

(1998) 02 GUJ CK 0020

In the Gujarat High Court

Case No : Spl. Civil Application No's. 10605 of 1995, 2870 of 1996 and 590 of 1997 with C.A. No. 297 of 1998

Ajit D. Padiwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Environment (Protection) Act, 1986 — Section 3
Forest Act, 1927 — Section 20

Citation : AIR 1998 Guj 147 : (1998) 1 GLR 804

Hon'ble Judges : Kumaran Sreedharan, C.J.; M.S. Shah, J

Bench : Division Bench

Advocate : Raj Punjwani, Bhushan B. Oza, Amicus Curiae and D.K. Nakrani, for the Appellant; Rajeew Dhawan J.D. Ajmera Central Govt. Standing Counsel for 1., Santosh Hegde Anip Sachthey and Nandish Chudgar for Nanavati Associates (for No. 5), B.P. Tanna, of Tanna Associates (for No. 15) and Tushar Mehta, (for Nos. 16 to 19), S.N. Shelat, A.A.G. and Amee Yajnik, Asst. Govt. Pleader, for the Respondent

Judgement

K. Sreedharan, C.J.—Special Civil Application No. 10605 of 1995 was filed by late Shri Ajit D. Padiwal, who was a practising lawyer of this Court. The main prayer in that petition, filed as a public interest litigation, is to direct respondents Nos. 1 to 4, 6 and 7, Union of India, State of Gujarat and its Officers to take effective steps against the unauthorised and illegal encroachment made by the 5th respondent, Sanghi Industries, over an extent of 500 hectares of reserved forest land for the construction of a jetty. Allegations made therein, that respondent No. 5 is encroaching upon extensive forest areas for construction of jetty, were based on a news item, which was published in Daily newspapers, having wide circulation. The construction of jetty and connecting roads are within the reserved mangrove forest in Kutch. Though the Conservator of Forests, Kutch Circle, tried to prevent the 5th respondent from carrying on illegal activities within the forest area, revenue authorities are taking a contrary view of the matter and are siding with the 5th respondent, 5th respondent has encroached

upon reserved forest area of Golai village and also into the mangrove reserved forest near Akri Village, violating the provisions of the Indian Forests Act, 1927 and the Forest Conservation Act, 1980. u/s 20 of the Indian Forests Act, 1927, Government of Gujarat had declared the lands of west mangrove forest of Talukas Abdasa and Lakhpat of Kutch District as reserved forests. 130846 acres and 37 gunthas of land so declared as reserved forests still continue to be reserved forest and no non-forest activity can be permitted in that area. 5th respondent has trespassed into the west mangrove forest without any authority and started construction of jetty and approach road. These activities will lead to adverse impact on environment and ecology. Activities resorted to by the 5th respondent will destroy the mangrove forest and annihilate the entire marine wildlife.

2. Special Civil Application No. 2870 of 1996 has been filed by World Wide Fund for Nature India, a Public Trust registered under the Bombay Public Trusts Act. According to them, State of Gujarat, by notification dated 12-9-1975, issued u/s 20 of the Indian Forests Act, 1927, declared the lands of western mangrove forest as reserved forest. 3rd respondent, Sanghi Cements, has constructed a road on the reserved forest land connecting it to the main land where they have put up their factory. This road is 50 metres wide and 1150 metres long. They have also constructed bridges across rivers. They have constructed a jetty within the boundaries of the western mangrove reserved forest. The illegal activities and unauthorised encroachments made within reserved forests by the third respondent violates the provisions of Section 2 of the Forest Conservation Act, 1980. Construction of jetty, bridges and road, leading to the jetty, violates the provisions of the Coastal Regulation Zone Notification dated 19-2-1991, issued u/s 3 of the Environment (Protection) Act, 1986. That Notification prohibits all constructions on the land, which are influenced by the tidal action (in the landward side) upto 500 metres from the high tide line. It also prevents such activities in between the low tide line and the high tide line. Under Clause (2), no construction is permissible in areas, which are ecologically sensitive, like National Parks, Sanctuaries, reserved forests and mangroves. On 7th July, 1995, 3rd respondent applied for permission under Coastal Regulation Zone Notification of 1991. That application was not in proper form. 3rd respondent was directed to file proper application, with all details and route it through the State Government. Thereupon, it is alleged, 3rd respondent did not approach the Central Government, but has constructed the jetty, bridges and portion of the road, leading to jetty, which falls within the Coastal Zone Regulation Notification. On these averments, it is prayed that State Government may be restrained from granting any lease or right to the third respondent over lands falling within reserved forests without complying with Section 2 of the Indian Forest Conservation Act, 1980 and to restrain the 3rd respondent from carrying on any construction of the jetty, road or bridge in any portion, which falls within the Coastal Regulation Zone Notification.

3. The Indian Council for Enviro-Legal Action moved the Supreme Court in Writ

Petition (C) No. 554 of 1993, challenging the setting up of Factories, construction of bridges and other activities, which violated the environmental laws of the land. One of the Projects, which, as per the petitioners, violated the Environmental Laws, is the Sanghi Jetty/Cement Project in Kutch. National Environmental Engineering Research Institute ("NEERI") was directed by Their Lordships to examine environmental viability and sustainability of the Project. NEERI submitted their report to Court. When the matter came up for hearing on 23-12-1996. Their Lordships felt that the issue raised before that Court be better dealt with at the High Court level. Their Lordships remitted the issue to this Court for considering all issues raised therein, along with the pending matters. Consequently, Special Civil Application No. 590 of 1997 was registered.

4. It is common case of parties that Sanghi Industries have undertaken construction of a jetty in Khauthar Bel. It bears Survey No. 131. According to the petitioners, this land forms pan of reserved forests. The State Government and the Company, on the other hand, would contend that it is part of revenue land, comprised in Akri village. In the nature of the contentions raised by the parties, it is necessary to go into the issue as to whether Khauthar Bet is part of reserved forest, as contended by the petitioners, or is revenue land, as stated by the State Government and Sanghi Industries.

5. Section 3 of the Indian Forest Act, 1927 deals with the power of the State Government to reserve forests. As per that Section, any forest land or waste land, which is the property of Government or over which the Government has proprietary right, can be constituted by the State Government as a reserved forest. As to how the land is to be reserved is provided in the subsequent sections. Whenever it has been decided to constitute any land a reserved forest, the State Government should issue a Notification. That Notification must specify as nearly as possible the situation and limits of the land to be reserved. Government has also to appoint Forest Settlement Officer to enquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any other person in or over the land. That Officer is to deal with such claims as provided in the Act. Section 4 makes it absolutely clear that for specifying the situation and limit of the land to be reserved, it is sufficient to describe the limits by roads, rivers, ridges or other well-known or readily intelligible boundaries. After the issue of a Notification u/s 4, no right shall be acquired in or over the land by any one without specific grant in that regard by the Government. Forest Settlement Officer appointed u/s 4 should also publish a proclamation, specifying the situation and limits of the proposed forest. This Officer is to enquire into the claims preferred by any one over the land comprised within the Notified Area. Rights in respect of which no claim is preferred or those which are not brought to the knowledge of the Forest Settlement Officer during the enquiry u/s 7 of the Act will stand extinguished. If any claim over the area is established before the Forest Settlement Officer, that officer has the power to exclude such land from the list of the proposed forest. Once all the said claims are decided by the Forest Settlement Officer, the State Government is to publish a

Notification in the Official Gazette, declaring the area to be reserved forest u/s 20 of the Act. That declaration should definitely specify the limits of the forest, which is to be reserved, according to boundary marks. The Act gives utmost importance to the boundary marks erected or otherwise, to decide the limits of the forest.

6. In exercise of the powers conferred by Sections 4 and 17 of the Indian Forest Act, State of Gujarat issued Notification dated 19-3-1962. As per that Notification, areas mentioned in the Schedule thereto, situated in Abdasa and Lakhpat Talukas were declared as reserved forests. Forest Settlement Officer, Bhavnagar has been nominated to be the Settlement Officer u/s 4(1)(c) of the Act. Collector of Kutch was appointed appellate authority to entertain appeals from the decision of the Settlement Officer. In the Schedule, against column "Survey Number", it was noted as "Not Available". A Note was also added to the effect that this area is slushy and muddy and completely out of village boundaries of extreme border villages and hence, no Survey Number exists. The Notification thus makes it clear that the west mangrove forest notified thereunder is completely out of village boundaries. Boundary of that area is specifically given. Eastern Boundary, with which we are concerned in these proceedings, was given as :--

".....As per demarcation carried out on the spot from the boundary stone No. 18 at the corner of old Khauthat Port and Custom Building to the boundary stone No. 280, where land is touching to the Koteswar Port limit line in the sim of Narayan Sarovar. The line is possibly running by separating salt waste and cultivable lands in the west of village boundary of Jakav, Kosa, Akri, Modi, Bhutau, Tera, Ghuar and Narayan Sarovar village, covering entire mangrove and grass, island"

The description of this eastern boundary of the forest area shows that the forest is situated to the west of Akri village. It takes in the entire mangrove and grass island. The grass island should, therefore, be to the west of Akri village. It cannot form part of Akri Village. The area of the forest reserved is 1,30,846.37 acres. In relation to this area, the Forest Settlement Officer was to consider claims of persons that may be put forth. Settlement Officer considered the claims as is seen in his Award dated 11-5-1966. Two persons, by name Vagher Hussain Osman and Suleman Liyar, are seen to have raised certain claims over the said land. That was dealt with by him in the Award. Those claims were in relation to the properties comprised in Survey Nos. 1290, 1291, 1292, 1293 and 1294. Apart from those claims, no other claim was seen to have been put forth by any one. Pursuant to that Award of the Settlement Officer, State Government issued notification dated 2-7-1975, u/s 20 of the Forest Act. The area covered by this Notification is identical to that contained in notification issued u/s 4 on 19-3-1962. The eastern boundary was maintained the same. So, entire land west of the village boundary of Akri, was included in the west mangrove reserved forest. Grass island formed part of the land reserved as forest. Khauthar Bet has

got grass vegetation only. No other area is now mentioned to have grass vegetation. That grass island, which has grass cultivation, must, therefore, form part of reserved forests.

7. In the Notification issued u/s 4 of the Indian Forest Act, as against column "Survey Number", it was noted : "Not Available : This area is slushy and muddy and completely out of village boundaries of extreme border villages and hence, no Survey Number exists." On the basis of this description of the Survey Number in the Notification, it was argued that area, in relation to which Government intends to make it reserved, should be outside the village boundaries of border villages. This boundary as per the Conference held at Mysore should be the low tide line. Consequently, the west mangrove forest must have its eastern boundary at the low tide line. We are finding it difficult to agree with this argument. Low tide line in the particular area is far away from the village boundary. The area in between the low tide line and high tide line is substantial. The Notification u/s 4 does not make reference to the low tide line or the high tide line. Boundaries were described with reference to boundary stones planted at the site. It was with reference to those boundary stones the situation and limits of the land fixed. Consequently, it cannot be held that the areas, which are slushy and muddy alone came within the ambit of the Notification. According to us, the area comprised within the boundary, situated to the west of the eastern boundary was taken in as the area to be reserved.

8. While describing the eastern boundary in the Notification dated 19-3-1962, it was stated :--

".....The line is possibly running by separate salt waste and cultivable lands in the west of village boundary of Jakay. Kosa, Akri, Modi, Bhutau, Tera, Ghuar, and Narayan Sarovar village, covering entire mangrove and grass islands....."

This description of the eastern boundary, according to counsel representing Sanghi Cements, shows that boundary was drawn in such a manner that cultivable lands situated to the west of the village boundary were taken out of the limits. In other words, the eastern boundary was drawn in such a manner that all cultivable lands to the west of the village boundaries were outside the area notified to be reserved forest. If the boundary line is so drawn, it is further argued, the land possessed by the Company will be outside the reserved forest area. This argument is quite attractive. But, on the facts of these cases, especially in view of the plans now made available to us, it is not possible to accept this argument. The eastern boundary given in the notification, even conceding for argument's sake the contention put forth by the company is tenable, should be a continuous line. It cannot have the effect of patches of land, situated to the west of the boundary lines being excluded from the reserved area. Viewed in this light, we are clear in our mind that within the area reserved as forest, there cannot be an island-like formation, falling outside the purview of the notification.

9. As per Notification u/s 4, the area, which was to be declared as reserved forest, was having an extent of 130846.37 acres. In the Award passed by the Settlement Officer, rights of two individuals were recognised. For a proper understanding of that Award, we read its translation :--

"..... On the Cher Forest Land (West Mangrove Forest) admeasuring 130846.00 acres (205.45 sq. miles), situated on western side of Abadasa Lakhpat Talukas of Kutch District, the following two account holders, on whose names the fields shown against their names stand, and which are situated on the island known as "Chabri Island", around 8 miles away from Jakhau Port, have all the rights to carry on their business and they have right of to and fro access over the said land and that no other person except the said two persons have any right whatsoever over the said lands.

Survey No. Survey No.

1 Vagher Hussain Osman 1292 2.12

1293 2.15

1294 1.26

2. Suleman Liyar 1291 7.16

1290 1.26

The boundary of this area is as per the Notification, and demarcation of the boundary is shown by the stones.

This order is issued by me under my signature and seal of the Court today, 11-5-1966."

The area reserved in favour of the two persons named therein is about 15 acres. While issuing the Notification u/s 20, that area has not been deducted from that mentioned in the Notification issued u/s 4. On this basis, it was contended that all lands coming within the boundary cannot be taken as reserved forest. We are not impressed with this argument. As against 130000 odd acres, 15 acres is a negligible area. The non-mention of that area or the reduction of the total area to that extent cannot be taken as a ground for doubting the correctness of the boundary of the reserved forest. In Annexure IX attached to the report submitted by Shri Bhardwaj Committee, Survey Nos. 1291 to 1295 and 1299 in Chabidhar-I Bet is stated to have no agricultural activities at present. From what point of time agricultural operations in that area ceased to exist is not clear. If the agricultural operations stopped prior to 1975, the date of publication of Notification u/s 20 of the Forest Act, non-reduction of the area covered by the Award of the Settlement Officer can be justified. Non-reduction of the area in the Award, thus, is of no consequence. No provision of the Forest Act requires the mention of Survey Number of the land to be reserved. The entire Act gives emphasis to the situation and limits of the area as per boundaries. Thus, it can be seen that under the Indian Forest Act, boundaries of the reserved forest are the most

important element and not the Survey Numbers or its extent. In the instant case, the boundary marks of the area are clearly established by the plan prepared by the Committee headed by Shri Bhardwaj and the plan seen in the official record made available to us by the learned Additional Advocate General of Gujarat. Government of India placed before us the plan of Kutch District, published by the Surveyor General of India. West mangrove reserved forest is marked in that plan with thick green boundary lines. Khauthar Bet is shown in that plan as falling within the boundaries of west mangrove reserved forest. No argument has been advanced by any of the parties to this proceeding, questioning the correctness of the boundary marked in that plan. We do not find any reason to doubt the correctness or authenticity of that plan. West mangrove reserved forest is continued to the north by Golay reserved forest. This is a strong circumstance to take the view that Khauthar Bet is part and parcel of west mangrove forest notified to be reserved forest u/s 20 of the Indian Forest Act, 1927.

10. Sanghi Cements applied for land to build a Captive Port near to their plant. In their communication, dated 12-9-1994, they suggested two probable locations, one in sugar creek and the other in Khare creek. The land is described as Government waste land (unsurveyed). One of the locations they sought for was shown in the map filed along with the petition. In the map, the land was located as one to the south of boundary stones F-357 and 358 and located to the west of Survey Nos. F-359 and 360. That plan certified to be the correct plan, showing the location of the area demanded is at page 555 of Special Civil Application No. 2870 of 1996. This was the plan given to the forest officials. On verifying the boundaries shown in that plan, the forest authorities found the area to be outside the reserved forest. But, actually, the area that was wanted by the company and which they took possession of was not correctly located. The irregular shaped land, which the company wanted, was shown in the plan as situated near to boundary marks F-357, 358, 359 and 360, and outside, i.e. to the east of the forest boundary stones, bearing Nos. 145 to 153. This is discernible from plan Annexure R-1 filed along with the affidavit-in-reply dated 24-9-1997 filed on behalf of the Union of India. The land in Khauthar Bet, which is now used by Sanghi Cements for constructing the jetty, is to the west of boundary stones Nos. 130 to 145 of the reserved forest. It is to the west of boundary stones F-362 to 365 of Gunav village and F-392 to 394 of Akri village.

11. On behalf of the Government of Gujarat, a plan prepared by the Project Officer, Land Record Computer Unit, Gandhinagar, was placed before us by learned Additional Advocate-General on 10-2-1998. In that plan, 12 Bets, including Khauthar Bet, have been located in yellow colour. They are situated to the west of the eastern boundary of reserved forest. Survey Nos. 1291 to 1294 and 1299 made mention of in the Award passed by the Forest Settlement Officer in his Award are located in Chabidhar-I Bet located at the southern extremity of the reserved forest. Only these Survey Numbers are given to portions in that Bet. From the plan, it is evident that even the remaining portions of that Bet

have not been surveyed and numbers assigned. The plan further states that the yellow coloured Bets were surveyed during 1969-71, i.e. long after the Award passed by the Forest Settlement Officer. Survey Numbers made mentioned of in the Award were assigned during 1963-64. From this circumstance, it is clear that portions of Chabidhar-I Bet, over which private parties have claims, were dealt with by the Settlement Officer and their rights decided in the Award. On the date of this Award, no other Bet was surveyed or survey numbers assigned. Nor was any right over any portion, known as "Bets", put forth by any one before the Settlement Officer. Assignment of Survey Numbers to the Bets, therefore, does not in any way change the character of the lands within the boundary as reserved forest. The plan now produced by the learned Additional Advocate-General makes the issue relating to the eastern boundary of the reserved forest abundantly clear. In the light of the above discussions, the nature of Khauthar Bet as part of reserved forest is not at all open to any doubt.

12. This Court directed the Chief Secretary to Government of Gujarat to constitute a Committee for ascertaining the demarcating line to show forest and non-forest land area. Pursuant to that direction, Chief Secretary constituted a Committee, consisting of Shri A.M. Bhardwaj, IAS, Revenue Inspecting Commissioner, Shri K.R. Patel, IPS, Chief Conservator of Forests, Wildlife, and Shri A.M. Saiyed, Superintendent, Land Records, Rajkot. That Committee prepared two plans, Annexures VII and VIII, attached to its report. In Annexure VII, west mangrove forest was located on the basis of the boundary stones fixed at the time of the proceedings initiated under the Forest Act for notifying it as a reserved forest. As per that plan, the area, where the activities for putting up the jetty are carried out, is seen located inside the forest area. The report of the Committee makes it clear that that plan was prepared on the basis of the data that could be culled out from the old records. The Committee did not get the benefit of the plan that was prepared at the time of the Notification issued under the Forest Act.

13. Annexure VIII, attached to the Report of the Committee, is another plan, showing the area leased out to Sanghi Cements. That plan gives survey boundary of revenue land by giving the numbers in "F" Series. They are from F 359 to 393. Just to the west of the boundary of the revenue land, stones 136 to 153 are marked. The line connecting these stones is the eastern boundary of the forest land as per the Notification and Plan Annexure VII, Khauthar Bet, with Survey No. 131, is marked with brown stripes. It has an extent of 95 hectares. 94 acres and 22 sq. metres. That portion of land, even as per this plan, Annexure VIII, is within the forest area. On the basis of this plan, it is argued by the State of Gujarat and the company that Khauthar Bet was not reserved forest.

14. It is agreed on all sides that the Bombay Inam (Kutch Area) Abolition Act, 1958 was enacted to abolish certain Inams in the Kutch area of the erstwhile State of Bombay. Inam land, which, thus became vested in the State, is comprised of Khauthar Bet as well. It was in respect of the land so vested in

Government that Notification u/s 4 was issued for declaring it as a reserved forest. The Notification dated 19th March, 1962, as stated earlier, gave the boundaries with reference to boundary stones. The location of those boundary stones made mention of in the Notification is discernible from Annexure VII plan prepared by the Bhardwaj Committee. Learned Additional Advocate-General, Gujarat, made available to us file relating to the Notification issued under the Forest Act, reserving the west mangrove forest. We took that file on record. That file contains plan of the area, notified as reserved forest. That plan is signed by the Forest Settlement Officer. We took that plan as an authentic plan of the west mangrove forest. The boundary shown therein exactly tallies with the boundaries of the reserved forest in Annexure VII Plan attached to Bhardwaj Committee Report. Consequently, we have no hesitation in finding that the area situated to the west of the line shown in Annexure VII Plan to be the reserved forest notified in conformity with the provisions of the Forest Act. Khauthar Bet is situated within that area.

15. 6th All India Cadastral Survey Conference was held in Mysore from 5th to 7th of June, 1972. That conference made a recommendation that in all the Cadastral maps of maritime village, low water line is to be drawn, indicating the village boundary. In other words, the boundary of the village is to extend upto the low water line. This recommendation was acted upon by the Settlement Commissioner and Director of Land Records, Gujarat. Consequently, village boundary was drawn in such a manner that it extended upto the low water line on full moon/new moon days. Presumably, on the basis that on low tide water recedes beyond the western side of Khauthar Bet. Khauthar Bet is taken as part of revenue land. This exercise resorted to by the Government, to say the least, is clearly illegal and unsustainable. The Resolution adopted at the Conference, under no circumstance, can go to vary the area or the boundary of the forest land, notified u/s 20 of the Forest Act. Notification must prevail.

16. It is the case of the Government of Gujarat and the Company that when Khauthar Bet was assigned Survey No. 131, it ceased to be forest land. The nature of the land is changed and it becomes revenue land. This view taken by the Government cannot be sustained. Nature of the land as on the date of Notification u/s 4 is the decisive factor. No survey number was assigned to the land on the date of this Notification to treat it as revenue land. On the date of Notification u/s 4 of the Forest Act, Khauthar Bet and the adjoining land was Government land, or to be specific, waste land. The land situated within the boundary stones was notified to be made reserved forest. Subsequent assignment of Survey Number, if any, will not, in any way, change the nature or character of the land. If at any time prior to 1975 when Notification u/s 20 was issued. Government of Gujarat wanted to exclude the area of Khauthar Bet from the purview of the Notification, steps contemplated for that purpose under the Forest Act should have been resorted to. No such step having been taken by the Government, it is too late in the day for them to raise a contention that Khauthar Bet does not form part of the reserved forest. The nature of the land as on the

date of Section 4 Notification is the decisive factor. Subsequent survey and assignment of Survey Number will not, in any way, change the character of that land (vide the decision of the Supreme Court in *The State of U.P. Vs. Dy. Director of Consolidation and Others*, .

17. On behalf of Sanghi Cements, its President filed Affidavit-in-reply in Special Civil Application No. 2870 of 1996. In paragraph 3 of that affidavit dated 23rd April, 1996, it is categorically admitted that by Notification dated 2-7-1995, issued u/s 20 of the Indian Forest Act, lands admeasuring 52951.73 hectares of mangrove forest of Kutch District were specified as reserved forests. The Company has no case that the said land does not lake in Khauthar Bet. They did not get approval from the Government of India for carrying on any non-forest activity in the reserved forest covered by the said Notification. It is settled law that when there is difference between the area, survey number and boundary of any property, boundary is to prevail and that should be the decisive factor (vide AIR 1948 207 (Privy Council) . Regarding boundary of the reserved forest in the instant case, there cannot be any dispute because boundary stones were planted to demarcate the area. Those stones were made mention of in the Notification issued under Sections 4 and 20 of the Forest Act. The location of these stones were verified and spotted in Annexure VII plan prepared by the Committee, headed by Shri Bhardwaj. No other plan of the reserved forest, carving out or excluding patches of land within the boundary as being non-forest land, is produced by the State. When the boundary is so clear, no argument can be allowed to be advanced by any one, disputing the nature of the land falling within that boundary.

18. A perusal of the entire records show that Sanghi Cements found Khauthar Bet to be the suitable area for putting up a jetty. They sought for getting that land on permanent lease. While locating the area, they prepared the plan in such a way that it was in Gunav village near the west of the boundary stones F-357 to 360 in the unsurveyed portion lying to the east of forest boundary stones 142 to 150. On going through the plan, Forest Authorities found the area to be outside the reserved forest. Consequently, they did not raise any objection. Thereupon, sanction was obtained from the Revenue to get possession of that land. But, actually, the land was not in between the boundaries of the reserved forest and the village boundary of Gunav in the unsurveyed area. That land was situated to the west of village Akri. But that land was to the west of Survey Stones Nos. 132 to 142 of the forest boundary. For getting that land, which is now found to be within the reserved forest area, a wrong plan was submitted to Forest Authorities. The land taken possession of falls within the boundaries of reserved forest. For getting that land, permission from the Central Government should have been obtained. This has not been done.

19. Another aspect that is to be considered is the nature of the land lhat has been assigned to the Company by the Government of Gujarat. The Company was allotted 250 hectares of land for caplive portal village Gunav, which isunsurveyed

coastal land, but, actually, the land that was taken possession of by the Company was not one situated in village Gunav. Land which the Company took possession of is situated in village Akri. Village Gunav and village Akri, though adjoining, are located in two Talukas. The area so given to the Company is marked in the plan at page 555 in second part of Special Civil Application No. 2870 of 1996. That plan was the one submitted by the Company when they sought for the assignment. Correctness of that plan was certified by the Company. After getting the said land allotted, they wanted to alter the description of the property. Government allowed the prayer and corrected it as :

"..... Place Akri Village, Taluka Abdasa, District Kutch, Survey No. 131, area hectares 98.11.95 sq. metres (which is known as Khauthar Bet) and adjoining coastal land, admeasuring hectares 151.88.05 sq. metres, total 250 hectares (25 lakh sq. metres) shown on the map attached herewith in letler dated 2-6-1995"

Under what provision of law, this correction has been effected, is not clear. The land, which is supposed to have been taken possession of by the Company from the Mamlatdar of Lakhpal Taluka, is now changed to be that situated in Akri Village in Abdasa Taluka. The steps taken by State Government and the Collector of the District shows that they were prepared to surrender the land to the company without verifying its nature and even the location.

20. In the Notification issued u/s 4 of the Indian Forest Act, as against column "Survey Number", it was noted : "Not Available : This area is slushy and muddy and completely out of village boundaries of extreme border villages and hence, no Survey Number exists. "On the basis of this description of the Survey Number in the Notification, it was argued that land, in relation to which Government intended to make it reserved forest, should be outside the village boundaries of border villages. This boundary as per the Conference held at Mysore should be the low tide line. Consequently, the west mangrove forest must have its eastern boundary at the low tide line. We find it difficult to agree with this argument. Low tide line in the particular area is far away from the village boundary now marked in the plans made available to court. The area in between the low tide line and the existing village boundary is substantial. Neither the Notification u/s 4 nor any provision of the Act makes reference to the low tide line or the high tide line. Boundaries were described with reference to boundary stones planted at the site. It was with reference to those boundary stones the situation and limits of the land fixed. Consequently, it cannot be held that the areas, which are slushy and muddy, alone came within the ambit of the Notification. Accordingly, the entire area comprised within the boundaries demarcated by planting survey stones mentioned in the notifications was taken in as reserved forest.

21. A question that was mooted before us on behalf of the petitioners is that Khauthar Bet is an Island. According to them, during high tide, the area is surrounded by water. During low tide, the water will recede and Khauthar Bet will be connected to the main land in Akri Village. Since the land is not surrounded

by water during the entire period, learned Additional Advocate-General and counsel representing Sanghi Cements submitted that Akri Bet cannot be considered as an island. Word "island" has not been defined in the Forest Act. In the absence of such a definition, the meaning of that word, as given in the Dictionary, is to be followed. Meaning of that word, as understood in the common parlance alone can be accepted (vide *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, and *Mohinder Singh Vs. State of Haryana and Others*, . In *Corpus Juris Secundum*, Volume 48 "island" has been described as "A body of land surrounded by water." It goes on to state that "to constitute an island in a river the land must be permanently surrounded by water, and a portion of land is not necessarily an island because water occasionally and periodically flows entirely around it." As per Black's Law Dictionary, "island" is "a piece of land surrounded by water" and "land in a navigable stream which is surrounded by water only in times of high water is not an island....."

New Webster's Dictionary defines "island" as "a piece of land surrounded water." Khaulhar Bet is not surrounded by water throughout the entire day. Only at high tide, water separates it from the main land. Such an area cannot be considered as an island. Learned counsel representing the Central Government did not advance an argument that Khauthar Bet is an island. In these circumstances, Khauthar Bet cannot be taken as an "island". As a result of the above discussion, we come to the conclusion that Khauthar Bet forms part of reserved forest and Sanghi Cements to be in possession of the same for putting up a captive jetty. Substantial work for that has been carried out without any permission from the Central Government.

22. Government of India issued Coastal Regulation Zone Notification, 1991 for regulating the activities in coastal regulation zones. The coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters, which are influenced by tidal action upto 500 metres from the high tide line and the land between the low tide line and high tide line was notified as coastal regulation zones. Restrictions have been imposed on setting up and expansion of industries in the said zone. The distance from the high tide line, to which the regulations are to apply, can be modified on a case by case basis, while preparing the Coastal Zone Management Plan. However, the distance should not be fixed at less than 100 metres. Examination of case to case basis of rivers, creeks and backwaters were permitted only till Coastal Zone Management Plans are prepared. Thereafter, the restrictions should be in accordance with such plans. Clause (2) of the Notification enumerates the various prohibited activities within the zone. It, inter alia, prevents setting up of new industries and expansion of the same except those directly related to the water fronts or directly needed for foreshore facilities within the coastal regulation zone. The Notification further prohibits construction activities in ecologically sensitive areas specified in Annexure "I" to the Notification. All other activities other than those prohibited are to be regulated. Paragraph 3.1 states that "Clearance shall be given for any activity within the

Coastal Regulation Zone only if it requires water front and foreshore facilities." Operational constructions for ports, jetties, etc., require environmental clearance from the Ministry of Environment & Forests. It further requires the coastal states to prepare Coastal Zone Management Plans, identifying and classifying the coastal regulation zone areas. While preparing the Coastal Zone Management Plans, the guidelines given in Annexures-I and II of the Notification are to be adhered to and the plan to be got approved by the Central Government in the Ministry of Environment and Forests. Within the framework of such approved plans, the activities within the zone are to be regulated by the State Government except those that are falling within paragraphs 2 and 3.2 of the Notification. For regulating the developmental activities, the coastal stretches within the 500 metres of the high tide line on the landward side are classified into four categories. Among other areas, reserved forests and mangroves fall within Category I in Annexure-I of the Notification.

23. In conformity with the Notification, the State Government, on 27th September, 1996, prepared Coastal Zone Management Plan for the State of Gujarat. The plan so prepared was submitted to the Central Government for its approval. That plan was remitted back to the State Government for certain modifications. Clause 3.3(i) of the Notification enjoins the coastal States to prepare Coastal Zone Management Plans, identifying and classifying CRZ areas in accordance with the guidelines in Annexure-I and II of the Notification. Those plans should be submitted to the Central Government for approval. Till such plans are prepared and got approved, all activities within the zone should be in conformity with the Notification itself. After the preparation of the Coastal Zone Management Plans, development activities in the Zone are to be regulated by the State Government in areas falling outside paragraph 2 and paragraph 3 (2) of the Notification. This means, if the development activity comes within any category prohibited under paragraph 2, the State Government is not the authority to regulate the same. It will be the Central Government. Likewise, if the development activity relates to those that fall in paragraph 3(2), it is also outside the control of the State Government. These construction activities in ecologically sensitive areas specified in Annexure "I" and construction for ports, harbours, light houses, requiring water frontage, jetties, wharves, quays, slipways etc., are outside the control of the State Government. Reserved forests, mangroves, areas close to breeding and spawning grounds of fish and other marine life etc., are ecologically sensitive and important. They fall in Category I of Annexure-I. Any construction activity in such an areas is prohibited. So, the State Government is not the competent authority to deal with such construction.

24. In the instant case, the construction of jetty is in Khauthar Bet. Khauthar Bet has been found to be situated within reserved forests. As per Annexure I of the Coastal Regulation Zone Notification, reserve forests is ecologically sensitive and important. It falls within Category I, viz., C.R.Z. I. Construction activity in ecologically sensitive areas, as specified in Annexure I the Notification is a prohibited activity under paragraph 2(xi) of the Notification. For carrying on such

an activity, the Authority to give sanction is the Central Government. No one has got a case that Government of India, in Ministry of Environment and Forest permitted Sanghi Cements to carry on the construction of Captive Jetty in Khauthar Bet.

25. Sanghi Cements obtained No Objection Certificate from Gujarat Pollution Control Board for Jetty on May 9, 1995 and for the Captive Port and Desalinization Plants on January 24, 1996. They sought CRZ exemption from the Central Government on July 7, 1995. Government of India took the stand that the Jetty requires environmental appraisal as per the C.R.Z. Notification, Sanghi Cements thereupon, applied to the Central Government for C.R.Z. clearance on 1st May, 1996. The Company sought separate clearance for the captive limestone mines, cement manufacturing unit and captive jetty from Gujarat Pollution Control Board, Gujarat Pollution Control Board and the Central Government treated these projects separately and did not assess the cumulative impact and risks arising out of the total Project related activities. Government of Gujarat granted clearance for the jetty, intake of sea water, discharge of saline water, construction of approach road, pipeline and to put up transmission lines. Activity undertaken by Sanghi Cements was one of the Projects considered by Apex Court in Writ Petition (Civil) No. 664 of 1993. Apex Court referred the issue to NEERI for Expert opinion. They came to the conclusion that construction of jetty and operational back up facilities, including Captive Power Plant in the Coastal Regulation Zone, is in progress without obtaining the clearance from the Ministry of Environment and Forests, which is required as per Clause 3.2(ii) of CRZ Notification of February, 1991. According to them, Sanghi Cements sought clearance separately for the mining of limestone, manufacturing of cement, Captive Jetty and Captive Power Plant from the Gujarat Pollution Control Board and Ministry of Environment and Forests, Government of India. An assessment of cumulative impacts and risks would have warranted the requirement of the regional environmental impact and risk assessment report. However, the Authorities granted clearance without an original environmental impact and risk assessment study. They went on to state that environmental appraisal process was fragmented and uncoordinated. Location of the jetty, according to NEERI, is in an island, surrounded by dense vegetation of mangroves and so, environmentally non-viable. They gave the opinion that construction and operation of the jetty would impair dense mangrove vegetation and the aquatic ecosystem. This opinion expressed by NEERI is to be considered by this Court since the matter has been remitted by the Apex Court for consideration by this Court.

26. On 16th June, 1995, Government of India, informed the Sanghi Cements that since the cost of the captive jetty facilities is less than Rs. 50/-crores, environmental clearance from Ministry of Environment and Forests was not required. However, Sanghi Cements were directed to take approval of the Ministry for the facilities proposed to be located within 500 metres of high tide line as per Coastal Regulation Zone Notification. This direction given to Sanghi

Cements to get approval under the Coastal Regulation Zone Notification has not been fulfilled till date nor did Sanghi Cements question the correctness of that direction.

27. On 1-5-1996, Sanghi Cements applied for permission of the Central Government for the construction of captive jetty. This Court, by order dated 19-6-1997, directed the Government of India, to decide that application for permission to put up construction on the coastal regulation zone land within a period of four weeks. The extent of the zone was, for the interim order, fixed as 100 metres, instead of 500 metres. The Company was permitted to carry on construction on non-CRZ Revenue lands, subject to the following terms and conditions :--

"... (1) (i) The Government of India shall decide the application of the Company for permission to put up construction on the Coastal Regulation Zone land, within a period of four weeks from today.

(ii) The order dated 25-4-1996 passed in Special Civil Application No. 10605 of 1995 also stands modified and instead of 500 m. it should be read as 100 m.

(2) The respondent Company is permitted to carry on construction on non-CRZ, Revenue Lands subject to the following terms and conditions : --

(i) The respondent Company is permitted to construction desalination plant for the purpose of supply of potable water to the people in the vicinity and the staff of the Company working there. The Company shall not charge anything for the supply of potable water to the local people.

The Company is also permitted to construct the building for the power plant.

The Company agrees that in case the Company loses in this litigation, the Company shall hand over the desalination plant and the power plant to the State Government without claiming any compensation.

(ii) The respondent company is permitted to put up other constructions on its own risk and cost and Company offers to demolish the same in case it loses in this litigation.

(iii) The Company is permitted to carry on the above constructions only on the non-forest lands as per the report of the committee dated January 1, 1997 and after the requisite permissions are obtained by the Company from the respective authorities concerned.

(iv) It will be open for the State Government to monitor the construction works as permitted by this order on the non-forest lands as per the report of the Committee and on non-CRZ lands.

(3) We further direct that the Company shall not commence the above constructions before furnishing to the State Government a Bank Guarantee or a nationalised Bank for a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only) for the

purpose of compensating damage, if any, to the disputed area and for meeting with its obligations, if any.

(4) In the facts and circumstances of the case, it is further directed that the main matters shall be listed for final hearing after a period of four weeks from today."

28. Central Government constituted an Rx-pert Committee to go into the issue. That Committee was constituted in accordance with Schedule III of the Environmental Impact Assessment Notification of 1994. It consisted of 13 members. By a majority of 11:2, the Committee recommended to Central Government to accord the Project Environmental clearance. Since the Government of India did not pass final order within the time fixed in the oruer dated 19-6-1997, the Company moved Civil Application No. 1750 of 1997. By order dated 23-10- 997, this Court granted four more weeks" time to the Government of India to pass final order on the application for permission under the Coastal Regulation Zone Notification. Thereupon, Government of India, by order dated 3rd November, 1997, constituted another Committee, consisting of 7 members, headed by Shri Anil Agarwal, to go into the issue and submit its report. The Terms of Reference to the Committee were :--

(1) to assess the likely impact of the Project on CRZ area along Khare creek, including breeding and spawning grounds, if any;

(2) to report whether any mangroves are present in the proposed project site and if so, whether the proposed project will have any impact on these mangroves;

(3) To indicate the type of land, quality of forest/mangroves in the proposed site, including the inter tidal zone;

And

(4) to assess the impact of the jetty construction on the mangroves, if any, existing on the opposite banks of the creek.

The said Committee submitted a report to the Central Government on 19th November, 1997. After the submission of that Report, two Members of the Committee, wrote to the Government about their reservations to the Report. Government of India moved this Court after a further period of six weeks to take a decision on the issue. On 17th December, 1997, this Court directed the Central Government to pass final order on or before 7-1-1998 and to make available a copy of that order to this Court on 12-1-1998. Before taking a decision, Government of India was directed to afford Sanghi Cements an opportunity of being heard in the matter and the Government to pass a reasoned decision. Pursuant to that decision, Sanghi Cements made a detailed representation to the Government of India. Secretary to Government heard representative of the Company in the presence of the seven Members of the Committee constituted by the Government. Government, by order dated 9th January, 1998, rejected the

petition, holding that it would not be correct to grant environmental clearance for construction of the jetty at Khauthar Bet until Government of Gujarat determines the carrying capacity of the region through a Coastal Zone Management Plan, system of monitoring is evolved and other safeguards taken, as suggested by the Experts. This order of the Central Government is challenged in Civil Application No. 297 of 1998 filed in Special Civil Application No. 2870 of 1996.

29. Learned counsel representing Sanghi Cements submitted that the order of the Central Government dated 9-1-1998 is arbitrary and illegal. No reasonable person would have come to the conclusion reached therein in view of the opinion expressed by Experts and on the recommendations made by Officers in the Department. It is their case that Minister acted so arbitrarily and illegally that this Court has to interfere with the same.

30. Learned counsel representing the Government of India questions the maintainability of Civil Application No. 297 of 1998. According to him, this Court issued a writ of mandamus, directing the Central Government to dispose of the petition filed by Sanghi Cement for sanction to construct the jetty under the Coastal Regulation Zone Notification. That writ worked itself out when the Government passed order dated 9-1-1998. If Sanghi Cements are not satisfied with that order, they will have to file a new Special Civil Application, challenging its validity. They cannot collaterally attack that order by filing this Civil Application.

31. As per the terms contained in the Forest Conservation Act and the Coastal Regulation Zone Notification, the construction of jetty in Khauthar Bet requires the sanction/approval from the Government of India in the Ministry of Environment and Forest. That Ministry is enjoined to examine the entire aspects and to come to its conclusion based on relevant materials placed before it. Relevant materials consist of various reports submitted by the Expert Committees and the fact finding Committees. Presumably, on the basis of the material, Government issued order dated 9-1-1998, holding :--

".... On the basis of reports referred to above, the Government of India have come to the conclusion that it would not be correct to grant environmental clearance to Messrs. Sanghi Industries Limited for construction of the jetty at Khauthar in Kutch District of Gujarat until the Government of Gujarat determines that carrying capacity of the region through a coastal zone management plan system of monitoring is evolved and safeguards taken as suggested by the Experts."

This order is attacked on the ground that the Ministry had not taken into consideration relevant opinions given by Experts and fact finding bodies, but took into consideration irrelevant matters and acted in an arbitrary manner.

32. Notes File, leading to the order dated 9-1-1998, issued by the Central Government, has been made available to us. A perusal of that file shows that all Officers in the Ministry were inclined to accord sanction to Sanghi Cements to

permit them to carry on the construction of jetty at Khauthar Bet. The Minister incharge of the Department was not agreeing with the views of the Officers or of the Expert Committee. Single-handedly, he turned down the suggestions of his Department and directed refusal of sanction. In deference to his opinion, order dated 9-1-1998 has been issued. It is true that the Minister is a statutory authority to take the decision on the issue. It is also necessary that he must give reasons based on the materials before him. Such an approach is not seen to have been resorted to in this case while the Minister was taking a view contrary to those expressed by the Department and Experts. The stand of the Central Government on carrying capacity studies is that it will spread over a long period of time in the present context. So, if the permission asked for by Sanghi Cements is to be dealt with after the completion of a carrying-capacity study, it will virtually amount to keeping the matter in cold storage for pretty long number of years and consequently, denial of sanction. Such an approach taken by the Ministry, to say the least, is not legal or proper.

33. The order dated 9-1-1998 is one passed by the Government of India pursuant to direction given by this Court in a pending matter. That order is now seen to have been issued without a proper appreciation of the entire facts and circumstances. So, this Court can go into the correctness or otherwise of the order when it is seen that all relevant aspects were not considered in its proper perspective. Ministry did not examine the feasibility of allowing the construction when it is to take place within a reserved forest. At no point of time had any authority dealt with the application for permission to put up construction of jetty in Khauthar Bet, within the reserved forest. This issue, having been resolved by us by our conclusion that Khauthar Bet forms part of reserved forest, should have been considered by the Government of India. This having not been done, we quash the order dated 9-1-1998 and direct the Central Government to reexamine the prayer of Sanghi Cements for permission to put up Captive Jetty in Khauthar Bet. This must be done in the light of the observations made earlier in this judgment within a period of two months from the date of receipt of a copy of this judgment. We make it clear that in dealing with the above issue, Sanghi Cements should be afforded a reasonable opportunity of being heard in the matter.

34. Guidelines to be followed in granting permission in cases of this nature are laid down by the Supreme Court in various decisions. Adherence of those principles will certainly protect the Forest and ecology. No argument was advanced before us that any aspect other than that dealt with by the Apex Court has to be followed in granting permission to Sanghi Cements. So, it is not necessary to deal with the various decisions cited at the Bar covering those aspects. We make it clear that the Central Government should strictly follow the guidelines fixed by the Apex Court while dealing with the issue relating to the establishment of the Factory and Jetty of Sanghi Cements.

35. Before parting with the cases, we think it proper to impress upon the Central

Government the industrial backwardness of Kutch District, the largest District in the whole of India, which also constitutes about one-fourth of the total area of Gujarat. The said area badly requires economic development. Rich mineral resources are available in that District. After taking due care to protect the environment of that area, resources present there have to be tapped for the benefit of the humanity. Virtually, the entire population in that area falling within Lakhpat and Abdasa Talukas live below poverty line. 3.39 million hectares (approx.), i.e. 74% of the total area of Kutch, enveloping the whole of western Kutch is arid/Semi arid and desert wasteland and is tabulated as non-cultivable. Their condition can be improved only by industrial development. As per the estimate, more than 5000 million tonnes of mineral deposits of limestone and 200 million tonnes of Lignite are available in that District. Exploitation of these resources with proper environment management should be resorted to for the benefit of the Nation. The case of the Government of Gujarat, that mineral based industries, like Cement, are to be set up in the above-mentioned Talukas of Kutch District, should receive proper consideration at the hands of the Central Government.

36. The present controversy is about the Jetty Project in Abdasa Taluka for an export oriented cement plant in Lakhpat Taluka. The existing ports are far away from the above Talukas--Kandla Port, 175 K.Ms. away by road, and Mundra Port, 130 K.Ms, away, Jakhau and Koteswar are fishery harbours, with depths of not more than 2.5 metres. The captive jetty for lighterage traffic is proposed to be constructed at the Khauthar Bet at a distance of 13 K.Ms, from the cement plant. Our finding that Khauthar Bet is a part of the West mangrove reserved forest, is based on the ground that the Khauthar Bet falls within the boundaries of the said reserved forest as specified in the Notifications issued under Sections 4 and 20 of the Indian Forest Act, which boundaries are also delineated in the official maps. However, no party has disputed the finding given by the Bhardwaj Committee that there are no mangroves on and around the Khauthar Bet, which admeasures 98 hectares out of 52000 hectares of the total land comprised in the west Mangrove reserved forest, and that the only vegetation, which was noticed by the Committee on and around the Khauthar Bet was 38 babool trees, 11 khar trees and 3 or 4 cactus, besides grass (page 222/Spl. C.A. 2870 of 1996).

37. The Expert Committee, appointed by the Ministry of Environment and Forest of the Government of India in 1997, was headed by Dr. Anil Agarwal. While reporting that the luxuriant growth of mangroves formations was found on the opposite bank of the creek facing the jetty, the Agarwal Committee has noted in paragraph 3 of its report, dated 19th November, 1997, as under:--

"... The routine operations and transportation of cement by barges at the jetty-head and onward transportation to cargo ship berthed away from the creek-mouth, are now likely to have an adverse impact either on the creek or the mangrove ecosystem unless there are accident spills." (page 98-99 in C.A. 297/98)

This Committee has also suggested certain precautions and safeguards for maintaining the eco-sensibility of the mangrove system. There is also no dispute about the stand of the Government of Gujarat as disclosed in its affidavit-in-reply dated 22nd April, 1997 that permission for construction of captive jetty on the Khauthar Bet is not for a direct berthing port but only for lighterage traffic of small barges or vessels at lower water depth in the creek (page 441/2870, page 137/590 of 97).

38. While dealing with the issue on the sanction to be given to Sanghi Cements, the Central Government must necessarily take into consideration the opinions given by Experts on the question of environment protection: As regards the present project, no Committee till date recommended absolute ban of all construction activities in the area on the ground of pollution or as endangering ecology.

39. All the petitions are disposed of as indicated above.