हरियाणा सरकार
कार्यालय उप वन संरक्षक फरीदाबाद
बाई पास रोड, नजदीक रोज गार्डन, सैक्टर–14, फरीदाबाद, दूरभाष 0129–2286760

क्रमांक दिनांक

सेवा में

अति0 प्रधान मुख्य वन संरक्षक, एफ0सी0ए0,
हरियाणा, पचंकूला।

विषय **Diversion of 0.2369 Ha of forest land for access to proposed petrol pump of HPCL between Ankhir Chowk Surajkund in village Mewla Maharajpur M.No. 54 killa No, 18, Tehsil Badkhal, District Faridabad**

संदर्भ **आपका पत्र क्रमांक एफ0सी0ए0/ 3453 दिनांक 06.03.2023**

उपरोक्त विषय के संबंध में आपको अवगत करवाया जाता है कि प्रपोजड पेट्रोल पम्प का ऐरिया special section 4 of village Mewla Maharajpur में आता हैं। इससे संबंधित मामला सिविल अपील नं0 10294 आफ 2013 है, जिसमें दिये गये निर्णय दिनांक 21.7.2022 की प्रति आपको ई–मेल पर भेज दी गई है। यह आपको सूचनार्थ एवं आवश्यक कार्यवाही हेतू प्रेषित है।

—Sd/—
उप वन संरक्षक,
फरीदाबाद।

पृ0 क्रमांक 63 दिनांक 25-4-2023

एक प्रति मुख्य वन संरक्षक, द0 परि0, गुरूग्राम को सूचनार्थ एवं आवश्यक कार्यवाही हेतू प्रेषित है।

उप वन संरक्षक,
फरीदाबाद।

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 10294 OF 2013

NARINDER SINGH & ORS. ...APPELLANT(S)

v.

DIVESH BHUTANI & ORS. ...RESPONDENT(S)

With

CIVIL APPEAL No. 8454/2014

CIVIL APPEAL No. 8173/2016

CIVIL APPEAL No. 11000/2013

WRIT PETITION (Civil) No. 1008/2021

WRIT PETITION (Civil) No. 1031/2021

WRIT PETITION (Civil) No. 1320/2021

J U D G M E N T

ABHAY S. OKA, J.

1. The broad issue involved in these appeals and writ petitions is "Whether a land covered under a special order issued by the Government of Haryana under Section 4 of the Punjab

Land Preservation Act, 1900 (for short, 'PLPA') is a 'forest land' within the meaning of the Forest (Conservation) Act, 1980 (for short, 'the 1980 Forest Act')?"

FACTUAL ASPECTS

2. Civil Appeal No.10294 of 2013, Civil Appeal No.8454 of 2014, Civil Appeal No.8173 of 2016 and Civil Appeal No.11000 of 2013 take exception to the orders passed by the National Green Tribunal (for short, 'the NGT').

3. Civil Appeal No.10294 of 2013 takes exception to the order dated 03rd May 2013 passed by the NGT in Original Application No.42 of 2013. The said application was filed for inviting the attention of the NGT to the illegal non-forest activities of the encroachers on the lands bearing Khasra Nos.1359, 1374 and 1378 of Village Anangpur Tehsil Ballabhgarh, District Faridabad in the State of Haryana. The NGT passed the impugned order restraining the carrying on of any non-forest activities on the subject lands. The NGT proceeded on the footing that the lands at village Anangpur covered by the order dated 18th August 1992 issued under Section 4 of PLPA were forest lands within the meaning of the 1980 Forest Act. Before the said order dated 18th August 1992 was passed, a notification dated 10th April 1992

under Section 3 of PLPA was issued notifying the entire area covered by Ballabhgarh Tehsil of Faridabad District. The appellants are running marriage halls on the land subject matter of the said order dated 18th August 1992, issued under Section 4 of PLPA.

4. Civil Appeal No.8173 of 2016 impugns the order dated 16th May 2016 passed by the NGT in Original Application No.519 of 2015. In Original Application No.519 of 2015, a prayer was made to stop the commercial and non-forest activities on the lands bearing Khasra No.182 Min, RECT No.61, Kila No.19 (8-0), 20/1(0-7) and 22/2 (7-17) of Village Ankhir, Tehsil Ballabhgarh, District Faridabad in the State of Haryana. The said lands were the subject matter of another order issued on 18th August 1992 by the Government of Haryana in the exercise of the power under Section 4 of PLPA in respect of certain lands in village Ankhir. The NGT held that the lands covered by the said order under Section 4 were forest lands within the meaning of the 1980 Forest Act.

5. Civil Appeal No.11000 of 2013 takes exception to the same order dated 03rd May 2013 passed by the NGT in Original Application No.42 of 2013, which is also the subject matter of

challenge in Civil Appeal No.10294 of 2013. The appellants claim to be the owners of a restaurant on the land subject matter of the order dated 18th August 1992, issued under Section 4 of PLPA.

6. Civil Appeal No.8454 of 2014 also takes exception to the same order dated 03rd May 2013 of the NGT. The appellants therein are having marriage halls on the subject land.

7. The petitioners in Writ Petition (Civil) No.1031 of 2021 have invoked Article 32 of the Constitution of India. The petitioners claim to be the holders of the lands in Villages Anangpur, Ankhir and Mewla Maharajpur (for short, 'the said three villages') in Tehsil Ballabhgarh, District Faribadad in the State of Haryana. The lands held by them are the subject matter of the three separate orders dated 18th August 1992 issued under Section 4 of PLPA in respect of certain lands in the said three villages. The petition is based on a Public Notice dated 21st August 2021 issued by the Municipal Corporation of Faridabad informing that in compliance with the orders passed by this Court, a time of two days has been granted to the members of the public to remove illegally constructed farm houses/banquet halls/ structures on forest lands, failing which the Municipal

Corporation and Forest Department of the State Government will undertake action to remove the said structures on 23rd August 2021. In the writ petition, it is contended that the said notice was issued based on the orders passed by this Court from time to time in the Petitions for Special Leave to Appeal (Civil) Nos.7220-7221 of 2017 *(Municipal Corporation of Faridabad v. Khori Gaon Residents Welfare Association through its President).* A declaration was prayed for that the orders dated 18th August 1992 issued under Section 4 of PLPA were illegal apart from praying for the other reliefs. It was contended that the said orders dated 18th August 1992 were illegal as the compliance with the mandatory provisions of Sections 3, 6, 7 and 14 of PLPA was not made. A prayer was also made for issuing a writ of *mandamus* to the State of Haryana to notify and implement the Punjab Land Preservation (Haryana Amendment) Act, 2019 (for short, 'the 2019 Amendment Act').

8. The petitioner in Writ Petition (Civil) No.1008 of 2021 claims to be a resident of Village Ankhir. He claims to be the owner of the land bearing Khasra Nos.32 and 39 of Village Ankhir. One of the contentions raised by the petitioner is that the construction on the subject lands was made before 18th

August 1992. Therefore, a direction is sought to restrain the respondents from disturbing the peaceful possession of the petitioner over the subject land and from demolishing structures thereon.

9. The petitioners in Writ Petition (Civil) No.1320 of 2021 claim to be the residents of Village Old Lakkarpur Khori. They contend that the Faridabad Municipal Corporation acting in collusion and connivance with the owners of the hotels and farmhouses mentioned in the petition has illegally demolished their structures. It is contended that the said Municipal Corporation has implemented orders passed by this Court in the Petitions for Special Leave to Appeal Nos.7220-7221 of 2017 by picking and choosing some structures while not disturbing the hotels and farmhouses constructed on the lands subject matter of the orders passed under Section 4 of PLPA. The prayer in the petition is for issuing a writ of *mandamus*, directing the respondents to restore possession of the petitioners in respect of their residential structures in Village Old Lakkarpur Khori.

SUBMISSIONS OF THE PETITIONERS/APPELLANTS

10. Shri Vikas Singh, the learned Senior Counsel appearing for the petitioners in Writ Petition (Civil) No.1031 of 2021, has made

detailed submissions. His primary submission is that merely because the subject lands are covered by the notifications/orders issued by the State of Haryana under Sections 3, 4 and 5 of PLPA, the same cannot be *ipso facto* treated as forest lands within the meaning of the 1980 Forest Act. He submitted that though the lands in question have been shown as unclassified forests in the records of the State Forest Department, it is not conclusive as the Forest Department is only a supervisory department. He invited our attention to the scheme of PLPA and particularly, Sections 3, 4 and 5. He pointed out that a notification under Section 3 of PLPA can be issued only when, according to the opinion of the State Government, conservation of sub-soil water or the prevention of erosion is needed in any area subject to erosion or likely to become liable to erosion. He submitted that the orders under Sections 4 and 5 of PLPA could only be issued in respect of the lands covered by a valid notification under Section 3. His submission is that issuing a proper notification under Section 3 of PLPA is a *sine qua non* for issuing the orders under Sections 4 and 5 of PLPA. His submission is that a notification under Section 3 of PLPA was not issued regarding any of the lands in the said three

villages. He relied upon the notification dated 17th October 1989 issued under the Punjab Land Revenue Act, 1887 (for short, 'the Land Revenue Act') and contended that by the said notification, the State Government varied the limits of Tehsil Ballabhgarh, District Faridabad by excluding the area of the said three villages. He submitted that after 17th October 1989, a notification under Section 3 of PLPA was not issued regarding the lands in the said three villages. Therefore, the orders issued in respect of the three villages under Sections 4 and 5 are illegal. He pointed out that after the amendment made in 1926 to PLPA, the orders contemplated under Sections 4 and 5 could be issued only for a temporary period. He submitted that once the period specified in the orders under Sections 4 and 5 expires, the restrictions imposed by the said orders cease to apply. He pointed out that in any case, the orders dated 18th August 1992 issued under Section 4 of PLPA prohibit certain activities such as clearing or breaking up of lands and quarrying of the stones, etc., without permission of the authorities mentioned therein. Thus, the only restriction imposed by the orders under Section 4 is of prohibiting certain activities without obtaining prior permission from the authorities mentioned therein. He urged

that the provisions of PLPA are not intended to protect any forest or forest activities.

11. He invited our attention to the provisions of the Indian Forest Act, 1927 (for short, 'the 1927 Forest Act'). He submitted that the Act deals with three categories of forest lands. The first category is of the reserved forests covered by Sections 3 to 27. The second category is of the protected forests or waste-lands which are the property of the Government and not included in the reserved forests. Sections 29 to 34 enable the State Government to notify such lands as protected forests. The third category is of private lands. Sections 35 to 38 allow the State Government to regulate or prohibit certain activities, such as, breaking up or clearing of land for cultivation, etc., in any forest or waste lands. He pointed out that the important difference between Section 4 of PLPA and Section 35 of the 1927 Act is that Section 4 contains permissive or enabling provisions, and Section 35 is completely prohibitory. He urged that what is prohibited under Section 35 cannot be permitted even by the authorities. He submitted that even the lands covered by Sections 35 to 38 of the 1927 Act, which are private lands with forests, do not vest in the Government. He pointed out that the

acquisition of such lands can be made under the Land Acquisition Act, 1894 by the State Government or upon the request of the owners, which should be made within not less than three months from the notification issued under Section 35 and not later than twelve years from the date of such notification. He urged that the 1927 Act is the appropriate legislation dealing with forests. The fact that the provisions of Sections 35 to 38 dealing with private lands have been included in Chapter V of the 1927 Act fortifies the submission of the petitioners that PLPA is not a legislation which deals with or is intended to deal with forests on private properties.

12. Without prejudice to the submission that PLPA does not deal with forests at all, the learned senior counsel submitted that after the 1927 Forest Act came into force, the provisions of the PLPA, to the extent to which the same deal with lands which fall within the domain of the 1927 Forest Act, became inoperative being repugnant to the 1927 Forest Act. The 1927 Forest Act is a central legislation, which must prevail. Hence, if any private land is to be treated as a forest land, the same must satisfy the tests laid down in Chapter V of the 1927 Forest Act.

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13. Another limb of his argument is that the subject lands were a part of the controlled area notified under Section 29 of the Faridabad Complex (Development and Regulation) Act, 1971 (for short, 'the 1971 Act') and in fact, the final development plan covering the subject lands was prepared and notified on 17th December 1991. The development plan under the 1971 Act is prepared after following a detailed procedure of assessment of areas which are likely to be notified as controlled areas for the purposes of planned development. Once a land is designated as a controlled area, it will cease to be a forest.

14. The learned senior counsel urged that as mandated by Section 6 of PLPA, no inquiry was conducted before imposing the regulations and restrictions under Sections 4 and 5 of PLPA. Public notice of the Government Orders dated 18th August 1992 was not published in accordance with Section 7 of PLPA. Moreover, under Section 7(b), the land owners are entitled to receive compensation from the State Government on account of restrictions imposed by Sections 4 or 5 of PLPA. But the land owners affected by the orders dated 18th August 1992 have not been paid any compensation. He submitted that even Section 37 of the 1927 Forest Act provides for payment of compensation

to the owners of the private lands having a forest. He urged that assuming that the orders dated 18th August 1992 under Section 4 are legal, the petitioners ought to have been paid adequate compensation. He submitted that once the 2019 Amendment Act is allowed to be implemented by modifying the order dated 1st March 2019 passed in Writ Petition (Civil) No.4677 of 1985, the entire issue will be ironed out. He submitted that the 2019 Amendment Act seeks to strike a balance between the rights of the land owners and the need to have environmental protection.

15. Referring to the decision of this Court in the case of ***T.N. Godavarman Thirumulkpad v. Union of India and Ors.***[1] (1997 *Godavarman's case),* he submitted that the said decision does not deal with PLPA. He also invited our attention to the further order passed in the case of ***T. N. Godavarman Thirumulkpad v. Union of India and Ors.***[2] (2008 *Godavarman's case)* and submitted that this Court considered lands covered by the orders under Sections 4 and 5 of PLPA only in the context of carrying on mining activity. The core issue of whether the lands subject matter of the orders under Section 4 and 5 of PLPA *ipso facto* become forest lands under the 1980

[1] (1997) 2 SCC 267
[2] (2008) 16 SCC 401

Forest Act is not considered by this Court. He also commented upon another decision of this Court in the case of ***M.C. Mehta v. Union of India and Ors.***[3] *(1st M.C.Mehta case).* He submitted that what is considered by this Court is the stand of the Forest Department of the State Government that the areas notified under Sections 4 and 5 of PLPA are not forests. He pointed out that while rejecting the said contention, this Court has not dealt with the core issue of the legal effect of the orders issued under Sections 4 and 5. The same is the argument made by him about a decision of this Court in the case of ***M.C. Mehta v. Union of India & Ors.***[4] *(2nd M.C. Mehta case).* However, he submitted that in the case of ***B.S. Sandhu v. Government of India and Ors.***[5], this Court has categorically held that the lands covered by the orders under Sections 4 and 5 of PLPA may or may not be forest lands within the meaning of the 1980 Act.

16. The learned counsel made extensive submissions on the decisions of this Court in the case of ***M.C. Mehta (Kant Enclave Matters, In Re.) v. Union of India & Ors.***[6] *(3rd M.C. Mehta case).* His submission is that though this Court has dealt with the

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[3] (2004) 12 SCC 118
[4] (2008) 17 SCC 294
[5] (2014) 12 SCC 172
[6] (2018) 18 SCC 397

issue raised by the applicant (R. Kant & Co.) about the order dated 18th August 1992 issued under Section 4, the decision is *per incuriam* as this Court has failed to consider and follow the binding decision of a co-ordinate Bench in the case of ***B.S. Sandhu***[5]. Moreover, he has submitted that the applicant in the said case did not challenge the validity of the order dated 18th August 1992 made under Section 4 of PLPA.

17. Relying upon various maps tendered across the bar, he urged that if the lands covered by the notifications/orders under Sections 3, 4 and 5 of PLPA are to be treated as forests, the entire Districts of Faridabad and Gurugram will have to be treated as forests under the 1980 Forest Act, which will have disastrous consequences.

18. The learned counsel appearing for the appellants in Civil Appeal No.8173 of 2016 firstly urged that the Faridabad Tehsil has not been notified under Section 3 of PLPA. He pointed out that Ballabhgarh and Faridabad are the Tehsils within District Faridabad. The notification under Section 3 of PLPA dated 10th April 1992 is only in respect of Ballabhgarh Tehsil. His submission is that there was no notification issued under Section 3 of PLPA in respect of the land of the appellants in

village Ankhir and therefore, the order under Section 4 is illegal. He submitted that the 1927 Forest Act provides for a grant of compensation in respect of the private lands declared as forests. He submitted that there is an inconsistency between the 1927 Forest Act which is a Central legislation and PLPA which is a State Legislation. He urged that under Sections 4, 29 and 35 of the 1927 Forest Act, there is a provision to declare lands of different categories as forests. However, the same can be done only after prior notice and after granting an opportunity of being heard to the affected persons. Moreover, under Section 37 of the 1927 Forest Act, there is a provision for acquiring private land declared as a forest and consequently, there is a provision regarding payment of compensation. Assuming that the lands covered by the orders issued under Section 4 and 5 of PLPA are forests under the 1980 Forest Act, there is no provision for giving a hearing to the owners/affected persons before issuing the orders. There is no provision for acquiring such lands and only a limited compensation is payable under PLPA to the owners. He pointed out the earlier affidavits filed on behalf of the State of Haryana. The First Affidavit is of Shri Banarsi Dass, Principal Chief Conservator of Forests, Haryana which is dated 08th

December 1996. He also pointed out the affidavit dated 25th February 1997 filed by Shri S.K. Maheswari, Commissioner and Secretary to the Government of Haryana, Forest Department. He submitted that assuming that the contentions raised in both the affidavits are correct, the area covered by the notifications under Sections 4 and 5 of PLPA will continue to be the forest only during the currency of the periods specified in the orders. The learned counsel also relied upon the decisions of this Court in the case of ***B. S. Sandhu***[5] in support of his case that the lands covered by the orders passed under Sections 4 and 5 are not necessarily forests within the meaning of the 1980 Forest Act. He submitted that the limited object of PLPA was to preserve sub-soil water and to stop soil erosion. He submitted that PLPA was never intended to deal with forests or forest lands. He submitted that whether a particular land is a forest within the meaning of the 1980 Forest Act, is an issue to be considered and decided in the facts of each case. Lastly, he urged that Section 4 of PLPA prohibits only certain activities without permission of the authorities named therein. This is an indication that the lands covered by the orders under Section 4 are not forests.

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19. The submissions of the appellants in Civil Appeal No.10294 of 2013 are also similar. In addition, a submission was made that as required by Section 7 of PLPA, notifications/orders under Sections 3, 4 and 5 were not published in vernacular language. The appellants also relied upon the provisions of Section 29 of the 1971 Act and Section 27 of the National Capital Region Planning Board Act, 1985 (for short, 'the NCR Act'). He submitted that the NCR Act will have an overriding effect over PLPA, which is a State Act.

THE SUBMISSIONS OF THE STATE GOVERNMENT

20. The learned Solicitor General of India appearing for the State Government extensively relied upon the Additional Affidavit filed by Shri Suresh Dalal, Addl. Principal Chief Conservator of Forest, Haryana. He submitted that the effect of the 1980 Forest Act is that except for certain purposes mentioned in Section 2, forest lands can always be diverted for non-forest use with the prior permission of the Central Government. Our attention was invited to various provisions of PLPA and amendments carried out thereto from time to time. He submitted that the Statement of Objects and Reasons of the 2019 Amendment Act makes it clear that the object of PLPA was

not to extinguish property rights. The learned counsel urged that the main object was to prevent erosion of soil and conservation of sub-soil water. It was contended that PLPA has no connection whatsoever with the issue of forests. He submitted that the only decision of this Court that deals with the effect of the orders under Sections 4 and 5 is in the case of ***B. S. Sandhu***[5], which clearly holds that a land covered by such orders may or may not be a forest. His submission is that the decision in the ***3rd M.C. Mehta* case**[6] ignores the binding decision of a co-ordinate Bench in the case of ***B. S. Sandhu***[5]. The learned counsel clarified the stand taken on oath by the State Government in earlier proceedings. He submitted that in the case of Panchkula, Ambala, Yamunanagar, Gurugram, Faridabad and some other Districts, practically 100% area had been notified under Sections 3, 4 and 5 of PLPA, and therefore, the entire area covering the said Districts cannot be a forest. It was pointed out that about 39.35% of the geographical area of the State of Haryana has been notified under PLPA. His submission is that all the lands notified under PLPA cannot be treated as forest lands under the 1980 Forest Act as the consequences thereof will be disastrous. Our attention was invited to paragraph 81 of

the said Additional Affidavit, in which it is pointed out that about 59 public projects have come up in the areas notified under Sections 3, 4 and 5 of PLPA. The projects/structures include CRPF Group Centre, Terminal Ballistic Research Laboratory, Police Lines, Government ITI College, etc. He laid emphasis on the 2019 Amendment Act. It was submitted that as there is no challenge to the validity of the 2019 Amendment Act, the State Government may be permitted to implement the same. The learned counsel further stated that the only factual statement made in the earlier affidavits dated 08th December 1996 and 25th February 1997 is that the areas notified under Sections 4 and 5 of PLPA were being shown as State regulated forest areas during the currency of the notifications. However, that practice was discontinued later. The affidavits do not deal with the status of the notified lands.

SUBMISSIONS OF THE INTERVENORS/APPLICANTS

21. The learned senior counsel Shri Colin Gonsalves appearing for the applicant in I.A. No. 33254 of 2022 firstly submitted that the claim made by the State that very large areas of the State and in particular Faridabad and Gurgaon districts have been notified under PLPA is fallacious. For that purpose, he relied

upon the statistics produced by the State Government itself in its additional affidavit. He submitted that a very tall and incorrect claim has been made by the State Government that nearly 40% of the area of the State will be a forest if the lands notified under Sections 3 and 4 of PLPA are treated as forest lands. Relying upon paragraph 50 of the said affidavit, he pointed out that out of the geographical area of 1,25,800 hectares of Gurugram district, the special orders under Sections 4 and 5 cover only an area of 6821 hectares. Similarly, out of the geographical area of 74,100 hectares of Faridabad district, only an area of 5611 hectares has been covered by the special orders under Sections 4 and 5 of PLPA. He pointed out that as stated in paragraph 49 of the same affidavit, the total area of the forests under the 1927 Forest Act and unclassified forests represents 3.31 per cent of the geographical area of the State. He submitted that even the State Government has taken a consistent stand that the areas covered by notifications issued under clause (a) of Sections 4 and 5 of PLPA are forests within the meaning of the 1980 Forest Act. He submitted that the same stand was specifically taken by the State Government in I.A. filed by it before the High Court in the case of **Vijay Bansal & Others v.**

State of Haryana & others[7]. He urged that Section 2 of the 1980 Forest Act overrides all the laws for the time being in force in the State. He submitted that the only effect of Section 2 of the 1980 Act is that there is an embargo on the State Government or any other authority on passing an order permitting the use of any forest land for non-forest purposes without the prior approval of the Central Government. He submitted that as far as the order dated 18th August 1992 under Section 4 of the PLPA in respect of the lands in village Anangpur is concerned, the issue has been concluded in the **3rd M.C. Mehta case**[6] by this Court by upholding the validity of the same and by holding that the lands covered by the order are forest lands under the 1980 Forest Act.

22. The submission of Shri Sanjay Parikh, the learned senior counsel is that the lands notified under Sections 4 and 5 of PLPA were not only recorded as forest lands in the Government records but were always treated as forests by the Forest Department of the State of Haryana.

23. He submitted that the State of Haryana filed an affidavit of Shri Banarasi Das, the Principal Chief Conservator of Forests in

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[7] 2009 SCC online P&H 8073

Civil Writ Petition No. 171 of 1996 which was the connected case heard along with the main case in which the decision of this Court in the case of **1997 *T.N. Godavaran's case*[1]** was rendered. The stand taken by the State Government in the said affidavit was that the areas covered by the notifications issued under PLPA are forest lands. The learned counsel submitted that this Court has deprecated an attempt made by the Government of Haryana to take a somersault and to take a stand contrary to what is stated in the said affidavit.

24. The learned counsel appearing for the applicant in I.A. No. 14685/2021 supported the submissions made by other applicants/intervenors. His submission is that any land shown as forest land in the government records will be a forest within the meaning of the 1980 Forest Act. He submitted that a narrow meaning cannot be given to the concept of the government records by holding that only the revenue records/land records are government records. He urged that even the records maintained by the Forest Department are also government records. The learned Amicus curiae also made brief submissions.

CONSIDERATION OF SUBMISSIONS

THE APPROACH OF THE COURT IN INTERPRETING THE LAWS RELATING TO FORESTS AND THE ENVIRONMENT

25. While interpreting the laws relating to forests, the Courts will be guided by the following considerations:

i. Under clause (a) Article 48A forming a part of Chapter IV containing the Directive Principles of State Policy, it is the obligation of the State to protect and improve the environment and to safeguard the forests;

ii. Under clause (g) of Article 51A of the Constitution, it is a fundamental duty of every citizen to protect and preserve the natural environment, including forests, rivers, lakes and wildlife etc.;

iii. Article 21 of the Constitution confers a fundamental right on the individuals to live in a pollution-free environment. Forests are, in a sense, lungs which generate oxygen for the survival of human beings. The forests play a very important role in our ecosystem to prevent pollution. The presence of forests is necessary for enabling the citizens to enjoy their right to live in a pollution-free environment;

iv. It is well settled that the Public Trust Doctrine is a part of our jurisprudence. Under the said doctrine, the State is a trustee

of natural resources, such as sea shores, running waters, forests etc. The public at large is the beneficiary of these natural resources. The State being a trustee of natural resources is under a legal duty to protect the natural resources. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gains;

v. Precautionary principle has been accepted as a part of the law of the land. A conjoint reading of Articles 21, 48A and 51-A(g) of the Constitution of India will show that the State is under a mandate to protect and improve the environment and safeguard the forests. The precautionary principle requires the Government to anticipate, prevent and remedy or eradicate the causes of environmental degradation including to act sternly against the violators;

vi. While interpreting and applying the laws relating to the environment, the principle of sustainable development must be borne in mind. In the case of **Rajeev Suri v. Delhi Development Authority and Others**[8], a Bench of this Court to which one of us is a party (A.M. Khanwilkar, J.) has very

[8] (2021) SCC online SC 7

succinctly dealt with the concept of sustainable development.

Paragraphs 507 and 508 of the said decision reads thus:

> **"507.** The principle of sustainable development and precautionary principle need to be understood in a proper context. **The expression "sustainable development" incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that sustainable development is indeed a principle of development - it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is *sustainable*; and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society.** By Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:
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> "1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy

economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

508. The right to development, thus, is intrinsically connected to the preservance of a dignified life. It is not limited to the idea of infrastructural development, rather, it entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense inter-dependence between right to development and right to natural environment. In International Law and Sustainable Development, Arjun Sengupta in the chapter "***Implementing the Right to Development***" notes thus:

"... Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other..."

vii. Even 'environmental rule of law' has a role to play. This Court in the case of **Citizens for Green Doon and Others *v.* Union of India and Others**[9] has dealt with another important issue of lack of consistent and uniform standards for analysing the impact of development projects. This Court observed that the principle of sustainable development may create differing and arbitrary metrics depending on the nature of individual

[9] (2021) SCC OnLine SC 1243

projects. Therefore, this Court advocated and accepted the need to apply and adopt the standard of 'environmental rule of law'. Paragraph 40 of the said decision reads thus:

> **"40.** A cogent remedy to this problem is to adopt the standard of the 'environmental rule of law' to test governance decisions under which developmental projects are approved. In its 2015 Issue Brief titled "Environmental Rule of Law: Critical to Sustainable Development", the United Nations Environment Programme has recommended the adoption of such an approach in the following terms:
>
> "Environmental rule of law integrates the critical environmental needs with the essential elements of the rule of law, and provides the basis for reforming environmental governance. It prioritizes environmental sustainability by connecting it with fundamental rights and obligations. It implicitly reflects universal moral values and ethical norms of behaviour, and it provides a foundation for environmental rights and obligations. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be arbitrary, that is, discretionary, subjective, and unpredictable."

FORESTS UNDER THE 1927 FOREST ACT

26. The concept of forest under the 1927 Forest Act appears to be different from the concept of forest under the 1980 Forest Act. The analysis of the provisions of both the enactments will show

that their spheres of operation are not the same though there may be some overlap.

27. The 1927 Forest Act deals with reserved forests (Chapter II), village forests (Chapter III) and protected forests (Chapter IV). Chapter V contains provisions which apply to forests which are not vested in the State Government. First three categories of forests are on the lands vesting in the State. Under the 1927 Forest Act, every forest does not *ipso facto* become a reserved forest or a protected forest. Chapter II contains an elaborate procedure for declaring any land vested in the State Government as a reserved forest. Only after following an elaborate process laid down in Chapter II that a land vesting in the State Government can be declared as a reserved forest. Once a notification is issued under Section 20 in the official gazette declaring a particular land as a reserved forest, prohibitions contained in Sections 26 of the 1927 Forest Act apply. Section 26 reads thus:

> **"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 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 bums any tree or strips off the bark or leaves from, or otherwise damages, the same;

(g) **quarries stone, bums 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 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 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 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 willfully or by gross negligence in a reserved forest, the State Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion there of the exercise of all rights of pasture or to forest produce shall be suspended for such period as it thinks fit.

(emphasis added)

In the context of clause (a) of Sub-Section (1) of Section 26, Section 5 of the 1927 Forest Act is also relevant which reads thus:

"**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 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 State Government in this behalf.**"

(emphasis added)

28. There is a power vested in the State Government under Section 28 to assign to any village community the rights of the State Government over any land which has been constituted as a reserved forest. Once this power is exercised in respect of a reserved forest, it becomes a village forest.

29. Under Chapter IV of the 1927 Forest Act, there is a power vested in the State Government to declare any forest land or waste-land vested in it, which is not included in a reserved forest, as a protected forest. The consequences of a land being declared as a protected forest are not as stringent as the consequences of the declaration of a land as a reserved forest. Sections 30 and Section 33 are relevant for that purpose, which read thus:

> **"30. Power to issue notification reserving trees, etc.**–The State Government may, by notification in the 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 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 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.**

xxx xxx xxx

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 bums 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 bums 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 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."

(emphasis added)

30. Chapter V of the 1927 Forest Act applies to forests or waste-lands not being the property of the Government. Thus, Chapter V applies to forests on private properties as the title of the Chapter is "Of the control of forests and lands not being property of Government". Sections 35 to 37 are relevant which read thus:

> **"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

(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 land slips 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 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 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 State Government.

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.

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."

31. Once a notification is issued by exercising the power under sub-section (1) of Section 35, there is a complete prohibition on breaking up or clearing forest lands for cultivation, the pasturing of cattle or clearing of vegetation. There is a power to assume management of such private forests by exercising the power under Section 36. There is also a power to acquire such private land. In fact, under sub-section (2) of Section 37, an option is given to the owner of a forest land comprised in any notification issued under Section 35 to require the State Government to acquire such forest land. But the owner must make a requisition at any time not less than three months from the date of the notification or more than twelve years from the said date.

32. Though, the 1927 Forest Act does not define the terms 'forest', 'reserved forest' and 'protected forest', a forest land does not become a reserved forest unless a notification is issued under Section 20 of the 1927 Forest Act. Similarly, a forest can be declared as a protected forest only by publishing a notification under Section 29 of the 1927 Forest Act.

CONCEPT OF FORESTS UNDER THE 1980 FOREST ACT

33. Now, we come to the 1980 Forest Act. This is a complementary enactment, dealing with matters concerning conservation of forests. In its statement of objects and reasons, it is noted that deforestation is causing ecological imbalance and is leading to environmental deterioration. It also notes that a widespread concern has been caused due to deforestation taking place on a large scale in our country.

The preamble of the 1980 Forest Act recites that:-

> "An Act to provide **for the conservation of forests** and for matters connected therewith or ancillary or incidental thereto."
>
> (emphasis added)

It must be borne in mind that the 1927 Forest Act is a pre-Constitution legislation. The said legislation is confined to only three categories of forests. The 1980 Forest Act has not repealed the 1927 Forest Act. In a sense, the 1980 Forest Act supplements the provisions of the 1927 Forest Act. During the last four decades, there has been a realization of the adverse impact of deforestation on the environment. The depletion of the green cover was one of the consequences of deforestation. Cutting down forests led to environmental degradation. Since the forests absorb carbon dioxide, its destruction considerably affects the ability of the nature to keep emissions out of the

atmosphere. This is one of the causes of global warming. The law relating to the environment gradually evolved during the last three decades in the light of the Constitutional provisions and ever-increasing awareness and growing concern about environmental degradation. Perhaps, to prevent large-scale deforestation, the Legislature thought it fit to come out with another legislation for protecting the forests.

34. The 1980 Forest Act came into force with effect from 25th October 1980. It has only 5 Sections. The most important is Section 2 which reads thus:

> **"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.]

[emphasis added]

35. Section 2 overrides all the laws applicable to a particular State which will include not only the laws of that particular State but also the relevant Central laws applicable to that particular State. Clause (i) of Section 2 applies to a reserved forest within the meaning of any law for the time being in force in that State. Clauses (ii), (iii) and (iv) of Section 2 apply to "any forest land". As clause (i) specifically refers to a reserved forest within the meaning of any law in force, it is obvious that clauses (ii), (iii) and (iv) apply to any other forest, whether or not recognized or declared as such under any law in force in that State. Hence, clauses (ii), (iii) and (iv) of Section 2 apply to any forest land

which may not be necessarily a reserved forest or a protected forest or a private forest governed by Chapter V under the 1927 Forest Act. Restrictions imposed by Section 2 (except clause (i) thereof) apply to every forest land in respect of which no declarations have been made either under the 1927 Forest Act or any other law relating to the forests in force in that State.

36. Before we deal with the concept of a forest under the 1980 Forest Act, we must note here that this enactment does not provide for an absolute prohibition on the use of any forest land or a part thereof for any non-forest purposes. The State Government or any other authority can always permit the use of any forest land or any portion thereof for non-forest purposes only with the prior approval of the Central Government. In a sense, this enactment provides for permissive use of forest land for non-forest activities with the prior approval of the Central Government. Therefore, the owner of a private land which is a forest within the meaning of Section 2 can convert its use for non-forest purposes only after obtaining requisite permission of the State Government or concerned competent authority. However, the State Government or the competent authority, as the case may be, cannot permit such use for non-forest activities

without obtaining prior approval from the Central Government. This provision has been made to check further depletion of already depleted green cover and to ensure that only such non-forest activities are permitted by the Central Government which will not cause ecological imbalance leading to environmental degradation. Considering the scheme of the 1980 Forest Act, the title holder of a private land which is a forest within the meaning of Section 2 is not divested of his right, title or interest in the land. But there is an embargo on using his forest land for any non-forest activity.

37. The object of the embargo on permitting non-forest use of forest land without prior permission of the Central Government is not to completely prevent the conduct of non-forest activities. This provision enables the Central Government to regulate non-forest use of forest lands. While exercising the power to approve non-forest use, the Central Government is under a mandate to keep in mind the principles of sustainable development as evolved by this Court including in its decision in the case of **Rajeev Suri**[6]. The embargo imposed by Section 2 ensures that the development and use of a forest land for non-forest use is governed by the principle of sustainable development. In a

sense, Section 2 promotes the development work on forest land only to the extent it can be sustained while alleviating environmental concerns. The power given to the Central Government under Section 2 must be exercised by adopting scientific and consistent yardsticks for applying the principles of sustainable development.

38. Now, coming to the meaning of "forest" or "any forest land" covered by Section 2, this Court in **1997 *Godavaraman's case***[1] has explained the legal position. Paragraphs 3 and 4 of the said decision read thus:-

> **"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. *Banshi Ram Modi* [(1985) 3 SCC 643] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will

forthwith correct its stance and take the necessary remedial measures without any further delay."

[emphasis added]

Thus, according to the aforesaid decision, Section 2 applies to three categories of forests:

i. Statutorily recognized forests such as reserved or protected forests to which clause (i) of Section 2 is applicable;

ii. The forests as understood in accordance with dictionary sense and

iii. Any area recorded as a forest in Government records.

So far as the first category of forests is concerned, it poses no difficulty as the forests under the said category covered by Clause (i) of Section 2 are statutorily recognized forests.

39. It is the second category which poses some difficulty. As the object of Section 2 of the 1980 Forest Act is to ensure that only sustainable growth/development takes place on forest lands. The need for giving a wider meaning to "forest" or "forest land" contemplated by the 1980 Forest Act can be well understood and justified. Moreover, the object of the 1980 Forest Act is to prevent ecological imbalance resulting from deforestation. The provision is aimed at protecting inter-

dependence between the right to development of an individual and the right to the natural environment of the public at large. The Legislature has used the words "any forest" in Clauses (ii) to (iv) of Section 2 after referring to the reserved forests in Clause (i) of Section 2. The intention is to bring all the forests, whether covered by the 1927 Forest Act or not, within the sweep of the 1980 Forest Act. A dictionary always contains the meaning of the words as they are understood by people for generations. It contains the meaning of a word which is already legitimized. Lexicographers include a word in the dictionary when it is used by many in the same way. Therefore, forest as understood by its dictionary meaning is covered by Section 2.

40. Hence, the question is what is the dictionary meaning of the word 'forest'. Most of the well-known dictionaries are more or less consistent when it comes to the meaning of the word 'forest'. The erstwhile Nagpur High Court in the case of **Laxman Ichharam v. The Divisional Forest Officer, Raigarh**[10] made an attempt to define 'forests' by referring to dictionary meaning of the word 'forest' in the Oxford English dictionary. Paragraph 13 of the said decision reads thus:

[10] AIR 1953 Nagpur page 51

"**13.** The term 'forest' has not been defined anywhere in the Forest Act. In the absence of such a definition the word 'forest' must be taken in its ordinary dictionary sense. The *Shorter Oxford English Dictionary*, Vol.I, gives the following meaning to it:

'1. An extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture.....

2. Law. A woodland district, usually belonging to the king, set apart for hunting wild beasts and game etc.,.....

3. A wild uncultivated waste."

The Cambridge dictionary defines a forest as under:

"a large area of land covered with trees and plants usually larger than a wood, or the trees and plants themselves."

Merriam-Webster dictionary defines a forest as under:-

"1 : a dense growth of trees and underbrush covering large tract

2 : a attract of wooded land in England formerly owned by the sovereign and used for game

3 : something resembling a forest especially in profusion or lushness."

Therefore, when we consider the meaning of a forest or forest land within the meaning of Clauses (ii) to (iv) of Section 2, it has to be a large or extensive tract of land having a dense growth of trees, thickets, mangroves etc. A small isolated plot of land will not come within the ambit of Clauses (ii) to (iv) of Section 2 merely because there are some trees or thickets thereon, as opposed to extensive tract of land covered with dense

growth of trees and underbrush or plants resembling a forest in profusion or lushness.

41. If a land is shown as a forest in Government records, it will be governed by Section 2. A Government record is a record maintained by its various departments. A Government record is always made after following a certain process. Only the entries made after following due process can be a part of any Government record. Government records will include land or revenue records, being statutory documents. For the same reason, it will also include the record of the forest department. After all, the forest department is the custodian of forests. It is this department of the State which is under an obligation to protect the forests for upholding the constitutional mandate. Further, it is this department which identifies the forest lands and maintains a record. Therefore, the record maintained by the Forest Department of forest lands after duly identifying the forest lands will necessarily be a Government record.

42. Whether a particular land is a 'forest land' within the meaning of Clauses (ii) to (iv) of Section 2 of the 1980 Forest Act, is a question which is required to be decided in the facts of each case in the light of the aforesaid parameters.

43. Clause (i) of Section 2 mandates that no reserved or declared forest should be divested of its status by the State Government without prior approval of the Central Government. The effect of Clause (i) is that the State Government cannot exercise the power under Section 27 of the 1927 Forest Act of declaring that a particular land will cease to be a reserved forest unless there is prior approval from the Central Government. The test for the grant of prior approval which we have laid down above will also apply to such prior approval. In this background, we proceed to discuss the issue which we have been called upon to decide in this group of cases.

THE IMPACT OF THE NOTIFICATIONS/ORDERS ISSUED UNDER PLPA

44. PLPA was published in the Government Gazette of Punjab on 15th November 1900. PLPA was brought into force from that very day. A photocopy of the proceedings of the Council of the Lieutenant Governor of Punjab along with a photocopy of the Gazette dated 15th November 1900 has been placed on record. Reliance was placed on the address of Hon'ble Mr H.C. Fanshawe while tabling the Bill of PLPA. His address reflects the intention of the legislature. The proceedings record that:

> "The Hon'ble Mr. Fanshawe moved for leave to introduce a Bill to provide for the better preservation and protection of certain portions of the territories of the Punjab situate within or adjacent to the *Siwalik* Mountain range or affected or liable to be affected by the action of streams and torrents, such as are commonly called *chos* flowing through or from, or by the deboisement of forests within, that range."

Mr. Fanshawe in his address, further notes that prior to 1852, the waste-lands of Siwaliks were well protected by trees and bushes and grass. He further stated that grass and trees on the hillsides have been largely destroyed. He, therefore, stated that legislative action is required to be taken to check the evils in question. In the Preamble of PLPA, as originally enacted, it is stated thus :

> "Act to provide for **the better preservation and protection of certain portions of the territories of the Punjab situate within or adjacent to the *Siwalik* mountain range or affected or liable to be affected by the deboisement of forests within that range**, or by the action of streams and torrents, such as are commonly called *chos* flowing through or from it."
>
> [emphasis added]

45. The Preamble specifically refers to the deboisement of the forests. The dictionary meaning of the word "deboisement" is "deforestation". Thus, the object of PLPA is also to protect the

territories likely to be affected by deforestation. It is argued that PLPA has been enacted essentially for the conservation of sub-soil water or the prevention of erosion and it has nothing to do with forests. Deforestation is one of the accepted and recognized causes of erosion of soil. There is an article published on the website of the World Wildlife Fund. The article deals with deforestation and recognizes it as a cause of soil erosion. The relevant portion of the said article reads thus:

> "**Deforestation**
>
> **Without plant cover, erosion can occur and sweep the land into rivers. The agricultural plants that often replace the trees cannot hold onto the soil and many of these plants, such as coffee, cotton, palm oil, soybean and wheat, can actually worsen soil erosion.** And as land loses its fertile soil, agricultural produces move on, clear more forest and continue the cycle of soil loss."
>
> (emphasis added)

Thus, one of the objects of PLPA undoubtedly appears to be the protection and preservation of forests as it is one of the measures for preventing erosion of soil. Significantly, Clause (c) of Section 2 of PLPA provides that the expressions, 'tree', 'timber', 'forest-produce' and 'cattle' shall have the same meaning which is assigned in Section 2 of the 1927 Forest Act.

46. The material Sections in PLPA are Sections 3 to 7. Firstly, we are dealing with Section 3, which reads thus:

> "**3. Notification of areas**— Whenever it appears to the Provincial 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 3 enables the State Government to notify an area subject to erosion or likely to become liable to erosion. When 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, the State Government may by a notification issue a direction accordingly. By the inclusion of any area in a notification under Section 3, *per se*, there are no constraints or restrictions imposed on the use of the lands. There is nothing in Section 3 to suggest that the power to issue notification can be exercised necessarily in respect of forest lands. The lands covered by the notification may also include non-forest lands. However, in respect of the areas notified under Section 3, the State Government can exercise the powers under Section 5A. Section 5A reads thus:

"**5-A. Power to require execution of works and taking of measures.**— In respect of areas notified under section 3 generally or the whole or any part of any such area, the Provincial Government may, by general or special order, direct—
(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 the Provincial Government, be necessary for carrying out the purposes of this Act."

Before the amendment made in the year 1926, Sections 4 and 5 empowered the State Government to pass general or special orders providing for regulations, restrictions and prohibitions as mentioned in the said sections either temporarily or permanently. However, by the 1926 amendment, the word 'permanently' has been deleted. Sections 4 and 5 of PLPA, as they stood before the 2019 Amendment Act, read thus:

"**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 Provincial 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 rightholder 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 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, goats or camels 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 Provincial 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 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 6 lays down the procedural requirement of publishing notifications/orders issued under Sections 4, 5 or 5A in the official gazette after recording the satisfaction of the State Government, after due inquiry, that the directions contained in the orders are necessary for the purposes of giving effect to the provisions of PLPA. Section 7 enables the persons affected by special orders under Sections 4, 5 and 5A to seek compensation.

47. Though in this group of cases, wider submissions have been canvassed, we find that the entire challenge concerns only the three separate Government orders dated 18th August 1992 issued under Section 4 of PLPA in relation to the specific lands in the said three villages. There is no challenge in any of

the Writ Petitions to any order issued under Section 5 of PLPA. Even the NGT in the impugned orders has relied upon only the special orders under Section 4. Therefore, we are confining our discussion to the question whether the lands covered by special orders issued under Section 4 of PLPA are forest lands within the meaning of the 1980 Forest Act. When an order is issued under Section 4 in respect of a specifically identified area which is a part of a larger area notified under Section 3 for imposing any of the specific prohibitions or restrictions provided in Section 4, such an order can be termed as a special order under Section 4. Section 3 of PLPA contemplates the issuance of a notification in respect of a larger area when it is desirable to provide for the conservation of sub-soil water or prevention of erosion. When the State Government is satisfied that deforestation of a forest area forming part of a larger area notified under Section 3 is likely to lead to erosion of soil, the power under Section 4 can be exercised. Various clauses of sub-section (4) refer to trees, timber, forest produce and cattle. Clause (c) of Section 2 of PLPA specifically provides that the said words shall have the meaning severally assigned to these expressions in Section 2 of the 1927 Forest Act. Clause (a) of

Section 4 empowers the State Government to restrict or prohibit clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under Section 3. In the context of Clause (a) of Section 4, we may note here that Clause (a) of sub-section (1) of Section 26 read with Section 5 of the 1927 Forest Act prohibits clearing of a reserved forest for cultivation. Sub-section (1) of Section 35 of the 1927 Forest Act empowers the State Government to prohibit breaking up or clearing private forest land, pasturing of cattle or clearing vegetation on forest lands not vested in the Government. Such prohibition can be imposed in respect of privately owned forest lands for various reasons set out in the provision. One of the specified reasons is the protection of lands from erosion. Even clause (h) of sub-section (1) of Section 26 of the 1927 Forest Act prohibits breaking up or clearing any land forming a part of a reserved forest for cultivation or for any other purpose. Clause (g) of Section 4 of PLPA empowers the State Government to prohibit or prevent quarrying of stones or burning of lime at places where such stones or lime had not ordinarily been so quarried or burnt prior to the notification issued under Section 3.

Similar are the restrictions imposed by clause (g) of sub-section (1) of Section 26 of the 1927 Forest Act in respect of the lands forming part of a reserved forest. clause (c) of Section 4 of PLPA which empowers the Government to impose restrictions on the cutting of trees or timber is also a pointer which indicates that a special order under Section 4 has to be necessarily in respect of a forest land. A similar restriction is applicable to a reserved forest as provided in clause (f) of sub-section (1) of Section 26 of the 1927 Forest Act. Clause (d) of Section 4 of PLPA empowers the State Government to prohibit the setting on fire of trees, timber or forest produce. Such restriction is also found in clauses (b) and (f) of sub-section (1) of Section 26 in respect of a reserved forest. Clause (f) of Section 4 empowers the State Government to regulate, restrict or prohibit the admission, herding, pasturing or retention of sheep, goats or camels. Clause (d) of sub-section (1) of Section 26 of the 1927 Forest Act imposes a similar restriction on the lands forming a part of a reserved forest. Clauses (f) and (g) of Section 4 of PLPA refer to forest produce generated out of any such area notified under Section 4. As noted earlier, PLPA incorporates the definition of "forest produce" in the 1927

Forest Act in PLPA by reference. Sub-Section (4) of Section 2 of the 1927 Forest Act defines "forest produce" which reads thus:

> **"2(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, 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)."

Thus, it appears to us that various restrictions, regulations and prohibitions in different clauses in Section 4 of PLPA can be invoked necessarily in respect of forest lands. Whereas, Section 3 of PLPA contemplates the issuance of a general notification in respect of any area subject to erosion or likely to become liable to erosion when it appears to the State Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion. As noted earlier, one of the objectives of PLPA is to prevent erosion of land which may be caused due to

deforestation. When the State Government is satisfied that as a result of deforestation or impending deforestation, erosion of a particular area out of the area notified under Section 3 is likely to take place, the State Government may exercise the power under Section 4 by issuing a special order. The reason is that the measures provided in Section 4 are intended to prevent deforestation of a forest area. Section 3 of PLPA contemplates the issuance of a notification in respect of a larger area when it is desirable to provide for the conservation of sub-soil water or prevention of erosion. When the State Government is satisfied that deforestation of a forest area forming part of a larger area notified under Section 3 is likely to lead to erosion of soil, the power under Section 4 can be exercised. Therefore, it follows that the specific land in respect of which a special order under section 4 of PLPA has been issued will have all the trappings of a forest governed by clauses (ii) to (iv) of Section 2 of the 1980 Forest Act. Therefore, in respect of the lands covered by special orders under Section 4 of PLPA, the State Government or authorities of the State can permit diversion to non-forest use only after prior approval of the Central Government is granted in accordance with Section 2 of the 1980 Forest Act.

48. Clause (a) of Section 5 of PLPA provides for restricting or prohibiting the cultivation of any land ordinarily under cultivation prior to the publication of the notification under Section 3. However, the power under Section 5 to restrict or prohibit can be exercised in a case where prior to the publication of the notification under Section 3, quarrying of any stone or the burning of any lime was being made. Thus, there is a marked difference between the language used in Section 4 and that in Section 5 of PLPA. However, as noted earlier, it is not necessary for us to decide the issue whether a land forming a part of a special notification under Section 5 of PLPA *ipso facto* becomes a forest under the 1980 Forest Act.

THE EFFECT OF THE STAND TAKEN BY THE STATE GOVERNMENT IN PLEADINGS / AFFIDAVITS AND CORRESPONDENCE.

49. At this stage, it is relevant to note that on 08th December 1996 an affidavit was filed by Mr. Banarsi Dass, Principal Chief Conservator of Forests of the State of Haryana in Civil Writ Petition No.171 of 1996. The said civil writ petition was dealt with by this Court in the ***1997 Godavarman's case***[1] in its judgment dated 12th December 1996. The stand taken in the said affidavit was that the State was treating the lands notified

under Sections 4 and 5 of PLPA as forests. It must be noted here that a similar stand was taken by the State Government even in the subsequent correspondence/ affidavits/pleadings. In the letter dated 21st December 1992 addressed by the Deputy Inspector General of Forests of the Government of India to the Principal Chief Conservator of Forests, the Government of Haryana, it was stated that the area notified under Sections 4 and 5 of the PLPA has been recorded as forest in the Government record. As stated in the said letter, this factual position has been noted on the basis of what is stated in the letter dated 09th December 1992 addressed by the Principal Chief Conservator of Forests of the Government of Haryana. Record of Discussions in a meeting of Principal Chief Conservator of Forests held under the Chairmanship of Director General of Forests and Special Secretary (DGF&SS) of the Government of India on 25th August 2014 is placed on record along with a note submitted by Shri A.D.N. Rao, the learned counsel. The meeting was attended by various officers of the Ministry of Environment, Forests and Climate Change as well as the Principal Chief Conservator of Forests of Government of Haryana - Shri C.R. Jojriwal. It is noted in

paragraph 2 that subject to the approval of this Court various areas stated therein shall be mandatorily treated as a 'forest' for the purposes of the 1980 Forest Act. The lands which were to be mandatorily treated as forests were divided into two categories. Category (A) was of Recorded Forest Areas and Category (B) of Forests by Dictionary meaning. In clause (c) of Category (A), it is provided that the areas covered by the notifications issued under Sections 4 and 5 of PLPA shall be treated as forests for the purposes of the 1980 Forest Act. The stand of the Government of Haryana is also reflected in the decision of the Division Bench of Punjab and Haryana High Court in the case of **Vijay Bansal**[7]. The said decision, rendered on 15th May 2009, proceeded to hold that the areas forming parts of notification under Section 3 of PLPA in respect of which restrictions have been imposed under Sections 4 and 5 of PLPA are to be treated as forest lands for the purposes of 1980 Forest Act. An application being C.M. No.12170 of 2009 was filed in the said case by the State of Haryana seeking modification of the judgment. Prayer 5 of the said application is relevant which is reproduced for convenience.

> "(5) It has been accordingly prayed that only those lands where clearing, breaking-up or cultivation

has been prohibited by a special order notified under Section 4(a) or 5(a) of the PLPA, 1900 may be treated as 'forest lands' as has been so held by the Hon'ble Supreme Court in M.C. Mehta's case (supra) and not those lands in respect whereto general restrictions have been imposed under Section 4(c) and (d) or Section 5(c) and (d) of the PLPA, 1900."

In the said application, there is a specific pleading that the lands covered by the notifications under Sections 4 and 5 of PLPA were treated as forest lands.

50. The Division Bench of the Punjab and Haryana High Court by the order dated 04th December 2009 accepted the aforesaid prayer and held that those lands which are covered by notifications imposing restrictions/prohibitions under clause (a) of Section 4 and clause (a) of Section 5 of PLPA are declared as 'forest lands' for the purposes of 1980 Forest Act. Thus, this was the categorical stand taken by the State Government in the pending proceedings on oath.

51. We may note here that the statements made on behalf of the State Government in the letters, affidavits and pleadings cannot be conclusive to decide the issue of the status of the lands covered by a special notification under Section 4 of PLPA. The finding on the issue cannot be based only on the stand taken

earlier by the State Government in the correspondence and affidavits. Independently of the stand taken as aforesaid, on a careful analysis of Section 4 of PLPA, we have come to a conclusion that the lands covered by the special orders under Section 4 of PLPA have all the trappings of a forest within the meaning of Section 2 of the 1980 Forest Act. Therefore, we have held that the lands covered by the special notification under Section 4 will be forest lands within the meaning of Section 2 of the 1980 Forest Act.

EARLIER DECISIONS OF THIS COURT

52. The 1997 *Godavarman's case* does not even refer to the legal effect of the orders under Sections 4 and 5 of PLPA. Even the 2008 *Godavarman's case* does not consider the aforesaid issue. In paragraph 21, this Court directed that mining activity in the areas covered by orders under Section 4 and 5 of PLPA shall be prohibited on the ground that the said lands were recorded as forests in government records. The 1st M.C. Mehta's case was decided by a Bench of two Hon'ble Judges. As can be seen from paragraph 79 of the said decision, the issue of the legal effect of the orders under Sections 4 and 5 of PLPA very much arose before the Bench in the context of the applicability

of Section 2 of the 1980 Forest Act. However, in paragraph 82, the Bench specifically observed that it is not necessary to decide the legal effect of the orders under Sections 4 and 5 of PLPA. This Court relied upon only the affidavits filed on behalf of the State Government including the affidavit of Shri Banarasi Dass. This Court observed that the State Government cannot take a somersault and take a stand contrary to what is stated in their earlier affidavits. Thus, the issue which we have decided about the legal effect of Section 4 of PLPA was not decided by this Court in the said case. The 3rd M.C. Mehta was decided by a Bench of two Hon'ble Judges. From the first two paragraphs of the decision, it is apparent that this Court dealt with an application made by M/s. R. Kant & Co. The issue was about the contravention of the order dated 18th August 1992 under Section 4 in respect of certain lands in village Anangpur. The Bench dealt with contention that the land notified under the said order dated 18th August 1992 was not a forest. Even in this judgment, we find that a closer examination was not made of the scheme of Section 4 of PLPA and its legal effect vis-à-vis Section 2 of the 1980 Forest Act. Even the decision of the Punjab and Haryana High Court in the case of **Vijay Bansal**[7] does not deal with the

issue of the legal effect of orders under Sections 4 and 5 of PLPA Act.

53. The decision of a Bench of two Hon'ble Judges of this Court in the case of **B.S. Sandhu**[5] dealt with the order dated 12th October 2004 passed by a Division Bench of Punjab and Haryana High Court. The appellant before this Court Mr.B.S. Sandhu had contended before the High Court that the lands in village Karoran in District Ropar in possession of Forest Hill Golf and Country Club, of which he was the proprietor, were not forest lands and the lands were either agricultural lands or uncultivable waste lands. The High Court did not accept the said contention and held that Village Karoran has been notified under Section 3 of PLPA and is regulated by prohibitory directions under Sections 4 and 5 of PLPA. Therefore, it was held that the lands in the entire village were forests within the meaning of the 1980 Forest Act. In paragraph 18 of the said decision, this Court held thus:

> **"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 deboisement 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."

In paragraph 19 this Court observed thus :

> **"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* [*T.N. Godavarman Thirumulpad* 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."

What is material are the observations made in paragraph 23 of the said decision which read thus:

> **"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."

54. The Bench has not gone into the scheme of the 1927 Forest Act and the object sought to be achieved by PLPA. Thus, the entire emphasis of the appellant in **B.S. Sandhu's case[5]** was that mere inclusion of an area in the notification under Section 3 of PLPA will not *ipso facto* lead to the conclusion that the area is a forest for the purposes of 1980 Forest Act.

55. Thus, essentially in the case of **B.S. Sandhu[5],** this Court dealt with a notification under Section 3 of PLPA which was applicable to the entire village in question. Though Sections 4 and 5 are referred in the said decision, it is not clear whether there was a special order issued under Sections 4 in respect of the lands of Mr. B.S. Sandhu. Moreover, the said decision

overlooks that one of the objects of PLPA was to prevent deforestation as the same may result in erosion of soil. The Court did not notice that the restrictions provided in Section 4 show that the same can be applied only to the lands having trappings of a forest within the meaning of the 1980 Forest Act. The decision in the case of **B.S. Sandhu**[5], with great respect, does not take note of these crucial legal and factual aspects.

THE OTHER ISSUES

56. We may note here that the petitioners in Writ Petition (Civil) No.1031 of 2021 represented by the learned senior counsel Shri Vikas Singh are claiming that they are residents of Villages Anangpur, Mewla Maharajpur and Ankhir covered by three separate orders issued on 18th August 1992 under Section 4. A perusal of the said orders on record of Civil Appeal No.10294 of 2013 will show that the orders are special orders relating to only certain specific lands mentioned therein in the schedules thereto. The lands in the schedule are specific lands described by reference to Killa or other relevant numbers. Even the area of the lands covered has been incorporated. The notifications do not relate to the entire village. The same are in respect of specific lands in the said three villages. By placing

reliance on the figures quoted in the additional affidavit of the State of Haryana and by producing certain maps, Shri Vikas Singh, the learned senior counsel tried to contend that if the contentions of some of the intervenors are accepted, the entire districts of Gurugram and Faridabad will be forests within the meaning of Section 2 of 1980 Forest Act. On this aspect, what is relevant is the chart incorporated by the State Government in paragraph 50 of the additional affidavit. We are reproducing the chart for a ready reference:

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

S. N.	District	Geogra-phical 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 Geogra-phical 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	Rohtak	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 Dadri	149500	0	92669	149500	149500	100.00%
22	Jind	270200	0	0	0	0	0.00%
	Total (State)	4421200	31738	1086086	1739907	1739907	39.35%

57. Thus, the special orders under Sections 4 and 5 in respect of 22 districts of Haryana including the districts of Gurugram and Faridabad cover only an area of 31,738 hectare, out of the total area of 44,21,200 hectares. In at least 8 districts, not a single land is governed by special orders under Sections 4 and 5. Hence, only about 7.1% of the total lands in 22 districts are covered by special orders issued under Sections 4 and 5 of PLPA. Going by these figures of the lands covered by the special orders under Section 4 and 5, the percentage of the lands covered by special orders under Section 4 must be insignificant as compared to the total area of the districts. Thus, the picture tried to be projected by the petitioners and the State Government is completely misleading and fallacious.

58. In this group of appeals, we are concerned only with the three separate orders dated 18th August 1992 in relation to the said three villages. A submission was canvassed that there was no notification issued under Section 3 of PLPA covering the said three villages. It is contended that the requisite procedure was not followed. We may note here that it is too late in the day to challenge the said orders after the lapse of more than 20

years. The ground of the gross delay is itself sufficient to negative the said challenge. The State Government cannot be called upon to show compliance with procedural aspects for the first time after lapse of more than 20 years. Therefore, it will not be appropriate to entertain a challenge to the said orders on the ground of non-compliance with the procedural provisions of Sections 6 and 7 after lapse of more than 20 years. Reliance was placed on a notification dated 17th October 1989 issued by the State Government under Section 5 of the Punjab Land Revenue Act, 1887. By the said notification, the State Government excluded certain areas from the limits of Ballabhgarh Tehsil in Faridabad District. A new Tehsil was formed of the said excluded areas known as Faridabad Tehsil. However, on 10th April 1992, a notification was issued under Section 3 of PLPA in respect of the entire Tehsil of Ballabhgarh. The three special orders dated 18th August 1992 are in respect of specifically described lands in the said three villages in Tehsil of Ballabhgarh. Therefore, apart from the gross delay, it cannot be accepted that the special orders under Section 4 dated 18th August 1992 were not preceded by a general order under Section 3 of PLPA in respect of Tehsil Ballabhgarh. The

three special orders specifically refer to a due inquiry made by the State Government for coming to the conclusion that prohibitions contained in the said orders are necessary for the purpose of giving effect to the provisions of PLPA.

59. Another argument canvassed was that the said three villages are covered by controlled areas declared under the 1971 Act as well as a final development plan. In view of the language used by Section 2 of the 1980 Forest Act, the said provision overrides all other laws applicable to the State of Haryana including the Central laws. Moreover, once it is found that the lands covered by the said three orders dated 18th August 1992 are forest lands covered by clauses (ii) to (iv) of Section 2 of the 1980 Forest Act, its status as forest lands cannot be altered unless Section 2 is followed.

60. A vague attempt was made to contend that firstly the lands covered by special orders under Section 4 can be treated as forests within the meaning of the 1980 Forest Act only from the date of the respective orders and that it will continue to be a forest for a limited duration for which the said special orders are in force. Both the arguments do not commend us at all. An occasion for passing special orders under Section 4 arises

when the lands in respect of which special orders are sought to be issued, are forest lands. It is true that, to such lands, Section 2 of the 1980 Forest Act will apply from 25th October 1980 when the same was brought into force. Once a land is covered by the sweep of Section 2 of the 1980 Forest Act, whether the special orders under Section 4 continue to be in force or not, the lands covered by the said notifications will continue to fall in the category of forests covered by Section 2 of the 1980 Forest Act.

THE 2019 AMENDMENT ACT

61. The State Government as well as the appellants have relied upon the 2019 Amendment Act. Our attention was also invited to the order dated 01st March 2019 in Writ Petition (Civil) No.4677 of 1985 (M.C. Mehta v. Union of India & Ors.). By the said order, this Court directed that the 2019 Amendment Act shall not be acted upon without permission of this Court. I.A.No.93600/2021 has been filed by the State of Haryana in Writ Petition (Civil) No.4677 of 1985 seeking permission to implement the provisions of 2019 Amendment Act. In one of our orders passed in this group of appeals, we

had observed that the said prayer can be considered in this group itself.

62. By the 2019 Amendment Act, Section 3 has been substituted from the date of publication of the Amendment Act in the Government Gazette. Substituted Section 3 contemplates the State Government issuing a preliminary notification before issuing a final notification under Section 3. It also provides for inviting objections to the preliminary notification and giving a hearing to the objectors. Section 3A was added which provides that the provisions of PLPA shall not apply, amongst others, to the lands included in the final development plans or any other town improvement plans or schemes published under the provisions of the said Act of 1971, the Haryana Development and Regulation of Urban Areas Act, 1975 etc. A proviso has been added to Section 4 laying down that the period of validity of any order issued under Section 4 shall not exceed the period of validity of the corresponding notification under Section 3. Section 23 was incorporated in the principal Act by the 2019 Amendment Act. It provides that the orders and notifications issued under PLPA 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 notification. Moreover, clause (c) of sub-section (2) of Section 23 provides that after the expiry of the period stated in such orders or notifications, the regulations, restrictions or prohibitions imposed shall cease to exist. Another important feature of the 2019 Amendment Act is that Section 4A has been incorporated. It provides that in respect of the areas notified under Section 3, the State Government may, in the whole or any part of such areas, by general order temporarily regulate, restrict or prohibit the cutting of trees and timber. Sub-section (3) of Section 4A provides that all subsisting general orders issued under Section 4 prior to the date of commencement of 2019 Amendment Act shall be deemed to have been issued under Section 4A. A note appended to Section 4A clarifies that all the subsisting general orders issued under Section 4 or notifications made thereunder prior to the publication of the 2019 Amendment Act 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. Sub-section (2) of Section 1 of 2019 Amendment Act is of some importance. It lays down that the said Amendment Act shall be deemed to have come into force from 01st November 1966 except unless expressly provided otherwise.

63. In this group of petitions, we are concerned with three special orders under Section 4 issued on 18th August 1992 in respect of the said three villages. The effect of the said orders is that the lands referred to therein are forest lands within the meaning of Section 2 of the 1980 Forest Act. Even if such orders are cancelled or amended or rescinded or their duration comes to an end, the status of the lands covered by the same as forest lands governed by Section 2 of the 1980 Forest Act cannot be altered without following the due process provided therein. Once a land is found to be a 'forest' within the meaning of the 1980 Forest Act, its user for non-forest purposes will be always governed by Section 2 of the 1980 Forest Act. Secondly, clause (i) of Section 2 provides that even in the case of a reserved forest under the 1927 Forest Act, the State Government cannot pass an order declaring that the same shall cease to be a reserved forest, without the prior approval of the Central Government. Thirdly, Section 2 starts

with a *non obstante* clause which overrides anything contained in any other law for the time being in force in a State which will include all State and Central legislations applicable to the State. Therefore, *prima facie,* the 2019 Amendment Act enacted by the State Legislature would be repugnant to and violative of Section 2 of the 1980 Forest Act, if construed otherwise. Hence, whether the 2019 Amendment Act is given effect or not, it will not change the status of the lands covered by the special orders under Section 4 of PLPA as the said lands possess all the trappings of a forest with effect from 25th October 1980 within the meaning of the 1980 Forest Act. Therefore, it is not necessary for us in these petitions to deal with the issue whether the order dated 01st March 2019 passed in Writ Petition (Civil) No.4677 of 1985 should be modified. The said prayer will have to be considered by the Bench dealing with the said writ petition.

CONCLUSIONS AND OPERATIVE PART

64. Thus, we hold that the lands covered by the special orders issued under Section 4 of PLPA have all the trappings of forest lands within the meaning of Section 2 of the 1980 Forest Act and, therefore, the State Government or competent authority

cannot permit its use for non-forest activities without the prior approval of the Central Government with effect from 25th October 1980. Prior permission of the Central Government is the quintessence to allow any change of user of forest or so to say deemed forest land. We may add here that even during the subsistence of the special orders under Section 4 of PLPA, with the approval of the Central Government, the State or a competent authority can grant permission for non-forest use. If such non-forest use is permitted in accordance with Section 2 of the 1980 Forest Act, to that extent, the restrictions imposed by the special orders under Section 4 of PLPA will not apply in view of the language used in the opening part of Section 2 of the 1980 Forest Act. We also clarify that only because there is a notification issued under Section 3 of PLPA, the land which is subject matter of such notification, will not *ipso facto* become a forest land within the meaning of the 1980 Forest Act.

65. Therefore, the lands covered by the special orders dated 18th August 1992 issued under Section 4 of PLPA will be governed by the orders passed by this Court in the Petition for Special Leave to Appeal (Civil) Nos.7220-7221 of 2017. Hence,

all the concerned authorities shall take action to remove the remaining illegal structures standing on land covered by the special orders and used for non-forest activities on the said lands erected after 25th October 1980, without prior approval of the Central Government, and further to restore *status quo ante* including to undertake reforestation/afforestation programmes in right earnest. As far as the lands covered by special orders under Section 5 are concerned, we are not making any adjudication. Therefore, the authorities will have to decide the status of the lands covered by the said orders under Section 5 on case to case basis.

66. To avoid any prejudice to the affected persons, we direct that before the action of removal of the illegal structures and/or action of stopping non-forest activities is taken in respect of the lands covered by the special orders dated 18th August 1992 issued under Section 4 of PLPA, the concerned competent authority shall afford an opportunity of being heard to the affected persons and conclude such proceedings finally not later than three months from today and submit compliance report in that regard within the same time.

67. Writ Petition (Civil) Nos. 1008 and 1031 of 2021 stand disposed of in above terms. Civil Appeal Nos. 10294 of 2013, 8454 of 2014, 8173 of 2016 and 11000 of 2013 also stand disposed of in above terms and the orders impugned passed by the NGT stand modified accordingly.

68. As regards Writ Petition (Civil) No.1320 of 2021, the same will be governed by the directions issued in Petitions for Special Leave to Appeal (Civil) No.7220-7221 of 2017 for rehabilitation of the eligible occupants. The petitioners can always move the concerned authority for that purpose. Writ Petition (C) No.1320 of 2021 be disposed of accordingly.

69. There will be no order as to costs.

.....J.
(A. M. KHANWILKAR)

.....J.
(ABHAY S. OKA)

.....J.
(C. T. RAVIKUMAR)

New Delhi;
July 21, 2022.

GOVERNMENT OF HARYANA
FOREST AND WILDLIFE DEPARTMENT
ORDER

Whereas, Hon'ble Supreme Court, vide their Judgment dated 21.07.2022 have decided Civil Appeal No. 10294 of 2013 (Narender Singh and Others versus Divesh Bhutani and ors.). Thereby, the Hon'ble Court has, *inter alia* (at para 64 of the said Order), directed as under –

'Therefore, the lands covered by the special order dated 18th August 1992 issued under Section 4 of PLPA will be governed by the orders passed by this Court in the Petition for Special Leave to Appeal (Civil) Nos. 7220-7221 of 2017. Hence, all the concerned authorities shall take action to remove the remaining illegal structures standing on land covered by the special orders and used for non-forest activities on the said lands erected after 25th October 1980, without prior approval of the Central Government, and further to restore status quo ante including to undertake reforestation/afforestation programmes in right earnest. As far as the lands covered by special orders under Section 5 are concerned, we are not making any adjudication. Therefore, the authorities will have to decide the status of the lands covered by the said orders under Section 5 of the case basis.'

For compliance for the above said Order of the Hon'ble Court, at first stage, the unauthorized structures in villages *Ankhir, Mewla Mahrajpur, Anangpur and Lakarpur* in district Faridabad, required to be removed from forest areas, need to be identified. Therefore, there is a need to establish the procedure for identification of unauthorized structures in forest land.

Accordingly the Governor of Haryana is pleased to order that procedure to be followed shall be as under:–

(i) The Divisional Forest Officer, Faridabad will prepare the list of structures, prima-facie, observed to be unauthorized on forest land. Satellite Image/ Drone-mapping/LiDAR data alongwith Ground Report may be used for preparing the list of structures, so as to ensure that no unauthorized structure is left behind.

(ii) The verification of structures contained in the list prepared by the Divisional Forest Officer will be done by the Committee of Officers at Faridabad with following composition –

1. Deputy Commissioner (or his nominee)	Chairperson
2. Municipal Commissioner (or his nominee)	Member
3. Divisional Forest Officer	Member Secretary
4. District Revenue Officer	Member
5. District Town Planner	Member

(In case the Deputy Commissioner decides to nominate an officer in his place then, he will also nominate a suitable officer to chair the committee)

-CONTD. P.T.O.

(iii) In case any person or agency, after receiving the notice from Divisional Forest Officer for removal of the structure submits evidence that the structure was constructed prior to 24.10.1980, this committee of officers will verify the claim submitted by such person or agency.

(iv) Furthermore, some of the lands notified by special Orders under section 4 of the PLP Act, may also be attracting another Order dated 07.04.2022 of Hon'ble Supreme Court passed in C.A. No. 6990 of 2014 titled as 'State of Haryana versus Jai Singh & Others'. This issue relates to *Shamlat Deh/ Jumla Mustarka Malkan lands* which have been partitioned during last 3 to 5 decades. In the process of identification of unauthorized structures on lands notified under special section 4 of the PLP Act, the Deputy Commissioner will also ensure to mention ownership of such partitioned *Shamlat Deh/ Jumla Mustarka Malkan land.*

(v) This committee of officers will also list-out the cases in which some of the organizations have already sent proposal to the Government of India or Government of Haryana for diversion of land under the Forest (Conservation) Act, 1980.

The task will be completed within 15 days and following further immediate action will be taken-

(a) The Divisional Forest Officer, Faridabad will issue notices to the entities for the unauthorized structures/ occupation in the format given at **Annexure A.**

(b) The Deputy Commissioner Faridabad will submit detailed report of the Committee to the Government.

VINEET GARG
Additional Chief Secretary to Government of Haryana
Forest and Wildlife Department Chandigarh

Chandigarh dated,
the 14th September, 2022

Endst. No. 1700-Ft.-1-2022/5070 Chandigarh dated the 14.9.2022

A copy is forwarded to the following for information and necessary action: –

1. Principal Chief Conservator of Forest (HoFF), Haryana, Panchkula.
2. Chief Conservator of Forest (South Circle) Gurugram.
3. Deputy Commissioner, Faridabad.
4. All members of the Committee.
5. Sr. Secy/Ft.M, PS/CPSCM, PS/CS, PS/APSCM, PS/ACSFt.

(Jeet Singh)
Superintendent Forest Administrative Branch
for Additional Chief Secretary to Government Haryana
Forest and Wildlife Department