BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH AT PUNE (MAHARASHTRA)

ORIGINAL APPLICATION NO. 2 /2026

IN THE MATTER OF: -

Nishikant Jadhav .....Petitioner

Versus

State of Maharashtra and ors.

.....Respondents

REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT TO THE REPLY AFFIDAVITS FILED BY RESPONDENT NO.1 AND RESPONDENT NO.6

PAPER BOOK

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SEAL OF NOTARY * INDIA * GOVERNMENT * ARCHANA D. JAISWAL * NAGPUR (M.S.) * Regn. No. 4753

Filed By – Adv. Ramteke Bodhi Sham and Adv.Mrinall Shashi S Chakravorty

(Advocates for Petitioner)

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE (MAHARASHTRA)

ORIGINAL APPLICATION NO. 02 OF 2026

IN THE MATTER OF: -

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Date – 09/04/2026.

Place- Nagpur

Nishikant Jadhav.

Nishikant Jadhav

Petitioner

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH AT PUNE (MAHARASHTRA)

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REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT TO THE REPLY AFFIDAVITS FILED BY RESPONDENT NO.1 AND RESPONDENT NO.6

Most Respectfully Showeth:

I, Nishikant Jadhav, s/o of Shri Late Shri Narayanrao Jadhav, aged 81 years, R/o Plot No.2, Raj Nagar, Chhaoni Katol Road, Nagpur – 440013, being the Petitioner in the above-mentioned case, do hereby solemnly affirm and state on oath as under:

1. **In reply to paragraph 1**, the Applicant submits that the same is a formal and evasive paragraph which discloses no substantive defence. The use of the expression **"without prejudice"** is of no legal consequence unless accompanied by a valid factual and statutory rebuttal, which is absent here.

   The answering respondents have, in the very same affidavit, chosen to raise definite pleas on maintainability, locus, forest status of the subject lands, and delisting from Zudpi Jungle category.

   Having done so, they cannot simultaneously seek to keep the entire matter fluid by reserving an unrestricted right to file a better or fuller reply at a later stage. Such a reservation cannot dilute the effect of their present pleadings, much less the admissions and inconsistencies emerging therefrom.

The Applicant therefore submits that paragraph 1 is merely introductory, does not traverse the material averments of the Original Application, and creates no legal bar to consideration of the present matter on merits under the National Green Tribunal Act, 2010.

2. **In reply to paragraph 2**, the Applicant respectfully submits that the objection of non-maintainability founded merely on the pendency of PIL No.16 of 2025 before the Hon'ble Bombay High Court, Nagpur Bench is misconceived in law and is denied.

   The present Original Application has been instituted under Sections 14, 15 and 17 read with Section 18 of the National Green Tribunal Act, 2010 on pleaded violations of Schedule I enactments, including the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986.

   Under Section 19 of the NGT Act, this Hon'ble Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908, though it is guided by principles of natural justice; and under Section 20 it is required to apply the principles of sustainable development, precautionary principle and polluter pays principle.

   Accordingly, mere pendency of a writ PIL does not, by itself, divest or suspend the statutory jurisdiction of this Hon'ble Tribunal.

3. Without prejudice to the above, even if the respondents seek to invoke principles analogous to res sub judice or judicial comity, the burden lies on them to establish the degree of identity required in law.

   In **State of Meghalaya v. Union of India**, the Hon'ble Supreme Court held in paras 16 to 19 that the principles underlying Section 10 CPC are shall be a "reasonable guiding light"; that Section 10 is a rule of procedure; that it does not bar institution of the latter proceeding; and that it does not bar interlocutory orders.

   In Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd., para 8, quoted in State of Meghalaya para 17, the Court held that the object of Section 10 is to avoid simultaneous trial and inconsistent findings, but that it neither affects jurisdiction nor creates a substantive bar.

   Further, in **Aspi Jal v. Khushroo Rustom Dadyburjor**, the Hon'ble Supreme Court held in paras 11 to 13 that the basic object of Section 10 CPC is to avoid contradictory verdicts and multiplicity of proceedings, but that the provision

applies only when the entire subject-matter in controversy is the same; it does not apply merely because some of the issues overlap. The Hon'ble Supreme Court further held that the test for applicability of Section 10 is whether, on a final decision in the previously instituted proceeding, such decision would operate as res judicata in the subsequent proceeding.

Tested on the above principles, the respondents' objection fails.

A. **First,** PIL No.16 of 2025 is admittedly still pending and has not been finally decided. The very order annexed by Respondent Nos.1 and 6 dated 26.02.2025 only issues notice, directs the Registrar of the University to file an affidavit, expects the State Government to file reply, and restrains the private respondents/allottees from carrying out development or construction until further orders. It is therefore not a final adjudication of the issues now raised in the present OA.

B. **Second,** the proceedings are not identical in their legal frame, scope, and matter directly and substantially in issue. The amended PIL is framed as a broader public law challenge concerning devolvement of PDKV land parcels for commercial and non-agricultural use allegedly contrary to the Government Resolutions of 2004 and 2011 and the protection of Nagpur's green cover under Article 21. The present OA, by contrast, is a statute-specific environmental proceeding confined to Khasra No.175, Mouza Dabha and Khasra No.13/3, Mouza Futala, and is founded upon pleaded violations of the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986 and the EIA Notification, 2006, together with prayers for environmental restraint and restoration under the NGT Act. At the highest, there may be overlap in background facts; but that is not the legal test. The respondents have not shown that the whole subject-matter in controversy is identical.

C. **Third,** even this Hon'ble Tribunal, by order dated 16.03.2026, did not uphold the objection as an automatic threshold bar; it merely directed the concerned respondents to place documentary material on record so that the effect of the High Court proceedings could be examined.

Paragraph 2 of the reply, therefore, proceeds on an overbroad assumption that pendency of the High Court PIL automatically bars the present OA. That is not the law, and the objection deserves to be rejected.

(Copy of **State of Meghalaya v. Union of India**, Original Suit No. 1 of 2021, order dated **11.05.2023** annexed herewith as **Annexure – RJ/1** and Copy of **Aspi Jal & Anr. v. Khushroo Rustom Dadyburjor**, Civil Appeal No. 2908 of 2013, decided on **05.04.2013**. Annexed herewith as **Annexure – RJ/2**)

4. **In reply to paragraph 3,** the Applicant respectfully submits that the objection is misconceived in law and overbroad on facts. The mere fact that the Hon'ble Bombay High Court has issued notice in PIL No.16 of 2025 does not, by itself, operate as a bar to the present Original Application nor does it disable this Hon'ble Tribunal from considering interlocutory or interim environmental relief.

   Under Section 19(1) of the National Green Tribunal Act, 2010, this Hon'ble Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908; under Section 19(4)(i), it is expressly empowered to pass interim orders including injunction or stay; and under Section 20 it is required to apply the principles of sustainable development, precautionary principle and polluter pays principle.

5. The law on so-called **"parallel proceedings"** has been clearly explained by the Hon'ble Supreme Court. **In State of Meghalaya v. Union of India, paras 16 to 19**, the Hon'ble Supreme Court held that the principles underlying Section 10 CPC shall be a "reasonable guiding light"; that Section 10 is a rule of procedure; that it does not bar institution of the later proceeding; and that it does not bar interlocutory orders.

   Likewise, **in Aspi Jal v. Khushroo Rustom Dadyburjor, para 11**, the Hon'ble Supreme Court held that the object of Section 10 is to prevent simultaneous adjudication only where there are truly parallel litigations in respect of the same cause of action, same subject matter and same relief; **in para 12**, it held that the real test is whether the final decision in the earlier proceeding would operate as res judicata in the later one; and in para 13, it held that Section 10 is not attracted merely because some matters overlap, but only when the entire subject matter in controversy is the same.

The respondents' assertion of "parallel adjudication" is further unsustainable because the present OA is not co-extensive with the High Court PIL either in its legal foundation or in the reliefs claimed.

The High Court proceeding, even as reflected in the annexed order, was moved on the footing that Government Resolutions dated 13.07.2004 and 31.05.2011 did not permit lands owned by the Agriculture University to be allotted for purposes other than the purpose of the University. The present OA, by contrast, is a statute-specific environmental action confined to Khasra No.175, Mouza Dabha and Khasra No.13/3, Mouza Futala, founded upon pleaded absence of prior approval under **Section 2 of the Forest (Conservation) Act, 1980, absence of prior environmental clearance where applicable under the EIA Notification, 2006, and consequential prayers for restraint, removal of unauthorized non-forest use, and ecological restoration under Sections 14, 15 and 17 of the NGT Act.**

Thus, at the highest, there is some overlap in factual background; but under paras 11 to 13 of **Aspi Jal v. Khushroo Rustom Dadyburjor**, such overlap is not enough. The respondents have not shown sameness of cause of action, sameness of subject matter, sameness of relief, or that a decision in the High Court PIL would necessarily operate as res judicata on the present OA.

It is also material that this Hon'ble Tribunal, by order dated 16.03.2026, did not accept the objection of parallel litigation as an automatic threshold bar and merely directed the concerned respondents to place documentary material on record so that the effect of the High Court proceedings could be examined. Paragraph 3 of the reply therefore proceeds on an overbroad and legally untenable assumption that mere pendency plus issuance of notice in the High Court automatically bars the present OA. That is not the law, and the objection deserves to be rejected.

6. **In reply to paragraph 4,** the Applicant respectfully submits that the objection as to locus is wholly misconceived, contrary to the express scheme of the National Green Tribunal Act, 2010, and liable to be rejected outright. The answering respondents have merely asserted that the petitioner has "no locus of whatsoever nature" without even attempting to meet the statutory test contained in Section 18 of the NGT Act. Such a bald assertion, unsupported by the Act or by any binding precedent, does not constitute a valid preliminary objection.

Section 18 of the National Green Tribunal Act is itself a complete answer to paragraph 4. **In Municipal Corporation of Greater Mumbai v. Ankita Sinha,** the **Hon'ble Supreme Court in para 16.1** specifically noticed that Section 18 identifies who can move the Tribunal and that Section 18 includes, inter alia, "any person aggrieved including any representative body / organization", and further held that locus standi before the NGT is not limited only to the aggrieved party in a narrow sense.

In para 16.6, the **Hon'ble Supreme Court went further and expressly observed that "any person or organization who may be interested in the subject matter is permitted to approach the NGT."**

These observations are directly applicable here and demolish the respondents' attempt to import a narrow civil-law notion of standing into a specialised environmental statute.

The same judgment also explains why the respondents' narrow objection is legally unsustainable**. In para 17.3**, the Hon'ble Supreme Court held that, **for the environmental forum tasked with implementation of the statutes in Schedule I of the NGT Act, the concept of lis is beyond the usual understanding in civil cases, because one side may be a private or governmental actor disturbing the environment while the other may be an individual, a body or even the government itself having concern for environmental protection.**

In para 17.4, the Hon'ble Supreme Court held that the NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration.

Therefore, the respondents' attempt to deny standing to a public-spirited Nagpur resident complaining of continued non-forest use of recorded Zudpi Jungle land is contrary to the very conception of the NGT recognised by the Hon'ble Supreme Court.

The constitutional basis is equally clear. **In para 28.2 of In Municipal Corporation of Greater Mumbai v. Ankita Sinha the Hon'ble Supreme Court expressly quoted Subhash Kumar v. State of Bihar** and reaffirmed that the right to life under Article 21 includes the right to enjoyment of pollution-free water and air for full enjoyment of life.

The same discussion in **In Municipal Corporation of Greater Mumbai v. Ankita Sinha** acknowledges the broader environmental jurisprudence developed by the Hon'ble Supreme Court, including liberalisation of standing in environmental matters.

Once environmental harm is understood as implicating Article 21 and community rights, a plea that the petitioner has "no locus whatsoever" merely because he is not asserting a narrow proprietary injury is contrary to settled constitutional environmental law.

7. The Applicant has also approached the correct forum. **In para 19.1 of Ankita Sinha, the Hon'ble Supreme Court relied on Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India** where it was observed that environmental issues and matters covered under the NGT Act and Schedule I should be instituted and litigated before the NGT, so as to secure specialised and expeditious environmental justice and avoid conflict of orders.

   The present OA, being founded upon pleaded violations of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 in respect of identified parcels recorded as Zudpi Jungle, is therefore before the very forum contemplated by the binding jurisprudence of the Hon'ble Supreme Court.

   The Applicant's standing is, in any event, independently established on facts. **The Original Application specifically pleads that the Applicant is a senior citizen resident of Nagpur City and a retired IFS officer from the Madhya Pradesh cadre**; that he is a socially conscious citizen who has consistently taken interest in ecological balance, public health and environmental sustainability in and around Nagpur; and **that he is directly affected and aggrieved by the illegal activities being carried out in the forest areas of Nagpur in contravention of established environmental norms.**

   The Applicant has also specifically pleaded clear locus under Section 18 of the NGT Act. **The respondents are therefore not questioning the standing of a stranger to the subject; they are questioning the standing of a retired forest officer possessing direct knowledge, experience and concern in matters of forest governance and environmental protection,**

who is also a resident of the very city where the impugned parcels are situated. Such an objection is untenable both in law and on facts.

Accordingly, paragraph 4 discloses no valid preliminary objection. The Applicant has clear locus under Section 18 of the NGT Act; his residence in Nagpur, his pleaded direct environmental grievance, and his professional background as a retired IFS officer reinforce his bona fides and competence to bring the matter; and the objection raised by Respondent Nos.1 and 6 deserves rejection.

(Copy of **Municipal Corporation of Greater Mumbai v. Ankita Sinha & Ors.**, Civil Appeal Nos. 12122-12123 of 2018 etc., judgment dated **07.10.2021**. annexed herewith as Annexure – RJ/3)

8. **In reply to paragraph 5**, the Applicant respectfully submits that the contents thereof, to the extent they admit that Survey No.175, Mouza Dabha admeasuring 23.68 HR and Survey No.13/3, Mouza Futala admeasuring 23.06 HR are recorded in the revenue record as "Zudpi Jungle", are correct and constitute a clear admission in favour of the Applicant. The remaining averments are denied. Once the respondents themselves admit that the subject lands are recorded as Zudpi Jungle in the Government revenue record, the legal consequence under the Forest (Conservation) Act, 1980 is attracted, and the answering respondents cannot avoid that consequence merely by pleading a so-called "historical perspective" or long-standing non-forest use.

The respondents' plea is, in fact, the very plea which the State of Maharashtra advanced before the Hon'ble Supreme Court in In Re: Zudpi Jungle Lands. **In para 2 of the judgment dated 22.05.2025**, the Hon'ble Supreme Court specifically recorded the State's submission that though these lands were recorded in the revenue records as Zudpi Forest lands, taking into consideration the historical perspective they were not forest lands and had for several decades been put to non-forestry purposes such as residential, agricultural, government offices, public schools and primary health centres. **Yet, after considering that very plea, the Hon'ble Supreme Court rejected the broad exclusionary stand and in para 138(i) expressly directed that "the Zudpi Jungle lands shall be considered as Forest lands" in line with the order dated 12.12.1996 in T.N. Godavarman**.

The plea now taken in paragraph 5 is therefore not a new defence, but a repetition of an argument already considered and answered by the Hon'ble Supreme Court.

9. The respondents' attempt to rely on long user, agricultural possession, existence of buildings, or past non-forestry activity is legally insufficient. Long illegality or long misuse does not ripen into legality, nor does it erase the statutory requirement of prior approval under Section 2 of the FC Act.

In **In Re: Construction of Multi Storeyed Buildings in Forest Land Maharashtra, the Hon'ble Supreme Court** dealt with a strikingly similar defence.

There too, the State sought to justify the position by saying that the land had been granted for agricultural purpose and was being continuously used for such purpose, and therefore the FC Act was not applicable.

(Copy of **In Re: Construction of Multi Storeyed Buildings in Forest Land Maharashtra**, judgment dated **15.05.2025**. annexed herewith as **Annexure – RJ/6**)

The Supreme Court rejected that defence. **In para 2.14, the Court recorded the State's plea that continuous agricultural use made the 1980 FC Act inapplicable.** In **paras 23 and 24, the Court set out Section 2 of the FC Act and held that, after 1980, no forest land could be de-reserved, used for non-forest purpose, or assigned by lease or otherwise to a private person without prior Central approval.** In para 28, it specifically held that, since the lease was only for one year, the forest land could not thereafter be assigned to any private person without such approval. **In para 32, it reiterated the Godavarman principle that forest land includes land recorded as forest in Government records, para 38 held the allotment not sustainable in law, and para 91 finally held it to be in "blatant disregard" of Section 2 of the FC Act.** That principle applies squarely here.

The respondents' own subsequent conduct also destroys paragraph 5. **In Annexure R-6/D and the forwarding letter forming part thereof, the office of the Collector, Nagpur has itself forwarded a proposal to the Additional Principal Chief Conservator of Forests and Nodal Officer for "delisting" the survey numbers as shrub forest / Zudpi Jungle, expressly stating that the proposal is being forwarded for approval and appropriate action pursuant to the Supreme Court's Zudpi orders dated 22.05.2025 and 25.08.2025.**

The proposal for delisting is, therefore, an implied admission by the answering respondents that the lands continue to attract the

Zudpi/forest regime unless and until competent approval is granted. A proposal for delisting is not a delisting order.

The Applicant **therefore submits that paragraph 5 contains a fatal contradiction:** the respondents admit the governing revenue record yet seek to nullify its legal effect by reference to historical use. That contention is untenable after the binding law in T.N. Godavarman, after para 138(i) of In Re: Zudpi Jungle Lands, and after the subsequent 25.08.2025 order.

The admitted recording of the lands as Zudpi Jungle is sufficient to attract the Forest Conservation Act, 1980 framework; the respondents have shown no final order deleting the land from that regime and no completed prior approval under Section 2.

Accordingly, paragraph 5 deserves to be rejected.

10. **In reply to paragraph 6**, the Applicant respectfully submits that the same is denied as false, self-contradictory and legally misconceived. The respondents seek to rely upon entries relating to buildings, roads, barren land called Charai and present possession in order to contend that there is "no entry" showing Zudpi Jungle in existence. This contention is untenable on the face of their own pleadings and annexures.

At the outset, paragraph 6 is irreconcilable with paragraph 5 of the same reply. In paragraph 5, the respondents have expressly admitted that Survey No.175, Mouza Dabha and Survey No.13/3, Mouza Futala are recorded in the revenue record as "Zudpi Jungle." Further, in the very tabular material reproduced by them, the remarks against Survey No.13/3 contain the expression "Zudapi Jungle." Having made such admission, the respondents cannot, in the very next paragraph, invite this Hon'ble Tribunal to ignore the governing recorded status merely because some other columns refer to roads, buildings, Charai, agricultural use or present possession. The respondents are thus attempting to create an artificial distinction between the admitted legal character of the land and the subsequent physical features or user entries reflected in certain parts of the record.

The legal fallacy in paragraph 6 lies in conflating present physical use with legal classification. Entries showing roads, buildings, fenced portions, agricultural use or Charai do not constitute, either singly or collectively, a lawful order deleting the land from the category of Zudpi Jungle / forest. At

the highest, such entries may show present occupation or past encroachment or non-forest use; they do not establish that the land has ceased to be forest land in law. The respondents have not produced any competent order of correction, deletion, reclassification or denotification by which the admitted Zudpi Jungle status stood lawfully removed.

11. The governing legal position is settled. The principle flowing from the order dated 12.12.1996 in T.N. Godavarman Thirumulpad — **namely that "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980 includes not only statutorily notified forests but also any area recorded as forest in Government records irrespective of ownership — stands expressly reiterated by the Hon'ble Supreme Court in para 131 of the Kumaon Stone Crusher judgment.**

(Copy of **T.N. Godavarman Thirumulpad v. Union of India & Ors.**, W.P.(C) No. 202 of 1995, order dated **12.12.1996** annexed herewith as **Annexure – RJ/4** and Copy of **State of Uttarakhand & Ors. v. Kumaon Stone Crusher, Civil Appeal No. 14874 of 2017, judgment/order dated 15.09.2017** annexed herewith as **Annexure – RJ/5**)

The same principle now stands specifically applied to Zudpi Jungle lands in In Re: Zudpi Jungle Lands. In para 2 of that judgment, the Hon'ble Supreme Court recorded the very defence now attempted by the answering respondents, namely that although the lands were recorded in the revenue records as Zudpi Forest lands, "taking into consideration the historical perspective" they were not forest lands and had for several decades been put to non-forestry purposes.

Yet, after considering that plea, the Hon'ble Supreme Court in para 138(i) expressly directed that the Zudpi Jungle lands shall be considered as forest lands in line with the order dated 12.12.1996.

Paragraph 6 of the present reply is therefore only another form of the same rejected defence, now dressed up as a selective reading of user-columns in the 7/12 extracts.

12. The respondents' own subsequent conduct further demolishes paragraph 6. The present Original Application stood verified and filed on 03.01.2026 and further this instant petition was admitted, and notices was issued to the respondents by order dated 20.01.2026.

However, the acknowledgement relied upon by Respondent Nos.1 and 6 for submission of the delisting proposal is dated 17.03.2026, i.e. after institution of the present proceedings. Even in the forwarding letter forming part of the same annexure, the Collectorate states that the proposal is being submitted "for approval and appropriate action," and that the original proposal received is being forwarded onward for that purpose.

Thus, the answering respondents cannot rely upon a later and still incomplete forwarding exercise, initiated or at least acknowledged only after filing and admission of the present OA, to retrospectively validate the legal position asserted in paragraph 6.

13. That this becomes still more significant in view of the reply filed by Respondent No.7 – Ministry of Environment, Forest and Climate Change. Respondent No.7 has specifically stated that it considers proposals for diversion of forest land only upon receipt of complete proposals from the concerned State Government through the prescribed procedure, and that, in the absence of any proposal received from the State Government in respect of the subject land, the Ministry had neither examined nor granted any approval under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.

Respondent No.7 further stated that, although it had written on 06.03.2026 to the State Forest Department seeking the factual position, no factual report had been received till the date of its affidavit. Therefore, even as of the Central Government's own reply, no proposal in respect of the subject land had reached the competent authority in a manner that could support the respondents' present defence.

14. Accordingly, paragraph 6 is not only contrary to the admitted revenue status and binding forest law; it is also belied by the respondents' own post-petition conduct, which shows that the legal status of the land remained unresolved and that no completed approval or lawful delisting existed when the present OA was instituted, nor even by the time Respondent No.7 filed its reply.

The respondents may point to entries reflecting present occupation or past non-forest use, but such entries do not displace the admitted Zudpi Jungle status, do not amount to lawful deletion of forest classification, and do not neutralise the embargo of Section 2 of the Forest (Conservation) Act, 1980. Paragraph 6 therefore deserves to be rejected.

15. **In reply to paragraph 7**, the Applicant respectfully submits that the same is denied as selective, misleading and contrary to the true ratio and operative directions of the Hon'ble Supreme Court in In Re: Zudpi Jungle Lands.

The answering respondents seek to brand the Applicant's reliance on the said judgment as "misleading", but paragraph 7 itself proceeds by extracting only a descriptive part of the judgment and then using that extraction to obscure the binding operative conclusions.

At the outset, the Applicant submits that the block quotation reproduced by the answering respondents beginning with the words "***As discussed hereinabove……they all would be affected"*** substantially reflects the discussion in paragraph 120 of the judgment regarding the existence of developmental activities and public utilities on certain Zudpi Jungle lands.

However, the following sentence immediately thereafter ***"Considering all these aspects the Hon'ble Supreme Court of India, in the particular facts and circumstances of the case involved in the judgment issued directions to the State of Maharashtra to seek approval under Section 2 of the Forest (Conservation) Act, 1980 in respect of the Zudpi Jungle lands allotted by the competent authority up to 12th December 1996 and for which land classification has not been changed, for their deletion from the "List of Forest Areas"*** **is not shown as part of paragraph 120 and is the answering respondents' own interpretive bridge.**

By stitching together, a descriptive paragraph with their own narrative and by omitting the controlling operative directions, the answering respondents create a materially misleading impression that the existence of roads, buildings, schools, public utilities and Agricultural University establishments somehow dilutes or neutralises the forest character of Zudpi Jungle lands. That is not what the judgment holds.

16. The real answer given by the Hon'ble Supreme Court lies **not in paragraph 120** but in paragraphs **136 and 138.**

In paragraph 136, the Court expressly held that, after 12th December 1996, no forest could be denotified or used for non-forestry purpose except with the permission of the Central Government under the FC Act, 1980. In paragraph 138(i), the Court directed that the Zudpi Jungle lands shall be considered as Forest lands in line with the order dated

12th December 1996. In paragraph 138(ii), the Court further directed that, even for Zudpi Jungle lands allotted by the competent authority up to 12th December 1996 and for which land classification had not been changed, the State of Maharashtra shall seek approval under Section 2 of the Forest (Conservation) Act, 1980 for their deletion from the "List of Forest Areas".

Thus, the legal consequence of the judgment is not that existing development negates forest status; the legal consequence is that Zudpi Jungle lands continue to be forest lands and can be dealt with only through the limited statutory route prescribed in **paragraph 138.**

That the Paragraph 7 is especially misleading because the very defence now advanced by the answering respondents was already raised by the State of Maharashtra before the Hon'ble Supreme Court and considered in the judgment itself.

In paragraph 2 of the judgment, the Court recorded the State's plea that though these lands were recorded in the revenue records as Zudpi Forest lands, "taking into consideration the historical perspective" they were not forest lands and had for decades been used for residential, agricultural, government offices, public schools, primary health centres and other non-forestry purposes. Notwithstanding that plea, the Court still held, in paragraph 138(i), that Zudpi Jungle lands shall be considered as Forest lands.

Paragraph 7 of the present reply is therefore only a repetition of the very plea already considered and answered against the State.

17. The respondents' presentation is also internally self-destructive. In paragraph 7 they contend that the Applicant's submission regarding Survey No.175 and Survey No.13/3 is misleading.

Yet, in paragraph 8 of the very same reply, they expressly admit that Annexure-1 attached to the judgment dated 22.05.2025 shows many lands as Zudpi Jungle "including the land in question" at pages 101 and 103 of the judgment.

Further, in paragraph 9 they themselves state that the Hon'ble Apex Court has held that Zudpi Jungle land shall be considered as forest lands. The answering respondents therefore cannot, in one breath, deny the relevance of

the judgment to the subject parcels and, in the next, admit both the inclusion of the subject lands in the annexure and the Court's holding that Zudpi Jungle land is to be treated as forest land.

18. That, it is also material that the 2025 CEC recommendation, extracted in the judgment papers, stated in clear terms that the Zudpi Jungle lands shall be considered as Forest Lands for all purposes whatsoever and that the Forest (Conservation) Act, 1980 is applicable to Zudpi Jungle lands, and further recommended a limited Section 2 deletion route for certain pre-12.12.1996 allotments. The operative directions in paragraph 138 substantially follow that structure. Paragraph 7 of the reply, however, highlights only the descriptive inconvenience of existing development while suppressing the controlling legal conclusion that the FC Act discipline continues to apply.

19. Accordingly, paragraph 7 misdirects this Hon'ble Tribunal in three ways -

First, it relies on the descriptive discussion in paragraph 120 while withholding the operative directions in paragraphs 136 and 138 of the judgment dated 22.05.2025.

Second, it suggests that the existence of developmental activity weakens the forest character of the land, whereas the Hon'ble Supreme Court's actual answer was to retain forest status in paragraph 138(i), to permit only a limited Section 2 deletion route for certain pre-12.12.1996 allotments in paragraphs 138(ii) to 138(v), and, in paragraph 138(vi), to require that for post-12.12.1996 allotments the State must disclose the officers responsible and that the Union Government process such proposals only after ensuring punitive action against the concerned officers under Sections 3A and 3B of the Forest (Conservation) Act, 1980.

Third, the answering respondents have added on their own, an additional bridging sentence after the extracted part of paragraph 120 beginning with the words ***"Considering all these aspects…deletion from the 'List of Forest Areas"*** That **sentence is not shown as part of paragraph 120**, yet it is positioned in such a way as to pass off the respondents' own gloss as though it flows seamlessly from the Hon'ble Supreme Court's reasoning.

This is a **misleading mode of presentation**. It suppresses the true structure of the judgment, selectively highlights a descriptive passage, and then superimposes a diluted narrative so as to misdirect this Hon'ble Tribunal

regarding the actual legal consequence declared by the Hon'ble Supreme Court.

The respondents' treatment of paragraph 120 is, therefore, not a fair quotation but a selective extraction coupled with an impermissible interpolation intended to obscure the binding operative directions.

Paragraph 7 therefore deserves to be rejected.

20. **In reply to paragraph 8**, the Applicant respectfully submits that the same, to the extent it admits that Annexure-1 attached to the judgment dated 22.05.2025 of the Hon'ble Supreme Court shows the land in question as Zudpi Jungle at pages 101 and 103 of the judgment, constitutes a clear and material admission in favour of the Applicant.

The remaining tenor of the paragraph, insofar as it seeks to reduce the legal significance of that admission by diverting attention to the committee report for simplification of diversion procedure, is denied as selective and legally misconceived.

21. At the outset, the answering respondents cannot be permitted to approbate and reprobate. In paragraph 7 they characterised the Applicant's reliance on the Supreme Court judgment as "misleading, misconceived and liable to be rejected." Yet, in paragraph 8, they themselves expressly admit that Annexure-1 attached to the judgment dated 22.05.2025 shows many lands as Zudpi Jungle, including the very land parcels in question, at page nos. 101 and 103 of the judgment.

This admission demolishes the central thrust of paragraph 7 and confirms that the subject parcels are not outside the judgment but are expressly within its documentary sweep.

22. That the legal consequence of that admission is decisive. Annexure-1 is not an external or informal document casually referred to by the respondents; it is expressly enclosed with the judgment itself in paragraph 140 under the title "Annexure-1 to the Report of the Committee for suggesting changes required in simplified procedure for diversion of Zudpi Jungle Land under Forest Conservation Act, 1980 titled as 'Resolving Zudpi Jungle Land Issue: A Development Perspective'." Once the answering respondents themselves accept that the subject lands are shown in Annexure-1 to the judgment, they

cannot simultaneously contend that the judgment has no direct bearing on the parcels forming the subject matter of the present OA.

23. The respondents' attempt to shift focus from the annexure to the committee report is also legally untenable. The committee report and its annexures do not override the judgment; they are absorbed into the judgment only to the extent accepted and acted upon by the Hon'ble Supreme Court. The controlling legal consequence flows not from the title of the report but from the operative directions of the Court.

In paragraph 138(i), the Hon'ble Supreme Court directed that the Zudpi Jungle lands shall be considered as Forest lands in line with the order dated 12th December 1996. In paragraph 138(ii), the Court directed that even for certain Zudpi Jungle lands allotted up to 12th December 1996, the State must seek approval under Section 2 of the Forest (Conservation) Act, 1980 for deletion from the "List of Forest Areas".

In paragraph 138(vi), the Court further mandated that for post-12.12.1996 allotments, the Union Government shall process such proposals only after ensuring punitive action against the concerned officers under Sections 3A and 3B of the FC Act.

Therefore, **once paragraph 8 admits that the subject lands fall within Annexure-1, the answering respondents cannot lawfully present the matter as if the judgment only offers a development-friendly simplification route divorced from forest-law discipline.**

24. The admission in paragraph 8 must also be read with the settled forest-law principle flowing from T.N. Godavarman and reiterated in later decisions, namely that land recorded as forest in Government record attracts the discipline of Section 2 of the Forest (Conservation) Act, 1980 irrespective of ownership.

In the present case, the respondents have already admitted in paragraph 5 that the subject lands are recorded in the revenue record as "Zudpi Jungle." Paragraph 8 now goes further and admits that the very same lands are included in Annexure-1 to the Supreme Court's Zudpi Jungle judgment.

These two admissions, taken together, leave no scope for the respondents to argue that the subject lands stand outside the FC Act regime.

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25. Indeed, the respondents' own subsequent conduct confirms the same position. In later paragraphs they rely on a proposal for "delisting" the land from Zudpi Jungle category.

A proposal for delisting is itself an admission that the lands continue to lie within the Zudpi/forest legal framework unless and until competent approval is granted.

Thus, paragraph 8, far from assisting the answering respondents, materially strengthens the Applicant's case that the subject parcels are expressly covered by the Supreme Court's Zudpi Jungle judgment and remain subject to the FC Act discipline laid down therein.

26. Accordingly, **paragraph 8 deserves to be read as an admission against the answering respondents and not as a defence**.

Once they admit that the subject lands are included in Annexure-1 to the judgment dated 22.05.2025, the operative consequences of paragraphs 138(i), 138(ii) and 138(vi) must follow.

27. **In reply to paragraph 9**, the Applicant respectfully submits that the same, to the extent it states that the Hon'ble Apex Court in its judgment dated 22.05.2025 in In Re: Zudpi Jungle Lands has held that Zudpi Jungle lands shall be considered as forest lands and that the directions issued therein are to be scrupulously followed by the Union Government and the State of Maharashtra, constitutes a clear admission in favour of the Applicant.

The remaining tenor of the paragraph, insofar as it seeks to derive any assistance from the subsequent modification application filed by the State of Maharashtra, is denied as irrelevant, selective and legally misconceived.

28. At the outset, the answering respondents cannot be permitted to rely upon the judgment only for its supposed flexibility while suppressing its binding command.

Once the answering respondents themselves admit that the Hon'ble Apex Court has held that Zudpi Jungle land shall be considered as forest land, the necessary legal consequence follows, namely that the subject lands continue to attract the discipline of the Forest (Conservation) Act, 1980 unless and until lawfully dealt with in the manner prescribed by the Hon'ble Supreme Court. The opening portion of paragraph 9 is therefore destructive of the respondents' own broader defence.

29. The reference in paragraph 9 to the State of Maharashtra having filed an application seeking modification of the final order dated 22.05.2025 does not assist the answering respondents.

a. **First,** the answering respondents have not even placed the alleged modification application on record. Their own annexure index shows only four annexures, namely R-6/A (High Court order dated 26.02.2025), R-6/B (7/12 extract of Survey No.175), R-6/C (7/12 extract of Survey No.13/1 and 13/3), and R-6/D (acknowledgement dated 17.03.2026 regarding delisting proposal). No copy of the State's modification application has been annexed, nor has the complete order dated 25.08.2025 been filed as a separate annexure. Thus, while pleading from the alleged prayers of the modification application, the answering respondents have withheld the very application on which they seek to build their narrative.

b. **Second,** even on the respondents' own showing, the modification plea they seek to invoke does not help them. In paragraph 9 they refer to prayer clause (a) concerning "Fragmented Land Parcels" of less than 3 hectares. However, in paragraph 10 of the same reply, the answering respondents themselves admit that the Hon'ble Apex Court rejected prayer clause (a) and directed that all such fragmented land parcels shall be declared as protected forest. Therefore, the very plea to which paragraph 9 gestures was not accepted by the Hon'ble Supreme Court.

c. **Third,** the entire discussion regarding fragmented land parcels is wholly inapplicable to the present case. The subject lands are not fragmented parcels below 3 hectares. On the contrary, the answering respondents themselves have already pleaded in paragraph 5 that Survey No.175, Mouza Dabha admeasures 23.68 HR and Survey No.13/3, Mouza Futala admeasures 23.06 HR. Having themselves pleaded these areas, the answering respondents cannot lawfully invoke a modification plea relating to tiny fragmented parcels as

though it had any bearing on the present subject matter. Paragraph 9 is therefore an attempt to introduce an inapplicable category into the case so as to create an impression of wider permissible relaxation than the law actually allows.

So, the proper reading of paragraph 9 is therefore not that it furnishes a defence to the answering respondents, but that it contains an admission coupled with a diversion. The admission is that Zudpi Jungle lands are to be treated as forest lands and that the Supreme Court's directions must be scrupulously followed. The diversion is the attempt to rely upon a modification application that has not even been annexed, and whose relevant prayer, in any case, stood rejected on the respondents' own showing.

Accordingly, paragraph 9 deserves to be read as an admission against the answering respondents and not as a defence. Their reference to the State's modification application is incomplete at the record level, irrelevant on facts, and ineffective in law.

30. **In reply to paragraph 10**, the Applicant respectfully submits that the same, **to the extent it records that the Hon'ble Apex Court rejected prayer clause (a) of the State of Maharashtra's modification application, constitutes a clear admission in favour of the Applicant.**

The remainder of the paragraph, insofar as it seeks to derive assistance from the limited clarification regarding Section 3(2) of the Forest Rights Act, 2006, is denied as irrelevant, inapplicable and legally misconceived.

At the outset, paragraph 10 destroys the very line of argument hinted at in paragraph 9. The official order dated 25.08.2025 of the Hon'ble Supreme Court makes it clear in paras 2 to 5 that prayer clause (i)(a) was not entertained, was expressly rejected, and that all such fragmented land parcels were required to be declared as protected forest, subject only to the limited clarification that if the State desired to use such land for purposes mentioned in Section 3(2) of the Forest Rights Act, 2006, the same could be done only after following the prescribed procedure and conditions.

Thus, the Supreme Court did not relax paragraph 138(vii); it reaffirmed it.

31. The entire discussion in paragraph 10 is, in any event, wholly inapplicable to the present case. Paragraph 138(vii) of the judgment dated 22.05.2025

applies to **"fragmented land parcels"** each **having an area of less than three hectares and not adjoining any forest area**.

By the answering respondents' own pleadings, however, Survey No.175, Mouza Dabha measures 23.68 HR and Survey No.13/3, Mouza Futala measures 23.06 HR.

These parcels are therefore ex facie outside the category of **"fragmented land parcels"** to which paragraph 138(vii) and the modification prayer clause (i)(a) relate.

The answering respondents cannot invoke a rejected modification plea concerning sub-3 hectare fragments in order to cloud the legal position governing parcels of 23.68 and 23.06 hectares.

32. The respondents' reliance on the clarification regarding Section 3(2) of the Forest Rights Act, 2006 is equally misplaced. Section 3(2) permits only specified Government-managed facilities such as schools, dispensaries or hospitals, anganwadis, fair price shops, electric and telecommunication lines, tanks and minor water bodies, drinking water supply and pipelines, rain-water harvesting structures, minor irrigation canals, non-conventional energy sources, skill upgradation or vocational training centres, roads and community centres.

Even for those limited purposes, the statute requires that the forest land to be diverted must be less than one hectare in each case and that the project must be recommended by the Gram Sabha. The answering respondents have not pleaded, much less proved, that the impugned projects in the present OA satisfy those statutory conditions, or that any Gram Sabha recommendation exists, or that diversion below one hectare per case is involved.

Paragraph 10 is also selective at the record level. Although the answering respondents rely upon the State's modification proceedings and the clarification allegedly flowing therefrom, they have not annexed the State's modification application to their reply.

Their annexure index contains only four annexures — the High Court order, the 7/12 extracts, and the acknowledgement regarding the delisting proposal — and does not include the modification application itself. Thus, while referring to the prayer clauses and supposed effect of the modification

proceedings, the answering respondents have withheld the underlying application and invite this Hon'ble Tribunal to act on a selective account.

The true legal effect of paragraph 10 is therefore the opposite of what the answering respondents seek to suggest. It confirms that the Supreme Court refused to relax the forest-law regime for fragmented parcels, insisted that such parcels be declared protected forest, and allowed resort to Section 3(2) of the Forest Rights Act only through a narrow and conditional statutory route. Since the present subject lands are not fragmented parcels and since no case under Section 3(2) FRA has been pleaded or established, paragraph 10 affords no defence whatsoever to the answering respondents and instead strengthens the Applicant's case that the governing regime remains one of strict statutory compliance.

33. **In reply to paragraph 11**, the Applicant respectfully submits that the same, to the extent it reproduces the order dated 25.08.2025 inserting paragraph (x-a), is only a partial statement of the law and is denied insofar as it is used as a defence to the present proceedings.

The answering respondents omit the controlling limits of that order. The clarification inserted by paragraph (x-a) is a narrow, one-time and category-specific relaxation confined to encroachments made prior to **12th December 1996** for specified purposes such as agriculture, kaccha houses, pakka houses, slums, government employee colonies, government or Z.P. schools, private schools and other public utilities to the quantified extent recorded by the CEC.

It is not a blanket immunity for all present uses or projects on Zudpi Jungle land.

The most important part of paragraph (x-a), which the answering respondents themselves reproduce, is that any encroachment made after 12th December 1996, if sought to be regularized, must be dealt with only in accordance with **clauses (i) to (vi) of paragraph 138** of the judgment dated 22.05.2025.

Those clauses do not create an unrestricted relaxation. On the contrary, they retain forest status, require the State to seek approval under **Section 2 of the Forest (Conservation) Act, 1980** in eligible cases, and in **paragraph 138(vi)** require the State to disclose the officers responsible and the Union

Government to process such proposals only after ensuring punitive action under **Sections 3A and 3B of the Forest Conservation Act 1980.**

Thus, even the later order dated 25.08.2025 preserved the discipline of the FC Act and did not dissolve it.

34. That the Paragraph 11 also fails because the answering respondents have not pleaded or proved that the subject parcels or the impugned use fall within the narrow class protected by paragraph (x-a).

They have not placed any material to show that the impugned occupation or use is a pre-12.12.1996 encroachment of the kind enumerated in paragraph (x-a). They have not shown that the present case forms part of the quantified 10,365.049 hectares referred to in the CEC report.

Nor have they placed any case-specific material showing that the present matter answers the limited welfare-oriented categories contemplated by the Supreme Court. A bare reproduction of paragraph (x-a), without pleading and proof of applicability, affords no defence.

Further, the answering respondents have not even annexed the State's modification application on which they seek to rely. Their own annexure index contains only four annexures, namely the High Court order dated 26.02.2025, the 7/12 extracts, and the acknowledgement dated 17.03.2026 regarding delisting proposal. Neither the modification application nor the complete order dated 25.08.2025 has been filed by them as a separate annexure. The respondents therefore invite this Hon'ble Tribunal to accept a selective reading of the modification proceedings without placing the full underlying material on record.

35. Accordingly, paragraph 11 is of no assistance to the answering respondents. Properly read, the order dated 25.08.2025 grants only a narrow and conditional exception for certain pre-12.12.1996 encroachments, while expressly preserving strict compliance with paragraph 138 for post-12.12.1996 cases, including the route of Section 2 approval and punitive action under Sections 3A and 3B of the FC Act.

Paragraph 11 therefore deserves to be rejected as a selective and inapplicable plea.

36. **In reply to paragraph 12**, the Applicant respectfully submits that the same, far from answering the Original Application, constitutes a clear admission

that the subject lands continue to be treated by the answering respondents as Zudpi Jungle lands requiring delisting under the forest-law framework. The paragraph is therefore destructive of the respondents' earlier plea that the lands are not forest lands in law.

If the lands had already ceased to be forest lands or had already stood lawfully excluded from the Zudpi Jungle regime, there would have been no occasion whatsoever to initiate any proposal for "delisting" them from the Zudpi Jungle category.

37. The answering respondents' entire reliance is only upon a proposal process, not upon any final statutory approval. Section 2 of the Forest (Conservation) Act, 1980 is explicit that no State Government or other authority shall make any order directing use of forest land for non-forest purpose except with the prior approval of the Central Government.

Therefore, a proposal for delisting or diversion is not equivalent to approval; nor can a pending proposal retrospectively validate an already impugned use or neutralise the challenge in the present OA.

On the respondents' own showing, the only document annexed is an acknowledgement dated 17.03.2026 and a forwarding communication stating that the original proposal is being submitted "for approval and appropriate action." That itself shows that the process, even according to them, was incomplete.

38. Paragraph 12 is further weakened by the timeline. The present Original Application stood has been admitted by this Hon'ble Tribunal on date 20.01.2026. The only document relied upon by the answering respondents evidencing onward submission of the delisting proposal is dated 17.03.2026, i.e. after institution of the present proceedings.

Thus, the respondents cannot rely upon a later forwarding exercise, taken or at least evidenced after filing of the OA, to retrospectively support the legal position asserted in their reply.

The answering respondents' own record is also incomplete and selective. Although paragraph 12 states that the Tahsildar submitted a proposal on 24.12.2025, no copy of that actual proposal has been annexed to the reply. What is annexed is only the later acknowledgement / forwarding material. The Tribunal is therefore not shown the contents of the alleged proposal, the

category under which it was moved, whether the subject use is pleaded as pre-12.12.1996 or post-12.12.1996, whether it is district-wise consolidated as required, whether it conforms to the format contemplated by the Hon'ble Supreme Court, or whether it contains the particulars required for post-12.12.1996 allotments.

A bare assertion that some proposal was forwarded cannot substitute production of the proposal itself and proof of its legal sufficiency.

39. The binding directions of the Hon'ble Supreme Court in In Re: Zudpi Jungle Lands make the deficiency of paragraph 12 even more apparent. In paragraph 138(i), the Court directed that Zudpi Jungle lands shall be considered as forest lands.

In paragraph 138(ii), it directed that only as an exception, and without being treated as a precedent, the State of Maharashtra may seek Section 2 approval for deletion of Zudpi Jungle lands allotted by the competent authority up to 12th December 1996 and for which land classification had not been changed.

In paragraph 138(iii), the Court directed that the State shall submit a consolidated proposal for each district and shall ensure that the land use is not changed in future.

In paragraph 138(v), the Court required the Union Government and the State of Maharashtra, with prior approval of the CEC, to devise a format for processing proposals for diversion of Zudpi Jungle land for non-forestry activities.

In paragraph 138(vi), for allotments made after 12th December 1996, the Court required the State to give reasons as to why such allotments were made, to furnish the list of officers who made such allotments in violation of the Court's order, and clarified that the Union Government shall process such proposals only after ensuring punitive action under Sections 3A and 3B of the Forest (Conservation) Act, 1980.

Hence the Paragraph 12 does not show compliance with any of these mandatory conditions.

40. The position is further sealed by the reply of Respondent No.7 – Ministry of Environment, Forest and Climate Change. Respondent No.7 has specifically stated that, in the absence of any proposal received from the State

Government in respect of the subject land, the Ministry had neither examined nor granted any approval under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, and that even after its letter dated 06.03.2026 no factual report had been received till the date of its affidavit. Therefore, even as per the Central Government's own stand, no proposal concerning the subject land had reached the competent authority in a manner resulting in examination or approval.

This completely undercuts the respondents' attempt in paragraph 12 to portray the matter as though effective statutory compliance had already been undertaken.

41. Accordingly, paragraph 12 does not furnish any defence to the answering respondents. At the highest, it shows that after institution of the present OA, the local revenue authorities attempted to set in motion a proposal for delisting.

That does not displace the admitted Zudpi Jungle status, does not amount to prior approval under Section 2 of the FC Act, does not satisfy the binding requirements of paragraph 138 of the judgment dated 22.05.2025, and does not cure the absence of punitive-action compliance where required. Paragraph 12 therefore deserves to be rejected.

42. **In reply to paragraph 13,** the Applicant denies that he is not entitled to any relief or interim relief. The contents of paragraph 13 are merely consequential and argumentative and do not disclose any independent defence. On the contrary, the answering respondents' own reply contains admissions and omissions which establish a strong prima facie case in favour of the Applicant, including:

(i) admission that the subject lands are recorded as "Zudpi Jungle";

(ii) admission that the subject lands are shown in Annexure-1 to the judgment dated 22.05.2025 in In Re: Zudpi Jungle Lands;

(iii) absence of any final order deleting the lands from Zudpi Jungle / forest status; and

(iv) reliance only on a subsequent proposal for delisting, acknowledged on 17.03.2026, which was forwarded for

approval and appropriate action and therefore does not amount to completed statutory compliance.

43. The answering respondents have also failed to show any prior approval under Section 2 of the Forest (Conservation) Act, 1980 in respect of the subject lands. Further, Respondent No.7 – MoEF&CC has specifically stated that, in the absence of any proposal received from the State Government in respect of the subject land, the Ministry had neither examined nor granted any approval under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980. Thus, the plea that no prima facie case exists is contrary to the record itself.

44. The balance of convenience is also in favour of maintaining the forest-law status quo, because any continued non-forest use or construction on land admitted to be recorded as Zudpi Jungle would risk further irreversible legal and environmental consequences, whereas the answering respondents have shown no completed statutory approval in their favour.

The plea of absence of irreparable injury is equally untenable, since continued change of use or construction on land treated in law as forest land is by its nature likely to result in irreversible prejudice to the environment and frustrate the statutory regime.

Paragraph 13 therefore deserves to be rejected.

Nishikant Jadhav.

Nishikant Jadhav

Petitioner

Counsels For Petitioner

Advocate Ramteke Bodhi Sham

Advocate Mrinall Shashi S Chakravorty

VERIFICATION

Verified on this 9th day of April 2026 that the contents of the above-mentioned affidavit are true and correct and nothing material has been concealed therefrom.

Nishikant Jadhav.

Nishikant Jadhav

Petitioner

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, WESTERN ZONE
BENCH AT PUNE (MAHARASHTRA.)

NOTARIAL REG
ENTRY NO. 6265
DATE 10/04/2026

ORIGINAL APPLICATION NO. 02 of 2026

IN THE MATTER OF: -

Nishikant Jadhav

.....Petitioner

Versus

State of Maharashtra and ors.

.....Respondents

AFFIDAVIT

I Nishikant Jadhav S/o Late Shri Narayanrao Jadhav age about 81 years, R/o Plot No.2, Raj Nagar, Chhaoni Katol Road, Nagpur – 440013 do hereby solemnly affirm on oath as under:

1. That I am the petitioner in the instant case and fully conversant with the facts of the case and hence competent to swear on this affidavit.
2. That I am filling in the present Rejoinder affidavit with Annexures before the Hon'ble Tribunal the Contents from Para 1 to last have been drafted on my instruction and same has been instructed to my counsel.
3. That, I have read and understood the contents of, and based documents filed along with the application.

Nishikant Jadhav.

Deponent

VERIFICATION

I the above-named do hereby that the contents of the paras above are true and correct, and no material fact has been concealed.

Signed and verified on, **09th Day of April 2026** at Nagpur

Date- 09/04/2026.

Place- NAGPUR

Nishikant Jadhav.

Deponent

10/04/2026
ARCHANA D. JAISWAL
NOTARY (Regn. No. 4753)
KHARE TOWN, DHARAMPETH
NAGPUR-440010

Be Sworn Solemnly Affirmed
by Nishikant Jadhav
Who is personally Known to
me / identified by Adv. Chakravarty
before me on this 10th day
of April 2026 at Nagpur

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

ORIGINAL SUIT NO. 1 OF 2021

STATE OF MEGHALAYA ..... PLAINTIFF(S)

VERSUS

UNION OF INDIA & OTHERS ..... DEFENDANT(S)

O R D E R

1. By way of these proceedings, registered as Original Suit No. 1 of 2021, the State of Meghalaya seeks to invoke the original jurisdiction of this Court under Article 131 of the Constitution of India for a declaration that Sections 5, 6, 7, 8 and 9 of the Lotteries (Regulation) Act, 1998 ['the Act of 1998'], and Rule 5 of the Lotteries (Regulation) Rules, 2010 ['the Rules of 2010'], are *ultra vires* and unconstitutional, and for other reliefs.

1.1. The reliefs claimed in the plaint read as under: -

> "The plaintiff, therefore, prays that this Hon'ble Court may be pleased to pass a judgment and decree granting following relief:
>
> a) Declare and hold Section 5 of the Lotteries (Regulation) Act, 1998 (Act No. 17 of 1998) and the Rules framed thereunder as being *ultra-vires* to the Constitution of India and unconstitutional; and
>
> b) Declare and hold Section 6 of the Lotteries (Regulation) Act, 1998 as being *ultra-vires* to the Constitution of India and unconstitutional as being violative of Article 14, to the extent it empowers the Central Government to pass orders prohibiting a lottery organized in contravention of provisions of Sections 5 of the Lotteries (Regulation) Act, 1998; and

Signature Not Verified
Digitally signed by ARJUN BISHT
Date: 2022.05.11 12:29:10 IST
Reason:

c) Declare and hold Section 7, 8, 9 of the Lotteries Regulation Act, 1998 as being ultra-vires to the Constitution of India and unconstitutional as being violative of Article 14 to the extent they provide for penal consequences for violation of Section 5 of the Lotteries (Regulation) Act, 1998; and

d) Declare and hold Rule 5 of the Lotteries (Regulation) Rules 2010 as *ultra-vires* to the Constitution of India and unconstitutional as violative of Article 14; and

e) Grant permanent injunction, restraining the Defendant Union of India from issuing orders under Section 6 of the Lotteries (Regulation) Act, 1998 prohibiting sale of tickets of a lottery organized in contravention of provisions of Sections 5 of the Lotteries (Regulation) Act, 1998, in relation to the lotteries organized by the Plaintiff; and

f) Grant permanent injunction, restraining the Defendant Union of India from initiating or taking any penal action under Section 7, 8 and 9 of the Lotteries (Regulation) Act, 1998 against any person for violation of Section 5 and 6 of the Lotteries (Regulation) Act, 1998 to the extent it relates to the lotteries organized by the Plaintiff; and

g) Grant permanent injunction, restraining the Defendant Nos. 2 to 36 States and Union Territories from prohibiting sale of tickets of lottery organized by the Plaintiff State in their respective jurisdiction; and

h) Award costs against such Defendant who may contest the Plaintiff's claim to relief; and/or

i) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Section 5 of the Act of 1998 is to the effect that a State Government may prohibit the sale of tickets of a lottery organized, conducted or promoted by every other State within its territories. Section 6 thereof empowers the Central Government to prohibit a lottery organized, conducted or promoted in contravention of Section 4 or where tickets of such lottery are sold in contravention of Section 5, by an order published in the Official Gazette. Section 7 of the Act of 1998 deals with penalties, which may extend to rigorous imprisonment for 2 years or with fine or both.

Section 8 states that offences under the Act of 1998 shall be cognizable and non-bailable. Section 9 of the Act of 1998 deals with offences by companies and identifies those within the management who would be deemed guilty of the offence and liable to be proceeded against and punished. The State of Meghalaya assails Sections 6, 7, 8 and 9 of the Act of 1998, insofar as they pertain to contraventions of Section 5 of the Act of 1998. Rule 5 of the Rules of 2010 details the procedure to prohibit sale of lottery tickets, in terms of the provisions of the Act of 1998.

3. In addition to the declaratory reliefs, the State of Meghalaya has also sought a perpetual injunction restraining the Union of India from issuing orders under Section 6 of the Act of 1998 in relation to the lotteries organized by it; a perpetual injunction restraining the Union of India from initiating or taking any penal action under Sections 7, 8 and 9, for violation of Sections 5 and 6 of the Act of 1998, in relation to the lotteries organized by it; and a perpetual injunction restraining the States and Union Territories, viz., defendant Nos. 2 to 36, from prohibiting the sale of lottery tickets organized by it in their respective jurisdictions. Lastly, the State of Meghalaya has also sought the suit costs against the contesting defendants.

4. Presently, we have heard learned counsel for the contesting parties on the question of maintainability of the suit; and we propose to deal only with this issue of maintainability and the aspects supplemental.

4.1. It is the contention of the Union of India and several of the impleaded States that this suit is not maintainable. It has essentially been

contended on behalf of the Union of India by the learned Attorney General that in the case of ***State of Madhya Pradesh v. Union of India and Anr.:* (2011) 12 SCC 268,** this Court has ruled that recourse to original jurisdiction under Article 131 of the Constitution of India is not permissible to challenge the vires of a statute; and the question is referred to a Larger Bench in Original Suit No. 1 of 2012. It has also been submitted that in Original Suit Nos. 1 of 2020, 1 of 2023 and 3 of 2023, similar question is pending consideration before this Court. It has, therefore, been submitted that either the matter be referred to a Larger Bench or the decision of Larger Bench be awaited. It has been argued on behalf of the State of Kerala that Article 131 of the Constitution requires that the dispute raised thereunder should involve a question, be it of law or fact, on which the existence or extent of a legal right would depend; and it is asserted that the State of Meghalaya cannot claim any 'legal right' to sell its lottery tickets in other States. It is further contended that the business of lotteries would be a form of gambling and amount to *res extra commercium* and, therefore, the State of Meghalaya cannot claim any legal right to conduct its lottery business in another State against the will of that State. Maintainability of the present suit has been questioned on behalf of the State of Bihar and the State of Assam too.

4.2. On the other hand, the State of Meghalaya, supported by the States of Nagaland and Sikkim, would point out that a 6-Judge Bench of this Court had an occasion to deal with the challenge by a State to a parliamentary legislation under Article 131 of the Constitution in ***State of West Bengal v.***

Union of India*: AIR 1963 SC 1241** and assert that it is trite that a State can maintain such a challenge by invoking the original jurisdiction of this Court. It has also been contended that the decision in the case of ***State of Madhya Pradesh (supra) may not be considered to be an authority for the proposition that the present suit is not maintainable at all

5. Article 131 of the Constitution of India reads as under: -

> "**131. Original jurisdiction of the Supreme Court.-** Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-
>
> (a) between the Government of India and one or more States; or
>
> (b) between the Government of India and any State or States on one side and one or more other States on the other; or
>
> (c) between two or more States,
>
> if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:
>
> Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

5.1. Rule 6 of Order XXVI of the Supreme Court Rules, 2013 reads as under: -

> "6. The plaint shall be rejected: -
> (a) where it does not disclose a cause of action.
> (b) where the suit appears from the statement in the plaint to be barred by any law."

6. Significantly, in ***Tashi Delek Gaming Solutions Ltd. v. State of Karnataka and Ors.*: (2006) 1 SCC 442**, this Court had an occasion to deal with the scope and ambit of Article 131 of the Constitution. This Court observed that Article 131 would be attracted where adjudication is necessary in relation to a legal right of one State or the Union of India *vis-*

à-vis other States, as the case may be. It was further observed that the expression 'legal right' had indisputably received a liberal interpretation by this Court from time to time. The issue in that case was the right of the agents of the States of Sikkim and Meghalaya to challenge, by way of a writ petition, a notification issued by the State of Karnataka, under the Act of 1998, which affected their lottery business in that State. The Karnataka High Court held against them on the ground that it would be for their principals, i.e., the States of Sikkim and Meghalaya, to invoke the jurisdiction of the Supreme Court under Article 131 of the Constitution. In that regard, this Court observed that even if the States of Sikkim and Meghalaya filed suits against the State of Karnataka under Article 131, the independent right of the agents to maintain an action before the appropriate forum could not be taken away. It was further observed that as Article 131 would not include even a statutory corporation, as the enlarged definition of a 'State' under Article 12 would not extend to Article 131, it would not be permissible for the agents, even if they joined together with their principals, viz., the States of Sikkim and Meghalaya, to maintain a suit under Article 131. Further, this Court observed that if the States of Sikkim or Meghalaya had intended to sue the State of Karnataka independently, in terms of Article 131 of the Constitution, the only forum where the dispute between them could have been resolved was this Court alone. It was, accordingly, held that the writ petitions filed by the agents were maintainable.

7. Reference may also be made to the case of ***State of Rajasthan and Ors. v. Union of India and Ors.*****: (1977) 3 SCC 592** decided by a 7-

Judge Bench of this Court, wherein it was observed that a State's right to seek enforcement of a legal right arising under the Constitution cannot be thrown out *in limine* as being outside the scope and ambit of Article 131. This Court noted that every constitutional question would concern allocation and exercise of Governmental power and, therefore, no constitutional question can fail to be political, but what this Court would not entertain under Article 131 is a purely political dispute between States which does not involve determination of any legal or constitutional right or obligation.

8. Of particular significance in this context is the 7-Judge Bench decision of this Court in ***State of Karnataka v. Union of India and Anr.*: (1977) 4 SCC 608**, wherein it was observed in the concurring opinion with majority as under: -

> "162. The jurisdiction conferred on the Supreme Court by Article 131 of the Constitution should not be tested on the anvil of banal rules which are applied under the Code of Civil Procedure for determining whether a suit is maintainable. Article 131 undoubtedly confers "original jurisdiction" on the Supreme Court and the commonest form of a legal proceeding which is tried by a Court in the exercise of its original jurisdiction is a suit. But a constitutional provision, which confers exclusive jurisdiction on this Court to entertain disputes of a certain nature in the exercise of its original jurisdiction, cannot be equated with a provision conferring a right on a civil court to entertain a common suit so as to apply to an original proceeding under Article 131 the canons of a suit which is ordinarily triable under Section 15 of the Code of Civil Procedure by a Court of the lowest grade competent to try it. Advisedly, the Constitution does not describe the proceeding which may be brought under Article 131 as a "suit" and significantly, Article 131 uses words and phrases not commonly employed for determining the jurisdiction of a court of first instance to entertain and try a suit. It does not speak of a "cause of action", an expression of known and definite legal import in the world of witness actions. Instead, it employs the word 'dispute,' which is no part of the elliptical jargon of law. But above all, Article 131 which in a manner of speaking is a self-contained code on matters falling within its purview, provides expressly for the

> condition subject to which an action can lie under it. That condition is expressed by the clause : "if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends". By the very terms of the article, therefore, the sole condition which is required to be satisfied for invoking the original jurisdiction of this Court is that the dispute between the parties referred to in clauses (*a*) to (*c*) must involve a question on which the existence or extent of a legal right depends.
>
> 163. The quintessence of Article 131 is that there has to be a dispute between the parties regarding a question on which the existence or extent of a legal right depends. A challenge by the State Government to the authority of the Central Government to appoint a Commission of Inquiry clearly involves a question on which the existence or extent of the legal right of the Central Government to appoint the Commission of Inquiry depends and that is enough to sustain the proceeding brought by the State under Article 131 of the Constitution. Far from its being a case of the "omission of the obvious", justifying the reading of words into Article 131 which are not there, I consider that the Constitution has purposefully conferred on this Court a jurisdiction which is untrammelled by considerations which fetter the jurisdiction of a Court of first instance, which entertains and tries suits of a civil nature. The very nature of the disputes arising under Article 131 is different, both in form and substance, from the nature of claims which require adjudication in ordinary suits."

8.1. Therefore, though titled as a 'suit', a proceeding under Article 131 of the Constitution of India cannot be likened to a civil suit under the Code of Civil Procedure, 1908 ['CPC']. In any event, Section 9 CPC also grants wide jurisdiction to the Court to try all civil suits unless they are barred, either expressly or impliedly.

9. We may also note that Part III(A) of the Supreme Court Rules, 2013, deals with original suits filed before this Court. Order XXVI therein deals with 'Plaints' and Order XXVI Rule 6 states that a plaint shall be rejected – (a) where it does not disclose a cause of action or (b) where the suit appears from the statement in the plaint to be barred by any law. These Rules were framed by this Court in exercise of power under Article 145 of

the Constitution. However, the premise that any 'law' could bar the original jurisdiction of this Court under Article 131, i.e., a suit as it appears from the statement in the plaint, is a misnomer as an enacted 'law' cannot possibly control the scope and ambit of a constitutional provision.

10. Noticeably, in ***B.R. Enterprises v. State of U.P. and Ors.*****: (1999) 9 SCC 700**, this Court affirmed that 'lottery' was a form of gambling and merely because a lottery is run by the State itself, it would not change its character as *res extra commercium.* However, it was observed that sale of lottery tickets by a State, though not a 'trade' under Article 301 of the Constitution, would still be a 'business' within the meaning of Article 298(b) of the Constitution. Dealing with Section 5 of the Act of 1998, this Court observed that it is only a State, which has decided as a policy in public interest to make itself a lottery-free zone, that can prohibit sale of lotteries of other States within its territories. Therefore, a State conducting a lottery can claim a right to do so under Article 298(b) of the Constitution.

11. It is no doubt true that in ***State of Madhya Pradesh v. Union of India and Anr.*****: (2011) 12 SCC 268**, while dealing with an amendment application filed under Order VI Rule 17 CPC in an original suit under Article 131 of the Constitution, this Court noticed that the plaintiff, by way of amendment, was seeking to challenge the validity of a Central law; and held that, normally, for questions relating to validity of Central or other laws, the appropriate forum is the extraordinary writ jurisdiction under Articles 32 and 226 of the Constitution of India and not an original suit filed under Article 131 of the Constitution. Reference was made to Article 131-A, which

was inserted with effect from 01.02.1977 by the Constitution (42nd Amendment) Act, 1976, and was thereafter repealed by the Constitution (43rd Amendment) Act, 1977, with effect from 13.04.1978. Be it noted that Article 131-A was introduced so as to confer exclusive jurisdiction upon the Supreme Court to decide the constitutional validity of Central laws by depriving the High Courts of jurisdiction to do so. However, it was noted that hardship was being caused to persons living in distant parts of India owing to Article 131-A, amongst other Articles, and it was decided to omit such Articles, including Article 131-A, from the Constitution by way of the Constitution (43rd Amendment) Act, 1977. Therefore, it is difficult to say that the omission of Article 131-A was effected in the context of denuding the Supreme Court of its jurisdiction to deal with the constitutional validity of Central or State laws as, perhaps, assumed in the case of ***State of Madhya Pradesh*** (supra). However, basing on such an assumption, this Court observed that when Central laws can be challenged in the State High Courts as well as before this Court in writ jurisdiction, normally, no recourse can be permitted to challenge the validity of a Central law by invoking the exclusive jurisdiction of this Court under Article 131 of the Constitution. This view, however, lost sight of the fact that Article 131 confers 'original jurisdiction' on this Court not only on the strength of the nature of the dispute but also the status of the party invoking the remedy, i.e., either the Union of India or a State, whereas the liberty to challenge the validity of Central laws or State laws under Article 226 or Article 32 would be available to all. The relevant observations in this case had been as under: -

> **"20.** By way of the present amendment, the plaintiff State of M.P. is seeking to challenge the validity of the Central law in a proceeding (suit) initiated under Article 131 of the Constitution. Normally, for questions relating to validity of Central or other laws, the appropriate forum is the extraordinary writ jurisdiction under Articles 32 and 226 of the Constitution of India in a writ petition and not an original suit filed under Article 131 which vests exclusive jurisdiction on this Court as regards the disputes enumerated therein. It is relevant to point out that Article 131-A of the Constitution inserted by the Constitution (forty-second Amendment) Act, 1976, provides for exclusive jurisdiction to this Court in regard to questions as to constitutionality of Central laws. The said Article 131-A viewed as substantially curtailing the power of judicial review of the writ courts, that is, the High Courts under Article 226 and this Court under Article 32 was omitted vide the Constitution (forty-third Amendment) Act, 1977. It follows that when the Central laws can be challenged in the State High Courts as well and also before this Court under Article 32, normally, no recourse can be permitted to challenge the validity of a Central law under the exclusive original jurisdiction of this Court provided under Article 131."

12. In ***State of Jharkhand v. State of Bihar and Anr*: (2015) 2 SCC 431**, another co-ordinate Bench of this Court recorded its inability to agree with the conclusion drawn in ***State of Madhya Pradesh*** (supra) that, in an original suit under Article 131, the constitutionality of an enactment could not be examined. However, as the said decision was rendered by a co-ordinate Bench, the Bench observed that judicial discipline demanded that the matter should be referred for examination of the question by a Larger Bench of this Court. Basing on this judgment, it is contended that till the jurisdiction of this Court to entertain a challenge under Article 131 to the constitutionality of an enactment is decided by a Larger Bench, this Court should stay its hands. In this case, the other co-ordinate Bench of this Court, while regretting inability to agree with the observations in ***State of Madhya Pradesh*** (supra) stated its reasons, *inter alia*, in the following: -

> "**11.** We regret our inability to agree with the conclusion recorded in *State of M.P.* v. *Union of India*, that in an original suit under Article

131, the constitutionality of an enactment cannot be examined. Since the above decision is rendered by a coordinate Bench of two Judges, judicial discipline demands that we should not only refer the matter for examination of the said question by a larger Bench of this Court, but are also obliged to record broadly the reasons which compel us to disagree with the abovementioned decision.

12. The Constitution of India invests this Court with jurisdiction, both original and appellate, under various provisions of Part V, Chapter V of the Constitution. Such jurisdiction of this Court is in addition to the jurisdiction created under Article 32 of the Constitution of India for the enforcement of fundamental rights guaranteed under Part III of the Constitution.

*** *** ***

14. It can be seen from the language of Article 131 that the exclusive jurisdiction of this Court extends to any dispute between the Government of India and any one or more States and the disputes arising between two or more States in various possible combinations specified in the said article. The dispute could be on a question of fact or law or fact."

12.1. In this decision, while referring to the aforesaid decisions in the ***State of Karnataka*** (supra), this Court further observed while making reference to a Larger Bench as under: -

"**16.** If the question of constitutionality of a statute (either of Parliament or the State Legislature) were to be raised by a party other than the persons specified under Article 131, both this Court as well as the High Courts are competent to examine. This proposition is too well settled in our jurisprudence for the period of last sixty years. What is more significant is that if Parliament chooses to repeal the proviso to Section 113 of the Code of Civil Procedure, even an ordinary civil court functioning in accordance with the procedure prescribed under the Code of Civil Procedure would be competent to examine such a question.

"**113.*Reference to High Court***.—Subject to such conditions and limitations as may be prescribed, any court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the

> court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court."
>
> It is only the proviso of Section 113 of the Code of Civil Procedure which obliges an ordinary civil court to refer the same for the opinion of the High Court. Therefore, we find it difficult to accept the statement of law enunciated by this Court in *State of M.P.* v. *Union of India*.
>
> **17.** We are unable to agree with the proposition that this Court cannot examine the constitutionality of a statute in exercise of its exclusive original jurisdiction under Article 131.
>
> **18.** We, therefore, deem it appropriate that the question is required to be examined by a larger Bench of this Court. We direct the Registry to place the matter before the Hon'ble the Chief Justice of India for appropriate orders in this regard."

13. It is also noteworthy that the case on hand cannot be viewed as limited just to a challenge to the validity of certain provisions of the Act of 1998. In light of earlier judgments of this Court, as referred hereinbefore, it would be open to this Court to read down or interpret the statutory provisions so as to effectively deal with the grievance of the States of Meghalaya, Nagaland and Sikkim with the provisions of the Act of 1998, which allegedly infringe their right to do business under Article 298(b). No doubt, if this Court is required to decide the constitutional validity of the impugned provisions of the Act of 1998, it may be necessary to await the decision of the Larger Bench, but not otherwise. Therefore, at this stage, it would be premature to non-suit the State of Meghalaya on the ground that this suit is not maintainable or to keep it on hold for all purposes, pending the decision of the Larger Bench. Significantly, the Bench in the ***State of Madhya Pradesh*** (supra) did not take note of the Larger Bench decision in ***State of West Bengal*** (supra), but having referred to the same in ***State of Jharkhand*** (supra), the Bench still deemed it appropriate to refer the matter to a Larger Bench. In the ***State of Karnataka*** (supra), this Court

observed that there is a distinction between 'State' and 'State Government' and this distinction is evident from the language of Article 131 and, therefore, what has to be seen for the purpose of determining the applicability of that Article is whether any legal right of the State, as distinct from the State Government, is infringed.

14. In the aforesaid view of the matter, we are not inclined to accept the contentions urged by the Union of India and some of the States, including the State of Kerala, that this suit is not maintainable under Article 131 of the Constitution. Given the wide ambit of the reliefs sought herein, the State of Meghalaya is entitled to take the case forward on merits, subject to what has been stated hereinbefore, with regard to the final relief to be granted in the context of validity of the impugned provisions of the Act of 1998. As the State of Meghalaya seeks to assert its right to do business in lotteries under Article 298(b) and its executive power to do so would be subject to parliamentary legislation, viz., the Act of 1998, the grievances raised by it in that context would constitute disputes which fall squarely within the four corners of Article 131 of the Constitution.

15. For what has been discussed hereinabove, the position that emerges is that the suit of the present nature and in its present form cannot be dismissed at the threshold as not maintainable.

16. In any case, even if the decision in the Larger Bench reference is to be awaited, the question, however, would remain as to whether nothing further could be done in the present suit until determination by Larger Bench. The answer to this question, in our view, would be in the negative

for the first principles governing such a position. In this regard, a reference to the principles underlying Section 10 of the Code of Civil Procedure, 1908 shall be a reasonable guiding light.

17. By virtue of Section 10 CPC, a Court is prohibited from proceeding with trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit, of course, subject to other conditions mentioned therein. This Court has explained that the object of the prohibition contained in Section 10 CPC is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and to avoid inconsistent findings. However, this rule of procedure is held not affecting the jurisdiction of the Court to entertain and deal with the latter suit and does not create a bar to the institution of the suit. The Courts have also consistently held that Section 10 CPC does not create a bar to the passing of interlocutory orders including those of injunction. These principles are succinctly summarised by this Court in the case of ***Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd.*: (1998) 5 SCC 69**. Therein, this Court was, of course, considering the applicability of bar under Section 10 to summary suit under Order XXXVII of CPC but, while explaining the connotation of the expression "trial" in Section 10 CPC, observed as under: -

> "**8**. Therefore, the word "trial" in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to "proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit". The object of the prohibition contained in Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to

> avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the latter suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the latter suit with the earlier suit, or appointment of a receiver or an injunction or attachment before judgment. The course of action which the court has to follow according to Section 10 is not to proceed with the "trial" of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word "trial" in Section 10 is not used in its widest sense."

18. The above principles of law, with necessary variations, when applied to the present case, lead to the position that even if final determination of the question of maintainability (in case the constitutional validity of the impugned provision is to be decided) may depend upon the decision of Larger Bench, the supplemental proceedings in the present suit, particularly those relating to the prayer of interim relief, cannot be put on hold.

19. In view of the above, in the first place, we are unable to uphold the contention on behalf of the contesting defendants that the present proceedings ought to be held as not maintainable. Secondly, even if final answer to this question is to await the decision of the Larger Bench, there is no bar to the passing of interlocutory orders such as that of injunction. Whether an injunction is to be granted in the present case or not is a matter different and that shall be examined at the appropriate stage.

20. Therefore, at the present stage, we leave it open for the contesting defendants to file their reply in relation to the prayer for interim relief by the plaintiff-State, if so chosen, within four weeks from today.

21. List the matter after ensuing summer vacations.

……..…… J.
(DINESH MAHESHWARI)

……..…… J.
(SANJAY KUMAR)

NEW DELHI;
MAY 11, 2023.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2908 OF 2013
(Arising out of S.L.P. (C) No. 14808 of 2012)

Aspi Jal & Anr. … **Appellants**

VERSUS

Khushroo Rustom Dadyburjor …**Respondent**

J U D G M E N T

The plaintiffs-petitioners, aggrieved by the order dated 9th February, 2012 passed by the Bombay High Court in Writ Petition No.7653 of 2011, affirming the order dated 6th July, 2011 passed by the Court of Small Causes at Mumbai, in R.A.E Suit No.173/256 of 2010 whereby it has stayed the proceedings in R.A.E. No.173/256 of 2010 till the decision in R.A.E. Suit No.1103/1976 of 2004 and

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R.A.E. Suit No.1104/1977 of 2004, have preferred this Special Leave Petition under Article 136 of the Constitution of India.

Leave granted.

The plaintiffs claim to be the owner of the building known as " Hanoo Manor" situate at Dadyseth 2nd Cross Lane in Chawpatty area of the city of Mumbai. According to the plaintiffs, in one of the flats of the said building admeasuring 1856.75 sq.ft. situate on the second floor, defendant's father, Rustom Dady Burjor (since deceased)was inducted as a tenant on a monthly rent of Rs.355/-. The plaintiffs filed a suit for eviction from the tenanted premises against the defendant being R.A.E. Suit No.1103/1976 of 2004(hereinafter to be referred to as the "First Suit") before the Small Causes Court on 6th November, 2004 on the ground of bona fide requirement for self occupation and acquisition of alternate accommodation by the defendant. The plaintiffs thereafter filed another suit being

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R.A.E. Suit No.1104/1977 of 2004 (hereinafter to be referred to as the "Second Suit") on the same day in the Small Causes Court for eviction of the defendant on the ground of non-user for several years before the institution of the suit. The plaintiffs during the pendency of the aforesaid two suits, chose to file yet another suit bearing R.A.E. Suit No. 173/256 of 2010 (hereinafter to be referred to as the "Third Suit") on 22nd February, 2010 for eviction of the defendant on the ground of non-user for a continuous period of not less than six months immediately prior to the institution of the suit.

The defendant filed an application on 29th September, 2010 for stay of hearing of the third suit till final disposal of the first and second suits. The defendant made the aforesaid prayer inter alia stating that the parties in all the three suits are same as also the issues. It was further averred that the subject matter of all these suits are one and the same. According to the defendant, since the matter in issue in the third suit is substantially

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in issue in the earlier two suits, the trial of the third suit is liable to be stayed until the hearing and final disposal of the previously instituted first and second suits. The plaintiffs filed reply objecting to the defendant's prayer for stay of the third suit inter alia on the ground that the causes of action being different, the application filed by the defendant for stay of the third suit is fit to be rejected. The Court of Small Causes by its order dated 6th July, 2011, acceded to the prayer of the defendant and stayed the third suit till final decision in the earlier two suits. While doing so, the trial court observed as follows:

> " 13. On bare reading of the pleading in both suits, it clearly appears that both suits are filed on the same ground i.e. non user. As, I discussed earlier one test of the applicability of Section 10 to a particular case is whether on the final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. The object of the section is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. Complete identity of the subject-matter is not necessary to attract the application of S.10 and if

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> a matter directly and substantially in issue in a previously instituted suit is also directly and substantially in issue in a later suit, then under S.10 the later suit shall be stayed."

Ultimately, the trial court came to the following conclusion and while staying the suit proceeded to observe as follows:

> "15. .. .. But, in the present case, it is crystal clear from pleading that matter in issue in both suits is directly and substantially identical. Therefore, this is a fit case to invoke Section 10 of the Code of Civil Procedure."

The plaintiffs assailed the aforesaid order by way of a petition under Article 227 of the Constitution of India before the Bombay High Court. The High Court concurred with the findings and the conclusion of the trial court and dismissed the writ petition inter alia, observing as follows:

> " 9. … Admittedly, the Petitioner has filed R.A.E. Suit No.1104/1977 of 2004 and R.A.E. Suit No. 173/256 of 2010 on the ground of nonuser, though the period is different. But, after perusing the plaints, it is crystal clear that issue

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involved in both the suits are similar. Therefore, in view of Section 10 of the Civil Procedure Code and judgment in the matter of Challapalli Sugar Pvt. Ltd. (Supra), it is necessary, in the interest of justice, subsequent suit filed by the Petitioner, i.e. R.A.E. Suit No.173/256 of 2010 to be stayed and the same is done by the Trial Court by giving detailed reasons. Therefore, I do not find any substance in the present Petition to interfere in the well reasoned order passed by the Trial Court dated 6th July, 2011."

Mr.Shyam Divan, Senior counsel appearing on behalf of the appellants submits that in the second suit, the plaintiffs have sought eviction on the ground of non-user of the suit premises for several years prior to the filing of the suits but in the third suit it has specifically been averred that "the defendant and his family has not been in use and occupation of the suit premises for a continuous period of more than six months immediately prior to the institution of this suit without reasonable cause". Thus, according to Mr. Divan, the matter in issue in the third suit is non-user of the suit premises prior to six months from the date of institution of the said suit. He points out that the

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plaintiffs may fail in the earlier two suits by not establishing the non-user of the tenanted premises for a period of six months prior to the institution of those suits, yet, they can succeed in the third suit by proving the non-user of the suit premises by the defendants for six months prior to the institution of that suit. According to him, the matter in issue in the third suit being substantially different than the first two suits, the provisions of Section 10 of the Code of Civil Procedure, 1908 (hereinafter to be referred to as the "Code") is not attracted and hence, the trial court erred in staying the third suit till the disposal of the first two suits.

Mr. Harish N. Salve, Senior counsel appearing on behalf of the defendant, however, submits that the matter in issue in both the suits being non-user of the tenanted premises by the defendant, the trial court rightly held that the provisions of Section 10 of the Code is attracted and on that premise, stayed the third suit.

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We have given our thoughtful consideration to the rival submissions and we find substance in the submission of Mr. Divan.

Section 10 of the Code which is relevant for the purpose reads as follows:

> " 10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.
>
> Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the

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Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of

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the same relief and is aimed to protect the defendant from multiplicity of proceeding. The view which we have taken finds support from a decision of this Court in National Institute of Mental Health & Neuro Sciences vrs. C.Parameshwara, **(2005) 2 SCC 256** in which it has been held as follows:

> " 8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the

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previous instituted suit. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical."

In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether "the matter in issue is also directly and substantially in issue in previously instituted suits". The key words in Section 10 are "the matter in issue is directly and substantially in issue in the previously instituted suit". The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the

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subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.

As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what "the matter in issue" exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where few of the matters in issue are common and will apply only when the entire subject matter in controversy is same. In other words, the matter

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in issue is not equivalent to any of the questions in issue. As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case. Reference in this connection can be made to a decision of this Court in Dunlop India Limited vrs. A.A.Rahna & Anr. **(2011) 5 SCC 778** in which it has been held as follows:

> "35. The arguments of Shri Nariman that the second set of rent control petitions should have been dismissed as

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barred by res judicata because the issue raised therein was directly and substantially similar to the one raised in the first set of rent control petitions does not merit acceptance for the simple reason that while in the first set of petitions, the respondents had sought eviction on the ground that the appellant had ceased to occupy the premises from June 1998, in the second set of petitions, the period of non-occupation commenced from September 2001 and continued till the filing of the eviction petitions. That apart, the evidence produced in the first set of petitions was not found acceptable by the appellate authority because till 2-8-1999, the premises were found kept open and alive for operation, The appellate authority also found that in spite of extreme financial crisis, the management had kept the business premises open for operation till 1999. In the second round, the appellant did not adduce any evidence worth the name to show that the premises were kept open or used from September 2001 onwards. The Rent Controller took cognizance of the notice fixed on the front shutter of the building by A.K.Agarwal on 1-10-2001 that the Company is a sick industrial company under the 1985 Act and operation has been suspended with effect from 1-10-2001; that no activity had been done in the premises with effect from 1-10-2001 and no evidence was produced to show attendance of the staff, payment of salary to the employees, payment of electricity bills from September, 2001 or that any commercial transaction was done from the suit premises. It is, thus, evident that even though the ground of eviction in

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the two sets of petitions was similar, the same were based on different causes. Therefore, the evidence produced by the parties in the second round was rightly treated as sufficient by the Rent Control Court and the appellate authority for recording a finding that the appellant had ceased to occupy the suit premises continuously for six months without any reasonable cause."

(Underlining ours)

In view of what we have observed earlier, the orders passed by the trial court as affirmed by the High Court are vulnerable and therefore, cannot be allowed to stand.

Mr. Divan prays that direction may be issued to the trial court to hear all the suits together. We restrain ourselves from issuing such direction but give liberty to the parties if they so choose to make such a prayer before the trial court. Needless to state that in case such a prayer is made, the trial court shall consider the same in accordance with law.

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In the result, the appeal is allowed and the impugned order of the trial court as affirmed by the High Court is set aside but without any order as to costs.

.....J.
[CHANDRAMAULI KR. PRASAD]

.....J.
[V. GOPALA GOWDA]

NEW DELHI
APRIL 05, 2013.

SUPREME COURT OF INDIA
JUDGMENT
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[2021] 10 S.C.R. 1

MUNICIPAL CORPORATION OF GREATER MUMBAI

v.

ANKITA SINHA & ORS.

(Civil Appeal Nos. 12122-12123 of 2018)

OCTOBER 07, 2021

[A. M. KHANWILKAR, HRISHIKESH ROY AND C. T. RAVIKUMAR, JJ.]

National Green Tribunal Act, 2010: History of legislation – Preamble and Statement of Objects and Reasons of the Act – Contours of the jurisdiction of the NGT – Discussed.

National Green Tribunal Act, 2010: Interpretation of – Purposive interpretation – The provision must be read with the intention to accentuate them, especially as they concern protections of rights under Art.21 and also deal with vital environmental policy and its regulatory aspects.

National Green Tribunal Act, 2010: Salient features – Discussed.

National Green Tribunal Act, 2010: Role of National Green Tribunal – The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc – As one looks at these enactments, an expanded role for the NGT is clearly discernible – The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment – NGT is primarily concerned with protection of the environment and also preservation of the natural resources – As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions – NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration.

National Green Tribunal Act, 2010: Power of National Green Tribunal – In case of environmental events causing damage – The

NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events – The larger discourse which informs such functions is related to distributive and corrective justice – Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the NGT will be required to devise a plan for alleviating damage – An inquisitorial function is also available for the NGT, within and without adversarial significance – Many of these functions do not require an active "dispute", but the formulation of decisions.

National Green Tribunal: Suo motu power, exercise of – The specialized tribunal's exercise of suo motu powers is somewhat distinct from those exercised by the constitutional Courts – The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments – However, as long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

National Green Tribunal: Uniqueness of NGT vis-a-vis other Tribunals – The statutory Tribunals are categorized to fall under four subheads; Administrative Tribunals under Art.323A; Tribunals under Art.323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Art.21 – The duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

National Green Tribunal: Sui Generis role of NGT – NGT is a specialised forum – The NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment – Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment – The necessity of having a specialized body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice – The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

National Green Tribunal: An Authority to take suo motu cognizance of matter – NGT is not required to be triggered into action by an aggrieved or interested party alone – The exercise of power by the NGT is not circumscribed by receipt of application – When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

Environmental law: Precautionary Principle – Application of – Held: The principle must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other 'decisions' or 'orders' to governmental authorities or polluters, when they fail to "to anticipate, prevent and attack the causes of environmental degradation – Two aspects must therefore be emphasized i.e. that the NGT is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests – Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain – Doctrines/Principles.

Environmental law: Environmental justice and equity – When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social – An "equal footing" conception may not, therefore, be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions – Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

Directing to post the matters on 25.10.2021 for further directions and answering the common legal issue regarding *suo motu* jurisdiction of NGT, the Court

HELD: 1.1 The 186th Report of the Law Commission of India dated 23.9.2003, the Law Commission had made the pertinent observation espousing the case for the creation of a

specialized Court to deal with environmental issues. The observations in the Report suggest that the Law Commission was of the opinion that it was not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts would not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court. The NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that the creation of the NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum. [Paras 13.2, 13.3, 13.4][28-D; 29-D-E, F]

1.2 The power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT. This is how the proposed forum was made free from the rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated. [Paras 13.4 and 13.5][30-B-C; 30-D]

2.1 A reading of the Statement of Objects and Reasons of NGT Act shows that paragraph 4 thereof refers to the *National Environmental Tribunal Act, 1995 (NET)* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a

large number of environmental cases are pending in higher Courts which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts. Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to *"achieve the objectives of Article 21, 47, 48A, 51A (g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure".* [Paras 14.2, 14.3][31-G-H; 32-A-C]

2.2 The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum. [Para 14.4][32-C-E]

2.3 The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment. The

limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of the NGT. [Paras 14.5, 14.6][32-E-H; 33-A]

3.1 The NGT is intended to address wide ranging societal concerns. The Statute has to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The application of the *Heydon's Rule* could adequately aid here as the Rule directs adoption of that construction which *"shall suppress the mischief and advance the remedy"*. [Paras 15.1, 15.3] [33-B-C, G]

Bengal Immunity Co. v. State of Bihar **[1955] 2 SCR 603; AIR 1955 SC 661 – followed.**

Francis Bennion *Statutory Interpretation* described; *Panama Refining Co. v. Ryan* **47 Columbia Law Review 527 – referred to.**

3.2 The laudatory objectives for creation of the NGT would implore to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act. The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects. [Para 15.6][34-G; 35-A-B]

4.1 Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed

under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) *"any person aggrieved including any representative body / organization"* and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws. [Para 16.1][35-B-H; 36-A-B]

4.2 While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011.* The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto. By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a

A **term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties. [Paras 16.2, 16.3, 16.4, 16.5][36-B-C, D-G]**

4.3 Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution. [Paras 16.6, 16.7][36-G-H, 37-A-B]

5. NON-ADJUDICATORY ROLES OF NGT

5.1 As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution.[Para 17.1][37-B-D]

Vellore Citizens' Welfare Forum v. UOI **(1996) 5 SCC 647 : [1996] 5 Suppl. SCR 241 – relied on.**

5.2 The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation. [Para 17.2][37-D-F]

5.3 For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of *lis,* would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions. The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. [Paras 17.3, 17.4][37-F-G; 38-A]

5.4 The NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active *"dispute",* but the formulation of *decisions*. [Para 18][38-D-F]

Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India **(2012) 8 SCC 326 : [2012] 12 SCR 947 – relied on.**

A **6. EXERCISE OF *SUO MOTU* POWER BY NGT**

The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot B **naturally travel beyond its environmental domain in reference to the scheduled enactments. However, as long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude. From the very inception, the role of the NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative** C **or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate. [Paras 20, 21.6][39-F-H; 41-F-G]**

Mantri Techzone (P) Ltd. v. Forward Foundation **(2019) 18 SCC 494;** *Rajeev Hitendra Pathak v. Achyut Kashinath* **(2011) 9 SCC 541 : [2011] 10 SCR 513;** D *Rajeev Suri v. DDA* **2021 SCC Online SC 7;** *Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Ors.* **(1999) 2 SCC 718 : [1999] 1 SCR 235 – relied on.**

E **7. UNIQUENESS OF NGT *VIS-A-VIS* OTHER TRIBUNALS**

While there are many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article F **323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. The duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute. The ideal was to** G **create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of**

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nations which have set up such institutions with broad powers. [Para 22.1, 22.2, 22.3][41-G-H; 42-A-C; 43-B-C]

State of Meghalaya v. All Dimasa Students Union **(2019) 8 SCC 177 : [2019] 8 SCR 297 – relied on.**

8. THE SUI GENERIS ROLE OF NGT

8.1 The NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT. [Para 24.4][44-G-H; 45-A]

Paramjit Kaur v. State of Punjab **(1999) 2 SCC 131 : [1998] 1 Suppl. SCR 538;** *DG NHAI v. Aam Aadmi Lokmanch* **2020 SCC Online SC 572 – relied on.**

8.2 The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise. [Para 24.5][45-B-C]

9. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

9.1 Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, should necessarily clothe it with the authority to take *suo motu* cognizance of matters, for effective discharge of its mandate. Section 14(1) of the NGT Act deals

with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm. [Paras 25.1, 25.3][45-D-E; 46-B-D]

9.2 Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning. [Para 25.4][46-D-G]

9.3 The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/ orders of the NGT need not always involve any application or

appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum. It may also be relevant to bear in mind that while dealing with contested cases, the NGT is required to pass *"award"* and *"order"* and the statute repeatedly uses the word *"decision"*. Therefore, it is appropriate to correlate the word *"decision"* to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI*. [Paras 25.5, 25.6][46-G-H; 47-B]

9.4 The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. [Para 25.7][47-C-D]

State of Punjab & Anr. v. Shamlal Murari & Anr. **(1976) 1 SCC 719 : [1976] 2 SCR 82 – relied on.**

9.5 While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10* of *the Rio Declaration* which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional. [Para 25.8][47-F-H]

10. THE PRECAUTIONARY PRINCIPLE

10.1 The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily

responsible for the environmental concerns and remedies. Section 20 of the NGT Act which includes the term *"decision"*, in addition to *"order"* and *"award"*, also require the Tribunal to apply the *'Precautionary Principle'* . [Paras 26.2 and 26.3][48-D-E]

10.2 The principle must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other *'decisions'* or *'orders'* to governmental authorities or polluters, when they fail to *"to anticipate, prevent and attack the causes of environmental degradation."*. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain. [Para 26.4][48-F-G; 49-A-B]

10.3 It is an important legal onus on the Tribunal to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial. [Para 26.5][49-B-C]

11. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

11.1 The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition. Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental

risks as well as protections, including application of sustainable development principles. [Para 27.1][49-E-G]

11.2 When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An *"equal footing"* conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice. [Para 27.3][50-F-G]

12. ENVIRONMENTAL JURISPRUDENCE IN INDIA

12.1 By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence. Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the *'Absolute Liability Principle'* by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative. [Paras 28.2, 28.3][52-A-B, C-D]

12.2 The Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse. There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the '*at risk*' nature of some populations. The creation of the NGT itself was due in large

part to the need expressed by this Court for such a forum.[Para 28.4][52-F; 53-A-B]

12.3 Environmental jurisprudence in India has been intrinsic to advancing a democratic, welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach. [Para 28.6][53-E-F]

H.P. Bus Stand Management & Development Authority v. Central Empowered Committee **(2021) 4 SCC 309 – relied on.**

12.4 The NGT is the institutionalization of the developments made by this Court in the field of environment law. The progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence. [Para 28.8][55-A-B]

13.1 The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum,* and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court. [Para 30][55-C-E]

13.2 The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists with many countries declaring climate emergencies and many others being urged to follow suit. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as *the 'Seventh Generation' sustainability principle,*or the *'Great Law of the Iroquois'* (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line. [Paras 31, 32][55-E-G; 56-A-B]

13.3 It is vital for the well being of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that a better environmental legacy is left behind, for our children, and the generations thereafter. In circumstances, where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. The *"global impacts of climate change will fall disproportionately on minority and low-income communities"*. Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of the NGT. [Paras 33, 34][56-B-E]

13.4 The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated. [Paras 35, 36][56-F-H; 57-A-B]

13.5 When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. An interpretation must be adopted which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective. [Paras 37, 39][57-B-D, E-G]

Standard Chartered v. Dharminder Bhohi **(2013) 15 SCC 341 : [2013] 9 SCR 410;** *Transcore v. Union of India* **(2008) 1 SCC 125 : [2006] 9 Suppl. SCR 785;** *Techi Tagi Tara v. Rajendra Singh Bhandari & Ors.* **(2018) 11 SCC 734 : [2017] 12 SCR 956;** *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.* **(2019) 19 SCC 479;** *Sarah Mathew v. Institute of Cardio Vascular Diseases* **(2014) 2 SCC 62 : [2013] 12 SCR 674;** *New India Assurance Co. Ltd. v. Nusli Neville Wadia* **(2008) 3 SCC 279 : [2007] 13 SCR 598;** *M.C. Mehta v. UOI* **(1997) 2 SCC 353 : [1996] 10 Suppl. SCR 973;** *S. Jagannathan v. Union of India* **(1997) 2 SCC 87 : [1996] 9 Suppl. SCR 848;** *Karnataka Industrial Areas Development Board v. C Kenchappa and Ors*. **(2006) 6 SCC 371 : [2006] 2 Suppl. SCR 362;** *Rural Litigation And Entitlement Kendra & Ors v. State Of U. P. & Ors* **AIR 1985 SC 652 : [1985] 3 SCR 169;** *Charan Lal Sahu v. Union of India* **(1990) 1 SCC 613 : [1989] 2 Suppl. SCR 597;** *Virender Gaur v. State of Haryana* **(1995) 2 SCC 577 : [1994] 6 Suppl. SCR 78;** *Subhash Kumar v. State of Bihar* **(1991) 1 SCC 74;** *M.C. Mehta v. Union of India* **(1987) 1 SCC 395 : [1987] 1 SCR 819;** *M.C. Mehta v. Union of India* **(1986) 2 SCC 176 : [1986] 1 SCR 312;** *Indian Council for Environmental-Legal Action v. Union of India* **(1996) 3 SCC 212 : [1996] 2 SCR 503;** *A.P. Pollution Control Board v. M.V. Nayudu* **(1999) 2 SCC 718 : [1999] 1 SCR 235;** *A.P. Pollution Control Board II v. M.V. Nayudu* **(2001) 2 SCC 62 : [2000] 5 Suppl. SCR 249 – referred to.**

Case Law Reference

[2013] 9 SCR 410	**referred to**	**para 10.1**
[2006] 9 Suppl. SCR 785	**referred to**	**para 10.2**
[2011] 10 SCR 513	**relied on**	**para 10.3**
[2017] 12 SCR 956	**referred to**	**para 11.1**
(2019) 19 SCC 479	**referred to**	**para 12.1**
[1955] 2 SCR 603	**referred to**	**para 8**

A	**[2013] 12 SCR 674**	**referred to**	**para 15.6**
	[2007] 13 SCR 598	**referred to**	**para 15.6**
	[1996] 5 Suppl. SCR 241	**relied on**	**para 17.1**
	[1996] 10 Suppl. SCR 973	**referred to**	**para 17.1**
B	**[2012] 12 SCR 947**	**relied on**	**para 19.1**
	(2019) 18 SCC 494	**relied on**	**para 21.1**
	[1999] 1 SCR 235	**relied on**	**para 21.6**
	[2019] 8 SCR 297	**relied on**	**para 22.2**
C	**[1998] 1 Suppl. SCR 538**	**relied on**	**para 24.1**
	[1976] 2 SCR 82	**relied on**	**para 25.7**
	[1996] 9 Suppl. SCR 848	**referred to**	**para 26.4**
	[2006] 2 Suppl. SCR 362	**referred to**	**para 26.4**
D	**[1985] 3 SCR 169**	**referred to**	**para 28.1**
	[1989] 2 Suppl. SCR 597	**referred to**	**para 28.1**
	[1994] 6 Suppl. SCR 78	**referred to**	**para 28.1**
	(1991) 1 SCC 74	**referred to**	**para 28.2**
E	**[1987] 1 SCR 819**	**referred to**	**para 28.3**
	[1986] 1 SCR 312	**referred to**	**para 28.4**
	[1996] 2 SCR 503	**referred to**	**para 28.4**
F	**[1999] 1 SCR 235**	**referred to**	**para 28.4**
	[2000] 5 Suppl. SCR 249	**referred to**	**para 28.4**
	(2021) 4 SCC 309	**relied on**	**para 28.7**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.12122-12123 of 2018.

G

From the Judgment and Order dated 30.10.2018 and 05.12.2018 of the National Green Tribunal, Principal Bench, New Delhi in O.A. No.510 of 2018 and Review Application No.49 of 2018 in O.A. No.510 of 2018.

H

With

Civil Appeal Nos. 86 and 5902 of 2019 and Civil Appeal Nos. 6273, 6274, 6275, 6276, 6277-6278, 6279, 6280-6281, 2897, 6282, 6283, 6262, 6284, 6285 and 6286 of 2021.

Amit Anand Tiwari, AAG, Anand Grover, Nidhesh Gupta, Sanjay Parikh, Gopal Shankarnarayanan, V. Giri, Mukul Rohatgi, Krishnan Venugopal, Sajan Poovyya, Jaideep Gupta, Atmaram N. S. Nadkarni, Dhruv Mehta, Siddhartha Dave, Sr. Advs., Ms. Astha Sharma, Ms. Mantika Haryani, Simranjeet Singh Rekhi, Vanshdeep Dalmia, Harish Vasudevan, Ms. Nishtha Kumar, Ms. Japneet Kaur, Ms. Vriti Gujral, Ms. Pallavi Singh, Abhimanue Shrestha, Satwik Parikh, Divyansh Khurana, James P. Thomas, K. K. Vinosh, Apzal Ansari, Abhilash M. R., Sayooj Mohandas M., Amith Krishnan, M. Thangathurai, Sandeep Singh, Mahesh Agarwal, Rohan Talwar, Shivendra Singh, E. C. Agrawala, Anand Kumar Shrivastava, Ms. Priyansha Indra Sharma, Sharan Balakrishnan, Pratibhanu Singh, Arpit Shukla, Ms. Aishwarya Bhati, Gurmeet Singh Makker, Ms. Ruchi Kohli, Shiv Mangal Sharma, Bhuvan Mishra, C. K. Sasi, Abdullah Naseeh, Ms. Meena K. P., Ms. Anindita Mitra, Ashish Wad, Ms. Tamali Wad, Ms. Aruna Savla, Pimple Sharad, Ms. Sukriti Jaggi, Ajeyo Sharma, Sidharth Mahajan, Santosh Rebello Salvador, Ms. Arzu Paul, Adiraj Bali, Ms. Deepti Arya for M/s J S Wad and Co., Jobi Jose Kondody, Alex M Scaria, Ms. Usha Nandini V., Biju P. Raman, Ms. Saritha Thomas, S. Thananjayan, Ms. Promila, K. Sakthivel, Ms. Aaiyna Verma, Ms. Jaswanti, Darpan K. M., Ms. Amrita Sharma, Prakash S. Rao, Rajat Jonathan Shaw, Ms. Rashi Bansal, Bijo Mathew Joy, Manu Krishnan G., Seshatalpa Sai Bandaru, E. M. S. Anam, M. S. Vishnu Sankar, A. Karthik, Enoch David Simon Joel, Ms. Smrithi Suresh, Saaketh Kasibhatla, Arsh Khan, Parsant Kumar, Md. Shahid Anwar, Amit Singh, Intakhab Alam, Mohammed Naseem Mughal, Satish Solanki, Mukesh Verma, Yash Pal Dhingra, Amith S. J., Purushottam Sharma Tripathi, Mukesh Kumar Singh, Tahir Ashraf Siddiqui, Jogy Scaria, Ms. Beena Victor, Ms. M. Prirya, Ravi Lomod, K. Parameshwar, Ms. A. Sreguruprya, Prasad Hegde, Zulfiker Ali P. S., Augustine Peter, Ms. Lakshmi Sree P., Ms. Sadiya Shakeel, Dr. Joseph Aristotle S., Ms. Preeti Singh, Ms. Ripul Swati Kumari, Suvidutt M. A., Mrs. Anu B., Ms. Vijayalakshmi Raju, Mrs. Dhanya C., Advs. for the Appearing Parties.

A The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

"Estragon: Let's go.

Vladimir: We can't.

B ***Estragon: Why not?***

Vladimir: We're waiting for Godot." [1]

1. Leave granted in the Special Leave Petitions.

2. The consideration to be made in these matters is whether the National Green Tribunal (for short "the NGT") has the power to exercise C S*uo Motu* jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

3. In the lead case in this group, i.e. the Civil Appeal No. 86 of 2019, the NGT noticed an article titled "*Garbage Gangs of Deonar: The Kingpins and Their Multi-Crore Trade"* in the online news portal, D *The Quint.* The article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai city.

4. The NGT took *suo motu* cognizance of the above article vide order dated 07.08.2018 and directed that the article writer Ankita Sinha E be the applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the F inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that '*damage to the environment and public health is self-evident'* and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

G 5. This Court while entertaining the Civil Appeal No. 86/2019 of MCGM, ordered stay on the operation of the order passed by the NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether the NGT has the power to exercise *suo motu* jurisdiction.

H [1] Beckett, S. (1954). Waiting for Godot: Tragicomedy in 2 Acts.

6. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita Sharma, Mr. S. Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

7. Projecting the contrary view, Mr. Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved party in SLP(C) No. 6732/2021, Mr. Sanjay Parikh, learned Senior Counsel for the Intervener in C.A. No.86/2019 and Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing for the Impleader I.A. No.71482/2021 in the SLP(C) No. 6732/2021, by referring to the special role envisaged for the NGT and the history of its incorporation, make equally powerful submission in support of exercise of *suo motu* jurisdiction, by the NGT.

8. Mr. Anand Grover, the learned Senior Counsel was appointed as the *Amicus Curiae* to assist the Court and he was heard at length. The counsel acknowledges the NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr. Grover is of the view that the NGT is incapable of triggering action on its own. In other words, the NGT cannot act *suo motu* without someone moving the Forum as otherwise the forum then would be perceived to be judging its own cause. Since *suo motu* power is not conferred under the NGT Act, the specialized tribunal has to be moved by an outside party. But the format of the application is not important and even a letteraddressed by an interested party, will clothe the NGT with power to take action is the concessional submission of Mr. Grover.

A 9. Representing the Central Government, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India submitted that *Suo Motu* power is not exercisable by the NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as the "NET Act"). The counsel refers to the provisions of the NGT Act and submits that the concept of *locus standi* was expanded for NGT's intervention under Section 18(2)(e) but the tribunal is not vested with *suo motu* power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, the NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by the NGT, the ASG is on the same page as the *amicus curiae* but as earlier noted both counsel argue for keeping away the *suo motu* powerfrom the NGT.

10.1 Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered Vs. Dharminder Bhohi*[2] wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

10.2 Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore Vs. Union of India*[3], opined on behalf of a Division Bench that,

> " 67. ...The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts."

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[2] (2013) 15 SCC 341

[3] (2008) 1 SCC 125

10.3 The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak Vs. Achyut Kashinath*[4], observed as under : -

> "34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised."

11.1 The second limb of contention is that the Act is applicable to '*disputes'* as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors*.[5] wherein the term *'substantial question relating to environment'* was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

> "**19.** On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.
>
> **20.** ...In *Prabhakar* v. *Deptt. of Sericulture* [*Prabhakar* v. *Deptt. of Sericulture*, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)
>
> "*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:

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[4] (2011) 9 SCC 541
[5] (2018) 11 SCC 734

A ' "*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'

35. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:

B '*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined."

C 11.2 The *amicus curiae* has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

D 12.1 Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226 and Article E 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.,*[6] Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

"41. ...Suffice it to say that the NGT is not a tribunal set up either F under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act.....

43. ...In the present case, it is clear that Section 16 of the NGT G Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate

H [6] (2019) 19 SCC 479

jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re* [*Powers, Privileges and Immunities of State Legislatures, In re*, (1965) 1 SCR 413 : AIR 1965 SC 745] , made in the following words: (SCR p. 499: AIR p. 789, para 138)

"*138*. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.

'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, Vol. 9, p. 349] '.

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL* [*BSNL* v. *TRAI*, (2014) 3 SCC 222] , we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests* [*Wilfred J.* v. *Ministry of Environment & Forests*, 2014 SCC OnLine NGT 6860] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

12.2 The argument has been that the superior Courts exercising discretionary powers under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on the NGT would suggest the limited nature of the Forum's powers, which would exclude any *suo motu* exercise.

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

13.1 In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

13.2 The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 23.9.2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialized Court to deal with environmental issues:-

> "It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.
>
> These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District

and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts."

13.3 The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

13.4 The NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that the creation of the NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum. The 186th Law Commission Report provided the following reasoning,

"Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in L. Chandra Kumar vs. Union of India, 1997 (3) SCC 261.

No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[7]

Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

13.5 This is how the proposed forum was made free from the rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated.

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

14.1 The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2,3,4,5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow: -

"2**.** India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

[7] Chapter II, 186th Law Commission Report.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

14.2 A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the *National Environmental Tribunal Act, 1995 (NET)* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts

A which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

14.3 Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under B Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to *"achieve the objectives of Article 21, 47, 48A, 51A (g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure".* An institution concerned with a significant aspect of right to life necessarily should be given the most C liberal construction.

14.4 The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the preservation and improvement D of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. E The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

14.5 The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to F judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in G India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

14.6 The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment H Appellate Authority along with the involvement of multi-disciplinary issues

arising in environmental cases, were intended to be addressed through the constitution of the NGT.

III.THE NEED FOR PURPOSIVE INTERPRETATION

15.1 While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention.Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes,* authored byJustice G.P. Singh who explained thus,

> "When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds: a compelling rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

15.2 The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

15.3 The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which *"shall suppress the mischief and advance the remedy"* as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co. vs. State of Bihar*[8]*,*

[8] 1955 (2) SCR 603; AIR 1955 SC 661

A "...the office of all judges is to make such construction as shal suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

B

15.4 Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by—

C (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'

D 15.5 Justice Frankfurter of US Supreme Court in '*Some Reflections on the Reading of Statutes*', has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

'The purpose of construction being the ascertainment of meaning, every con- sideration brought to bear for the solution of that problem must be devoted to that end alone.

E

...

Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'."[9]

F Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co. Vs. Ryan*, and the same is taken as a lodestar in our quest,

"the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view"[10].

G

15.6 The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say

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[9] 47 Columbia Law Review 527

H [10] 293 U.S. 388 (1935) (dissenting)

incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[11] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT -

16.1 Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit"*. Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) *"any person aggrieved including any representative body / organization"* and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development

[11] Sarah Mathew v. Institute of Cardio Vascular Diseases (2014) 2 SCC 62, New India Assurance Co. Ltd. Vs. Nusli Neville Wadia (2008) 3 SCC 279.

principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

16.2 While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> *"24. Order and directions in certain cases – The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."*

16.3 The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

16.4 By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

16.5 Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

16.6 Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

16.7 The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. NON-ADJUDICATORY ROLES OF NGT

17.1 As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. *[See Vellore Citizens' Welfare Forum vs. UOI*[12]*; M.C. Mehta vs. UOI*[13]etc.]

17.2 The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

17.3 For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of *lis,* would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

[12] (1996) 5 SCC 647
[13] (1997) 2 SCC 353

17.4 The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report,

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

18. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active *"dispute",* but the formulation of *decisions*.

19.1 With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India*[14], highlighted the NGT's role in the context, in the following words: -

> "40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly

[14] (2012) 8 SCC 326

Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

19.2 In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo motu* by the Courts.

VI EXERCISE OF *SUO MOTU* POWER BY NGT

20. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

21.1 Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd. vs. Forward Foundation*[15], Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:-

> "40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights."

21.2 As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

21.3 Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

> "46. ... 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, leaves 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."

21.4 Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri* vs. *DDA*[16] was not to constrict the *suo motu*

[15] (2019) 18 SCC 494

[16] 2021 SCC Online SC 7.

powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of *'Merits Review'* and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

> "503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

21.5 Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

21.6 The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Ors.*[17] where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

> "The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. UNIQUENESS OF NGT *VIS-A-VIS* OTHER TRIBUNALS

22.1 While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to

[17] (1999) 2 SCC 718

function.The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

22.2 The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya vs. All Dimasa Students Union*[18], fittingly observed thus:-

> "163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in L. Hirday Narain v. CIT [L. Hirday Narain v. CIT, (1970) 2 SCC 355] , wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)
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> "14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts

[18] (2019) 8 SCC 177

will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen."

22.3 Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

23. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

"The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."[19]

VIII. THE SUI GENERIS ROLE OF NGT

24.1 The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur Vs. State of Punjab*[20], wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

"14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbiter is entrusted acts sui generis, that is, on its own and not under any law."

24.2 In *DG NHAI vs. Aam Aadmi Lokmanch*[21], Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:-

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[19] GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall? Asian Journal of Law and Society,7(1), 85-126.
[20] (1999) 2 SCC 131
[21] 2020 SCC Online SC 572

A "38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

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76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

D 77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued."

F 24.3 In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as "*an expert regulatory body*", which can issue general directions also *albeit* within the statutory framework.

G 24.4 The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those

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cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT.

24.5 The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

25.1 Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo motu* cognizance of matters, for effective discharge of its mandate.

25.2 The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

> " 14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
>
> (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose: Provided that the Tribunal may, if it is

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

25.3 The Section 14(1) of the NGT Act deals with jurisdiction, andthe jurisdictional provision conspicuously omits to specify that an B application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party C alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can D self-ignite action either towards amelioration or towards prevention of harm.

25.4 In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section E 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling F for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena G of NGT's functioning.

25.5 The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would H logically suggest that the action/orders of the NGT need not always

involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

25.6 It may also be relevant to bear in mind that while dealing with contested cases, the NGT is required to pass *"award"* and *"order"* and the statute repeatedly uses the word *"decision"*. Therefore, it is appropriate to correlate the word *"decision"* to the NGT, in its non-adversarial or inquisitorialrole, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

25.7 The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab & Anr. Vs. Shamlal Murari & Anr.*[22] has so correctly prioritized the substantive rights and observed succinctly,

"8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

25.8 While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10* of *theRio Declaration* which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

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[22] (1976) 1 SCC 719

X. THE PRECAUTIONARY PRINCIPLE

26.1 Tracing the origin of the *Precautionary Principle,* Scott Lafranchi in his treatise[23] has expounded on the proactive role of the authorities in the following passage: -

> "Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."16 The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.'"

26.2 The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

26.3 As earlier seen, S.20 of the NGT Act which includes the term *"decision",* in addition to *"order"* and *"award"*, also require the Tribunal to apply the *'Precautionary Principle'* and the statutory mandate being relevant is extracted: -

> "20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

26.4 The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other *'decisions'* or *'orders'* to governmental authorities or polluters, when they fail to *"to anticipate, prevent and attack the causes of environmental degradation"*[24]. Two aspects must therefore be

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[23] Scott LaFranchi, Surveying the Precautionary Principle's Ongoing Global Development: The Evolution of an Emergent Environmental Management Tool, 32 B.C. Envtl. Aff. L. Rev. 679 (2005)

[24] Vellore Citizens (supra), S. Jagannathan v. Union of India (1997) 2 SCC 87, Karnataka Industrial Areas Development Board v. C Kenchappa and Ors (2006) 6 SCC 371.

emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

26.5 It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, *'The Nature of the Judicial Process'*, stated thus,

> "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

27.1 The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.[25] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

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[25] Schlosberg D, Defining Environmental Justice: Theories, Movements, and Nature (Oxford University Press 2009)

27.2 Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law,* wrote the following evocative passage on the concept of environmental justice,

> "Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity," which is understood to mean the fair distribution of environmental risks and protection from environmental harms."[26]

27.3 There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm.Further, those who benefit cause harm to the places where people "live, work, play, and go to school," whereas the people who reside there do little or nothing to harm their community." [27]

When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An *"equal footing"* conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

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[26] Schiffer, L. J., & Dowling, T. J. (1997). Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27(2), 327–342.

[27] Jeff Todd, A "Sense of Equity" in Environmental Justice Litigation, 44 HARV. ENVTL. L. REV. 169, 193 (2020).

27.4 The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of *locus standi*.

> "The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities." [28]

27.5 In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the *'Blindfold of Lady Justice'*, which symbolizes *"the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class."*[29] The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

28.1 Proceeding with the above understating, we can comfortably place the NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India,* have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights[30], liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[31]

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[28] Supra Note 26.

[29] Ibid

[30] Rural Litigation And Entitlement Kendra & Ors V. State Of U. P. & Ors AIR 1985 SC 652,Charan Lal Sahu Vs. Union of India (1990) 1 SCC 613, Virender Gaur Vs. State of Haryana (1995) 2 SCC 577

[31] See M.A.A. Baig, Environmental Law And Justice(1996). Domenico Amirante, Environmental Courts In Comparative Perspective: Preliminary Reflections On The National Green Tribunal Of India (2012). M.K. Ramesh, Environmental Justice: Courts And Beyond, Indian Jo. Of Envtl. L. 20(2002).

28.2 By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence.[32] Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar Vs. State of Bihar*, this Court explicitly held the following,

> "Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."[33]

28.3 Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the *'Absolute Liability Principle'*[34] by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. . . .The right was recognized as part of the right to life in 1991. . . . The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[35]

28.4 It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[36] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies,

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[32] Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed.5.

[33] (1991) 1 SCC 74.

[34] M.C. Mehta vs. Union of India, 1987 SCC (1) 395.

[35] Rajamani, Lavanya. 2007. Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability. Journal of Environmental Law

[36] Supra, Note 19.

including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the '*at risk'* nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[37]

28.5 Justice T.S. Doabia in *Environmental & Pollution Laws in India,* has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> ...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned." [38]

28.6 Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach.

28.7 Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand*

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[37] M.C. Mehta vs. Union of India (1986) 2 SCC 176, Indian Council for Environmental-Legal Action v. Union of India (1996) 3 SCC 212, A.P. Pollution Control Board vs. M.V. Nayudu (1999) 2 SCC 718, A.P. Pollution Control Board II vs. M.V. Nayudu (2001) 2 SCC 62.

[38] Justice T.S. Doabia, Environmental & Pollution Laws in India, 3rd Ed., Vol 2 (2017).

Management & Development Authority vs. Central Empowered Committee[39] so succinctly said that,

> "40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges – of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi–disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

28.8 It is this environmental rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,

> "With reference to the judicial enforcement of environmental law – which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order – the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade." [40]

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[39] (2021) 4 SCC 309

[40] Domenico Amirante, Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India, 29 Pace Envtl. L. Rev. 441 (2012)

The NGT therefore, is the institutionalizationof the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. CONCLUSION:

29. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

30. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum,* and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

31. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists[41] with many countries declaring climate emergencies and many others being urged to follow suit[42].

32. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the

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[41] Indian Network for Climate Change Assessment, Climate Change and India: A 4X4 Assessment - A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16 November 2010

[42] Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020.

A future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as *the 'Seventh Generation' sustainability principle,*or the *'Great Law of the Iroquois'* (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

33. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

34. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the *"global impacts of climate change will fall disproportionately on minority and low-income communities"*.[43] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

35. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

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[43] Supra Note 23.

36. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

37. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

38. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedurals safeguards clarified above in play, the nature of the trigger itself viz. a letter or a '*suo motu'* initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

39. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

40. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is

A vested with *suo motu* power in discharge of its functions under the NGT Act.

41. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the
B cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

Devika Gujral Legal issue answered.

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 w as 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 are 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 f ar 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 ore 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 my 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.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14874 OF 2017
(ARISING OUT OF SLP(C)No.19445 of 2004)

STATE OF UTTARAKHAND & ORS. ... APPELLANTS

VERSUS

KUMAON STONE CRUSHER ... RESPONDENT

WITH
C.A. No. 14446/2017 @ SLP(C) No.3189/2012
C.A. No. 14448/2017 @ SLP(C) No.1675/2012
C.A. No. 14922/2017 @ SLP(C) No.8713/2008
C.A. No. 14924/2017 @ SLP(C) No.10601/2008
C.A. No. 14923/2017 @ SLP(C) No.9523/2008
C.A. No. 14920/2017 @ SLP(C) No.6959/2008
C.A. No. 14921/2017 @ SLP(C) No.6958/2008
C.A. No. 14452/2017 @ SLP(C) No.950/2012
C.A. No. 14453/2017 @ SLP(C) No.1031/2012
C.A. No. 14464/2017 @ SLP(C) No.948/2012
C.A. No. 14465/2017 @ SLP(C) No.1169/2012
C.A. No. 14468/2017 @ SLP(C) No.1197/2012
C.A. No. 14469-14476/2017 @ SLP(C) No.2213-2220/2012
T.P.(C) No.76/2012
T.P.(C) No.77/2012
C.A. No. 14485/2017 @ SLP(C) No.1697/2012
C.A. No. 14486/2017 @ SLP(C) No.2082/2012
C.A. No. 14492/2017 @ SLP(C) No.2236/2012
C.A. No. 14493/2017 @ SLP(C) No.2081/2012
C.A. No. 14495/2017 @ SLP(C) No.2399/2012
C.A. No. 14497-14509/2017 @ SLP(C) No.3152-3164/2012
C.A. No. 14510-14523/2017 @ SLP(C) No.2938-2951/2012
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C.A. No. 13405-13408/2017 @ SLP(C) No.13019-13022/2012
C.A. No. 13411-13426/2017 @ SLP(C) No.12808-12823/2012
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C.A. No. 13465-13487/2017 @ SLP(C) No.16261-16283/2013

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Date: 2018.06.13
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C.A. No. 13105/2017 @ SLP(C) No. 29549/2016
C.A. No. 14283/2017 @ SLP(C) No. 31868/2009
C.A. No. 14534-14536/2017 @ SLP(C) No.37685-37687/2012
C.A. No. 14537/2017 @ SLP(C) No.37683/2012
C.A. No. 13519/2017 @ SLP(C) No. 33180/2010
C.A. No. 13131/2017 @ SLP(C) No.24803/2017 @ SLP(c)...(CC)22210/2016
C.A. No. 14538/2017 @ SLP(C) No.37576/2012
C.A. No. 13117/2017 @ SLP(C) No. 35807/2016
C.A. No. 1010/2011 (X)
C.A. No. 14312-14314/2017 @ SLP(C) No. 31530-31532/2011
C.A. No. 14323-14326/2017 @ SLP(C) No. 32620-32623/2011
C.A. No. 13398/2017 @ SLP(C) No. 35680/2015
C.A. No. 13410/2017 @ SLP(C) No. 35673/2015
C.A. No. 13429/2017 @ SLP(C) No. 35682/2015
C.A. No. 14919/2017 @ SLP(C) No. 6956/2008

C.A. No. 13119/2017 @ SLP(C) No.35813/2016
C.A. No. 13380-13384/2017 @ SLP(C) No.4943-4947/2013
C.A. No. 14327/2017 @ SLP(C) No. 1398/2012
C.A. No. 14340-14347/2017 @ SLP(C) No. 34909-34916/2011
C.A. No. 13396/2017 @ SLP(C) No.4461/2013
C.A. No. 14356/2017 @ SLP(C) No. 36272/2011
C.A. No. 14365-14367/2017 @ SLP(C) No. 134-136/2012
C.A. No. 14375/2017 @ SLP(C) No. 1684/2012
C.A. No. 14377/2017 @ SLP(C) No. 2433/2012
C.A. No. 14379/2017 @ SLP(C) No. 1874/2012
T.P.(C) No. 18/2012
C.A. No. 14380/2017 @ SLP(C) No. 1198/2012
C.A. No. 14405/2017 @ SLP(C) No. 1074/2012
T.P.(C) No. 44/2012
C.A. No. 14408/2017 @ SLP(C) No. 652/2012
C.A. No. 14411/2017 @ SLP(C) No. 738/2012
C.A. No. 14412-14413/2017 @ SLP(C) No. 146-147/2012
C.A. No. 14424-14425/2017 @ SLP(C) No. 877-878/2012
C.A. No. 14445/2017 @ SLP(C) No. 981/2012
C.A. No. 13399-13404/2017 @ SLP(C) No.8204-8209/2013
C.A. No. 13104/2017 @ SLP(C)No. 3457/2016
C.A. No. 2047/2006

J U D G M E N T

ASHOK BHUSHAN, J.

Delay condoned. Leave granted.

2. This batch of cases relates to levy of transit fee. Transit fee levied by three States, i.e., State of Uttar Pradesh, State of Uttarakhand and State of Madhya Pradesh is in question.

3. In exercise of power under Section 41 of Indian Forest Act , 1927 (hereinafter referred to as “1927 Act) rules have been framed by different States. State of U.P. has framed the Rules, namely, the Uttar Pradesh Transit of Timber & other Forest Produce Rules, 1978 (hereinafter

referred to as “1978 Rules”). After formation of the State of Uttarakhand in the year 2000, the above 1978 Rules were also extended by the State of Uttarakhand by 2001 Rules. State of Madhaya Pradesh has framed Rules, namely, the Madhya Pradesh Transit (Forest Produce) Rules, 2000(hereinafter referred to as “2000 Rules”).

4. Several writ petitions were filed in the Allahabad High Court, Uttarakhand High Court and High Court of Madhya Pradesh challenging the levy of transit fee, validity of transit fee Rules and for other reliefs. The writ petitions filed by the writ petitioners were allowed by the Uttarakhand High Court whereas Allahabad High Court dismissed some writ petitions and allowed others. The Madhya Pradesh High Court has allowed the writ petitions by a common judgment dated 14.05.2007. The State of Uttarakhand and State of Uttar Pradesh has filed SLPs, in which leave has been granted, challenging the judgments of the High Courts in so far as writ petitions filed by the writ petitioners were allowed. The State of Madhya Pradesh has also filed appeals challenging the common judgment dated 14.05.2007. The writ petitioners

whose writ petitions were dismissed by the Allahabad High Court has also filed SLPs against the said judgment in which leave has been granted.

5. The entire bunch of cases before us can be described in four groups. **First group** consists of appeals filed by the State of U.P. as well as State of Uttarakhand challenging various judgments of Uttarakhand High Court by which writ petitions filed by the different writ petitioners for quashing the levy of transit fee were allowed. The **second group** of appeals consists of appeals filed by the State of U.P. challenging the judgment of Allahabad High Court dated 11.11.2011 and few other judgments by which writ petitions filed by the writ petitioners have been allowed. **Third group** of appeals has been filed by the writ petitioners whose writ petitions filed before the High Court either have been dismissed or the reliefs claimed in their writ petitions have not been granted. The **fourth group** of appeals has been filed by the State of Madhya Pradesh against the judgment dated 14.05.2007 by which writ petitions filed by the writ petitioners in the Madhya Pradesh High Court have been

allowed quashing the notification fixing the transit fee and directing for refund of the transit fee.

6. For comprehending the issues which have come for consideration in this batch of appeals, we shall first notice the facts in some of the writ petitions which have been decided by three High Courts, i.e., Uttarakhand, Allahabad and Madhya Pradesh.

7. The parties shall be hereinafter referred to as described in the writ petitions filed before the High Court.

FACTS

I. CIVIL APPEALS ARISING OUT OF JUDGMENTS OF UTTARAKHAND HIGH COURT.

8. There are nineteen appeals arising out of judgments rendered by Uttarakhand High Court. There are only three main judgments rendered by Division Bench of the High Court which have been followed in other cases. It is thus necessary to note the facts giving rise to above mentioned three judgments.

(1) Judgment dated 01.07.2004 in Writ Petition No. 1124 (M-B) of 2001, M/s Kumaon Stone Crusher vs.

State of U.P. & Ors.

[Giving rise to Civil Appeal (arising out of SLP No. 19445 of 2004, State of Uttaranchal & Ors. vs. State of Kumaon Stone Crusher and Civil Appeal (arising out of SLP No. 26273 of 2004, the State of U. P. & Ors. vs. M/s. Kumaon Stone Crusher.]

9. M/s Kumaon Stone Crusher filed a writ petition praying for quashing the order dated 14.06.1999 issued by Conservator of Forest and order dated 01.06.1999 issued by Divisional Forest Officer directing for making recovery and levy of Transit Fee upon the finished item of stone i.e. stone grits, stone chips etc from the writ petitioner. Petitioners case was that its stone crusher which collects the boulders from the bank of Sharda River, which is a Forest Produce, Transit Fee is charged and paid. After taking the boulders to the crushing centre and involving manufacturing process, boulders are converted into the commercial commodity, namely, stone grits and chips. It is pleaded that after it becomes a commercial commodity, it ceases to be as Forest Produce and no Transit Fee can be charged and recovered thereafter.

10. The Division Bench *vide* its judgment dated

01.07.2004 allowed the writ petition and quashed the orders dated 14.03.1999 and 21.06.1999. Both State of Uttarakhand and State of U. P. aggrieved by aforesaid judgments have filed the above noted several appeals.

(2) JUDGMENT DATED 30.03.2005 IN WRIT PET. NO.310 OF 2005, M/s. Kumaon Pea Gravel Aggregated Manufacturing Company vs. State of Uttarakhand and Ors.

[Giving rise to Civil Appeal (arising out of SLP No. 23547 of 2005 and Civil Appeal (arising out of SLP No. 24106 of 2007)]

11. Writ Petitioners, proprietary firms were carrying on the business of manufacturing & sale of finished produce of washed and single pea gravel and bajri. The Writ Petitioner used to purchase river bed material from the lessee of query on payment of royalty and trade tax on which Transit Fee is charged from the State of Uttarakhand. But when the writ petitioners transport their finished products from their factory to customers, Transit Fee is charged by State of Uttarakhand and further, when it crosses the border of Uttarakhand and enter into the State of U.P., the Transit Pass issued by

the State of Uttarakhand is to be surrendered and again Transit Passes are to be taken by making payment of the Transit Fee.

12. High Court allowed the writ petition *vide* its judgment dated 30.03.2005 holding that after river bed material is converted into the Washed & Single Pea Gravel and Bajri after involving manufacturing process, a new commercial commodity comes into existence and same ceases to be a Forest Produce. High Court allowed the writ petition holding that no Transit Fee can be realised. It was further observed that even if, same is treated as Forest Produce, Transit Fee can not be realised twice on the same material under 1978 Rules. Both State of U.P. and Uttarakhand had filed Civil Appeals against the aforesaid judgment.

(3) Judgment dated 26.06.2007 in Writ Petition No. 993 of 2004, M/s Gupta Builders vs. State of Uttaranchal & Ors.

13. The writ petitioner in the writ petition has prayed for issuing a writ of certiorari, quashing 1978 Rules as applicable in State of Uttaranchal (now Uttarakhand)

so far the 1978 Rules provides for Transit Pass and Transit Fee for boulders, sand and bajri, further not to enforce 1978 Rules as amended by the State of U.P. *vide* amendment Rules 2004.

14. Writ Petitioner, a Registered Partnership Firm was engaged in the business of purchase & sale of natural stones, boulders, sand & bajri and supplying the same to the various Government Departments including PWD. Writ Petitioner purchased boulders, sand, bajri from the Kol river bed from Uttaranchal Forest Development Corporation which is lessee. Writ Petitioner makes payment of royalty and other charges to the lessee. The Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as 'Rules, 1963') has been adopted by the State of Uttarakhand, as Uttaranchal Minor Minerals (Concession) Rules, 2001(hereinafter referred to as 'Rules, 2001'). Uttaranchal Forest Development Corporation issues Form MM-11 to the writ petitioner.

15. Writ Petitioner pleaded that since royalty and other charges are being paid in accordance with the minor

mineral rules framed under the Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957'), no Transit Fee can be levied on the writ petitioner. The High Court allowed the writ petition holding that Transit Fee under Rules, 1978 can not be applicable on the transit of minor minerals. The levy of Transit Fee was held to be illegal.

16. Following the aforesaid judgment dated 26.06.2007 several other writ petitions were decided giving rise to different other Civil Appeals, which are Civil Appeal No.1010 of 2011, Civil Appeal(arising out of SLP No. 18094 of 2011) and Civil Appeal (arising out of SLP No. 26285 of 2011).

II. CIVIL APPEALS ARISING OUT OF JUDGMENTS OF ALLAHABAD HIGH COURT

17. A large number of Civil Appeals have been filed. Four Transfer Petitions and seven Contempt Petitions have also been filed. Civil appeals have been filed by the aggrieved parties against the various judgments of the Allahabad High Court. All the civil appeals filed by the

writ petitioners as well as by the State of U.P. centre around leviability of transit fee on different forest produces as per 1978 Rules.

18. Apart from various other judgments against which appeals have been filed, two judgments delivered by two Division Benches need to be specially noted by which judgments bunch of writ petitions numbering more then 100 have been decided. We shall notice these two judgments first before referring to facts of other cases.

CIVIL APPEAL NOS.2739-2762 OF 2008

(KUMAR STONE WORKS & Ors. VS. STATE OF U.P. & ORS.)

(arising out of judgment dated 27.04.2005 in Writ Petition No.975 of 2004, Kumar Stone Works & Others vs. State of U.P. & Ors.)

19. Several writ petitions were filed challenging the realisation of transit fee on transport of stone chips, stone grit, stone ballast, sand, morrum, coal, lime stone, dolomite etc. The writ petitioners have also challenged the validity of notification dated 14.06.2004 by which 1978 Rules were amended increasing the transit fee from Rs.5/- to Rs.38/- per tonne of lorry load of timber and other forest produce. By judgment dated

27.04.2005 bunch of writ petitions was decided consisting of petitions dealing with different materials. The High Court in its judgment has noticed details of few of the writ petitions facts of only leading petition which need to be briefly referred:

20. Writ Petition No.975 of 2004, which was stated to be leading writ petition:

Petitioners have been granted mining lease by the District Magistrate, Sonebhadra, for excavation of boulders, rocks, sand and morrum in the District of Sonebhadra from the plots situated on the land owned by the State Government which do not come within any forest area. The petitioners' case was that they do not carry any mining operation in the forest area. After excavation they transport the goods from the site to the destination by truck. The petitioners convert the stone and boulder into Gitti. It was further pleaded that while transporting the goods, they do not pass through the forest area and they are not using any forest road for the purpose of transportation of their goods. They pay

royalty to the State Government under the provisions of the U.P. Minor Minerals (Concession) Rules, 1963. The State's case was that the petitioners are procuring the grit, boulder etc. from the land of village Billi Markundi notified under Section 4 of the Indian Forest Act, 1927. The petitioners are carrying out mining operations in the forest land. With regard to some of the petitioners it was alleged that they are carrying business in the area which had already been notified as forest area under Section 4 of 1927 Act. It was pleaded by the State that grit, boulder etc. are being procured and transported from the forest which are the forest produce. The Transit Rules, 1978 has already been upheld by this Court.

21. The Division Bench after hearing the parties dismissed all the writ petitions holding the liability of the petitioners to pay transit fee. The High Court held that validity of the Rules have already been upheld by this Court in ***State of U.P. vs. Sitapur Packing Wood Suppliers, 2002 (4) SCC 566***. The Court upheld the 2004 Amendment. The High Court also held that the words

"brought from forest" as occurring in Section 2(4)(b) of the 1927 Act, necessarily implies that it passes through the forest. It also held forest must be understood according to its dictionary meaning. This description covers all statutory recognised forest, whether designated as reserve, protected or otherwise. The Court held that all goods are passing through forest, hence, petitioners cannot deny liability to pay transit fee. The increase of transit fee to Rs.38/- can neither be said to be excessive or exorbitant or prohibitive.

22. The several civil appeals have been filed against the above judgment where the appellants reiterate their claim as they raised before the High Court.

Civil Appeal arising out of SLP(C)No.1675 of 2012
State of U.P.& Ors. vs. M/s. Ajay Trading (Coal)Co.& Ors.
(arising out of the judgment dated 11/21.11.2011) in Writ Petition No.963 of 2011 - M/s. Ajay Trading (Coal)Co.& Ors. vs. State U.P. & Ors.)

23. By judgment dated 11.11.2011, two batches of writ petitions were decided. First batch consisted of Writ (Tax) No.327 of 2008(NTPC Limited & another vs. State of U.P. and others) and other connected matters and second

batch consisted of Writ (Tax) No.963 of 2011 (M/s. Ajay Trading (Coal) Co. and others vs. State of U.P. & Ors.).

24. The first group of writ petitions of which Writ (Tax) No.327 of 2008 was treated as leading writ petition, was filed against the imposition of transit fee on the transportation of soil(mitti) and coal. NTPC Limited is a Government of India undertaking engaged in generation of electricity in its various units, one of them being Singrauli Super Thermal Power Station at Shakti Nagar, District Sonebhadra which is a Coal Based Thermal Power Station. For disposal of fly ash, soil is excavated from non-forest areas and it is transported by the route, which does not fall within the forest area. The Divisional Forest Officer has demanded transit fee on transportation of soil. By amendments the petitioners were also permitted to challenge Fourth and Fifth Amendment Rules, 1978.

25. The second group of writ petitions of which Writ (Tax) No.963 of 2011(M/s. Ajay Trading((Coal) Co. and others vs. State of U.P. & ors.) was treated as leading petition. That petitioners are incorporated as Public

Limited Co./Private Lt. Co./Proprietor Firm Manufacturers and Traders of goods made of forest produce, the miners, as transporters of forest produce who challenged the applicability of Indian Forest Act, 1927 on mines and minerals and other forest produce. The validity of Fourth and Fifth Amendment Rules by which transit fee was increased was also challenged. Both the above batch of writ petitions consisted of a large number of writ petitions dealing with various materials raising various facts and grounds, some common and some different.

26. The Division Bench by its judgment dated 11.11.2011 has set aside the Fourth and Fifth Amendment Rules increasing the transit fee. The Court recorded its conclusion in paragraph 187 of the judgment on various submissions raised by the learned counsel for the parties before it.

27. The claim of various writ petitioners that they are not liable to pay transit fee was, however, not accepted. Aggrieved against the judgment dated 11.11.2011 in so far as it struck down Fourth and Fifth Amendment Rules, the State of U.P. has come up in appeals whereas writ

petitioners who were denying the liability to pay transit fee have filed appeals against the judgment dated 11.11.2011 reiterating their claim that they are not liable to pay transit fee on various grounds as raised in their writ petitions. The claims in various writ petitions are different and also founded on different grounds. It is neither necessary nor desirable to notice the facts and claim in each case separately. The writ petitions which have been decided by both the judgments dated 27.04.2005 as well as 11.11.2011 consisted of different nature of writ petitions which can be broadly described in few groups. It shall suffice to notice facts and claims as raised in few cases of each group:

Group(A) This represents petitioners who have obtained mining leases under U.P. Minor Minerals (Concession) Rules, 1963 as well as leases of major minerals for mining of various minerals. Some of the mining lease holders are also transporting the minerals. There are other categories of petitioners who are only transporting the minerals from their factories. Stone crusher, dealers who are crushing the minerals and

transporting finished materials, all these petitioners denied their liability to pay transit fee.

Petitioners claim that the stone ballasts and grit, boulders etc. are minerals which are covered under MMDR Act, 1957 and no transit fee can be charged under 1978 Rules. Some of the petitioners say that they are transporting the minerals through State and National Highways by paying toll tax. Petitioners further state that the transit fee is charged twice that is on raw material as well as on finished goods which is not permissible. Check posts have been put on State and National Highways which are illegal.

Group(B) Petitioners in this group deal with coal/ hard coke/coal briquettes /softcoke /cinder (rejected coke). Petitioners claim that coal is not forest produce and it is governed by various Parliamentary Acts which covers the field. Petitioners further pleaded that they are not mining coal from forest area rather they are purchasing from Coal India Ltd. after payment of necessary expenses. They are not using any forest land and rather are using State and National highways and PWD

roads. Some petitioners obtained coal from a company or dealer by paying necessary charges. The petitioner is using U.P. roads as a passage only and going out of State of U.P. that is to Delhi and Haryana. Some petitioners also rely on exemption notification dated 29.03.2010.

Group(C) This group consisted of limestone, calcium hydroxide, marble, calcium oxide, dolomite, pawdis, etc. Petitioners claim that the aforesaid items are not forest produce. They further pleaded that they are using State and National highways as well as PWD roads and not using any forest road. They further pleaded that twice transit fee is charged, firstly on raw material and secondly on the finished products by Fourth and Fifth Amendment.

Group(D) This group consists of petitioners who are dealers in plywood, imported timber/wood, bamboo, veneer, waste of plywoods, wood charcoal. Petitioners claim that they are not passing through forest area in U.P. They are not transporting any forest produce rather are transporting finished goods. Petitioners are purchasing timber which is coming into the country.

Group(E) This group consists of petitioners dealing

in fly ash, clinkers and gypsum. Petitioners claim to obtain the aforesaid material by manufacturing process. Petitioners claim that the aforesaid articles are not forest produce since they undergo chemical process.

28. In so far as writ petition included in group 'A' is concerned, we have noticed above the facts of Writ Petition No.26273 of 2004, M/s. Kumaon Stone Crusher, decided on 01.07.2004. Group 'B' consisting of petitioners who are dealing in coal/hard coke/coal briquettes/soft coke/cinder(rejected coke), etc. C.A. No.2706 of 2008 (M/s. Krishna Kumar Jaiswal vs. State of U.P. & Ors., is one of such writ petitions which was dismissed by the High Court on 27.04.2005.

29. In group 'B' reference is made to Civil Appeals arising out of SLP(C)Nos.34909-34916 of 2012 (M./s. Anand Coal Agency & Ors. etc.etc. vs. State of U.P. & Ors. etc.etc.). The writ petitioners-appellants are involved in trading of coal. Petitioners get coal after the acceptance of their bid by the Coal India Limited for the coal field concern. The petitioners imports coal from the outside the State of U.P. by road and do not use forest

roads. The coal is transported only by National highways and PWD roads. It was stated that collection of transit fee on coal is illegal and without jurisdiction. Levy on schedule minerals is exclusively subject matter of MMDR Act.

30. Another case in this context is Civil Appeal arising out of SLP(C)No.981 of 2012 (Lanco Anpara Power Ltd. vs. State of U.P. & Ors.). The writ petitioner-appellant is a Company carrying on the business in generation, distribution and sale of electricity in the State of U.P. Transit fee is charged on transportation of coal from the colliery to the thermal power unit of the petitioner at Anpara. The petitioner contends that condition precedent for applicability of transit fee with regard to forest produce as referred to in Section 2(4)(b)(iv) is that the genesis of the produce in question must be traceable to forest. In the present, coal brought by the petitioner does not owe its genesis to a forest. The transit fee thus cannot be levied.

31. In group 'C', one of the cases is Civil Appeal arising out of SLP(C)No.36272 of 2011 (Agra Stone Traders

Association & Ors. vs. State of U.P. & Ors., the writ petitioners-appellants are engaged in the business of purchasing and selling of marbles, marbles goods, marble chips, stone chips, stone powder, dolomite, limestone chips and pawdis from the State of Rajasthan, Madhya Pradesh, Karnataka, Andhra Pradesh, Orissa, etc. from various wholesale shopkeepers, industries/factories situated in the above said States. After purchasing the above said materials/finished goods the same are transported by them within the State of U.P. for sale to the consumers from the shops of the writ petitioners. The above materials are not directly transported from mines nor the same are in original form of mines and minerals. The petitioners have all necessary passes and invoices from different States. However, when petitioners' vehicles enter into the State of U.P. transit fee is being charged under 1978 Rules. The petitioners denied their liability to pay transit fee.

32. One of such cases is Civil Appeal No.1697 of 2012 (M/s. Aditya Birla Chemicals (India) Limited vs. State of U.P. & Ors.). The writ petitioner-appellant is a public

limited company who is engaged in the business of manufacture of chemicals and uses calcium hydroxide and calcium oxide. The petitioner pleads that calcium hydroxide is manufactured by treating lime with water at a particular temperature and calcium oxide is made by thermal decomposition of materials such as limestone, that contain calcium carbonate in a lime kiln which is accomplished by heating the material to above 825 degree centigrade. These products were also purchased from registered traders/manufacturers of the State of Rajasthan after obtaining invoices and passes. On such transportation the State of U.P. is levying transit fee. The product manufactured and purchased by the petitioners is not forest produce and no transit fee can be levied.

33. In group 'D', one of the cases is Civil Appeal arising out of SLP(C) No.30185 of 2012 (Arvind Kumar Singh & Anr. vs. State of U.P. & Ors.), the writ petitioner-appellant carries on the business of supplying bamboo, waste of plywood and small twigs/debarked jalawani lakdi of eucalyptus and poplar trees to paper manufacturing units. The paper manufacturing units, to

which the petitioner supplies are situate in the State of Haryana, Punjab, Uttar Pradesh and Madhya Pradesh. Waste of plywood is a waste product obtained from the plywood industries, which is processed to obtain chips. The purchases are not made by the petitioner inside any forest of Uttar Pradesh or any other State. The loaded trucks of the petitioner do not pass through any forest road. The waste of plywood and veneer is neither timber nor any kind of forest produce. They are products of human/mechanical effort and labour and a result of a manufacturing process. There is no liability to pay transit fee on the above items.

34. In group 'E', one of the cases is Civil Appeal arising out of SLP(C)No.5760 of 2012 (Ambuja Cements Limited vs. State of U.P. & Ors.). The writ petitioner-appellant is an ISO Co. for manufacturing of cement. The fly ash (a by product of Thermal Power Plants, purchased by the petitioners); and gypsum (a raw material used in the manufacture of cement and purchased by the petitioner) and clinker is not a forest produce. Clinker/fly ash is an industrial produced and cannot fall

in the ambit of forest produce as defined under Section 2(4) of 1927 Act. The manufacture of clinker comprises of two stages. In stage one raw material like lime stone, clay, bauxite, iron ore and sand are mixed in specific proportion and raw mix is obtained and in stage second the raw material is fed into kiln whereby at high temperature, chemical reaction occurs and the product obtained is 'alite' which is commercially sold as clinker. The petitioner though was not a party in the writ petition before the High Court but has filed the SLP with the permission of the Court granted on 10.02.2012.

III. TRANSFER PETITIONS

35. **Transfer Petition No.18 of 2012** has been filed under Article 139A for transferring the Writ Petition No.40 of 2000 pending in the High Court of Judicature at Allahabad. The writ petitioner is engaged in business of manufacturing and dealing in aluminium and semis. Hindalco owns and operates the Aluminium plant at Renukoot and captive thermal power plant is at Renusagar. Hindalco uses both bauxite and coal in the production of aluminium.

36. In December, 1999, the State of U.P. demanded transit fee on transport of minerals (bauxite and coal). Aggrieved thereby Writ Petition(C) No 40 of 2000 was filed. An Interim order was passed on 18.01.2000 restraining forest department from charging transit fee. This interim order continued till 29.10.2013 when this court passed detailed interim order.

37. The petitioner's case is that in SLP(C) No.11367 of 2007, Kanhaiya Singh & Anr. Versus State of U.P., the same question is engaging attention of this Court, hence, the Writ Petition filed by the petitioner be transferred and heard along with the aforesaid Special Leave Petition.

38. **Transfer Petition No.44 of 2012** has been filed to transfer Writ petition(tax) No.1629 of 2007 to hear it with SLP(C) No.11367 of 2007. The petitioner has set up coal based thermal power plant at Renusagar for captive generation of power which it supplies continuously to the aluminium manufacturing unit of the petitioner at Renukoot. In the process of generation of power the said thermal power plant produces the fly ash which needs to

be disposed of as per the directions of the Central Government.

39. The petitioner has entered into agreement with various cement manufacturers for lifting, disposal of fly ash. From November 2007, the forest department of the State started demanding transit fee from each Truck/Dumper. Even though the payment of any levy is the responsibility of contractors who are lifting the fly ash. The petitioner filed Writ Petition No.1629 of 2007 challenging the aforesaid demand of transit fee on fly ash in which the interim order was passed by the High Court on 29.11.2007. In the aforesaid background it was prayed that Writ Petition be transferred and heard along with SLP(C) No.11367 of 2007.

40. **Transfer Petition No.76 of 2012** has been filed by Aditya Birla Chemicals (India) Ltd. for transfer of Writ Petition no.101 of 2008 pending in the Allahabad High Court. The Petitioner is engaged in the business of manufacturing and sale of chemicals, casting soda, bleaching powder, sodium chloride etc. at its factory situated at Renukoot, District Sonebhadra. For continuous

supply of power to the manufacturing unit petitioner has set up coal based thermal power plant at Renusagar. Fly ash is generated from thermal power plant which needs to be disposed of. Petitioner made available the fly ash to seven cement industries free of cost. The petitioner maintained its own roads which is connecting National Highway No. 76E which goes one side to Madhya Pradesh and to Mirzapur on other side. From November 2007, forest department of U.P. Started demanded transit fee on supply of fly ash. After filing the Writ petition the various developments took place including decisions on bunch of writ petitions of 11.11.2011.

41. The petitioner case is that similar issues are pending in SLP(C) No.11367 of 2007 and Writ Petition be transferred and heard along with the aforesaid Special Leave Petition. This Court in all the above three Transfer Petitions, on 19.11.2012 passed an order to take up these matters along with the SLP(C) No.11367 of 2007.

IV. <u>CONTEMPT PETITIONS</u>

42. Contempt Petition No.251 of 2008 in I.A.No.7 of 2008 in Civil Appeal No.2797 of 2008, the members of applicants association are plying public transport truck carrying minor minerals like boulders, sand, stone, dust, etc. Trucks do not enter into any forest area nor use any forest road. In C.A.No.2797 of 2008 an interim order was passed by this court directing that there shall be stay of demand by way of transit fee in the meantime. Applicants case is that the applicant's association has also been impleaded in C.A. No. 2797 of 2008. It is pleaded that despite the knowledge of interim order of this court the respondent at different check posts are demanding transit fee. Prayer has been made to issue Show Cause Notice and initiate contempt proceedings. No Notice has been issued in the contempt proceeding as yet.

43. Contempt Petition(C) No.199-201 of 2014 in SLP(C) No.31530 of 2011 and other two Special Leave Petitions. Applicants are engaged in the business of transportation of sand, stones, polish stones, rough stones, crushed stones, stone grits, stone marbles etc. Applications claimed that whenever their vehicles entered in the State

of U.P., Transit fee is demanded. It is contended that in SLP(C) filed by the applicants this court on 02.12.2012 stayed the recovery of transit fee. Applicants case is that despite the knowledge of interim order dated 02.12.2012 the same is not being complied with, hence, the Contempt Petition has been filed. In Contempt application, no notice has been issued.

44. **One Writ Petition (C)No.203 of 2009** (M/s. Pappu Coal Master & Ors. vs. State of U.P. & Anr.) has also been filed where petitioners have prayed that respondent may be restrained from charging any fee from petitioners under the 1978 Rules as amended by Amendment Rules dated 14.06.2004. This writ petition was directed to be listed along with SLP(C)No.11367 of 2007.

V. CIVIL APPEALS AGAINST THE JUDGMENT DATED 14.05.2007 OF THE MADHYA PRADESH HIGH COURT

45. The State of Madhya Pradesh has filed appeals against a common judgment dated 14.05.2007 of the High Court of Madhya Pradesh. Civil Appeal arising out of SLP(C)No.6956 of 2008 has been filed against the common judgment rendered in six writ petitions which also

included Writ Petition No.2309 of 2002 (Northern Coalfields Limited vs. State of Madhya Pradesh and ors.

46. The writ petitioners-Northern Coalfields Limited is engaged in excavation and sale of coal. The State of M.P. framed M.P. Transit (Forest Produce) Rules, 2000 for imposing transit fee. The writ petitioner pleaded in the writ petition that the State of M.P. has no legislative competence for imposing any tax on coal. It was further pleaded that fee can be imposed only if there is any *quid pro quo* between the services rendered and fee charged. Notification dated 28.05.2001 issued by the State of M.P. fixing fee of Rs.7/- per metric tonne was challenged. Following reliefs were sought in the writ petition:

> "*i) Issue on appropriate writ/writs, order/orders, direction/directions to quash the authorisation of imposing transit passes on movement of coal under M.P. Transit pass (Forest Rule) 2000 ANNEXURE-P/1.*
>
> *ii) To quash the fixation of rates of fees for issuance of transit passes ANNEXURE-P/2.*
>
> *iii) To quash the demand for payment of fees for transit of coal ANNEXURE-P/3*
>
> *iv) To grant such other appropriate*

relief as deemed and fit and proper in the facts and circumstances of the case."

47. More or less similar reliefs were claimed in the other writ petitions before the M.P. High Court. In some of the writ petitions prayer was also made for issuing writ of mandamus declaring Section 2(4)(b)(iv) and Section 41 of the 1927 Act as unconstitutional and *ultra vires* to the extent it relates to minerals. Prayer was also made to declare M.P. Transit (Forest Produce) Rules, 2000 and notification dated 28.05.2001 as *ultra vires* to the power of the State under 1927 Act.

48. Counter-affidavit was filed by the State contending that as per Section 41 of 1927 Act, the State is conferred with a power to make rules to regulate the transit of all timber and other forest-produce.

49. The High Court after hearing the parties and considering the submissions by the impugned judgment quashed the notification dated 28.05.2001 by which fee of Rs.7/- was fixed. The High Court also directed refund of the amount in a phased manner within a period of five years. Aggrieved by the judgment dated 14.05.2001 the

State of Madhya Pradesh has filed these appeals.

50. We have heard learned counsel appearing for the States as well as learned counsel appearing for various writ petitioners.

51. While referring the respective submissions of the learned counsel, submissions on behalf of the writ petitioners have been referred to as submissions of writ petitioners and the submissions on behalf of the States have been referred to as on behalf of the State.

VI. Submissions with regard to the judgment of Uttarakhand High Court

52. As noted above both the State of Uttarakhand and State of U.P. have challenged the judgment of Uttarakhand High Court. Shri Dinesh Dwivedi, learned senior counsel questioning the judgment dated 01.07.2004 of Uttarakhand High Court in M/s. Kumaon Stone Crusher vs. State of Uttarakhand, submits that boulders crushed into grits retain same characteristic that is forest produce. By obtaining grits, stone chips and dust no new material is obtained. Challenging the judgment of Uttarakhand High Court in M/s. Gupta Builders dated 26.06.2007, it is

submitted that the mere fact that royalty has been paid by the writ petitioners in accordance with the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 as adopted in Uttarakhand by Uttarakhand Minor Minerals (Concession) Rules, 2001 shall have no effect on the entitlement of the State to levy transit fee. The judgment of the High Court that no transit fee can be levied on the minerals is erroneous. It is further submitted that the High Court erred in adopting a very restrictive meaning of word 'forest' whereas the forest has to be understood in a wide sense. It is contended that Forest Act, 1927 and MMDR Act, 1957 operate in different fields. In so far as the case of the writ petitioners is that transit fee is being charged for second transit also. It is submitted that transit pass has its destination and after it reaches its destination, the pass comes to an end, the transit fee can be validly charged.

53. Replying the above submission of State, learned counsel for writ petitioners submits that main challenge in the writ petitions filed by petitioners was that no

Transit Fee can be levied on finished products from the stone crusher. It is contended that river bed materials i.e. boulders and bajri by applying mechanical process are converted into small size stone grits, chips and dust which become a commercial commodity and ceases to be a Forest Produce therefore no Transit Fee can be charged. It is further contended that in Section 2(4)(b) of the 1927 Act the words 'found in' and 'brought from' are qualified by word 'when', which denotes the time factor. The word 'when' signifies that the item while leaving the forest is in continuous process of transit from the point where it is said to be found in. But once, the continuous transit of forest produce terminates at any point of place which is not a forest item included in Clause B(4)(2), shall cease to be a Forest Produce and further transit of such material being material not brought from forest shall not attract tax under Section 41 of Act, 1927.

54. The stone or sand which is in its primary or dominantly primary state is subjected to a manufacturing process for making it marketable product, which is not a

Forest Produce. Act, 1927 does not provide for any definition of term 'Manufacturing Process'. The term 'Manufacturing Process' is to be given a liberal interpretation. The process of stone crushing have to be held to be Manufacturing Process. It is further contended that levy of Transit Fee on Transit Pass does not have any relationship with the distance of the destination of the transit and the Transit Pass originally issued at the time of First Sale of transit required only on endorsement and the insistence of levy of Transit Fee at the time of second transit is irrational and unreasonable.

55. Learned counsel for the State of U.P, challenging the judgment of High Court of Uttarakhand has also raised the similar submissions as has been raised by the learned counsel for the State of Uttarakhand.

VII. SUBMISSIONS RELATING TO JUDGMENTS OF THE <u>ALLAHABAD HIGH COURT</u>.

56. Following are various submissions on behalf of several writ petitioners and their reply by State:-

(i) (a)The products which are being transited by them

or on their behalf are not Forest Produce since they have undergone manufacturing process resulting into a new commodity. All the writ petitioners supported the judgment of Uttarakhand High Court dated 01.07.2004 in M/s Kumaon Stone Crusher wherein, the High Court has held that no levy of Transit Fee can be made on the finished items of stone i.e. stone grits, sand grits & chips etc. They submitted that in the stone crusher, factories, boulders and stones obtained from different mining lessees are subjected to a process by which different items are formed thereby losing their character of Forest Produce. Several other materials like lime stone, fly ash, clinker, calcium hydro-oxide and calcium oxide, cinder, gypsum are also obtained after undergoing a manufacturing process, which are no longer a forest produce. Another group of petitioners who deal with marble stone, stone slabs and tiles also raise similar submission that marble slabs are finished goods which are different from Forest Produce and no Transit Fee can be demanded.

(b)Another group of petitioners who deal with in

veneer, plywood also claimed that after undergoing manufacturing process veneer and plywood are no longer a Forest Produce hence, no Transit Fee can be charged. Last category of articles for which non-leviability of transit fee is claimed comprises of coal, hard coke, finished coal, coal briquettes, soft-coke. With regard to coal it is submitted that coal is not a Forest Produce at all, since it is obtained from collieries which are not in forest. It is further submitted that in view of Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957) and Coal Bearing Areas (Acquisition & Development) Act, 1957, the regulation of coal is outside the Indian Forest Act, 1927 (hereinafter referred to as 'Act, 1927').

(c)The above submissions of writ petitioners have been refuted by learned counsel appearing for State of U.P. and State of Uttarakhand. It is submitted that stone boulders and stone ballasts after being subjected to crushing by which stone grits, sand grits & chips are obtained, does not in any manner change the nature

of product. Stone grits, sand grits & chips obtained after crushing are still a Forest Produce on which Transit Fee is charged. Accepting the aforesaid argument will lead to a situation where State shall lose its regulatory power on Forest Produce on mere facial change of the Forest Produce. With regard to other articles the State has refuted the submission and it is submitted that all the articles claimed by the writ petitioners are Forest Produce which are subject to Transit Fee.

(d)With regard to parliamentary enactments relating to coal as claimed by the writ petitioners, it is submitted that parliamentary enactments regarding coal are on different subjects and has no effect on the Act, 1927 and the rules framed therein.

(e)Learned Additional Advocate General of the State of U.P., during his submission has submitted that in so far as, fly ash, clinker and synthetic gypsum are concerned, the State does not claim them to be Forest Produce and no Transit Fee shall be charged on fly ash, clinker and synthetic gypsum. He, however, submitted

that gypsum is a naturally mined Forest Produce and what is excluded is only synthetic gypsum.

(f)For veneer and plywood, it is submitted that veneer is small pieces of timber which remains a Forest Produce and plywood is also a kind of timber which retains its natural character of Forest Produce. With other articles, with regard to which, it is claimed that by manufacturing process and chemical treatment they are transformed to new commercial commodity is refuted by counsel for the State.

(ii) (a)One of the the main planks of attack of learned counsel for the writ petitioners to the 1927 Act & 1978 Rules is based on 1957 Act. It is submitted that 1957 Act is enacted by the Parliament in reference to Entry 54 of List I of Seventh Schedule of the Constitution of India. It relates to regulation of mines and the development of minerals to the extent to which such regulation and development under the control of the Union is declared by the Parliament by law. The legislative competency of the State with regard to mines and minerals development is contained in Entry 23 of List II which Entry is subject

to provisions of List I with respect of mines and minerals development under the control of the Union of India. It is submitted that in so far as transit fee on minerals is concerned, the entire field is covered by 1957 Act wherein there is a declaration by the Parliament that Union shall take under its control the regulation of mines and the development of minerals to the extent provided therein. The entire regulation of minerals including its transport being covered under 1957 Act, the State is denuded of any jurisdiction to legislate. It is further contended that 1957 Act is a special enactment which shall override the 1927 Act which is a general enactment. It is further contended that provisions of 1978 Rules and the provisions of Section 41 of Forest Act, due to the repugnancy to the provisions of 1957 Act shall stand overridden. The transit and transportation of minerals is an integral part of regulation and development of minerals and the Parliament having unequivocally enacted the law it is to occupy the entire field regarding the transit and transportation of minerals and development of mines. No other law can

trench upon occupied field. The provision of Forest Act, 1927 including Section 41 and Transit Fee Rules, 1978 framed thereunder shall stand impliedly repealed after enactment of 1957 Act, especially after insertion of Section 4(1A) and Section 23C by Act 38 of 1999 with effect from 18.12.1999.

(b)Learned counsel for the State refuting the above submissions contends that repugnancy between a parliamentary statute and a statute of State legislature arises when the two laws operate in the same field, they collide with each other. It is submitted that subject matters of 1927 Act and 1957 Act are distinct and different. In 1927 Act provisions relating to transport of forest produce is only incidental and ancillary in nature. The object of two legislations is entirely different. Forest Act, 1927 comprehensively deals with forest and forest wealth whereas 1957 Act deals with mines and minerals wealth. He further submits that 1957 Act does not impliedly overrule the 1927 Act, both the legislations being under different subjects. It is submitted that argument

of implied repeal could have arisen only where there is no option. To take a view that 1957 Act shall impliedly overrule 1927 Act regarding transit of forest- produce, the control of the State under Section 41 shall be lost and the very purpose and object of the Forest Act shall be defeated. An activity of mining held in a forest cannot be regulated and prevented by mining officers in the forest area, they cannot enter into forest area and exercise their powers. The machinery for enforcement of forest laws and the mining laws are different. Their powers are different, officers are different, consequences of breach are different and both provisions operate in different fields. It is thus submitted that the provisions of Indian Forest Act, 1927 in so far as Section 41 of 1927 Act and 1978 Rules are concerned, shall not stand impliedly overruled by Parliamentary enactment of 1957 Act.

(iii) (a)It is submitted that Division Bench of the Allahabad High Court in ***Kumar Stone Works and others*** by its judgment dated 27.04.2005 has mis-interpreted the words ”brought from” as contained in Section 2(4)(b) of

1927 Act. It is submitted that there is no issue with regard to the words ”found in”. The words “found in” clearly mean found in a forest. The word “when” signifies the physical presence of the item. The word 'when' also qualifies the words “brought from a forest”. Thus when a forest produce is brought from a forest, the things mentioned in sub-clause (1) of sub-section (4) of Section 2 will be treated as forest produce. The thrust of the submission is that the words 'brought from forest', mean that the forest produce originated from forest. For any produce to be forest to be brought from forest means it is starting point of transit and not in transit. The Division Bench of the High Court in its judgment dated 27.04.2005 erred in equating the words “brought from forest” as “brought through forest”. The High Court has held that even forest produce passes through forest area it shall be liable to payment of transit fee.

(b)It is further submitted by the learned counsel for the writ petitioners that in fact the Division Bench of the Allahabad High Court vide its order dated 04.03.2008 in ***M/s. Nagarjuna Construction Ltd.*** has

already expressed its disagreement with the Division Bench judgment in ***Kumar Stone Works and others v. State of U.P. and others, 2005 (3) AWC 2177,*** and referred following two questions for consideration of the larger Bench:

> *(i) Whether the words 'brought from' used in section 2(4)(b) of the Indian Forest Act would cover such items mentioned in sub-clauses (i) to (iv) of Section 2(4) (b) which though did not have origin in the forest but they are transported through a forest?*
>
> *(ii) Whether the interpretation of the words 'brought from' given by Division Bench in Kumar Stones Case(Supra) is correct? Let the papers be placed before the Hon'ble Chief Justice for appropriate orders."*

(c)It is submitted that the Division Bench of Allahabad High Court while delivering the judgment dated 11.11.2011 although noticed that the above questions have been referred to for consideration of a larger Bench did not await the judgment of larger Bench rather chose to follow the Division Bench judgment in ***Kumar Stone Works.***

(d)Learned counsel for the State has refuted the

aforesaid submission. It is submitted that the Division Bench of the Allahabad High Court in ***Kumar Stone Works*** has correctly held that the term 'brought from a forest' must be read to mean 'brought through a forest'. It is submitted that any other interpretation would render the term to be in conflict with the term 'found in a forest'. It is submitted that the High Court has referred to various dictionary meanings of word 'brought' and after relying on said definition the Division Bench held that the words 'brought from' mean 'brought through forest'.

(iv) (a)One more submission which has been raised by the writ petitioners is that the word 'forest' as used in 1927 Act as well as in Transit Fee Rules, 1978 has to be read as 'forest' as enumerated in the 1927 Act, i.e., a reserved forest, a village forest and a protected forest. Thus, transit fee can be charged only when forest produce transit through a reserved forest, a village forest or a protected forest. It is submitted that the Division Bench in its judgment dated 11.11.2011 has adopted a very expansive definition of forest when it held that the

forest has to be understood as a large track of land covered with trees and undergrowth usually of considerable extent, on the principles of sound ecological and scientific basis reflecting sociological concerns. Learned counsel for the petitioners submits that the definition of forest as adopted by the Division Bench of Uttarakhand High Court in M/s. Gupta Builders in Writ Petition No.993 of 2004 giving rise to C.A.No. 1008 of 2011(State of Uttar Pradesh vs. M/s. Gupta Builders & Ors.) is a correct definition of forest. It is submitted that Uttarakhand High Court has rightly adopted a restrictive meaning of forest in the Forest Act, 1927.

(b)The above submission of learned counsel for the petitioners is opposed by the State of U.P. It is submitted by learned senior counsel that the word 'forest' has to be understood broadly and the definition of forest as given by this Court in ***T.N. Godavarman Thirumulkpad vs. Union of India and others, 1997 (2) SCC 267,*** is to be followed and the Division Bench in its judgment dated 11.11.2011 has correctly interpreted the word 'forest'.

(v) (a)Some of the writ petitioners have submitted that although they are not passing through any forest but still transit fee is charged by the State on the ground that several State highways, PWD roads and several roads have been declared protected forests by the State of U.P. by issuing notification under the provisions of 1927 Act. It is submitted that passing through National highways and State highways cannot be treated akin to passing from any kind of forest so as to attract leviability of transit fee.

(b)Learned Additional Advocate General for the State of U.P. submits that the roads from which the petitioners claim to have passed are roads which have been declared as protected forests. Hence, forest produces transiting from the above roads are liable to pay transit fee. In support of his submission he refers to notification dated 10.02.1960 issued under proviso to sub-section (3) of Section 29 as well as Section 80A of 1927 Act.

(vi) (a)One of the submissions raised by learned counsel for the petitioner is that Rule 3 read with

Schedule A of 1978 Rules is totally independent of Rule 5 and same has no correlation with each other. Rule 3 and Schedule A nowhere contemplates or has a column prescribing charging of a fee. It is submitted that transit fee is chargeable on transit pass issued under Rule 4(b) which is required to be checked under Rule 6(4) only. Referring to Rule 5, it is submitted that Rule 5 contemplates charging a fee in those cases in which transit is done on the transit pass issued under Rule 4(1)(b) and checked under Rule 6(4).

(b)It is submitted that fee cannot be charged in any other case. The above submissions have been refuted on behalf of the State. It is contended that on all transit pass issued under the Rule 1978 transit fee is required to be paid.

(vii) The petitioners further submitted that although no final notification has been issued under Section 20 of 1927 Act but still the Forest Department treats several areas in the District of Sonebhadra and other Districts as forest area and transit fee is asked for treating the said areas as forest area. It is submitted that Section 4

notification is only a preliminary notification which cannot be treated as notification declaring the area as reserved forest.

(viii) (a)Learned counsel for the petitioners submitted that the Constitution Bench judgment of this Court in ***State of West Bengal vs. Kesoram Industries and ors, (2004) 10 SCC 201*** where Constitution Bench held that Union's power to regulate and control does not result in depriving the States of their power to levy tax or fees within their legislative competence without trenching upon the field of regulation and control of the Union, need not be relied on.

(b)The Constitution Bench also interpreted Seven-Judge Bench decision in ***Synthetics and Chemicals Ltd etc vs. State of U. P. and ors., (1990) 1 SCC 109.*** It is submitted that with regard to the interpretation put by the Constitution Bench in ***State of West Bengal vs. Kesoram Industries (supra)*** a reference has already been made to a Nine Judge Bench by reference order dated 30.03.2011 in ***Mineral Area Development Authority vs. Steel Authority of India and Ors., (2011) 4 SCC 450.***

(ix) The State of U.P. cannot realize transit fee as per Third Amendment Rules dated 09.09.2004. Third Amendment Rules having been substituted by Fourth & Fifth Amendment Rules and Fourth & Fifth Amendment Rules having been struck down by judgment dated 11.11.2011, Third Amendment Rules shall not revive. Third Amendment Rules are not in existence.

VIII. Following are the submissions on behalf of State of U.P. in support of Civil Appeals filed by them and their reply by the writ petitioners thereto:-

57. Shri Ravindra Srivastava, learned senior counsel leading the arguments on behalf of the State of U.P. contends that this Court in ***State of U.P. and others vs. Sitapur Packing Wood Suppliers and others, 2002(4)SCC 566,*** has upheld the validity of 1978 Rules and has pronounced that transit fee is regulatory in nature and for regulatory fee *quid pro quo* is not necessary. The High Court for its judgment has relied on ***Jindal Stainless Ltd.(2) and Anr. Vs. State of Haryana and Ors., 2006 (7) SCC 241,*** which has been overruled by 9-Judges Constitution Bench in ***Jindal Stainless Ltd. & Anr. v.***

State of Haryana & Ors., 2016(1) Scale 1, the very basis of the judgment of the High Court is knocked out. The State being entitled to levy transit fee it can change the basis of levy of transit fee. That option on the basis of *advalorem* is also permissible both for fee and tax and no exception can be taken to the Fifth Amendment on the ground that the Fifth Amendment adopts *advalorem* basis for fixing the fee. The increase in transit fee by Fourth and Fifth Amendments cannot be held to be arbitrary or excessively disproportionate. The finding of the High Court that the State had not provided any data to justify the increase in transit fee is incorrect since the State had in fact by a table which itself has been noted in paragraph 85 of the judgment has mentioned the income and expenditure related to transit fee, a perusal of which could indicate that the expenditure of State Government was much more than collection of transit fee even after Fifth Amendment. The value of timber and other forest-produce has increased manifold. The increase in levy of transit fee had become necessary to meet the ever increasing expenditure incurred by the State. The High

Court committed error in striking down Fourth and Fifth Amendments without there being any sufficient and valid ground.

58. Learned counsel for the writ petitioners have vehemently opposed the above submission and supported the judgment of the High Court striking down the Fourth and Fifth Amendment Rules. It is submitted that ***Jindal Stainless (2)*** overruled by the judgment of 9-Judges constitution Bench does not have much bearing in the facts of the present case. The High Court independent of reliance placed on ***Jindal Stainless (2)*** has held that transit fee is excessive in nature and the State of U.P. had not produced data for justifying the increase in the transit fee. It is true that for regulatory fee *quid pro quo* is not to be proved but the State was obliged to prove a broad correlation between the levy of transit fee and the expenditure incurred by the State on the transit of forest-produce. The High Court in paragraph 177 to 186 has considered the issue in detail and has returned findings to support its conclusion that exorbitant increase in transit fee has robbed the regulatory

character of the transit fee which has become confiscatory and has partaken character of tax. The figures given in paragraph 85 of the judgment are figures of expenditure of the entire forest department which can have no correlation with the collection of transit fee. The entire expenditure of the forest department cannot be met by collection of transit fee. The State does not give any detail of expenditure which it has actually incurred in regulation of transit of the forest-produce.

59. Learned counsel for the writ petitioners have demonstrated by different charts of the respective increase in the transit fee by Fourth and Fifth Amendment Rules as compared to fee which was being charged under Third Amendment Rules. It is submitted that regulatory fee could not have been charged on *advalorem* basis which is generally adopted for levying a tax and not a fee. The charging of transit fee by Fourth and Fifth Amendment Rules, is for the purposes of augmenting the Revenue of the State and not for regulation of transit which changes the character of transit fee into a tax, which is not permissible under

law.

60. After noticing the respective submissions of both parties, we now proceed to consider them in the same seriatum.

IX. Whether by Manufacturing process/chemical Treatment as claimed by the writ petitioners, the forest produce looses its character of forest produce.

61. We first take the case of stone boulders which are crushed into stone grits, stone chips and stone dust etc. Stone boulders are obtained from riverbed, stone rocks & stone mines. After crushing of the stone boulders, stone grits, stone chips and stone dust are obtained which does not transform into any new commodity, except that the stone in smaller pieces and shapes are obtained. The Allahabad High Court, in its judgment in Kumar Stone Works (Supra) decided on 27.04.2005 has given a detailed reasoning for not accepting stone grits, stone chips and stone dust as a new commodity. It held that the character of Forest Produce is not lost by such crushing of the stone.

High Court of Uttarakhand has taken a contrary view in its judgment dated 01.07.2004 in Kumaon Stone Crusher (Supra), as noted above.

62. Learned counsel for the writ petitioners have relied on few judgments of this Court which need to be noticed. Reliance is placed on Two Judge Bench in ***Suresh Lohiya vs. State of Maharashtra and another, (1996) 10 SCC 397***. In the above case, the question for consideration was, as to whether, the Bamboo mat is a Forest Produce. The definition of 'Timber' and 'tree', given in sub clause 6 and sub clause 7 of Section 2 was noticed which is to the following effect:

> *"2. (6) 'timber' includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and*
>
> *2.(7) 'tree' includes palms, bamboos, stumps, brushwood and canes."*

63. The above judgment of this court was based on 'consideration of definition of timber and tree' as given in Section 2 (6) & 2 (7). This Court held that definition of timber included tree and all wood whether cut or fashioned or hollowed out for any purposes. This

Court held that said definition of timber cannot be read in definition of tree which includes Bamboo hence, fashioned Bamboos are not included in the definition of tree. The Bamboo mat was thus held, not to be a Forest Produce. The above judgment was based on its own facts and does not help the writ petitioner in the present case.

64. In ***CST vs. Lal Kunwa Stone Crusher (P) Ltd., (2000) 3 SCC 525,*** the Court was considering liability of Trade Tax on stone chips, gittis and stone ballast. The question raised before the Court was, as to whether, the stone gittis, sand chips and dust continue to be stone grits, chips and dust or after crushing them, they get converted into a new commercial products, so as to attract the tax on their sale. The case of dealer was that at the time of purchase of goods sales tax has been paid hence, goods emerging out of same are not liable to be taxed again. This Court held that the word 'stone' is wide enough to accept various forms of grits, gitti, kankar and ballast hence, no tax

was leviable on the sand chips, grits & dust etc. In para 5 following was held:

> *"5. The view taken by the Tribunal as affirmed by the High Court is that the goods continue to be stone and they are not commercially different goods to be identified differently for the purposes of sales tax. The decision relied on by the minority view in the Tribunal in Reliable Rocks Builders & Suppliers v. State of Karnataka turned on the concept of consumption of goods for the purpose of bringing into existence new goods. In that case the Court was not concerned with an entry of the nature with which we are concerned in the present case. Where the dealer had brought into existence new commercial goods by consuming the boulders to bring out small pieces of stone, it was held that such activity attracted purchase tax. In the present case, however, stone, as such, and gitti and articles of stones are all of similar nature though by size they may be different. Even if gitti, kankar, stone ballast, etc. may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, yet it cannot be presumed that Entry 40 of the notification is intended to describe the same as not stone at all. In fact the term "stone" is wide enough to include the various forms such as gitti, kankar, stone ballast. In that view of the matter, we think that the view taken by the majority of the Tribunal and affirmed by the High Court stands to reason. We are, therefore, not inclined to interfere with the same."*

65. The above judgment held that the nature and character of the stone remains the same, even after, crushing the boulders into small stones, dust etc. Reliance by the writ petitioner is also placed on judgment in ***(2003) 3 SCC 122, Tej Bahadur Dube (Dead by Lrs.) vs. Forest Range Officer F. S. (S.W.), Hyderabad***. In the above case, the appellant was charged for violation of Rule 3 to 7 of the A.P. Sandalwood and Red Sanderswood Transit Rules, 1969. The assessee was found transporting finished sandalwood products. He was charged with the violation of aforesaid rules. Assessee's case was that he has obtained permission of the authorities for converting sandalwood purchased by him into various types of handles which are ultimately used in other sandalwood handicrafts. This Court held that sandalwood products which have been converted into such products after obtaining proper permission was not prohibited, in para 6 following was held:

> *"6. As noticed above, the original appellant was a holder of a licence to deal in and stock sandalwood. From the material on record, it is seen that the said appellant*

had obtained necessary permit from the competent authorities for converting the sandalwood purchased by him into various types of handles which are ultimately used in other sandalwood handicrafts which permission was valid up to 31-12-1982 period covering the period of seizure. The appellant had contended that it is pursuant to the said permission he had converted the sandalwood pellets into handles to be used in the other sandalwood artefacts and he had informed the authorities concerned about such conversion as per Exts. P-18 to P-27. It is also the case of the appellant that converted sandalwood artefacts or parts thereof do not require any transit permit and it is only sandalwood in its original form or chips and powder of sandalwood which requires a transit permit. The trial court has agreed with this submission of the appellant. We also notice under the Rules and the Act what is prohibited is the transportation of sandalwood as defined in Section 2(o) of the Act and not sandalwood products which have been converted into such products after obtaining proper permission from the authorities. Such converted sandalwood products under the Rules do not require any transit permit. We say so because the Rules referred to in these proceedings do not contemplate such transit permit and the respondents have not produced any other Rules to show such transit permit is required. On the contrary, the respondent argues that even converted sandalwood products require transit permit because they remained to be sandalwood as contemplated under Section 2(o) of the Act. In the absence of any specific rules or provisions in the Act to this effect, we are

> *unable to agree with this argument. We are of the opinion that once sandalwood is subjected to a certain process from which a sandalwood product is lawfully obtained, then such product ceases to be sandalwood as understood in Section 2(o) of the Act."*

66. The above case also does not lend any support to the case of writ petitioners. In the above case, appellant had obtained permission of the competent authority for converting the sandalwood into various types of handles hence, the transportation was not found violative of rules.

67. In this context, it is necessary to refer to a Three Judge Bench Judgment of this court in ***Karnataka Forest Development Corporation Ltd. vs. Cantreads Private Limited and others (1994) 4 SCC 455.*** This Court had occasion to consider Karnataka Forest Act, 1963. Caoutchouc or latex covers natural covering sheets of various grades or not, was the question under consideration. After noticing the various dictionary meanings of caoutchouc, it was held that since processing does not result in bringing out a new commodity but it preserves the same and rendered it fit for markets, it

does not change its character hence, it remained a Forest Produce. Thus rubber sheets converted from caoutchouc continue to be a Forest Produce. In the above case, this court has also held that a 'test of commercial parlance' by considering entries in sales tax is not applicable while considering the definition of Forest Produce.

68. The Court observed that the definition of Forest Produce is in technical or botanical sense. The above judgment fully supported the contention of the State that while considering the definition of the Forest Produce, scientific and botanical sense has to be taken into consideration and commercial parlance test may not be adequate in such cases.

69. We thus are of the view that judgment of Division Bench of the Allahabad High Court dated 27.04.2005 in Kumar Stone Works deserved to be approved and judgment of Uttarakhand dated 01.07.2004 in ***Kumaon Stone Crusher*** deserves to be set aside in so far as above aspect is concerned.

70. Now, we come to the case of marble slabs & tiles, chips etc. Writ Petitioners have placed reliance on Three Judge Bench Judgment in ***Income Tax Officer, Udaipur vs. Arihant Tiles and Marbles Private Limited, (2010) 2 SCC 699***. The question of consideration in the above case was that whether conversion of raw marbles blocks into final products or polished marble slabs or tiles in factory constitute 'manufacture or production' so as to entitle the assessee relief under 80-1A(2)(iii). This Court held that process which was applied by the assessee will come in the category of 'manufacture or production'. In para 16 of the judgment following was stated:

> *"16. In the present case, we have extracted in detail the process undertaken by each of the respondents before us. In the present case, we are not concerned only with cutting of marble blocks into slabs. In the present case we are also concerned with the activity of polishing and ultimate conversion of blocks into polished slabs and tiles. What we find from the process indicated hereinabove is that there are various stages through which the blocks have to go through before they become polished slabs and tiles. In the circumstances, we are of the view that*

> *on the facts of the cases in hand, there is certainly an activity which will come in the category of "manufacture" or "production" under Section 80-IA of the Income Tax Act."*

71. In the above view, this Court held that assessee was entitled for the benefit of Section 80-1A of the Income Tax Act, 1961. The above case was directly concerned as to what was the 'manufacture or production', which was defined in the Act itself and the marble slabs or tiles were held to be covered by 'manufacture or production'. The case was on its own facts and the Court was not concerned, as to whether, the marble blocks after it became marble slabs or tiles loses its nature or character of Forest Produce. The said judgment does not help in the present case.

72. This Court in ***Akbar Badrudin Giwani vs. Collector of Customs, Bombay, (1990) 2 SCC 203***, again reiterated that the general principle of interpretation of tariff entries according to any tax statutes of a commercial nomenclature can be departed from where the application of commercial meaning or trade nomenclature runs counter to the statutory context. In the present case

statutory context of Forest Produce as defined in Act, 1927 has to be taken in its botanical and scientific sense.

73. We thus conclude that the Transit Fee on marble slabs and tiles cannot be denied and the State did not commit any error in demanding the Transit Fee on transit of aforesaid goods.

74. It goes without saying that on forest produce which are exempted by notification issued under Proviso to Rule 3 of 1978, no transit fee is leviable. One of such notification dated 29.03.2010 has been brought on record.

X. Whether coal (and its various varieties), lime stone, dolomite, fly ash, clinker, gypsum, veneer and plywood are forest produce ?

75. Coal is formed from plant substances preserved from complete decay in a normal environment and later altered by various chemical and physical agencies. There are four stages in coal formation: peat, lignite, bituminous and anthracite. The stage depends upon the conditions to which the plant remains are subjected after they were

buried – the greater the pressure and heat, the higher the rank of coal. Higher-ranking coal is denser and contains less moisture and gases and has a higher heat value than lower-ranking coal.

76. The formation of coal itself is due to large tracts of forest getting buried under the ground due to natural processes such as floods and sedimentation. Further, a major portion of the coal reserves of the country are situated beneath forest lands and clearance for mining of the same from forest lands. Coal, thus, is clearly a forest produce.

77. Hard coke and soft coke are made from coal. Coke can be formed naturally as well as by synthetic method. Hard coke, soft coke, coal briquettes are all different variations of coal which do not shed their natural characteristic and are all forest produce.

78. Limestone is expressly mentioned in definition of forest produce, slake lime/quick lime/hydrated lime are all produce of limestone. Further, produce known quicklime is produced by heating of limestone, upon which limestone breaks down into Calcium oxide (quicklime) and

carbon dioxide. That upon adding water to the same, the quicklime is converted into slaked lime and thereafter, upon being carbonated, the produce will revert to its natural state of being limestone. Hence, the said process does not change the nature of the product, as the basic ingredient is essentially limestone, and merely upon heating and addition of water, the nature of the produce i.e. limestone, does not change. Hence, limestone is a forest produce.

79. Dolomite is a sedimentary rock. Dolomite is formed by the post depositional alteration of lime mud and limestone by magnesium-rich ground water. Dolomite and limestone are very similar stones and are forest produce.

80. Coming to fly ash, clinker and gypsum, learned Additional Advocate General has submitted before us that the State has accepted that fly ash, clinker an synthetic gypsum are not forest produce. Thus, fly ash, clinker and synthetic gypsum are not forest produce. Gypsum is naturally found and obtained in the natural form, hence it is a forest produce.

Veneer and waste plywood

81. The veneer is nothing but thin sheets of wood which are cut from existing logs & planks, which is then again glued upon planks of wood. The essential nature of the product of veneer is merely sliced/cut up wood. Hence, it continues to be a forest produce.

82. The waste plywood that is remains of plywood and veneer are nothing but cut-up logs. The process of manufacturing involves placing logs and wood into a specialized machine, which cuts out thin sheets of wood from the log. That when the logs reaches a certain diameter of thickness, the same can no longer be suitable for extraction by the machines and unutilized wood is left behind in the process of slicing as well. Essential character of the product does not change, hence, it comes within the definition of timber and forest produce.

XI. <u>FOREST ACT 1927 & MMDR ACT, 1957</u>

83. We now proceed to consider the impact of 1957 Act on Forest Act, 1927 and the Transit Fee Rules 1978 framed under Section 41 of 1927 Act. The Indian Forest Act, 1927

is a pre-constitutional legislation enacted by Indian legislature as per Section 63 of Government of India Act, 1915. 1927 Act was the law enforced in the territory of India immediately before the commencement of the Constitution and by virtue of Article 372 of the Constitution of India, 1927 Act continues in force until altered or repealed by a competent legislation. The 1927 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 1957 Act was enacted for regulation of mines and development of minerals under the control of the Union. The 1957 Act was enacted under Entry 54 of List I of the Constitution which is to the following effect:

> *"Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."*

84. List II also contains Entry 23 which relates to regulation of mines and mineral development. Entry 23 List II is as follows:

> *"Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."*

85. Entry 23 of List II has been made subject to provisions of List I. The Parliamentary legislation in reference to Entry 54 to the extent regulation and development of minerals declared under control of the Union of India is extracted from the legislative field of the State.

86. The writ petitioners contend that State is denuded with legislative competence regarding mineral, its regulation or transportation. Learned counsel for the writ petitioners have referred and relied on the various pronouncements of this Court in reference to Parliamentary enactment 1957. It is not necessary to refer to a large number of cases of this Court on the subject, the reference of only few of such cases shall serve the purpose for the present case.

87. The Constitution Bench judgment of this Court in ***Hingir-Rampur Coal Co., Ltd. and others vs. The State of***

Orissa and others, AIR 1961 SC 459, needs to be noted. The State of Orissa has enacted Orissa Mining Areas Development Fund Act, 1952 by which levy and demand was raised. The appellant challenged the enactment on the ground that legislation covers the same field which was occupied by 1957 Act referable to Entry 54 of List I. Considering the submission of the appellant, the Constitution Bench stated following:

> *"23.....If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself. This position is not in dispute.*

88. The validity of 1957 Act was considered in the context of Industries (Development and Regulation)

Act,1951 and Mines and Minerals(Development and Regulation) Act, 1948. This Court repelled challenge to the 1957 Act on the ground that the declaration under 1948 Act was not referable to Entry 54.

89. The next judgment which needs to be considered is ***State of Orissa vs. M.A. Tulloch and Co., 1964(4)SCR 461.*** Orissa Mining Areas Development Fund Act, 1952 came for consideration in reference to Mines and Minerals (Development and Regulation) Act, 1957. This Court held that 1952 Act was enacted by virtue of legislative power under Entry 52 of List II whereas 1957 Act was enacted in reference to Entry 54 of List I. This Court held that Central Act 1957 contained a declaration as contained in Section 2 which is to the following effect:

> "***Section 2.Declaration as to the expediency of Union control.-*** *It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.*"

90. After noticing the above declaration, this Court laid down following:

> *"It does not need much argument to realise that to the extent to which the Union Government had taken under "its control" the regulation and development of minerals" so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 and legislation of the State which had rested on the existence of power under that entry would to the extent of that "control" be superseded or be rendered ineffective, for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make and has made."*

91. This Court further held that intention of the Parliament was to cover the entire field. The Court held that after enactment of 1957 Act, 1952 Act shall disappear. This Court, thus, upheld the demands which were raised for the period upto June, 1958.

92. There cannot be any dispute to the proposition as laid down in the above noted cases and several other subsequent judgments of this Court reiterating the above proposition. The ratio laid down above, however, is not attracted in the facts of the present case. The present is not a case where the legislation, 1927 Act and Rules

1978 are referable to Entry 23 of List II. The present is a case where we are concerned with a pre-constitutional legislation which is 1927 Act which has been continued as per Article 372 of the Constitution. Article 372 sub-clause (1) is as follows:

> "***372.Continuance in force of existing laws and their adaptation.-*** *(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority."*

93. The law which has been continued in force by virtue of Article 372 is to continue until altered or repealed or amended by a competent legislature. Several pre-constitutional laws which have been continued under Article 372 came before this Court for consideration wherein Article 254 was also considered.

94. A Constitution Bench of this Court in ***B.V. Patankar and others vs. C.G. Sastry, AIR 1961 SC 272,*** had occasion to consider Mysore House Rent and Accommodation Control

Order, 1948, which was a pre-constitution law and by Part B States (Laws) Act, 1951 extended the operation of Transfer of Property Act, 1882 in the State of Mysore. In the above case arguments were raised that the House Rent and Accommodation Control Order, 1948 as extended in Mysore from April, 1951 became repugnant and was repealed. It was held that the pre-constitutional law which was saved by Article 372 remained unaffected by Article 254. Following was stated in paragraph 7:

> *"7. ....The argument, therefore, that as from April 1, 1951, as a result of repugnancy the House Rent Control Order of 1948 stood repealed must be repelled as unsound and cannot be sustained, because it was an existing law which was saved by Article 372 of the Constitution and remained unaffected by Article 254...."*

95. In ***Pankajakshi (Dead) Through Legal Representatives and others vs. Chandrika and others, 2016 (6) SCC 157,*** a Constitution Bench of this Court had occasion to consider a pre-constitutional law, i.e., Travancore-Cochin High Court Act in the context of Code of Civil Procedure(Amendment) Act, 1976. In the above case an earlier judgment of this Court, namely, ***Kulwant Kaur and***

others vs. Gurdial Singh Mann (Dead) by Lrs. And others, 2001 (4) SCC 262, came to be considered wherein this Court had occasion to consider Section 42 of Punjab Courts Act, 1918. This Court held that Article 254 of the Constitution would have no application to such a law for the simple reason that it is not a law made by the legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. In paragraph 27 following has been held:

> *"**27.** Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This*

> *being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further."*

96. Thus, to find out as to whether the 1927 Act and Rules, 1978 framed thereunder survive even after enforcement of 1957 Act, we have not to look into Article 254 but we have to find out as to whether the above pre-constitutional law is **altered or repealed or amended by a competent legislature.** To find out this competent legislation as contemplated by sub-clause (1) of Article 372 in the context of pre-constitutional law the nature and content of pre-constitutional law has to be found out. There cannot be any dispute that Act, 1927 was

enacted to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. Essentially the 1927 Act is related to the forest. In the Constitution initially the forest was in Entry 19 of List II. Thus, it was the State legislature which was competent to alter or repeal or amend the said law. Various amendments in the 1927 Act were made by the State of U.P. in different provisions of 1927 Act in exercise of its legislative power as conferred by List II.

97. By the Constitution (Forty-second Amendment) Act, 1976, with effect from 03.01.1977 Entry 19 was omitted from List II and transferred in List III as Entry 17A. Entry 17A is “Forests”. Thus, with effect from 03.01.1977, both the Parliament and the State legislature are competent legislature within the meaning of Article 372 sub-clause (1). The question to be answered thus is as to whether a competent legislature has altered or repealed or amended 1927 Act.

98. Writ Petitioners have also contended that 1927 Act in so far as Section 41 and Transit Fee Rules, 1978 are

concerned, stand impliedly repealed by virtue of 1957 Act and in any view of the matter after amendment of 1957 Act by Act 38 of 1999 by which specific provisions regarding transport of minerals were inserted in 1957 Act, Section 4(1A) and Section 23C which were inserted with effect from 18.12.1999.

99. Justice G.P. Singh in Principles of Statutory Interpretation, 14th Edition, explained the implied repeal as follows:

> *"There is a presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle expressio unius est exclusio alterius. Further, the presumption will be comparatively strong in case of virtually contemporaneous Acts. The continuance of existing legislation, in the absence of an express provision of repeal, being presumed, the burden to show that there has been a repeal by implication lies on the party asserting the same. The presumption is, however,*

> *rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act 'that the two cannot stand together'. But, if the two may be read together and some application may be made of the words in the earlier Act, a repeal will not be inferred…"*

100. This Court in ***Municipal Council, Palai through the Commissioner of Municipal Council, Palai vs. T.J. Joseph*** in ***AIR 1963 SC 1561,*** has elaborated the concept of implied repeal in following words:

> *"**9.** It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new act are so inconsistent with the old ones that the two cannot stand together. As has been observed by Crawford on Statutory Construction, p. 631, para 311:*
>
> > *"There must be what is often called 'such a positive repugnancy between the two provisions of the old and the*

> *new statutes that they cannot be reconciled and made to stand together'. In other words they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal ... for the intent of the legislature to repeal the old enactment is utterly lacking."*

The reason for the rule that an implied repeal will take place in the event of clear inconsistency or repugnancy, is pointed out in Crosby v. Patch and is as follows:

> *"As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable. Bowen v. Lease (5 Hill 226). It is a rule, says Sedgwick, that a general statute without negative words will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent. 'The reason and philosophy of the rule,' says the author, 'is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in*

> *general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to effect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all."*

For implying a repeal the next thing to be considered is whether the two statutes relate to the same subject-matter and have the same purpose. Crawford has stated at p. 634:

> *"And, as we have already suggested, it is essential that the new statute cover the entire subject matter of the old; otherwise there is no indication of the intent of the legislature to abrogate the old law. Consequently, the later enactment will be construed as a continuation of the old one."*

The third question to be considered is whether the new statute purports to replace the old one in its entirety or only partially. Where replacement of an earlier statute is partial, a question like the one which the court did not choose to answer in the Commissioners of Sewers case would arise for decision.

10. *It must be remembered that at the*

> *basis of the doctrine of implied repeal is the presumption that the legislature which must be deemed to know the existing law did not intend to create any confusion in the law by retaining conflicting provisions on the statute book and, therefore, when the court applies this doctrine it does no more than give effect to the intention of the legislature ascertained by it in the usual way i.e. by examining the scope and the object of the two enactments, the earlier and the later."*

101. The question of repeal by implication arises when two statutes become inconsistent to the extent that competence of one is not possible without disobedience to other.

102. The principles for ascertaining the inconsistency/repugnancy between two statutes were laid down by this Court in ***Deep Chand vs. State of U.P and others, AIR 1959 SC 648***. K. Subba Rao, J. speaking for the Court stated following in paragraph 29:

> *"29……Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:*
>
> > *(1) Whether there is direct conflict between the two provisions;*

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

103. The Constitution Bench in ***State of Kerala and others vs. Mar Appraem Kuri Company Limited and another, 2012 (7) SCC 106,*** had occasion to consider when by a subsequent enactment the case of *pro tanto* repeal can be read. In the above case State of Kerala had enacted Kerala Chitties Act, 1975. The Seventh Schedule of the Constitution, List III Entry 7 pertains to contracts including special forms of contracts. The Parliament enactment, Chit Funds Act, 1982 and State legislature Kerala Chitties Act, 1975, the subject being under concurrent list, in paragraph 27, the Court held that when there is a conflict in respect of a matter in the concurrent list between Parliamentary and the State legislations, Parliamentary legislation will pre-dominate by virtue of *non obstante* clause of Article 254 and by

reason of Article 372 sub-clause (1). This Court held that the legislative intent to abrogate or wipe off the former enactment is to be looked into to find out whether it is a case of *pro tanto repeal*. Following was stated in paragraph 19:

> *"**19**. Further, the learned counsel emphasised on the words "to the extent of the repugnancy" in Article 254(1). He submitted that the said words have to be given a meaning. The learned counsel submitted that the said words indicate that the entire State Act is not rendered void under Article 254(1) merely by enactment of a Central law. In this connection, it was submitted that the words "if any provision of a law" and the words "to the extent of the repugnancy" used in Article 254(1) militate against an interpretation that the entire State Act is rendered void as repugnant merely upon enactment by Parliament of a law on the same subject."*

104. A repeal may be brought about by subsequent legislation without any reference to the legislation intended to be repealed, since, it matters little as to whether repeal is done expressly or inferentially. As noted above, 1957 Act was enacted in reference to Entry 54 of List I to provide for the regulation of mines and

the development of minerals whereas the subject of the legislation under the 1927 Act was the forest, transit of forest-produce and the duty leviable on timber and other forest-produce.

105. It is *sine qua non* that both the sets of laws must deal with "**the same subject matter**". In the instant case, under the Forest Act "transit of forest-produce" itself is subject of primary legislation as can be seen from the preamble and the provisions to Section 41 & 42 of the Act. In contrast, the 1957 Act in view of Section 2 thereof, gives control of the "Regulation of Mines and Development of Minerals" to the Union. The detailed provisions as primary legislation, deal with regulation of mines and development of minerals (Section 4 to 17 and Section 18). For the purposes of Regulation of Mines and Development of Minerals, it is provided that no mining operation can be undertaken without the license or permit as per Section 4. Provisions relating to transport or storage are only incidental and ancillary in nature. But the main point of difference in the subject matter of legislation under the 1957 Act is "Regulation of Mines

and Development of Minerals".

106. When the minerals are forest-produce by definition under the 1927 Act under Section 2(4), validity of which is not challenged, forest-produce and its transit is altogether a different subject matter than the subject matter governed by 1957 Act. The object of the two legislations is different. The regulation is different. The Forest Act comprehensively deals with forest and forest wealth with a different object and the 1957 Act deals with mines and mineral wealth.

107. Much emphasis has been given by the counsel for the writ petitioners on Section 4(1A) and Section 23C. Section 4(1A) is couched in negative as follows:

> *"No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."*

108. Section 23C provides power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.

109. The Rules may cover inspection, checking and search

of minerals at the place of excavation as well as transit of the minerals. The Rules under Section 23C are only incidence of regulation of minerals which is the subject matter of the 1957 Act.

110. The 1927 Act is a comprehensive statute relating to transit of forest-produce and the duty leviable on timber and other forest-produce.

111. The 1927 Act provides comprehensive provisions with regard to reserved forest, village forest and protected forest. The forests are directly linked with environment and ecological balance but because of large human development, exploitation of forests and other natural resources and deforestation, the international community has been alarmed, several international conventions and treaties were made including Kyoto Protocol and Paris Convention to which India is a signatory.

112. Article 48A also inserted by the Forty-second Amendment Act, 1976 which is to the following effect:

> "***48A. Protection and improvement of environment and safeguarding of forests and wild life.-*** *The State shall endeavour to protect and improve the environment and to safeguard the forests and and wild*

life of the country.”

113. Article 51A of the Constitution lays down as one of the fundamental duties that every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

114. As per the National Forest Policy, 1988 issued by the Ministry of Environment & Forests, one of the basic objectives if the State is to 'encourage efficient utilization of forest produce and maximizing substitution of wood' and states that “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 lifeforms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.”

115. The subjects of 1927 Act and 1957 Act are thus distinct and separate. The 1957 Act was on development and regulation of mines and minerals. Mines and minerals

are also found in forests. The definition of forest-produce as contained in Section 2 sub-section (4) of the Act includes peat, surface oil, rock and minerals(including lime-stone, laterite, mineral oils, and all products of mines or quarries).

116. The State has been empowered to regulate transit of forest-produce under Section 41 of the Act. Regulation of transit of forest-produce is a larger activity covering transit of different kinds of forest-produce including minerals. Both the legislations being on different subject matters the provisions relating to transportation of minerals as contained in 1957 Act can at best be said to be incidentally affecting the 1927 Act, incidental encroachment of one legislation with another is not forbidden in the constitutional scheme of distribution of legislative powers.

117. This Court has time and again emphasised that in the event any overlapping is found in two Entries of Seventh Schedule or two legislations, it is the duty of the Court to find out its true intent and purpose and to examine the particular legislation in its pith and

substance. In ***Kartar Singh vs. State of Punjab, 1994 (3) SCC 569,*** paragraphs 59, 60 and 61 following has been held:

> *"**59**....But before we do so we may briefly indicate the principles that are applied for construing the entries in the legislative lists. It has been laid down that the entries must not be construed in a narrow and pedantic sense and that widest amplitude must be given to the language of these entries. Sometimes the entries in different lists or the same list may be found to overlap or to be in direct conflict with each other. In that event it is the duty of the court to find out its true intent and purpose and to examine the particular legislation in its 'pith and substance' to determine whether it fits in one or other of the lists. [See : Synthetics and Chemicals Ltd. v. State of U.P.; India Cement Ltd. v. State of T.N."*
>
> ***60**. This doctrine of 'pith and substance' is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as*

a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden.

118. In ***A.S. Krishna and others vs. State of Madras, AIR 1957 SC 297*** this Court laid down following in paragraph 12:

"12. This point arose directly for decision before the Privy Council in Prafulla Kumar Mukherjee v. The Bank of Commerce, Ltd. [1946 74 I.A. 23 There, the question was whether the Bengal Money-Lenders Act, 1940, which limited the amount recoverable by a money-lender for principal and interest on his loans, was valid in so far as it related to promissory notes. Money-lending is within the exclusive competence of the Provincial Legislature under Item 27 of List II, but promissory note is a topic reserved for the center, vide List I, Item 28. It was held by the Privy Council that the pith and substance of the impugned legislation begin money-lending, it was valid notwithstanding that it incidentally encroached on a field of legislation reserve for the center under Enter 28. After quoting its approval the observations of Sir Maurice Gwyer C.J. in Subrahmanyan Chettiar v. Muttuswami Goundan, (supra) above quoted, Lord Porter observed :

> *"Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to Indian as well as to Dominion legislation.*
>
> *No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provision should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap, and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, must beneficent legislation would be satisfied at birth, and many of the subjects entrusted to Provincial legislation could never effectively be dealt with."*

119. Further in ***Union of India and others vs. Shah Govedhan L. Kabra Teachers' College, 2002 (8) SCC 228*** in paragraph 7 following was laid down:

> *"7. It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of*

Parliament as well as the State Legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to override another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the court that there is apparent overlapping between the two entries the doctrine of "pith and substance" has to be applied to find out the true nature of a legislation and the entry within which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of "pith and substance". The doctrine of "pith and substance" means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object, scope and effect, is required to be gone into. The question of invasion into the territory of another

> *legislation is to be determined not by degree but by substance. The doctrine of "pith and substance" has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made."*

120. Thus, even it is assumed that, in working of two legislations which pertain to different subject matters, there is an incidental encroachment in respect of small area of operation of two legislations. Legislation cannot be struck down as being beyond legislative competence nor it can be held that one legislation repeals the other. Thus, when we look into the pith and substance of both the legislations, it is clear that they operate in different field and the submission cannot be accepted that 1957 Act impliedly repeals the 1927 Act in so far as Section 41 and 1978 Rules are concerned.

121. We, thus, conclude that the submission of learned counsel for the writ petitioners that in view of the 1957 Act especially as amended by Act 38 of 1999, the provisions of 1927 Act & 1978 Rules have become void, inoperative and stand repealed, cannot be accepted.

XII. <u>Interpretation of Section 2(4)(b) of 1927 Act</u>

122. The meaning of words 'brought from' as used in Section 2 sub-section (4) sub-clause (b) has become very significant in the present case since it is a case of large number writ petitioners that the goods which they are transiting did not originate from any forest area rather they have been taken from non-forest area, hence, there is no liability to pay transit fee. Whether forest produce as defined in Section 2 sub-section (4) sub-clause (b) should be forest produce which originated from forest or even the forest produces which are merely passing through a forest area shall attract the liability of transit fee is the question to be answered.

123. The Division Bench judgment of the Allahabad High Court in ***Kumar Stone Works,*** although has referred to various definitions of meaning of word 'brought' but it did not advert to the fact as to what meaning has to be attributed to word 'from' with which word the word 'brought' is prefixed. The word 'from' has been defined in *Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd*

Edition in following words:

> *"From: As used as a function word, implies a starting point, whether it be of time, place, or condition; and meaning having a starting point of motion, noting the point of departure, origin, withdrawal, etc., as he travelled "from" New York to Chicago. Silva V. MacAuley, 135 Cal App. 249, 26 P.2d 887. One meaning of "from" is "out of." Word "from" or "after" and event or day does not have an absolute and invariable meaning but each should receive an inclusion or exclusion construction according to intention with which such word is used. Acme Life Ins. CO. v. White, Tex. Civ. App. 99 SW 2d 1059, 1060. Words "from" and "to", used in contract, may be given meaning to which reason and sense entitles them, under circumstances of case. Woodruff v. Adams, 134 Cal App.490, 25 P, 2d 529."*

124. The word 'from' is used to denote a point of time, a place or a period. Both the words 'found in or brought from' have been used before word 'forest'. Both the words that is 'found in' and 'brought from', has clear nexus with forest. The true meaning of the words 'brought from' has to be appreciated when read in the context of word 'found in'. The word 'brought from' is an expression which conveys the idea of the items having their origin in the forests and they have been taken out from the

forest. The word 'from' refers to the place from which the goods have been moved out that is from the place of their original location. The forest is birth place, the origin of the items mentioned in sub-clauses (1) to (iv) of sub-clause(b) of Section 2(4). The 'found in' means that the item which has origin from the forest, is found in the forest while 'brought from' means that items having origin in forest have moved out from the forest.

125. The 1978 Rules framed under Section 41 of the 1927 Act also reflect that rule making authority has also understood the meaning of word 'brought from' in the above sense. As per Rule 3 no forest produce shall be moved to or from or within the State of U.P. except or without a transit pass in the form in the Schedule A. The Schedule A of the Rules contains the form. Item No.1 of the form is as follows:

> “1. Locality of origin;
>
> (a) name and situation of forest,
>
> (b) name of forest owner.”

126. The above Item No.1 also thus clearly refers to locality of origin of the produce and form requires name

and situation of forest and name of the forest owner. Thus, locality of origin is related to a forest which supports the interpretation as placed by us.

127. Learned counsel for the writ petitioners have also placed reliance on a judgment of the Division Bench of the Karnataka High Court in ***Yeshwant Mony Dodamani and Ors. (1962 CRLJ 832).*** The Division Bench had occasion to consider the definition of forest produce as contained in sub-section (4) of Section 2 of the Act. In paragraph 6 of the judgment following has been stated:

> *"6. On a plain reading of these expressions 'found in' or 'brought from', there can hardly be any doubt that both of them indicate the forest to be the source or original depository of the forest produce in question. The learned Government Pleader has very strenuously contended that the expression 'found in' a forest merely means 'come across' or 'discovered' in a forest irrespective of the fact whether the article or goods so discovered were originally sourced or deposited or grown in a forest or some other place which is not a forest. All that is necessary, according to the learned Government Pleader, is that somebody (meaning apparently a forest officer or a forest guard or other person acting under the authority of the Act or Rules) finds or discovers these goods within, the area of a forest Same argument, however, is not available nor is it pressed with, reference to other expression 'brought*

from' a forest. It is conceded that the expression 'brought from' a forest certainly excludes the idea of a thing being brought from outside the forest but taken through it. It is, however, contended that if an article so brought from outside the forest is 'found' i.e., discovered by somebody within a forest, it would come within the definition. We find it difficult to accept this argument which places extreme strain both on the language and upon logic. The expression at the commencement of Clause (b) of Section 2(4) should be compared with the expression at the commencement of Clause (a) of Section 2(4). The articles listed under Clause (a) become forest-produce by virtue of their own nature, whether they are found in a "forest or not, or brought from a forest or not. On the other hand, the articles listed under Clause (b) become forest-produce, not by virtue of their nature alone, but by virtue of the fact that they are found in or brought from a forest. The term 'found in' a forest does not necessarily, in our opinion, require an actual discovery of those items by a living person before those items can become forest-produce.

In our opinion, the term 'found in' actually refers to things growing in a forest like timber trees, fuel trees, fruits, flowers etc. or mineral deposits or stones existing in the forest. The distinctive feature is either the existence or the growth or deposit within the area of a forest and not their discovery by some living person. The idea underlying the expression 'brought from' is equally emphatic of the source of the thing so brought being within the area of a forest. The conveyance or transport involved in the idea of a thing being brought undoubtedly has its beginning in the forest by virtue of the use of the

expression 'from.'"

128. We are of the view that Karnataka High Court has correctly interpreted the word "brought from" as occurring in clause (b) of Section 2(4). We are, thus, of the view that the word 'brought from' has to be understood in the above manner. We, however, may clarify that the origin of forest produce may be in any forest situate within the State of U.P. or outside the State of U.P. Since, transit pass is necessary as per Rule 3 for moving a forest produce into or from or within the State of U.P. Any produce, goods entering within or the outside the State which is the forest produce having originated in the forest requires a transit pass for transiting in the State of U.P. Conversely, any goods which did not originate in forest whether situate in the State of U.P. or outside the State but is only passing through a forest area may not be forest produce answering the description of forest produce within the meaning of Section 2(4)(b).

XIII. <u>Meaning of 'Forest'</u>

129. Safeguarding of forest has also been recognised by

our Constitution under Article 48A which oblige the State to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51A sub-clause(g) enumerates the fundamental duty of every citizen of India to protect and improve the natural environment including the forests, lakes, rivers, wildlife.

130. The Forest Conservation Act, 1980 is another Parliamentary enactment which has been specifically enacted to provide for the conservation of the forest and for matters connected therewith. The definition of forest cannot be confined only to reserved forests, village forests and protected forests as enumerated in 1927 Act. This Court has already held in ***T.N. Godavarman Thirumulkpad vs. Union of India and others, 1997 (2) SCC 267,*** that the word "forest" must be understood according to its dictionary meaning, in paragraph 4 following is stated:

> *"4....The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of*

Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof..."

131. Thus, forest shall include all statutorily recognised forests, whether designated as reserve, protected or otherwise. 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 records irrespective of the ownership. The restrictive meaning of forest as given by the Uttarakhand High Court in M/s Gupta Builders cannot be approved.

132. It is relevant to note that even before this Court's definition in ***T.N. Godavarman case (supra)*** in expansive manner, the forest was understood by the State legislature in a very wide manner. This is reflected by

definition of forest and forest land as given in Section 38A inserted by Uttar Pradesh Amendment Act 5 of 1956 with effect from 3.12.1955. The definitions of 'forest' as given in Section 38A(b) and 'forest land' in 38A(c) of 1927 Act are as follows:

> "***38A(b)*** *"forest" means a track of land covered with trees, shrubs, bushes or woody vegetation whether of natural growth or planted by human agency, and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest-produce, or grazing facilities, or on climate, stream-flow, protection of land from erosion, or other such matters and shall include-*
>
> *(i) land covered with stumps of trees of a forest;*
>
> *(ii) land which is part of a forest or was lying within a forest on the first day of July, 1962;*
>
> *(iii) such pasture land, water-logged or non-cultivable land, lying within, or adjacent to, a forest as may be declared to be a forest by the State Government.*
>
> ***38A(c)*** *"forest land" means a land covered by forest or intended to be utilized as a forest;"*

133. The definition of forest as contained in Section

38A(b), as noticed above, gives very wide definition of forest and giving restrictive meaning of forest in view of the wide definition given by the State legislature cannot be accepted. We, thus, are of the view that the interpretation of forest as given by the Division Bench in its judgment dated 11.11.2011 has to be approved and the restrictive definition as given by the Uttarakhand High Court in its judgment dated 26.6.2007 in M/s. Gupta Builders cannot be approved. We, thus, reject the submission of learned counsel for the petitioners to adopt a restrictive meaning of word 'forest'.

XIV. Whether Notification dated 10.02.1960 declares Roads as Protected Forest

134. Whether passing through the roads as notified by notification dated 10.02.1960 can be treated to be passing through a protected forest is the question to be answered. The notification which has been relied by learned Additional Advocate General is notification dated 10.02.1960. It is useful to extract the contents of the said notification:

"February 10, 1960

No.1115/XIV-331-50,-Whereas the Governor Uttar Pradesh, is of the opinion that the making of enquiry and record contemplated under sub-section(3) of section 29 of the Indian Forest Act 1927(Act no.XVI of 027), will occupy such length of time as in the meantime to endanger the rights of the State Government, now therefore, in exercise of the powers conferred by the proviso to the aforesaid sub-section and by the sub-section(1) of the said section, read with section 80-A of the aforesaid Act, the Governor of Uttar Pradesh is pleased to declare that pending such enquiry and record the provisions of Chapter IV of the said Act to be applicable to the lands specified in the schedule here to : A)

Schedule

District	**Serial No.**	**Name of Road,**	**Mileage to be declared as Reserved or Protected Forest**	**Description of boundary**					
			4	**4**					
			From	**To**					
			M	**fg**	**ft**	**M**	**fg**	**ft**	

				.	.		.	.	
1.Meerut	1.	Meerut - Baghpat Road	3	0	0	31	2	0	The boundary of the land has been demarcated on the ground by stone pillars
….	….	….	…	…	…	…		…	……

…… …… …… ……”

135. A perusal of the schedule indicates that in 48 Districts as they existed in 1960, different roads have been declared to be protected forests from mileage to mileage. A perusal of the schedule which is part of notification issued by the State of U.P. indicates that in the various roads mentioned in the Schedule National highways are also included.

136. For finding the consequences of notification dated 10.02.1960 proviso to the sub-section (3) of Section 29 read with Section 80A, referred in the notification needs to be looked into. Section 29 contained in Chapter IV (deals with protected forests) is quoted below:

> *"**29. Protected Forests.-**(1) The [State Government] may, by notification in the [official gazette], declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest but 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 entitle.*
> *(2) The forest-land and waste-lands comprised in any such notification shall be called a "protected forest".*
> *(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the [State government] thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved.*
>
> *Provided that, if, in the case of any forest-land or waste land, the [State Government] thinks that such inquiry and record are necessary, but that*

> *they will occupy such length of time as in the meantime to endanger the rights of Government, the [State Government] may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities."*

137. Section 80A which has been referred in the notification is a provision which has been inserted by U.P. Act 18 of 1951 with effect from 06.10.1951. Section 80A is as follows:

> *"**80A**. The State Government may, by notification in the Official Gazette, declare that any of the provisions of or under this Act, shall apply to all or any land on the banks of canals or the sides of roads which are the property of the State Government or a local authority, and thereupon such provisions shall apply accordingly."*

138. Under Section 80A the State Government may, by notification declare that any of the provisions of Act shall apply on the **banks of canals or the sides of roads** which are the property of the State Government or a local authority. Section 80A is included in Chapter XIII which is a miscellaneous Chapter. Section 80A empowers the

State to declare any land on the **banks of canals or the sides of roads** as protected forest on which any other provisions of the Act can be applied. Notification dated 10.02.1960 declared that provisions of Chapter IV of the Act shall be applied. Thus land mentioned in the schedule is declared as protected forest.

139. Section 80A delineates the legislative scheme of declaring protected forests on **banks of canals or the sides of roads**. The State while issuing notification under Section 80A can only effectuate, the object and purpose of Section 80A as enacted by the State legislature.

140. The notification dated 10.02.1960 has to be read in the light of the substantive provisions contained under Section 80A. When Section 80A empowers the State to declare any land on the **banks of canals or the sides of roads** as protected forests State can do only which is permitted by the State and no more. Section 80A read with notification dated 10.02.1960 shall only mean that both the sides of the roads which have been mentioned in the Schedule are now declared protected forests. The

purpose for such declaration is not far to seek. Both sides of canals or both sides of the roads can be declared as protected forests for maintenance and management of the same by applying the different provisions of the Act. Maintenance of forests on both sides of canals is with the object and purpose of environment protection. Maintenance of protected forests on both the sides of the road is for the same purpose and object, and also with object to combat the vehicular pollution and to improve the environment and ecology. By notification under Section 80A, it cannot be accepted that road itself has been declared as protected forest. The object is not to declare the road as protected forest so as to apply different provisions of 1927 Act on the roads itself. The interpretation put by the State that roads declared by notification dated 10.02.1960 have become protected forests is not compatible with provisions of Chapter IV. The State cannot exercise its power under Section 30 nor any Rules under Section 32 can be framed by the State for the roads itself. The maintenance and regulation of

roads are governed by different statutes and principles of law. We, thus, reject the submissions of learned counsel for the State that merely because both sides of roads are declared protected forests, the roads itself have become protected forests. We, thus, conclude that merely passing through the roads as included in the notification dated 10.02.1960, it cannot be held that the goods or forest produce are passing through the protected forests.

XV. <u>Whether Rule 3 is independent of Rule 5</u>

141. Rule 3 is couched in negative term providing that "……no forest produce shall be moved into or from or within the State of Uttar Pradesh except as hereinafter provided without a transit Pass in the form in Schedule A……". Thus transit of forest produce is permissible only with a transit pass. Rule 4(1) contains provisions regarding officers and persons who issue passes. Rule 4(1) is as follows:

Officers and Persons to issue passes

"Rule 4.(1):The following officers and persons shall have power to issue passes under these rules:-

(a) For forest produce belongings to Government or not owned by any other person, the Conservator of Forest, the Divisional Forest Officer, the Sub-Divisional Forest Officer or any other officer authorized in this behalf in writing by conservator of Forest or the Divisional Forest Officer;

(b) For forest produce owned by any person, such person or his agent if so authorized in writing by the Divisional Forest Officer-

(i) Provided that any person who desires to obtain a transit pass or authorization to issue passes under clause (b) of sub-rule(1) above shall apply in the form in Schedule 'B' and the Divisional Forest Officer may, before issuing the transit pass or authorization to issue such passes, conduct such inquiry and call for such information as considered necessary;

(ii)Such authorization shall specify the period during which it shall remain in force, and shall also specify the route to be adopted and check Chawki or depot through which to produce must pass; and

(iii)Any authorization may at any time be changed (on request or otherwise) or cancelled by the Division Forest Officer or Conservation of Forests."

142. Now we come to Rule (5) which provides for fees payable for different passes. Rule 5 along with its

Marginal note (as originally framed) is as follows:

Fees Payable for different classes of passes	*5. At the check Chawki or depot established under rule 15 and specified under proviso (ii) to clause(b), sub-rule (1) of rule 4, the forest produce along-with the two copies of the pass(duplicate and triplicate) shall be produced for examination under sub-rule(4) of rule 6 and for payment of transit fee on the forest produce calculated at the following rates; corresponding receipt shall be granted in the form given in Schedule C-* *(i) per lorry load of timber or other forest produce ……Rs.5.00 per tonne of capacity* *(ii) per cart load of timber or other forest produce ……Rs. 2.50* *(iii) per camel load of timber or other forest produce ……Rs.1.25* *(iv) per pony load of timber or other forest produce ……Rs.0.50* *(v) per head load of timber or other forest produce ……Rs. 0.25"*

143. Referring to Chawki or depot established under Rule 15 and specified under proviso(ii) to clause(b), sub-rule (1) of Rule 4, learned counsel contends that transit passes as referred to under proviso (ii) to clause(b) of sub-rule (1) of Rule 4 are only to be charged with transit fees.

144. Rule 4 as noticed above contains provisions

regarding officers and persons who have power to issue passes. Under Rule 4(1)(a) for the forest produce belonging to government or not owned by any other person various officers of the forest department are authorized to issue passes. Rule 4 clause (b) relates to various produce own by any person. Pass can be issued by such persons or his agents if so authorized in writing by the Divisional Forest Officer. Any person who is referred to in Rule 4(b) has to apply in the form in Schedule B to the Divisional Forest Officer whereon authorization has to be issued by the authorized Divisional officer. The words in Rule 5 namely "…Chawki or depot established under Rule 15 and specified under proviso(ii) to clause(b), sub-rule (1) of Rule 4" are the words qualifying the words chawki or depots. The fee has to be paid for different passes at chawki or depot where it shall be produced for examination and payment of transit fees. All forest produces are to be produced at chawki or depot for payment of transit fee. Reading of Rule 5 does not indicate any intention that only one category of passes as referred to in Rule 4(1)(b) are leviable with

transit fee. The words"…specified under proviso(ii) to clause(b), sub-rule(1) of Rule 4 only refer to check Chawki or depot where forest produce is to be produced for examination. The Marginal Note of Rule 5 also clarifies the intent of the Rule. The Marginal note reads as "Fees payable for different classes of passes." Thus Marginal Note clarifies that transit fee is payable at all kinds of passes and submission is incorrect that leviablity of fee is only on one category of passes as referred to in Rule 4(1)(b). Marginal note has been held to be an internal aid to statutory interpretation of a statute. Justice G.P.Singh in Principles of Statutory interpretation 14th Edition regarding marginal note states as follows:

> *"...Marginal notes appended to Articles of the Constitution have been held to constitute part of the Constitution as passed by the Constituent Assembly and therefore they have been made use of in construing the Articles, e.g. Article 286, as furnishing 'prima facie', 'some clue as to the meaning and purpose of the Article'.*
>
> *A note appended to a statutory provision or subordinate legislation is merely explanatory in nature and does not*

> *dilute the rigour of the main provision. Notes under the rules cannot control the rules but they can provide an aid for interpretation of those rules. Further, a note which is made contemporaneously with the rules is part of the rule, and is not inconsistent with the rule, but makes explicit what is implicit in the rule."*

145. This Court has also occasion to consider the value of marginal note in several cases. In ***2004 (2) SCC 579, N.C.Dhoundial versus Union of India & Ors.,*** It was laid down in paragraph 15 that heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to listen the legislative intent. Following was laid down in para 15:

> *"**15....**The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide Uttam Das Chela Sunder Das v. Shiromani Gurdwara Parbandhak Committee and Bhinka v. Charan Singh)."*

146. In event the interpretation as put by learned counsel for the petitioner is accepted that fee under Rule 5 is chargeable only on passes obtained under Rule

4(1)(b) only, the easiest manner to avoid payment of transit fee is not to apply in form B for obtaining the booklet for issuance of pass by the person or from its authorized representative, which cannot be the intent of the Rule. Rule 4 is a rule made with regard to the persons and officers who have power to issue passes that has nothing to do with payment of fee which is separately provided in Rule 5 and is applicable to all kinds of passes.

147. Rule 6(4) on which also emphasis has been given by learned counsel for the petitioner only provides that the first copy of the triplicate forms of pass shall form the counterfoil and second and third parts shall be given to the person in-charge of the produce under transit and shall be produced whenever required by any checking officer. Schedule A which is appended to the Rules also use the word counterfoil and all passes are to be issued in form A as required by Rule 3 as well as Rule 6(1). When all transit passes have to be in same form and in triplicate we fail to see that how it can be read that only on one category of passes fee is leviable and Rule 5

is not applicable and is completely independent of Rule 3.

148. We thus are of the view that the submissions of learned counsel of the petitioner that transit fee is payable only with regard to passes issued under Rule 4(1)(b) which are required to be checked under Rule 6(4), cannot be accepted. Pay ability of transit fee is attached with transit pass issued under form A except in cases where no transit pass is required for the removal of forest produce as enumerated in proviso to Rule 3. We thus do not accept the interpretation of Rule 3, 4, 5 & 6 as contended by learned counsel for the petitioner in respect of pay ability of transit fee on transit passes issued under 1978 Rules.

XVI. Non-issuance of Section 20 Notification after Section 4 Notification of 1927 Act

149. At this juncture, it is also necessary to notice one submission raised by the learned counsel for the petitioners. It is contended that the State of Uttar Pradesh although issued notification under Section 4 of 1927 Act proposing to constitute a land as forest but no

final notification having been issued under Section 20 of 1927 Act the land covered by a notification issued under Section 4 cannot be regarded as forest so as to levy transit fee on the forest produce transiting through that area. With reference to above submission, it is sufficient to notice Section 5 as inserted by Uttar Pradesh Act 23 of 1965 with effect from 25.11.1965. By the aforesaid U.P. Act 23 of 1965 Section 5 has been substituted to the following effect:

> *"Section 5. Bar of accrual of forest rights.- After the issue of the notification under section 4 no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or a contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land, nor any tree therein felled, girdled, lopped, tapped, or burnt, or its bark or leaves stripped off, or the same otherwise damaged, nor any forest-produce removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf."*

150. Section 5 clearly provides that after the issue of the notification under Section 4 no forest produce can be removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf. The regulation by the State thus comes into operation after the issue of notification under Section 4 and thus the submission of the petitioners that since no final notification under Section 20 has been issued they can not be regulated by Rules 1978 cannot be accepted.

151. We, however, make it clear that we have not entered into the issue as to whether actually after Section 4 notification State has taken any further steps including notification under Section 20 or not.

152. In so far as submission of learned counsel for the writ petitioner that Constitution Bench judgment in State of ***West Bengal vs. Kesoram Industries (surpa)*** having been referred to a Nine Judge Bench which reference having not been answered, the interpretation given by the Five Judge Bench of ***Synthetics and Chemicals vs. State of U. P. and ors*** cannot be relied, suffice it to say for the purposes of this batch of cases it is not necessary for us to rest

our decision on the proposition as laid down in ***Kesoram Industries***. Independent of preposition as laid down by the Constitution Bench in ***Kesoram Industries*** there are clear pronouncement of this court as noticed above by us for deciding the issues raised in this batch of cases.

153. The writ petitioners have contended that in view of striking down Fourth and Fifth Amendment Rules to 1978 Rules, the Third Amendment dated 09.09.2004 could not have been resorted to for realising the transit fee at the rate of Rs.38/-. The petitioners relying on judgments of ***Firm A.T.B Mehtab Majid and Co. vs. State of Madras and another, AIR 1963 SC 928; B.N. Tiwari vs. Union of India, AIR 1965 SC 1430 and State of U.P. and others vs. Hirendera Pal Singh, 2011 (5) SCC 305,*** have submitted that the earlier Rule does not revive even when substituted Rule is struck down by the Court. Shri D.K. Singh, learned Additional Advocate General has refuted the submission and placed reliance on judgment of this Court in ***Supreme Court Advocate-on-record Association vs. Union of India, 2016(5)SCC 1***. This Court in the interim order dated 29.10.2013 has expressly directed that “the

State shall be free to recover transit fee for forest produce removed from within the State of U.P. at the rate stipulated in the Third amendment to the Rules mentioned in the earlier part of this order." Further, after noticing the striking down of Fourth and Fifth Amendment Rules by the High Court, this Court in the same interim order permitted the State to recover transit fee in terms of the Third Amendment Rules.

154. It is, further, relevant to note that the High Court in its judgment dated 11.11.2011 has issued following directions in the last paragraph of the judgment which contained operative portion as below:

> *"188. All the writ petitions are consequently allowed. The Notifications dated 20.10.2010, by which the 'U.P. Transport of Timber and Other Forest Produce Rules, 1978', was amended by the 4th Amendment; and the Notification dated 4.6.2011, by which the 'U.P. Transport of Timber and Other Forest Produce Rules, 1978' was amended by the 5th Amendment, are quashed. It will be open to the Respondents to impose and collect the transit fees on such forest produce prevailing on such rates as it was being charged prior to the 4th Amendment to the Rules notified on 20.10.2010, i.e. at the rate of Rs.38/- per tonne of capacity per lorry load of timber or other forest produce; Rs. 19/- per tonne of capacity per cart load of timber or other forest*

produce; Rs. 1.25 per camel load of timber and other forest produce; Rs.4/- per pony load of timber or other forest produce and Rs.2/- per head load of timber or other forest produce. We also declare that the imposition of transit fee on 'Sponge Iron' which is not a forest produce after undergoing the process of manufacture, converting it into a commercially different commodity than forest produce, and 'Tendu Patta', the trade and transportation of which is monopolized by the State Government, is not valid in law, and restrain Respondents from requiring transit passes and transit fees on it. The costs are made easy.
Petitions allowed.

155. The High Court has thus even though had struck down Fourth and Fifth Amendment Rules but has clearly permitted the State to recover transit fee in accordance with the rate as was applicable prior to Fourth Amendment Rules. We, thus, do not find any infirmity in the State's recovery of transit fee at the rate of Third Amendment Rules. There being express order by the High Court on 11.11.2011 as well as interim order by this Court on 29.10.2013 permitting the State to recover transit fee as per the rate as was prevalent by Third Amendment Rules prior to enforcement to Fourth Amendment Rules, we are of the view that the question as to whether by striking down Fourth and Fifth Amendment Rules, Third Amendment

Rule does not revive need not be gone into in the present case. In view of the order of the Division Bench of the High Court dated 11.11.2011, the State was fully competent to recover the transit fee as per Third Amendment Rule, which direction of the High Court we duly affirm.

XVII. VALIDITY OF FOURTH AND FIFTH AMENDMENT RULES

156. We now proceed to consider the respective contentions of the parties on the Fourth and Fifth Amendment Rules. Before we proceed to consider the rival contentions, it is necessary to have broad over-view of the concept of fee and tax. Further, the nature of regulatory fee and its essential characteristic also needs to be looked into.

157. The *locus classicus* on the concept of fee and tax is the judgment of this Court in ***The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282,*** B.K. Mukherjea, J. speaking for 7-Judge Bench has elaborately defined the tax and fee in paragraphs 43 and 44 which are

quoted below:

> "43. A neat definition of what "tax" means has been given by Latham C.J. of the High Court of Australia in Matthews v. Chicory Marketing Board (60 C.L.R. 263, 276.).
>
> > *"A tax", according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered".*
>
> *This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law (Vide Lower Mainland Dairy v. Orystal Dairy Ltd. 1933 AC 168.).*
>
> *The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected form part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority (See Findlay Shirras on "Science of Public Finance", Vol. p. 203.). Another feature of taxation is that as it is a part of the common burden, the quantum of*

imposition upon the taxpayer depends generally upon his capacity to pay.

44. Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay (Vide Lutz on "Public Finance" p. 215.). These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

158. Further, on distinction between tax and fee following was stated in paragraphs 45 and 46:

"45...The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest (Vide Findlay Shirras on "Science of Public Finance" Vol. I, p. 202.). Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. As Seligman says, it is the

special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action (Vide Seligman's Essays on Taxation, p. 408.).

46. If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be co-related to the expenses incurred by Government in rendering the services. As indicated in article 110 of the Constitution, ordinarily there are two classes of cases where Government imposes 'fees' upon persons. In the first class of cases, Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred.

A most common illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant (Vide Seligman's Essays on Taxation, p. 409.), and if the money paid by licence holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regard as a tax."

159. In another Constitution Bench in ***Corporation of Calcutta and Anr. vs. Liberty Cinema, AIR 1965 SC 1107,*** following was stated in paragraphs 16 and 17:

> *"16. Both these cases discussed other tests besides the requirement of the rendering of services for determining whether a levy is a fee, but with these we are not concerned in the present case. These cases also discussed the correlation of the costs of the services to the levy but with also we are not concerned as it is not sought to uphold the present levy on the ground of such correlation. We have referred to these cases only for showing that to make a levy a fee the services rendered in respect of it must benefit, or confer advantage on, the person who pays the levy.*
>
> *20. The other case to which we wish to refer in this connection is The Hingir-Rampur Coal Co., Ltd. v. The State of Orissa and ors., [1961]2SCR537 . There the imposition by a certain statute of a levy on lessees of coal mines in a certain area and the creation of a fund with it, was called in question. It was held that the levy was a fee in return for services and was valid. It was there said at p. 549, "If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area, the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee." It may be mentioned that the levy there went to meet expenditure necessary or expedient for providing*

amenities like communication, water supply and electricity for the better development of the mining area and to meet the welfare of the labour employed and other persons residing or working in the area of the mines. Here again there is no element of control but the services resulted in real benefit specially accruing to the persons on whom the levy was imposed. These decisions of this Court clearly establish that in order to make a levy a fee for services rendered the levy must confer special benefit on the persons on whom it is imposed. No case has been brought to our notice in which it has been held that a mere control exercised on the activities of the persons on whom the levy is imposed so as to make these activities more onerous, is service rendered to them making the levy a fee."

160. The nature of transit fee came for consideration before this Court in ***State of Tripura and others vs. Sudhir Ranjan Nath, 1997 (3) SCC 665.*** The Tripura Transit Rules levy the transit fee. The High Court has declared Rule 3 which provided for charging of transit fee as unconstitutional. In appeal against the said judgment, referring to the judgment of the ***Corporation of Calcutta and Anr. vs. Liberty Cinema (supra)*** it was held that expression 'licence fee' does not necessarily mean a fee in lieu of services and that in the case of regulatory

fees, no *quid pro quo* need be established. Following was held in paragraph 15:

> *"**15.** This decision has been followed in several decisions, including the recent decisions of this Court in Vam Organic Chemicals Ltd. v. State of U.P., 1997 (2) SCC 715 and Bihar Distillery v. Union of India, 1997 (2) SCC 727. The High Court was, therefore, not right in proceeding on the assumption that every fee must necessarily satisfy the test of quid pro quo and in declaring the fees levied by sub-rules (3) and (4) of Rule 3 as bad on that basis. Since we hold that the fees levied by the said sub-rules is regulatory in nature, the said levy must be held to be valid and competent, being fully warranted by Section 41."*

161. This Court held that transit fee is a regulatory fee in nature.

162. In ***Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn., 1999 (2) SCC 274,*** where this Court held that a fee which is charged for regulation for such activity would be validly classified as a fee and not a tax although no service is rendered. In paragraph 9 following was stated:

> *"**9.** It is, by now, well settled that a licence fee may be either regulatory or*

compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive."

163. The Uttar Pradesh Transit of Timber and other Forest Produce Rules, 1978, itself came for consideration before this Court in ***State of U.P. vs. Sitapur Packing Wood Suppliers, 2002 (4) SCC 566.*** The High Court had held the Rules to be constitutionally valid but levy of transit fee was invalidated. In absence of *quid pro quo*, the High Court did not strike down the Rules and observe that it is open to the State Government to levy transit fee by rendering service as *quid pro quo*. Rules 3 and 5 of 1978 Rules as well as provisions of Section 41 of Forest Act, 1927 were considered by this Court. This

Court relying on the judgments of this Court in ***State of Tripura*** **v.** ***Sudhir Ranjan Nath, Corpn. of Calcutta*** **v.** ***Liberty Cinema and Secunderabad Hyderabad Hotel Owners' Assn.*** **v.** ***Hyderabad Municipal Corpn.*** held transit fee under Rule 5 as clearly regulatory and it was held that it was not necessary for the State to establish *quid pro quo*. Following was held in paragraphs 8,9 and 10:

> *"**8.** The distinction between tax and fee is well settled and need not be restated herein. It is clear from the afore-noticed provisions of the Act and the Rules that the transitory fee is regulatory in nature. The question of quid pro quo is necessary when a fee is compensatory. It is well established that for every fee quid pro quo is not necessary. The transit fee being regulatory, it is not necessary to establish the factum of rendering of service. Thus, there is no question of a levy of transit fee being invalidated on the ground that quid pro quo has not been established.*
>
> ***9.** In State of Tripura v. Sudhir Ranjan Nath almost similar question came up for consideration in relation to the State of Tripura. It was held that Sections 41 and 76 of the Act vest total control over the forest produce in the State Government and empower it to regulate the transit of all timber or other forest produce for which purpose the State Government is also empowered to make the Rules. The decision of the High Court invalidating the levy of application fee in the said case on the*

ground that the State had not established that the services were rendered in lieu of the said fee, was reversed by this Court holding that the fee was regulatory and not compensatory. Reference may be made to the decision in the case of Corpn. of Calcutta v. Liberty Cinema wherein it was held that the expression licence fee does not necessarily mean a fee in lieu of services and in case of regulatory fee no quid pro quo need be established. Following Liberty Cinema case[2] similar views have been expressed in Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn. and P. Kannadasan v. State of T.N.

10. *The transit fee under Rule 5 is clearly regulatory and, thus, it was not necessary for the State to establish quid pro quo. The High Court was in error in holding that transit fee is invalid in absence of quid pro quo. As a consequence the penalty would also be valid. The penalty was held to be invalid by the High Court in view of its conclusion about the invalidity of the transit fee. The penalty, however, cannot be beyond what is permissible in the Act. That aspect, however, is not under challenge in these appeals as the State Government after the impugned judgment of the High Court realizing its mistake amended the Rule so as to bring the provision of penalty in accord with the provisions of the Act."*

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164. In view of the foregoing discussion, it is now well settled that transit fee charged under 1978 Rules is regulatory fee in character and further the State is not

to prove *quid pro quo* for levy of transit fee. After having noticed the nature and character of the transit fee as envisaged in 1978 Rules, we now proceed to notice various provisions of 1978 Rules as well as Fourth and Fifth Amendment Rules.

165. Section 41 of the Forest Act, 1927 empowered the State to make Rules to regulate transit of forest produce. The State of Uttar Pradesh by Uttar Pradesh Act 23 of 1965 with effect from 23.11.1965 after sub-section (2) of Section 41 inserted sub-sections (2A) and (2B). Sub-section (2A) is as follows:

> *"(2A) The State Government may by notification in the Gazette delegate, either unconditionally or subject to such conditions as may be specified in the notification, to any Forest-officer, not below the rank of Conservator, the power to prescribe fees under clause (c) of sub-section (2)."*

166. The State of U.P. in exercise of power under Section 41 framed Rules, namely, the Uttar Pradesh Transit of Timber and other Forest Produce Rules, 1978. Rule 3 provided for regulation of transit of forest-produce by means of passes which is to the following

effect:

> *"**3. Regulation of transit of forest produce by means of passes.** - No forest produce shall be moved into, or from, or within, the State of Uttar Pradesh except as hereinafter provided, without a transit pass in the form in Schedule A to these Rules, from an officer of the Forest Department or a person duly authorised by or under these Rules to issue such pass or otherwise than in accordance with the conditions of such pass or by any route or to any destination other than the route or destination specified in such pass :*
> *Provided that no transit pass hall be required for the removal-*
>
> *(iii) of any forest produce which is being removed for bona fide consumption by any person in exercise of a privilege granted in this behalf by the 'State Government' or of a right recognised under this Act, within the limits of a village in which it is produced;*
>
> *(iv) of forest produce by contractor's agency from the forests managed by the Forest Department, in which case the movement shall be regulated by the relevant conditions of sale and terms of the corresponding agreement deed executed by the buyer;*
>
> *(v) of such forest produce as may*

be exempted by the State Government from the operation of these rules by notification in the official Gazette."

167. Rule 5 prescribes for fees payable for different classes of passes. Rule 5(as originally framed) is as below:

*"**5. Fees payable for different classes of passes.** - At the Check Chowki or depot established under Rule 15 and specified under proviso (ii) to clause (b) of sub-rule (1) of Rule 4, the forest produce alongwith the two copies of the pass (duplicate and triplicate) shall be produced for examination under sub-rule (4) of Rule 6 and for payment of transit fee on the forest produce calculated at the following rates; corresponding receipt shall be granted in the form given in Schedule 'C'-*

(i)per lorry load of timber or other forest produce	.Rs. 5.00 per tonne of capacity
(ii)per cart load of timber or other forest produce	.Rs. 2.50
(iii)per camel load of timber or other forest produce	.Rs. 1.25
(iv)per pony load of	.Re. 0.50

	timber or other forest produce	
(v)	per head load of timber or other forest produce	.Re. 0.25

Note. - In respect of resin and resin products, the provisions of the Uttar Pradesh Resin and Other Forest Produce (Regulation of Trade) Act, 1976 and the rules framed thereunder, shall apply.”

168. By the Uttar Pradesh Transit of Timber and other Forest Produce (Third Amendment) Rules, 2004 fee prescribed in Rule 5 was increased, for example per lorry load of timber or other forest produce in place of Rs.5/- per tonne of capacity fee of Rs.38/- per tonne of capacity is shown. Now, comes to Fourth Amendment Rules, 2010 dated 20.10.2010, the fee which was Rs.38/- for per tonne per lorry load of timber or other forest produce was increased as Rs.200/- per cubic meter of capacity other than of Khair, Sal and Sagaun (Teak), Shisham, Sandal Wood and Red Sanders. Then comes to Fifth Amendment Rules,2011 dated 04.06.2011. Rule 5 was amended where the basis of levy of fee was changed into *advalorem*

at the rate of 5% or minimum Rs.2,000/- for per lorry load of timber or other than of Khair, Sal and Sagaun (Teak), Shisham, Sandal Wood and Red Sanders. Relevant extract of Rule 5 as amended by Fifth Amendment is as follows:

(i)(a) per lorry load of timber other than of Khair, Sal and Sagaun (Teak) Shisham, Sandal Wood and Red Sanders	**Rs.200.00 per cubic Meter of capacity**	**(i)(a) per lorry load or timber of Khair, Sal and Sagaun (Teak) Shisham,Sandal Wood and Red Sanders**	**Advalorem at the rate of 5% or minimum Rs.2000/-**
(b)per lorry load of timber other than of Khair, Sal and Sagaun (Teak), Shisham, Sandal Wood and Red Sanders or other forest produce	**Rs.75.00 per cubic Meter of capacity**	**(b) per lorry load of timber other than of Khair, Sal and Sagaun (Teak), Shisham,Sandal Wood and Red Sanders or other forest produce except as mentioned in (i)c)**	**Advalorem at the rate of 5% or minimum Rs.750.**
		(c)per lorry load of other forest produce coming from mines, e.g., coal, lime, stone, sand,	**Advalorem at the rate of 15% of minimum Rs.400/-**

		Bajari, and other minerals.	

169. Before we proceed further with the discussion it is necessary to note the actual impact on Transit Fee of Fourth and Fifth Amendment Rules. We have already noted that initially when Transit Fee Rules were framed in 1978, Transit Fee on per lorry load of timber was Rs. 5 per tonne of capacity. By 3rd amendment with effect from 14.06.2004 Rs. 5/- was increased as Rs. 38 per tonne of capacity. By 4th amendment rules, the Transit Fee was increased as Rs. 200/- per cubic meter with regard to timber, Khair, Sal & Sagaun, Sisham, Sandal wood and Red Sanders and with regard to other timber Rs. 75 per cubic meter. 170. The same amount was leviable on other forest produce. The chart has been given by learned Counsel for the petitioners reflecting the effect of Third, Fourth & Fifth Amendment Rules with regard to a lorry load having different capacities. The chart is as follows:

TRANSIT FEE CHARGED

Vehicles	As per 1978	As per G.O. Dt.	As per G. O. dt. 20.10.2010	As per G. O. Dt. 04.06.2011	

	Rules Rs. 5/- per Ton	16.04.2004 Rs. 38/- per Ton	(a) Rs. 200/- per Cubic Meter Capacity (b)Rs. 75/- Per Cubic Meter capacity		
6 wheeler	9 Ton x Rs. 5/- = Rs. 45/-	9 Ton x Rs. 38/- = Rs. 342/-	(a) 28.57 Cubic Meter x Rs. 200/- = Rs. 5714/-	(a) Per Lorry load of timber of Khair, Sal and Sagaun (Teek), Shisham, Sandal wood and Red Sandaers	Ad-Valorem at the rate of 5% or minimum Rs. 2000/-
10-12 wheeler	15 Ton X Rs. 5/- = Rs. 75/-	15 Ton x Rs. 38/- = Rs. 570/-	36.50 Cubic Meter x Rs. 200/- = Rs. 7300/-	(b) Per lorry load of timber other than of Khair, Sal and Sagaun (Teek), Shisham, Sandal wood and Red Sanders and other forest produce as mentioned in (i) (c)	Ad-valorem at the rate of 5% or minimum Rs. 750/-
6 wheeler			(b) 28.57 Cubic Meter x Rs. 75/- = Rs. 2142/-	(c) Per lorry load of other forest produce coming from mines i.e. coal, lime, stone, sand, bajri and other minerals.	Ad-Valorem at the rate of 15% or minimum Rs. 750/-
10-12 wheele			36.50 Cubic Meter x Rs. 75/-		

r			= Rs. 2737/-		

171. The above chart indicates that by Third Amendment Rules which was enforced from 14.06.2004 that is after 26 years of enforcement of Transit Rule, the Transit Fee was increased 7 times. Whereas by Fourth amendment which was imposed with effect from 20.10.2010. Transit Fee was increased more than 16 times. As per Fifth amendment rules, Transit Fee was based on *ad-valorem* basis and although the minimum amount was fixed but there was no cap on the maximum amount. Thus Transit Fee payable was on the value of all forest produce. Whereas with regard to timber *ad-valorem* was at the rate of 5 per cent but with regard to coal, lime stone, sand, stone, bajri & other minerals ad-valorem is at the rate of 15 per cent.

172. High Court after considering the impact of Fifth Amendment has held that by Fifth Amendment the increase in Transit Fee is more than ten times. The Fifth Amendment Rule was issued in six months of issuance of Fourth Amendment Rule. In the affidavit filed before the High Court the State has pleaded that every year

expenditure increases 10% to 20%, When every year expenditure increases only 10 to 20%, what was necessity to increase the transit fee several times by 5th Amendment, remains unexplained.

173. Learned senior counsel **Shri N. K. Kaul** appearing for the respondent, Indian Wood Products Co. has explained the impact of increase of Transit Fee on the basis of *ad-valorem*. According to the chart in so far as the Transit Fee on Khair wood as paid by Indian Wood Products Ltd, the payment was made 96.38 times by 4th amendment and 362.33 times from 3rd amendment on the basis of 5th amendment of the Rules dated 04.06.2011.

174. Before we arrive at any conclusion regarding validity or otherwise of the Fourth and Fifth Amendment Rules following three issues need to be addressed:

(a) Whether there is a broad correlation between increase in the fee and expenses incurred in regulation of forest produce, although the State is not liable to prove any quid pro quo?

(b) Whether the State has satisfactorily justified the increase in Transit Fee by 4th & 5th amendment by

producing relevant material?

(c) Whether by adoption of *ad-valorem* basis by 5th amendment Rules the Transit Fee no longer remains a fee and has changed into character of a tax?

175. We have already noticed the pronouncement of this Court that for regulatory fee, State is not to prove any quid pro quo. Regulatory Fee can be charged, even if, no services are rendered by the State in lieu of fee realised. This Court in few more cases had occasion to advert to the aforesaid issue which need to be noted. In The State of Maharashtra and Others vs. Salvation Army, Western India Territory, (1975) 1 SCC 509, this Court had occasion to consider the provisions of Bombay Public Trust Act, 1950 wherein, two per cent contribution was required to be paid to Public Trust Administration Fund. This Court noticed the essential elements to characterise the payment as a fee. In para 14 following was stated:

> *"14...Thus, two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accept either willingly or unwillingly and in the second place, the*

amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the state to be spent for general public purposes."

176. Another case which needs to be noted is ***Sreenivasa General Traders and Others vs. State of Andhra Pradesh and Others, (1983) 4 SCC 353***. In this case, the Court after referring to earlier judgments of this Court laid down the following in para 31:

"31.The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of on consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be

> *"by and large" a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee, and the service rendered..."*

177. In ***Delhi Race Club Limited vs. Union of India and Others, (2012) 8 SCC 680,*** following was laid down in para 39 and 43:

> *"39. Dealing with such regulatory fees, this Court in Vam Organic Chemicals Ltd. & Anr. Vs. State of U.P. observed that in case of a regulatory fee, like the licence fee, no quid pro quo is necessary, but such fee should not be excessive..."*
>
> *"43...Hence, in our opinion, the licence fee imposed in the present case is a regulatory fee and need not necessarily entail rendition of specific services in return but at the same time should not be excessive. In any case, the appellant has not challenged the amount of the levy as unreasonable and expropriatory or excessive..."*

178. Thus the issue (a) as noted above, has to be answered holding that although, the State is not required to prove any quid pro quo for levy or increase in fee but a broad correlation has to be established between

expenses incurred for regulation of Transit and the fee realised.

179. The issue (b) that whether State has satisfactorily justified the increase in Transit Fee by Fourth and Fifth Amendment Rules by producing any material has to be answered on the basis of material which has been produced by the State before the High Court and has been adverted to before us by learned senior counsel Shri Ravindra Srivastava. The submission of learned counsel for the State is that the High Court has not adverted to the relevant material produced by the State which was filed before the Court by means of a counter affidavit. The above submission is not correct since in para 85 of the judgment, the High Court has noticed the figures which were placed by the State in its affidavit regarding amount of collection of Transit Fee and the expenses incurred by the State on the establishment and other miscellaneous expenses. The following chart of expenses and Transit Fee and the cost of enforcement by Forest Department has been noticed by the High Court in para 85 which is to the following effect:

वन उपज अभिवहन से प्राप्त राजस्व तथा इससे प्राप्त करने हेतु प्रवर्तन पर किया गया व्यय					
वर्ष	वन उपज अभिवहन से प्राप्त राजस्व (रूपये लाख में)	वन विभाग प्रवर्तन पर किया गया व्यय			
		अधिष्ठान	अन्य	अनुसांगिक व्यय	योग
2	3	4	5	6	7
2004-05	3867.00	10997.33	15.37	201.33	11213.93
2009-10	9086.17	27684.38	15.61	238.73	27938.72
2010-11	11288.2	31786.85	31.09	387.22	32205.16
2011-12 (Upto July 2011	3848.33	11338.75	2.94	41.89	11383.58

180. Learned counsel appearing for the writ petitioners with regard to above collection and expenses has submitted that by collection of Transit Fee State was trying to meet the entire expenses of Forest Department and the expenses of entire establishment and no details were given of expenses incurred for regulation of Transit Fee separately. It is submitted that Transit Fee is not the only source of Forest Department to meet the expenses of entire establishment of the Forest Department.

181. Shri Udit Chandra, learned counsel appearing for some of the petitioners has referred to a Division Bench judgment of Allahabad High Court in ***Civil Misc.Writ***

Petition No.72465 of 2011-M/s. Singh Timber Trader and others vs. State of U.P. and others (reported in 2016(1) Allahabad Daily Judgment 174). It is submitted that the writ petitioners in the above case, the manufacturers of plywood and veneer prayed for quashing of the notification dated 20.10.2010 by which Rule 11 of the U.P. Establishment and Regulation of Saw Mills Rules, 1978 had been substituted by U.P. Establishment and Regulation of Saw Mills (Fourth Amendment) Rules, 2010. By the said Fourth Amendment, Rules, 2010 licence fee for Saw Mills had been enhanced by 15 times from Rs.5,000/- per year to Rs.75,000/- per year. What is submitted is that the State in the said writ petition for justifying the enhancement of licence fee for Saw Mills has relied on the same figures of expenditure on enforcement/regulation in U.P. Forest Department which has been relied in the High Court in the impugned judgment in support of increase in the transit fee. It is submitted that thus the figures of expenditure which are claimed by the State are not clearly figures of expenditure on regulation of transit but include other

expenditures of the forest department also. It is useful to extract the following portion of the above mentioned Division Bench judgment dated 23rd December, 2014:

> *"The State Government in the counter affidavit has tried to justify the enhancement in the fee in the following manner.*
>
> *(a) Expenditure on enforcement/ regulation in U.P. Forest Department has increased about three times i.e. from Rs.11213.93 lakh in year 2004-05 to 32205.16 lakh in year 2010-11.*

Year Expenditure on regulation (Rupees in Lakh)

	Establish -ment	**Other**	**Incidental expenditure**	**Total**
2004-05	10997.33	15.37	201.33	11213.93
2009-10	27684.38	15.61	238.73	27938.72
2010-11	31786.85	31.09	387.22	32205.16

> The license fee/renewal of saw mills and veneer/plywood are thus regulatory in nature and the same has been enhanced with a view to balance and meet the enhanced expenditure being incurred on enforcement/regulation of the Forest Department.."

182. From the above it is clear that the submission of learned counsel for writ petitioners is correct that the expenditure which is claimed by the State as noticed in

paragraph 85 of the impugned judgment of the High Court is the expenditure not confined to regulation of transit but other expenditures of the forest department as well. Thus, the correlation sought to be established by the State on account of transit fee raised and those expenditures as claimed is unfounded and has rightly not been accepted by the High Court.

183. The High Court after considering the stand of the State has held the following in paragraphs 141 and 142:

> *"141....The increase of the transit fees by the 4th Amendment on cubic feet basis and thereafter by impugned 5th Amendment on ad valorem basis on movement of forest produce on the ground that the value of the forest produce has increased, has made it unconstitutional on both the counts namely that the cost of forest produce has no co-relation with the objects sought to be achieved by regulation of transit, and secondly the State has not justified the increase on any empirical data based on scientific evaluation of the cost of regulation. The fee has thus changed its character from regulatory fee, and in the absence of any defence on quid pro quo, to a compensatory tax, which has the effect of augmenting the revenue of the State.*
>
> *142. In our opinion, considering the arguments raised and the material placed before us, even if the Rules of 1978 are valid, the notifications dated 13.12.2010,*

dated 4th June, 2011 under challenge, increasing the transit fees firstly on cubic feet basis and thereafter item wise on ad valorem basis linked to the price by making distinction between the forest produce, and the minor minerals, which are also forest produce, and without providing justification for such increase, converted the regulatory fees into compensatory tax. The State has completely failed to justify, such arbitrary increase, both on the principle of reasonableness and in public interest."

184. The aforesaid figures, as noticed in paragraph 85, were expressly considered by the High Court in para 181 of the judgment where following observation has been made:

"181....The collections in 2010-11, before the 4th and 5th Amendments to the Rules of 1978 was 11288. 2 lacs, whereas the expenditure of the establishment and other administrative expenses on the enforcement for the entire year 2010-11 on the collection of transit fees by the department was 32205.16 lacs. It is likely to 128 increase, as admitted by only 10-20% every year. The revenue to be generated by the transit fee, would thus be at least 10 times more than the cost in collection of fees. By any conservative estimate the increase of fees on ad valorem basis, would be far above the entire expenses born by the department for enforcement on collection of the fees, and thus the large amount of the collection of transit fees will go into the coffers of the State to raise its revenues. Even if

> *entire collections are spent on maintenance of staff, vehicles, fuel and other administrative expenses of forest department, it looses its character as regulatory fees, to regulate transit of forest produce, with no benefit or service directly or indirectly to facilitate the trade or transit of forest produce. There is no averment, nor it is argued by learned Counsel appearing for the State that any facility or services are to be provided or are contemplated for the trade."*

185. The High Court thus held, after considering the material brought by the State for increase in transit fee, that increase in transit fee was excessive and the character of the fee has changed from simple regulatory fee to a fee which is for raising revenue.

186. The High Court in para 181 has returned the finding that "The revenue to be generated by the transit fee, would thus be at least 10 times more than the cost in collection of fees."

187. A three-judges Bench in ***Calcutta Municipal Corpn. And others vs. Shrey Mercantile (P) Ltd. and others, 2005 (4) SCC 245*** had considered provisions of Calcutta Municipal Corporation (Taxation) Regulations, 1989 whether levy was made on *advalorem* basis. The Court

examined the issue as to whether such levy is a “fee” or a “tax”. The Court held the levy in the nature of tax and also held it arbitrary and discriminatory, violative of Article 14. The following was held in paragraph 16 by the High Court:

> *“**16.** Therefore, the main difference between “a fee” and “a tax” is on account of the source of power. Although “police power” is not mentioned in the Constitution, we may rely upon it as a concept to bring out the difference between “a fee” and “a tax”. The power to tax must be distinguished from an exercise of the police power. The “police power” is different from the “taxing power” in its essential principles. The power to regulate, control and prohibit with the main object of giving some special benefit to a specific class or group of persons is in the exercise of police power and the charge levied on that class to defray the costs of providing benefit to such a class is “a fee”. Therefore, in the aforestated judgment in Kesoram case[1] it has been held that where regulation is the primary purpose, its power is referable to the “police power”. If the primary purpose in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the Government. But where the Government intends to raise revenue as the primary object, the imposition is a tax. In the case of Synthetics & Chemicals Ltd. v. State of U.P.[3] it has been held that regulation is a necessary concomitant of the police power of the State and that though the doctrine of police power is an American doctrine, the*

> *power to regulate is a part of the sovereign power of the State, exercisable by the competent legislature. However, as held in Kesoram case[1] in the garb of regulation, any fee or levy which has no connection with the cost or expense of administering the regulation cannot be imposed and only such levy can be justified which can be treated as a part of regulatory measure. To that extent, the State's power to regulate as an expression of the sovereign power has its limitations. It is not plenary as in the case of the power of taxation."*

188. The Court further held that since the Regulation provides for imposition of fee on *advalorem* basis which is a circumstance to show that the impugned levy is in the nature of tax and not in the nature of a fee. In paragraph 18 following was stated;

> *"18..Further, under the Regulations, the Corporation while prescribing fees has levied fees on ad valorem basis which is one more cirumstance to show that the impugned levy is in the nature of tax and not in the nature of a fee. Further, the qunatum of levy indicates that it is a tax and not a fee. The analysis of the various provisions of the Act and the impugned Regulations shows that the impugned levy is in exercise of power of taxation under the said Act to augment the revenues primarily and not as a part of regulatory measure."*

189. Shri Ravindra Srivastava, learned senior counsel,

appearing for the State has submitted that no exception can be taken to the adoption of *advalorem* basis for imposition of transit fee by means of Fifth Amendment Rules. He submits that when a State is competent to levy fee, what shall be the yardstick of such levy depends on facts of each case and the State can find its own basis for determining the extent of fee. He has relied on three-Judges Bench judgment in ***P.M. Ashwathanarayana Sefty and others vs. State of Karnataka and others, 1989 Supp.(1) SCC 696***. He submits that this Court in the above case was considering the levy of Court fee under Karnataka Court Fee Valuation Act, 1958. The Court fee was leviable on *advalorem* basis and the Court proceeded to examine the issue as to whether Court fee can be levied on *advalorem* basis. This Court in the above case has also held that a fee may shed its complexion as a fee and assume that of a tax. In paragraph 40 of the judgment following was held:

> *"**40.** A fee which at the inception is supportable as one might shed its complexion as a fee and assume that of a tax by reason of the accumulation of surpluses or the happening of events which tend to affect and*

unsettle the requisite degree of correlation."

190. The Court also addressed the issue as to whether *advalorem* principle which is appropriate to taxation would be inapplicable in the context of an impost which is meant as a contribution towards the costs of service. The Court held that in view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic and social policies. The Court further held that the question of the measure of tax or a fee should be *advalorem* or *ad quantum* is again a matter of fiscal policy. The Court ultimately held that although *advalorem* principle which may not be an ideal basis for distribution of a fee but no unconstitutionality or infirmity can be incurred. However, the Court has held that 'fee' meant to defray expenses of services cannot be applied towards objects of general public utility. In paragraph 96 following is stated:

*"**96**. The power to raise funds through the fiscal tool of a fee is not to be confused with a compulsion so to do. While "fee"*

meant to defray expenses of services cannot be applied towards objects of general public utility as part of general revenues, the converse is not valid. General public revenues can, with justification, be utilised to meet, wholly or in substantial part, the expenses on the administration of civil justice. Many States including Karnataka and Rajasthan had, earlier, statutory upper limits fixed for the court fee. But later legislation has sought to do away with the prescription of an upper limit. The insistence on raising court fees at high rates recalls of what Adam Smith-"Wealth of Nations" said:

> *"There is no art which one government sooner learns of another than that of drawing money from the pockets of the people.""*

191. In the aforesaid case, the Court, however, had struck down Entry 20 in Schedule I of the Bombay Act where *advalorem* Court fee was imposed without the benefit of upper limit of Rs.15,000/- which was prescribed in respect of other suits and proceedings. The Court held the aforesaid imposition as arbitrary and upheld the judgment striking down the above provision. Paragraph 90 to 93 of the judgment are relevant and are extracted below:

> ***"90.*** *In the appeal of the State of*

Maharashtra arising out of the Bombay Court Fees Act, 1959, the High Court has struck down the impugned provisions on the ground that the levy of court fee on proceedings for grant of probate and letters of administration ad valorem without the upper limit prescribed for all other litigants—the court fee in the present case amounts to Rs 6,14,814 —is discriminatory. The High Court has also held that, there is no intelligible or rational differentia between the two classes of litigation and that having regard to the fact that what is recovered is a fee, the purported classification has no rational nexus to the object. The argument was noticed by the learned Single Judge thus:

> *Petitioners next contend that the impugned clause discriminates as between different types of suitors and that there is no justification for this discrimination. Plaintiffs who go to civil courts claiming decrees are not required to pay court fees in excess of Rs 15,000. This is irrespective of the amounts claimed over and above Rs 15 lakhs. As against this, persons claiming probates have no such relief in the form of an upper limit to fee payable.*

91. *This contention was accepted by the learned Single Judge who has upheld the appeal. Indeed, where a proceeding for grant of probate and letters of administration becomes a contentious matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs 15,000 on the court fee is fixed, there is no logical justification for singling out this proceeding for an ad*

valorem impost without the benefit of some upper limit prescribed by the same statute respecting all other litigants. Neither before the High Court — nor before us here — was the impost sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate "fee" from another distinct source. It is purported to be collected and sought to be justified only as court fee and nothing else.

92. The discrimination brought about by the statute, in our opinion, fails to pass the constitutional muster as rightly pointed out by the High Court. *The High Court, in our opinion rightly, held:*

> *"There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Article 14 of the Constitution. On this ground also item 10 cannot be sustained."*

93. *We approve this reasoning of the High Court and the decision of the High Court is sustained on this ground alone. In view of this any other ground urged against the constitutionality of the levy is unnecessary to be examined."*

192. The Court thus struck down a provision of the Court fee where there was no maximum cap on *advalorem basis*.

*T*here was no maximum cap in the Fifth Amendment Rules although minimum fee was prescribed. Even in some of the cases of fee *advalorem principle* may be applied but we are of the considered opinion that in case of transit fee where the object and purpose is regulation of transit of forest produce adoption of *advalorem* principle for levy of transit fee was not appropriate and such levy changed the character of fee into a tax which has rightly been so held by the High Court. We are, thus, of the view that the High Court has given cogent and valid reason for striking down the Fourth and Fifth Amendment Rules which decision was rendered by the High Court after elaborate and proper consideration of material brought before the Court after analysing the purpose and object of the imposition of transit fee. We, thus, affirm the judgment of the High Court striking down Fourth and Fifth Amendment Rules.

Transfer Petitions

193. This Court vide its order dated 19.11.2012 had already directed the transfer petitions to be heard along with SLP(C)NO.11367 of 2007. The Transfer Petitions,

thus, deserve to be decided in terms of the Civil Appeal arising out of SLP(C)No.11367 of 2007.

Contempt Petitions

194. The seven Contempt Petitions have been filed in which notices have not yet been issued. All the Civil Appeals being decided by this order, the contempt petitions deserve to be dismissed.

XVIII. Interim orders passed against the judgment of the Allahabad High Court

195. In this batch of appeals in some appeals interim order were passed. In some of the appeals, no interim order was passed. This Court noticing the divergent orders passed in the batch of appeals, passed a detailed interim order on 29.10.2013 which was to the following effect:

> *"1) The State shall be free to recover transit fee for forest produce removed from within the State of U.P. at the rate stipulated in the 3rd amendment to the Rules mentioned in the earlier part of this order.*
>
> *2) Any such recovery shall remain subject to the ultimate outcome of present petitions pending in this Court.*
> *3) In the event of writ petitioners/private*

parties succeeding in their cases, the amount deposited/recovered from them shall be refunded to them with interest at the rate of 9% p.a. from the date the deposit was made till actual refund.

4) The State shall maintain accurate amount of recovery made and the nature and the quantum/quantity of the produce removed by the private parties concerned.

5) Even in the 2nd batch of cases arising out of Writ Petition No. 975 of 2004 whereby the High Court has struck down the 4th and 5th amendment to the Rules, the State shall be free to make recoveries in terms of the 3rd amendment in regard to the forest produce removed from within the State of U.P. The operation of the orders passed by the High Court shall to that extent remain stayed.

6) This modification shall not apply to exempted goods or industrial by products like Klinker and fly ash."

196. By a subsequent order dated 26.04.2016, this Court further modified the interim order dated 29.10.2013. The order dated 29.10.2013 was modified on 26.04.2016 to the following effect:

"(1) Insofar as forest produce as defined in sub-clause(a) of Clause(4) of Section 2 is concerned, the State shall be free to recover transit fee within the State of U.P. at the rate stipulated in the fifth amendment to Rule 5 as aforesaid;

(2) Insofar as forest produce originating from

State of U.P. and covered by sub-clause (b) of Clause (4) of Section 3 is concerned, the State shall be free recover transit fee at the rate stipulated in the fifth amendment to the aforesaid Rule 5.

(3) Insofar as forest produce covered under sub-clause(b) of Clause(4) of Section 2, which does not originate from State of U.P. but is merely passing through the State, the State shall be free to recover transit fee in respect of such forest produce at the rate stipulated in the fourth amendment to aforesaid Rule 5.

(4) Any such recovery shall remain subject to the ultimate outcome of present petitions pending in this Court.

(5) In the event of writ petitioners/private parties succeeding in their cases, the amount deposited/recovered 27 from them shall be refunded to them with interest @ 9% per annum from the date of deposit till actual refund.

(6) The State shall maintain accurate amount of recovery made and the nature/quantity of the produce removed by the private party is concerned.

(7) These modified directions shall come into effect on and from 1 st May 2016. (8) This modification shall not apply to exempted goods or industrial by-products like Klinker fly ash."

197. This Court directed that State shall be free to recover transit fee within the State of U.P. at the rate

stipulated in the Fifth Amendment to Rule 5.

198. The Court also held that such recovery shall remain subject to the ultimate outcome of present cases pending in this Court. With further condition that in the event of writ petitioners/private parties succeeding in their cases, the amount deposited/recovered from them be refunded with interest @9%.

199. We having upheld the judgment of the High Court dated 11.11.2011 striking down Fourth and Fifth Amendment Rules further steps needs to be taken as per interim direction dated 26.04.2016 which came into the effect from 01.05.2016. It is made clear that in so far as prior to 01.05.2016 recovery was permitted as per Third Amendment Rules which has been upheld, there is no question of considering any claim of refund of any transit fee prior to 01.05.2016. The transit fee is an indirect tax and the State is entitled to consider the claim of refund provided the transit fee has not passed on to the consumer which may result into unjust enrichment. Thus we permit the State to consider any

claim of refund of transit fee on the condition that State shall permit refund only after being satisfied that there is no passing of the transit fee to the ultimate consumer and refund may not result in unjust enrichment.

XIX. CIVIL APPEALS OF STATE OF M.P. FILED AGAINST THE JUDGMENT DATED 14.05.2007

200. The Writ Petitions were filed by the respondents to the Civil Appeals in the High Court of Madhya Pradesh praying for quashing the Notification dated 28.05.2001 issued by the State of Madhya Pradesh fixing the amount of Transit Fee for issuance of Transit Pass in exercise of power under Rule 5 of the M.P. Transit (Forest Produce) Rules, 2000 (hereinafter referred to as 'Rules, 2000'). Writ Petitioners have also prayed for declaring Section 2 (4)(b)(iv) and Section 41 of Indian Forest Act, 1927(hereinafter referred to as 'Act, 1927') as unconstitutional and *ultra vires* to the extent they relate to minerals. Rule 5 of Rules, 2000 as well as Notification dated 28.05.2001 was also sought to be

declared as *ultra vires* to the powers of the State Government under Act, 1927. In the Writ Petition the writ petitioners raised the following contentions:

201. The Regulatory Fee with regard to transit fee on minerals is totally illegal and without jurisdiction in as much as the field is covered by the MMDR Act 1957. Regulatory Fee imposed by the State of Madhya Pradesh is a direct encroachment on the regulatory measures which are covered within the Act, 1957. Mineral Concession Rules, 1960(hereinafter referred to as 'Rules, 1960') read with Mineral Transit Pass Regulations, 1996(hereinafter referred to as 'Regulations, 1996'), which specifically provides for issue of transit pass and charging of fee covers the field and State Government cannot frame any rule of the present nature effecting the transportation of mineral. Rule 5 of Rules, 2000 as well as Notification dated 28.05.2001 are contrary to Section 41 of Act, 1927. The Act, 1927 being a pre-constitutional statute enacted by the dominion legislature and Act, 1957 being a parliamentary enactment will have overriding effect over the

provisions of the earlier statute. The State Government has put the fee on Transit Pass qua tonnage which makes it colourable piece of exercise of power.

202. The State contested the Writ Petition by filing counter-affidavit and contended that the Act, 1927 has been designed to protect and increase the forest wealth and Notification dated 28.05.2001 has been issued in exercise of power under Rule 5 of Rules, 2000, which were framed under Section 41 of the Act, 1927. The Regulatory Fee is not charged on extraction of mineral and there is no encroachment on the provisions of Act, 1957. The Regulatory Fee is charged only on the transportation of minerals. The method chosen by State Government to levy the fee on the basis of quantity of minerals would not change the nature and character of the levy. The power of regulation and control under Act, 1957 is totally different from the imposition of Regulatory Fee on Forest Produce by the State.

203. The Division Bench of the High Court by its judgment dated 14.05.2007, although repelled the several arguments of petitioner which we shall shortly notice

hereinafter but declared the Notification dated 28.05.2001 as beyond the scope of Section 41 of Act, 1927.

204. Learned senior counsel in support of the appellants contends that the Act, 1927, the Transit Rules, 2000, and Act, 1957 operate in different fields and spheres and the mere incidental trenching or overlapping of the provisions of the State enactment will not render the State enactment unconstitutional. The view of the High Court that Notification dated 28.05.2001 is invalid and beyond the scope of Section 41 of Act, 1927 is erroneous. The Transit Pass is computed on the basis of weight/volume of the Forest Produce so as to maintain the consistency and transparency in computation of transit fees. The computation or measure of levy will never change the nature of the levy which in the present case is regulatory in nature.

205. The High Court having held that the rules framed by the State under Section 41 of the Act, 1927 operates in different fields and spheres from the MMDR Act, 1957 and the State government has the legislative competence

to frame the rules, holding that the computation of fee on the basis of weight/volume of the Forest Produce is illegal, cannot be sustained. He further contended that the High Court has issued direction for refund of the fees collected by the State in pursuance of the Notification dated 28.05.2001 and it is submitted that the direction of the High Court to refund the fees is contrary to the law settled by this Court that in indirect taxes the burden is already transferred to the consumers and therefore, direction to refund the tax so collected, the burden of which has already been transferred, will lead to unjust enrichment of assessee.

206. Learned counsel appearing for the writ petitioner have refuted the contention of the State and has reiterated the submissions. Respondent-petitioners have further raised the submissions, which were pressed before the High Court. It is submitted that even though the respondent-petitioners has not filed any Special Leave Petition challenging the judgment of the High Court dated 14.05.2009, they are entitled to urge the grounds which were pressed before the High Court in

support of the Writ Petition.

207. It is submitted that petitioner does not mine coal but buys it from Northern Coal Fields Ltd. or from other coal fields. Petitioner also reimburses the royalty etc on the coal purchased from different coal fields as per the provisions of Act, 1957. The impugned demand is illegal and without jurisdiction as the field is fully occupied by rules made thereunder. The Transit Fee of Rs. 7 per tonne fixed by Notification dated 28.05.2001 is Transit Fee on minerals which is illegal and without jurisdiction.

208. We have considered the submissions raised by learned counsel for the parties and perused the record. Before we proceed to consider the submission, it is necessary to notice the finding given by the Division Bench of the High Court in the impugned judgment on various contentions raised before it. The Division Bench of the High Court considered the submission of learned counsel for the writ petitioners that Act, 1957 occupies the field and the State had no jurisdiction to frame any rules regarding transit of minerals. After noticing the

various judgments of this Court, the Division Bench concluded that two enactments i.e. Act, 1927 and Act, 1957 operate in different areas. The Division Bench specifically rejected the argument of writ petitioners that Section 2(4)(b)(iv) and Section 41 of the Act, 1927 be declared *ultra vires*. The Division Bench of the High Court also noticed the judgment of this Court in ***Sudhir Ranjan Nath (supra) and Sitapur Packing Wood Suppliers (supra)***. In para 63 of the judgment following was held:

> *"63...We have referred to two judgments of the Apex Court and we are of the considered opinion on that both the enactments operate in different areas. The operational sphere being different we conclude and hold that the submission that Section 2 (4)(b)(iv) and Section 41 should be declared ultra vires is sans substratum and we repel the same."*

209. The Division Bench of the High Court further rejected the submission of the writ petitioners impugning the Rule 5 of Rules, 2000 framed under Section 41 of the Act, 1927. In para 71 & 72 following has been held:

> *"71. On a perusal of the aforesaid form it is perceptible that there is mention of locality of storage, name and address of the*

owner, description of produce and quantity, name of place of transportation, route and barrier at which forest produce would be produced for check. On a perusal of the aforesaid form it is manifest that it pertains to forest produce at large. Fee can be levied but the fee must have nexus with the transit for checking in the context of forest goods. Hence, we are not inclined to accept the contention of the learned senior counsel for the petitioners that framing of the said rule under Section 41(2) is not permissible."

> *"72....At this juncture we may repeat at the cost of repetition that the purpose of Section 41 of the 1927 Act, and the purpose of the MMDR Act are quite different..."*

210. The High Court thus has rejected the submission of the writ petitioners, holding that both 1927 Act and 1957 Act operate into different spheres. The High Court further held that rule framed by the State under Section 41 of the Act, 1927 i.e. Rule 5 of Rules, 2000 is valid. Various submissions of the writ petitioners reiterated before us on the basis of Act, 1957 and rules framed thereunder including Section 4(1A) and Section 23C of Act, 1957 have already been considered by us, while considering the submission raised with

regard to Civil Appeals arising from the judgment of the Allahabad High Court. The above submission having already noted and considered, it needs no repetition here. Hence, submission raised by learned counsel for the writ petitioners on the basis of Act, 1957 is thus rejected.

211. Now, we come to the reason on the basis of which Division Bench of the High Court has allowed the Writ Petition by quashing the Notification dated 28.05.2001. The High Court held that the Notification dated 28.05.2001 is contrary to the provisions of Section 41 of the Act, 1927 and the notification transgresses Rule 5 of Rules, 2000 because Rule 5 provides that State Government or an authorised officer by it, from time to time, shall fix the rate of the fee for issue of Transit Pass. The fee is to be issued for issue of Transit Pass and Transit Pass by no stretch of imagination can have any nexus with unit of minerals. Thus in fact, it is a fee pertaining to the minerals and not a fee issued on Transit Pass. In para 74 of the judgment, following has been held by

the High Court:

> *"74...Hence, we have no doubt in holding that the notification issued is contrary to the provisions of Section 41 of the Forest Act and in fact such issuance of notification cannot be said to be in consonance with the said provision. It transgresses Rule 5 because Rule 5 stipulates that the State Government or an officer authorised by it from time to time shall fix the rate of fee for issue of transit pass as per the provisions of Rule 4. Thus the fee is to be fixed for issue of a transit pass and a transit pass by no stretch of imagination can have any nexus with the unit of minerals in fact if we allow ourselves to say, it is said to be a gymnastic in the rule making process to impose a fee on the minerals in the guise of collection of fee on transit pass. In fact it is a fee pertaining to minerals and not a fee on issue of transit pass. As we have scanned the anatomy of the provisions of both the enactments rules framed there under and analysed the purport and import of the notification, the true nature and character of levy surface something different. The exact nature of levy cannot be marginalised by making a sweeping statement that is a measure of levy and the unit of minerals has been chosen as a rational basis as there is transportation by rope ways by land and by other means. The units chosen really tries to enter into the arena of regulation and control. It may innocuous look to be a measure or standard of fee on transit but in essentiality it is a trespass into the area of regulation and control. As has been stated earlier the 1957 Act is a regulatory Act and meant for minerals and minerals area*

development but such imposition of fee as we are disposed to think on the basis of foregoing analysis creates a dent and concavity in the regulation and control. That apart the standard or measurement does not have any nexus with the essential character of the levy. Therefore the notification runs counter to the rule because that was not the intendment of the Rule and further that cannot be the intendment of the language in which sections 41 and 76 of the 1927 Act have been couched. Quite apart from the above, once we have held that Section 41 of the 1927 Act and the provisions of 1957 Act operate in different spheres and judged by those parameters, the notification has to be lanceted and accordingly we so hold."

212. Whether the above view of the High Court, holding that State could not have asked for payment of fee on Forest Produce on the basis of quantity/volume of the Forest Produce is correct ? We revert back to provision of Section 41 of the Act, 1927. Section 41 empowers the State to make rules to regulate the transit of Forest Produce. The rules thus can very well regulate the transit of the Forest Produce. Sub section 2 of Section 41 provides that "in particular and without prejudice to the generality of the foregoing provision such rules may,....(c) provide for

the issue, production and return of such passes and for the payment of fees therefore." Thus, power given to State is to regulate the transit of all timber and other Forest Produce and the rules may provide for issue of passes and for the payment of fees, therefore, fee for issue of the passes has correlation with the Forest Produce which is clear from the scheme of Rules, 2000. According to Rule 3 no Forest Produce shall move into or outside or within the State of Madhya Pradesh except in the manner as provided without a Transit Pass in Form A, B and C. The Forms of Transit Pass are part of the rules. For example, for ready reference, we extract the Form A of the Rule, which is to the following effect:

FORM A

[See Rule 6(2)]

Book No.	Counter foil Transit Pass	Page No.
1	Locality of Storage:- (a) Range (b) Division	
2	Name and address of owner of forest produce-	
3	Description of produce and quantity-	
4	Property mark etc.-	
5	Name of place to which the produce is to be transported-	

6	Route by which produce is to be transported-	
7	Barrier at which forest produce will be produced for check	
8	Date of expiry of pass-	

Note:- Second foil will be similar to the Counterfoil.

Signature of checking officer

Signature of issuing officer

213. Column three provides for description of produce and quantity.

Rule 5 of Rules, 2000 provides for as follows:

> *s"5. Rates of fee for issue of transit pass:-The State Government or an officer authorised by the State Government from time to time, shall fix rates of fee for issue of transit pass as per the provisions of Rule 4."*

214. The Rule provides for fixing of rates of fee for issue of Transit Pass. The word 'rate' has been defined in Advanced Law Lexicon by P. Ramanatha Aiyar, in the following words:

> *"Rate means a rate, cess or assessment the proceeds of which are applicable to public local purposes and leviable on the basis of a valuation of property, and includes any sum which, although obtained in the first instance by a precept, certificate or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate."*

215. When the State is empowered to fix rates of fee, it can very well fix the fee on the quantity of Forest Produce. High Court having upheld both Section 41 of the Act, 1927 as well as Rule 5 of Rules, 2000, we see no reason as to how the notification issued under Rule 5 can be held to be beyond the powers of the State.

216. When the State is empowered to fix the rate of fee, it has latitude under the statute to adopt a basis, for fixation of rates of fee. It cannot be said that under the statute fee can be charged only to meet the expenses which are incurred for printing or preparation of passes. The High Court has taken a incorrect view of the matter while coming to the conclusion that Notification dated 28.5.2001 is beyond the power of the State under Rule 5 of Rules, 2000. Rule 5 clearly empowers the State to fix the rate of fee and the rate of fee can be fixed on the basis of quantity/ volume of the Forest Produce. We thus are of the view that the High Court committed error in setting aside the Notification dated 28.05.2001. This

Court in ***State of U.P. Vs. Sitapur Packing Wood Supplier (Supra)*** which judgment has already been noticed by Division Bench of High Court has considered the rules framed by State of U.P. under Section 41 of 1927 Act. Rule 5 of the U.P. Transit of Timber and Other Forest Produce Rules, 1978, provided for payment of transit fee on the forest produce calculated on the rates as mentioned therein. High Court had upheld the competence of the State in providing fee as set out in Rule 5 which was noticed by this Court in paragraph 7 of the judgment, which is to the following effect:-

> *"7. Having found that the constitutional competence in providing fee as set out in Rule 5 is not lacking, the High Court accepted the challenge to the validity of levy on the ground that the fee is not supported by the principle of quid pro quo. It held that no service is provided in lieu of the fee to any person much less to the person from whom the transit fee is charged. In the view of the High Court, reasonable relationship between the levy of the fee and the services rendered had not been established."*

217. High Court although upheld the competence of the State to provide fee but held that fee is not supported

by principles of *quid pro quo*. On that ground transit fee was held to be invalid. The view of the High Court was reversed and this Court held that charging of transit fee was valid. Following was held in paragraph 10 and 11:-

> *"10. The transit fee under Rule 5 is clearly regulatory and, thus, it was not necessary for the State to establish quid pro quo. The High Court was in error in holding the transit fee is invalid in absence of quid pro quo....*
>
> *11. For the aforesaid reasons, we allow these appeals and hold that the levy of the transit fee is valid and the judgment of the High Court is accordingly set aside. The parties are, however, left to bear their own costs."*

218. It is also relevant to note that although the High Court in its judgment has held that both 1957 Act and 1927 Act operate in different fields. However, it had also made observations that imposing fee by fixing tonnage and cubic meter as unit had entered into regulation and control, which is in the realm of the MMDR Act. In paragraph 74, following has been observed:-

> *"74....Though a stance has been taken that it is a regulatory fee and the State has to undertake many works for routes and environment and, therefore, it is to be regarded as regulatory fee but as we*

perceive, imposing fee by fixing tonnage and cubic meters as unit, it enters into the 'regulation and control' which is in the realm of the MMDR Act, for it has impact on the mining activity and the primary purpose, as is patent, is to regulate the mineral. It is not for the purpose of regulating the transit of minerals but to have a regulatory measure of control of minerals. The difference between issue of transit pass for a fee has been galvanised into a fee on mineral unit which has a controlling effect on the development of minerals."

219. We have already found that 1927 Act and 1957 Act operate in different fields. State has power to regulate transit of forest produce under section 41 of 1927 Act and the regulation of minerals and effect of transit rules framed by the State is only incidental on the regulatory control on the mineral as exercised under 1957 Act. The above observations of the Division Bench thus cannot be approved.

220. In result, in view of the foregoing discussion, we are of the view that High Court committed error in quashing the order dated 28.05.2001. The Civil Appeals filed by the State of Madhya Pradesh deserves to be allowed.

XX. CONCLUSIONS

221. In view of the foregoing discussion, we arrived at following conclusions:

I. (a) The crushing of stones, stone boulders into stone grits, stone chips and stone dust does not result into a new commodity different from forest produce. The crushed materials continue to be stone and retain their nature of forest produce.

(b) Coal with its various varieties, limestone, hydrated lime, quick limestone, slake lime, veneer and plywood waste are all forest produce.

(c) Marble blocks, marble slabs, marble chips are all forest produce.

(d) Flay ash, clinker, synthetic gypsum are not forest produce. Gypsum, however, is a forest produce.

II. The Indian Forest Act, 1927 and the Rules framed under Section 41 are neither overridden nor impliedly repealed, altered or amended by Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder. Both the above legislations operate in

different spheres and fields.

III. The words “brought from” as occurring in Section 2(4)(b) of 1927 Act means brought from forest from where forest produce has originated. The words 'brought from forest' cannot be read as “brought through forest”. We, however, clarify that for an item to be treated as forest produce, its origin may be in any forest within the State of U.P. or in a forest outside the State of U.P.

IV. The forest has to be understood according to its dictionary meaning which covers the statutory recognised forest and also shall include any area regarded as forest in the Government record irrespective of the ownership. The meaning of forest cannot be restricted only to reserve forests, protected forests and village forests.

V. The roads notified by notification dated 10.02.1960 under Section 80A of 1927 Act cannot be read to mean that such roads have been declared as protected forest. The notification dated 10.2.1960 can only be read to mean that both sides of the road have been declared as

protected forest on which Chapter IV of the 1927 Act shall be applicable.

VI. Rule 3 of 1978 Rules is not independent of Rule 5 of 1978 Rules. Transit fee is payable on all kinds of transit passes and cannot be confined only to transit passes as referred to in Rule 4(1)(b) only.

VII. After issuance of notification under Section 4 of 1927 Act, removal of forest produce therefrom shall be governed by the Rules framed by the State in view of U.P. Act 23 of 1965 by which original Section 5 has been substituted in its application in the State of U.P. The fact that no notification under Section 20 has been issued does not mean that restriction put by the State Government by Rules are not applicable.

VIII. The Division Bench of the Allahabad High Court by its judgment dated 11.11.2011 has rightly struck down Fourth and Fifth Amendment Rules to 1978 Rules as being excessive and confiscatory in nature.

IX. The notification dated 28.05.2001 issued by the

State of Madhya Pradesh in exercise of power under Rule 5 of 2000 Rules cannot be said to be beyond the scope of Rule 5 of 2000 Rules and Section 41 of 1927 Act. The State of Madhya Pradesh was fully justified in fixing rate of transit fee at the rate of Rs.7/- and Rs.4/- per tonne which was well within the power of the State under Rule 5 of 2000 Rules framed under the 1927 Act.

222. In view of the foregoing discussion, we decide this batch of cases in following manner:

(1) All Civil Appeals filed by the State of U.P. and State of Uttarakhand challenging the judgments of the High Court of Uttarakhand dated 01.7.2004, 20.03.2005, 26.06.2007 and subsequent judgments following the aforesaid three judgments are allowed. The impugned judgments are set aside and the writ petitions stand dismissed.

(2) All the Civil Appeals filed by the State of U.P. against the judgment dated 11.11.2011 and subsequent judgments following judgment dated 11.11.2011 are dismissed.

(3) The Civil Appeals filed by the writ petitioners

against the judgment of the Allahabad High Court dated 27.04.2005 and the subsequent judgments following the judgment dated 27.04.2005 as well as the Civil Appeals filed by the writ petitioners against the judgment dated 11.11.2011 and other subsequent judgments following the judgment dated 11.11.2011 are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII).

(4) The transfer petitions are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII) and Writ Petition(C) No.203 of 2009 (M/s. Pappu Coal Master & Ors. vs. State of U.P. & Anr.) is also disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII)

(5) The writ petitioners from whom the transit fee was realised with effect from 01.05.2016 in accordance with the Fifth Amendment to 1978 Rules shall be entitled to claim for refund along with interest @ 9% which shall be considered by the State or any officer authorised by the State. The claim of refund shall be allowed only if the assessee alleges and establishes that he has not passed

on the burden to any other person, since it is well settled that the power of the Court is not meant to be exercised for unjustly enriching a person.

(6) All the Contempt Petitions are dismissed.

(7) All the Civil Appeals filed by the State of Madhya Pradesh against judgment dated 14.05.2007 are allowed. The judgment of the Division Bench of the High Court dated 14.05.2007 is set aside and the writ petitions stand dismissed.

223. Parties shall bear their own costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
SEPTEMBER 15, 2017.

IN THE SUPREME COURT OF INDIA
CIVIL APPEALLATE JURISDICTION

CIVIL APPEAL NO.2047 OF 2006

STATE OF UTTARANCHAL & ORS. ... APPELLANT

VERSUS

HIMALAYA STONE INDUSTRY & ORS. ... RESPONDENTS

WITH SLP(C)NO.13656 OF 2002 (ADITYA BIRLA CHEMICALS (INDIA) LTD. AND
SLP(C)No.15721 of 2012 (M/S. NANAK TRANSPORT AND COAL SUPPLIERS & OTHERS)

O R D E R

C.A.NO.2047 of 2006

Order in this appeal has been reserved on 03.08.2017. This appeal does not relate to entry tax rather the leviability of Trade Tax under the U.P. Trade Tax Act, 1948. This appeal is de-tagged to be listed after two weeks.

SLP(C)Nos.13656 and 15721 of 2012

Order in these petitions has been reserved on 03.08.2017. These are de-tagged to be listed before a Bench of which Hon'ble Mr. Justice Ashok Bhushan is not a member.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
SEPTEMBER 15, 2017.

REVISED

ITEM NO.1502 COURT NO.6 SECTION X

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s).14874/2017 @ Petition(s) for Special Leave to Appeal (C)No(s)19445/2004

STATE OF UTTARANCHAL & ORS. Appellant(s)

VERSUS

M/S. KUMAON STONE CRUSHER Respondent(s)

WITH

C.A. No. 14446/2017 @ SLP(C) No.3189/2012
C.A. No. 14448/2017 @ SLP(C) No.1675/2012
C.A. No. 14922/2017 @ SLP(C) No.8713/2008
C.A. No. 14924/2017 @ SLP(C) No.10601/2008
C.A. No. 14923/2017 @ SLP(C) No.9513/2008
C.A. No. 14920/2017 @ SLP(C) No.6959/2008
C.A. No. 14921/2017 @ SLP(C) No.6958/2008
C.A. No. 14452/2017 @ SLP(C) No.950/2012
C.A. No. 14453/2017 @ SLP(C) No.1031/2012
C.A. No. 14464/2017 @ SLP(C) No.948/2012
C.A. No. 14465/2017 @ SLP(C) No.1169/2012
C.A. No. 14468/2017 @ SLP(C) No.1197/2012
C.A. No. 14469-14476/2017 @ SLP(C) No.2213-2220/2012
T.P.(C) No.76/2012
T.P.(C) No.77/2012
C.A. No. 14485/2017 @ SLP(C) No.1697/2012
C.A. No. 14486/2017 @ SLP(C) No.2082/2012
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T.P.(C) No. 18/2012
C.A. No. 14380/2017 @ SLP(C) No. 1198/2012
C.A. No. 14405/2017 @ SLP(C) No. 1074/2012
T.P.(C) No. 44/2012
C.A. No. 14408/2017 @ SLP(C) No. 652/2012
C.A. No. 14411/2017 @ SLP(C) No. 738/2012
C.A. No. 14412-14413/2017 @ SLP(C) No. 146-147/2012
C.A. No. 14424-14425/2017 @ SLP(C) No. 877-878/2012
C.A. No. 14445/2017 @ SLP(C) No. 981/2012
C.A. No. 13399-13404/2017 @ SLP(C) No.8204-8209/2013
C.A. No. 13104/2017
C.A. No. 2047/2006

Date : 15-09-2017 These matters were called on for pronouncement of judgment today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

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Mr. K. V. Sreekumar, AOR
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Mr. E. R. Sumathy, AOR
Mr. Garvesh Kabra, AOR
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Mr. R. P. Gupta, AOR
Mr. Jitendra Kumar, AOR
Mr. R. D. Upadhyay, AOR
Mr. C. D. Singh, AOR
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Ms. Hina Khan, Adv.
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Ms. Vanita Bhargava, Adv.
Mr. Ajay Bhargava,Adv.
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Ms. Shefali Mitra, Adv.

Mr. Gaurav Agarwal, Adv.
Mr. Raj Singh Rana, Adv.

Mr. Bharat Sangal, AOR
Ms. S.S. Reddy, Adv.
Ms. Vidushi Garg, Adv.
Ms. Isha Gupta, Adv.
Ms. Vernika Tomar, Adv.
Ms. Anindita Deka, Adv.
Ms. Pragati Neekhra, AOR
Mr. U.A. Rana, Adv.
Mr. Himanshu Mehta, Adv.
Mr. Avirat Kumar, Adv.
Gagrat And Co, AOR

Hon'ble Mr. Justice Ashok Bhushan pronounced the judgment of the Bench comprising Hon'ble Mr. Justice A.K. Sikri and His Lordship.

(1) All Civil Appeals filed by the State of U.P. and State of Uttarakhand challenging the judgments of the High Court of Uttarakhand dated 01.7.2004, 20.03.2005,26.06.2007 and subsequent judgments following the aforesaid three judgments are allowed. The impugned judgments are set aside and the writ petitions stand dismissed.

(2) All the Civil Appeals filed by the State of Uttar Pradesh against the judgment dated 11.11.2011 and subsequent judgments following judgment dated 11.11.2011 are dismissed.

(3) The Civil Appeals filed by the writ petitioners against the judgment of the Allahabad High Court dated 27.04.2005 and the subsequent judgments following the judgment dated 27.04.2005 as well as the Civil Appeals filed by the writ petitioners against the judgment dated 11.11.2011 and other subsequent judgments following the judgment dated

11.11.2011 are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII).

(4) The transfer petitions are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII) and Writ Petition(C) No.203 of 2009 (M/s. Pappu Coal Master & Ors. vs. State of U.P. & Anr.) is also disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII)

(5) The writ petitioners from whom the transit fee was realised with effect from 01.05.2016 in accordance with the Fifth Amendment to 1978 Rules shall be entitled to claim for refund along with interest @ 9% which shall be considered by the State or any officer authorised by the State. The claim of refund shall be allowed only if the assessee alleges and establishes that he has not passed on the burden to any other person, since it is well settled that the power of the Court is not meant to be exercised for unjustly enriching a person.

(6) All the Contempt Petitions are dismissed.

(7) All the Civil Appeals filed by the State of Madhya Pradesh against judgment dated 14.05.2007 are allowed. The judgment of the Division Bench of the High Court dated 14.05.2007 is set aside and the writ petitions stand dismissed.

C.A.NO.2047 of 2006

Order in this appeal has been reserved on 03.08.2017. This appeal does not relate to entry tax rather

the leviability of Trade Tax under the U.P. Trade Tax Act, 1948. This appeal is de-tagged to be listed after two weeks.

SLP(C)Nos.13656 and 15721 of 2012

Order in these petitions has been reserved on 03.08.2017. These are de-tagged to be listed before a Bench of which Hon'ble Mr. Justice Ashok Bhushan is not a member.

(B.PARVATHI)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order / reportable judgment is placed on the file)

ITEM NO.1502 COURT NO.6 SECTION X

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s).14874/2017 @ Petition(s) for Special Leave to Appeal (C)No(s)19445/2004

STATE OF UTTARANCHAL & ORS. Appellant(s)

VERSUS

M/S. KUMAON STONE CRUSHER Respondent(s)

WITH

C.A. No. 14446/2017 @ SLP(C) No.3189/2012
C.A. No. 14448/2017 @ SLP(C) No.1675/2012
C.A. No. 14922/2017 @ SLP(C) No.8713/2008
C.A. No. 14924/2017 @ SLP(C) No.10601/2008
C.A. No. 14923/2017 @ SLP(C) No.9523/2008
C.A. No. 14920/2017 @ SLP(C) No.6959/2008
C.A. No. 14921/2017 @ SLP(C) No.6958/2008
C.A. No. 14452/2017 @ SLP(C) No.950/2012
C.A. No. 14453/2017 @ SLP(C) No.1031/2012
C.A. No. 14464/2017 @ SLP(C) No.948/2012
C.A. No. 14465/2017 @ SLP(C) No.1169/2012
C.A. No. 14468/2017 @ SLP(C) No.1197/2012
C.A. No. 14469-14476/2017 @ SLP(C) No.2213-2220/2012
T.P.(C) No.76/2012
T.P.(C) No.77/2012
C.A. No. 14485/2017 @ SLP(C) No.1697/2012
C.A. No. 14486/2017 @ SLP(C) No.2028/2012
C.A. No. 14492/2017 @ SLP(C) No.2236/2012
C.A. No. 14493/2017 @ SLP(C) No.2081/2012
C.A. No. 14495/2017 @ SLP(C) No.2399/2012
C.A. No. 14497-14509/2017 @ SLP(C) No.3152-3164/2012
C.A. No. 14510-14523/2017 @ SLP(C) No.2938-2951/2012
C.A. No. 13122-13129/2017 @ SLP(C) No.3192-3199/2012
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C.A. No. 13320/2017 @ SLP(C) No.6144/2012
C.A. No. 13346-13358/2017 @ SLP(C) No.3512-3524/2012
C.A. No. 13360-13378/2017 @ SLP(C) No.3320-3338/2012
C.A. No. 13386-13395/2017 @ SLP(C) No.3490-3499/2012
C.A. No. 13405-13408/2017 @ SLP(C) No.13019-13022/2012

C.A. No. 13411-13426/2017 @ SLP(C) No.12808-12823/2012
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C.A. No. 13542/2017 @ SLP(C) No.6807/2012
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C.A. No. 13575/2017 @ SLP(C) No.4761/2012
C.A. No. 13578-13580/2017 @ SLP(C) No.4882-4884/2012
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C.A. No. 13621/2017 @ SLP(C) No.5911/2012
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CONMT.PET.(C)No.199-201/2014 In SLP(C)No.31530-31532/2011
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C.A. No. 13721-13740/2017 @ SLP(C) No. 26639-26658/2012
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C.A. No. 2819/2008
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C.A. No. 1007/2011
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C.A. No. 1008/2011
C.A. No. 13130/2017 @ SLP(C) No. 2294/2008
C.A. No. 14487-14491/2017 @ SLP(C) No.33170-33174/2012
C.A. No. 14280/2017 @ SLP(C) No. 29725/2009
CONMT.PET.(C)No.585-587/2016 In SLP(C)No.31530-31532/2011
C.A. No. 14494/2017 @ SLP(C) No.30535/2012
C.A. No. 14293/2017 @ SLP(C) No.27511/2011
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C.A. No. 14075/2017 @ SLP(C) No. 32029/2012
C.A. No. 14525-14531/2017 @ SLP(C) No.36975-36981/2012
C.A. No. 14532/2017 @ SLP(C) No.30185/2012
C.A. No. 13719-13720/2017 @ SLP(C) No.34637-34638/2014
C.A. No. 13345/2017
CONMT.PET.(C) No. 251/2008 In C.A. No. 2797/2008
C.A. No. 14281/2017 @ SLP(C) No. 27771/2009
C.A. No. 13105/2017
C.A. No. 14283/2017 @ SLP(C) No. 31868/2009
C.A. No. 14534-14536/2017 @ SLP(C) No.37685-37687/2012
C.A. No. 14537/2017 @ SLP(C) No.37683/2012
C.A. No. 13519/2017 @ SLP(C) No. 33180/2010
C.A. No. 13131/2017
C.A. No. 14538/2017 @ SLP(C) No.37576/2012
C.A. No. 13117/2017
C.A. No. 1010/2011
C.A. No. 14312-14314/2017 @ SLP(C) No. 31530-31532/2011
C.A. No. 14323-14326/2017 @ SLP(C) No. 32620-32623/2011
C.A. No. 13398/2017
C.A. No. 13410/2017
C.A. No. 13429/2017
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C.A. No. 13119/2017
C.A. No. 13380-13384/2017 @ SLP(C) No.4943-4947/2013
C.A. No. 14327/2017 @ SLP(C) No. 1398/2012
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C.A. No. 14375/2017 @ SLP(C) No.1684/2012
C.A. No. 14377/2017 @ SLP(C) No.2433/2012
C.A. No. 14379/2017 @ SLP(C) No. 1874/2012
T.P.(C) No. 18/2012
C.A. No. 14380/2017 @ SLP(C) No. 1198/2012
C.A. No. 14405/2017 @ SLP(C) No. 1074/2012
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C.A. No. 14412-14413/2017 @ SLP(C) No. 146-147/2012
C.A. No. 14424-14425/2017 @ SLP(C) No. 877-878/2012
C.A. No. 14445/2017 @ SLP(C) No. 981/2012
C.A. No. 13399-13404/2017 @ SLP(C) No.8204-8209/2013

C.A. No. 13104/2017
C.A. No. 2047/2006

Date : 15-09-2017 These matters were called on for pronouncement of judgment today.
CORAM :
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

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Gagrat And Co, AOR

Hon'ble Mr. Justice Ashok Bhushan pronounced the judgment of the Bench comprising Hon'ble Mr. Justice A.K. Sikri and His Lordship.

(1) All Civil Appeals filed by the State of U.P. and State of Uttarakhand challenging the judgments of the High Court of Uttarakhand dated 01.7.2004, 20.03.2005,26.06.2007 and subsequent judgments following the aforesaid three judgments are allowed. The impugned judgments are set aside and the writ petitions stand dismissed.

(2) All the Civil Appeals filed by the State of Uttar Pradesh against the judgment dated 11.11.2011 and subsequent judgments following judgment dated 11.11.2011 are dismissed.

(3) The Civil Appeals filed by the writ petitioners against the judgment of the Allahabad High Court dated 27.04.2005 and the subsequent judgments following the judgment dated 27.04.2005 as well as the Civil Appeals filed by the writ petitioners against the judgment dated 11.11.2011 and other subsequent judgments following the judgment dated

11.11.2011 are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII).

(4) The transfer petitions are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII) and Writ Petition(C) No.203 of 2009 (M/s. Pappu Coal Master & Ors. vs. State of U.P. & Anr.) is also disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII)

(5) The writ petitioners from whom the transit fee was realised with effect from 01.05.2016 in accordance with the Fifth Amendment to 1978 Rules shall be entitled to claim for refund along with interest @ 9% which shall be considered by the State or any officer authorised by the State. The claim of refund shall be allowed only if the assessee alleges and establishes that he has not passed on the burden to any other person, since it is well settled that the power of the Court is not meant to be exercised for unjustly enriching a person.

(6) All the Contempt Petitions are dismissed.

(7) All the Civil Appeals filed by the State of Madhya Pradesh against judgment dated 14.05.2007 are allowed. The judgment of the Division Bench of the High Court dated 14.05.2007 is set aside and the writ petitions stand dismissed.

(8) Pending applications, if any, stand disposed of.

C.A.NO.2047 of 2006

Order in this appeal has been reserved on 03.08.2017. This appeal does not relate to entry tax rather

the leviability of Trade Tax under the U.P. Trade Tax Act, 1948. This appeal is de-tagged to be listed after two weeks.

SLP(C)Nos.13656 and 15721 of 2012

Order in these petitions has been reserved on 03.08.2017. These are de-tagged to be listed before a Bench of which Hon'ble Mr. Justice Ashok Bhushan is not a member.

(B.PARVATHI)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order / reportable judgment is placed on the file)

2025 INSC 701

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

IN RE: CONSTRUCTION OF MULTI STOREYED BUILDINGS IN FOREST LAND MAHARASHTRA

I.A.NO. 2079 OF 2007
[Application for Impleadment and Directions]

WITH

I.A. NOS.2301-2302 OF 2008
[Applications for Impleadment and Directions in I.A. No. 2079 OF 2007]

WITH

I.A. NOS.3044-3045 OF 2011
[Application for Impleadment and Directions in I.A. No. 2079 OF 2007]

WITH

I.A. NO.254946 OF 2023
[Application for Directions in I.A. Nos. 2301-2302 of 2008 in I.A. No. 2079 OF 2007]

WITH

I.A. NO.39711 OF 2024
[Application for permission to file Additional Documents in I.A. No.254946 of 2023]

IN

WRIT PETITION (C) NO. 202 OF 1995

IN RE: T.N. GODAVARMAN THIRUMALPAD ....PETITIONER

VERSUS

Signature Not Verified
Digitally signed by DEEPAK SINGH
Date: 2025.05.15 16:12:03 IST
Reason:

UNION OF INDIA & ORS. ....RESPONDENTS

WITH

WRIT PETITION (C) NO.301 OF 2008

WITH

I.A. No. 9108 OF 2024 in WRIT PETITION (C) NO.301 OF 2008

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J U D G M E N T

B.R. GAVAI, CJI

I. INTRODUCTION

1. The present matter is a classic example as to how the nexus between the Politicians, Bureaucrats and the Builders can result in the conversion of precious Forest Land for commercial purposes under the garb of resettlement of people belonging to the backward class from whose ancestors, agricultural land was acquired for public purpose.

II. FACTUAL POSITION

2. The facts in brief, shorn of unnecessary details, giving rise to present proceedings are as under:

a. Background

2.1 An area admeasuring 32 Acres 35 Gunthas at Survey No. 20 of Village Kondhwa Budruk in Pune District was notified as a Reserved Forest under the provisions of Section 34 of the Indian Forest Act, 1878 (hereinafter referred to as "the 1878 Act") vide Notification dated 1st March 1879.

2.2 A portion of the land admeasuring 3 Acres 20 Gunthas was de-reserved by the State Government vide Notification dated 5th January 1934.

2.3 It is pertinent to note that no further orders for de-reservation were passed post 1934. As a result of which the remaining area of 29 Acres and 15 Gunthas, which was numbered as Survey No.20-A and subsequently renumbered as Survey No.21 of Village Kondhwa Budruk remained to be a Forest Land (hereinafter referred to as "the subject land").

2.4 During the 1960s, a different parcel of land in Survey No.37 of Kondhwa Budruk belonging to one 'Chavan Family' was acquired by the State Government for the purposes of construction of "Dr. Bandorwala Leprosy Hospital".

2.5 It appears from the record that no compensation was paid to the 'Chavan Family'. As such, a request was made by them for allotment of the subject land as an alternative for their resettlement.

2.6 It further appears from the record that in response to the request made by the 'Chavan Family', the Tehsildar, Haveli vide his communication dated 13th May 1968, released the subject land to the 'Chavan Family' for cultivation for a period

of one year. The subject land was allotted on "*Eksali*" (yearly) basis for the year 1968-69.

2.7 The said allotment was accepted by the 'Chavan Family'. The members of the 'Chavan Family' had also given an undertaking to the Mamlatdar, Taluka-Haveli, District Pune. The relevant part of the said undertaking reads thus:

> "I accept and agree that the said assessment is allotted to me under the provision of Bombay Land Revenue Code 1879 and rules thereunder and shall be subjected to following terms and conditions.
>
> 1. That, no part of the said land shall be leased out, mortgaged, sold, excavated or no lien shall be created by me (the term includes self, heirs, executers, assignees, administrators) without prior written approval of the Collector.
>
> 2. That, I will handover the possession of the land to any person nominated by the Collector without any hassle on or before 15/12/1967.
>
> 3. That, I will not use the said assessment for any purpose other than cultivation.
>
> 4. That, I do not have any right of the trees standing on the land and I will behave as per the rules annexed herewith."

2.8 It is pertinent to note that a perusal of the record would reveal that the said *Eksali* (yearly) lease was never renewed thereafter.

2.9 It further appears from the record that on 22nd March 1969, the State Government took a decision that the Forest

Land given on lease for cultivation on *Eksali* basis should be permanently released for cultivation to the *Eksali* leaseholders after de-reservation.

2.10 It appears that in pursuance of this resolution, the 'Chavan Family' made an application for permanent release of the subject land in the year 1988.

2.11 It is relevant to note that in the meanwhile, the Forest (Conservation) Act, 1980 (hereinafter referred to as, "the 1980 FC Act") came into force with effect from 25th October 1980. Under the provisions of Section 2 of the 1980 FC Act, no Forest Land could be de-reserved or used for any non-forest purposes without the permission of the Central Government.

b. Actions of the State Government

2.12 A perusal of the record would reveal that there was a lot of inter-departmental correspondence between the different authorities. It appears that the District Collector vide his letter dated 19th June 1991 found that the members of the 'Chavan Family' were cultivating only 3 Acres and 20 Gunthas and, therefore, recommended that the said area which was under actual cultivation be allotted to them in view of the Government Resolution dated 22nd March 1969. He further

recommended that the possession of the remaining land be handed over to the Forest Department.

2.13 However, surprisingly, the Divisional Commissioner vide his recommendation to the State Government dated 30th November 1994, though, specifically recorded that as per the Collector's report, the members of the 'Chavan Family' were in cultivation only in 3 Acres and 20 Gunthas, recommended allotment of the entire subject land to the 'Chavan Family'. It is further surprising to note that the Divisional Commissioner also observed that there is no necessity to obtain the prior approval of the Central Government for allotment of the said land. It is also surprising to note that the Divisional Commissioner also noted that the subject land was a Reserved Forest.

2.14 It appears that thereafter the file was pending before the State Government. At that stage, the then Minister for Revenue opined that the said land was granted by the Government for Agricultural purpose and that the applicants (the 'Chavan Family') were using the said land continuously for such purpose and, therefore, the provisions of the 1980 FC Act were not applicable in the said case. He therefore sought

State govt. Plea.

legal advice on the point from the Law and Judiciary Department of the Government of Maharashtra. This could be gathered from the reply given by the Deputy Secretary to the Government, Revenue and Forest Department dated 8th April 2008 to the Central Empowered Committee ("CEC" for short) in response to certain queries.

2.15 It would further appear that thereafter on 27th July 1998, the Deputy Secretary to Government, Law and Judiciary Department, gave his opinion that there is no necessity for obtaining prior sanction of the Government of India if the Forest Land is already broken up and acquired before coming into force of the 1980 FC Act. Accordingly, the Minister for Revenue, the Government of Maharashtra sanctioned the allotment of the subject land and an order came to be issued by the Government of Maharashtra vide Memorandum dated 4th August 1998 to that effect.

2.16 In pursuance to the order passed by the State Government, the Collector issued an order of allotment of land on 28th August 1998. The said allotment, however, was subject to certain conditions. It will be relevant to refer to

Condition Nos. 2, 4, 5 and 7 of the said allotment order dated 28th August 1998, which read thus:

> "2) The allottee shall not be entitled to mortgage, donate, sell, partition or exchange in any other manner without the prior permission of the District Collector, Pune. Similarly, shall not sell or transfer the said land or any part thereof.
>
> xxx xxx xxx
>
> 4) The allotee shall not lease the aforesaid land granted to him to any other person.
>
> 5) It is necessary for the allottee to bring the said land under cultivation within a period of two years from the date of this order.
>
> xxx xxx xxx
>
> 7) The said land shall be used for agricultural purposes. Except agriculture, it shall not be used for any other purpose."

c. Acquisition and Construction by RRCHS

2.17 It would further appear from the record that immediately after the land was allotted, the Divisional Commissioner vide order dated 30th October 1999 granted permission to the 'Chavan Family' to sell the land in question to one Mr. Aniruddha P. Deshpande, the Chief Promotor of Richie Rich Cooperative Housing Society Limited ("RRCHS" for short) for residential purposes.

2.18 However, a perusal of the material on record would reveal that much prior to the said permission or even much prior to the actual allotment of the subject land to the 'Chavan Family', the transactions were entered into by the members of the 'Chavan Family' with Mr. Aniruddha P. Deshpande, Chief Promoter, RRCHS. We will be referring to those documents when we discuss the rival submissions.

2.19 The District Collector, Pune thereafter vide order dated 8th July 2005 granted permission for use of the subject land for Non-Agricultural purposes i.e. for construction of the residential buildings.

2.20 On 27th February 2006, the Pune Municipal Corporation issued a Commencement Certificate and sanctioned the Building Plan.

2.21 Thereafter, on 3rd July 2007, the Ministry of Environment and Forest (MoEF) granted environmental clearance for construction of "Raheja Richmond Park", a Residential, Shopping and IT Complex.

d. Proceedings before this Court

2.22 After noticing the aforesaid aspects, one Nagrik Chetna Manch filed I.A. No. 2079-2080 of 2007 in Writ Petition (Civil)

No. 202 of 1995 before this Court challenging the allotment of Reserved Forest Land to private persons and its use for construction of multi-storeyed buildings in violation of the 1980 FC Act.

2.23 In the said proceedings, this Court vide order dated 23rd November 2007, directed the CEC to enquire into the matter and submit its report.

2.24 In pursuance to the orders passed by this Court, the CEC started conducting enquiries into the matter and held various meetings. When the CEC started conducting enquiries, various queries were made to the State Government. The Revenue and Forest Department of the State of Maharashtra issued a notice dated 2nd July 2008 to the RRCHS and one of the members of the 'Chavan Family' thereby informing them about the Government's decision to review the Government Order dated 4th August 1998 vide which the land was allotted to the 'Chavan Family'.

2.25 It would further appear that the Forest Department issued a notice to the RRCHS dated 4th July 2008, notifying the RRCHS that the possession of the subject land was required to be taken back. Aggrieved thereby, the RRCHS filed

I.A. No.2301-2302 of 2008 in I.A. No.2079 of 2007 praying for impleadment as well as challenging the aforementioned notices dated 2nd July 2008 and 4th July 2008.

2.26 The said RRCHS also filed a writ petition being Writ Petition (Civil) No.301 of 2008, praying for the following reliefs:

> "(a) Issue a writ of certiorari or any other appropriate writ order or direction under Article 32 of the Constitution of India for quashing the notice dated 2.7.2008 bearing no. Land-3408/1025/PKP 935/Part 2/J-5, issued by the State Government; and/or
>
> (b) Issue a writ of certiorari or any other appropriate writ order or direction under Article 32 of the Constitution of India for quashing the notice dated 4.7.2008 bearing no. 57 of 2008-09, issued by the Forest Department, Government of Maharashtra; and/or
>
> (c) Pass such other of further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2.27 After an elaborate enquiry, the CEC submitted its report dated 27th November 2008 and recommended thus:

> i) the allotment of 11.89 ha of Reserve Forest land in Survey No.21 (old Survey No.20A) Kondhwa Bk in District Pune for agriculture purposes and subsequent permission given for its sale in favour of M/s Richie Rich Co-operative Housing Society Ltd. and construction of buildings should be cancelled.
>
> ii) the area should be restored back as forest;

iii) the senior functionaries and officers of the Government of Maharashtra responsible for the allotment/use of the said Reserve Forest land in violation of the provision of the FC Act and this Hon'ble Court's order dated 12.12.1996 should be prosecuted for criminal breach of trust and other provisions of the Indian Penal Code. It is imperative that amongst others the then Revenue Minister, Maharashtra, who approved the land allotment along with the then Divisional Commissioner, Pune who granted the permission for the sale of the land in favour of private person for the construction of buildings, Mr. Ashok Khadse, the then Deputy Conservator of Forests, Pune who has issued "No Objection Certificate" not only in this case but in many other cases facilitating illegal use of the forest land for private gains and Mr. Aniruddha P. Deshpande, Developer, who entered into various Development Agreements for purchase and use of the Reserve Forest for construction of buildings are prosecuted.

iv) Mr. Khadse who is presently under suspension should not be reinstated without obtaining permission of this Hon'ble Court;

v) the Chairman, Central Empowered Committee may be authorized to constitute a multi disciplinary "Special Investigation Team" to examine the details of all the Reserve Forest under the administrative control of the Revenue Department in Pune and which have been allotted/allowed to be used in the past without obtaining approval under the FC Act. All such allotment/uses should be treated as null and void and the Government of Maharashtra should be directed to cancel all such orders. State functionaries/officers who are found to be responsible for allotment/use of the forest land in all such cases, should be prosecuted for criminal breach of trust; and

vi) the Chief Secretary, Government of Maharashtra should be directed to ensure immediate compliance of this Hon'ble Court's order dated 22.9.2006 in IA No.1483 regarding transfer of forest land in charge of the Revenue Department to the Forest Department. Till the entire exercise is completed, he should be directed to file fortnightly Action Taken Report before the Hon'ble Court as well as the CEC."

2.28 Subsequent reports have been filed by the CEC on 1st November 2010 and 14th August 2013.

2.29 I.A. Nos. 3044-45 of 2011 are filed by one Greenfield Cooperative Housing Society ("GCHS" for short) praying for impleadment in the matter and for quashing of the order dated 29th September 2008 by which the Divisional Commissioner, Pune had cancelled the permission to sell by virtue of which the GCHS had purchased the land from the original leaseholder.

2.30 I.A. No.254946 of 2023 for directions has been filed by RRCHS contending that the Gazette Notification dated 9th March 1944 did not show the subject land as the Forest Land and, therefore, prayed for disposal of the present proceedings in view of the said Gazette Notification.

2.31 I.A. No.39711 of 2024 has been filed by the State to place on record the original Gazette Notification dated 9th March 1944. It was contended by the State that the Gazette Notification dated 9th March 1944 placed by RRCHS was a fabricated document.

2.32 This Court, therefore, vide order dated 9th May 2024, directed enquiry to be conducted by the Additional Director General of State CID, Pune. The Additional Director General of State CID, Pune conducted an enquiry and submitted his report on 16th August 2024 pointing out therein that the Gazette Notification dated 9th March 1944 placed by the RRCHS was a forged one and not genuine one.

2.33 That is how the present proceedings have reached this stage.

III. SUBMISSIONS

3. We have heard Shri K. Parameshwar, learned Senior Counsel (Amicus Curiae) ably assisted by Mr. M.V. Mukunda, Ms. Kanti, Ms. Raji Gururaj and Mr. Shreenivas Patil, learned counsel. We have also heard Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the RRCHS and Shri Shekhar Naphade, learned Senior Counsel appearing on

behalf of the GCHS and Shri Aniruddha Joshi, learned Senior Counsel appearing on behalf of the State.

4. Shri K. Parameshwar submitted that the allotment of the Forest Land to the 'Chavan Family' was in flagrant breach of the orders of this Court and the provisions of the 1980 FC Act. He submits that though the record would clearly reveal that the subject land was recorded as a Forest Land, the land was allotted to the 'Chavan Family' in flagrant violation of the law. He submits that the record would reveal that the 'Chavan Family' was only a front, while, in fact, the allotment was made by the State Government in favour of a Builder. He submits that the record would reveal that much prior to 1998 when the land was actually allotted in favour of the 'Chavan Family', the 'Chavan Family' had already entered into a deal with Mr. Aniruddha P. Deshpande, the Chief Promoter of RRCHS.

5. The learned Amicus submits that in the present case it would clearly reveal that the then Revenue Minister and the then Divisional Commissioner of Pune had acted in total breach of the doctrine of public trust and misused their power to aid the illegal activities of the Builder. The learned Amicus further submits that, considering for a moment that the

allotment of the subject land in favour of the 'Chavan Family' was legal, it is clear that the subsequent allocation thereof in favour of RRCHS was totally in contravention of the conditions on which the land was allotted to the 'Chavan Family'. He further submits that the record would reveal that the subject land was in fact used for the purposes of plantation.

6. The learned Amicus, therefore, would submit that this Court should accept the report of the CEC and set aside the allotment in favour of the 'Chavan Family'.

7. Shri Abhishek Manu Singhvi, learned Senior Counsel submitted that the subject land was not used as a Forest Land for a long period. It is submitted that the land in question was allotted to the 'Chavan Family' in lieu of compensation for acquisition of their land. It is submitted that the subject land lost its character as a Forest Land on account of non-use of it for a long time for the said purpose. It is therefore submitted that in view of the doctrine of *desuetude*, the subject land no longer remained a Forest Land and, therefore, the allotment of the subject land in favour of the 'Chavan Family' was totally valid in law. In this respect, he relied on the judgment of this

Court in the case of ***Municipal Corporation for City of Pune and another v. Bharat Forge Co. Ltd. and others***[1]

8. The learned Senior Counsel further contended that the RRCHS is the *bona fide* purchaser of the subject land from the 'Chavan Family'. It is submitted that the records viz., the revenue records as well as the Final Regional Plan of Pune Region would show that the land in question was shown in a Public/Semi Public Zone which could be used for residential purposes. It is submitted that the Final Regional Plan of Pune Region was published in accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966, which is a complete code in itself. It is submitted that since the subject land was not shown in a green zone, the RRCHS was the *bona fide* purchaser and, therefore, it cannot be penalized for purchasing the said land.

9. An alternative submission made by the learned Senior Counsel is that, as held by this Court in ***In Re: "Construction of Multi Storeyed Buildings in Forest Land Maharashtra***[2]***"***, the RRCHS should be allotted an alternate

[1] (1995) 3 SCC 434 : 1995 INSC 181
[2] I.A. No.2771-2772 of 2009 etc. dated 9th September 2024

piece of land inasmuch as the land allotted to the 'Chavan Family' was in lieu of their land acquired by the Government.

10. Shri K. Parameshwar, learned Amicus, in rejoinder, submitted that the doctrine of *desuetude* would not be applicable to the facts of the present case. He relied on the following judgments of this Court in this regard:

(i) ***State of Maharashtra v. Narayan Shamrao Puranik and Others***[3]***;***

(ii) ***Cantonment Board, MHOW and Another v. M.P. State Road Transport Corpn.***[4]***; and***

(iii) ***Monnet Ispat and Energy Limited v. Union of India and Others***[5]

IV. ISSUES FOR CONSIDERATION

11. In the background of these submissions, the following points arise for consideration:

a. As to whether the subject land is a Forest Land;

b. As to whether the Divisional Commissioner was justified in recommending the allotment of subject land in favour of the 'Chavan Family' and as to

[3] **(1982) 3 SCC 519 : 1982 INSC 78**
[4] **(1997) 9 SCC 450 : 1997 INSC 401**
[5] **(2012) 11 SCC 1 : 2012 INSC 305**

whether the State Government was justified in accepting the said recommendation;

c. As to whether the doctrine of *desuetude* would be applicable to the facts of the present case;

d. As to whether the RRCHS could be said to be *bona fide* purchaser of the subject land;

e. As to whether the RRCHS would be entitled to allotment of alternate piece of land in view of the order passed by this Court in ***In Re: "Construction of Multi Storeyed Buildings in Forest Land Maharashtra"***[6];

f. As to whether the doctrine of public trust would be applicable in the facts and circumstances of the present case.

V. DISCUSSION AND ANALYSIS

a. As to whether the subject land is a Forest Land.

12. A perusal of the Gazette Notification dated 1st March 1879 would reveal that it declares the lands described in the Schedule annexed thereto to be Reserved Forest in the Poona

[6] I.A. No.2771-2772 of 2009 in WP(C) No.202 of 1995 etc. dated 9th September 2024

Collectorate. The said Notification has been issued in exercise of the powers conferred by Section 34 of the 1878 Act. A perusal of the Schedule thereto would reveal that the land in Village Kondhwa Budruk having survey No. 20, admeasuring an area of 32 Acres and 35 Gunthas (13.27 ha) has been included in the said Schedule. Subsequently, by way of Notification issued on 5th January 1934, it was declared that out of the said area in Survey No.20, an area admeasuring 3 Acres and 20 Gunthas would cease to be a Reserved Forest. As such, after deforestation of 3 Acres and 20 Gunthas, the balance area of 29 Acres and 15 Gunthas (11.89 ha) continued to be notified as a Reserved Forest. The said area of 29 Acres and 15 Gunthas was numbered as Survey No.20-A, which was subsequently renumbered as Survey No.21 Kondhwa Budruk.

13. A perusal of the records of the Forest Department would reveal that the said area continued to be shown as notified 'Reserved Forest'.

14. However, in the records maintained by the Revenue Department, the said area of Survey No.21 Kondhwa Budruk has been recorded as "Government Grazing Ground".

15. It will be relevant to note that in order to clear this anomaly, the officers of the Forest Department have addressed number of letters to the Collector, Pune for rectification of the revenue records, which are as under:

(i) Letter dated 18.3.1991 from Deputy Conservator of Forests, Pune to District Collector, Pune.

(ii) Letter dated 5.1.1994 from the Deputy Conservator of Forests to the Tahsildar, Haveli.

(iii) Letter dated 9.7.1998 from the Range Forest Office to the Tahsildar, Haveli

(iv) Letter dated 29.7.1998 from the Deputy Conservator of Forests to the Collector, Pune

(v) Letter dated 10.9.1998 from the Range Forest Officer to the Tahsildar, Haveli

(vi) Letter dated September, 1998 from the Deputy Conservator of Forests to the Collector, Pune.

(vii) Letter dated 11.9.1998 from the Deputy Conservator of Forests to the Collector, Pune.

(viii) Letter dated 17.12.1998 from the Deputy Conservator of Forests to the Collector, Pune

16. Not only this, but the perusal of the communication dated 26th August 1994, addressed by the District Collector, Pune to the Executive Engineer (Estd.), Maharashtra State Electricity Board ("MSEB" for short) would reveal that it is reserved as a "Forest Land". It is to be noted that the MSEB had sought allotment of this land for construction of High-

Tension Sub-Station. While refusing the said request, the Collector, Pune informed the MSEB vide letter dated 26th August 1994 as under:

> "In reference to your above letter please note that the land referred by you is reserved as "Forest Land" as per the Indian Forest Rules, 1897 vide circular No. 24F dt. 1st March, 1879 and amended in 1890. Hence same cannot be allotted to you. The application is therefore filed."

17. It is further relevant to note that the Collector, Pune while forwarding the request of the 'Chavan Family' to the State Government vide communication dated 19th June 1991, referred to the said land as "Government Forest Land". However, noting that the 'Chavan Family' was in cultivation of the land admeasuring 3 Acres and 20 Gunthas, he recommended allotment of the said land to the 'Chavan Family'. He also recommended that the possession of the remaining land be handed over to the Forest Department. In the said letter, the Collector noted thus:

> "S.No.20 is reserved for afforestation. As per the Govt. notification No. AS/36/13//14032 dt 5.01.1934 (Pg 175) the rights for cultivation of the area admeasuring 3 Acres 20 Gunthas out of S.No.20A have been allotted to Shri Chauhan family for which the Forest Dept has given their consent. The Forest Department has requested for the possession of the remaining land i.e. 29 Acres 15 Gunthas since reserved for Forest only."

18. It could thus be seen that the though the Collector recorded that Survey No. 20 was reserved for afforestation, he recommended the allotment of the land admeasuring 3 Acres 20 Gunthas to 'Chavan Family'. While doing so, he recorded "No Objection" of the Forest Department. We will be referring to the said aspect subsequently inasmuch as the said "No Objection given by one of the Forest Officers, was subsequently cancelled by the Forest Authorities.

19. Surprisingly, the Divisional Commissioner vide his communication dated 30th November 1994, addressed to the Secretary, Revenue and Forest Department, noticing the stand taken by the Collector, Pune, recommended the entire land be allotted to the 'Chavan Family'. It is further to be noted that in the said communication, the Divisional Commissioner also specifically recorded that the 'Chavan Family' was in illegal possession of the land after 1969.

20. After the 1980 FC Act came into effect, no Forest Land could have been de-reserved without the permission of the Central Government. It is to be noted that though the reliance is placed by the RRCHS on the Gazette Notification dated 9th March 1944 to contend that the said subject land was de-

reserved, on an enquiry conducted by the Additional Superintendent of Police State CID under the orders of this Court, the said Gazette Notification is found to be fabricated.

21. It would thus be amply clear from the record that the said land was notified as early as in 1879 as Reserved Forest and which reservation continues to be so till date.

b. As to whether the Divisional Commissioner was justified in recommending the allotment of subject land in favour of the 'Chavan Family' and as to whether the State Government was justified in accepting the said recommendation.

22. Having held that the subject land is a reserved Forest Land, the next question that would be required to be considered is as to whether the said land could have been allotted to the 'Chavan Family'.

23. It will be relevant to refer to Section 2 of the 1980 FC Act (as it originally exists, without amendment), which reads thus:

> "**2. Restriction on the de-reservation 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;

(*iii*) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government.

(*iv*) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation].

Explanation.—For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for—

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and Construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

24. It would thus be clear that after the 1980 FC Act was brought into effect, no State Government or any other authority, unless there is prior approval by the Central

Government, could have directed any Reserved Forest or any portion thereof to cease to be under the status of "reserved" or any forest land or any portion thereof to be used for any non-forest purposes. Nor could it have assigned any forest land or any portion thereof, by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization.

25. Reliance is placed by the RRCHS on the judgment of this Court in the case of ***State of Bihar v. Banshi Ram Modi and Others***[7]. The legal opinion given by the Deputy Secretary, Law and Judiciary Department, Government of Maharashtra also relies on the said judgment.

26. No doubt that in the case of ***Banshi Ram Modi*** (supra), this Court held that if an area had already been dug up and mining operations were carried on prior to coming into force of the 1980 FC Act, the State Government, for continuing the said lease for the purposes of mining, shall not need prior approval of the Central Government. It has been held that though it would be necessary to seek prior approval of the Central Government for starting mining operations on a virgin

[7] **(1985) 3 SCC 643 : 1985 INSC 126**

area, it would not be necessary to seek such approval for the purposes of carrying out mining operations in a forest area which is broken up or cleared before the commencement of the 1980 FC Act.

27. We find that even on facts, the said judgment would not be applicable. There is no order permitting the subject land to be used for non-forest purposes by any of the competent authorities. A reliance is sought to be placed on the letter issued by the Tehsildar, Taluka Haveli dated 13th May 1968, thereby informing the 'Chavan Family' about its decision to lease the subject land on "Eksali" basis for the year 1968-69. However, it is to be noted that the said lease was only for a period of one year. It is further to be noted that while accepting the said yearly lease, the 'Chavan Family' has given an undertaking that they will hand over the vacant and peaceful possession on 15.12.1967 (sic) i.e. prior to 1980.

28. In any case, nothing is placed on record to show that the land was permitted to be used by the State for any non-forest purposes prior to 1980. In any event, since the lease deed was valid only for one year, after the 1980 FC Act came into effect, in view of the restrictions imposed in clause (iii) of Section 2 of

the 1980 FC Act, the forest land could not have been assigned either by way of lease or any other mode to any private person unless there was prior approval of the Central Government.

29. In the case of ***Ambica Quarry Works v. State of Gujarat and Others***[8], this Court while distinguishing the judgment in the case of ***Banshi Ram Modi*** (supra) observed thus:

> "**15.** The rules dealt with a situation prior to the coming into operation of 1980 Act. ***The "1980 Act" was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and further deforestation and ecological imbalances should be prevented***. That was the primary purpose *writ large* in the Act of 1980. ***Therefore the concept that power coupled with the duty enjoined upon the respondents to renew the lease stands eroded by the mandate of the legislation as manifest in 1980 Act in the facts and circumstances of these cases. The primary duty was to the community and that duty took precedence, in our opinion, in these cases. The obligation to the society must predominate over the obligation to the individuals***.
>
> *** *** ***
>
> **18.** The aforesaid observations have been set out in detail in order to understand the true ratio of the said decision in the background of the facts of that case. It is true that this Court held that if the permission had been granted before the coming into operation of the 1980 Act and the forest land has been broken up

[8] **(1987) 1 SCC 213 : 1986 INSC 267**

or cleared, clause (*ii*) of Section 2 of 1980 Act would not apply in such a case. But that decision was rendered in the background of the facts of that case. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (*See* Lord Halsbury in *Quinn* v. *Leathem*) [(1901) AC 495] . But in view of the mandate of Article 141 that the ratio of the decision of this Court is a law of the land, Shri Gobind Das submitted that the ratio of a decision must be found out from finding out if the converse was not correct. ***But this Court, however, was cautious in expressing the reasons for the said decision in State of Bihar v. Banshi Ram Modi [(1985) 3 SCC 643]***. This Court observed in that decision that the result of taking the contrary view would be (SCC p. 648, para 10) 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. ***There was an existing lease where mining operation was being carried on and what was due by incorporation of a new term was that while mining operations were being carried on some other minerals were available, he was giving right to collect those. The new lease only permitted utilisation or collection of the said other minerals***.

19. In the instant appeals the situation is entirely different. The appellants are asking for a renewal of the quarry leases. It will lead to further deforestation or at least it will not help reclaiming back the areas where deforestations have taken place. In that view of the matter, in the facts and circumstances of the case, in our opinion, the ratio of the said decision cannot be made applicable to support the appellants' demands in these cases because the facts are entirely different here. ***The primary purpose of the Act***

> ***which must subserve the interpretation in order to implement the Act is to prevent further deforestation. The Central Government has not granted approval. If the State Government is of the opinion that it is not a case where the State Government should seek approval of the Central Government, the State Government cannot apparently seek such approval in a matter in respect of which, in our opinion, it has come to the conclusion that no renewal should be granted***."
>
> [Emphasis supplied]

30. It could thus be seen that this Court in unequivocal terms held that the obligation to society must predominate over the obligation to the individuals. This Court held that in the case of ***Banshi Ram Modi*** (supra), there was an existing lease where mining operations were being carried on and what was due by incorporation of a new term was that while mining operations were being carried on some other minerals were available, he was given right to collect those. This Court observed that, however, in ***Ambica Quarry Works*** (supra), the situation is entirely different. The appellants therein were asking for a renewal of the quarry leases. It would lead to further deforestation or at least it will not help reclaiming back the areas where deforestations have taken place. The Court, therefore, observed thus:

> "**20.** In that view of the matter and the scheme of the Act, in our opinion, the respondents were right and the appellants were wrong. ***All interpretations must subserve and help implementation of the intention of the Act.*** This interpretation, in our opinion, will subserve the predominant purpose of the Act."
>
> [Emphasis supplied]

31. It is thus clear that this Court in unequivocal terms held that taking into consideration the Scheme of the Act, all interpretations which subserve and help implementation of the intention of the Act i.e. the protection of the forests must be accepted.

32. It would further be apposite to note that this Court in the present proceedings had an occasion to consider the judgments in the cases of ***Banshi Ram Modi*** (supra) and ***Ambica Quarry Works*** (supra). In the order dated 12th December 1996, this Court observed thus:

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

include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works* v. *State of Gujarat* [(1987) 1 SCC 213] , *Rural Litigation and Entitlement Kendra* v. *State of U.P.* [1989 Supp (1) SCC 504] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority* [WP (C) No 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in *State of Bihar* v. *Banshi Ram Modi* [(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.

5. 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 plywood 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."
>
> [Emphasis supplied]

33. A perusal of the aforesaid observation of this Court in the present proceedings would reveal that this Court after considering the judgment in ***Banshi Ram Modi*** (supra) has in unequivocal terms held that 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 be ceased immediately. It can thus clearly be seen that this Court has in unequivocal terms overruled what was held in ***Banshi Ram Modi*** (supra).

34. It is thus amply clear that for permitting any non-forest activity within the area of any "forest", it was necessary to have prior approval of the Central Government. It has

unequivocally been directed that all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. This Court specifically directed that running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and they are not permissible without prior approval of the Central Government.

35. It is further to be noted that this court in the case of ***Nature Lovers Movement v. State of Kerala***[9] has observed thus:

> "**52.** In the result, the appeal is disposed of in the following terms:
>
> (*1*) .....
>
> (*2*) ***After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for dereservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or assign any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organisation not owned, managed or controlled by the Government except after obtaining prior approval of the***

[9] **(2009) 5 SCC 373 : 2009 INSC 371**

Central Government.

(*3*) Conclusion D recorded by the High Court in para 103 of the impugned judgment is legally unsustainable and is set aside.

(*4*) As and when the State Government decides to assign 10,000 ha of forest land to unauthorised occupants/encroachers, it shall do so only after obtaining prior approval of the Central Government and the latter shall take appropriate decision keeping in view the object of the 1980 Act and the guidelines framed for regularisation of encroachments on forest land."

[Emphasis supplied]

36. The legal position, therefore, has been clarified by this Court in the case of ***Nature Lovers Movement*** (supra) after considering the earlier judgments reiterating the position that neither the State Government nor any other authority can make an order or issue a direction for de-reservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose. Neither is it permissible to assign any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organization not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government.

37. It is further to be noted that in the present case, the opinion given by the Deputy Secretary to the Government, Law and Judiciary Department was on 27th July 1998. The order approving allotment of land in favour of the 'Chavan Family' was issued by the Government of Maharashtra on 4th August 1998 and the order of allotment by the Collector was passed on 28th August 1998. It is thus clear that all these events have taken place well after the directions were issued by this Court on 12th December 1996 in the present proceedings.

38. It is thus clear that the Deputy Secretary to the Government of Maharashtra had totally erred in relying on the judgment of this Court in the case of ***Banshi Ram Modi*** (supra) by ignoring the observations made by this Court in the case of ***Ambica Quarry Works*** (supra) and specific directions issued by this Court in the present proceedings. For that very said reason, the decision of the State Government of allotting the land and implementing the same by the Collector is not at all sustainable in law. In that view of the matter, we have no hesitation in holding that the allotment of the land in favour of the 'Chavan Family' vide orders dated 4th August 1998 and 28th August 1998 is not sustainable in law.

c. As to whether the doctrine of desuetude would be applicable to the facts of the present case.

39. An argument is sought to be raised on behalf of the RRCHS that the doctrine of *desuetude* would be applicable to the facts of the present case. Let us test the correctness of the said argument.

40. Reliance in this respect is sought to be placed on behalf of the RRCHS on the judgment of this Court in the case of ***Bharat Forge Co. Ltd.*** (supra). In the said case, the liability of the respondents therein to pay octroi to the Municipal Corporation was under consideration. It was sought to be argued that since the 1918 Notifications had not been implemented, they stood repealed '*quasily*' by the time new Octroi Rules came to be framed in 1963 and, in fact, they were applied to realize octroi from the respondents. In this background, this Court observed thus:

> "**34.** Though in India the doctrine of desuetude does not appear to have been used so far to hold that any statute has stood repealed because of this process, we find no objection in principle to apply this doctrine to our statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the "dead letter". We would think it would advance the cause of justice to accept the application of doctrine of desuetude in our country

> also. Our soil is ready to accept this principle; indeed, there is need for its implantation, because persons residing in *free* India, who have assured fundamental rights including what has been stated in Article 21, must be protected from their being, say, prosecuted and punished for violation of a law which has become "dead letter". A new path is, therefore, required to be laid and trodden.
>
> **35.** In written submissions filed on behalf of respondents, it has been stated that the theory of desuetude can have no application to the facts of the present case, since the challenge by the respondents is to the levy and calculation under the 1963 Schedule, and not to the rates enforced since 1918. This submission has been characterised as "most important". As to this we would observe that if Notification of 1818 were to prevail despite 1918 Notifications, the fact that some changes were made in the Schedule in 1963 has no legal bearing on the question under examination. The theory of desuetude has been pressed into service by the appellant only to take care of relevant 1918 Notifications. If those notifications can be said to stand eclipsed, the fact that changes were made in the rates etc. in 1963 cannot stand in the way of application of the theory of desuetude."

41. It could thus be seen that the Court observed that the doctrine of *desuetude* would apply to our statutes as well for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the "dead letter". It has been observed that it would advance the cause of justice to accept the application of doctrine of

desuetude in our country as well. The Court observed that in view of the fundamental rights enshrined in Article 21 of the Constitution of India, a citizen must be protected from being prosecuted and punished for violation of a law which has become "dead letter".

42. However, it is clear from the aforesaid observations that for applicability of the doctrine of *desuetude*, the statute must not only be required to be in disuse for long duration but instead a contrary practice must also be prevalent.

43. We fail to understand as to how the said doctrine of *desuetude* would be applicable in the facts of the present case.

44. It is sought to be contended on behalf of the RRCHS that though the subject land was shown as Reserved Forest Land, as far back as in 1879, it was not used as a Forest Land for a long period and therefore it ceased to be Reserved Forest Land. We fail to appreciate such a submission. The subject land has continuously been recorded as 'Reserved Forest' in the Forest Records. Not only that, as we have already reproduced hereinabove, the Forest Authorities through a number of communications had requested the Revenue Authorities to correct the revenue entries and transfer the land to the Forest

Department. In any case, this Court in the case of ***Monnet Ispat and Energy Limited*** (supra) has correctly laid down the legal position as under:

> "**201.** From the above, the essentials of the doctrine of desuetude may be summarised as follows:
>
> (*i*) The doctrine of desuetude denotes a principle of quasi-repeal but this doctrine is ordinarily seen with disfavour.
>
> (*ii*) Although the doctrine of desuetude has been made applicable in India on few occasions ***but for its applicability, two factors, namely, (i) that the statute or legislation has not been in operation for a very considerable period, and (ii) the contrary practice has been followed over a period of time must be clearly satisfied. Both ingredients are essential and want of any one of them would not attract the doctrine of desuetude***. In other words, a mere neglect of a statute or legislation over a period of time is not sufficient but it must be firmly established that not only the statute or legislation was completely neglected but also the practice contrary to such statute or legislation has been followed for a considerably long period."
>
> [Emphasis supplied]

45. It could thus be seen that this Court has held that the doctrine of *desuetude* is ordinarily seen with disfavour. It has also been held that although this doctrine has been made applicable in India on a few occasions, however, for its applicability, two factors are necessary, namely, (*i*) that the

statute or legislation has not been in operation for a very considerable period, and (*ii*) the contrary practice has been followed over a period of time. It has been held that, not one but, both the conditions must be available to attract the applicability of the said doctrine of *desuetude*.

46. In the present case, the legislative history would clearly show that, right from 1878, when the 1878 Act was enacted, under Section 34 of the said Act, the law with regard to protection and conservation of forest has been consistently evolving more and more in favour of protection of forests.

47. We do not find any substance in the argument that the Notification dated 1st March 1879 issued under Section 34 of the 1878 Act has been put to disuse for a long time. In any case, nothing has been brought on record to show that a practice contrary to the provisions of the said Act was being applied. In that view of the matter, such an argument has to be heard only to be rejected.

d. As to whether the RRCHS could be said to be a bona fide purchaser of the subject land.

48. It is sought to be urged on behalf of the RRCHS that they are the *bona fide* purchaser of the subject land in question. It

is submitted on behalf of the RRCHS that the land in question was reflected as revenue land. It is submitted that the Final Regional Plan of Pune Region, which has statutory force, had shown the subject land as municipal land. It is further submitted that even prior to that in the Pune Regional Plan implemented on 17th May 1976, the land in question was included in the agricultural zone. As such, by no stretch of imagination, the RRCHS could have known that the subject land was Forest Land and not Revenue Land. It is further stated that even the revenue record pertaining to the subject land had shown the possession of the 'Chavan Family' over the said land. It is, therefore, submitted that the RRCHS, which is a *bona fide* purchaser of the land in question, could not be faulted with and penalized for no fault of theirs.

49. As already stated herein above, the subject land was allotted to the 'Chavan Family' by the Tehsildar, Haveli on 13th May 1968 on *Eksali* (yearly) lease for the year 1968-69. Not only that, the 'Chavan Family' had given an undertaking to the Mamlatdar, Haveli to surrender the said land prior to completion of one year. The 'Chavan Family' had further given an undertaking that the said land would not be put to any

other use except for the agricultural purposes. It is further pertinent to note that after the grant of lease for one year, there has been no renewal of the said lease, although the names of the 'Chavan Family' do appear in the 7/12 extracts of revenue records.

50. This Court in the case of ***Suraj Bhan and others v. Financial Commissioner and Others***[10] has held as follows:

> "**9.** ..... It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or *jamabandi* have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide *Jattu Ram* v. *Hakam Singh* [(1993) 4 SCC 403 : AIR 1994 SC 1653]). As already noted earlier, civil proceedings in regard to genuineness of will are pending with the High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition."

51. Recently, this Court in the case of ***P. Kishor Kumar v. Vittal K. Patkar***[11] has also observed thus:

> "**13.** .... mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question."

[10] **(2007) 6 SCC 186 : 2007 INSC 424**
[11] **2023 SCC OnLine SC 1483**

52. It is well-settled law that the entries in the revenue record do not confer a title to the property.

53. It would further appear from the record that after the lease was not renewed in 1969, for a period of about 20 years, the members of the 'Chavan Family' kept silent. It appears that only in the year 1988, they started moving the authorities for allotment of land in lieu of compensation. However, much prior to the actual allotment of land in their favour, they had already entered into transactions with the Builders. A perusal of the record would reveal that one Mr. Rajesh Shah had filed a civil suit, being Civil Suit No. 1023 of 1998 for permanent injunction against Mr. Raghunath Shripati Chavan and others. In the said suit, Mr. Aniruddha P. Deshpande, Chief Promoter of the RRCHS, was also made a party respondent. The other members of the 'Chavan Family' were also made respondents. In the said suit, Mr. Rajesh Shah had claimed that he had purchased 75% share of the subject land from some of the co-owners of the said land. The said co-owners had executed the Development Agreement dated 16th February 1995 and had granted development rights as well as executed

Power of Attorney to the plaintiff along with one Mr. Yogesh Kariya. In the said proceedings, Mr. Aniruddha P. Deshpande, Chief Promoter of the RRCHS had filed an affidavit dated 28th August 1998, wherein it was stated that the owners/holders of the said land had executed the Development Agreement dated 25th July 1992 and thereafter the Supplementary Agreement dated 23rd June 1995 in his favour and that the possession of the said property to the extent of their share had been delivered to him. He had also placed on record the copies of the General Power of Attorney dated 22nd June 1995 and 12th February 1996 executed by one Mr. Kesu Hari Chavan and others in his favour.

54. It will be relevant to reproduce Para 2 of the Affidavit dated 28th August 1998 filed by Mr. Aniruddha P. Deshpande, Chief Promoter, RRCHS in Civil Suit No. 1023 of 1998, which reads thus:

> "2. It is submitted that the owners/holders of the suit property Shri Abu G. Chavan, Sarubai S. Chavan, Pandurang Bhau Chavan, Kesu Hari Chavan, Dattatraya R. Chavan, Narayan Nana Chavan, Rakhmabai Vithal Chavan and others have executed Development agreement 25/7/92 and thereafter supplementary agreement dated 23/6/95 in favour of this applicant. The said owners have also delivered the possession of the suit property to the extent of their share to this applicant. As such this

applicant is in possession of the suit property to the extent of the undivided share of the above owners. In view of the said fact this applicant is necessary party to the suit. It is submitted that if any order is passed in the suit the same may seriously affect the right of this applicant and the applicant may suffer irreparable loss and hardship. The orders passed in the suit may also lead to multiplicity of litigation as such it is necessary that this third party may be added as the Defendant to the suit. If this applicant is added as the necessary party to the suit no hardship or injustice will be caused either to the plaintiff or the Defendant, on the contrary this applicant may suffer irreparable loss and hardship, hence in the interest of justice this applicant may please be added as the necessary party to the suit. The details of this applicant is as under:

SHRI ANIRUDDH P. DESHPANDE
AGE : 37 YEARS, OCC : BUSINESS
RESIDING AT : 66/2, APEKSHA,
OPPOSITE LAW COLLEGE,
PUNE 411 004."

55. It is further to be noted that another suit being Civil Suit No.1364 of 1998 was filed by one Mr. Raju Shivaji Bhonsale and another challenging the allotment of the subject land to the 'Chavan Family'. In the said suit also, Mr. Aniruddha P. Deshpande, Chief Promoter of the RRCHS was made a party respondent. Mr. Aniruddha P. Deshpande had also filed an affidavit dated 14th February 2005 in the said suit *inter alia* stating therein that during 1995 Mr. Chavan and others had granted the Development Rights in his favour.

56. It is further to be noted that the members of the 'Chavan Family' had entered into Development Agreement with Mr. Aniruddha P. Deshpande on 18th August 1998.

57. It is further to be noted that an order approving the allotment of the land in favour of the 'Chavan Family' was passed by the Government vide order dated 4th August 1998, whereas the actual allotment of land by the Collector is by order dated 28th August 1998.

58. It is relevant to note that in the civil suit filed by Mr. Rajesh Shah, a Compromise *Pursis* dated 29th August 1998 was filed by the members of the 'Chavan Family', Mr. Aniruddha P. Deshpande and Mr. Rajesh Shah, which reads thus:

> "i) the members of the Chavan family (allottees of the said land) and Mr. Aniruddha P. Deshpande (Chief Promoter of the Richie Rich Co-operative Housing Society) admit, agree and confirm that (a) the Development Agreement dated 16.2.1995 pertaining to the said land has been executed by the three members of the Chavan family in favour of Mr. Rajesh Shah and Mr. Yogesh Kariya, and (b) the possession of the said property was delivered to Mr. Rajesh Shah and Yogesh Shah to the extent of shares of owners executing the agreement.
>
> ii) the Agreement dated 25.7.1992 and the Supplementary Agreement dated 23.6.1995 and Agreement dated 16.2.1995 executed by

the other owners in favour of Mr. Aniruddha P. Deshpande is also valid and subsisting and that the possession of the said property has been given to him to the extent of shares of the owners executing the said agreement.

iii) the said land is exclusively in the joint possession of Mr. Rajesh Shah, Mr. Yogesh Kariya, Raghunath Chavan and Aniruddha P. Deshpande.

iv) an Agreement has been reached between Mr. Rajesh Shah and Aniruddha P. Deshpande that out of the said land Mr. Shah and Mr. Kariya shall be entitled to an area of 8 acres and Mr. Aniruddha P. Deshpande shall be entitled to the balance area. They shall be deemed to be in possession of the respective area; and

v) Mr. Raghunath Chavan and other 19 members of Chavan family have agreed to sell/grant development rights for the respective area to Mr. Rajesh Chavan and Mr. Yogesh Kariya and Mr. Aniruddha P. Deshpande."

59. On the very same date i.e., 29th August 1998, after recording the Compromise *Pursis*, the said civil suit being Civil Suit No. 1023 of 1998 came to be disposed of.

60. We ask a question to ourselves as to whether the short span within which the decision was taken by the Government to allot the land in favour of the 'Chavan Family', the actual allotment of the land to the 'Chavan Family' by the Collector and the disposal of the suit in terms of the compromise on the very next day, is merely a coincidence.

61. It is further to be noted that the allotment order dated 28th August 1998, specifically prohibited the 'Chavan Family' in view of conditions (2) and (4), reproduced hereinabove, from mortgaging, donating, selling, partitioning or exchanging in any other manner, or allotting the said land on lease to any other person without the prior permission of the District Collector. The allotment order further mandated the 'Chavan Family' to bring the said land under cultivation within a period of two years from the date of the allotment. It further prohibited the said land from being used for any other purpose than agricultural purpose.

62. In the light of these glaring facts, can it be said that the RRCHS is a *bona fide* purchaser? The records amply speak for themselves.

63. It is amply clear that though the *Eksali* (yearly) lease expired in 1969, the members of the 'Chavan Family' were silent for a period of almost 20 years. Things started moving only in 1988. During the said period, much before the allotment could be done, the members of the 'Chavan Family' had already started negotiating the deals with Mr. Aniruddha P. Deshpande, the Chief Promoter of RRCHS and Mr. Rajesh

Shah. The files were moving at different levels from 1991 to 1998, culminating in the final allotment in the year 1998. In the meantime, all the Development Rights in the land already stood transferred either to Mr. Aniruddha P. Deshpande, the Chief Promoter of the RRCHS or to Mr. Rajesh Shah. For the said purpose, not only had some of the members of the 'Chavan Family' entered into a Development Agreement, but they had also executed Power of Attorney in favour of said Mr. Aniruddha P. Deshpande surrendering their entire rights in his favour.

64. In that view of the matter, we find no substance in the argument that the RRCHS was a *bona fide* purchaser of the subject land. The facts point out that the 'Chavan Family' was only set up as a front for the benefit of the Developers. The fact that the agricultural land of the 'Chavan Family' was acquired, was being misused by the Developers as a pretext for grabbing the valuable piece of Forest Land for the purposes of commercial development. For doing so, even the status of a person who belongs to backward class was being misused.

e. As to whether the RRCHS would be entitled to allotment of alternate piece of land in view of the order passed by this Court in In Re: "Construction of Multi Storeyed Buildings in Forest Land Maharashtra".

65. An alternate submission made on behalf of the RRCHS is that since they are the *bona fide* purchaser of the subject land from the members of the 'Chavan Family', they would be entitled to allotment of an alternate piece of land as has been done by this Court in I.A. No.2771 of 2009.

66. The facts in the present case and the facts in I.A. No.2771 of 2009 are totally different. In the said case (i.e. I.A. No.2771 of 2009), the State had illegally taken possession of the land belonging to the predecessor-in-title of the applicants therein. Not only that, but the said land was given to the Armament Research Development Establishment Institute ("ARDEI" for short), which was a unit of Defence Department of the Union of India. There was no acquisition proceeding. The applicants therein fought right from the Trial Court to this Court and succeeded in getting a decree for possession of the land. When they put the decree in execution, the ARDEI opposed the same contending therein that an Armament Defence establishment was constructed thereon.

67. Faced with this situation and realizing its mistake, the State Government allotted another piece of land in lieu of the land which was already given in possession of the ARDEI. However, the record subsequently revealed that the land which was allotted to the applicants therein was notified as a Forest Land.

68. The Court noted the following special circumstances in the said case:

(i) "That the applicants had succeeded upto this Court and as such, they cannot be denied the benefits of the decree passed in their favour;

(ii) That the action of the State Government in encroaching upon the land of a citizen was itself illegal;

(iii) The State Government ought to have taken due precautions before allotting an alternate piece of land to the applicants;

(iv) That the land which was notified as a Forest Land could not have been allotted;

(v) That the State ought to have allotted a land, which had a clear title and also had a marketable value; and

(vi) That after the proceedings had reached finality in favour of the petitioners/applicants, the matter was lingering in the Court for almost 15 years."

69. In the aforesaid factual scenario, this Court passed the order dated 23rd July 2024, which is as under:

> "8. We, therefore, direct the State Government to come with a clear stand:
>
> i. As to whether another piece of equivalent land will be offered to the petitioner(s)/applicant(s); or
>
> ii. As to whether adequate compensation would be paid to the petitioner(s)/applicant(s); or
>
> iii. As to whether the State Government proposes to move the Central Government for denotification of the said land as forest land."

70. Thereafter, the Additional Chief Secretary, Revenue and Forest Department, Mantralaya, Mumbai tendered an undertaking before this Court, agreeing to allot an alternate piece of land in favour of the applicants therein. Accepting the said undertaking, this Court passed the order dated 9th September, 2024, which is as under:

> "7. We accept the undertaking and take it on record. However, in addition, we direct that the Collector, Pune shall personally ensure that the alternate land admeasuring 24 acres 38 guntas out of Survey No.7 situated at Mouje Yewalewadi, Tq. Haveli, District Pune would be measured and demarcated and thereafter peaceful and vacant possession of the said land would be handed over to the applicants/petitioners.
>
> 8. It is needless to state that if any encroachments are there on the said land, the same shall be removed prior to the said land being handed over to the applicants/petitioners.

> 9. Insofar as the modification to be issued under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 for changing the land use in question from Private/Semi-Private to Residential is concerned, we direct that the said procedure shall be completed within a period of three months from today.
>
> 10. It is further directed that all the formalities for conveying the title of the said land in favour of the applicants/petitioners shall be completed within a period of six weeks from today."

71. That is not the case here. The RRCHS knowing very well that the land was a Forest Land had entered into transactions with the members of the 'Chavan Family' much prior to the land even being allotted in their favour. The transactions between the RRCHS and the members of the 'Chavan Family' were totally illegal and contrary to the conditions on which the land was allotted to the 'Chavan Family'. As per the conditions of allotment, the land or any part thereof could not have been transferred by the 'Chavan Family' to anyone without the prior permission of the District Collector. The land was required to be brought under cultivation within a period of two years from the date of the allotment and that the land or any part thereof was not to be used for any other purpose than the agricultural purpose.

72. As already discussed hereinabove, the RRCHS through Mr. Aniruddha P. Deshpande had already entered into transactions with the members of the 'Chavan Family' much before the land was allotted in their favour. The members of the 'Chavan Family' had given the developmental rights as well as executed Power of Attorney in favour of said Mr. Aniruddha P. Deshpande even prior to the allotment of land in their favour. As discussed hereinabove, immediately on the next day on which the land was allotted in favour of the 'Chavan Family', the suit with regard to the subject property was compromised between Mr. Rajesh Shah, plaintiff and Mr. Aniruddha P. Deshpande. It is thus clear that the case of the RRCHS, in no way, bears any resemblance to the case in I.A.No. 2771 of 2009.

73. The RRCHS through Mr. Aniruddha P. Deshpande had, with open eyes, entered into illegal transactions with the members of the 'Chavan Family'. If a direction, as sought by the applicant-RRCHS is issued, it will amount to granting a premium to the RRCHS for the illegalities committed by them.

74. In that view of the matter, we do not find any merit in the said submission.

f. As to whether the doctrine of public trust would be applicable in the facts and circumstances of the present case.

75. That leaves us with the issue with regard to the doctrine of public trust.

76. Recently, this Court in the case of ***In Re: T.N. Godavarman Thirumulpad v. Union of India and others***[12] had an occasion to consider the importance of doctrine of public trust in the environmental matters. It will be apposite to refer to the following observations of this Court:

> "**151.** The importance of the 'Public Trust' doctrine in environmental and ecological matters has been explained by this Court in the case of *M.C. Mehta* v. *Kamal Nath*. This Court has elaborately referred to various articles and the judgments on the issue to come to a conclusion that the 'public trust' doctrine is a part of the law of the land in the following paragraphs:
>
> > **"23.** 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, p. 311 is in the following words:

[12] **(2025) 2 SCC 641 : 2024 INSC 178**

> "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. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. 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.
>
> 'Human 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."

24. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern 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 nullious*) or by every one in common (*res communious*). 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 p. 473, 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."

25.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 the property must be maintained for particular types of uses."

26. The American law on the subject is primarily based on the decision of the United States Supreme Court in *Illinois Central Railroad Co.* v. *People of the State of Illinois*, [146 US 387 (1892) : 36 L.Ed. 1018]. 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 of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. 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 therein free from obstruction or interference of private parties. The abdication 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 Sax the Court in *Illinois Central* [146 US 387 : 36 L.Ed. 1018 (1892)] "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".

27. In *Gould* v. *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 1886 a group of citizens interested in preserving Mount Greylock as an 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 creating 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 the Greylock Reservation Commission and the Tramway Authority. The plaintiffs brought the suit as beneficiaries of the public trust. The Court held both the lease and the management agreement invalid on the ground that they were in excess of 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 a certain tract of land.... *Gould*, like *Illinois Central*, was concerned 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 has 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."

28.In *Sacco* v. *Development of Public Works*, [532 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."

29. In *Robbins* v. *Deptt. of Public Works*, [244 NE 2d 577], the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, "wetlands of considerable natural beauty … often used for nature study and recreation" for highway use.

30. Professor Sax in the article (Michigan Law Review) refers to *Priewev* v. *Wisconsin State Land and Improvement Co.*, [93 Wis 534 (1896)], *Crawford County Lever and Drainage Distt. No. 1*, [182 Wis 404], *City of Milwaukee* v. *State*, [193 Wis 423], *State* v. *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 to work out a reasonable meaning for the public trust doctrine than have the courts of any other State".

31. 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 pro blems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which

> diffused 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 of wetland filling on private lands in a State where governmental permits are required."

32. We may at this stage refer to the judgment of the Supreme Court of California in *National Audubon Society* v. *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 supports 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 tura (*sic*) 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 Mono Lake were imperilled. The plaintiffs 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 State's 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*, [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 favouring one mode of utilization over another. There is a growing public recognition that one of the 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 favourably affect the scenery and climate of the area.'

Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavour 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*, [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 L. Rev. 233, 256-57/; 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 NW 2d 457 (ND 1976)] at pp. 462-463, 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.

33. 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*, [33 Cal 3d 419] clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in *Mono Lake case*, [33 Cal 3d 419] to the effect that the protection of ecological values is among the purposes 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.* v. *Mississippi*, [108 S.Ct. 791 (1988)] the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case*, [108 S.Ct. 791 (1988)] 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 ecosystems operating in our natural resources.

34. 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 seashore, 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.

35. 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."

152. This Court in unequivocal terms has held that 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.

153. The law with regard to the importance of the 'public trust' doctrine in ecological/environmental matters has further been evolved and expanded by this Court in subsequent judgments. In the case of *Association for Environment Protection* v. *State of Kerala*[11], this Court has referred to some of the judgments which followed the law laid down in the case of *Kamal Nath* (supra), which are as under:

> **"6.** In *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*, [(1999) 6 SCC 464], the Court applied the public trust doctrine for upholding the order of the Allahabad High Court which had quashed the decision of Lucknow Nagar Mahapalika permitting appellant M.I. Builders (P) Ltd. to construct an underground shopping complex in Jhandewala Park, Aminabad Market, Lucknow, and directed demolition of the construction made on the park land. The High Court had noted that Lucknow Nagar Mahapalika had entered into an agreement with the appellant for construction of shopping complex and given it full freedom to lease out the shops and also to sign agreement on its behalf and held that this was impermissible. On appeal by the builders, this Court held that the terms of agreement were unreasonable, unfair and atrocious. The Court then invoked the public trust doctrine and held that being a trustee of the park on behalf of the public, the Nagar Mahapalika could not have transferred the same to the private builder and thereby deprived the residents of the area of the quality of life to which they were entitled under the Constitution and municipal laws.
>
> **7.** In *Intellectuals Forum* v. *State of A.P.*, [(2006) 3 SCC 549], this Court again invoked the public trust doctrine in a

matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati Town, referred to some judicial precedents including *M.C. Mehta* v. *Kamal Nath* [*M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388], *M.I. Builders (P) Ltd.*, [(1999) 6 SCC 464], *National Audubon Society* [*National Audubon Society* v. *Superior Court*, 658 P 2d 709 : 33 Cal 3d 419 (1983)] and observed : (*Intellectuals Forum case*, [(2006) 3 SCC 549], SCC p. 575, para 76)

> "*76.* ... This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly *prohibit* the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources...."
>
> (emphasis in original)

8. In *Fomento Resorts and Hotels Ltd.* v. *Minguel Martins*, [(2009) 3 SCC 571 : (2009) 1 SCC (Civ) 877], this Court

was called upon to consider whether the appellant was entitled to block the passage to the beach by erecting a fence in the garb of protecting its property. After noticing the judgments to which reference has been made hereinabove, the Court held : (SCC pp. 614-15 & 619, paras 53-55 & 65)

> "*53.* The public trust doctrine enjoin s 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. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.
>
> *54.* The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and

other public assets. Professor Joseph L. Sax in his classic article, 'The Public Trust Doctrine in Natural Resources Law : Effective Judicial Intervention' (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including downslope lands, waters and resources.

***

65. We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These

> constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems."
>
> **154.** The importance of the doctrine of 'public trust' has further been emphasized in the case of *Tata Housing Development Company Limited* v. *Aalok Jagga (2020) 15 SCC 784* to which one of us (B.R. Gavai, J.) was a party."

77. In the present case, it appears that the then Minister for Revenue and the then Divisional Commissioner had totally given a go-bye to the doctrine of public trust. The facts appearing on the record are glaring.

78. As already discussed hereinabove, as per the order of the Tehsildar, Haveli, the land was allotted to the 'Chavan Family' on *Eksali* (yearly) lease and as per the undertaking of the 'Chavan Family' the possession of the land was to be returned on the expiry of the one year and there has been no further renewal. It further appears that thereafter the members of the 'Chavan Family' were in deep slumber.

79. From the records, it appears that one Mr. R.S. Chauhan, a retired Police Inspector, residing in Pune and others, for the first time, started agitating their rights on 4th August 1988. They had addressed communications dated 4th August 1988, 30th August 1988 and 27th December 1990 for allotment of subject land on permanent basis for cultivation in lieu of their land at Survey No. 37, acquired for Kondhwa Leprosy Hospital.

80. It appears that thereafter for the first time the Collector, Pune on 19th June 1991 recommended the permanent allotment of the subject land to the 'Chavan Family' only insofar as 3 Acres and 20 Gunthas are concerned. The Collector, Pune specifically observed that the 'Chavan Family' had the cultivation rights from 1969 only on 3 Acres and 20 Gunthas, whereas the rest of the land was reserved for village animal feeding. The Collector, Pune, therefore, recommended allotment of only 3 Acres and 20 Gunthas to the 'Chavan Family' and also recommended that possession of rest of the land should be handed over to the Forest Department.

81. It is to be noted that the office of the Collector, Pune on 26th August 1994, rejected the request of the Executive Engineer, MSEB for establishment of High-Tension Sub-

Station on the ground that the land in question was reserved as "Forest Land".

82. The Divisional Commissioner in his letter dated 30th November 1994 addressed to the Secretary, Revenue and Forest Department, Mantralaya noted that the Collector, Pune had opined that the 'Chavan Family' was entitled only to 3 Acres and 20 Gunthas. He also recorded the objection of the Forest Department to the effect that the Forest Department had asked for possession of the subject land for the purposes of afforestation.

83. In spite of noticing all of these facts, the Divisional Commissioner recommended that the entire subject land of 11 Hectare 89 Are be granted to the 'Chavan Family'. Thereafter the matter remained pending at the level of the State Government.

84. The then Minister for Revenue considered the proposal and came to a conclusion that the provisions of the 1980 FC Act were not applicable to the present case. However, he decided to seek the opinion of the Law and Judiciary Department of the Government of Maharashtra. The Deputy Secretary to Government, Law and Judiciary Department on

27th July 1998, relying on the judgment of this Court in the case of ***Banshi Ram Modi*** (supra) opined that the permission of the Government of India is not necessary. While doing so, he specifically ignored the specific judgment of this Court in the case of ***Ambica Quarry Works*** (supra) and the direction of this Court dated 12th December 1996 in the present proceedings.

85. Almost within a week thereafter, i.e. on 4th August 1998, the Government of Maharashtra issued an order allotting the land in favour of the 'Chavan Family'. A corrigendum thereto, vide order dated 13th August 1998, specifically provided that the allotment of land was specifically for "Agricultural purpose". The Collector, Pune thereafter within a short span, i.e. on 28th August 1998, allotted the subject land in favour of the 'Chavan Family'.

86. The alarming speed with which the events took place from July to August 1998 speaks volumes.

87. As already discussed hereinabove, though the 'Chavan Family' had already entered into transactions with Mr. Aniruddha P. Deshpande, the Chief Promoter of the RRCHS, they transferred the land in favour of RRCHS on 19th

December 1998. This is again done in breach of the allotment order of 28th August 1998. The Divisional Commissioner thereafter vide order dated 30th October 1999, permitted the sale of the subject land to the RRCHS on payment of 75% of the price fixed by the Collector, Assistant Director, Town Planning Department, Pune.

88. It is to be noted that though the powers for grant of permission are with the Collector, it is the Divisional Commissioner who exercised the said powers for reasons best known to him. Thereafter the District Collector granted permission for use of the subject land for Non-Agricultural purposes on 8th July 2005.

89. It is to be noted that all this has been done in the teeth of various communications of the Forest Department since 1991 requesting the Revenue Department to transfer the land to the Forest Department. It was also brought to the notice of the Revenue Authorities by the Forest Department that a plantation had already been carried out on the subject land in the year 1995-96.

90. In the light of these glaring facts, we have no hesitation in holding that the then Minister for Revenue, Government of

Maharashtra and the then Divisional Commissioner, Pune have acted totally in breach of public trust to illegally cause gain to private individuals at the cost of sacrificing precious Forest Land.

91. In the conclusion, we have no hesitation to hold that the allotment of the subject land to the 'Chavan Family' was in blatant disregard to the provisions of the law inasmuch as it was violative of Section 2 of the 1980 FC Act as well as the directions issued by this Court from time to time. We also hold that the allotment of the subject land was made, ignoring the communications of the Forest Department which had insisted that the said land could not be allotted inasmuch as, the same was classified as a Forest Land. We also have no hesitation to hold that the then Minister for Revenue and the then Divisional Commissioner, Pune have given a total go-bye to the doctrine of public trust inasmuch as, valuable forest land was allotted to the 'Chavan Family' *de hors* the provisions of the law.

92. While hearing this matter, another glaring issue has come to the notice of the Court. It has been noticed that a vast stretch of the land which is notified as 'Forest Land' is still in

possession of the Revenue Department. Such a situation creates many complexities as is evident in the present matter. The Revenue Department, despite resistance from the Forest Department, allotted the land to private individuals/institutions for non-forestry purposes. This, in turn, reduced the vital green cover. We, therefore, find that it is necessary that a direction needs to be issued to all the State Government and the Union Territories to hand over the possession of the lands which are recorded as 'Forest Land' and which are in possession of the Revenue Department to the Forest Department.

93. The report of the CEC would also reveal that there is material to show that many of the Forest Lands have been allotted to private individuals/institutions for non-forestry purposes. Any such allotment after 12th December 1996, i.e., the date on which the directions were given by this Court in the present proceedings, would not be sustainable in law.

94. It would, therefore, be imperative that wherever it is possible to take back the possession of such land, the State/Union Territory should do so and hand over the possession to the Forest Department for forestry purposes.

However, if on account of such lands already being converted for non-forest activities, it is found that taking back the possession of the land would not be in the larger public interest, then the States/Union Territories should recover the cost of the land from such individuals/institutions and use the said amount for the purpose of afforestation, restoration and conservation.

VI. CONCLUSION

95. We, therefore, dispose of the Interlocutory Applications and the Writ Petition in the following terms:

(i) We hold that the allotment of 11.89 ha of Reserve Forest land in Survey No.21 (old Survey No.20A) Kondhwa Budruk in District Pune for agriculture purposes on 28th August 1998 and subsequent permission given for its sale in favour of RRCHS on 30th October 1999 was totally illegal;

(ii) We further hold that Environmental Clearance granted by the MoEF on 3rd July 2007 to RRCHS is illegal and is accordingly quashed and set aside;

(iii) Since the State of Maharashtra has recalled the communication dated 4th August 1998 approving the allotment of the subject land to the 'Chavan Family', we uphold the same;

(iv) We direct that the possession of the subject land, which is reserved as a Forest Land, but is in possession of the Revenue Department, should be handed over to the Forest Department within a period of three months from today;

(v) We further direct the Chief Secretaries of all the States and the Administrators of all the Union Territories to constitute Special Investigation Teams for the purpose of examining as to whether any of the reserved Forest Land in the possession of the Revenue Department has been allotted to any private individuals/institutions for any purpose other than the forestry purpose;

(vi) The State Governments and the Union Territories are also directed to take steps to

take back the possession of the land from the persons/institutions in possession of such lands and handover the same to the Forest Department. In case, it is found that taking back the possession of the land would not be in the larger public interest, the State Governments/Union Territories should recover the cost of the said land from the persons/institutions to whom they were allotted and use the said amount for the purpose of development of forests; and

(vii) We further direct the Chief Secretaries of all the States and the Administrators of all the Union Territories to constitute Special Teams to ensure that all such transfers take place within a period of one year from today. Needless to state that hereinafter such land should be used only for the purpose of afforestation.

96. Before we part with this judgment, we place on record our deep appreciation for Shri K. Parameshwar, learned Senior Counsel, ably assisted by Mr. M.V. Mukunda, Ms. Kanti, Ms. Raji Gururaj and Mr. Shreenivas Patil, learned counsel, for rendering valuable assistance to this Court as Amicus Curiae. We also place on record our appreciation for the efforts put in by Dr. Abhishek Manu Singhvi, Shri Shekhar Naphade and Shri Aniruddha Joshi, learned Senior Counsel appearing for the parties.

.....CJI
(B.R. GAVAI)

.....J
(AUGUSTINE GEORGE MASIH)

.....J
(K. VINOD CHANDRAN)

NEW DELHI;
MAY 15, 2025.