

Haryana Forest Department
Office of Conservator of Forest, South Circle,
Forest Complex , Near Court, Gurugram, Tel. 0124-2320981
Email: cf.gurgaon@gmail.com

No.: 450

Dated: 04/05/2022

To,

Registrar General,
National Green Tribunal,
New Delhi.

Sub.: In the matter of Sonya Ghosh Vs. State of Haryana & Ors. and Haryali Welfare Society Vs. Union of India & Ors. in OA No. 04/2013 (Suo Moto)

In the matter of Sonya Ghosh Vs. State of Haryana & Ors. Vs. Union of India & Ors. in OA No. 04/2013 (Suo Moto), Hon'ble National Green Tribunal, in its last order dated 22.09.2021, inter-alia, ordered as under:

"10. Having considered the matter, we direct the Chief Secretary, Haryana to depute a competent officer to oversee compliance of order of this Tribunal dated 26.08.2020 for removing illegal encroachments and illegal constructions. The officer should be of the rank not below the rank of Additional Secretary to the Haryana Government. The officer may monitor compliance by clearly understanding the scope of action to be taken so that this Tribunal is not in the dark about the stand of the State, in absence of consolidated response of the State. Such Nodal Officer may file a compliance report after ascertaining all the facts within three months before the Tribunal by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF."

In compliance of the orders of Hon'ble National Green Tribunal, the State Government of Haryana has appointed Conservator of Forest (South Circle) as Nodal officer vide Memo no 357- Ft- 1-2022/634 dated 11.02.2022 and accordingly, the present status report is being filed by the undersigned By e-mail at judicial-ngt@gov.in.

Enclosure: as above.


Chief Conservator of Forests,
South Circle, Gurugram.

Status report in the matter of Sonya Ghosh Vs. State of Haryana & Ors. in

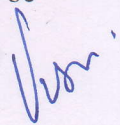
OA No. 04/2013 (Suo Moto).

In the matter of Sonya Ghosh Vs. State of Haryana & Ors. Vs. Union of India & Ors. in OA No. 04/2013 (Suo Moto), Hon'ble National Green Tribunal, in its last order dated 22.09.2021, inter-alia, ordered as under:

10. Having considered the matter, we direct the Chief Secretary, Haryana to depute a competent officer to oversee compliance of order of this Tribunal dated 26.08.2020 for removing illegal encroachments and illegal constructions. The officer should be of the rank not below the rank of Additional Secretary to the Haryana Government. The officer may monitor compliance by clearly understanding the scope of action to be taken so that this Tribunal is not in the dark about the stand of the State, in absence of consolidated response of the State. Such Nodal Officer may file a compliance report after ascertaining all the facts within three months before the Tribunal by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF."

In compliance of the orders of Hon'ble National Green Tribunal, the State Government of Haryana has appointed Conservator of Forest (South Circle) as Nodal officer vide Memo no 357-Ft- 1-2022/634 dated 11.02.2022 and accordingly, the present status report is being filed by the undersigned.

It is humbly submitted that a similar matter concerning authorized/ unauthorized structures in forest areas is under consideration before the Hon'ble Supreme Court of India in Special Leave to Appeal No 7220-7221/ 2017 in case titled as 'Municipal Corporation Faridabad v/s Khori Gaon Residents Welfare Association' along with other connected matters including WP (C) 1031/2021 (Satpal v/s Union of India) and Civil Appeals filed against Orders passed by Hon'ble NGT. The hearings in above stated matters before the Hon'ble Supreme Court stand concluded and the judgment is reserved. It is expected that the Hon'ble Supreme Court would be pronouncing the Judgment soon.



It is further stated that removal of violations was in progress in the districts of Gurugram and Faridabad and the quantum violations removed in the two districts is as under;

S.No	Name of District	Area from where violations removed	No of unauthorized structures demolished	Area
1	Gurugram	Areas closed under PLP Act	18 (15 farm houses, Shanties in 15 acre, and a Nursery)	40 acres
		Protected Forest Kadarapur and Basai	About 100 shanties	5 acre
2	Faridabad	Areas closed under PLP Act	13 Farm house and Structures in Khori village	205acre

Then, several IA's were filed in SLP 7220-7221/2017 wherein the applicability of FC Act on the areas closed under PLP Act was challenged. While hearing the matter on 20.09.2021 (Annexure- I) the Hon'ble Supreme Court in the Special Leave to Appeal No 7220-7221/ 2017 in the matter of Municipal Corporation Faridabad v/s Khori Gaon Residents Welfare Association along with other connected matters including WP (C) 1031/2021 (Satpal v/s Union of India) and other Civil Appeals, observed as under: -

"These matters involve issue regarding forest and non-forest land in reference to interplay between provisions of the Punjab Land Preservation Act, 1900; Forest Conservation Act, 1980 and the land which forms part of development plan under the Faridabad Complex (Regulation and Development), Act 1971. "

Further, vide its order dated 05.10.2021, (Annexure II) the Hon'ble Supreme Court in the above mentioned cases directed Haryana State Government to file affidavit about the factual position of legal issues of the area closed under PLP Act and related matters. Relevant part of order dated 05.10.2021 is as under:-

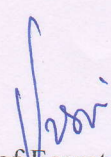
"We call upon the State of Haryana to file affidavit of authorized official to clearly state about the factual basis as to how the area has been first notified as forest area, be it under Union enactment or the State enactment, as the case may be, and also related matters which can be taken into account for answering the controversy in issue. That affidavit be filed on or before 07.10.2021 at 2:00 p.m. through email and advance copy be made available to the learned counsel appearing for the opposite parties."

In the compliance of above order dated 20.09.21 and 05.10.21, State of Haryana filed detailed affidavit in Hon'ble Supreme Court on 20.10.2021 (Annexure- III). In view of the above stated position and for reason that the Hon'ble Supreme Court accepted to hear the pleas concerning the scope of applicability of Forest Conservation Act on areas notified under PLP Act, and the interplay between these Acts and developmental plans of the State Government, the exercise of demolitions of structures was put on hold. It is pertinent to mention that the areas covered under the notification dated 07.05.1992 under Environment Protection Act are overlapping with PLP Act Areas at several places. It will be possible to assess whether, a structure is authorized or not, after the Judgment of Hon'ble Supreme Court is delivered. The hearing in matter in Hon'ble Supreme court has been concluded on 30.03.2022 and decision has been kept reserved (Annexure IV) and is expected to be pronounced soon.

In view of the submissions made above it is humbly prayed that a short date may be granted.

Annexures:

- i) Annexure I- Hon'ble Supreme Court order 20.09.2021
- ii) Annexure II- Hon'ble Supreme Court order dated 05.10.2021
- iii) Annexure III- Affidavit submitted by the State Government in compliance of order dated 20.09.21 and 05.10.2021
- iv) Annexure IV- Hon'ble supreme court order dated 31.03.2022


Chief Conservator of Forests,
South Circle, Gurugram

ITEM NO.302+301+303+304 Court 3 (Video Conferencing) SECTION IV-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 7220-7221/2017

(Arising out of impugned final judgment and order dated 29-04-2016 in CWP No. 19148/2010 29-04-2016 in COCP No. 1135/2012 passed by the High Court Of Punjab & Haryana At Chandigarh)

MUNICIPAL CORPORATION FARIDABAD

Petitioner(s)

VERSUS

KHORI GAON RESIDENTS WELFARE
ASSOCIATION (REGD.) & ORS.

Respondent(s)

IA No. 94719/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 57354/2017 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 91157/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 110223/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 109330/2021 - CLARIFICATION/DIRECTION
IA No. 89574/2020 - CLARIFICATION/DIRECTION
IA No. 112023/2021 - CLARIFICATION/DIRECTION
IA No. 101169/2021 - CLARIFICATION/DIRECTION
IA No. 94720/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 103155/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 48851/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 48850/2021 - EXEMPTION FROM FILING O.T.
IA No. 109331/2021 - EXEMPTION FROM FILING O.T.
IA No. 94717/2021 - INTERVENTION APPLICATION
IA No. 112022/2021 - INTERVENTION APPLICATION
IA No. 90923/2021 - INTERVENTION APPLICATION
IA No. 101159/2021 - INTERVENTION APPLICATION
IA No. 110209/2021 - INTERVENTION APPLICATION
IA No. 91893/2020 - INTERVENTION/IMPLEADMENT
IA No. 109328/2021 - INTERVENTION/IMPLEADMENT
IA No. 89573/2020 - INTERVENTION/IMPLEADMENT
IA No. 103153/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 110714/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 101155/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 48843/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 94724/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

C.A. No. 8454/2014 (XVII)

(IA No. 192694/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 10294/2013 (XVII)

IA No. 155784/2019 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 155775/2019 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 2091/2021 - CLARIFICATION/DIRECTION

IA No. 155772/2019 - INTERVENTION/IMPLEADMENT

IA No. 2082/2021 - INTERVENTION/IMPLEADMENT

IA No. 155781/2019 - INTERVENTION/IMPLEADMENT

IA No. 136483/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 125428/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 105838/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 148663/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 8173/2016 (XVII)

IA No. 2/2016 - APP FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS

IA No. 93369/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 138593/2019 - EXEMPTION FROM FILING O.T.

IA No. 97596/2020 - EXEMPTION FROM FILING O.T.

IA No. 138590/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 97595/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 1/2016 - STAY APPLICATION)

C.A. No. 11000/2013 (XVII)

IA No. 196807/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 3/2014 - STAY APPLICATION)

W.P.(C) No. 592/2021 (PIL-W)

IA No. 92847/2021 - AMENDMENT OF THE PETITION

IA No. 106531/2021 - APPLICATION FOR EXEMPTION FROM FILING TYPED DOCUMENTS

IA No. 82566/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 92163/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 65544/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 91186/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 64532/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 106530/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 84526/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 103150/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 92851/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 71100/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 82565/2021 - INTERVENTION APPLICATION

IA No. 71098/2021 - MODIFICATION

IA No. 92160/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 65543/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES
 IA No. 91182/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES
 IA No. 103148/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 657/2021 (PIL-W)
 IA No. 68638/2021 - EXEMPTION FROM FILING AFFIDAVIT)

W.P.(C) No. 759/2021 (PIL-W)
 IA No. 82248/2021 - APPLICATION FOR PERMISSION
 IA No. 82250/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 79663/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 82274/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 82271/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 788/2021 (X)
 IA No. 84840/2021 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 105404/2021 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 92555/2021 - EXEMPTION FROM FILING O.T.
 IA No. 105406/2021 - EXEMPTION FROM FILING O.T.
 IA No. 92554/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES
 IA No. 84845/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES
 IA No. 105412/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Writ Petition(s)(Civil) No(s). 1023/2021
 (FOR ADMISSION and IA No.114426/2021-GRANT OF INTERIM RELIEF and IA No.114427/2021-EXEMPTION FROM FILING O.T.

Writ Petition(s)(Civil) No(s). 1008/2021
 (FOR ADMISSION and IA No.112315/2021-EXEMPTION FROM FILING AFFIDAVIT

Writ Petition(s)(Civil) No(s). 1031/2021
 (FOR ADMISSION and IA No.116302/2021-STAY APPLICATION and IA No.116303/2021-EXEMPTION FROM FILING O.T.

Date : 20-09-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
 HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Parties

Mr. Tushar Mehta, SG
 Mr. Anil Grover, Sr.AAG
 Mr. B. K. Satija, AAG
 Mr. Rahul Khurana, Adv.

Mr. Satish Kumar, Adv.
 Mr. Sanjay Kumar Visen, AOR
 Mr. Amit Sahni Adv.

Mr. Tushar Mehta, SG
 Mr. Ruchi Kohli, AAG
 Ms. Srishti Mishra, Adv.
 Dr. Monika Gusain, AOR

Mr. Colin Gonsalves, Sr. Adv.
 Ms. Anupradha Singh, Adv.
 Mr. Haider Ali, Adv.
 Mr. Satya Mitra, AOR

Mr. Sanjay Parikh, Sr. Adv.
 Ms. Srishti Agnihotri, AOR
 Ms. Tripti Poddar, Adv.
 Mr. Satwik Parikh, Adv.
 Ms. Sanjana Grace Thomas, Adv.

Mr. Arun Bhardwaj, Sr. Adv. (AAG)
 Mr. Samar Vijay Singh, AAG
 Mr. Gauraan Bhardwaj, Adv.
 Mr. Abhishek Sharma, Adv.
 Mr. Nikhil Bhardwaj, Adv.
 Mr. Piyush Gaur, Adv.
 Mr. Rahul Kumar Sharma, Adv.
 Mr. Vishwa Pal Singh, AOR
 Ms. Nandita Jha, Adv.
 Mr. Y. P. Singh, Adv.
 Dr. Monika Gusain, AOR

Ms. Aishwarya Bhati, ASG
 Mr. Gurmeet Singh Makker, AOR
 Mr. S. K. Singhania, Adv.
 Mr. Sumit Teterwal, Adv.
 Mr. Vanshdeep Dalmia, Adv.
 Mr. Chinmayee Chandra, Adv.
 Mr. Suchakshu Jain, Adv.

Mr. Jayant Kr. Sud, Sr. Adv. (ASG)
 Ms. Vimla Sinha, Adv.
 Mr. Kamendra Mishra, Adv.
 Mr. Vikas Bansal, Adv.
 Mr. Manish, Adv.
 Mr. Amrish Kumar, AOR

Mr. A.N.S. Nadkarni, Sr. Adv.
 Mr. Mohit D. Ram, AOR

Mr. Arun Bhardwaj, Sr. Adv.
 Mr. B.K. Satija, AAG
 Ms. Ruchi Kohli, AAG

Ms. Srishti Mishra, Adv.
Dr. Monika Gusain, AOR

Mr. Arijit Prasad, Sr. Adv.
Mr. Vikas Verma, Adv.
Ms. Sapna Verma, Adv.
Mr. Shafik Ahmed, Adv.
Mr. Rashid N. Azam, Adv.
Mr. Naseem Anwar, Adv.
Mr. Durgesh Gupta, Adv.
Mr. Vinod Kumar Goyal, Adv.
Mr. Mohd. Adi Alvi, Adv.
Mr. V. Elanchezhiyan, AOR

Mr. Arijit Prasad, Sr. Adv.
Mr. Ravindra Chaprana, Adv.
Mr. Tejaswi Kumar Pradhan, AOR

Mr. P.S. Patwalia, Sr. Adv.
Mr. Manoranjan Paikray, Adv.
Mr. Tejaswi Kumar Pradhan, AOR

Ms. Aishwarya Bhati, ASG
Mr. Sumit Teterwal, Adv.
Mr. S.K. Singhanian, Adv.
Mr. Vanshdeep Dalmia, Adv.
Ms. Chinmayee Chandra, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Vedant Singh, AOR
Mr. Vinay Kumar Dubey, Adv.
Mr. Vivek Dubey, Adv.
Ms. Prajakta, Adv.
Mr. Vishisht Singh, Adv.
Mr. Prateek Tiwari, Adv.

Mr. Ram Ekbal Roy, Adv.
Mr. Birendra Pd. Singh, Adv.
Ms. Priyanka Das, Adv.
Mr. Jawaharlal, Adv.
Ms. Neha Das, Adv.
Mr. Binay Kumar Das, AOR

Mr. Mohit Paul, AOR
Mr. Kamal Gupta, Adv.
Ms. Sunaina Paul, Adv.

Mr. Ankit Swarup, AOR
Mr. Arunesh Grover, Adv.
Mr. Syed M. Ahmad, Adv.
Mr. Vijay Raj Singh Chouhan, Adv.

Mr. Kedar Nath Tripathy, AOR

Mr. Sibbo Sankar Mishra, AOR

Mr. Rajat Joseph, AOR

Mr. Smarhar Singh, AOR

Ms. Amiy Shukla, AOR

Ms. Ranjeeta Rohatgi, AOR

Ms. Manjeet Kirpal, AOR

Ms. Manju Jetley, AOR

Mr. Rajat Joseph, AOR

UPON hearing the counsel the Court made the following
O R D E R

I.A.No.91157/2021 and 101169/2021

As the directions sought in I.A.Nos.91157/2021 and 101169 filed in Special Leave Petition © Nos. 7220-7221/2017 are similar to the issues related to the batch of cases being C.A. No.10294/2013 and connected cases, hence, list these applications along with C.A. No.10294/2013 and connected cases on 04.10.2021, as prayed.

SLP(C) Nos.7220-7221/2017, W.P.© Nos.657/2021 and 788/2021

These matters pertain to issue of demolition action and related matters. Hence, need to proceed together.

In terms of order dated 14.09.2021, the

Faridabad Municipal Corporation (for short, 'the Corporation') has initiated the exercise of issuing provisional allotment letters to *prima facie* eligible applicants.

It is stated that in all 2391 applications have been received until 15.9.2021. Out of which, after processing the concerned applications, 892 applicants have been found to be *prima facie* eligible so far. The officials of the Corporation have contacted the concerned persons through telephone/mobiles and other means. Out of that, 302 persons reported to the office of the Corporation for collecting the provisional allotment letters.

Suffice it to observe that the modality suggested in the order dated 14.09.2021 is being rolled out by the Corporation in right earnest. For the time being, we will not make any further observation nor finally determine that issue.

Mr. Arun Bhardwaj, learned senior counsel appearing for the Corporation, has also informed us that the last dates for receiving applications and issuing final allotment letters have been realigned as follows:

The last date of receiving application is now fixed as 15.11.2021 and thereafter the

applications will be processed and draw of lots will be done on 02.12.2021 and in all probability the final allotment letters would be issued to the eligible candidates before 15.12.2021.

Let the aforesaid position be stated on affidavit.

Mr. Bhardwaj, learned counsel has also stated on instructions that after the provisional allotment letter is issued and the concerned person occupies the premises so allotted and points out any defect or some maintenance issues that will be attended to with utmost urgency as observed in order dated 14.9.2021.

We direct the Commissioner of Faridabad Municipal Corporation to submit a chart area-wise, disclosing the unauthorized structures standing on forest land which have not been demolished and with justification for non-demolition of unauthorized structures, before the next date of hearing.

The Corporation must proceed against every unauthorized structure(s) standing on forest land in terms of earlier orders.

In addition, the Corporation may also indicate the steps taken to remove the debris or process the same to make it environment friendly

and compliant.

List matters on 22nd October, 2021.

W.P.(C) No.592/2021, 759/2021 and 1023/2021

These matters will proceed together hereafter as separate cases dealing with the challenge to rehabilitation policy/scheme.

Learned counsel for the petitioner(s) submitted that an immediate order is essential before the verification process is being taken forward.

According to the petitioner(s), in addition to the documents referred to in Clause 3(e) defining the eligibility criteria, the person concerned/applicant may be permitted to establish his/her identity and the fact that he/she was occupant of the premises which has been demolished being unauthorized structure standing on forest land, by way of giving self certificate/affidavit as proof of income and other documents referred to as proof of address in the Pradhan Mantri Awas Yojana Scheme, 2015 including in other central schemes such as at page 14 of the Additional Documents being I.A. No.118212/2021 in W.P.© No.1023/2021 and not limited to Voters' list,

Pehachan Patra and electric connection Bill.

Mr. Arun Bhardwaj, learned senior counsel appearing for the Corporation, prays for time to take instructions in this regard.

List these matters on 27th September, 2021.

C.A. Nos.10294/2013, 11000/2013, 8173/2016, 8454/2014, W.P.(C) Nos. 1008/2021 and 1031/2021

These matters involve issue regarding forest and non-forest land in reference to interplay between provisions of the Punjab Land Preservation Act, 1900; Forest Conservation Act, 1980 and the land which forms part of development plan under the Faridabad Complex (Regulation and Development), Act 1971.

List these matters on 4th October, 2021.

In the meantime, the appellant(s)/petitioner(s) to serve advance copy of the appeal/petition paper-books on the standing counsel for the concerned authorities/State of Haryana/Union of India.

The respondent(s) in the concerned appeal(s)/petition(s) may file separate or common reply affidavit, as may be advised.

If common reply affidavit is filed by the State, the same be served on the counsel appearing for the opposite sides in the connected matters for their record.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

ITEM NO.301+302 Court 3 (Video Conferencing)

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 7220-7221/2017

(Arising out of impugned final judgment and order dated 29-04-2016 in CWP No. 19148/2010 29-04-2016 in COCP No. 1135/2012 passed by the High Court Of Punjab & Haryana At Chandigarh)

MUNICIPAL CORPORATION FARIDABAD

Petitioner(s)

VERSUS

KHORI GAON RESIDENTS WELFARE ASSOCIATION
(REGD.) THR ITS PRESIDENT & ORS.

Respondent(s)

(ONLY IA.NOS.91157 AND 101169/2021 IN SLP(C)NOS. 7220-7221 OF 2017 ALONG WITH C.A NO. 10294/2013, C.A NO. 11000/2013, 8173/2016, 8454/2014, W.P(C) NOS. 1008 AND 1031 OF 2021 ARE LISTED.
IA No. 91157/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 101169/2021 - CLARIFICATION/DIRECTION)

WITH

C.A. No. 8454/2014 (XVII)

(FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 192694/2019

IA No. 192694/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 10294/2013 (XVII)

(FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 148663/2018, FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 125428/2019, FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 136483/2019, FOR impleading party ON IA 155772/2019, FOR INTERVENTION/IMPLEADMENT ON IA 155772/2019, FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 155775/2019, FOR impleading party ON IA 155781/2019, FOR INTERVENTION/IMPLEADMENT ON IA 155781/2019 FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 155784/2019 FOR impleading party ON IA 2082/2021 FOR INTERVENTION/IMPLEADMENT ON IA 2082/2021 FOR CLARIFICATION/DIRECTION ON IA 2091/2021 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 105838/2021

IA No. 155784/2019 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 155775/2019 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 2091/2021 - CLARIFICATION/DIRECTION

IA No. 2082/2021 - INTERVENTION/IMPLEADMENT

IA No. 155781/2019 - INTERVENTION/IMPLEADMENT

IA No. 155772/2019 - INTERVENTION/IMPLEADMENT

IA No. 136483/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 125428/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 105838/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 148663/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 8173/2016 (XVII)

(FOR STAY APPLICATION ON IA 1/2016

FOR [APP FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS] ON IA 2/2016

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 138590/2019, FOR EXEMPTION FROM FILING O.T. ON IA 138593/2019

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 97595/2020, FOR EXEMPTION FROM FILING O.T. ON IA 97596/2020

IA No. 2/2016 - APP FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS

IA No. 93369/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 97596/2020 - EXEMPTION FROM FILING O.T.

IA No. 138593/2019 - EXEMPTION FROM FILING O.T.

IA No. 138590/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 97595/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 1/2016 - STAY APPLICATION)

C.A. No. 11000/2013 (XVII)

(FOR STAY APPLICATION ON IA 3/2014

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 196807/2019

IA No. 196807/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 3/2014 - STAY APPLICATION)

W.P. (C) No. 1008/2021 (X)

(FOR

FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 112315/2021

IA No. 112315/2021 - EXEMPTION FROM FILING AFFIDAVIT)

W.P. (C) No. 1031/2021 (X)

(FOR

FOR STAY APPLICATION ON IA 116302/2021

FOR EXEMPTION FROM FILING O.T. ON IA 116303/2021

IA No. 116303/2021 - EXEMPTION FROM FILING O.T.

IA No. 116302/2021 - STAY APPLICATION)

W.P. (C) No(s). 592/2021

(FOR FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 64532/2021 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 65543/2021 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 65544/2021 FOR MODIFICATION ON IA 71098/2021 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 71100/2021 FOR INTERVENTION APPLICATION ON IA 82565/2021 FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 82566/2021 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 84526/2021 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 91182/2021 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 91186/2021 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 92160/2021 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 92163/2021 FOR AMENDMENT OF THE PETITION ON IA 92847/2021 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 92851/2021

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 103148/2021 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 103150/2021 FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 106530/2021 FOR APPLICATION FOR EXEMPTION FROM FILING TYPED DOCUMENTS ON IA 106531/2021

IA No. 92847/2021 - AMENDMENT OF THE PETITION

IA No. 106531/2021 - APPLICATION FOR EXEMPTION FROM FILING TYPED DOCUMENTS

IA No. 82566/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 106530/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 64532/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 84526/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 103150/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 92851/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 71100/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 92163/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 65544/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 91186/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 82565/2021 - INTERVENTION APPLICATION

IA No. 71098/2021 - MODIFICATION

IA No. 91182/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 103148/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 92160/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 65543/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

W.P.(C) No. 759/2021 (PIL-W)

(FOR

FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 79663/2021

FOR APPLICATION FOR PERMISSION ON IA 82248/2021

FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 82250/2021

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 82271/2021

FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 82274/2021

IA No. 82248/2021 - APPLICATION FOR PERMISSION

IA No. 79663/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 82274/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 82250/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 82271/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 1023/2021 (X)

(FOR ADMISSION and IA No.114426/2021-GRANT OF INTERIM RELIEF and IA No.114427/2021-EXEMPTION FROM FILING O.T...)

Date : 05-10-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE DINESH MAHESHWARI

For parties:

Mr. Tushar Mehta, Ld. SG
 Mr. Arun Bhardwaj, Sr. Adv.
 Ms. Ruchi Kohli, AAG
 Mr. B.K. Satija, AAG
 Ms. Srishti Mishra, Adv.
 Dr. Monika Gusain, AOR

Mr. Tushar Mehta, SG
 Mr. Anil Grover, Sr. AAG
 Mr. B.K. Satija, AAG
 Mr. Samar Vijay Singh, AOR
 Mr. Rahul Khurana, Adv.
 Mr. Satish Kumar, Adv.
 Mr. Sanjay Kumar Visen, AOR
 Mr. Amit Sahni Adv.

Mr. Arun Bhardwaj, Sr. Adv. (AAG)
 Mr. Samar Vijay Singh, Addl. AAG
 Mr. Rahul Kumar Sharma, Adv.
 Mr. Gauraan Bhardwaj, Adv.
 Mr. Abhishek Sharma, Adv.
 Mr. Nikhil Bhardwaj, Adv.
 Mr. Vishwa Pal Singh, AOR
 Mr. Brijender Singh Dhull, Adv.
 Mr. Ashish Pandey, Adv.

Mr. Neeraj Kishan Kaul, Sr. Adv.
 Mr. Dhruv Sharma, Adv.
 Mr. Bhavya Sethi, Adv.
 Mr. Manoranjan Paikray, Adv.
 Mr. Tejaswi Kumar Pradhan, AOR

Ms. Ranjeeta Rohatgi, AOR

Mr. Jayant Bhushan, Sr. Adv.
 Mr. Ankit Swarup, AOR
 Mr. Arunesh Grover, Adv.
 Mr. Syed M. Ahmed, Adv.
 Mr. Vijay Raj Singh Chouhan, Adv.

Mr. Sanjay Parikh, Sr. Adv.
 Ms. Srishti Agnihotri, AOR
 Ms. Tripti Poddar, Adv.
 Mr. Satwik Parikh, Adv.
 Ms. Sanjana Grace Thomas, Adv.

Mr. Colin Gonsalves, Sr. Adv.
 Ms. Anupradha Singh, Adv.
 Mr. Haider Ali, Adv.
 Mr. Asad Alvi, Adv.
 Ms. Saba A.K. Patel, Adv.
 Mr. Satya Mitra, AOR

Mr. Jayant Kr. Sud, Sr. Adv. (ASG)
 Ms. Vimla Sinha, Adv.
 Mr. Kamlendra Mishra, Adv.
 Mr. Vikas Bansal, Adv.
 Mr. Manish, Adv.
 Mr. Amrish Kumar, Adv.

Mr. Mohit Paul, AOR
 Mr. Kamal Gupta, Adv.
 Ms. Sunaina Phul, Adv.

Ms. Amiy Shukla, AOR

Mr. Satya Mitra, AOR

Mr. Vishwa Pal Singh, AOR

Mr. Vedant Singh, AOR
 Mr. Vinay Kumar Dubey, Adv.
 Mr. Vivek Dubey, Adv.
 Ms. Prajakta, Adv.
 Mr. Vishisht Singh, Adv.
 Mr. Prateek Tiwari, Adv.

Mr. Kedar Nath Tripathy, AOR

Mr. Tushar Mehta, SG
 Mr. Anil Grover, Sr. AAG
 Mr. B.K. Satija, AAG
 Mr. Rahul Khurana, Adv.
 Mr. Satish Kumar, Adv.
 Mr. Sanjay Kumar Visen, AOR
 Mr. Amit Sahni Adv.

Mr. Sibho Sankar Mishra, AOR

Ms. Aishwarya Bhati, ASG
 Mr. Gurmeet Singh Makker, AOR
 Mr. S. K. Singhanian, Adv.
 Mr. Sumit Teterwal, Adv.
 Mr. Vanshdeep Dalmia, Adv.
 Mr. Chinmayee Chandra, Adv.

Ms. Manjeet Kirpal, AOR

Mr. Mathews J. Nedumpara, Adv.
 Ms. Manju Jetley, AOR

Mr. Arijit Parsad, Sr. Adv.
 Mr. Vikas Verma, Adv.
 Ms. Sapna Verma, Adv.

Mr. Shafik Ahmed, Adv.
 Mr. Rashid N. Azam, Adv.
 Mr. Naseem Anwar, Adv.
 Mr. Durgesh Gupta, Adv.
 Mr. Vinod Kumar Goyal, Adv.
 Md. Adi Alvi, Adv.
 Mr. V. Elanchezhiyan, AOR

Mr. ANS Nadkarni, Sr. Adv.
 Mr. Mohit D. Ram, AOR

Mr. Rajat Joseph, AOR

Mr. Smarhar Singh, AOR
 Ms. Shweta Kumari, Adv.
 Mr. Digvijay Chaprana, Adv.

Mr. Ram Ekbal Roy, Adv.
 Mr. Birendra Pd. Singh, Adv.
 Ms. Priyanka Das, Adv.
 Mr. Jawaharlal, Adv.
 Ms. Neha Das, Adv.
 Mr. Binay Kumar Das, AOR

Mr. Smarhar Singh, AOR
 Ms. Shweta Kumari, Adv.
 Mr. Nitin Nayak, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
 O R D E R

We have heard learned counsel for the parties.

We call upon the State of Haryana to file affidavit of authorized official to clearly state about the factual basis as to how the area has been first notified as forest area, be it under Union enactment or the State enactment, as the case may be, and also related matters which can be taken into account for answering the controversy in issue. That affidavit be filed on or

before 07.10.2021 at 2:00 p.m. through email and advance copy be made available to the learned counsel appearing for the opposite parties.

List the matters on Friday, i.e. 08.10.2021 at 2:00 p.m.

(DEEPAK SINGH)
(COURT MASTER)

(PARVEEN KUMARI PASRICHA)
ASSISTANT REGISTRAR

SECTION.....~~103~~ X**IN THE SUPREME COURT OF INDIA**

CIVIL/CRIMINAL/ORIGINAL/APPELLATE JURISDICTION

I.A./Criminal Misc. Petition No.....of 2012

Special Leave Petition (Civil/Criminal) No.....of 2012

Civil/ ~~Criminal Appeal/Transfer/ Writ~~ Petition No. 1031 of 2012

IN THE MATTER OF

SATPAL SONSPETITIONER (S)
APPELLANT(S)

VERSUS

Union of India & ors

RESPONDENT(S)

INDEX

SRL. NO.	PARTICULARS	COPIES	PAGE NO.	COURT FEE
1	Adoli document			
2	on behalf of Haryana			
3				
4				
5				
6				
7				
8				
9				
10				
			TOTAL	Rs.

Certified that the copies are correct

filed on : 20/10/2012

filled by

Clerk :
Name : RAJEEV KUMAR SHANMA
I.Card No. : 5453
Mob. : 9818937176

S.K. Visen
Sanjay Kumar Visen
Advocate for Petitioner(s)
Appellant(s)/ Respondents
CC NO. 1738

Resl. : Plot No. 229, Khasra No. 1754, Asola Housing Complex, Asola Extn., Dhakwali, P.S.

Fatehpur Beri, New Delhi-110074 Mob. : 9899980152, 9968750242

E-mail : s_visen@yahoo.co.in visen22@gmail.com

Court : S.C.B.A. Library No. 1

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) No.1031 OF 2021**

IN THE MATTER OF :

SATPAL & ORS.

...

PETITIONERS

VERSUS

UNION OF INDIA & ORS.

...

RESPONDENTS

**ADDITIONAL AFFIDAVIT ON BEHALF OF
STATE OF HARYANA IN COMPLIANCE OF
ORDER DATED 05.10.2021 and 20.09.2021**

FILED BY

:

SANJAY KUMAR VISEN

INDEX

SR. No.	PARTICULARS	PG No.
1.	Additional Affidavit on behalf of State of Haryana in compliance of order dated 05.10.2021 and 20.09.2021	1-85
2.	Annexure H - 1 Copy of the Indian Forest Act, 1927	86-185
3.	Annexure H -2 Copy of the Forest Conservation Act, 1980	186-188
4.	Annexure H - 3 Copy of the Amendment Bill dated 24 th October 1942	189-190
5.	Annexure - H 4 Copy of the PLPA, 1900 (as amended prior to the 2019 amendment) and adopted by the State of Haryana	191-207
6.	Annexure - H 5 A sample copy each of the Government Orders issued under Section 3 (General Order), Section 4 (General Order), and Section 4 and/or 5 (Special Order)	208-217
7.	Annexure H - 6 Copy of the Notification dated 18.08.1992	218-220
8.	Annexure H - 7 Copy of the Technical Note -6	221-230
9.	Annexure H - 8 Copy of the judgment in <i>T.N. Godavarman Thirumulpad v. Union of India</i> , (1997) 2 SCC 267	231-239

10.	Annexure H - 9 Copy of the judgment in <i>T.N. Godavarman Thirumulpad v. Union of India</i> , (2008) 16 SCC 401	240-243
11.	Annexure H - 10 Copy of the judgment in <i>M.C. Mehta v. Union of India</i> , (2004) 12 SCC 118	244-310
12.	Annexure H - 11 Copy of the judgment in <i>M.C. Mehta v. Union of India</i> , (2008) 17 SCC 294	311-320
13.	Annexure H - 12 Copy of the judgment in <i>B.S. Sandhu v. Govt. of India</i> , (2014) 12 SCC 172	321-335
14.	Annexure H - 13 Copy of the judgment in <i>M.C. Mehta (Kant Enclave matters) v. Union of India</i> , (2018) 18 SCC 397	336-385
15.	Annexure H - 14 copy of the notification dated 30.09.1948	386-387
16.	Annexure H - 15 copy of the Punjab Land Preservation (Haryana Amendment) Act, 2019	388-393
17.	Annexure H - 16 Copy of Comparison Chart of the PLPA, 1900 and the Amendment Act, 2019	394-421
18.	Annexure H - 17 Copy of order dated 01.03.2019 passed in WP(C) 4677/1985	422-424
19.	Annexure H - 18 copy of IA No.93600/2021 filed by State of Haryana in WP(C) 4677/1985	425-430

(1)

**N THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) No.1031 OF 2021**

IN THE MATTER OF :

SATPAL & ORS.

...PETITIONERS

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

**ADDITIONAL AFFIDAVIT ON BEHALF OF STATE OF HARYANA
IN COMPLIANCE OF ORDER DATED 05.10.2021 AND 20.09.2021**

I, Suresh Dalal, Additional Principal Chief Conservator of Forests, Haryana,
do hereby solemnly affirm and state as under:

1. That I am working in Haryana Forest Department as Additional Principal Chief Conservator of Forests, and being acquainted with the facts and circumstances of the case and as such, competent to swear the affidavit in aforesaid official capacity.
2. That the captioned matter along with other connected matter was listed for further proceedings on 05.10.2021. The Hon'ble Court after hearing the arguments was pleased to direct the State of Haryana to file an affidavit to clearly state about the factual basis as to how the area has been first notified as forest area, be it under Union enactment or the State enactment, as the case may be, and also related matters which can be taken into account for answering the controversy in issue.
3. That the present affidavit is being filed on behalf of state of Haryana in compliance of order dated 05.10.2021 and Order dated 20.09.2021. The relevant part of the order dated 05.10.2021 notes as under :

Magistrate *

"We call upon the State of Haryana to file affidavit of authorized official to clearly state about the factual basis as to how the area has been first notified as forest area, be it under Union enactment or the State enactment, as the case may be, and also related matters which can be taken into account for answering the controversy in issue."

4. That taking note of the present matter alongwith C.A. Nos. 10294/2013, 11000/2013, 8173/2016, 8454/2014 and W.P.(C) Nos. 1008/2021 observed that these matters involve issue regarding forest and non-forest land in reference to interplay between provisions of the Punjab Land Preservation Act, 1900; Forest Conservation Act, 1980 and the land which forms part of development plan under the Faridabad Complex (Regulation and Development), Act 1971. The Hon'ble Court further directed that the respondent(s) in the concerned appeal(s)/petition(s) may file separate or common reply affidavit, as may be advised.

The relevant portion of the order dated 20.09.2021 is reproduced as below:

"C.A. Nos. 10294/2013, 11000/2013, 8173/2016, 8454/2014, W.P.(C) Nos. 1008/2021 and 1031/2021

These matters involve issue regarding forest and non-forest land in reference to interplay between provisions of the Punjab Land Preservation Act, 1900; Forest Conservation Act, 1980 and the land which forms part of development plan under the Faridabad Complex (Regulation and Development), Act 1971.

List these matters on 4th October, 2021.

In the meantime, the appellant(s)/petitioner(s) to serve advance copy of the appeal/petition paper-books on the standing counsel for the concerned authorities/State of Haryana/Union of India.

The respondent(s) in the concerned appeal(s)/petition(s) may file separate or common reply affidavit, as may be advised.

If common reply affidavit is filed by the State, the same be served on the counsel appearing for the opposite sides in the connected matters for their record."

The answering respondent has filed a short reply dated 03.10.2021 in the above subjected matter craving liberty to file the detailed reply/additional affidavit. It is humbly submitted that contents of present additional affidavit may kindly be treated as response to C.A. Nos.10294/2013, 11000/2013, 8173/2016, 8454/2014, W.P.(C) Nos. 1008/2021 and IA No.91157 & 101169 of 2021 in SLP(C) 7220/2017 also.

5. It is submitted that the legal and factual issues pertaining to Acts ibid have long drawn history. The present affidavit seeks to present the entire factual picture before this Hon'ble Court. It is submitted that if certain aspects are left to be added to the present affidavit, the deponent craves liberty to file an additional affidavit on the said issues. The interplay between the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980, the Punjab Land (Preservation) Act, 1900, the Urban Development Laws and the orders and judgements passed by this Hon'ble Court from time to time under which the such areas have been considered as forest are being stated herein below.

Legal provisions regarding declaration or notification of any area as Forest - Central Enactment

6. At the outset, it is submitted that there exists no Central Government notification or State Government notification, with regard to the subject lands falling in Faridabad District under a Central enactment, for the declaration of the same as "forest" under the provisions of the said enactment. However, it is being undertaken that land notified as forest under the Indian Forest Act, 1927 or any other Central Enactment shall

strictly be dealt with in accordance with the provisions of the Indian Forest Act, 1927 and those of the Forest Conservation Act, 1980. It is submitted that the purported inclusion of the said land, as "forest", has been through a new proposition created through judicial pronouncements. It is submitted that in order to fully appreciate the controversy, the history of the enactment and the judicial pronouncements and the relevant legislations, need to be taken note of.

Indian Forest Act, 1927

7. It is submitted that the Indian Forest Act, 1927 is the only statute under which any area can be declared/ notified as a 'Forest' of different description, be it a 'Reserve Forest' or 'Protected Forest' or otherwise. The Indian Forest Act was for the first time enacted in 1878. Presently the applicable Act is the Indian Forest Act, 1927(hereinafter referred to as IFA, 1927) which is largely based on the Indian Forest Act of 1878. Both the 1878 Act and the 1927 Act sought to consolidate and reserve the areas having forest cover, or significant wildlife, to regulate movement and transit of forest produce, and duty leviable on timber and other forest produce.

A copy of the Indian Forest Act, 1927 is attached herewith and marked as **Annexure H - 1**. The provisions of law in this behalf are reproduced below: (Pg No. 86-185)

"3. Power to reserve forests.

The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

4. **Notification by State Government.**-(1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette -

- (a) declaring that it has been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer (hereinafter called "the Forest Settlement-officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation - For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer.

(3) Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act.

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 Government, or over which the Government has proprietary rights; or to the whole or any part of the forest produce of which the Government is entitled.

(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."

8. It is clear from a reading of Section 3 and Section 29, as reproduced above, that the State Governments are competent to constitute any area as 'Reserve' or 'Protected' forests only if such land is the property of the Government or over which the State Government has proprietary rights. It does not empower the Government to declare/constitute any privately owned land as 'Forest' of any nature.

9. It is submitted that further, it is important to make a reference to the provisions contained in Chapter V of the Indian Forest Act, 1927, which deals with "*Of the Control over Forests and Lands not being the property of Government*". This chapter deals with the inclusion of privately owned areas as 'Forest'. Under Section 35 of this Chapter, the State Government may, by notification regulate or prohibit the breaking or clearing for cultivation, pasturing of cattle or the firing or clearing of vegetation for specified purposes after following the prescribed procedure as mentioned therein.

10. Section 37 of the Indian Forest Act, 1927 deals with the situation where any privately owned land is notified as 'Forests', which is reproduced below:

37. Expropriation of forests in certain cases. - (1) In any case under this Chapter in which the State Government

considers that, in lieu of placing the forest or land under the control of a Forest-Officer, the same should be acquired for public purposes, the State Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the State Government shall require such forest or land accordingly."

11. It is submitted that certain privately owned lands can also be notified as 'Forest' under Section 38 of the Indian Forest Act, 1927 at the request of the landowners and on such terms and conditions as may be mutually agreed. Section 38 of the Indian Forest Act, 1927 is reproduced below for ready reference:

"38. Protection of forests at request of owners.

(1) The owner of any land or, if there more than one owner thereof, the owners of shares therein amounting in the aggregate at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire-

(a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or

(b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the State Government may, by notification in the Official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants."

Clause (a) of sub-section (1) of Section 38 lays down the underlying principle of notification of any area as Forest under Section 38 of the act *ibid.*

Forest Conservation Act, 1980

12. That the Forest (Conservation) Act, 1980 hereinafter referred to as FCA, 1980 is an Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto. A copy of the Forest Conservation Act, 1980 is attached herewith and marked as **Annexure H - 2**. The Objects and Reasons of the said enactment are as under :
(Pg No. 186-188)

"INTRODUCTION

Deforestation, which causes ecological imbalance and leads to environment deterioration, had been taking place on a large scale in the country and it had caused wide-spread concern. With a view to checking further deforestation the President promulgated the Forest (Conservation) Ordinance, 1980 on 2th October, 1980. To replace the aforesaid Ordinance the Forest (Conservation) Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

Deforestation causes ecological imbalance and leads to environment deterioration. Deforestation had been taking place on a large scale in the country and it had caused wide-spread concern.

2. With a view to checking further deforestation, the President promulgated on the 25th October, 1980, the Forest (Conservation) Ordinance, 1980. The Ordinance made the prior approval of the Central Government necessary for dereservation of reserved forests and for use of forest land for non-forest purposes. The Ordinance also provided for the constitution of an advisor committee to advise the Central Government with regard to grant of such approval.

3. The Bill seeks to replace the aforesaid Ordinance."

13. It is submitted that the relevant provision, Section 2 of the Forest Conservation Act, 1980, is quoted as under :

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.—

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose.
- (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, horticultural crops or medicinal plants;
- (b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, 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."

14. That the purpose of the FCA, 1980 is to regulate diversion of Forest Land for non-forestry purpose and for such diversion, prior-approval of Central Government is necessary. However, in certain cases such approval of Central Government is not required. Para 1.2 (i) of the guidelines for the FC Act, 1980 dealing with the cases where prior approval is not required is given below—

"1.2 Clarifications

- (i) *The cases in which specific orders for de-reservation or diversion of forest areas in connection with any project were issued by the State Govt. prior to 25.10.1980, need not be referred to the Central Govt.. However, in cases where only administrative approval for project was issued without specific orders regarding de-reservation and/or diversion of forest lands, a prior approval of the central Govt. would be necessary."*

Accordingly, cases in which the non-forest use has legally taken place prior to 25.10.1980 i.e. the date on which the FC Act came into force, do not require approval under the Act for the continuance of the non-forest activities.

Background, context and amendments in the PLPA, 1900

15. That the Punjab Land Preservation Act, 1900, in its application to the State of Haryana, was adopted by the Haryana Adaptation of Laws (State and concurrent subjects) Order, 1968. The PLPA, as enacted in the year 1900, was originally titled as "Punjab Land Preservation (Chos) Act, 1900. The word "Chos" is a locally used expression for the seasonal rivulets in the hilly areas. The word "Chos" was omitted from the title of the Act by way of Amendment Act 4 of 1944.

16. It is submitted that the area of operation of the PLPA was initially restricted only to the areas "*situated within or adjacent to the Shivalik Mountain range*" as is evident from the amendment carried out by way of Amendment Act 11 of 1942, whereby its operation was extended to the whole of Kangra district. The 'Statement of Objects & Reasons' as given below the Amendment Bill dated 24th October 1942 is a telling comment in this behalf. A true copy of the Amendment Bill dated 24th October 1942 is annexed herewith as **Annexure H - 3. (Pg No. 189-190)**

17. It is submitted that various amendments were carried out in the Punjab Land Preservation Act, 1900 (referred to as the 'PLPA' hereinafter) from time to time. These amendments before 2019 are summed up in the following table:

Sr. No.	Enactment/ Amendment	Statement of Objects & Reasons as published in	Major Amendment
1	Punjab Land Preservation Act, 1900	Punjab Gazette, 1899, Part-V-A, Page-13.	Enactment by the then Government of Punjab
2	Punjab Amendments Act 4 of 1905,	Punjab Gazette, 1905, Part-V, Page-137.	Section 5 (c) - The words "for bonafide domestic or agricultural purposes" were substituted by "for any purpose"
3	Punjab Amendment Act 7 of 1926	Punjab Gazette, 1926, Part-V, Page-28.	Section 4 and 5 - the Words "or permanently" were omitted.
4	Punjab Amendment Act 8 of 1926	Punjab Gazette, 1926, Part-I, Page-544.	Amendments in various Sections having the effect of 'extinguishment' of proprietary rights
5	Punjab Amendment Act 11 of 1942,	Punjab Gazette, 1942, Extra Ordinary Page 255.	The words "Situate within or adjacent to the Shivalik Mountain range" omitted along with the preamble; Section 2(a) Section 1 - Sub-section (2) inserted
6	Punjab Amendment Act 4 of 1944,	Punjab Gazette, 1943, Extra Ordinary Page 45-46.	The brackets and word "(Chos)" omitted, Section 2(a).
7	Punjab Amendment	Punjab Gazette, 1950,	Copy of Gazette unavailable.

Sr. No.	Enactment/ Amendment	Statement of Objects & Reasons as published in	Major Amendment
	Act 7 of 1950,	Extra Ordinary Page-159.	
8	Punjab Amendment Act 1 of 1951,	Punjab Gazette, 1951, Extra Ordinary Pages-100	Copy of Gazette unavailable.
9	Punjab Amendment Act No. 18 of 1958	Punjab Gazette, (Extra Ordinary), 1958, Pages-546 K.	Extended to the Territories, which immediately before the 1 st November, 1956 were comprised in the Patiala and East Punjab States Union
10	The Haryana adoption of Laws (State & concurrent subjects) Order, 1968	Haryana Gazette (Extraordinary) 29 th October 1968.	Substituted for the word 'Punjab' by the Haryana Adaptation of Laws (State & Concurrent Subjects), Order 1968

18. It is submitted that the amendments introduced vide Punjab Amendment Act 7 of 1926 and Punjab Amendment Act 8 of 1926 are contextual and very relevant to the facts of this case. The PLPA, 1900, authorized the Government to regulate, restrict or prohibit certain activities [as specified in Section 4 and 5 thereof (in the areas notified under Section 3 thereof)] temporarily or permanently (emphasis added). The words "or permanently" were omitted from Section 4 and 5 vide Punjab Amendment Act 7 of 1926 along with other accompanying amendments. Relevant part of Bill No. 5 of 1926, along with the 'Statement of Objects and Reasons', as extracted from the Punjab Gazette, dated March 5, 1926, is reproduced hereunder as follows:

"Bill No. 5 of 1926:

The Punjab Land Preservation (Chos) Amendment Bill.

A Bill to amend the Punjab Land Preservation (Chos) Act, 1900.

Preamble.		WHEREAS it is expedient to amend the Punjab Land Preservation (Chos) Act, 1900, in the manner hereinafter appearing, it is hereby enacted as follows:-
Short title	1.	This Act may be called the Punjab Land Preservation (Chos) Amendment Act, 1926.
Amendment of Section 4	2.	In section 4 of the Punjab Land Preservation (Chos) Act, 1900 (hereinafter referred to as the said Act), the words "or permanently" shall be omitted.
Amendment of Section 5	3.	In section 5 of the said Act, the words "or permanently" shall be omitted.
Amendment of Section 7	4.	In section 7 of the said Act after the word "extinguish" and the word "extinguished" the word "temporarily" shall be inserted.
Amendment of Section 15.	5.	In sub-section 4 of section 15 of the said Act, the word "permanently" and the word "absolutely" shall be omitted; and for the words "and shall not revive upon," the words "until" shall be substituted.
Insertion of a new section 23	6.	After section 22 of the said Act the following new section shall be inserted, namely -
Protection of notified areas at request of owners.	23.	Where a notification has been issued under the provisions of section 3 of the owner of any land within the area to which the notification relates, or if there be more than one owner of such land, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to

	the formation or conservation of forests thereon represent in writing to the Deputy Commissioner their desire:- (a) that such land be managed on their behalf by the Deputy Commissioner as a reserved or protected forest on such terms as may be mutually agreed upon; or (b) that all or any of the provisions of the Indian Forest Act, 1878, be applied to such land. In either case the Local Government may by notification in the official Gazette apply to such land such provisions of the Indian Forest Act, 1878, as it thinks suitable to the circumstances thereof, and as may be desired by the applicants."

STATEMENT OF OBJECTS AND REASONS

One of the main objections commonly urged against the Land Preservation (Chos) Act, II of 1900, is that it tends directly or indirectly to extinguish proprietary rights. Some clauses of the Act give foundation to this objection. The main object of the present Bill is to make it clear that rights of property will remain intact and that Government is only empowered to regulate these rights from time to time for the good of the people.

The opportunity has been taken to make another amendment introducing a clause similar to clause 38 of the Indian Forest Act, VII of 1878, permitting land-owners to have any area preserved by the Deputy Commissioner on such terms as may be mutually agreed upon. The necessity for such a provision has been manifested during the working of the present Act.

FAZL-I-HUSAIN
Member-in-charge"

19. It is submitted that the said amendment was further carried forward vide Punjab Amendment Act 8 of 1926. Relevant part of the amendment along with the 'Statement of Objects and Reasons', as extracted from the Punjab Gazette, dated 7th June 1926 is reproduced below:

"The 7th June 1926.

No. 71 - The Punjab Land Preservation (Chos) Second Amendment Bill is published under the provisions of rule 18 of the Punjab Legislative Council Rules for general information:-

A Bill to amend the Punjab Land Preservation (Chos) Act, 1900.

Preamble.	WHEREAS it is expedient further to amend the Punjab Land Preservation (Chos) Act, 1900, in the manner hereinafter appearing, it is hereby enacted as follows:-	
Short title.	1.	This Act may be called the Punjab Land Preservation (Chos) Second Amendment Act, 1926.
Amendment of section 8 of the Punjab Land Preservation (Chos) Act, 1900.	2.	In sub-section (2) of section 8 of the Punjab Land Preservation (Chos) Act, 1900 (hereinafter referred to as the said Act), the words "either absolutely or in perpetuity or" shall be omitted.
Amendment of section 9 of the Punjab Land Preservation (Chos) Act, 1900.	3.	In section 9 of the said Act, for clauses (a) and (b), the following words shall be substituted, namely:- "be suspended for the period specified in the declaration and for such further period (if

		any) to which such period may at any time be extended;"
Repeal of Section 12 of the Punjab Land Preservation (Chos) Act, 1900.	4.	Section 12 of the said Act shall be omitted.
Amendment of section 14 of the Punjab Land Preservation (Chos) Act, 1900.	5.	In clauses (a) and (c) of sub-section (1) of section 14 of the said Act, the words and figures "or section 12" shall be omitted, and in clause (d) of the same sub-section for the word "extinguished" the word "prohibited" shall be substituted.
Amendment of section 15 of the Punjab Land Preservation (Chos) Act, 1900.	6.	Sub-section (4) of section 15 of the said Act, shall be omitted.
Amendment of section 16 of the Punjab Land Preservation (Chos) Act, 1900.	7.	In clause (b) of sub-section (I) of section 16, for the word "extinguished" the word "prohibited" shall be substituted, and the word "suspended" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

THE main object of this Bill as of the previous Bill is to eliminate from the main Act certain provisions which had the effect of extinguishing rights of private property in Chos. The necessary object is attained by the amendment of section 8 of the Act. The other amendments down to and including clause 6 proposed in the Bill are intended to be of a purely consequential nature. The opportunity has also been taken to make an amendment of section 16 of the main Act necessitated by the Punjab Land Preservation (Chos) Amendment Bill.

FAZL-I-HUSAIN.

NOTES ON CLAUSES

Clause 1 is the title clause.

Clause 2 has the effect of preventing land in a Cho from vesting absolutely and in perpetuity in Government.

Clauses 3, 4, 5 and 6 are consequent on the amendment made in clause 2.

Clause 7 is an amendment consequential on certain amendments made in the Punjab Land Preservation (Chos) Amendment Bill. The necessity for this consequential amendment was overlooked when the Bill was introduced, and the opportunity is now taken to make the consequential amendment.

M. V.

BHIDE,

Secretary to Government, Punjab,
Legislative Department"

20. That the other amendments in the Act, as carried out after the Punjab Amendment Act 4 of 1944, primarily relate to the adoption of the said Act for the State of Punjab after independence, PEPSU and thereafter the State of Haryana in the year 1968, which do not have any substantial bearing to the facts of this case.

Major provisions of the PLPA, 1900 as relevant for this case

21. That That the Punjab Land (Preservation) Act, 1900 (hereinafter referred to as PLP Act) was enacted for providing for the better preservation and protection of land from soil erosion due to Cho (Hilly Torrents) and other agents in the territories of erstwhile Punjab which included the territories presently in Haryana. The Act was adopted by the State of Haryana since its formation by Haryana Adaptation of Laws (State and Concurrent Subjects) Order, 1968. A True Copy of the PLPA, 1900 (as amended prior to the 2019 amendment) and adopted by the State of Haryana is annexed and marked as **Annexure - H 4.** (Pg No. 191-207)

22. That the word "Chos" is a locally used expression for the seasonal rivulets in the hilly areas. The word "Chos" was omitted from the title of the Act by way of Amendment Act 4 of 1944. After the said amendment of 1944, the objective of the Act given in its section 3 is to provide for the conservation of soil water or the prevention of erosion or likely to become liable to erosion. Furthermore, there were other amendments that had also been carried out in the said act whereby the word "permanently" was deleted by amendment of the act in 1926 amongst other amendments.

23. That the restrictions/regulations applied to a particular land under PLP Act were not intended to restrict/regulate permanently. This fact is reflected in amendments introduced vide Punjab Amendment Act 7 of 1926 and Punjab Amendment Act 8 of 1926. The said amendments are contextual and relevant to the facts of this case. The PLPA, 1900, authorized the Government to regulate, restrict or prohibit certain activities [as specified in Section 4 and 5 thereof (in the areas notified under Section 3 thereof)] temporarily or permanently. The words "or permanently" were omitted from Section 4 and 5 vide Punjab Amendment Act 7 of 1926 along with other accompanying amendments. Relevant part of Bill No. 5 of 1926, along with the 'Statement of Objects and Reasons', as extracted from the Punjab Gazette, dated March 5, 1926, is reproduced hereunder as follows:

"Bill No. 5 of 1926.

The Punjab Land Preservation (Chos) Amendment Bill.

A Bill to amend the Punjab Land Preservation (Chos) Act, 1900.

<i>Preamble.</i>	<i>WHEREAS it is expedient to amend the Punjab Land Preservation (Chos) Act, 1900, in the manner hereinafter appearing, it is hereby enacted as follows:-</i>

Short title	1.	This Act may be called the Punjab Land Preservation (Chos) Amendment Act, 1926.
Amendment of Section 4	2.	In section 4 of the Punjab Land Preservation (Chos) Act, 1900 (hereinafter referred to as the said Act), the words "or permanently" shall be omitted.
Amendment of Section 5	3.	In section 5 of the said Act, the words "or permanently" shall be omitted.
Amendment of Section 7	4.	In section 7 of the said Act after the word "extinguish" and the word "extinguished" the word "temporarily" shall be inserted.
Amendment of Section 15.	5.	In sub-section 4 of section 15 of the said Act, the word "permanently" and the word "absolutely" shall be omitted; and for the words "and shall not revive upon," the words "until" shall be substituted.
Insertion of a new section 23	6.	After section 22 of the said Act the following new section shall be inserted, namely -
Protection of notified areas at request of owners.	23.	Where a notification has been issued under the provisions of section 3 of the owner of any land within the area to which the notification relates, or if there be more than one owner of such land, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon represent in writing to the Deputy Commissioner their desire:- (a) that such land be managed on their behalf by the Deputy Commissioner as a reserved or protected forest on such terms as may be mutually agreed upon; or

		(b) that all or any of the provisions of the Indian Forest Act, 1878, be applied to such land. In either case the Local Government may by notification in the official Gazette apply to such land such provisions of the Indian Forest Act, 1878, as it thinks suitable to the circumstances thereof, and as may be desired by the applicants."

STATEMENT OF OBJECTS AND REASONS

One of the main objections commonly urged against the Land Preservation (Chos) Act, II of 1900, is that it tends directly or indirectly to extinguish proprietary rights. Some clauses of the Act give foundation to this objection. The main object of the present Bill is to make it clear that rights of property will remain intact and that Government is only empowered to regulate these rights from time to time for the good of the people.

The opportunity has been taken to make another amendment introducing a clause similar to clause 38 of the Indian Forest Act, VII of 1878, permitting land-owners to have any area preserved by the Deputy Commissioner on such terms as may be mutually agreed upon. The necessity for such a provision has been manifested during the working of the present Act.

FAZL-I-HUSAIN
Member-in-charge"

24. That the said amendment was further carried forward vide Punjab Amendment Act 8 of 1926. Relevant part of the amendment along with the 'Statement of Objects and Reasons', as extracted from the Punjab Gazette, dated 7th June 1926 is reproduced below:

"The 7th June 1926.

No. 71 – The Punjab Land Preservation (Chos) Second Amendment Bill is published under the provisions of rule 18 of the Punjab Legislative Council Rules for general information:-

A Bill to amend the Punjab Land Preservation (Chos) Act, 1900.

Preamble.	WHEREAS it is expedient further to amend the Punjab Land Preservation (Chos) Act, 1900, in the manner hereinafter appearing, it is hereby enacted as follows:-	
Short title	1.	This Act may be called the Punjab Land Preservation (Chos) Second Amendment Act, 1926.
Amendment of section 8 of the Punjab Land Preservation (Chos) Act, 1900.	2.	In sub-section (2) of section 8 of the Punjab Land Preservation (Chos) Act, 1900 (hereinafter referred to as the said Act), the words "either absolutely or in perpetuity or" shall be omitted.
Amendment of section 9 of the Punjab Land Preservation (Chos) Act, 1900.	3.	In section 9 of the said Act, for clauses (a) and (b), the following words shall be substituted, namely:- "be suspended for the period specified in the declaration and for such further period (if any) to which such period may at any time be extended;"
Repeal of Section 12 of the Punjab Land Preservation (Chos) Act, 1900.	4.	Section 12 of the said Act shall be omitted.
Amendment of section 14 of the Punjab Land Preservation (Chos) Act, 1900.	5.	In clauses (a) and (c) of sub-section (1) of section 14 of the said Act, the words and figures "or section 12" shall be omitted, and in clause (d) of the same sub-section for the word "extinguished" the word "prohibited" shall be substituted.
Amendment of section 15 of the	6.	Sub-section (4) of section 15 of the said Act, shall be omitted.

Punjab Land Preservation (Chos) Act, 1900.		
Amendment of section 16 of the Punjab Land Preservation (Chos) Act, 1900.	7.	In clause (b) of sub-section (I) of section 16, for the word "extinguished" the word "prohibited" shall be substituted, and the word "suspended" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

THE main object of this Bill as of the previous Bill is to eliminate from the main Act certain provisions which had the effect of extinguishing rights of private property in Chos. The necessary object is attained by the amendment of section 8 of the Act. The other amendments down to and including clause 6 proposed in the Bill are intended to be of a purely consequential nature. The opportunity has also been taken to make an amendment of section 16 of the main Act necessitated by the Punjab Land Preservation (Chos) Amendment Bill.

FAZL-I-HUSAIN.

NOTES ON CLAUSES

Clause 1 is the title clause.

Clause 2 has the effect of preventing land in a Cho from vesting absolutely and in perpetuity in Government.

Clauses 3, 4, 5 and 6 are consequent on the amendment made in clause 2.

Clause 7 is an amendment consequential on certain amendments made in the Punjab Land Preservation (Chos) Amendment Bill. The necessity for this consequential amendment was overlooked when the Bill was introduced, and the opportunity is now taken to make the consequential amendment.

M. V. BHIDE,
Secretary to Government, Punjab,
Legislative Department"

25. That under Section 3 of the PLP Act, the State Government may issue direction, by notification, for prevention of erosion in any area subject to erosion or likely to become liable to erosion. In respect of areas notified under Section 3, the State Government may by notification Under Section 4 and or 5 temporarily regulate, restrict or prohibit any specified activities such as clearing of land, cultivation, quarrying, cutting of trees and collection of forest produce. These relevant provisions of the PLPA, which bring out the intent of the Act and the procedures adopted in this behalf, and which need to be considered, are explained in the following sub-paras:

"Section 3.

Whenever it appears to the State Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly.

Section 4.

In respect of areas notified under Section 3 generally or the whole or any part of any such area, the State Government may, by general or special order temporarily regulate, restrict or prohibit -

- (a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under Section 3;*
- (b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under Section 3;*
- (c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce other than grass, save for bona fide domestic or agricultural purposes or right-holder in such area;*

- (d) the setting on fire of trees, timber or forest produce;
- (e) the admission, herding, pasturing or retention of sheep, goats or camels;
- (f) the examination of forest-produce passing out of any such area; and
- (g) the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area to take any tree, timber or forest produce for their own use therefrom or to pasture sheep goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons.

Section 5.

In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3, the State Government may, by special order, temporarily regulate, restrict or prohibit -

- (a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of any stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under Section 3;
- (c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub section, of any forest-produce for any purposes, and
- (d) the admission, herding, pasturing or retention of cattle generally other than sheep, goats and camels, or of any class or description of such cattle."

Section 5A.

In respect of areas notified under section 3 generally or the whole or any part of any such area, the State Government may, by general or special order direct -

- (a) the levelling, terracing, drainage or embanking of fields;
- (b) the construction of earth-works in fields and ravines;
- (c) the provision of drains for storm waters;
- (d) the protection of land against the action of wind or water;

- (e) *the training of streams and;*
- (f) *the execution of such other works and the carrying out of such other measures as may, in the opinion of the State Government, be necessary for carrying out the purposes of this Act."*

26. That it is submitted that from the perusal of Act, it is evident that main object of the Act was to regulate certain activities in order to prevent erosion of soil in those areas and conservation of subsoil water. It is submitted that it is important to interpret the application of the said Act in the said context especially when the question of adjudging the land under the regulatory regime of such enactment, amounts to "forest" land or not. It is submitted by the very object of the Act, which is to prevent "soil erosion", it is clear that it applies to such land which would be susceptible to "soil erosion". Logically speaking, only such lands wherein there is no plantation or forest cover and lie open/barren, would be susceptible to erosion. It is submitted that any land, wherein there is some plantation or forest cover, would never be susceptible to soil erosion. Therefore, from the object of the Act itself, it is clear that the intendment of the PLPA was never to include land in any larger definition of forest land or protected land rather was merely to provide for a regulatory regime in order to protect such land from soil erosion. The regulatory regime in this regard included various steps and directions which were taken in consultation with a wide variety of departments. It is submitted that therefore, the partial regulatory supervision of any particular department of the Government i.e. Forest Department, which may notice such lands falling under the PLPA regime, would not be the determinative factor in ascertaining the status and nature of such lands.

27. It is worthwhile to mention here that in the original Act, such regulation was permitted to be effective either *temporary* or *permanently*.

However, considering the fact that permanent regulation may alienate the ownership rights of individuals permanently, the appropriate government through an amendment i.e. the Punjab Act 7 of 1926, the word "or permanently" was deleted from the entire Act wherever it so appeared.

28. It is submitted that after 1968, the State Forest Department had been issuing orders/Notifications under Sections 3, 4 and 5 of the PLPA from time to time in respect of areas mentioned therein. It is submitted that merely because the Forest Department exercised certain degree of regulatory control over the said land due to the administrative exigencies, the same would not automatically clothe the status of such land as "forest" in any statutory enactment or through judicial mandamus. A sample copy each of the Government Orders issued under Section 3 (General Order), Section 4 (General Order), and Section 4 and/or 5 (Special Order) issued in this behalf are annexed herewith as **Annexure-H5. (Pg No. 208 - 217)**

A copy of the Notification dated 18.08.1992 challenged in present writ petition is annexed herewith and marked as **Annexure H - 6. (Pg No. 218-220)**

29. That it is worthwhile to mention here that the Haryana Forest Department, the Nodal Department for issue of Notifications under PLP Act, has laid down detailed procedure / guidelines required to be followed for issuance of the Notifications under the said Act in the form Technical Note - 6. Copy of the said Technical Note -6 is annexed herewith and marked as **Annexure H - 7. (Pg No. 221 - 230)**

30. That each Notification particularly those issued under Sections 3, 4 and/or 5 of the PLP Act are required to be issued only in conformity with the prescribed procedure laid down under Technical Note - 6. The Technical Note, which is based on the erstwhile circulars of 1947 and 1964 prescribes that:

- (a) before closure of an area under PLP Act (by issuance of Notifications) the DFO will personally inspect the area and will consult the local inhabitants;
- (b) for areas to be closed, the Range Officer will elicit the opinion of the owners of the land proposed for closure;
- (c) where the land owners do not want the closure of their lands, the concerned Range Officer will, in writing, provide the necessity of closure of the land. The proposal for the closure of the land will be sent to the SDO (Civil). If he does not agree to the proposal, then in that case the DFO will take up the matter with the Deputy Commissioner for obtaining his consent. If the Deputy Commissioner also does not give his consent, then in that case the matter will be referred to the Government through the Conservator of Forest and Chief Conservator of Forest along with their recommendations and that after detailed enquiry Notification will be issued by the State Government. The Technical Note also deals with the procedure for payment for compensation under the PLP Act.

31. It is submitted that it is important to note the following from the above provisions and procedures:

- a.** That the Notifications/Orders under the PLPA can be issued only for a temporary period. The Forest Department of the State Government has been issuing the said notifications for specified periods varying between 15 to 30 years, in accordance with the provisions of the PLPA.
- b.** That the regulation, restriction, and prohibition of specified activities are limited only to the activities mentioned in the relevant sections, which does not include all the non-forestry activities.

c. That all the regulated, restricted or prohibited activities can be undertaken by the landowners with the permission of the officer concerned of the Forest Department.

In light of the above, it is submitted that considering that under various orders issued from time to time, if major portion of State land was under the regulatory control of the PLPA, it is absolutely inconceivable that the all such lands can be legislatively or judicially classified as "forest". Further, the administrative oversight and regulatory control was supposed to temporary in nature and not permanent unlike the status of land as "forest". Lastly, the administrative oversight or the limited regulatory control of the forest Department is not symptomatic of the character of lands.

32. That it is respectfully submitted that the intent and the provisions of both the IFA 1927 and PLP Act are completely different. Some of the important distinctions are being summarized herein below:

- (a) The IFA, 1927 was enacted for the purpose of conserving forests and the PLP Act was meant for protection of land from action of flowing water and blowing wind to arrest soil erosion/preservation of sub-soil water.
- (b) The IFA, 1927 provides for creation, conservation and protection of reserved and protected forests on lands which are owned by government or over which the Government has proprietary rights. The PLP Act provides for conservation of soil on lands which are largely private/community owned.
- (c) The notifications made under IFA, 1927, except those made under Chapter V, are of permanent nature whereas, the notifications made under PLP Act are always for a temporary and specified

period after which the restriction imposed on such lands come to an end.

It is respectfully submitted that the distinctions given at (a) to (c) above are indicative of the fact that the lands notified under PLP Act were not intended to be subjected to rigors of the FC Act, 1980. The Lands notified under the PLP Act came to be treated as forest for the purpose of FC Act, 1980 only by virtue of various Orders passed by this Hon'ble Court from time to time.

Judicial Pronouncements prior to the amendments of 2019

33. It is submitted that this Hon'ble Court considered the issue of applicability of Section 2 of the Forest Conservation Act, 1980 vide its orders dated 12.12.1996 on the subject in *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267. The relevant portion from para 4 of the order is extracted as under:

"3. 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.

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. Bansi 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."

A copy of the judgment in *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267 is annexed herewith and marked as Annexure H - 8. (Pg. No. 231 - 239)

34. It is submitted that the Hon'ble Supreme Court vide above mentioned order/judgment did not examine/consider the issue pertaining to PLPA Act and Notifications issued thereunder.

35. That this Hon'ble Court vide order dated 16.12.2002 in I.A No 828 and connected I.A's in W. P. (C) no 202 of 1995 *T.N. GodavarmanThirumulpad*(2008) 16 SCC 401 directed that " For the present, no mining will be permitted in the areas for which notification under Section 4 and 5 of the Punjab Land Preservation Act 1900 have been issued for regulating the breaking up of the land etc and such lands are or were recorded as "Forest" in Government records even if the notification period has expired, unless there is approval under the FC Act." The legal effect of the issuance of the notifications under the provisions of the PLP Act was not examined and decided.

A copy of the judgment in *T.N. GodavarmanThirumulpad v. Union of India*,(2008) 16 SCC 401is annexed herewith and marked as Annexure H

- 9. (Pg No. 240-243)

36. It is submitted that in *M.C. Mehta v. Union of India*, (2004) 12 SCC 118, this Hon'ble Court, in the context of mining in the Aravalli Hills, held as under:

Y.K. SABHARWAL, J.— The main question to be examined in these matters is whether the mining activity in area up to 5 kilometres from the Delhi-Haryana border on the Haryana side of the ridge and also in the Aravalli hills causes environment degradation and what directions are required to be issued. The background in which the question has come up for consideration may first be noticed.

Notifications regarding mining on Aravalli hills

30. The notification dated 7-5-1992 issued by the Ministry of Environment and Forests, Government of India under Section 3(2)(v) of the EP Act read with Rule 5 of the Rules made under the said Act has considerable bearing on the aspect of mining in Aravalli hills. The notification, inter alia, bans all new mining operations including renewals of mining leases and sets out the procedure for taking prior permission before undertaking such an activity. The notification, insofar as material for the present purposes, reads:

"S.O. 319(E).—Whereas a notification under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 (29 of 1986) inviting objections against restricting certain activities in specified area of Aravalli range which are causing environmental degradation in the region was published in the Gazette of India, Part II, Section 3 sub-section (2) vide S.O. 25(E) dated 9-1-1992;

And whereas all objections received have been duly considered by the Central Government;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with Rule 5 of the Environment (Protection) Rules, 1986 the Central Government hereby prohibits the carrying on of the following process and operations, except with its prior permission, in the areas specified in the table appended to this notification:

(i)***

(ii)(a) all new mining operations including renewals of mining leases;

(b) existing mining leases in sanctuaries/national parks and areas covered under Project Tiger; and/or

(c) mining is being done without permission of the competent authority;

(iii) cutting of trees;

(iv) construction of any clusters of dwelling units, farmhouses, sheds, community centres, information centres and any other activity connected with such construction (including roads, a part of any infrastructure relating thereto);

(v)***

2. Any person who desires to undertake any of the abovementioned processes or operations in the said areas, shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi, in the attached application form (annexure) specifying, inter alia, details of the area and proposed process or operation. He shall also furnish an environment impact statement and an environmental management plan along with the application and such other information as may be required by the Central Government for considering the application.

3. The Central Government in the Ministry of Environment and Forests shall, having regard to the guidelines issued by it from time to time for giving effect to the provisions of the said

Act, grant permission within a period of three months from the date of receipt of the application or where further information has been asked for from the applicant, within a period of three months from the date of the receipt of such information, or refuse permission within the said time on the basis of the impact of the proposed process or operation on the environment in the said area.

4. For seeking permission under this notification, an application in the prescribed form (see annexure), duly filled in, may be submitted to the Secretary, Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi.

3. (b)(ii) Erodability classification of the proposed land.

5. (a) Water balance at site surface and groundwater availability and demand.

12. (a) Environmental impact assessment report.

(b) Environmental management plan: prepared as per guidelines of MEF issued from time to time.

(c) Detailed feasibility report.

(d) Proposal for diversion of forest land under Forest (Conservation) Act, 1980 including benefit-cost analysis.

13. Recommendations of the State Pollution Control Board and/or the State Department of Environment and Forests."

32. The powers vested in the Central Government in terms of the aforesaid notification dated 7-5-1992 were delegated to the State Governments concerned, namely, Rajasthan and Haryana by issue of notification dated 29-11-1999 by the Central Government, Ministry of Environment and Forests. The said notification reads thus:

"MINISTRY OF ENVIRONMENT AND FORESTS NOTIFICATION

New Delhi, 29-11-1999

S.O. 1189(E).—In exercise of the powers conferred by Section 23 of the Environment (Protection) Act, 1986 (29 of 1986) (hereinafter referred to as the said Act), read with sub-rule (4) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby delegates the powers conferred on it to take measures for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution, to be exercised also by the State

Governments as notified in the notification of the Government of India in the Ministry of Environment and Forests No. S.O. 319(E) dated 7-5-1992 subject to certain conditions which are as follows:

(i) the State Governments concerned, namely, Haryana and Rajasthan shall constitute an Expert Committee for each State as per the composition given in Schedule I annexed to this notification;

(ii) each State Government shall also constitute a Monitoring Committee, under the Chairmanship of the District Collector concerned (Gurgaon in Haryana and Alwar in Rajasthan) as given in Schedule II annexed to this notification which shall inter alia monitor the compliance of the conditions stipulated while according environmental clearance by such State Governments and report to such State Government about the violations, if any, and the action taken thereon;

(iii) the District Collectors of Gurgaon in Haryana and Alwar in Rajasthan shall be authorised by the respective State Governments to take necessary action under Section 5 of the said Act in respect of cases where the project proponents fail to implement the conditions.

2. The State Government concerned shall initiate steps to prepare a master plan for the development of the area covered by Notification No. S.O. 319(E) dated 7-5-1992 integrating environmental concerns and keeping in view the future land use of the area. This master plan shall be prepared by the State agency concerned, approved by the competent authority and finally published, within two years from the date of issue of this notification, in accordance with the procedure laid down in the Town and Country Planning Act or any other similar Act of the respective State Government. The State Government concerned shall implement the master plan forthwith after its final publication.

3. Any person desirous of undertaking any of the activities mentioned in Notification No. S.O. 319(E) dated 7-5-1992 shall submit an application to the Secretary, Department of Environment of the Government of Haryana/Rajasthan, as the case may be. The applicant shall also furnish environment impact statement and an environment management plan and such other information as may be prescribed by such State Governments. The application after due scrutiny shall be

placed before the Expert Committee for its recommendations. Based on the recommendations of the Expert Committee, the Department of Environment in the State Government concerned shall take a final decision and convey the same to the applicant within three months from the date of receipt of application or when further information has been asked for from the applicant within three months from the date of receipt of such information.

4. The Ministry of Environment and Forests retains appellate power against rejection of any proposal and the National Environmental Appellate Authority constituted under the National Environment Appellate Authority Act, 1997 (22 of 1997) shall continue as an Appellate Authority against approval."

(emphasis in original)

47. The mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation have to be applied.

48. Development and the protection of environment are not enemies. If without degrading the environment or minimising

adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, a series of orders have been passed by this Court in T.N. Godavarman case [T.N. Godavarman Thirumulkpad v. Union of India, 1991 Supp (2) SCC 665; (1997) 2 SCC 267; (1997) 3 SCC 312; (1997) 5 SCC 760; (1997) 7 SCC 440; (1997) 10 SCC 775; (1998) 2 SCC 59, 341; (1998) 6 SCC 190; (1998) 9 SCC 632, 660, 672; (1999) 5 SCC 736; (1999) 9 SCC 121, 151, 216; (2000) 6 SCC 413; (2000) 10 SCC 494, 579, 645; (2002) 9 SCC 502] regulating the felling of trees in all the forests in the country. Principle 15 of the Rio Conference of 1992 [Ed.: Cited in (1999) 2 SCC 718, 733 in para 33] relating to the applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

Mines and Minerals (Regulation and Development) Act and Rules thereunder

50. The grant of mining leases is governed by the Mines and Minerals (Regulation and Development) Act, 1957 (for short "the MMRD Act") which was enacted to provide for the development and regulation of mines and minerals under the control of the Union. Section 13 is the rule-making power of the Central Government. The Central Government is empowered to make rules to provide for the manner in which rehabilitation

of flora and other vegetation, such as trees, shrubs and the like destroyed by reason of any mining operation shall be made in the same area or in any other area selected by the Central Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the mining lease. Section 18, *inter alia*, casts a duty upon the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by mining operations and for such purposes, the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit.

Mining in forest area

56. The question of permitting mining in the area where large scale of afforestation with foreign funding has taken place, is required to be examined keeping in view the national forest policy which also provides that forest land or land with tree cover should not be treated merely as a resource readily available to be utilised for various projects and programmes but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Mining and industrial development should be consistent with the need for conservation of trees in forests. It provides that no mining should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.

Aravalli hill range

58. The Aravallis, the most distinctive and ancient mountain chain of peninsular India, mark the site of one of the oldest geological formations in the world. Heavily eroded and with exposed outcrops of slate rock and granite, it has summits reaching 4950 feet above sea level. Due to its geological location, the Aravalli range harbours a mix of Saharan, Ethiopian, peninsular, oriental and even Malayan elements of flora and fauna. In the early part of this century, the Aravallis were well wooded. There were dense forests with waterfalls and one could encounter a large number of wild

animals. Today, the changes in the environment at Aravalli are severe. Though one finds a number of tree species in the hills, timber-quality trees have almost disappeared. Despite the increase of population resulting in increase of demand from the forest, it cannot be questioned nor has it been questioned that to save the ecology of the Aravalli mountains, the laws have to be strictly implemented. The notification dated 7-5-1992 was passed with a view to strictly implement the measures to protect the ecology of the Aravalli range. The notification was followed more in its breach.

The applicability of the Forest (Conservation) Act, 1980 to areas treated as forest by the State Forest Department

78. The provisions of the Act provide for the conservation of forest and for matters connected therewith or ancillary or incidental thereto. Any forest land or portion thereof cannot be used for any non-forest purposes or assigned by way of leases or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by the Government, except with the prior approval of the Central Government. Mining activity within forest area cannot be permitted in contravention of the provisions of the Act. The Act makes the contravention of any of the provisions of Section 2 as an offence punishable in the manner provided in the Act.

79. The controversy is in respect of certain leases where area under the lease is covered under notification issued under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900. The question is whether such area is "forest" of any kind.

80. Under Section 3 of the aforesaid Act, whenever it appears to the State Government that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly. Under Section 4(b), the State Government has power to regulate, restrict or prohibit the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under Section 3. Under Section 5(b) in respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under Section 3, the State Government may,

by special order, temporarily regulate, restrict or prohibit the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under Section 3. In respect of some mining areas notifications have been issued under Section 4 and in respect of some, notifications have been issued both under Sections 4 and 5. The submission is that invoking of Sections 3, 4 and 5 is only to conserve subsoil water and prevention of the area from erosion of land and is not to create any forest. It has been pointed out that in cases where the notifications have been issued, only felling of trees had been prohibited and not quarrying of stone.

81. It cannot be disputed that the State Forest Department has been treating and showing the aforesaid areas as "forest". The contention urged on behalf of the State Government is that it was on account of erroneous viewpoint of the Forest Department. In fact and law, such area is not "forest" and mining is not prohibited and, therefore the question of seeking permission under Section 2 of the FC Act does not arise.

82. In the instant case, it is not necessary to decide the legal effect of issue of the notification under Sections 4 and/or 5 of the Act. Not only in their record has the area been shown as forest but affidavits have been filed in this Court stating the area to be "forest". In T.N. Godavarman Thirumulkpad v. Union of India, this Court held that the term "forest" is to be understood in the dictionary sense and also that any area regarded as a forest in government records, irrespective of ownership, would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose. Reference in this connection may also be made to the affidavit dated 8-12-1996 filed by Banarsi Das, Principal Chief Conservator of Forests, Chandigarh, Haryana in Environmental Awareness Forum v. State of J&K [Civil Writ No. 171 of 1996]. Our attention has also been drawn to letter dated 26-11-2002 addressed by the Divisional Forest Officer, Faridabad to the Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad district and requesting him to ensure that the said forest areas are not affected by any mining operations as also to a letter dated 17-9-2001 sent by the

Principal Chief Conservator of Forests, Haryana (Panchkula) to the Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete somersault in these proceedings and contend that the earlier stand that the area is forest was under some erroneous impressions. In the present case, for the purposes of the FC Act, these areas shall be treated as forest and for use of it for non-forestry purpose, it would be necessary to comply with the provisions of the FC Act.

83. We may also note that assuming that there was any confusion or erroneous impression, it ought to have been first sorted out at the appropriate level and where affidavits had been filed in this Court, clarifications/orders sought before issue of the mining lease in respect of such area.

Conclusions

96. 1...

2.

3. On the facts of the case, the mining activity in areas covered under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980.

4."

A copy of the judgment in *M.C. Mehta v. Union of India*, (2004) 12 SCC 118, is attached herewith and marked as Annexure H - 10. (Pg No. 244 - 310)

37. That in para No.82 of the above mentioned Order/Judgment, this Hon'ble Court reiterated that in areas notified under Sections 4 and or 5 of the PLP Act, for any non-forest activity (referring to mining activity) prior permission of Central Government under Section 2 of the Forest Conservation Act, 1980 would be required. As recorded at para 82 of the said order, the Hon'ble Court did not decide the legal effect of the issuance of the Notifications under Section 4 / 5 of the PLPA but, on the factual position that in the affidavit filed by the State Government in W.P. (C) No.202 of 1995 the areas notified under Section 4 / 5 of the PLPA were

treated as forest temporarily (for the period 15/30 years as mentioned in Notification/Order issued under PLP Act) for the purpose of the Section 2 of the said Act and that the State has been seeking approval under the FC Act for diversion of forest land for mining etc. The basis of recording / treating part of the PLPA notified areas as forest by Forest Department was not examined by the Hon'ble Court.

38. It is submitted that in *M.C. Mehta v. Union of India*, (2008) 17 SCC 294, it was held as under :

ARIJIT PASAYAT, J.— IA No. 1901 of 2005 relates to the land situated in Aravalli Range. Challenge basically is to the communication dated 31-1-2005 by the Divisional Forest Officer, Faridabad requesting the Commissioner, Faridabad; the Administrator, Haryana, Urban Development Authority (in short "HUDA") and the District Town Planner, Faridabad forwarding a list of areas closed under Sections 4 and 5 of the Punjab Land Preservation Act, 1900 (in short "the Act"). It was indicated that these areas have been declared by this Court to be "forest" and, therefore, penal action is required to be taken for any non-forest activities under the Forest (Conservation) Act, 1980 (in short "the Conservation Act"). This communication was issued purportedly on the basis of this Court's order.

3. The background facts show that the State Government decided to notify the area in question under Section 4 of the Act, prohibiting activities contained in the said Notification dated 18-8-1992 for a period of 30 years. The effect of the decision in *M.C. Mehta v. Union of India* [(2004) 12 SCC 118] on the areas declared under Sections 4 and 5 of the Act, has to be noted.

11. Reference can be made to Sections 3, 4 and 5 of the Act. Section 3 inter alia provides that whenever the State Government with a view to conserve — (a) subsoil water; (b) erosion in any area; may make a notification for the said purpose and Section 4 thereof provides as to what activities can be prohibited. A perusal of Sections 4 and 5 would show that what can be prohibited is:

"(a) the clearing or breaking up of any area/land which was not under cultivation;

(b) the quarrying of stone or burning of lime which was not so being done earlier;

(c) the cutting of trees or timber or collection or removal of any forest produce except for bona fide domestic use;

(d) the setting on fire of trees, timber or forest produce;

(e) the admission, herding, retention or pasturing of animals;

(f) the examination of forest produce;

(g) the grant of permits to the inhabitants of the towns and villages to take any tree or timber or forest produce for their own use or to pasture sheep or camel or to cultivate or to make building, etc."

12. In view of the notification under Section 4 when the clearing or breaking up of the land is not permitted that itself is a bar from (sic for) fresh construction because a construction can take place only if clearing and breaking of an area/land takes place. This prohibition is clearly contained in the notification of 1992. The reliance placed by the applicants on clause (g) is clearly misconceived, inasmuch as the permissible activity allowed within clause (g) is in favour of inhabitants of town and villages within the limits or vicinity of any such area. The admitted case is that the applicants herein have developed plots in the area in question and have sold it to persons who are not inhabitants of towns and villages within such specified living area, but could be anybody from all over the country or outside, and therefore clause (g) of Section 4 has no application. The factum of developing a plot and then construction thereon would amount to clearing or breaking up of an area or land.

14. This Court was not only examining the mining activity in the area up to 5 km on the Haryana side of the Ridge, but also in Aravalli Hills causing environmental degradation as is apparent from para 1 of the judgment. Further in para 8, it has been noted that the application that was filed by Delhi Ridge Management Board not only sought for a direction to stop all mining activities but also of pumping of groundwater in and from areas up to 5 km from Delhi-Haryana border on the Haryana side of the Ridge, inter alia, stating that this was in the larger interest of maintaining ecological balance of the environment. As per learned amicus curiae location of the

applicant company's plots are in the Ridge and in the Aravalli chain.

20. Therefore, it is not correct as contended by the applicant that the nature of lands of the applicant were considered by this Court in the earlier case and the restrictions did not operate so far as they are concerned."

A copy of the judgment in *M.C. Mehta v. Union of India*, (2008) 17 SCC 294 is attached herewith and marked as Annexure H - 11. (Pg No. 311 - 320)

39. It is submitted that thereafter, the judgment in *B.S. Sandhu v. Govt. of India*, (2014) 12 SCC 172, was rendered by this Hon'ble Court.

The relevant paragraphs are quoted as under:

"18. It will be clear from the language of Section 3 of the PLP Act, 1900 extracted above that for the better preservation and protection of any local area, situated within or adjacent to Shivalik mountain range which is liable to be affected by debodement of forests in that range or by the action of "cho", such Government may by notification make a direction accordingly. The expression "local area" has not been defined in the PLP Act, 1900 and may include not only "forest land" but also other land. In Section 4 of the PLP Act, 1900 extracted above, the local Government was empowered by general or special order, temporarily or permanently to regulate, restrict or prohibit various activities mentioned in clauses (a), (b), (c), (d), (e), (f) and (g) thereof. A reading of these clauses would show that activities such as cultivation, pasturing of sheep and goats and erection of buildings by the inhabitants of towns and villages situated within the limits of the area notified under Section 3 can be regulated, restricted or prohibited by a general or special order of the local Government. All these activities are not normally carried on in forests. Similarly, under Section 5 of the PLP Act, 1900, the local Government was empowered by special order, temporarily or permanently to regulate, restrict or prohibit the cultivating of any land or to admit, herd, pasture or retain cattle generally other than sheep and goats. These activities are also not normally carried on in forests.

19. In our view, therefore, land which is notified under Section 3 of the PLP Act, 1900 and regulated by orders of the local Government under Sections 4 and 5 of the PLP

Act, 1900 may or may not be "forest land". Therefore, the conclusion of the High Court in the impugned order that the entire land of Village Karoran, District Ropar, which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 thereof is "forest land" is not at all correct in law. The basis for inclusion of the entire area in Village Karoran, District Ropar, in the list of forest areas in the State of Punjab pursuant to the order dated 12-12-1996 of this Court in T.N. GodavarmanThirumulpad v. Union of India [T.N. GodavarmanThirumulpad v. Union of India, (1997) 2 SCC 267] is legally not correct. Similarly, the conclusion of the High Court in the impugned order [Court on Its Own Motion v. State of Punjab, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H)] that the entire land in Village Karoran, District Ropar, having been notified under Section 3 of the PLP Act, 1900 and being under the regulatory regime of Sections 4 and 5 of the said Act is "forest land" is also legally not correct.

20. In fact, the High Court failed to appreciate the meaning of "forest" and "forest land" in Section 2 of the Forest (Conservation) Act, 1980 as given by this Court in the order dated 12-12-1996 in T.N. GodavarmanThirumulpad v. Union of India [T.N. GodavarmanThirumulpad v. Union of India, (1997) 2 SCC 267]. The relevant portions of the order dated 12-12-1996 of this Court in T.N. GodavarmanThirumulpad v. Union of India [T.N. GodavarmanThirumulpad v. Union of India, (1997) 2 SCC 267] on the meaning of the words "forest" and "forest land" is extracted hereinbelow: (SCC pp. 269-70, para 4)

"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."

(emphasis supplied)

The underlined [Ed.: Herein italicised.] portion of the order dated 12-12-1996 in T.N. GodavarmanThirumulpad v. Union of India [T.N. GodavarmanThirumulpad v. Union of India, (1997) 2 SCC 267] would show that the Forest (Conservation) Act, 1980 was enacted with a view to check "further deforestation" and was to apply to all forest irrespective of the nature of ownership or classification thereof. Hence, Section 2 of the Forest (Conservation) Act, 1980 puts a restriction on further deforestation of "forest land" and would apply to any land which at the time of enactment of the Forest (Conservation) Act, 1980 was "forest land" irrespective of its classification or ownership. This is exactly the view taken also by the CEC in its recommendations dated 10-9-2003 in IA No. 727 in T.N. Godavarman case [T.N. GodavarmanThirumulpad (85) v. Union of India, (2014) 12 SCC 187].

21. Para 8 of the recommendations dated 10-9-2003 of the CEC in IA No. 727 is extracted hereinbelow:

"8. After examining the submissions made by the applicant, affidavit filed by the State Government of Punjab and the 'No Objection' given by MoEF, the CEC is of the view that deletion of areas, which were under cultivation/habitation prior to 25-10-1980 i.e. enactment of the FC Act, would not be against the spirit of the FC Act, and this Hon'ble Court's order dated 12-12-1996 [T.N. GodavarmanThirumulpad v. Union of India, (1997) 2 SCC 267], if such areas were included in the "list of forest area" on technical reasons alone. However, the areas closed under Section 4 of the PLPA are recorded as "forest" in the Forest Department's records for the last 40-50 years. This Hon'ble Court by order dated 12-12-1996 [T.N. GodavarmanThirumulpad v. Union of India, (1997) 2 SCC 267] has held that areas recorded as 'forest' in Government records are forest for the purpose of Section 2 of the FC Act. It would therefore be necessary to obtain prior approval of the Central Government under Section 2 of the FC Act, for

deleting such areas from the "list of the forest area" after following the procedure as laid down in the Forest (Conservation) Rules, 1981, and the guidelines issued by the Central Government for implementation of the said Act. Irrespective of the merits of the case, it would not be appropriate to allow deletion of such area from the 'list of forest area' without following the prescribed procedure and provisions of the Forest (Conservation) Act."

22. Thus, what the High Court was called upon to decide is whether the land on which the Forest Hill Golf and Country Club of Col. B.S. Sandhu was situated was forest land as on 25-10-1980 irrespective of its classification or ownership. This is a factual question and the High Court should have decided this factual question on the basis of government records as on 25-10-1980 and other materials filed before the High Court, but the High Court has instead decided this question by reference to the provisions of the PLP Act, 1900 and the records of the Forest Department in which the land was shown to be under the Forest Department because of the fact that the land was closed under the PLP Act, 1900 several decades before the enactment of the Forest (Conservation) Act, 1980. Moreover, by recording a blanket finding that all land in Village Karoran, District Ropar, was "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980, the High Court has affected the legal rights of several villagers, agriculturists, farmers, shop owners, inhabitants of Village Karoran, District Ropar, who were carrying on their respective occupations on their land even before the enactment of the said Act on 25-10-1980. In our view, the High Court should have been very careful before recording findings which affect the property rights of persons protected by Article 300-A of the Constitution.

23. We have also examined the two decisions of this Court in the first and second cases of M.C. Mehta [M.C. Mehta v. Union of India, (2004) 12 SCC 118] , [M.C. Mehta v. Union of India, (2008) 17 SCC 294] cited on behalf of the State of Punjab and we find that the aforesaid decisions have been rendered in the case of Aravalli Hills in the State of Haryana and it was held therein that as the State Forest Department had been treating and showing the areas as "forest", in fact and in law, the area was forest and non-forest activities could not be allowed in such areas without the prior

permission of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. In these two decisions, this Court has not enquired into the basis of inclusion of the areas in forest by the State Forest Department nor has this Court considered as to whether a land becomes "forest land" by mere inclusion of the same under the notification under Section 3 of the PLP Act, 1900. In the present case, on the other hand, the State Government has in its affidavit stated before this Court that the basis of inclusion of the entire land of Village Karoran, District Ropar, in forest areas in the records of the Forest Department of Government of Punjab was that the land was closed under the PLP Act, 1900 and we have found this basis as not correct in law.

24. We, therefore, set aside the finding of the High Court that the entire land in Village Karoran, District Ropar, is "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980 and remand the matter to the High Court for fresh hearing and fresh order in accordance with law. Consequently, all directions in the impugned order [Court on Its Own Motion v. State of Punjab, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H)] which flow out of the aforesaid finding of the High Court that the land was "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980 are set aside. We, however, make it clear that we have not set aside the directions for investigation by CBI in the impugned order."

A copy of the judgment in *B.S. Sandhu v. Govt. of India*, (2014) 12 SCC 172 is attached herewith and marked as Annexure H - 12. (Pg. No. 321-335)

40. That the legal validity of considering the areas notified under Section 4 / 5 of the PLPA as forest was for the first time considered by this Hon'ble Court vide Order/Judgment dated 21.05.2014 as mentioned in preceding para. After considering the above said judgment in MC Mehta and Other relevant legal and factual issues, the Hon'ble Court has been pleased to hold that the areas closed under the provisions of Punjab land Preservation Act, 1900 were not forest and thus provisions / restrictions under Section 2 of the Forest Conservation Act, 1980 were not attracted to

the said areas. This Hon'ble Court specifically has been pleased to hold that the decision of this Hon'ble Court reported as (2004) 12 SCC 118 and (2008) 17 SCC 294 never enquired into the basis of inclusion the areas in forest by the State Forest Department and that this Hon'ble Court never considered as to whether by mere inclusion of same under the Notification under Section 3 of the PLPA the land becomes forest.

It is worthwhile to mention here that case of state of Haryana is similar to case of Punjab. The Principal Act is in name of 'Punjab' Land Preservation Act. After separation from State of Punjab, the State of Haryana adopted the Act in same manner as was applicable in Punjab. Forest Department of both States were maintaining the records in same manner and land notified under Section 4 and/or 5 of PLPA was being recorded as forest during period of Order/Notification only. It is therefore, respectfully, submitted that legal proposition w.r.t. PLPA notified land can't be different for State of Haryana from that for State of Punjab.

It will not be out of place to mention here that State of Haryana through Industries & Commerce Department has filed an IA No.2603/2014 in WP(C) 4677/1985 titled as M.C.Mehta Vs UoI&Ors. with the following prayers:

- "(i) Declare/Clarify that land covered under the expired notifications/orders issued under Section 4 and/or 5 of the PLPA is not 'Forest' in terms of orders dated 18.03.20004,*
- (ii) Decide the legal effects of the notifications/orders issued under Section 4 and/or 5 of the Punjab Land Preservation Act, 1900,*
- (iii) Declare/Clarify that areas covered under Special Orders/Notifications issued under Section 4 and/or 5 of the PLPA do not constitute 'Forest' for the purposes of Section 2 of the Forest Conservation Act, 1980,*

- (iv) Declare that the areas notified under section 4/5 of the PLPA and forming a part of even the subsisting notifications are not 'Forest' and that these areas have to be regulated as per the provisions of the PLPA qua the regulations,, restrictions, and prohibitions specified in the Special Orders therefore."

The said IA No.2603/2014 is still pending consideration before this Hon'ble Court. After passing of Judgment dated 14.05.2014 in B.S. Sandhu Case, the State of Haryana filed an additional affidavit in 2014.

41. It is submitted that thereafter in *M.C. Mehta (Kant Enclave matters) v. Union of India*, (2018) 18 SCC 397, this Hon'ble Court, held as under :

MADAN B. LOKUR, J.— The principal question that arises in this batch of substantive applications is whether, in the State of Haryana, land notified under the provisions of the Punjab Land Preservation Act, 1900 (for short "the PLP Act") is forest land or is required to be treated as forest land. If so, whether construction carried out by the applicant R. Kant & Co. on this land is in contravention of the Notification dated 18-8-1992 issued under the provisions of the PLP Act; the Forest (Conservation) Act, 1980 and the decisions of this Court.

2. Our answer to both the questions is in the affirmative. We have no doubt that land notified by the State of Haryana under the provisions of the PLP Act must be treated as "forest" and "forest land" and has in fact been so treated for several decades by the State of Haryana. There is no reason to change or alter the factual or legal position. The construction activity carried out by the applicant R. Kant & Co. is clearly in violation of the Notification dated 18-8-1992 and in blatant defiance of orders passed by this Court from time to time. Unfortunately, the Town and Country Planning Department of the State of Haryana has been supporting the illegalities of the applicant despite strong resistance from the Forest Department of the State of Haryana. There is no doubt that at the end of the day, the State of Haryana comes out in very poor light and must be held accountable for its conflicting and self-destructive stand

taken in spite of affidavits filed by the Chief Secretary of the State of Haryana from time to time supporting the Forest Department. The unfortunate and distressing consequence of this is that because of a complete lack of any concern for the environmental and ecological degradation carried out in the Aravalli Hills by influential colonisers like the applicant and what appears to be a very strong mining lobby in Haryana, the damage caused to the Aravalli Hills is irreversible. It is not only the future generations that have to pay a heavy price for this environmental degradation, but even the present generation is paying a heavy price for the environmental and ecological degradation inasmuch as there is an acute water shortage in the area as prophesied by the Central Groundwater Board. In addition, what was once a popular tourist destination, namely, Badkal Lake has now vanished and the entire water body has become bone dry. What are the more severe consequences that will be felt in the years to come, only time and nature will tell.

An alleged discordant note

59. The issue of the status of areas closed under the provisions of the PLP Act came up for consideration in *B.S. Sandhu v. Union of India* [*B.S. Sandhu v. Union of India*, (2014) 12 SCC 172]. In this case, about 3700 acres of land in Village Karoran in District Ropar in Punjab was notified under the provisions of the PLP Act. Despite this, the Forest Hill Golf and Country Club was established on closed land and was being developed allegedly in blatant violation of the environment and forest laws as well as orders passed by this Court on 12-12-1996 [*T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267].

62. This Court noted in *B.S. Sandhu* case [*B.S. Sandhu v. Union of India*, (2014) 12 SCC 172] that the notification issued under the provisions of the PLP Act resulted in the land in Village Karoran being recorded as land under the control of the Forest Department and therefore forest land. In other words, the basis of the conclusion that the entire land in Village Karoran is forest land was that the land was closed under the provisions of the PLP Act and was therefore a forest. Consequently, the first question required to be decided by this Court was whether land notified under the provisions of the PLP Act is forest land or not.

63. This Court in *B.S. Sandhu case* [*B.S. Sandhu v. Union of India*, (2014) 12 SCC 172] took the view that activities prohibited in closed areas under the PLP Act are such that are not normally carried on in a forest. Reference was made to activities such as cultivation, pasturing of sheep and goats, erection of buildings by inhabitants of towns and villages, herding, pasturing or retaining cattle, etc. Therefore, the closed land could not be forest land. This Court observed that land notified under the provisions of the PLP Act may or may not necessarily be forest land and the decision of the High Court holding that closed land was forest land was not at all correct in the law. It was held that the High Court failed to correctly appreciate the meaning of "forest" and "forest land" as well as the decision of this Court in *Godavarman* [*T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SGC 267] (decided on 12-12-1996).

64. It was also held in *B.S. Sandhu case* [*B.S. Sandhu v. Union of India*, (2014) 12 SCC 172] that since the Forest (Conservation) Act, 1980 came into force on 25-10-1980 the High Court had to decide whether Sandhu's land was forest land as on that date irrespective of its classification or ownership. The High Court ought to have examined the government record as on 25-10-1980 before concluding that Sandhu's land was forest land and not only the provisions of the PLP Act and the records of the Forest Department which showed the land to be forest only because of the fact that the land was closed under the provisions of the PLP Act.

65. This Court also examined the two decisions rendered in *M.C. Mehta* [*M.C. Mehta v. Union of India*, (2004) 12 SCC 118] [*M.C. Mehta v. Union of India*, (2008) 17 SCC 294]. These decisions were distinguished on the ground that they related to the Aravalli Hills in the State of Haryana and further it was held therein that the State Forest Department has been treating and showing the closed area as forest in fact and in law. Consequently, non-forest activities could not be allowed in such areas without the prior permission of the Central Government as mandated by the Forest (Conservation) Act, 1980. It was noted that this Court has not enquired into the basis of inclusion of the areas as forest by the State Forest Department. This Court also did not consider whether land became forest land by mere inclusion in terms of the notification issued under the PLP Act. On the other hand, in

the case under discussion the Government of Punjab had stated that the basis of inclusion of the entire land of Village Karoran as forest area in the records of the Forest Department was that the land was closed under the PLP Act and this basis was not correct in law.

66. This Court having distinguished the decisions rendered by this Court in M.C. Mehta [M.C. Mehta v. Union of India, (2004) 12 SCC 118] [M.C. Mehta v. Union of India, (2008) 17 SCC 294] and by necessary implication the orders passed in Godavarman [T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267], we do not see how the decision in Sandhu [B.S. Sandhu v. Union of India, (2014) 12 SCC 172] can be of any assistance to the applicant. The decision in Sandhu [B.S. Sandhu v. Union of India, (2014) 12 SCC 172] must be confined to its own facts.

67. We may mention, without comment, that the purpose of issuing a notification under the PLP Act is to ensure that in the closed area there is no activity such as cultivation, pasturing of sheep and goats, erection of buildings, herding, pasturing or retaining cattle, etc. Therefore, the notification is a clear indication that such closed areas must be forest land or treated as forest land so that such objectionable non-forest activities are not carried out therein and that activities that are not normally carried out in forests are prohibited in forest land, so as to preserve and protect such forest land. A notification under the PLP Act does not convert land into forest land but recognises it as such or at least requires it to be treated as such.

107. The pendency of the present applications in this Court gave occasion to the applicants to once again try and raise the issue of closed areas under the PLP Act being not forest or forest land. Reference was made to the decision of this Court in Sandhu. It was submitted that this Court had struck a discordant note in Sandhu. We cannot agree since the decision in Sandhu itself distinguished the M.C. Mehta set of orders both on facts and in law. The decision rendered in Sandhu cannot, by any stretch of imagination, come to the aid of the applicants.

108. We may only note that insofar as the present case is concerned, there is a wealth of material to indicate clearly that closed land under the PLP Act is forest land

or in any event, is required to be treated as forest land. Several notifications issued under the PLP Act have been brought to our notice which prohibit certain activities which ought not to be carried out on forest land. The affidavits filed by responsible officers of the State of Haryana, including affidavits filed by the Chief Secretary unequivocally state that lands closed under the PLP Act are forest land. Similarly, there are judgments and orders passed by this Court to the same effect and the conduct of the State of Haryana, including the Forest Department and its relationship with the Town and Country Planning Department is a clear indication that lands closed under the provisions of the PLP Act are nothing but forest or forest land.

109. There is absolutely no doubt that Sandhu is distinguishable both on facts and in law and it has been recognised as such by this Court in the judgment delivered in Sandhu.

112. Taking an overall view of all the facts in the case and the law on the subject, we have no doubt that Kant Enclave is a forest or is a forest land or is required to be treated as a forest or forest land and absolutely no construction activity could have been permitted on it with effect from 18-8-1992. Any and all construction activity in Kant Enclave since that date is illegal and impermissible in law."

A copy of the judgment in *M.C. Mehta (Kant Enclave matters) v. Union of India*, (2018) 18 SCC 397 is attached herewith and marked as Annexure H - 13. (Pg No. 336 - 385)

Clarifications as to the affidavits and the ensuing presumptions by the Court

42. It is submitted that while declaring the areas notified under Sections 4 and/or 5 of the PLPA as 'Forest' vide its orders dated 18.03.2004, as announced in the context of mining originally and expanded in 2018, and where the Hon'ble Court failed to decide the issue of the legal effect of the issue of Notifications issued under Sections 4

and/or 5 of the PLPA, this Hon'ble Court was persuaded by the following three factors in coming to the said conclusion:

- (i) That the areas notified under Section 4 and/or 5 of the PLPA had been shown as 'Forest' in the Government records;
- (ii) That affidavits had been filed stating such area to be 'Forest'; and
- (iii) That the Government had been seeking approvals under Section 2 of the FC Act 1980 for diversion of land notified under Section 4 and/or 5 of the PLPA for non-forestry purpose.

43. It is submitted that it is important to clarify each one of the above issues. It is submitted that the issue of declaration of lands under Section 4 and 5 of the PLPA and the showing of such lands as "forest" in the government records are concerned, it is respectfully submitted that the authentic records of any land, its ownership and use are maintained only by the Revenue Department of the State. It is submitted that it is only such record, on the basis of which any determinative exercise can be carried out as to the status of the land. It is submitted that only such records can have any legal sanctity. It is submitted that merely because the Forest Department exercised certain degree of regulatory control over the said land due to the administrative exigencies, the same would not automatically clothe the status of such land as "forest" in any statutory enactment or through judicial mandamus.

44. Without prejudice to the above, it is submitted that records maintained by the Forest Department have been examined which specifically mention the area under (i) Reserve Forest, (ii) Protected Forest, (iii) Unclassed, (iv) under Section 38 of the Indian Forest Act, and (v) Under Section 4 and 5 of the PLPA. It is submitted that for mere regulatory purpose, the sum total of all such descriptions is shown as the Forest area. It is submitted that none of the lands notified under Section 4

and/or 5 of the PLPA have been recorded as 'Forest' in the land revenue records.

45. It is submitted that with regard to the practice of the Government to seek approvals under Section 2 of the FC Act 1980 for diversion of land notified under Section 4 and/or 5 of the PLPA for non-forestry purpose is concerned, it is respectfully submitted that as per the information received from the State Forest Department, no permission for diversion of land notified under Sections 4 and/or 5 for non-forestry purposes was ever obtained prior to 18.03.2004 i.e. the date of order of this Hon'ble Court when such areas were directed to be treated as 'Forest'. However, details of land for which diversion of such land has been obtained/ granted after 18.03.2004 are given below:

Details of land for which permission has been sought and granted for diversion of land notified under Section 4 and/or 5 of the LPLA granted				
Sr. No.	District	Purpose of Diversion	Date of Permission by the Mol&F	Area of Land of which diversion permitted (in Hectares)
1	Gurgaon	For hard shouldering of existing berms on Gurgaon-Farukhnagar-Jhajjar Road	27.11.2008	18.27
2	Panchkula	Construction of Pinjore-Kalka-Parwanoo Bye-pass	08.06.2009	4.86
3	Panchkula	For Kaushalya Dam	21.12.2009	2.02
4	Gurgaon	For erection 400 KV Transmission line through various road strips closed under section 4 & 5 of PLPA	26.03.2010	19.61
5	Faridabad	For IT-SEZ - M/s Espire Infrastructure	20.10.2010	1.3531

Details of land for which permission has been sought and granted for diversion of land notified under Section 4 and/or 5 of the LPLA granted				
Sr. No.	District	Purpose of Diversion	Date of Permission by the MoE&F	Area of Land of which diversion permitted (in Hectares)
		Corporation Ltd.		
6	Faridabad	Club-cum-Recreation Complex	28.10.2010	0.8755
7	Panchkula	For construction of community centre in Rural area and Nursery School and Computer Centre in Bitna	23.11.2010	0.5832
8	Panchkula	For Solid Waste Management at Village Juriwala	29.04.2011	5.35
9	Gurgaon	For 400 KV Gurgaon-Manesar Transmission Line	26.09.2012	13.5386
10	Mewat	For 765 KV Transmission line of Power Grid Corporation	13.12.2012	19.0362
11	Gurgaon	For 66 KV Transmission Line of HVPNL	08.07.2013	3.502
				88.9986

46. It is submitted that with regard to previously filed affidavits of the State of Haryana, it is submitted that the affidavit dated 8th December 1996 was filed by the then Principal Chief Conservator of Forests whereas the affidavit dated 25.02.1997, filed by the then Commissioner & Secretary, Forest Department, in compliance of the directions dated 12.12.1996 of

this Hon'ble Court within a period of 79 days of the first affidavit. A conjoint reading of both the affidavits makes it clear that the areas notified under Sections 4 and/or 5 of the PLPA were shown as state regulated 'forest' area and that too only during the currency of the Notifications, which were issued for temporary periods. The subsequent affidavit only clarified the position, which was not at variance with the first affidavit dated 08.12.1996.

47. It is submitted that previously, during the course of hearings in this matter, this Hon'ble Court directed vide its interim orders dated 4.03.1997 that *"all the concerned authorities, in the meantime, continue to examine various aspects of the problems requiring solution and try to solve these problems in collaboration with the Central Government and the state Governments. An efficacious exercise of this kind would enable reduction of the area which may require judicial scrutiny and adjudication in these matters."* Accordingly, the Mines & Geology Department of the State made a reference to the State Forest Department in this behalf for resolution of the issue. After examination, the State Forest Department issued the following advice dated 17.06.1997 to the Mines & Geology Department:

"FORESTS DEPARTMENT

It is stated that the areas notified under the Land Preservation Act have been shown as Forests in the records of Forest Department on their own and not because of any legal or statutory requirement. This is confirmed by the fact that we dis-continue showing these areas as forests upon their expiry of the period of notification under Land Preservation Act. This practice of showing areas notified under Land Preservation Act as Forests has put other departments to a considerable harassment. Therefore, it is decided that in future, the department will stop this practice of recording areas notified under Section 4 and/or 5 of Land Preservation Act as Forests in

respect of areas already notified as well as areas to be notified under Land Preservation Act.

2. AD's file in original is returned herewith.

Sd/-

Commissioner & Secretary to
Govt. Haryana, Forests Deptt.

To
The Financial Commissioner & Secretary to Govt.,
Haryana, Mines and Geology Department.

U.O. No. 4040-Ft. I-97/spl.
17.6.97"

Chandigarh, dated the

The above sequence of events shows that the areas notified under Section 4 and/or 5 of the PLPA were not to be treated as Forest.

48. It is submitted that it has already been explained hereinbefore that the PLPA permitted regulation of the areas notified under Sections 4 and/or 5 of the PLPA for temporary periods and not on permanent basis. None of the Notifications/ General or Special Orders issued under the relevant sections of the PLPA stated that such areas would be treated as 'Forest' even during the currency of such notifications/ orders. It has also been brought out in the affidavits filed by and on behalf of the Forest Department in 1996 and 1997, that the said area ceased to be regulated as 'Forest' on expiry of the said Notification/ orders. The net effect of the expiry of the said orders was that such area was free from any regulation, restriction or prohibition after the expiry of the Notification/ Order. As such, the area under expired Notification cannot be treated as 'Forest' by any stretch of imagination. The Forest Department is charged with the responsibility of regulation of the 'Orders' during the currency thereof and such regulation is only qua the regulated, restricted or prohibited activities, which does not include all the non-forestry activities.

Extent of Areas Notified under IFA, 1927 and Extent of Areas notified under Sections 4 and/or 5 of the PLPA

49. That total area notified as Forest under the IFA, 1927 and unclassified forest is 1,46,254 Ha (3.31% of the geographical area). The details of such areas district wise are as under:

**AREAS NOTIFIED UNDER IFA, 1927 AND UN CLASSED FOREST IN
HARYANA
(AREA IN HECTARE)**

S. N.	District	Geo. Area	Reserve Forests (RF)	Protected Forests (PF)	Un classed Forests (UC)	Forests under Section 38 of IFA 1927	Total area notified under IFA, 1927 and Un classed Forest (4+5+6+7)	% of Col 8 of total area of district
1	2	3	4	5	6	7	8	9
1	PANCHKUL A	89800	8629	25268	8	0	33905	37.76 %
2	AMBALA	157400	198	3477	0	6	3681	2.34%
3	YAMUNANA GAR	176800	6872	13340	109	0	20321	11.49 %
4	KURUSHETR A	153000	1836	2682	0	0	4518	2.95%
5	KAITHAL	231700	3714	3502	0	0	7216	3.11%
6	KARNAL	252000	391	7214	40	68	7714	3.06%
7	PANIPAT	126800	0	4103	0	50	4153	3.28%
8	SONIPAT	212200	0	7386	0	127	7513	3.54%
9	ROTHAK	174500	0	4016	357	0	4373	2.51%
10	JHAJJAR	183400	0	3736	45	0	3781	2.06%
11	GURUGRAM	125800	215	1632	16	0	1863	1.48%
12	FARIDABAD	74100	176	1334	0	0	1509	2.04%
13	PALWAL	135900	139	2693	92	0	2923	2.15%
14	MEWAT	150700	16	1183	56	207	1462	0.97 %
15	MAHENDER GARH	189900	1662	2403	28	545	4638	2.44%
16	REWARI	159400	559	3293	0	112	3964	2.49%

17	HISAR	398300	0	6318	8	4	6331	1.59%
18	FATEHABAD	253800	0	5491	54	6	5551	2.19%
19	SIRSA	427700	4	4752	35	52	4843	1.13%
20	BHIWANI	328300	104	6042	34	200	6381	1.94%
21	CHARKHI DADRI	149500	35	2715	9	0	2759	1.85%
22	JIND	270200	414	6255	177	9	6855	2.54%
	TOTAL	442120 0	2496 3	118833	1071	1387	14625 4	3.31%

50. That a total area of 17,39,907 Ha (39.35% of the geographical area) has been notified under Sections 3, 4 and 5 of the PLP Act. The details of such areas district wise are as under:

AREAS NOTIFIED UNDER PLP ACT, 1900 (AREA IN HECTARE)

S. N.	District	Geographical Area	Notified area under PLP Act, 1900				
			U/S 4 and/or 5 (By special order)	U/S 4 (By General order)	U/S Section 3	Total Notified area	% of column 7 with total Geographical Area of District
1	2	3	4	5	6	7	8
1	Panchkula	89800	4310	70476	89800	89800	100.00%
2	Ambala	157400	1613	8562	157400	157400	100.00%
3	Yamunanagar	176800	2498	72693	176800	176800	100.00%
4	Kurushetra	153000	8	0	8	8	0.01%
5	Kaithal	231700	0	0	0	0	0.00%
6	Karnal	252000	0	0	0	0	0.00%
7	Panipat	126800	0	0	0	0	0.00%
8	Sonipat	212200	1867	0	1867	1867	0.88%
9	Rothak	174500	221	0	221	221	0.13%
10	Jhajjar	183400	210	0	210	210	0.11%
11	Gurugram	125800	6821	125800	125800	125800	100.00%
12	Faridabad	74100	5611	14610	74100	74100	100.00%
13	Palwal	135900	25	0	135900	135900	100.00%
14	Mewat	150700	6432	130677	150700	150700	100.00%
15	Mahendergarh	189900	1089	189900	189900	189900	100.00%
16	Rewari	159400	971	159400	159400	159400	100.00%
17	Hisar	398300	0	0	0	0	0.00%
18	Fatehabad	253800	0	0	0	0	0.00%
19	Sirsa	427700	0	0	0	0	0.00%
20	Bhiwani	328300	62	221299	328300	328300	100.00%
21	Charkhi	149500	0	92669	149500	149500	100.00%

	Dadri						
22	Jind	270200	0	0	0	0	0.00%
	Total (State)	4421200	31738	1086086	1739907	1739907	39.35%

Note:

- A. Areas notified under Section 3 have been taken as the total area notified under the PLP Act as Section 4/5 notifications are only issued in respect of the areas notified under Section 3.
- B. The Section 3 notifications have been issued without specifying any period with respect to their validity and therefore each of these notifications are in effect in force in perpetuity as there was no provision under the PLP Act (prior to Amendment) for modifications, rectification and or cancellation of any notification issued under Section 3, 4 or 5 of the said PLP Act.
- C. The details of the Section 4 and 5 notifications include the expired notifications which for the purpose of the FC Act, 1980 continue to be in force as per order dated 16.12.2002 passed by this Hon'ble Court in W.P (C) No. 202 of 1995 [(2008) 16 SCC 401].

Governing Development Laws

51. That it is respectfully submitted that some of the governing urban development laws are important to be cited so as to demonstrate the interplay between different legislations.

52. That Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act of 1963 is the Act which was enacted with the object "An Act to prevent haphazard and sub-standard development along scheduled roads and in controlled areas in the State of Haryana" Under Section 4 of the Punjab Scheduled Roads and Controlled, Areas (Restriction of Unregulated Development Act), 1963, the Government may by Notification declare the whole or any part of any area in terms of the restrictions mentioned therein, to be a Controlled Area for the purposes of the Act [various notifications have been issued declaring areas as a Controlled Area starting from the year 1963 [erstwhile Punjab Govt.] which has been recognised/continued as such and duly reflected in

the various notification/Development Plans issued by the Govt. of Haryana for the applicable regions. The relevant provisions are as under :

"Section 4. Declaration of controlled area.—

(1) The Government may, by notification in the Official Gazette, declare any area outside the limits of municipal town or any other area, which in its opinion has the potential for building activities, industrial, commercial, institutional, recreational estates/ activities and uses subservient to the above, to be a controlled area for the purposes of this Act.] (2) The Government shall also cause the contents of the declaration made under subsection (1) to be published in at least two newspapers printed in a language other than English.

Section 5.: Publication of plans etc. in controlled area.— (1) The Director shall, not later than 1 [one year] from the declaration under sub-section (1) of section 4 or within such further period as the Government may allow, prepare plans in the prescribed manner showing the controlled area and signifying therein the nature of restrictions and conditions proposed to be made applicable to the controlled area and submit the plans to the Government. Under Section 7, the land so declared as a Controlled Area shall not be used for any other purpose other than that for which it was used on the date of the Notification under section 4. Section 23 of the Act, as reproduced below, stipulates that the provisions of this Act shall have effect notwithstanding anything inconsistent in any other law

"23. Effect of other laws.— (1) Nothing in this Act shall affect the operation of – (a) the Punjab New Capital (periphery) Control Act, 1952 (Punjab Act of 1953); (b) 40[* * * *] (c) the Punjab Slum Areas (Improvement and Clearance) Act, 1961 (Punjab Act 24 of 1961); (d) 41[* * * * *]*

(2) Save as aforesaid, the provisions of this Act and the rules made thereunder shall effect notwithstanding anything inconsistent therewith contained in any other law.

(3) Notwithstanding anything contained in any such other law

– (a) when permission required under this Act for doing any act or taking any action in respect of any land has been obtained, such act or action shall not be deemed to be unlawfully done or

taken by reason only of the fact that permission, approval or sanction required under such other law for doing such act or taking such action has not been obtained;

(b) when permission required under this Act for doing such act or taking such action has not been obtained, such act or action shall not be deemed to be lawfully done or taken by reason only of the fact that permission, approval or sanction required under such other law for the doing of such act or the taking of such action has been obtained."

53. That in terms of the Faridabad Complex (Regulation and Development) Act of 1971 the legislative intent of Controlled Areas declared through Notifications not being affected by any law in force was taken forward.

54. That the Faridabad Complex (Regulation and Development) Act, 1971, is an Act to enact a uniform law for regulation and development of the Faridabad Complex and the adjoining towns and localities. Under the provisions of the said act, areas may be declared as 'controlled areas' (Section 29 of the Act). The expression 'controlled area' has been defined under section 2 (f) to mean an area declared under section 29 of the Act of 1971 to be a controlled area. Under Section 29 (7) of the Act, the state government of Haryana decided to identify the controlled areas in the Faridabad- Ballabhgarh region, including the nature of restrictions and conditions applicable in the planned development of such controlled areas. Subsequently, on December 11, 1991 the final development plan was notified by the state of Haryana in which the controlled areas were identified and their usage was notified. The broad land use notified are as under:

Serial No.	Land Use	Area in Ha
1.	Residential	19262
2.	Industrial	7749

3.	Commercial	1910
4.	Transport and Communication	3840
5.	Public and Semi Public Use	1310
6.	Public Utility	382
7.	Open Space, Park and Green Belt	3199
8.	Special Zone	1091
9.	Total	38473

55. That it is relevant to note that Section 29 of the Act, falling under chapter 6 of the Act of 1971, starts with a non obstante clause. This being the case, the declaration made under the said section in respect of the Faridabad complex, being a controlled area, will ensure, despite any other law for the time being in force.

56. That the Faridabad Complex Act of 1971 was superseded by the Haryana Municipal Corporation Act of 1994, in terms of section 421 of the said act. Notifications issued under the Act of 1971 and any license in force at that time were saved. Consequently, the declaration in the Notification of 11.12.1991 declaring lands earmarked for urbanisation/as per stipulated land use therein have been saved.

57. That the legislative intent was therefore, that notwithstanding any law in force, areas within the Haryana Municipal Corporations would be declared as Controlled Areas subject to restrictions of unregulated development was carried forward and reflected in section 346 of the Act of 1994, wherein new areas could be declared as Controlled Areas and not being subject to any law in the time being in force. Section 346(1) was amended by Haryana Municipal Corporation (Amendment) Act of 2004 by virtue of which the commissioner could after prior approval of the

Government by Notification, declare any part of the Municipal Corporation to be a Controlled Area under the Act of 1963.

58. That as an illustration, the brief history of Development Plans of Faridabad-Ballabhgarh Complex is stated as under:

- (1) Final Development Plan-1981 published vide Punjab Govt. Gazette Notification No.2930-2TCP-65 dated 19.01.1966 published on 22.01.1966
- (2) Draft Development Plan-2001 published vide Haryana Govt. Gazette Notification No.3431-10DP-82/6194 dated 26.04.1982 published on 27.04.1982
- (3) Final Development Plan-2011 published vide Haryana Govt. Gazette Notification No.13/29/91-3CII dated 11.12.1991 published on 17.12.1991

59. It is submitted that considering the fact that the purport of the PLP Act was merely to provide for a regulatory regime to ensure that the erosion of soil does not take place, and considering the fact that there was no statutory embargo or restriction from such PLP Act land being governed by local municipal laws, it cannot be said that the development plans of the relevant place included such areas mistakenly within their municipal limits.

Factual and Legal position prior to the amendment in 2019

60. That That the factual and legal position qua the lands notified under the PLP Act can be summarised as under. PLP Act was enacted in the year 1900 for the purpose of providing for the better preservation and protection of land from soil erosion due to Cho (Hilly Torrents)

and other agents in the territories of erstwhile Punjab which included the territories presently in Haryana.

61. The intentions of the PLP Act has been that the regulatory measures for restricting or prohibiting the acts and actions contemplated in terms of the PLP Act are to be temporary in nature ("permanently" word was deleted by amendment of the act in 1926).

62. It is submitted that the PLPA provided for regulation/ restrictions or prohibition of certain activities specified therein (and not all the non-forestry activities as understood in the context of Section 2 of the FC Act 1980) for temporary periods¹ and not in perpetuity

63. The intention of the PLP Act has never been to create / convert notified land into forest land in any manner. The closure / prohibition which is sought to be enforced is as a temporary measure solely as a measure to regulate, restrict or prohibit certain activities during the period of such closure which is lifted upon the expiry of the said period.

64. The 'Statement of Objects and Reasons' appended to the Amendment Bill of 1926 makes a positive assertion to the effect that "the main object of the present Bill is to make it clear that rights of property will remain intact and that Government is only empowered to regulate these rights from time to time for the good of the people." As such, this Act was never meant to extinguish the proprietary rights of the landowners. Its provisions were envisaged for temporary regulation of certain specified activities in the areas notified thereunder.

65. Any area can be declared or notified as 'Forest' under Sections 3, 4, and 29 of the Indian Forest Act, 1927 only in respect of Government

owned land. It is submitted that privately owned land can be notified as 'Forest' under Section 38 of the Indian Forest Act, 1927 and that too on the request of the landowners on such terms and conditions as may be mutually agreed. Moreover, even the IFA 1927, under which the lands are notified as forest, prescribes that whenever any private land is to be notified as forest, the owner of the land may cause the State Government to acquire his land under Land Acquisition Act, 1894- now substituted by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

66. Under Section 3 of the PLP Act, the State Government notifies that it is desirable to provide for the conservation of sub soil, water and or prevention of erosion in the specified areas. Such notifications have been issued without specifying their validity period. Under Section 4 and or 5 of the PLP Act specified activities are temporarily regulated, restricted or prohibited (and not permanently).

67. While the PLP Act per se does not intend or provide for considering the notified areas as Forest, the Haryana Forest Department has been recording part of the areas notified under Section 4 and or 5 as Forest during the validity period of such notifications and after expiry of the said notifications, exclude such areas from their record of Forest Areas and such excluded areas were no more subjected to any restriction, regulation or prohibition.

68. The PLP Act does not have any specific provision to rectify, amend or de- notify the order and Notification issued under the said Act even where the same has been found to have inherent defect, mistake or where certain lands have been inadvertently included or found to have been issued in-violation of prescribed procedure.

69. The PLP Act does not have any specific provision whereby reasonable opportunity is provided to the affected persons. It also does not have any provision granting rights to such persons of being heard before imposing restrictions, prohibition and regulations with respect to an area being proposed to be brought under such restrictions, prohibition and regulation by way of Notification under the Act.

70. The lands notified under PLP Act have never been notified as protected forest or reserved forest or any other class of forest under the provisions of IFA, 1927.

71. A total area of about 17.4 Lakh Ha out of the total geographical area of 44.2 Lakh Ha have been notified under Section 3, 4 and or 5 of the PLP Act. This constitutes 39.35 % of the geographical area of the State of Haryana. 100 % area of the 11 districts, out of a total of 22 districts, are notified under the provisions of the PLP Act. These include districts of panchkula, ambala, yamunanagar, Faridabad and Gurugram.

72. In terms of the order dated 16.12.2002, passed by this Hon'ble Court in W. P (C) 202 of 1995, for non-forest activities like mining approval under Section 2 of the FC Act 1980 is mandatory even after the notification issued under Section 4 and or 5 under the PLP Act has expired.

73. In terms of the order dated 18.03.2004 passed in W.P (C) no 4677 of 1985 by this Hon'ble Court in areas notified under Sections 4 and or 5 of the PLP Act, approval under the FC Act 1980 is mandatory for non forest activities. The legal effect of issuance of such notifications was not decided in the said order.

74. For the first time this Hon'ble Court examined and decided the legal effect of issuance of notifications under Sections 4 and or 5 of the PLP Act in the case of B.S. Sandhu Vs. Govt. of India & Ors. this Hon'ble Court in its judgment dated 11.09.2018 held that mere issuance of notifications under the PLP Act does not make an area as forest.

75. Taking a contrary view from the aforesaid decision, a co-ordinate bench of this Hon'ble Court vide its judgement dated 11.09.2018 passed in W. P (C) 4677 of 1985 held that mere inclusion of any land in any notification issued under the provision of the PLP Act would make the said land as Forest.

76. In terms of the order dated 23.07.2021 passed by this Hon'ble Court, every unauthorised structure standing on forest lands are required to be removed.

77. In terms of the aforesaid judgement dated 11.09.2018 (2018) 18 SCC 397 read with Order dated 16.12.2002 (2008) 16 SCC 401 and Order dated 23.07.2021 passed in SLP (C) 7220/2017, all areas notified Section 3, 4 and or 5 of the PLP Act are forest land including where the validity period of the notification has expired. Every structure constructed on such land after issuance of any notification under the provisions of the PLP Act are illegal structures and are required to be demolished.

78. Accordingly, about 39.35 % of the geographical area of the State of Haryana, being notified under the provisions of the PLP Act are required to be considered as forest and every structure constructed after issuance of the notification for the first time are required to be considered as illegal and are required to be demolished.

79. For example a notification dated 30.09.1948 has been issued by the then Government of East Punjab notifying a total area of 25,54,000

Acres (about 10,21,600 Ha) in the then existing district of Gurugram under Section 3 of the PLP Act and without specifying the validity period of the said notification. On the same date another notification notifying the said area under Section 4 of the PLP Act was also issued for a period of 25 years. Therefore, the entire 25,54,000 Acres of land is required to be considered as forest land and all constructions that may have come up on these lands during the last 73 years are required to be considered illegal and liable to be demolished. The copy of the notification dated 30.09.1948 for ready reference is being annexed herein as **Annexure H-14** (Pg. 386 - 387)

80. There are millions and millions of persons who are severely affected due to almost 40 % of the geographical area of the state now being considered as forest lands and due to millions of structures which are now required to be considered as illegal and liable for demolition. The lands notified under the provisions of the PLP Act include both Government and private Lands and also the structures that have come up on these lands including schools, colleges, hospitals, police stations, roads, transmission lines, government buildings, Defence Establishments, Infrastructure, Residential houses including those developed by the Government Corporations. It is submitted that the demolitions required are on a mammoth scale and beyond the capacity of the State Government and is bound to create serious and unparalleled law and order problems. Besides the above, it raises a very pertinent issue regarding the constitutional rights of the people to such lands particularly where the constructions have been undertaken after taking requisite approvals in accordance with law.

Practical issues arising out of the judgment in M.C. Mehta (Kant Enclave matters) v. Union of India, (2018) 18 SCC 397

81. That it is submitted that in terms of the judgement dated 11.09.2018 (Kant Enclave Judgment) and Order dated 23.07.2021 passed in SLP(C) 7220/2017 (Municipal Corporation of Faridabad Vs Khori Village RWA) by this Hon'ble Court, areas notified under Section 3, 4 and or 5 of the PLP Act are required to be considered as forest and structures standing thereon are required to be considered as illegal, unless requisite permission under Forest Conservation Act is obtained, and liable to be demolished. The list of some of the critical establishments which are similarly situated in the State of Haryana is as below:

Sr No	District	Tehsil	Critical Establishments
1	Panchkula	Kalka	CRPF Group Centre, Damdama Pinjore
2	Panchkula	Panchkula	Terminal Ballistic Research Laboratory (TBRL) Test range Ramgarh
3	Panchkula	Panchkula	ITBP Corporate office, Ramgarh
4	Panchkula	Panchkula	ITBP 50th Battalion Bana Madanpura
5	Panchkula	Panchkula	Police Lines Panchkula
6	Panchkula	Panchkula	Chandimandir Cantonment Panchkula
7	Yamunanagar	Bilaspur	Govt. ITI College, Sadhura
8	Yamunanagar	Bilaspur	Lal Bahadur Shastri Mahila Aurvedic College
9	Jhajjar	Matanhail	Krishi Mandi, Matanhail
10	Jhajjar	Matanhail	Milk Plant
11	Jhajjar	Matanhail	Sport Stadium
12	Jhajjar	Matanhail	Indira Gandhi Super Thermal Power Plant, Jharli
13	Sonapat	Ganaur	Anaj Mandi

Sr No	District	Tehsil	Critical Establishments
14	Sonipat	Gohana	Bhagat Phool Singh Govt. Medical College for Women
15	Sonipat	Sonipat	DeenBandhu Sir Chhotu Ram University of Science & Technology
16	Sonipat	Sonipat	CRPF Camp, Kherwa
17	Rewari	Kosli	ITBP Camp Jatusana Rewari
18	Rewari	Rewari	Mini Secretariate Rewari
19	Rewari	Rewari	District Court Rewari
20	Mahendergarh	Narnaul	Mini Secretariate Narnaul
21	Mahendergarh	Narnaul	District and Session Courts Narnaul
22	Mahendergarh	Narnaul	New Police Station
23	Faridabad	Faridabad	Police Station Surajkund Faridabad
24	Faridabad	Faridabad	Rajhans Tourist Complex
25	Faridabad	Faridabad	Manav Rachna University
26	Faridabad	Faridabad	Aravali International School
27	Faridabad	Faridabad	Shri Siddhidata Ashram
28	Faridabad	Faridabad	HUDA Sector 21-A,B,C,24, 26,27-D, 37,38, Ankhir, Faridabad
29	Faridabad	Faridabad	Gymkhanna Club, Ankhir
30	Faridabad	Faridabad	Badkhal Lake Resort , Haryana Tourism
31	Faridabad	Faridabad	Jungal Fowl Camp, Surajkund, Lakadpur
32	Faridabad	Faridabad	ESI, Medical College
33	Faridabad	Faridabad	Central Ground Water Board
34	Gurugram	Gurgaon	Gurugram Air Force Station (GFLS) Sector - 14
35	Gurugram	Gurgaon	Air Force Facility
36	Gurugram	Gurgaon	Air Force Station, Old Delhi Road
37	Gurugram	Gurgaon	Police Line Gurgaon
38	Gurugram	Gurgaon	Mini Secretariate Gurgaon
39	Gurugram	Gurgram	Military Area near DLF Golf Corse along Gurugram Faridabad Road
40	Gurugram	Gurugram	Shikohpur Village Extension
41	Gurugram	Manesar	IMT Manesar
42	Gurugram	Manesar	National Security Guard (NSG)
43	Gurugram	Manesar	Police Line Manesar
44	Gurugram	Manesar	National Brain Research Centre

Sr No	District	Tehsil	Critical Establishments
45	Gurugram	Manesar	Raj Rifle Army Setup near Kukrola, Manesar
46	Gurugram	Sohna	Bhondsi Jail
47	Gurugram	Sohna	Group Centre CRPF Gurgaon
48	Gurugram	Sohna	Saras Resort, Haryana Tourism
49	Gurugram	Sohna	Nirankari Baba Gurubachansingh Memorial College
50	Gurugram	Sohna	Tata Energy Research Institute ,Gawal Pahari
51	Gurugram	Sohna	National Institute of Solar Energy, Gawal Pahari
52	Gurugram		Hundreds of Head Quarters of multinational companies
53	Gurugram		Hundreds of Govt. Offices, hospital and educational institute
54	Nuh	Firozpur Zhirka	CRPF Camp, FirojpurZhirka
55	Nuh	Nuh	CSc, e-Governance Services India
56	Nuh	Nuh	SHKM Govt. Medical College, Nalhar
57	Nuh	Nuh	Army Setup near Indri village
58	Nuh	Nuh	Police Line, Namakpur
59	Nuh	Tauru	Air Force Station, MohmmadpurAhir

Amendment Bill, 2019

82. That the State of Haryana has in the above background and particularly considering the unintended adverse impact of the PLP Act on millions of people came out with the Punjab Land Preservation (Haryana Amendment) Act, 2019 duly passed by the assembly and having already received the assent by the Governor of the State of Haryana whereby the activities and developments undertaken strictly in accordance with the prevalent applicable laws both by the Government as also by private individuals have been sought to be remedied. The requirement and justification for bringing in the said amendment to the PLP Act has been

dealt with in the Statement of Objects and Reasons of the Amendment Act. The important relevant portions, which are self-explanatory, are reproduced below:

".....the subsisting orders and notifications issued under section 4 and/or section 5 of PLPA extend over an area of about 10,94,543 hectares or about 10,945 sq. Km. accounting roughly for about 25% of the total geographical area of the state. These orders and notifications extend to the geographical areas, wholly or partly, of 14 out of 22 Districts in the state. Almost the entire districts of Gurugram, Rewari and Mahendergarh are covered under these orders and notifications".

".....Such orders and notifications were never issued either for effecting the changes in the existing land uses or to regulate the permissible land uses. The lands covered under these orders and notifications were never directly or indirectly intended to be brought under the purview of the rigors of forest or related laws. Further, PLPA, as amended in 1926, provides only for temporary and not permanent restrictions, regulations and prohibitions. However, over a period of time a number of changes have come to fore with various interpretations of the provisions of the PLPA from time to time, in particular with respect to considering the areas notified under PLPA as "forest" and making expiry of notifications issued under section 4 and or 5 inconsequential thereby rendering extinguishment of the ownership right almost permanently. These have led to, apart from other consequence, large extent of areas in the state under agriculture, public infrastructure, residential, institutional, commercial and other uses becoming liable to be considered as unauthorised and unlawful even where these were explicitly permitted and came up strictly in conformity and in accordance with the then existing applicable law governing such land uses and activities undertaken thereupon. Lakhs of dwelling units, commercial buildings, industrial units, public buildings, massive public infrastructure, and agriculture activities over about one fourth of the geographical area of the State are affected. Sale and purchase of such lands and immoveable properties have become liable to be considered as illegal. Such unintended consequences adversely impacting

livelihood of millions of citizen and need to be allayed and remedied."

".....PLPA does not have any provision to rectify, amend or de-notify the orders and notifications issued under the act even where the same have been found to have inherent defects, mistakes or where certain lands have been inadvertently included or found to have been issued in violation of the prescribed procedure. In addition, PLPA does not have any provision for re-notifying and or extending the period of the orders and notifications. The PLPA also does not have provisions for removal of difficulties or responding to exigencies warranting exemptions to be afforded in exceptional cases. The enabling provisions in these regard are required to be introduced and incorporated."

The copy of the Punjab Land Preservation (Haryana Amendment) Act, 2019 is being annexed herewith as **Annexure H-15 (Pg No. 388 - 393)**
Copy of Comparison Chart of the PLPA, 1900 and the Amendment Act, 2019 is being annexed herewith as **Annexure H-16 (Pg No. 394 - 421)**

83. That it is submitted that without prejudice to the legality or the effect of the previous position in law, even if the ratio of the judgments quoted above, is applied in its full force, considering the fact that subject lands would now fall out of the purview of the PLPA Act itself, there would be no reason left to classify the same as forest lands. It is submitted that even if the generic definition of forest is applied over and above the limited statutory recognition in the Indian Forest Act, 1927, it is submitted that the subject lands being of various kinds - agricultural, residential, public purpose, etc., the said lands can never be classified as forest land.

84. That it is submitted that another aspect which needs to be noted is that in PLPA 1900, there was no provision to rectify, amend or de- notify the order and Notification issued under the Act even where the same has

been found to have inherent defect, mistakes or where certain land have been inadvertently included or found to have been issued in-violation of prescribed procedure. Even, the PLPA, 1900 is not having any provision for re-notifying for extended period. Therefore, the amendments in PLPA, 1900 have been carried out by the applicant -State of Haryana with the sole object to make the provisions of the Act more effective, transparent and in the interest of public at large.

85. That it is submitted that the PLPA, 1900 does not contemplate any provision providing reasonable opportunity of being heard before imposing restrictions, prohibition and regulations with respect to an area being proposed to be brought under such restrictions, prohibition and regulation by way of Notification under the Act. The said amendment is in conformity with the constitutional rights granted under Article 300-A (Right to Property) of the Constitution of India.

86. That it is submitted that by way of the Amendment Act, 2019, Section 3 of the PLPA, 1900 has been substituted by introducing Section 3(1), 3(2), 3(3) and 3(4) whereby the provisions have been made out for submitting the objections, providing opportunity of hearing and publishing in Gazette and newspapers only after recommendation by the Deputy Commissioner and consideration thereof by State Government. It is further submitted that by way of Amendment Act, 2019, after Section 3 of Principal Act 1900, Section 3A has been inserted specifying the applicability of the Act.

“3A. Act not to apply to certain lands.-

The provisions of this Act shall not apply to-

- (a) the lands included in the final development plans, any other town improvement plans or schemes published under the provisions of-*

- (i) the Punjab Town Improvement Trust Act, 1922 (Punjab Act 4 of 1922);
- (ii) the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (Punjab Act 41 of 1963);
- (iii) the Faridabad Complex (Regulation and Development) Act, 1971 (42 of 1971);
- (iv) the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975);
- (v) the Haryana Municipal Corporation Act, 1994 (16 of 1994);
- (vi) the Gurugram Metropolitan Development Authority Act, 2017 (34 of 2017);
- (vii) the Faridabad Metropolitan Development Authority Act, 2018 (9 of 2019);
- (viii) any other Act, Statute or Order that the State Government may notify from time to time, where date of publication of such plan or scheme is:-

(I) prior to the date of the publication of the Punjab Land Preservation (Haryana Amendment) Act, 2019, in the Official Gazette; or

(II) later than the date of the publication of Punjab Land Preservation (Haryana Amendment) Act, 2019 in the Official Gazette but prior to the date of publication of applicable and subsisting special order, if any, issued under section 4 or section 5 of this Act; -

(b) the lands forming part of any public infrastructure, including rail, roads, canals, public institutions, government or public establishments created or developed up to a date prior to the date of the publication of Punjab Land Preservation (Haryana Amendment) Act, 2019 in the Official Gazette or required for development of such public infrastructure in future as the State Government may notify from time to time; and

(c) land which have been under bona-fide agriculture use save and except those lands whose owners have consented for inclusion of their lands under the purview of this Act.

Note.- Land recorded in the relevant revenue records as being used for the time being for agriculture uses shall be deemed to

be land under bona-fide agriculture use for the purposes of this clause."

87. It is submitted that by way of Amendment Bill, 2019, after Section 6 and 18 of the PLPA 1900, Section 6A and Section 18A respectively have been inserted. It is submitted that Section 6A gives power to the State Government to amend or rescind, if it is necessary only after recording reasons thereof. Further, Section 18A gives power to the State Government to exempt the applicability of operation of any provision of the Act.

88. That it is submitted that it will not be out of place to mention here that the Principal Act of 1900 was enacted for land improvement i.e. prevention from soil erosion. It is submitted that as per Schedule 7 of the Constitution of India, the subject 'land improvement' falls under List II-State List (Entry No.18). Accordingly, to achieve the object, the State of Haryana made amendments in PLPA, 1900 by introducing the PLPA Amendment Bill, 2019.

89. That it is submitted that taking away the basis of a legal pronouncement is valid exercise in law. It is submitted that considering the above stated position, the amendment was in impending public interest. Reliance is placed on a recent judgment which has summarised a long line of cases on the point. In *Cheviti Venkanna Yadav v. State of Telangana*, (2017) 1 SCC 283, this Hon'ble Court, held as Under:

"26. The second issue that emanates for consideration is whether the base of the earlier judgment has really been removed. Before stating the factual score it is necessary to state how this Court has viewed the said principle. In *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality* [*Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality*, (1969) 2 SCC 283], the Constitution Bench while dealing with the legislation which intended to validate the tax declared by law to be illegal, opined that when

a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind, for that tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Thereafter, the Court proceeded to state that validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. The legislature does it many a way. One of the methods it may adopt is to give its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon the courts. On such legislation being brought, it neutralises the effect of the earlier decision as a consequence of which it becomes ineffective. The test of validity of a validating law depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax.

27. In *Bhubaneswar Singh v. Union of India* [*Bhubaneswar Singh v. Union of India*, (1994) 6 SCC 77] in view of Section 3 of the Coking Coal Mines (Emergency Provisions) Act, 1971 which was promulgated in the year 1971, the Custodian being appointed by the Central Government took over the management of the coking coal mines and the said mines remained under the management of the Central Government through the Custodian during the period from 17-10-1971 to 30-4-1972. The Coking Coal Mines (Nationalisation) Act, 1972 came into force w.e.f. 1-5-1972, and the right, title and interest of the owners in relation to the coking coal mines stood transferred to and vested absolutely in the Central

Government free from all encumbrances. The provisions of the said Act were challenged before this Court in *Tara Prasad Singh v. Union of India* [*Tara Prasad Singh v. Union of India*, (1980) 4 SCC 179] and the Constitution Bench upheld the validity of the said Act. The writ petitioner before the High Court making a grievance that the Custodian had debited the expenses for raising the coal while the coking coal mine was under the management of the Custodian but had not credited the price for the quantity of the coal raised, which was lying in stock on the date prior to the date the said coal mine vested under the Central Government. The High Court allowed the writ petition and a direction was issued that account be recast and payment be made to the petitioner. The appeal before this Court by special leave was dismissed, as this Court was of the view that sale price of stock of extracted coal lying at the commencement of the appointed date had to be taken into account for determining the profit and loss during the period of management of the mine by the Custodian. After the appeal preferred by the Coal Fields was dismissed, the Coal Mines Nationalisation Laws (Amendment) Ordinance, 1986 was promulgated and later on replaced by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 came into force. By Section 4 of the Amendment Act, sub-section (2) was introduced in Section 10 of the Coking Coal Mines (Nationalisation) Act, 1972. The said provision declared that the amounts specified in the fifth column of the First Schedule against any coking coal mines or group of coking coal mine specified in the second column of the said Schedule are required to be given by the Central Government to its owner under sub-section (1) shall be deemed to be included, and deemed always to have included, the amount required to be paid to such owner in respect of all coal in stock or other assets referred to in clause (j) of Section 3 on the date immediately before the appointed day and no other amount shall be paid to the owner in respect of such coal or other assets. Section 19 was the validating provision.

28. The writ petition was filed questioning the validity of the said Ordinance primarily on the ground that it purported to nullify the judgment rendered in *Central Coal Fields Ltd. v. Bhubaneswar Singh* [*Central Coal Fields Ltd. v. Bhubaneswar Singh*, (1984) 4 SCC 429]. The Court referred to the provisions and opined that: (Bhubaneshwar

Singh case [Bhubaneshwar Singh v. Union of India, (1994) 6 SCC 77], SCC p. 85, para 13)

"13. ... if sub-section (2) as introduced by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 in Section 10 had existed since the very inception, there was no occasion for the High Court or this Court to issue a direction for taking into account the price which was payable for the stock of coke lying on the date before the appointed day. The authority to introduce sub-section (2) in Section 10 of the aforesaid Act with retrospective effect cannot be questioned. Once the amendment has been introduced retrospectively, courts have to act on the basis that such provision was there since the beginning. The role of the deeming provision need not be emphasised in view of series of judgments of this Court. Hence reading sub-section (2) of Section 10 along with Section 19, it has to be held that respondents are not required to take into account the stock of coke lying on the date prior to the appointed day, for the purpose of accounting during the period when the mine in question was under the management of the Central Government, because it shall be deemed that the compensation awarded to the petitioner included the price for such coal lying in stock on the date prior to the appointed day. Neither any compensation is to be paid for such stock of coal nor the price thereof is to be taken into account for the purpose of sub-section (1) of Section 22 of the Coking Coal Mines (Nationalisation) Act, 1972."

Being of this view, the Court dismissed the writ petition.

29. In State of H.P. v. Narain Singh [State of H.P. v. Narain Singh, (2009) 13 SCC 165] while dealing with the validation of statute the Court ruled that: (SCC p. 175, para 26)

"26. It is therefore clear where there is a competent legislative provision which retrospectively removes the substratum of foundation of a judgment, the said exercise is a valid legislative exercise provided it does not transgress any other constitutional limitation."

To arrive at the said conclusion, the two-Judge Bench reproduced from the decision of the Constitution Bench in State of T.N. v. Arooran Sugars Ltd. [State of T.N. v. Arooran Sugars Ltd., (1997) 1 SCC 326] which is to the following effect: (Narain Singh case [State of H.P. v. Narain Singh, (2009) 13 SCC 165], SCC p. 176, para 28)

"28. ... '16. ... It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect.' (Arooran Sugars case [State of T.N. v. Arooran Sugars Ltd., (1997) 1 SCC 326], SCC p. 341, para 16)"

30. From the aforesaid authorities, it is settled that there is a demarcation between the legislative and judicial functions predicated on the theory of separation of powers. The legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity. When a law is enacted with retrospective effect, it is not considered as an encroachment upon judicial power when the legislature does not directly overrule or reverse a judicial dictum. The legislature cannot, by way of an enactment, declare a decision of the court as erroneous or a nullity, but can amend the statute or the provision so as to make it applicable to the past. The legislature has the power to rectify, through an amendment, a defect in law noticed in the enactment and even highlighted in the decision of the court. This plenary power to bring the statute in conformity with the legislative intent and correct the flaw pointed out by the court, can have a curative and neutralising effect. When such a correction is made, the purpose behind the same is not to overrule the decision of the court or encroach upon the judicial turf, but simply enact a fresh law with retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment is founded. This does not amount to statutory overruling by the legislature. In this manner, the earlier decision of the court becomes non-existent and

unenforceable for interpretation of the new legislation. No doubt, the new legislation can be tested and challenged on its own merits and on the question whether the legislature possesses the competence to legislate on the subject-matter in question, but not on the ground of overreach or colourable legislation."

90. That it is submitted that this being the position of law mentioned herein above, the applicant - State Government faced with innumerable difficulties and to protect the livelihood of millions of citizens / residents of the State of Haryana had come out with the said Amendment Bill owing to exigencies to provide for inter-alia besides others for effective mechanism for regulating tree felling, introduction of principles of natural justice by providing an opportunity of hearing to affected parties and removal of difficulties to safeguard the interest of the citizens / residents of the State of Haryana as per the settled law.

91. It is submitted that this Hon'ble Court vide its order dated 01.03.2019 passed in WP(C) 4677/1985 (M. C. Mehta Case, Forest Bench Case) has directed the applicant-State of Haryana further not to act without the permission of this Hon'ble Court under the said Amendment Act. It is submitted that the said amendment Act was not placed before this Hon'ble Court at that juncture. Had copy of Amendment Bill been on record, this Hon'ble Court would not have passed the order dated 01.03.2009. A copy of order dated 01.03.2019 passed in WP(C) 4677/1985 is annexed and marked as Annexure H-17. (Pg No. 422-424)

92. It is submitted that after obtaining the assent of the Governor - State of Haryana, the answering State has filed an IA No.93600/2021 in WP(C) 4677/1985 (M. C. Mehta, Forest Bench case) with the following prayers:

- (a) direct to take on record the Punjab Land Preservation (Haryana Amendment) Act 2019
- (b) grant permission to applicant-State of Haryana to act upon the Punjab Land Preservation (Haryana Amendment) Act 2019 after due publication in official Gazette"

A true copy of IA No.93600/2021 filed by State of Haryana in WP(C) 4677/1985 is annexed herewith and marked as Annexure H - 18. (Pg No. 425-430)

93. That it is submitted that further, in the context of Section 3A, introduced through the amendment in 2019 in the PLPA, the brief history of Development Plans of Faridabad-ballabhgarh Complex covering the land of villages Ankhir, Badkhal, MewlaMaharajpur etc. (notified vide order/notification dated 18.08.1992 under PLPA 1900) as already explained in preceding paras ought to be considered.

94. That the Punjab Land Preservation (Amendment) Act 2019 has been enacted with the object of removing anomalies in the unamended act. The PLP Act and the Punjab Land Preservation (Amendment) Act 2019 provides for conservation of sub-soil water or the prevention of erosion in the specified areas and do not override any Central Act such as IFA, 1927 and or FC Act, 1980. It is further submitted that amendment has been carried out after following the due process of law and as provided in the Constitution of India.

95. That the present affidavit is being filed in compliance of order dated 05.10.2021 and 20.09.2021. The deponent prays to file further additional affidavit to place on record if need arises.

96. That the annexures annexed with the affidavit are true and correct copies of the originals.

[Signature]

DEPONENT



85

VERIFICATION

I, the above-named deponent do hereby verify that the contents of the above affidavit are true and correct to my knowledge derived from the record maintained by the office of the deponent and nothing material has been concealed there from.

Verified at New Delhi on this 19 day of October, 2021

[Signature]

DEPONENT



[Signature]
15.10.21
(Kuldeep Singh)
Special Executive Magistrate
Haryana, Chandigarh

Special F

THE INDIAN FOREST ACT, 1927¹

(16 of 1927)

[21st September, 1927]

An Act to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.

WHEREAS it is expedient to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce;

It is hereby enacted as follows:—

CHAPTER I PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Indian Forest Act, 1927.

²[(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States.

(3) It applies to the territories which, immediately before the 1st November, 1956, were comprised in the States of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal; but the Government of any State may by notification in the Official Gazette bring this Act into force in the whole or any specified part of that State to which this Act extends and where it is not in force.]

STATE AMENDMENTS

Gujarat.—In section 1,—

(a) in sub-section (2), add the following proviso, namely:—

“Provided that on the commencement of the Indian Forest (Gujarat Unification and Amendment) Act, 1960, this Act shall also extend to the Saurashtra area of the State of Gujarat.”

1. This Act has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), sec. 3 and Sch; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), sec. 3 and Sch.

This Act has been extended to—

- (1) Berar (partially) by the Berar Laws Act, 1941 (4 of 1941).
 - (2) The Province of Coorg, *see* Coorg Gazette, 1930, Pt. I, p. 94.
 - (3) The Delhi Province, *see* Gazette of India, 1933, Pt. IIA, p. 293.
 - (4) The whole of Madhya Pradesh, by M.P. Act 23 of 1958.
 - (5) Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and Sch. I (w.e.f. 1-7-1965).
 - (6) Pondicherry by Reg. 7 of 1963, sec. 3 and Sch. (w.e.f. 1-10-1963).
 - (7) Goa, Daman and Diu by Reg. 11 of 1963, sec. 3 and Sch.
 - (8) Laccadive, Minicoy and Amindivi Islands by the Reg. 8 of 1965, sec. 3 and Sch. (w.e.f. 1-10-1967).
 - (9) Sikkim by S.O. 1138 (E), dated 1st December, 1988 (w.e.f. 20-4-1989).
2. Subs. by the A.O. (No. 3) Order, 1956, for sub-sections (2) and (3).

(b) in sub-section (3), add the following proviso, namely:—

"Provided that on the commencement of the Indian Forest (Gujarat Unification and Amendment) Act, 1960 this Act shall come into force in the Saurashtra area of the State."

[Vide Gujarat Act 15 of 1960, sec. 6(a) (w.e.f. 6-12-1960).]

Himachal Pradesh.—In section 1, after sub-section (2), insert the following sub-section, namely:—

"(2A) Notwithstanding anything contained in sub-section (2), it also extends to such territories which, immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union and have since merged with Himachal Pradesh under section 5 of the Punjab Reorganisation Act, 1966."

[Vide Himachal Pradesh Act 25 of 1968, sec. 2 (w.e.f. 17-2-1969).]

Madhya Pradesh.—In section 1—

(a) in sub-section (2), at the end insert "other than the Madhya Bharat and Sironj regions of the State of Madhya Pradesh";

(b) in sub-section (3), at the end insert "It also applies to the territories comprised in the Madhya Bharat, Vindhya Pradesh, Bhopal and Sironj regions of the State of Madhya Pradesh."

[Vide Madhya Pradesh Act 23 of 1958, sec. 3 and Sch., Pt. A).]

Maharashtra.—In section 1,—

(a) in sub-section (2), after the words "Part B States", add the words "other than the Hyderabad area of the State of Maharashtra";

(b) in sub-section (3), insert the following proviso, namely:—

"Provided that on the commencement of the Indian Forest (Maharashtra Unification and Amendment) Act, 1960 this Act shall be in force in the Hyderabad area of the State of Maharashtra."

[Vide Maharashtra Act 6 of 1961, sec. 3 (w.e.f. 3-2-1961).]

Punjab: Haryana: Chandigarh.—In section 1, after sub-section (2), insert the following sub-section, namely:—

"(2A) Notwithstanding anything contained in sub-section (2), it also extends to the territories which, immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union."

[Vide Punjab Act 13 of 1962, sec. 2 (w.e.f. 10-7-1962) and Central Act 31 of 1966, sec. 88.]

2. Interpretation clause.—In this Act, unless there is anything repugnant in the subject or context,—

(1) "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;

(2) "Forest-officer" means any person whom ¹[***] the ²[State Government] or any office empowered by ¹[***] the ²[State Government] in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer;

1. The words "the Governor-General in Council or" omitted by the A.O. 1937.

2. Subs. by the A.O. 1950, for "Provincial Government".

- (3) "forest-offence" means an offence punishable under this Act or under any rule made thereunder;
- (4) "forest-produce" includes—
- (a) the following whether found in, or brought from, a forest or not, that is to say— timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, ¹[kuth] and myrabolams, and
 - (b) the following when found in, or brought from a forest, that is to say—
 - (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,
 - (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
 - (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
 - (iv) peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries);
- ²[(4A) "owner" includes a Court of Wards in respect of property under the superintendence or charge of such Court;]
- (5) "river" includes any stream, canal, creek or other channels, natural or artificial;
- (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
- (7) "tree" includes palms, bamboos, skumps, brush-wood and canes.

STATE AMENDMENTS

Bihar: Orissa.—In section 2, for clause (4A), substitute the following clause, namely:—

"(4A) "owner" includes—

- (1) the Court of Wards constituted under the Court of Wards Act, 1879 (Bengal Act 9 of 1879) or the Central Provinces Court of Wards Act, 1899, in respect of any property under the superintendence or charge of either of such Courts;
- (2) a Manager appointed under section 2 of the Chota Nagpur Encumbered Estates Act, 1876, in respect of any property the management of which is vested in such Manager."

[Vide Bihar and Orissa Act 3 of 1934, sec. 2 (w.e.f. 24-10-1934).]

Gujarat: Maharashtra.—In section 2, after clause (4A), insert the following clause, namely:—

"(4B) 'Police officer' means a Police officer as defined in the Bombay Police Act, 1951;

1. Ins. by Act 26 of 1930, sec. 2.

2. Ins. by Act 3 of 1933, sec. 2.

(4C) 'Revenue Officer' means a Revenue Officer as defined in Maharashtra Land Revenue Code, 1966, or where that Code is not in force, as defined in a law corresponding to that Code."

[Vide Gujarat Act 15 of 1960, sec. 6 (b) (w.e.f. 6-12-1960); Maharashtra Act 6 of 1961, sec. 4 (w.e.f. 3-2-1961) as amended by Maharashtra Act 7 of 1985, sec. 2 (w.e.f. 1-6-1985).]

Himachal Pradesh.—In section 2.—

- (a) in clause (6), at the end omit the word "and";
- (b) in clause (7), for the sign ".", substitute the sign and word " ; and"; and
- (c) after clause (7) so amended, insert the following clause, namely:—

"(8) 'Vehicle' means a wheeled conveyance of any description which is capable of being used for movement on land and includes a cart, trolley vehicle and a trailer but does not include bicycle and cattle."

[Vide Himachal Pradesh Act 15 of 1991, sec. 2 (w.e.f. 24-7-1991).]

Madhya Pradesh.—(A) In section 2, in clause (4), in sub-clause (a),—

- (i) after the word "lac", insert the words "shellac, gum".

[Vide Madhya Pradesh Act 9 of 1965, sec. 2 (w.e.f. 20-3-1965).]

- (ii) after the words "mahua seeds", insert the words "tendu leaves".

[Vide Madhya Pradesh Act 1 of 1990, sec. 3.]

(B) in section 2, in clause (4), in sub-clause (b), after item (iv) add the following item, namely:—

"(v) standing agricultural crops".

[Vide Madhya Pradesh Act 9 of 1965, sec. 2 (w.e.f. 20-3-1965).]

Maharashtra.—In section 2, in clause (4), in clause (a),—

- (i) after the word "Kuth", insert the words ", apta and temburni leaves."

[Vide Bombay Act 24 of 1955, sec. 2 (w.e.f. 22-6-1955).]

- (ii) after the words "temburni leaves", insert the word ", rosha grass, including oil derived therefrom, rauwolfia serpentina."

[Vide Maharashtra Act 27 of 1968, sec. 2 (w.e.f. 28-8-1968).]

Tripura.—(1) In section 2,—In clause (4),—

- (i) in sub-clause (a), for the words "and myrobolams", substitute the words "myrobolams, gum, sal seeds, sal leaves, kendu leaves, wild animals, skins, tusks, horns and bones, and all other parts of produce of wild animals".
- (ii) in sub-clause (b), in item (iii), omit the words "wild animals and skins, tusks, horns, bones" and the words "and all other parts or produce of animals".

(2) In section 2, after clause (7), insert the following clause, namely:—

"(8) 'wild animals' shall have the same meaning as defined in the Wild Life (Protection) Act, 1972.

[Vide Tripura Act 10 of 1984, sec. 3 (w.e.f. 16-2-1985).]

Uttar Pradesh.—In section 2, for clause (1), substitute the following clauses, namely:—

- (1) "authorized officer" means an officer authorized under sub-section (1) of section 52A;

(1A) "Cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, sheep, lambs, goats and kids;"

[Vide Uttar Pradesh Act 1 of 2001, sec. 2.]

Uttaranchal.—In section 2, after clause (2), insert the following clause, namely:—

"(2A) "authorized officer" means an officer authorized under sub-section (1) of section 52A;"

[Vide Uttaranchal Act 10 of 2002, sec. 2.]

West Bengal.—In section 2,—

(a) in clause (4),—

(i) in sub-clause (a), for the words "and *murobalams*", substitute the words "*murobalams* gum, sal seeds, sal leaves, tendu leaves, wild animals, skins, tusks, horns and bones, and all other parts or produce of wild animals";

(ii) in sub-clause (b), in item (iii),—

(a) omit the words "wild animals and skins, tusks, horns, bones";

(b) omit the words "and all other parts or produce of animals";

(b) in clause (b), omit the word "and" at the end;

(c) in clause (7), for the words "and canes", substitute the words "and canes, and";

(d) after clause (7), insert the following clause, namely:—

"(8) "wild animal" shall have the same meaning as in Wild Life (Protection) Act, 1972."

[Vide West Bengal Act 39 of 1981, sec. 3.]

SECTION 2A

Gujarat: Maharashtra.—After section 2, insert the following section, namely:—

"2A. *Construction of certain reference to Central or Bombay Acts.*—In the application of this Act to any area of the State of Gujarat/Maharashtra other than the Bombay area thereof, any reference to a provision of a Central or Bombay Act shall, where no such Act is in force in that area, be construed as a reference to the provision of the corresponding law, if any, in force in that area."

[Vide Gujarat Act 15 of 1960, sec. 6(c) (w.e.f. 6-12-1960);]

COMMENTS

(i) Clause 4(a) of section 2 of the Forest Act defines 'forest produce' to include '*mahua flowers*' whether found in or brought from the forest or not. In view of the definition '*mahua flowers*' constitute forest produce; *Dulichand v. State of M.P.*, 1980 MPLJ 465.

(ii) A cursory perusal of the definition makes it clear that the term 'forest produce' includes 'timber'; *Abdul Samad v. State*, AIR 1969 J & K 52.

(iii) Sub-clauses (ii), (iii) and (iv) of clause 4(b) of section 2 of the Act would indicate that the word 'forest' has been used in the definition in its widest significance; *Laxman Iccharam v. D.F.O. Raigarh*, AIR 1953 Nag 51 (FB).

CHAPTER II

OF RESERVED FORESTS

3. Power to reserve forests.—The ¹[State Government] may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

1. Subs. by the A.O. 1950, for "Provincial Government".

STATE AMENDMENT

Uttar Pradesh.—For section 3, substitute the following section, namely:—

"3. *Power to reserve forest.*—The State Government may constitute any forest land or waste land or any other land (not being land for the time being comprised in any holding ¹[***] or in any village abadi) which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Explanation.—The expression "holding" shall have the meaning assigned to it in U.P. Tenancy Act, 1939, and the expression 'village abadi' shall have the meaning assigned to it in the U.P. Village Abadi Act, 1947."

[Vide Uttar Pradesh Act 23 of 1965, sec. 2 (w.e.f. 23-11-1965). The words "or grove" omitted by Notification No. 7043/XVII-299-1965, dated 1st February, 1966.]

COMMENTS

(i) A grove is not a forest; *State v. Avaid Nath*, AIR 1977 All 192.

(ii) The word 'reserved' has not been defined in the Act. On the terminology employed by the Act 'reserved forests' are those areas of forest land which are constituted as a 'reserved forests' under Chapter II of the Act; *Union of India v. Abdul Jalil*, AIR 1965 SC 147.

(iii) The term 'forest' having not been defined in the Forest Act, the meaning given in the Shorter Oxford English Dictionary may be applied, which is 'an extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture'; *Laxman Ichharam v. Divisional Forest Officer*, AIR 1953 Nag 51.

4. Notification by ¹[State Government].—(1) Whenever it has been decided to constitute any land a reserved forest, the ¹[State Government] shall issue a notification in the ²[Official Gazette]—

- (a) declaring that it has been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer (hereinafter called "the Forest Settlement-officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation.—For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer.

(3) Nothing in this section shall prevent the ¹[State Government] from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act.

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

STATE AMENDMENT

Maharashtra.—In section 4, in sub-section (1), after the words "State Government", insert the words "or subject to the general or special orders of the State Government, the Commissioner".

[Vide Maharashtra Act 8 of 1958, sec. 3(4) read with Maharashtra Gazette, Extra, Pt. IVB, dated 13th June, 1980.]

COMMENTS

(i) The words 'any land' does not mean any land other than the land mentioned in section 3. In section 3, two kinds of lands are mentioned which could be declared as reserved forest. They are—(1) Forest Land, and (2) Waste Land; *Jang Bahadur v. State*, 1977 All WR 599 (HC).

(ii) A notification under section 4 of the Act is required to be published in the Gazette and unless it is so published, it is of no effect; *Mahendra Lal v. State of U.P.*, AIR 1963 SC 1019.

(iii) Notification under section 4 of the Act is merely a notification declaring the intention of the Government to constitute certain land as a reserve forest and specifying, as nearly as possible, the situation and limits of such land; *Mausid Oraon v. The King*, AIR 1951 Pat 380.

5. Bar of accrual of forest-rights.—After the issue of a 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 contract in writing made or entered into by or on behalf of the ¹[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 except in accordance with such rules as may be made by the ²[State Government] in this behalf.

STATE AMENDMENT

Uttar Pradesh.—For section 5, substitute the following section, namely:—

"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.

[Vide Uttar Pradesh Act 23 of 1965, sec. 3 (w.e.f. 23-11-1965).]

COMMENTS

(i) Section 5 of the Act specifically states that after the issue of the notification under section 4, no right shall be acquired in or over the land comprised in notification issued under section 4 of the Act except by succession or under a grant or contract with the Government; *State v. Ind Additional District and Sessions Judge, Varanasi*, AIR 1984 All 360.

(ii) Section 5 of the Act prohibits fresh clearing for cultivation or for any other purpose except in accordance with such rules as may be made by the State Government in this behalf; *Mohammad Siddiq v. The State of U.P.*, AIR 1968 All 396.

1. Subs. by the A.O. 1950, for "Crown".

2. Subs. by the A.O. 1950, for "Provincial Government".

6. Proclamation by Forest Settlement-officer.—When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and
- (c) fixing a period of not less than three months from the date of such proclamation; and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

COMMENTS

Section 6 of the Act makes provision for a proclamation of the notification issued under section 4 by publication in several places so that the persons, who might be affected by the issue of notification, may prefer objection thereto; *Mohammad Siddiq v. The State of U.P.*, AIR 1968 All 396.

7. Inquiry by Forest Settlement-officer.—The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. Powers of Forest Settlement-officers.—For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:—

- (a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and
- (b) the powers of a Civil Court in the trial of suits.

9. Extinction of rights.—Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

COMMENTS

(i) Before the provisions of section 9 could be attracted, it had to be established by the Government that the land in dispute was either forest land or waste land within the meaning of section 3 of the Act; *State v. Avasi Nath*, AIR 1977 All 192.

(ii) The rights in respect of which no claim is preferred and which are not brought to the knowledge of Forest Settlement-officer during the course of inquiry under section 7 of the Act are extinguished on publication of notification under section 20 of the Act; *Mahaluxmi Bank Limited v. Province of Bengal*, AIR 1942 Cal 371.

10. Treatment of claims relating to practice of shifting cultivation.—(1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the ¹[State Government], together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the ¹[State Government] may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise—

- (a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or
- (b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe.

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of the ¹[State Government].

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the ¹[State Government].

COMMENTS

The practice of shifting cultivation shall, in all cases, be deemed a privilege subject to control, restriction and abolition by the State Government; *Mohd. Siddiq v. State*, AIR 1968 All 396.

11. Power to acquire land over which right is claimed.—(1) In the case of a claim to a right in or over any land, other than a right of way or right of pasture, or a right to forest-produce or a water-course, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement-officer shall either—

- (i) exclude such land from the limits of the proposed forest; or
- (ii) come to an agreement with the owner thereof for the surrender of his rights; or
- (iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(3) For the purpose of so acquiring such land—

- (a) the Forest Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894 (1 of 1894);

1. Subs. by the A.O. 1950, for "Provincial Government".

- (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;
- (c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
- (d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

STATE AMENDMENT

Uttar Pradesh.—In section 11, after sub-section (3), insert the following sub-section, namely:—

"(4) The provisions of sub-section (3) shall apply also when the Forest Settlement-officer proceeds to acquire any land in consequence of any order passed on appeal or revision under this Act."

[Vide Uttar Pradesh Act 23 of 1965, sec. 4 (w.e.f. 23-11-1965).]

12. Order on claims to rights of pasture or to forest-produce.—In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

STATE AMENDMENT

Gujarat: Maharashtra.—Section 12 shall be renumbered as sub-section (1) of that section and after the sub-section so renumbered, insert the following sub-section, namely:—

"(2) A copy of the order passed under sub-section (1) shall be furnished to the claimant by the Forest Settlement-officer and another copy of that order shall be forwarded to the Forest Officer who attended the inquiry or, if no such officer attended, to the Divisional Forest Officer."

[Vide Gujarat Act 15 of 1960, sec. 6 (d), (w.e.f. 8-12-1960); Maharashtra Act 6 of 1961, sec. 6 (w.e.f. 9-2-1961).]

13. Record to be made by Forest Settlement-officer.—The Forest Settlement-officer, when passing any order under section 12, shall record, so far as may be practicable,—

- (a) the name, father's name, caste, residence and occupation of the person claiming the right; and
- (b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

14. Record where he admits claim.—If the Forest Settlement-officer admits in whole or in part any claim under section 12, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest produce which he is from time to time authorised to take or receive, and such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

COMMENTS

Section 14 of the Act provides that the Forest Settlement-officer, in case he admits the whole or in part any clause under section 12 of the Act, shall also record the extent to which the claim is so admitted, specifying the number and the description of the cattle which the claimant is, from time to time, authorised to take or receive and such other particulars as the case may require; *Mohd. Siddiq v. State*, AIR 1968 All 396.

15. Exercise of rights admitted.—(1) After making such record the Forest Settlement-officer shall, to the best of his ability, having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For this purpose the Forest Settlement-officer may—

- (a) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or
- (b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or
- (c) record an order, continuing to such claimants a right of pasture or to forest-produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the ¹[State Government].

16. Commutation of rights.—In case the Forest Settlement-officer finds it impossible having due regard to the maintenance of the reserved forest, to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the ¹[State Government] may make in this behalf, commute such rights, by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

17. Appeal from order passed under section 11, section 12, section 15 or section 16.—Any person who has made a claim under this Act, or any Forest-officer or other person, generally or specially empowered by the ¹[State Government] in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the ¹[State Government] may, by notification in the ²[Official Gazette], appoint to hear appeals from such orders:

Provided that the ¹[State Government] may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the ¹[State Government], and when the Forest Court has been so established, all such appeals shall be presented to it.

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

STATE AMENDMENTS

Maharashtra.—In section 17, after the words "State Government", wherever they occur, insert the words "or subject to the general or special orders of the State Government, the Commissioner".

[*Vide* Maharashtra Act 8 of 1958, sec. 3(4) and Sch. read with Maharashtra Gazette, Extra., Pt. IVB, dated 19th April, 1981.]

Uttar Pradesh.—For section 17, substitute the following section, namely:—

"17. Appeal from order passed under section 11, section 12, section 15 or section 16.— Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the State Government in this behalf may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12, section 15 or section 16, present an appeal from such order to the District Judge.

Explanation.—In this section and the succeeding sections of this chapter, District Judge means the District Judge of the district in which the land is situate, and includes an Additional District Judge to whom an appeal is transferred by the District Judge."

[*Vide* Uttar Pradesh Act 25 of 1965, sec. 5 (w.e.f. 23-11-1965).]

18. Appeal under section 17.—(1) Every appeal under section 17 shall be made by petition in writing, and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be to an officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the ¹[State Government], be final.

STATE AMENDMENT

Uttar Pradesh.—For section 18, substitute the following section, namely:—

"18 Appeal under section 17.—(1) Every appeal under section 17 shall be made by petition in writing and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the District Judge.

(2) The District Judge may, after giving to the parties an opportunity of being heard, confirm, set aside or modify the order under appeal, or remand the case to the Forest Settlement-officer with such directions as he thinks fit.

(3) During the pendency of appeal the District Judge may, for sufficient cause, stay, on such terms, if any, as he thinks fit, the operation of the order appealed from and pass any incidental or consequential order.

(4) The order passed on appeal shall, subject to the provisions of section 22, be final."

[*Vide* Uttar Pradesh Act 23 of 1965, sec. 6 (w.e.f. 23-11-1965).]

1. Subs. by the A.O. 1950, for "Provincial Government".

COMMENTS

(i) Considering the scope of sub-section (4) of section 18 of the Act there is no clear provision in the Act conferring any right on the aggrieved claimants to go up in revision against the order passed by the Forest Appellate Court under section 17 of the Act; *Swami Nath Singh v. State of U.P.*, AIR 1967 All 427.

(ii) Sub-section (4) of section 18 of the Act provides for revising an appellate order by the State Government; *Mahendra Lal Jain v. State of U.P.*, AIR 1963 SC 1019.

(iii) No revision was filed before the State Government (Local Government) and the appellate order, thus, became final under sub-section (4) of the section 18 of the Act; *Maha Luxmi Bank Ltd. v. Province of Bengal*, AIR 1942 Cal 371.

19. Pleadors.—The ¹[State Government], or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

STATE AMENDMENT

Uttar Pradesh.—For section 19, substitute the following section, namely:—

"19. Pleadors.—The State Government or any person who has made a claim under this Act may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer or the District Judge in the course of any inquiry or appeal under this Act."

[Vide Uttar Pradesh Act 23 of 1965, sec. 7 (w.e.f., 23-11-1965).]

20. Notification declaring forest reserved.—(1) When the following events have occurred, namely:—

- (a) the period fixed under section 6 for preferring claims have elapsed and all claims (if any) made under that section or section 9 have been disposed of by the Forest Settlement-officer;
- (b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and
- (c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under section 16 of that Act,

the ¹[State Government] shall publish a notification in the ²[Official Gazette], specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

STATE AMENDMENTS

Maharashtra.—In section 20, in sub-section (1), after the words "the State Government", insert the words "or subject to the general or special orders of the State Government, the Commissioner".

1. Subs. by the A.O. 1950, for "Provincial Government".
2. Subs. by the A.O. 1937, for "Local Official Gazette".

[Vide Maharashtra Act 8 of 1958, sec. 3(4) and, Sch. read with Maharashtra Government Gazette, Extra., Pt. IVB, dated 19th November, 1981.]

Uttar Pradesh.—In section 20, in sub-section (1), for clause (b), substitute the following clause, namely:—

- (b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the District Judge; and”.

[Vide Uttar Pradesh Act 23 of 1965, sec. 8 (w.e.f. 23-11-1965).]

SECTION 20A

Madhya Pradesh.—After section 20, insert the following section, namely:—

‘20A. Forest-land or waste-land deemed to be reserved forests.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any forest-land or waste-land in the territories comprised within an Indian State, immediately before the date of its merger in any of the integrating States now forming part of this State (hereinafter in this section referred to as the “merged territories”),—

- (i) which had been recognised by the Ruler of any such State immediately before the date of merger as a reserved forest in pursuance of any law, custom, rule, regulation, order or notification for the time being in force; or
- (ii) which had been dealt with as such in any administration report or in accordance with any working plan, or register maintained or acted upon immediately before the said date and has been continued to be so dealt with thereafter;

shall be deemed to be reserved forests for the purposes of this Act.

(2) In the absence of any rule, order or notification under this Act applicable to the area in question, any law, custom, rule, regulation, order or notification mentioned in sub-section (1) shall, anything in any law to the contrary notwithstanding, be deemed to be validly in force, as if the same had the force and effect of rules, orders and notifications made under the provisions of this Act and shall continue to so remain in force until superseded, altered or modified in accordance therewith.

(3) No report, working plan, or register as aforesaid or any entry therein shall be questioned in any Court of law; provided that the State Government have duly certified that such report, working plan, or register had been prepared under the authority of the said Ruler before the date of the merger and has been under the authority of the State Government continued to be recognised, maintained or acted upon thereafter.

(4) Forest recognised in the merged territories as village forests or protected forests, or forests other than reserved forests, by whatever name designated or locally known, shall be deemed to be protected forests within the meaning of this Act and provisions of sub-sections (2) and (3) shall *mutatis mutandis* apply.

Explanation I.—“Working Plan” includes any plan, scheme, project, maps, drawings and layouts prepared for the purpose of carrying out the operations in course of the working and management of forests.

Explanation II.—“Ruler” includes the Darbar administration prior to the date of the merger and “State Government” includes the successor Governments after the said date.

Explanation III.—The expression "Indian State" shall have the meaning assigned to that expression in clause (15) of Article 366 of the Constitution of India.

Explanation IV.—"Integrating States" means the States of Madhya Pradesh, Madhya Bharat, Rajasthan, Vindhya Pradesh and Bhopal as existing before the 1st day of November, 1956.

[Vide Madhya Pradesh Act 9 of 1965 sec. 3 (w.e.f. 20-3-1965).]

Orissa.—After section 20, insert the following section, namely:—

20A. *Forest-land or waste-land deemed to be reserved forests.*—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, any forest-land or waste-land in the merged territories, which had been recognised by the Ruler of any merged State immediately before the date of merger as a reserved forest in pursuance of any law, custom, rule, regulation, order or notification for the time being in force or which has been dealt with as such in any administration report or in accordance with any working plan, or register maintained and acted upon immediately before the said date and has been continued to be so dealt with thereafter, shall be deemed to be reserved forests for the purposes of this Act.

(2) In the absence of any rule, order or notification under this Act, applicable to the area in question, any law, custom, rule, regulation, order or notification mentioned in sub-section (1) shall, anything in law to the contrary notwithstanding, be deemed to be validly in force as if the same had the force and effect of rules, orders and notifications made under the provisions of this Act and shall continue to so remain in force until superseded, altered or modified in accordance therewith.

(3) No report, working plan, or register as aforesaid or any entry therein shall be questioned in any Court of law; provided that the State Government have duly certified that such report, working plan, or register had been prepared under the authority of the said Ruler before the date of the merger and has been under the authority of the State Government continued to be recognised, maintained or acted upon thereafter.

(4) Forests recognised in the merged territories as Khasra forests, village forests or protected forests, or forests other than reserved forests, by whatever name designated or locally known, shall be deemed to be protected forests within the meaning of this Act and provisions of sub-sections (2) and (3) shall *mutatis mutandis* apply.

Explanation I.—"Working plan" includes any plan, scheme, project, maps, drawings and layouts prepared for the purpose of carrying out the operations in course of the working and management of forests.

Explanation II.—"Ruler" includes the Darbar administration prior to the date of the merger, and

"State Government" includes the successor Governments after the said date."

[Vide Orissa Act 11 of 1954, sec. 2.]

Uttar Pradesh.—After section 20, insert the following section, namely:—

20A. *Certain forest-land or waste-land when deemed to be reserved forest.*—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, including the Merged States (Laws) Act, 1949 or the U.P. Merged States (Application of Laws) Act, 1950, or any order issued thereunder, any forest-land or waste-land in a merged State which immediately before the date of merger (hereinafter in this section referred to as the said date),—

- (a) was deemed to be a reserved forest under any enactment in force in that State,
- or

- (b) was recognised or declared by the Ruler of such State as a reserved forest under any law (including any enactment, rule, regulation, order, notification, custom or usage having the force of law) for the time being in force, or
- (c) was dealt with a reserved forest in any administrative report or in accordance with any working plan or register maintained and acted upon under the authority of the Ruler.

shall be deemed to be and since the said date to have continued to be a reserved forest subject to the same rights or concession, if any, in favour of any person as were in force immediately before the said date.

Explanation I.—A certificate of the State Government or of any officer authorised in his behalf to the effect that a report, working plan or register was maintained and acted upon under the authority of the Ruler shall be conclusive evidence of the fact that it was so maintained and acted upon.

Explanation II.—Any question as to the existence or extent of any right or concession referred to in this sub-section shall be determined by the State Government, whose decision, given after such enquiry, if any, as it thinks fit, shall be final.

Explanation III.—"Working plan" includes any plan scheme, project, map, drawings and lay-outs prepared for the purpose of carrying out the operations in course of the working and management of forests.

(2) No right shall be deemed to have been acquired on or after the said date in or over any land mentioned in sub-section (1) except by succession or under a grant or contract in writing made or entered into by or on behalf of the State Government or some person in whom such right was vested immediately before the said date and no fresh clearings since made for cultivation or for any other purpose (except clearings made in accordance with any concessions granted by the Ruler and in force immediately before the said date or in accordance with the rules made by the State Government in this behalf since the said date) shall be recognised as or deemed to be lawful, anything contained in this Act or any other law for the time being in force notwithstanding.

(3) The State Government may within five years from the commencement of the Indian Forest (Uttar Pradesh Amendment) Act, 1965, revise any arrangement of the nature specified in section 22, and pass any incidental or consequential order, including any direction to the effect that any of the proceedings specified in the foregoing provisions of this Chapter be taken.

(4) In relation to any land mentioned in sub-section (1), the references in sections 24 and 26—

- (a) to section 23 shall be construed as references to sub-section (2); and
- (b) to rights admitted, recorded or continued under section 14 or section 15 shall be construed as references to rights of pasture or to forest-produce admitted, recorded or continued in or under the corresponding enactment, law or document referred to in sub-section (1).

(5) Without prejudice to any action that may be or may have been taken for ejectment, vacation of encroachment or recovery of damages in respect of any unauthorised occupation of or trespass over any land mentioned in sub-section (1), or for seizure, confiscation, disposal or release (on payment of value or otherwise) of any forest produce in respect of which any forest offence has been committed in relation to such land or of any tools, boats, carts or cattle used in committing such offence, nothing in this section shall be deemed to authorise the conviction of any person for any act done before the commencement of the Indian Forest (Uttar

Pradesh Amendment) Act, 1965, which was not an offence before such commencement.

[Vide Uttar Pradesh Act 23 of 1965, sec. 9 (w.e.f. 23-11-1965).]

COMMENTS

(i) The notification under section 20 of the Act must specify the limits of the forest and the date from which the forest is constituted; *Mausid Oraon v. The King*, AIR 1951 Pat 380.

(ii) It is only from the date fixed by the notification under sub-section (1) of section 20 of the Act that a forest is deemed to be a reserved forest; *Gola v. Emperor*, AIR 1946 Pat 51.

21. Publication of translation of such notification in neighbourhood of forest.—The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

22. Power to revise arrangement made under section 15 or section 18.—The [State Government] may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 or section 18, and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

STATE AMENDMENT

Uttar Pradesh.—For section 22, substitute the following section, namely:—

"22. Powers to revise arrangements made under section 15 or section 18.—The State Government may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 or on appeal under section 18, and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16."

[Vide Uttar Pradesh Act 23 of 1965, sec. 10, (w.e.f. 23-11-1965).]

SECTION 22A

After section 22, insert the following section, namely:—

"22A. Power of revision in other cases.—(1) Without prejudice to the provisions of section 22, the State Government may, either of its own motion or on a petition being made in that behalf, call for the record of any appeal decided under section 18, and may confirm the order passed on such appeal, or set it aside, or modify it, or remand the case to the Forest Settlement-officer with such directions as it may think fit.

(2) No petition under this section may be made, after November 22, 1965, and the State Government may not exercise any power under this section, after said date."

[Vide Uttar Pradesh Act 11 of 1973, sec. 2 (w.r.e.f. 23-11-1960).]

23. No right acquired over reserved forest, except as here provided.—No right of any description shall be acquired in or over a reserved forest except by

1. Subs. by the A.O. 1950, for "Provincial Government".

succession or under a grant or contract in writing made by or on behalf of the ¹[Government] or some person in whom such right was vested when the notification under section 20 was issued.

24. Rights not to be alienated without sanction.—(1) Notwithstanding anything contained in section 23, no right continued under clause (c) of subsection (2) of section 15 shall be alienated by way of grant, sale, lease mortgage or otherwise, without the sanction of the ²[State Government]:

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

25. Power to stop ways and water-courses in reserved forests.—The Forest-officer may, with the previous sanction of the ²[State Government] or of any officer duly authorised by it in this behalf, stop any public or private way or water-course in a reserved forest, provided that a substitute for the way or water-course so stopped, which the ²[State Government] deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

26. Acts prohibited in such forests.—(1) Any person who—

- (a) makes any fresh clearing prohibited by section 5, or
 - (b) sets fire to a reserved forest, or, in contravention of any rules made by the ¹[State Government] in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest;
- or who, in a reserved forest—
- (c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf;
 - (d) trespasses or pastures cattle, or permits cattle to trespass;
 - (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
 - (f) fells, girdles, lops, or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;
 - (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;
 - (h) clears or breaks up any land for cultivation or any other purpose;
 - (i) in contravention of any rules made in this behalf by the ¹[State Government] hunts, shoots, fishes, poisons water or sets traps or snares; or
 - (j) in any area in which the Elephants' Preservation Act, 1879 (6 of 1879), is not in force, kills or catches elephants in contravention of any rules so made,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in

1. Subs. the A.O. 1950, for "Crown".

2. Subs. by the A.O. 1950, for "Provincial Government".

addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit—

- (a) any act done by permission in writing of the Forest-officer, or under any rule made by the ¹[State Government]; or
- (b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under section 23.

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the ¹[State Government] may (notwithstanding that any penalty has been inflicted under this section), direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

STATE AMENDMENTS

Bihar.—In section 26, in sub-section (1), for the words "shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid" substitute the following words, namely:—

"shall be punishable with imprisonment for a minimum term of six months which may extend to two years or with minimum fine of one thousand rupees which may extend to five thousand rupees or with both in addition to such compensation as the Convicting Court may direct to be paid. The offence under this section shall be cognizable and non-bailable."

[Vide Bihar Act 9 of 1990, sec. 2 (w.e.f. 10-9-90).]

Bihar: Orissa.—In section 26, for sub-section (3), substitute the following sub-section, namely:—

"(3) Whenever in a reserved forest,—

- (a) fire is caused wilfully or by gross negligence, or
- (b) theft of forest produce occurs and such theft is, in the opinion of the State Government, on such a scale as to be likely to imperil the future yield of such forest,

the State Government may, notwithstanding that any penalty has been inflicted under this section or under any other law for any act referred to in clause (a) or clause (b), direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended,—

- (i) in the circumstances mentioned in clause (a), for such period, as it thinks fit.
- (ii) in the circumstances mentioned in clause (b); for a period not exceeding four years."

[Vide Bihar and Orissa Act, 1935 (9 of 1935), sec. 2 (w.e.f. 23-10-1935).]

Gujarat.—In section 26—

(i) in sub-section (1), for clause (b), substitute the following clause, namely:—

"(b) sets fire to a reserve forest or to a forest in a land in respect of which a notification declaring the decision of the State Government to constitute it a

1. Subs. by the A.O. 1950, for "Provincial Government".

reserved forest has been issued under section 4, or in contravention of any rules made by the State Government in this behalf, kindles in such forest any fire or leaves any fire burning in such manner as to endanger such a forest; or who, in a reserved forest or a forest in a land notified as aforesaid, under section 4—"

(ii) after sub-section (3), insert the following sub-section, namely:—

"(4) When a person is convicted under clause (d) or (h) of sub-section (1)—

(a) a Forest officer not below the rank of a Ranger.

(b) a Police officer not below the rank of a Sub-Inspector, or

(c) a Revenue officer not below the rank of a Mahalkari,

may evict him from the forest or land in relation to which he has committed the offence."

[Vide Gujarat Act 15 of 1960, sec. 6 (e) (w.e.f. 8-12-1960).]

Haryana.—In section 26, in sub-section (1), for the words "which may extend to six months, or with fine which may extend to five hundred rupees", substitute the words "which may extend to one year, or with fine which may extend to one thousand rupees".

[Vide Haryana Act 31 of 1973, sec. 2 (w.e.f. 10-7-1973).]

Himachal Pradesh.—In section 26, for the words "six months" and "five hundred" substitute the words "two years" and "five thousand" respectively.

[Vide Himachal Pradesh Act 15 of 1991, sec. 3 (w.e.f. 24-7-1991).]

Madhya Pradesh.—In section 26, in sub-section (1),—

(i) for clause (b), substitute the following clause, namely:—

Same as in Gujarat (i);

(ii) in clause (e), for the word "dragging", substitute the word "removing";

(iii) in clause (f), for the words "the same", substitute the words "the same or any forest produce";

(iv) for clause (h), substitute the following clause, namely:—

"(h) clears or breaks up any land for cultivation or for any other purpose, or cultivates or attempts to cultivate any land in any other manner in any protected forests;"

(v) for the words "extend to six months, or with fine which may extend to five hundred rupees", substitute the words "extend to one year, or with fine which may extend to *[Fifteen thousand rupees]".

[Vide Madhya Pradesh Act 9 of 1965, sec. 4 (w.e.f. 20-3-1965) * Substituted by Madhya Pradesh Act 7 of 2010, sec. 3, for "one thousand rupees".]

Maharashtra.—In section 26,—

(a) Same as in Gujarat (i) except for the words "a forest in a land" at two places where they occur, substitute the words "a proposed forest in a land";

(b) Same as in Gujarat (ii) except in clause (c), for the word "Mahalkari", substitute the words "Mahalkari or Tehsildar".

[Vide Maharashtra Act 6 of 1961, sec. 7 (w.e.f. 9-2-1961).]

In section 26, in sub-section (1), for the words "six months or with fine which may extend to five hundred rupees", substitute the words "one year or with fine which may extend to two thousand rupees".

[Vide Maharashtra Act 7 of 1985, sec. 3 (w.e.f. 1-6-1985).]

Punjab.—In section 26, in sub-section (1),—

- (i) in clause (e), for the word "dragging", the words "dragging or removing" shall be substituted;
- (ii) in clause (f), for the words "the same", the words "the same or any forest produce" shall be substituted; and
- (iii) for the words "six months, or with fine which may extend to five hundred rupees", substitute the words "two years, or with fine which may extend to five thousand rupees".

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 2 (w.e.f. 26-10-2004).]

Uttar Pradesh.—(1) In section 26, in sub-section (1),—

for clause (a), substitute the following clause, namely:—

"(a) makes any fresh clearing or does any other act prohibited by section 5, or"

[Vide Uttar Pradesh Act 23 of 1965, sec. 11 (w.e.f. 23-11-1965).]

(2) In section 26, in sub-section (1),—

- (i) in clause (b), after the words "reserved forest", insert the words "or to a forest in the land in respect of which a notification under section 4 has been issued";
- (ii) in clause (e), for the word "dragging", substitute the word "removing";
- (iii) in clause (f), after the words "the same", insert the words "or any forest produce";
- (iv) for the words "shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both," substitute the words "shall, for an act under clause (b) or clause (f) or clause (g) or clause (h), be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and on the second and every subsequent conviction for the same offence, with imprisonment for a term which may extend to two years, or with fine which may extend to twenty thousand rupees but which shall not be less than five thousand rupees, or with both, and for an act under any of the other clauses, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both and on the second and every subsequent conviction for the same offence, with imprisonment which may extend to six months, or with fine which may extend to two thousand rupees, or with both,".

[Vide Uttar Pradesh Act 1 of 2001, sec. 3.]

Uttaranchal.—In section 26, in sub-section (1),—

- (i) in clause (b), after the words "reserved forest", insert the words "or to a forest in the land in respect of which a notification under section 4 has been issued";
- (ii) in clause (e), for the word "dragging", substitute the word "removing";
- (iii) in clause (f), after the words "the same", insert the words "or any forest produce";
- (iv) for the words "shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both," substitute the words "shall, for an act described clause (b) or clause (f) or clause (g) or clause (h), be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both and on the second and every subsequent

conviction for the same offence, with imprisonment for a term which may extend to two years, or with fine which may extend to twenty thousand rupees but which shall not be less than five thousand rupees, or with both, and for an act described under any of the other clauses, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both and on the second and ever subsequent conviction for the same offence, with imprisonment which may extend to six months, or with fine which may extend to two thousand rupees, or with both."

[Vide Uttaranchal Act 10 of 2002, sec. 3.]

West Bengal.—In section 26,—

(a) in sub-section (1), for the words "six months, or with fine may extend to five hundred rupees", substitute the words "one year, or with fine which may extend to one thousand rupees";

(b) after sub-section (1), substitute the following sub-section, namely:—

"(1A) (a) The forest officer may evict from a reserved forest or from any land in a reserved forest any person who; in such forest, trespasses or pasture cattle, or permits cattle to trespass, or clears or breaks up such land for cultivation or for any other purpose and may demolish any building erected or construction made by such person on such land.

(b) Any agricultural or other crops grown, or any building erected or any construction made by any person on any land in reserved forest shall be liable to confiscation by an order of the Divisional Forest-Officer.

(c) The provisions of this sub-section shall have effect notwithstanding any penalty inflicted under sub-section (1)."

[Vide West Bengal Act 22 of 1958 sec. 3.]

COMMENTS

(i) The bamboo trees are forest-produce but topals, supads made from bamboo chips are not forest-produce. Thus, the permission of forest department is not required for removal of such bamboo articles from the reserved forests; *Fateh Singh Guniba v. State*, AIR 1987 Guj 918.

(ii) In view of the provisions of clause (i) of sub-section (1) of section 26 of the Act, no person can carry on fishing within the reserved forest without the permission of the Forest Settlement Officer or State Government. The fish found in a channel or pond in reserved forest is forest-produce; *State v. Distt. Judge, Bijnor*, AIR 1981 All 205.

(iii) The onus lies on the State to prove the guilt of accused under section 26 of the Act. Where the notification has not been proved in accordance with law by the documentary evidence as provided under the provisions of the Evidence Act, 1872, the accused can not be held liable to punishment; *Janu Khan v. State*, AIR 1960 Pat 213.

(iv) For the purpose of proving guilt of the accused, it is necessary to show not only that they did the acts mentioned in clauses (f) and (h) of sub-section (1) of section 26, but also that they were not entitled to do those acts because there had been a notification issued under sub-section (1) of section 20 of the Act specifying the limits of the forest and that the land in question fell within those limits. Such a notification is essential for the purpose of declaring a forest as a reserved forest. The production of notification under section 4 or oral evidence as to limits of the forest is not sufficient; *Mausid Oraon v. The King*, AIR 1951 Pat 380.

27. Power to declare forest no longer reserved.—(1) The ¹[State Government] may, ²[***] by notification in the ³[Official Gazette], direct that, from a date fixed by such notification, any forest or any portion thereof reserved under the Act shall cease to be a reserved forest.

(2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

STATE AMENDMENTS

Maharashtra.—In section 27, in sub-section (1), after the words "State Government", insert the words "or subject to the general or special orders of the State Government, the Commissioner".

[Vide Maharashtra Act 8 of 1958, sec. 3(4) and Sch. read with Maharashtra Government Gazette, Pt. IVB, dated 13th June, 1980.]

SECTION 27A

Uttar Pradesh.—After section 27, insert the following section, namely:—

"27A. Finality of orders, etc.—No act done, order made or certificate is issued in exercise of any power conferred by or under this Chapter shall, except as hereinbefore provided, be called in question in any Court."

[Vide Uttar Pradesh Act 23 of 1965, sec. 12 (w.e.f. 23-11-1965).]

CHAPTER III OF VILLAGE-FORESTS

28. Formation of village-forests.—(1) The ¹[State Government] may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The ¹[State Government] may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests.

STATE AMENDMENTS

Gujarat.—In section 28,—

(i) In sub-section (1).—

(a) after the words "reserved forest", insert the words "or called a protected forest";

(b) after the word "village community", insert the words and figures "village panchayat established under the Bombay Village Panchayats Act, 1933,

1. Subs. by the A.O. 1950, for "Provincial Government".

2. The words "subject to the control of the Governor-General in Council," omitted by the A.O. 1937.

3. Subs. by the A.O. 1937, for "Local Official Gazette".

co-operative society registered or "deemed to be registered under the Bombay Co-operative Societies Act, 1925;"

(ii) In sub-section (2), after the word "community", insert the words "panchayat or society".

(iii) In sub-section (3),—

(a) after the word "reserved", insert the words "or protected" and

(b) after the word "village forests", insert the words "according as the forests assigned are reserved or protected forests".

[Vide Gujarat Act 15 of 1960, secs. 3 and 4(2) (w.e.f. 8-12-1960).]

(iv) Same as that of Maharashtra (b).

Maharashtra.—In section 28,—

(a) same as in Gujarat (i), (ii) and (iii).

[Vide Bombay Act 62 of 1948, sec. 2 (w.e.f. 4-12-1948); Bombay Act 24 of 1955, sec. 3 (w.e.f. 22-6-1955) and Maharashtra Act 6 of 1961, sec. 2 (w.e.f. 9-2-1961).]

(b) In section 28,—

(a) for the words and figures "the Bombay Village Panchayats Act, 1933", substitute the words and figures "the Bombay Village Panchayats Act, 1958";

(b) for the words and figures "the Bombay Co-operative Societies Act, 1925", substitute the words and figures "the Maharashtra Co-operative Societies Act, 1960".

[Vide Maharashtra Act 7 of 1985, sec. 4 (w.e.f. 1-6-1985).]

Uttar Pradesh.—In section 28, in sub-section (1),—

(a) between the word 'forest' and the comma, insert "or declared a protected forest or is a forest belonging to the Government";

(b) for the full stop occurring at the end, substitute a comma and add the following thereafter:—

"and, subject to the rules made under the sub-section (2), all the provisions of this Act relating to reserved forests, protected forests or forests belonging to the Government, shall as the case may be, apply to them";

(2) Omit sub-section (3).

[Vide Uttar Pradesh Act 21 of 1960, sec. 3 (w.e.f. 2-11-1960).]

CHAPTER IV

OF PROTECTED FORESTS

29. Protected forests.—(1) The ¹[State Government] may, by notification in the ²[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 Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a "protected forest".

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

(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 ¹[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 ¹[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 ¹[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.

STATE AMENDMENTS

Maharashtra.—In section 29, in sub-section (1), and in the proviso wherever they occur after the words "State Government", insert the words "or subject to the general or special orders of the State Government, the Commissioner".

[Vide Maharashtra Act 8 of 1958, sec. 3(4) read with Maharashtra Government Gazette Pt. IVB, dated 19th November, 1981.]

COMMENTS

(i) Under sub-section (2) of section 29, the forest and waste lands are to be called protected forest. There is no provision in Chapter IV for transfer of possession over any property to the Government. Legally, therefore, possession could not pass to Government by mere fact of publication of notification; *M/s. Jetmal Bhojraj v. State of Bihar*, AIR 1967 Pat 287.

(ii) Chapter IV of the Act provides for what are called protected forests and the State Government is empowered to constitute any land other than reserved forests as protected forests. The State Government is further empowered to make rules to regulate cutting, sawing, conversion or removal of trees, etc. Penalties are prescribed for acting in contravention of the prohibitions contained in the earlier part of the Act; *Virji Lalji Patel & Co., Jabalpur v. State of M.P.*, 1965 Jab LJ 1017.

30. Power to issue notification reserving trees, etc.—The ¹[State Government] may, by notification in the ²[Official Gazette],—

- (a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;
- (b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the ¹[State Government] thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such terms, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the right suspended in the portion so closed; or
- (c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.

31. Publication of translation of such notification in neighbourhood.—The Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

32. Power to make rules for protected forests.—The ¹[State Government] may make rules to regulate the following matters, namely:—

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests;
- (b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licences by such persons;
- (c) the granting of licences to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licences by such persons;
- (d) the payments, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;
- (f) the examination of forest-produce passing out of such forests;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests;
- (h) the protection from fire of timber lying in such forests and of trees reserved under section 30;
- (i) the cutting of grass and pasturing of cattle in such forests;
- (j) hunting, shooting, fishing, poisoning, water and setting traps or snares in such forests and the killing or catching of elephants in such forests in areas in which the Elephants' Preservation Act, 1879 (6 of 1879), is not in force;
- (k) the protection and management of any portion of a forest closed under section 30; and
- (l) the exercise of rights referred to in section 29.

COMMENTS

The conservator of forest, who is a public authority acting on behalf of the Government, is required to act in a reasonable manner. While exercising his powers under the standing orders in matters relating to grant of extension of period of licence, he can not act arbitrarily at his own sweet will like a private individual, instead he must

1. Subs. by the A.O. 1950, for "Provincial Government".

act in conformity with the constitution and the principles laid down in the standing orders in a manner which may withstand the test of reasonableness. Any departure with the principle of reason or equality would vitiate the order; *Dayashankar Singh v. Conservator of Forest*, AIR 1984 All 188.

33. Penalties for acts in contravention of notification under section 30 or of rules under section 32.—(1) Any person who commits any of the following offences, namely:—

- (a) fells, girdles, lops, taps or burns any tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;
- (b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal or collects, subjects to any manufacturing process, or removes any forest-produce;
- (c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;
- (d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing fallen or felled, or to say closed portion of such forest;
- (e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;
- (f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;
- (g) permits cattle to damage any such tree;
- (h) infringes any rule made under section 32,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Whenever fire is caused wilfully or by gross negligence in a protected forest, the ¹[State Government] may, notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.

STATE AMENDMENTS

Bihar.—In section 33, in sub-section (1), for the words "shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both", substitute the words "shall be punishable with imprisonment for a minimum term of six months which may extend to two years or with minimum fine of one thousand rupees which may extend to five thousand rupees or with both. The offence under this section shall be cognizable and non-bailable."

[Vide Bihar Act 9 of 1990, sec. 3 (w.e.f. 10-9-1990).]

Bihar: Orissa.—For sub-section (2), substitute the following sub-section, namely:—

"(2) Whenever in a protected forest.—

- (a) fire is caused wilfully or by gross negligence, or

1. Subs. by the A.O. 1950, for "Provincial Government".

- (b) theft of forest produce occurs and such theft is, in the opinion of the State Government, on such a scale as to be likely to imperil the future yield of such forest,

the State Government may, notwithstanding that any penalty has been inflicted under this section or under any other law for any act referred to in a clause (a) or clause (b), direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended—

- (i) in the circumstances mentioned in clause (a), for such period as it thinks fit,
- (ii) in the circumstances mentioned in clause (b), for a period not exceeding four years."

[Vide Bihar and Orissa Act, 1935 (9 of 1935), sec. 3 (w.e.f. 23-10-1935).]

Gujarat.—In section 33, after sub-section (2), insert the following sub-section, namely:—

"(3) When a person is convicted of an offence under sub-section (1),—

- (a) a Forest officer not below the rank of a Ranger, or
- (b) a Police officer not below the rank of a Sub-Inspector, or
- (c) a Revenue officer not below the rank of a Mahalkari, may evict him from the protected forest in relation to which he has committed the offence."

[Vide Gujarat Act 15 of 1960, sec. 6(f) (w.e.f. 8-12-1960).]

Haryana.—In section 33, in sub-section (1), for the words "which may extend to six months, or with fine which may extend to five hundred rupees", substitute the words "which may extend to one year, or with a fine which may extend to one thousand rupees".

[Vide Haryana Act 31 of 1973, sec. 3 (w.e.f. 10-7-1973).]

Himachal Pradesh.—In section 33, in sub-section (1), for the words "six months" and "five hundred" substitute the words "two years" and "five thousand" respectively.

[Vide Himachal Pradesh Act 15 of 1991, sec. 3 (w.e.f. 24-7-1991).]

Madhya Pradesh.—In section 33, in sub-section (1), —

- (i) in clause (a), for the words "any such tree", substitute the words "any such tree or forest-produce";
- (ii) for clause (c), substitute the following, namely:—
"(c) contrary to any prohibition under section 30, clears or breaks up any land for cultivation or for any other purpose, or cultivates or attempts to cultivate any land in any other manner in any protected forest."
- (iii) in clause (f), for the word 'drags', substitute the word "removes"; and
- (iv) for the words "extends to six months or with fine which may extend to five hundred rupees" substitute the words "extend to one year or with fine which may extend to *[fifteen thousand rupees]".

[Vide Madhya Pradesh Act 9 of 1965, sec. 5 (w.e.f. 20-3-1965) * Substituted by Madhya Pradesh Act 7 of 2010, sec. 4, for "one thousand rupees".]

Maharashtra.—Same as in Gujarat except that in clause (c), after the word 'Mahalkari', insert the words "or Tehsildar".

[Vide Maharashtra Act 6 of 1961, sec. 8 (w.e.f. 3-2-1961).]

In section 33, in sub-section (1), for the words "six months or with fine which may extend to five hundred rupees," substitute the words "one year or with fine which may extend to two thousand rupees".

[Vide Maharashtra Act 7 of 1985, sec. 5 (w.e.f. 1-6-1985).]

114

Punjab.—In section 33, in sub-section (1),—

- (i) in clause (f), for the word "drags", substitute the words "drags or removes"; and
- (ii) for the words "six months, or with fine which may extend to five hundred rupees, or with both", substitute the words "two years, or with fine which may extend to five thousand rupees, or with both".

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 3 (w.e.f. 26-10-2004).]

Uttar Pradesh.—In section 33, in sub-section (1),—

- (i) in clause (c), after the words "or clears", insert the words "or attempts to break-up or clear";
- (ii) in clause (f), for the word "drags", substitute the word "removes";
- (iii) for the words "six months or with the which may extend to five hundred rupees, or with both", substitute the words "two years, or with fine which may extend to five thousand rupees, or with both and on the second and every subsequent conviction for the same offence, with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees".

[Vide Uttar Pradesh Act 1 of 2001, sec. 4 (w.e.f. 16-4-2001).]

Uttaranchal.—In section 33, in sub-section (1),—

- (i) in clause (c), after the words "or clears", insert the words "or attempts to break-up or clear";
- (ii) in clause (f), for the word "drags", substitute the word "removes";
- (iii) for the words "six months or with the which may extend to five hundred rupees, or with both", substitute the words "two years, or with fine which may extend to five thousand rupees, or with both and on the second and every subsequent conviction for the same offence, with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees".

[Vide Uttaranchal Act 10 of 2002, sec. 4.]

West Bengal.—In section 33,—

- (a) in sub-section (1), for the words "six months, or with fine which may extend to five hundred rupees", substitute the words "one year, or with fine which may extend to one thousand rupees";
- (b) after sub-section (1), insert the following sub-section, namely:—
 "(1A) The Forest officer may notwithstanding any penalty inflicted under this section, evict from any land in any protected forest any person who, contrary to any prohibition under section 30, clears or breaks up such land for cultivation or for any other purposes."

[Vide West Bengal Act 22 of 1988, sec. 4 (w.e.f. 3-2-1989).]

COMMENTS

The provisions of section 33 of the Act only provide punishments for the commission of offences mentioned in the section and there is no provision specifically given in this section to award compensation for damages caused in respect of the protected forests; *Emperor v. Hulianna*, 8 Bom LR 957.

34. Nothing in this Chapter to prohibit acts done in certain cases.—Nothing in this Chapter shall be deemed to prohibit any act done with the permission in

writing of the Forest-officer, or in accordance with rules made under section 32, or, except as regards any portion of a forest closed under section 30, or as regards any rights the exercise of which has been suspended under section 33, in the exercise of any right recorded under section 29.

STATE AMENDMENTS

SECTION 34A

Madhya Pradesh.—After section 34, insert the following section, namely:—

"34A. Power to declare forests no longer protected.—(1) The State Government may, by notification, direct that from a date fixed in that behalf by such notification, any forest or portion thereof protected under this Act, shall cease to be a protected forest.

(2) From the date so fixed, such forest or portion thereof shall cease to be protected but the rights, if any, which have been extinguished therein shall not revive in consequence of such cessation."

[Vide Madhya Pradesh Act 9 of 1965, sec. 6 (w.e.f. 20-3-1965).]

CHAPTER V

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT

35. Protection of forests for special purposes.—(1) The ¹[State Government] may, by notification in the ²[Official Gazette], regulate or prohibit in any forest or waste-land—

- (a) the breaking up or clearing of land for cultivation;
- (b) the pasturing of cattle; or
- (c) the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary for any of the following purposes:—

- (i) for protection against storms, winds, rolling stones, floods and avalanches;
- (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines, and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- (iii) for the maintenance of a water-supply in springs, rivers and tanks;
- (iv) for the protection of roads, bridges, railways and other lines of communication;
- (v) for the preservation of the public health.

(2) The ¹[State Government] may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the ¹[State Government].

STATE AMENDMENTS

Delhi.—In section 35, in sub-section (1),—

- (i) for the words "any forest or waste land", substitute the words "any forest, waste-land or grass-land";
- (ii) for clauses (b) and (c), substitute the following clauses, namely:—
 - "(b) the cutting of tress and timber;
 - (c) the disposal of any forest-produce;
 - (d) the firing or clearing of vegetation;
 - (e) the cutting, storage and conservation of grass or leaf fodder; or
 - (f) the admission, herding or pasturing of cattle;" and
- (iii) after clause (v) insert the following clause, namely:—
 - "(vi) for any other purpose conductive to public welfare."

[Vide Act 66 of 1948, sec. 30.]

Madhya Pradesh.—In section 35, in sub-section (1),—

- (i) after clause (c), insert the following clause, namely:—
 - "(d) the cutting of plants and trees;" and
- (ii) after clause (iv), insert the following clause, namely:—
 - "(iva) for preventing destruction and for promoting conservation and development of forest."

[Vide Madhya Pradesh Act 26 of 1950, sec. 2 (w.e.f. 3-11-1950).]

West Bengal.—Sections 35 to 38 repealed by section 63 of the Bengal Private Forests Act, 1948 (14 of 1948). Section 63 of the 1948 Act runs as follows:—

"63. (1) Sections 35, 36, 37 and 38 of the Indian Forest Act, 1927, in their application to Bengal are hereby repealed.

(2) Such repeal shall not affect anything done or suffered or any obligation or liability accrued or any proceedings commenced before the commencement of this Act.

(3) Any private forest or waste-land held under the control of a Forest-officer under section 36 of the Indian Forest Act, 1927, immediately before the commencement of this Act shall, on such commencement, notwithstanding the repeal of the said section, continue to be so held under the control of a Regional Forest-officer under the provisions of this Act applicable to a vested forest and shall be deemed to be a vested forest for the purposes of this Act.

(4) All lands which immediately before the commencement of this Act were being managed as a reserved or protected forest under the provisions of section 38 of the Indian Forest Act, 1927, shall, on such commencement, notwithstanding the repeal of the said section, continue to be managed under the provisions of section 59 of this Act as a vested forest subject to such terms as may have been mutually agreed upon between the owner or owners of such lands and the Collector, and the

1. Subs. by the A.O. 1950, for "Provincial Government".

application made under sub-section (1) of the said section 38 by the owner or owners of any such land shall be deemed to be an application made under the said section 59."

SECTION 35A

Punjab: Haryana: Chandigarh.—After section 35, insert the following section, namely:—

"35A. *Power to regulate preservation, etc., of trees in private lands.*—The State Government may, by rules made under section 76, regulate the preservation and disposal of trees standing on lands belonging to or in the occupation of private persons, in respect of which permission to remove is required under the record of rights prepared under any law relating to land revenue."

[Vide Punjab Act 13 of 1962, sec. 3 (w.e.f. 10-7-1962) and Central Act 31 of 1966, sec. 88.(w.e.f. 1-11-1966).]

COMMENTS

(i) The provisions contained in the sections 35 and 36 of the Act empower the State Government to assume the management of such forests at the request of owners; *V.L. Patel & Co. v. State of Madhya Pradesh*, AIR 1965 MP 211.

(ii) Chapter V of the Act deals with the control over forests and lands not being the property of the Government. The provisions of this chapter would themselves show that the Act is intended to be a piece of legislation not only in respect of Government forest but also in respect of forests and lands not belonging to Government; *Kashi Prasad v. State of Orissa*, AIR 1963 Ori 24.

36. Power to assume management of forests.—(1) In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the [State Government] may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

STATE AMENDMENTS

Madhya Pradesh.—In section 36, after sub-section (2), add the following sub-sections, namely:—

"(3) For the purpose of calculating the net profits, the total expenditure incurred on the working and management of the forest shall be adjusted against the total income from the working and management up to the date of account.

(4) For the purpose of sub-section (3),—

(a) the total income shall include the proceeds of confiscation or forfeitures for forest offences not committed by the owner in respect of the forest or the forest-produce thereof after deducting from such proceeds the rewards, if any, paid to informers and officers out of such proceeds;

(b) the total expenditure shall include—

(i) an amount equal to twenty per cent. of total income in lieu of supervision charges payable to Government;

1. Subs. by the A.O. 1950, for "Provincial Government".

- (ii) the value of any forest produce removed or any advantage gained by the owner after the date on which such forest or land is taken under management by Government;
- (iii) cost of management incurred on the pay and allowance of the Forest Department staff; and
- (iv) such incidental expense as may be incurred by the Forest-officer including that incurred for the storage, transport and sale of the articles or forest produce forfeited or confiscated."

[Vide Madhya Pradesh Act 26 of 1950, sec. 3 (w.e.f. 3-11-1950).]

West Bengal.—See under section 35.

37. Expropriation of forests in certain cases.—(1) In any case under this Chapter in which the ¹[State Government] considers that, in lieu of placing the forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the ¹[State Government] may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the ¹[State Government] shall acquire such forest or land accordingly.

STATE AMENDMENTS

Delhi.—In section 37, in sub-section (2), for the words "not less than three", substitute the words "not less than seven".

[Vide Act 66 of 1948, sec. 30.]

West Bengal.—See under section 35.

38. Protection of forests at request of owners.—(1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire—

- (a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or
- (b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the ¹[State Government] may, by notification in the ²[Official Gazette], apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

STATE AMENDMENTS

Delhi.—In section 38, in sub-section (1), for the words "two-thirds" substitute the words "one-half".

[Vide Act 66 of 1948, sec. 30.]

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

Himachal Pradesh: Punjab: Haryana: Chandigarh:—In section 38, in sub-section (1), for the words "the owners of shares therein amounting in the aggregate to at least two-thirds thereof", substitute the words "the owners of the majority shares therein".

[*Vide* Himachal Pradesh Act 25 of 1968, sec. 3 (w.e.f. 17-2-1969); Punjab Act 13 of 1962 sec. 4 (w.e.f. 10-7-1962) and Central Act 31 of 1966, sec. 88, Punjab Act 13 of 1962 has been repealed by section 7 of H.P. Act 25 of 1968 in so far as it applies to the areas merged in Himachal Pradesh under section 5 of the Punjab Reorganisation Act, 1966.]

West Bengal.—See under section 35.

Uttar Pradesh.—After section 38, insert the following Chapter, namely:—

*[CHAPTER VA

OF THE CONTROL OVER FORESTS OF CLAIMANTS

38A. *Definition.*—In this Chapter, unless there is anything repugnant in the subject of context,—

- (a) "claimant" as respects any land means a person claiming to be entitled to the land or any interest therein acquired, owned, settled or possessed or purported to have been acquired, owned, settled or possessed whether under, through or by any lease or licence executed prior to the commencement of the U.P. Zamindari Abolition and Land Reforms Act, 1950; or under and in accordance with any provision of any enactment, including the said Act;
- †[(b) "forest" means a track of land covered with tress, 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.]
- †[(c) "forest land" means a land covered by forest or intended to be utilized as a forest; and
- †(d) "prescribed" means prescribed by rules made under this Act.]

[*] Chapter VA (containing of sections 38A to 38G) inserted by U.P. Forest Amendment Act 5 of 1956, sec. 2 (w.r.e.f. 3-12-1955).]

[†] Substituted by U.P. Act 21 of 1960, sec. 3 (w.e.f. 2-11-1960).]

38B. *Power to regulate or prohibit breaking or clearing, etc.*—(1) The State Government may by notification in the Official Gazette regulate or prohibit in any forest (situate in or upon any land of a claimant)—

- (a) the breaking up or clearing of the land for cultivation or any other purpose;
- (b) the firing or clearing of the vegetation;
- (c) the girdling or tapping or burning of any tree or the stripping off of the bark from any tree;
- (d) the lopping and pollarding of trees;
- (e) the cutting, sawing, conversion or, the removal of trees where such regulation or prohibition appears necessary—
 - (i) for the conservation of trees and forests; or

- (ii) for the improvement of grazing; or
- (iii) for the maintenance, increase and distribution of supply of fodder, timber or fuel; or
- (iv) for the protection of land against erosion; or
- (v) for subserving the interests of the general public.

(2) No notification shall be made under sub-section (1) until after the issue of a notice to the claimant of the land calling on him to show-cause within a reasonable period, not less than fourteen days and not exceeding thirty days, to be specified in such notice, why such notification should not be made, and until objections, if any, and any evidence he may produce in support of the same, have been heard by an officer not below the rank of an Assistant Collector of the first class appointed in that behalf and considered by the State Government.

(3) It shall be lawful for the State Government to make the notification under sub-section (1) either in respect of any particular forest or generally in respect of all forests situate in an area.

38C. Prohibition or regulation in emergent cases.—Where it is proposed to issue a notification in respect of any forest or generally all the forests in any area under section 38B and the State Government is satisfied that immediate action is necessary to prevent the doing of all or any of the acts mentioned in clauses (a) to (e) of sub-section (1) of the said section, it may by notification in the Official Gazette prohibit the doing except as and in the manner specified, of such act in respect of that forest or, as the case may be, generally all forests situate in any area as may be specified and, thereupon, no person shall, notwithstanding any claim, right, agreement, custom, usage or law to the contrary, do any of the said acts in such forest or forests until expiry of six months from the date of the notification and until the objection, if any, filed in pursuance of the notice, under sub-section (2) of section 38B has been heard and considered by the State Government.

38D. Service of notice.—The notice under sub-section (2) of section 38D shall—

- (a) in the case of a notification affecting an individual person (not being a corporation, firm or body of persons) be served on that person—
 - (i) personally by delivering or tending to him the notice, or
 - (ii) by registered post, or
 - (iii) where the person cannot be found, by leaving an authentic copy of the notice with some adult male member of his family or by affixing such copy in some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

*(aa) in case of a notification a corporation, firm or body of persons, be served on the manager, principal officer or agent thereof in the manner provided in clause (a); and]

- (b) in the case of a notification of a general nature in relation to all forests in an area, be served by publication in the Official Gazette and it shall not be necessary, unless the State Government so directs, to serve the notice individually on the claimants.

[*] Inserted by U.P. Act 11 of 1964, sec. 2 (w.e.f. 17-4-1964).

38E. Application of section 36 of Act 16 of 1927.—The provisions of section 36 shall *mutatis mutandis* apply to any regulation or prohibition notified under section 38B or 38C.

38F. *Penalty.*—Any person who—

- (i) breaks up or clears any land for cultivation or any other purpose, fires or clears any vegetation, girdles, taps, burns, lops, pollards, fells, cuts, saws, converts or removes or strips off the bark from any tree, in any forest in respect of which a notification under section 38B or 38C *[or 38H] has been issued, or does any of the aforesaid acts in contravention of the provisions contained in sub-section (4) of section 38H, or
- (ii) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading, or
- (iii) permits cattle to damage any such tree,

shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

[*] Inserted by U.P. Act 21 of 1960, sec. 4 (w.e.f. 2-11-1960).

38G. *Saving.*—The powers conferred by sections 38B, 38C, 38D †[and 38H] shall be in addition to and not in derogation of any other powers conferred on any authority by or under any other provision of this Act.

[†] Inserted by U.P. Act 21 of 1960, sec. 5 (w.e.f. 2-11-1960).]

After section 38G, insert the following sections, namely:—

“38H. *Power to take over management.*—(1) Whenever it appears to the State Government that the taking over of the management of any particular forest, or forest-land, is necessary or expedient in the public interest, or in order to secure the proper management thereof, particularly with a view to ensure its planned development as a forest, it may, by notification in the Official Gazette do so for all or any of the said purposes for such period, not exceeding fifteen years, as may be specified in the notification.

(2) No notification under sub-section (1) shall be issued until—

- (a) after the issue of a notice by the Forest-officer to the claimant or the owner or tenure-holder of the forest or forest-land, as the case may be, affording him reasonable opportunity to show cause within a period of not less than fourteen days from the date of service of the notice on him to be specified in such notice, why management of the forest or forest-land specified therein by not taken over; and
- (b) objections, if any, have been heard and disposed of by the Forest-officer in the manner prescribed.

(3) The notice referred to in sub-section (2) shall be served upon the person concerned in accordance with the provisions of section 38D.

**(4) No person shall, after the service of the notice referred to in sub-section (2), do or permit or cause to be done, save with the permission of the Forest-officer, any of the following acts on or in respect of such forest or forest-land, namely:—

- (a) the breaking up or clearing of the land for cultivation or any other purposes;
 - (b) the firing or clearing of the vegetation;
 - (c) the girding or tapping or burning of any tree or the stripping off the bark from any tree;
 - (d) the lopping or pollarding of tress;
 - (e) the felling, cutting, sawing, conversion or removal of trees;
- until—

- (i) where objections under clause (a) of sub-section (2) have been filed, the disposal thereof under clause (b) of that sub-section and thereafter, unless the objections have been allowed for a further period of six months or the publication of the notification under sub-section (1), whichever is earlier;

- (ii) where no objections under clause (a) of sub-section (2) have been filed the publication of notification under sub-section (1) or expiry of six months from the date of service of notice, which is earlier.]

** Sub-section (4) inserted by U.P. Act 11 of 1964, sec. 4 (w.e.f. 17-4-1964).

38-I. Consequences of notification under section 38H.—The State Government shall, in respect of a forest, or forest-land for which a notification under section 38H has been issued—

- (i) place the forest, or forest-land, as the case may be, with the effect from the date of the notification, in the charge of a Forest-officer, for carrying out the purposes mentioned in the notification, and thereupon the provisions of section 5 shall *mutatis mutandis* apply to such a forest or forest-land, as the case may be, and
- (ii) be liable and pay to the claimant or the owner or the tenure-holder of the forest, or forest-land, as the case may be, the balance of the income, if any, accruing to it therefrom, for the period commencing from the date of notification till the date it is released under section 38L after deducting therefrom such percentage of it, not exceeding twenty, as may be prescribed for cost of management and the amount, if any, spent by the State Government on its development.

38J. Payment in respect of forests already in possession of the State Government.—In the case of a forest, possession whereof was taken over by the State Government prior to the commencement of the Indian Forest (U.P. Amendment) Act, 1960, and the management whereof is taken over in accordance with the provisions of section 38H, the State Government shall, in the absence of a contract between the State Government and the person concerned to the contrary, be liable to pay, for the period commencing from the date of possession till the issue of the notification under the said section, the balance of income accruing therefrom in accordance with the provisions of section 38-I (ii) as if the provisions of the aforesaid Act has been in force at all material dates and the management of such forest had been assumed on the date of taking over possession thereof; anything contained in any other law, custom, usage for the time being in force or contract to the contrary notwithstanding.

38K. Permission to cultivate areas lying within a forest or forest-land taken over under this Act.—(1) The State Government may, where it is satisfied that it is necessary so to do in the public interest on the application of the person whose forest or forest land, as the case may be, has been taken over under section 38H, allow him to cultivate such part of it, not being in excess of one fifth of the total area of such forest or forest-land, as the case may be, and for such period, not being beyond the period of its management, as may be specified in the order granting the permission.

(2) An application under sub-section (1) shall be submitted to the Forest-officer in charge of the forest or the forest-land, as the case may be, who shall forward the same, with his recommendations thereon, to the State Government.

(3) The decision of the State Government on the application under sub-section (2) shall be final and be not questioned in any Court of law.

38L. Release of a forest or forest-land from management.—The State Government may, at any time, by notification in the Official Gazette, release from its management any forest or forest-land, as the case may be, taken over under section 38H and thereupon the forest or the forest-land, as the case may be, shall cease to be under the management of the State Government, and the liability of the State Government in respect of the forest or the forest-land, as the case may be, shall cease with effect from the date of release specified in the notification.

38M. Powers to make rules.—(1) The State Government may, after previous publication in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) provide for the items for which and the manner in which the cost of management shall be calculated;
- (b) prescribe the procedure for the hearing and disposal of objections under this Act;
- (c) prescribe the mode of management or development of the forest or the forest land taken over under this Act;
- (d) prescribe the form of application under section 38K and the particulars that must be given therein; and
- (e) prescribe any other matters which are to be, and may be, prescribed under this Act.

(3) All rules made under this Act, shall, as soon may be after they are made, be laid before each House of the Legislature while it is in session, for a total period of fourteen days extending in its one session or more than one successive sessions and shall, unless some later date is appointed, take effect, from the date of their publication in the Official Gazette, subject to such modifications or annulments as the two Houses of the Legislature may agree to make; so however, that any such modifications or annulment shall be without prejudice to the validity of anything previously done thereunder."

[Vide Uttar Pradesh Act 21 of 1960, sec. 6 (w.e.f. 2-10-1960).]

COMMENTS

A strong presumption of legality and correctness is always attached in favour of notification issued under section 38 of the Act which can not be rebutted in collateral proceedings initiated under some other Act; *Ballamgarh Co-operative Chore Reclamation Society v. State of Punjab*, AIR 1988 P&H 228.

CHAPTER VI

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE

39. Power to impose duty on timber and other forest-produce.—(1) The ¹[Central Government] may levy a duty in such manner, at such places and at such rates as it may declare by notification in the ²[Official Gazette] on all timber or other forest-produce—

- (a) which is produced in ³[the territories to which this Act extends], and in respect of which the ⁴[Government] has any right;
- (b) which is brought from any place outside ²[the territories to which this Act extends].

⁵[***]

(2) In every case in which such duty is directed to be levied *ad valorem* the ¹[Central Government] may fix by like notification the value on which such duty shall be assessed.

1. Subs. by the A.O. 1937, for "Local Government".
2. Subs. by the A.O. 1937, for "Local Official Gazette".
3. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for "Part A States and Part C States".
4. Subs. by the A.O. 1950, for "Crown".
5. The proviso omitted by the A.O. 1937.

(3) All duties on timber or other forest-produce which, at the time when this Act comes into force in any territory, are levied therein under the authority of the ¹[State Government], shall be deemed to be and to have been duly levied under the provisions of this Act.

²[(4) Notwithstanding anything in this section, the State Government may, until provision to the contrary is made by ³[Parliament], continue to levy any duty which it was lawfully levying before the commencement⁴ of ⁵[the Constitution], under this section as then in force:

Provided that nothing in this sub-section authorises the levy of any duty which as between timber or other forest-produce of the ⁶[State] and similar produce of the locality outside the State, discriminates in favour of the former, or which, in the case of timber or other forest-produce of localities outside the ⁶[State], discriminates between timber or other forest-produce of one locality and similar timber or other forest-produce of another locality.]

COMMENTS

The enhancement of royalty for better performance of the work in order to improve man made forests does not amount to levy tax; *Sirpur Paper Mills Ltd. v. Government of Andhra Pradesh*, AIR 1984 NOC 301 (AP).

40. Limit not to apply to purchase-money or royalty.—Nothing in this Chapter shall be deemed to limit the amount, if any, chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

CHAPTER VII

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT

STATE AMENDMENTS

West Bengal.—In Chapter VII, for the heading, substitute the following heading, namely:—

**"OF THE CONTROL OF TRADE, POSSESSION AND TRANSIT OF TIMBER
AND OTHER FOREST-PRODUCE".**

[Vide West Bengal Act 22 of 1988, sec. 5 (w.e.f. 3-2-1989).]

41. Power to make rules to regulate transit of forest produce.—(1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the ¹[State Government], and it may make rules to regulate the transit of all timber and other forest-produce.

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Ins. by the A.O. 1937 as amended by para. 2 and Sch. to the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

3. Subs. by the A.O. 1950, for "the Central Legislature".

4. i.e. the 26th January, 1950.

5. Subs. by the A.O. 1950, for "Part III of the Government of India Act, 1935".

6. Subs. by the A.O. 1950, for "Province".

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

- (a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within ¹[the State];
- (b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;
- (c) provide for the issue, production and return of such passes and for the payment of fees therefor;
- (d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to the ²[Government] on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark;
- (e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;
- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;
- (g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;
- (h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;
- (i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

(3) The ³[State Government] may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.

1. Subs. by the A.O. 1937, for "British India".

2. Subs. by the A.O. 1950, for "Crown".

3. Subs. by the A.O. 1950, for "Provincial Government".

STATE AMENDMENTS

126

Goa.—In section 41, in sub-section (2),—

- (i) in clause (h), after the words "saw-pits", insert the words "saw mills and sawing contrivances";
- (ii) after, clause (h), insert the following clause, namely:—

"(ha)—Regulating by grant of licences within specified limits, the converting or cutting of timber in saw mill and sawing contrivances and prescribe fees and conditions subject to which such licences may be granted."

[Vide Goa Act 15 of 1989, sec. 2 (w.e.f. 10-8-1989).]

Gujarat.—In section 41,—

- (i) in sub-section (2),—
 - (a) in clause (c), delete the words "and for the payment of fees therefor";
 - (b) in clause (h), for the words "or subject to conditions", substitute the words "or regulate by grant of licences"; and
 - (c) in clause (i), delete the words "and provide for the levy of fees for such registration".
- (ii) after sub-section (2), insert the following sub-section, namely:—

"(2A) Any rules made under this section may provide for the levy of fees for the issue of passes grant of licences and registration of property marks referred to in clauses (c), (h) and (i) of sub-section (2)".

[Vide Gujarat Act 48 of 1963, sec. 2 (w.e.f. 21-2-1963).]

Maharashtra.—In section 41, after sub-section (1), insert the following sub-section, namely:—

"(1A) Notwithstanding anything contained in any law for the time being in force, the State Government may make rules to regulate by grant of licences, within the forest limits or such distance therefrom not exceeding eighty kilometres as may be determined, the converting or cutting of timber in a saw mill and prescribe fees and conditions, subject to which such licence may be granted, and the manner in which, and the authority to whom, an appeal against the order of refusal, suspension or revocation of a licence may be filed."

[Vide Maharashtra Act 23 of 1984, sec. 2 (w.r.e.f. 12-9-1960).]

Uttar Pradesh.—In section 41, after sub-section (2), insert the following sub-sections, namely:—

"(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).

(2B) Notwithstanding any judgment, decree or order of any Court any rule purported to have been made by a Conservator before the commencement of the Indian Forest (Uttar Pradesh Amendment) Act, 1965, prescribing fees to be paid in respect of passes specified in clause (b) of sub-section (2) shall be deemed to have been made under a power delegated under sub-section (2A) as if the provisions of sub-section (2A) were always in force and the Conservator were duly authorised thereunder, and shall be deemed to be always to have been valid, and shall continue in force until altered, repealed or amended by the State Government or a duly authorised Conservator, as the case may be:

Provided that nothing in this sub-section shall be deemed to authorise the prosecution or punishment of any person under section 42 for any act done before the commencement of the said Act."

[Vide Uttar Pradesh Act 23 of 1965, sec. 13 (w.e.f. 23-11-1965).]

West Bengal.—In section 41,—

(a) for sub-section (1), substitute the following sub-section, namely:—

"(1) The control of all rivers and their banks as regards the floating of timber and other forest-produce, as well as the control of transit of all timber and other forest-produce, by land or water and the control of trade and possession of timber and other forest-produce, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce as well as the trade and possession of timber and other forest-produce."

(b) in sub-section (2), after clause (i), insert the following clause, namely:—

"(j) provided the regulation by licence or permit of trade and possession of timber and other forest-produce, and the levy of fees for such licence or permit."

[Vide West Bengal Act 22 of 1988, sec. 6.]

COMMENTS

Section 41 of the Act confers on the State Government the power to make rules to regulate the transit of forest-produce. The power conferred under this section is merely regulatory in nature, in respect of transit of timber and other forest-produce; *Kashi Prasad v. State of Orissa*, AIR 1963 Ori 24.

¹[41A. Powers of Central Government as to movements of timber across customs frontiers.—Notwithstanding anything in section 41, the Central Government may make rules to prescribe the route by which alone timber or other forest-produce may be imported, exported or moved into or from ²[the territories to which this Act extends] across any customs frontier as defined by the Central Government, and any rules made under section 41 shall have effect subject to the rules made under this section.]

42. Penalty for breach of rules made under section 41.—(1) The ³[State Government] may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

STATE AMENDMENTS

Bihar.—For section 42, substitute the following section, namely:—

"42. *Penalty for breach of rules made under section 41.*—The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a minimum term of six months which may extend to two years or with minimum

1. Ins. by the A.O. 1937.

2. Subs. by the A.O. (No. 3) Order, 1956, for "Part A States and Part C States".

3. Subs. by the A.O. 1950, for "Provincial Government".

fine of one thousand rupees which may extend to five thousand rupees or with both. The offence under this section shall be cognizable and non bailable."

[Vide Bihar Act 9 of 1990, sec. 4 (w.e.f. 10-9-1990).]

Goa.—In sections 42, for the words "six months" and "five hundred rupees", substitute the words "one year" and "one thousand rupees" respectively.

[Vide Goa Act 15 of 1989, sec. 3 (w.e.f. 10-8-1989).]

Himachal Pradesh.—In section 42, for the words "six months" and "five hundred rupees", substitute the words "two year" and "five thousand rupees" respectively.

[Vide Himachal Pradesh Act 15 of 1991, sec. 3 (w.e.f. 24-7-1991).]

Madhya Pradesh.—In section 42, in sub-section (1), for the words "extend to six months or fine which may extend to five hundred rupees", substitute the words "extend to one year or fine which may extend to two thousand rupees".

[Vide Madhya Pradesh Act 9 of 1965, sec. 7 (w.e.f. 20-3-1965).]

Maharashtra.—In section 42, in sub-section (1), for the words "six months or with fine which may extend to five hundred rupees", substitute the words "one year or with fine which may extend to two thousand rupees".

[Vide Maharashtra Act 7 of 1985, sec. 6 (w.e.f. 1-6-1985).]

Uttar Pradesh.—In section 42, for sub-section (1), substitute the following sub-section, namely:—

"(1) The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to two years, or fine which may extend to five thousand rupees or both."

[Vide Uttar Pradesh Act 1 of 2001, sec. 5 (w.e.f. 16-4-2001).]

Uttaranchal.—In section 42, in sub-section (1), for the words "six months, or fine which may extend to five hundred rupees", substitute the words "two years, or fine which may extend to five thousand rupees".

[Vide Uttaranchal Act 10 of 2002, sec. 5.]

West Bengal.—In section 42, in sub-section (1), for the words "six months, or fine which may extend to five hundred rupees", substitute the words "one year, or fine which may extend to two thousand rupees".

[Vide West Bengal Act 22 of 1988, sec. 7 (w.e.f. 3-12-1989).]

COMMENTS

Under section 42 of the Act the State Government is authorised to make rules to prescribe penalties for the breach of rules made under section 41 of the Act; *Shiv Narain Bhasin v. State of H.P.*, 1986 Cri LJ 574 (HP).

43. Government and Forest-officers not liable for damage to forest-produce at depot.—The ¹[Government] shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

44. All persons bound to aid in case of accidents at depot.—In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the ¹[Government] or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger or securing such property from damage or loss.

1. Subs. by the A.O. 1950, for "Crown".

CHAPTER VIII

129

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

45. Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.—(1) All timber found adrift, beached, stranded or sunk;

all wood or timber bearing marks which have not been registered in accordance with the rules made under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and

in such areas as the ¹[State Government] directs, all unmarked wood and timber,

shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this Chapter.

(2) Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51 and may be brought to any depot which the Forest-officer may notify as a depot for the reception of drift timber.

(3) The ¹[State Government] may, by notification in the ²[Official Gazette], exempt any class of timber from the provisions of this section.

COMMENTS

The compliance by Government with the conditions laid down in the Indian Forest Act, 1927 is obligatory; AIR 1931 Cal 430.

46. **Notice to claimants of drift timber.**—Public notice shall from time to time be given by the Forest-officer, of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

47. **Procedure on claim preferred to such timber.**—(1) When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after according his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons who he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

(3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the ³[Government], or against any Forest-officer on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

3. Subs. by the A.O. 1950, for "Crown".

(4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48. Disposal of unclaimed timber.—If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances not created by him.

49. Government and its officers not liable for damage to such timber.—The ¹[Government] shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

50. Payments to be made by claimant before timber is delivered to him.—No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under section 51.

51. Power to make rules and prescribe penalties.—(1) The State Government ²[may, by notification in the Official Gazette, make rules] to regulate the following matters, namely:—

- (a) the salving, collection and disposal of all timber mentioned in section 45;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid for salving, collecting, moving, storing or disposing of such timber; and
- (d) the use and registration of hammers and other instruments to be used for marking such timber.

³[(1A) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

(2) The ⁴[State Government] may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

STATE AMENDMENTS

Goa.—In section 51, in sub-section (2), for the words "six months" and "five hundred rupees", substitute the words "one year" and "one thousand rupees" respectively.

[Vide Goa Act 15 of 1989, sec. 4 (w.e.f. 10-8-1989).]

1. Subs. by the A.O. 1950, for "Crown".
2. Subs. by Act 4 of 2005, sec. 2 and Sch.-S.No. 25(a), for "may make rules".
3. Ins. by Act 4 of 2005, sec. 2 and Sch.-S.No. 25(b) (w.e.f. 11-1-2005).
4. Subs. by the A.O. 1950, for "Provincial Government".

Madhya Pradesh.—In section 51, in sub-section (2), for the words "extends to six months or fine which may extend to five hundred rupees", substitute the words "extend to one year, or fine which may extend to *[fifteen thousand rupees]".

[Vide Madhya Pradesh Act 9 of 1965, sec. 8 (w.e.f. 20-3-1965) * Substituted by Act 7 of 2010, sec. 5, for "one thousand rupees".]

West Bengal.—In section 51, in sub-section (2), for the words "six months, or fine which may extend to five hundred rupees," substitute the words "one year, or fine which may extend to one thousand rupees".

[Vide West Bengal Act 22 of 1988, sec. 8 (w.e.f. 3-2-1989).]

Tripura.—After section 51, insert following section, namely:—

"51A. Power to regulate manufacture and preparation of articles based on forest produce.—(1) The State Government may make rules,—

(a) to provide for the establishment, and regulation by licence, permit or otherwise (and the payment of fees therefor), of saw mills and other units including factories engaged in the manufacture or preparation of the following articles:—

- (i) *Katha* (Catechu) or *Kuth* out of *Khair* wood;
- (ii) plywood, veneer and wood-panel products;
- (iii) preparation of match-boxes and match-splints;
- (iv) boxes including packing cases made out of wood;
- (v) such other articles based on forest-produce as the State Government may, by notification in the Official Gazette, from time to time, specify;

(b) to provide for the regulation by licence, permit or otherwise, of procurement of raw materials for the preparation of the article mentioned in clause (a), the payment and deposit of fees therefor and for due compliance of the conditions thereof, the forfeiture of the fee so deposited or any part thereof for contravention of any such condition, and the adjudication of such forfeiture by such authority as the State Government may, by notification in the Official Gazette, specify.

(2) The State Government may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees or both."

[Vide Tripura Act 10 of 1984, sec. 4 (w.e.f. 16-3-1985).]

CHAPTER VIIIA

Uttar Pradesh.—After Chapter VIII, insert the following Chapter, namely:—

"CHAPTER VIIIA

REGULATION OF MANUFACTURE AND PREPARATION OF ARTICLES BASED ON FOREST-PRODUCE

51A. Power to regulate manufacture, etc. of articles based on forest-produce.—The State Government may make rules—

(a) to provide for the establishment and regulation by licences, permits or otherwise (and the payment of fees therefor) of saw mills and units including factories engaged in the manufacture or preparation of—

- (i) *Katha* out of *Khair* tree;
- (ii) rosin, turpentine and other products out of resin;
- (iii) plywood and match out of timber;

- (iv) such other preparations based on forest-produce as the State Government, may by notification in the Official Gazette, from time to time, specify;
- (b) to provide for the regulation by licences, permits or otherwise of the supply of raw materials relating to the preparations mentioned in clause (a), the payment of fees therefore, the deposit of such sum for due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may by notification in the Official Gazette be specified by the State Government."

[Vide Uttar Pradesh Act 13 of 1976, sec. 21 (w.r.e.f. 4-10-1975).]

West Bengal.—After Chapter VIII, insert the following Chapter, namely:—

"CHAPTER VIIIA

REGULATION OF MANUFACTURE AND PREPARATION OF ARTICLES BASED ON FOREST PRODUCE

51A. *Power to regulate manufacture and preparation of articles based on forest-produce.*—(1) The Government may make rules—

- (a) to provide for the establishment and regulation by licence, permit or otherwise (and the payment of fees therefor), of saw-mills and units including factories engaged in the manufacture or preparation of the following articles—
 - (i) *Katha* (Catechin) or Cutch out of *Khair* wood;
 - (ii) Plywood, veneer and wood-panel products;
 - (iii) preparation of match-boxes and match splints;
 - (iv) boxes including packing cases made out of wood;
 - (v) such other articles based on forest-produce as the State Government may, by notification in the Official Gazette, from time to time, specify;
- (b) to provide for the regulation by licence, permit or otherwise of procurement of raw materials for the preparation of the articles mentioned in clause (a), the payment and deposit of fees therefor and for due compliance of the conditions thereof, the forfeiture of the fees so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as the State Government may, by notification in the Official Gazette, specify.

(2) The State Government may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

[Vide West Bengal Act 39 of 1981, sec. 4.]

CHAPTER IX

PENALTIES AND PROCEDURE

52. Seizure of property liable to confiscation.—(1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon

as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

STATE AMENDMENTS

Bihar.—For section 52, substitute the following section, namely:—

"52. Seizure and its procedure for the property liable for confiscation.—(1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, arms, boats, vehicles, ropes, chains or any other article in committing any such offence may be seized by any Forest-officer or Police-officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of the Divisional Forest Officer authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the forest-produce with respect to which offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his immediate superior.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest-offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest-produce so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. The Magistrate having jurisdiction to try the offence concerned may, on the basis of the reports of the authorised confiscating officer, cancel the registration of a vehicle used in committing the offence, the licence of the vehicle-driver and the licence of the arms. A copy of order on confiscation shall be forwarded without undue delay to the Conservator of Forests of the forest circle in which the forest-produce as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer—

- (a) sends an intimation about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;
- (b) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property;
- (c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and

- (d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purposes.

(5) No order of confiscation under sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than the forest-produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, ropes, chains or other articles were used without his knowledge or convenience or, as the case may be, without the knowledge or convenience of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest-offence."

[Vide Bihar Act 9 of 1990, sec. 5 (w.e.f. 10-9-1990).]

Goa.—In section 52,—

- (i) in sub-section (1), for the words "or cattle", substitute the words, "cattle, vehicles or any contrivances used";
- (ii) after sub-section (1), insert the following sub-section, namely:—

"(1A) Any Forest-officer or Police-officer may, if he has reason to believe that a vehicle or cart has been or is being used for the transport of forest-produce in respect of which there is a reason to believe that a forest-offence has been or is being committed, require the driver or other person in charge of such vehicle or cart to stop the vehicle or cart and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle or cart and inspect all records relating to the forest-produce carried which are in the possession of such driver or other person in charge of the vehicle or cart or any other person in the vehicle or cart";

- (iii) for sub-section (2), substitute the following sub-section, namely:—

"(2). Every officer seizing any property under this section, shall place on such property or the receptacle of vehicle (if any) in which it is contained, a mark indicating that the same has been so seized and make a report of such seizure—

- (a) where the offence on account of which the seizure has been made, is in respect of timber, firewood, charcoal or any forest-produce which is the property of Government, to the concerned authorised officer under section 61A; and

- (b) in other cases, to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his superior officer."

[Vide Goa Act 15 of 1989, sec. 5 (w.e.f. 10-8-1989).]

Gujarat.—In section 52, in sub-section (1),—

- (1) for the word "carts", substitute the word "vehicles".

[Vide Gujarat Act 15 of 1960, sects. 3 and 4(2) (w.e.f. 8-12-1960).]

- (2) after sub-section (1), insert the following sub-section, namely:—

"(1A) Any Forest-officer or Police-officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest-produce in respect of which there is reason to believe that a forest-offence has been or is

being committed, require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary for examination of the contents in the vehicle and inspection of all records relating to the forest-produce and in possession of such driver or other person in charge of the vehicle or any other person in the vehicle."

- (3) in sub-section (2), for the words "make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made", substitute the following words, namely:—

"make a report of such seizure—

- (a) where the offence on account of which the seizure has been made is in respect of the forest-produce which is the property of the State Government or in respect of which the State Government has any interest, to the concerned authorised officer under section 61A; and
- (b) in other cases, to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made."

[Vide Gujarat Act 19 of 1983, sec. 2 (w.r.e.f. 24-5-1983).]

Himachal Pradesh.—In section 52, in sub-section (1),—

- (1) For the words 'carts', substitute the word "vehicles".

[Vide Himachal Pradesh Act 25 of 1968, sec. 4 (w.e.f. 17-2-1968).]

- (2) For sub-section (2), substitute the following sub-sections, namely:—

"(2) Any Forest-officer or Police-officer may, if he has reason to believe that a vehicle has been or is being used for the transport of timber (excluding fuelwood) resin, *khair* wood and *katha* in respect of which is forest-offence has been or is being committed, require the driver or other person-in-charge such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person-in-charge of the vehicle.

(3) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been seized, and shall, as soon as may be, make a report of such seizure—

- (a) where the offence, on account of which the seizure has been made, is in respect of timber (excluding fuelwood), resin, *khair* wood and *katha* which is the property of the State Government, to the concerned authorised officer under sub-section (1) of section 52A; and
- (b) in other cases, to the Magistrate having jurisdiction to try the offence on account of which the seizure is made."

[Vide Himachal Pradesh Act 15 of 1991, sec. 4 (w.e.f. 24-7-1991).]

Madhya Pradesh.—For section 52, substituted the following section, namely:—

"52. *Seizure of property liable to confiscation and procedure therefor.*—(1) "[When there is reason to believe that a forest-offence has been committed in respect of any reserved forest and protected forest or forest produce, the produce, and all tools, boats, vehicles, ropes, chains or any other article used in committing any such offence may be seized by any Forest-officer or Police-officer].

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Extra Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity or bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, make a report about the seizure to the authorised officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the

Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the forest-produce with respect to which offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest-offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest-produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in committing such offence. A copy of order on confiscation shall be forwarded without any undue delay to the Conservator of Forests of the forest circle in which the timber or forest-produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer—

- (a) sends an intimation in form prescribed about initiation of proceedings for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;
- (b) Issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property;
- (c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and
- (d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

(5) No order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than the timber or forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest-offence."

[Vide Madhya Pradesh Act 25 of 1983, sec. 3 * Substituted by Madhya Pradesh Act 7 of 2010, sec. 6.]

After sub-section (5), insert the following sub-sections, namely:—

"(6) The seized property shall continue to be under custody until confirmation of the order of the authorised officer by the Appellate Authority or until the expiry of the period for initiating "*suo motu*" action by him whichever is earlier, as prescribed under section 52A.

(7) Where the authorised officer having jurisdiction over the case is himself involved in the seizure or investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section."

[Vide Madhya Pradesh Act 7 of 2010, sec. 6.]

Maharashtra.—(a) Same as (1) in Gujarat.

[Vide Bombay Act 25 of 1953, sec. 2 (w.e.f. 12-5-1953); Maharashtra Act 6 of 1961, sec. 2 (w.e.f. 3-2-1961).]

(b) after sub-section (1), insert the following sub-section, namely:—

"(1A) Any Forest-officer or Police-officer may, if he has reason to believe that a vehicle has been or is being used, for the transport of forest produce in respect of

which there is reason to believe that a forest-offence has been or is being committed, require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person in charge of the vehicle."

(b) in sub-section (2),—

- (i) after the words "on such property", insert the words and brackets "or the receptacle or vehicle (if any) in which it is contained";
- (ii) after the proviso, insert the following proviso, namely:—

"Provided further that, where the offence on account of which the seizure has been made is in respect of timber, sandalwood, firewood, charcoal or such other forest-produce as may be notified by the State Government from time to time (hereinafter referred to as the 'notified forest-produce') and which is the property of the State Government. Such officer shall make a report of such seizure also to the concerned authorised officer under section 61A.

Explanation.—For the purposes of this Chapter, the expressions "property of Government" and "property of the State Government" include the property belonging to the Forest Development Corporation of Maharashtra, Limited";

(c) in the marginal note, for the word "confiscation", substituted the words "confiscation and forfeiture".

[Vide Maharashtra, Act 7 of 1985, sec. 7 (w.e.f. 1-6-1985).]

Punjab; Haryana; Chandigarh.—Same as (1) in Gujarat.

[Vide East Punjab Act 7 of 1948, sec. 2 (w.e.f. 3-4-1948).]

Tripura.—In section 52, in sub-section (1), for the words "carts or cattle", substitute the words "carts, vehicles or cattle".

[Vide Tripura Act 10 of 1984, sec. 5 (w.e.f. 16-3-1985).]

Uttar Pradesh.—(i) Same as in Gujarat (1) and (2).

[Vide Uttar Pradesh Act 21 of 1960, sec. 7 (w.e.f. 2-11-1960).]

(ii) In section 52,—

- (i) in sub-section (1), for the words "vehicles or cattle", substitute the words "vehicles, cattle, ropes, chains or other articles";
- (ii) for sub-section (2), substitute the following sub-section, namely:—

"(2) Any Forest-officer or Police-officer may, if he has reason to believe that a boat or vehicle of which a forest-offence has been, or is being, committed, require the driver or other person in charge of such boat or vehicle to stop it, and he may detain such boat or vehicle for such reasonable time as is necessary to examine the contents in such boat or vehicle and to inspect the records relating to the goods transported so as to ascertain the claims, if any, of the driver or other person in charge of such boat or vehicle regarding the ownership and legal origin of the forest-produce in question.

(3) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made, and if the seizure is in respect of forest-produce which is the property of the State Government, shall also make a report to the authorized officer."

[Vide Uttar Pradesh Act 1 of 2001, sec. 6.]

Uttaranchal.—(i) In section 52, in sub-section (1), for the words "carts or cattle", substitute the words "vehicles, cattle, ropes, chains or other articles";

(ii) for sub-section (2), substitute the following sub-section, namely:—

"(2) Any forest-officer or police may, if he has reason to believe that a boat or vehicle has been, or is being used for the transport of any forest-produce in respect of which a forest-offence has been, or is being, committed, require the driver or other person in charge of such boat or vehicle to stop it, and he may detain such boat or vehicle for such reasonable time as is necessary to examine the contents in such boat or vehicle and to inspect the records relating to the goods transport so as to ascertain the claims, if any, of the driver or other person in charge of such boat or vehicle regarding the ownership and legal origin of the forest produce in question.

(3) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made, and if the seizure is in respect of forest-produce which is the property of the State Government, shall also make a report to the authorized officer."

[Vide Uttaranchal Act 10 of 2002, sec. 2.]

West Bengal.—In section 52,—

(a) in sub-section (1), for the words "boats, carts", substitute the words "ropes, chains, boats, vehicles";

(b) in sub-section (2),—

(i) after the words "on such property", insert the words "or the receptacle, if any containing such property"; and

(ii) for the proviso, substitute the following proviso, namely:—

"Provided that it will not be necessary to make a report of such seizure to the Magistrate in the following cases, namely:—

(i) when the forest-produce with respect to which each offence is believed to have been committed is the property of the State Government and the offender is unknown, it shall be sufficient to make a report of the circumstances to the official superior;

(ii) when the offence falls under the purview of section 59A;

(iii) when the offender agrees in writing to get the offence compounded."

(c) after sub-section (2), insert the following sub-section, namely:—

"(3) Any Forest-officer or Police-officer may, if he has reason to believe that a vehicle has been or is being used for the transport of any forest-produce in respect of which a forest-offence has been committed, require the driver or other or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the content in the vehicle and inspect all record relating to goods carried, which are in possession of such driver or other person in charge of the vehicle."

[Vide West Bengal Act 22 of 1988, sec. 10.]

SECTIONS 52A TO 52D

Bihar.—After section 52, insert the following section, namely:—

"52A. *Appeal against the order of confiscation.*—Any person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact of such order has

not been communicated to him within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee payable in such form as may be prescribed, along with the certified copy of order of confiscation to the District Magistrate (hereinafter referred to as Appellate Authority) of the District in which the forest-produce has been seized.

Explanation—(1) The time required for containing certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub-section.

(2) The Appellate Authority referred to in section 52A, may, where no appeal has been preferred before him, "*suo motu*" within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "*suo motu*" action to the officer effecting seizure and to any person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and may send for the record of the case:

Provided that no formal notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about "*suo motu*" action, to the authorised officer.

(4) The Appellate Authority may pass such order of "Interim" nature for custody preservation or disposal (if necessary) of the subject-matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case or the complexities, involved, may permit parties to the appeal to be represented by their respective legal practitioner.

(6) on the date fixed for hearing of the appeal or "*suo motu*" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "*suo motu*" action, make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order or of order of consequential nature, shall be sent to the authorised officer for compliance or for passing any appropriate order in conformity with the order of Appellate Authority.

52B. *Petition for revision before Secretary, Forest and Environment Department, Government of Bihar against the order of the Appellate Authority.*—(1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Secretary, Forest and Environment Department, Government of Bihar.

Explanation.—In computing the period of thirty days under this sub-section the time requisite for obtaining certified copy of Appellate Authority shall be excluded.

(2) The Secretary, Forest and Environment Department, Government of Bihar may confirm, reverse or modify any final order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised Officer for compliance or for passing such further order or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Secretary, Forest and Environment Department, Government of Bihar shall, as far as may be, exercise the same powers and follow the same procedure as exercised and followed while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (2 of 1974).

(5) Notwithstanding anything to the contrary contained in Code of Criminal Procedure, 1973 (2 of 1974) the order passed under this section shall be final and shall not be called in question before any Court.

52C. Bar of Jurisdiction of Courts etc. in certain circumstances.—(1) On receipt of intimation under sub-section (4) of section 52 about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject-matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Revision Authority referred to in sections, 52, 52A and 52B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated in this Act, or any other law for the time being in force.

Explanation.—Where under any law for the time being in force, two or more Courts have jurisdiction to try forest-offence, then on receipt of intimation under sub-section (4) of section 52 by one of the Courts of Magistrates having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-section (1) shall affect the power saved under section 61.

52D. Power of entry, inspection, search and seizure.—Notwithstanding anything contained in any other law for the time being in force any Forest-officer not below the rank of a Range Officer of Forests or any Police-officer not below the rank of a Sub-Inspector, may, if he has reasonable grounds to believe that any forest-offence has been committed in contravention of this Act enter upon, inspect and search any place, premises, appurtenances thereto, land, vehicle or boat and seize any illegal forest-produce and all tools, arms, boats, vehicles ropes, chains or any other article used in committing such offence."

[Vide Bihar Act 9 of 1990, sec. 6 (w.e.f. 10-9-1990).]

SECTIONS 52A AND 52B

Himachal Pradesh.—After section 52, insert the following sections, namely:—

"52A. *Confiscation by Forest Officers in certain cases.*—(1) Notwithstanding anything contained in this Chapter, where a forest-offence is believed to have been committed in respect of timber (excluding fuelwood), resin, *khair* wood and *katha*, which is the property of the State Government, the officer seizing the property under sub-section (1) of section 52 without any unreasonable delay produce it, together with all tools, ropes, chains, boats or vehicles used in committing such offence before an officer, authorised by the State Government in this behalf, by

notification published in the Official Gazette, not below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes under sub-section (1) of section 52 any timber (excluding fuelwood) resin, *khair* wood and *katha*, which is the property of the State Government, or where any such property is produced before an authorised officer under sub-section (1), once he is satisfied that a forest-offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property so seized together with all tools, ropes, chains, boats or vehicles used in committing such offence.

(3) (a) Where the authorised officer, after passing an order of confiscation under sub-section (2), is of the opinion that it is expedient in the public interest so to do, he may order confiscated property or any part thereof to be sold by public auction.

(b) Where any confiscated property is sole as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses relating thereto, shall, where the order of confiscation made under section 52A is set aside or annulled by an order under section 59 or section 59A, be paid to the owner thereof or the person from whom it was seized as may be specified in such order.

52B. *Issue of show cause notice confiscation under section 52A.*—(1) No order confiscating any timber (excluding fuelwood) resin, *khair* wood and *katha*, ropes chains, boats or vehicles shall be made under section 52A except after notice in writing to the person from whom it is seized and considering his objections, if any:

Provided that no order confiscating a motor vehicle shall be made except, after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objection if any.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat or vehicle shall be made under section 52A if the owner if the tool, rope, chain, boat or vehicle proves to the satisfaction of the authorised officer that it was used in carrying the timber (excluding fuelwood), resin, *khair*, wood and *katha* without the knowledge or connivance of the owner himself, his agent, if any and the person-in-charge of the tool, rope, chain, boat or vehicle and that each of them had taken all reasonable and necessary precaution against such use."

[Vide Himachal Pradesh Act 15 of 1991, sec. 5 (w.e.f. 24-7-91).]

SECTIONS 52A AND 52C

Madhya Pradesh.—After section 52, insert the following sections, namely:—

"52A. *Appeal against the order of confiscation.*—(1) Any person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact of such order has not been communicated to him, within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee and payable in such form as may be prescribed, along with certified copy of order of confiscation to the Conservator of Forests (hereinafter referred to as Appellate Authority) of the forest circle in which the forest-produce has been seized.

Explanation—(1) The time requisite for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub-section.

(2) The Appellate Authority referred to in sub-section (1), may, where no appeal has been preferred before him, "*suo motu*" within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of

appeal issue a notice for hearing of appeal or, as the case may be, of "*suo motu*" action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the *[order of the authorised officer], and may send for the record of the case:

Provided that no formal notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about "*suo motu*" action, to the authorised officer.

(4) The Appellate Authority may pass such orders of "Interim" nature for custody, preservation or disposal (if necessary) of the subject-matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioner.

(6) on the date fixed for hearing of the appeal or "*suo motu*" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification of *[order of the authorised officer]:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "*suo motu*" action, make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order on or of order of consequential nature, shall be sent to the authorised officer for compliance or for passing any appropriate order in conformity with the order of Appellate Authority.

52B. *Revision before Court of Sessions against order of Appellate Authority.*—(1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may, within thirty days of the order sought to be impugned, submit a petition for revision to the Court of Sessions division whereof the headquarters of the Appellate Authority are situate.

Explanation.—In computing the period of thirty days under this sub-section the time requisite for obtaining certified copy of order of Appellate Authority shall be excluded.

(2) The Court of Sessions may confirm, reverse or modify any final order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised Officer for compliance or for passing such further order or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Court of Sessions shall, as far as may be, exercise the same powers and follow the

same procedure as it exercises and follows while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974) the order of the Court of Sessions passed under this section shall be final and shall not be called in question before any Court.

52C. *Bar to Jurisdiction of Courts, etc. under certain circumstances.*—(1) On receipt of intimation under sub-section (4) of section 52 about initiation of proceedings for confiscation or property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject-matter of confiscation, has been made, no Court, Tribunal or Authority (other than the Authorised Officer Appellate Authority and Court of Sessions referred to in sections, 52, 52A and 52B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under section 52, notwithstanding anything to the contrary contained in this Act, or any other law for the time being in force.

Explanation.—Where under any law for the time being in force, two or more Courts have jurisdiction to try forest-offence, then receipt of intimation under sub-section (4) of section 52 by one of the Courts of Magistrate having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2). Noting in sub-section (1) shall affect the power saved under section 61."

[Vide Madhya Pradesh Act 25 of 1983, sec. 4 (w.e.f. 1-1-1983) * Substituted by Madhya Pradesh Act 7 of 2010, sec. 7.]

SECTIONS 52A TO 52G

Punjab.—After section 52, insert the following sections, namely:—

"52A. *Procedure for confiscation.*—(1) Where the Authorised Officer upon production before him of the property seized or upon receipt of report about seizure of such property, or where the Authorised Officer himself seized the property under sub-section (1), of section 52, is satisfied that a forest-offence has been committed in respect thereof, may, by order in writing for reason to be recorded in writing, confiscate the forest-produce so seized together with any tool, vehicle, boat, rope, chain or any other article used in committing such offence.

(2) A copy of the order of confiscation, shall be forwarded without any delay to the Conservator of Forests of the forest circle in which the forest-produce has been seized.

(3) No order of confiscating any property, shall be made under sub-section (1), unless the Authorised Officer—

- (a) issues a notice in writing to the person from whom the property is seized and to any other person, who shall claim before the Authorised Officer any interest in such property;
- (b) affords an opportunity to the person referred to in clause (a) of making a representation within such time, as may be specified in the notice referred to in that clause; and
- (c) gives the officer effecting the seizure and the person to whom notice has been issued under clause (a), a hearing on such date, as may be fixed in this regard.

(4) No order of confiscation under sub-section (1) with regard to any tool, vehicle, boat, rope, chain or any other article (other than timber or forest-produce seized) shall be made, if the person referred to in clause (a) of sub-section (3), proves to the satisfaction of the Authorised Officer that any such tool, article, boat, rope, chain or other article was used without his knowledge or connivance or his servant or agent and that all reasonable and necessary precautions had been taken against the use of aforesaid objects for the commission of the forest offence.

(5) No order of confiscating a vehicle shall be made except after giving a notice in writing to the registered owner of the vehicle and his financier, if any, if, in the opinion of the Authorised Officer, it is practicable to do so and considering his objections, if any.

52B. *Appeal against the order of confiscation.*—(1) Any person, aggrieved by an order of confiscation made under sub-section (1) of section 52A, may, within a period of thirty days from the date of receipt of such order, prefer an appeal on payment of such fee, as may be prescribed along with the certified copy of order of confiscation to the Conservator of Forests (hereinafter referred to as the Appellate Authority) having jurisdiction.

(2) The Appellate Authority may pass such order of interim nature for custody, preservation or disposal (if necessary) about the subject-matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(3) Notwithstanding anything contained in sub-section (1), if no appeal has been preferred before the Appellate Authority, but the Appellate Authority deems it appropriate in public interest to proceed against the order passed under sub-section (1) of section 52A, it may *suo moto* take cognizance even after the expiry of the stipulated period of thirty days, but before the expiry of a period of sixty days from the date of receipt of the said order and pass such order, as it may deem appropriate:

Provided that before passing any order, the Appellate Authority shall give an opportunity of being heard to the concerned parties.

(4) The Appellate Authority, having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by legal practitioners.

52C. *Revision.*—(1) Any party aggrieved by an order of the Appellate Authority, may within a period of thirty days from the date of receipt of order of the Appellate Authority, file revision petition to the Court of Sessions.

(2) The order passed by the Court of Sessions shall be final and shall not be further called in question before any other Court.

52D. *Disposal of confiscated property.*—When the order of confiscation of property passed under sub-section (1) of section 52A, attains finality and the Authorised Officer is of the opinion that it is expedient in public interest so to do, he may order such property or any part thereof to be sold by public auction.

52E. *Penalty for forcibly opposing seizure.*—Whoever forcibly opposes the seizure of any forest-produce, tool, rope, chain, boat, vehicle or cattle, liable to be seized under this Act, or receives the same after seizure, shall be punishable with imprisonment for a term, which may extend to one year or with fine which may extend to one thousand rupees, or with both.

52F. *Order of confiscation not to prevent any other punishment.*—No order of confiscation passed under section 52A, 52B or 52C shall prevent the infliction of any punishment to which the person affected thereby, may be liable under this Act.

52G. *Bar of jurisdiction.*—Save as otherwise expressly provided in this Act, no officer, authority, civil court or tribunal shall have any jurisdiction to entertain any suit or proceeding or any other matter which is governed under the provisions of this Act."

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 6 (w.e.f. 26-10-2004).]

SECTION 52A

Tripura.—After section 52, insert the following section, namely:—

"52A. *Confiscation of saw mill etc.*—(1) Where a saw mill is established, maintained or operated, without a licence or without renewal of a licence the authorised officer may order confiscation of the stock of wood together with whole or portion of the plants, machinery implements, tools, and equipments of the saw mill.

(2) Where the authorised officer seizes under sub-section (1) of section 52 any forest-produce or where any such property is produced before the authorised officer after seizure by any Forest-officer and he is satisfied that a forest-offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution instituted for the commission of such forest-offence, order confiscation of the property so seized together with all tools, equipments, ropes, chains, boats, carts, vehicles and cattle used in committing such offence.

(3) No order confiscating any property shall be made under sub-section (1) or sub-section (2) unless the person from whom the property is seized and in case the owner of such property is known, such person is given—

- (a) a notice in writing informing him the grounds on which it is proposed to confiscate such property;
- (b) an opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and
- (c) a reasonable opportunity of being heard in the matter.

(4) Any Forest-officer not below the rank of Conservator of Forests empowered by the State Government in this behalf by notification, may within 30 days from date from the date of order of confiscation by the authorised officer under sub-section (1) or sub-section (2) either *suo-motu* or on application, call for and examine the records of that order and may make such inquiry or cause such inquiry to be made and pass orders as he may think fit:

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(5) Any person aggrieved by an order passed under sub-section (1), (2) or (4) may within thirty days from date of communication to him of such order, appeal to the District Court having jurisdiction over the area in which the property has been seized and the District Court shall after giving an opportunity to the parties to be heard, pass such order as it may think fit and the order of the District Court so passed shall be final. Where an order of confiscation of any property under sub-section (1) or sub-section (2) or sub-section (4) has become final in respect of the whole or any portion of such property, such property or the portion thereof, as the case may be, shall vest in the State Government free from all encumbrances.

Explanation.—For the purposes of this section authorised officer means an officer not below the rank of Assistant Conservator of Forest authorised by the State Government by notification."

[Vide Tripura Act 8 of 1987, sec. 3 (w.e.f. 20-5-1987).]

SECTION 52A TO 52D

146

Uttar Pradesh.—After section 52, insert the following sections, namely:—

"52A. *Procedure on seizure.*—(1) Notwithstanding anything contained in this Act or any other law for the time being in force where a forest-offence is believed to have been committed in respect of any forest-produce, which is the property of the State Government, the officer seizing the property under sub-section (1) of section 52 shall without unreasonable delay, produce it together with all the tools, boats, vehicles, cattle, ropes, chains and other articles used in committing the offence, before an officer, not below the rank of a Divisional Forest Officer, authorized by the State Government in this behalf, who may, for reasons to be recorded, make an order in writing with regard to custody, possession, delivery, disposal or distribution of such property, and in case of tools, boats, vehicles, cattle, ropes, chains and other articles, may also confiscate them.

(2) The authorized officer shall, without any undue delay, forward a copy of the order made under sub-section (1) to his official superior.

(3) Where the authorized officer passing an order under sub-section (1) is of the opinion that the property is subject to speedy and natural decay he may order the property or any part thereof to be sold by public auction and may deal with the proceeds as he would have dealt with such property if it had not been sold and shall report about every such sale to his official superior.

(4) No order under sub-section (1) shall be made without giving notice, in writing, to the person from whom the property is seized, and to any other person who may appear to the authorized officer to have some interest in such property:

Provided that in an order confiscating a vehicle, when the offender is not traceable, a notice in writing to the registered owner thereof and considering his objections if any will suffice.

(5) No order of confiscation of any tool, boat, vehicle, cattle, rope, chain or other article shall be made if any person referred to in sub-section (4) proves to the satisfaction of the authorized officer that any such tool, boat, vehicle, cattle, rope, chain or other article was used without his knowledge or connivance or without the knowledge or connivance of his servant or agent, as the case may be, and that all reasonable precautions had been taken against use of the objects aforesaid for the commission of the forest offence.

52B. *Appeal.*—Any person aggrieved by an order of confiscation may, within thirty days of the date of communication to him of such order, prefer an appeal to the State Government and the State Government shall, after giving an opportunity of being heard to the appellant and the authorised officer, pass such order as it may think fit confirming, modifying or annulling the order appealed against and the order of the State Government shall be final.

52C. *Order of confiscation not to prevent any other punishment.*—No order of confiscation under section 52A or 52B shall prevent the infliction of any punishment to which the person affected thereby may be liable under this Act.

52D. *Bar of jurisdiction in certain cases.*—Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, whenever any forest-produce belonging to the State Government together with any tool, boat, vehicle, cattle, rope, chain or other article is seized under sub-section (1) of section 52, the authorised officer under section 52A or the State Government under section 52B shall have jurisdiction, to the exclusion of every other officer, court, Tribunal or authority, to make order with

regard to the custody, possession, delivery, disposal or distribution of the property."

[Vide Uttar Pradesh Act, 1 of 2001, sec. 8.]

Uttaranchal.—After section 52, insert the following sections, namely:—

"52A. *Procedure on seizure.*—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where a forest-offence is believed to have been committed in respect of any forest-produce, which is the property of the State Government, the officer seizing the property under sub-section (1) of section 52 shall, without unreasonable delay, produce it together with all the tools, boats, vehicles, cattle, ropes, chains and other articles used in committing the offence, before an officer, not below the rank of a Divisional Forest Officer, authorised by the State Government in this behalf, who may, for reasons to be recorded, make an order in writing with regard to custody, possession, delivery, disposal or distribution of such property, and in case of tools, boat, vehicles, cattle, ropes, chains and other articles, may also confiscate them.

(2) The authorised officer shall, without any undue delay, forward a copy of the order made under sub-section (1) to his official superior.

(3) Where the authorised officer passing an order under sub-section (1) is of the opinion that the property is subject to speedy and natural decay he may order the property or any part thereof to be sold by public auction and may deal with the proceeds as he would have dealt with such property if it had not been sold and shall report about every such sale to his official superior.

(4) No order under sub-section (1) shall be made without giving notice, in writing, to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property:

Provided that in an order confiscating a vehicle, when the offender is not traceable, a notice in writing to the registered owner thereof and considering his objections if any will suffice.

(5) No order of confiscation of any tool, boat, vehicle, cattle, rope, chain or other article shall be made if any person referred to in sub-section (4) proves to the satisfaction of the authorised officer that any such tool, boat, vehicle, cattle, rope, chain or other article was used without his knowledge or connivance or without the knowledge or connivance of his servant or agent, as the case may be, and that all reasonable precautions had been taken against use of the objects aforesaid for the commission of the forest-offence.

52B. *Appeal.*—Any person aggrieved by an order of confiscation may, within thirty days of the date of communication to him of such order, prefer an appeal to the Conservator of Forests of the circle who shall, after giving an opportunity of being heard to the appellant and the authorised officer, pass such order as he may think fit confirming, modifying or annulling the order appealed against and the order of the Conservator of Forest of the circle shall be final.

52C. *Order of confiscation not to prevent any other punishment.*—No order of confiscation under section 52A or 52B shall prevent the infliction of any punishment to which the person affected thereby may be liable under this Act.

52D. *Bar of jurisdiction in certain cases.*—Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, whenever any forest-produce belonging to the State Government together with any tool, boat, vehicle, cattle, rope, chain or other article is seized under sub-section (1) of section 52, the authorised officer under

section 52A or the State Government under section 52B shall have jurisdiction, to the exclusion of every other officer, court, Tribunal or authority, to make order with regard to the custody, possession, delivery, disposal or distribution of the property.
[Vide Uttaranchal Act 10 of 2002, sec. 7.]

SECTION 52A

West Bengal.—After section 52, insert the following section, namely:—

"52A. Penalty for forcibly opposing seizure.—Whoever forcibly opposes the seizure of tools, ropes, chains, boats, vehicles or cattle liable to be seized under this Act, or receives the same after seizure, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

[Vide West Bengal Act 22 of 1988, sec. 11.]

COMMENTS

The procedure as contained in section 52 of the Act must be strictly completed by the officer seizing the property in connection with the commission of forest offence. According to the provisions of this section, the officer cannot justify the detention of the property or material so seized on the ground of an offence against the forest law if he has not taken the recourse of section 52 of the Act which requires to bring the matter before the Magistrate as soon as may be, but this expression "as soon as may be" cannot be so construed as to cover a period of weeks or months; *Kamlesh Kumar v. State of Madhya Pradesh*, AIR 1985 MP 130.

53. Power to release property seized under section 52.—Any Forest-officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under section 52, may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

STATE AMENDMENTS

Goa.—In section 53, for the words and figures "or cattle under sections 52, may release", substitute the words, figures and letters "vehicle, cattle, or any other contrivance under section 52, may, subject to the provision of section 61G, release".

[Vide Goa Act 15 of 1989, sec. 6 (w.e.f. 10-8-1989).]

Gujarat.—In section 53,—

- (1) for the word "carts", substitute the word "vehicles".

[Vide Gujarat Act 15 of 1960 secs. 3 and 4(2) (w.e.f. 8-12-1960).]

- (2) for the words and figures "under section 52; may release", substitute the words, figures and letter "under section 52, may, subject to section 61G release".

[Vide Gujarat Act 19 of 1983, sec. 3 (w.r.e.f. 24-5-1983).]

Himachal Pradesh.—In sections 53,—

- (1) for the word "carts", substitute the word "vehicles".

[Vide Himachal Pradesh Act 25 of 1968, sec. 4 (w.e.f. 7-2-1968).]

- (2) At the end but before the sign ".", insert the words, brackets, figures, sign and alphabet "or before the authorised officer under sub-section (1) of section 52A".

[Vide Himachal Pradesh Act 15 of 1991, sec. 6 (w.e.f. 24-7-1991).]

Madhya Pradesh.—For section 53, substitute the following section, namely:—

"53. *Power to release property seized under section 52.*—Any forest officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has seized any tools, boats, vehicles or any other article under section 52, may release the same on the execution by the owner thereof, of a security in a form as may be prescribed, of an amount equal to the value of such property, as estimated by such officer, for the production of the property so released, when so required, before the authorised officer under section 52 or the magistrate having jurisdiction to try the offence on account of which the seizure has been made."

[Vide Madhya Pradesh Act 7 of 2010, sec. 8.]

Maharashtra.—(1) Same as in Gujarat (1).

[Vide Bombay Act 5 of 1953, sec. 2 (w.e.f. 12-5-1953); Maharashtra Act 6 of 1961, sec. 3 (w.e.f. 3-2-1961).]

(2) Same as in Gujarat (2).

[Vide Maharashtra Act 7 of 1985, sec. 8 (w.e.f. 1-6-1985).]

Orissa.—In section 53, for the word "carts", substitute the word "vehicles".

[Vide Orissa Act 11 of 1954, sec. 3.]

Punjab: Haryana: Chandigarh.—Same as in Gujarat.

[Vide East Punjab Act 7 of 1948, sec. 2 (w.e.f. 3-4-1948); Central Act 3 of 1966, sec. 88 (w.e.f. 1-11-1966).]

Tripura.—In section 53, for the words "carts or cattle", substitute the words "carts, vehicles or cattle".

[Vide Tripura Act 10 of 1984, sec. 6 (w.e.f. 16-3-1985).]

Uttar Pradesh.—(1) Same as in Gujarat (1).

[Vide Uttar Pradesh Act 21 of 1960, sec. 7 (w.e.f. 2-11-1960).]

(2) In section 53,—

(i) for the words "vehicle or cattle", substitute the words "vehicles, cattle, ropes, chains or other articles";

(ii) after the words "the seizure has been made", insert the words "except in respect of cases falling under section 52A for which the procedure laid down in that section shall be followed".

[Vide Uttar Pradesh Act 1 of 2001, sec. 8.]

Uttaranchal.—In section 53,—

(i) for the words "carts or cattle", substitute the words "vehicles, cattle, ropes, chains or other articles";

(ii) Same as in Uttar Pradesh 2(ii).

[Vide Uttaranchal Act 10 of 2002, sec. 8.]

West Bengal.—In section 53—

(a) for the words "boats, carts", substitute the words "ropes, chains, boats, vehicles"; and

(b) after the words "the seizure has been made", insert the words, figures and letter "except in respect of offences falling under section 59A for which the procedure laid down in that section shall be followed".

[Vide West Bengal Act 22 of 1988, sec. 12 (w.e.f. 3-2-1989).]

54. Procedure thereupon.—Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

STATE AMENDMENTS

Gujarat.—Omit section 54.

[Vide Gujarat Act 19 of 1983, sec. 4 (w.e.f. 24-5-1983).]

Madhya Pradesh.—In section 54, for full stop, substitute a colon and thereafter, inserts the following proviso, namely:—

“Provided that before passing any order for disposal of property, the Magistrate shall satisfy himself that no intimation under sub-section (4) of section 52 has been received by his Court or by any other Court having jurisdiction to try the offence on account of which the seizure of property has been made.”

[Vide Madhya Pradesh Act 25 of 1983, sec. 5C (w.e.f. 1-11-1983).]

Maharashtra.—For section 54, substitute the following section, namely:—

“54. Procedure on receipt by Magistrate of report of seizure.—Upon the receipt of any report under sub-section (2) of section 52, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and, subject to sections 58 and 61G for the disposal of the property according to law.”

[Vide Maharashtra Act 7 of 1985, sec. 9 (w.e.f. 1-6-1985).]

West Bengal.—In section 54, for the words “any such report”, substitute the words, figures and brackets “any report under sub-section (2) of section 52”.

[Vide West Bengal Act 22 of 1988, sec. 13 (w.e.f. 3-2-1989).]

COMMENTS

Disposal of property as contemplated in section 54 of the Act also includes interim disposal of property subject to the course of final decision; *Shabbir Ali v. State*, 1987 MPLJ 57.

55. Forest-produce, tools, etc., when liable to confiscation.—(1) All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

STATE AMENDMENTS

Gujarat.—In section 55, in sub-section (1),—

(1) for the word “carts”, substitute the word “vehicles”.

[Vide Gujarat Act 15 of 1960, secs. 3 and 4(2) (w.e.f. 8-12-1960).]

(2) for the words “shall be liable”, substitute the words, figures and letter “shall subject to section 61G, be liable”.

[Vide Gujarat Act 19 of 1983, sec. 5 (w.e.f. 24-5-1983).]

Himachal Pradesh.—In section 55, in sub-section (1), for the word “carts”, substitute the word “vehicles”.

[Vide Himachal Pradesh Act 25 of 1968, sec. 4 (w.e.f. 17-2-1968).]

Madhya Pradesh.—In section 55, for sub-section (1), substitute the following sub-section, namely:—

“(1) All timber or forest-produce which in either case is not the property of the Government and in respect of which a forest-offence has been committed, and all tools, boats, vehicles, ropes, chains or any other article, in each case used in committing any forest-offence shall subject to provisions of sections 52, 52A, 52B

and 52C, be liable to confiscation upon conviction of the offender for such forest offence."

[Vide Madhya Pradesh Act 25 of 1983, sec. 6 (w.e.f. 1-11-1983).]

Maharashtra.—(1) Same as in Gujarat (1).

[Vide Bombay Act 25 of 1963, sec. 2 (w.e.f. 12-5-1953); Maharashtra Act 6 of 1961, sec. 2 (w.e.f. 3-2-1961).]

(2) In section 55,—

- (a) in sub-section (1), for the words "shall be liable to confiscation", substitute the words, figures and letter "shall, subject to section 61G, be liable by order of the convicting Court to forfeiture";
- (b) in sub-section (2), for the word "confiscation", substitute the word "forfeiture";
- (c) in the marginal note, for the word "confiscation", substitute the word "forfeiture".

[Vide Maharashtra Act 7 of 1985, sec. 10 (w.e.f. 1-6-1985).]

Punjab: Haryana: Chandigarh.—Same as in Gujarat (1).

[Vide East Punjab Act 7 of 1948, sec. 2 (w.e.f. 3-4-1948); Central Act 31 of 1968, sec. 8 (w.e.f. 1-11-1966).]

Uttar Pradesh.—(i) Same as in Gujarat (1).

[Vide Uttar Pradesh Act 21 of 1960, sec. 7 (w.e.f. 2-11-1960).]

(ii) In section 55, in sub-section (1), for the words "vehicle and cattle used in committing any forest-offence", substitute the words "vehicles, cattle, ropes, chains and other articles used in committing such forest-offence".

[Vide Uttar Pradesh Act 1 of 2001, sec. 9.]

Uttaranchal.—Same as in Uttar Pradesh (ii).

[Vide Uttaranchal Act 10 of 2002, sec. 9.]

West Bengal.—In section 55, in sub-section (1), for the words "boats, carts and cattle", substitute the words "rope, chains, boats, vehicle or cattle".

[Vide West Bengal Act 22 of 1988, sec. 14 (w.e.f. 3-2-1989).]

COMMENTS

(i) The provisions of sub-section (2) of section 55 make it clear that such confiscation may be in addition to any other punishment prescribed for such offence; *State of Maharashtra v. Arjun Tabadu Mahajan*, 1988 Cr LJ (Mah) 236.

(ii) Under section 55 of the Act, the phrase "shall be liable for confiscation" does not mean that property stands automatically confiscated. On the contrary, it is pre-supposed that an opportunity is to be given to the person affected before the property is actually ordered to be confiscated; *Mehta Brothers v. State of Himachal Pradesh*, AIR 1980 HP 289.

56. Disposal on conclusion of trial for forest-offence, of produce in respect of which it was committed.—When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest-officer, and, in any other case, may be disposed of in such manner as the Court may direct.

STATE AMENDMENTS

Goa.—In section 56,—

- (i) for the words "has been confiscated", substitute the words "has been forfeited";

- (ii) for the words "in any other case, may be disposed", substitute the words, figures and letters "in any other case may, subject to provisions of section 61G, be disposed".

[Vide Goa Act 15 of 1989, sec. 8 (w.e.f. 10-8-1989).]

Gujarat.—In section 56, for the words "in any other case, may be disposed" substitute the words, figures and letter "in any other case may, subject to section 61G, be disposed".

[Vide Gujarat Act 19 of 1983, sec. 6 (w.r.e.f. 24-5-1983).]

Maharashtra.—In section 56,—

- (a) for the word "confiscated", substitute the word "forfeited";
 (b) for the words "in any other case, may be disposed of" substitute the words, figures and letters "in any other case may, subject to section 61G, be disposed of".

[Vide Maharashtra Act 7 of 1985, sec. 11 (w.e.f. 1-6-1985).]

West Bengal.—In section 56, for the words "When the trial of", substitute the words, figures and letter "Without prejudice to the provisions of section 59A, when the trial of"

[Vide West Bengal Act 22 of 1988, sec. 15 (w.e.f. 3-2-1989).]

57. Procedure when offender not known or cannot be found.—When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest-officer, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

STATE AMENDMENTS

Goa.—In section 57,—

- (i) after the words "that an offence has been committed", insert the words, figure and letter "subject to the provisions of section 61G";
 (ii) for the words "to be confiscated", substitute the words "to be forfeited to the Government together with tools, boats, vehicles, carts or cattle or and other articles used in committing the offence";
 (iii) for the words "one month", substitute the figures and words "45 days".

[Vide Goa Act 15 of 1989, sec. 8 (w.e.f. 10-8-1989).]

Gujarat.—In section 57, for the words "that an offence has been committed" substitute the words, figure and letter "that an offence has been committed, subject to section 61G".

[Vide Gujarat Act 19 of 1983, sec. 7 (w.r.e.f. 24-5-1983).]

Maharashtra.—In section 57, for the portion beginning with the words "the Magistrate may" and ending with the words "to be confiscated" substitute, the following words namely:—

"the Magistrate may, if he finds that an offence has been committed, but subject to section 61G, order the property in respect of which the offence has been committed,

to be forfeited together with tools, boats, vehicles or cattle and other articles used in committing the offence."

[Vide Maharashtra Act 7 of 1985, sec. 12 (w.e.f. 1-6-1985).]

Uttar Pradesh.—In section 57, for the words, "the Magistrate may", substitute the words "the Magistrate, subject to section 52D, may"

[Vide Uttar Pradesh Act 1 of 2001, sec. 10.]

Uttaranchal.—Same as in Uttar Pradesh.

[Vide Uttaranchal Act 10 of 2002, sec. 10.]

58. Procedure as to perishable property seized under section 52.—The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

STATE AMENDMENTS

Goa.—For section 58, substitute the following section, namely—

"58. *Procedure as to perishable property seized under section 52.*—The Forest-officer who made the seizure under section 52 may, notwithstanding anything contained in this Act or any other law, sell the property if it is subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold and shall report every such sale to his superior officer."

[Vide Goa Act 15 of 1989, sec. 9 (w.e.f. 10-8-1989).]

Gujarat.—In section 58,—

- (1) for the words "The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of", substitute the words and figures "The Forest-officer who made the seizure under section 52 may, notwithstanding anything contained in this Act or any other law, sell";

- (2) add the following at the end, namely:—

"and shall report about every such sale to his official superior".

[Vide Gujarat Act 19 of 1983, sec. 8 (w.r.e.f. 24-5-1983).]

Himachal Pradesh.—In section 58, after the words "The Magistrate", insert the words, brackets, figures and alphabet "or subject to such rules as may be prescribed, the authorised officer under sub-section (1) of section 52A".

[Vide Himachal Pradesh Act 15 of 1991, sec. 7 (w.e.f. 24-7-1991).]

Maharashtra.—For section 58, substitute the following section, namely:—

"58. *Procedure as to perishable property seized under section 52.*—The Forest-officer who made the seizure under section 52 may, notwithstanding anything contained in this Act or any other law, sell any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold and shall report about every such sale to his official superior."

[Vide Maharashtra Act 7 of 1985, sec. 13 (w.e.f. 1-6-1985).]

Uttar Pradesh.—In section 58, for the words "The Magistrate may, notwithstanding anything hereinbefore contained", substitute the words "Notwithstanding anything hereinbefore contained, but subject to sub-section (3) of section 52A, the Magistrate may,".

[Vide Uttar Pradesh Act 1 of 2001, sec. 11 (w.e.f. 16-4-2011).]

Uttaranchal.—Same as in Uttar Pradesh.

[Vide Uttaranchal Act 10 of 2002, sec. 11.]

West Bengal.—Renumber section 58 as sub-section (1) of that section and—

(1) in sub-section (1) as so renumbered,—

(a) omit the words “and may deal with the proceeds as he would have dealt with such property if it had not been sold”;

(b) add the following proviso at the end, namely:—

“Provided that if in the opinion of the officer seizing such property it is not possible to obtain the orders of the Magistrate in time, such officer may sell the property himself, remit the proceeds of sale into the Government treasury and may make a report of such seizure, sale and remittance to the Magistrate.”;

(2) after sub-section (1), as so renumbered, insert the following sub-section, namely:—

“(2) The Magistrate may deal with the proceeds of the sale of any property sold under sub-section (1) as he would have dealt with such property if it had not been sold.”

[Vide West Bengal Act 22 of 1988, sec. 16 (w.e.f. 3-2-1989).]

59. Appeal from orders under section 55, section 56 or section 57.—The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 55, section 56 or section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

STATE AMENDMENTS

Goa.—In section 59, for the words “one month”, substitute the words and figures “45 days”.

[Vide Goa Act 15 of 1989, sec. 10 (w.e.f. 10-8-1989).]

Himachal Pradesh.—In section 59,—

(A) (a) in the heading, after the words “orders under section” but before the figure “55”, insert the figure, “52A”;

(b) the existing section shall be renumbered as sub-section (1) thereof; and

(c) after sub-section (1), so renumbered, insert the following sub-sections, namely:—

“(2) any person aggrieved by any order passed under section 52A or section 59A may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity to the appellant and the Authorised Officer or the officer specially empowered under section 59A, as the case may be, to be heard, pass such order as he may think fit confirming, modifying or annulling the order appealed against.

(3) The order of the Sessions Judge under sub-section (2) shall be final and shall not be questioned in any Court of law.”

[Vide Himachal Pradesh Act 15 of 1991, sec. 8 (w.e.f. 24-7-1991).]

SECTIONS 59A AND 59B

155

(B) After section 59, insert the following sections, namely:—

"59A. Revision.—Any Forest-officer not below the rank of Conservator of Forests, especially empowered by the State Government in this behalf by notification published in the Official Gazette, may, before the expiry of thirty days from the date of order of the authorised officer under section 52A, *suo-motu* call for and examine the records of that order, may make such enquiry or cause such enquiry to be made and may pass such orders as he deems fit:

Provided that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

59B. Bar of jurisdiction in certain cases.—Whenever any timber (excluding fuelwood), resin, *khair* wood and *katha* together with any tool, rope, chain, bost or vehicle used in committing any forest offence is seized under section 52, the authorised officer under sub-section (1) of section 52A or the officer specially empowered under section 59A or Sessions Judge hearing an appeal under sub-section (2) of section 59 shall have, and not withstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or in any other law for the time being in force, any other officer, Court, Tribunal or authority shall not have, jurisdiction to make order with regard to custody, possession, delivery, disposal or distribution of such property."

[Vide Himachal Pradesh Act 15 of 1991, sec. 9 (w.e.f. 24-7-1991).]

SECTIONS 59A. TO 59G

West Bengal.—After section 59, insert the following sections, namely:—

"59A. Confiscation by Forest-officer of forest-produce in the case of forest-offence believed to have been committed.—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any other law for the time being in force, where a forest-offence is believed to have been committed in respect of the timber or other forest-produce which is the property of the State Government the Forest-officer or the Police-officer the timber or other forest-produce under sub-section (1) of section 52 shall, without any unreasonable delay, produce the same, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence before an officer of a rank not inferior to that of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification in the Official Gazette (hereinafter referred to as the authorised officer):

(2) The State Government may, for any local, area, authorise one or more officers under sub-section (1).

(3) Where any timber or other forest-produce which is the property of the State Government is produced before an authorised officer under sub-section (1) and the authorised officer is satisfied that a forest-offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.

(4) (a) Where the authorised officer, after passing the order of confiscation of the property together with all tools, ropes, chains, boats, vehicles, and cattle as aforesaid under sub-section (3), is of opinion that it is expedient in the public interest so to do, he may order such property or any part thereof and such tools, ropes, chains, boats, vehicles and cattle to be sold by public auction.

(b) Where the order of confiscation of any property or tools, ropes, chains, boats, vehicles or cattle under sub-section (3) is set aside or annulled under section 59C

or section 59D, the proceeds of sale by auction shall, after deduction of the expenses of auction and all other incidental expenses relating thereto if any, be paid to the owner of such property or tools, ropes, chains, boats, vehicles or cattle or to the person from whom the same was seized as may be specified in the order under section 59C or section 59D.

59B. Issue of notice before confiscation.—No order confiscating any property or tools, ropes, chains, boats, vehicles or cattle shall be made under section 59A except after giving a notice in writing to the owner of, or the person from whom, such property or tools, ropes, chains, boats, vehicles or cattle have been seized, for showing cause as to why the same should not be confiscated and considering his objections, if any:

Provided that no order confiscating any motor vehicle shall be made except after giving a notice in writing to the registered owner thereof if, in the opinion of the authorised officer, it is practicable to do so and considering his objections, if any.

Explanation.—"motor vehicle" shall have the same meaning as in the Motor Vehicles Act, 1939 (4 of 1939).

(2) Without prejudice to the provisions of sub-section (1), no order connecting any tool, rope, chain, boat, vehicle or cattle shall be made under section 59A if the owner thereof proves to the satisfaction of the authorised officer that such tool, rope chain, boat, vehicle or cattle was used in carrying the timber or other forest-produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use.

59C. Revision.—Any Forest-officer of a rank not inferior to that of the Conservator of Forests specially empowered by the State Government in this behalf by notification in the Official Gazette may *suo motu* or on application by the aggrieved person call for and examine any record of any order under section 59A and may make such inquiry or cause such inquiry to be made and may pass such order as he deems fit:

Provided that no such record shall be called for after the expiry of thirty days from the date of the order under section 59A, and no order under this section shall be passed if, in the meantime, an appeal has been preferred under 59D against any order under section 59A:

Provided further that no order prejudicial to any person shall be passed under this section without giving him an opportunity of being heard.

59D. Appeal.—Any person aggrieved by an order under section 59A or section 59C may, within thirty days from the date of communication to him of such order, prefer an appeal to the District Judge having jurisdiction over the area in which the property and the tools, ropes, chains, boats vehicles or cattle have been seized and the District Judge shall, after giving the appellant and the officer who passed the order an opportunity of being heard, pass an order confirming, modifying or annulling the order appealed against.

(2) The order of the District Judge under sub-section (1) shall be final and shall not be called in question by any Court.

59E. Award of punishment under other provisions of the Act.—Notwithstanding any order under section 59A or section 59C or section 59D, nothing in any of the said sections shall be deemed to prevent the award to any person affected by such order of any punishment to which such person is liable under this Act or any other law for the time being in force.

59F. *Confiscated property and proceeds of sale to vest in Government.*—When an order for the confiscation or sale by auction of any property or any tools, ropes, chains, boats, vehicles or cattle is passed under section 59A and is confirmed in whole or in part on revision under section 59C or on appeal under section 59D, such property or tools, ropes, chains, boats, vehicles or cattle or the proceeds of sale, as the case may be, shall vest in the State Government from all incumbrances.

59G. *Bar of Jurisdiction in certain cases.*—Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973, (2 of 1974) or in any other law for the time being in force, the officer authorised under section 59A or the Forest-officer specially empowered under section 59C or the District Judge to whom an appeal may be preferred under section 59D shall have and any other officer or Forest-officer or Court, Tribunal or authority shall not have jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of any property or tools, ropes, chains, boats, vehicles or cattle seized under section 52."

[Vide West Bengal Act 22 of 1988, sec. 7 (w.e.f. 3-2-1989).]

60. *Property when to vest in Government.*—When an order for the confiscation of any property has been passed under section 55 or section 57, as the case may be, and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

STATE AMENDMENTS

Goa.—In section 60, for the word "confiscation", substitute the word "forfeiture".

[Vide Goa Act 2 of 1990, sec. 4 (w.e.f. 29-3-1990).]

Himachal Pradesh.—For section 60, substitute the following section, namely:—

"60. When an order for the confiscation of any property has been passed under section 52A or section 55 or section 57, as the case may be, or where on revision application made under section 59A such order for confiscation has not been set aside, and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred or when, on such an appeal being preferred, the Appellate Court confirms such orders in respect of the property or a portion of such property, such property or such portion thereof, or if it has been sold under sub-section (3) of section 52A, the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances."

[Vide Himachal Pradesh Act 15 of 1991, sec. 10 (w.e.f. 24-7-1991).]

Madhya Pradesh.—Renumber section 60 as sub-section (2) thereof and before sub-section (2) so renumbered, insert the following sub-section, namely:—

"(1) Property ordered to be confiscated by an authorised officer under section 52, subject to result of proceedings before Appellate Authority on presentation of appeal or upon 'suo motu' action, under section 52A, later on revision before Court of Sessions under section 52B, shall, upon conclusion of proceedings in revision, vest in the Government free from all encumbrances:

Provided that such vesting shall take effect—

- (a) where no appeal is preferred or no 'suo motu' action is taken, before or Appellate Authority—on expiry of period specified for preferring appeal or for taking 'suo motu' action under section 52A, whichever is later;

(b) where final orders are passed by Appellate Authority under section 52A, but no revision preferred under section 52B—on expiry of period specified for submitting petition for revision under section 52B.”

[Vide Madhya Pradesh Act 25 of 1983, sec. 7 (w.e.f. 1-11-1983).]

Maharashtra.—In section 60, for the word “confiscation” substitute the word “forfeiture”.

[Vide Maharashtra Act 7 of 1985, sec. 14 (w.e.f. 1-6-1985).]

Punjab.—For section 60, substitute the following section, namely:—

“60. *Property when to vest in Government.*—When an order for confiscation for any property has been passed under section 52A or section 52B or section 52C, as the case may be, and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, if it has been sold under section 52D, the sale proceeds thereof shall vest in the State Government free from all encumbrances.”

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 7 (w.e.f. 26-10-2004).]

Uttar Pradesh.—Renumber section 60 as sub-section (1) thereof and after sub-section (1) as so renumbered, insert the following sub-section, namely:—

“(2) When an order for confiscation has been passed under section 52A and the period of limitation for an appeal or revision has elapsed and no appeal or revision has been preferred or when on appeal or revision, the order for confiscation for whole or a portion of the property has been confirmed, the property or such portion, as the case may be, shall vest in the State Government free from all encumbrances.”

[Vide Uttar Pradesh Act 1 of 2001, sec. 12 (w.e.f. 16-4-2001).]

Uttaranchal.—Same as in Uttar Pradesh.

[Vide Uttaranchal Act 10 of 2002, sec. 12.]

61. Saving of power to release property seized.—Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under section 52.

STATE AMENDMENTS

Goa.—In section 61, for the words and figures “under section 52”, substitute the words and figures “under section 52 which is not the property of the Government and the withdrawal of any charge made in respect of such property”.

[Vide Goa Act 15 of 1989, sec. 12 (w.e.f. 10-8-1989).]

Himachal Pradesh.—In section 61, after the figure “52” but before the sign “.” occurring at the end, insert the words “, which is not the property of the Government, and the withdrawal of any charge made in respect of such property”.

[Vide Act 15 of 1991, sec. 11 (w.e.f. 24-7-1991).]

Maharashtra.—In section 61, for the words and figures “seized under section 52” substitute the following, namely:—

“seized under section 52 which is not the property of Government and the withdrawal of any charge made in respect of such property”.

[Vide Maharashtra Act 7 of 1985, sec. 15 (w.e.f. 1-6-1985).]

SECTIONS 61A TO 61B

Goa.—After section 61, insert the following sections, namely:—

“61A. *Confiscation by Forest-officer in certain cases.*—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or any other law for the time

being in force, where a forest-offence is believed to have been committed in respect of forest-produce which is the property of the Government, the officer seizing the property under sub-section (1) of section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles, carts and cattle used in committing such offence before an officer authorised by the Government in this behalf, by notification in the Official Gazette not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the "authorised officer").

(2) Where an authorised officer seizes under sub-section (1) of section 52, any forest-produce which is the property of the Government or any such property is produced before the authorised officer under sub-section (1) and once he is satisfied that a forest-offence has been committed in respect of such property such authorised officer may, whether or not a prosecution is instituted for the commission of such forest-offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles, carts, cattle, and other contrivances used in the commission of such offence.

(3) Where the authorised officer, after passing an order of confiscation under sub-section (2), is of the opinion that it is expedient in the public interest so to do, he may, order the confiscated property or any part thereof to be sold by public auction.

(4) Where any confiscated property is sold as aforesaid the proceeds thereof, after deduction of the expenses of such auction or other incidental expenses relating thereto, shall, where the order of confiscation made under section 61A is set aside or annulled by an order under section 61C or 61D, be paid to the owner thereof or to the person from whom it was seized as may be specified in such order.

61B. Issue of showcause notice before confiscation under section 61A.—(1) No order confiscating any forest-produce or tools, ropes, chains, boats, vehicles, carts, cattle or any contrivances shall be made under section 61A except after notice in writing to the person from whom it was seized and considering his objection, if any:

Provided that, no order confiscating a motor vehicle shall be made except, after giving a notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order shall be made under section 61A, if the owner of the tools, rope, chain, boat, vehicle, carts, cattle or any other contrivance proves to the satisfaction of the authorised officer that it was used in carrying forest-produce without the knowledge or connivance of the owner himself, his agent, if any and the person in charge of the tools, rope, chain, boat, vehicle, cart, cattle or any other contrivance and that each of them taken all reasonable and necessary precautions against such use.

61C. Revision.—Any Forest-officer not below the rank of Deputy Conservator of Forests, specially empowered by the Government in this behalf, by notification in the Official Gazette, may, before the expiry of ninety days from the date of order of the authorised officer under section 61A, give notice and call for and examine the records of that order and may make such enquiry or cause such enquiry to be made and may pass such orders as he deems fit:

Provided that no such order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

61D. Appeal.—Any person aggrieved by any order under section 41, 61A or section 61C may, within forty-five days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge

shall, after giving an opportunity of being heard to the appellant and the authorised officer or the officer specially empowered under section 61C, as the case may be, pass such order as he may think fit confirming, modifying or annulling the order appealed against.

(2) An order of the Sessions Judge under sub-section (1) shall be final and shall not be questioned in any Court of law.

61E. *Order of confiscation or seizure not to interfere with other punishment.*—The order of any confiscation or seizure under section 41, 61A or section 61C or section 61D shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.

61F. *Property confiscated when to vest in Government.*—When an order for confiscation or seizure of any property has been passed under section 41, 61A or 61D such order has become final in respect of the whole or any portion of it or if it has been sold under sub-section (3) of section 61A, the sale proceeds thereof, as the case may be, shall vest in the Government free from all encumbrances.

61G. *Bar of jurisdiction in certain cases.*—Whenever any forest-produce belonging to the Government together with any tool, rope, chain, boat, vehicle, cart, cattle or any other contrivance used in committing any offences to seized under sub-section (1) of section 52, the authorised officer under section 61A or the officer specially empowered under section 61C or the Sessions Judge hearing an appeal under section 61D have and, notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or in any other law for the time being in force, any other officer, Court, Tribunal or authority shall not have, jurisdiction to make an order with regard to custody, possession, delivery or distribution of such property."

[Vide Goa Act 15 of 1989, sec. 13 (w.e.f. 10-8-1989).]

Gujarat.—After section 61, insert the following sections, namely:—

"61A. *Confiscation by Forest-officer in certain cases.*—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or where any other law for the time being in force, where a forest-offence is believed to have been committed in respect of forest-produce which is the property of the State Government, the officer seizing the property under sub-section (1) of section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the State Government in this behalf, by notification in the Official Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the "authorised officer").

(2) Where an authorised officer seizes under sub-section (1) of section 52, any forest-produce which is the property of the State Government or where any such property is produced before the authorised officer under sub-section (1) and he is satisfied that a forest-offence has been committed in respect of such property such authorised officer may, whether or not a prosecution is instituted for the commission of such forest-offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

(3) (a) Where the authorised officer, after passing an order of confiscation under sub-section (2), is of the opinion that it is expedient in the public interest so to do, he may, order the confiscated property or any part thereof to be sold by public auction.

(b) Where any confiscated property is sold as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses,

relating thereto, shall where the order of confiscation made under section 61A is set aside or annulled by an order under section 61C or 61D, be paid to the owner thereof or to the person from whom it was seized as may be specified in such order.

61B. Issue of show cause notice before confiscation under section 61A.—(1) No order confiscating any forest-produce or tools, ropes, chains, boats, vehicles and cattle shall be made under section 61A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it and considering his objections, if any.

Provided that, no order confiscating a motor vehicle shall be made except, after giving a notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under section 61A, if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying forest-produce without the knowledge or connivance of the owner himself, his agents, if any, and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them taken all reasonable and necessary precautions against such use.

61C. Revision.—Any Forest-officer not below the rank of Conservator of Forests, especially empowered by the State Government in this behalf, by notification in the Official Gazette, may, before the expiry of thirty days from the date of order of the authorised officer under section 61A, *suo motu* call for and examine the records of that order and may make such enquiry or cause such enquiry to be made and may pass such orders as he deems fit:

Provided that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

61D. Appeal.—Any person aggrieved by any order under section 61A or section 61C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity of being heard to the appellant and the authorised officer or the officer specially empowered under section 61C, as the case may be, pass such order as he may think fit, confirming, modifying or annulling the order appealed against.

(2) An order of the Sessions Judge under sub-section (1) shall be final and shall not be questioned in any Court of law.

61E. Award of confiscation not to interfere with other punishment.—The award of any confiscation under section 61A or 61C or 61D shall not prevent the infliction of any punishment which the person affected thereby is liable under this Act.

61F. Property confiscated when to vest in Government.—When an order for confiscation of any property has been passed under section 61A or 61C or 61D and such order has become final in respect of the whole or any portion of such property, such property or portion thereof or if it has been sold under sub-section (3) of section 61A, the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances.

61G. Bar of jurisdiction in certain cases.—Whenever any forest-produce belonging to the State Government or any tool, rope, chain, boat, vehicle or cattle used in committing any offence is seized under sub-section (1) of section 52, the authorised officer under section 61A or the officer specially empowered under section 61C or the Sessions Judge hearing an appeal under section 61D, shall have and, notwithstanding anything to the contrary contained in this Act or in the Code of

Criminal Procedure, 1973 or in any other law for the time being in force, any other officer, Court, Tribunal or authority shall not have, jurisdiction to make orders with regard to custody, possession, delivery, disposal or distribution of such property."

[Vide Gujarat Act 19 of 1983, sec. 9 (w.r.e.f. 24-5-1983).]

Maharashtra.—After section 61, insert the following sections, namely:—

"61A. Confiscation by Forest-officers of forest-produce where forest-offence is believed to have been committed.—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or any other law for the time being in force, where a forest-offence is believed to have been committed in respect of timber, sandalwood, firewood, charcoal or any other notified forest-produce which is the property of the State Government, the officer seizing the property under sub-section (1) of section 52 shall, without any unreasonable delay, produce it, together with all tools, boats, vehicles and cattle used in committing such offence before an officer authorised by the State Government in this behalf, by notification in the Official Gazette, not being an officer below the rank of an Assistant Conservator of Forests (hereinafter referred to as "the authorised officer").

(2) The State Government may authorise one or more officers for any local area under sub-section (1).

(3) Where an authorised officer seizes under sub-section (1) of section 52, any timber, sandalwood, firewood, charcoal or any other notified forest-produce which is the property of the State Government or any such property is produced before an authorised officer under sub-section (1) and he is satisfied that a forest-offence has been committed in respect of such property such authorised officer may, whether or not a prosecution is instituted for the commission of such forest-offence, order confiscation of the property so seized together with all tools, boats, vehicles and cattle used in the committing such offence.

(4) (a) Where the authorised officer, after passing an order of confiscation under sub-section (3), is of the opinion that it is expedient in the public interest so to do, he may, order the confiscated property or any part thereof and the tools, boats, vehicles and cattle to be sold by public auction.

(b) Where any confiscated property or the tools, boats, vehicles and cattle are sold as aforesaid, the proceeds thereof, after deduction of the expenses of such auction or other incidental expenses, relating thereto, shall where the order of confiscation made under this section is set aside or annulled by an order under section 61C or 61D, be paid to the owner thereof or to the person from whom it was seized as may be specified in such order.

61B. Issue of show cause notice before confiscation under section 61A.—(1) No order confiscating any timber, sandalwood, firewood, charcoal or any other notified forest-produce, tools, boats, vehicles or cattle shall be made under section 61A except after notice in writing to the person from whom it is seized and considering his objections, if any:

Provided that, no order confiscating a motor vehicle shall be made except, after giving a notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, boat, vehicle or cattle shall be made under section 61A, if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, firewood, charcoal or any other notified forest-produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

"61C. *Revision*.—Any Forest-officer not below the rank of Conservator of Forests, specially empowered by the State Government in this behalf, by notification in the Official Gazette, may, *suo motu* call for and examine the record of the order of the authorised officer under section 61A; and may make such enquiry or cause such enquiry to be made and may pass such orders as he deems fit:

Provided that the such record shall be called for, after the expiry of 30 days from the date of such order, and no order under this section shall be passed if, in the meanwhile, an appeal has been filed under section 61D against the order of the authorised officer:

Provided further that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

61D. *Appeal*.—Any person aggrieved by any order passed under section 61A or section 61C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property and the tools, boats, vehicles, and cattle to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity to the appellant and the authorised officer or the officer specially empowered under section 61C, as the case may be, to be heard, pass such order as he may think fit, confirming, modifying or annulling the order appealed against.

(2) An order of the Sessions Judge under sub-section (1) shall be final and shall not be questioned in any Court of law.

61E. *Award of confiscation not to interfere with other punishment*.—The award of any confiscation under section 61A or section 61C or section 61D shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act or any other law for the time being in force.

61F. *Property, etc., confiscated when to vest in Government*.—When an order for confiscation of any property or any tools, boats, vehicles or cattle is passed under section 61A or section 61C or section 61D and such order has become final in respect of the whole or any portion of such property, or tool, boat, vehicle or cattle, such property or portion thereof or tool, boat, vehicle or cattle or if it has been sold under clause (a) of sub-section (4) of section 61A, the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances.

61G. *Bar of jurisdiction in certain cases*.—Whenever any timber, sandalwood, firewood, charcoal or any other notified forest-produce which is the property of the State Government together with any tool, boat, vehicle or cattle used in committing any offence is seized under sub-section (1) of section 52, the Authorised Officer under section 61A or the officer specially empowered under section 61C or the Sessions Judge hearing an appeal under section 61D shall have and, notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, any other officer, Court, Tribunal or authority shall not have, jurisdiction to make orders with regard to custody, possession, delivery, disposal or distribution of such property and any tool, boat, vehicle or cattle."

[Vide Maharashtra Act 7 of 1985, sec. 16 (w.e.f. 1-6-1985).]

SECTIONS 61A TO 61C

Uttar Pradesh.—(i) After section 61, add the following section, namely:—

"61A. *Summary eviction of persons convicted of certain offences*.—(1) Where a court convicts any person of an offence under clause (a), clause (d) or clause (h) of sub-section (1) of section 26, or clause (c) or clause (h) of sub-section (1) of section 33,

it may, when passing judgment, direct the eviction of such person from any land in respect of which the offence has been committed.

(2) Any Court of Appeal or revision may direct any order under sub-section (1), passed by a court subordinate thereto to be stayed pending consideration by the former court and may modify, alter or annul such order."

[Vide Uttar Pradesh Act 23 of 1965, sec. 14 (w.e.f. 23-11-1965).]

(ii) After section 61A, insert following sections, namely:—

"61B. Summary eviction of unauthorized occupant.—(1) If a Forest-officer, not below the rank of a Divisional Forest Officer, is of the opinion that any person is in unauthorized occupation of any land in areas constituted as a reserved or protected forest under section 20 or section 29 as the case may be and that he should be evicted, the Forest-officer shall issue a notice in writing calling upon the person concerned to show cause, on or before such date as is specified in the notice, why an order of eviction should not be made.

(2) If after considering the cause, shown in pursuance of a notice under this section, the Forest-officer is satisfied that the said land is in unauthorized occupation he may make an order of eviction for reasons to be recorded therein, directing that the said land shall be vacated by such date as may be specified in the order, by the person concerned, which shall not be less than ten days from the date of the order.

(3) If any person refuses or fails to comply with the order of eviction by the date specified in the order, the Forest-officer who made the order under sub-section (2) or any other Forest-officer, duly authorised by him in this behalf, may evict that person from and take possession of the said land and may for this purpose use such force as may be necessary.

(4) Any person aggrieved by an order of the Forest-officer under sub-section (2) may, within such period and in such manner as may be prescribed, appeal against such order to the Conservator of Forests of the circle or to such officer as may be authorised by the State Government in this behalf and the order the Forest-officer shall, subject to the decision in such appeal, be final.

61C. Disposal of Property left on land by unauthorized occupant.—(1) Where any person has been evicted from any land under section 61B, the Forest-officer may, after giving not less than ten days notice to the person from whom possession of the land has been taken, remove or cause to be removed or dispose of, by public auction, any property remaining on such land including any material of a demolished building or standing crop.

(2) Where any property is sold under sub-section (1) the sale proceeds thereof shall, after deducting the expenses of the sale and the expenses necessary to restore the land to its original condition be paid to the person concerned."

[Vide Act 1 of 2001, sec. 13.]

Uttaranchal.—After section 61, insert the following section, namely:—

61A. Summary eviction of unauthorized occupants.—(1) If a Forest-officer, not below the rank of a Divisional Forest Officer, is of the opinion that any person is in unauthorized occupation of any land in areas constituted as reserved or protected forest under section 20 or section 29, as the case may be, and that he should be evicted, the Forest-officer shall issue a notice in writing calling upon the person concerned to show cause, on or before such date as is specified in the notice, why an order of eviction should not be made.

(2) If after considering the cause, if any, shown in pursuance of a notice under this section, the Forest-officer is satisfied that the said land is in unauthorized occupation, he may make an order of eviction for reasons, to be recorded therein, directing that the said land shall be vacated by such date, as may be specified in the

order, by the person concerned, which shall not be less than ten days from the date of the order.

(3) If any person refuses or fails to comply with the order of eviction by the date specified in the order, the Forest-officer who made the order under sub-section (2) or any other Forest-officer, duly authorised by him in this behalf, may evict that person from and take possession of the said land and may for this purpose, use such force as may be necessary.

(4) Any person aggrieved by an order of the Forest-officer under sub-section (2) may, within such period and in such manner as may be prescribed appeal against such order to the Conservator of Forest of the circle or to such officer as may be authorised by the State government in this behalf and the order of the Forest-officer shall, subject to the decision in such appeal be final.

61B. *Disposal of property left on land by unauthorized occupant.*—(1) Where any person has been evicted from any land under section 61B, the Forest-officer may, after giving not less than ten days' notice to the person from whom possession of the land has been taken remove or cause to be removed or dispose of, by public auction, any property remaining on such land including any material of a demolished building or standing crop.

(2) Where any property is sold under sub-section (1) the sale proceeds thereof shall, after deducting the expenses of the sale and the expenses necessary to restore the land to its original condition, be paid to the person concerned.

[Vide Uttaranchal Act 10 of 2002, sec. 13.]

62. **Punishment for wrongful seizure.**—Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

STATE AMENDMENTS

Goa.—For section 62, substitute the following section, namely:—

"62. *Punishment for wrongful seizure.*—(1) Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to forfeiture under this Act shall, on conviction be punishable with imprisonment which may extend to six months or with fine which may extend to five hundred rupees, or with both.

(2) Any fine so imposed or any portion thereof shall, if the convicting Court so directs, be given as compensation to the person aggrieved by such seizure."

[Vide Goa Acts 15 of 1989, sec. 14 (w.e.f. 10-8-1989) and 2 of 1990, sec. 4 (w.e.f. 29-3-1990).]

Madhya Pradesh.—In section 62, for the words "extend to six months, or with fine which may extend to five hundred rupees", substitute the words "extend to one year or with fine which may extend to one thousand rupees".

[Vide Madhya Pradesh Act 9 of 1965, sec. 12 (w.e.f. 20-3-1965).]

Maharashtra.—Renumber section 62 as sub-section (1) thereof and,—

(a) in sub-section (1) as so renumbered, for the word "confiscation", substitute the words "confiscation or forfeiture",

(b) after sub-section (1), as so renumbered, add the following sub-section, namely:—

"(2) Any fine so imposed, or any portion thereof, shall, if the convicting court so directs, be given as compensation to the person aggrieved by such seizure."

[Vide Maharashtra Act 7 of 1985, sec. 17 (w.e.f. 1-6-1985).]

Punjab.—In section 62, for the words "six months, or with fine which may extend to five hundred rupees, or with both", substitute the words "two years, or with fine which may extend to five thousand rupees, or with both".

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 8 (w.e.f. 26-10-2004).]

63. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.—Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

- (a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or
- (b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer; or
- (c) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

STATE AMENDMENTS

Madhya Pradesh.—In section 63, for the words "shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both", substitute the words "shall be punishable with imprisonment for a term which shall not be less than six months and may extend to two years, or with fine not less than five thousand rupees, or with both".

[Vide Madhya Pradesh Act 7 of 2010, sec. 9.]

West Bengal.—In section 63, for the words "which may extend to two years, or with fine, or with both", substitute the words "which shall not be less than three months but which may extend to five years and also with fine which shall not be less than five thousand rupees".

[Vide West Bengal Act 22 of 1988, sec. 18.]

64. Power to arrest without warrant.—(1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30.

STATE AMENDMENTS

Gujarat.—In section 64, in sub-section (1), for the words "Any Forest-officer or Police-officer", substitute the words "Any Forest-officer, Police-officer or Revenue-officer".

[Vide Gujarat Act 15 of 1960, sec. 6 (h) (w.e.f. 8-12-1960).]

Maharashtra.—Same as in Gujarat.

[Vide Maharashtra Act 6 of 1961, sec. 10 (w.e.f. 3-2-1961).]

65. Power to release on a bond a person arrested.—Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of section 64, may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police station.

STATE AMENDMENTS

Gujarat.—In section 65, for the words "a Ranger", substitute the words "a Ranger, any Police-officer of a rank not inferior to that of Sub-Inspector or any Revenue-officer of a rank not inferior to that of a Mahalkari".

[Vide Gujarat Act 15 of 1960, sec. 6(i) (w.e.f. 8-12-1960).]

Maharashtra.—In section 65.—

- (1) For the words "a Ranger", substitute the words "a Ranger, any Police-officer of a rank not inferior to that of Sub-Inspector or any Revenue Officer of a rank not inferior to that of Mahalkari or Tahsildar".

[Vide Maharashtra Act 6 of 1961, sec. 11 (w.e.f. 3-2-1961).]

- (2) For the words "may release such person", substitute the words figures and letter "may, subject to and without prejudice to the provisions of section 65A, release such person".

[Vide Maharashtra Act 7 of 1985, sec. 18 (w.e.f. 1-6-1985).]

SECTION 65A

After section 65, insert the following section, namely:—

"65A. Certain offences to be non-bailable.—Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973,—

- (a) the offences under sections or clauses of sections mentioned in clause (b) shall be non-bailable;
- (b) the sections and clauses of sections of this Act referred to in clause (a) are the following, namely:—
Section 26, clauses (a), (b), (f), (g), (h), and (i) of sub-section (1).
Section 33, clauses (a), (b), (c), (d), (f), and (h) of sub-section (1).
Section 42.
Section 63;
- (c) no person accused of any offence referred to in clause (b), shall, if in custody, be released on bail or on his own bond unless—
 - (i) the prosecution has been given an opportunity to oppose the application for such release, and
 - (ii) where the prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence."

[Vide Maharashtra Act 7 of 1985, sec. 19 (w.e.f. 1-6-1985).]

Uttar Pradesh.—After section 65, insert the following section, namely:—

65A. Certain Offences to be non-bailable.—(1) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 any offence punishable, under section 26, or section 33 or section 42 or section 63 shall be non-bailable.

(2) No person accused of any offence as aforesaid shall, if in custody, be released on bail on application for being released on bail or on his own bond unless—

- (a) the prosecution has been given an opportunity to oppose the application for such release, and
- (b) where the prosecution opposes the application as aforesaid the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence."

[Vide Uttar Pradesh Act 1 of 2001, sec. 14 (w.e.f. 16-4-2001).]

Uttaranchal.—Same as in Uttar Pradesh.

[Vide Uttaranchal Act 10 of 2002, sec. 14.]

West Bengal.—After section 65, insert the following section, namely:—

"65A. *Certain offences to be non-bailable.*—(1) Notwithstanding anything continued in this Act or in the Code of Criminal Procedure, 1973, any offence punishable under:

- (a) clause (a) or clause (b) or clause (f) or clause (g) or clause (h) or clause (i) of section 26, or
- (b) clause (a) or clause (b) or clause (c) or clause (d) or clause (f) or clause (h) of sub-section (1) of section 33, or
- (c) section 42, or
- (d) section 63,

shall be non-bailable.

(2) No person accused of any offence as aforesaid shall, if in custody, be released on application for release on bail or on his own bond unless—

- (a) the prosecution has been given an opportunity to oppose the application for such release, and
- (b) where the prosecution opposes the application as aforesaid the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence."

[Vide West Bengal Act 21 of 1988, sec. 19 (w.e.f. 3-2-1989).]

66. Power to prevent commission of offence.—Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

STATE AMENDMENTS

Gujarat.—In section 66, for the words "Every Forest-officer and Police-officer", substitute the words "Every Forest-officer, Police-officer and Revenue-officer".

[Vide Gujarat Act 15 of 1960, sec. 6(j) (w.e.f. 8-12-1960).]

Maharashtra.—Same as in Gujarat.

[Vide Maharashtra Act 6 of 1961, sec. 12 (w.e.f. 3-12-1961).]

SECTION 66A

Bihar.—After section 66, insert the following section, namely:—

"66A. *Eviction of encroachment from Government Forest Land.*—(1) Encroachment of Government Forest Land shall be cognisable and non-bailable offence.

(2) Any Forest-officer not below the rank of Divisional Forest Officer, if he has reasons to believe that the encroachment of Government Forest Land has been done, may evict the encroachment and may use all the powers conferred on Magistrate under the Bihar Public Land Encroachment Act, 1956 (Bihar Act 15 of 1956)."

[Vide Bihar Act 9 of 1990, sec. 7 (w.e.f. 10-9-1990).]

Madhya Pradesh.—After section 66, insert the following section, namely:—

"66A. *Attempt or abetment of an offence.*—Any person who attempts to contravene or abets the contravention of any provisions of this Act or the rules made thereunder shall be deemed to have contravened such provisions or rules."

[Vide Madhya Pradesh Act 7 of 2010, sec. 10.]

SECTIONS 66A and 66B

Punjab.—After section 66, insert the following sections, namely:—

“66A. Eviction of encroachment from State Government forest land.—Any Forest-officer, not below the rank of the Divisional Forest Officer, if he has reason to believe that encroachment of the State Government forest land has been made, may evict the encroachment and may use all the powers conferred on an Executive Magistrate under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (Punjab Act 13 of 1973).

66B. Punishment for abetment.—(1) Whoever abets any offence punishable under this Act, shall, if the offence abetted is committed in consequence of such abetment, be punished with the same punishment as is provided under this Act for the commission of such offence.

(2) Whoever abets any offence punishable under this Act, shall, if the offence abetted is not committed in consequence of such abetment, be punished with half of the punishment provided for the commission of such offence under this Act.”

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 9 (w.e.f. 26-10-2004).]

Uttar Pradesh.—After section 66 the following section, namely:—

“66A. Penalty for not preventing commission of forest offence.—Whoever, being a Forest-officer or Police-officer, bound under section 66 to prevent commission of any forest offence, intentionally or knowingly, neglects or omits to prevent or abets, the commission of such offence, shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.”

[Vide Uttar Pradesh Act 1 of 2001, sec. 15 (w.e.f. 16-4-2001).]

West Bengal.—After section 66, insert the following section, namely:—

“66A. Punishment of abetment.—(1) Whoever abets any offence punishable under this Act shall, if the offence abetted is committed in consequence of abetment, be punished with the same punishment as is provided for such offence.

(2) Whoever abets any offence under this Act shall, if the offence abetted is not committed in consequence of abetment, be punished with the same punishment as is provided for such offence, but such punishment shall extend up to the one-fourth of maximum punishment provided for such offence.”

[Vide West Bengal Act 22 of 1988, sec. 20 (w.e.f. 3-2-1989).]

67: Power to try offences summarily.—The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the ¹[State Government] may try summarily, under the *Code of Criminal Procedure, 1898 (5 of 1898), any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

STATE AMENDMENTS

Bihar.—For section 67, substitute the following section, namely:—

“67. Notwithstanding anything to the contrary contained either in the Criminal Procedure Code, 1973 or any other law for the time being in force, the State Government may, by notification in the Official Gazette constitute a special court with powers of first class Magistrate for the trial of all forest-offences punishable with imprisonment for a term which may extend to two years, or with fine which

1. Subs. by the A.O. 1950, for “Provincial Government”.

* See Code of Criminal Procedure, 1973 (2 of 1974).

may extend to five thousand rupees, or with both, as the case may be, in accordance with the procedure prescribed for summary trial under Chapter XXI of the Criminal Procedure Code, 1973."

[Vide Bihar Act 9 of 1990, sec. 8 (w.e.f. 10-9-1990).]

Gujarat.—Same as in Maharashtra (1).

[Vide Gujarat Act 15 of 1960, secs. 3 and 4(2) (w.e.f. 8-12-1960).]

Himachal Pradesh.—In section 67, for the words, brackets and figures "the Code of Criminal Procedure, 1898 (5 of 1898)", substitute the words brackets and figures "the Code of Criminal Procedure, 1973 (2 of 1974)".

[Vide Himachal Pradesh Act 15 of 1991, sec. 12 (w.e.f. 24-7-1991).]

Madhya Pradesh.—In section 67, for the words "not exceeding six months, or fine not exceeding five hundred rupees", substitute the words "not exceeding one year, or with fine not exceeding one thousand rupees".

[Vide Madhya Pradesh Act 9 of 1965, sec. 13 (w.e.f. 20-3-1965).]

Maharashtra.—In section 67,—

- (1) for the words "The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government", substitute the words "any Magistrate of the first class specially empowered in this behalf by the State Government in consultation with the High Court".

[Vide Bombay Act 23 of 1951, sec. 2 and Sch. (w.e.f. 5-7-1951); Maharashtra Act 6 of 1961, sec. 2 (w.e.f. 3-2-1961).]

- (2) (a) for the words and figures "the Code of Criminal Procedure, 1898 (5 of 1898)", substitute the words and figures "the Code of Criminal Procedure, 1973 (2 of 1974)".

- (b) for the words "not exceeding six months, or fine not exceeding five hundred rupees, or both", substitute the words "not exceeding one year, or fine not exceeding two thousand rupees, or both, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial; but, notwithstanding anything contained in the said Code, in the case of conviction for any offence in a summary trial under this section, it shall be lawful for the Magistrate to pass sentence of imprisonment of any term for which such offence is punishable under this Act."

[Vide Maharashtra Act 7 of 1985, sec. 20 (w.e.f. 1-6-1985).]

Punjab, Haryana, Chandigarh.—In section 67, for the words "The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government", substitute the words "The Chief Judicial Magistrate or any other Judicial Magistrate of the first class specially empowered in this behalf by the High Court".

[Vide Punjab Act 25 of 1964, sec. 37 and Sch. IV, Part II (w.e.f. 2-10-1964) and Central Act 31 of 1966, sec. 88.]

Punjab.—For section 67, substitute the following section, namely:—

"67. Power to try offences summarily.—The Chief Judicial Magistrate or any other Judicial Magistrate of the First Class, specially empowered in this behalf by the High Court, may try summarily, under the Code of Criminal Procedure, 1973, any forest-offence punishable with imprisonment for a term, not exceeding two years or with fine, not exceeding five thousand rupees or with both and the provisions of sections 262 to 265 of the said Code shall apply to such trial; but notwithstanding anything contained in the said Code, in the case of conviction for

any offence in summary trial under this section, the Magistrate may pass sentence of imprisonment for any term for which such offence is punishable under this Act."

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 10 (w.e.f. 26-10-2004).]

68. Power to compound offences.—(1) The ¹[State Government] may, by notification in the ²[Official Gazette], empower a Forest-officer—

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and
- (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.

STATE AMENDMENTS

Bihar.—For section 68, substitute the following section, namely:—

"68. (1) The State Government may, by notification in the Official Gazette, empower a Forest-officer—

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence other than an offence specified in clauses (c) and (d) to section 26, clauses (c) and (d) to section 33 or section 62 or section 63, sum of money by way of compensation for the offence which such person is suspected to have committed, and
- (b) when any property has been seized as liable for confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of an Assistant Conservator of Forests."

[Vide Bihar Act 9 of 1990, sec. 9 (w.e.f. 10-9-1990).]

Goa.—In section 68,—

- (1) (i) in sub-section (1), after the words "The State Government may", insert the words "subject to such conditions as may be specified,";

1. Subs. by the A.O. 1950, for "Provincial Government";
2. Subs. by the A.O. 1937, for "Local Official Gazette".

- (ii) in clause (a), for the words "any forest-offence," substitute the words "any forest-offence under this Act," and after the words "a sum of money," insert the words ", not exceeding ten thousand rupees, ";
- (iii) in clause (b), for the words "liable to confiscation", substitute the words, figures and letters "liable to confiscation subject to provision of section 61G";
- (iv) in sub-section (3), for the word "fifty", substitute the words "ten thousand".

[Vide Goa Act 15 of 1989, sec. 15 (w.e.f. 10-8-1989).]

(2) In section 68(1)—

for clause (b), the following clause shall be substituted, namely:—

"(b) When any property has been seized as liable to confiscation subject to the provision of section 61G, to release the same on payment of the value thereof as estimated by such officer."

[Vide Goa Act 2 of 1990, sec. 5 (w.e.f. 29-3-1990).]

Gujarat.—For section 68, substitute the following section, namely:—

"68. *Power to compound offences.*—(1) The State Government may, by notification in the Official Gazette, empower a Forest-officer—

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, payment of a sum of money, or at his discretion, an undertaking in writing to pay a sum of money, by way of compensation for the offence which such person is suspected to have committed, and
- (b) when any property has been seized as liable to confiscation subject to section 61G to release the same on payment of, or at his decision, on acceptance of an undertaking in writing to pay the value thereof as named by such officer.

(2) On the payment of, or on acceptance of an undertaking in writing to pay, such sum of money, or such named value, or both, as the case may be, to such an officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings other than those under section 82 where necessary, shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and the sum of money accepted or agreed to be accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of two thousand rupees."

[Vide Gujarat Acts 15 of 1960, sec. 6(k) (w.e.f. 8-12-1960); 11 of 1976, sec. 3 (w.e.f. 1-4-1976); 19 of 1983, sec. 10 (w.e.f. 24-5-1983).]

Madhya Pradesh.—In section 68, substitute the following section, namely:—

"68. *Power to compound offences.*—(1) The State Government may, by notification in the Official Gazette, empower a Forest-officer,—

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and
- (b) when any property has been seized as liable to confiscation, to release the same at any time before the order of confiscation is passed by the appropriate authority, on payment of the value thereof as estimated by such officer.

(2) On the payment of such money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest officer shall not be empowered under this section unless he is a Forest officer of a rank not inferior to that of a Ranger, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case be less than two times the value of the forest produce:

Provided that in case the forest produce in respect of which an offence has been committed is not the property of the Government or in the case the value of the forest produce is less than one thousand rupees and, if the offender has committed the offence for the first time, the suspected person may be discharged and the property (other than the forest produce), if any, seized may be released on payment of the sum of ten thousand rupees or the value of the seized property, whichever is less; the seized forest produce may be released only if it is not the property of the Government or on the payment of the value thereof, as the case may be."

[Vide Madhya Pradesh Act 7 of 2010, sec. 11.]

Maharashtra.—For section 68, substitute the following section, namely:—

"68. *Power to compound offences.*—(1) Subject to the provisions of sub-section (3), the State Government may, by notification in the Official Gazette, empower a Forest-officer—

Rest same as in Gujarat.

[Vide Maharashtra Act 6 of 1961, sec. 13 (w.e.f. 3-2-1961).]

Punjab, Haryana, Chandigarh.—In section 68, in sub-section (3), for the word "fifty", substitute the words "five hundred".

[Vide Punjab Act 13 of 1962, sec. 5 (w.e.f. 10-7-1962) read with Central Act 31 of 1966, sec. 88.]

Punjab.—In section 68, for sub-section (3), substitute the following sub-section, namely:—

"(3) A Forest-officer, not below the rank of the Divisional Forest Officer, shall be empowered under this section. The sum of money accepted as compensation under clause (a) of sub-section (1), shall, in no case, exceed the sum of five thousand rupees.

Explanation.—For the purpose of compounding an offence under this section, it is clarified that illicitly felling of every tree shall be treated as a separate offence."

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 11 (w.e.f. 26-10-2004).]

Tripura.—In section 68, in sub-section (3), for the words "one hundred rupees" and the words "fifty rupees", substitute the words "one thousand five hundred rupees" and "five thousand rupees" respectively.

[Vide (Indian) Forest (Tripura Third Amendment) Act, 1990, sec. 3 (w.e.f. 20-6-1991).]

Uttar Pradesh.—In section 68, in sub-section (3)—

(i) omit the words "and is in receipt of a monthly salary amounting to at least one hundred rupees";

(ii) for the words "five hundred rupees", substitute the words "five thousand rupees for the first offence and for second and subsequent offences of the same nature shall not be less than five thousand rupees or more than ten thousand rupees,".

[Vide Uttar Pradesh Act 1 of 2001, sec. 16 (w.e.f. 16-4-2001).]

Uttaranchal.—In section 68, in sub-section (3)—

- (i) omit the words "and in receipt of a monthly salary amounting to at least one hundred rupees";
- (ii) for the words "fifty rupees", substitute the words "five thousand rupees for the first offence and for second and subsequent offences of the same nature shall not be less than five thousand and or more than ten thousand rupees".

[Vide Uttaranchal Act 10 of 2002, sec. 15.]

West Bengal.—In section 68,—

- (a) in sub-section (1), for the words "the value thereof", substitute the words "an amount equivalent to double the market value thereof"
- (b) in sub-section (2), for the words "or such value", substitute the words "or such amount"
- (c) for sub-section (3), substitute the following sub-section, namely:—

"(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Forester, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of one thousand one hundred and fifty rupees."

[Vide West Bengal Act 14 of 1975, sec. 3 (w.e.f. 6-5-1975).]

- (d) after sub section (3), insert the following sub-section, namely:—

"(4) Notwithstanding anything contained in the foregoing provisions of this section no forest-offence other than a forest-offence under section 62 or section 63, shall be compounded by a Forest-officer if the value of the forest-produce seized exceeds five thousand rupees or if a cart or other vehicle has been used in committing the offence."

[Vide West Bengal Act 22 of 1988, sec. 21.]

COMMENTS

Even if the offence is compounded, still under sub-section (2) of section 68 of the Act the further proceedings against the offender are only barred if the offender had paid the amount of compensation damages; *State of Himachal Pradesh v. Sabala*, 1988 (1) Crimes 936 (HP).

69. Presumption that forest-produce belongs to Government.—When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

COMMENTS

The High Court did not examine the various submissions made, more particularly, with regard to the presumption available to be drawn under section 69 of the Act. The omission on the part of the appellate Judge under the Act is a serious error; *State of Himachal Pradesh v. Dhanwant Singh*, AIR 2004 SC 1636.

CHAPTER X

CATTLE-TRESPASS

70. Cattle-trespass Act, 1871, to apply.—Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damages to a public plantation within the meaning of section 11 of the Cattle-trespass Act, 1871 (1 of 1871), and may be seized and impounded as such by any Forest-officer or Police-officer.

71. Power to alter fines fixed under that Act.—The ¹[State Government] may, by notification in the ²[Official Gazette], direct that, in lieu of the fines fixed under section 12 of the Cattle-trespass Act, 1871 (1 of 1871), there shall be levied for each head of cattle impounded under section 70 of this Act such fines as it thinks fit, but not exceeding the following, that is to say:—

For each elephant	ten rupees
For each buffalo or camel	two rupees
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer	one rupee
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid	eight annas

STATE AMENDMENTS

Gujarat.—In section 71, for the words "eight annas", substitute the words "fifty naye paise".

[Vide Gujarat Act 15 of 1960, sec. 6(1) (w.e.f. 8-12-1960).]

Madhya Pradesh.—For section 71, substitute the following section, namely:—

"71. **Power to alter fines fixed under that Act.**—The State Government may, by notification in the Official Gazette, direct that, in lieu of the fines fixed under section 12 of the Cattle-trespass Act, 1871 (1 of 1871), there shall be levied for each head of cattle impounded under section 70 of this Act, such fines as it thinks fit, but not exceeding the following, that is to say:—

For each elephant	one thousand rupees
For each camel	two hundred and fifty rupees
For each buffalo	one hundred rupees
For each calf, ass, pig, ewe, sheep, lamb, goat, kid or any other cattle	fifty rupees

Provided that the cost of maintenance of such cattle during the period of impoundment shall be recoverable at the prevailing rates as fixed by the Divisional Forest Officer, in addition to the fine."

[Vide Madhya Pradesh Act 7 of 2010, sec. 12.]

Maharashtra.—Same as in Gujarat.

[Vide Maharashtra Act 6 of 1961, sec. 14 (w.e.f. 3-2-1961).]

Punjab.—In section 71, for the words "ten rupees", "two rupees", "one rupee" and "eight annas", substitute the words "two hundred and fifty rupees", "twenty five rupees", "ten rupees" and "five rupees" respectively.

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 12 (w.e.f. 26-10-2004).]

West Bengal.—In section 71, for the words "ten rupees", "two rupees", "one rupee" and "eight annas", substitute the words "fifty rupees", "five rupees", "three rupees" and "one rupee" respectively.

[Vide West Bengal Act 14 of 1975, sec. 4 (w.e.f. 6-5-1975).]

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

CHAPTER XI OF FOREST-OFFICERS

72. State Government may invest Forest-officers with certain powers.—

(1) The ¹[State Government] may invest any Forest-officer with all or of the following powers, that is to say:—

- (a) power to enter upon any land and to survey, demarcate and make a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
- (c) power to issue a search-warrant under the Code of Criminal Procedure, 1898 (5 of 1898)*; and
- (d) power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.

(2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

STATE AMENDMENTS

Maharashtra.—In section 72, in sub-section (1), in clause (c), for the words and figures "the Code of Criminal Procedure, 1898 (5 of 1898)", substitute the words and figures "the Code of Criminal Procedure, 1973 (2 of 1974)".

[Vide Maharashtra Act 7 of 1985, sec. 21 (w.e.f. 1-6-1985).]

Punjab.—In section 72, in sub-section (1), for clause (a), substitute the following clause, namely:—

"(a) power to enter upon, alongwith the persons assisting such Forest-officer in the performance of his duties, any land and to survey, demarcate and make a map of such land."

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 13 (w.e.f. 26-10-2004).]

73. Forest-officers deemed public servants.—All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

74. Indemnity for acts done in good faith.—No suit shall lie against any public servant for anything done by him in good faith under this Act.

STATE AMENDMENTS

Madhya Pradesh.—For section 74, substitute the following section, namely:—

"74. *Indemnity for acts done in good faith.*—No suit, prosecution or other legal proceeding shall lie against any public servant for anything done in good faith or omitted to be done likewise, under this Act or the rules or orders made thereunder."

[Vide Madhya Pradesh Act 25 of 1983, sec. 8 (w.e.f. 1-11-1983).]

Punjab.—For section 74, substitute the following section, namely:—

"74. *Indemnity for acts done in good faith.*—(1) No suit or prosecution or any other legal proceedings, shall lie against any public servant for anything done by him in good faith under this Act.

1. Subs. by the A.O. 1950, for "Provincial Government".

* See Code of Criminal Procedure, 1973 (2 of 1974).

(2) No court shall take cognizance of any offence alleged to have been committed by a Forest-officer while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the State Government."

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 14 (w.e.f. 26-10-2004).]

Uttar Pradesh.—For section 74, substitute the following section, namely:—

"74. *Indemnity for acts done in good faith.*—No suit, prosecution or other legal proceeding shall lie against the State Government or any public servant for anything which is in good faith done or intended to be done in pursuance of this Act or rules or orders made thereunder."

[Vide Uttar Pradesh Act 1 of 2001, sec. 18.]

Uttaranchal.—For section 74 of the principal Act, the following section shall be substituted, namely:—

"74. *Indemnity for acts done in good faith.*—No suit, prosecution or other legal proceeding shall lie against the State Government or any public servant for anything done by him under this Act or rules or orders made thereunder."

[Vide Uttaranchal Act 10 of 2002, sec. 16.]

West Bengal.—For section 74, substitute the following section, namely:—

"74. *Indemnity for acts done in good faith.*—(1) No suit or criminal prosecution or other legal proceeding shall lie against any public servant for anything done by him in good faith under this Act.

(2) No Court shall take cognizance of any offence alleged to have been committed by a Forest-officer while acting or purporting to act in the discharge of his official duty except with previous sanction of the State Government."

[Vide West Bengal Act 22 of 1988, sec. 22.]

75. Forest-officers not to trade.—Except with the permission in writing of the ¹[State Government], no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside ²[the territories to which this Act extends].

CHAPTER XIII

SUBSIDIARY RULES

76. Additional powers to make rules.—The ¹[State Government] may make rules—

- (a) to prescribe and limit the powers and duties of any Forest-officer under this Act;
- (b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;
- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and
- (d) generally, to carry out the provisions of this Act.

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for "Part A States and Part C States".

STATE AMENDMENTS

Punjab: Haryana: Chandigarh.—In section 76, in clause (c), between the word "timber" and the word "belonging", insert the words "or other forest-produce" and omit the words "but grown on lands belonging to or in the occupation of private persons".

[Vide Punjab Act 20 of 1954, sec. 2 (w.e.f. 11-5-1954); Central Act 31 of 1966, sec. 88 (w.e.f. 1-11-1966).]

77. Penalties for breach of rules.—Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

STATE AMENDMENTS

Madhya Pradesh.—In section 77, for the words "extend to one month, or fine which may extend to five hundred rupees", substitute the words "extend to six months, or with fine which may extend to one thousand rupees".

[Vide Madhya Pradesh Act 9 of 1965, sec. 15 (w.e.f. 20-3-1965).]

Punjab.—In section 77, for the words "one month, or fine which may extend to five hundred rupees, or both", substitute the words "six months, or fine which may extend to two thousand rupees, or with both".

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 15 (w.e.f. 26-10-2004).]

Uttar Pradesh.—In section 77, for the words "One month, or fine which may extend to five hundred rupees", substitute the words "one year, or with fine which may extend to two thousand rupees".

[Vide Uttar Pradesh Act 1 of 2001, sec. 18 (w.e.f. 16-4-2001).]

Uttaranchal.—Same as in Uttar Pradesh.

[Vide Uttaranchal Act 10 of 2002, sec. 17.]

78. Rules when to have force of law.—All rules made by the ¹[State Government] under this Act shall be published in the ²[Official Gazette], and shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

STATE AMENDMENTS

Gujarat.—Renumber section 78 as sub-section (1) thereof and after sub-section (1) as so renumbered, insert the following sub-section, namely:—

"(2) All rules made by the State Government under this Act shall be laid for not less than thirty days before each House of the State Legislature as soon as possible after they are made and shall be subject to such modifications as the Legislature may make during the session in which they are so laid, or the session immediately following."

[Vide Gujarat Act 15 of 1960, sec. 6(m) (w.e.f. 8-12-1960).]

Maharashtra.—Renumber section 78 as sub-section (1) thereof and after sub-section (1) as so renumbered, insert the following sub-section, namely:—

"(2) All rules made by the State Government under this Act shall be laid for not less than thirty days before each House of the State Legislature as soon as possible after they are made and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid, or the session immediately following and publish in the Official Gazette."

[Vide Maharashtra Act 6 of 1961, sec. 15 (w.e.f. 3-2-1961).]

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

Uttar Pradesh.—For section 78, substitute the following section, namely:—

"78. Further provisions regarding rules.—(1) All rules under this Act shall be made by notification in the Gazette.

(2) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the State Legislature, while it is in session, for a total period of fourteen days which may be comprised in its one session or in two or more successive sessions and shall, unless some later date is appointed, take effect from the date of their publication in the Gazette subject to such modifications or annulments as the two Houses of the Legislature may agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder".

[Vide Uttar Pradesh Act 23 of 1965, sec. 15 (23-11-1965).]

CHAPTER XIII.

MISCELLANEOUS

79. Persons bound to assist Forest-officers and Police-officers.—(1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and every person who is employed by any such person in such forest, and

Every person in any village contiguous to such forest who is employed by the ¹[Government] or who receives emoluments from the ¹[Government] for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall forthwith take steps, whether so required by any Forest-officer or Police-officer or not,—

- (a) to extinguish any forest fire in such forest of which he has knowledge or information;
- (b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest,

and shall assist any Forest-officer or Police-officer demanding his aid—

- (c) in preventing the commission in such forest of any forest-offence; and
- (d) when there is reason to believe that any such offence has been committed in such forest in discovering and arresting the offender.

(2) Any person who, being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person) fails—

- (a) to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information required by sub-section (1);
- (b) to prevent, as required by sub-section (1), to extinguish any forest fire in a reserved or protected forest;
- (c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest; or

1. Subs. by the A.O. 1950, for "Crown".

(d) to assist any Forest-officer or Police-officer demanding his aid in preventing the commission in such forest of any forest-offence, or, when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

STATE AMENDMENTS

Bihar.—In section 79, in sub-section (2), for the words "shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees or with both" substitute the following words, namely:—

"shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both".

[Vide Bihar Act 9 of 1990, sec. 10 (w.e.f. 10-9-1990).]

Madhya Pradesh.—In section 79, in sub-section (2), for the words "extend to one month, or with fine which may extend to two hundred rupees", substitute the words "extend to six months or with fine which may extend to one thousand rupees".

[Vide Madhya Pradesh Act 9 of 1965, sec. 16 (w.e.f. 20-3-1965).]

Punjab.—In section 79, in sub-section (2), for the words "one month, or with fine which may extend to two hundred rupees, or with both", substitute the words "six months, or with fine which may extend to two thousand rupees, or with both".

[Vide Indian Forest (Punjab Amendment) Act, 2004, sec. 16 (w.e.f. 26-10-2004).]

Uttar Pradesh.—In section 79, in sub-section (2), for the words "one month, or with fine which may extend to two hundred rupees", substitute the words "one year, or with fine which may extend to one thousand rupees."

[Vide Uttar Pradesh Act 1 of 2001, sec. 19 (w.e.f. 16-4-2001).]

Uttaranchal.—Same as in Uttar Pradesh.

[Vide Uttaranchal Act 10 of 2002, sec. 18.]

80. Management of forests the joint property of Government and other persons.—(1) If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the ¹[State Government] may either—

- (a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same; or
- (b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

(2) When the ¹[State Government] undertakes under clause (a) of sub-section (1) the management of any forest, waste-land or produce, it may, by notification in the ²[Official Gazette], declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

1. Subs. by the A.O. 1950, for "Provincial Government".

2. Subs. by the A.O. 1937, for "Local Official Gazette".

STATE AMENDMENTS

SECTION 80A

Gujarat.—After section 80, insert the following section, namely:—

"80A. Power of Government to apply provisions of this Act to certain lands of Government or local authority.—The State Government may, by notification in the Official Gazette, declare that any of the provisions of this Act shall apply to all or any lands 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 to such lands accordingly."

[Vide Gujarat Act 15 of 1960, secs. 3 and 4 (2) (w.e.f. 8-12-1960).]

Madhya Pradesh.—After section 80, insert the following section, namely:—

"80A. Penalty for unauthorisedly taking possession of land constituted as reserved or protected forest.—(1) Any person who unauthorisedly takes or remains in possession of any land in areas constituted as reserved or protected forest under section 20 or section 29, as the case may be, without prejudice to any other action that may be taken against him under any other provision of this Act, be summarily ejected by order of a Forest-officer not below the rank of Divisional Forest Officer and any crop which may be standing on such land or any building or other work which he may have constructed thereon, if not removed by him within such time as such Forest-officer may fix, shall be liable to forfeiture:

Provided that no order of ejectment under this sub-section shall be passed unless the person proposed to be ejected is given a reasonable opportunity of showing cause why such an order should not be passed.

. (2) Any property so forfeited shall be disposed of in such manner as the Forest-officer may direct and the cost of removal of any crop, building or other work and of all works necessary to restore the land to its original condition shall be recoverable from such person in the manner provided in section 82.

(3) Any person aggrieved by an order of the Forest-officer under sub-section (1) may, within such period and in such manner as may be prescribed, appeal against such order to the State Government or to such officer as may be authorised by the State Government in this behalf and the order of the Forest-officer shall, subject to the decision in such appeal, be final.

(4) The provisions of this section shall apply to such areas, and on such dates as the State Government may, by notification*, specify and different dates may be specified for different areas."*

[Vide Madhya Pradesh Act 9 of 1965, sec. 17 (w.e.f. 20-3-1965).]

* Provisions have been extended to West Nimar, Sidhi, Surguja, Sehorè, Raigarh, Bilaspur, Raipur, Durg, Bastar, Sagar, Jabalpur, Balaghat, Damoh, Mandla, Seoni, Narsimhapur, Raisen, Chhindwara, Hoshangabad, Betul, Shajapur, Rajgarh, Vidisha, Gwalior, Bhind, Shivpuri, Morena, Guna, Datia, Indore, Ujjain, Dewas, Dhar, Jabua, Ratlam, East Nimar, Mandsaur, Rewa, Panna, Satna, Shehdol, Chhatarpur and Tikamgarh—See M.P. Gaz., 20-3-1965, Extra., p. 640; *ibid.* 1966, Extra., p. 41; *ibid.* 1966, Extra., p. 1775; and *ibid.* 1967, Extra., p. 1814 respectively.

Maharashtra.—Same as that in Gujarat.

[Vide Bombay Act 24 of 1955, sec. 6 (w.e.f. 22-6-1955) and Maharashtra Act 6 of 1961, sec. 2 (w.e.f. 3-2-1961).]

Uttar Pradesh.—After section 80, insert the following section, namely:—

"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."

[Vide Uttar Pradesh Act 18 of 1951, sec. 2 (w.e.f. 6-10-1951).]

81. Failure to perform service for which a share in produce of Government forest is employed.—If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any part of the forest-produce of which the Government is entitled upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the ¹[State Government] that such service is no longer so performed:

Provided that no such share be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the ¹[State Government].

82. Recovery of money due to Government.—All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

STATE AMENDMENTS

Gujarat.—In section 82, after the words "such produce", insert the words "or on account of compensation or value of property undertaken to be paid under section 68".

[Vide Gujarat Act 15 of 1960, sec. 6 (n) (w.e.f. 8-12-1960).]

Haryana.—For section 82, substitute the following section, namely:—

82. Recovery of money due to Government.—All money, other than fines, payable to the State Government under this Act or under any rules made thereunder, or, on account of timber or other forest-produce, or under any contract relating to timber and other forest-produce including any sum recoverable thereunder for the breach thereof, or in consequence of its cancellation, or under the terms of the conditions of sale of timber or other forest-produce by auction or by invitation of tenders and all compensation awarded to the State Government under this Act may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue."

[Vide Haryana Act 12 of 1973, sec. 2 (w.e.f. 24-4-1973).]

Himachal Pradesh.—For section 82, substitute the following section, namely:—

"82. Recovery of money due to Government.—(1) All money payable to the State Government under this Act or under any rule made under this Act, or on account of the price of timber, or other forest-produce, or of expenses incurred in execution of this Act in respect of timber and other forest-produce, or under any contract relating to timber and other forest-produce including any sum recoverable thereunder for breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest-produce by auction or by invitation of tenders, issued by or under the authority of a Forest-officer and all compensation awarded to the State Government under this Act may, if not paid

1. Subs. by the A.O. 1950, for "Provincial Government".

when due, be recovered, under the law for the time being in force, as if it were an arrear of land revenue.

(2) For the removal of doubts, it is hereby declared that the provisions of sub-section (1) shall also apply to all cases of recovery which are either pending at the commencement of the Indian Forest (Himachal Pradesh Amendment) Act, 1968, or initiated hereafter in respect of contracts entered into prior to such commencement, any judgment, decree or order of any Court to the contrary notwithstanding."

[Vide Himachal Pradesh Act 25 of 1968, sec. 5 (w.e.f. 17-2-1969).]

Madhya Pradesh.—For section 82, substitute the following section, namely:—

"82. All money other than fines, payable to the State Government under this Act, or under any rules made thereunder or on account of timber or other forest produce, or under any contract relating to timber and other forest-produce including any sum recoverable thereunder for breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest-produce by auction or by invitation of tenders issued by or under the authority of a Forest-officer and all compensation awarded to the State Government under this Act may, if not paid when due, be recovered, under the law for the time being in force, as if it were an arrear of land revenue."

[Vide Madhya Pradesh Act 9 of 1965, sec. 18, (w.e.f. 20-3-1965).]

Maharashtra.—In section 82, after the words "such produce", insert the words "or on account of compensation or value of property agreed to be paid under section 68".

[Vide Maharashtra Act 6 of 1981, sec. 16 (w.e.f. 3-2-1961).]

Uttar Pradesh.—For section 82, substitute the following section, namely:—

"82. *Recovery of money due to State Government.*—All money, other than fines, payable to the State Government under this Act or under any rule made thereunder on account of the price of any forest-produce or any agricultural crop grown on land owned by the State Government in a reserved or protected forest or under any contract relating to forest-produce or said agricultural crop, including any sum recoverable thereunder for breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of such agricultural crop or other forest-produce by auction or by invitation of tenders issued by or under the authority of a Forest-officer and all compensation awarded to the State Government under this Act, may, if not paid when due, be recovered, under the law for the time being in force, as if it were an arrear of land revenue."

[Vide Uttar Pradesh Act 1 of 2001, sec. 20 (w.e.f. 16-4-2001).]

Uttaranchal.—Same as in Uttar Pradesh.

[Vide Uttaranchal Act 10 of 2002, sec. 19].

COMMENTS

Section 82 of the Act is applicable in case of recovery of the dues in respect of the auction sale of the forest-produce of the forests of Balaghat; *Mulam Chand v. State*, AIR 1960 MP 152 (DB).

83. Lien on forest-produce for such money.—(1) When any such money is payable for or in respect of any forest-produce, the amount thereof shall deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to ¹[Government].

COMMENTS

(i) Under sub-section (1) of section 83 of the Act, a charge is created automatically under the rule of law. The State Government has, under the contract and by virtue of the State even though the property in the goods has passed to the contractor, the right to pass removal of the goods and take possession thereof till the amount is paid; *Virendra Kumar v. State*, AIR 1980 All 100.

(ii) The Forest-officer could not have sold the stock of wood under the provisions of section 83 of the Act; *State of Uttar Pradesh v. Raghubir*, AIR 1972 All 555.

84. Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.—Whenever it appears to the State Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894 (1 of 1894).

STATE AMENDMENTS

SECTION 84A

Himachal Pradesh.—After section 84, insert the following section, namely:—

"84A. *Validity of settlements, etc., of covenanting States.*—For the removal of doubts, it is hereby declared that every settlement or arrangement made before the 20th August, 1948, under the authority of any covenanting State forming part of the territories referred to in sub-section (2A) of section 1, with respect to any claims or rights of any person admitted by the Government of that State to be in existence in any of the forests or waste-lands which were the property of that Government or over which that Government had proprietary rights or to the whole or part of the forest-produce of which that Government was entitled, shall be deemed to be a settlement of the claims and rights duly inquired into and admitted for the purposes of this Act and shall be deemed always to have been so inquired and admitted for the purposes of the Patiala Forest Act, 1999 B.K., and it shall not be, and shall be deemed never to have been, necessary to determine the rights of persons in accordance with Chapters II and IV, as the case may be, for declaring any forest or waste-land to be a reserved or protected forest or a first or second class forest."

[Vide Himachal Pradesh Act 25 of 1968, sec. 6 (w.e.f. 27-2-1969).]

Punjab: Haryana: Chandigarh.—Same as in Himachal Pradesh.

[Vide Punjab Act 13 of 1962, sec. 6 (w.e.f. 10-7-1962); Central Act 31 of 1966, sec. 88 (w.e.f. 1-11-1966).]

West Bengal.—After section 84, insert the following section, namely:—

"84A. *Application of the Act to land.*—The State Government may, by notification in the Official Gazette, declare that any of the provisions of this Act shall apply to any land which is the property of the State Government or the Central Government and thereupon such provisions shall apply to such land accordingly."

[Vide West Bengal Act 22 of 1988, sec. 23 (w.e.f. 3-2-1989).]

85. Recovery of penalties due under bond.—When any person, in accordance with any provision of this Act, or in compliance with any rule made thereunder, binds himself by any bond or instrument to perform any duty or act

1. Subs. by the A.O. 1950, for "Crown".

or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872 (9 of 1872), be recovered from him in case of such breach as if it were an arrear of land revenue.

STATE AMENDMENTS

Gujarat.—Renumber section 85 as sub-section (1) of that section, and after sub-section (1) as so renumbered, add the following sub-section, namely:—

“(2) If any question arises—

- (a) whether there has been a breach of any of the conditions of such bond or instrument,
- (b) as to the sum to be paid for such breach,
- (c) as to the person or persons liable to pay such sum,

the question shall be referred to and, after giving notice to the person concerned and after considering his objection (if any) be decided by an officer, not below the rank of a Sub-Divisional Forest Officer, authorised by the State Government in this behalf. The person aggrieved by the decision of such officer may, within a period of sixty days from the date of such decision, appeal to the State Government or such other appellate authority as the State Government may appoint in this behalf. The decision of such officer, subject to an appeal to the appellate authority, and the decision of the appellate authority on such appeal, shall be final.”

[*Vide Gujarat Act 15 of 1960, secs. 3 and 4(2) (w.e.f. 8-12-1960).*]

Maharashtra.—Same as in Gujarat.

[*Vide Bombay Acts 10 of 1956, sec. 2 (w.e.f. 14-3-1956) and 26 of 1957, sec. 2 (w.e.f. 23-8-1957) and Maharashtra Act 6 of 1961, sec. 2 (w.e.f. 3-2-1961).*]

COMMENTS

Section 85 applies in a particular penalty provided in contract for a breach of the condition as to the contractor abstaining from any act and it cannot be applied generally to all the consequences of a rescission of the contract under the terms of the contract; *Bhagwan Das v. Secretary of State*, AIR 1925 Bom 227.

¹[85A. Saving for rights of Central Government.—Nothing in this Act shall authorise a Government of any State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned.]

86. Repeals.—[*Rep. by Repealing and Amending Act, 1947 (2 of 1948), sec. 2 and Sch.*].

THE SCHEDULE.—Enactments Repealed.—[*Rep. by the Repealing and Amending Act, 1947 (2 of 1948), sec. 2 and Sch.*].

1. Subs. by the A.O. 1950, for section 85A. Earlier section 85A was inserted by the A.O. 1937.

THE FOREST (CONSERVATION) ACT, 1980

(69 of 1980)

[27th December, 1980]

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

BE it enacted by Parliament in the Thirty-first year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Forest (Conservation) Act, 1980.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 25th day of October, 1980.

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

- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose;
- ¹[(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 organisation 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.]

²[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 or ancillary to conservation, development and management of forests and wild-life, 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.]

1. Ins. by Act 69 of 1988, sec. 2 (w.e.f. 15-3-1989).

2. Subs. by Act 69 of 1988, sec. 2, for "Explanation" (w.e.f. 15-3-1989).

COMMENTS

(i) Where the conditions are not satisfied, mines situated within the protected forest must be closed forthwith and mines situated partly within and partly outside the protected forest should also be closed forthwith insofar as they fall within the protected forest. Thus the grant of lease/licence is illegal; *Tarun Bhagat Singh v. Union of India*, 1993 Supp (3) SCC 115.

(ii) Section 2 applies to any forest land irrespective of the fact that it has been declared as reserved forest or not; *Uttar Pradesh Gandhi Ismark Nidhi, Vijayasthapak v. State of Uttar Pradesh*, (1988) 2 Reports (All) 327.

¹[2A. Appeal to National Green Tribunal.—Any person aggrieved, by an order or decision of the State Government or other authority made under section 2, on or after the commencement of the National Green Tribunal Act, 2010*, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.]

3. Constitution of Advisory Committee.—The Central Government may constitute a Committee consisting of such number of persons as it may deem fit to advise that Government with regard to—

- (i) the grant of approval under section 2; and
- (ii) any other matter connected with the conservation of forests which may be referred to it by the Central Government.

²[3A. Penalty for contravention of the provisions of the Act.—Whoever contravenes or abets the contravention of any of the provisions of section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.]

²[3B. Offences by authorities and Government departments.—(1) Where any offence under this Act has been committed—

- (a) by any department of Government, the head of the department; or
- (b) by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the department, or in the case of an authority, any person other than the persons referred to in clause (b) of sub-section (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.]

4. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

1. Ins. by Act 19 of 2010, sec. 36 and Sch. (w.e.f. 18-10-2010).

* Date of commencement 18-10-2010, vide S.O. 2569(E), dated 18th October, 2010.

2. Ins. by Act 69 of 1988, sec. 3 (w.e.f. 15-3-1989).

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

5. Repeal and saving.—(1) The Forest (Conservation) Ordinance, 1980 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

189

Annexure H.3

Government Gazette (Extraordinary) Punjab

Published by Authority

Lahore, Saturday, October 24, 1942

LEGISLATIVE DEPARTMENT

The 24th October 1942

No. 344-Leg. -- The Punjab Land Preservation (Chos) (Amendment) Bill is published for general information under the proviso to rule 83 of the Rules of Procedure of the Punjab Legislative Assembly:-

A Bill further to amend the Punjab Land Preservation (Chos) Act, 1900.

It is hereby enacted as follows:-

Short title	1.	This Act may be called the Punjab Land Preservation (Chos) (Amendment) Act, 1942.
Amendment of long title of Punjab Act II of 1900.	2.	In the long title of the Punjab Land Preservation (Chos) Act, 1900 (hereinafter referred to as the said Act), the words "situate within or adjacent to Siwalik mountain range" shall be omitted.
Omission of preamble of Punjab Act II of 1900.	3.	The preamble of the said Act shall be omitted.
Amendment of section 1 of Punjab Act II of 1900.	4.	In section 1 of the said Act:- (a) subsection (2) shall be renumbered as subsection (3); (b) after subsection (1) the following subsection shall be inserted, namely:- "(2) It extends to the whole of the Kangra district and to areas situate within or adjacent to the Siwalik mountain range."
Amendment of section 3 of Punjab Act II of 1900.	5.	For section 3 of the said Act, the following shall be substituted, namely:-
Notification of	3.	Whenever it appears to the Provincial

Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

areas.	Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion such Government may by notification make a direction accordingly."

STATEMENT OF OBJECTS AND REASONS

The Uhl Hydro-Electric Project depends for its water supply on the Uhl River which provides ample water in the summer months but much less water in the winter when the higher hills are covered with snow and the effects of the monsoon rainfall have passed away. It is, however, in the winter months that the demand for electricity is particularly keen and it is essential that everything possible should be done to increase the discharge in cold weather months. The difficulty is largely due to deboisement of forests and over-grazing of pasture lands which result in increasingly rapid run off from the hills in the monsoon months and the consequent depletion of sub-soil water which would otherwise feed the stream thereafter. The evil effect of the denudation of hills has given rise to similar difficulties in the Swalik Range and it was for this reason that the Land Preservation Act II of 1900 was passed. Under section 3 of that Act however its provisions can only be applied to areas within or adjacent to the Swalik mountains and as the Uhl valley lies outside this area, it is not at present possible to make use of its provisions in the interest of the Hydro Electric Project. It is proposed, therefore, in the present Bill to extend this Act so as to include the whole of the Kangra District.

BALDEV SINGH
Minister in Charge

E.C. MARTEN
Secretary, Legislative Department

Attested

[Signature]

Divisional Forest Officer,
GURGAON Forest Division
GURGAON.

//TRUE COPY//

191

Annexure H-4

1900 : Pb. Act 21

LAND PRESERVATION

193

PUNJAB LAND PRESERVATION ACT, 1900.

CONTENTS

Sections.

Preliminary.

1. Short title and commencement.

General Definitions.

2. Definitions.

Notification and Regulation of Areas

3. Notification of areas.
4. Power to regulate, restrict or prohibit, by *general or special* order, within notified areas, certain matters.
5. Power in certain cases, to regulate, restrict or prohibit, by special order, within notified areas, certain further matters.
- 5-A. Power to require execution of works and taking of measures.
6. Necessity for regulation, restriction or prohibition to be recited in the order under sections 4, 5 or 5-A.

Publication of Order.

7. Proclamation of regulations, restrictions, and prohibitions and admission of claims for compensation for rights which are restricted or prohibited.
- 7-A. Power to fix time within which work to be executed etc.

Control over the beds of Chos.

8. Action when State Government considers it desirable to take measures to regulate the beds of chos. Vesting of such beds in the Government.
9. Effect of notification to suspend or extinguish private rights in the area notified under section 8.
10. Power of Deputy Commissioner to delimit the bed and to decide what constitutes such bed. Power to take possession of bed when vested in the Government.
11. Bar of compensation for acts done under sections 8, 9 or 10.
12. [Repealed.] *Attended*

Hm
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

*Sections.**Power to enter upon and delimit notified area and beds.*

13. Power to enter upon, survey and demarcate local areas notified under section 3 or section 8.

Inquiry into claims and awards of compensation.

14. Inquiries into claims and awards thereupon.
15. Method of awarding compensation and effect of such award.

Procedure, Records and Appeal.

16. Record-of-rights in respect of notified area.
17. Mode of proclaiming notifications and of serving notices, orders and processes, issued under the Act.
18. Appeal, review and revision.

Penalties, bar of Suits and Rules.

19. Penalty for offences.
20. Application of provisions of Act VII of 1878.
21. Bar of suits.
22. Power to make rules.

Attested
H
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

193

1900 : Pb. Act 2]

LAND PRESERVATION

195

PUNJAB LAND PRESERVATION ACT, 1900¹

PUNJAB ACT 2 OF 1900²

[28th August, 1900, 10th October, 1900.]

1	2	3	4
Year	No.	Short title	Whether repealed or otherwise affected by legislation
1900	ii	The Punjab Land Preservation Act, 1900	Amended Punjab Acts, 4 of 1905 ³ , 7 ⁴ and 8 ⁵ of 1926. Amended Government of India (Adaptation of Indian Laws) Order, 1937. Amended by Punjab Act (1) of 1942 ⁶ Amended by Punjab Act 4 of 1944 ⁷ Amended by the Indian Independence (Adaptation of Bengal and Punjab Acts) Orders, 1948 (G.O. 40) Amended by Punjab Act 7 of 1950 ⁸ Amended by the Adaptation of Laws Order, 1950. Amended by the Adaptation of Laws (Third Amendment) Order, 1951. Amended by Punjab Act I of 1951 ⁹ Extended to the territories which, immediately before the 1st November, 1956 were comprised in the Patiala and East Punjab States Union, by Punjab Act No. 18 of 1956. Extended to the territories which, immediately before the 1st November, 1956 were comprised in the Patiala and East Punjab States Union, by Punjab Act 18 of 1958 ¹⁰ . The Haryana Adaptation of Laws (State and Concurrent Subjects) Order, 1968 ¹⁰ .

1. For Statement of Objects and Reasons, see *Punjab Gazette*, 1899, Part V-A, page 15.
2. For Statement of Objects and Reasons, see *Punjab Gazette*, 1905, Part V, page 137.
3. For Statement of Objects and Reasons, see *Punjab Gazette*, 1926, Part V, page 28. It came into force on 16th August, 1926.
4. For Statement of Objects and Reasons, see *Punjab Gazette*, 1926, Part I, page 544. It came into force on 16th August, 1926.
5. For Statement of Objects and Reasons, see *Punjab Gazette*, 1942, Extraordinary, page 255.
6. For Statement of Objects and Reasons, see *Punjab Gazette*, 1943, Extraordinary, pages 45-46.
7. For Statement of Objects and Reasons, see *Punjab Gazette*, 1950, Extraordinary, pages 159.
8. For Statement of Objects and Reasons, see *Punjab Gazette*, 1951, Extraordinary, pages 100.
9. For Statement of Objects and Reasons, see *Punjab Gazette* (Extraordinary), 1958, pages 546K.
10. For Statement of Objects and Reasons, see *Haryana Gazette* (Extraordinary), dated the 29th October, 1968.

Division of Forests and
Guns and Explosives
PUNJAB

194

196

LAND PRESERVATION

[1900 : Pb. Act 2

An Act to provide for the better preservation and protection of certain portions of the territories of '[Haryana] * * * *

* * * * *

It is hereby enacted as follows :—

PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Punjab Land Preservation Act, 1900.

[(2) It shall extend to the whole of the State of '[Haryana.]

[(3) It shall come into force at once [in the principal territories and on the 15th May, 1958 in the transferred territories.]

Definitions.

2. In this Act unless a different intention appears from the subject or context,—

(a) the expression "land" means land within any [* *] area preserved and protected or otherwise dealt with in manner in this Act provided, and includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(b) the expression "cho" means a stream or torrent flowing through or from the Siwalik mountain range within '[Haryana];

1. Substituted for the word "Punjab" by the Haryana Adaptation of Laws (State and Concurrent Subjects) Order, 1968.
2. The words "Situate within or adjacent to the Siwalik mountain range" omitted by Punjab Act 11 of 1942, section 2.
3. The preamble was omitted by *Ibid*, section 3.
4. The brackets and word "(chos)" omitted by Punjab Act 4 of 1944, section 2(a).
5. Sub-section (2) inserted by Punjab Act 11 of 1942, section 4(a) and substituted by Punjab Act 4 of 1944, section 2(b) was substituted against the present sub-section by Punjab Act 1 of 1951, section 2.
6. The old sub-section (2) was renumbered as sub-section (3) by Punjab Act 11 of 1942, section 4(a).
7. Added by the Haryana Adaptation of Laws (State and Concurrent Subjects) Order, 1968.
8. The word "Local" omitted by the Punjab Act 4 of 1944, section 3(a).

Attested
H
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

195

(c) the expressions "tree", "timber", "forest-produce" and "cattle", respectively, shall have the meanings severally assigned thereto in section 2 of the Indian Forest Act, ¹(1927);

(d) the expression "person interested" includes all persons claiming any interest in compensation to be made on account of any measures taken under this Act ²("* *");

(e) the expression "Deputy Commissioner" includes any officer or officers at any time specially appointed by the ³(State) Government to perform the functions of a Deputy Commissioner under this Act;

⁴(f) the expression "rightholder" includes—

(i) persons not being tenants or mortgagees having rights to or in land; and

(ii) persons having rights of collection of forest produce or of grazing or pasture; and

(g) the expression "erosion" includes the removal or displacement of earth, soil, stones or other materials by the action of wind or water.]

NOTIFICATION AND REGULATION OF AREAS.

⁵[3. Whenever it appears to the ⁶(State) Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly.]

4. In respect of areas notified under section 3 generally or the whole or any part of any such area, the ⁷(State) Government may by general or special order temporarily * * * * * regulate, restrict or prohibit—

Notification of areas.

Power to regulate, restrict or prohibit by general or special order, within notified areas, certain matters.

1. Substituted for the figures "1878" by Punjab Act 4 of 1944, section 3(b). See the Indian Forest Act, 1927 (16 of 1927), section 2.
2. The word "and" omitted by *ibid*, section 3(c).
3. Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
4. Added by Punjab Act 4 of 1944, section 3(d).
5. Substituted for the old section by Punjab Act 11 of 1942, section 5.
6. The words "or permanently" were omitted by Punjab Act 7 of 1926, section 2.

Hm
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

196

- (a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under section 3;
- (c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section, of any forest produce other than grass, save for *bonafide* domestic or agricultural purposes ¹[or right-holder in such area];
- (d) the setting on fire of trees, timber or forest produce;
- (e) the admission, herding, pasturing or retention of sheep ²[goats or camels];
- (f) the examination of forest-produce passing out of any such area; and
- (g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom or to pasture sheep ³[goats or camels] or to cultivate or erect buildings therein and the production and return of such permits by such persons.

Power in certain cases, to regulate, restrict or prohibit by special order, within notified areas, certain further matters.

5. In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3, the "[State] Government may, by special order, temporarily * * * regulate, restrict or prohibit—

- (a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification

1. Added by Punjab Act 4 of 1944, section 4(a).
 2. Substituted for the words "or goats" by *ibid*, section 4(b).
 3. Substituted for the word "or goats" by *ibid* section 4(c).
 4. Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
 5. The words "or permanently" were inserted by Punjab Act 7 of 1926, section 3.

Divisional Forest Officer
 Gurgaon Forest Division
 GURGAON.

197

under section 3;

- (c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section, of any forest-produce '[for any purpose], and
- (d) the admission, herding, pasturing or retention of cattle generally other than sheep²[goats and camels], or of any class or description of such cattle.

*[5-A. In respect of areas notified under section 3 generally or the whole or any part of any such area, the³[State] Government may, by general or special order, direct—

Power to require execution of works and taking of measures.

- (a) the levelling, terracing, drainage and embanking of fields ;
- (b) the construction of earth-works in fields and ravines ;
- (c) the provision of drains for storm water ;
- (d) the protection of land against the action of wind or water ;
- (e) the training of streams ; and
- (f) the execution of such other works and the carrying out of such other measures as may, in the opinion of the³[State] Government, be necessary for carrying out the purposes of this Act.]

6. Every order made under⁵[sections 4, 5 or 5-A] shall be published in the 'Official Gazette and shall set forth that the [State]² Government is satisfied, after due inquiry, that regulations, restrictions⁷[prohibitions or directions] contained in the order are necessary for the purpose of giving effect to the provision of this Act.

Necessity for regulation, restriction or prohibition to be recited in the order under sections 4, 5 and 5-A, Publication of order.

1. Substituted for the words "for bona fide domestic or agricultural purposes" by Punjab Act 4 of 1905.
2. Substituted for the words "and goats" by Punjab Act 4 of 1944, section 5.
3. Substituted for the word "Provincial" by the Adaptation of Laws Order 1950.
4. Inserted by *ibid*, section 6.
5. Substituted for "Section 4 or section 5" by *ibid*, section 7 (a).
6. Substituted for the word "Gazette" by the Government of India (Adaptation of Indian Laws) Order, 1937.
7. Substituted for the words "or prohibitions" by *ibid*, section 7 (b).

Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

198

Proclamation of regulations, restrictions and prohibition and admission of claims for compensation for rights which are restricted or prohibited.

7. (1) When, in respect of any '(* *) area, a notification has been published under section 3, and—

- (a) upon such publication any general order, made under section 4 ²[or section 5-A] becomes applicable to such area, or
- (b) any special order under ³[sections 4, 5 or 5-A], is made in respect of such area,

the Deputy Commissioner shall cause public notice of the provisions of such general or special order to be given and if the provisions of any such order restrict or ⁴[prohibit the exercise of] any existing rights, shall also publish in the language of the country and in every town and village the boundaries of which include any portion of the area within or over which the ⁵[exercise of any such rights is so restricted or prohibited] a proclamation stating the regulation, restrictions and prohibitions which have been imposed, by any such order, within the limits of such area or in any part or parts thereof fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

(2) Any claim not preferred within the time fixed in the proclamation made under sub-section (1), shall be rejected:

Provided that, with the previous sanction of the Commissioner, the Deputy Commissioner may admit any such claim as if it had been made within such period.

"[7-A. (1) When an order has issued under section 5-A, the Deputy Commissioner may by notice require the owner or occupier of the land to execute such works or take such measures as may be specified in the notice.

1. The word "Local" was omitted by Punjab Act 4 of 1944, section 8 (a).
2. Inserted by *ibid*, section 8 (b).
3. Substituted for "Section 4 or section 5" by *ibid*, section 8 (c).
4. Substituted for the word "extinguish" by Punjab Act 7 of 1926, section 4.
5. Substituted for the words "any such rights are so restricted or extinguished" by *ibid*, section 4.
6. Inserted by Punjab Act 4 of 1944, section 9.

Handwritten signature
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

199

(2) Every such notice shall state the time within which the works are to be executed or measures are to be taken.

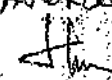
(3) A person aggrieved by an order contained in such a notice as aforesaid may, within thirty days from the service of such notice or within such longer period as the Deputy Commissioner may allow him in this behalf, serve a notice of his objections on the Deputy Commissioner in such manner as may be provided by the rules made under this Act.

(4) If and in so far as an objection under this section is based on the ground of some informality, defect or error in or in connection with the notice, the Deputy Commissioner shall dismiss the objection, if he is satisfied that the informality, defect or error was not a material one.

(5) If the objection is brought on all or any of the following grounds, that is to say :—

- (a) that the notice might lawfully have been served on the occupier of the land in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served ;
- (b) that some other person, being the owner, occupancy tenant, mortgagee with possession, or lessee, or farm holder, or possessing some other right in or over the land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required ;
- (c) where the work or measure is work or measure for the common benefit of the land in question and other land, that some other person being the owner or occupier of land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required ;

the objector shall serve a copy of his notice of objection on each other person referred to, and on the hearing of the objection the Deputy Commissioner may make such order as he thinks fit with respect to the person by whom any work is to be executed or measure is to be taken and the contribution to be made by any other person towards the cost of the work or measure, or as to the proportions in which any expenses which may become recoverable by the Deputy Commissioner


Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

200

under sub-section (6) are to be borne by the objector and such other person :

Provided that no such order shall be made unless the person who is likely to be affected thereby has been given a reasonable opportunity of being heard.

In exercising his power under this sub-section the Deputy Commissioner shall have regard—

- (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works and measures required ; and
- (b) in any case, to the degree of benefit to be derived by the different persons concerned.

(6) Notwithstanding anything to the contrary in any law for the time being in force, no person required by a notice or an order under this section to execute any work or to take any measure shall be required to obtain the consent of any other person before complying with such notice or order.

(7) Subject to such right of objection as aforesaid and the right of appeal under section 18, if the person required by the notice to execute works or to take measures fails to execute the works or to take the measures indicated within the time thereby limited, the Deputy Commissioner may himself or by an agent execute the works or take the measures and recover from that person the expenses reasonably incurred by him in so doing :

Provided that it shall not be necessary for the Deputy Commissioner to wait for the decision of any objection other than an objection under clause (a) of sub-section (5), or an appeal against any decision on such objection, before taking action under this sub-section.

* * * * *

(8) If the cost of any work executed or any measure taken by any person remains unpaid by the person from whom it is due after the date specified in a notice issued in this behalf by the Deputy Commissioner or such other date as is fixed by him, such cost shall be recoverable as an arrear of land revenue and a certificate issued by the

1. Proviso (2) omitted by Punjab Act 1 of 1951, section 3.

[Signature]
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

201

Deputy Commissioner in this behalf shall be final and conclusive evidence of the sum so recoverable and the person liable for the same.

(9) Every order issued under this section shall be published in such manner as may be prescribed in the rules made under this Act, and upon such publication every person affected thereby shall, unless the contrary be proved, be deemed to have had due notice thereof.

(10) The Deputy Commissioner may by general or special order authorise any revenue officer subordinate to him to enquire into any objection that may be brought under this section :

Provided that no final order on any such objection shall be passed except by the Deputy Commissioner himself.

(11) In making an order on objections brought under this section, the Deputy Commissioner shall be guided by such rules, if any, as the [State] Government may make in this behalf.

(12) For the purposes of this section, the expression "estate" shall have the meaning assigned thereto in the Punjab Land Revenue Act, 1887.]

CONTROL OVER THE BEDS OF CHOS.

8. (1) Whenever it appears to the [State] Government that it is desirable that measures should be taken in the bed of any *cho* for the purpose of—

- (a) regulating the flow of water within, and preventing the widening or extension of, such bed, or of;
- (b) reclaiming or protecting any land situate within the limits of such bed;

such Government, may, either proceed at once in manner in sub-section (2) provided, or in the first instance, by notification specifying the nature and extent of the measure to be taken and the locality in and the time within which such measures are to be so taken, require all persons possessing proprietary or occupancy rights in land situate in such locality to themselves carry out the measures specified in such notification accordingly.

(2) If the whole or any part of the bed of any *cho* be unclaimed, or, if, in the opinion of the [State] Government the measures deemed necessary under sub-section (1) are of such a character, in regard to

Action when State Government considers it desirable to take measures to regulate the beds of chos. Vesting of such beds in State Government.

1. Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

Hu
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

202

extent and cost, that the interference of the '[State] Government is absolutely necessary, or in the event of the owner or occupier of any portion of the bed of any *cho* failing to comply with the requirements of any notification issued under sub-section (1) such Government may, by notification, declare that the whole or any part of the area comprised within the limits of the bed of any *cho* shall vest in '[the State Government]' * * * for such period and subject to such conditions (if any) as may be specified in the notification :

Provided that no such declaration shall be made in respect of, or shall affect, any land included within the limits of the bed of any such *cho*, which at the date of the publication of the notification making such declaration, is cultivated or culturable, or yields any produce of substantial value.

(3) When the owner or occupiers of such locality are unable to agree among themselves regarding the carrying out of such measures, the decision of those paying the larger amount of land-revenue shall be held to be binding on all.

(4) The '[State] Government may, from time to time, by like notification, extend the period during which any such area shall remain vested in the '[the State Government].

9. Upon the making of any declaration under sub-section (2) of section 8, all private rights of whatever kind existing in or relating to any land comprised within the area specified in the notification containing such declaration at the time of the publication thereof, shall '[be suspended for the period specified in the declaration and for such further period (if any) to which such period may at any time be extended] :

Provided that, as far as circumstances admit, such rights of way and water shall be reserved, in respect of every such area, as may be necessary to meet the reasonable requirements and convenience of the persons (if any) who at the time of the making of such declaration, possessed any such rights over such area.

Effect of
notification to
suspend or
extinguish
private rights in
the area notified
under section 8.

1. Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
2. Substituted for the words "His Majesty for the purposes of the Province" by the Adaptation of Laws (Third Amendment) Order, 1951.
3. The words "either absolutely and in perpetuity or" were omitted by Punjab Act 8 of 1926, section 2.
4. Substituted for the words "His Majesty" by the Adaptation of Laws (Third Amendment) Order, 1951.
5. Substituted for the old clauses (a) and (b) by Punjab Act 8 of 1926, section 3.

[Signature]
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

203

10. (1) The Deputy Commissioner shall, for the purposes of every notification issued under sub-section (2) of section 8, fix the limits of the area comprised within the bed of the *cho* to which such notification is to apply.

Power of Deputy Commissioner to delimit the bed and to decide what constitutes such bed. Power to take possession of bed when vested in the State Government.

(2) Upon the publication of a notification containing any declaration under sub-section (2) of section 8, it shall be lawful for the Deputy Commissioner to—

- (a) take possession of the area specified in such declaration;
- (b) eject all persons therefrom; and
- (c) deal with such area, while it remains vested in [the State Government], as if it were the absolute property of [the State Government].

11. No person shall be entitled to any compensation for any thing at any time done, in good faith, in exercise of any power conferred by section 8, section 9 or section 10.

Bar of compensation for acts done under sections 8, 9 or 10.

12. [Condition as to sale of land acquired under the Act and obligation of Local Government to keep account of moneys expended on such land]—*Repealed by Act 8 of 1926, s. 4.*

POWER TO ENTER UPON AND DELIMIT NOTIFIED AREAS AND BEDS

13. It shall be lawful for the Deputy Commissioner and for his subordinate officers, servants, cart takers and workmen, from time to time, as occasion may require,—

Power to enter upon, survey and demarcate local areas notified under section 3 or section 8.

- (a) to enter upon and survey any land comprised within any * * * * area in regard to which any notification has been issued under section 3 or section 8 [or in regard to which a notification is proposed to be issued under section 5-A];
- (b) to erect bench-marks on and to delimit and demarcate the boundaries of any such;
- (c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to give effect to all or any of the provisions of this Act.

- 1. Substituted for the words "His Majesty" by the Adaptation of Laws (Third Amendment) Order, 1951.
- 2. The word "local" omitted by Punjab Act 4 of 1944, section 10(a).
- 3. Inserted by *ibid.*, section 10(b).

Hm
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

204

Provided that reasonable compensation, to be assessed and determined in the manner in this Act provided, shall be made in respect of any damage or injury caused to the property or rights of any person in carrying out any operations under the provisions of this section, but no such compensation shall be payable in respect of anything done under the said provisions within the limits of any * * * area notified under section 8.

INQUIRY INTO CLAIMS AND AWARD OF COMPENSATION

Inquiries into
claims and
awards
thereupon.

14. (1) The Deputy Commissioner shall—

- (a) fix a date for inquiring into all claims made under section 7 * 2* and may in his discretion, from time to time, adjourn the inquiry to a date to be fixed by him;
- (b) record in writing all statements made under section 7;
- (c) inquire into all claims duly preferred under section 7 * 2*, and
- (d) make an award upon each such claim, setting out therein the nature and extent of the right claimed, the person or persons making such claim, the extent (if any) to which, and the person, or persons in whose favour, the right claimed is established, the extent to which it is to be restricted or ³[prohibited] and the nature and amount of the compensation (if any awarded).

(2) For the purposes of every such inquiry the Deputy Commissioner may exercise all or any of the powers of a Civil Court in the trial of suits under the Code of Civil Procedure.

(3) The Deputy Commissioner shall announce his award to such persons interested, or their representatives, as are present, and shall record the acceptance of those who accept it. To such as are not present, the Deputy Commissioner shall cause immediate notice of his award to be given.

- 1. The word "local" omitted by Punjab Act 4 of 1944, section 10(a).
- 2. The words "or section 12" were omitted by Punjab Act 8 of 1926, section 5.
- 3. Substituted for the word "extinguished" by *ibid*, section 5.
- 4. See now the Code of Civil Procedure, 1908 (Act 5 of 1906).

H. M.
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

205

15. (1) In determining the amount of compensation, the Deputy Commissioner shall be guided, so far as may be, by the provisions of sections 23 and 24 of the Land Acquisition Act, 1894, and, as to matters which cannot be dealt with under those provisions, by what is just and reasonable in the circumstances of each case.

Method of awarding compensation and effect of such award.

(2) The Deputy Commissioner may, with the sanction of the [State] Government and the consent of the person entitled, instead of money award compensation in land or by reduction in revenue or in any other form.

(3) If, in any case, the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such right is so prohibited.

(4) * * * * *

PROCEDURE, RECORDS AND APPEALS

16. (1) For every area, notified under section 3 or section 8, the Deputy Commissioner shall prepare a record setting forth the nature, description, local situation and extent of all rights mentioned in section 4 and section 5—

Record of rights in respect of notified areas.

(a) existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8;

(b) regulated, restricted, * * * or [prohibited] by any order under section 4 or section 5.

(2) When any award is made under section 14, its effect upon any right shall also be recovered therein.

17. (1) Upon the publication of a notification issued under any of the provisions of this Act, the Deputy Commissioner shall cause public notice of the substance thereof to be given at convenient places in the locality to which such notification relates.

Mode of proclaiming notification and of serving notices, orders and processes issued under the Act.

1. Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
2. Repealed by Punjab Act 8 of 1926, section 6.
3. The word "suspended" was omitted by Punjab Act 8 of 1926, section 7.
4. Substituted for the word "extinguished" by *ibid*, section 7.

Hm
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

206

(2) The procedure prescribed in sections 20, 21 and 22 of the Punjab Land-Revenue Act, 1887, shall be followed, as far as may be, in proceedings under this Act.

Appeal, review
and revision.

18. Every order passed and every award made by a Deputy Commissioner under this Act, shall, for the purposes of appeal, review and revision, respectively, be deemed to be the order of a Collector within the meaning of sections 13, 14, 15 and 16 of the Punjab Land-Revenue Act, 1887.

Provided that nothing in this Act contained shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in and compensation awarded as to the apportionment or distribution thereof amongst such persons or any of them.

PENALTIES, BAR OF SUITS AND RULES

Penalty for
offences.

19. Any person who, within the limits of any area notified under section 3, commits any breach of any regulation made [restriction or prohibition imposed, order passed or requisition made under sections 4, 5, 5-A or 7-A] [or obstructs or resists in any way whatever the execution of acts or things done under section 13,] shall be punished with imprisonment for a term which may extend to one month, or with a fine which may extend to one hundred rupees, or with both.

Application of
provisions of the
Indian Forest Act,
1927.

20. [The provisions of sections 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64 (excluding the last sentence), 66, 67, 68, and 73 of the Indian Forest Act, 1927,] shall, so far as applicable, be read as part of this Act, and for the purposes of those provisions, every offence punishable under section 19 shall be deemed to be a "forest offence", and every officer employed in the management of any area notified under section 3 or section 8, as care-taker or otherwise, shall be deemed to be a forest officer.

1. The word "local" omitted by Punjab Act 4 of 1944, section 11(a).
2. Substituted for the words "or restriction or prohibition imposed under section 4 or section 5" *ibid*, section 11(b).
3. Inserted by Punjab Act 7 of 1950, section 2.
4. Substituted for "The provisions of sections 52, 54, 55, 56, 57, 58, 59, 60, 61, 63 (excluding the last sentence), 64, 65, 66, 67, and 72 of the Indian Forest Act, 1878," by Punjab Act 4 of 1944, section 12.

[Signature]
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

207

1900 : Pb. Act 2]

LAND PRESERVATION

209

21. No suit shall lie against the ¹[Government] for anything done under this Act, and no suit shall lie against any public servant, for anything done, or purporting to have been done, by him, in good faith, under this Act.

Bar of suits.

22. (1) The ²[State] Government may make rules, consistent with this Act,—

Power to make rules.

- (a) regulating the procedure to be observed in any inquiry or proceeding under this Act; and
- (b) generally for the purpose of carrying into effect all or any of the provisions of this Act.

(2) All rules made under this section shall be published in the ³Official Gazette.

Attested

H

1. Substituted for the word "Crown" by the Adaptation of Laws Order, 1950.
2. Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950. Divisional Forest Officer
3. Substituted for the word "Gazette" by the Government of India. (Adaptation of Gurgaon Forest Division Indian Laws) Order, 1937. GURGAON.

"TRUE COPY"

Annexure-H-5

[Published in Haryana Govt. Gaz. (Extra.), Nov. 17, 1997]

Haryana Government

Forest Department

Order

Dated 17, November, 1997

No. S.O.113/P.A.2/1900/S.3/97:- Whereas, it appears to the Governor of Haryana that the areas specified in the schedule hereunto annexed situated within Haryana State are subject to erosion by the removal or displacement of earth, soil stones, or other materials by the action of wind and water and that it is desirable to provide for the conservation of the sub-soil water and for the prevention of erosion of the said areas;

Now, therefore, in exercise of the powers conferred by section 3 of the Punjab Land Preservation Act 1900, and in supersession of Haryana Forest Department Notification No. S.O.64/P.A.2/1900/S.3/1980, dated the 10th July, 1980, the Governor of Haryana hereby notifies the said areas for the conservation of sub-soil water and prevention of erosion therein:-

SCHEDULE

District	Tehsil	Villages
Panchkula	Kalka	All revenue estate of Kalka Tehsil
	Panchkula	All revenue estate of Panchkula Tehsil
Ambala	Naraingarh	All revenue estate of Naraingarh Tehsil
	Ambala	All revenue estate of Ambala Tehsil
	Barara	All revenue estate of Barara Tehsil
Y/Nagar.	Jagadhari	All revenue estate of Jagadhari Tehsil
	Chhachhrauli	All revenue estate of Chhachhrauli Tehsil
Faridabad	Faridabad	All revenue estate of Faridabad Tehsil
	Ballabgarh	All revenue estate of Ballabgarh Tehsil
	Palwal	All revenue estate of Palwal Tehsil
	Hathin	All revenue estate of Hathin Tehsil
Gurgaon	Gurgaon	All revenue estate of Gurgaon Tehsil

Attested
H
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

District	Tehsil	Villages
	Nuh	All revenue estate of Nuh Tehsil
	Ferozepur Jhirka	All revenue estate of Ferozepur Jhirka Tehsil
	Sohna	All revenue estate of Sohna Tehsil
	Pataudi	All revenue estate of Pataudi Tehsil
Mohindergarh	Narnaul	All revenue estate of Narnaul Tehsil
	Mohindergarh	All revenue estate of Mohindergarh Tehsil
Rewari	Rewari	All revenue estate of Rewari Tehsil
	Bawal	All revenue estate of Bawal Tehsil
	Koshli	All revenue estate of Koshli Tehsil
Bhiwani	Bhiwani	All revenue estate of Bhiwani Tehsil
	Dadri	All revenue estate of Dadri Tehsil
	Lohari	All revenue estate of Lohari Tehsil

S.K. MAHESHWARI,
Commissioner and Secretary to Government
Haryana, Forest Department.

TRUE COPY

Attested

Hm

Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

[Published in Haryana Govt. Gaz. (Extra.), Nov. 17, 1997]

HARYANA GOVERNMENT
FOREST DEPARTMENT
ORDER

Dated 28 November, 1997

No. S.O. 121/P.A. 2/ 1900 IS.4/ 97:- Whereas the Governor of Haryana is satisfied after due enquiry that the regulations, restrictions and prohibitions hereinafter contained are necessary for the purpose of giving effect to the Punjab land preservation Act 1990.

Now, therefore, in exercise of the powers conferred by section 4 of the said Act, and in suppression of Haryana Government, Forest Department order No. S.O 130/P.A./2/1900/S. 4/1995, Dated the 16th November, 1995, the Governor of Haryana hereby prohibits the following acts for a period of fifteen years with effect from the date of publication of this order in the official Gazette, in the area more particularly specified in the schedule given below, which has been notified under section 3 of the said Act, - Vide Haryana Government, Forest Department, Notification No. S.O. 113/ P.A.2/ 1900/ S.3/ 97, dated the 17th November, 1997.

- a) The cutting of trees of timer except eucalyptus and poplar or the collection or removed or subjection to any manufacturing process of any forest produce other than flower, fruit and honey, save for bonafide.
- b) Domestic or agricultural purposes or for purpose of the right holders in the land, provided that the owners of the land may sell trees or timber after obtaining a permit to do so from the Divisional Forest Officer, of the concerned division, such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of forest conservancy. In notified area of Panchkula

Attended
H. H.
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

District Ambala District and Yamuna Nagar District of the State of Haryana specified in the below mentioned schedule, Khair trees (acacia Cotechu) shall be purchased solely by Haryana Forest Development Corporation limited at the prices fixed by the Board of Directors of the Haryana Forest Development Corporation Limited.

SCHEDULE

District	Tehsil	Village
Panchkula	Kalka	Area lying on North side of metalled & unmetalled road connection Chandigarh, Panchkula, Ramgarh, Raipur Rani, Naraingarh, Sadhaura, Bilaspur Chhachrauli, Dadupur and reaching Jamuna river near Villages Natthanpur and Lakur.
Ambala	Naraingarh	
Y/Nagar	Jagadhri	
Faridabad	Ballabgarh	Areas lying on western side of Delhi Ballabgarh road and northern side of Ballabgarh-Sohana road.
Gurgaon	Nuh	Areas lying on western side of Delhi Alwar road.
	Ferozepur Jhirka	All revenue estates of Ferozepur Jhirka Tehsil.
	Gurgaon	All revenue estate of Gurgaon Tehsil.
	Sohna	All revenue estate of Sohna Tehsil.
	Pataudi	All revenue estate of Pataudi Tehsil.
Mohindergarh	Narnaul	All revenue estate of Narnaul Tehsil.
	Mohindergarh	All revenue estate of Mohindergarh Tehsil.
Rewari	Rewari	All revenue estate of Rewari Tehsil.
	Bawal	All revenue estate of Bawal Tehsil.
	Kosli	All revenue estate of Kosli Tehsil.
Bhiwani	Dadri	Area lying on western side of Dadri, Bhiwani, Tosham & Hisar Road.
	Bhiwani	
	Loharu	

Attended
Han
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

S.K. MAHESHWARI
Commissioner and Secretary to Government
Haryana, Forest Department.

212

[Published in Haryana Govt. Gaz. (Extra.), June 15, 2004]

**Haryana Government
Forest Department
Order**

Dated 11th, June, 2004

No. S.O.56/P.A.2/1900/S.4/2004:- In exercise of the powers conferred by **section 4** of the Punjab Land Preservation Act, 1900 (Act 2 of 1900), and all other power enabling him in this behalf., the Governor of Haryana hereby makes the following amendment in the Haryana Government, Forest Department Order No. S.O.121/ P.A/ 1900/ S.4/97, dated the 28th Nov, 1997, namely:

Amendment

In Haryana Government, Forest Department, Order no. S.O.121/ P.A.2/ 1900/ S.4/97, dated the 28th Nov, 1997, in the Schedule, under heading "Tehsil":-

- (i) For the Work "Kalka the Words, Kalka and Panchkula" shall be substituted and
- (ii) For the word "Jagadhari and Chhachrauli" shall be substituted.

Advised
Hm
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

D.S.DHESI
Secretary to Government
of Haryana
Forest Department.

[Published in Haryana Govt. Gaz. (Extra.), June 15, 2004]

Haryana Government

Forest Department

Order

Dated 18th April, 2007

No. S.O.40/P.A.2/1900/S.4/2007:- In exercise of the powers conferred by section 4 of the Punjab Land Preservation Act, 1900 (Act 2 of 1900), the Governor of Haryana hereby makes the following amendment in the Haryana Government, Forest Department Order No. S.O.121/ P.A/ 1900/ S.4/ 97, dated the 28th Nov, 1997, namely.

Amendment

In Haryana Government, Forest Department, Order no. S.O. 121/ P.A.2/ 1900/ S.4/97, dated the 28th Nov, 1997, for the words, signs and brackets "In notified areas of Panchkula District, Ambala District and Yamunanagar District of the State of Haryana, Specified in the below mentioned Schedule, Khair trees (Acacia Catechu) shall be purchased solely by Haryana Forest Development Corporation Limited at the prices fixed by the Board of Directors of the Haryana Forest Development Corporation Limited" the words and signs "the Farmers of the State shall be at liberty to sell khair trees to any person/agency/Haryana Forest Development Corporation Limited of their choice so as to enable them to get remunerative price of their product provided that the owners of the land may sell the khair trees after obtaining a permit to do so from the Divisional Forest Officer concerned" shall be substituted.

Attended
Hm
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

H.C. DISODIA,
Financial Commissioner and Principal Secretary
to Government, Haryana, Forest Department

True Copy

[Published in Haryana Govt. Gaz. Legislative Supplement Dated the 13th
Sept., 1977]

**HARYANA GOVERNMENT
FOREST DEPARTMENT
Order
The 9th September, 1977**

No. S.O. 123/P.A.2/1900/S.4./77. Whereas the Governor of Haryana is satisfied after due enquiry that the regulations, restrictions and prohibitions hereinafter contained are necessary for the purpose of giving effect to the provisions of the Punjab Land Preservation Act, 1900.

Now, therefore, in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana hereby prohibits the following acts for a period of fifteen years, with effect from the date of publication of this order in the Official Gazette, in the areas specified in the schedule annexed hereto, the said areas forming part of the village Ratour in Tehsil Nariangarh, District Ambala, specified in the schedule to Haryana Government, Forest Department, Notification No. S.O.70/P.A.2/1900/S.3/77, dated the 3rd June, 1977:-

1. The clearing or breaking up of the land not ordinary under cultivation prior to the publication of Haryana Government, Forest Department, Notification No. S.O. 70/P.A.2/1900/S.3/77, dated the 3rd June, 1977:

Provided that the breaking up of the land or for cultivation may be permitted by the Division Forest Officer, Morni-Pinjore Forest Division.

2. The quarrying of stones or the burning of lime at the place where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the said notification except with the permission of the Collector of Ambala District who will consult the Divisional Forest Officer, Morni-Pinjore Forest Division before according such permission.

Attested
Hm
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

215

3. The cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this subsection, of any forest produce other than grass save for the bonafide domestic or agricultural purposes or for the purpose of right holders in the land; provided that the owners of the land may sell trees or timber after first obtaining a permit to do so from the Divisional Forest Officer, Morni-Pinjore Forest Division. Such permit will prescribe such conditions for sale, as may, from time to time, appear necessary in the interest of forest conservancy.
4. The setting on fire of trees, timber or forest produce.
5. The admission, herding, pasturing, retention of sheep, goats and camels provide that in cases where sickness necessitates for the keeping of goats for milk the Divisional Forest Officer, Morni-Pinjore Forest Division may issue a permit at his discretion for the retention of limited number of stall fed goats to be specified for a specified period.

SCHEDULE					
Distt.	Tehsil	Village with Hadbast No.	Description of Khasra Nos.		Area in acres
			Rectangle No.	Killa No.	
1	2	3	4	5	6
Ambala	N. garh	Bari Kohri H.B. No. 254	35	2 to 4 6 to 20, 24, 25	19

G. V. GUPTA
Secretary to Government Haryana,
Forest Department.

Attested
[Signature]
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

TRUE COPY

[Published in Haryana Govt. Gaz. Legislative Supplement Dated the 13th
Sept., 1977]

HARYANA GOVERNMENT
FOREST DEPARTMENT

Order

The 9th September, 1977

No. S.O. 124/P.A.2/1900/S/5/77:- Whereas certain areas mentioned in the schedule annexed here to are comprised within the limit of the local areas notified under section 3 of the Punjab and Preservation Act, 1900 vide Haryana Government, Forest Department, Notification No. S.O. 70/P.A.2/1900/S/3/77, dated 3rd June, 1977.

And whereas in respect of the said areas, the Government of Haryana is satisfied after due enquiry that the regulation, restriction and prohibits herein after specified are necessary for the purpose of giving effect to the provision of the said Act:-

Now, therefore, in exercise of the powers conferred by section 5 of the said Act, the Governor of Haryana hereby prohibits the following acts in the said areas for a period of fifteen years, with effect from the date of publication of this Notification in the Official Gazetted:-

- Attested*
Han
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.
1. The Cutting of trees or timber for any purpose, provided that the Divisional Forest Officer, Morni-Pinjore Forest Division may permit:-
 - (a) The cutting of trees or timber for house building and agricultural implements and of a dry wood for fuel and for marriage by persons shown in the settlement record as entitled to do so;

- (b) The lopping of branches for lac and the sale of Chall leaves to leather workers;

Provided that for the cutting of dry wood for the death ceremonies by the person shown in the settlement records as entitled to do so, the permission of the Divisional Forest Officer shall not be required and that for this purpose simple information to the Forest Guard concerned within a fortnight of felling shall do.

2. The collection or removal of grass for any purpose, provided that the Divisional Forest Officer, Morni-Pinjore Forest Division may permit:-

- (a) The cutting or sale of ripe grass after the rainy season; and
(b) The cutting or sale of green grass during the rainy season from such portions of the notified areas in which grass may have sufficiently established itself.

3. The pasturing of any cattle other than sheep, goats and camel, provided that in such areas where the forest crop is well established and in case of emergency such as abnormal drought or floods, Divisional Forest Officer, Morni-Pinjore Forest Division may throw open such area for grazing by the cattle of the land owners on such conditions as may be appropriate in each case.

SCHEDULE					
Distt.	Tehsil	Village with Hadbast No.	Description of Khasra Nos.		Area in acres
			Rectangle No.	Killa No.	
1	2	3	4	5	6
Ambala	N. garh	Bari Kohri H.B. No. 254	35	2 to 4, 6 to 20, 24, 25	19

Attest
H. G.
Divisional Forest Officer
Gurgaon Forest Division
GURGAON.

G.V. GUPTA
Secretary to Government Haryana
Forest Department

TRUE COPY

HARYANA GOVT. GAZ. AUG 25, 1992

(BHDR. 3, 1914 SAKA)

Annexure H-6

[Authorized English Translation]

HARYANA GOVERNMENT

FOREST DEPARTMENT

ORDER

The 18th August, 1992

No. S.O. 101/P.A. 2/1900/S.3/92- Whereas the Governor of Haryana is satisfied after due enquiry that the prohibitions hereinafter contained are necessary for the purpose of giving effect to the provisions of the Punjab Land Preservation Act, 1900;

Now, therefore, in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana hereby prohibits the following acts for a period of thirty years with effect from the date of publication of this order in the official Gazette in the areas specified in the schedule annexed hereto, the said area forming part of the village Anagpur, in Ballabgarh Tehsil, Faridabad District specified in the schedule annexed to Haryana Government Forest Department, notification No. S.O. 59/PA 2/1900/S.3/92, dated the 10th April, 1992:-

1. The clearing or breaking up of the land not ordinarily under cultivation prior to the publication of Haryana Government Forest Department notification No. S.O. 59/ PA-2/1900/S.3/92 dated the 10th April, 1992 provided that the breaking up the land for cultivation may be permitted by the Divisional Forest Officer, Faridabad Forest Division.

2. The quarrying of stones or the burning of lime at place, where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the said notification except with the

permission of the Collector of Faridabad District who will consult the Divisional Forest Officer, Faridabad Forest Division, before according such permission.

3. The cutting of trees or timber or the collection or removal or subjection to any manufacturing process of any forest produce other than grass, flower, fruit and honey save for the bonafide domestic or agricultural purposes of right holders in the land, provided that owners of the land may sell trees or timber after first obtaining a permit to do so from the Divisional Forest Officer, Faridabad, Forest Division. Such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of forest conservancy.

4. The setting on fire of trees, timber or forest produce.

5. The admission, herding, pasturing or retention of sheep, goats or camels, provided that in cases where sickness necessitates for the keeping of goats for milk, the Divisional Forest Officer, Faridabad Forest Division, may issue a permit at his discretion for the retention of a limited number of stall fed goats to be specified for a specified period.

SCHEDULE

District	Tehsil	Village with H.B. Number	Description of Khasra Number			Area in acres
			Rect- angle Numbers	Killa Nos.		
1	2	3	4			5
Faridabad	Ballabgarh	Anagpur H.B.2	1 to 60, 62, 134,			1467
			139, 173, 210,			Acres
			213, 218, 243,			
			245, 246, 249,			
			250, 402, 415,			
			432, 478, 480,			
			503, 506, 514,			
			525, 533, 590,			

604, 639, 642,
647, 654, 659,
680, 684, 690,
704, 782, 787,
807, 808, 833,
893, 917, 920,,
939, 974, 999,
1059, 1077, 1092,
1101, 1104, 1111,
1132, 1141, 1142,
1150, 1181, 1183,
1194, 1197, 1205,
1219, 1224, 1228,
1233, 1235, 1238,
1266, 1294, 1308,
1316, . 1319-min,
1327, 1330, 1339,
1351, 1359-min,
1362, 1368, 1371,
1374, 1378 min,
1379, 1383, 1350,
1381, 1385, 1386,
1387, 1388, 1389,
1390, 1395, 1404,
1408, 1427, 1446,
1473, 1506, 1556,
1680, 1512

VEENA EAGLETON,
Secretary to Government, Haryana,
Forest Department

Δ
Tour Copy

221



"Annexure-7"

GOVERNMENT OF HARYANA

TECHNICAL NOTE No. 6

CLOSURES OF PRIVATE AREAS

Issued by :

CHIEF CONSERVATOR OF FORESTS, HARYANA

CHANDIGARH.

1975.

TECHNICAL NOTE No. 6

FOREST CLOSURES

6.1 The Punjab Land Preservation Act, 1900, and the Indian Forest Act, 1927, as amended upto date continue to be in force in Haryana State under Section 89 of the Punjab Reorganization Act 1966. The Punjab Land Preservation Act 1900 and Chapter V of the Indian Forest Act 1927 deal with the control and management of lands not being the property of the Government. The relevant principal sections of both the Acts are reproduced below for ready reference :-

6.2 PUNJAB LAND PRESERVATION ACT 1900.

Section 3 :- Whenever it appears to the State Govt. that it is desirable to provide for the conservation of sub soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly.

Section 4 :- In respect of areas notified under Section 3 generally or the whole or any part of any such area, the State Government may by general or special order, temporarily regulate, restrict or prohibit :-

- a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under Section 3;
- b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under Section 3;
- c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub section of any forest produce other than grass save for bonafide domestic or agricultural purposes of right holder in such areas;
- d) the setting on fire of trees, timber or forest produce.

- e) the admission, herding, pasturing or retention of sheep goats or camels;
- f) the examination of forest produce passing out of any such area; and
- g) the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom, or to pasture sheep goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons.

Section 5 :- In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under Section 3 the State Government may, by special orders temporarily regulate, restrict or prohibit -

- a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under Section 3;
- b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under Section 3;
- c) the cutting of trees and timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest produce for any purposes; and
- d) the admission, herding, pasturing or retention of cattle generally other than sheep, goats and camels or of any class or description of such cattle.

Section 5-A :- In respect of areas notified under Section 3 generally the whole or any part of any such area, the State Government, may, by general or special order direct -

- a) the levelling terracing, drainage and embanking of fields;
- b) the construction of earthworks in fields and ravines;
- c) the provision of drains for storm water;
- d) the protection of land against the action of wind or water;
- e) the training of streams; and
- f) the execution of such other works and the carrying out of such other measures as may, in the Opinion of the State Government, be necessary for carrying out the purposes of this Act.

6.3 INDIAN FOREST ACT 1927

Section 38 Protection of forest at request of owners

- 1) The owner of any land or, if there be more than one owner thereof, the owners of majority of shares therein may with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire -
 - a) that such land be managed on their behalf by the Forest Officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or
 - b) that all or any of the provisions of this Act be applied to such land.
- 2) In either case, the State Government may by notification in the official gazette, apply to such land such provisions of this Act as it thinks suitable to be circumstances thereof and as may be desired by the applications.

LEGAL

6.4 Instructions were issued by Punjab Government and their letter No. 1568 dated Lahore, 4th October, 1939 laying down procedure in respect of dealing with antierosion works in areas other than Government forests, and on that basis; circular No. 12 was issued by the Forest Department, Punjab. The same was revised after independence of the country in 1947 vide circular No. 12 issued by the Conservator of Forests, South Circle, East Punjab. Government instructions issued in 1939 were modified later vide Punjab Government letter No. 6539-Ft(VI)-64/4712 dated 6-11-64. Accordingly by the following procedure is laid down.

6.5 **Section-3 :-** All areas to which Section 4,5 and 5-A of the Punjab Land Preservation Act are to be applied and in respect of which certain restrictions prohibitions or regulations are to be made should first be notified under Section 3 of the Act, through a notification by State Government. Provisions of Punjab Land Preservation Act can be applied with or within consent of the owners.

6.6 **Section-4** :- Section 4 of the Act enables Govt. to keep out sheep, goats and camels ; and temporarily regulate, restrict or prohibit various acts enumerated under this section.

A notification to this effect shall be issued by Government.

6.7 **Section-5** :- Closure under Section 5 is of much stricter nature than the one under Section 4 and in addition to the restrictions imposed under Section 4, grazing of cattle, felling or lopping of trees continuation of cultivation and removal of any forest produce may be regulated, prohibited or restricted. Notification under Section 4 is necessary before any notification under Section 5 is issued.

6.8 **Section 5-A** :- Section 5-A is made use of when in view of the nature and extent of soil erosion, it is considered necessary to require the execution of various works given under this section.

6.9 **Section 38 of the Indian Forest Act 1927**

For closure under Section 38 of the I.F. Act 1927 consent of majority of the owners, is essential. The owners, themselves will decide the type of management to be applied to the land and the land so closed will be managed as protected or reserved forest on such terms as may be mutually agreed upon. Normally such lands are managed as protected forests.

SUPERVISION

6.10 After the issue of notifications under Section 4 or 5 of the Land Preservation Act, implementation of the restrictions or regulations, devolves on the Forest Department; and no charge on that account can be made from the land owners. Local Forest Guard looks after the protection of such areas. In case of areas closed under Section 38 of the I.F. Act, management vests with the forest department subject to the conditions mutually agreed upon and the local Forest Guard will look after the area accordingly.

6.11 **Application by owners**

Applications for closure under Section 4 and 5 of the Punjab Land Preservation Act are not required. Nevertheless such applications are encouraged so as to avoid claim of compensation under Section 7 of the Act. For closures under Section 38 an application

addressed to the collector signed by owners having majority of shares is necessary. This application will also indicate the exact conditions of management to be applied to the area.

The application should also clearly state the period for which the closure is required. The law lays down that if provisions of Chapter IV of I.F.A. are to be applied to the land under Section 38 of the I.F.A. the period of closure will not exceed 30 years.

Applications may be obtained from the owners on standard printed forms (Appendices 1 a to 1 c)

6.12 Standard Notifications

Stand forms of notifications for management and closure of areas under Section 3, 4, 5, 5-A of the Punjab Land preservation Act, 1900 and Section 38 of the I.F.A. 1927 are given in Appendices 2 a to 2 g

6.13 As far as possible, all habitation, religious places, graveyards, wells, tanks, public Roads and paths etc. should be excluded from the limits of closure. If this is not possible, access should be provided. Limits of areas to be notified under Section 5 should not be in the vicinity of any habitations.

Concentrated and compact areas should form part of closure. Isolated bits scattered about or narrow bits of unclosed areas projecting into closed areas present practical difficulties in enforcing protection.

6.14 Proprietorship of Shamlat Deh

The ownership of common village waste lands vests in the village proprietors and are generally used for grazing purposes. The areas of closure should be so selected that there should be no hardship to the villagers. Ordinarily not more than one half of the grazing waste land should be closed to grazing at a time. If whole is to be closed, written consent of proprietors and right holders is necessary. However prohibition on sheep, goats and camels browsing may be imposed in accordance with provisions of the Act.

6.15 Demarcation under Section 13 of the Punjab Land Preservation Act may be done when notification under Section 3 or Section 4 of the Act has been issued and a notification under Section 5, 5-A is proposed to be issued. In case of areas proposed to be closed under Section 38 of the I.F.A. 1927 a similar demarcation is necessary. Kacha boundary pillars will be

erected, usually through the owners of the land, so that there may be no misunderstanding on the part of any villager as to what land is proposed for closure.

6.16 COMPENSATION

When an area is notified under the Punjab Land preservation Act and demarcation has been carried out, the Deputy Commissioner serves a notice on the inhabitant of the village to claim compensation for rights prohibited or restricted. The period allowed is three months from the date of issue of such proclamation (Section 7). Form of notice is given as Appendix 3a to 3c. If any claims are preferred, an enquiry is held into the claims as provided in Section 14 to 18. The claim is either rejected or award sanctioned.

6.17 Appeal against the award of compensation lies with the Commissioner and must be preferred, if so desired, within 60 days of the award. In cases mentioned in Section 17 of 18 of the Punjab Land Preservation Act and against orders passed under Section 11, 12, 15 and 16 appeal lies with a Revenue Officer, and his orders are final subject only to revision by the State Govt. and cannot be questioned in Civil Court according to Section 18 of the Act.

CIVIL SUITS

6.18 Suit against the Government for anything done under the Punjab Land Preservation Act and suit against any public servant for anything done, or purporting to have been done by him in good faith, are barred under Section 21 of the said Act.

PROCEDURE

6.19 The following procedure for completion of papers and issue of the Gazette notifications under the provisions of Punjab Land Preservation Act 1900 and Section 38 of the I.F.A. 1927 is laid down. This is partly based on instructions as were in force under Revised Circular No. 12 of the Conservator of Forests, South Circle East Punjab issued in 1947 and partly on Punjab Government Memo No. 6539-Ft(IV)-64/4712-12 dated 6-11-1964.

6.20 On receipt of suggestions from Range Officer/Working Plan Officer, the Divisional Forest Officer will personally inspect the area required to be closed for purposes of afforestation and/or checking of erosion. He will also consult local inhabitants informally, in this behalf.

6.21 For areas to be closed, the Range Officer will elicit the opinion of the owners of the land proposed for closure. The Range Officer will clearly indicate the state of erosion and unless the land is under active erosion or likely to be subject to erosion closure under Land preservation Act cannot be done.

The enquiry conducted and opinion of owners will also accompany the closure proposal. In case the owners do not agree to the closures, the Range Officer will clearly indicate why closure is necessary even in the absence of consent by owners. After this the procedure, set forth below, will be observed depending on whether the closure is agreed to by owners of land/civil officers or not.

Where the closure is agreed to by the owners of land

6.22 The proposal, alongwith suitable instructions, will be sent by the Range Officer to the forest Patwari. He will get it countersigned by the Revenue Patwari and Quanungo who may make corrections, if necessary, about the particulars, of the area on the basis of revenue records.

6.23 The Range Officer will also send the proposal simultaneously to the Sub Divisional Officer (Civil) for his information giving therein the boundaries of the area proposed to be closed.

6.24 The Forest Patwari, after getting the case completed by the Revenue Patwari/Quanungo, will submit it to the Range Officer. The Range Officer, after enquiry will send the case to the Divisional Forest Officer.

6.25 The Divisional Forest Officer will, on receipt of the case from the Range Officer, send it alongwith requisite draft notification to the Conservator who will pass it on to the Chief Conservator of Forests, Haryana for onward transmission to the Government for issue of notification, after thorough checking.

Where the closure is not agreed to by the owners of land

6.26 The Range Officer on receipt of the case, after completion of the formalities mentioned in paras 6.22 and 6.23 above, will send it to the Tehsildar/Naib Tehsildar giving the technical reasons for the closure of the area and the later will forward it to the Sub Divisional Officer (Civil) for countersignatures and transmission to the Divisional Forest Officer. If the

Tehsildar/S.D.O. (Civil) wishes to inspect the site, he will give the date of inspection to Range Officer, who will accompany him. The case, however, will not be sent by them to the Subordinate Revenue Staff, at this stage and will be completed within 2 months at the maximum.

Thereafter the Divisional Forest Officer will deal with the case as in para 6.25 above.

Where the S.D.O.(Civil) does not agree to the proposal

6.27 The Divisional Forest Officer will take up the Case with the Deputy Commissioner for obtaining his consent and after the Deputy Commissioner has agreed to the closure, the Divisional Forest Officer will refer the case to his Conservator, who will forward it to the Chief Conservator of Forests for onward transmission to Government for notification.

6.28 If the Deputy Commissioner does not give his consent

The Conservator will refer the case to the Chief Conservator of Forests, who will submit it to Government with his recommendation, if he considers that the issue of notification is necessary.

6.29 The Patwari, will prepare, under the direction of the Divisional Forest Officer or Range Officer, the following papers:-

- a) A list of Khasra Nos. lying within the proposed area.
- b) A field book of all Khasra numbers included in part.
- c) A tracing from the shajra map showing Khasra numbers to be closed. Khasra number outside but adjacent to the boundary line of the closure should also be shown. Boundary line should be coloured.
- d) An extract from the last detailed Jamabandi given complete entry for holdings of which closure is proposed. A note of any mutations entered after the preparations of the last detailed jamabandi should be added. It should be prepared on a form added as appendix 4.
- e) Share list of owner of area applied for voluntary closure will be prepared as in appendix 5.
- f) An index for closure proposal will be prepared as in appendix 6.
- g) An extract from the Sharat Wajib-ul-araz giving details of rights in the proposed area.
- h) An area statement on a form added as Appendix 7.
- i) A statement regarding information and certificates on a form added as appendix 8.

- j) An index map of the whole village on a scale 1"= 240 Karams will be prepared. In this map the situation of the proposed area for closure under different sections will be shown in different colours. Where both sections 4 & 5 are to be applied in a village, one map showing both the areas will be prepared. The situation of habitations, tanks, religious and prominent places should also be indicated in the map.

Note :- All closure papers will be prepared in quadruplicate.

GAZETTE NOTIFICATION

6.30 Draft notification prepared on standard forms should be thoroughly checked in respect of details entered therein before their submission by the Divisional Forest Officer and also after their issue by the Government and discrepancies, if any, be got removed.

Annexure H-8

TN GODAVARMAN THIRUMULKPAD v UNION OF INDIA

267

a widow holding a life estate and has held that in view of the provisions of the Land Reforms Act she will be deemed to be a *Bhumidhar*. The learned counsel tried to distinguish the judgment by saying that in that case, the land had devolved on the widow from her husband directly and not on the basis of any compromise. According to us, the ratio of that judgment cannot be distinguished on this ground.

b 7. The High Court has rightly rejected the stand of the appellants that as Smt Phoola got the lands by way of maintenance it will be covered by Section 11 of the Act and after vesting she will be deemed to be the asami and not *Bhumidhar*. It appears Section 11 shall be applicable where the holder of sir or khudkasht lands allots such lands to a person in lieu of maintenance allowance. In the present case, Smt Phoola got the lands on the basis of a compromise entered into in the year 1932 and she was in possession thereof.

c 8. We are surprised as to how the Deputy Director while exercising the revisional power entered into all questions of fact and came to the conclusion on pure conjecture that the appellants before this Court shall be deemed to be in possession of the lands since 1932. This Court has repeatedly pointed out that howsoever wide the power under statutory revision may be in contrast to Section 115 of the Code of Civil Procedure, still while exercising that power the authority concerned cannot act as court of appeal so as to reappraise the evidence on record for recording findings on questions of fact. According to us, the High Court should have set aside the order of the Deputy Director, on this ground alone and should have restored the order of the Consolidation Officer and the Settlement Officer (Consolidation). We are in agreement with the conclusions arrived at by the High Court. Accordingly, this appeal fails and is dismissed. No costs.

(1997) 2 Supreme Court Cases 267

(BEFORE J.S. VERMA AND B.N. KIRPAL, JJ.)

f T.N. GODAVARMAN THIRUMULKPAD

Petitioner;

Versus

g UNION OF INDIA AND OTHERS

Respondents.

Writ Petitions (C) No. 202 of 1995[†] with No. 171 of 1996
decided on December 12, 1996

g A. Constitution of India — Arts. 32 & 21 — Ecology — Protection and conservation of forests — Interim directions issued by Supreme Court — All on-going activity within any forest in any State throughout the country, without prior permission of Central Govt., must stop forthwith — Running of saw mills including veneer or plywood mills and mining of any mineral, being non-forest purposes, not permissible without prior approval of Central Govt. and must stop forthwith — Felling of trees in Tirap and Changlang in State of Arunachal

h [†] Under Article 32 of the Constitution of India

268

SUPREME COURT CASES

(1997) 2 SCC

Pradesh to be totally banned — Felling of trees in all other forests to remain suspended in accordance with working plan of State Govt., as approved by Central Govt. — Movement of cut trees and timber from any of the seven North-Eastern States to any other State to be completely banned — All the States must constitute Expert Committees and submit reports to the Supreme Court — Specific directions for States of J&K, U.P. and W.B. and T.N. also issued — 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 — Ministry of Railways to file an affidavit giving full particulars 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 — These orders and directions to continue till further orders of the Court and will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal — Matter to be listed on 25-2-1997 for further hearing — Forest Conservation Act, 1980, S. 2

B. Forest Conservation Act, 1980 — S. 2 — 'Forest' — Meaning — Words and phrases

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. (Para 4)

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; *Supreme Court Monitoring Committee v Mussoorie Dehradun Development Authority*, WP (C) No 749 of 1995, decided on 29-11-1996, *State of Bihar v Banshi Ram Modi*, (1985) 3 SCC 643, relied on

R-M/17353/C

Advocates who appeared in this case .

Ashok Desai, Attorney General, N.N. Goswami, H.N. Salve, Rajeev Dhavan, Shanti Bhushan, A.S. Nambiar, T.L.V. Iyer, A.K. Ganguli, P.S. Poti, M.S. Nargolkar, Jayant Das, S.N. Choudhary, Avadh Behari Rohtagi, K. Amareshwari and D.P. Gupta, Senior Advocates (A.D.N. Rao, P. Parameswaran, Ms Anil Katiyar, V Krishnamurthi, A. Manarputham, Dayan Krishnan, Ms B. Sunita Rao, Ms N.N. Saikia, Ms U. Hazanka, S.R. Hegde, P.H. Parekh, E.R. Kumar, Indu Verma, K.J. John, Mahendar Vyas, P.K. Manohar, Arvind, V Balachandran, T.V.S.N. Chari, Nikhil Nayyar, G. Prakash, Gopal Singh, S.M. Jadhav, J.P. Verghese, S.R. Setia, V. Balaji, A.T.M. Sampath, V.G. Pragasam, S.K. Agnihotri, Raj Kumar Mehta, H.S. Munjral, K.R. Nagaraja, K.K. Tyagi, B.S. Chahar, Ashok Mathur, Ms H. Wahi, Ms S. Karanika, Ms Nandini Mukherjee, Gaurav Jain, Ms Abha Jain, Ms S. Janani, Karilash Vasdev, Prem Malhotra, Shakeel Ahmed Syed, D.N. Mukherjee, D.S.

T N GODAVARMAN THIRUMULKPAD v UNION OF INDIA

269

Mahra, B.B. Singh, A.K. Srivastava, T. Anil Kumar, A. Venkateshwara Rao, Aruneshwar Gupta, J.S. Manhas, J.S. Attri, U.U. Lalit (Amicus curiae), Ms Purnima Bhat, Ms Meenakshi Sakhardanda, Altaf Nayak, R. Sasiprabhu, A.V. Palli, Zafar Shah, Atul Sharma, Ms Rekha Palli, Ms Kavita Wadia, S.K. Bhattacharya, S.K. Dhingra and Ms Ranu, Advocates, with them) for the appearing parties.

Chronological list of cases cited

on page(s)

a	1. WP (C) No 749 of 1995, decided on 29-11-1996, <i>Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority</i>	270b-c
b	2. 1989 Supp (1) SCC 504, <i>Rural Litigation and Entitlement Kendra v State of U P</i>	270b
	3. (1987) 1 SCC 213, <i>Ambica Quarry Works v State of Gujarat</i>	270b
	4. (1985) 3 SCC 643, <i>State of Bihar v Banshi Ram Modi</i>	270b-c

ORDER

1. In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice was issued to all of them. We have heard the learned Attorney General for the Union of India, the 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 in-depth 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.

2. 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.

3. 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.

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*¹, *Rural Litigation and Entitlement Kendra v. State of U.P.*² and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*)³. The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi*⁴ 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.

2. In addition to the above, in the tropical wet evergreen 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

¹ (1987) 1 SCC 213

² 1989 Supp (1) SCC 504

³ WP (C) No 749 of 1995 decided on 29-11-1996

⁴ (1985) 3 SCC 643

bio-diversity. All saw mills, veneer mills and plywood 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 waterways. 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 purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

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

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

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

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

6. Each State Government should within two months, file a report regarding:

(i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;

(ii) the licensed and actual capacity of these mills for stock and sawing;

(iii) their proximity to the nearest forest;

(iv) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess:

(i) the sustainable capacity of the forests of the State qua saw mills and timber-based industry;

(ii) the number of existing saw mills which can safely be sustained in the State;

(iii) the optimum distance from the forest, qua that State, at which the saw mill should be located.

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

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 AND 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 and Kashmir and in such plantations, felling will be strictly in accordance with law. b

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 and Kashmir Wild Life Protection Act, 1978 or any other law banning such felling or removal of trees. c

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 and 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. d

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 and 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. e

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 — f

(a) be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will g

h

T N GODAVARMAN THIRUMULKPAD v UNION OF INDIA

273

include certification that the timber has come from State Forest Corporation sources; and

- a (b) be undertaken by either the Corporation itself, the Jammu and Kashmir Forest Department or the receiving agency.

7. The State of Jammu and 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.

- b 8. No saw mills, 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.

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

- d 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 bona fide personal use in Himachal Pradesh.

- e 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.

- f 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.

- g 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

- h 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. a

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. b

4. Insofar 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; c

(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. d

(b) Insofar 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. e

(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-para (b) and (c) above will not apply to such areas. f

(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 orders of this Court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled for 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. g

6. Insofar as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeals Nos. 367 to 375 of 1977 h

STATE OF GUJARAT v SUHRID GEIGY LTD

275

a in CAs Nos. 1344-45 of 1976. After the order is made in those civil appeals on the IAs 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.

b The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue, until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal.

c 6. 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.

d 7. 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.

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

9. List the matter on 25-2-1997 as part-heard for further hearing.

(1997) 2 Supreme Court Cases 275

(BEFORE S.P. BHARUCHA AND S.C. SEN, JJ.)

STATE OF GUJARAT

Appellant;

Versus

f SUHRID GEIGY LTD. AND OTHERS

Respondents.

Civil Appeals No. 1780 of 1980[†] with Nos. 3536-40 of 1982 and 7431 of 1983, decided on December 10, 1996

g A. Excise — Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — S. 2(h) — “Narcotic drug” or “narcotic” — Meaning of — Held, one which produces either drowsiness or sleep or stupefaction or insensibility and not necessarily all the four effects — Word “or”, occurring between “stupefaction” and “insensibility” cannot be read as “and” — Plain meaning applied — Interpretation of statutes — Basic rules — Plain meaning — Interpretation of statutes — Subsidiary rules — Conjunctive or disjunctive — Words and phrases — “Or”

h [†] From the Judgment and Order dated 4/7-4-1980 of the Gujarat High Court in S C A No 912 of 1975

Annexure-H-9

T.N. GODAVARMAN THIRUMULPAD (61) v. UNION OF INDIA 401

a followed. Appreciation of evidence must be done on the basis of materials on record and not on the basis of some reports which have nothing to do with the occurrence in question.

114. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial. Such rights are enshrined in our constitutional scheme being Article 21 of the Constitution of India. If an accused has a right of fair trial, his case must be examined keeping in view the ordinary law of the land.

b 115. It is one thing to say that even applying the well-known principles of law, they are found to be guilty of commission of offences for which they are charged but it is another thing to say that although they cannot be held guilty on the basis of the materials on record, they must suffer punishment in view of the past experience of otherwise."

c 10. In the instant case, there has been even no substantial compliance with Section 50 of the NDPS Act.

11. For the reasons aforementioned, the impugned judgment of conviction and sentence cannot be upheld. It is set aside accordingly. The appeal is allowed.

d 12. The appellant is in custody. He shall be released forthwith unless required in connection with some other case.

(2008) 16 Supreme Court Cases 401

(Record of Proceedings)

(BEFORE Y.K. SABHARWAL AND ARIJIT PASAYAT, JJ.)

e T.N. GODAVARMAN THIRUMULPAD (61) .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

IA No. 827 in WP (C) No. 202 of 1995 with IA No. 798 in WP (C) No. 202 of 1995 etc., decided on December 16, 2002

f Environment Protection and Pollution Control — Forests — Mining — Supreme Court's order dt. 29-10-2002/30-10-2002 prohibiting mining activities in entire Aravalli Hills from Haryana to Rajasthan — Clarification/Modification sought in respect of — Held, order modified to the effect that wherever requisite approval/sanctions in the State had been obtained under Forest (Conservation) Act or Environment (Protection) Act and mining is not prohibited under applicable Acts or notifications or orders of the Court, mining can continue — Further directions issued on consideration of report of Central Empowered Committee dt. 14-12-2002

T.N. Godavarman Thirumulpad (57) v. Union of India, (2008) 16 SCC 337, modified

T.N. Godavarman Thirumulpad (27) v. Union of India, (2002) 10 SCC 634, referred to

R-D/33530/S

h

402 SUPREME COURT CASES (2008) 16 SCC

Chronological list of cases cited on page(s)

1. (2008) 16 SCC 337, *T.N. Godavarman Thirumulpad (57) v. Union of India* 403c-d, 403d, 404b-c, 404e a
2. (2002) 10 SCC 634, *T.N. Godavarman Thirumulpad (27) v. Union of India* 403f

ORDER

IA No. 827

1. Let the Central Empowered Committee file its response to the affidavit dated 14-12-2002 filed on behalf of the Ministry of Environment and Forests within three weeks. List on 14-2-2003. b

IA No. 798

2. Reply by the respondent be filed within four weeks. List on 14-2-2003.

IA No. 745

3. Mr A.D.N. Rao, learned counsel states that out of twenty-three accused in the murder of Sanjay Singh, some of them have been arrested and for remaining proceedings are being taken for declaration of proclaimed offenders and efforts made to apprehend them. List on 14-2-2003. c

IA Nos. 782 to 784, 793 to 795 and 813 to 815

4. The applications are referred to the Central Empowered Committee which will respond thereto within six weeks. List on 14-2-2003. d

IA No. 785

5. The application is referred to the Central Empowered Committee for its suggestions.

IA No. 786

6. Issue notice to the Ministry of Environment. Mr Rao will respond to the application. List the application on 14-2-2003. e

IA No. 799

7. Union of India will respond.

8. List the application on 14-2-2003.

IA No. 804

9. We direct the Chief Secretary of the State of Madhya Pradesh to file reply on or before 20-12-2002. f

IA Nos. 805-12

10. Referred to the Central Empowered Committee for its suggestions.

Contempt Petition No. 479 of 2002 with IA No. 1 in WP No. 202 of 1995

11. The copy of the application be served on to the amicus curiae. g

IA No. 836

12. Mr Himanshu Shekhar, learned counsel accepts notice on behalf of Respondent 4 and Mr Rao, learned counsel accepts notice on behalf of Respondents 1-3.

13. Counter-affidavit be filed within four weeks. Rejoinder-affidavit, if any, be filed in another two weeks. h

14. Till further order, the operation of the order dated 20-8-2002 shall remain stayed.

- a 15. The above order will apply to similar other areas in the National Park. It would be the responsibility of the State Government to ensure the compliance with the same.

Contempt Petition No. 193 of 2001

- b 16. We request the Central Empowered Committee to give recommendations on the aspects which have been highlighted in the report filed by the Principal Chief Conservator of Forests, Tamil Nadu within four weeks.

17. List the matter for hearing on 7-3-2003 at 2.00 p.m.

IA Nos. 828, 833-35, 837-40 and 846-47

- c 18. One of the aforesaid applications has been filed by¹ the State of Rajasthan seeking modification or clarification to the effect that the order dated 29-10-2002/30-10-2002¹ would be applicable only to illegal mines in the Aravalli Hills. IA No. 840 has been filed by M/s Gurgaon Sohna Mineral and another seeking similar relief. Applications have also been filed by the State of Haryana and other parties.

- d 19. We have heard learned counsel. On 29-10-2002/30-10-2002¹ this Court prohibited and banned the mining activities in the entire Aravalli Hills. This ban, it was directed, is not limited only to the hills encircling Kote and Alampur Villages but extends to the entire hill range of Aravalli from Haryana to Rajasthan. The Chief Secretaries, State of Haryana and State of Rajasthan were directed to ensure that no mining activity in the Aravalli Hills is carried out, especially in that part which has been regarded as forest area or
e protected under the Environment (Protection) Act.

20. On consideration of the report of the Central Empowered Committee dated 14-12-2002, we issue the following further directions:

- f (1) Mining may be permitted in forest areas where specific prior approval under Section 2 of the Forest (Conservation) Act, 1980 has been accorded by the Ministry of Environment and Forests, Government of India. However, in view of this Court's order dated 14-2-2000² passed in IA No. 548 no mining activity is permitted within areas which are notified as sanctuary, national park under Sections 18, 35 of the Wild Life (Protection) Act, 1972 or any sanctuary, national park or game reserve declared under any other Act or rules made thereunder even if
g prior approval have been obtained from MoEF under the FC Act in such an area.

- h (2) Under Notification dated 29-11-1999 issued under Section 23 of the Environment (Protection) Act for certain districts including Gurgaon District in the State of Haryana, the Ministry has delegated power to grant approval for mining purposes to the State. The mining activities are

¹ T.N. Godavarman Thirumulpad (57) v. Union of India, (2008) 16 SCC 337

² T.N. Godavarman Thirumulpad (27) v. Union of India, (2002) 10 SCC 634

being regulated under the Notification dated 7-5-1992 issued by the Ministry of Environment and Forests (Annexure A-1 in IA No. 833). We direct that, for the time being, no mining shall be permitted within the areas of Gurgaon District in the State of Haryana where mining is regulated under the Notification dated 7-5-1992 issued under Section 3 of the Environment (Protection) Act, pursuant to permission granted after 29-11-1999. a

Meanwhile, the Central Empowered Committee which is examining the matter will give its suggestions within a period of six weeks. On the receipt of those suggestions, the prayers made by the applicants for modification of the order dated 29-10-2002/30-10-2002¹ insofar as Gurgaon District is concerned, will be considered. b

(3) No mining activity would be permitted in respect of areas where there is a dispute of applicability of the FC Act, till such time the dispute is resolved or approval under the FC Act is accorded, in addition to order already passed in Writ Petition No. 4677 of 1985. c

21. For the present, no mining will be permitted in the areas for which notification under Sections 4 and 5 of the Punjab Land Preservation Act, 1900 has been issued for regulating the breaking up of the land, etc. and such lands are or were recorded as "forest" in government records even if the notification period has expired, unless there is approval under the FC Act. d

22. Learned Attorney General and Solicitor General will assist the Court on the aforesaid aspects on the next date of hearing.

23. In respect of Suggestions 7 and 8, the Union of India will respond on the next date of hearing.

24. The order dated 29/30-10-2002¹, prohibiting and banning the mining activity in Aravalli Hills from Haryana to Rajasthan is modified insofar as the State of Rajasthan is concerned to the following effect: e

Wherever requisite approval/sanctions in the said State have been obtained under the FC Act and EP Act, and the mining is not prohibited under the applicable Acts or notifications or orders of the Court, mining can continue and to such mining the order aforesaid will not apply. f

25. This order will be applicable to non-forest land covered for the period prior to the date of modification of the order dated 29-11-1999 in the State of Haryana.

26. This variation will not apply to the area in Alampur District in the State of Haryana.

27. List the matter on 7-2-2003 at 2 o'clock. g

WPs (C) Nos. 672 of 1998 and 603 of 2000

28. Adjourned to 7-2-2003.

Court Masters

h

Annexure-H/10

118

SUPREME COURT CASES

(2004) 12 SCC

finality. However, the High Court directed payment of costs of Rs 50,000 to be paid by the Union of India authorities as the appellant had not been given reasonable opportunity of hearing. a

8. We are of the view that it was not justified in the circumstances of the case to order payment of costs. The appellant could not establish that there was any mala fides on the part of the Union of India authorities. Therefore, the direction to pay costs was not warranted. In the circumstances of the case, we set aside the direction to pay Rs 50,000 as costs. As the other writ petition filed by the appellant seeking promotion to the post of Air Marshal is pending consideration by the High Court, we direct that the same may be considered and disposed of expeditiously. b

9. Both the appeals shall stand disposed of accordingly. There will be no order as to costs.

(2004) 12 Supreme Court Cases 118 c

(BEFORE Y.K. SABHARWAL AND H.K. SEMA, JJ.)

M.C. MEHTA

Petitioner;

Versus

UNION OF INDIA AND OTHERS

Respondents. d

IAs No. 1785 of 2001 in LA No. 22 and WP (C) No. 4677 of 1985[†] with IAs Nos. 1806, 1815, 1817-19, 1822-25, 1794-95 and 1785 in WPs (C) Nos. 4677 of 1985 and 410 of 2002, IAs Nos. 1832, 1835-36, 1838-40, 1785, 22 in WPs (C) Nos. 4677 of 1985, 661, 428, 624 of 2002, CP (C) No. 568 of 2002 in WP (C) No. 428 of 2002, decided on March 18, 2004

A. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Mining — Ban on mining activity imposed in order dated 6-5-2002[‡] in an area up to 5 km from Delhi-Haryana border on Haryana side of the ridge and in Aravalli hills — Said ban continued — Recommendations in CMPDI report (set out in paras 60 to 70 herein) accepted — Held, it would not be expedient to lift the said ban before ensuring implementation of suggestions made in the said report and the various other reports referred to in this order — Hence, a Monitoring Committee constituted to inspect mines from an environmental angle on an individual mine-to-mine basis, in light of the said recommendations and to submit a report thereon within three months, on the basis of which report lifting of the said ban would be considered — Further held, violation of any of the conditions stipulated would entail risk of cancellation of the mining lease, and if despite stringent conditions, degradation of the environment continues, the Supreme Court would have to consider, at a later date, the closure of mining activity in areas where there is such risk — Environment Protection and Pollution Control — Mining e

B. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Mining — Nature of, in respect of its environmental impact — f

[†] Under Article 32 of the Constitution of India g

[‡] See cited order at (2004) 12 SCC 188, below h

M.C. MEHTA v. UNION OF INDIA

119

- Responsibilities, duties and accountability therefor of entrepreneurs setting up and running mining operations and regulatory authorities, especially when carried on near townships — Disclosures in respect of the environmental impact to be made before grant of permission for mining — Where the regulatory authorities either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, held, the principles of accountability for restoration and compensation have to be applied — Environment Protection and Pollution Control — Mining —**
- a** **Constitution of India — Arts. 32 and 226 — Compensation against errant or negligent public officials — Grant of — Polluter-pays principle**

- C. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Right to enjoyment of pollution-free water and air — Scope of — Measures that may be taken by Court to aid protection of — Held, the natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage to the environment — Further held, life, public health and ecology have priority over unemployment and loss of revenue — However, development and protection of the environment are not enemies — A balance has to be struck — In case of doubt environment concerns take precedence over economic interests — Principles of sustainable development and the precautionary principle (as contained in Principle 15 of the Rio Conference of 1992) reiterated and explained — Risk of harm to the environment or to human health to be decided in public interest according to a "reasonable person's" test — Having regard to the right of the community at large it is permissible to encourage the participation of amicus curiae, the appointment of experts and Monitoring Committees — Words and phrases — "Sustainable development"**
- c**
- d**

- e** **On 6-5-2002[†], the Supreme Court directed the Chief Secretary, Government of Haryana to stop within 48 hours all mining activities and pumping of groundwater in and from an area up to 5 km from the Delhi-Haryana border on the Haryana side of the ridge and also in the Aravalli hills. The question to be considered in these applications was whether the order should be made absolute, vacated or modified. The examination of issues was confined to the effect on the ecology of the mining activity carried on within an area of 5 km of Delhi-Haryana border on the Haryana side in areas falling within the districts of Faridabad and Gurgaon, including in the Aravalli hills within that area.**
- f**

- g** **The notification S.O. 319(E) dated 7-5-1992 issued by the Ministry of Environment and Forests, Government of India under Section 3(2)(v) of the Environment (Protection) Act, 1986 ("EP Act") read with Rule 5 of the Rules made under the said Act (set out in para 30 herein), inter alia, bans all new mining operations including renewals of mining leases and sets out the procedure for taking prior permission before undertaking such an activity. The powers vested in the Central Government in terms of the aforesaid notification dated 7-5-1992 were delegated to the State Governments concerned, namely, Rajasthan and Haryana by issue of notification S.O. 1189(E) dated 29-11-1999 by the Central Government, Ministry of Environment and Forests (set out in para 32 herein).**

- h** **Notification S.O. 60(E) dated 27-1-1994, as amended on 4-5-1994 was issued by the Ministry of Environment and Forests, Government of India, in**

exercise of powers conferred by Sections 3(1) and (2)(5) of the EP Act read with Rule 6(3)(d) of the EP Rules stipulating that expansion or modernisation of any activity (if the pollution load is to exceed the existing one) or a new project listed in Schedule I [which includes mining projects (major minerals) with leases of more than five hectares] to the notification would not be undertaken in any part of India unless it had been accorded environmental clearance by the Central Government in accordance with the procedure specified in the notification (set out in para 35 herein).

Notification dated 28-11-2001 was issued by the Haryana Government with a view to enforce the recommendations of NEERI contained in para 6.1 of its report (set out in para 4 herein) so far as mining operations in the State of Haryana are concerned. In terms of the notification, the designated authority and the Monitoring Committee were directed to impose the conditions mentioned in the notification while according environmental clearance. This notification was issued in the purported attempt to comply with the directions of the Supreme Court as contained in (1996) 8 SCC 462.

Some mining leases were granted prior to notification dated 27-1-1994 and some after the issue of that notification. Even in respect of the leases granted prior to 27-1-1994, the renewal of most of the leases had come up after issue of notification. Some of the leases were for extraction of major minerals, some for extraction of minor minerals and some for extraction of both major and minor minerals. In respect of none of the leases, before commencement of mining activity, was an Environmental Impact Assessment (ELA) report obtained from MOEF. In respect of mining in Aravalli hills in Gurgaon, the relevant notifications are those dated 7-5-1992, 29-11-1999 and 28-1-2003. Under the notification dated 7-5-1992, no permission was granted by MOEF though some applications were pending before it when power was delegated to the State Government. Permissions were granted by the State Government after the powers were delegated to it. The delegation in favour of the State had since been withdrawn. The matter was considered in light of these notifications and other provisions of law.

Issuing directions in the terms below, the Supreme Court

Held:

The natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage to environment. There has been accelerated degradation of the environment primarily on account of lack of effective enforcement of environmental laws and non-compliance with the statutory norms. It has been repeatedly held by the Supreme Court that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. (Para 45)

The definition of "sustainable development" which Brundtland gave more than three decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. Life, public health and ecology have priority over unemployment and loss of revenue.

M.C. MEHTA v. UNION OF INDIA

121

- Development and the protection of environment are not enemies however. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. (Paras 46 and 48)
- a
- b Principle 15 of the Rio Conference of 1992 relating to the applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interests. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment. (Para 48)
- c
- d The most vital necessities, namely, air, water and soil, having regard to right to life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of amicus curiae, the appointment of experts and the appointments of Monitoring Committees. The approach of the Court has to be liberal towards ensuring social justice and protection of human rights. (Para 46)
- e *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598 : AIR 1991 SC 420; *M.C. Mehta v. Union of India*, (1987) 4 SCC 463; *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664; *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718; *T.N. Godavarman Thirumulpad v. Union of India*, 1991 Sapp (2) SCC 665; (1997) 2 SCC 267; (1997) 3 SCC 312; (1997) 5 SCC 760; (1997) 7 SCC 440; (1997) 10 SCC 775; (1998) 2 SCC 59, 341; (1998) 6 SCC 190; (1998) 9 SCC 632, 660, 672; (1999) 5 SCC 736; (1999) 9 SCC 121, 151, 216; (2000) 6 SCC 413; (2000) 10 SCC 494, 579, 645; (2002) 9 SCC 502, *relied on*
- f *Chairman Barton: The Status of the Precautionary Principle in Australia* (Vol. 22, 1998, Harv. Envtl. Law Review, pp. 509, 549-A), *relied on*
- g Mining operation is hazardous in nature. It impairs the ecology and people's right to natural resources. The entire process of setting up and functioning of a mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to a township, which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including the authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring
- h

compliance with safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation have to be applied. (Para 47)

The effect of mining activity in area up to 5 km from Delhi-Haryana border on Haryana side of the ridge and also in the Aravalli hills is to be seen in the light of the several reports listed below:

(1) The National Environmental Engineering Research Institute (NEERI) report dated 20-4-1996, especially para 6.1 thereof (set out in para 4 herein).

(Para 4)

M.C. Mehta v. Union of India, (1996) 8 SCC 462, referred to

(2) EPCA (Bhure Lal Committee) reports dated 9-8-2002 (set out in para 14 herein) and 21-10-2002 (set out in para 18 herein) and a note given by the Chairman, Central Ground Water Board on the serious impact of pumping of groundwater from mines and groundwater regime in mining areas and its buffer zone in the Aravalli hills of NCT Delhi, Faridabad and Gurgaon districts of Haryana, which was annexed thereto (set out in para 16 herein).

(Paras 16 and 22)

(3) CEC reports dated 22-6-2003 (set out in para 41 herein) and 7-2-2003 (mentioned in para 42 herein) and suggestions given by the CEC (set out in para 43 herein).

(Para 39)

(4) The final report of the Central Mine Planning and Design Institute Limited (CMPDI) and its recommendations (set out in paras 60 to 70). (Para 60)

It would not be expedient to lift the ban on mining imposed in terms of the order of the Supreme Court dated 6-5-2002[†] before ensuring implementation of suggestions of CMPDI and other recommendations of experts (NEERI, EPCA and CEC). Even though there are observations in the report of CMPDI that measures for protecting the environment can be undertaken without stopping mine operations and also the suggestions of MOEF to permit mining subject to the mine leaseholders undertaking to comply with such conditions which remain to be complied with, having regard to the enormous degradation of the environment the safer and the proper course is to first constitute a Monitoring Committee, get a report from it and only thereafter consider, on individual mine-to-mine basis, lifting of ban imposed in terms of order dated 6-5-2002[†]. The mining activity can be permitted only on the basis of sustainable development and only on strict compliance of the stipulated conditions. Violation of any of the conditions would entail the risk of cancellation of the mining lease.

(Paras 71, 90, 96.5, 96.8 and 96.1)

No one has raised any objection to the recommendations contained in the report of CMPDI. These recommendations are accepted in principle. With a view to monitor the overall eco-restoration efforts in the Aravalli hills and to provide technical support to the implementing organisations and also to monitor implementation of recommendations contained in the reports referred to herein, it is necessary to constitute a Monitoring Committee. Therefore a Monitoring Committee is constituted by this order (directions for membership and working thereof set out in paras 92 to 94 herein) and it is directed to individually examine

M.C. MEHTA v. UNION OF INDIA

123

a and inspect mines from the environmental angle in the light of the said recommendations and file a report in the Supreme Court, within three months, in respect of individual mines with its recommendations for restart or otherwise as also recommendation, if any, for the payment by the mine operators and/or by the State Government towards an environmental fund having regard to the precautionary principle and polluter-pays principle and on consideration of that report, to decide the aspect of modification of the order dated 6-5-2002[†], partially or entirely. All individuals and departments concerned are directed to render full cooperation to the Monitoring Committee. (Paras 70, 71 and 95)

b It may be reiterated that if, despite stringent conditions, the degradation of environment continues and reaches a stage of no-return, the Supreme Court may have to consider, at a later date, the closure of mining activity in areas where there is such a risk. (Para 89)

c D. Mines and Minerals — Mines and Minerals (Regulation and Development) Act, 1957 — Ss. 18 and 13 — Mining operations — Permission for commencement of — Relevant rules for — Statutory provisions to be complied with in addition to — Held, the relevant rules are those framed under S. 18 [the Mineral Conservation and Development Rules, 1988, especially Rr. 31, 32(2), 33, 34, 37, 39, 41(1) and 41(2)(a) thereof] and not those framed under S. 13 [the Mineral Concession Rules, 1960, especially Rr. 22(4), (4-A) and (5) thereof] — Further held, the grant of permission for mining and the approval of mining plans and the scheme
d by the Ministry of Mines, Government of India by itself does not mean that mining operations can commence — Mere approval of the mining plan by the said Ministry would not absolve the leaseholder from complying with the other provisions — Mineral Conservation and Development Rules, 1988 — Rr. 31, 32(2), 33, 34, 37, 39, 41(1) and 41(2)(a) — Measures under —
e Held, are not required to remain only on paper but must be strictly complied with — Mineral Concession Rules, 1960 — Rr. 22(4), (4-A) and (5) — Held, deal with the grant of a mining lease and not commencement of mining operations — Environment (Protection) Act, 1986 — Air (Prevention and Control of Pollution) Act, 1981 — Water (Prevention and Control of Pollution) Act, 1974 — Forest (Conservation) Act, 1980

f E. Environment Protection and Pollution Control — Mining — Notification S.O. 60(E) dated 27-1-1994 — Temporal operation of — Held, applicable to mining leases granted before issue of said notification but coming up for renewal thereafter — Environmental assessment applications filed under said notification and pending with authorities concerned — Directions given for disposal of said applications within ten weeks — Mines and Minerals — Generally — Grants — Renewal of a grant — Held, is a fresh grant — Constitution of India — Art. 32 — Time-bound disposal of
g environment assessment applications pending before government authorities — Directions for, given — Environment (Protection) Act, 1986 — S. 3

h F. Environment Protection and Pollution Control — Mining — Notification S.O. 60(E) dated 27-1-1994 — Extension of date to apply for environmental clearance under, to 31-3-2003 by circular dated 14-5-2002 — Inefficacy of — Administrative Law — Subordinate Legislation — Notifications — Procedure for issue — Held, a statutory notification cannot be notified by issue of circular — Constitution of India — Arts. 77 and 166 — Environment (Protection) Act, 1986 — S. 3

Having regard to the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and the same should be prevented, and that the concept that power coupled with the duty enjoined upon the respondents to renew the lease stood eroded by the mandate of the Forest Conservation Act the primary duty was to the community, and that duty took precedence. In such cases, the obligation to society must predominate over the obligation to individuals. (Para 75)

It is settled law that the grant of renewal is a fresh grant and must be consistent with law. The plea that since the leaseholders had invested sums of money in mining operation, it was the duty of the authorities to renew the lease is rejected. (Paras 76 and 75)

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; *State of M.P. v. Krishnadas Tikaram*, 1995 Supp (1) SCC 587, relied on

Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664, distinguished

No doubt, the notification dated 27-1-1994 is prospective but the contention that the notification dated 27-1-1994 would not apply to leases which come up for consideration for renewal after issue of the notification is rejected. The said notification is applicable also when renewal of mining lease is considered after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases were the requirements of the notification complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification. (Paras 73, 96.2 and 77)

A statutory notification cannot be notified by issue of circular. The circular dated 14-5-2002 issued by the Ministry of Environment and Forests (discussed in para 37 herein) extending the period to apply for environmental clearance under the notification dated 27-1-1994 up to 31-3-2003 has no applicability to the mining activity. (Para 37)

During the course of hearing environment assessment applications in terms of notification dated 27-1-1994 have been filed by some of the leaseholders. In case those applications are presently with the Central Empowered Committee, the same shall be forthwith forwarded by CEC to MOEF. The adverse effect, if any, and extent thereof on human health and ecology shall be examined while deciding the impact of these activities. There is also the desirability of transparency in such matter. MOEF is directed to consider the said applications within a period of ten weeks. (Para 91)

M.C. Mehta v. Union of India, (2004) 12 SCC 186; *M.C. Mehta v. Union of India*, (2004) 12 SCC 185, referred to

G. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Mining — Mining in forest areas — Factors to be considered in permitting — Held, diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits — Mining and industrial development should be consistent with the need for conservation of trees in forests — National Forest Policy, 1988 referred to in extenso — Mining in

a areas where large-scale afforestation with foreign funding had been undertaken — Impermissibility — Held, entire area of lease in such areas to be excluded and not only the part thereof where allegedly damage had been caused to the plantations as a result of mining operations — Environment Protection and Pollution Control — Forest (Conservation) Act, 1980 — S. 2

b The question of permitting mining in the area where large-scale afforestation with foreign funding has taken place, is required to be examined keeping in view the National Forest Policy, 1988 issued by the Ministry of Environment and Forests, Government of India which inter alia provides that the national goal should be to have a minimum of 1/3rd of the total land area of the country under forest or tree cover. In the hills and in mountainous regions, the aim should be to maintain 2/3rds of the area under such cover. The policy also provides that forest land or land with tree cover should not be treated merely as a resource readily available to be utilised for various projects and programmes but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose c should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Mining and industrial development should be consistent with the need for conservation of trees in forests. It further provides that no mining rights should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery. (Paras 56 and 55)

d For the present a complete ban on mining operations on forest land is not being suggested so long as it is possible to undertake the said operation on the sustainable development principle and after obtaining due approvals under various statutory provisions including Section 2 of the Forest (Conservation) Act, 1980. At the same time, the commencement and continuation of mining over areas on which crores of foreign funds have been spent for afforestation and e plantation cannot be appreciated. Therefore, no mining activity can be carried out on area over which plantation has been undertaken under the Aravalli Project by utilisation of foreign funds. Further, it is also not possible to accept the contention urged on behalf of the leaseholders that only that part of such leased land where allegedly damage has been caused to plantations as a result of mining operations, be excluded from mining and not the entire area of the lease. For f example, if the mining area is 5 hectares and damage as a result of mining is to plantation in an area of 1 hectare, it is not practicable or reasonable to exclude only that 1 hectare and permit the mining operation on the rest of the mining area. (Paras 57, 96.4 and 59)

g H. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Mining — Mining in forest areas — “Forest” — Meaning of — Mining in areas covered under notification issued under Ss. 4 and/or 5 of 1900 Punjab Act — Permissibility of — Environment Protection and Pollution Control — Punjab Land Preservation Act, 1900 (2 of 1900), Ss. 4 and 5 — Words and phrases — “Forest”

h I. Constitution of India — Arts. 32, 136 and 226 — Procedure — Affidavits — State resiling from stand taken in — Impermissibility — Held, assuming that there was any confusion or erroneous impression, it ought to have been first sorted out at the appropriate level, prior to the filing of the affidavits — Practice and procedure

The term "forest" is to be understood in the dictionary sense and also that any area regarded as a forest in government records, irrespective of ownership, would be a forest. (Para 82)

T.N. Godavarman Thirumulkpad v. Union of India, (1997) 2 SCC 267, followed

The controversy is in respect of certain leases where area under the lease is covered under notification issued under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900. The question is whether such area is "forest" of any kind. In the instant case, it is not necessary to decide the legal effect of issue of the notification under Sections 4 and/or 5 of the Act. Not only in their record has the area been shown as forest but affidavits have been filed in the Supreme Court stating the area to be "forest". The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose. On the facts and circumstances of the case the State Government cannot be permitted to take a complete somersault in these proceedings and contend that the earlier stand that the area is forest was under some erroneous impressions. Assuming that there was any confusion or erroneous impression, it ought to have been first sorted out at the appropriate level and where affidavits had been filed in the Supreme Court, clarifications/orders sought before issue of the mining lease in respect of such area. Moreover, reference can also be usefully made to the part of the State Forest Report, 1999 issued by Forest Survey of India in relation to Haryana. It, inter alia, provides that large-scale plantations were carried out under the Aravalli Project since 1992. In these matters, neither the State nor the leaseholders can be permitted to turn round and now take a stand that the areas covered under the Aravalli Project are not forest. In the present case, the mining activity in areas covered under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980. (Paras 79, 82, 83 and 57)

Environmental Awareness Forum v. State of J&K, Civil Writ No. 171 of 1996, referred to

J. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Mining — Mining in Aravalli range — Ban on mining activity imposed in order dated 6-5-2002[‡], in an area up to 5 km from Delhi-Haryana border on Haryana side of ridge and in Aravalli hills — Ban in areas in district of Gurgaon — Extension to district of Faridabad — Total stoppage of mining activity — Issues discussed — MOEF directed to prepare a short-term and long-term action plan in terms of CMPDI recommendations (set out in paras 60 to 70 herein) for restoration of environmental quality of Aravallis in Gurgaon, within four months — Monitoring Committee set up in terms of this order, to inspect mining leases in Faridabad as well — Environment Protection and Pollution Control — Mining

The notification dated 7-5-1992 was passed with a view to strictly implement the measures to protect the ecology of the Aravalli range. The notification was followed more in its breach. The Aravalli hill range has to be protected at any cost. In case despite stringent conditions, there is an adverse irreversible effect on the ecology in the Aravalli hill range area, at a later date, the total stoppage of mining activity in the area may have to be considered. For similar reasons such a step may have to be considered in respect of mining in Faridabad district as well. MOEF is directed to prepare a short-term and long-

[‡] See cited order at (2004) 12 SCC 188, below

M.C. MEHTA v. UNION OF INDIA

127

- a term action plan for the restoration of the environmental quality of the Aravalli hills in Gurgaon district having regard to what is stated in the final report of CMPDI, within four months. Assuming there was any ambiguity about the applicability of order dated 6-5-2002[†] to mining in Aravalli range, it is clarified that the said order would be applicable to all the mines in the Aravalli hill range in Gurgaon district. (Paras 58, 96.6, 96.7 and 71)

- b Having examined the matter, that though the study conducted by CMPDI relates to mining activity in the Aravalli hills in Gurgaon district, in public interest the general safeguards and suggestions in that report deserve to be implemented in respect of mining in Faridabad district as well. The Monitoring Committee shall inspect the leases in question in Faridabad district as well in the light of NEERI, as also violations noticed in the reports submitted by EPCA and the suggestions of EPCA, CEC and CMPDI and file its report containing suggestions on recommencement or otherwise of the mining activity therein. (Paras 87 and 88)

- c K. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Mining — Impact on groundwater — Ban on mining activity imposed in order dated 6-5-2002 in an area up to 5 km from Delhi-Haryana border on Haryana side of ridge and in Aravalli hills — Stoppage of mining in areas where groundwater level had been touched — Monitoring Committee set up in terms of this order to carve out the said area; and it was agreed on behalf of the leaseholders that they would cooperate and not undertake any mining in such an area — Environment Protection and Pollution Control — Mining (Para 84)

- e L. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Mining — Non-payment of royalty to villagers in areas covered under order dated 6-5-2002[†] (that is the area up to 5 km from Delhi-Haryana border on Haryana side of ridge and in Aravalli hills) — Held, dispute of this nature cannot be adjudicated in these proceedings — Environment Protection and Pollution Control — Mining

- f M. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Mining — Leases in respect of minor minerals — Notification S.O. 60(E) dated 27-1-1994 — Applicability to — Monitoring Committee set up in terms of this order directed to examine the said leases in light of the CMPDI report (set out in paras 60 to 70 herein) and to file its report

- A controversy has been raised about non-payment of royalty by the leaseholders to villagers on whose behalf it was contended that the order dated 6-5-2002 prohibiting mining should not be varied till the leaseholders discharge their liability to pay royalty to the villagers. A dispute of this nature cannot be properly adjudicated in these proceedings. It is left open to be adjudicated before an appropriate forum in accordance with law. (Para 85)

- g As per the report of CMPDI the small mines (less than 5 hectares) and the mining of minor minerals, are no doubt small individually but have damaging characteristics when in clusters e.g. mines of granite, marble, slate, quartzite etc. (falling under minor minerals), especially when the processing is taken into consideration. Though notification dated 27-1-1994 is not applicable to minor minerals, but having regard to degradation of the environment and the required standard of the risk of harm to the environment or to human health to be decided in public interest according to "reasonable person's test", and the report of CMPDI, the Monitoring Committee is directed to examine the leases granted for

128

SUPREME COURT CASES

(2004) 12 SCC

extraction of minor minerals in light thereof and file its report. The Committee would, however, bear in mind that the notification dated 27-1-1994 as such is not applicable to these leases.

(Paras 63 and 86)

D-M/ATZ/29781/S

Advocates who appeared in this case :

Mukul Rohatgi and Raju Ramachandran, Additional Solicitor General, Ranjit Kumar, Kailash Vasdev and Dr. Rajeev Dhavan, Senior Advocates (M.C. Mehta in person, Naresh Kaushik, Ms Shilpa Chohan, Abhishek Maratha, Ms Lalitha Kaushik, S.C. Gupta, K.C. Kaushik, D.S. Mahra, K.K. Lahiri, Ejaz Maqbool, Gourav Kejriwal, Neeraj Kr. Jain, Ms Kavita Wadia, T.A. Khan, P. Parameswaran, K.B. Rohatgi, Ms Aparna Rohatgi Jain, Mahesh Kasana, Ms Nanita Sharma, Vivek Sharma, Abhishek Atrey, Ms Vanita Bhargava, Ms Nina Gupta, Ms Bina Gupta, Ms Varuna Bhandari Gugnani, D.N. Goburdhun, Ms Pinky Anand, Ms Geeta Luthra, Ms Sheil Sethi, Sanjay Sarin, Ashok Mathur, Dhruv Mehta, Mohit Choudhary, Ms Shalini Gupta, S.U.K. Sagar, Ms Bina Madhavan, Prasanth P., R.C. Verma, Mukesh Verma, Manish Shanker, S.K. Dubey, A.K. Yadav, K.V. Mohan, Mohan Pandey, R.S. Suri, Vijay Panjwani, Ms Indra Sawhney, Bharat Sangal, C.D. Singh, V.B. Saharya, Mahabir Singh, Shiva Puja Singh, J.P. Dhanda, S.K. Sabharwal, Neeraj Kr. Sharma and A.D.N. Rao, Advocates) for the appearing parties.

Chronological list of cases cited

	on page(s)	
1. (2002) 9 SCC 502, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
2. (2000) 10 SCC 664, <i>Narmada Bachao Andolan v. Union of India</i>	166g-h, 178a-b, 178b-c, 178c-d, 178d	
3. (2000) 10 SCC 494, 579, 645, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
4. (2000) 6 SCC 413, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
5. (1999) 9 SCC 121, 151, 216, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
6. (1999) 5 SCC 736, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
7. (1999) 2 SCC 718, <i>A.P. Pollution Control Board v. Prof. M.V. Nayudu</i>	167a-b	e
8. (1998) 9 SCC 632, 660, 672, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
9. (1998) 6 SCC 190, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
10. (1998) 2 SCC 59, 341, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
11. (1997) 10 SCC 775, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
12. (1997) 7 SCC 440, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	f
13. (1997) 5 SCC 760, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
14. (1997) 3 SCC 312, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
15. (1997) 2 SCC 267, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g, 181d-e	
16. (1996) 8 SCC 462, <i>M.C. Mehta v. Union of India</i>	130h, 133a, 160g, 164g, 179a	
17. Civil Writ No. 171 of 1996, <i>Environmental Awareness Forum v. State of J&K</i>	181f	
18. 1995 Supp (1) SCC 587, <i>State of M.P. v. Krishnadas Tikaram</i>	180a-b	g
19. (1991) 1 SCC 598 : AIR 1991 SC 420, <i>Subhash Kumar v. State of Bihar</i>	166d	
20. 1991 Supp (2) SCC 665, <i>T.N. Godavarman Thirumulkpad v. Union of India</i>	167g	
21. 1989 Supp (1) SCC 504, <i>Rural Litigation and Entitlement Kendra v. State of U.P.</i>	180a	
22. (1987) 4 SCC 463, <i>M.C. Mehta v. Union of India</i>	166f-g	
23. (1987) 1 SCC 213, <i>Ambica Quarry Works v. State of Gujarat</i>	179a-b, 180a	h

The Judgment of the Court was delivered by

a **Y.K. SABHARWAL, J.**— The main question to be examined in these matters is whether the mining activity in area up to 5 kilometres from the Delhi-Haryana border on the Haryana side of the ridge and also in the Aravalli hills causes environment degradation and what directions are required to be issued. The background in which the question has come up for consideration may first be noticed.

b 2. The Haryana Pollution Control Board (HPCB) was directed by orders of this Court dated 20-11-1995 to inspect and ascertain the impact of mining operation on Badkal lake and Surajkund — an ecologically sensitive area falling within the State of Haryana. In the report that was submitted, it was stated that explosives were being used for rock-blasting for the purpose of mining; unscientific mining operations were resulting in laying of overburden materials (topsoil and murum remain) haphazardly; and deep mining for
c extracting silica sand lumps was causing an ecological disaster as these mines lie unreclaimed and abandoned. It was, inter alia, recommended that an environmental management plan (EMP) should be prepared by mine leaseholders for their mines and actual mining operations made operative after obtaining approval from the State Departments of Environment or
d HPCB; EMP should be implemented following a time-bound action plan; land reclamation and afforestation programmes were also to be included in EMP and had to be implemented strictly by the implementing authorities. The report recommended stoppage of mining activities within a radius of 5 km from Badkal lake and Surajkund (tourist places). The Haryana Government, on the basis of the recommendations made in the report, stopped mining operations within the radius of 5 km of Badkal lake and
e Surajkund.

3. The mine operators raised objections to the recommendations of stoppage of mining operations. According to them, pollution, if any, that was generated by the mining activities could not go beyond a distance of 1 km and the stoppage was wholly unjustified.

f **NEERI report and earlier directions**

4. By order dated 12-4-1996, the Court sought the expert opinion of the National Environmental Engineering Research Institute (NEERI) on the point whether the mining operations in the said area were to be stopped in the interest of environmental protection, pollution control and tourism development and, if so, whether the limit should be 5 km or less. NEERI in
g its inspection report dated 20-4-1996, inter alia, recommended that:

“6.1. *Mining.*—(1) Detailed exploratory operations need to be undertaken to facilitate the estimation of reserves in the region, and for scientific management of mining operations.

h (2) The mine lease-owners need to undertake the mining operations in series i.e., mining activities must be completed to full potential in a block before moving to the next. This will help in reclamation of land in the block in which mining operations have been completed.

(3) to (9) * * *

(10) The environmental management plans (EMPs) being formulated by the mine-owners should include land rejuvenation and afforestation programmes, and other measures necessary to protect the quality of the environment and human health. The mining operations should commence only after the approval of EMPs by a designated authority. A time-bound action plan needs to be initiated for the implementation of the measures delineated in the environmental management plans.

(11) and (12) * * *

(13) The question of lifting the ban on mining operations needs to be considered in conjunction with the implementation of stringent pollution control, land reclamation, green belt, and other environmental management measures so as to facilitate the availability of construction materials and employment opportunities for the workers along with the protection of environment and public health.

(14) It is considered necessary to prepare a regional environmental management plan for urgent implementation to enable eco-friendly regional development in the area."

5. On consideration of the reports, this Court came to the conclusion that the mining activities in the vicinity of tourist resorts were bound to cast a serious impact on the local ecology. The mining brings extensive alteration in the natural land profile of the area. Mined pits and unattended dumps of overburden left behind during the mining operations are the irreversible consequences of the mining operations and rock-blasting; movement of heavy vehicles, movements and operations of mining equipment and machinery cause considerable pollution in the shape of noise and vibration. The ambient air in the mining area gets highly polluted by the dust generated by the blasting operations, vehicular movement, loading/unloading/transportation and the exhaust gases from equipment and machinery used in the mining operations. It was directed that in order to preserve the environment and control pollution within the vicinity of two tourist resorts, it was necessary to stop mining activity within 2 km radius of the tourist resorts of Badkal lake and Surajkund. The Court further directed the Director, HPCB to enforce all the recommendations of NEERI contained in para 6.1 of its report so far as the mining operations in the State of Haryana were concerned. Further, it was directed that failing to comply with the recommendations could result in the closure of the mining operations and that the mining leases within the area from 2 km to 5 km radius would not be renewed without obtaining prior no-objection certificate from HPCB as also from the Central Pollution Control Board (CPCB). Unless both the Boards grant no-objection certificate, the mining leases in the said area would not be renewed (*M.C. Mehta v. Union of India*¹).

Present issues

a 6. The aspects to be examined include the compliance with the conditions imposed by the Pollution Boards while granting no-objection certificates for mining and also compliance with various statutory provisions and notifications as also the obtaining of the requisite clearances and permissions from the authorities concerned before starting the mining operations.

b 7. In matters under consideration, the areas of mining fall within the districts of Faridabad and Gurgaon in Haryana State.

c 8. IA No. 1785 of 2001 has been filed by the Delhi Ridge Management Board praying that the Government of Haryana be directed to stop all mining activities and pumping of groundwater in and from the area up to 5 km from Delhi-Haryana border on the Haryana side of the ridge, *inter alia*, stating that in the larger interest of maintaining the ecological balance of the environment and protecting Asola Bhatti Wildlife Sanctuary and the ridge located in Delhi and adjoining Haryana, it was necessary to stop mining. In the application, it has been averred that Asola Bhatti Wildlife Sanctuary is located on the southern ridge which is one of the oldest mountain ranges of the world and represents the biogeographical outer layer of the Aravalli mountain range which is one of the most protected areas in the country. The sanctuary is significant as it is instrumental in protecting the green lungs of the National Capital of Delhi and acts as a carbon sink for the industrial and vehicular emissions of the country's capital which is witnessing rapid growth in its pollution level each year. The ridge, it is averred, is a potential shelter belt against advancing desertification and has been notified as a wildlife sanctuary and reserve forest by the Government of the National Capital Territory of Delhi. Regarding the mining activities, it is averred that for extraction of *badarpur* (silica sand), there is large-scale mining activity on the Haryana side just adjacent to the wildlife sanctuary of the ridge which activities threaten the sanctuary's habitat and also pumping of large quantity of groundwater from mining pits. It was also stated that the groundwater level was being depleted as a result of the mining activity. Further, the quarry dust that comes out of mining pits is a serious health hazard for the human population living nearby and also the wild animals inhabiting the sanctuary pointing out that the mining and extraction of groundwater had been banned in the National Capital Territory of Delhi and the ridge being protected as per the order of this Court, it was necessary, that the ridge on the Haryana side was also protected — that being the extension of the range and, therefore, mining, withdrawal of groundwater and destruction of flora, etc. should also be restricted outside Delhi or at least up to 5 km from Delhi-Haryana border towards Haryana.

g 9. On 6-5-2002[‡], this Court directed the Chief Secretary, Government of Haryana to stop, within 48 hours, all mining activities and pumping of groundwater in and from an area up to 5 km from the Delhi-Haryana border

[‡] See cited order at (2004) 12 SCC 188, below

132

SUPREME COURT CASES

(2004) 12 SCC

on the Haryana side of the ridge and also in the Aravalli hills. The question to be considered is whether the order should be made absolute or vacated or modified.

10. Our examination of the issues is confined to the effect on the ecology of the mining activity carried on within an area of 5 km of Delhi-Haryana border on the Haryana side in areas falling within the districts of Faridabad and Gurgaon and in the Aravalli hills within Gurgaon district. The question is whether the mining activity deserves to be absolutely banned or permitted on compliance of stringent conditions and by monitoring it to prevent the environmental pollution.

EPCA visits

11. In terms of the order passed by this Court on 22-7-2002, the Environmental Pollution Control Authority (EPCA) was directed to give a report with regard to the environment in the area preferably after a personal visit to the area in question without any advance notice. It may be noted that EPCA was constituted by the Government of India under notification dated 29-1-1998 issued in exercise of power under Sections 3(1) and (3) of the Environment (Protection) Act, 1986 (for short "the EP Act"). Mr Bhure Lal was appointed its Chairman. EPCA was constituted with a view to protect and improve the quality of environment and preventing, controlling and abating environmental pollution. EPCA has also the power to deal with environment issues pertaining to the National Capital Region which may be referred to it by the Central Government. EPCA has jurisdiction over the National Capital Region as defined in clause (f) of Section 2 of the National Capital Region Planning Board Act, 1985. The districts of Gurgaon and Faridabad are part of the National Capital Region, under Section 2(f) read with the Schedule to the said Act.

12. The Chairman of CPCB is a convenor member of EPCA. EPCA made a surprise visit to the area to see the mining sites. The mining sites visited are located in the villages of Anangpur, Pali, Mohabatabad and Manger, which fall within the notified area of 5 km radius from the Delhi border in Faridabad district. EPCA also visited mining sites that are located outside the notified zone in Kot area. EPCA also held consultation with the officials of the Central Ground Water Board and obtained their opinion on this matter. On 7-8-2002, members of EPCA visited the mining sites located within five km radius from Delhi border. The objectives of the visit, as per EPCA, were as follows:

1. Assessment of the level of compliance with the conditions laid down in the regulatory procedures like the no-objection certificate (NOC) granted by authorities to the mine-owners.
2. Evidence of land and habitat degradation in and around the mining sites.
3. Evidence of misuse and shortage of groundwater in the area.
4. Assessment of the implication of such activities for the local ecology and drinking water sources in the area.

13. During the visit, prima facie, EPCA found evidence of clear violation of some of the key conditions of order of this Court dated 10-5-1996¹.

a EPCA first report and recommendations

14. EPCA gave its report dated 9-8-2002. It would be useful to reproduce the said report in extenso as under:

b "Anangpur area and its vicinity."—EPCA inspected the mining sites owned by Mohan Ram and Company as well as at least 5 other mining sites in this area, which EPCA is not clear who owns.

b At the time of visit there was no mining taking place. So EPCA members assessed level of compliance with some of the key conditions laid down in the NOCs. There was clear evidence of violation of the following conditions:

c (i) The excavated pits should be filled with fly ash or municipal solid waste in the bottom layers. The topsoil should be used as a top layer while filling the pit. Land reclamation and tree plantation should be done in a planned manner over the reclaimed mine pits.

d (ii) The applicant shall not discharge any effluent or groundwater outside their lease premises and shall take appropriate measures for rainwater harvesting and reuse of water so as not to affect adversely the groundwater table of the area. No mining operation shall be carried out in the water table area.

(iii) The green belt proposed in the environment management plan around the proposed mining lease area and along the roadside shall be developed.

e The most serious violation noticed by EPCA was the continuation of mining even after reaching the groundwater level which has been disallowed by the regulatory agencies. Photographs taken by EPCA, which show deep mining pits have turned into large lakes of groundwater. In this mining lease area EPCA members saw extensive and deep water bodies. The water was blue, indicating that this was groundwater and not surface water run-off collected in the pits.

f Even more serious violation noticed was configuration of water pipes laid out to draw water out of the pits to throw them over hills and let the water flow out. This is a grave misuse of precious groundwater in an area where groundwater is the only source of water for the local population — both urban and rural.

g EPCA members talked to local villagers who complained that water table in the area has gone down over a period of time and that the village is facing water shortage. While earlier groundwater could be tracked at the depth of 30-35 ft now deep borewells have been dug to get drinking water, in addition, noise and dust pollution from the mining sites is a problem.

h

¹ *M.C. Mehta v. Union of India*, (1996) 8 SCC 462

Goodwill Mine in Pali village.—EPCA found similar violation of conditions and evidence of mining sites reaching the level of groundwater in deep pits and pipes fitted to drain out water here as well. a

During the long drive to various mining sites, EPCA could not see any credible sign of green belt along the roads. Moreover, one important condition of NOCs is that 'a safe distance should be maintained from the road to overburden dumps and the mine pits in accordance with the directions/notifications of the Department of Environment, Haryana and Bureau of Mines'. But EPCA noticed mining sites very close to the roads b and also very close to the ecologically sensitive area of Asola Sanctuary near the Goodwill Mine.

Stone-crushing sites in Pali.—EPCA has inspected the stone-crushing sites in the area. All sites had a lot of material and trucks being loaded. It is difficult to establish if these are the leftover material from the past or were products from banned sites or from sites from c outside the notified area. EPCA was informed that after the Hon'ble Supreme Court directive of May 2002, the stone-crushers were not being operated, except between the hours of 5 a.m. to 9 a.m. EPCA was, therefore, unable to verify the working conditions of these crushers. But it did not find any evidence of afforestation as stipulated by the NEERI d directive or any evidence of dust-minimising equipment.

Mining around Manger village.—Again the same situation was found around Anangpur. The villagers interviewed here were caught between the devastation of the mines, desperate shortage of drinking water and the only livelihood option that these manual stone quarries provided.

Legal mining in Kot area.—As mining is banned along the 5 km e radius from the Delhi border, EPCA also visited some mines that are outside the notified area to ascertain the state of the environment. In this area, surface mining is being done and not deep mining. Therefore, as yet, the groundwater reserves are not being touched in this region. The entire area was like a giant dust field. We saw no evidence of any f afforestation or even dust-minimising efforts being undertaken in the areas that are being mined. We did see one tanker of water, which was sprinkling the roads, unable to stop the dust from swirling. EPCA could not see any protection for the workers from dust. As this area will clearly emerge as a major mining area in the future, it is important that the mining area is properly demarcated and environment management plan g implemented to enable scientific mining to minimise degradation of the environment.

Faridabad-Gurgaon Road.—EPCA saw mining alongside the road. Though the mines were closed because of the Hon'ble Court directive, EPCA saw vast pits and mining activity in this area. This is the road for the proposed bypass from Delhi. h

3. *The present laws and regulations in the area.*—We have assessed the current applicable laws and regulations in the area, which govern land use and mining so as to understand what efforts have been made by different agencies to ensure compliance:

a

b

c

d

e

f

g

h

- In May 1992, parts of the Aravalli range were declared ecologically sensitive under the Environment (Protection) Act. Under this notification, certain activities — including all new mining operations, including renewals of mining leases — are restricted and permission has to be sought from the Ministry of Environment and Forests. This notification is valid for reserved forests in the districts of Gurgaon in Haryana and Alwar in Rajasthan.
- In August 1992, the Forest Department of Haryana had issued a notification under the Punjab Land Preservation Act, 1900, banning the clearing and breaking up of the land not under cultivation, quarrying of stone ... in the Badkal area without prior permission of the Forest Department. This ban was for 30 years. Earlier it had already issued a similar notification for the Pali area for 25 years.
- In 1996, the Hon'ble Supreme Court banned all mining activity within 2 km of the Badkal and Surajkund tourist resorts.
- In the same order, it ordered that mining leases within the area from 2 km to 5 km radius shall not be renewed without obtaining no-objection certificates from the Haryana Pollution Control Board as also the Central Pollution Control Board (CPCB). It stipulated that 'unless both the Boards grant no-objection certificate, the mining leases in the said area shall not be renewed'.
- Mining in 2-5 km was allowed under condition that there would be strict adherence to the environment management plan laid down by NEERI. It has to be noted here that CPCB had in its report to the Hon'ble Court in 1996 stated that the 'deep mining for silica is causing an ecological disaster'. CPCB has recommended that mining activity 'should be stopped within a radius of 5 km from Badkal and Surajkund'. The subsequent report of NEERI dated 20-4-1996, recommended green belt at 1 km radius all around the boundaries of the two lakes. On this basis, the Hon'ble Court directed that radius be extended to 2 km for a green belt and to cushion the impacts of air and noise pollution.
- The Hon'ble Court in its order asked the agencies to ensure enforcement of the recommendations of NEERI. It directed that 'failure to comply with the recommendations may result in the closure of the mining operations'.

4. *Compliance and enforcement: absent and missing.*—To discuss the future strategy for this area, it would be important to assess the track record of the different agencies in ensuring that the previous orders and directives are enforced and complied with: a

1. No mining within 2 km of Badkal and Surajkund: probably enforced. But difficult to assess as the area is hilly.

2. Mining within 2-5 km should get permission from Haryana Pollution Control Board and CPCB. CPCB has issued 2 NOCs dated 20-12-2001 and 6-5-2002. No further record has been found of NOCs given for mining in this area. EPCA has not been able to find the NOCs granted by the Haryana Pollution Control Board. b

COMPLIANCE WITH THE ENVIRONMENTAL MANAGEMENT PLANS
RECOMMENDED BY NEERI AS DIRECTED BY THE HON'BLE SUPREME
COURT c

Sl. No.	Directive	Enforced or not	
1.	200 m wide green belt along Surajkund and Badkal.	Shrubs and wild growth. No real evidence of good afforestation.	
2.	100 m wide green belt outside mining lease boundary.	Definitely not done. EPCA did not see afforestation, except for some recent plantation of dying and dead trees in one or two places. The signboards were more prominent than the trees they were supposed to show. d	
3.	100 m open peripheral area around stone-crusher zone with green belt.	Not done. e	
4.	Green belt on either side of the road between Surajkund and Badkal.	We saw large-scale construction on this road — from schools to management colleges and housing colonies.	
5.	Mining should commence only after the environmental management plan (EMP) is approved by a designated authority.	There is no evidence of an environmental management plan being adhered to in this region. f	

ADHERENCE TO THE CONDITIONS OF THE NO-OBJECTION CERTIFICATE
GRANTED BY CPCB FOR MINING g

Sl. No.	Directive	Enforced or not	
1.	Mining to be done with approved mining plan.	No evidence.	
2.	Excavated pit to be filled by fly ash or municipal solid waste in the bottom layers.	EPCA saw no evidence that this recommendation had even been attempted to be followed. All h	

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

137

a	Overburden should be used in the middle layer. Topsoil on top layer and afforestation.	abandoned mines were left open and degraded. The entire region was pockmarked with deep holes and overburden.
b	3. No discharge of effluent or groundwater outside lease premises. Must take measures for rainwater harvesting and reuse of water so as not to affect the groundwater table in the areas. No mining operations shall be carried out in the water table area.	Not done. Gross violation. See section on water for details.
c	4. Ambient air quality standards to be complied with.	No evidence. Mine was closed.
	5. Noise level at the boundary shall conform with noise standards.	No evidence. Mine was closed.
	6. Green belt around lease area and roadside.	Not done.
d	7. Clearance of Ground Water Board for the usage of the groundwater will be obtained for the conservation of groundwater and to ascertain that there will be no impacts on the groundwater table of the area.	No evidence. Ground Water Board has not given any clearance that we could ascertain.

e From the above, it is clear that little or nothing has been done to seriously comply with the directives of the Hon'ble Supreme Court as well as to enforce the regulations and conditions laid down by the authorities for environmental management of the mining areas.

f 5. *Impact on groundwater reserves.*—It has been argued by the Government of Haryana in its IA No. 1785 of 2001 that the Expert Committee constituted by it under the Chairmanship of the Principal Conservator of Forests has submitted that there is a water divide between the two boundaries of the two States which prevents the flow of water from Delhi side to Haryana side. It has, therefore, argued that the mining on the Haryana side is not affecting the water balance in the Delhi side of the ridge.

g It has further said that only in four pits the groundwater was pumped regularly and in two pits occasionally. Therefore, it has argued that little or no impact on groundwater reserves is possible.

h 5.1. *Ground Water Board.*—EPCA requested the Central Ground Water Board (CGWB) for its opinion. The Board has based its

recommendations on the data available with it as well as a field survey. The key issues are:

1. On the issue of the ridge providing a water divide between the two States, CGWB has maintained that while the surface water divide follows the Delhi-Haryana border, except in the catchment of Bhuria nala, 'the surface water divide may not be the groundwater divide in the strict sense due to secondary porosity and also flat-topped nature of the hills'. It also states that the Aravalli hills are highly fractured, jointed and weathered making the major recharge zone for the surrounding areas. a

2. On the impact on the groundwater reserves due to mining, the Board has found that its observation wells have shown an increase in groundwater levels in Anangpur and Manger, after the mining has been stopped in May. Therefore, in spite of monsoon failure and continued abstraction of water, the observation wells have noted increased water levels within just 2 months of the mining being closed. b

The groundwater levels in a tubewell monitored in Mewla Maharajpur during mid-July and first week of August showed a rise of 0.18 metres. A higher rise — 0.71 to 0.78 metres, was observed in the two tubewells near the Manger mines and Pali mines in the two months since the mines were closed. This clearly points to the impact of mining on groundwater reserves. c

This fact was also confirmed in the interviews done by EPCA at site.

3. CGWB also notes that contrary to what has been claimed, the mined water is not being pumped into abandoned pits to recharge the groundwater. Instead the groundwater pumped is discharged into the surrounding nalas, leading to 'wastage' of groundwater. For instance, in the case of Anangpur mines, the water was pumped into Bhuria nala and in the case of Pali, the groundwater was discharged into a nala to Badkal lake and from Manger mine towards Dhauj lake causing 'enormous losses to groundwater resources of the area'. The mined water is also full of silt, which reduces recharge as well. d

4. Furthermore, CGWB notes that the large surface lakes in the mines are leading to huge losses of groundwater through evaporation.

5. The Central Ground Water Authority (CGWA) has notified these areas — south district of NCT Delhi, Faridabad, Ballabhgarh Municipal Corporation area, Gurgaon town as water-stressed areas and has put regulatory measures on groundwater development in these areas. e

Given all this, CGWB concludes that the 'dewatering of mines in the Aravalli hills has affected groundwater regimes of the mine area as well as buffer zone resulting in the depletion of groundwater resources'. f

5.2. *Compliance with groundwater-related regulations.*—The NOC given by the Central Pollution Control Board includes an explicit condition regarding groundwater:

a

That the mine-owner will ensure that there is no discharge of effluent of groundwater outside lease premises. They must take measures for rainwater harvesting and reuse of water so as not to affect the groundwater table in the areas. Most importantly, it stipulates that no mining operations shall be carried out in the water table area.

b

This condition has been grossly violated. Even the Haryana Government's affidavit in court accepts that pumping of groundwater is taking place, though it attempts to soften the issue by arguing that it is only being done in a few cases.

c

Under this condition, mining is not allowed in the water table area. EPCA saw deep and extensive pits of mines with vast water bodies. EPCA also saw evidence of pumps and pipes being used to drain out the groundwater so that mining could continue. Therefore, the miners are mining for silica, but also in the process, mining and destroying the groundwater reserves of the areas.

d

In times of such water stress and desperation, this water mining is nothing less than a gross act of wastage of a key resource. This time the stress has been further aggravated by the failure of monsoon. Notices have been issued in the nearby housing colonies stating that fall in groundwater table due to lack of rains is responsible for water shortage in the area this season. This only indicates how important it is to conserve groundwater in the region for long-term sustainability of drinking water sources. Groundwater is the only source of drinking water here."

e

15. On the basis of study and visit as well as the report of the Central Ground Water Board, EPCA made the following recommendations:

f

"1. The ban on the mining activities and pumping of groundwater in and from an area up to 5 km from the Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli hill must be maintained.

g

2. Not only must further degradation be halted but all efforts must be made to ensure that the local economy is rejuvenated, with the use of plantations and local water-harvesting-based opportunities. It is indeed sad to note the plight of people living in these hills who are caught between losing their water-dependent livelihood and between losing their only desperate livelihood to break stones in the quarries. It is essential that the Government of Haryana seriously implements programmes to enhance the land-based livelihood of people — agriculture, animal care and forestry. Local people must not be thrown into making false choices, which may secure their present but will destroy their future. Already, all the villages visited by EPCA complained of dire and desperate shortages of drinking water. Women talked about long queues before taps to collect

h

water. Clearly, water resources of the region are critical inputs to development and cannot be wasted and destroyed like this. The State Government must come up with strategies to involve local communities in the future development of this region. a

We have been given to understand that under the mining lease, 10 per cent of the royalty is to be given to local villagers. We have also understood that the turnover of the mining operations in this area is substantial — between Rs 50 lakhs to Rs 1 crore a day were the gross estimates provided to us. However, we do not have any estimate of the money that has been given to villagers from this revenue. But there was little evidence in these poor and destitute villages that any effort had been made to share the proceeds with them. b

3. The Central Ground Water Board must be consulted urgently about what should be done with the huge standing water in the area. This is a valuable national resource and the Board should be asked if the water is best conserved by covering it to stop evaporation or should it be used for recharge and storage with further water-harvesting efforts. c

4. The Ministry of Environment and Forests (MOEF) should be asked to extend the notification under the Environment (Protection) Act to the Faridabad part of the Aravalli ridge as well. Currently, the notification is only for Gurgaon district. This notification declaring it an ecologically sensitive area will help to regulate the activities in this region. d

5. It is not clear to us if adequate planning for water is being done in the large-scale construction activities being undertaken in this area. This aspect is outside the purview of this report but needs to be examined carefully. e

6. It must also be noted that Gurgaon-Faridabad Road is being proposed as the major bypass for the city of Delhi. The Hon'ble Court will note its directives on the air pollution case in this regard. It has been said to the Court in that matter that the Government of Haryana is intending to widen the road and bids have even been issued to this effect. Therefore, it is all the more important that the mining activity along the road must not be allowed. The 5 km ban from the border of Delhi will take care of this requirement. f

7. EPCA would also recommend that the mining area outside the 5 km area must be demarcated and regulated. In this context, EPCA would like to draw the attention of the Court to the violations and gross disregard for regulations found in the present mines. It is not out of place to mention that these mines are owned by very powerful and highly placed individuals in the establishment. In a related case the High Court of Punjab and Haryana has directed on 20-4-2001 a CBI enquiry on the basis of a public interest litigation filed by a journalist. In its order the Hon'ble Court maintained that its examination has found evidence that illegal mining operations are going on in the area. The Hon'ble Court g h

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

141

a also noted the bias of the State Government to shield the offenders and has said that because there is prima facie evidence of the involvement of a 'person who holds the high position of Cabinet Minister in the State', the enquiry should be done by CBI. This enquiry is still ongoing.

During the examination of the case, EPCA was told of other persons involved in the mining activity who are highly influential and part of the ruling political parties in the State and Centre.

b In this respect, EPCA would recommend that tighter and constant monitoring of the area must be done by a Central Government agency. To increase accountability, EPCA would also recommend that the environment management plan (EMP) for the mining area as well as the conditions of the NOC should be made a public document. All other subsequent monitoring reports of this region must be available publicly, preferably on the website of the monitoring agency."

c 16. With the report, a note given by the Chairman, Central Ground Water Board on impact of pumping of groundwater from mines and groundwater regime in mining area and its buffer zone in Aravalli hills of NCT Delhi, Faridabad and Gurgaon districts of Haryana was also annexed. The said note reads as under:

d "Based on available data with Central Ground Water Board and a quick survey in and around mining area in Aravalli hills, following observations are made—

e 1. The area under consideration forms part of Aravalli range from where mining of silica sand and other construction material was being carried out. The mining of silica sand was mainly carried out below water table by dewatering the mines whereas mining for other construction material is carried out above water table. The major mining areas are Anangpur, Pali, Manger and Mohabatabad.

f 2. The surface water divide in the area approximately follows Delhi-Haryana border except the catchment of Bhuria nala flowing in Haryana State, which extends in Asola area of Delhi State also. The formations in the Aravalli hills are highly fractured, jointed and weathered making it the major recharge zone for the surrounding areas. The surface water divide may not be groundwater divide in strict sense due to secondary porosity and also flat-topped nature of the hills.

g 3. The pumping of groundwater during mining of silica sand affects groundwater regime of surrounding area. During the field visit, it was reported by local people that during the dewatering of mines there was decline in groundwater levels and reduction in discharge in surrounding wells whereas after stoppage of pumping the rise in water levels and increase in discharge has been reported. In few observation wells on downstream side of mines rise in groundwater levels has been observed in Anangpur and Manger villages after stoppage of abstraction of groundwater from deep

h

mines. The groundwater levels in a tubewell monitored in Mewla Maharajpur during mid-July 2002 and first week of August 2002 were 24.39 and 24.57 m below ground level respectively, showing a rise of 0.18 m. Groundwater levels in a tubewell located at a temple near Manger mine in second week of July 2002 and first week of August 2002 were 51.70 and 49.99 m below ground level respectively showing a rise of 0.71 m. Similarly, groundwater levels in a tubewell at Indernagar in Delhi area near Pali mine in third week of June 2002 and first week of August 2002 were 59.68 and 58.90 m below ground level respectively showing a rise of 0.78 m. The stoppage of dewatering of mines has resulted in rise of groundwater levels in surrounding areas. a

4. It has been observed that drainage pattern of the area has been modified due to haphazard mining and dumping of waste material which has bearing on natural path of groundwater flow in the area. c

5. It is claimed that abandoned pits act as recharge pits and in some cases the pumped groundwater is put in these pits so that there may not be substantial modification in the conditions of groundwater regime. All the groundwater pumped out from Anangpur mine has not been put into abandoned adjoining pits resulting in wastage of groundwater by discharge into Bhuria nala. Observation has indicated that Bhuria nala which was ephemeral stream became a perennial stream during mining operations and now flow has stopped after closure of mining activity. Similarly, pumped-out groundwater from Pali mine was being discharged in an easterly flowing nala to Badkal lake and from Manger mine in a south-westerly flowing nala towards Dhauj lake causing enormous losses to groundwater resources of the area. Further, the pumped-out water cannot be recharged effectively due to its high silt content. In silica sand mines the water table has been intersected and is presently exposed to the atmosphere causing huge losses to groundwater through evaporation. d

6. Studies conducted by Central Ground Water Board have revealed that water levels in Faridabad new town which falls in buffer zone of mine area have declined by 1.44 m/year. The decline of groundwater level in the towns has been attributed to overdevelopment of groundwater for domestic and industrial uses which is totally dependent on groundwater. The pumping out of groundwater for mining of silica sand in recharge zone might have aggravated the declining trend of groundwater levels which otherwise would have contributed to the buffer zone. e

7. Central Ground Water Authority has notified south district of NCT Delhi and Faridabad and Ballabgarh Municipal Corporation area and Gurgaon town and adjoining industrial area in August 2000, October 1998 and December 2000 respectively mainly on consideration of overdevelopment of groundwater resources resulting f

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

143

in substantial decline in groundwater levels. Regulatory measures on groundwater development have been imposed in these areas.

a 8. Therefore, it is observed that dewatering of mines in Aravalli hills has affected groundwater regime of the mine area as well as buffer zone resulting in depletion of groundwater resources."

b 17. When the aforesaid report came up for consideration, some of the mine-owners submitted that their mines had not been inspected by Bhure Lal Committee. Particulars of the mines that were stated to have not been inspected were filed on 23-9-2002. Bhure Lal Committee was requested to carry out the inspection of the said areas/mines. The Committee was also permitted to associate such other organisations or persons as it may deem fit and proper for the purpose of inspection.

EPCA second report and recommendations

c 18. In terms of the aforesaid order, 26 mines were inspected and report dated 21-10-2002 was submitted. The observations made as a result of inspection in regard to each mine are as follows:

"The numbers indicated in parenthesis are serial numbers of mines given in the list of mines furnished by Kailash Vasdev, Senior Advocate to the Hon'ble Supreme Court that was forwarded to EPCA:

1. (9)

d Name of mine/area: New Anangpur Silica Sand Mines, M/s S.P. Sethi.
Location: Village New Anangpur, District Faridabad.
Total area of land on lease/Actual area under mining activity: 186.52 ha.
Mineral extracted: Silica sand mines.
Status of mining: Above groundwater level.
Whether groundwater is extracted: No.
e Status of environmental clearances: No clearance given. No environmental management plan.

This mine is located very close to the Delhi border (in close proximity to Asola Sanctuary). EPCA members were shown two pits, which were not being worked currently. There was no groundwater exploitation seen in these pits. Only brown stagnant rainwater was seen. But what was very clear was that this mining lease was adjoining the boundary of Delhi. Only recent plantation of saplings was noticed along the path.

2. (13)

g Name of mine/area: Anangpur Silica Sand Mines, M/s Mohan Ram and Co.
Location: Village Anangpur, District Faridabad.
Total area of land on lease/Actual area under mining activity: 175.00 ha.
Mineral extracted: Silica sand mines.
Status of mining: Below groundwater level.
Whether groundwater is extracted: Yes.
Status of environmental clearances: NOC granted by State Pollution Control Board for renewal of lease in 1999. No environmental management plan.

h This mine has large pits where sand and silica was being extracted. This was a working mine and had large amount of water in the two pits. EPCA members also saw a pipe, which was currently unused, meant for pumping out the water from the

pits. The pits were at least 100-150 feet deep and the groundwater had been clearly exploited for some time. Large amount of overburden was also seen in the area.

3. (12)

Name of mine/area: Anangpur Silica Sand Mines, M/s S.P. Sethi, Anangpur. a

Location: Village Anangpur, District Faridabad.

Total area of land on lease/Actual area under mining activity: 489.34 ha.

Mineral extracted: Silica sand, china clay, ordinary sand, stone road material (RM) and masonry stone (MS).

Status of mining: Below groundwater table. b

Whether groundwater is extracted: Yes.

Status of environmental clearances: No clearance given. No environmental management plan.

The mining pit here has turned into a huge groundwater lake. Groundwater is fully exposed. Extensive overburden could be seen near the pits. It was very evident that no major efforts were made to create plantation in the area. Some new and young saplings could be seen alongside the paths leading to the pits. Clearly these were planted very recently. c

4. (8)

Name of mine/area: Anangpur Silica Sand Mines, M/s Rajdhani Minerals Corporation.

Location: Village Anangpur, District Faridabad.

Total area of land on lease/Actual area under mining activity: 188.47 ha. d

Mineral extracted: Silica sand, china clay, ordinary sand, stone RM and MS.

Status: Seen one closed pit. Did not see any water.

Status of environmental clearances: NOC granted by State Pollution Control Board.

5. (7)

Name of mine/area: Mewla Maharajpur Silica Sand Mines, M/s K.C. Ahuja & Co. e

Location: Village Mewla Maharajpur, District Faridabad.

Total area of land on lease/Actual area under mining activity: 162.905 ha.

Mineral extracted: Silica sand, china clay, ordinary sand, stone road material (RM) and masonry stone (MS).

Status: Surface mining from the rocks. f

Whether groundwater is extracted: No.

Status of environmental clearances: No clearance given. No environmental management plan.

One pit seen, mostly stone being quarried. Some water seen. No evidence of tree plantation seen in the area. But mine pits are adjoining the road.

6. (19)

Name of mine/area: M/s Ramkrishna Purni Devi. g

Location: Village Badkal, District Faridabad.

Total area of land on lease/Actual area under mining activity: 369.4 ha.

(Of this 121 ha falls within 2 km of Badkal Tourist Complex where mining has been banned.)

Mineral extracted: Silica sand, ordinary sand, road metal, masonry stone and minor mineral. h

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

145

Status: Mining above groundwater table.

Whether groundwater is extracted: No.

a

Status of environmental clearances: No clearance given. No environmental management plan.

EPCA members saw one pit located next to the border of Delhi. The mining area is hard rock and the pit was being worked for stone. The mining site was at the boundary of Delhi and Asola Sanctuary was seen at a close distance. This mine is also adjoining the road.

b

7. (2)

Name of mine/area: Mohan Ram & Co., proprietor Kartar Singh.

Location: Village Pali, District Faridabad.

Mineral extracted: Ordinary stone, road metal, masonry stone.

Under litigation in the High Court of Delhi.

8. (11)

c

Name of mine/area: Pali Silica Sand Mines, M/s Goodwill Mineral Corporation.

Location: Village Pali, District Faridabad.

Total area of land on lease/Actual area under mining activity: 50.5 ha.

Mineral extracted: Silica sand, china clay, sand.

Status of mining: Below water table.

d

Whether groundwater is extracted: Yes.

Status of environmental clearances: NOC granted by State Pollution Control Board in 1999 for renewal of lease. Asked to comply with conditions laid down by CPCB as well. No environmental management plan as yet.

A deep pit with extensive water body. Pipes, pumps and generators could be seen at the site. Water is extracted from the pit. Very little plantation could be seen at the site. The pit is contiguous to other mines in the area and the extent of groundwater being exploited is massive and the expanse is vast. Some trees have been planted along the roadside. This mine is adjoining the main Delhi bypass of Faridabad-Gurgaon, which is being tendered for a four-lane highway.

e

9. (17)

Name of mine/area: M/s Sheeshpal Singh.

Location: Village Pali, District Faridabad.

f

Total area of land on lease/Actual area under mining activity: 127.95 ha.

Mineral extracted: Silica, china clay, sand, quartzite.

Status: Below groundwater table.

Whether groundwater is extracted: Yes.

Status of environmental clearances: No clearance given. No environmental management plan.

g

Large lake of groundwater could be seen at the site. The lake apparently covers a few contiguous mining pits. No efforts to create plantation in the area except a few young saplings which seemed to have been planted very recently. Huge overburden could be seen near the pits. This mine is adjoining the main Delhi bypass of Faridabad-Gurgaon, which is being tendered for a four-lane highway.

10. (20)

h

Name of mine/area: M/s Ram Chandar.

Location: Villages Gothra, Mohabatabad, District Faridabad.

146

SUPREME COURT CASES

(2004) 12 SCC

Total area of land on lease/Actual area under mining activity: 296 ha.

Mineral extracted: Silica sand, ordinary sand, road metal and masonry stone.

Status: Below groundwater table.

Whether groundwater is extracted: Yes.

Status of environmental clearances: No clearance given. No environmental management plan.

Deep mining pits with large water bodies could be seen. The mine is also contiguous to the other mines so the amount of water that is being exploited is massive and uncontrolled. Huge amounts of overburden were also seen in the area. In this mine some efforts have been made to create plantations and the trees, unlike those seen in other areas, were more mature. This mine is adjoining the main bypass of Faridabad-Gurgaon, which is being tendered for a four-lane highway.

11. (22)

Name of mine/area: M/s Maruti Minerals.

Location: Plot No. 1, Village Manger, District Faridabad.

Total area of land on lease/Actual area under mining activity: 63.225 ha.

Mineral extracted: Silica sand, china clay, ordinary sand, road metal and masonry stone.

Status: Above groundwater.

Whether groundwater is extracted: No.

Status of environmental clearances: Clearance given. No environmental management plan.

Observed surface stone mining. No water seen. New lease and so the mines have not reached groundwater levels as yet. But mine near Delhi bypass of Faridabad-Gurgaon Road.

12A. (1)

Name of mine/area: M/s Seven Mines and Minerals Pvt. Ltd.

Location: Plot No. 6, Village Manger, District Faridabad.

Total area of land on lease/Actual area under mining activity: 59.3875 ha.

Mineral extracted: Ordinary sand, road metal and masonry stone.

Status: Above groundwater table.

Whether groundwater is extracted: No.

Status of environmental clearances: Clearance given. No environmental management plan.

Observed surface stone mining. No water seen. New lease and so the mines have not reached groundwater levels as yet. But mine near Delhi bypass of Faridabad-Gurgaon Road.

12B.

Name of mine/area: M/s Seven Mines and Minerals Pvt. Ltd.

Location: Plot No. 8, Village Manger, District Faridabad.

Total area of land on lease/Actual area under mining activity: 63.75 ha.

Mineral extracted: Ordinary sand, road metal and masonry stone.

Status: Above groundwater table.

Whether groundwater is extracted: No.

Status of environmental clearances: Clearance given. No environmental management plan.

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

147

Observed surface stone mining. No water seen. New lease and so the mines have not reached groundwater levels as yet. But mine near Delhi bypass of Faridabad-Gurgaon Road.

a

13. (25)

Name of mine/area: M/s Ashok Minerals Industry.

Location: Plot No. 7, Village Manger, District Faridabad.

Total area of land on lease/Actual area under mining activity: 67.00 ha.

Status: Above groundwater table.

b

Whether groundwater is extracted: No.

Status of environmental clearances: No clearance given. No environmental management plan.

Observed surface stone mining. No water seen. New lease and so the mines have not reached groundwater levels as yet. But mine is on the Delhi bypass of Faridabad-Gurgaon Road.

14. (23)

c

Name of mine/area: M/s Jaikrishan Impex Pvt. Ltd.

Location: Plots Nos. 2 and 3, Village Manger, District Faridabad.

Total area of land on lease/Actual area under mining activity: 44.785 ha and 56.4375 ha.

Mineral extracted: Stone mining.

Status: Below groundwater table.

d

Whether groundwater is extracted: Yes.

Status of environmental clearances: No clearance given. No environmental management plan.

Was shown one pit with small water collection. But at a distance seen another pit with large amount of groundwater collected. This mine is being worked and clearly water must have been pumped from the mine. Deep pits seen. But mine is near Delhi bypass of Faridabad-Gurgaon Road.

e

15. (10)

Name of mine/area: M/s Faridabad Gurgaon Minerals.

Location: Plot No. 5, Village Manger, District Faridabad.

Total area of land on lease/Actual area under mining activity: 33.0375 ha.

Mineral extracted: Ordinary sand, road metal and masonry stone.

f

Status: Below groundwater table.

Whether groundwater is extracted: Yes.

Status of environmental clearances: No clearance given. No environmental management plan.

Exposed groundwater could be seen. This mine had also been worked. Deep pits seen in this mine.

g

16. (24)

Name of mine/area: M/s Patram Mines and Minerals Pvt. Ltd.

Location: Plot No. 11, Village Manger, District Faridabad.

Total area of land on lease/Actual area under mining activity: 126.75 ha.

Mineral extracted: Silica sand and stone.

h

Status: Above groundwater table.

Whether groundwater is extracted: No.

148

SUPREME COURT CASES

(2004) 12 SCC

Status of environmental clearances: No clearance given. No environmental management plan.

Stone quarry. No water seen. Some efforts have been made to create plantation. a

17. (18)

Name of mine/area: M/s Sheeshpal Singh.

Location: Village Pali, District Faridabad.

Total area of land on lease/Actual area under mining activity: 44.48 ha.

Mineral extracted: Silica/Ord. sand and stone, road metal and masonry stone.

Status: Above groundwater table. b

Whether groundwater is extracted: No.

Status of environmental clearances: No clearance given. No environmental management plan.

Recent lease. Mining activity had recently started. New pit seen and as yet only stone was being quarried.

18. (4)

Name of mine/area: Pali Silica Sand Mines, M/s S.P. Sethi. c

Location: Village Pali, District Faridabad.

Total area of land on lease/Actual area under mining activity: 82.20 ha.

Mineral extracted: Silica/Ord. sand, china clay, stone (road metal and masonry).

Status: Below groundwater table.

Whether groundwater is extracted: Yes. d

Status of environmental clearances: NOC given by State Pollution Control Board in 1999 for renewal of lease. No environmental management plan.

Pit with little water seen. Being worked. Large amount of overburden was seen close to mine. 1 ha of plantation created near mine.

19. (3)

Name of mine/area: Pali Silica Sand Mines, M/s P.K. Sethi. e

Location: Pali, District Faridabad.

Total area of land on lease/Actual area under mining activity: 162 ha.

Mineral extracted: Sand, china clay, stone (road and masonry).

Status: Above groundwater table.

Whether groundwater is extracted: No.

Status of environmental clearances: No clearance given. No environmental management plan. f

Pit with no water seen. Being worked. Large amount of overburden was seen close to mine.

20. (5)

Name of mine/area: Pali Silica Sand Mines, M/s Lucky Minerals.

Location: Village Pali, District Faridabad. g

Total area of land on lease/Actual area under mining activity: 261.36 ha.

Mineral extracted: Sand, china clay, stone (road metal and masonry).

Status: Above groundwater table.

Whether groundwater is extracted: No.

Status of environmental clearances: No clearance given. No environmental management plan. h

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

149

Pit with no water seen. Being worked. Large amount of overburden was seen close to mine. Nominal plantation seen. But area with lessee is very large — over 261 ha — and no idea if other mines in the area have reached water levels.

a

21. (6)

Name of mine/area: Mohabatabad Silica Sand Mines, M/s P.K. Sethi.

Location: Village Mohabatabad, District Faridabad.

Total area of land on lease/Actual area under mining activity: 399.59 ha.

Mineral extracted: Sand, china clay, stone (road metal and masonry).

b

Status: Above groundwater table.

Whether groundwater is extracted: No.

Status of environmental clearances: No clearance given. No environmental management plan.

Shown pit where stone is being quarried. But area with lessee is very large — over almost 400 ha — and no idea if other mines in the area have reached water level as yet.

c

22. (14)

Name of mine/area: M/s Tejvir Singh and Co.

Location: Village Bandhwari, District Gurgaon.

Total area of land on lease/Actual area under mining activity: 91.20 ha.

Mineral extracted: Silica sand, ordinary sand, china clay, quartz and stone mine.

d

Status: Above groundwater table.

Whether groundwater is extracted: No.

Status of environmental clearances: Clearance given. No environmental management plan.

Stone quarry. Very recent lease granted and clearance has only been done in April 2002. Large, seemingly abandoned, pits seen on road. Labourer colony on road near mine and a number of trucks seen on this road carrying material. No plantation seen.

e

23. (15)

Name of mine/area: Mr Ashok Gupta.

Location: Village Balola, District Gurgaon.

Total area of land on lease/Actual area under mining activity: 19.15 ha.

Mineral extracted: Silica sand and china clay.

f

Status: Above groundwater table.

Whether groundwater is extracted: No.

Status of environmental clearances: Clearance given. No environmental management plan.

Stone quarry. Recent lease and clearance of January 2002. No plantation seen. The mine is on the main Delhi bypass — Gurgaon-Faridabad Road, which is being developed as a four-lane bypass.

g

24. (16)

Name of mine/area: Mr Ashok Gupta.

Location: Plot No. 3, Village Behrampur, District Gurgaon.

Total area of land on lease/Actual area under mining activity: 94.05 ha.

Mineral extracted: Silica sand, quartzite.

h

Status: Above groundwater table.

Whether groundwater is extracted: No.

150

SUPREME COURT CASES

(2004) 12 SCC

Status of environmental clearances: No clearance given. No environmental management plan.

Stone quarry. Recent lease. No plantation seen. But near village. As this mine is near the five km radius, other mines with crushers and blasting seen at close distance. a

11B. (22)

Name of mine/area: M/s Maruti Minerals.

Location: Village Haidpur, District Gurgaon.

Total area of land on lease/Actual area under mining activity: 18.125 ha. b

Mineral extracted: Stone.

Status: Above groundwater table.

Whether groundwater is extracted: No.

Status of environmental clearances: No clearance given. No environmental management plan.

Stone quarry. No plantation seen. Near habitation of Gurgaon town. c

25. (21)

Name of mine/area: Mr Karan Singh.

Location: Village Nathpur, District Gurgaon.

Total area of land on lease/Actual area under mining activity: 5.996 ha.

Mineral extracted: Silica sand.

Status: Above groundwater level (surface mining). d

Whether groundwater is extracted: No.

Status of environmental clearances: No clearance given. No environmental management plan.

Stone quarry. No plantation seen. Mine on main Delhi-Gurgaon Road at the border of Delhi. Mine lease recently awarded at the edge of DLF Residential Colony. Allegations that illegal mining is being done at the Delhi side of this mine, next to the protected area of Delhi forest. e

19. In respect of the groundwater regime the report states that:

"The key issue to examine is the impact of mining on the groundwater regime in the region. It is evident from the inspection done by EPCA that groundwater reserves are being exploited and destroyed, it must be stressed that it is not a matter of individual mines reaching groundwater levels or not, the issue to examine is the water regime of the entire area." f

20. The report further states that

"during his inspection of the mines, Kartar Singh Badana, Minister of Cooperatives in the State and also a mine-owner told EPCA members that the impact of groundwater abstraction is minimal. He maintained that the miners were harvesting the water and not allowing it to flow to the Yamuna, where it would be lost to the State. A perusal of the reports of the groundwater regime shows that this contention cannot be upheld." g

21. It is also stated in the report that

"the geology and geomorphology of the area comprises the oldest-exposed lithology with upland units. The rock type is mainly quartzite h

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

151

a and these rise 150-200 metres above ground level. In the quartzites the groundwater aquifers occur in the weathered zones and interspaces within interconnected joints and fractures. According to CGWB, the unconfined aquifer is about 50 metres thick. But between 50-110 metres below ground level (bgl) a thick clay layer ranging in thickness from 25-60 metres separates the top unconfined aquifer from the confined aquifer."

b 22. The mines inspected by EPCA were below 150 feet (45 metres) and on checking it was found that most mines were further operating at 20-100 feet (6-30 metres) below water levels. This means that the mines are abstracting water from the confined aquifer. As annual rainfall mostly replenishes the unconfined or top aquifer levels, the mining activity is destroying a non-renewable resource. EPCA saw deep and extensive pits of mines with vast water bodies — stretching at times to a kilometre and more.

c EPCA also saw evidence of pumps and pipes being used to drain out the groundwater so that mining could continue. Therefore, the miners are mining for silica, but also in the process mining and destroying the groundwater reserves of the areas.

d 23. The NOC given by the Central Pollution Control Board includes an explicit condition regarding groundwater:

"That the mine-owner will ensure that there is no discharge of effluent or groundwater outside lease premises. They must take measures for rainwater harvesting and reuse of water so as not to affect the groundwater table in the areas. Most importantly, it stipulates that there should be no mining operations carried out in the water table area."

e 24. The report of the Central Ground Water Board states very categorically that the groundwater table is already at a critical stage in Faridabad. It states:

f "The stage of groundwater development of Faridabad block is 89.02 per cent in dark category and no further abstraction of groundwater should be carried out to avoid any adverse environment impact on groundwater regimes. Thus no additional tubewells are advisable to be constructed for community water supply scheme even though they may not affect the storage in Badkal lake."

The report further states that "the domestic water supply to Faridabad town has to be catered to and there are no surface water sources which can be tapped".

g 25. EPCA further observes that most of the mining is happening inside the municipal area of Faridabad. In fact, the Department of Mines and Geology states in the letter dated 12-10-2002,

h "it is submitted that the mineral rights of the mines vests with the State Government.... The surface rights of Villages Badkal, Pali, Gothra, Mohabatabad, Anangpur, Mewla Maharajpur are with Municipal Corporation, Faridabad and Manger revenue estate is with Gram Panchayat."

26. Sensitivity of this region is further accentuated by its close proximity to the reserved forests of Asola Sanctuary located at the border of Delhi and Haryana and other ecologically sensitive areas like Surajkund and Badkal lake. a

27. Even in Gurgaon, the CGWB report indicates that the groundwater scenario is grim. According to CGWB, the "groundwater development of Gurgaon block is 124 per cent, indicating that the entire block in which Gurgaon town is situated is overexploited". The groundwater levels are also falling dangerously according to the report of CGWB which recommends strict regulatory measures for groundwater use. b

28. EPCA, while reaffirming the recommendations that had been made in its earlier report dated 9-8-2002, made the following recommendations:

"The overall assessment of the environmental impact of the mining activities in the area especially its implication for groundwater level in the region reaffirms EPCA's assessment presented in its earlier report. EPCA upholds its earlier recommendations made vide the report submitted to the Hon'ble Supreme Court on 9-8-2002. c

EPCA is concerned that if mining is allowed to continue in this area, it will have serious implications for the groundwater reserve which is the only source of drinking water in the area. EPCA has also noticed uncontrolled construction activities that will expand urban habitation considerably in future. Unless immediate measures are taken to conserve and augment water resources in the area an acute survival crisis is expected. Interviews with local villagers in the vicinity of mines confirm that water shortage is already a serious problem in the region. d

The extent of degradation in and around mines is the evidence of failure to enforce basic rules for ecological safeguards. Recent attempts at planting trees are cosmetic. Exposed groundwater lakes observed in mining sites only reconfirm the worst fears. If mining could not be stopped in so many pits even after reaching groundwater level there is no guarantee that even some of those mines still at the surface level will abide by the stipulated norms when they reach the water table." e

Submissions for confirming or varying order dated 6-5-2002[‡] f

29. Having regard to the ground realities as reflected in the aforesaid reports, should the order passed on 6-5-2002[‡] be varied is the question. The continuance of the order has been strenuously objected to by the mining leaseholders and also by the Government of Haryana. Various applications have been filed seeking vacation of the order and in support thereof, submissions have been made mainly by Mr Shanti Bhushan, Dr. Rajeev Dhavan, Mr Kapil Sibal, Mr K.B. Rohatgi and Mr Dhruv Mehta representing the leaseholders and Mr Mukul Rohatgi, learned Additional Solicitor General representing the Government of Haryana. We have also heard Mr Raju Ramachandran and Mr Altaf Ahmed, learned Additional Solicitors General for the Ministry of Environment and Forests, Government of India, Mr C.S. Vaidyanathan and Mr Kaushik (in support of LA No. 1825 of 2002 filed by g h

[‡] See cited order at (2004) 12 SCC 188, below

a the villagers). Mr Ranjit Kumar, learned amicus and Mr M.C. Mehta, advocate/petitioner-in-person and Mr Kailash Vasdev for the Government of Delhi have made submissions in support of closure of mining activity and for making the order dated 6-5-2002[‡] absolute by prohibiting all mining activities and pumping of groundwater in and from an area up to 5 km from Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli hills.

Notifications regarding mining on Aravalli hills

b 30. The notification dated 7-5-1992 issued by the Ministry of Environment and Forests, Government of India under Section 3(2)(v) of the EP Act read with Rule 5 of the Rules made under the said Act has considerable bearing on the aspect of mining in Aravalli hills. The notification, inter alia, bans all new mining operations including renewals of mining leases and sets out the procedure for taking prior permission before
c undertaking such an activity. The notification, insofar as material for the present purposes, reads:

d "S.O. 319(E).—Whereas a notification under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 (29 of 1986) inviting objections against restricting certain activities in specified area of Aravalli range which are causing environmental degradation in the region was published in the Gazette of India, Part II, Section 3 sub-section (2) vide S.O. 25(E) dated 9-1-1992;

And whereas all objections received have been duly considered by the Central Government;

e Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with Rule 5 of the Environment (Protection) Rules, 1986 the Central Government hereby prohibits the carrying on of the following process and operations, except with its prior permission, in the areas specified in the table appended to this notification:

- f (i) * * *
- (ii)(a) all new mining operations including renewals of mining leases;
- (b) existing mining leases in sanctuaries/national parks and areas covered under Project Tiger; and/or
- (c) mining is being done without permission of the competent
g authority;
- (iii) cutting of trees;
- (iv) construction of any clusters of dwelling units, farmhouses, sheds, community centres, information centres and any other activity connected with such construction (including roads, a part of any infrastructure relating thereto);

- h (v) * * *

[‡] See cited order at (2004) 12 SCC 188, below

2. Any person who desires to undertake any of the abovementioned processes or operations in the said areas, shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi, in the attached application form (annexure) specifying, inter alia, details of the area and proposed process or operation. He shall also furnish an environment impact statement and an environmental management plan along with the application and such other information as may be required by the Central Government for considering the application. a

3. The Central Government in the Ministry of Environment and Forests shall, having regard to the guidelines issued by it from time to time for giving effect to the provisions of the said Act, grant permission within a period of three months from the date of receipt of the application or where further information has been asked for from the applicant, within a period of three months from the date of the receipt of such information, or refuse permission within the said time on the basis of the impact of the proposed process or operation on the environment in the said area. b

4. For seeking permission under this notification, an application in the prescribed form (see annexure), duly filled in, may be submitted to the Secretary, Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi. c

* * *

3. (b)(ii) Erodability classification of the proposed land.

* * *

5. (a) Water balance at site surface and groundwater availability and demand. d

* * *

12. (a) Environmental impact assessment report.

(b) Environmental management plan: prepared as per guidelines of MEF issued from time to time.

(c) Detailed feasibility report.

(d) Proposal for diversion of forest land under Forest (Conservation) Act, 1980 including benefit-cost analysis. e

13. Recommendations of the State Pollution Control Board and/or the State Department of Environment and Forests."

31. The aforesaid notification, restricting mining activities in the Aravalli range is relevant for mining operation in Gurgaon district wherein part of Aravalli hill range exists. f

32. The powers vested in the Central Government in terms of the aforesaid notification dated 7-5-1992 were delegated to the State Governments concerned, namely, Rajasthan and Haryana by issue of notification dated 29-11-1999 by the Central Government, Ministry of Environment and Forests. The said notification reads thus: g

h

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

155

“MINISTRY OF ENVIRONMENT AND FORESTS NOTIFICATION

New Delhi, 29-11-1999

a S.O. 1189(E).—In exercise of the powers conferred by Section 23 of the Environment (Protection) Act, 1986 (29 of 1986) (hereinafter referred to as the said Act), read with sub-rule (4) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby delegates the powers conferred on it to take measures for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution, to be exercised also by the State Governments as notified in the notification of the Government of India in the Ministry of Environment and Forests No. S.O. 319(E) dated 7-5-1992 subject to certain conditions which are as follows:

b (i) the State Governments concerned, namely, Haryana and Rajasthan shall constitute an Expert Committee for each State as per the composition given in Schedule I annexed to this notification;

c (ii) each State Government shall also constitute a Monitoring Committee, under the Chairmanship of the District Collector concerned (*Gurgaon in Haryana and Alwar in Rajasthan*) as given in Schedule II annexed to this notification which shall inter alia monitor the compliance of the conditions stipulated while according environmental clearance by such State Governments and report to such State Government about the violations, if any, and the action taken thereon;

d (iii) the District Collectors of *Gurgaon in Haryana and Alwar in Rajasthan* shall be authorised by the respective State Governments to take necessary action under Section 5 of the said Act in respect of cases where the project proponents fail to implement the conditions.

e 2. The State Government concerned shall initiate steps to prepare a master plan for the development of the area covered by Notification No. S.O. 319(E) dated 7-5-1992 integrating environmental concerns and keeping in view the future land use of the area. This master plan shall be prepared by the State agency concerned, approved by the competent authority and finally published, within two years from the date of issue of this notification, in accordance with the procedure laid down in the Town and Country Planning Act or any other similar Act of the respective State Government. The State Government concerned shall implement the master plan forthwith after its final publication.

f 3. Any person desirous of undertaking any of the activities mentioned in Notification No. S.O. 319(E) dated 7-5-1992 shall submit an application to the Secretary, Department of Environment of the Government of Haryana/Rajasthan, as the case may be. The applicant shall also furnish environment impact statement and an environment management plan and such other information as may be prescribed by such State Governments. The application after due scrutiny shall be placed before the Expert Committee for its recommendations. Based on

g

h

the recommendations of the Expert Committee, the Department of Environment in the State Government concerned shall take a final decision and convey the same to the applicant within three months from the date of receipt of application or when further information has been asked for from the applicant within three months from the date of receipt of such information. a

4. The Ministry of Environment and Forests retains appellate power against rejection of any proposal and the National Environmental Appellate Authority constituted under the National Environment Appellate Authority Act, 1997 (22 of 1997) shall continue as an Appellate Authority against approval." (emphasis in original) b

33. Schedules I and II of the notification set out the composition of the Expert Committee and of the Monitoring Committee. Some controversy and confusion in respect of constitution of committees insofar as it relates to appointment of an expert from non-government organisation, was brought to our notice but the delegation in favour of State Governments having been withdrawn now, it is not necessary to examine this aspect. The Central Government, in terms of notification dated 28-2-2003, has withdrawn the delegation in favour of the State Governments. c

Notification of 27-1-1994 regarding environment impact assessment (EIA) d

34. Another notification which is of considerable importance on the aspect of mining is dated 27-1-1994, as amended on 4-5-1994. The notification has been issued by the Ministry of Environment and Forests, Government of India, in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 6 of the EP Rules stipulating that expansion or modernisation of any activity (if the pollution load is to exceed the existing one) or a new project listed in Schedule I of the notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified in the notification. e

35. The issue in these matters is of the interpretation of the notification, its applicability also to mining leases granted earlier to the issue of the notification i.e. at the time of the renewal of such mining lease. The notification dated 27-1-1994, to the extent material for the present purpose, reads as under: f

"S.O. 60(E).—Whereas a notification under clause (a) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 inviting objections from the public within sixty days from the date of publication of the said notification, against the intention of the Central Government to impose restrictions and prohibitions on the expansion and modernisation of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in that notification was published as No. S.O. 80(E) dated 28-1-1993: g
h

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

157

And whereas all objections received have been duly considered;

- a* Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs that on and from the date of publication of this notification in the Official Gazette, expansion or modernisation of any activity (if pollution load is to exceed the existing one) or a new project listed in Schedule I of this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification.
- b*

2. Requirements and procedure for seeking environmental clearance of projects:

- c* I. (a) Any person who desires to undertake any new project or the expansion or modernisation of any existing industry or project listed in Schedule I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

- d* The application shall be made in the pro forma specified in Schedule II of this notification and shall be accompanied by a project report which shall, inter alia, include an environmental impact assessment report/environment management plan prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time.

- e* (b) Cases rejected due to submission of insufficient or inadequate data and plans may be reviewed as and when submitted with complete data and plans. Submission of incomplete data or plans for the second time would itself be a sufficient reason for the impact assessment agency to reject the case summarily.

II. In case of the following site-specific projects:

- f* (a) mining;
(b)-(d) * * *
- (e) prospecting and exploration of major minerals in areas above 500 ha,

- g* the project authorities will intimate the location of the project site to the Central Government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central Government in the Ministry of Environment and Forests will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the construction, operation or mining.

- h* III. (a) The reports submitted with the application shall be evaluated and assessed by the impact assessment agency, and if

deemed necessary it may consult a Committee of Experts, having a composition as specified in Schedule III of this notification. The impact assessment agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the IAA or such other body under the Central Government authorised by the IAA in this regard. a

(b) The said Committee of Experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any time prior to, during or after the commencement of the operations relating to the project. b

(c) The impact assessment agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities, supplemented by data collected during visits to sites or factories, if undertaken, and interaction with affected population and environmental groups, if necessary. Summary of the reports, the recommendation and the conditions, subject to which environmental clearance is given, shall be made available subject to the public interest to the parties concerned or environmental groups on request. Comments of the public may be solicited, if so decided by impact assessment agency, within thirty days of receipt of proposal, in public hearings arranged for the purpose after giving thirty days' notice of such hearings in at least two newspapers. c d

Public shall be provided access, subject to the public interest, to the summary of the reports/environmental management plans at the headquarters of the impact assessment agency.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing where required, and decision conveyed within thirty days thereafter. e

The clearance granted shall be valid for a period of five years for commencement of the construction or operation. f

No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and/or site clearance is obtained.

IV. In order to enable the impact assessment agency to monitor effectively the implementation of the recommendations and conditions subject to which the environmental clearance has been given the project authorities concerned shall submit a half-yearly report to the impact assessment agency. Subject to the public interest, the impact assessment agency shall make compliance reports publicly available. g

V. If no comments from the impact assessment agency are received within the time-limit, the project would be deemed to have been approved as proposed by project authorities. h

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

159

3. Nothing contained in this notification shall apply to:

- a (a) any item falling under Entries 3, 18 and 20 of Schedule I to be located or proposed to be located in the areas covered by Notifications Nos. S.O. 102(E) dated 1-2-1989, S.O. 114(E) dated 20-2-1991, S.O. 416(E) dated 20-6-1991 and S.O. 319(E) dated 7-5-1992.
- b (b) any item falling under Entries 1, 2, 3, 4, 5, 7, 9, 10, 12, 13, 14, 16, 17, 19, 21, 25 and 27 of Schedule I if the investment is less than Rs 50 crores.
- (c) any item reserved for small-scale industrial sector with investments less than Rs 1 crore.

c 4. Concealing factual data or submission of false, misleading data/reports, decisions or recommendations would lead to the project being rejected. Approval, if granted earlier on the basis of false data would also be revoked. Misleading and wrong information will cover the following:

- d — False information.
— False data.
— Engineered reports.
— Concealing of factual data.
— False recommendations or decisions.

SCHEDULE I

(See paras 1 and 2)

List of Projects Requiring Environmental Clearance from the Central Government

- e 1. Nuclear power and related projects such as heavy water plants, nuclear fuel complex, rare earths.
- | | | | |
|--------|---|---|---|
| 2.-19. | * | * | * |
|--------|---|---|---|
20. Mining projects (major minerals) with leases more than 5 hectares.
- | | | | |
|-----------|---|---|---|
| f 21.-29. | * | * | * |
| | * | * | * |

SCHEDULE III

[See sub-para III(a) of para 2]

Composition of the Expert Committees for Environmental Impact Assessment

- g 1. The Committee will consist of experts in the following disciplines:
- (i) Ecosystem Management
- (ii) Air/Water Pollution Control
- (iii) Water Resource Management
- (iv) Flora/Fauna Conservation and Management
- h (v) Land Use Planning
- (vi) Social Sciences/Rehabilitation

(vii) Project Appraisal

(viii) Ecology

(ix) Environmental Health

(x) Subject Area Specialists

(xi) Representatives of NGOs/Persons concerned with environmental issues.

2. The Chairman will be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience.

3. The representative of IAA will act as Member-Secretary.

4. Chairman and members will serve in their individual capacities except those specifically nominated as representatives.

5. The membership of a committee shall not exceed 15.

Explanatory Note regarding the Impact Assessment Notification dated 27-1-1994

1.-3. * * *

4. *Public hearing.*—Public hearings could be called for in case of projects involving large displacement or having severe environmental ramifications.

5.-7. * * *

8. *Exemption for projects already initiated.*—For projects listed in Schedule I to the notification in respect of which the required land has been acquired and all relevant clearances of the State Government including NOCs from the respective State Pollution Control Boards have been obtained before 27-1-1994, a project proponent will not be required to seek environmental clearance from the IAA. However, those units who have not as yet commenced production will inform the IAA."

36. Reference may also be made to a notification issued by the Haryana Government on 28-11-2001 with a view to enforce the recommendations of NEERI contained in para 6.1 of its report so far as mining operations in the State of Haryana are concerned. In terms of the notification, the designated authority and the Monitoring Committee were directed to impose the conditions mentioned in the notification while according environmental clearance. This notification, it seems, was issued in the purported attempt to comply with the directions of this Court as contained in the order dated 10-5-1996 as reported in *M.C. Mehta case*¹.

37. We may also refer to the circular dated 14-5-2002 issued by the Ministry of Environment and Forests noticing that in the past several units had come up in violation of the notification dated 27-1-1994 and a view had been taken earlier that such units were permitted to apply for environment clearance by 31-3-1999. For a period of five years, there was no circular or notification granting any time to apply for EIA (environmental impact

¹ *M.C. Mehta v. Union of India*, (1996) 8 SCC 462

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

161

- assessment) under notification dated 27-1-1994. The period to apply for environment clearance was extended up to 30-6-2001 which deadline was extended up to 31-3-2003, stating that it was to give opportunity to defaulting units to avail of the last and final opportunity to obtain ex post facto environment clearance. The notification dated 27-1-1994 is applicable also to construction activity. It seems that this circular was issued to give opportunity to those who had undertaken constructions after issue of notification without compliance of stipulations therein. We are, however, not concerned in these matters with the construction which may have come up in breach of the notification. It does not appear that MOEF intended to legalise the commencement or continuance of mining activity without compliance of stipulations of the notification. In any case, a statutory notification cannot be notified by issue of circular. Further, if MOEF intended to apply this circular also to mining activity commenced and continued in violation of this notification, it would also show total non-sensitivity of MOEF to the principles of sustainable development and the object behind the issue of notification. The circular has no applicability to the mining activity.

Central Empowered Committee (CEC) — its suggestions

38. The notification dated 27-1-1994 is mandatory. The compliance with the notification before commencement of any mining operation is essential and cannot be dispensed with. MOEF has so far not conducted environment impact assessment in respect of any of the mining leases under the notification dated 27-1-1994.

39. Before the order dated 6-5-2002[‡] was passed, the leaseholders had not made any application before the Ministry for grant of EIA. The applications were filed during the pendency of these matters under the order of this Court. The EIA applications of the leaseholders are lying with the Central Empowered Committee (CEC). CEC was constituted in terms of notification dated 17-9-2002, issued by the Government of India, Ministry of Environment and Forests in exercise of power conferred by Section 3(3) of the EP Act for the purposes of monitoring and ensuring compliance of the order of this Court covering the subject-matter of forests and wildlife and related issues arising out of the said order and one of the functions of the Committee in terms of the notification is to monitor the implementation of the orders of this Court and place reports of non-compliance before the Court including in respect of encroachment and removals, working plans, compensatory afforestation, plantations and other conservation issues.

40. In the order dated 31-10-2002^{††}, this Court has observed that no mining activity can be carried out without remedial measures taking place and for this purpose, it is necessary that environment impact assessment is done and the applications dealt with before any mining activity can be permitted. It was also observed that the application of leaseholders for environmental clearance can be disposed of within a period to be specified by

[‡] See cited order at (2004) 12 SCC 188, below

^{††} See cited order at (2004) 12 SCC 185, below

162

SUPREME COURT CASES

(2004) 12 SCC

this Court. In terms of order dated 25-11-2002**, the Central Empowered Committee was asked to file its suggestions in regard to the time for considering the applications for grant of EIA. CEC had received a large number of voluminous environment impact assessment plans only in the last few days which are being examined further stating that the process of examination and formulation of suggestions is likely to take some more time. On 24-1-2003, CEC was granted time to file its report up to 8-2-2003. CEC has filed three reports, the last having been filed on 7-2-2003.

41. In an interim report dated 22-6-2003 CEC stated that the complete information had not been supplied to it by the State of Haryana. The report states that as per the information provided by Haryana State, in Faridabad district there are 21 sanctioned major mineral mines with the size varying from 44.48 hectares to 516.518 hectares. In Gurgaon district 54 mining leases have been sanctioned varying in size from 5.96 hectares to 802.322 hectares. All the mines of major minerals were operating in Faridabad district without obtaining statutory environmental clearance under the EP Act. It also noticed that in respect of the Aravalli hill range being acknowledged as eco-friendly area under the Aravalli notification, clearances were being granted on the basis of examination of an expert group without any public hearing or participation of NGOs or the affected people. As already noticed, the delegation in favour of the State has been now withdrawn. The report further observes that most of the mines are operating in violation of approved plans. Instead of doing sectionwise mining (bench mining) the mining operations are carried on unscientifically with the sole aim to make maximum profits which has resulted in a number of fatal accidents involving labourers, hazards to the adjoining population, indiscriminate scattering of the overburden, wasteful manner of mining with complete disregard to mineral conservation aspect, rendering reclamation of mined area impossible. Further it points out that several mining leases have been granted in areas where plantations were undertaken with the financial assistance provided by international donor agencies. Mining activities are permitted in a manner which is destroying the groundwater table and also the deep aquifers thereby causing irreparable damage to the critical groundwater reserves. There is no effective mechanism to ensure compliance with various conditions stipulated while granting statutory approvals. No deterrent action was taken against mines even in those cases where during monitoring, serious violations and non-compliance of conditions were found. CEC has made the following suggestions:

“(i) for major mineral mines above 5 hectares in Faridabad district, mining activity may be allowed to be undertaken only after the required environmental clearances are accorded by the Ministry of Environment and Forests (MOEF);

(ii) the powers delegated to the State Government by notification dated 27-1-1997 to grant environmental clearances in respect of areas of Gurgaon district falling within Aravalli notification dated 7-5-1992

** See cited order at (2004) 12 SCC 186, below

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

163

- a require to be reconsidered as the presumptions on the basis of which powers were delegated to the State Government have been found to be incorrect;
- (iii) mining activity may be allowed in respect of areas notified under Sections 4 and 5 of the PLP Act, which for the purpose of the FC Act are 'forest' even as per the State Government records, only after obtaining prior approval under the said Act from MOEF;
- b (iv) all mining leases granted in respect of areas where plantations have been raised under the financial assistance received from any international donor agencies may be cancelled forthwith. The authorities concerned may be prohibited from allowing any mining operations, allowing renewals or grants of fresh leases in such areas;
- c (v) mining activity may be allowed only as per the approved mining plans. Mines which are found to be operating at variance with the approved mining plans may be made liable for cancellation of lease and payment of exemplary compensation;
- d (vi) in view of rampant and indiscriminate mining, which was being done, a high-level Monitoring Committee may be constituted comprising representatives of the State Government, MOEF, Indian Bureau of Mines, Director General of Mines Safety and reputed NGOs. This Committee may be empowered to monitor the implementation of the conditions imposed while approving mining plans, grants of environmental clearances and other approvals/clearances. Whenever any violation is detected, the Committee should have the powers to direct closure of the defaulting mines and also to impose fines commensurate with the seriousness of the violation;
- e (vii) in addition to the above (vi), the officials of the State Government, Indian Bureau of Mines, MOEF, Director General of Mines Safety may independently monitor, at least once in three months, to ensure compliance of all statutory conditions;
- f (viii) the State Government may identify and notify officials, who would ensure enforcement of the directions given by the Monitoring Committee and/or the abovementioned officials;
- (ix) no mining activity may be allowed without obtaining 'no-objection certificate' from the Central Ground Water Board to ensure that the water table and the underground aquifers are not adversely affected;
- g (x) before allowing resumption of mining activity in any approved mining lease, the status of compliance of the conditions of the approved mining plans, approved environmental management plans, environmental clearances and other statutory conditions/clearances may be ascertained. Suitable and adequate compensation/penalty for non-compliance of stipulations may be recovered, otherwise such stipulations would remain only on paper;
- h (xi) in respect of forest area, including areas notified under Sections 4 and 5, net present value of the land leased out for mining may be

recovered as per the Hon'ble Supreme Court order dated 30-10-2002 in IA No. 566 in Writ Petition (Civil) No. 202 of 1995 (forest matter);

(xii) a suitable system of securing adequate bank guarantee, bank deposit or other personal guarantee from the mine-owner may be worked out to ensure compliance of all statutory and other conditions; a

(xiii) after considering the annual approved rate of mining and mineral deposits in the area, optimum size of the mines may be determined in respect of approved mines to ensure optimum utilisation of the mineral resources; b

(xiv) presently, the overburden is not stacked as per approved mining plan, which makes it practically impossible to carry out any reclamation work. The overburden dumping may be allowed only at identified sites within the mining lease area as per approved mining plans; c

(xv) for the purpose of afforestation, the funds may be recovered from the mine-owners and deposited with the Forest Department for undertaking afforestation in a planned manner; d

(xvi) the identification of the consultants for preparation of EIAs should be done by the regulating agency instead of by the mine-owners to ensure good and credible reports. It is important that payment to the consultants should also be routed through the regulating agency and not directly by the mine-owners." e

42. The report of CEC dated 7-2-2003 mentions that the State Government, despite letters, had not made available to the Committee the following information:

(i) minewise details of stipulated conditions, which have been fulfilled and those which have not been fulfilled; f

(ii) details of five major mineral mines in Faridabad and Gurgaon districts which have fulfilled all the conditions stated in the approved mining plans, environmental and other clearances; g

(iii) details of the mines where mining activity has been undertaken without obtaining requisite environmental clearance.

43. In the absence of the information as aforesaid CEC gave its suggestions on the basis of information available to it which are as under: h

"(i) the ban on mining activity may continue up to 2 km from Surajkund and Badkal lakes, as per the Hon'ble Court's order dated 10-5-1996¹;

(ii) each of the existing mines may be physically inspected by Inspection Team(s) comprising officials of the State Government, Indian Bureau of Mines, Director General of Mines Safety and the Ministry of Environment and Forests to report the specific conditions which have not been fulfilled/violated especially in respect of: i

(a) sectionwise (benchwise) mining to be done as per approved mining plan; j

¹ M.C. Mehta v. Union of India, (1996) 8 SCC 462

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

165

- (b) storage of topsoil as per approved mining plan;
- (c) dumping of overburden in identified area as per the approved mining plan;
- (d) plantations as per environmental management plan;
- (e) observance of Mines Safety Rules and Regulations;
- (f) damage to the plantations raised under externally aided projects (foreign funding);
- (g) damage if any to the water table/underground aquifers; and
- (h) compliance of environmental clearance stipulations;

The Inspection Team(s) may submit the reports to the State Government and the Ministry of Environment and Forests (MOEF) with copies to the Central Empowered Committee (CEC) for their comments and for carrying out verification, if found necessary.

- (iii) suitable penalties for non-compliance/violation of various conditions, as found by the above Inspection Team(s) or by CEC may be imposed. Norms for quantifying the penalties for violation of various conditions may be formulated by the State Government with the concurrence of CEC. No mine may be allowed to resume mining activity without first paying the penalty imposed on it;
- (iv) mining activity may completely be prohibited in area where plantations have been undertaken with foreign assistance/funding (externally aided projects). Mining leases already granted/approved in all such areas may be cancelled;
- (v) yearwise requirement of funds for implementation of various conditions under which mining has been approved may be computed for each mine. To ensure compliance of these conditions, adequate safeguards by way of bank guarantee, mortgage of immovable assets, pledge of movable assets, personal guarantee of the lessee or others (supported by adequate assets) may be put in place;
- (vi) MOEF may examine the environment impact assessment report/environment management plan of individual major mineral mines and proposals for approval under the FC Act, if the mining lease is in 'forest' as per the Hon'ble Supreme Court's order dated 12-12-1996 in Writ Petition (C) No. 206 of 1995, and take decision(s) thereon, including regarding measures for protecting the water table and underground aquifers, in a time-bound manner; and
- (vii) regular inspection of the mines may be undertaken by the identified officials of the State Government, Indian Bureau of Mines and Director General of Mines Safety. Mines which are found to have violated the conditions may be made liable to pay stiff penalties including closure of the mines."

- 44. Some mining leases were granted prior to notification dated 27-1-1994 and some after the issue of that notification. Even in respect of the leases granted prior to 27-1-1994, the renewal of most of the leases has come

up after issue of notification. Some of the leases are for extraction of major mineral, some for extraction of minor mineral and some for extraction of both major and minor mineral. In respect of none of the leases, before commencement of mining activity, EIA was obtained from MOEF. In respect of mining in Aravalli hills in Gurgaon, the relevant notifications dated 7-5-1992, 29-11-1999 and 28-1-2003 have been noticed earlier. Under the notification dated 7-5-1992, no permission was granted by MOEF though some applications were pending before it when power was delegated to the State Government. Permissions were granted by the State Government after the powers were delegated to it. The delegation in favour of the State has since been withdrawn. a
b

Legal parameters

45. The natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage to environment. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. (See *Subhash Kumar v. State of Bihar*².) c

46. Further, by the Forty-second Constitutional Amendment, Article 48-A was inserted in the Constitution in Part IV stipulating that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51-A, inter alia, provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Article 47 which provides that it shall be the duty of the State to raise the level of nutrition and the standard of living and to improve public health is also relevant in this connection. The most vital necessities, namely, air, water and soil, having regard to right to life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of amicus curiae, the appointment of experts and the appointments of Monitory Committees. The approach of the Court has to be liberal towards ensuring social justice and protection of human rights. In *M.C. Mehta v. Union of India*³ this Court held that life, public health and ecology has priority over unemployment and loss of revenue. The definition of "sustainable development" which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In *Narmada Bachao Andolan v. Union of India*⁴ this Court observed that sustainable development d
e
f
g

² (1991) 1 SCC 598 : AIR 1991 SC 420

³ (1987) 4 SCC 463

⁴ (2000) 10 SCC 664 h

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

167

a means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. [See Chairman Barton: *The Status of the Precautionary Principle in Australia* (Vol. 22, 1998, Harv. Env'tt. Law Review, p. 509 at p. 549-A) as referred to in para 28 in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*⁵.]

b 47. The mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur.

c The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and

d standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation

e have to be applied.

48. Development and the protection of environment are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the

f need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, a series of orders have been passed by this Court in *T.N. Godavarman case*⁶ regulating the felling of trees in all the forests in the country. Principle 15 of the Rio Conference of 1992⁸ relating to the

g applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall

5 (1999) 2 SCC 718

6 *T.N. Godavarman Thirumulkpad v. Union of India*, 1991 Supp (2) SCC 665; (1997) 2 SCC 267; (1997) 3 SCC 312; (1997) 5 SCC 760; (1997) 7 SCC 440; (1997) 10 SCC 775; (1998) 2 SCC 59, 341; (1998) 6 SCC 190; (1998) 9 SCC 632, 660, 672; (1999) 5 SCC 736; (1999) 9 SCC 121, 151, 216; (2000) 6 SCC 413; (2000) 10 SCC 494, 579, 645; (2002) 9 SCC 502

8 Ed.: Cited in (1999) 2 SCC 718, 733 in para 33

not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment. a b

49. Bearing in mind the aforesaid principles, we have to consider the main question: should the mining activity in the areas in question be banned altogether or permitted and, if so, conditions to be provided therefor? The reports and suggestions of NEERI, EPCA and CEC have already been extensively noted. The effect of mining activity in area up to 5 km from Delhi-Haryana border on Haryana side of the ridge and also in the Aravalli hills is to be seen in the light of these reports and another report dealt with later. One of the aspects stated in these reports is about carrying on of mining activity in close proximity to the residential area and/or main roads carrying traffic. c d

Mines and Minerals (Regulation and Development) Act and Rules thereunder

50. The grant of mining leases is governed by the Mines and Minerals (Regulation and Development) Act, 1957 (for short "the MMRD Act") which was enacted to provide for the development and regulation of mines and minerals under the control of the Union, Section 13 is the rule-making power of the Central Government. The Central Government is empowered to make rules to provide for the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reason of any mining operation shall be made in the same area or in any other area selected by the Central Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the mining lease. Section 18, inter alia, casts a duty upon the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by mining operations and for such purposes, the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit. e f g

51. The Mineral Concession Rules, 1960 have been framed by the Central Government in exercise of the powers conferred by Section 13 of the MMRD Act. Chapter IV of these Rules relates to grant of mining leases in respect of land in which the minerals vest in the Government. Rule 22(4), inter alia, provides that on receipt of the communication from the State Government of the precise areas to be granted for mining purpose, the h

- applicant shall submit a mining plan, within the period stipulated in the Rules, to the Central Government for its approval. The applicant, on approval
- a of the mining plan by the Central Government, shall submit the same to the State Government to grant mining lease over that area. Rule 4-A, inter alia, provides that notwithstanding anything contained in sub-rule (4), the State Government shall be competent to approve mining plans of opencast mines (mines other than underground mines) in respect of new metallic or industrial minerals, named therein, one of it being silica sand. The mining plan, as
 - b provided in sub-rule (5) of Rule 22, shall, inter alia, incorporate the mineral reserves of the area and the plan of area showing, inter alia, watercourses, limit of reserves and other forest areas and density of trees, if any, assessment of impact of mining activity on forest, land surface and environment including air and water pollution; details of the scheme of restoration of the area by afforestation, land reclamation, use of pollution control devices and
 - c such other measures as may be directed by the Central Government or the State Government from time to time. A tentative scheme of mining and annual programme and plan for excavation from year to year for five years is also required to be incorporated in the mining plan. Rule 22(5) was inserted in the Rules by notification dated 27-9-1994 to which certain amendments were made in terms of notification dated 17-1-2000 also inserting by the
 - d same notification Rule 22(4-A). Sub-rule (4) to Rule 22 had been earlier inserted by notification dated 27-9-1994.

52. The grant of permission for mining and approving mining plans and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. It cannot be accepted that by approving mining plan and scheme by the Ministry of Mines, the Central
- e Government is deemed to have approved mining and it can commence forthwith on such approval. Section 13 of the MMRD Act and the Rules made in exercise of powers under the said section, deal, inter alia, with the aspect of grant of mining of lease and not commencement of mining operations. Rules made under Section 18, however, deal with commencement of mining operations and steps required to be taken for protection of
 - f environment by preventing or controlling any pollution which may be caused by mining operation. A mining leaseholder is also required to comply with other statutory provisions such as the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Forest (Conservation) Act, 1980. Mere approval of the mining plan by the
 - g Government of India, Ministry of Mines would not absolve the leaseholder from complying with the other provisions.

53. Rules 31 to 41 contained in Chapter V of the Mineral Conservation and Development Rules, 1988 framed under Section 18 of the MMRD Act deal with the measures required to be taken by the lessee for the protection of environment from any adverse effect of mining or irreversible consequences thereof. These Rules, inter alia, provide that every holder of a mining lease
- h shall take all possible precautions for the protection of environment and

control of pollution while conducting mining operations in the area (Rule 31); shall, wherever topsoil exists and is to be excavated for mining operations, remove it separately and utilise for restoration or rehabilitation of the land which is no longer required for mining operations [Rule 32(2)]. The holder is also required to take steps so that the overburden, waste rock, rejects and fines generated during prospecting and mining operations or tailings, slimes and fines produced during sizing, salting and beneficiation or metallurgical operations shall be stored in separate dumps which shall be properly secured to prevent escape of material therefrom in harmful quantities which may cause degradation of environment. Wherever possible, the waste rock, overburden etc. shall be back-filled into the mines' excavation with a view to restoring the land for its original use as far as possible and wherever it is not feasible during mining operation, the waste dumps shall be suitably terraced and stabilised through vegetation or otherwise (Rule 33). It is also required that the phased restoration, reclamation and rehabilitation of lands affected by mining operation shall be undertaken which work shall be completed before the conclusion of mining operations and the abandonment of mine (Rule 34). Air pollution due to fines, dust and smoke or gaseous emissions during mining operations and related activities shall be controlled and kept within "permissible limits" specified under various environmental laws of the country including the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 by the holder of mining lease (Rule 37). Further, noise arising out of such operations shall be abated or controlled by the lessee at the source so as to keep it within the permissible limit (Rule 39). The mining operations shall be carried out in such a manner so as to cause least damage to the flora of the area and nearby areas [Rule 41(1)]. Every holder of a mining lease shall take immediate measures for planting in the same area or any other area as selected by the authorised officer not less than twice the number of trees destroyed by reason of any mining operation and look after them during the subsistence of the licence/lease and restore, to the extent possible, other flora destroyed by mining operations [Rule 41(2)(a)].

54. The aforesaid measures are not required to remain only on paper but strictly complied for the protection of environment and control of pollution as a result and consequence of mining operations.

National forest policy

55. In respect of mining in the forest area, we may also refer to the National Forest Policy, 1988 issued by the Ministry of Environment and Forests, Government of India which, inter alia, notices that over the years, forests in the country have suffered serious depletion. One of the reasons for it is inadequacy of protection measures and diversion of forest land to non-forest uses, without ensuring compensatory afforestation and essential environmental safeguards; and the tendency to look upon forests as revenue-earning resource. The basic objectives of the policy, inter alia, are maintenance of environment stability through preservation and, where necessary, restoration of the ecological balance that has been adversely

- disturbed by serious depletion of the forests of the country and checking the soil erosion and water conservation and increasing substantially the forest/tree cover through massive afforestation and social forestry programmes. It provides that the national goal should be to have a minimum of 1/3rd of the total land area of the country under forest or tree cover. In the hills and in mountainous regions, the aim should be to maintain 2/3rds of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile ecosystem. It also provides that a massive need-based and time-bound programme of afforestation and tree planting, with particular emphasis on fuel wood and fodder development, on all degraded and denuded lands in the country, whether forest or non-forest land, is a national imperative.

Mining in forest area

56. The question of permitting mining in the area where large scale of afforestation with foreign funding has taken place, is required to be examined keeping in view the national forest policy which also provides that forest land or land with tree cover should not be treated merely as a resource readily available to be utilised for various projects and programmes but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Mining and industrial development should be consistent with the need for conservation of trees in forests. It provides that no mining should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.
57. Our attention was drawn by learned counsel appearing for leaseholders to the part of the national policy which provides that beneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to repair and revegetate the area in accordance with established forestry practices to submit that the policy itself contemplates mining operations in the forest area. For the present, we are not suggesting a complete ban on mining operations on forest land so long as it is possible to undertake the said operation on the sustainable development principle and after obtaining due approvals under various statutory provisions including Section 2 of the Forest (Conservation) Act, 1980. At the same time, we are unable to appreciate the commencement and continuation of mining over areas on which crores of foreign funds have been spent for afforestation and plantation. Further, it is also not possible to accept the contention urged on behalf of the leaseholders that only that part of such leased land where allegedly damage has been caused to plantation as a result of mining operations, be excluded from mining and not the entire area of the lease. For example, if the mining area is 5 hectares and damage as a result of mining is to plantation in an area of 1 hectare, it is not practicable or reasonable to exclude only that 1 hectare and permit the mining operation on the rest of the mining area. Reference can also be usefully made to the part of the State

Forest Report, 1999 issued by Forest Survey of India in relation to Haryana. It, inter alia, provides that large-scale plantations were carried out under the Aravalli Project since 1992. The document claims increase of the forest cover in the State as a result of plantation under the Aravalli Project. It, inter alia, mentions that forest cover increase in Gurgaon and Faridabad is mainly due to plantation raised under the Aravalli Project which was started in the early 1990s. In these matters, neither the State nor the leaseholders can be permitted to turn round and now take a stand that the areas covered under the Aravalli Project are not forest. The National Forestry Action Programme of December 2000 issued by the Ministry of Environment and Forests of the Government giving project profile also makes detailed reference to the institution building and integrated national resource development in the Aravalli region, Haryana under the project-implementing agency of the Forest Department, Government of Haryana. The project profile, inter alia, states that central to such a policy is rehabilitation of common lands to meet the needs of the rural poor and to reduce soil and water erosion, and the proposed programme was envisaged to bring the benefit of integrated development of the Aravalli ecosystem to the whole community, particularly, to the poorer sections. The project, it is stated, has been implemented in Aravalli hills situated in the five districts of Haryana including Gurgaon. One of the expected outcomes of the project is the reduced soil erosion and improved water regime in the rehabilitated area which will drastically reduce the run-off leading to recharge of constantly depleting groundwater resources. It records that the Haryana Forest Department has implemented a project on the eco-restoration of common lands in the Aravalli hills, from June 1990 to October 1999. The project is being funded by the Delegation of European Communities. The total cost was 28.8 million ECU in which external assistance was to the extent of 23.2 million ECU.

Aravalli hill range

58. The Aravallis, the most distinctive and ancient mountain chain of peninsular India, mark the site of one of the oldest geological formations in the world. Heavily eroded and with exposed outcrops of slate rock and granite, it has summits reaching 4950 feet above sea level. Due to its geological location, the Aravalli range harbours a mix of Saharan, Ethiopian, peninsular, oriental and even Malayan elements of flora and fauna. In the early part of this century, the Aravallis were well wooded. There were dense forests with waterfalls and one could encounter a large number of wild animals. Today, the changes in the environment at Aravalli are severe. Though one finds a number of tree species in the hills, timber-quality trees have almost disappeared. Despite the increase of population resulting in increase of demand from the forest, it cannot be questioned nor has it been questioned that to save the ecology of the Aravalli mountains, the laws have to be strictly implemented. The notification dated 7-5-1992 was passed with a view to strictly implement the measures to protect the ecology of the Aravalli range. The notification was followed more in its breach.

59. In the aforesaid background, any mining activity on the area under plantation under the Aravalli Project cannot be permitted. The grant of leases
a for mining operation over such an area would be wholly arbitrary, unreasonable and illogical.

Report of CMPDI on Aravalli

60. The Central Mine Planning and Design Institute Limited (CMPDI) on being asked by the Central Pollution Control Board to conduct a study of environmental problems of Aravalli hills and preparation of action plan for
b restoration of environmental quality in Gurgaon district, after extensive examination, has submitted to CPCB its final report in July 2003. CMPDI is a subsidiary of Coal India Limited (Government of India enterprise). The report in respect of Aravalli range in Gurgaon district has been prepared by CMPDI with the following objectives:

- c 1. To prepare status report of the pollution problems in the Aravalli hills.
2. To prepare environmental management plan to abate various environmental problems.
3. To prepare action plan for restoration of environmental quality.

61. The environmental problems in the Aravalli range in Gurgaon district
d have been identified and remedial measures including the pollution control guidelines and action plan for various stakeholders have been suggested by CMPDI. It has been noticed that in large-scale mining projects what is still required is a proposal at the district level as to what will be mined, how it will be mined and with what method and many such areas of environmental concern which had not been adequately addressed keeping in view the
e environmental degradation of the Aravalli hills. It has also been noticed that the Aravalli notification restricts process and operations under certain categories of land in the district. Though the records of such lands are available in every village-level map, there is no record available at the district level in respect of these areas to undertake realistic appraisal and effective monitoring of mining and other projects at the macro level on such lands.
f While noticing that notification dated 29-11-1999, inter alia, made provision for preparing a master plan integrating the environmental concerns and the future land use of the area, but the master plan prepared on 28-8-2002 does not, inter alia, address the issue of natural resource assessment and water resource status; the areas near crushing zone and active mining zone remain a matter of concern and concerted efforts have not been given to the quality of
g roads and the dust suppression measures to maintain the air quality within safe limits. The guidelines of operation in an eco-friendly manner have been issued by the State Government but the compliance is only partial, inasmuch as windbreaking walls are not proper, pollution control devices are not operating and the green belts around the crushing zones are not maintained. Identification of mines in the district is difficult. There does not seem to be
h any mechanism to upgrade the mining technologies and methodologies to minimise the impact due to mining in the eco-sensitive zones in the district.

There is no identified land where overburden could be temporarily dumped prior to being utilised for void filling and for other purposes. There does not seem to be adequate awareness among the people in respect of the environmental problems. In some parts of the district, the groundwater potential is already in the dark category. Lack of water conservation measures and rainwater harvesting may ultimately lead to water scarcity in the near future.

62. Having identified the environmental problems, various actions have been recommended by CMPDI for the eco-restoration in the Aravalli range in Gurgaon district. It has been, inter alia, recommended that it is imperative on the part of the State Government to improve interdepartmental coordination among various government departments to achieve the common objective i.e. ecological restoration of Aravalli hills in the district. The master plan should indicate the proposed eco-restoration plan to compensate the environmental degradation by the proposed activities in the master plan. Rehabilitation programmes for the abandoned mine areas are either to convert these to water reservoirs and eco-parks or reclamation by filling by rural waste, urban waste or fly ash. The master plan should be detailed to show the areas where overburden could be dumped, areas where waste material could be stocked, areas where plantation could be carried out, etc. etc. The planning should, inter alia, include environmental impact and concerns of activities of one sector on the other sectors in the district e.g. afforestation should be planned not only with a view to increase vegetation on the hills but also to be supplement for fuel, fodder etc. in the district. All efforts should be made to preserve the groundwater resources. Water-shed management and rainwater harvesting to be implemented in the Aravalli hill regions on a war footing. In the areas where mining deeper than the groundwater table of the area is to be carried out, adequate provision of pollution control and conservation of water resources should be made. There should be frequent inspections of the mining operations to ensure that these are in line with the requirement for sustainable development. The inspections may be carried out at an interval of three months. There should be continual source of revenue from the mining operations to the fund, recommended to be created, for the eco-restoration of the Aravalli hills. The minimum period of lease should be for 15-20 years. This will induce the mine operators to take environmental protection measures more seriously. The State Pollution Control Board shall undertake regular monitoring to check compliance and to assess the ambient air quality, water quality and other environmental protection measures. The Ministry of Environment and Forests should take initiative to appoint a Central agency to monitor the eco-restoration efforts and to provide technical support to the implementing organisations. The renewal of mining lease and granting new leases should be effected after examining the environmental protection measures taken by the lessee. Requisite data should be displayed on the Internet to arouse awareness in the public and for further usage. Stringent action should be taken for water conservation. The Forest Department may even carry out the afforestation on behalf of mine operators. Expenses

- should, however, be borne by the mine operators. The afforestation shall be carried out keeping in view, inter alia, the consideration of checking soil erosion. The mining lessee should implement the environmental management plan and mining plan approved by the authority concerned. In future, efforts in respect of search for sustainable development should broadly take into consideration resource potential in the region, the demand of the products and the supply options. Though the demand for the niche products existing in the Aravalli range which is one of the oldest mountain ranges in India will continue to grow, the supply options need to be given a closer look due to eco-sensitivity of the region. The environmental cost needs to be internalised in the cost of the product and there is need to limit the supply options. Noticing that the Aravalli range prevents the desert from spreading into the Indo-Gangetic plains, it has been suggested that all future planning should not only concentrate to meet the ever-growing demand of the products but due consideration should also be given to protect the chain. All the developmental activities should, therefore, be planned in a coherent manner and there should be integrated approach for sustainable development.

63. CMPDI has noticed that in the Aravalli hills a large number of activities, operations of stone-crushers and deforestation besides other activities are causing environmental degradation. These mines are usually located in clusters in remote mineral-rich districts/areas where living standards are lower and understanding of people towards environmental impact is also poor. In the past, the mine operators took no note of environmental damage. In fact, they were not even conscious about it. The attitude of the mining community is to ignore the environmental concerns. In the majority of the cases, the environmental concerns are ignored for making quick profits. The small mines (less than 5 hectares) and the mining of minor minerals which are no doubt small individually but have damaging characteristics when in clusters e.g. mines of granite, marble, slate, quartzite etc. (falling under minor minerals) are no less damaging than the others, especially when the processing is taken into consideration. The mining activities result in disturbance of land surface, altering drainage pattern and land use, besides pollution problems, which may lead to the environmental problems of air, water and noise pollution and solid waste pollution.

64. It has been suggested that the short-term and long-term action plan for the restoration of environmental quality of the area shall be prepared separately. The action plan shall be prepared in such a way that it should be a guiding tool also in the hands of the State Pollution Control Boards and government agencies for enforcement of the environmental laws for the restoration of environmental quality of the area. Monitoring programme shall include frequency of monitoring for air quality, water quality, groundwater, solid wastes, noise level etc.

65. In respect of water resources, it has been, inter alia, suggested that in order to draw water resource management plan, it is essential to assess the water quality of the various components of the hydrologic cycle i.e. stream, groundwater, surface water etc. It has been pointed out that since the surface

water potential is not promising in the district, there is increased dependence on the groundwater for meeting the agricultural, domestic and industrial requirement resulting in depletion of groundwater resources in the district. It has been suggested that utmost care is required for further development of groundwater in the areas where the recharge of the groundwater is low. a

66. Dealing with the flora and fauna, it has been pointed out that the earliest account shows that at one time the Aravalli hills were well covered with *dhauk* (*Anogeissus pendula*). Now, except in a few places viz. Jhir Forest in Firozpur Jhirka (dedicated to Mahadeo Temple) and near Bhondsi recently regenerated with *dhauk*, the Aravallis are by and large, bereft of vegetation in the district. b

67. It has been noticed that in order to take stock of the environmental problems, CPCB and CMPDI team made several visits to Aravalli hills and held discussion with the mine operators, State officials and local people. There are a number of mining projects etc. which are already existing and there is also tremendous potential to further increase industrial and other development activities. The environmental impact due to mining projects on air quality, water quality, noise level, overburden etc. has been noticed and it has been pointed out that the opening of new projects will further affect some of the environmental attributes. c

68. The report notices that the environmental degradation has taken place due to mining activities. The existing crusher units are also not functioning on the environmental sound systems. The situation warrants closer look on various components of the systems affecting the environmental attributes in the area, devising pragmatic approaches to facilitate eco-restoration of the Aravalli hills and offering broad framework to the industrial units to function under environmentally sustainable framework. The suggestions also include the enactment of rules for grant of mine leases to levy a separate charge for dump removal, ecological restoration in the area, the technology to be used for mining operations and post-mining land use and mine decommissioning. As far as environmental protection in the Aravalli hills is concerned, planning and provisions must start from the stage of grant of mine lease and what all it should include have been set out. It has been, inter alia, suggested that the environmental framework shall include the framework for environmental clearance such as depth of cutting, area of plantation and the type of plantation, which are attributes related to closure planning as also framework for monitoring and for forestry besides air quality, land use pattern, etc. In a nutshell, it has been suggested that it is imperative on the part of the mine operators to carry out the mine operations in such a fashion that it has least impact on the ecology of the area. The pollution prevention guidelines have been suggested in para 7.1.1.2. d e f g

69. Having regard to the detailed study, the recommendations and action plan has been dealt with in Chapter VIII of the report, inter alia, suggesting that concerted efforts from various departments are needed. The report states that though the environmental upgradation measures need to be taken more h

- seriously by the mine and other industrial operators, there is need on the part of the State Government to immediately start these measures in the areas
- a where degradation has already taken place. The other recommendations have already been broadly noticed.

70. No one has raised any objection to the recommendations contained in the report of CMPDI. We accept the recommendations in principle.

Modification of order dated 6-5-2002[‡] regarding mining in Aravalli .

71. Now, the question is should mining activities in the Aravalli range in
- b Gurgaon district be permitted to restart and, to that extent, the order dated 6-5-2002[‡] be modified, meanwhile directing implementation of recommendations in the report of CMPDI and earlier-referred reports. The other option is to first constitute a Monitoring Committee directing it to individually examine and inspect mines from the environmental angle in the light of the said recommendations and file a report in this Court in respect of
- c individual mines with its recommendations for restart or otherwise as also recommendation, if any, for the payment by the mine operators and/or by the State Government towards environmental fund having regard to the precautionary principle and polluter-pays principle and on consideration of that report, to decide the aspect of modification of the order dated 6-5-2002[‡], partially or entirely. We are of the view that the second option is more
- d appropriate. We are conscious of observations in CMPDI that measures for protecting the environment can be undertaken without stopping mine operations and also the suggestions of MOEF to permit mining subject to the mine leaseholders undertaking to comply with such conditions which remain to be complied, but, having regard to the enormous degradation of the environment, in our view, the safer and the proper course is to first constitute
- e a Monitoring Committee, get a report from it and only thereafter consider, on individual mine-to-mine basis, lifting of ban imposed in terms of order dated 6-5-2002[‡]. Before concluding this aspect, we may note that assuming there was any ambiguity about the applicability of order dated 6-5-2002[‡] to mining in Aravalli range, it is clarified that the said order would be applicable to all the mines in Aravalli hill range in Gurgaon district.

f Applicability of notification dated 27-1-1994

72. The notification has been reproduced in the earlier part of the judgment. It, inter alia, applies to mining projects (major minerals) with leases of more than 5 hectares. It can neither be disputed nor has been disputed that the notification is mandatory. It, inter alia, provides that on and from the date of its publication in the Official Gazette expansion or
- g modernisation of any activity (if pollution load is to exceed the existing one) or a new project listed in Schedule I of this notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified therein. The contention urged on behalf of the leaseholders is that the leases in question do not relate to expansion or modernisation of any
- h activity as postulated by the notification. Further, it is contended, that the

[‡] See cited order at (2004) 12 SCC 188, below

notification applies to "a new project" which means that it will apply to mining lease granted after issue of notification. It has been strenuously contended that the renewal of existing mining lease is neither "an expansion" nor "modernisation" nor is it a "new project" and, therefore, the notification will have no applicability at the time of consideration of the renewal of the lease. Reliance has been placed on a decision of this Court in *Narmada case*⁴ holding that the notification is clearly prospective and, inter alia, prohibits the undertaking of a new project listed in Schedule I without prior environmental clearance from the Central Government. The contention urged was that since in *Narmada case*⁴, where construction had commenced nearly 8 years prior to the notification, the very same notification was not held applicable. On the same analogy, it cannot have any applicability to the leases granted prior to the issue of notification.

73. No doubt, the notification is prospective but the question here is whether it would be applicable when the aspect of renewal comes up for consideration after the issue of the notification. In *Narmada case*⁴, it was not held that this notification will not apply at the stage of renewal. The observations made in para 129 of the said decision and relied upon by learned counsel for the leaseholders have no relevance to determine the applicability of the notification at the stage of renewal. In *Narmada case*⁴, the environmental clearance had been granted in the year 1987 and this Court noticing that when it was granted by the Prime Minister, whatever studies were available were taken into consideration, it was known that the construction of the dam would result in submergence and the consequent effect which the reservoir will have on the ecology of the surrounding areas and various studies relating to environmental impact had been taken into consideration and that there was no obligation to obtain the statutory clearance under the 1994 notification.

74. In the present case, regarding the manner of grant of no-objection certificate from environmental angle for proposed mining activity, by way of illustration, we may refer to the order dated 18-1-1999 issued by the Haryana State Pollution Control Board whereby no-objection certificate for renewal of lease was granted stipulating that the applicant Som Prakash Sethi in respect of mining activity at Village Anangpur, District Faridabad shall also be seeking environmental clearance of its mining project in compliance with this notification without even mentioning any time-limit for it and admittedly till date that had not been done. None bothered to find out whether conditions in the order had been complied or not. Further the letter dated 25-1-2003, sent to the Principal Secretary of Central Empowered Committee by the Director, Mines and Ecology, Haryana shows how the State Government has been circumventing the legal requirements and permitting mining. In that letter, it has been stated that pending approval of the environmental plan, the mining lessees undertook the mining operation of the minor mineral on issue of short-term permit, in cases where the fresh mining leases were granted and in case of renewal of mining leases, the mining activities were going on. This is

⁴ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664

despite conditions in the judgment dated 10-5-1996¹ by this Court that the Director, Mining and Ecology, Haryana would be responsible for mining in the State of Haryana.

- a
75. Be that as it may and reverting to the legal position, in *Ambica Quarry Works v. State of Gujarat*⁷ though a case under the Forest (Conservation) Act, 1980 rejecting the contention that approval at the stage of renewal was not necessary and also the plea that since the leaseholders had invested sums of money in mining operation, it was the duty of the
- b
- authorities to renew the lease, it was held that having regard to the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and the same should be prevented, and that the concept that power coupled with the duty enjoined upon the respondents to renew the lease stood eroded by the mandate of the FC Act. It was held that the primary duty was to the community, and that duty took precedence. In
- c
- such cases, the obligation to the society must predominate over the obligation to the individuals. It would be apposite to reproduce what was said by Justice Mukherjee (as he then was) in paras 14 and 15 which read thus: (SCC p. 219)

- d
- "14. Here the case of the appellants is that they have invested large sums of money in mining operations. Therefore, it was the duty of the authorities that the power of granting permission should have been so exercised that the appellants had the full benefits of their investments. It was emphasised that none of the appellants had committed any breach of the terms of grant nor were there any other factors disentitling them to such renewal. While there was power to grant renewal and in these cases there were clauses permitting renewals, it might have cast a duty to grant such renewal in the facts and circumstances of the cases specially in view
- e
- of the investments made by the appellants in the areas covered by the quarrying leases, but renewals cannot be claimed as a matter of right for the following reasons.

- f
15. The rules dealt with a situation prior to the coming into operation of 1980 Act. '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."
- g
- (emphasis in original)

- h
- ¹ *M.C. Mehta v. Union of India*, (1996) 8 SCC 462
⁷ (1987) 1 SCC 213

76. In *Rural Litigation and Entitlement Kendra v. State of U.P.*⁸ agreeing with views expressed in *Ambica Quarry Works*⁷ it was held that the FC Act applies to renewals as well and even if there was a provision for renewal in the lease agreement on exercise of the lessee's option, the requirement of the Act had to be satisfied before such renewal could be granted. In *State of M.P. v. Krishnadas Tikaram*⁹ these two decisions were relied upon and it was held that even the renewal of lease cannot be granted without the prior concurrence of the Central Government. It is settled law that the grant of renewal is a fresh grant and must be consistent with law.

77. We are unable to accept the contention that the notification dated 27-1-1994 would not apply to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases the requirements of the notification were complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification.

The applicability of the Forest (Conservation) Act, 1980 to areas treated as forest by the State Forest Department

78. The provisions of the Act provide for the conservation of forest and for matters connected therewith or ancillary or incidental thereto. Any forest land or portion thereof cannot be used for any non-forest purposes or assigned by way of leases or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by the Government, except with the prior approval of the Central Government. Mining activity within forest area cannot be permitted in contravention of the provisions of the Act. The Act makes the contravention of any of the provisions of Section 2 as an offence punishable in the manner provided in the Act.

79. The controversy is in respect of certain leases where area under the lease is covered under notification issued under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900. The question is whether such area is "forest" of any kind.

80. Under Section 3 of the aforesaid Act, whenever it appears to the State Government that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly. Under Section 4(b), the State Government has power to regulate, restrict or prohibit the quarrying of stone or the burning of lime at

⁸ 1989 Supp (1) SCC 504

⁷ *Ambica Quarry Works v. State of Gujarat*, (1987) 1 SCC 213

⁹ 1995 Supp (1) SCC 587

M.C. MEHTA v. UNION OF INDIA (*Sabharwal, J.*)

181

- places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under Section 3. Under Section
- a 5(b) in respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under Section 3, the State Government may, by special order, temporarily regulate, restrict or prohibit the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under Section 3. In respect of some mining areas
 - b notifications have been issued under Section 4 and in respect of some, notifications have been issued both under Sections 4 and 5. The submission is that invoking of Sections 3, 4 and 5 is only to conserve subsoil water and prevention of the area from erosion of land and is not to create any forest. It has been pointed out that in cases where the notifications have been issued, only felling of trees had been prohibited and not quarrying of stone.
 - c 81. It cannot be disputed that the State Forest Department has been treating and showing the aforesaid areas as "forest". The contention urged on behalf of the State Government is that it was on account of erroneous viewpoint of the Forest Department. In fact and law, such area is not "forest" and mining is not prohibited and, therefore the question of seeking permission under Section 2 of the FC Act does not arise.
 - d 82. In the instant case, it is not necessary to decide the legal effect of issue of the notification under Sections 4 and/or 5 of the Act. Not only in their record has the area been shown as forest but affidavits have been filed in this Court stating the area to be "forest". In *T.N. Godavarman Thirumulkpad v. Union of India*¹⁰ this Court held that the term "forest" is to be understood in the dictionary sense and also that any area regarded as a forest in
 - e government records, irrespective of ownership, would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose. Reference in this connection may also be made to the affidavit dated 8-12-1996 filed by Banarsi Das, Principal Chief Conservator of Forests,
 - f Chandigarh, Haryana in *Environmental Awareness Forum v. State of J&K*¹¹. Our attention has also been drawn to letter dated 26-11-2002 addressed by the Divisional Forest Officer, Faridabad to the Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad district and requesting him to ensure that the said forest areas are not affected by any mining operations as also to a letter dated 17-9-2001 sent by the Principal
 - g Chief Conservator of Forests, Haryana (Panchkula) to the Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete somersault in these proceedings and contend that the earlier stand that the area is forest was

h 10 (1997) 2 SCC 267;

11 Civil Writ No. 171 of 1996

under some erroneous impressions. In the present case, for the purposes of the FC Act, these areas shall be treated as forest and for use of it for non-forestry purpose, it would be necessary to comply with the provisions of the FC Act. a

83. We may also note that assuming that there was any confusion or erroneous impression, it ought to have been first sorted out at the appropriate level and where affidavits had been filed in this Court, clarifications/orders sought before issue of the mining lease in respect of such area.

Impact of mining on groundwater b

84. Where during mining water level is touched, the Monitoring Committee shall carve out that area and it was agreed on behalf of the leaseholders that they would cooperate and not undertake any mining in such an area.

Non-payment of royalty to the villagers c

85. A controversy has been raised about non-payment of royalty by the leaseholders to villagers on whose behalf it was contended that the order dated 6-5-2002[‡] prohibiting mining should not be varied till the leaseholders discharge their liability to pay royalty to the villagers. On the other hand, mine leaseholders dispute the claim put forth on behalf of the villagers and it has been submitted that no amount is payable by them and the villagers can make their claim, if any, from the State Government. A dispute of this nature cannot be properly adjudicated in these proceedings. We leave it open to be adjudicated before an appropriate forum in accordance with law. d

Leases in respect of minor mineral

86. Though notification dated 27-1-1994 is not applicable to minor minerals, but having regard to what we have discussed above in regard to degradation of environment and the required standard about the risk of harm to the environment or to human health to be decided in public interest according to "reasonable person's test", and the report of CMPDI, we direct the Monitoring Committee to examine the leases granted for extraction of minor mineral in light thereof and file its report. The Committee would, however, bear in mind that the notification dated 27-1-1994 as such is not applicable to these leases. e f

Mining in Faridabad district

87. Having examined the matter, we are of the view that though the study conducted by CMPDI relates to mining activity in Aravalli hills in Gurgaon district, in public interest the general safeguards and suggestions in that report deserve to be implemented in respect of mining in Faridabad district as well. g

88. We have already extracted the recommendations of NEERI, as also violations noticed in the reports submitted by EPCA and the suggestions of EPCA, CEC and CMPDI. The Monitoring Committee shall inspect the leases in question in Faridabad district as well in the light of these h

[‡] See cited order at (2004) 12 SCC 188, below

recommendations and file its report containing suggestions on recommencement or otherwise of the mining activity therein.

- a 89. It may be reiterated that if, despite stringent conditions, the degradation of environment continues and reaches a stage of no-return, this Court may have to consider, at a later date, the closure of mining activity in areas where there is such a risk.

- b 90. As earlier noticed as well, it would not be expedient to lift the ban on mining imposed in terms of the order of this Court dated 6-5-2002[‡] before ensuring implementation of suggestions of CMPDI and other recommendations of experts (NEERI, EPCA and CEC). The safer course is to consider this question on individual basis after receipt of report of the Monitoring Committee.

Environment impact assessment applications

- c 91. During the course of hearing environment assessment applications in terms of notification dated 27-1-1994 have been filed by some of the leaseholders. In case those applications are presently with the Central Empowered Committee, the same shall be forthwith forwarded by CEC to MOEF. The adverse effect, if any, and extent thereof on human health and ecology shall be examined while deciding impact of these activities. There is also the desirability of transparency in such matter. MOEF is directed to
- d consider the said applications within a period of ten weeks.

Monitoring Committee

- e 92. With a view to monitor the overall eco-restoration efforts in the Aravalli hills and to provide technical support to the implementing organisations and also to monitor implementation of recommendations contained in reports referred herein, it is necessary to constitute a Monitoring Committee. The heads of the following departments would be members of the Monitoring Committee:

1. Regional Officer of State Pollution Control Board
2. Forest Department
3. District Administration
- f 4. Department of Mining and Geology
5. Irrigation Department
6. Regional Officer of CGWB
7. Agriculture Department
8. District Industry Department
9. Chairman, CPCB

- g 93. Besides above, MOEF is directed to appoint an officer from the Central Ground Water Board to be a member of the Monitoring Committee. The following persons as representatives of the public shall also be members of the said Committee:

1. Prof. Dilip Biswas, Ex-Chairman, CPCB
- h 2. Mr Valmiki Thapar

[‡] See cited order at (2004) 12 SCC 188, below

3. Mr Bhure Lal

94. MOEF would act as a nodal agency of the Monitoring Committee. The Secretary of MOEF is directed to appoint an officer not below the rank of a Joint Secretary in the Ministry for the said purpose. a

95. The Monitoring Committee is directed to inspect the mines in question and file a report within a period of three months, inter alia, containing suggestions for recommencement of mining in individual cases. All individuals and departments concerned are directed to render full cooperation to the Monitoring Committee. b

Conclusions

96. 1. The order dated 6-5-2002[‡] as clarified hereinbefore cannot be vacated or varied before consideration of the report of the Monitoring Committee constituted by this judgment.

2. The notification of environment assessment clearance dated 27-1-1994 is applicable also when renewal of mining lease is considered after issue of the notification. c

3. On the facts of the case, the mining activity in areas covered under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980. d

4. No mining activity can be carried out on area over which plantation has been undertaken under the Aravalli Project by utilisation of foreign funds.

5. The mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions.

6. The Aravalli hill range has to be protected at any cost. In case despite stringent conditions, there is an adverse irreversible effect on the ecology in the Aravalli hill range area, at a later date, the total stoppage of mining activity in the area may have to be considered. For similar reasons such step may have to be considered in respect of mining in Faridabad district as well. e

7. MOEF is directed to prepare a short-term and long-term action plan for the restoration of environmental quality of Aravalli hills in Gurgaon district having regard to what is stated in final report of CMPDI within four months. f

8. Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance of the stipulated conditions. g

97. The matters are directed to be listed after reopening of courts after summer vacation on receipt of the report from the Monitoring Committee.

[‡] See cited order at (2004) 12 SCC 188, below h

294

SUPREME COURT CASES

(2008) 17 SCC

6. A reading of the abovequoted paragraphs would reveal that when an order of a court quashing the detention is set aside, the remittance of the detenu to jail to serve out the balance period of detention does not automatically follow and it is open to the detaining authority to go into the various factors delineated in the judgments aforequoted so as to find out as to whether it would be appropriate to send the detenu back to serve out the balance period of detention. In this view of the matter, we are of the opinion that the detaining authority must be permitted to re-examine the matter and to take a decision thereon within a period of 3 months from the date of the supply of the copy of this order. We further direct that during this period the interim order in favour of the appellant given by us on 30-4-2007 will continue to operate.

7. The appeals are allowed in the above terms.

(2008) 17 Supreme Court Cases 294

(BEFORE DR. ARIJIT PASAYAT, C.K. THAKKER AND L.S. PANTA, JJ.)

M.C. MEHTA

Appellant;

Versus

UNION OF INDIA AND OTHERS

Respondents.

IAs No. 1901 in No. 1888 in WP (C) No. 4677 of 1985[†]
with IAs No. 1955 in No. 1988 in WP (C) No. 4677 of 1985,
decided on May 14, 2008

A. Constitution of India — Arts. 21, 48-A, 51-A(g), 47, 32 and 226 — Directions given in *M.C. Mehta case*, (2004) 12 SCC 118 — Whether directions were against mining activity only — Whether construction permissible in Aravalli Hills in Faridabad — Held, the area has been treated as "forest" and *M.C. Mehta case* apart from dealing with mining activity, has also taken care of other aspects like environmental degradation — Held, development of plots and then doing construction thereon amounts to "clearing or breaking up of ... area/land" which is prohibited in this area — No valid objection could therefore be taken against communication dated 31-1-2005 of the Divisional Forest Officer, Faridabad, requesting that penal action be taken for non-forest activities in the area mentioned in this communication — Punjab Land Preservation Act, 1900 (2 of 1900) — Ss. 3, 4 and 5 (as applicable to State of Haryana) — Forest (Conservation) Act, 1980

B. Words and Phrases — "Clearing and breaking up of any area/land" — Held, includes development of plots and doing construction thereon — Town Planning — Development — What is — Punjab Land Preservation Act, 1900 (2 of 1900), Ss. 4 and 5

The present case arose out of communication dated 31-1-2005 addressed by the Divisional Forest Officer, Faridabad, requesting the Commissioner, Faridabad and the Administrator, Haryana Urban Development Authority, forwarding a list of areas in Aravalli Hills in Faridabad, under Sections 4 and 5 of the Punjab Land

[†] Under Article 32 of the Constitution of India

M.C. MEHTA v. UNION OF INDIA

295

a Preservation Act, 1900. It was mentioned in this communication that these areas have been declared by the Supreme Court to be "forest" and therefore penal action was required to be taken for any non-forest activity under the Forest (Conservation) Act, 1980. Besides, there was an individual who was informed that he could not be granted occupancy certificate for the construction in the area unless he obtained no-objection certificate (NOC) from the Forest Department.

b An interim application was filed wherein it was *inter alia* contended that the directions given in *M.C. Mehta case*, (2004) 12 SCC 118, which formed the basis for the aforementioned communication, prohibited mining activity only, and not construction activity.

Rejecting this contention, the Supreme Court

Held :

c Under Sections 4 and 5 of the Punjab Land Preservation Act, 1900, "clearing or breaking up of any area/land which was not under cultivation" can be prohibited. In view of notification under Section 4, when clearing or breaking up of land is not permitted that itself is a bar from fresh construction because construction can take place only if clearing and breaking up of an area/land takes place. This prohibition is clearly contained in the notification of 1992. Reliance placed by the applicants on clause (g) of Section 4 is clearly misconceived, inasmuch as the permissible activity allowed within clause (g) is in favour of inhabitants of town and villages within the limits or vicinity of any such area. However, the applicants have developed plots in the area in question and have sold it to persons who are not inhabitants of towns and villages within such specified living area, but could be anybody from all over the country or outside, and therefore clause (g) of Section 4 has no application. The factum of developing a plot and then doing construction on it would amount to clearing or breaking up of an area or land. The State Forest Department has been treating and showing the area notified under Sections 3, 4 and 5 as forest. This has been noted in *M.C. Mehta case*. Further, *M.C. Mehta case* was not confined to examination of mining activity in the area up to 5 km on Haryana side of the Ridge, but also in Aravalli Hills causing environmental degradation. It has also been noted in the judgment in *M.C. Mehta case* that the application that was filed by Delhi Ridge Management Board not only sought for a direction to stop all mining activities but also of pumping of groundwater in and from areas up to 5 km from Delhi-Haryana border on Haryana side of the Ridge, *inter alia* stating that this was in the larger interest of maintaining ecological balance of the environment. Location of the applicant company's plots are in the Ridge and in the Aravalli chain. (Paras 11 to 14)

e The Environmental Pollution Control Authority (EPCA) pursuant to the Court's order dated 22-7-2002 visited the area and gave its report which clearly showed that key conditions of the earlier order dated 10-5-1996 were violated. The Central Groundwater Board's report also shows that the area in question in Village Anangpur has been notified as a very precarious groundwater situation. Any construction activity therein without adequate water reserves will also have a negative effect. It is noted in *M.C. Mehta case* that groundwater table is already at a critical stage in Faridabad. It is therefore not correct to contend that the nature of applicant's lands had already been considered in the earlier case and the restrictions did not apply to them. (Paras 15 to 20)

h *M.C. Mehta v. Union of India*, (2009) 17 SCC 541; *M.C. Mehta v. Union of India*, (1996) 8 SCC 462, relied on

296

SUPREME COURT CASES

(2008) 17 SCC

T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267; *M.C. Mehta v. Union of India*, (2004) 12 SCC 188, referred to

M.C. Mehta v. Union of India, (2004) 12 SCC 118, explained

IAs dismissed

K-M/38022/S

Advocates who appeared in this case :

Ranjit Kumar (Amicus Curiae), Arun Jaitley, P.S. Patwalia, K.K. Venugopal, Vijay Lakshmi Menon and C.A. Sundaram, Senior Advocates [Kamal Gupta (Amicus Curiae), Pijush Sharma, Dinesh C. Pandey, Gopal S. Narayan, Ms Sharmila Upadhyay, Sanjay Hedge, Dhruv Mehta, Harshvardhan Jha and Yashraj Singh Deora (for M/s K.L. Mehta & Co.), Advocates] for the Appellant;

Manjit Singh, Additional Advocate General (T.V. George, Vijay Panjwani, V.K. Verma, Ms Sheil Sethi, Ms Anil Katiyar, Ms Sharmila Upadhyay, C.S. Ashri and Ajay Siwach, Advocates) for the Respondents.

Chronological list of cases cited

on page(s)

1. (2009) 17 SCC 541, *M.C. Mehta v. Union of India*

302c

2. (2004) 12 SCC 188, *M.C. Mehta v. Union of India*

299e-f, 302f-g

3. (2004) 12 SCC 118, *M.C. Mehta v. Union of India*

297a-b, 297b-c,

297g-h, 299e-f, 301a-b,

302a, 302f-g, 303a, 303d-e

4. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad v. Union of India*

298a, 300d-e

5. (1996) 8 SCC 462, *M.C. Mehta v. Union of India*

302f

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.— IA No. 1901 of 2005 relates to the land situated in Aravalli Range. Challenge basically is to the communication dated 31-1-2005 by the Divisional Forest Officer, Faridabad requesting the Commissioner, Faridabad; the Administrator, Haryana, Urban Development Authority (in short "HUDA") and the District Town Planner, Faridabad forwarding a list of areas closed under Sections 4 and 5 of the Punjab Land Preservation Act, 1900 (in short "the Act"). It was indicated that these areas have been declared by this Court to be "forest" and, therefore, penal action is required to be taken for any non-forest activities under the Forest (Conservation) Act, 1980 (in short "the Conservation Act"). This communication was issued purportedly on the basis of this Court's order.

2. Similar communication was made by the Senior Town Planner, Gurgaon Circle, Gurgaon intimating Dr. Mathan Singh Kanwar that he has to obtain "NOC" from the Forest Department and produce the same before the Senior Town Planner so that the next course of action with regard to granting occupation certificate can be carried out. Reference has also been made to a letter dated 19-9-1999 by the Commissioner and Secretary to Government, Haryana Forest and Wildlife Department addressed to the Principal Chief Conservator, Forest Conservation, Haryana on the subject of prohibition in the areas covered under the notification issued under the Act. It has been indicated therein that the Forest Department will not declare areas notified, under Sections 4 and 5 of the Act as "forest".

3. The background facts show that the State Government decided to notify the area in question under Section 4 of the Act, prohibiting activities contained in the said Notification dated 18-8-1992 for a period of 30 years. The effect of the decision in *M.C. Mehta v. Union of India*¹ on the areas declared under Sections 4 and 5 of the Act, has to be noted.

4. Learned counsel for the petitioner in IAs Nos. 1901 and 1999 filed by Kant Enclave Residents Welfare Association, IA No. 1955 filed on behalf of Karamyogi Shelters (P) Ltd. and certain other IAs i.e. IAs Nos. 1965-66 and 2024 in IAs Nos. 1901-04 for impleadment and directions are filed by PCL Industries. It is the stand that the decision of this Court in *M.C. Mehta case*¹ fully takes care of the situation. It is submitted that the decision was mining centric. In the instant case the development started in 1992. The earlier judgment clearly excluded constructions already undertaken. There cannot be any retrospective effect in the inter-fraction (*sic*) of forest and in the instant case the first and in most of the cases the first licence was granted prior to the Conservation Act. Reference is also made to the Faridabad Complex Requisition and Development Act, 1971 (in short "the 1971 Act"), the National Capital Region Planning Board, 1985 and also to the object of the 1971 Act. It is pointed out that the situation for the pre-21-12-1992 period has been dealt with in paras 80 and 81 of the earlier judgment. Similar stand has been dealt with and rejected in para 82. It is pointed out that there is an overriding effect so far as Section 27 is concerned and the 1971 Act has to be kept out of consideration because of Section 27.

5. Learned amicus curiae on the other hand submitted that this Court nowhere has kept the cases of the applicant out of consideration. In fact the other questions like the effect of Section 4 were examined.

6. In the Order dated 18-8-1992 issued by the Forest Department of the Government, Serial Nos. 9 to 16 become relevant.

7. It is to be noted that Section 4 is subject to Section 3 notification. The Conservator of Forests in his letter to M/s R. Kant & Co. dated 15-5-1996 noted as follows:

"M/s R. Kant & Co., 407, Vishal Bhawan, 95 Nehru Place, New Delhi 110 019 is allowed to proceed ahead with their plan in Khasra Nos. 9 to 16, Village Anangpur, Faridabad in accordance with the agreement signed with Haryana Government through the Commissioner and the Secretary, Town and Country Planning, Haryana dated 27-5-1992."

8. It is to be noted that earlier the focus was on areas and not on khasra numbers. The stand of the applicants regarding pre-21-12-1992 has been dealt with in paras 80 and 81 of the earlier judgment. The decision of this Court in *M.C. Mehta case*¹ dealt with the applicability of the Conservation Act to the areas treated as forest by the State Forest Department in paras 78, 79, 80, 81 and 82. It was, inter alia, observed as follows: (SCC pp. 180-82, paras 78-82)

“78. The provisions of the Act provide for the conservation of forest and for matters connected therewith or ancillary or incidental thereto. Any forest land or portion thereof cannot be used for any non-forest purposes or assigned by way of leases or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by the Government, except with the prior approval of the Central Government. Mining activity within forest area cannot be permitted in contravention of the provisions of the Act. The Act makes the contravention of any of the provisions of Section 2 as an offence punishable in the manner provided in the Act. a b

79. The controversy is in respect of certain leases where area under the lease is covered under notification issued under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900. The question is whether such area is ‘forest’ of any kind.

80. Under Section 3 of the aforesaid Act, whenever it appears to the State Government that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly. Under Section 4(b), the State Government has power to regulate, restrict or prohibit the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under Section 3. Under Section 5(b) in respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under Section 3, the State Government may, by special order, temporarily regulate, restrict or prohibit the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under Section 3. In respect of some mining areas notifications have been issued under Section 4 and in respect of some, notifications have been issued both under Sections 4 and 5. The submission is that invoking of Sections 3, 4 and 5 is only to conserve subsoil water and prevention of the area from erosion of land and is not to create any forest. It has been pointed out that in cases where the notifications have been issued, only felling of trees had been prohibited and not quarrying of stone. c d e f

81. It cannot be disputed that the State Forest Department has been treating and showing the aforesaid areas as ‘forest’. The contention urged on behalf of the State Government is that it was on account of erroneous viewpoint of the Forest Department. In fact and law, such area is not ‘forest’ and mining is not prohibited and, therefore the question of seeking permission under Section 2 of the FC Act does not arise. g

82. In the instant case, it is not necessary to decide the legal effect of issue of the notification under Sections 4 and/or 5 of the Act. Not only in their record has the area been shown as forest but affidavits have been filed in this Court stating the area to be ‘forest’. In *T.N. Godavarman* h

M.C. MEHTA v. UNION OF INDIA (*Pasayat, J.*)

299

*Thirumulpad v. Union of India*² this Court held that the term 'forest' is to be understood in the dictionary sense and also that any area regarded as a forest in government records, irrespective of ownership, would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose. Reference in this connection may also be made to the affidavit dated 8-12-1996 filed by Banarsi Das, Principal Chief Conservator of Forests, Chandigarh, Haryana in *Environmental Awareness Forum v. State of J&K*³. Our attention has also been drawn to letter dated 26-11-2002 addressed by the Divisional Forest Officer, Faridabad to the Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad District and requesting him to ensure that the said forest areas are not affected by any mining operations as also to a letter dated 17-9-2001 sent by the Principal Chief Conservator of Forests, Haryana (Panchkula) to the Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete somersault in these proceedings and contend that the earlier stand that the area is forest was under some erroneous impressions. In the present case, for the purposes of the FC Act, these areas shall be treated as forest and for use of it for non-forestry purpose, it would be necessary to comply with the provisions of the FC Act."

In para 82 it has been noted that it is not necessary to decide the legal effect of the issue of the notifications under Sections 4 and 5 of the Act.

9. Conclusions in the said case were to the following effect: (*M.C. Mehta case*¹, SCC p. 184, para 96)

"96. 1. The order dated 6-5-2002⁴ as clarified hereinbefore cannot be vacated or varied before consideration of the report of the Monitoring Committee constituted by this judgment.

2. The Notification of environment assessment clearance dated 27-1-1994 is applicable also when renewal of mining lease is considered after issue of the notification.

3. On the facts of the case, the mining activity in areas covered under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980.

4. No mining activity can be carried out on area over which plantation has been undertaken under the Aravalli Project by utilisation of foreign funds.

5. The mining activity can be permitted only on the basis of sustainable development and on compliance with stringent conditions.

² (1997) 2 SCC 267

³ Civil Writ No. 171 of 1996

⁴ *M.C. Mehta v. Union of India*, (2004) 12 SCC 188

6. The Aravalli Hill Range has to be protected at any cost. In case despite stringent conditions, there is an adverse irreversible effect on the ecology in the Aravalli Hill Range area, at a later date, the total stoppage of mining activity in the area may have to be considered. For similar reasons such step may have to be considered in respect of mining in Faridabad District as well. a

7. MoEF is directed to prepare a short-term and long-term action plan for the restoration of environmental quality of Aravalli Hills in Gurgaon District having regard to what is stated in the final report of CMPDI within four months. b

8. Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance with the stipulated conditions."

10. It is to be noted that in the counter-affidavit filed by the State of Haryana on 10-9-2006 it has been, inter alia, stated as follows: c

"This notification covers Khasra Nos. 9 to 16 of Village Anangpur. Since then this land is being treated as forest and it was also included in the list of forests in the government record. The affidavit filed by the Forest Department, Haryana in case of CWP No. 202 of 1995 in *T.N. Godavarman Thirumulpad v. Union of India*², this area was shown as a forest. Section 2 of the Forest (Conservation) Act, 1980 restricts the dereservation of forest or use of forest land for non-forest purposes. d

M/s R. Kant & Co., the present applicant applied for exemption from the Haryana Development and Regulation of Urban Area Act, 1975 for establishment of films studio and allied complex at Village Anangpur. The Government exercising the powers conferred by Section 23 of the Haryana Development and Regulation of Urban Area Act, 1975 (hereinafter referred to as 'the Act of 1975') vide Letter dated 17-4-1984 granted the exemption subject to certain conditions. Prior to notification under Section 4 of the Punjab Land Preservation Act, 1900, the said land was not shown as forest in government records. The conditions were: e

(a) The company gets the layout plan finally approved from DTCP within 60 days of the grant of the exemption letter. f

(b) The company shall submit a bank guarantee equal to 10% of the total cost of all development works as certified by the Director within 60 days of the issue of this letter.

(c) That the exemption is conditional and subject to the production of title deeds as proof of ownership of the land in question by M/s R. Kant & Co. g

17. That the applicant failed to comply with the terms and conditions of the agreement and undertaking of the exemption granted under Section 23 of the Act of 1975. Therefore a show-cause notice dated 19-12-1986 was issued to the applicant for withdrawal of the exemption. The copy of the show-cause notice dated 19-12-1986 is as Annexure R-5. h

M.C. MEHTA v. UNION OF INDIA (*Pasayat, J.*)

301

a 21. That the Principal Chief Conservator of Forests vide letter dated 27-1-2006 informed the Director, Town and Country Planning Department that Khasra Nos. 9 to 16 of Anangpur is notified under Section 4 of the Punjab Land Preservation Act, 1900 vide Notification dated 18-8-1992. Hence the above area was treated as forest in view of the order dated 18-3-2004 passed by this Court in *M.C. Mehta case*¹. Since the applicant never submitted any proposal with the Forest Department for diversion of forest land for non-forestry use under the Forest (Conservation) Act, 1980, therefore the Director, Town and Country Planning asked the applicant vide letter dated 27-6-2006 to seek the diversion of forest land in Khasra Nos. 9 to 16 of Village Anangpur for non-forestry use under the Forest (Conservation) Act, 1980.”

c 11. Reference can be made to Sections 3, 4 and 5 of the Act. Section 3 inter alia provides that whenever the State Government with a view to conserve — (a) subsoil water; (b) erosion in any area; may make a notification for the said purpose and Section 4 thereof provides as to what activities can be prohibited. A perusal of Sections 4 and 5 would show that what can be prohibited is:

- d “(a) the clearing or breaking up of any area/land which was not under cultivation;
- (b) the quarrying of stone or burning of lime which was not so being done earlier;
- (c) the cutting of trees or timber or collection or removal of any forest produce except for bona fide domestic use;
- (d) the setting on fire of trees, timber or forest produce;
- e (e) the admission, herding, retention or pasturing of animals;
- (f) the examination of forest produce;
- (g) the grant of permits to the inhabitants of the towns and villages to take any tree or timber or forest produce for their own use or to pasture sheep or camel or to cultivate or to make building, etc.”

f 12. In view of the notification under Section 4 when the clearing or breaking up of the land is not permitted that itself is a bar from (*sic* for) fresh construction because a construction can take place only if clearing and breaking of an area/land takes place. This prohibition is clearly contained in the notification of 1992. The reliance placed by the applicants on clause (g) is clearly misconceived, inasmuch as the permissible activity allowed within clause (g) is in favour of inhabitants of town and villages within the limits or vicinity of any such area. The admitted case is that the applicants herein have developed plots in the area in question and have sold it to persons who are not inhabitants of towns and villages within such specified living area, but could be anybody from all over the country or outside, and therefore clause (g) of Section 4 has no application. The factum of developing a plot and then construction thereon would amount to clearing or breaking up of an area or land.

13. The judgment in *M.C. Mehta case*¹ notes the argument, which is presently reiterated that the State Forest Department has been treating and showing the areas notified under Sections 3, 4 and 5 as forest. This Court noted this in para 82 of the judgment which has been extracted above. a

14. This Court was not only examining the mining activity in the area up to 5 km on the Haryana side of the Ridge, but also in Aravalli Hills causing environmental degradation as is apparent from para 1 of the judgment. Further in para 8, it has been noted that the application that was filed by Delhi Ridge Management Board not only sought for a direction to stop all mining activities but also of pumping of groundwater in and from areas up to 5 km from Delhi-Haryana border on the Haryana side of the Ridge, inter alia, stating that this was in the larger interest of maintaining ecological balance of the environment. As per learned amicus curiae location of the applicant company's plots are in the Ridge and in the Aravalli chain. b

15. Under the orders of this Court dated 22-7-2002⁵, the Environmental Pollution Control Authority ("EPCA", for short) was directed to give a report with regard to the environment in the area preferably after a personal visit. The objective of the visit by the EPCA members has been noted in para 12 of the judgment as under: c

1. Assessment of the level of compliance with the conditions laid down in the regulatory procedures like the no-objection certificate (NOC) granted by authorities to the mine owners. d

2. Evidence of land and habitat degradation in and around the mining sites.

3. Evidence of misuse and shortage of groundwater in the area.

4. Assessment of the implication of such activities for the local ecology and drinking water sources in the area. e

16. During the visit, it appears that EPCA found clear evidence of violation of some of the key conditions of order of this Court, dated 10-5-1996⁶.

17. EPCA referred to the notification of August 1992 which report is extracted at para 14 of the judgment. In fact EPCA, in its report regarding compliance with environmental management plans recommended by NEERI as directed by this Court on 10-5-1996⁴ at Sl. No. 4 noticed as under: (*M.C. Mehta case*¹, SCC p. 136, para 14) f

Sl. No.	Directive	Enforced or not
	*	*
4.	Green belt on either side of the road between Surajkund and Badkal. (P.S. The applicant's near Surajkund)	We saw large-scale construction on this road—from schools to management colleges and housing colonies."

⁵ *M.C. Mehta v. Union of India*, (2009) 17 SCC 541

⁶ *M.C. Mehta v. Union of India*, (1996) 8 SCC 462

STATE OF A.P. v. ANJUMAN ARA BEGUM

303

18. The recommendations of EPCA are as under: (*M.C. Mehta case*¹, SCC pp. 139-40, para 15)

- a "15. ... 2. Not only must further degradation be halted but all efforts must be made to ensure that the local economy is rejuvenated, with the use of plantations and local water harvesting-based opportunities. It is indeed sad to note the plight of people living in these hills who are caught between losing their water-dependent livelihood and between losing their only desperate livelihood to break stones in the quarries. It is essential that the Government of Haryana seriously implements programmes to enhance the land-based livelihood of people — agriculture, animal care and forestry. Local people must not be thrown into making false choices, which may secure their present but will destroy their future. Already, all the villages visited by EPCA complained of dire and desperate shortages of drinking water. Women talked about long queues before taps to collect water. Clearly water resources of the region are critical inputs to development and cannot be wasted and destroyed like this. The State Government must come up with strategies to involve local communities in the future development of this region."
- b
- c

d 19. The Central Groundwater Board's report referred to in para 16 shows that the area in question in Village Anangpur has been notified as a very precarious groundwater situation. Any construction activity therein without adequate water reserves will also have a negative effect. In para 24 of *M.C. Mehta case*¹ it is noted that groundwater table is already at a critical stage in Faridabad.

e 20. Therefore, it is not correct as contended by the applicant that the nature of lands of the applicant were considered by this Court in the earlier case and the restrictions did not operate so far as they are concerned.

21. The IAs are accordingly dismissed.

(2008) 17 Supreme Court Cases 303

(BEFORE DALVEER BHANDARI AND H.S. BEDI, JJ.)

f STATE OF ANDHRA PRADESH .. Appellant;
Versus
ANJUMAN ARA BEGUM AND OTHERS .. Respondents.

Civil Appeal No. 1754 of 2006[†], decided on November 7, 2008

g Civil Procedure Code, 1908 — S. 11 — Res judicata — Applicability — Different parties in earlier and subsequent proceedings and new issues raised by subsequent parties — Proceeding of land grabbing under Andhra Pradesh Land Grabbing Act, 1982 against the earlier party could not ultimately succeed in the High Court and Supreme Court — *M* (earlier party) and later parties (Respondents 1 to 59) derived their title by way of inheritance and purchase from two plots of land — Respondents 1 to 21

h [†] From the Final Judgment and Order dated 15-9-2005 of the High Court of Andhra Pradesh at Hyderabad in WP No. 3646 of 2003

172

SUPREME COURT CASES

(2014) 12 SCC

(2014) 12 Supreme Court Cases 172

(BEFORE A.K. PATNAIK AND F.M. IBRAHIM KALIFULLA, JJ.)

B.S. SANDHU

Appellant; *a*

Versus

GOVERNMENT OF INDIA AND OTHERS

Respondents. *b*

Civil Appeals Nos. 4682-83 of 2005[†] with Nos. 4684-85, 4798-4800 of 2005, SLPs (C) Nos. 19226 and 20235 of 2013, decided on May 21, 2014

A. Environment Protection and Pollution Control — Forest (Conservation) Act, 1980 — S. 2 — “Forest” and “forest land” — Determination — Basis — Notification of lands under Ss. 3 to 5 of Punjab Land Preservation Act, 1900 (PLP) or listing of land in records of Forest Department and fact that on basis of such listing/notification State Government had included land concerned in list of “forest lands” submitted to Supreme Court on an earlier occasion, held, do not conclusively prove that land is forest land *c*

— Held; land notified under Ss. 3 to 5, PLP Act, 1900 or land listed in records of Forest Department to be under its administrative control because of said notifications (nor its inclusion in the list before Supreme Court only on that basis) need not be forest land — High Court’s finding that land concerned was forest land on said basis therefore, set aside — Matter remanded to High Court to decide whether land in question was forest land when the 1980 Act came into force on 25-10-1980 irrespective of its classification or ownership — Said issue is to be decided on basis of government records and other factual materials placed before it — Moreover, by recording a blanket finding that all land in Village Karoran, District Ropar, was “forest land” for the purpose of S. 2, 1980 Act, High Court has affected legal rights of several villagers, agriculturists, farmers, shop owners, inhabitants of Village Karoran, District Ropar, who were carrying on their respective occupations on their land even before the enactment of 1980 Act on 25-10-1980 — High Court should have been very careful before recording findings which affect the property rights of persons protected by Art. 300-A of the Constitution — Therefore, consequential directions of High Court regarding demolition order, cancellation of L-2 licence of Club and correction of revenue records of Club set aside — However, direction of High Court for CBI investigation into alleged involvement of IAS and IPS officers in showing official favours to Club, not set aside — Punjab Land Preservation Act, 1900 (2 of 1900) — Ss. 3 to 5 — Constitution of India, Art. 300-A *d*
e
f
g

B. Tenancy and Land Laws — Punjab Land Preservation Act, 1900 (2 of 1900) — Ss. 3 to 5 and Ss. 4(a) to 4(g) — Lands notified under Ss. 3 to 5 need not be only forest land but can also be non-forest land — Notifications *h*

[†] From the Judgment and Order dated 12-10-2004 in WPs Nos. 1134 and 1850 of 2004 of the High Court of Punjab and Haryana at Chandigarh

- under 1900 Act are to prohibit and regulate land concerned for the better preservation and protection of any local area, situated within or adjacent to
- a **Shivalik Mountain Range — Forest (Conservation) Act, 1980 — S. 2 — “Forest” and “forest land”**

- The present appeals were filed by a club, some private landowners of Village Karoran (agriculturists, house owners and shop owners) and the Bhartiya Kisan Union, which is a union of farmers. The dispute arose when the High Court by taking suo motu cognizance of a news item published on 22-1-2004 in
- b *Hindustan Times* (HT Chandigarh Live) titled “Forests Hill Club under the Central Government Scanner” took cognizance of the matter and by the impugned order in PIL held that all the lands in Village Karoran are forest land for the purpose of Section 2 of the Forest (Conservation) Act, 1980 and therefore, could not be used for non-forest purposes without the prior permission of the Central Government. And that the Club had violated said provision, by constructing a golf club and resort there. The High Court, therefore, directed
- c demolition of the structures of the Club, cancellation of L-2 licence issued to the Club by the Excise Department and correction of revenue records (which indicated that the lands concerned were not forest land). The High Court also directed a CBI investigation into the whole matter as allegedly the Club had taken the help of IAS and IPS officers for its illegal activities and as said officers had been given honorary membership in the Club and had been allowed to use
- d the premises of the Club/Resort for their private functions.

- The appellants submitted that the High Court could not have relied on the notification under Section 3, and the prohibitory orders under Sections 4 and 5 of the Punjab Land Preservation Act, 1900 (PLP Act, 1900) to hold that the lands were forest land. That is because the said notification and prohibitory orders covered both forest and non-forest land. And the object of the PLP Act, 1900 was to preserve and protect land situated within the Shivalik Mountain Range.
- e And that merely because land were covered under the PLP Act, 1900 and merely because records of the Forest Department showed said lands under the administrative control of the Forest Department, these lands could not be treated as forest land for the purpose of Section 2 of the 1980 Act. And that the Club had acquired said lands from private parties by way of sale deeds and some of the lands were agricultural lands and uncultivable wastelands. And that revenue
- f records indicated that the lands were not forest land. And that even if expert committee of the State Government constituted under directions of the Supreme Court in *T.N. Godavarman Thirumulpad*, (1997) 2 SCC 267 had identified all forest land in Village Karoran, by subsequent orders in *T.N. Godavarman Thirumulpad* (85), (2014) 12 SCC 187 pursuant to subsequent affidavits filed by the State Government, large portions of habitable land in Village Karoran were deleted from said list.

- g The State Government submitted that due to lack of statutory definition of forest land in any statute, reliance has to be placed on directions of the Supreme Court in *M.C. Mehta*, (2004) 12 SCC 118, wherein the Supreme Court took the view that if the State Forest Department has been treating and showing a particular area as forest, that area is to be treated as forest land for the purpose of Section 2 of the 1980 Act.

- h CEC was of the view that deletion of the forest areas concerned which were under cultivation or habitation prior to 25-10-1980 i.e. when the Forest

(Conservation) Act, 1980 was enacted, would not be against the spirit of the 1980 Act. And that for deleting such areas from the list of forest areas, the procedure as laid down in the Forest (Conservation) Rules, 1981 and the guidelines issued by the Central Government for implementation of the 1980 Act, must be followed. a

Setting aside the finding of the High Court that the land is forest land and the directions against the Club and remanding the matter for fresh hearing as per law, the Supreme Court

Held :

It is clear that the reason why the entire 3700 acres of land in Village Karoran, District Ropar, was included in the list of "forest land" in the report submitted by the State Government to the Supreme Court in 1997 [in *T.N. Godavarman Thirumulpad*, (1997) 2 SCC 267] is that in the records of the Forest Department, the said land was shown to be under the Forest Department. The land in the Village Karoran, District Ropar, is recorded as land under the control of the Forest Department because the land was notified under the PLP Act, 1900. b

(Para 15) c

Prohibitory directions notified under Sections 4 and 5 of the PLP Act, 1900 in respect of the land concerned are issued by State Government for the better preservation and protection of any local area, situated within or adjacent to Shivalik Mountain Range which is liable to be affected by debodisement of forests in that range or by the action of "cho". The expression "local area" has not been defined in the PLP Act, 1900 and may include not only "forest land" but also other land where non-forest activities are carried out as is clear from Sections 4(a) to 4(g) and 5 of the PLP Act, 1900. The basis for inclusion of the entire area in the list of forest areas pursuant to the list submitted by the State Government only on the above basis, in compliance with order dated 12-12-1996 in *T.N. Godavarman Thirumulpad*, (1997) 2 SCC 267 is legally not correct. Similarly, the conclusion of the High Court in the impugned order that the entire land having been notified under Section 3 of the PLP Act, 1900 and being under the regulatory regime of Sections 4 and 5 of the said Act is "forest land" is also legally not correct. d

(Paras 17 and 19) e

In fact, the High Court failed to appreciate the meaning of "forest" and "forest land" in Section 2 of the Forest (Conservation) Act, 1980 as given by the Supreme Court in the order dated 12-12-1996 in *T.N. Godavarman Thirumulpad*, (1997) 2 SCC 267. The Forest (Conservation) Act, 1980 was enacted with a view to check "further deforestation" and was to apply to all forest irrespective of the nature of ownership or classification thereof. Hence, Section 2 of the Forest (Conservation) Act, 1980 puts a restriction on further deforestation of "forest land" and would apply to any land which at the time of enactment of the Forest (Conservation) Act, 1980 was "forest land" irrespective of its classification or ownership. This is exactly the view taken also by the CEC in its recommendations dated 10-9-2003 in IA No. 727 in *T.N. Godavarman Thirumulpad* (85), (2014) 12 SCC 187. f

(Para 20) g

T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad* (85) v. *Union of India*, (2014) 12 SCC 187, clarified and applied

Thus, what the High Court was called upon to decide is whether the land on which the Club is situated was forest land as on 25-10-1980 irrespective of its classification or ownership. This is a factual question and the High Court should h

B.S. SANDHU v. GOVT. OF INDIA

175

a have decided this factual question on the basis of government records as on 25-10-1980 and other materials filed before the High Court, but the High Court has instead decided this question by reference only to the provisions of the PLP Act, 1900 and the records of the Forest Department in which the land was shown to be under the Forest Department because of the fact that the land was notified under the PLP Act, 1900 several decades before the enactment of the Forest (Conservation) Act, 1980. Moreover, by recording a blanket finding that all land in Village Karoran, District Ropar, was "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980, the High Court has affected the legal rights of several villagers, agriculturists, farmers, shop owners, inhabitants of Village Karoran, District Ropar, who were carrying on their respective occupations on their land even before the enactment of the Forest (Conservation) Act, 1980 on 25-10-1980. The High Court should have been very careful before recording findings which affect the property rights of persons protected by Article 300-A of the Constitution. (Para 22)

c *M.C. Mehta v. Union of India*, (2004) 12 SCC 118; *M.C. Mehta v. Union of India*, (2008) 17 SCC 294, distinguished

The finding of the High Court that the entire land in Village Karoran, District Ropar, is "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980, is set aside. The matter is remanded to the High Court for fresh hearing and fresh order in accordance with law. Consequently, all directions in the impugned order which flow out of the aforesaid finding of the High Court that the land was "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980 are set aside. It is made clear that the directions for investigation by CBI in the impugned order have however not been set aside. (Para 24)

Court on Its Own Motion v. State of Punjab, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H), reversed

SS-D/53294/S

e Advocates who appeared in this case :

f Mohan Jain, Additional Solicitor General, Ajay Bansal, Additional Advocate General, Ashwini Chopra, V.K. Bali, Puneet Bali and A. Mariarputham, Senior Advocates (Rudreshwar Singh, K.S. Rupal, Gurmant Sullar, Ms Devaki Anand, Raman Walia, Aditya Soni, Ms Christina Kumar, Ms Elizabeth Barr, Gopal Jha, Kaushik Poddar, Rameshwar Prasad Goyal, Ajit Kumar Pande, Samir Ali Khan, A. Tewari, Ms Ashmi Mohan, Shree Pal Singh, Gurman Singh, Anuj Prakash, Kanan Walia, Kaushik Poddar, Prashant Kumar, Rohit K. Singh, Alok Kumar, Ashok Dhamija, Alakh Alok Srivastava, D.K. Thakur, B.V. Balaram Das, Ms Sukhbeer Kaur Bajwa, N.K. Karhail, Ms M.J. Asha, P. Parameswaran, Ashiesh Kumar, Bimal Roy Jad, B.K. Khurana, A.D.N. Rao, Rakesh Kumar, Kuldip Singh, Jagjit Singh Chhabra, Pardaman Singh, Dheeraj Yadav, Gaurav Yadav, Vivek Goyal, Rajeev Kumar and N.G. Dev, Advocates) for the appearing parties.

Chronological list of cases cited

on page(s)

- g 1. (2014) 12 SCC 187, *T.N. Godavarman Thirumulpad (85) v. Union of India* 177f-g, 185b
2. (2008) 17 SCC 294, *M.C. Mehta v. Union of India* 180e, 180f, 186b-c
3. (2004) 12 SCC 118, *M.C. Mehta v. Union of India* 180d, 180f, 182b, 186b-c
4. (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H), *Court on Its Own Motion v. State of Punjab* 176a-b, 179b-c, 182a, 182a-b, 184b-c, 186f-g
- h 5. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad v. Union of India* 176c, 176f-g, 177e, 178b, 180a, 180c-d, 182b, 184b-c, 184c-d, 184d, 185a, 185d, 185d-e

The Judgment of the Court was delivered by

A.K. PATNAIK, J.— These civil appeals have been filed by way of special leave under Article 136 of the Constitution against the common order dated 12-10-2004 of the Division Bench of the Punjab and Haryana High Court in *Court on Its Own Motion v. State of Punjab*¹.

Facts of the case

2. CWP No. 1134 of 2004 is a public interest litigation entertained by the High Court suo motu pursuant to a news item published on 22-1-2004 in *Hindustan Times* (HT Chandigarh Live). This news item was titled "Forest Hill Club under the Central Government Scanner", and it stated that the Ministry of Environment and Forests, Union of India, has found that a Forest Hill Golf and Country Club in Village Karoran, District Ropar, near Chandigarh was being developed in blatant violation of the environmental and forest laws as well as the orders² passed by this Court in December 1996. The news item further stated that the Forest Department of the Government of Punjab had informed the Union Ministry of Environment and Forest that the entire area, on which the golf course had been set up, was closed under the Punjab Land Preservation Act, 1900 (for short "the PLP Act, 1900") and was a "forest area", which attracted the provisions of the Forest (Conservation) Act, 1980, but the Punjab Government permitted change of land use as a quid pro quo because a large number of top IAS and IPS officers and other decision-makers have been given honorary membership of the club or have been allowed to use the premises and facilities of the Club for private functions.

3. CWP No. 1850 of 2004 was filed by one Ranjeet Singh as a writ petition under Article 226 of the Constitution. In the writ petition, it was inter alia stated that Village Karoran is located in Kharar Tehsil of District Ropar and is about eight kilometres to the north-west of Chandigarh and the entire area of the village measuring about 3700 acres is covered under the PLP Act, 1900, and this area measuring about 3700 acres of Village Karoran is also shown as "forest area" in the Annual Administration Report and the Register of Forest Area of the Forest Department.

4. It is further stated in the writ petition that pursuant to the order dated 12-12-1996 passed by this Court in *T.N. Godavarman Thirumulpad v. Union of India*², an Expert Committee was set up by the Government of Punjab to identify the forest areas of the State of Punjab, and this Expert Committee included the entire area of Karoran Village as forest area in its report, and accordingly an affidavit was filed on behalf of the State Government in March 1997 in this Court, showing the entire area of Karoran Village as part of the forest areas of the State of Punjab. It is also stated in the writ petition that the entire area of Karoran Village was included as forest area in the management plan prepared by the State Forest Department and the

¹ (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H)

² *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

a management plan was approved by the Ministry of Environment and Forests vide its Letter dated 14-12-1998. The case made out in the writ petition was that Section 2 of the Forest (Conservation) Act, 1980 was applicable to any land in Karoran Village and, therefore, the land could not have been diverted for non-forest activities without the prior permission of the Central Government.

b 5. Col. B.S. Sandhu, who was the proprietor/Managing Director of the Forest Hill Golf and Country Club, contended before the High Court that merely because Village Karoran is covered under the PLP Act, 1900, the lands comprising the area of Village Karoran do not become "forest land". He further contended that the lands in Village Karoran on which the Forest Hill Golf and Country Club has been constructed were private lands acquired by sale deeds by the Dashmesh Educational Society formed by him for a period of eight years from different owners and some of the lands are agricultural lands and some of the lands are uncultivable wastelands (Gair Mumkin Pahar) and unless a formal notification was issued under Section 35 of the Forest Act, 1927 notifying a private land as "forest land", a private land cannot be treated to be "forest land".

d 6. Col. B.S. Sandhu also contended before the High Court that the fact that the State Forest Department had shown the entire land in Village Karoran as under the administrative control of the Forest Department does not also make the entire land in Karoran Village to be the "forest land". He further contended before the High Court that the entries in the revenue records of the State Government would show that the land in Village Karoran on which the club has been established is not "forest land". He, however, conceded before the High Court that pursuant to the orders passed by this Court in *T.N. Godavarman Thirumulpad v. Union of India*² on 12-12-1996, the Expert Committee constituted by the State of Punjab initially identified all the "forest areas" including those owned by private landowners in Village Karoran measuring 3700 acres as "forest land" and an affidavit was also filed on 21-2-1997 on behalf of the Forest Department, Government of Punjab, in this Court accordingly, but he submitted before the High Court that pursuant to the affidavits filed on behalf of the State Government, orders were passed by this Court in IA No. 727 in *T.N. Godavarman Thirumulpad case*³ deleting large portions of land under habitation in Village Karoran from the "list of forest areas" in the State of Punjab.

g 7. The High Court, however, rejected the contentions made on behalf of Col. B.S. Sandhu in Civil Appeals Nos. 4682-83 of 2005 and held that the entire land of Village Karoran which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 of the aforesaid PLP Act, 1900 is "forest land" and attracts the provisions of Section 2 of the Forest (Conservation) Act, 1980 if sought to be used for "non-forest purpose". The High Court also held that in the

h ² (1997) 2 SCC 267.

³ *T.N. Godavarman Thirumulpad (85) v. Union of India*, (2014) 12 SCC 187

records of the Forest Department of the Government of Punjab, the entire land of Village Karoran was shown to be "forest land" and the entries in the revenue record regarding the nature of the land were changed by the officers of the Revenue Department of the Government of Punjab at the behest of Col. B.S. Sandhu for the obvious reason that he was eyeing this big chunk of land for his personal gains. The High Court, therefore, discarded the latest entries of the revenue record and instead accepted the records of the Forest Department to hold that the land in question was "forest land".

8. The High Court further held that in *T.N. Godavarman case*², this Court has in its order dated 12-12-1996 defined the term "forest land" occurring in Section 2 of the Forest (Conservation) Act, 1980 to include not only "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership. The High Court held that as the land in Village Karoran was recorded in the records of the Forest Department of the Government of Punjab to be "forest land", the same was "forest land" within the meaning of Section 2 of the Forest (Conservation) Act, 1980. The High Court also held that the entire 3700 acres of land in Village Karoran was identified as "forest land" by the Expert Committee constituted by the State of Punjab in its report dated 19-2-1997 and the State Government filed its affidavit dated 21-2-1997 before this Court along with the report of the Expert Committee. The High Court took note of the fact that pursuant to hardships experienced by the owners of some of these lands in Village Karoran and pursuant to numerous representations, the State Government did examine the issue afresh and excluded a portion of the land from the "list of forest areas", but Col. B.S. Sandhu and his associates cannot derive any benefit or advantage from this stand of the State Government.

9. With the aforesaid findings, the High Court allowed the writ petitions directing Col. B.S. Sandhu and the companies and/or the societies floated by him to immediately close down its entire enterprise known as "Forest Hill Country Club Resort and Golf Course" and to demolish all the illegally erected buildings within a period of three months and to handover the "management" and "control" of the land in question to the State Forest Department. The High Court also directed the Revenue Department, Government of Punjab, to carry out all necessary corrections in the "records-of-rights" regarding the "forest land" falling within the revenue estate of Village Karoran, Tehsil Kharar, District Ropar and directed the Punjab State Electricity Board, through its Chairman, to discontinue the power supply forthwith to the Forest Hill Resort and directed the Commissioner of Excise and Taxation Department, Government of Punjab, to cancel L-2 licence issued in favour of the Forest Hill Resort. The High Court also directed the Central Bureau of Investigation through its Director to constitute a Special Investigation Team to be headed by an officer not below the rank of Deputy Inspector General, which shall hold a thorough probe into

2 *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

B.S. SANDHU v. GOVT. OF INDIA (*Patnaik, J.*)

179

- a the question of accountability of top executive and administrative functionaries of the departments concerned of the Government of Punjab, some officers of the Central Government in relation to establishment and development of the Forest Hill Golf and Country Club at Village Karoran and to report as to whether any one of them indulged in taking direct or indirect gratification and/or acted in violation of the Conduct Rules and to constitute a Special Investigation Team of the Central Bureau of Investigation to inquire into and submit its report as to how much lands are actually owned by Col. B.S. Sandhu, his family members and/or the societies/companies floated by them.

- c 10. Aggrieved by the impugned order¹, Col. B.S. Sandhu has filed Civil Appeals Nos. 4682-83 of 2005. Aggrieved by the impugned order, some agriculturists, house owners and shop owners of Village Karoran have filed Civil Appeals Nos. 4799-4800 of 2005 and the Bhartiya Kisan Union, which is a union of farmers has filed Civil Appeal No. 4798 of 2005, challenging, in particular, the finding of the High Court that the entire land in Village Karoran is "forest land" covered under Section 2 of the Forest (Conservation) Act, 1980 and cannot be used for non-forest purposes without the prior permission of the Central Government.

d *Contentions on behalf of the parties*

- e 11. At the hearing of these appeals, the learned counsel for the appellants submitted that the conclusion of the High Court in the impugned order that the entire land of Village Karoran, District Ropar, which has been notified under Section 3 of the PLP Act, 1900 and which is being regulated by the prohibitory directions notified under Sections 4 and 5 of the PLP Act, 1900 is "forest land" is not correct in law. They referred to the provisions of the PLP Act, 1900 to show that the aforesaid Act was meant to preserve and protect the land situated within or adjacent to Shivalik mountain range. They argued that the notification issued under Section 3 of the PLP Act, 1900, therefore, covered both "forest" and "non-forest land" and therefore a notification under Section 3 of the PLP Act, 1900 closing a particular land under the said Act would not per se make the land a "forest land".

- g 12. The learned counsel for the appellants further submitted that the High Court has gone by only the records of the Forest Department in which the entire land of 3700 acres in Village Karoran, District Ropar, was shown as within the administrative control of the Forest Department. They argued that the land which is under the administrative control of the Forest Department does not become "forest land" only because the Forest Department exercises control over that land. They submitted that an affidavit was filed on behalf of the Government of Punjab in this Court pursuant to the order dated 12-12-1996

h

¹ *Court on Its Own Motion v. State of Punjab*, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H)

of this Court in *T.N. Godavarman Thirumulpad v. Union of India*², on the basis of the report of the Expert Committee constituted by the State Government for identification of forest areas in the State of Punjab in February 1997 stating that the entire 3700 acres of land in Village Karoran, District Ropar, was "forest land" but subsequently the State Government realised the mistake and filed an affidavit in October 1999 before this Court for excluding portions of the land in Village Karoran, District Ropar, from the list of "forest areas" earlier furnished by the State of Punjab to this Court saying that such land was under cultivation and human habitation and the farmers who were cultivating the land and those who were living in the land will suffer immense hardship if the land continues to be "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980. a

13. The learned counsel appearing for the State of Punjab,³ on the other hand, submitted that whether a particular land is "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980 has to be decided in accordance with the order dated 12-12-1996 of this Court in *T.N. Godavarman Thirumulpad v. Union of India*² as there is no definition of forest either in the Forest (Conservation) Act, 1980 or in the Forest Act, 1927. He submitted that this Court in *M.C. Mehta v. Union of India*⁴ (hereinafter referred to as "*first M.C. Mehta case*") has taken the view that if the State Forest Department has been treating and showing a particular area as forest, that area is to be treated as forest and if such area was to be used for non-forest purposes, it was necessary to comply with the provisions of the Forest (Conservation) Act, 1980. He submitted that this view was again endorsed by this Court in *M.C. Mehta v. Union of India*⁵ (hereinafter referred to as "*second M.C. Mehta case*"). He referred to the Annual Report of the East Punjab (Forest Department) to show that the entire land in Village Karoran, District Ropar, under the PLP Act, 1900 was under the Forest Department and submitted that in view of the decisions of this Court in the *first* and the *second M.C. Mehta cases*^{4,5}, the entire land in Village Karoran, District Ropar, including the land of Col. B.S. Sandhu was "forest land" and could not be diverted for non-forest purposes without the permission of the Central Government as provided in Section 2 of the Forest (Conservation) Act, 1980. b

14. The Member-Secretary of the Central Empowered Committee (for short "the CEC") referred to the records of IA No. 727 in *T.N. Godavarman Thirumulpad v. Union of India* (Writ Petition No. 202 of 1995) to show that the proposal of the State Government to exclude an area of 69,367 ha out of 1,68,224 ha closed under the PLP Act, 1900 from the list of forest areas was examined by the CEC and the CEC was of the view that the deletion of the c

2 (1997) 2 SCC 267

4 (2004) 12 SCC 118

5 (2008) 17 SCC 294

a areas which were under cultivation of the habitation prior to 25-10-1980 i.e. when the Forest (Conservation) Act, 1980 was enacted, would not be against the spirit of the Forest (Conservation) Act, 1980. He submitted that the CEC, however, was also of the view that for deleting such areas from the list of forest areas, the procedure as laid down in the Forest (Conservation) Rules, 1981 and the guidelines issued by the Central Government for implementation of the Forest (Conservation) Act, 1980, must be followed.

b *Conclusions of this Court*

c 15. After hearing the learned counsel for the parties, we find that the reason why the entire 3700 acres of land in Village Karoran, District Ropar, was included in the list of "forest land" submitted by the State Government to this Court in February 1997 is that in the records of the Forest Department, Government of Punjab, the said land was shown to be under the Forest Department, Government of Punjab. We have, therefore, examined the Annual Report of the East Punjab (Forest Department) included in the compilation filed on behalf of the State Government on 22-2-2014 and we find that the land in the Village Karoran, District Ropar, is recorded as land under the control of the Forest Department because the land was closed under the PLP Act, 1900. This is also clear from Para 5 of the affidavit of Shri J.S. Kesar, IAS, Financial Commissioner and Secretary to Government of Punjab, Department of Forests and Wildlife Preservation, filed in this Court in October 1999 extracted hereinbelow:

e "5. The basis for inclusion of all the areas closed under the PLPA, 1900 as "forest areas" in the earlier affidavits was that the same were being reported in the Annual Administrative Reports of the Forest Department since several decades under the category "closed under the PLP Act, 1900". Though the areas closed under the PLPA, 1900 were not specifically recorded as forest areas because of the fact that they were included in the Annual Administrative Reports of the State Forest Department. As such, besides the areas with tree cover even cultivated fields and habitations in the areas notified under the PLPA, 1900 were depicted as "forest areas" by the Expert Committee and included in Annexure G of the affidavit dated 21-2-1997 filed by the State Government in the Hon'ble Apex Court. It is thus reiterated that the Expert Committee included the cultivated/habitation areas closed under the PLP Act, 1900 in the list of forest areas only because these stood included in the Annual Administrative Reports of the Department as "Areas closed under the PLPA, 1900".

g Thus, the basis of including the entire land in Village Karoran as forest area in the affidavit of the State Government in this Court is that the land was closed under the PLP Act, 1900 and therefore was forest area.

h

16. The High Court has also taken a view in the impugned order¹ that as the entire land of Village Karoran, District Ropar, was closed in the PLP Act, 1900, it was "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980. Para 53 of the impugned order¹ of the High Court is quoted hereinbelow: [Court on Its Own Motion case¹, RCR (Civil) p. 644] a

"53. For the reasons aforementioned and relying upon the expression 'forest' and 'forest lands' as defined by Their Lordships in *T.N. Godavarman case*² and the principles laid down in *M.C. Mehta case*⁴, we hold that the entire land of Village Karoran which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 thereof, is a 'forest land' and attract the provisions of Section 2 of the Forest (Conservation) Act, 1980, if sought to be used for 'non-forest purposes'." b

17. Hence, the first question that we have to decide is whether the conclusion of the High Court that the land which is notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 of the aforesaid Act is "forest land" is correct in law. Sections 3, 4 and 5 of the PLP Act, 1900 as it was originally enacted are extracted hereinbelow: c

"3. Whenever it appears to the local Government that it is desirable to provide for the better preservation and protection of any local area, situated within or adjacent to the Sivalik mountain range or affected or liable to be affected by the debodisement of forest in that range or by the action of chos, such Government may, by notification, make a direction accordingly. d

4. *Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters.*—In respect of areas notified under Section 3 generally or the whole or any part of any such area, the local Government may by general or special order temporarily or permanently, regulate, restrict or prohibit— e

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under Section 3; f

(b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under Section 3;

(c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest produce other than grass, save for bona fide domestic or agricultural purposes; g

(d) the setting on fire of trees, timber or forest produce;

1 *Court on Its Own Motion v. State of Punjab*, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H) h

2 *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

4 *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

B.S. SANDHU v. GOVT. OF INDIA (*Patnaik, J.*)

183

(e) the admission, herding, pasturing or retention of sheep or goats or camels;

a (f) the examination of forest-produce passing out of any such area; and

b (g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom, or to pasture sheep or goats or to cultivate or erect buildings therein and the production and return of such permits by such persons.

5. *Power in certain cases, to regulate, restrict or prohibit, by special order, within notified areas, certain further matters.*—In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under Section 3, the local Government may, by special order, temporarily regulate, restrict or prohibit—

c (a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under Section 3;

(b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under Section 3;

d (c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section, of any forest produce for bona fide domestic or agricultural purposes; and

(d) the admission, herding, pasturing or retention of cattle generally other than sheep and goats, or of any class or description of such cattle.”

e 18. It will be clear from the language of Section 3 of the PLP Act, 1900 extracted above that for the better preservation and protection of any local area, situated within or adjacent to Shivalik mountain range which is liable to be affected by debodisement of forests in that range or by the action of “cho”, such Government may by notification make a direction accordingly. The expression “local area” has not been defined in the PLP Act, 1900 and may include not only “forest land” but also other land. In Section 4 of the PLP Act, 1900 extracted above, the local Government was empowered by general or special order, temporarily or permanently to regulate, restrict or prohibit various activities mentioned in clauses (a), (b), (c), (d), (e), (f) and (g) thereof. A reading of these clauses would show that activities such as cultivation, pasturing of sheep and goats and erection of buildings by the inhabitants of towns and villages situated within the limits of the area notified under Section 3 can be regulated, restricted or prohibited by a general or special order of the local Government. All these activities are not normally carried on in forests. Similarly, under Section 5 of the PLP Act, 1900, the local Government was empowered by special order, temporarily or permanently to regulate, restrict or prohibit the cultivating of any land or to admit, herd, pasture or retain cattle generally other than sheep and goats. These activities are also not normally carried on in forests.

19. In our view, therefore, land which is notified under Section 3 of the PLP Act, 1900 and regulated by orders of the local Government under Sections 4 and 5 of the PLP Act, 1900 may or may not be "forest land". Therefore, the conclusion of the High Court in the impugned order that the entire land of Village Karoran, District Ropar, which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 thereof is "forest land" is not at all correct in law. The basis for inclusion of the entire area in Village Karoran, District Ropar, in the list of forest areas in the State of Punjab pursuant to the order dated 12-12-1996 of this Court in *T.N. Godavarman Thirumulpad v. Union of India*² is legally not correct. Similarly, the conclusion of the High Court in the impugned order¹ that the entire land in Village Karoran, District Ropar, having been notified under Section 3 of the PLP Act, 1900 and being under the regulatory regime of Sections 4 and 5 of the said Act is "forest land" is also legally not correct.

20. In fact, the High Court failed to appreciate the meaning of "forest" and "forest land" in Section 2 of the Forest (Conservation) Act, 1980 as given by this Court in the order dated 12-12-1996 in *T.N. Godavarman Thirumulpad v. Union of India*². The relevant portions of the order dated 12-12-1996 of this Court in *T.N. Godavarman Thirumulpad v. Union of India*² on the meaning of the words "forest" and "forest land" is extracted hereinbelow: (SCC pp. 269-70, para 4)

"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."

(emphasis supplied)

² (1997) 2 SCC 267

¹ *Court on Its Own Motion v. State of Punjab*, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H)

B.S. SANDHU v. GOVT. OF INDIA (*Patnaik, J.*)

185

- The underlined[†] portion of the order dated 12-12-1996 in *T.N. Godavarman Thirumulpad v. Union of India*² would show that the Forest (Conservation) Act, 1980 was enacted with a view to check “further deforestation” and was to apply to all forest irrespective of the nature of ownership or classification thereof. Hence, Section 2 of the Forest (Conservation) Act, 1980 puts a restriction on further deforestation of “forest land” and would apply to any land which at the time of enactment of the Forest (Conservation) Act, 1980 was “forest land” irrespective of its classification or ownership. This is exactly the view taken also by the CEC in its recommendations dated 10-9-2003 in IA No. 727 in *T.N. Godavarman case*³.

21. Para 8 of the recommendations dated 10-9-2003 of the CEC in IA No. 727 is extracted hereinbelow:

- “8. After examining the submissions made by the applicant, affidavit filed by the State Government of Punjab and the ‘No Objection’ given by MoEF, the CEC is of the view that deletion of areas, which were under cultivation/habitation prior to 25-10-1980 i.e. enactment of the FC Act, would not be against the spirit of the FC Act, and this Hon’ble Court’s order dated 12-12-1996², if such areas were included in the “list of forest area” on technical reasons alone. However, the areas closed under Section 4 of the PLPA are recorded as “forest” in the Forest Department’s records for the last 40-50 years. This Hon’ble Court by order dated 12-12-1996² has held that areas recorded as ‘forest’ in Government records are forest for the purpose of Section 2 of the FC Act. It would therefore be necessary to obtain prior approval of the Central Government under Section 2 of the FC Act, for deleting such areas from the “list of the forest area” after following the procedure as laid down in the Forest (Conservation) Rules, 1981, and the guidelines issued by the Central Government for implementation of the said Act. Irrespective of the merits of the case, it would not be appropriate to allow deletion of such area from the ‘list of forest area’ without following the prescribed procedure and provisions of the Forest (Conservation) Act.”

22. Thus, what the High Court was called upon to decide is whether the land on which the Forest Hill Golf and Country Club of Col. B.S. Sandhu was situated was forest land as on 25-10-1980 irrespective of its classification or ownership. This is a factual question and the High Court should have decided this factual question on the basis of government records as on 25-10-1980 and other materials filed before the High Court, but the High Court has instead decided this question by reference to the provisions of the PLP Act, 1900 and the records of the Forest Department in which the land was shown to be under the Forest Department because of the fact that

† Ed.: Herein italicised.
2 (1997) 2 SCC 267

3 *T.N. Godavarman Thirumulpad (85) v. Union of India*, (2014) 12 SCC 187

335

186

SUPREME COURT CASES

(2014) 12 SCC

the land was closed under the PLP Act, 1900 several decades before the enactment of the Forest (Conservation) Act, 1980. Moreover, by recording a blanket finding that all land in Village Karoran, District Ropar, was "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980, the High Court has affected the legal rights of several villagers, agriculturists, farmers, shop owners, inhabitants of Village Karoran, District Ropar, who were carrying on their respective occupations on their land even before the enactment of the said Act on 25-10-1980. In our view, the High Court should have been very careful before recording findings which affect the property rights of persons protected by Article 300-A of the Constitution.

23. We have also examined the two decisions of this Court in the *first* and *second* cases of *M.C. Mehta*^{4,5} cited on behalf of the State of Punjab and we find that the aforesaid decisions have been rendered in the case of Aravalli Hills in the State of Haryana and it was held therein that as the State Forest Department had been treating and showing the areas as "forest", in fact and in law, the area was forest and non-forest activities could not be allowed in such areas without the prior permission of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. In these two decisions, this Court has not enquired into the basis of inclusion of the areas in forest by the State Forest Department nor has this Court considered as to whether a land becomes "forest land" by mere inclusion of the same under the notification under Section 3 of the PLP Act, 1900. In the present case, on the other hand, the State Government has in its affidavit stated before this Court that the basis of inclusion of the entire land of Village Karoran, District Ropar, in forest areas in the records of the Forest Department of Government of Punjab was that the land was closed under the PLP Act, 1900 and we have found this basis as not correct in law.

24. We, therefore, set aside the finding of the High Court that the entire land in Village Karoran, District Ropar, is "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980 and remand the matter to the High Court for fresh hearing and fresh order in accordance with law. Consequently, all directions in the impugned order¹ which flow out of the aforesaid finding of the High Court that the land was "forest land" for the purpose of Section 2 of the Forest (Conservation) Act, 1980 are set aside. We, however, make it clear that we have not set aside the directions for investigation by CBI in the impugned order.

⁴ *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

⁵ *M.C. Mehta v. Union of India*, (2008) 17 SCC 294

¹ *Court on Its Own Motion v. State of Punjab*, (2004) 4 RCR (Civil) 619 : (2005) 2 ICC 16 (P&H)

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA

397

(2018) 18 Supreme Court Cases 397

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

a M.C. MEHTA ... Petitioner;

Versus

UNION OF INDIA AND OTHERS ... Respondents.

Kant Enclave matters, In Re

b IAs Nos. 2310 of 2008, 2378-79 of 2009, 2269-70, 2381-84 and 2393
in Writ Petition (C) No. 4677 of 1985[†] with IAs Nos. 2310-11 in
Writ Petition (C) No. 202 of 1995, decided on September 11, 2018

c A. Environment Law — Polluter Pays Principle and Remedial/
Compensatory/Punitive Measures — Remedial action/Reclamation/
Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer
— Development/Constructions on forest land in flagrant violation of law —
Irreversible damage to environment and ecology of the Aravalli Hills

d — Applicant builders flouting law with support and collusion of Town
and Country Department of State of Haryana, despite reservations of
Forest Department and despite Noti. dt. 18-8-1992 — Relief given to third
party individual buyers — Constructions made prior to Noti. dt. 18-8-1992,
permitted — Constructions made post the said notification directed to be
demolished — Polluter pays principle applied, and applicant builders directed
to deposit 10% of project cost of about Rs 50 crores i.e. Rs 5 crores in Aravalli
Rehabilitation Fund

e — Applicant builders directed to make full refund of amounts along with
interest at 18% p.a. to all third party individual buyers who had invested
in their project and to whom land had been conveyed but had not made
constructions thereon — Refund with interest at 18% p.a. of investment
made in land by third party individual buyers whose constructions were to
be demolished, also directed — In addition latter were to be paid cost of
construction, tentatively fixed at Rs 50 lakhs, to be borne equally by applicant
builder and Town and Country Department (due to the latter's collusion —
See also Shortnote B) — Other directions issued

f — All constructions made by such third party individual buyers prior to
Noti. dt. 18-8-1992, held, are protected and should not be demolished — But
with regard to such buyers who made constructions after 18-8-1992, their
constructions, held, illegal and should be demolished — Said constructions
were made (or allowed to be made) with the support, tacit or otherwise, of
g the present applicants and the Town and Country Department of the State of
Haryana — Applicants must pay for this — It is not that those who have made
constructions after 18-8-1992 are completely innocent — Nevertheless, it is
necessary to compensate them in view of the role played by Town and Country
Planning Department of the State of Haryana — To compensate them for the
land, applicant, directed to give them a full refund of their investment in the
h land along with interest at 18% p.a. from the date of the investment — In

[†] Under Article 32 of the Constitution of India

addition, they were to be paid Rs 50 lakhs each towards cost of construction, 50% each to be borne by applicant and Town and Country Department — Costs of constructions tentatively fixed at Rs 50 lakhs, however if anybody's construction is demolished in view of present order is not satisfied with present quantification at Rs 50 lakhs, he has liberty to proceed against applicants and Town and Country Department by way of civil suit, in accordance with law

— The polluter pays principle applied — Though damage caused, irreversible, perhaps some damage could be remedied — Applicant builder had stated that it had spent about Rs 50 crores on developing the project — In the absence of the exact or accurate figure and proceeding on the basis as stated, it would be reasonable to require applicants to deposit 10% of this amount (that is, Rs 5 crores) for rehabilitation of the damaged areas — This amount should be deposited in the Aravalli Rehabilitation Fund within one month — Matter be listed only for compliance with directions — Tenancy and Land Laws — Punjab Land Preservation Act, 1900 (2 of 1900) — S. 4 — Noti. dt. 18-8-1992 — Violation of — Punitive directions issued against builders — Local Government — Town Planning — Illegal/Unauthorised constructions/Development/Encroachment — Restitution — Disgorgement of Gains of Wrongdoer (Paras 126 to 136)

B. Tort Law — Public Law Torts — Breach of statutory duty — Authorities giving statutory permission for unauthorised constructions, knowing fully well the illegal nature of what was being permitted — Well-meaning citizens duped thereby to invest in such development project and raise constructions — Liability of State Authorities therefor

— Held, in present case, Department concerned was fully aware that land in question was a forest or forest land or treated as a forest or forest land, and therefore any construction made on the land or utilisation of the land for non-forest purposes, without the prior approval of the Central Government, would be illegal and violative of the provisions of the Forest (Conservation) Act, 1980 — Notwithstanding this, constructions were made (or allowed to be made) on said land with the support, tacit or otherwise, of the developer and Department concerned — They must pay for this — Hence, in addition to punitive directions issued against the developer for refunding investment made in land with 18% interest, directed that Department concerned would be liable for 50% of cost of constructions which were directed to be demolished — Constitution of India — Arts. 21 and 14 — Local Government — Town Planning — Illegal/Unauthorised constructions/Development/Encroachment

Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, applied

M.C. Mehta v. Union of India, (2004) 12 SCC 186, relied on

Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2014) 3 SCC 430, explained and distinguished

C. Tenancy and Land Laws — Punjab Land Preservation Act, 1900 (2 of 1900) — S. 4 — Noti. dt. 18-8-1992 — Areas notified under S. 4 and closed under Punjab Land Preservation Act, 1900 (PLP Act), held, are "forest" and "forest land" and records indicate that land concerned in Aravalli Hills

a has been so treated for several decades by State of Haryana — Therefore, construction activity carried out by applicant is in violation of PLP Act, Forest (Conservation) Act, 1980 and orders passed by Court from time to time — Town and Country Planning Department supported said illegal constructions despite resistance from Forest Department — State of Haryana must be held accountable for its conflicting and self-destructive stand

b — Complete lack of concern for environmental and ecological degradation in Aravalli Hills has caused irreversible damage — There is acute water shortage in the area — Popular tourist destination viz. Badkal Lake has vanished — Only years to come can reveal other severe damage — See Shortnotes A and B for detailed punitive and rehabilitative directions, including for demolition of constructions raised in violation of Noti. dt. 18-8-1992

c — Object behind Noti. dt. 18-8-1992 was to prevent environmental and ecological degradation in the area due to mining, quarrying and construction activity — Thus meetings and discussions were held for closing area between and around Badkal Lake and Surajkund tourist complexes (Paras 3 to 19)

d — In present case validity of notification issued under S. 23, Haryana Development and Regulation of Urban Areas Act, 1975 is not in issue — No doubt said S. 23 notification granted exemption to applicant for setting up of film studio and allied complex in land concerned — But conditions on which exemption was granted were not complied with by appellant, more importantly conditions relating to completion period and availability of water (Paras 3 to 6)

e — Various orders of Court regarding land concerned, were not blanket orders and required adherence to laws, rules and regulations which necessarily included Noti. dt. 18-8-1992 issued under S. 4, PLP Act (Paras 20 to 27)

— Though Town and Country Planning Department was very much in favour of applicant colonising land and making constructions, the Department's understanding seemed to be that issues of environmental degradation, pollution and groundwater were not its concern (Paras 28 to 30)

f — Notwithstanding decisions of Court and materials indicating that Aravalli Hills need protection, issue of colonising land was kept alive in Court and applications were filed from time to time — Decision of Court attained finality in *M.C. Mehta*, (2008) 17 SCC 294 and all submissions of applicant were duly considered and rejected — Issue as to whether constructions could be made in violation of Noti. dt. 18-8-1992 issued under S. 4, PLP Act was neither open for discussion earlier and in any event no longer res integra after decision in *M.C. Mehta*, (2008) 17 SCC 294 — Faridabad Complex (Regulation and Development) Act, 1971 (42 of 1971) — Ss. 29 and 2(f) — Act has nothing to do with the Noti. dt. 18-8-1992 declaring areas concerned as forest land — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975) — S. 23 — Forest (Conservation) Act, 1980, S. 2 (Paras 31 to 58 and 84 to 125)

h

D. Constitution of India — Art. 137 — Review of orders attaining finality — Scope of and maintainability — Substance not nomenclature of application relevant

— Reiterated, that nomenclature given to an application is of absolutely no consequence — What is of importance is the substance of the application and if it is found, in substance, to be an application for review, it should be dealt with by the Court as such, and by circulation — Practice and Procedure — Review (Paras 70 to 75)

State (NCT of Delhi) v. Gurdip Singh Uban, (2000) 7 SCC 296, *relied on*
State of Punjab, In re, 2004 SCC OnLine P&H 1008, *cited*

Disposing of the substantive applications, the Supreme Court

Held :

Attempts at colonisation — Reports of Central Empowered Committee (CEC)

The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation, which would ultimately result in ecological imbalance. It was held that therefore the provisions of the law for conservation of forests and for matters connected therewith, must apply to all forests, irrespective of the nature of ownership or classification thereof. (Para 31)

T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267, *referred to*

Notwithstanding the decisions of the Court rendered from time to time and a wealth of material to the effect that the Aravalli Hills need to be protected, the issue of colonising the land owned by the applicant, which was the subject-matter of the prohibitory notification under the provisions of the PLP Act, was kept alive. Applications were filed by interested parties in the Court and CEC was required from time to time to submit reports to the Court. (Paras 31 to 52)

M.C. Mehta v. Union of India, (2004) 12 SCC 188; *M.C. Mehta v. Union of India*, (2009) 17 SCC 541; *M.C. Mehta v. Union of India*, (2004) 12 SCC 118; *T.N. Godavarman Thirumulpad (61) v. Union of India*, (2008) 16 SCC 401; *M.C. Mehta v. Union of India*, (2004) 12 SCC 186, *referred to*

The decision of the Court rendered on 14-5-2008, *M.C. Mehta v. Union of India*, (2008) 17 SCC 294, has attained finality and all the submissions advanced by the applicant were duly considered and rejected by a Bench of three Judges of the Court. The issue whether the applicant could make any construction whatsoever on the notified land that is Khasras Nos. 9 to 16 in Village Anangpur in violation of the notification issued under the provisions of the PLP Act was not open to discussion earlier and in any event is no longer *res integra* or open to any further discussion or examination. (Paras 53 to 58)

M.C. Mehta v. Union of India, (2008) 17 SCC 294, *relied on*

B.S. Sandhu v. Union of India, (2014) 12 SCC 172, *distinguished*

M.C. Mehta v. Union of India, (2004) 12 SCC 118; *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267, *held distinguished*

Orders of the Court

Further, with regard to the issue of water management, the Court referred to the report of the National Environmental Engineering Research Institute. According to the report Surajkund Lake impounds water from rain and natural springs. Badkal

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA

401

a Lake is an impoundment formed due to the construction of an earthen dam. The catchment areas of these lakes are shown in a figure attached with the report. The land use and soil types as explained in the report show that Badkal Lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large-scale construction in the vicinity of these tourist resorts may disturb the rainwater drains which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of groundwater. The hydrology of the area may also be disturbed. (Para 87)

b *M.C. Mehta v. Union of India*, (1996) 8 SCC 462; *M.C. Mehta (Badkal and Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715, referred to

c The issue of availability of water, or the lack of it is relevant because even the Chief Minister of Haryana in his order of 11-7-1990 had noted that the availability of water from the aquifers is of paramount importance and that aquifers available at the deeper level would be fully exploited to meet the demand of water supply for the population of Kant Enclave. (Para 88)

In spite of all these concerns shown to the environment and availability of water, the fact of the matter is that today Badkal Lake is bone dry and there is no water in the "Lake". There is absolutely no water in Badkal Lake. The damage to the environment has been done and appears to be irreversible. (Para 89)

d One of the more significant orders was passed on 12-12-1996. Through this order, the Court laid down what could be described as "forest" and "forest land". The view taken was that the two expressions must be given their dictionary or natural meaning and if so considered, there can be no doubt that degraded forests and closed lands under the PLP Act are nothing but forest land. Similarly, the orders passed from time to time in *M.C. Mehta cases* make it loud and clear that the Aravalli Hills need protection from environmental degradation and the laws must be strictly enforced to ensure that there is no damage caused to the ecology of the Aravalli Hills. Thus, there is no doubt that closed areas under the PLP Act are nothing but forest land and deserve to be treated as such. (Para 90)

T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267, relied on

f Notwithstanding the concern shown by the Court for the environment and ecology of the Aravalli Hills, the tacit support given to the applicants by the Town and Country Planning Department of the State of Haryana completely vitiated the efforts of the Forest Department as well as the orders of the Court. It came to such a pass that the Delhi Ridge Management Board was compelled to file an application on 29-11-2001 being IA No. 1785 of 2001 in which it was stated that the withdrawal and pumping of groundwater in the ridge was a matter of serious concern. This application resulted in the Court passing an order on 6-5-2002 directing the stoppage of all mining activity and pumping of groundwater as prayed for. This order was followed by another order passed on 22-7-2002 (not reported) requiring Environment Pollution Control Authority (EPCA) to furnish a report, which it did on 9-8-2002 to the effect that the order passed on 6-5-2002 deserved to be confirmed. (Para 92)

h *M.C. Mehta v. Union of India*, (2004) 12 SCC 188; *M.C. Mehta v. Union of India*, (2009) 17 SCC 541, relied on

Subsequently, EPCA gave another report on 21-10-2002 on the basis of information obtained from the Central Groundwater Board to the effect that mining activity was going on and the mines were operating below the groundwater level which was resulting in exploitation and destruction of groundwater sources. (Para 93)

The blatant and open flouting of orders passed by the Court resulted in the constitution of CEC on 17-9-2002 for monitoring and ensuring compliance of the orders passed by the Court. CEC submitted reports to the Court from time to time. These have already been adverted to and need not be repeated. (Para 94)

Review petition of Kant Enclave

It was extremely important for R. Kant & Co. to have come out with full facts in the review petition filed by it, more particularly the fact of the issuance of the Notification dated 18-8-1992. The failure to disclose this material fact vitiates the proceedings initiated by the applicant in the Court. (Paras 97 to 101)

M.C. Mehta v. Union of India, 1997 SCC OnLine SC 1, held modified

M.C. Mehta v. Union of India, 1998 SCC OnLine SC 2; *M.C. Mehta v. Union of India*, Review Petition (C) No. 914 of 1997, order dated 12-10-1998 (SC), referred to

Interlocutory application filed by the applicant

The applicant R. Kant & Co. should have learnt a lesson from the dismissal of its review petition, the interlocutory application as well as the orders passed by the Court from time to time and reports given by expert bodies, but it does not appear to have been so. That is because, after the decision of the Court rendered on 14-5-2008 R. Kant & Co. filed an application being IA No. 2310 of 2008 on 11-7-2008 challenging a communication dated 23-5-2008 issued pursuant to the orders passed by the Court. Subsequently, the applicant also filed IAs Nos. 2377-79 of 2009 objecting to the reports filed by CEC. These IAs were not argued before and no submissions were made in respect of these IAs. (Paras 102 to 106)

M.C. Mehta v. Union of India, (2008) 17 SCC 294, relied on

M.C. Mehta v. Union of India, 1998 SCC OnLine SC 2; *M.C. Mehta v. Union of India*, (2004) 12 SCC 118, referred to

Issue again raised in the Court

The pendency of the present applications in the Court gave occasion to the applicants to once again try and raise the issue of closed areas under the PLP Act being not forest or forest land. Reference was made to the decision of the Court in *B.S. Sandhu*, (2014) 12 SCC 172. It was submitted that the Court had struck a discordant note in *Sandhu case*. Such a submission is not tenable since the decision in *Sandhu case* itself distinguished *M.C. Mehta*, (2004) 12 SCC 118 and *M.C. Mehta*, (2008) 17 SCC 294 set of orders both on facts and in law. The decision rendered in *Sandhu case* cannot, by any stretch of imagination, come to the aid of the applicants. (Para 107)

Insofar as the present case is concerned, there is a wealth of material to indicate clearly that closed land under the PLP Act is forest land or in any event, is required to be treated as forest land. Several notifications issued under the PLP Act have been brought to our notice which prohibit certain activities which ought not to be carried out on forest land. (Para 108)

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA

403

M.C. Mehta v. Union of India, (2008) 17 SCC 294, *relied on*

B.S. Sandhu v. Union of India, (2014) 12 SCC 172, *distinguished*

a *M.C. Mehta v. Union of India*, (2004) 12 SCC 118, *referred to*

What is of crucial importance and great significance is that no one has challenged the validity or correctness of the Notification dated 18-8-1992. It is not understandable how the correctness or validity of the notification can be challenged without any direct attack. A collateral attack cannot be permitted more certainly so by relying upon another decision of the Court, which has nothing to do with the facts of the present case. (Para 110)

b On the other hand, the applicants have "challenged" every significant order passed by the Court, either through a review petition or through interlocutory applications. The applicants have been unsuccessful in every such adventure. (Para 111)

c Taking an overall view of all the facts in the case and the law on the subject, there is no doubt that Kant Enclave is a forest or is a forest land or is required to be treated as a forest or forest land and absolutely no construction activity could have been permitted on it with effect from 18-8-1992. Any and all construction activity in Kant Enclave since that date is illegal and impermissible in law. (Para 112)

Mining-centric orders

d The submission to the effect that all the orders passed by the Court were mining-centric and did not relate to construction activity in Kant Enclave is not tenable. Unfortunately, the Court was unable to enforce its orders in letter and spirit, thanks entirely to the apathy of the State of Haryana and the persistence of the applicants with the result that Badkal Lake is today, admittedly, absolutely dry. (Para 113)

e The culpability of some of the State authorities in ensuring this tragic situation is quite evident from IA No. 2269 of 2007 filed by the Administrator, Haryana Urban Development Authority. Despite the clear judgment and order passed by the Court, the attitude of some sections of the State Government obviously did not change and unrestricted development through mining activity and construction activity was given precedence over the environment resulting in, amongst other things a parched Badkal Lake. (Para 114)

f The submission that the inclusion of Khasras Nos. 9 to 16 in Village Anangpur in the Notification dated 18-8-1992 was a mistake and that it was always the intention of the State of Haryana to keep this land out of the rigours of the PLP Act is not tenable. If it was in fact the intention of the State of Haryana to keep Kant Enclave out of the purview of the Notification dated 18-8-1992 nothing prevented the State from either issuing a corrigendum or issuing a fresh notification or taking some positive step to delete Khasras Nos. 9 to 16 in Village Anangpur from the rigours of the notification. (Para 115)

Alleged inapplicability of the notification

Reliance was then placed on Sections 29(1) and (7) of the Faridabad Complex (Regulation and Development) Act, 1971 to submit that the Notification dated 18-8-1992 was not applicable to controlled areas. (Para 116)

h In terms of Section 2(f) of the said Act, a controlled area means an area declared under Section 29 of the said Act to be a controlled area. (Para 117)

The said submission is not tenable because as per the Statement of Objects and Reasons, there was a multiplicity of local authorities in the Faridabad-Ballabhgarh area with the result that integrated development of this area was not possible. Consequently, it was essential to devise a set up for administration of this area which would meet the objectives of rapid and integrated development and eliminate haphazard development. The said Act was intended to achieve this objective. Quite clearly, this has nothing to do with the Notification dated 18-8-1992. Moreover, Section 29(1) of the said Act related to any law for the time being in force—the Notification dated 18-8-1992 came much later and was not in force when the said Act was enacted. (Para 118)

Other submissions

It was then contended that the exemption granted on 17-4-1984 under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 exempted the applicant or in any case Kant Enclave from all the provisions of the said Act. While this may be so, it is not understandable how the said Act exempts the applicant or Kant Enclave from the prohibitions imposed by the subsequent Notification dated 18-8-1992. The said Act has no relevance or reference to the provisions of the PLP Act. (Para 119)

The applicants also contended that in view of the decision rendered by the Court in *Sandhu case*, the subject land ought to have been an existing forest as on 25-10-1980 when the Forest (Conservation) Act, 1980 came into force. This is not at all a correct interpretation of the decision rendered in *Sandhu case*. It is nobody's case, and indeed it cannot be anybody's case that no area can be declared as a forest after 25-10-1980. If this were the interpretation given, then the entire purpose of the order dated 12-12-1996 would be rendered meaningless since it was in terms of this order that forest land was directed to be identified, even if that land was not so recognised as forest land. Acceptance of the interpretation sought to be given by the learned counsel would also emasculate the PLP Act. (Para 120)

T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267, relied on

B.S. Sandhu v. Union of India, (2014) 12 SCC 172, referred to

The final submission of the applicants was that constructions were made in terms of the orders passed by the Court on 17-3-1997 and 13-5-1998 and in fact, building plans and sanction plans were approved by the authorities concerned. And that therefore, the members of the Kant Enclave Residents Welfare Association had acted bona fide and therefore their houses or constructions should not be demolished as suggested by CEC. (Para 121)

M.C. Mehta v. Union of India, 1997 SCC OnLine SC 1; *M.C. Mehta v. Union of India*, 1998 SCC OnLine SC 2, referred to

In this regard, it must be appreciated that the order dated 17-3-1997 as modified on 13-5-1998 permitted construction only in accordance with law and not dehors the Notification dated 18-8-1992. It is not the case of any of the applicants and indeed it cannot be their case, that the orders of the Court gave a complete go by to the notification and virtually quashed it even though it was never under challenge at that point of time or even today. It appears that very large residential complexes have been constructed despite the orders of the Court, which did not give any blanket permission to the applicants to make constructions, according to

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA 405

a their whims and fancies. For reasons that are not at all clear, such constructions were permitted by the authorities concerned despite the orders of the Court and even though the Notification dated 18-8-1992 prohibited breaking up of the land. It is difficult, under the circumstances, to take the view that the applicants and the authorities concerned had acted bona fide. (Para 122)

b Out of a total of about 1600 plots said to have been carved out by R. Kant & Co. in Kant Enclave, conveyance deeds have been executed only in respect of 284 residential plots and three commercial plots. On the residential plots, only 33 houses have been constructed and it appears that not one of them is a single-storey hutment. (Para 123)

c The extent of violation of the Notification dated 18-8-1992 is quite frightening and one can only imagine the phenomenal environmental and ecological damage caused to the area by the applicants. This could not have happened without the knowledge of the State of Haryana and its officers who permitted blatant disregard of the rule of law despite affidavits of the Chief Secretary of the State of Haryana. The rule of law seems to have broken down in Haryana and become the rule of men only to favour the applicants. It is painful to see such a mockery of the law and total lack of concern for the environment and ecology of the Aravalli Hills. (Para 124)

d Despite the increase of population resulting in increase of demand from the forest, it cannot be questioned nor has it been questioned that to save the ecology of the Aravalli mountains, the laws have to be strictly implemented. (Para 125)

M.C. Mehta v. Union of India, (2004) 12 SCC 118, relied on

SS-D/61316/S

Advocates who appeared in this case :

e Anil Grover, Additional Advocate General, Ranjit Kumar (Amicus Curiae), Sanjay R. Hegde, Kapil Sibal and S.B. Upadhyay, Senior Advocates [A.D.N. Rao (Amicus Curiae), Rishi Raj Sharma, Sudipto Sircar, Anil Kr. Mishra, Pranjal Kishore, D.C. Pandey, Rajeev Gurum, Ms Noopur Singhal, Satish Kumar, Sanjay Kr. Visen, Pawan Upadhyay, Ms Anisha Upadhyay, Sarvjit Pratap Singh, Nishant Kr., S. Wasim A. Qadri, R. Balasubramanian, Sachin Sharma, Ms Subhashini Sen, Pranay Ranjan, D.L. Chidananda, Ritesh Kumar, Raj Bahadur, Gurmeet Singh Makker, Shivaji M. Jadhav, T.V. George and Ms Sharmila Upadhyay, Advocates] for the appearing parties; Petitioner-in-Person.

f Chronological list of cases cited on page(s)

1.	(2014) 12 SCC 172, <i>B.S. Sandhu v. Union of India</i>	427g-h, 428a, 428c, 428d-e, 428f-g, 429c-d, 429d, 430c, 439d-e, 439e, 440a, 440a-b, 442c-d, 442d
2.	(2014) 3 SCC 430, <i>Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra</i>	445d-e
3.	(2009) 17 SCC 541, <i>M.C. Mehta v. Union of India</i>	419e, 436f
4.	(2008) 17 SCC 294, <i>M.C. Mehta v. Union of India</i>	423g, 427a, 427b, 427e-f, 429a, 429c-d, 430c, 439a-b, 439b-c, 439e
5.	(2008) 16 SCC 401, <i>T.N. Godavarman Thirumulpad (61) v. Union of India</i>	420d
6.	(2004) 12 SCC 188, <i>M.C. Mehta v. Union of India</i>	419c-d, 422b-c, 436e-f, 436f, 437c-d
7.	(2004) 12 SCC 186, <i>M.C. Mehta v. Union of India</i>	420f

406 SUPREME COURT CASES (2018) 18 SCC

8. (2004) 12 SCC 118, *M.C. Mehta v. Union of India* 419e-f, 420f-g, 421c, 422a, 422b, 426e-f, 426f-g, 429a, 429c-d, 430c, 437a, 437c, 438d, 439a-b, 439e, 441a, 444b, 428c a
9. 2004 SCC OnLine P&H 1008, *State of Punjab, In re*
10. (2000) 7 SCC 296, *State (NCT of Delhi) v. Gurdip Singh Uban* 430e, 431a, 431c-d, 431g-h
11. Review Petition (C) No. 914 of 1997, order dated 12-10-1998 (SC), *M.C. Mehta v. Union of India* 416b b
12. 1998 SCC OnLine SC 2, *M.C. Mehta v. Union of India* 415c, 415e, 424f, 425c-d, 426b-c, 438a, 438d-e, 442e-f, 442f-g
13. (1997) 3 SCC 715, *M.C. Mehta (Badkal and Surajkund Lakes Matter) v. Union of India* 412f-g, 413a, 413a-b, 413g-h, 414a, 414b, 414c-d, 415a-b, 415b-c, 415c, 434g-h, 435a, 435b-c, 437e c
14. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad v. Union of India* 417c-d, 418c-d, 418d-e, 421b, 421d, 426d-e, 428a, 428b-c, 428f, 429c-d, 435g, 436a-b, 436b-c, 437b-c, 442d-e
15. 1997 SCC OnLine SC 1, *M.C. Mehta v. Union of India* 414c, 414e, 437f, 438a, 442e-f, 442f-g d
16. (1996) 8 SCC 462, *M.C. Mehta v. Union of India* 412b-c, 412c-d, 412e, 412f-g, 413g-h, 415b, 421a, 434c-d, 434e-f, 434g-h
17. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum v. Union of India* 446c-d e
18. (1996) 3 SCC 212, *Indian Council for Enviro-Legal Action v. Union of India* 446c-d

The Judgment of the Court was delivered by

MADAN B. LOKUR, J.— The principal question that arises in this batch of substantive applications is whether, in the State of Haryana, land notified under the provisions of the Punjab Land Preservation Act, 1900 (for short "the PLP Act") is forest land or is required to be treated as forest land. If so, whether construction carried out by the applicant R. Kant & Co. on this land is in contravention of the Notification dated 18-8-1992 issued under the provisions of the PLP Act; the Forest (Conservation) Act, 1980 and the decisions of this Court. f

2. Our answer to both the questions is in the affirmative. We have no doubt that land notified by the State of Haryana under the provisions of the PLP Act must be treated as "forest" and "forest land" and has in fact been so treated for several decades by the State of Haryana. There is no reason to change or alter the factual or legal position. The construction activity carried out by the applicant R. Kant & Co. is clearly in violation of the Notification dated 18-8-1992 and in blatant defiance of orders passed by this Court from time to time. Unfortunately, the Town and Country Planning Department of the g
h

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 407

- a State of Haryana has been supporting the illegalities of the applicant despite strong resistance from the Forest Department of the State of Haryana. There is no doubt that at the end of the day, the State of Haryana comes out in very poor light and must be held accountable for its conflicting and self-destructive stand taken in spite of affidavits filed by the Chief Secretary of the State of Haryana from time to time supporting the Forest Department. The unfortunate and distressing consequence of this is that because of a complete lack of any concern for the environmental and ecological degradation carried out in the
- b Aravalli Hills by influential colonisers like the applicant and what appears to be a very strong mining lobby in Haryana, the damage caused to the Aravalli Hills is irreversible. It is not only the future generations that have to pay a heavy price for this environmental degradation, but even the present generation is paying a heavy price for the environmental and ecological degradation inasmuch as there is an acute water shortage in the area as prophesied by the Central Groundwater
- c Board. In addition, what was once a popular tourist destination, namely, Badkal Lake has now vanished and the entire water body has become bone dry. What are the more severe consequences that will be felt in the years to come, only time and nature will tell.

Brief background

- d 3. By a Communication dated 17-4-1984 the Commissioner and Secretary, Town and Country Planning Department of the State of Haryana granted exemption to the applicant R. Kant & Co. for setting up a film studio and allied complex in Khasras Nos. 9 to 16 (owned by the applicant) in Village Anangpur in Faridabad District. The exemption was granted under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975) on certain terms and conditions.

- e 4. Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975 reads as follows:

- f "23. *Power to exempt.*—If the Government is of the opinion that the operation of any of the provisions of this Act causes undue hardship or circumstances exist which render it expedient so to do, it may, subject to such terms and conditions as it may impose, by a general or special order exempt any class of persons or areas from all or any of the provisions of this Act."

- g 5. The validity of the exemption is not before us and so we need not delve into the reasons for the exemption. Be that as it may, it appears that the applicant did not comply with the terms and conditions imposed upon it and therefore a show-cause notice was issued for withdrawal of the exemption. The applicant contested the show-cause notice and a hearing was given by the Chief Minister of Haryana being the Minister-in-charge of the Town and Country Planning Department. By an order dated 11-7-1990 the show-cause notice was dropped but some further terms and conditions were imposed on the applicant. It is important to note that one of the issues mentioned by the Chief Minister in his order related to the availability of water. The significance of this will be
- h adverted to a little later. For the present, it may be noted that the order recorded in para 9 is as follows:

"Director, Town and Country Planning Department further inquired as to whether any technical as well as physical studies have been undertaken with regard to the *availability of the potable water* to meet the requirement of this population for the next 20 to 25 years. In reply to the query of the Director, Town and Country Planning Department with regard to the proposed density of the complex and the manner in which the requirements of drinking water is proposed to be met with, the representative of the company explained that they have already got a hydrological survey done for the area from which it has emerged that in 2/3rd of the site, *there are aquifers available at the deeper level which would be fully exploited to meet the demand of the water supply for the proposed population of about 30,000*. The Director, Town and Country Planning Department observed that as the company is required to maintain the studio-cum-allied complex for a period of five years after its completion, the span of availability of the water from the aquifers is of paramount importance because ultimately the responsibility for upkeep and maintenance of this particular complex would vest with the Faridabad Complex Administration or any other Local Authority. Hence, the company should keep this particular aspect in view."

(emphasis supplied)

6. It took quite some time for the applicant to accept the terms and conditions imposed by the Chief Minister in his order dated 11-7-1990. Eventually, the applicant accepted the terms and conditions and entered into an agreement on 27-3-1992 with the State of Haryana. One of the terms and conditions of the agreement was that the applicant would complete the entire project of a film studio and allied complex within a period of five years; extensions for the area earmarked for group housing could be considered on merits. It is nobody's case that the entire project was completed within a period of five years and there is nothing on record to suggest that any extension was granted to the applicant for group housing.

Notification under the PLP Act and other developments

7. The issue of environmental degradation in the Aravalli Hill areas as well as in the Shivalik Hill areas was a matter of concern for the State of Haryana, as it should be. In this regard, meetings were held and decisions taken for closing the area between Surajkund and Badkal Lake under the provisions of the PLP Act. The overall objective of these discussions and the reference to the PLP Act was for preventing environmental and ecological degradation of the area due to mining and quarrying as well as construction activity.

8. On 12-9-1990 a meeting was held in the context of closing some areas for purposes of afforestation, particularly those areas where mining activity was going on. It was suggested by the Town and Country Planning Department that areas earmarked for colonisation should not be closed but no final decision was taken and it was decided that the list of such areas should be provided or made available for further directions. The list was eventually prepared and it included the land of the applicant, but nothing further happened in this regard.

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (Lokur, J.) 409

9. It appears from a reading of the documents before us (particularly a letter dated 9-6-1993 sent by the Deputy Conservator of Forests, Faridabad to the Chief Administrator, Faridabad Complex Administration, the Administrator of the Haryana Urban Development Authority and the District Town Planner, Faridabad) that sometime in 1988 the State of Haryana constituted a high-level committee for the development of the area between and around Badkal Lake and Surajkund tourist complexes. It further appears that the High-Level Committee held several meetings between August 1988 and 1990 and apparently a report was submitted recommending that the Aravalli Hills area between these two complexes should be brought under the provisions of the PLP Act. This seems to have resulted in the issuance of a Notification dated 18-8-1992 under the provisions of Section 4 of the PLP Act. We had requested the learned counsel for the State of Haryana to provide us with a copy of the report and the recommendations but they have not been provided, for whatever reason.

10. The notification prohibited, inter alia, clearing or breaking up of land not ordinarily under cultivation. Permission to break the land for cultivation could be permitted by the Divisional Forest Officer, Faridabad Forest Division. In any event, construction activity could not be permitted even by the Divisional Forest Officer.

11. We may note that one of the reasons that appears to have weighed with the State of Haryana in permitting the breaking up of land for cultivation is because Haryana is a predominantly agricultural State with 83% of the total land area under cultivation. This is to be found in the affidavit dated 25-2-1997 of Shri S.K. Maheshwari, IAS, Commissioner and Secretary to the Government of Haryana filed in this Court in *T.N. Godavarman Thirumulpad v. Union of India*¹. In any event, as mentioned above, construction activity could not be permitted even by the Divisional Forest Officer.

12. The Notification dated 18-8-1992 (which included the land of the applicant and there is no dispute about this) reads as follows:

"No. S.O.104/P.A.-2/1900/S.3/92.—Whereas the Governor of Haryana is satisfied after the due enquiry that the prohibitions hereinafter contained are necessary for the purpose of giving effect to the provisions of the Punjab Land Prevention Act, 1900;

Now, therefore in exercise of the powers conferred by Section 4 of the said Act, the Governor of Haryana hereby prohibits the following acts for a period of thirty years (30 years) with effect from the date of publication of this order in the Official Gazette in the areas specified in the Schedule annexed hereto, the said area forming part of Village Anangpur in Ballabgarh, Tehsil Faridabad District specified in the Schedule annexed Haryana Government Forest Department Notification No. S.O.59/P.A.-2/1900/S.3/92, dated 10-4-1992:

¹ WP No. 202 of 1995

1. The clearing or breaking up of the land not ordinarily under cultivation prior to the publication of Haryana Government Forest Department Notification No. S.O.59/P.A.-2/1900/S.3/92 dated 10-4-1992 provided that the breaking in the land for cultivation may be permitted by the Divisional Forest Officer, Faridabad Forest Division. a

2. The quarrying of stones or the burnings of lime at place where such stone or lime had not ordinarily been as quarried or burnt prior to the publication of the said notification except with the permission of the Collector of Faridabad District who will consult the Divisional Forest Officer, Faridabad Forest Division before according such permission. b

3. The cutting of trees or timber or the collection or removal or subjection to any manufacturing process of any forest produce other than grass, flower, fruit and honey save for the bona fide domestic or agricultural purpose of right holders in the land provided that owners of the land may sell trees or timber after first obtaining a permit to do so from the Divisional Forest Officer, Faridabad Forest Division. Such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of forest conservancy. c

4. The setting on fire of trees, timber of forest produce. d

5. The admission, herding or pasturing, retention of sheep, goats or camels provided that in case where sickness necessitates for the keeping of goats, for milk, Divisional Forest Officer, Faridabad Division may issue a permit at his discretion for the retention of a limited number of stall-fed goat, to be specified for a specified period." e

13. In a parallel exercise, steps were taken by the State of Haryana for publishing a Development Plan for Faridabad. As a result of this exercise, the State of Haryana notified the Final Development Plan on 11-12-1991 under Section 29 of the Faridabad Complex (Regulation and Development) Act, 1971 (42 of 1971). One of the factors mentioned in the notification justifying the necessity for amendment of the Development Plan was the rapid increase and scarcity of urbanisable area in Delhi and the rising population in the National Capital Region. f

14. Also, in the meanwhile, it appears that on the basis of the exemption granted to the applicant in 1984, the Town and Country Planning Department encouraged the applicant to go ahead with its activity of colonisation of the land owned by it having an area of about 424.84 acres. The applicant prepared a layout plan for a film studio and allied complex which appears to have been approved by the Town and Country Planning Department subject to certain terms and conditions on or about 19-12-1991. g

15. Therefore, the position as it stood towards the end of August 1992 was that the applicant had the benefit of an exemption under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975; the applicant was administratively permitted (if not encouraged) by the Town and Country Planning Department to construct upon the land owned by it in Village h

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 411

- a Anangpur; the layout plan prepared by the applicant was approved by the Town and Country Planning Department and was apparently in conformity with the Development Plan for Faridabad and finally, the applicant had entered into an agreement with the State of Haryana to complete its project of a film studio and allied complex within 5 years. On the other hand, environmental and ecological degradation in the entire area (which included the land owned by the applicant) was sought to be prevented by the State of Haryana through a statutory notification issued by the Forest Department under
- b the provisions of the PLP Act. There was, therefore, a dichotomy of views and a conflict of interest between two Departments of the Haryana Government—one favouring colonisation and the other favouring environmental protection and conservation.

- c 16. In this backdrop, a doubt arose whether the applicant could carry on its construction activity for setting up a film studio and allied complex in the closed area of the notification. This concern was voiced, amongst others, by the Principal Chief Conservator of Forests who sent a communication to the Commissioner & Secretary of the Forest Department on 31-8-1992 inquiring whether permission for setting up a film studio and allied complex by the applicant could be issued or not. The Principal Chief Conservator of Forests mentioned in his communication that prior permission of the Central
- d Government was compulsory for change of land use. The reason why the Principal Chief Conservator of Forests mentioned about prior mandatory permission of the Central Government is because he believed that with the issuance of the notification under the provisions of the PLP Act, the subject land was a forest or in any event was required to be treated as a forest and therefore, under the provisions of the Forest (Conservation) Act, 1980 the permission of
- e the Central Government was required for carrying on a non-forest activity in a forest. We will advert to this issue a little later.

17. The Principal Chief Conservator of Forests was given a somewhat casual response to the effect that he could take appropriate action according to norms.

- f 18. Apart from the communication dated 31-8-1992 referred to above and the response thereto, there was an exchange of letters between Departments of the State of Haryana with the focal point being the Town and Country Planning Department requesting that the land belonging to the applicant may be de-notified and taken out of the purview of the notification issued under the provisions of the PLP Act. However, nothing came out of this correspondence and the land of the applicant was admittedly not de-notified.

- g 19. Eventually on 15-5-1996 the Conservator of Forests wrote to the applicant that it was allowed to proceed ahead with its activities in accordance with the agreement signed with the State of Haryana on 27-3-1992. Perhaps this permission was granted keeping in mind that the applicant was required to complete the development works within a period of five years and also submit a bank guarantee for executing such development works in terms of
- h the agreement dated 27-3-1992. This "permission" was ex facie contrary to the

statutorily notified prohibitions under the PLP Act. Apparently realising this, the above letter was followed up immediately by another communication sent by the Conservator of Forests to the Principal Chief Conservator of Forests on 17-5-1996 requesting that the land owned by the applicant may be de-notified and that the Haryana Government is morally bound to allow the applicant to develop the project as per the sanctioned plans. Nothing came out of this and the land was not de-notified and no further event of note took place.

Initial set of orders passed by this Court

20. Around this time, a public interest litigation *M.C. Mehta v. Union of India*² was pending in this Court regarding issues of deforestation coupled with other environmental issues. On 10-5-1996³ this Court passed a rather significant order relating to the Aravalli Hills and the areas adjoining the land of the applicant. This was on the basis of a report prepared by the Haryana Pollution Control Board and another by the National Environmental Engineering Research Institute in respect of environmental degradation and pollution in the eco-sensitive zone in the Aravalli Hills. By the order dated 10-5-1996³ this Court prohibited mining within a 2 km radius of Badkal Lake and Surajkund and construction activity of any type within a radius of 5 km from Badkal Lake and Surajkund. In fact, all open areas were directed to be converted into green belts. As a result of this, the applicant obviously could not carry out any activities in the land owned by it, where it had proposed to establish a film studio and allied complex. The prohibition imposed by this Court was obviously in addition to the prohibition imposed by the notification issued under the PLP Act. It is quite likely that this Court was not even made aware of the notification under the PLP Act.

21. The order passed by this Court on 10-5-1996³ was sought to be modified/clarified by the Executive in Haryana on the ground that in the prohibited 5 km radius, buildings were under construction, plots had been allotted/sold under various development schemes and the plot holders had even started construction. Consequently, the vested rights of several persons were likely to be affected thereby causing them a huge financial loss.

22. After hearing the learned counsel for the parties, this Court took the view, again on the basis of the above reports, that to protect the two lakes from environmental degradation, it would be necessary to limit construction activity in the close vicinity of the lakes. Consequently, by an order dated 11-10-1996⁴ the earlier order of 10-5-1996³ was clarified, inter alia, to the effect that no construction shall be permitted within the green belt around the two lakes, that is an area having roughly 1 km radius. As far as the area outside the green belt is concerned, it was directed that no construction would be permitted for a further 1 km. It was, however, clarified that the latter direction would not apply to plots already sold or allotted prior to 10-5-1996 in the developed areas and that unallotted plots in the said areas may be sold with the prior approval of the

² WP No. 4677 of 1985⁴

³ *M.C. Mehta v. Union of India*, (1996) 8 SCC 462

⁴ *M.C. Mehta (Badkal and Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 413

a authority concerned. All development schemes and plans for constructions in the area from 1 km to 5 km radius of the lakes shall require prior approval from the Central Pollution Control Board and the Haryana Pollution Control Board.⁴ The clarification[†] given by this Court on 11-10-1996⁴ reads as follows: (*M.C. Mehta case*⁴, SCC pp. 720-21, para 11)

b “1. No construction of any type shall be permitted, now onwards, within the green belt area as shown in Ext. A and Ext. B. The environment and ecology of this area shall be protected and preserved by all concerned. A very small area may be permitted, if it is of utmost necessity, for recreational and tourism purposes. The said permission shall be granted with the prior approval of “the Authority”, the Central Pollution Control Board and the Haryana Pollution Control Board.

c 2. No construction of any type shall be permitted, now onwards, in the areas outside the green belt (as shown in Ext. A and Ext. B) up to one km radius of the Badkal Lake and Surajkund (one km to be measured from the respective lakes). This direction shall, however, not apply to the plots already sold/allotted prior to 10-5-1996 in the developed areas. If any unallotted plots in the said areas are still available, those may be sold with the prior approval of “the Authority”. Any person owning land in the area may construct a residential house for his personal use and benefit. The construction of the said plots, however, can only be permitted up to two-and-a-half storeys (ground, first floor and second half floor) subject to the building bye-laws/rules operating in the area. The residents of the villages, if any, within this area may extend/reconstruct their houses for personal use but the said construction shall not be permitted beyond two-and-a-half storeys subject to building bye-laws/rules. Any building/ house/commercial premises already under construction on the basis of the sanctioned plan, prior to 10-5-1996 shall not be affected by this direction.

e 3. All constructions which are permitted under Directions 1 and 2 above shall have the clearance of “the Authority”, the Central Pollution Control Board and the Haryana Pollution Control Board before “occupation certificates” are issued in respect of these buildings by the authorities concerned.

f 4. All development schemes, and the plans for all types of constructions relating to all types of buildings in the area from 1 km to 5 km radius of the Badkal Lake and Surajkund (excluding Delhi areas) shall have prior approval of the Central Pollution Control Board and the Haryana Pollution Control Board.”

g 23. According to the applicant, its land was beyond the 1 km radius but within the 5 km radius and the orders^{3, 4} passed by this Court vitally affected it. The applicant’s view was that its project was mainly a residential colony having

h 4 *M.C. Mehta (Badkal and Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715

† Ed.: Clarification of Direction 4 of the Supreme Court in its order dated 10-5-1996, *M.C. Mehta v. Union of India* (1996) 8 SCC 462.

3 *M.C. Mehta v. Union of India*, (1996) 8 SCC 462

a a commercial complex, schools, hospitals and film studios, but no industry of any nature whatsoever. It had expended a huge amount in the project, but could not proceed any further with it in view of the order dated 11-10-1996⁴ passed by this Court. Given the nature of the project, it was unreasonable to require the applicant to obtain no-objection certificates from the Pollution Control Boards. Consequently, a review petition being RP (C) No. 914 of 1997 was filed by the applicant on or about 26-2-1997 seeking a review of the order dated 11-10-1996⁴. It was submitted in the application that the restrictions imposed by this Court do not pertain to constructions of the applicant and that the requirement of obtaining a no-objection certificate from the Pollution Control Boards does not apply to the constructions of the applicant, which fall beyond 1 km but within the 5 km radius of Badkal Lake and Surajkund. b

c 24. The application for review came up for consideration on 17-3-1997 when this Court noted⁵ that it did not have sufficient time to dispose of the matter that day. But by way of an interim order it was directed, inter alia, that a person owning land in the areas abovementioned (in the order dated 11-10-1996⁴) may construct a residential house up to 2½ floors subject to the building bye laws and rules operating in the area. Those individuals who seek to construct houses in accordance with the decision of this Court and in conformity with the relevant rules may file their plans with the competent authority who may examine and keep the plans ready until further orders. In other words, even in such cases permission for construction was not granted, but permission to prepare plans was of course granted. It was further directed that the authorities should not insist upon the production of a no-objection certificate from the State or Central Pollution Control Board. The order passed by this Court on 17-3-1997⁵ reads as follows: d

e "The grievance of the petitioner is that when individuals who seek to construct their houses applying the plans of Faridabad Municipal Corporation, the plans are not being approved on the ground that the clearance certificates are not obtained from the Pollution Control Board. We do not have the sufficient time to dispose of the matter today, we think that, f

g (1) all the individuals who seek to construct their houses within 2½ floors' range as indicated in the judgment of this Court, they are at liberty to file plans before the competent authority. The competent authority would examine whether the plans are in conformity with the Rules and within 2½ storeys' range laid down by this Court. If the authority finds the plans in conformity with the above Rules and the directions given by this Court, the same may be examined and kept ready until further orders.

h (2) For the examination of these matters, the authorities are directed not to insist upon production of no-objection certificate from the State or Central Pollution Control Board."

4 *M.C. Mehta (Badkal and Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715

5 *M.C. Mehta v. Union of India*, 1997 SCC OnLine SC 1

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (Lokur, J.) 415

a 25. On or about 2-7-1997 the Municipal Corporation of Faridabad filed a reply to some pending applications and the review petition. After detailing the facts, including the impact of the orders passed by this Court, the difficulties faced by the Municipal Corporation in implementing them and other directions, it was prayed that certain schemes in the Haryana Urban Development Authority sectors (schemes mentioned at Serial Nos. 3, 4 and 5 of the reply) may not be affected by the order passed by this Court on 11-10-1996⁴. With regard to other projects and development schemes sanctioned in accordance b with the Development Plan prior to the order dated 10-5-1996³ it was prayed that they may also not be affected by the order passed by this Court on 11-10-1996⁴. Similarly, buildings, houses, commercial premises already sanctioned prior to 10-5-1996 in accordance with the Development Plan may not be affected by the order of 11-10-1996⁴ and construction may be permitted as per the Development Plan and building by-laws in force.

c 26. The review petition was again taken up for consideration on 13-5-1998⁶. On that date, a modified plan and some maps were placed before this Court. Upon a perusal of these maps, it transpired that some areas got excluded from the 1 km green belt, as originally proposed. It was directed that these areas could be urbanised in accordance with the applicable laws and rules. With regard to private lands (such as that of the applicant) it was directed that in d the areas adjoining the Surajkund complex, the State of Haryana may review the position so that only single-storey "hutments" are permitted to be constructed and "not tall buildings as originally conceived". The order passed by this Court was directed to be in modification or substitution of all earlier orders in that behalf. The order passed on 13-5-1998⁶ reads as follows: (M.C. Mehta case⁶, SCC OnLine SC paras 1-4)

e "1. A modified plan has been placed on record. The area meant to be left for Surajkund and around has been earmarked on the said plan by a zig-zag line. In the face of these altered boundaries from previous maps, certain areas have come out from the one kilo metre belt as originally proposed. Whatever areas have fallen out and whatever are adjacent thereto, f urbanisation thereof will take place in accordance with the laws, rules and regulations applicable to those areas as provided by the Faridabad Municipal Corporation.

g 2. Certain private areas (marked as "ABCD") in which construction is proposed would have to be viewed again. We have desired of the learned counsel for the State of Haryana to render assistance in that regard so that in the areas adjoining the Surajkund complex only single storey hutments get permitted to be constructed and not tall buildings as originally conceived.

3. Small areas as shown red on the plan would require to be acquired for the Complex. This means that the State will have to pay compensation on acquisition. But Mr Salve, learned Senior Counsel who appears for some

h 4 M.C. Mehta (Badkal and Surajkund Lakes Matter) v. Union of India, (1997) 3 SCC 715

3 M.C. Mehta v. Union of India, (1996) 8 SCC 462

6 M.C. Mehta v. Union of India, 1998 SCC OnLine SC 2

of the land owners says that those land owners who are owning those two small red patches which are within the encirclement would surrender the same to the State without compensation.

4. This order shall be in modification or substitution of all earlier orders in that behalf." (emphasis supplied)

No further orders were passed in this regard, except an order relating to a hotel complex, with which we are not concerned. The review petition was then disposed of by this Court on 12-10-1998⁷.

27. It seems to us that these orders passed by this Court were not blanket orders which could permit the applicants to ignore the Notification dated 18-8-1992. The requirement, in terms of the orders passed by this Court, continued to be adherence to the laws, rules and regulations, which would necessarily include the notification issued under the provisions of the PLP Act.

Issues arising out of the orders passed by this Court

28. In this background and context, it appears that some questions were raised by the Financial Commissioner and Secretary to Government, Haryana Revenue Department in a letter dated 1-3-1999 with regard to the status of the land owned by the applicant. The issues raised were to the following effect:

- (i) whether the applicant is in unauthorised possession of the land;
- (ii) whether the applicant has violated any statutory provision and is using the land in the manner in which it is authorised;
- (iii) whether it is permissible for the applicant to develop a residential colony in the land for which it had obtained an exemption for setting up a film studio and allied complex and whether the Town and Country Planning Department had permitted this.

29. In response to these issues, the Director in the Town and Country Planning Department wrote to the Financial Commissioner & Secretary to the State of Haryana on 16-3-1999 to the following effect:

"Regarding Issue 1, it is to inform that as per certificates given by District Revenue Authority from time to time, M/s R. Kant & Company is in authorised possession of land in Khasras Nos. 9-16, Village Anangpur, District Faridabad. Photos of the certificates given by the Revenue Authority are enclosed herewith.

Regarding Issue 2 it is to inform that the Company is using the land according to approved layout plan and service plan estimates.

Regarding Issue 3, it is to inform that in the revised approved layout plan of Kant Enclave film studio and allied complex, in addition to film studios provision of resident plots, group housing and the required social and commercial infrastructure has been made as per the exemption order of 1984, revocation order of 1990 and an agreement dated 27-3-1992

⁷ M.C. Mehta v. Union of India, Review Petition (C) No. 914 of 1997, order dated 12-10-1998 (SC)

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (Lokur, J.) 417

executed by the Company with the Government. *Therefore the provision of residential plots in Kant Enclave is permissible.* (emphasis supplied)

- a 30. It will be noticed that the Director, Town and Country Planning Department did not make any reference to the Notification dated 18-8-1992 issued under the provisions of the PLP Act. This sequence of events clearly indicates that the Town and Country Planning Department was very much in favour of the applicant colonising its land and making constructions therein on the basis of select administrative orders. It was quite prepared to, and did, ignore
- b orders passed by this Court from time to time and also ignore the notification of 18-8-1992 issued under the provisions of the PLP Act. The understanding of the Town and Country Planning Department seems to be that issues of environmental degradation, pollution and groundwater were not its concern. To say the least, the Town and Country Planning Department was myopic and brazen in pushing its agenda—certainly vis-à-vis the applicant versus the
- c environment and in disregard of a statutory notification.

Another attempt at colonisation

- d 31. In proceedings pertaining to the protection and conservation of forests throughout the country, this Court passed an order on 12-12-1996⁸ which is of considerable significance. The order was passed in Writ Petition No. 202 of 1995 with Writ Petition No. 171 of 1996. After hearing the learned Attorney General, the learned counsel for the States, the parties and other applicants as well as the learned Amicus Curiae it was held by this Court that the Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation, which would ultimately result in ecological imbalance. It was held that therefore the provisions of the law for conservation of forests and for
- e matters connected therewith, must apply to all forests, irrespective of the nature of ownership or classification thereof. It was held: (SCC pp. 269-70, para 4)

- f “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
- g so understood irrespective of the ownership or classification thereof.”

- h It was further directed that in view of the meaning given to the word “forest” it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any forest. All ongoing activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. Each State Government was also

8 T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267

directed to constitute within one month an expert committee to 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 and also to identify areas which were earlier forests, but stand degraded, denuded or cleared. In other words, this Court gave a realistic and pragmatic definition to the words "forest" and "forest land".

32. However, even before that, as far as the State of Haryana is concerned, an affidavit was filed by Shri Banarsi Das, IFS, Principal Chief Conservator of Forests, Haryana in *Environment Awareness Forum v. State of J&K*⁹. The affidavit dated 8-12-1996 stated that the total forest area in Haryana is 1,54,706 ha (1995-1996), which includes 11,513 ha of the PLP Act areas. It further says that earlier (1985-1986) the forest area in Haryana was 1,68,543 ha, which included 26,499 ha of the PLP Act areas. The reduction in the forest area was due to the expiry of notifications issued under the PLP Act and Section 38 of the Forest Act, 1927. It was noted that steps were taken for protection of forests, which included the enforcement of regulations under the PLP Act. What is of significance is that even before the order was passed by this Court on 12-12-1996⁸ the State of Haryana had acknowledged its treatment of the PLP Act areas as forest land, and as we shall see later, this was always so.

33. In *T.N. Godavarman Thirumulpad v. Union of India*¹ an affidavit was filed by the State of Haryana on 25-2-1997. The affidavit was sworn by Shri S.K. Maheshwari, IAS, Commissioner and Secretary to the Government of Haryana, Forest Department. In his affidavit, reference was made to the order passed by this Court on 12-12-1996⁸. It was stated in the affidavit that as far as identification of areas which were forests, but stand degraded or denuded or cleared, it would not be possible to do so without prescribing some cut-off date since land that is closed under the provisions of the PLP Act "creates forests" and the Act is as old as 1900. Therefore, a cut-off date of 25-10-1980 was selected as on that date the Forest (Conservation) Act, 1980 came into force. It was further stated that land that is closed under the provisions of the PLP Act is a forest only during the period of closure. After expiry of the closure period, the land is no longer shown as forest in the records of the Forest Department. A little later in the affidavit, it was reiterated that an area closed under the provisions of the PLP Act is "counted as forest" only during the currency of the closure. Taking all such areas into consideration, it was stated that the recorded forest cover in the State of Haryana is now 149,680.49 ha. Notwithstanding the affidavit, the Director in the Town and Country Planning Department issued a communication dated 16-3-1999 to the effect that the provision of residential plots in Kant Enclave was permissible. In view of the affidavit of Shri S.K. Maheshwari, there is enough room to suspect the bona fides of the applicant and the Town and Country Planning Department, but we leave it at that.

⁹ WP No. 171 of 1996

⁸ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

¹ WP No. 202 of 1995

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (Lokur, J.) 419

Further set of orders passed by this Court

34. In the writ petition filed by *M.C. Mehta* an application was filed by the
- a Delhi Ridge Management Board on 5-12-2001 (being IA No. 1785 of 2001) to the effect that large-scale mining activity near the Delhi-Haryana border was resulting in a large quantity of groundwater being pumped out from mining pits. As far as Delhi is concerned, the mining and extraction of groundwater had been banned and the ridge in Delhi was being protected in terms of the orders passed by this Court from time to time. However, it was stated in the application
 - b that the ridge in Haryana also needed to be protected as this was an extension of the same range. It was submitted that mining, withdrawal of groundwater and destruction of flora, etc. should also be restricted outside Delhi or at least up to 5 km from the Delhi-Haryana border towards Haryana. The significance of this application is that it jogs the memory and recalls the order passed by the Chief Minister of Haryana on 11-7-1990 relating to the availability of potable
 - c drinking water and the span of availability of water from the aquifers and their application. Acting upon the application filed by the Delhi Ridge Management Board, this Court passed an order on 6-5-2002¹⁰ as follows: (SCC p. 188, para 2)

“IA No. 1785

- d 2. Issue notice. Mr Bharat Singh accepts. Reply be filed within four weeks. Rejoinder be filed within four weeks thereafter. In the meantime, within 48 hours from today the Chief Secretary, Government of Haryana is directed to *stop all mining activities and pumping of groundwater in and from an area up to 5 km from the Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli Hills.* (emphasis supplied)
- e 35. The application appears to have been taken up for consideration on 22-7-2002¹¹. The proceedings of that date have not been reported, but have been mentioned in *M.C. Mehta v. Union of India*¹². This Court directed the Environment Pollution Control Authority (EPCA) to give a report with regard to the environment in the area, preferably after a personal visit. It was noted that EPCA had been constituted by the Government of India by a Notification
- f dated 29-1-1998 issued in exercise of power conferred by Sections 3(1) and 3(3) of the Environment (Protection) Act, 1986. Generally speaking, EPCA was constituted to protect and improve the quality of the environment and to prevent, control and abate environmental pollution.

- g 36. EPCA did visit the subject area and also took the opinion of the Central Groundwater Board and in its Report of 9-8-2002 it recommended that the ban on mining activities and pumping of groundwater in and from an area up to 5 km from the Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli Hills must be maintained. EPCA gave a further report on 21-10-2002 reaffirming its earlier recommendations. It was further recommended that if mining is allowed to continue in this area, it

- h 10 *M.C. Mehta v. Union of India*, (2004) 12 SCC 188
- 11 *M.C. Mehta v. Union of India*, (2009) 17 SCC 541
- 12 (2004) 12 SCC 118

would have serious implications for the groundwater reserves. EPCA also noticed uncontrolled construction activities that would expand urban habitation considerably in future and therefore recommended that unless immediate measures were taken to conserve and augment water resources in the area, an acute survival crisis could be expected. Interviews with local villagers in the vicinity of the mines confirmed that water shortage was already a serious problem in the region.

37. This Court also referred to reports by another expert body, namely, the Central Empowered Committee (CEC). This expert body was constituted by a Notification dated 17-9-2002 issued by the Ministry of Environment and Forests in exercise of power conferred by Section 3(3) of the Environment (Protection) Act, 1986. CEC was constituted for monitoring and ensuring compliance of the orders passed by this Court in relation to forests and wildlife and other related issues arising out of the orders. CEC was also expected to submit reports regarding non-compliance of the orders of this Court, including in respect of encroachments and removals, working plans, compensatory afforestation, plantations and other conservation issues.

Reports of CEC

38. Among the first few reports given by CEC, one dated 14-12-2002 deserves mention. It is not clear what led to this report, but in any event, it was considered by this Court on 16-12-2002¹³ and an order was passed as a result of the report that no mining activity would be permitted in areas where there is a dispute of applicability of the Forest (Conservation) Act, 1980 till such time the dispute is resolved or approval for non-forest activity is accorded under the said Act by the Central Government. This Court also directed that no mining would be permitted in areas for which a notification under Sections 4 and 5 of the PLP Act has been issued in regulating the breaking up of the land, etc. and such lands are or were recorded as "forest" in government records even if the notification period had expired, unless there was approval under the provisions of the Forest (Conservation) Act, 1980. These directions are significant and appear, generally, to have been overlooked.

39. Separately and in compliance of the orders passed by this Court on 25-11-2002¹⁴ CEC submitted three reports, all of which primarily pertained to mining activities in the subject area. These reports were considered by this Court and dealt with in the judgment and order passed on 18-3-2004¹². In the report dated 22-1-2003 (erroneously recorded as June) it was recommended by CEC that mining activity may be allowed in the areas closed under the provisions of the PLP Act "which for the purpose of the [Forest (Conservation)] Act are 'forest' even as per the State Government records, only after obtaining prior approval under the said Act from the MoEF (Ministry of Environment and Forests)". In another report, dated 7-2-2003 it was recommended that the

13 *T.N. Godavarman Thirumulpad (61) v. Union of India*, (2008) 16 SCC 401

14 *M.C. Mehta v. Union of India*, (2004) 12 SCC 186

12 *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 421

ban on mining activity may continue up to 2 km from Surajkund and Badkal Lakes in terms of the order passed by this Court on 10-5-1996³.

- a 40. While considering the entire issue, this Court also considered the question whether areas covered under the PLP Act are "forest" of any kind. While dealing with this, it was noted that the Forest Department of the State of Haryana has been treating and showing the closed areas as "forest" in its records. This Court also adverted to the affidavits filed in this Court from time to time, including by Shri S.K. Maheshwari and Shri Banarsi Das. This Court
- b also drew attention to its earlier order of 12-12-1996⁸ and the fact that the State of Haryana had been seeking permission of the Central Government to divert such closed land for non-forestry purposes. This Court also referred to letters dated 26-11-2002 and 17-9-2001 wherein a view was expressed that land closed under the PLP Act is forest land. This Court, therefore, declined to permit the State of Haryana to take a somersault and contend that land closed under the
- c provisions of the PLP Act is not forest. This is what this Court said in para 82 of the report: (*M.C. Mehta case*¹², SCC pp. 181-82)

- d "82. In the instant case, it is not necessary to decide the legal effect of issue of the notification under Sections 4 and/or 5 of the Act. Not only in their record has the area been shown as forest but affidavits have been filed in this Court stating the area to be "forest". In *T.N. Godavarman Thirumulpad v. Union of India*⁸ this Court held that the term "forest" is to be understood in the dictionary sense and also that any area regarded as a forest in government records, irrespective of ownership, would be a forest. The State of Haryana, besides having filed affidavits in the forest matters
- e treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose. Reference in this connection may also be made to the affidavit dated 8-12-1996 filed by Banarsi Das, Principal Chief Conservator of Forests, Chandigarh, Haryana in *Environment Awareness Forum v. State of J&K*⁹. Our attention has also been drawn to letter dated 26-11-2002 addressed by the Divisional Forest Officer, Faridabad to the Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad
- f District and requesting him to ensure that the said forest areas are not affected by any mining operations as also to a letter dated 17-9-2001 sent by the Principal Chief Conservator of Forests, Haryana (Panchkula) to the Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete somersault in these
- g proceedings and contend that the earlier stand that the area is forest was under some erroneous impressions. In the present case, for the purposes of the FC Act, these areas shall be treated as forest and for use of it for

3 *M.C. Mehta v. Union of India*, (1996) 8 SCC 462

8 *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

12 *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

9 WP No. 171 of 1996

non-forestry purpose, it would be necessary to comply with the provisions of the FC Act.”

41. Having considered voluminous material on record, this Court concluded in the said judgment of 18-3-2004¹² that it would be appropriate to constitute a Monitoring Committee, which it did,

“to monitor the overall eco-restoration efforts in the Aravalli Hills and to provide technical support to the implementing organisations and also to monitor implementation of recommendations contained in reports referred herein,...” (*M.C. Mehta case*¹², SCC p. 183, para 92)

This Court also held that the order dated 6-5-2002¹⁰ as clarified in the judgment cannot be varied or vacated before consideration of the report of the Monitoring Committee. It was also concluded that on the facts of the case, the mining activity in areas covered under the provisions of the PLP Act cannot be undertaken without approval under the Forest (Conservation) Act, 1980.

42. Therefore, apart from stopping mining activity, this Court also stopped pumping of groundwater in and from an area up to 5 km from the Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli Hills.

Further reports of CEC

43. Notwithstanding the decisions of this Court rendered from time to time and a wealth of material to the effect that the Aravalli Hills need to be protected, the issue of colonising the land owned by the applicant, which was the subject-matter of the prohibitory notification under the provisions of the PLP Act, was kept alive. Applications were filed by interested parties in this Court and CEC was required from time to time to submit reports to this Court.

44. In a report dated 12-9-2007 which pertained mainly to mining activities in Gurgaon and Faridabad Districts of Haryana, one of the recommendations made by CEC was to the effect that maps of appropriate scales should be prepared of areas notified under the provisions of the PLP Act, including areas for which the notifications have expired. These areas could be cross-verified with the help of relevant afforestation maps, satellite imagery of the relevant times, progress reports filed in the Aravalli Afforestation Programme and other details. It was also recommended that these areas may be demarcated and treated as a prohibited zone for mining activity.

45. In a supplementary report dated 5-12-2007 it was recorded by CEC that it had come to its notice that areas notified under the provisions of the PLP Act are being used or proposed to be used for colonisation, farmhouses and other construction activities. It was noted that in many cases such user has been permitted by the departments concerned of the State Government on the strength of improper no-objection certificates granted in the past by the Forest Department. CEC stated that the recommendations made in respect of mining in

¹² *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

¹⁰ *M.C. Mehta v. Union of India*, (2004) 12 SCC 188

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 423

a these areas are equally applicable to activities such as colonisation, construction of farmhouses, etc. It was recommended that areas notified under the provisions of the PLP Act, including areas for which notifications have expired, may also be treated as a prohibited zone for colonisation, construction of farmhouses and other construction activities. Such activities in the prohibited zone should be permitted only if in public interest and after obtaining permission from this Court.

b 46. Yet another report was required to be submitted by CEC, which it did on 28-8-2008. In the report, it was mentioned that a meeting was held with officers of the State of Haryana and a two-step approach was suggested. The first step was to identify areas where mining, colonisation, etc. is taking place in the Aravalli Hills, but such activities are prohibited or regulated in those areas by various enactments and orders of this Court. These would include, amongst others, areas notified under the provisions of the PLP Act. The second step would be to lay down broad principles and guidelines in respect of mining, colonisation and other non-forestry activities in the Aravalli Hills which would, inter alia, provide for an independent monitoring mechanism. Broadly, only such non-forestry activities would be permitted, that are absolutely necessary and unavoidable and in public interest.

c 47. A meeting was held, as mentioned above, for detailing the procedure and methodology for identification of the prohibited areas, preparation of macro plans, including closed areas under the PLP Act and in other areas where orders of this Court have been violated as well as the provisions of the Forest (Conservation) Act, 1980 for mining and for colonisation, etc. It was decided that all this would be placed before this Court for consideration and approval. It is also proposed that after the necessary maps are prepared of the prohibited areas, macro plans and identification being completed, a detailed proposal would be placed before this Court for appropriate directions. It was expected that the State Government would ensure immediate cessation of non-forestry activity going on in any prohibited area and in violation of the orders of this Court and the provisions of law.

d 48. Another report was submitted by CEC on 13-11-2008 pursuant to directions issued by this Court to file the land-use maps and macro plans in respect of the Aravalli Hills in Haryana. While the report is considerably detailed, what is of concern to us is that the revenue map of Village Anangpur superimposed on the satellite imagery revealed that a large number of colonies, farmhouses and mines were located in areas closed under the provisions of the PLP Act. One of the prominent violators was the applicant (Kant Enclave) which had violated the orders of this Court of 14-5-2008¹⁵ (the decision of this Court will be discussed a little later). The report also mentioned that there was large-scale illegal use of areas closed under the provisions of the PLP Act for illegal private gains in blatant violation of the environmental laws and the orders of this Court. It was suggested that this could not have taken place without the active connivance and support of the officials concerned. It was also noted that

h
15 *M.C. Mehta v. Union of India*, (2008) 17 SCC 294

the groundwater level in the area was rapidly depleting and had already been marked as "Dark Zone for Groundwater". In view of the somewhat alarming situation, it was recommended by CEC that colonies, farmhouses, banquet halls and other buildings illegally constructed in areas closed under the provisions of the PLP Act, such as Kant Enclave should be demolished.

49. Yet another report (the last one that we are concerned with) was submitted by CEC on 15-1-2009. In this report, it was stated that the work of superimposing on all geo-rectified village maps with the corresponding satellite imageries had been completed. In addition, village wise land-use maps had been prepared. These comprised of three components, namely, satellite imagery, scanned village maps and superimposed village maps on satellite imagery with marking of areas notified under the provisions of the PLP Act.

50. It was noted on the above basis that a large number of colonies, buildings, banquet halls, farmhouses, engineering colleges, schools, ashrams, etc. were located in areas notified under the provisions of the PLP Act or areas with forest cover. CEC expressed the view that demolition of the above illegal structures and rehabilitation of such areas (including Kant Enclave) should be taken up by the State of Haryana in a time-bound manner and no sale or purchase of such lands should be permitted. The permission earlier granted, if any, for non-forestry uses in such areas should be immediately revoked. The State of Haryana had suggested that large-scale demolition might create a serious law and order problem, but CEC did not agree with this. However, CEC recommended the regularisation of areas notified under the provisions of the PLP Act and other forest areas falling in identified Haryana Urban Development Authority sectors, subject to effective steps being taken for the demolition of buildings and structures in the areas notified under the provisions of the PLP Act and other forest areas and rehabilitation of such areas.

51. In response to the report of CEC dated 15-1-2009 the State of Haryana filed an affidavit through Shri Dharam Vir, the Chief Secretary of the State on 15-3-2009 in *M.C. Mehta v. Union of India*². It was stated in the affidavit that as far as the Municipal Corporation of Faridabad is concerned, in view of the order dated 13-5-1998⁶ passed by this Court, the erection of buildings, with due permission under the applicable law cannot be said to be illegal. Ex facie, this is incorrect, since this Court permitted, if at all, only the construction of hutments and not buildings. As far as the Town and Country Planning Department is concerned, it was stated that Kant Enclave was granted exemption under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975 on 17-4-1984 and therefore it would be in the interest of justice if the constructions that had come up pursuant to the above exemption may be allowed to exist. The Notification dated 18-8-1992 and the other orders of this Court were conveniently overlooked.

52. An affidavit dated 25-10-2010 was filed by the Chief Town Planner in the Department of Town and Country Planning. It was stated in the affidavit

² WP No. 4677 of 1985

⁶ *M.C. Mehta v. Union of India*, 1998 SCC OnLine SC 2

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 425

a that the Development Plan for Faridabad had been prepared in accordance with the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963 and the final Development Plan was published in 1991 in consonance with the NCR Planning Board Act, 1985. The Development Plans provided, inter alia, areas to be used for residential, commercial, industrial, public and semi-public uses, agriculture, open space, etc. In addition, it was stated that Kant Enclave had been granted exemption under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975. In view
b of this, the State of Haryana through the Forest Department ought not to have published the notification under Section 4 of the PLP Act, including therein the area already earmarked for urbanisation in the final Development Plan. It was stated that the Town and Country Planning Department had taken steps to exclude the land of the applicant from the notification issued under the PLP Act and follow-up action was also taken in this regard. The affidavit is, however,
c silent about the fact that the land owned by the applicant was not de-notified in spite of vigorous efforts of the Town and Country Planning Department. It was stated in the affidavit that pursuant to the order passed by this Court on 13-5-1998⁶ the Town and Country Planning Department had approved building plans and had also issued part completion certificates on 23-12-2004. In view of all these facts as well as in view of the affidavit filed by the Chief Secretary
d of the State of Haryana, it would be in the interest of justice that constructions that had come up in pursuance of the exemption granted under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 may be allowed to exist. It was submitted that a final decision may be taken by this Court and the State Government would abide by the directions given by this Court on this issue.

e *Yet another attempt at colonisation is rejected*

f 53. Not content with several letters, reports and decisions of this Court, the applicant opened up yet another front to push ahead with its colonisation and construction activity in the land owned by it being Khasras Nos. 9 to 16 in Village Anangpur. The applicant filed IA No. 1901 of 2005 in WP No. 4677 of 1985 (*M.C. Mehta v. Union of India*). In this application, it was submitted by the applicant that it was in exclusive possession of Khasras Nos. 9 to 16 in Village Anangpur having purchased the same from the rightful owners. It was stated that the applicant had been granted exemption under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975 for setting up its project named Kant Enclave. The exemption had been granted
g on 17-4-1984. It was stated that the applicant had spent over Rs 50 crores in carrying out and undertaking developmental work on the land. In addition, the applicant had sold or booked or allotted 1500 plots to prospective buyers out of which in about 450-500 cases, conveyance deeds had already been executed and registered with the authorities concerned. It was submitted that the decisions of this Court were mining-centric and were misconstrued by officers of the Forest
h Department. Consequently, a Communication dated 31-1-2005 was issued by

6 *M.C. Mehta v. Union of India*, 1998 SCC OnLine SC 2

the Forest Department to the District Town Planner, Faridabad to the effect that the land of the applicant was a closed area under the provisions of the PLP Act, and therefore non-forest use of the land was prohibited. As a result of this communication, the District Town Planner refused to sanction building plans of the plot holders of Kant Enclave or to issue completion certificates in respect of buildings already completed in terms of sanctions or approvals earlier granted. a

54. On this basis, it was submitted in the application that this Court may issue appropriate directions to the effect that only mining activities were prohibited in the subject area and that the orders of this Court did not affect the construction activities carried on by the applicant in its project as permitted by the order of this Court dated 13-5-1998⁶. It was prayed that directions may be issued to the State Government to permit registration of plots and sanction building plans as well as issue completion certificates. b

55. By an order dated 24-7-2006 this Court directed the Chief Secretary of Haryana to file an affidavit in response to the application IA No. 1901 of 2005. A detailed affidavit dated 10-9-2006 was filed by the Chief Secretary Shri Prem Prashant, IAS in which it was stated, inter alia, that the Notification dated 18-8-1992 issued under the provisions of the PLP Act covered Khasras Nos. 9 to 16 in Village Anangpur, that is, the land owned by the applicant. It was categorically stated that since then this land was treated as forest and it was also included in the list of forests in the government record. Reference was also made to the affidavit filed by the Forest Department in WP No. 202 of 1995 to the effect that the subject area was shown as a forest and that the provisions of the Forest (Conservation) Act, 1980 would be applicable. The affidavit also referred to the order passed by this Court on 12-12-1996⁸ to the effect that the term "forest" is to be understood in the dictionary sense and also that any area regarded as forest in government records irrespective of ownership, would be a forest. Reference was also made to the decision of this Court rendered on 18-3-2004¹² in this regard. c d e

56. The affidavit further stated that the Principal Chief Conservator of Forests, had informed the Director, Town and Country Planning Department by a letter dated 27-1-2006 that the land of the applicant being Khasras Nos. 9 to 16 in Village Anangpur is notified under Section 4 of the PLP Act. Therefore, the above area was treated as a forest in view of the orders passed by this Court on 18-3-2004¹². Since the applicant had never submitted any proposal with the Forest Department for diversion of forest land for non-forestry use, the Director, Town and Country Planning had asked the applicant by letter dated 27-6-2006 to seek the diversion of forest land in Khasras Nos. 9 to 16 in Village Anangpur for non-forestry use in accordance with the provisions of the Forest (Conservation) Act, 1980. f g

6 *M.C. Mehta v. Union of India*, 1998 SCC OnLine SC 2

8 *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

12 *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 427

- a 57. The application was taken up for consideration by this Court and by a judgment and order dated 14-5-2008¹⁵ the application was dismissed. A three-Judge Bench of this Court noted that the challenge was really to the communication dated 31-1-2005. While dealing with the decisions rendered by this Court from time to time, the three-Judge Bench noted that developing a plot and making construction thereon would amount to clearing up or breaking up of an area and that would be in violation of the prohibition contained in the notification of 18-8-1992. It was held in para 12 of the report: (*M.C. Mehta case*¹⁵, SCC p. 301)
- b

- c "12. In view of the notification under Section 4 when the clearing or breaking up of the land is not permitted that itself is a bar from (*sic* for) fresh construction because a construction can take place only if clearing and breaking of an area/land takes place. This prohibition is clearly contained in the notification of 1992. The reliance placed by the applicants on clause (g) is clearly misconceived, inasmuch as the permissible activity allowed within clause (g) is in favour of inhabitants of town and villages within the limits or vicinity of any such area. The admitted case is that the applicants herein have developed plots in the area in question and have sold it to persons who are not inhabitants of towns and villages within such specified living area, but could be anybody from all over the country or outside, and therefore clause (g) of Section 4 has no application. The factum of developing a plot and then construction thereon would amount to clearing or breaking up of an area or land."
- d

- e This Court also noted the view of the Central Groundwater Board to the effect that the area in question in Village Anangpur has been notified as a very precarious groundwater situation and that any construction activity therein without adequate water reserves will also have a negative effect. It was also noted that the groundwater table is already at a critical stage in Faridabad.

- f 58. The decision of this Court rendered on 14-5-2008¹⁵ has attained finality and all the submissions advanced by the applicant were duly considered and rejected by a Bench of three learned Judges of this Court. The issue whether the applicant could make any construction whatsoever on the notified land that is Khasras Nos. 9 to 16 in Village Anangpur in violation of the notification issued under the provisions of the PLP Act was not open to discussion earlier and in any event is no longer *res integra* or open to any further discussion or examination.

- g *An alleged discordant note*

- h 59. The issue of the status of areas closed under the provisions of the PLP Act came up for consideration in *B.S. Sandhu v. Union of India*¹⁶. In this case, about 3700 acres of land in Village Karoran in District Ropar in Punjab was notified under the provisions of the PLP Act. Despite this, the Forest Hill Golf and Country Club was established on closed land and was being developed

¹⁵ *M.C. Mehta v. Union of India*, (2008) 17 SCC 294

¹⁶ (2014) 12 SCC 172

allegedly in blatant violation of the environment and forest laws as well as orders passed by this Court on 12-12-1996⁸.

60. The learned counsel for the applicant relied heavily on this decision in *B.S. Sandhu case*¹⁶ to contend that merely because a notification had been issued under the provisions of the PLP Act, the closed land does not become "forest land". This very contention had been raised by the Proprietor/Managing Director of the Country Club (Sandhu) in the Punjab and Haryana High Court. It was submitted that his land was private land and it could not be treated as forest land without a formal notification under Section 35 of the Forest Act, 1927. a

61. According to the State of Punjab, an Expert Committee was constituted in terms of the orders passed by this Court on 12-12-1996⁸ and this Expert Committee included the entire area of Village Karoran as forest area in its report. The Punjab and Haryana High Court rejected¹⁷ the contention urged by Sandhu and that gave rise to appeals which were decided by this Court. b

62. This Court noted in *B.S. Sandhu case*¹⁶ that the notification issued under the provisions of the PLP Act resulted in the land in Village Karoran being recorded as land under the control of the Forest Department and therefore forest land. In other words, the basis of the conclusion that the entire land in Village Karoran is forest land was that the land was closed under the provisions of the PLP Act and was therefore a forest. Consequently, the first question required to be decided by this Court was whether land notified under the provisions of the PLP Act is forest land or not. c

63. This Court in *B.S. Sandhu case*¹⁶ took the view that activities prohibited in closed areas under the PLP Act are such that are not normally carried on in a forest. Reference was made to activities such as cultivation, pasturing of sheep and goats, erection of buildings by inhabitants of towns and villages, herding, pasturing or retaining cattle, etc. Therefore, the closed land could not be forest land. This Court observed that land notified under the provisions of the PLP Act may or may not necessarily be forest land and the decision of the High Court holding that closed land was forest land was not at all correct in the law. It was held that the High Court failed to correctly appreciate the meaning of "forest" and "forest land" as well as the decision of this Court in *Godavarman*⁸ (decided on 12-12-1996). d

64. It was also held in *B.S. Sandhu case*¹⁶ that since the Forest (Conservation) Act, 1980 came into force on 25-10-1980 the High Court had to decide whether Sandhu's land was forest land as on that date irrespective of its classification or ownership. The High Court ought to have examined the government record as on 25-10-1980 before concluding that Sandhu's land was forest land and not only the provisions of the PLP Act and the records of the e

⁸ *T.N. Godavarman Thirupulpad v. Union of India*, (1997) 2 SCC 267 f

¹⁶ *B.S. Sandhu v. Union of India*, (2014) 12 SCC 172 g

¹⁷ *State of Punjab, In re*, 2004 SCC OnLine P&H 1008 : (2004) 4 RCR (Civil) 619 h

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 429

Forest Department which showed the land to be forest only because of the fact that the land was closed under the provisions of the PLP Act.

- a 65. This Court also examined the two decisions rendered in *M.C. Mehta*^{12, 15}. These decisions were distinguished on the ground that they related to the Aravalli Hills in the State of Haryana and further it was held therein that the State Forest Department has been treating and showing the closed area as forest in fact and in law. Consequently, non-forest activities could not be allowed in such areas without the prior permission of the Central Government as mandated by the Forest (Conservation) Act, 1980. It was noted that this Court has not enquired into the basis of inclusion of the areas as forest by the State Forest Department. This Court also did not consider whether land became forest land by mere inclusion in terms of the notification issued under the PLP Act. On the other hand, in the case under discussion the Government of Punjab had stated that the basis of inclusion of the entire land of Village Karoran as forest area in the records of the Forest Department was that the land was closed under the PLP Act and this basis was not correct in law.
- b
- c

- d 66. This Court having distinguished the decisions rendered by this Court in *M.C. Mehta*^{12, 15} and by necessary implication the orders passed in *Godavarman*⁸, we do not see how the decision in *Sandhu*¹⁶ can be of any assistance to the applicant. The decision in *Sandhu*¹⁶ must be confined to its own facts.

- e 67. We may mention, without comment, that the purpose of issuing a notification under the PLP Act is to ensure that in the closed area there is no activity such as cultivation, pasturing of sheep and goats, erection of buildings, herding, pasturing or retaining cattle, etc. Therefore, the notification is a clear indication that such closed areas must be forest land or treated as forest land so that such objectionable non-forest activities are not carried out therein and that activities that are not normally carried out in forests are prohibited in forest land, so as to preserve and protect such forest land. A notification under the PLP Act does not convert land into forest land but recognises it as such or at least requires it to be treated as such.

- f 68. We may also mention, en passant, the provisions of Section 35(1) of the Forest Act, 1927. This refers to breaking up or clearing of land for cultivation, pasturing of cattle, etc. and reads as follows:

"35. *Protection of forests for special purposes.*—(1) The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land—

- g (a) the breaking up or clearing of land for cultivation;
(b) the pasturing of cattle; or
(c) the firing or clearing of the vegetation,

12 *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

h 15 *M.C. Mehta v. Union of India*, (2008) 17 SCC 294

8 *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

16 *B.S. Sandhu v. Union of India*, (2014) 12 SCC 172

when such regulation or prohibition appears necessary for any of the following purposes:

- (i) for protection against storms, winds, rolling stones, floods and avalanches; a
- (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines, and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- (iii) for the maintenance of a water-supply in springs, rivers and tanks; b
- (iv) for the protection of roads, bridges, railways and other lines of communication;
- (v) for the preservation of the public health."

69. We leave it at that because of the distinguishing features in *M.C. Mehta*^{12, 15} set of orders as contrasted and recognised with the facts in *Sandhu*¹⁶. c

Review in disguise

70. Notwithstanding unambiguous conclusions arrived at by this Court from time to time on matters pertaining to the environmental degradation of the Aravalli Hills and the implications of a notification issued under the provisions of the PLP Act, the applicant persisted in pressing these applications and sought to contend that it was fully entitled, as of right, to make constructions on the land owned by it and known as Kant Enclave. Submissions were made by the learned counsel for the applicant on issues that have conclusively been settled by this Court and in fact, the submissions were only a rehash of submissions made from time to time and which have been rejected. It was submitted by the learned counsel for the applicant, relying on *State (NCT of Delhi) v. Gurdip Singh Uban*¹⁸ that the applications filed by it and by the Residents Welfare Association were perfectly maintainable. Reference was made to Point 1 discussed in the decision. This point reads as follows: (SCC p. 307, para 13) d

"(I) Whether a party who had lost his case in civil appeal could be permitted to bypass the procedure of circulation in review matters and adopt the method of filing applications for "clarification", "modification" or "recall" of the said order in civil appeals so that the matters were not listed in circulation but could be listed in Court straightaway? Whether such applications could be filed even after dismissal of review applications? What is the procedure that can be followed in such cases?" e

This Court considered the question in considerable detail and deprecated the practice of filing review applications in undeserving cases without any proper examination of the substance of the applications. It was noted that indiscriminate filing of such review petitions wastes the time of the Court and that there must be some seriousness and restraint in filing review applications. f

12 *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

15 *M.C. Mehta v. Union of India*, (2008) 17 SCC 294

16 *B.S. Sandhu v. Union of India*, (2014) 12 SCC 172

18 (2000) 7 SCC 296 h

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (Lokur, J.) 431

This Court answered the question in the following manner: (*Gurdip Singh Uban case*¹⁸, SCC pp. 308-09, para 16)

a "16. At the outset, we have to refer to the practice of filing review applications in large numbers in undeserving cases without properly examining whether the cases strictly come within the narrow confines of Rule XL of the Supreme Court Rules. In several cases, it has become almost everyday experience that review applications are filed mechanically as a matter of routine and the grounds for review are a mere reproduction of the grounds of special leave and there is no indication as to which ground strictly falls within the narrow limits of Rule XL of the Rules. We seriously deprecate this practice. If parties file review petitions indiscriminately, the time of the Court is unnecessarily wasted, even if it be in chambers where the review petitions are listed. Greater care, seriousness and restraint is needed in filing review applications."

c 71. It was made clear that what is of importance is the substance of the application and not the title given to it and genuine cases requiring a clarification or modification or a recall would of course be entertained. It was observed by this Court as follows: (*Gurdip Singh Uban case*¹⁸, SCC p. 310, para 20)

d "20. We should not however be understood as saying that in no case an application for "clarification", "modification" or "recall" is maintainable after the first disposal of the matter. All that we are saying is that once such an application is listed in Court, the Court will examine whether it is, in substance, in the nature of review and is to be rejected with or without costs or requires to be withdrawn with leave to file a review petition to be listed in chambers by circulation. Point 1 is decided accordingly."

e 72. On this basis, it was submitted by the learned counsel for the applicant that there was no bar in the applicant moving or pressing appropriate applications and that is precisely what has been done.

f 73. In our opinion, there is nothing in these applications before us to remotely suggest that the various orders passed by this Court need any clarification or modification or recall. All issues raised by the applicants have been considered threadbare by several Benches of this Court and all of them have arrived at a similar conclusion, namely, that the environmental and ecological degradation of the Aravalli Hills must stop and that everybody is bound by the terms of the notification issued under the provisions of the PLP Act and that closed land under the Notification dated 18-8-1992 is a forest and should be treated as a forest.

g 74. That apart, the view expressed by this Court in *Gurdip Singh Uban*¹⁸ cannot be limited only to applications for modification, clarification or recall. There is a growing tendency to provide different nomenclatures to applications to sidestep the rigours and limitations imposed on an applicant and the Court in

h

18 *State (NCT of Delhi) v. Gurdip Singh Uban*, (2000) 7 SCC 296

dealing with a review petition. Applications can be and are titled as applications for directions, rehearing, reconsideration, revisiting, etc., etc. One has only to open a thesaurus and find an equivalent word and give an application an appropriate nomenclature so that it could be taken up for consideration in open court and on its merits and not as a review petition by circulation. In our opinion, the nomenclature given to an application is of absolutely no consequence—what is of importance is the substance of the application and if it is found, in substance, to be an application for review, it should be dealt with by the Court as such, and by circulation.

75. Considering the substantive applications filed by the applicant, we are of the clear opinion that these applications are nothing but disguised review petitions and they should not have been listed for hearing in open court without an appropriate order passed by this Court. They should have first been circulated and dealt with as review petitions and if the Bench concerned was of the view that they were required to be heard in open court, only then should they have been listed for hearing in open court. However, we are not detaining ourselves any further in this regard since we propose to deal with these applications on merits, treating them as applications for clarification, modification, recall, reconsideration, etc. of the orders passed by this Court from time to time.

76. The learned counsel for the applicants (Kant & Co. as well as the Residents Welfare Association of Kant Enclave) and the learned Amicus Curiae made detailed submissions over a couple of days on a variety of issues that they believed arose in these cases. Even though we are of opinion that in view of several decisions rendered by this Court from time to time, such submissions are not open to be made by the learned counsel, nevertheless, the submissions having been made, we will deal with each of them.

Is the notified land a forest or treated as a forest?

77. The principal contention urged by the learned counsel for the applicants is that the land in question Khasras Nos. 9 to 16 in Village Anangpur notified under the provisions of the PLP Act on 18-8-1992 was not forest land. This submission is clearly liable to be rejected.

(i) Affidavits of the State of Haryana

78. In this connection, we may refer to the affidavit of Shri Banarsi Das, IFS, Principal Chief Conservator of Forests, Haryana. The affidavit dated 8-12-1996 was filed in *Environment Awareness Forum v. State of J&K*⁹. In this affidavit it is stated that the total forest area in Haryana in 1985-86 was 1,68,543 ha. This included 26,499 ha of areas closed under the PLP Act. In other words, as far back as in 1985-86, if not earlier, the Principal Chief Conservator of Forests of the Government of Haryana considered and treated areas closed under the provisions of the PLP Act as forest land. This was well before the present controversy had arisen. The affidavit goes on to state that in 1995-96 the total forest area in Haryana was 1,54,706 ha and this included

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 433

a 11,513 ha of area closed under the PLP Act. It is quite clear to us that as far as the State of Haryana is concerned, closed areas under the PLP Act were always treated as forest land and this was well before any controversy arose in the matter.

b 79. Pursuant to an order passed by this Court an affidavit was filed on 25-2-1997 by Shri S.K. Maheshwari, IAS, Commissioner and Secretary in the Forest Department. The affidavit was filed in the case of *Godavarman*. It was stated that since the PLP Act came into force in 1900 some cut-off date was required for identification of forests and forest land. This cut-off date was taken as 25-10-1980, that is, the date on which the Forest (Conservation) Act, 1980 came into force. This date was taken only for convenience and for no other reason. This is clear from the affidavit which also states that closure under the PLP Act "creates forests" during the period of closure, after which the land is no longer shown as forest in government records. The affidavit reiterates that closed areas are "counted as forest" during the currency of the closure under the PLP Act. Therefore, identification of forest land from 1900 would have been a humungous task and to avoid an unnecessary exercise, the cut-off date of 25-10-1980 was taken. The affidavit cannot be read or understood to mean that land not recorded as "forest" on 25-10-1980 in the government records can never become or be recognised or treated as "forest". This would be too far-fetched and would go against the letter and spirit of the PLP Act.

e 80. The affidavit of Shri Prem Prashant, IAS, Chief Secretary of Haryana takes us back beyond 1985-86 and 25-10-1980. In the affidavit dated 10-9-2006 filed in response to IA No. 1901 of 2005 filed by the applicants (in *M.C. Mehta*) Shri Prem Prashant takes us back to Notifications dated 10, 1970 and 10-11-1980 issued by the State of Haryana through the Forests and Animal Husbandry Department and subsequent Notifications dated 16-11-1995 and 28-11-1997. This was to bring on record that the provisions of the PLP Act have been made use of through notifications issued thereunder for several decades for the protection and preservation of forests and forest land, even if such lands are not recorded as "forest" in government records. This would be in consonance with the provisions and the spirit of the PLP Act.

f 81. In an affidavit dated 15-3-2009 filed by Shri Dharam Vir, the Chief Secretary of Haryana with reference to the report of CEC dated 15-1-2009 in *M.C. Mehta* it was submitted that all constructions made post 17-4-1984 (the date on which exemption was granted to the applicants under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975) may be allowed to exist. This affidavit must be read in conjunction with the notification of 18-8-1992 and if so read, it suggests that the Chief Secretary desired that constructions made between 17-4-1984 and 18-8-1992 may be allowed to exist. However, even Shri Dharam Vir did not doubt or deny that closed areas under the PLP Act are forest or forest land. He only suggested a possible reprieve to the applicants.

g 82. The view of the Government of Haryana is therefore quite clear and consistent that land notified under the PLP Act is forest land and no

construction can be made thereon but if some dilution is to be made, then it should be only for the period between 17-4-1984 and 18-8-1992.

83. Quite apart from the affidavits filed by the State of Haryana through the Chief Secretary or the Principal Chief Conservator of Forests or the Commissioner & Secretary of the Forest Department, we are aware that through the conduct and correspondence of the Town and Country Planning Department that it was very keen on permitting construction in closed areas. We are not sure why the Town and Country Planning Department was persistently going out of its way to be of assistance to the applicants but whatever the reason, it was categorical in recommending the environmental degradation of the Aravalli Hills.

(ii) *Orders of this Court*

84. In addition to the affidavits of the State of Haryana, the various orders passed by this Court from time to time in *Godavarman* and in *M.C. Mehta* make it very clear that closed areas under the PLP Act are forest and forest land and need to be treated as forest land.

85. The decisions of this Court, go back to 10-5-1996³ when this Court proposed to deal with preserving the environment and controlling pollution through the stoppage of mining operations within the radius of 5 km from the tourist resorts of Badkal Lake and Surajkund. This Court considered reports prepared by the Haryana Pollution Control Board and the National Environmental Engineering Research Institute. It was noted that the State of Haryana had already prohibited mining operations within the radius of 5 km from these tourist resorts and on a consideration of the reports mentioned above, it was concluded that there shall be no mining activity within a 2 km radius of the tourist resorts of Badkal Lake and Surajkund. All the mines, which fall within the said radius shall not be reopened. It was further directed that no construction activity of any type shall be permitted now onwards within the 5 km radius of Badkal Lake and Surajkund and all open areas shall be converted into green belts. Interestingly, this Court also noted as follows: (*M.C. Mehta case*³, SCC p. 468, para 7)

"7. The Badkal Lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. The mining activities in the vicinity of these tourist resorts may disturb the rainwater drains which in turn may badly affect the water level as well as the water quality of these water bodies. The mining may also cause fractures and cracks in the subsurface, rock layer causing disturbances to the aquifers which are the source of groundwater. This may disturb the hydrology of the area."

86. The order dated 10-5-1996³ was subsequently modified on 11-10-1996⁴ to the effect that now onwards construction activity would not be permitted in certain areas, and there was no blanket ban. Permission to construct was

³ *M.C. Mehta v. Union of India*, (1996) 8 SCC 462

⁴ *M.C. Mehta (Badkal and Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 435

a subject to *utmost necessity* for recreational and tourism purposes and no other. However, exemption was granted to plots already sold or allotted prior to 10-5-1996 in developed areas (this was varied subsequently). It was further directed as follows: (*M.C. Mehta case*⁴, SCC p. 721, para 11)

b “11. ... 4. All development schemes, and the plans for all types of constructions relating to all types of buildings in the area from 1 km to 5 km radius of the Badkal Lake and Surajkund (excluding Delhi areas) shall have prior approval of the Central Pollution Control Board and the Haryana Pollution Control Board.”

87. Further, with regard to the issue of water management, this Court referred to the report of the National Environmental Engineering Research Institute and noted as follows: (*M.C. Mehta case*⁴, SCC p. 718, para 6)

c “6. ... According to the report Surajkund Lake impounds water from rain and natural springs. Badkal Lake is an impoundment formed due to the construction of an earthen dam. The catchment areas of these lakes are shown in a figure attached with the report. The land use and soil types as explained in the report show that the Badkal Lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. d Large-scale construction in the vicinity of these tourist resorts may disturb the rainwater drains which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of groundwater. The hydrology of the area may also be disturbed.”

e 88. The reason why we are referring to availability of water, or the lack of it, is because even the Chief Minister of Haryana in his order of 11-7-1990 had noted that the availability of water from the aquifers is of paramount importance and that aquifers available at the deeper level would be fully exploited to meet the demand of water supply for the population of Kant Enclave.

f 89. In spite of all these concerns shown to the environment and availability of water, the fact of the matter is that today Badkal Lake is bone dry and there is no water in the “Lake”. We had specifically asked the learned counsel for the parties as well as the learned Amicus Curiae about the status of Badkal Lake and we were told quite categorically that today there is absolutely no water in Badkal Lake. The damage to the environment has been done and appears to be irreversible.

g 90. One of the more significant orders was passed by this Court on 12-12-1996⁸. Through this order, this Court laid down what could be described as “forest” and “forest land”. The view taken was that the two expressions must be given their dictionary or natural meaning and if so considered, there can be no doubt that degraded forests and closed lands under the PLP Act are nothing but forest land. Similarly, the orders passed by this Court from time to time in

h
4 *M.C. Mehta (Badkal and Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715
8 *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

M.C. Mehta make it loud and clear that the Aravalli Hills need protection from environmental degradation and the laws must be strictly enforced to ensure that there is no damage caused to the ecology of the Aravalli Hills. In view of the clear expression of views and conclusions arrived at by this Court from time to time and repeated on several occasions we have no doubt that closed areas under the PLP Act are nothing but forest land and deserve to be treated as such.

91. In the decision rendered on 12-12-1996⁸ this Court directed the identification of 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. As a result of this, each State Government was directed, inter alia, to: (*T.N. Godavarman Thirumulpad case*⁸, SCC p. 271, para 5)

"(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...."

92. Notwithstanding the concern shown by this Court for the environment and ecology of the Aravalli Hills, the tacit support given to the applicants by the Town and Country Planning Department of the State of Haryana completely vitiated the efforts of the Forest Department as well as the orders of this Court. It came to such a pass that the Delhi Ridge Management Board was compelled to file an application on 29-11-2001 being IA No. 1785 of 2001 in which it was stated that the withdrawal and pumping of groundwater in the ridge was a matter of serious concern. It was, therefore, prayed that the Government of Haryana may be directed to stop all mining activity and pumping of groundwater in and from the area of 5 km from the Delhi-Haryana border in the Haryana side of the ridge. This application resulted in this Court passing an order on 6-5-2002¹⁰ directing the stoppage of all mining activity and pumping of groundwater as prayed for. This order was followed by another order passed by this Court on 22-7-2002¹¹ (not reported) requiring EPCA to furnish a report, which it did on 9-8-2002 to the effect that the order passed on 6-5-2002¹⁰ deserved to be confirmed.

93. Subsequently, EPCA gave another report on 21-10-2002 on the basis of information obtained from the Central Groundwater Board to the effect that mining activity was going on and the mines were operating below the groundwater level which was resulting in exploitation and destruction of groundwater sources.

94. The blatant and open flouting of orders passed by this Court resulted in the constitution of the Central Empowered Committee (CEC) on 17-9-2002 for monitoring and ensuring compliance of the orders passed by this Court.

⁸ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

¹⁰ *M.C. Mehta v. Union of India*, (2004) 12 SCC 188

¹¹ *M.C. Mehta v. Union of India*, (2009) 17 SCC 541

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 437

CEC submitted reports to this Court from time to time. These have already been adverted to and need not be repeated.

a 95. In its decision dated 18-3-2004¹² this Court considered all this material and addressed all the issues raised before it including issues of environmental and ecological degradation.

b 96. This Court specifically addressed itself to the question whether closed areas under the PLP Act are “forest” of any kind. This Court noted that the Forest Department of the State of Haryana showed such areas as “forest” in its records and treated such areas as “forest”; affidavits had also been filed on behalf of the State of Haryana in cases pending in this Court to the same effect; the words “forest” and “forest land” had been clearly explained by this Court in its order dated 12-12-1996⁸ and finally the Government of Haryana itself sought permission from the Central Government to divert land closed by notifications under the PLP Act for non-forest purposes. Therefore, it was held
c that the State of Haryana cannot now take a somersault and contend that areas closed under the PLP Act are not forest. This Court disposed¹² of IA No. 1785 of 2001 and confirmed the order passed on 6-5-2002¹⁰ and held that areas closed under the PLP Act cannot be utilised for non-forest purposes without the prior permission of the Central Government under the provisions of the Forest (Conservation) Act, 1980.

d (iii) *Review petition of Kant Enclave*

e 97. In view of the restrictions imposed by this Court, which obviously did not suit the applicants, a review petition being RP No. 914 of 1997 was filed by R. Kant & Co. on or about 26-2-1997. In the review petition, it was not disclosed that a notification had been issued under the PLP Act. While concealing this extremely important fact, a review was sought of the order passed by this Court on 11-10-1996⁴ to the effect that no permission is required from the Central Pollution Control Board or the Haryana Pollution Control Board in respect of the constructions made by the applicant beyond the 1 km but within the 5 km radius of Badkal Lake and Surajkund.

f 98. The review petition was taken up for consideration on 17-3-1997⁵ when it was made clear that plans for construction of houses could be filed before the competent authority who could examine them in accordance with the applicable rules and if the plans were in order, they could be “kept ready until further orders”. Since the full facts were not placed before this Court, an order was passed to the effect that for the purposes of examination, there should be no insistence by the authorities concerned on the production of
g no-objection certificate from the Central or State Pollution Control Board. It was also observed that 2½ storey buildings could be constructed.

12 *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

8 *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

h 10 *M.C. Mehta v. Union of India*, (2004) 12 SCC 188

4 *M.C. Mehta (Badkal and Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715

5 *M.C. Mehta v. Union of India*, 1997 SCC OnLine SC 1

99. On 13-5-1998⁶ the Court modified the order passed on 17-3-1997⁵ to the effect that in certain private areas where construction is proposed, only single storey hutments could be permitted to be constructed and not tall buildings as originally conceived. Therefore, it is quite clear from the orders passed by this Court that construction was not permitted until further orders but that plans could be prepared and examined.

100. A reference to the above orders clearly indicates that the State of Haryana and the applicants had full knowledge of the proceedings in this Court, but showed no concern for the environment and the ecology of the area.

101. In our opinion, it was extremely important for R. Kant & Co. to have come out with full facts in the review petition filed by it, more particularly the fact of the issuance of the Notification dated 18-8-1992. The failure to disclose this material fact vitiates the proceedings initiated by the applicant in this Court.

(iv) Interlocutory application filed by the applicant

102. Notwithstanding complete clarity on the issue of what is a forest and forest land, the status of closed areas notified under the PLP Act and issues of environmental and ecological degradation of the Aravalli Hills, the applicants made bold to file IA No. 1901 of 2005 (in *M.C. Mehta*) sometime in October 2005 in which it was prayed that the decision rendered by this Court on 18-3-2004¹² is restricted only to mining activities and does not affect the construction activities carried out by the applicant, which it is entitled to in view of the orders passed by this Court on 13-5-1998⁶.

103. In response to the application, an affidavit dated 10-9-2006 was filed by Shri Prem Prashant, IAS, Chief Secretary of Haryana in which it was categorically stated that the provisions of the PLP Act have been taken recourse to from time to time for the protection of forests and forest land. In this regard, he annexed Notifications issued by the State of Haryana on 12-3-1970 through the Forests and Animal Husbandry Department, on 10-11-1980 through the Forest Department, on 16-11-1995 through the Forest Department and on 28-11-1997 through the Forest Department.

104. The Notification dated 18-8-1992 was one of such notifications for the protection of forests and forest lands. It was categorically stated on affidavit that from the date of the Notification, that is, 18-8-1992 the subject land was being treated as forest and it was also included in the list of forests in the government records. This was also shown as a forest in the affidavit filed by the State of Haryana in *Godavarman*. That the subject land was forest land was also stated by the Principal Chief Conservator of Forests in a Letter dated 27-1-2006 addressed to the Director, Town and Country Planning Department. In fact, the said Director had required the applicant to seek the diversion of the forest land for non-forestry purposes by Letters dated 27-1-2006 and 27-6-2006 but the applicant did not do so. It was specifically pointed out to the applicant in both

⁶ *M.C. Mehta v. Union of India*, 1998 SCC OnLine SC 2

⁵ *M.C. Mehta v. Union of India*, 1997 SCC OnLine SC 1

¹² *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 439

the letters that constructions made by the applicant were illegal, but obviously, to no effect.

a 105. The application was taken up for consideration by a Bench of three learned Judges who dismissed the application by a judgment and order dated 14-5-2008.¹⁵ The issue whether land closed by a notification issued under the provisions of the PLP Act was forest land was once again considered by this Court and the decision rendered on 18-3-2004¹² was specifically and categorically reiterated.

b 106. We would have imagined that the applicant R. Kant & Co. would have learnt a lesson from the dismissal of its review petition, the interlocutory application as well as the orders passed by this Court from time to time and reports given by expert bodies, but it does not appear to have been so. We say this because, after the decision of this Court rendered on 14-5-2008¹⁵ R. Kant & Co. filed an application being IA No. 2310 of 2008 on 11-7-2008
c challenging a communication dated 23-5-2008 issued pursuant to the orders passed by this Court. Subsequently, the applicant also filed IAs Nos. 2377-79 of 2009 objecting to the reports filed by CEC. These IAs were not argued before us and no submissions were made in respect of these IAs.

(v) *Issue again raised in this Court*

d 107. The pendency of the present applications in this Court gave occasion to the applicants to once again try and raise the issue of closed areas under the PLP Act being not forest or forest land. Reference was made to the decision of this Court in *Sandhu*¹⁶. It was submitted that this Court had struck a discordant note in *Sandhu*¹⁶. We cannot agree since the decision in *Sandhu*¹⁶ itself distinguished the *M.C. Mehta*^{12, 15} set of orders both on facts and in law. The decision
e rendered in *Sandhu*¹⁶ cannot, by any stretch of imagination, come to the aid of the applicants.

f 108. We may only note that insofar as the present case is concerned, there is a wealth of material to indicate clearly that closed land under the PLP Act is forest land or in any event, is required to be treated as forest land. Several notifications issued under the PLP Act have been brought to our notice which prohibit certain activities which ought not to be carried out on forest land. The affidavits filed by responsible officers of the State of Haryana, including affidavits filed by the Chief Secretary unequivocally state that lands closed under the PLP Act are forest land. Similarly, there are judgments and orders passed by this Court to the same effect and the conduct of the State of Haryana, including the Forest Department and its relationship with the Town and Country
g Planning Department is a clear indication that lands closed under the provisions of the PLP Act are nothing but forest or forest land.

h 15 *M.C. Mehta v. Union of India*, (2008) 17 SCC 294
12 *M.C. Mehta v. Union of India*, (2004) 12 SCC 118
16 *B.S. Sandhu v. Union of India*, (2014) 12 SCC 172

109. There is absolutely no doubt that *Sandhu*¹⁶ is distinguishable both on facts and in law and it has been recognised as such by this Court in the judgment delivered in *Sandhu*¹⁶. It was suggested by the learned counsel for the applicants that because this Court did not enquire into the basis of inclusion of closed areas as forest, therefore the Notification dated 18-8-1992 is vitiated. Reliance placed on an observation in *Sandhu*¹⁶ with respect, may not strictly be valid, in the sense that there was enough material to indicate why, at least since 1970 closed areas have been included as forest and treated as forest by the State of Haryana. We may add that there was a report of a committee that eventually led to the issuance of the Notification dated 18-8-1992 but that was unfortunately not placed before us in spite of our request to the learned counsel for the State of Haryana.

110. What is of crucial importance and great significance is that no one has challenged the validity or correctness of the Notification dated 18-8-1992. We do not see how the correctness or validity of the notification can be challenged without any direct attack. A collateral attack cannot be permitted more certainly so by relying upon another decision of this Court, which has nothing to do with the facts of the present case.

111. On the other hand, the applicants have "challenged" every significant order passed by this Court, either through a review petition or through interlocutory applications. The applicants have been unsuccessful in every such adventure.

112. Taking an overall view of all the facts in the case and the law on the subject, we have no doubt that Kant Enclave is a forest or is a forest land or is required to be treated as a forest or forest land and absolutely no construction activity could have been permitted on it with effect from 18-8-1992. Any and all construction activity in Kant Enclave since that date is illegal and impermissible in law.

Mining-centric orders

113. The next submission advanced by the learned counsel for the applicants was to the effect that all the orders passed by this Court were mining-centric and did not relate to construction activity in Kant Enclave. This argument is stated only to be rejected. The judgments delivered by this Court have only to be read and understood and it would be more than obvious that the concern of this Court was to preserve and protect the environment in and around the Aravalli Hills and generally avoid environmental and ecological degradation of the area both through the stoppage of mining activity and constructions. Unfortunately, this Court was unable to enforce its orders in letter and spirit, thanks entirely to the apathy of the State of Haryana and the persistence of the applicants with the result that Badkal Lake is today, admittedly, absolutely dry.

114. The culpability of some of the State authorities in ensuring this tragic situation is quite evident from IA No. 2269 of 2007 filed by the Administrator,

¹⁶ *B.S. Sandhu v. Union of India*, (2014) 12 SCC 172

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 441

- a Haryana Urban Development Authority, in which the first prayer is to the effect that this Court should issue an appropriate direction that the judgment and order dated 18-3-2004¹² was restricted only to mining activities and did not affect the development or urbanisation or construction activities carried out as per the laws, rules and regulations of the Municipal Corporation of Faridabad or the Haryana Urban Development Authority. Despite the clear judgment and order passed by this Court, the attitude of some sections of the State Government obviously did not change and unrestricted development through mining activity and construction activity was given precedence over the environment resulting in, amongst other things a parched Badkal Lake.
- b

Notification issued erroneously

- c 115. It was then contended by the learned counsel for the applicants that the inclusion of Khasras Nos. 9 to 16 in Village Anangpur in the Notification dated 18-8-1992 was a mistake and that it was always the intention of the State of Haryana to keep this land out of the rigours of the PLP Act. This submission too is stated only to be rejected. If it was in fact the intention of the State of Haryana to keep Kant Enclave out of the purview of the Notification dated 18-8-1992 nothing prevented the State from either issuing a corrigendum or issuing a fresh notification or taking some positive step to delete Khasras Nos. 9 to 16 in Village Anangpur from the rigours of the notification.
- d

Alleged inapplicability of the notification

- e 116. Reliance was then placed on the provisions of sub-section (1) and sub-section (7) of Section 29 of the Faridabad Complex (Regulation and Development) Act, 1971 to submit that the Notification dated 18-8-1992 was not applicable to controlled areas. These provisions read as follows:

- e “29. Declaration of controlled area.—(1) Notwithstanding any law for the time being in force the Chief Administrator may, with the previous approval of the State Government by notification, declare the whole or any part of the area within the Faridabad Complex including an area within a distance of 8 km on the outer sides of the boundaries of Faridabad Complex as a controlled area.

(2)-(6) * * *

- f (7) After considering the objections, suggestions and representations, if any, and the recommendations of the Chief Administrator thereon, the State Government shall decide as to the final plans showing the controlled area and signifying therein the nature of restrictions and conditions applicable to the controlled area and publish the same in the Official Gazette and in such other manner as may be prescribed.”

- g 117. In terms of Section 2(f) of the said Act, a controlled area means an area declared under Section 29 of the said Act to be a controlled area.

- h 118. We are unable to appreciate the relevance of this submission for the reason that, as per the Statement of Objects and Reasons, there was a multiplicity of local authorities in the Faridabad-Ballabhgarh area with the result that integrated development of this area was not possible. Consequently,

it was essential to devise a set up for administration of this area which would meet the objectives of rapid and integrated development and eliminate haphazard development. The said Act was intended to achieve this objective. Quite clearly, this has nothing to do with the Notification dated 18-8-1992. Moreover, Section 29(1) of the said Act related to any law for the time being in force—the Notification dated 18-8-1992 came much later and was not in force when the said Act was enacted.

Other submissions

119. It was then contended that the exemption granted on 17-4-1984 under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 exempted the applicant or in any case Kant Enclave from all the provisions of the said Act. While this may be so, we do not see how the said Act exempts the applicant or Kant Enclave from the prohibitions imposed by the subsequent Notification dated 18-8-1992. The said Act has no relevance or reference to the provisions of the PLP Act.

120. The learned counsel for the applicants also contended that in view of the decision rendered by this Court in *Sandhu*¹⁶, the subject land ought to have been an existing forest as on 25-10-1980 when the Forest (Conservation) Act, 1980 came into force. In our opinion, this is not at all a correct interpretation of the decision rendered by this Court in *Sandhu*¹⁶. It is nobody's case, and indeed it cannot be anybody's case that no area can be declared as a forest after 25-10-1980. If this were the interpretation given, then the entire purpose of the order dated 12-12-1996⁸ passed by this Court would be rendered meaningless since it was in terms of this order that forest land was directed to be identified, even if that land was not so recognised as forest land. Acceptance of the interpretation sought to be given by the learned counsel would also emasculate the PLP Act.

121. The final submission of the learned counsel for the applicants was that constructions were made in terms of the orders passed by this Court on 17-3-1997⁵ and 13-5-1998⁶ and in fact, building plans and sanction plans were approved by the authorities concerned. Therefore, it must be held by this Court that the members of the Kant Enclave Residents Welfare Association had acted bona fide and therefore their houses or constructions should not be demolished as suggested by CEC.

122. In this regard, it must be appreciated that the order dated 17-3-1997⁵ as modified on 13-5-1998⁶ permitted construction only in accordance with law and not de hors the Notification dated 18-8-1992. It is not the case of any of the applicants before us, and indeed it cannot be their case, that the orders of this Court gave a complete go by to the notification and virtually quashed it even though it was never under challenge at that point of time or even today. It appears that very large residential complexes have been constructed

¹⁶ *B.S. Sandhu v. Union of India*, (2014) 12 SCC 172

⁸ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

⁵ *M.C. Mehta v. Union of India*, 1997 SCC OnLine SC 1

⁶ *M.C. Mehta v. Union of India*, 1998 SCC OnLine SC 2

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (Lokur, J.) 443

despite the orders of this Court, which did not give any blanket permission to the applicants to make constructions, according to their whims and fancies. For reasons that are not at all clear, such constructions were permitted by the authorities concerned despite the orders of this Court and even though the Notification dated 18-8-1992 prohibited breaking up of the land. It is difficult, under the circumstances, to take the view that the applicants and the authorities concerned had acted bona fide.

123. We had asked the learned counsel for the applicants to place before us the details of the construction made in Kant Enclave. The following chart was then placed before us on 24-7-2018. This chart indicates that out of a total of about 1600 plots said to have been carved out by R. Kant & Co. in Kant Enclave, conveyance deeds have been executed only in respect of 284 residential plots and three commercial plots. On the residential plots, only 33 houses have been constructed and it appears that not one of them is a single-storey hutment.

Sl. No.	Particulars	Work done
1.	Conveyance deeds executed	284 residential plots
2.	Conveyance deeds executed	3 commercial plots
3.	Houses constructed and people living	33 houses
4.	Film studio (FS-2) constructed	1 no.
5.	Overhead water tank of 545 KL capacity constructed and functional	3 nos.
6.	Underground water tank of 1200 KL capacity constructed and functional	3 nos.
7.	Pumping station (functional)	1 no.
8.	Pumping machine (submersible pumps) installed and functional	9 nos.
9.	Sewage treatment plant having cost of more than Rs 70,00,000 installed	1 no.
10.	Parks (fully developed)	14 nos.
11.	Roads completed	1,36,460 sq m (approx. 20 km)
12.	Street lights poles erected and energised	627 nos.
13.	Internal sewage pipelines completed and functional	21150 m
14.	Storm water drain completed and functional	18,000 m
15.	Water supply pipelines completed and functional	22,700 m
16.	Trees planted	10,000 nos. (Along roadside and in green belt)
17.	Fire hydrants/fire tanks having 265 CUM capacity	3 nos.
18.	Electric sub-station for 650 KV transformer	2 nos.

124. The extent of violation of the Notification dated 18-8-1992 is quite frightening and one can only imagine the phenomenal environmental and ecological damage caused to the area by the applicants. This could not have happened without the knowledge of the State of Haryana and its officers who permitted blatant disregard of the rule of law despite affidavits of the Chief

Secretary of the State of Haryana. The rule of law seems to have broken down in Haryana and become the rule of men only to favour the applicants. At this point, we cannot help but referring to a passage from a judgment of this Court with regard to the Aravalli Hills and the need for their protection. We had intended to avoid this reference only because it would be repetitive, but it is painful to see such a mockery of the law and total lack of concern for the environment and ecology of the Aravalli Hills.

125. In the order dated 18-3-2004¹² it was stated in para 58 of the report as follows: (*M.C. Mehta case*¹², SCC p. 172)

"58. The Aravallis, the most distinctive and ancient mountain chain of peninsular India, mark the site of one of the oldest geological formations in the world. Heavily eroded and with exposed outcrops of slate rock and granite, it has summits reaching 4950 ft above sea level. Due to its geological location, the Aravalli range harbours a mix of Saharan, Ethiopian, peninsular, oriental and even Malayan elements of flora and fauna. In the early part of this century, the Aravallis were well wooded. There were dense forests with waterfalls and one could encounter a large number of wild animals. Today, the changes in the environment at Aravalli are severe. Though one finds a number of tree species in the hills, timber-quality trees have almost disappeared. *Despite the increase of population resulting in increase of demand from the forest, it cannot be questioned nor has it been questioned that to save the ecology of the Aravalli mountains, the laws have to be strictly implemented.*" (emphasis supplied)

Relief

126. The question that now remains for consideration is whether any relief is required to be granted to the applicants and if so what relief should be granted.

127. There is no doubt that irreversible damage has been caused to the environment and ecology of the Aravalli Hills. The damage was caused or allowed to be caused, despite a statutory notification issued under the provisions of the PLP Act. The brazenness of the applicants in flouting the law is quite apparent. But what is more unfortunate is the support given to the applicants by the Town and Country Department of the State of Haryana, despite the reservations of the Forest Department. The Town and Country Department in apparent collusion with R. Kant & Co. effectively led a very large number of people up the garden path. Fortunately, only 33 of them have made some personal constructions—but it is not clear whether their constructions are pre or post 18-8-1992.

128. Therefore, we have two categories of persons who have been taken for a ride by R. Kant & Co. The first category consists of those who have been conveyed land by R. Kant & Co. and the second category consists of those who have been conveyed land and have made constructions.

¹² *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

M.C. MEHTA (KANT ENCLAVE MATTERS) v. UNION OF INDIA (*Lokur, J.*) 445

a 129. As far as the first category of persons is concerned, the relief that can be awarded to them is a full refund of their investment along with interest at 18% p.a. payable entirely by R. Kant & Co. from the date of the investment. We order accordingly.

b 130. As far as the second category of persons is concerned, as submitted by Shri Dharam Vir, Chief Secretary of the State of Haryana in his affidavit of 15-3-2009 there is an available, reasonable and appropriate course of action to adopt. This course of action is to save or allow to exist constructions made in Kant Enclave pursuant to the exemption granted to the applicant (R. Kant & Co.) on 17-4-1984 under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975 but before 18-8-1992 when the notification under the provisions of the PLP Act came into force. Any construction made after 18-8-1992 is clearly illegal and contrary to law and must be demolished as recommended by the Central Empowered Committee.
c We accept the submission made by Shri Dharam Vir and CEC and do not disturb the constructions made between 17-4-1984 and 18-8-1992. We direct accordingly.

d 131. However, in respect of constructions made after 18-8-1992 there is no option but to direct the State of Haryana to demolish the illegal and unauthorised constructions. The demolition should be completed on or before 31-12-2018. We direct accordingly.

e 132. In *Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra*¹⁹ this Court considered the issue of unauthorised construction from the point of view of a well-meaning citizen who is led up the garden path by the State, which gives statutory permission for unauthorised constructions. In the present case of Kant Enclave, well-meaning citizens have been virtually duped into investing huge amounts despite R. Kant & Co. and the Town and Country Department of the State of Haryana being fully aware of the statutory Notification dated 18-8-1992 and the restrictions placed by the notification. R. Kant & Co. and the Town and Country Department of the State of Haryana were also fully aware that Kant Enclave is a forest or forest land or treated as a forest or forest land, and therefore any construction made on the land or utilisation of the land for non-forest purposes, without the prior approval of the Central Government, would be illegal and violative of the provisions of the Forest (Conservation) Act, 1980. Notwithstanding this, constructions were made (or allowed to be made) in Kant Enclave with the support, tacit or otherwise, of R. Kant & Co. and the Town and Country Department of the State of Haryana. They must pay for this. This is not to suggest that those who have made constructions after 18-8-1992 are completely innocent. Nevertheless, it is necessary to compensate them in view of the role played by the Town and Country Planning Department of the State of Haryana. To compensate them for the land, we direct that

h

R. Kant & Co. to give them a full refund of their investment in the land along with interest at 18% p.a. from the date of the investment. We order accordingly.

133. As far as the cost of construction is concerned, we tentatively quantify it at Rs 50 lakhs. This will be paid to those who constructed after 18-8-1992 and whose construction is directed to be demolished. The quantified amount will be paid, in equal proportion, by R. Kant & Co. and the Town and Country Planning Department of the State of Haryana. The quantified amount is directed to be paid on or before 31-12-2018. If anyone whose construction is demolished in view of our orders, is not satisfied with the quantification, that person is at liberty to proceed against R. Kant & Co. and the Town and Country Planning Department of the State of Haryana by way of a civil suit in accordance with law and with the cause of action arising as on today.

134. The polluter pays principle is a wholesome principle that has been universally accepted and also adopted and applied in our country through several decisions of this Court. In this context, we may draw attention to among two of the earliest decisions rendered by this Court, namely, *Indian Council for Enviro-Legal Action v. Union of India*²⁰ and *Vellore Citizens' Welfare Forum v. Union of India*²¹. The law having been settled for more than two decades, we are of the view that it must be applied in a case such as the present. The damage caused to the Aravalli Hills, as already noted, is irreversible. However, perhaps some of the damage could be remedied—at least we hope so. According to R. Kant & Co. it has expended Rs 50 crores in developing Kant Enclave. We do not know the exact or accurate figure but proceed on the basis as stated. In our opinion, it would be reasonable to require R. Kant & Co. to deposit 10% of this amount (that is, Rs 5 crores) for rehabilitation of the damaged areas. This amount should be deposited by R. Kant & Co. in the Aravalli Rehabilitation Fund within one month and in any case on or before 31-10-2018. The matter be listed only for compliance of this direction in the first half of November 2018.

135. We direct the incumbent Chief Secretary of the State of Haryana to ensure compliance with our remaining orders, both in letter and spirit on or before 31-12-2018.

136. The substantive applications stand disposed of in the terms mentioned above.

20 (1996) 3 SCC 212
21 (1996) 5 SCC 647

DEVELOPMENT DEPARTMENT

(FOREST)

The 30th September, 1948.

386

Annexure-H-14"

No. 9419-D. Whereas it appears to the Governor of East Punjab that the areas specified in the schedule hereinto annexed are either subject to erosion by the removal or displacement of earth, soil, stones, or other materials by the action of wind or water, or are likely to become subject to erosion, and that it is desirable to provide for the conservation of the sub-soil water and for the prevention of erosion in the said areas.

Now, therefore, the Governor of East Punjab is pleased, in exercise of the powers conferred by section 3 of Punjab Land Preservation Act, 1900, as subsequently amended, to make directions accordingly.

SCHEDULE

<u>District</u>	<u>Tehsil</u>	<u>Area in acres</u>
Gurgaon	Gurgaon	262, 656
	Rewari	270, 656
	Nuh	356, 802
	Ferozpur Jhirka	727, 991
	Palwal	244, 631
	Ballabgarh	691, 264

No. 9420-D. Whereas the Governor of East Punjab is satisfied, after due enquiry, that the regulations, restrictions and prohibitions hereinafter contained are necessary for the purpose of giving effect to the provisions of the Punjab Land Preservation Act, 1900, the Governor of East Punjab, in exercise of the powers conferred by section 4 of the said Act is hereby pleased to prohibit the following acts for a period of 25 years with effect from the date of this notification in the area specified in the schedule annexed to East Punjab Government notification Nos 9419-D dated 30th September, 1948.

1. The clearing or breaking or cultivating of malkiat land not ordinarily under cultivation prior to the publication of East Punjab Government notification No. 9419-D dated the 30.9.48. provided that the breaking up of the land for cultivation may be permitted by the Divisional Forest Officer, Gurgaon/Rohtak Forest Division.

2. The quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried on prior to the publication of the said notification, except with the permission of the collector of the Gurgaon District, who will consult the Divisional Forest Officer, Gurgaon/Rohtak Forest Division, before according such permission.

3. The cutting of trees or timber or the collection or removal or subjection to any manufacturing process of any forest produce other than grass flower fruit and honey have for bonafied domestic or agriculture purpose provided that the owners of the land may fell trees or timber first obtaining a permit to do so from the Divisional Forest Officer, Gurgaon/Rohtak Forest Division, such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of forest conservancy.

4. The setting on fire of trees, timber or forest produce.
5. The admission, herding, pasturing or retention sheep, goats and camels provided that in cases where such necessitates the keeping of goats for milk and Divisional Forest Officer, Gurgaon/Rohtak Forest Division may issue a permit at his discretion for the retention of a limited number of stallfed goats to be specified for a specified period.

SCHEDULE

<u>District</u>	<u>Tehsil</u>	<u>Area in acres</u>
Gurgaon	Gurgaon	262, 658
	Rewari	270, 686
	Nuh	256, 802
	Ferozpur Jhirka	200, 508
	Palwal	244, 631
	Ballabgarh	183, 977

Sd/-

Secretary to Government, East Punjab,
Revenue and Development Department

388

Annexure-H-15



Haryana Government Gazette

EXTRAORDINARY

Published by Authority

© Govt. of Haryana

No. 33-2019/Ext.] CHANDIGARH, WEDNESDAY, FEBRUARY 20, 2019 (PHALGUNA 1, 1940 SAKA)

HARYANA VIDHAN SABHA SECRETARIAT

Notification

The 20th February, 2019

No. 05-HLA of 2019/10/3742.— The Punjab Land Preservation (Haryana Amendment) Bill, 2019, is hereby published for general information under proviso to Rule 128 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly :-

Bill No. 05- HLA of 2019

THE PUNJAB LAND PRESERVATION (HARYANA AMENDMENT) BILL, 2019

A

BILL

further to amend the Punjab Land Preservation Act, 1900, in its application to the State of Haryana.

BE it enacted by the Legislature of the State of Haryana in the Seventieth Year of the Republic of India as follows:-

1. (1) This Act may be called the Punjab Land Preservation (Haryana Amendment) Act, 2019. Short title and commencement.
- (2) It shall be deemed to have come into force from the first day of November, 1966, except unless expressly provided.
2. In section 2 of the Punjab Land Preservation Act, 1900 (hereinafter called the principal Act),- Amendment of section 2 of Punjab Act 2 of 1900.
 - (i) in sub-clause (ii) of clause (f), the word "and" existing at the end shall be omitted;
 - (ii) in clause (g), for the sign "." existing at the end, the sign "," shall be substituted;
 - (iii) after clause (g), the following clause shall be added, namely:-
 - "(h) "State Government" means the Government of the State of Haryana .".

Substitution of
section 3 of
Punjab Act 2 of
1900.

3. For section 3 of the principal Act, the following section shall be substituted and shall be deemed to have been substituted with effect from the date of publication of this amendment Act in the Official Gazette, namely:-

"3. Notification of areas.- (1) Whenever it appears to the State Government that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion with respect to land in any locality, the State Government may issue a preliminary notification to that effect, so as to invite objections from the persons interested in such lands, which shall be published in the Official Gazette and in two daily newspapers circulating in that locality, of which at least one shall be in Hindi language.

(2) Any person interested in any land which has been notified under sub-section (1) may, within sixty days of the date of publication of the notification, may file objections to the said desirability for conservation of subsoil water or the prevention of erosion in such area.

(3) Every objection under sub-section (2) shall be made to the Deputy Commissioner in writing and the Deputy Commissioner shall give the objector a reasonable opportunity of hearing in person or by any person authorized by him in this behalf and shall, after hearing all such objections and after making such further enquiries, if any, as he may consider necessary, make a report in respect of the land which has been notified under sub-section (1) as a whole, or make different reports in respect of different parcels of such land to the State Government, containing his recommendations, together with record of proceedings held by him for the decision of the State Government thereupon. The State Government shall consider the recommendations of the Deputy Commissioner and its decision thereon shall be final.

(4) When the State Government, after considering the recommendations of the Deputy Commissioner, made under sub-section (3), is satisfied that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area, the State Government may, by notification, order accordingly. Every such notification shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in Hindi language.

(5) Every notification issued under sub-section (4) shall be valid for the period stated therein which shall not exceed thirty years from the date of the publication of such notification:

Provided that wherever the period of validity is not stated in the notification, such notification shall be deemed to be valid for a period of thirty years from the date of the publication of such notification."

Insertion of
section 3A in
Punjab Act 2 of
1900.

4. After section 3 of the principal Act, the following section shall be inserted, namely:-

"3A. Act not to apply to certain lands.- The provisions of this Act shall not apply to-

- (a) the lands included in the final development plans, any other town improvement plans or schemes published under the provisions of-
 - (i) the Punjab Town Improvement Trust Act, 1922 (Punjab Act 4 of 1922);
 - (ii) the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (Punjab Act 41 of 1963);
 - (iii) the Faridabad Complex (Regulation and Development) Act, 1971 (42 of 1971);
 - (iv) the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975);
 - (v) the Haryana Municipal Corporation Act, 1994 (16 of 1994);
 - (vi) the Gurugram Metropolitan Development Authority Act, 2017 (34 of 2017);
 - (vii) the Faridabad Metropolitan Development Authority Act, 2018 (9 of 2019);

(viii) any other Act, Statute or Order that the State Government may notify from time to time, where date of publication of such plan or scheme is:-

- (I) prior to the date of the publication of the Punjab Land Preservation (Haryana Amendment) Act, 2019, in the Official Gazette; or
- (II) later than the date of the publication of Punjab Land Preservation (Haryana Amendment) Act, 2019 in the Official Gazette but prior to the date of publication of applicable and subsisting special order, if any, issued under section 4 or section 5 of this Act;

- (b) the lands forming part of any public infrastructure, including rail, roads, canals, public institutions, government or public establishments created or developed up to a date prior to the date of the publication of Punjab Land Preservation (Haryana Amendment) Act, 2019 in the Official Gazette or required for development of such public infrastructure in future as the State Government may notify from time to time; and
- (c) land which have been under bona-fide agriculture use save and except those lands whose owners have consented for inclusion of their lands under the purview of this Act.

Note.- Land recorded in the relevant revenue records as being used for the time being for agriculture uses shall be deemed to be land under bona-fide agriculture use for the purposes of this clause."

5. In section 4 of the principal Act,-

- (i) the words 'generally or' and the words 'general or' shall be omitted;
- (ii) in clause (g), for the sign ":" existing at the end, the sign ":-" shall be substituted; and
- (iii) the following proviso shall be inserted at the end, namely:-

"Provided that the period of validity of any order issued under this section shall not exceed the period of validity of the corresponding notification published under section 3 of this Act."

Amendment of section 4 of Punjab Act 2 of 1900.

6. After section 4 of the principal Act, the following section shall be inserted, namely:-

"4A. Power to regulate felling of trees.- (1) In respect of areas notified under section 3, the State Government may, in whole or any part of such areas, by general order temporarily regulate, restrict or prohibit the cutting of trees and timber.

(2) The period of validity of any order issued under sub-section (1) shall not exceed the period of validity of the corresponding notification published under section 3 of this Act.

(3) All subsisting general orders issued under section 4 prior to the date of publication of Punjab Land Preservation (Haryana Amendment) Act, 2019 in the Official Gazette shall be deemed to have been issued under sub-section (1) of this section.

(4) All orders issued under this section shall be solely for the purpose of temporarily regulating, restricting or prohibiting felling of trees and not for regulating any other activity or imposing restrictions or change in the permissible land use for such area.

Note.- For the removal of any doubt, it is declared that all the subsisting general orders issued under section 4 or notifications made there under prior to the date of publication of the Punjab Land Preservation (Haryana Amendment) Act, 2019 in the Official Gazette shall also be subject to the provisions of sub-section (4), solely for the purpose of temporarily regulating, restricting or prohibiting felling of trees and not for regulating any other activity or imposing restrictions or change in the permissible land use for such area."

Insertion of section 4A in Punjab Act 2 of 1900.

Amendment of
section 5 of
Punjab Act 2 of
1900.

7. In section 5 of the principal Act,-

- (i) for the sign “.” existing at the end, the sign “:” shall be substituted;
- (ii) the following proviso shall be added at the end, namely:-

“Provided that the period of validity of any order issued under this section shall not exceed the period of validity of the corresponding notification published under section 3 of this Act.”.

Insertion of
section 6A in
Punjab Act 2 of
1900.

8. After section 6 of the principal Act, the following section shall be inserted, namely:-

“6A. Power to amend or rescind.- The State Government may, if it finds necessary so to do and after recording reasons thereof in writing, amend or rescind, any notification or order made under the provisions of this Act.”.

Insertion of
section 18A in
Punjab Act 2 of
1900.

9. After section 18 of the principal Act, the following section shall be inserted, namely:-

“18A. Power to exempt.- If the State Government is of the opinion that the operation of any of the provisions of this Act or any part of notification or order issued under this Act, as the case may be, causes or has caused undue hardship or circumstances exist which render it expedient so to do, it may, subject to such terms and conditions, as it may impose, by an order, exempt any class of persons or areas or land from all or any provisions of this Act.”.

Insertion of
section 23 in
Punjab Act 2 of
1900.

10. After section 22 of the principal Act, the following section shall be added, namely:-

“23. Savings.- (1) The orders and notifications issued under this Act shall be deemed to have been amended so as to exclude the categories of land covered under section 3A with effect from the date of issuance or publication of such orders or notifications.

(2) For the removal of doubts, it is declared that-

- (a) the lands, excluding those covered under section 3A, shall continue to remain included in the orders or notifications issued under section 3, 4 or 5 or deemed to have been issued under section 4A for the periods stated therein;
- (b) wherever the period of validity is not stated, such order or notification shall be deemed to be valid for a period of thirty years from the date of its commencement; and
- (c) after the expiry of the period stated in such orders or notifications, the regulations, restrictions or prohibitions imposed therein shall cease to exist.

#

#

#

#

#

#

#

STATEMENT OF OBJECTS AND REASONS

The Punjab Land Preservation Act, 1900 (Punjab Act II of 1900), hereinafter referred to as 'PLPA', was enacted by the then Government of Punjab in 1900. The Act provides for the conservation of subsoil water and/or prevention of erosion in areas found to be subject to erosion or likely to become liable to erosion.

The intent behind the PLPA and its area of jurisdiction has evolved over a period of time. The first major amendment of immediate relevance was carried out in 1926 (Punjab Act VII of 1926) whereby it was clarified that the provisions of the Act never intended to extinguish the ownership rights of the people. Through the said amendment, from the existing expression 'temporarily or permanently' as appearing in the section 4 and section 5 of the PLPA, the expression 'or permanently', was omitted. This amendment is in conformity with the constitutional right granted under Article 300-A of the Constitution of India.

The subsisting orders and notifications issued under section 4 and/or section 5 of PLPA extend over an area of about 10,94,543 hectares or about 10,945 sq. km. accounting roughly for about 25% of the total geographical area of the State. These orders and notifications extend to the geographical area, wholly or partly, of 14 out of 22 District in the State. Almost the entire districts of Gurugram, Rewari and Mahendergarh are covered under these orders and notifications. A vast proportion of these lands include privately owned lands and lands that have traditionally as well as legally been under agriculture and other non-forestry uses, including lands forming part of public infrastructure such as rail, roads, canals, public institutions and government establishments. Most of the area were covered under the orders and notifications under PLPA with the primary objective of regulating tree felling (State of Haryana not having a separate 'Tree Act' for regulating felling of Trees). Such orders and notification were never issued either for effecting the changes in the existing land uses or to regulate the permissible land uses. The lands covered under these orders and notifications were never directly or indirectly intended to be brought under the purview of the rigors or forest or related laws. Further, PLPA, as amended in 1926, provides only for temporary and not permanent restrictions, regulations and prohibition. However, over a period of time a number of changes have come to force with various interpretations of the provisions of the PLPA from time to time, in particular with respect to considering the areas notified under PLPA as "forest" and making expiry of notifications issued under section 4 and or 5 inconsequential thereby rendering extinguishment of the ownership right almost permanently. These have also led to large tracts under agriculture, public, infrastructure, residential, institutional, commercial and other uses becoming liable to be considered as unauthorized activities and unlawful uses even where these were explicitly permitted and came up strictly in conformity and in accordance with the then existing applicable law governing such land use and activities undertaken thereupon. Lakhs of dwelling units, commercial buildings, industrial units, public buildings and massive public infrastructure and agriculture activities over about one fourth of the geographical area of the State are affected. Sale and purchase of such lands and immoveable properties have become liable to be considered a illegal. Such unintended consequences adversely impacting livelihood of millions of citizens and need to be allayed and remedied.

The felling of trees in the state is being regulated by issuance of general orders under section 4 of the PLPA. It is desirable that for effective regulation of tree felling, a specific and separate provision for the same is introduced in the act while putting to rest any ambiguity or doubt in this regard.

There is no provision in PLPA to provide reasonable opportunity of being heard before imposing restrictions, prohibitions and regulations with respect to an area being proposed to be brought under such restrictions, prohibitions and regulations. In order to adhere to the principles of natural justice, it is required to be provided.

PLPA does not have any provision to rectify, amend or de-notify the orders and notifications issued under the act even where the same have been found to have inherent defects, mistakes or where certain lands have been inadvertently included or found to have been issued in violation of the prescribed procedure. In addition, PLPA does not have any provision for re-notifying and or extending the period of the orders and notifications. The PLPA also does not have provisions for removal of difficulties or responding to exigencies warranting exemptions to be afforded in exceptional cases. The enabling provisions in these regard are required to be introduced and incorporated.

In the above background and to address the concerns effectively, it is warranted that the PLPA is appropriately amended and owing to the exigencies explained, certain provisions of proposed amendments need to be made applicable from retrospective effect.

Therefore, now it is required to amend section 2, section 3, section 4 and section 5 of the PLPA and, further, also required to insert section 3A (after section 3), section 4A (after section 4), section 6A (after section 6), section 18A (after section 18) and section 23 (after section 22) of the PLPA.

Hence, this Bill.

RAO NARBIR SINGH,
Forest & Wild Life Minister, Haryana.

Chandigarh:
The 20th February, 2019.

R. K. NANDAL,
Secretary.

Comparative Chart of the PLPA, 1900 & Amendment Act, 2019

Punjab Land Preservation Act, 1900	Punjab Land Preservation (Haryana Amendment) Bill, 2019
1. (1) This Act may be called the Punjab Land Preservation Act, 1900. It shall extend to the whole of the State of Punjab. (2) It shall come into force at once.	1. (1) This Act may be called the Punjab Land Preservation (Haryana Amendment) Act, 2019. (2) It shall be deemed to have come into force from the first day of November, 1966, except unless expressly provided.
Definitions 2. In this Act unless a different intention appears from the subject or context:- (a) the expression "land" means land within any area preserved and protected or otherwise deal with in manner in this Act provided, and includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth; (b) the expression "Cho" means a stream or torrent flowing through or from the Siwalik mountain range with in Punjab; (c) the expression "tree", "timber", "forest produce" and "cattle", respectively, shall have the meanings severally assigned thereto in section 2 of the Indian Forest Act, 1927; (d) the expression "person interested" includes all persons claiming any interest in	2. In section 2 of the Punjab Land Preservation Act, 1900 (hereinafter called the principal Act),- (i) in sub-clause (ii) of clause (f), the word "and" existing at the end shall be omitted; (ii) in clause (g), for the sign "." existing at the end, the sign ";" shall be substituted; (iii) after clause (g), the following clause shall be added, namely:- "(h) "State Government" means the Government of the State of Haryana."

compensation to be made on account of any measures taken under this Act; (e) the expression "Deputy Commissioner" includes any officer or officers at any time specially appointed by the State Government to perform the functions of a Deputy Commissioner under this Act; (f) ----- the expression "right-holder" includes- (i) persons not being tenants or mortgagees having rights to or in land; and (ii) persons having rights of collection of forest produce or of grazing or pasture; and (g) the expression "erosion" includes the removal or displacement of earth, soil, stones or other material by the action of wind or water.	
Notification areas 3. Whenever it appears to the State Government that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may – by notification make a direction accordingly.	3. For section 3 of the principal Act, the following section shall be substituted and shall be deemed to have been substituted with effect from the date of publication of this amendment Act in the Official Gazette, namely:- 3.Notification of areas.- (1) Whenever it appears to the State Government that it is desirable to provide for the conservation of subsoil water

or the prevention of erosion in any area subject to erosion or likely to become liable to erosion with respect to land in any locality, the State Government may issue a preliminary notification to that effect, so as to invite objections from the persons interested in such lands, which shall be published in the Official Gazette and in two daily newspapers circulating in that locality, of which at least one shall be in Hindi language.

(2) Any person interested in any land which has been notified under sub-section (1) may, within sixty days of the date of publication of the notification, may file objections to the said desirability for conservation of subsoil water or the prevention of erosion in such area.

(3) Every objection under sub-section (2) shall be made to the Deputy Commissioner in writing and the Deputy Commissioner shall give the objector a reasonable opportunity of hearing in person or by any person authorized by him in this behalf and shall, after hearing all such objections and after making such further enquiries, if any, as he may consider necessary, make a report in respect of the land which has been notified under sub-section (1) as a whole, or make different reports in respect

of different parcels of such land to the State Government, containing his recommendations, together with record of proceedings held by him for the decision of the State Government thereupon. The State Government shall consider the recommendations of the Deputy Commissioner and its decision thereon shall be final.

(4) When the State Government, after considering the recommendations of the Deputy Commissioner, made under sub-section (3), is satisfied that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area, the State Government may, by notification, order accordingly. Every such notification shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in Hindi language.

(5) Every notification issued under sub-section (4) shall be valid for the period stated therein which shall not exceed thirty years from the date of the publication of such notification:

Provided that wherever the period of validity is not stated in the notification, such notification shall be deemed to be valid for a period of thirty years from the date of the publication of such notification.

	4. After section 3 of the principal Act, the following section shall be inserted, namely:- 3A. Act not to apply to certain lands.- The provisions of this Act shall not apply to- (a) the lands included in the final development plans, any other town improvement plans or schemes published under the provisions of- (i) the Punjab Town Improvement Trust Act, 1922 (Punjab Act 4 of 1922); (ii) the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (Punjab Act 41 of 1963); (iii) the Faridabad Complex (Regulation and Development) Act, 1971 (42 of 1971); (iv) the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975); (v) the Haryana Municipal Corporation Act, 1994 (16 of 1994); (vi) the Gurugram

	Metropolitan Development Authority Act, 2017 (34 of 2017); (vii) the Faridabad Metropolitan Development Authority Act, 2018 (9 of 2019); (viii) any other Act, Statute or Order that the State Government may notify from time to time, where date of publication of such plan or scheme is:- (I) prior to the date of the publication of the Punjab Land Preservation (Haryana Amendment) Act, 2019, in the Official Gazette; or (II) later than the date of the publication of Punjab Land Preservation (Haryana Amendment) Act, 2019 in the Official Gazette but prior to the date of publication of applicable and subsisting special order, if any, issued under section 4 or section 5 of this Act; (b) the lands forming part of any public infrastructure, including rail, roads, canals, public institutions, government or public establishments created or developed up to a date prior to the date of the publication of Punjab Land Preservation (Haryana Amendment) Act, 2019 in the Official Gazette or required for development of such public infrastructure in future as the State Government may notify from time to time; and

	(c) land which have been under bona-fide agriculture use save and except those lands whose owners have consented for inclusion of their lands under the purview of this Act. Note.- Land recorded in the relevant revenue records as being used for the time being for agriculture uses shall be deemed to be land under bona-fide agriculture use for the purposes of this clause."
Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters. 4. In respect of areas notified under section 3 generally or 'the whole or any part of any such area the State Government may by general or special order, temporarily regulate, restrict or prohibit- (a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3; (b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so-quarried or burnt prior to the publication of the notification under section 3 ; (c) the cutting or trees or	5. In section 4 of the principal Act,- (i) the words 'generally or' and the words 'general or' shall be omitted; following proviso shall be inserted at the end, namely:- "Provided that the period of validity of any order issued under this section shall not exceed the period of validity of the corresponding notification published under section 3 of this Act."

timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this subsection of any forest-produce other than grass, save for bona fide domestic or agricultural purposes of right-holder in such area; (d) the setting on fire of trees, timber or forest produce; (e) the admission, herding, pasturing or retention of sheep goats or camels; (f) the examination of forest-produce passing out of any such area; and (g) the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own Use therefrom, or to pasture sheep goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons,	
	6. After section 4 of the principal Act, the following section shall be inserted, namely:- "4A. Power to regulate felling of trees.- (1) In respect of areas notified under section 3, the State Government may, in whole or any part of such areas, by general order

temporarily regulate, restrict or prohibit the cutting of trees and timber.

(2) The period of validity of any order issued under sub-section (1) shall not exceed the period of validity of the corresponding notification published under section 3 of this Act.

(3) All subsisting general orders issued under section 4 prior to the date of publication of Punjab Land Preservation (Haryana Amendment) Act, 2019 in the Official Gazette shall be deemed to have been issued under sub-section (1) of this section.

(4) All orders issued under this section shall be solely for the purpose of temporarily regulating, restricting or prohibiting felling of trees and not for regulating any other activity or imposing restrictions or change in the permissible land use for such area.

Note.- For the removal of any doubt, it is declared that all the subsisting general orders issued under section 4 or notifications made there under prior to the date of publication of the Punjab Land Preservation (Haryana Amendment) Act,

	2019 in the Official Gazette shall also be subject to the provisions of sub-section (4), solely for the purpose of temporarily regulating, restricting or prohibiting felling of trees and not for regulating any other activity or imposing restrictions or change in the permissible land use for such area.”.
Power in certain cases, to regulate, restrict or prohibit by special order, within notified areas, certain further matters 5. In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3 the State Government may, by special order temporarily regulate, restrict or prohibit- (a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3 (b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under section 3; (c) the cutting of trees and timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce for any purposes; and (d) the admission, herding, pasturing or retention of cattle generally other than sheep,	7. In section 5 of the principal Act,- (i) for the sign “.” existing at the end, the sign “.” shall be substituted; (ii) the following proviso shall be added at the end, namely:- “Provided that the period of validity of any order issued under this section shall not exceed the period of validity of the corresponding notification published under section 3 of this Act.”.

goats and camels, or of any class or description of such cattle.	
5-A. IN respect of areas notified under section 3 generally or the whole or any part of any such area, the State Government, may, be general or special order, direct- (a) the leveling, terracing, drainage and embanking of fields; (b) the construction of earthworks in fields and ravines; (c) the provision of drains for storm water; (d) the protection of land against the action of wind of water; (e) the training of streams; and (f) the execution of such other works and the carrying out of such other measures as may, in the opinion at the State Government, be necessary far carrying out the purposes of this Act.	
6. Every order made under section 4,5 or 5-A shall be published in the Official Gazette and shall setforth that the State Government is satisfied, after due inquiry, that regulations, restrictions, prohibitions or directions contained in the order are necessary for the purpose of giving effect to the provisions of this Act.	
	8. After section 6 of the

	principal Act, the following section shall be inserted, namely:- "6A. Power to amend or rescind.- The State Government may, if it finds necessary so to do and after recording reasons thereof in writing, amend or rescind, any notification or order made under the provisions of this Act."
7. (1) When, in respect of any area, a notification has been published under section 3, and — (a) upon such publication any general order, made under section 4 or section 5-A, becomes applicable to such area, or (b) any special order under sections 4, 6 or 5-A, is made in respect of such area, the Deputy Commissioner shall cause public notice of the provisions of such general or special order to be given, and if the provisions of any such order restrict or prohibit the exercise of any existing rights, shall also publish in the language of the country and in every town and village the boundaries of which include any portion of the area within or over which the exercise of any such rights is so restricted or prohibited a proclamation stating the regulations, restrictions and prohibitions which have been imposed, by any such order,	

within the limits of such area or in any part or parts thereof; fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount and particulars of the compensations (if any) claimed in respect thereof.

(2) Any claim not preferred within the time fixed in the proclamation made under subsection (1), shall be rejected:

Provided that with the previous sanction of the Commissioner, the Deputy Commissioner may admit any such claim as if it had been made within such period.

7 -A. (1) When an order has issued under section 5-A, Deputy Commissioner may by notice require the owner or occupier of the land to execute such works or take such measures as may be specified in the notice.

(2) Every such notice shall state the time within which the works are to be executed or measures are to be taken.

(3) A person aggrieved by an order contained in such a notice as aforesaid may, within thirty days from the service of such

notice or within such longer period as the Deputy Commissioner may allow in this behalf, serve a notice of his objections on the Deputy Commissioner in such manner as may, be provided by the rules made under this Act.

(4) If and in so far as an objection under this section is based on the ground of some informality, defect or error in or in connection with the notice, the Deputy Commissioner shall dismiss the objection, if he is satisfied that the informality, defect or error was not a material one.

(5) If the objection is brought on all or any of the following grounds, that is to say-

(a) that the notice might lawfully have been served on the occupier of the land in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served;

(b) that some other person, being the owner, occupancy tenant, mortgagee with possession or lessee or farm holder or possessing some other right in or over the land to be benefited, ought to contribute towards the expenses of

executing any works or taking any measures required;

(c) where the work or measure is work or measure for the common benefit of the land in question and other land, that some other person, being the

owner or occupier of land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required;

the objector shall serve a copy of his notice of objection on each other person referred to, and. On the hearing of the objection the Deputy Commissioner may make such order as he thinks fit with respect to the person by whom any work is to be executed or measure is to be taken and the contribution to be made by any other person towards the cost of the work or measure or as to the

proportions in which any expenses which may become recoverable by the Deputy Commissioner under subsection

(6) are to be borne by the objector and such other person:

Provided that no such order shall be made unless the person who is likely to be affected thereby has been given a reasonable opportunity of being heard.

In exercising his power: under this sub-section the Deputy Commissioner shall have regard

(a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of works and measures required; and

(b) in any case, to the degree of

benefit to be derived by the different persons concerned.

(6) Notwithstanding anything to the contrary in any law for the time being in force, no person required by a notice or an order under this section to execute any work or to take any measure shall be required to obtain the consent of any other person before complying with such notice or order.

(7) Subject to such right of objection as aforesaid and the right of appeal under section 18, if the person required by the notice to execute works or to take measures fails to execute the works or to take the measures indicated, within the time thereby limited, the Deputy Commissioner may himself or by an agent execute the works or take the measures and recover from that person whole of the expenses reasonably incurred by him in so doing:

Provided that it shall not be necessary for the Deputy Commissioner to wait for the decision of any objection other than an objection under clause (a) of subsection (5), or an appeal against any decision on such objection, before taking action under this subsection;

(8) If the cost of any work executed or any measure taken by any person remains unpaid by the person from whom it is due after the date specified in a

notice issued in this behalf by the Deputy Commissioner or such other date as is fixed by him, such cost shall be recoverable as an arrear of land revenue and a certificate issued by him, such cost shall be recoverable as an arrear of land revenue and a certificate issued by the Deputy Commissioner in this behalf shall be final and conclusive evidence of the sum so recoverable and the person liable for the same.

(9) Every order issued under this section shall be published in such manner as may be prescribed in the rules made under this Act, and upon such publication every person affected thereby shall unless the contrary be proved, be deemed to have had due notice thereof.

(10) The Deputy Commissioner may by general or special order authorise any revenue officer subordinate to him to enquire into any objection that may be brought under this section; Provided that no final order on any such objection shall be passed except by the Deputy Commissioner himself.

(11) In making an order on objections brought under this section, the Deputy Commissioner shall be guided by such rules, if any, as the State Government may make in this behalf.

(12) For the purposes of this

section, the expression "estate" shall have the meaning assigned thereto in the Punjab Land Revenue Act, 1887.	
CONTROL OVER THE BEDS OF CHOS. 8. (1) Wherever it appears to the State Government that it is desirable that measures should be taken in the bed of any cho for the purpose of- (a) regulating the flow of water within and preventing the widening or extension of such bed, or of (b) reclaiming or protecting any land situate within the limits of such bed; such Government may, either proceed at once in manner in subsection (2) provided, or, in the first instance, by notification specifying the nature and extent of the measures to be taken, and the locality in and the time within which such measures are to be taken, require all persons possessing proprietary or occupancy right in land situate in such locality to themselves carry out the measures specified in such notification accordingly. (2) If the whole or any part of the bed of any cho be unclaimed, or if, in the opinion of the State Government the measures deemed necessary under subsection (1) are of such a character, in regard to extent and cost, that the	

interference of the State Government is absolutely necessary, or in the event of the owner or occupier of any portion of the bed of any cho failing to comply with the requirements. of any notification issued under subsection (1), such Government may, by notification, declare that the whole or any part of the area comprised within the limits of the bed of any cho shall vest in the State Government for such period and subject to such conditions (if any) as may be specified in the notification.

Provided that no such declaration shall be made in respect of or shall affect any land included within the limits of the bed of any such cho, which, at the date of the publication of the notification making such declaration, is cultivated or culturable, or yields any produce of substantial value.

(3) When the owners or occupiers of such locality are unable to agree among themselves regarding the carrying out of such measures, the decision of those paying the larger amount of land revenue shall be held to be binding on all.

(4) The State Government may, from time to time, by like notification, extend the period during which any such area shall remain vested in the State Government.

Effect of notification to suspend or Extinguish private rights in the area notified under section 8 9. Upon the making of any declaration under subsection (2) of section 8, all private rights of whatever kind existing in or relating to any land comprised within the area specified in the notification containing such declaration at the time of the publication thereof, shall be suspended for the period specified in the declaration and for such further period (if any) to which such period may at any time be extended. Provided that, as far as circumstances admit, such rights of way and water shall be reserved, in respect of every such area, as may be necessary to meet the reasonable requirements and convenience of the person (if any) who, at the time of the making of such declaration, possessed any such rights over such area	
Power of Deputy Commissioner to delimit the bed and to decide what constitutes such bed. Power to take possession of bed when vested in State Government. 10. (1) The Deputy Commissioner shall, for the purposes of every notification issued under subsection (2) of section 8, fix the limits of the comprised within the bed of the	

photo to which such notification is to apply. (2) Upon the publication of a notification containing any declaration under subsection (2) of section 8, it shall be lawful for the Deputy Commissioner, to - (a) take possession of the area specified in such declaration; (b) eject all persons there from ; and to (c) deal with such area while it remains vested in the State Government as if it were the absolute property of the State Government.	
11. No person shall be entitled to any compensation for anything at any time done, in good faith in exercise of any power conferred by section 8, section 9 or section 10.	
12. (Condition as to sale of land acquired under the Act and obligation of Local Government to keep account of moneys expended on such land) Repealed by Act VIII of 1926, section 4.	
POWER TO ENTER UPON AND DELIMIT NOTIFIED AREAS AND BEDS 13. It shall be lawful for the Deputy Commissioner and for subordinate officers, servants, care takers, and workmen, from time to time, as occasion may require. (A) to enter upon any survey	

any land comprised within any area in regard to which any notification has been issued under section 3 or section 8 or in regard to which a notification is proposed to be issued under section 5-A area in regard to which any notification has been issued under section 3 or section 8 or in regard to which a notification is proposed to be issued under section 5-A; (b) to erect bench-marks on and to delimit and demarcate the boundaries of any such area; and (c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to give effect to all or any of the provisions of this Act : Provided that reasonable compensation to be assessed and determined in the manner in this Act provided shall be made in respect of any damage or injury caused to the property or rights of any person in carrying out any operations under the provisions of this section, but no such compensation shall be payable in respect of any this done under the said provisions within the limits of any area notified under section. 8	
14. (1) . The Deputy Commissioner shall (a) fix a date for inquiring into all claims made under section 7 and may in his discretion from time to time adjourn the inquiry	

to a date to be fixed by him;
 (b) record in writing all statements made under section 7;
 (c) inquire into all claims duly preferred under section 7; and
 (d) make and award upon each such claim, setting out therein the nature and extent of the right claimed, the person or persons making such claim, the extent (if any) to which, and the person, or persons in whose favour, the right claimed is established, the extent to which it is to be restricted or prohibited that the nature and amount of the compensation (if any) awarded.

(2) For the purposes of every such inquiry, the Deputy Commissioner may exercise all or any of the power of a Civil Court in the trial of suits under the Code Civil Procedure Act XIV of 1882.

(3) The Deputy Commissioner shall announce his award to such persons interested, or their representatives, as are present, and shall record the acceptance of those who accept it. To such as are not present, the Deputy Commissioner shall cause immediate notice of his award to be given.

15. (1) In determining the amount of compensation, the Deputy Commissioner shall be guided, so far as may be, by the provisions of sections 23 and 24 of the Land Acquisition Act,

1894 and as to matters which cannot be dealt with under those provisions by what is just and reasonable in the circumstances of each case. (2) The Deputy Commissioner may, with the sanction of the State Government and the consent of the person titled, instead of money award compensation in land or by reduction in revenue or in any other form. (3) If in any case, the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such right is so prohibited.	
Record of rights in respect of Notified area. 16. (1) For every area, notified under section 3 or section 8, the Deputy Commissioner shall prepare a record setting forth the nature, description, local situation and extent of all rights mentioned in section 4 and section 5- (a) existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8, (b) regulated, restricted or prohibited by an order under section 4 or section 5 (2) When any award is made under section 14, its effect upon any right shall also be recorded	

therein.	
Mode of proclaiming notifications and of serving notices, orders and processes issued under the Act.	
17. (1) Upon the publication of a notification issued under any of the provisions of this Act, the Deputy Commissioner shall cause public notice of the substance thereof to be given at convenient places in the locality to which such notification relates. (2) The procedure prescribed in sections 20, 21 and 22 of the Punjab Land Revenue Act, 1887, shall be followed, as far as may be, in proceedings under this Act.	
18. Every order passed and every award made by a Deputy Commissioner under this Act, shall, for the purposes of appeal, review and revision, respectively be deemed to be the order of a Collector within the meaning of sections 13, 14, 15 and 16 of the Punjab Land Revenue Act, 1887. Provided that nothing in this Act contained shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded as to the apportionment or distribution thereof amongst such persons or any of them.	

	9. After section 18 of the principal Act, the following section shall be inserted, namely:- "18A. Power to exempt.-If the State Government is of the opinion that the operation of any of the provisions of this Act or any part of notification or order issued under this Act, as the case may be, causes or has caused undue hardship or circumstances exist which render it expedient so to do, it may, subject to such terms and conditions, as it may impose, by an order, exempt any class of persons or areas or land from all or any provisions of this Act."
19. Any person who, within the limits of any area notified under section 3, commits any breach of any regulation made, restriction or prohibition imposed, order passed or requisition made under sections 4, 5, 5-A, or 7-A shall be punished with imprisonment for a term which may extend to one month, or with a fine which may extend to one hundred rupees, or with both.	
20. The provisions of section, 52, 54, 55, 56, 57, 58, 59, 61, 61, 62, 64, (excluding the last sentence), 66, 67, 68 and 73 of the Indian Forest Act, 1927, shall so far as applicable, be read as part of this Act, and for	

the purposes of those provisions, every offence punishable under section 19 shall be deemed to be a "forest offence", and every officer employed in the management of any area notified under section 3 or section 8, as caretaker or otherwise, shall be deemed to be a forest officer.	
21. No suit shall lie against the Government for anything done under this Act, and no suit shall lie against any public servant for anything done, or purporting to have been done, by him, in good faith under this act.	
22. (1) The State Government may make rules, consistent with this Act, - (a) regulating the procedure to be observed in any inquiry or proceeding under this Act; and (b) generally for the purpose of carrying into effect all or any of the provisions of this Act. (2) All rules made under this section shall be published in the Official Gazette.	
	10. After section 22 of the principal Act, the following section shall be added, namely:- "23. Savings.- (1) The orders and notifications issued under this Act shall be deemed to have been amended so as to

	exclude the categories of land covered under section 3A with effect from the date of issuance or publication of such orders or notifications. (2) For the removal of doubts, it is declared that- (a) the lands, excluding those covered under section 3A, shall continue to remain included in the orders or notifications issued under section 3, 4 or 5 or deemed to have been issued under section 4A for the periods stated therein; (b) wherever the period of validity is not stated, such order or notification shall be deemed to be valid for a period of thirty years from the date of its commencement; and (c) after the expiry of the period stated in such orders or notifications, the regulations, restrictions or prohibitions imposed therein shall cease to exist.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 4677/1985

M.C. MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IN RE: KANT ENCLAVE (DISPOSED OF)

(1) IA NO. 28904/2019 (APPLN. FOR EXTENSION OF TIME FOR COMPLIANCE AND PLACING ON RECORD THE LIST OF DETAILS OF CONVEYANCE DEED IN TERM OF ORDER DATED. 14.1.2019 ON B/O M/S R. KANT AND CO.)

(2) IA NO. 33347/2019 (APPLN. FOR EXTENSION OF TIME FOR DEPOSIT OF REMAINING AMOUNT ON B/O SH. VISHWA NATH AGRAWAL AND ANR.)

Date : 01-03-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE DEEPAK GUPTA

Counsel for parties

Mr. Ranjit Kumar, Sr. Advocate (A.C.)
Mr. A.D.N. Rao, Adv.
Mr. Sudipto Sircar, Adv.
Mr. Rishi Raj Sharma, Adv.Mr. A.N.S. Nadkarni, ASG
Mr. R. Balasubramanian, Adv.
Mr. Rajesh K. Singh, Adv.
Mr. Pranay Ranjan, Adv.
Mr. Sachin Sharma, Adv.
Mr. Raj Bahadur, Adv.
Mrs. Anil Katiyar, Adv.
Mr. Gurmeet Singh Makker, Advocate
Mr. D.L. Chidananda, Adv.
Ms. Suhasini Sen, Adv.Mr. S.B. Upadhyay, Sr. Adv.
Mr. Pavan Upadhyay, Adv.
Ms. Anisha Upadhyay, Adv.
Mr. Sarvjit Pratap Singh, Adv.
Mr. Nishant Kr., Adv.
Ms. Manshika Gupta, Adv.
Ms. Swati, Adv.
Ms. Sharmila Upadhyay, Advocate

Mr. Kapil Sibal, Sr. Adv.
Mr. Vishal Rai, Adv.
Mr. Dinesh C. Pandey, Advocate

Mr. Shyam Divan, Sr. Adv.
Mr. Tejaswi Kumar Pradhan, Advocate
Mr. Manoranjan Paikaray, Adv.

Mr. Anil Grover, AAG
Mr. Satish Kumar, Adv.
Mr. Sanjay Kumar Visen, Advocate

Mr. Anand Mishra, Advocate

Mr. Shivaji M. Jadhav, Advocate

Mr. T.V. George, Advocate

Mr. Santosh Mishra, Advocate

Petitioner-In-Person

Mr. D.N. Goburdhun, Adv.
Ms. Gauri Goburdhan, Adv.
Ms. Pallavi Chopra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

IN RE: KANT ENCLAVE

It was submitted by the learned counsel appearing for the parties that the State Government has proposed certain amendments in the Punjab Land Preservation Act, 1900 permitting the construction in the forest area and PLPA region.

It was submitted that even after the order was passed by this Court for removal of certain structures in Kant Enclave, in order to get rid of this order, the State of Haryana has made certain amendments in Punjab Land Preservation Act, 1900, by virtue of that they are permitting the construction in the forest area and PLPA region also. It was submitted to be a misadventure on the part of the State of Haryana to get rid of the order, in the method and manner it has been done. It was also submitted that forest cannot be permitted to be disturbed like this and no such activities should have been prima facie permitted.

Let the copy of the Amendment/Act be placed on record. Let State Government not to act without permission of the Court under the Amendment Act.

List on 08.03.2019.

As prayed by Mr. Shyam Divan, learned senior counsel appearing for the applicant in I.A. No. 33347/2019, Registry may accept the Demand Drafts for a sum of Rs.42,00,000/-. To be deposited on or before 02.03.2019.

The amount of Rs.45,00,000/- (Rupees Forty Five Lacs) mentioned in the Office Report dated 28.02.2019 and the amount of Rs.42,00,000/- (Rupees Forty Two Lacs) permitted to be deposited in this order shall be kept in Fixed Deposit Account(s) initially for a period of three months, which shall be renewed periodically.

I.A. Nos.28904/2019 & 33347/2019 are dismissed.

(NARENDRA PRASAD)
COURT MASTER

(JAGDISH CHANDER)
COURT MASTER

425
Annexure H-18

IN THE SUPREME COURT OF INDIA

I.A. NO. 93600 OF 2021

IN

W.P. (C) NO. 4677 OF 1985

IN THE MATTER OF

M.C. MEHTA

.... PETITIONER

V/s

UNION OF INDIA & ORS.

.... RESPONDENTS

(RE-KANT ENCLAVE MATTER)

AN APPLICATION ON BEHALF OF STATE OF
HARYANA FOR DIRECTIONS.

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND
HIS COMPANION JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE
APPLICANT / RESPONDENT

MOST RESPECTFULLY SHOWETH:-

1. That the captioned matter was listed for hearing on 01.03.2019 and this Hon'ble Court upon hearing the parties was pleased to direct the applicant- State of Haryana to place on record the Copy of Amendment / Act and further directed not to act without permission of this Hon'ble Court under the Amendment Act.
2. That as per the direction of this Hon'ble Court, the applicant - State of Haryana is placing on record, the Amendment Act i.e. The Punjab Land Preservation (Haryana Amendment) Bill 2019 (*hereinafter referred as to the Amendment Bill, 2019*) whereby certain amendments have been carried out by the applicant-State of Haryana in Punjab Land Preservation Act, 1900, (*hereinafter referred as to PLPA, 1900*) to achieve the objects and to implement

the provisions of the Act more effectively. The Bill seeking the amendment in the PLPA, 1900 was introduced in Haryana Vidhan Sabha (Legislative Assembly) and the amendments being carried out were passed by the Haryana Vidhan Sabha on 20.02.2019. The said Bill was published in Haryana Government Gazette (extraordinary) on 20th February, 2019 under proviso to Rule 128 of the Rules of procedure & conduct of business in Haryana Legislative Assembly and the assent of the Governor - State of Haryana has been obtained on 11.06.2019 but has not been published in Official Gazette after assent of the Governor- State of Haryana, for the information of general public. Thus, same has not been acted upon.

(A true copy of the Punjab Land Preservation (Haryana Amendment) Bill 2019 is annexed herewith and marked as ANNEXURE A-1, pg. No. _____).

3. That this Hon'ble Court vide its order dated 01.03.2019 has directed the applicant-State of Haryana to place on record the said Amendment/ Act and further not to act without the permission of this Hon'ble Court under the said Amendment Act.

In view of this, the present application is being filed before this Hon'ble Court for placing on record the Amendment Bill, 2019 and further to seek permission of this Hon'ble Court to act upon said amendment after due publication in official gazette.

(A true copy of order dated 01.03.2019 passed by this Hon'ble Court in CWP No.4677/1985 is annexed herewith and marked as ANNEXURE A-2 pg. No. _____).

4. That in PLPA 1900, there was no provision to rectify, amend or de-notify the order and Notification issued under the Act even where the same has been found to have inherent defect, mistakes or where certain land have been inadvertently included or found to have been issued in violation of prescribed procedure. Even, the PLPA, 1900 is not having any provision for re-notifying for extended period. Therefore, the amendments in PLPA, 1900 have been carried out by the applicant -State of Haryana with the sole object to make the provisions of the Act more effective, transparent and in the interest of public at large. The said amendment is in conformity with the constitutional rights granted under Article 300-A (Right to Property) of the Constitution of India.
5. That felling of trees in the State of Haryana at present is being regulated by issuance of General Order issued under Section 4 of PLPA, 1900. For effective regulation of tree felling, a specific and separate provision for the same has been introduced in the Amendment Bill, 2019 putting to rest all ambiguity or doubt in this regard.

It is submitted that in the Amendment Bill, 2019, Section 4A in regard to power to regulate felling of trees has been inserted.

6. That the PLPA, 1900 does not contemplate any provision providing reasonable opportunity of being heard before imposing restrictions, prohibition and regulations with respect to an area being proposed to be brought under such restrictions, prohibition and regulation by way of Notification under the Act.

It is submitted that by way of the Amendment Act, 2019, Section 3 of the PLPA, 1900 has been substituted by introducing Section 3(1), 3(2), 3(3) and 3(4) whereby the provisions have been made out for submitting the objections, providing opportunity of hearing and publishing in Gazette and newspapers only after recommendation by the Deputy Commissioner and consideration thereof by State Government.

It is further submitted that by way of Amendment Act, 2019, after Section 3 of Principal Act 1900, Section 3A has been inserted specifying the applicability of the Act.

7. That by way of Amendment Bill, 2019, after Section 6 and 18 of the PLPA 1900, Section 6A and Section 18A respectively have been inserted.

It is submitted that Section 6A gives power to the State Government to amend or rescind, if it is necessary only after recording reasons thereof. Further, Section 18A gives power to the State Government to exempt the applicability of operation of any provision of the Act.

8. That after Section 22 of the PLPA, 1900, Section 23 as 'savings' has been introduced.

(A true copy of Punjab Land Preservation Act, 1900 is being annexed and marked as ANNEXURE A-3 pg. No. _____). A true copy of the Punjab Land Preservation (Haryana Amendment) Act 2019 has already been annexed herewith as Annexure A-1. For kind convenience of this Hon'ble Court, the comparison Chart of the PLPA 1900 and the Amendment Bill 2019 is

annexed herewith marked as ANNEXURE A-4 pg. No. _____).

9. That this being the position of law mentioned herein above, the applicant - State Government faced with innumerable difficulties and to protect the livelihood of millions of citizens / residents of the State of Haryana had come out with the said Amendment Bill owing to exigencies to provide for inter-alia besides others for effective mechanism for regulating tree felling, introduction of principles of natural justice by providing an opportunity of hearing to affected parties and removal of difficulties to safeguard the interest of the citizens / residents of the State of Haryana as per the settled law.

10. That it will not be out of place to mention here that this Hon'ble Court time and again has held that the Legislature has full power to bring any legislation in the interest of public at large without any restriction.

It is respectfully submitted that when order dated 01.03.2019 was passed, the copy of Amendment Bill was not before this Hon'ble Court.

11. That the present application is being made bonafide and in the interest of justice, equity and fair-play and the balance of convenience also lies in favour of the Applicant - State of Haryana.

12. That the annexures annexed with the present application are the true and correct copies of their respective originals.

430

PRAYER

On the foregoing submissions, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) direct to take on record the Punjab Land Preservation (Haryana Amendment) Act 2019
- (b) grant permission to applicant-State of Haryana to act upon the Punjab Land Preservation (Haryana Amendment) Act 2019 after due publication in official Gazette
- (c) pass such other order and/or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR ACT OF KINDNESS THE APPLICANT
IS DUTY BOUND SHALL EVERPRAY.

Drawn By:
B K Satija, AAG, Haryana

Filed By:

(SANJAY KUMAR VISEN)
(Advocate for the applicant)

Drawn on:

Filed on:
New Delhi

ITEM NO.2

COURT NO.3

SECTION XVII

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). 10294/2013

NARINDER SINGH & ORS.

Appellant(s)

VERSUS

DIVESH BHUTANI . & ORS.

Respondent(s)

IA No. 155784/2019 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 155775/2019 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 2091/2021 - CLARIFICATION/DIRECTION
IA No. 2082/2021 - INTERVENTION/IMPLEADMENT
IA No. 155781/2019 - INTERVENTION/IMPLEADMENT
IA No. 155772/2019 - INTERVENTION/IMPLEADMENT
IA No. 148663/2018 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 136483/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 125428/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 105838/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

C.A. No. 8454/2014 (XVII)

IA No. 192694/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 8173/2016 (XVII)

IA No. 2/2016 - APP FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS
IA No. 93369/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 97596/2020 - EXEMPTION FROM FILING O.T.
IA No. 138593/2019 - EXEMPTION FROM FILING O.T.
IA No. 97595/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 138590/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 1/2016 - STAY APPLICATION)

C.A. No. 11000/2013 (XVII)

IA No. 196807/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 3/2014 - STAY APPLICATION)

W.P.(C) No. 1008/2021 (X)

IA No. 112315/2021 - EXEMPTION FROM FILING AFFIDAVIT)

W.P.(C) No. 1031/2021 (X)

IA No. 146855/2021 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 143964/2021 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 116303/2021 - EXEMPTION FROM FILING O.T.
 IA No. 146851/2021 - INTERVENTION APPLICATION
 IA No. 143956/2021 - INTERVENTION APPLICATION
 IA No. 116302/2021 - STAY APPLICATION)

W.P.(C) No. 1320/2021 (X)
 (FOR ADMISSION)

Date : 31-03-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
 HON'BLE MR. JUSTICE ABHAY S. OKA
 HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Parties:

Mr. Tushar Mehta, S.G.
 Mr. K.M. Natraj, ASG
 Mr. Anil Grover, Sr.AAG
 Mr. Arun Bhardwaj, Sr. Adv.
 Mr. B.K. Satija, AAG
 Mr. Ajay Bansal, Adv.
 Mr. Rahul Kr. Sharma, Adv.
 Mr. Navin Gupta, Adv.
 Mr. Samar Vijay Singh, Adv.
 Mr. Abhishek Sharma, Adv.
 Ms. Gauraan, Adv.
 Mr. Sanjay Kumar Visen, AOR
 Dr. Monika Gusain, AOR
 Ms. Babita Mishra, Adv.

Ms. Aishwarya Bhati, ASG
 Mr. Sarad Kr. Singhanian, Adv.
 Mr. Gurmeet Singh Makker, AOR
 Mr. Sumit Teterwal, Adv.
 Mr. Vanshdeep Dalmia, Adv.
 Mr. Chinmayee Chandra, Adv.

Mr. Vikas Singh, Sr. Adv.
 Ms. Monisha Handa, Adv.
 Mr. Rajul Shrivastav, Adv.
 Mr. Mohit D. Ram, AOR

Mr. Sanjay Parikh, Sr. Adv.
 Ms. Srishti Agnihotri, AOR
 Mr. Satwick Parikh, Adv.
 Ms. Sanjana Thomas, Adv.

Mr. Colin Gonsalves, Sr. Adv.
 Mr. Kawalpreet Kaur, Adv.
 Mr. Haider Ali, Adv.

Ms. Amiy Shukla, AOR
Mr. Satya Mitra, AOR

Mr. Manoj Swarup, Sr. Adv.
Mr. Neelmani Pant, Adv.
Mr. Raghav Bhatia, Adv.
Mr. Arunesh Grover, Adv.
Mr. Ankit Swarup, AOR

Mr. Narender Hooda, Sr. Adv.
Mr. Shekhar G Devasa, AOR
Mr. Manish Tiwari, Adv.
Mr. Shashi Bhushan Nagar, Adv.
Ms. Satvisa Pattanayak, Adv.
M/S. Devasa & Co., AOR

Mr. D.N.Goburdhun, Sr. Adv.
Mr. Aakarsh Kamra, AOR
Ms. Gauri Goburdhun, Adv.

Ms. Sunita Singh Chauhan, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. S.K. Rajora, Adv.
Mr. Mr. Akhileshwar Jha, Adv.
Mr. E. Vinay Kumar, Adv.
Mr. Naresh Kumar, AOR

Ms. Ranjeeta Rohatgi, AOR
Mr. Sourabh Tandon, Adv.
Ms. Charu Narula, Adv.
Mr. Anuj Gupta, Adv.

Mr. Tejaswi Kumar Pradhan, AOR
Mr. Manoranjan Paikaray, Adv

Mr. Shekhar G. Devasa, AOR
Mr. Manish Tiwari, Adv.
Mr. Shashi Bhushan Nagar, Adv.
Ms. Satvisa Pattanayak, Adv.
M/S. Devasa & Co., AOR

Mr. Ritwick Dutta, Adv.
Mr. Rahul Choudhary, Adv.
Ms. K. V. Bharathi Upadhyaya, AOR

Mr. Kedar Nath Tripathy, AOR

Mr. Sibbo Sankar Mishra, AOR

Mr. Vijay Kumar, AOR

Ms. Manjeet Kirpal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard counsel for the parties.

Arguments concluded.

Judgment reserved.

Written submissions by the parties be filed
within one week from today.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER