

(2001) 05 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 909/96 Others Writ Petition (OWP) No. 1067/96 Others Writ Petition (OWP) No. 328/99 Others Writ Petition (OWP) No. 1127/99 Others Writ Petition (OWP) No. 992/93 Others Writ Petition (OWP) No. 931/99 Others Writ Petition (OWP)

Anil Paba

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2001) KashLJ 558

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : R.Mehta, M.I.Sher Khan, D.C.Raina, Ashok Parihar, A.Kapoor, A.K.Sharma, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—"All Indian cities like Jupiter are perpetually enveloped in thick dusty and gaseous substances. The movement of trucks,

buses, minibuses, tempos and other vehicles using petrol, diesel mixed with kerosene emit fumes which make a dull blue hue polluting the

environmental surroundings. The intensity of this increases as the day advances and it is maximum by the time sun sets in. When seen in electric

light; it gives an impression that one is surrounded by fog or mist depending upon the season. These gaseous substances to a naked eye would

seem to consist of dust and smoke but on chemical analysis it would become apparent that it contains poisonous gases and other contents which

would have disastrous effect and as a matter of fact is having on the inhabitants living in these cities. These gaseous substances can be invisible

carbon monoxide which is produced by petrol vehicles. Diesel operated vehicles

produces Carbon Dioxide which can be neutralised by green

forests which forest cover is shrinking day by day. Clear blue sky is visible only for a few days after heavy rain pour. To add to problems of an

ordinary citizens, roads are full of pot holes. Survival kit is required to escape the ghastly fumes and murderous pot holes. The streets are narrow.

In between the road and foot paths, there is an overflowing drain which is an open breeding ground for mosquitoes. Citizens weaken by the

poisonous gases fall easy pray to bacterial diseases. Not only this, the foot paths are covered by temporary and permanent encroachments. Open

drains stinks. If one ventures to get into other crowded areas then one is reminded of the picture of Bombay (Mumbai) which was depicted by the

then the Chief Justice of India in *Olga Tellis and others Vs Bombay Municipal Corporation and others* AIR 1986 SC 180 wherein it was pointed

out that those who have made pavements their homes exist in the midst of filth and squalor which has to be seen to be believed. Rabid dogs in

search of stinking meat and cats in search of hungry rats keep them company. They cook and sleep where they ease for no conveniences are

available to them. Their daughters come of age bath under the nosy gaze of passers by unmindful of the feminine sense of bashfulness". Quoted

from *Yogindera Singh Tomav V. State of Madhya Pradesh* AIR 1997 M.P. 124

2. So far as the capital cities of Jammu and Srinagar are concerned they are like any other city of India. When we say that India is one from

Kashmir to Kanayakumari then one of the predominant feature which would be found common is the way in which natural resources are being

exploited unmindful of the consequences which it is likely to have on the generations to come.

3. City of Jammu is situated on the bank of river Tawi. This city has an ancient historical background. This area is also associated with events

which took place and which are described in the great Indian Epic Mahabharata. To this city of temples, river Tawi served as a natural barrier on

one side, river Chenab protects it on the western side. Though not on the direct route of these who came to this country from mid Asia yet it has

not remained free from events of history. Mughal rulers left their influence in the region. The influence of Sufi Saints is apparent. The short stint

under the Punjab Rulers and the later administration given by the rulers who

ruled this state till 1947 has left an indelible mark on the State. The state has a rich historical background and a proud ethos.

4. In the city which is built on a plateau with natural slopes, stagnant water is found even in the drains with inclining ingredient. The human effort has been fully operated even to reverse this ordinarily law of nature. There is a water pollution, the drains are clogged, the streets over flowing more with vehicles than with human beings. There is air pollution. These vehicles are in such a desperate hurry that they over take each other unmindful of who is coming from the opposite direction.

5. When the traffic is moving nobody gives any attentions to the school going children. They have to wait and wait for crossing the roads. The passengers carrying vehicles are often over crowded and even if they are not crowded the conductor is always leaping out of the exit door. A door he can hit against any electric pole which are located on the edge of the metaled road i.e. the end of the road and the foot path. When the roads are free from vehicles, then the catties both stray and domesticated take over. Some time, they are found sitting in the centre of the' roads and when they are moving at nights they are not visible as their dark skin mingles with the darkness of the night resulting in accidents.

6. If one were to stand at a vintage point and watch the people of the city, the impression given is that they are in no hurry. Shopkeepers open their shops in the early hours with regular religious routine. The business premises are swept clean and all the dirt is passed on if an open space is available hereby to that space and if the space is not vacant then into the municipal drain. Those who get up very early in the day are young students who have not even crossed their teens. The teachers who are to teach them give them company for a while because they also wait for some transport. Anxious parents accompany their wards till they board the vehicles which are to take them to their school. Tiny tots keeps standing waiting to cross the road. No one cares for them or gives them any preference. If any urgency is shown by any section of the people then it is the driver and conductors of these passengers vehicles.

7. The traffic police is there. It gets into action only when a car with a red light approaches a busy crossing. One car hear the noise of whistle for a while. This dies down as the vehicle with red light moves away. The amount of

smoke and emission from the vehicle can lead to suffocation. Even the fogging machines for spraying insecticides would of no match to the smoke which is emitted by these vehicles.

8. On the main streets at intervals, the Municipal Committees has kept bins for collecting refuse. The stray and domestic animals keep themselves busy around these disposal bins. What is deposited in these bins is taken out by the stray animal. If one were to get into a narrow lane one would find that the drains are clogged. Main holes are covered by covers which are made of steel. If they are not properly fixed the chances of these being removed by unscrupulous elements leaving the main hole open are there. The narrow lanes are made further narrow by parking the vehicles.

Majority of these vehicles are those of the owners.

9. There is no regular channel for carrying the dirty water into any sullage disposal system. As a matter of fact there is no sullage treatment plant. If one were to visit the service station where cars are serviced, one would find that the dirty water is allowed to get into public drain. With the type of soil topography in the city of Jammu, there is every possibility of the water percolating into the lower layers and the time is not far off when the source of water will be get mingled with sullage, dirty and impure water. All liquids flow down wards. This law of nature has been reversed in this city water keep stagnating even if drains which are on slopes.

10. This is the grim scenario. The municipal authorities (including Development Authorities) and the authorities dealing with the traffic have to deal with the pollution in air. Pollution in water, pollution on the roads etc. Noise pollution is another area of concern. There is hardly any avenue of life where some remedial measures are not required to be taken, It is this aspect of the matter which has been adverted to in these Public Interest Litigations. The pollution of river Tawi and the damage which has been caused to Dal Lake. Srinagar and other water bodies. It is the pollution caused to these natural resources and the disturbances caused to the environmental system which is proposed to be dealt with in these petitions.

11. Maintenance of cleanliness is an age old problem. Mahatma Gandhi in his Autobiography indicates the State of cleanliness in his native town of Rajkot. A reading of this leaves us with an impression that in the last several decades in the matter of looking towards cleanliness and providing

sanitary conditions there has been no progress at all. What is said at page 122 of Reprint Edition of 1959 makes an interesting reading. After

describing the residential accommodations occupied by rich and the poor the situation around places of wothership has also been described. This

is what has been said regarding this aspect of the matter:

As I felt that I could be of some help in the sanitation department, I offered my services to the State. They were accepted and I was put on the

committee which was appointed to look into the decision. I paid especial emphasis on the cleanliness of latrines, and the committee decided to

inspect these in every street. The poor people had no objection to their latrines being inspected and what is more, they carried out the

improvements suggested to them. But when we went to inspect the houses of the upper class some of them even refused us admission not to talk

of listing to our suggestions. It was our common experience that the latrines of the rich were more unclean. They were dark and stinking and

reeking with filth and worms. The improvements we suggested were quite simple e.g. to have buckets for excrement instead of allowing it to drop

on the ground, to see that urine also was collected in buckets instead of allowing it to soak into the ground and to demolish the partitions between

the outer walls and the latrines so as to give the latrines sun light, air and enable the scavenger to clean them properly. The upper classes raised

numerous objections to this last improvement and in most cases it was not carried out.

The Committee had to inspect the untouchables quarters also. Only one member of the committee was ready to accompany me there. To the rest,

it was something preposterous to visit those quarters, still more so to inspect their latrines. But for me those quarters were an agreeable surprise.

That was the first visit in my life to such a locality. The men and women there were surprised to see us. I asked them to let us inspect their latrines.

Latrines for us; they exclaimed in astonishment. We go and perform our functions out in the open. Latrines are for you big people. Well, then you

won't mind if we inspect your houses ? I asked.

You are perfectly welcome, sir, You may see every nook and corner of our houses. Ours are no houses they are holes.

I went in and was delighted to see that the insides were as clean as the outside.

The entrances were well swept, the floothers were beautifully smeared with cow dung and the few pots and pans were clean and shining. There was no fear of an outbreak in those quarters.

Observance of the rules of sanitation and hygiene in a place which is regarded as holy. The authors of the smritis as I knew even then have laid the greatest emphasis on cleanliness both in ward and outward.

12. What was said in the last century is true as of today also. The problem is social. Society must awaken itself. As resort to had to legal remedies, legal aspect be examined.

Locus Standi and Person Aggrieved

13. In *Sidebotham Reexparte Sidebotham* (1880) 14 Ch.D 458 Lord Justice James was of the view that a man was not a person aggrieved unless

he himself had suffered particular loss in that he has been injuriously affected in his money or property rights. He was not aggrieved simply because

he had a grievance. This concept underwent a change when in *R.V. Thames Magistrates' Court* (1957) 5 LGR 129, A matter came before Lord

Denning and Lord Justice Parker. This was a case about a pitch in a street market in Bermondsey. The magistrates had awarded the pitch to a

seller of jellied cells. But a newspaper seller thought that he ought to have the pitch. He had no legal right to the pitch. In the above case the view

expressed was that he had a locus standi and the order passed by the magistrate was set aside. The old tendency to limit litigation visavis right of

persons who had a particular grievance has undergone a sea change in the recent times. This question was considered in *R.V. Commissioner of*

police of the Metropolis expart Blackburn (1968) 2 QB 118 and following observations were made by the Queen Bench.

A question may be raised as to the machinery by which he would be compelled to do his duty. On principle it seem to be that once a duty exists,

there should be means of enforcing it. This duty can be enforced. I think either by action at the suit of the Attorney General or the prerogative writ

of mandamus...

14. Lord Denning in his book"" *The Discipline of Law* has expressed his opinion as under:

Now here I must ask all of you to note that those were all cases where an ordinary citizen sought one of the prerogative remedies of certiorari,

mandamus or prohibition. These are available against government departments or any person or body set up by statutory authority affecting the

rights of individuals. And I have shown, I hope that any responsible citizen has a sufficient interest such as to entitle him to be heard if he complains

that the law is not being enforced as it should".

15. Person aggrieved is an expression used to identify persons who have a right to challenge decisions or acts of public authorities. The term

originated to describe the level of interest or standing required of an applicant for seeking issuance of prerogative writs of certiorari, prohibition etc.

The scope and meaning of the term has been developed in the context of these proceedings. These terms have by now acquired sufficient weight of

authority and familiarity. This concept is now made applicable more generally to a variety of statutes to indicate persons entitled to question public

authority activity under those provisions. The standard of interest of an applicant seeking judicial review is that he must have a sufficient interest in

the matter to which the proceedings relates rather than being a 'person aggrieved'.

16. Prima facie a person whose legal rights are infringed should have a sufficient interest to lay foundation for the complaint. This is the basis of civil

litigation and this applies equally in public law. The consequences of the exercise of public power, though may be more diffuse, impinging on a wide

range of persons at varying levels and therefore, requiring identification of the degree of interest needed over and above the concern of the general

public to entitle a person to enlist the aid of the legal system to secure redress. A formulation of this necessary interest level by Lord Denning in

R.V. Liverpool Corporation *ex parte* Liverpool Taxi Fleet Operators Association (1972) 2 QB 299. WIS in these words.

The writs of prohibition and certiorari lie on behalf of any person who is a 'person aggrieved' and that includes any person whose interests may be

prejudicially affected by what is taking place. It does not include a mere busybody who is interfering in things which do not concern him: but it does

include any person who has a genuine grievance because something has been done or may be done which affects him.

17. Again a person may not suffer any infringement of a legal right, he may nevertheless be prejudicially affected by an action. In the Liverpool Taxi

Fleet Operatothers case (supra) the Corporation had a long standing agreement to consult the Association before issuing any additional taxi

licences. Subsequently, ignoring this arrangement, they issued an additional 50 licences. This was done without any consultation. The association

sought to enforce the agreement which it was held that even though the arrangement was not contractual this was considered sufficient to confer on

them a sufficient degree of interest to make them aggrieved. See also R.V. Thames Magistrates/ Court exparte Greenbaum (1957) 55 LGR 129.

18. The judicial authorities recognise that a ratepayer and presumably a council tax payer has standing to challenge the decisions and actions of his

local authority having an interest in its proper financial management. R.V. Paddington Valuation Officer exparte Peachy Property Corporation Ltd.

(1966) 1 QB380.

19. This broad approach judicially evolved by the courts do apply generally to the prerogative writs and orders. The term has been construed in its

context in particular statues. This is discernible from the judgement of Lord Hewart CJ in Seveneake UDC V Tuynam (1929) 2 KB 433, wherein

it was said:

Now undoubtedly those words, 'a person aggrieved' have very often been considered, and if one looked at the terms apart from their context and

apart from particular circumstances, it would have been quite easy to marshal decisions contradictory import. But has been said again and again

there is often little utility in seeking to interpret particular expressions in one statute by reference to decisions given upon similar expressions in

different statutes which have been enacted alib intutu. The problem with which) we are concerned is not what is the meaning of the expression

'aggrieved' in any one of a dozen other statues but what is its meaning in this part of this statute.

20. Schiemann J has made the same point in the following terms in R.V. Secretary of State for the Environment, Exparte Rose Thatre Trust Co

(1990) 2 IR 186 at P. 202.

Not every member of the public can complain of every breach of statutory duty by a person empowered to come to a decision by that statute..

However, a direct financial or legal interest is not required... Where one is examining an alleged failure to perform a duty imposed by statute it is

useful to look at the statute and see whether it gives an applicant a right enabling him to have that duty performed. The court will... decide whether the statute gives the applicant expressly or impliedly a greater right or expectation than any other citizen of this country to have the decision taken lawfully.

21. The person aggrieved concept has two further implications. Thus in accordance with general principles of statutory constructions it would be wrong to suggest that in the predominantly statutory field of environmental law the term will not have a static or universal meaning. It will need to be reinterpreted in relation to the particular purposes and objectives of the provision in the environmental context. These are :

- i. Its application to organizations or interest groups : and
- ii. its application to the public authorities themselves.

22. Where an association has been established, it will be recognised as having the necessary standing to represent and protect those interests.

Cevent Garden Community Association Ltd. V. Greater London Council (1981) JPL 183 is a decision in which the Association, consisting of 80

per cent of the residents and having being formed to protect their interests was accepted as having standing to challenge a grant of planning

permission by the local authority. A decision in the environmental context is reported as *R v HMIP exparte Greenpeace* (1993) Independent, 30

September (1993) 225 ENDS Report 42. In according them standing the court took into account that the association had 5 million members

internationally . David Feulkes in *Administrative Law* (London Butterworth 7th edn, 1990) p. 360 says.

to establish whether an applicant has standing it will be necessary to examine the scheme in question, the rights and obligations to which it gives

rise, the persons to whom it gives and on whom it imposes them and the relation of the applicant to the scheme the defect shown to be present in

the decision challenged, its seriousness and its effect will be relevant...

23. In *R.V. Secretary of State for the Environment Exparte Rose Threater Trust Co* (1990) 2 WLR 186 at page 201, Schiemann, J said:

It would be absurd if two people neither of whom had standing could be an appropriately worded memorandum, incorporate themselves into

company which thereby obtained standing.

24. Litigation concerning the environment is generally initiated by persons and bodies to resist or challenge enforcement action by public authorities.

In such cases to be 'aggrieved' an association must be able to point to some tangible loss or burden suffered as a consequence of the subject

matter of the dispute and that mere obstruction of or inability to perform a duty is not sufficient. In *R.V. Nottingham Quarter Sessions ex parte*

Harlow (1952) 2 OB 601 the local authority had required an owner of premises to provide a dustbin. The owner succeeded in his appeal. It was

held that the authority could prefer a further remedy as a person aggrieved, because once the requirement on the owner of the premises to provide

a dustbin had been avoided, the local authority itself could be compelled to perform that duty. In *Ealing Borough Council v. Jones* ((1959) 1 QB

384 came to a different conclusion. The magistrates' court quashed an enforcement notice served by the local planning authority. The authority

succeeded in its appeal. On appeal the Divisional Court speaking through Lord Parker CJ said: "It is also clear that a person is not aggrieved

when that person being a public body has been frustrated in the performance of one of its public duties ... I am satisfied that a mere annoyance that

what was thought to be a breach of planning central turned out not to be a breach of planning Central turned out not to be a breach of planning

central and equally the mere fact that this authority charged with certain duties under the Act, has been frustrated in the performance of what it

thought was its duty are not of themselves, consideration sufficient to make the local planning authority an aggrieved person.

25. In *R.V. Boldere and others ex parte Begner* Regis UDC 1962) 60 LGR 292, the local authority proposed certain sewerage works.

Objections were preferred. The court considered the works unreasonable and quashed the resolutions. The local authority appealed. It was

contended that the local authority was not a "person aggrieved" the appeal court held that it had no jurisdiction and dismissed the appeal. On the

local authority application for an order of mandamus to compel appeal court to hear and determine the appeal, the Divisional Court held that since

the decision quashing the resolutions cast on the local authority the legal burden of carrying out its duty to sewer, the local authority was

'aggrieved'. In his judgement Lord Parker observed:

In other words that case (R.V. Nottingham Quarter Sessions *ex parte* Harlow) was a case where the local authority found themselves as a result

of the decision of the court of summary jurisdiction saddled with a burden from which they would otherwise have been discharged. That as it

seems to me is the high water mark, if I may use that expression of the cases on the matter.

26. The position of law in this country is no different. The Supreme Court of India in number of decisions has expressed an opinion that locus

stand! to approach a court does exist when injury is likely to be caused to the public at large. These decisions of the Supreme Court of India finds

mentioned in the decisions reported as Subash Kumar V. State of Bihar AIR 1991 SC 420. These are as under:

- i. Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802.
- ii. Sachidanand Pandey v. State of West Bengal AIR 1987 SC 1109.
- iii. Ramsharan Authanuprasi V. Union of India (1989) Supp. 117 SCC 251.
- iv. Chhetriya Pardushan Mukti Sangharsh Samiti V. State of U.P. AIR 1990 SC 2060;

27. Ultimately the view expressed by the Supreme Court of India in Subash Kumar's case (*supra*) was that if anything endangers or impairs the

quality of life in derogation of laws a litigation under the label of public interest litigation would be maintainable. The only note of caution that was

struck by the Supreme Court of India was that the courts should see to it that whatsoever is sought to be enforced in writ jurisdiction is not

vindication of some personal grudge or enmity. Apart from this there is a direct authority dealing with this aspect of the matter reported as Bangalore

Medical Trust vs B.S. Maddappa AIR 1991 SC 1902. in para 36 at page 1915 of the judgement it was observed as under:

Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspect may be with same result.

One relates to maintainability of the petition and other to exercise of discretion law on the former has marched much ahead. Many milestones have

been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide

construction in wake of public interest litigation. Even private challenge to executive or administrative action having extensive fall out the dividing

line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order

affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and

effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that

petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High

Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature.

They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury.

Present day development of this branch of jurisprudence is towards free movement both in nature of litigation and approach of the Courts.

Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers. Even

otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affording

individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with

responsibility of the administration. If furnishes enough cause of action either for individual or community in general to approach by way of writ

petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for

restraint in exercise of discretion as grave issues of public concern outweigh such considerations.

28. Public Trust Doctrine

The Ancient Roman Law formulated a legal concept which the modern system of jurisprudence describes as Doctrine of Public Trust. The basis of

this doctrine is that all natural resources like rivers, sea shores, forest and air are held by the sovereign in trusteeship for the free and unimpeded

use of the general public. Under the Roman Law, these resources were called 'Res nullius' i.e. owned by no one or 'Res communes' i.e. owned

by everyone. When this concept came to be operated by the English Common Law, then it was indicated that the sovereign could own these

resources but the ownership was limited in nature. These resources were deemed to have been held in trust by the crown for the benefit of the general

public. Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention: Michigan Law Review Vol 68 Part 1 is an article written by

Joseph L. Sax. Professor of law, University of Michigan. He has given the historical background of the Public Trust Doctrine. This is summed up in

the following words:

The source of modern public trust law is found in a concept that received much attention in Roman and English Law the nature of property rights in

rivers, the sea and the seashore. That history has been given considerable attention in the legal literature need not be repeated in detail here. But

two points should be emphasized. First certain interests such as navigation and fishing were sought to be preserved for the benefit of the public,

accordingly property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private

owners. Second while it was understood that in certain common properties such as the seashore, highways and running water perpetual use was

dedicated to public, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the

state apparently did protect public uses no evidence is available that public rights could be legally asserted against a recalcitrant government"".

29. The Public Trust Doctrine therefore, rests on the principle that the resources made available by the nature are of immense importance to the

people as a whole and it would be wholly unjustified to make them an object of private ownership. These resources being a gift of nature, should

be available to every one irrespective of the statute in force. Professor Sax may be quoted again vis-à-vis restrictions which he says are required to be

mandatory followed by the government authorities. He makes following observations.

These types of restriction on governmental authority are often thought to be imposed by the public trust; first the property subject to the trust must

not only be used for a public purpose but it must be held available for use by the general public; second, the property may not be sold, even for a

fair cash equivalent; and third the property must be maintained for particular types of uses:

30. Once it is conceded that the natural resources are part of Public Trust then the question arises as to what constitutes the nucleus of this trust.

What nature has given to us would naturally be the nucleus of this public trust.

31. The love of nature is a great gift and if it is frozen or crushed out, the human can hardly fail to suffer from the loss. There are doubtless some to

whom none of the beautiful wonders of Nature: neither the glories of the rising or setting sun, the magnificent spectacles of the boundless ocean,

sometimes so grand in its peaceful tranquillity, at others so majestic in this mighty power; the forests agitated by the storm or alive with the song of

birds; nor the glaciers and mountains may arouse. Such man are indeed pitiable. But happily they are exceptions.

32. We are told in the first chapter of Genesis that at the close of the sixth day 'God saw every thing that he had made and behold. It was very

good. Not merely some things, but everything: not merely good but very good. Yet how few of us appreciate the beautiful world in which we live.

33. ""To the attentive eye"" says Emerson, "" each moment of the year has its own beauty; and in the same field it beholds every hour a picture that

was never seen before and shall never be seen again. The heavens change every moment and reflect their glory or gloom on the plains beneath. For

most of us the early summer has a special charm. The very life is luxury, the air is full of scent and sound and sunshine of the song of birds and the

murmur of insects the meadows gleam with golden buttercups: one can almost see the grass grown and the buds open; the bees hum for very job,

and the air is full of a thousand scents, above all perhaps that of new mown lawn.

34. The richness of life is marvellous. And one who will sit down quietly on the grass and watch a little, will be indeed surprised at the number and

variety of living beings every one with a special history of its won, every one offering endless problems of great interest.

35. ""If indeed thy heart were right, then would every creature to be thee a mirror of life and a book of holy doctrine said Thomas a Kerpis.

36. ""Flowers"" says Ruskin. 'Seem intended for the solace of ordinary humanity. Children love them, quite, tender, contended, ordinary people love

them as they grow; luxurious and disorderly people rejoice in them gathered. They are the cottager's treasure and in the crowded town, mark as

with a little broken gragment of rainbow, the windows of the workers in whose

heart rests the conenant of peace. 'But in the crowded street, or even in the formal garden, flowers always seem to me at least as if they were pining for the freedom of the woods and fields, were they can live and grown as they list.

The woods were filled as full with song there seemed no room for sense of wrong.'" Tennyson.

37. Every tree indeed is a picture itself. On the whole no doubt woodlands are most beautiful in the summer; yet even in winter the delicate tracery of the branches, which cannot be so well seen when they are clothed with leaves has a special beauty of its own while every now and then hoar foost or snow settles like silver on every branch and twig, lighting up the forest as if by enchantment in preparation for some fairly festival.

38. Without water no landscape is complete. The spring and the rivulet, the brook, the river and the lake seem to give life to Nature and were indeed regarded by out ancestorss as living entities themselves. Water is beautiful in the morning mist, in the brad lake in the glacing stream, in the river pool or the wide ocean, beautiful in all its varied mods. It nourishes vegetation, it clothes the lowlands with green and the mountains with snow. It sculptures the rocks and excavates the valleys. In most cases acting mainly through the soft rain, though our harder rocks are still grooved by the icechisel of bygone ages. The refreshing power of water upon the earth is scarcely greater than that which it exercises on the mind of man.

After a long spell of work how delightful it is to sit by a lake or river or on the seashore, and enjoy the fresh air, the glancing sunshine on the water

and the ripple of the waves upon sand. If Lakes are less grand than the sea they are in some respects even more lovely. The seashore is

comparatively bare. The banks of lakes are often richly clothed with vegetation which comes close down to the water's edge sometimes hanging

even into the water itself. They are often studded with well wooded islands. They are sometimes fringed with green meadows, sometimes bounded

by rocky promontories rising directly from comparatively deep water; while the clam bright surface is often fretted by a delicate pattern of

interlacing ripples or reflects a second softened and inverted landscape. To water again, we owe the marvellous spectacle of the rainbow""God's

bow in the clouds."" It is indeed truly a heavenly messenger and so unlike

anything else that it scarcely seems to belong to this world.

39. All the above gifts of nature are, therefore, nucleus of the public trust.

40. Professor Barbara Ward has termed this ecological necessity as a morally imperative also. The language used by the learned Professor is being quoted:

We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat

on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms

provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death". There is a

commonly recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a

stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside

environment. Unfortunately, current legal doctrine rarely accounts for such constraints and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has

proven malleable and to a large extent still is, but there is a limit to this malleability and certain types of ecologically important resources for

example, wetlands and riparian forests can no longer be destroyed without enormous long term effects on environmental and therefore, social

stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective

observations of the laws of nature.

In sum ecologists view the environmental sciences as providing us with certain laws of nature. These laws just like our own laws, restrict our

freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative they are imposed on us by the natural world.

An understanding of the laws of nature must therefore, inform all of our social institutions.

41. In *MC Mehta V. Kamal Nath* (1997) ISCC 388, at page 406, it was observed that 'there is a commonly recognised link between laws and

social values but to ecologists a balance between laws and values is not alone

sufficient to ensure a stable relationship between humans and their environment.

42. The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention, Michigan Law Review Vol 68 Part 1 page 473 as

indicated above has given the historical background of the public trust doctrine as noticed above.

43. The development of Public Trust Doctrine be now taken note of:

The decision of the United States, Supreme Court in Illinois Central Railroad Co. V. People of the state of Illinois 146 US 387 dealt with this

subject. The Illinois Legislature made a substantial grant of submerged strip of lands along the shores of lake Mochigan extending from the

shoreline to the Illinois Central Railroad. This happened in 1869. In 1873, the Legislature changed its mind and repealed the 1869 grant. The State

of Illinois sued to quit title. The court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a little

different in character from that which the State held lands intended for sale. According to the Professor Sax Court in Illinois Central Railroad case

did nothing but articulated a principle that has become the central substantive thought in public trust litigation. When a state holds a resource which

is available for the free use of the general public a court will look with considerable scepticism upon any governmental conduct which is calculated

either to relocate that resource to more restricted uses or to subject public uses to the self interest of private parties. 44. In 1886 a group of citizen

interested in preserving Mount Greylock as an unspoiled natural forest, promoted the creation of an association for the purpose of laying out a

public park on it. The State acquired about 9000 acres. The legislature enacted a statute creating an Authority to construct and operate on Mount

Greylock an Aerial Tramway and certain other facilities and it authorized the commission to lease to the authority any portion of the Mount

Greylock Reservation. Before the project commenced five citizens brought an action against both the Greylock Reservation commission and

Tramway Authority. In *Commonwealth v. Greylock Reservation Commission* 350 Mass 410 (1966) the Supreme Judicial Court of Massachusetts took the

first major step in developing the doctrine applicable to changes in the use of lands dedicated to the public interest. In this case the plaintiffs brought

the suit as beneficiaries of the public trust. The passage in the judgement holding both the lease and the management agreement invalid on the ground that they were in excess of the statutory grant of the authority is as under:

The profit sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation or responsibility by the Authority as is given by the Management agreement we find no express grant to the Authority or power to permit use of public lands and of the Authority borrowed funds for what seems in part atleast a commercial venture for private profit.

45. Professor Sax's has made valuable comments on the above quoted paragraph. These are as under:

It hardly seems surprising then that the court questioned why a state should subordinate a public park, serving a useful purpose as relatively undeveloped land to the demands of private investorss for building such a commercial facility.

46. In *Sacco v. Development of Public Works* 532 Mass 670, Department of Public Works was restrained from filling a great pond as part of its plan to relocate part of State Highway. The court held that the improvement of public lands contemplated by this section doesn't include the widening of the State Highway.

47. Again in *Robbins v. Department of Public Works* 244 NE 2d 577, the Supreme Judicial Court of Massachusetts restrained the Public Works

Department from acquiring Fowl Meadows, ""Wetlands of considerable natural beauty... often used for nature study and recreation for highway

use. Professor Sax refers to decisions reported as *Preview v. Wisconsin State Land and Improvement Co* 93 Wis 534 (1896). *Crawford country*

Lever and Drainage Distt No. 1 182 Wis 404, *City of Milwaukee v. State* 193 Wis 423, *State v. Public Service Commission* 275 Wis 122 and

stated the scope of public trust doctrine in the following words.

Public trust problems are found whenever governmental regulation comes into question and they occur in a wide range of situations in which

diffused public interests need protection against tightly organized groups with clear and immediate goals"".

48. The judgement of the Supreme court of California in National Audubon Society V. Supreme Court of Alpine Country 33 Cal 3d 419

popularly known as "the Mono Lake case" Mono Lake a second largest lake in California deals with environmental problems. Some

environmentalist using the public trust doctrine filed a law suit against Los Angeles Water Diversions. The Court explained the concept of public

trust doctrine in the following words.

By the law of nature these things are common to mankind the air, running water, the sea and consequently the shores of the sea (Institutes of

Justinian 2.1.1.) from this origin in Roman Law, the English common law evolved the concept of the public trust, under which the sovereign owns

all of its navigable waterways and the lands laying beneath them as trustee of a public trust for the benefit of the people.

49. It was further observed:

The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed

in Marks V. Whitney 6 Cal 3d 251 (Public Trust easements) were traditionally defined in terms of navigation, commerce and fisheries. They have

been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the State and to

use the bottom of the navigable water for anchoring standing or other purposes. We went on, however, to hold that the traditional triad of uses

navigation, commerce and fishing did not limit the public interest in the trust res. In language of special importance to the present setting we stated

that the public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the State is

not burdened with an outmoded classification favoring one mode of utilization over another. There is an growing public recognition that one of the

important public uses of the tidelands a use encompassed within the tidelands trust is the preservation of those lands in their natural state. So that

they may serve as ecological units for scientific study as open space and as environments which provide food and habitat for birds and marine life

and which favourably affect the scenery and climate of the area.

Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as fish food which endeavor probably

qualifies the lake as a fishery under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and

ecological the scenic view of the lake and its shore the purity of the air and the use of the lake for nesting and feeding birds. Under marks v.

Whitney 6 Cal 3d 251 it is clear that protection of these values is among the purposes of the public trust"".

50.The powers of the State as trustee was summarized as under:

Thus the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the

State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases

when the abandonment of that right is consistent with the purposes of the trust..." ""The state has an affirmative duty to take the public trust into

account in the planning and allocation of water resources and to protect public trust uses whenever feasible, Just as the history of this state shows

that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative

water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests, (see

Johnson 14U.C Davis L Rev 233, 256571: Robiesome Reflections on Environmental consideration in Water Rights Administration, 2 Ecology

L.Q 695, 710711 (1972): Comment 33 Hastings L.J. 653, 654). As a matter of practical necessity the state may have to approve appropriations

despite for seeable harm to public trust uses. In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the

taking on the public trust (see United Plainsmen v. N.D. state water cons comment 247 NW 2d 457 (ND 1976) at PP 462463 and to preserve,

so for as consistent with the public interest the uses protected by the trust.""

""The public trust doctrine under the English Common Law extended

only to certain traditional uses such as navigation commerce and fishing. But the American courts have expanded the concept of the public trust

doctrine. The observations of the Supreme Court of California in Mono Lake case 33 cal 3d 419 to the effect that the protection of public trust

indicates that the ecology and the environment protection is a relevant factor to determine which lands waters or airs are protected by the Public

Trust Doctrine. The courts in United States are adopting this reasoning and are expanding the public trust to encompass new types of lands and

water. Thus in Phillips petroleum co. v. Mississippi 108 SC 791 (1988) the United States Supreme Court upheld Mississippi's extension of public

trust doctrine to lands underlying non navigable tidal area.

51. This doctrine of Public Trust has now become part of Indian Judicial System. All the natural resources are supposed to be protected.

52. Sustainable Development Concept of Sustainable Development ""Precautionary principle"" and polluters pays principle"" be now elaborated:

53. The Supreme Court of India in Vellore Citizens Welfare Forum v. Union of India (1996) 5 SCC 647 explained the Sustainable Development

Precautionary principle: and polluters pays principle as under :

Some of the salient principles of Sustainable Development as called out from Brundtland Report and other international documents are

InterGenerational equity. Use and Conservation of Natural Resources Environmental Protection, the precautionary principle, polluter pays

principle, obligation to assist and cooperate eradication of poverty and financial assistance to the developing countries. We are however, of the

view that the precautionary principles and the polluter pays principle are essential features of Sustainable Development. The precautionary principle

in the context of the municipal law means:

1. Environmental measures by the State government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

2. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures

to prevent environmental degradation.

3. The onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.

54. The Polluter pays principle has been held to be a sound principle by this Supreme Court in India Council for EnviroLegal Action v. Union of

India (1996) 3 SCC 212.

... we are of the opinion that any principle evolved in this behalf should be simple practical and suited to the conditions obtaining in this country.

The court ruled that:

... Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to

any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon

the very nature of the activity carried on.

55. Consequently the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected area to the soil

and to the underground water and hence they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected

areas. The Polluter pays principle as interpreted by the Supreme Court of India means that the absolute liability for harm to the environment

extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged

environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual suffers as well as the

cost of reversing the damaged ecology.

56. The precautionary principle and the Polluter pays principle have been accepted as part of the law of the land.

Water pollution : OWP No: 909/96 and OWP No. 1067/96

57. Lest the human race face the same fate which fell "Ancient Mariner" of Coleridge it is apt to take stern remedial measures. There may be water

around us but 'not a drop to drink'.

58. Next to air, water is an element without which it would be difficult for the human race to survive. It is this commodity which is available in

abundance but at the same time this abundance is full of ingredients which are dangerous to human life. Elements injurious to life to percolage and

mingle with underground water system. The petitioners submit that water is resultantly polluted. The issue involved in this petition is definitely an

issue of public importance. If remedial measures are not taken, the danger of sullage water mixing with sources of drinking water cannot be ruled

out.

59. In these two public interest litigation petitions the grievance made by the petitioners is that two rivers namely Devika and river Tawi are being

polluted. The petitioners submit that the respondent authorities should see to it that the wastage and dirty water of the Town of Udhampur is not

permitted to get into Devika river. Similar is the prayer made visavis river Tawi.

60. So far as the two petitioners who are residents of Udhampur are concerned, it is submitted that Devika river is a sacred river. It is submitted

that such is the sanctity attached to this river that Lord Krishana is said to have told Yudhishter that when river Ganga is burdened with the sins of

evils doers then river Ganga comes to have a bath in Devika river. It is in this manner river Ganga gets purified. It is stated that this river originates

from Mahadev and on the river bank there are several holy shrines. It is stated that two Shiva Temples and huge Nandi Bull exist on the bank of

this river. On Mahashivratri, Raksha Bandan, Baisakhi and Choudish of Magha and Chaitra citizens of the area take holy dip in the river. It is

believed that having a bath in this river not only there is purification of human bodies as also of the soul. Reference is being made to an Article

appearing in Daily Excelsior under the heading 'Weeping Devika'. Reference is also being made to another article which gives the importance of

this river on Vaisakhi day. In a nutshell what is stated is that this sacred river should be kept free from pollution.

61. The respondent Administrator Town Area Committee filed the reply. It is stated that all efforts are being made with a view to keep the river

free from pollution. The steps taken and the amount spent has been indicated. A report has also been submitted which is dated 13.09.2000. The

site plan of the sewerage and Drainage system of Udhampur Town has also been made part of this report.

62. So far as writ petition No. 1067/97 is concerned this deals with the pollution which is being caused to river Tawi. It is stated that this river

provides a picturesque view. It is stated that this river originates from Seoj Dhar near Bhaderwah and flows through Jammu and other towns of the

State and finally falls into river Chenab. It is stated that lakhs of Hindus consider the river Tawi as 'Suraj Putri'. What is sought to be urged is that

the river is not only sacred from religious point of view but it looks after the needs of the people. It is stated that this river should not be converted

into a garbage dumping ground. Suggestions have been given for preventing this river being polluted.

63. There can be no dispute with the proposition that citizens of this country are within their rights to have pollution free water and air. The

availability of this was held to be part of fundamental right as enacted in Article 21 of the constitution of India. The right to live is a fundamental

right and it includes the right to live is a fundamental right and it includes the right to enjoyment of pollution free water and air for full enjoyment of

life. If anything endangers or impairs quality of life then requisite writ, order or direction can be issued.

64. For all most five decades the judicial system in this country has been enforcing fundamental rights conferred upon the citizens of this country. It

was in 1976, the parliament of this country thought it apt to remind its citizens that they owe some duties also to this nation. A chapter on

fundamental duties in the shape of part IVA was added by Constitution Forty second, Amendment of 1976. A duty was imposed to protect and

improve the natural environment including forest, lakes and rivers, chapter on Directives principles of State policy also saw some amendments.

Article 48 A impressed upon the State to make an endeavor to protect and improve the environmental and to safeguard the forests and wildlife of

the country. There can be no two opinions that the term 'environment' would include water, air and land and the interrelationship which exists

among and between these element. As a matter of fact, Environment (protection) Act of 1986 defines several terms including environment

pollution, sewage effluents, sewer and streams. As these terms have a direct bearing for the purposes of these petitions, it would be apt to notice

them.

Environment" includes water, air , and land and the interrelationships which exists among and between water, air and land and human beings, other

living creatures, plants microorganism and property (vide section 2 (a) of the Environment (Protection) act 1986).

The expressions 'pollution' 'sewage effluent', 'sewer', and 'stream' are defined in the act as follows: "Pollution: means such contamination of water

or such alteration of the physical chemical or biological properties of water of such discharge of any sewage or trade effluent or of any other liquid

gaseous or solid substance into water (whether directly or indirectly) as may or is likely to create a nuisance or render such water harmful or

injurious to public health or safety or to domestic commercial, industrial, agricultural or other legitimate uses or to the life and health of animals or

plants or of aquatic organisms." "Sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from

open drains "Sewer means any conduit pipe or channel open or closed carrying sewage or trade effluent, "stream" includes:

i. river

ii. water course (whether flowing or for the time being dry.)

iii. inland water (whether natural or artificial)

iv. subterranean waters, v. sea or tidal water to such extent or as the case may be to such point as the State Government may by notification in the

Official Gazette specify in this behalf.

65, The reality of life today is that there is water pollution and this water pollution is to some extent directly connected with disposal of sewage

system. The introduction of modern water carriage systems now transfer this sewage disposal from the streets and townships to neighboring

streams and the rivers. This has resulted in the problem of water pollution. The question is not whether we as a developing nation can afford such

measures for the control of water pollution but the question is whether we can neglect this aspect of the matter. How enormous the problem is can

well be adjudged from what was reported by the World Health Organisation in its report. Relevant portion of which is as under:

... One hospital bed out of four in the world is occupied by a patient who is ill because of polluted water.... provision of a safe and convenient

water supply is the single most important activity that could be undertaken to improve the health of people living in rural areas of the developing

world".

66. It is known fact that in majority of urban areas the water which is supplied to the citizen of this country is not free from pollution. It is

contaminated and contains bacteria also. The question is what remedial measures are required to be taken. In this regard, we can seek guidance

from what was said by the Supreme Court of India in the case reported as Ratlam Municipality v. Vardhichand AIR 1980 SC 1622. Nuisance

existed in a locality. There were open drains, pits and there was want of lavatories. Directions were given by the Supreme Court of India to the

municipal authorities to abate the nuisance by affirmative action on a time bound frame. It was indicated that if it is not done then punishment under

Section 188 of the penal Code can be a consequence. Time is not far off when pipes which carry drinking water may be found intermingled with

pipes which carry sewage disposal. If this be a position, then some remedial measures are definitely required to be taken. If water which runs

through the sewage system is not permitted to mix with the source of drinking water then much can be achieved. Therefore, what was said by the

Supreme Court of India in Ratlam Municipality case (supra) would equally be applicable to this case also'. The direction given in para 23.2 and

23.4 would equally apply to this case. These paras be noticed:

The Municipal Council shall, within six months from today, construct a sufficient number of public latrines for use by men and women separately

provide water supply and scavenging service morning and evening so as to ensure sanitation. The Health Officer of the Municipality will furnish a

report at the end of the six monthly term that the work has been completed. We need hardly say that the local people will be trained in using and

keeping these toilets in clean condition. Conscious cooperation of the consumers is too important to be neglected by representative bodies. ""The

Municipality will not merely construct the drains but also fill up cesspools and other pits of filth and use its sanitary staff to keep the place free from

accumulations of filth. After all, what it lays out on prophylactic sanitation is a gain on its hospital budget.

67. The Municipal and Development authorities and also the State would accordingly take notice of the law laid down by the Supreme Court of

India in Ratlam Municipality case supra) and take further action. In case they do not do so then the observations made by the Supreme Court of

India in Ratlam Municipality case (supra) in para 23.5 would automatically apply. These observations be noticed:

We have no hesitation in holding that if these directions are not complied with the SubDivisional Magistrate will prosecute the officers responsible.

Indeed, this court will also consider action to punish for contempt in case of report by the Sub Divisional Magistrate of wilful breach by any

officer.

68. To some extent, this will take care of the problem of water sources being

polluted, However, something more is also required to be done. In the city of Jammu most of the sewage waste is being carried through open drains into water bodies. It is said that once in these water drains clear water used to be there. It was possible to find some fish and other water life. This does not exist now. This is because of the fact that these drains are filled by the toxic matters. The authorities would accordingly take steps in a phased manner to provide sewage system through cement pipes. The sewage waste would be treated so that the end product does not pollute environment including water.

69. It is said that in last century most of the wars were fought with a view to control oil producing areas. This century is likely to witness a war with a view to control pollution free fresh water sources. This war is already on in this country. Different States are already laying claim on the meagre water resources. It is high time that State as also the Municipal authorities pay due regard to this. In this regard, it would again be apt to refer to para 24 of the judgment in Ratlam Municipality case (supra). The following observations were made.

We are sure that the State Government will make available by way of loans or grants sufficient financial aid to the Ratlam Municipality to enable it to fulfil its obligations under this order. The state will realize that Art 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties. The municipality also will slim its budget on low priority items and elitist projects to use the savings on sanitation and public health".

70. It may also be seen that enjoyment of pollution free water and air is part of right to live as envisaged under Article 21 of the Constitution of India. Such is the view expressed by the Supreme Court in the case reported as Subhash Kumar V. State of Bihar AIR 1991 SC 420. The Rajasthan High Court also took note of this aspect of the matter in L.K. Koolwal V. State A.I.R. 1988 Raj 2. Maintenance of health, sanitation and environment was held to fall within the purview of article 21 as it adversely affects the life of citizens and it was observed that it amounts to allow poisoning and thus reducing the life spans of the citizens of this country.

71. I am accordingly of the view that the Municipal, Development

Authorities and State would take following steps :

(i) it would implement what was said by the Supreme Court of India in paras 23.2, 23.4 and would also take notice of the observations in para 24

of the above judgement in Ratlam, Municipality. It would frame a scheme so that the same is carried out in a phased manner. Let this scheme be

prepared by 31st of Sept. 2001.

(ii) effort be made to provide covered drainage I am mindful of the fact that it is not possible for the State to make the requisite budgetary

provisions at once because the problem is acute. But there are citizens and other public organizations who may be willing to provide covered

drains in front of the commercial premises owned by them in front of their houses. For this purposes the authorities would formulate a set design

and this design should be made available to all those persons who are willing to provide pucca and covered drainages in front of their houses or in

front of their commercial houses. It is made clear that the ownership of such a space would continue to vest in the State and State agencies and

these covered drains would remain accessible to public.

(iii) Any person or organisation who expresses a desire to cover even big drains flowing adjacent to their houses or commercial premises then the

state and state agencies should provide them with a set standard design and the citizens of this city and other organizations may be permitted to

cover open drains also. This would however, not vest the ownership of the portion which is so covered in the person covering the same. The

ownership would continue vest in the State and State agencies and the public would have a right to access to this covered portions.

(iv) The underground water resources vest in the State and therefore these cannot be tapped without there being permission from the state

authorities. Therefore henceforth no water sources would be permitted to be exploited unless permission is obtained from the State and State

agencies, (v) The Municipal authorities shall take monthly samples. The result of the analysis would be forwarded to the State Laboratories and

also to Central Laboratories maintained under the Environment Protection Act of 1986. Any person wishing to have a copy of this report would be

provided with the same on usual payment. In case it is found that the water is polluted then Municipal Authorities would initiate proceedings under

section 188 of the Indian Penal, 60de against the parson responsible for supply of

water in the city of Jammu.

(vi) The Municipal Authorities can also take initiative with a view to cover the open drains. It may either do so at its own level or it can authorize

some builders to take over the job. The part of the space so becoming available can be used for setting up markets leaving the space at the ground

level to be used by pedestrians for parking and other purposes. The Municipal Authorities can also have the advantage of having an arrangement

with builders whereby it can keep to itself some built area to be let out to the persons who are likely to be removed on account of encroachments

being removed in the city of Jammu. This will serve double purpose. The pollution problem would be taken care of. At the same time space would

become available for down trodden part of the population which has no means to have commercial complexes of their own. (vii) As indicated

above the Municipal Authorities would formulate a concrete scheme for seeing that all sewerage disposal is passed through separate pipes having

concrete lining. This is essential to protect water sources.

72. In case any of petitioners feel that something still remains to be done, they would be at liberty to approach this court again.

73. Before parting with this aspect it would be apt to remind the authorities both state and the Municipal Corporation that they should wake up

before the matter slips out of their hands. The observations made by Orissa High Court in *M.C. Mehta V. State* AIR 1992 Orissa 225,

particularly the observations made in para 11 are instructive. This para be noticed:

As stated by Thomas Fuller in *Ghormolia* 5451 we never know the worth of water till the well is dry. The authorities and functionaries must bear

in mind that nature never did betray the heart that loved her. (Wordsworth in *Tintern Abbey*). Nature's fury when aroused have been described by

Robert E Sherwood in *The petrified Forest* in the following words : "... Nature is hitting back. Nor with the old weapons... Floods, Plagues,

Holocausts. We can naturalize them. She's fighting back with strange instruments called neuoses. She's deliberately inflating making with the

jitters... She's taking the world away from the intellectuals and giving it back to the apes.

74. Let all concerned continue as intellectuals and not become apes by

provoking, antagonizing nature. Easiest way to provoke nature is by polluting water and or remaining callous to pollution, because water is one of the greatest gifts of nature.

OWP No. : 328/99 and OWP No : 1127/99 Green Cover and Forests

75. The petitioner herein has shown his concern whereby the green cover available to the city of Jammu is being reduced. It is submitted that the J

and K Housing Board wants to raise commercial construction by removing the green plantation. It is submitted that green trees generate and

provide Oxygen to the citizens.

76. It is submitted that if the green trees cease to exist then it will result in depletion of the source which is essential for purification of air.

77. In writ petition No. 1127 of 1999, the prayer made is that permitting unauthorised occuparts to occupants the forest land immense danger is

being caused to the ecological system.

78. The inhabitants of the forests, the foresters, woodcutters and other forest working and dwellers are as regards health, strength and a certain

native shrewdness and sagacity as superior to the peasants of the plain as they again are superior in health, strength and many strudy virtues to the

majority of the inhabitants of towns.

79. Once upon a time science can be no more exact than that a microscopically small globule, on the frontier of life may have swum around in the

shoreless primaeval sea. Reproducing itself by division, it gave rise eventually to the first life phenomenathe world of the Protozoa. From these the

animal world following a different method of nutrition, finally struck out on its own line of development. The plant stock has since propagated many

thousands of species including more than 250,000 flowering plants alone.

80. Whereas in the early periods of civilization forests had of necessity to be felled in order to make space for pastures and arable land, since then

the gradual tendency has been towards a reckless spoliation and destruction of the forest areas. What was not used for building and heating

purposes went to shipbuilding and fbr export although certain hardwood including the oak and the yew were also employed for furniture making.

The 16th century was particularly reckless period in respect of trees felling. For instance in the manor of Waidhofen, belonging to the bishopric of

Freisting in Bavaria no fewer than 10,000 oaks were felled. Holland and England comparatively unforested imported timber for the manufacture of weapons to the extent of 12,000 yew bows in the year 1589 alone. The Apennine Mountains, the great range that forms the backbone of Italy and is some 800 miles long, was robbed of its forests by the Romans for the sake of shipbuilding just as Spain was by the Arabs and the Carso by the Venetians. Many of the mountains of Greece, Guatemala and China lost their forests. Rain was no longer trapped in them, it washed the good solid down from the heights and deposited it in Lakes which were thus converted into marshy breeding places for infectious diseases. Only within recent years have the Pontine Marshes in western Italy been drained and a desolate and pestilential waste turned to use. For over fourteen hundred years they had been a menace.

81. Forests are a protection against both cold and hot winds. While around the Mediterranean the climate become hotter owing to the felling of the forests in the Spessert and Rhon districts of Germany the mean temperature after the clearing of the forests fell 1Â°C. Since forest no longer act as regulatorss in China that unhappy country suffers almost annually from disastrous floods. This has happened in Bangladesh where two third of the area is under floods. This has happened in Uttar Pradesh and Bihar. Landslide have caused destruction of property and caused loss to human life. If above are the disastrous consequences then it is apt to take remedial measures. In olden days trees were considered scared. That was the only moral sanction to not to cut trees. The most famous of mystic tress is the Tree of Knowledge' of Tree of Life' that figures in the Biblical account of paradise. It is a symbol derived from the Persian and Egyptian religions and adopted by the Jews. In the Persian religion it is known as Horn. In the under world of the ancient Egyptians the winged souls of the departed used to perch on the branches of Sycamore. Among the Aryans the rustling of the oak leaves was considered as a divine oracle. The ancient Germans and Slavs sacrificed their prisoners under lime trees on which they hung their booty. The Romans used Jupiter's oak on the capital for the same purpose.

82. In Islamic art there is the mystic giant tree Tube. On the Japanese island of Formosa each village has in front of it a spirit tree in which the souls of the ancestorss dwell; the villagers offer wine to them at the vintage festival.

In Greek mythology there is the tree of Hesperides in paradise, watched over by dragons and in Germanic legend and apple tree of Induna by eating the fruit of which the gods retained their eternal youth. That lights are visible in certain ash trees is a venerable belief in the Highlands of Scotland. A similar phenomenon is legendary in Iceland where it is said that a mountain ash grew on the spot where two innocent victims were executed. This moral and spiritual sanction is not enough to protect the forests. State administration had to pass an enactment by the name of J and K Preservation of Specific Trees Act 1993. This is a step in the right direction. This restriction, imposed is reasonable. This order is passed in the larger public interest. No exception can be taken to it. As a matter of fact, this is in line with the decision given by the Supreme Court of India. Environment protector implies maintenance of environment as a whole comprising man made and the natural environment. See Virender Gaur v. State 1995 (2) SCC 577.

83. The respondent. State has enacted a statute known as J and K Forest Conservation Act 1990.

84. As a matter of fact the petitioners are fully justified in contending that the respondents have no right to cut the standing trees. This would apply even to trees standing on private land. This aspect of the matter was considered by the Supreme Court in number of decisions. Once such decision is reported as T.N. Godavarman Thirumukpad vs Union of India AIR 1997 SC 1223. In the above case it was observed that legislation dealing with Forest conservation is applicable to all types of trees and forest whether owned by the State or by Private persons. The relevant observations are as under:

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 statutory recognised forests, whether designated as reserved, protected or whether 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 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 purposes 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

Amoika Quarry Works Vs State of Gujarat (1987) 1 SCO 213 (AIR 1987 SC 1073) Rural Litigation and Entitlement Kendra Vs. State of UP.

1989 Suppl (I) SCC 504 (AIR 1989 SC 594 and recently in the order dated 29th November 1996 in W.P. (C) No. 749/95 (Supreme Court

Monitoring Committee V. MussorieDehradun Development Authority) The earlier decision of this court in the State of Bihar vs. Sanshiram Modi

(1985) 3SCC 643 (AIR 1985 SC 814) 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.

85. Directions were given by the Supreme Court of India in T.N. Godaverman Thiru Mulkpad v. Union of India 1997 (2) SCC 267 and also in a

case by the same nomenclature reported as 1997 (3) SCC 312. These orders were challenged as violative of Article 19(1) (g) by one Sabia Khan

in the case reported as Sabia Khan V. State of UP. 1999 (1) SCC 271. It was pleaded that these orders were adhoc in nature and did not fall

within the purview of Forest Conservation Act of 1980. It was also pleaded that these do not fall within the purview of Directive Principles of State

Policy. This petition was dismissed as having been filed in the abuse of process of the Court resulting in wastage of Courts time. It was dismissed

with costs.

86. Katha, which is extracted from Khair trees was held to be a minor forest produce as this tree was exploited by private company. As these

orders were not being observed directions were given further in the case of M.C. Metha versus Union of India 1999 (I) SCC 413.

The Supreme Court of India observed that this was in breach of the earlier directions given by the Court. Accordingly, notice for invoking

contempt was issued to the officers who were exploiting the forest produce
Environment Awareness Forum vs. State of J and K 1999 (1) SCC

210.

87. Rubber Plantations is equally a forest produce. State of Karala V. Pullan Gud Rubber and Produce Co 1999 (6) SCC 99.

88. If above be the position then the respondents cannot cut trees even if these are standing on private lands.

89. With regard to the trees which have already felled by now., the matter has also been dealt with by the Supreme Court of India in T.N/

Godaverman Thiru Mulkapad V. Union of India 1997 (2) SCC 267. Giving direction visavis fallen trees directions were given by the Supreme

Court of India at page 1231 of the aforesaid judgment. This is being reproduced below:

Any felling of trees in forest or otherwise of any clearance of land for executing of projects, shall be in strict compliance with the Jammu and

Kashmir Forest Conservation Act 1990 and any other laws applying thereto. However, any trees so felled and the disposal of such trees shall be

done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect. This direction will also cover the

submerged areas of the Thein Dam. All timber obtained as aforesaid or otherwise shall be utilized within the state, preferably to meet the timber

and fuel wood requirements of the people the government and other local institutions."".

90. So far as ban imposed by the State Government visavis setting up saw mills are concerned this is also in accordance with law. This has been

dealt with in T.N. Godverman case (supra). The need to restrict and conditions imposed regarding the location of these saw mills is reasonable.

The State has carved out some exceptions also. It is accordingly held:

i. that the restriction imposed by the State Government visavis exploitation of forest produce are in accordance with law.

ii. the restriction imposed would apply to private as well as government forests.

iii. the saw mills are required to be set up in terms of the rule and regulations formulated by the State Government.

iv. If some individual makes out a case for removal of wood or for setting up a saw mill then the State Government has been given freedom to pass

specific orders. In case the petitioner makes any such representation that be considered and decided in accordance with law.

OWPNo. 992 of 93 and PIL No. 931 of 1999

91. Issue of air pollution and noise pollution caused by vehicular movement is the subject matter of this PIL. The petitioner submits that this is a matter which requires to be effectively checked. The vehicles which are moving around in the cities emit smoke and resultantly violates the air. The petitioner wants this to be checked.

PIL 931 of 1999

92. This concern is also shown by the residents of Mohalla Fattu Chogan Jammu through a letter petition. They want this court to check air

pollution. It is stated that trucks and other vehicles remain unthorisedly parked on the roads. Even in stationery condition engines of these vehicles

remain ignited. This leads to emission of unburnt vapours. This accordingly to the petitioner create air pollution, water pollution and also noise

pollution. A writ of mandamus is being claimed. This is to the effect that the concerned authorities should take notice of sections 117,122 and 127

of the Motor Vehicles Act of 1988 and also Rules 170, 175 and 275 of the rules framed under Motor Vehicles Act. It is also stated that attempts

made to draw the attention of the authorities have borne no fruit. It is accordingly urged that the authorities both State and Municipal should take

notice of the grievance indicated in the petition. Photographs have been placed on the record. These do indicates that loaded vehicles stand parked

on the roads. This obviously causes hinderance to the free flow of normal traffic. Remedial measures are imperative.

93. So far as air pollution is concerned motor vehicles on the roads are the biggest contributor towards this. The air pollution has acquired the most

serious environmental issue. The various pollutants in the air causes genetic effects on human beings. Our progeny is being poisoned for no fault of

theirs. One study indicates that the number of automobiles in India was 2 million in 1970. Today this figure is 8.5 million. It was likely to touch 10

million by the turn of century. The pollutants are emitted near ground level. These generally contains carbon monoxide, lead, hydrocarbons

(unburnt fuel) sulphur dioxide, nitrates, fine carbon particles. Dust produced by gradual wear and tear of tyres, brake linings and clutch plates is

another source of carbon monoxide.

94. Out of the pollutants emitted from the exhaust of automobiles i.e. carbon monoxide (CO) is regarded as the most dangerous to human beings.

It combines with hemoglobin in the blood stream 210 times faster than oxygen, thus reducing the intake of oxygen. Exposure to lesser dosage of

carbonmonoxide could produce dizziness lassitude and headache leading to accidents. Prolonged exposure to this gas levels above 9 parts per

million (9ppm) can lead to reduced mental activity, reduced life span and even cause death. The concentration of CO in the atmosphere goes up

during traffic jams and on congested roundabout. With a view to controlling and reducing this abnoxious gas, the Central Motor Vehicles Rule

1989 lays down the maximum permissible carbon monoxide levels in petrol driven vehicles. See rules 115 and 116. Carbon Monoxide is

colourless and odour less. This is formed in the exhaust fumes of mainly petrol driven vehicles when there is incomplete combustion due to an

excess of fuel.

95. The most effective method of reducing carbon monoxide is by the use of catalytic converters which converts carbon monoxide to relatively

harmless, carbon dioxide and water. Thus carbon monoxide emitted by petrol driven vehicles being colourless and odourless is a silent killer and

has to be eliminated.

96. Next in line comes lead pollution. It is widely accepted that using lead in petrol is both harmful to the environment and to human health

particularly to the young children. In Europe and other western countries the lead content has been reduced from 0.84 gm per litre in 1972 to the

current level of 0.15 gm per litre. This lead enters the human body while drinking or eating or is just breathed in. It is toxic and hinders

photosynthesis, water absorption and oxidation. A level of 60 gm of lead in 100 cc of blood is harmful. Prolonged exposure to lead poisoning can

reduce muscular strength causes mental disturbance, excessive fatigue. Loss of appetite are some of the symptoms.

97. In the matter of determining environmental matters the courts can always seek expert opinion. In *M.C. Metha v. Union of India* 1996 (4) SCC

750 the Supreme Court of India directed closure of on sixty eight industries while doing so the directions which were given in para 28. Thereafter,

the management of M/s Birla Textile (Prop. Textiles Ltd Calcutta) preferred a petition. This was basically with regard to the claims of the workmen. This was considered by the Supreme Court in *M.C. Metha v. Union of India* (1997) 11 SCC 327. The directions contained in the order passed earlier were modified. This was done with regard to condition No. 9 (d). Further directions with regard to settlement to be arrived at with the workmen were given. Therefore, the courts while dealing with problems of ecology and while ordering closure of factories can give directions with regard to the resettlement of workers employed in these industries. The Delhi Development Authority auctioned a plot 25% of the bid amount was deposited. A public interest litigation was filed contending that the plot could not be auctioned as it was part of the green belt. It was observed that as on the date of auction the plot was part of the green belt. It could not be auctioned. *Delhi Dev. Authority V. Ravinder Mohan Aggarwal* 1999(3) SCC 172.

98. Air Pollution The precautionary principle which is part of the content of sustainable development has to be followed by the State Government in controlling pollution suo motu. With regard to pollution caused by motor vehicles further directions came to be given in *M.C. Metha Vs. Union of India* 1999 (6) SCC 12. Chronic exposure to polluted air affects right to life. *M.C. Metha V. Union of India* 1999 (6) SCC 12.

99. With a view to control vehicular pollution directions were given by the Supreme Court in various cases. This was done with a view to ensure adequate safeguards necessary for public safety. Vehicular pollution was also highlighted and the need for remedial steps was canvassed to take care of the chaotic traffic conditions which results not only in pollution but also in road accidents resulting in death and bodily injury to citizens. Controlling vehicular pollution and protecting the environment is the primary function of the Executive. It is its obligation to devise suitable measures and provide machinery for rigid enforcement of such measures as are necessary to curb this menace. As what was required by the executive to be done was not being done directions were given by the Supreme Court of India in the case reported as 1997 (8) SCC 770.

100. Next to Carbon Monoxide and lead comes carbon dioxide. Diesel fuel is responsible for this. Collecting of carbon particles on plants hinders

the natural process of photosynthesis and, therefore, carbon dioxide is converted into carbohydrates. Hydrocarbons emitted by this reduces

hemoglobin the blood. Nitrogen oxides and sulphur dioxide are some of the other consequent emissions.

101. If above be the situation then it is a must to control the pollution emitted by various petrol driven and diesel driven vehicles. The intake of

these definitely causes physical and mental strains. In this situation human beings are weakened. They can fall prey and are susceptible to all

diseases including dague fever. The only way to control air pollution is to see that the norms laid down in rules namely the Central Motor Vehicles

Rule 1989 are strictly adhered to. In particular rules 115 and 116 have to be complied with.

102. It is accordingly directed the State administration and Municipal authorities shall see to it:

i. that vehicles emitting smoke beyond the permissible levels are not allowed on the roads and at least not in those areas where there is congestion;

and

ii. wherever possible the State administration and Municipal authorities should insist upon the owners of the automobiles to have these catalytic

converters,

iii. vehicles be not permitted to remain stationery in congested areas.

103. The plantation of trees would indeed be a step in the right direction for eliminating carbon dioxide. Photosynthesis is important to the green

trees which help in this regard. It is accordingly directed that with a view to see that there is reduced air pollution, following steps are taken.

i. smoke emitting vehicles should be checked.

ii. old vehicles should be given permit to move on longer routes and should not be permitted to enter in congested areas.

iii. green belts should be indicated and it should be made compulsory for every person purchasing a vehicle to plant trees either in his own house or

at a place to be earmarked for this purpose. In case, there is no green cover, then this can have disastrous affects on the generations to come; they

would suffer for no fault of theirs and

iv. the State administration and Municipal authorities would strictly enforce the Central Motor Vehicles Rule 1989 dealing with pollution control.

They should take immediate steps right now and implement these latest by 31st of October 2001.

104. Noise pollution is also required to be taken note of. Noise is often described as unwanted sound. As per Park's Textbook of Preventive and

Social Medicine, the human ear can hear frequencies from 80 to 20,000 Hz. The range is reduced with age and other subjective factorss When

human body is subjected to excessive noise, following ill affects have been indicated by the learned authorss at page 339 of 13th Edition.

a rise in blood pressure, a rise in intracranial pressure, an increase in heart rate and breathing and an increase in sweating. General symptoms such

as giddiness, nausea and fatigue may also occur. It interferes with sleep. Noise is also said to cause visual disturbance. It also causes a narrowing

of pupils. It affects colour perception and reduce night vision.

105. If such be the situation of noise exposure then definitely it is the duty of the State through its functionaries and also the Municipal authorities to

see that there is effective control of noise.

106. The textbook of Preventive and Social Medicine referred to above brings out that human system suffers and suffers both on account of water

pollution, air pollution and also on account of noise pollution. It is the bounden duty of the State functionaries and Municipal authorities to take care

of these in the city of Jammu. One can hear the noise of a moving vehicles siting inside the house even when the main road is more than 250 yards

away. The vehicles alone are not responsible forthis noise. The indiscriminate use of loud speakers is also there. It is accordingly directed that the

State and Municipal authorities would see to it that noise pollution is also controlled. The automobiles and loud speakers should not emit noise

beyond the permissible limit.

107. Another factor which requires to be taken serious notice is that in the streets of Municipality there are few specified toilets. In open spaces

toilets, there is no arrangement for washing. Flush tanks have not been provided. This is a practice which is definitely injurious not only to the

surroundings but is also not a healthy social practice. As such, all open toilets in the city of Jammu shall be replaced by proper toilets. Covered

toilets with over head water tanks and flush water tanks should be provided. Sulab Shouchalayas are being funded by the Government under

various scheme. This aspect of the matter be taken note of. The practice of having open toilet should come to an end. Whenever any plan is sanctioned for commercial premises then it should provide enough toilets and parking places.

108. Another matter of concern is stray animals moving on the roads. This also requires to be taken note of. Something is required to be done for the stray animals moving on the roads. A piece of land has simply to be enclosed with barbed wires. The stray animals moving on the roads can be provided shelter therein. It may cause some initial problem but later on there would be enough manure which can be utilized for producing green fodder. Once this circle starts then these stray animals shall have enough green fodder. Effort can also be made for improving their breed. Artificial insemination can be resorted to. The municipal as also the State authorities would take notice of this aspect of the matter also and take remedial measures. This would also be helpful in providing clean environment.

109. Problem of encroachments on public streets by parked vehicles be now dealt with. This aspect of the matter has been dealt with by the Supreme Court. This court in the OWP NO. 608 of 1995 decided on 22.12.1997 considered the matter in detail. It was observed that the municipal authorities are under a statutory obligation to see that encroachments are removed from every portion of the street which is accessible to public. Briefly this aspect of the matter is being dealt with again in this order:

110. Municipal Corporation or Municipal Authorities are merely a trustee when it looks after and maintain the streets. See

- i. Attorney General vs. Corporation of Sunder Land 187576 (2) Ch.D 634
- ii. Mddison vs. Alderson (1883) 8 App 467: 52 LJ QB 737
- iii. Samual Beram vs. Andrew Parker (1945) 99 Law Ed 27: 348 US 26.
- iv. Villages of Balle Tera vs. Bruce Borass (1784, 38 Law Ed. 2nd 797, 416 US 1.
- v. Agins vs. City of Tiburon (1980) 447 (US) 225.
- vi. K.R. Shenov vs. Udipi Municipality AIR 1974 SC 2177. vii. Bangalore Medical Trust vs. B.S. Muddappa AIR 1991 SC1902.

111. A street would include every operation which is accessible to public. See

- i. Municipality vs Mahadeoii AIR 1965 SC 1147.
- ii. State of U.P. vs. Ata Mohd AIR 1980 SC 1785.

iii. M/s Gobind Pershad vs New Delhi, Municipal Committee AIR 1993SC2313.

iv. Ankul Chandra vs. Dacca Dt Board AIR 1928 Cal 485.

v. Harvey vs. Truro Council (1903) 2 Ch. 638 and

vi. Rex vs. Wright (1332) 3 Band Ad (631) 37 RR 520.

112. Some of the instances to which a street and public street cannot be put to use are as under:

i. permission to raise permanent construction not to be given. See Municipal Committee Multan vs. Abdual Gafoor and others AIR 1934 Lah 900.

ii. permanent construction even on footpath not to be allowed. See Tallak Chand vs. Dharaji Municipality AIR 1955Sau63

iii. permission for sale of eatable not to be given see Pyarelal vs. Santlal AIR 1972 Raj 103.

iv. cannot be declared as hawker's corner, See Vishwa Nath vs. Sudhir Kumar Banerjee AIR 1961 Cal 389.

v. for erecting a statute see R. Vardharajan vs. Salem Municipal Council AIR 1973 Mad 55. See also govt. of Tamil Nadu vs. Chinglepur

BrawaierKazhagam AIR 1986 Mad 264.

vi. construction which affects ingress or Outgress See Mat Bhagwanti vs. Kst Joiti AIR 1975 All 341.

vii. erecting combines. See Prabhu Das Kalyan Ji vs. Haji Yusuf Makalal AIR 1983 Guj 119 Paras Ram Manji Mai Vs Kalol B.C. AIR 1972 Guj

54. Emperor vs Vishwa Nath AIR 1925 Bombay 535.

viii. deposit of Goods; See Municipal Committee Multan vs. Tahila AIR 1923 Lah 272 Dabra Municipality vs. Dwarka Prasad AIR 1939 Pat

683.

ix. putting fences and other obstructions District Board Manbhuoum Vs E.N. Railways Co AIR 1945 Pat 200. Pehlad Majaraj Vs Narain Mehto

AIR 1941 Pat 249. Firm Kastoori Lai Sant Lai Vs. M.C. Jagraon AIR 1939 Lah 199. M.C. Delhi vs Mohd Ibrahim AIR 1935 Lah 195.

x. Construction of a bunk. See Govinda Rao vs District Collector Earnakulam AIR 1983 Ker 11. xi. Construction obstructing a foot path.

Corporation of Cochin vs. N. Janardan AIR 1983 ker 148. 113. Depositing of some amount would not bring relationship of landlord and tenant:

see

H.S. Rikhy vs New Delhi Municipality AIR 1952 SC 554

i. thus if any obstructions/encroachment is caused on the public street then it would be a nuisance,

ii. depositing of goods or parking of vehicles on a portion of the street / footpaths would again be nuisance,

iii. this nuisance can give rise to civil as well as criminal liability. On the civil side the Municipal Authorities can claim damages. On the criminal side

it has sufficient power to take action in terms of Municipal Act.

iv. apart from this, section 293 of the penal code also makes a provision in this regard.

114. The Municipal Authorities would accordingly take notice of the above observation and direction given in OWP No. 608 of 1989 decided on

22.12.1997 and take remedial measures in the matter of removing encroachments.

115. In this regard it would be apt to have some separate cell in the office of the Municipality. Whenever a complaint is made in this cell, regarding

an encroachment being made that should be registered and examined immediately. If the officer to whom the work is assigned is remiss in doing so,

then he should be made liable for the same. In this regard what was said by the Supreme Court in the case reported as Ratlam Municipality vs

Vardhi Chand AIR 1980 SC 1622 would be attracted. See paras 23.2 and 23.4 of the above judgement.

116. In the following directions are given i. that so far as prevention of water pollution is concerned the respondent authorities would take notice of

the observations made by Supreme Court of India in Ratlam Municipality versus Vardhi Chand AIR 1980 SC 1622 which judgement in turn has

been noticed on pages 36 to 38 of this judgement.

ii. steps would be taken with a view to prevent air pollution. The provisions of Central Motor Vehicles rules of 1989 dealing with prescribed limits

of emission from motor vehicles be enforced.

iii. that the Transport Authority shall fix the route of the public passengers vehicles in such manner that new vehicles enter the congested city

whereas the older vehicles move in the outer regions. Other steps as indicated on page 38 would also be taken note of. iv. so far as noise pollution

is concerned the authorities would take notice of the observations made on page

9 and 10 and take all remedial steps as indicated therein, v.

provision for providing enclosed space for stray cattle be provided, vi. so far as removal of encroachments are concerned the respondent

authorities would take notice of the observations made at page 58 to 68 of the judgement and would see to it:

a. that the habit of placing material and permitting vehicles to remain parked on the pavements comes to an end.

b. public notice be given to the public advising them to remove the encroachments voluntarily.

c. the Municipal Authorities shall also fix the responsibility of the officer who is supposed to look into the question of removing of encroachment

and would take notice of the observations made at page 60 of the judgement.

vii. the Municipal Authorities would set up a cell for receiving complaints visavis encroachments. It would also entertain complaints pointing out that

garbage is lying anywhere in the locality or that the sewerage system is not functioning properly and remedial measure taken immediately in any

case not later than seven days.

117. As to what are the obligations of the municipal authorities in the matter of providing basic civic amenities to the citizen may also be noticed.

118. In Attorney General vs. Corporation of Sunder Land 187576 (2) Ch. D 634, the position of the municipal authorities with regard to public

parks, gardens, squares and streets was put at par with a trustee and it was held that the municipal authorities would be guilty of breach of trust in

employing any part thereof for purposes other than those contemplated by those relevant statute. Still later in Maddison vs. Alderson (1883) 8

App 467 52 LJ QB 737, it was observed that an excess of statutory power cannot be validated by acquiescence in or by the operation of

estoppel. The court would decline to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. It

was further observed that the court of equity would not permit the statute go be made an instrument of fraud.

119. What was said by the Chancery Court in the year 1875 was reiterated by the Supreme Court on hundred years later in K.R. Shenoy vs.

Udipi Municipality AIR 1974 SC 2177. In the above case, the Municipality of Udipi had granted permission for construction of Cinema hall in a

place which was preserved for residential purposes. This action of the Municipality was struck down by observing that the Municipal authorities

are supposed to enforce a scheme and not to act in breach thereof. It would be apt to quote what was said by the Supreme Court at page 2181.

... 27 where the Municipality acts in excess of the power conferred by the Act or abuses those powers then in those cases it is not exercising its

jurisdiction irregularly or wrongly but it is usurping powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is

usurping power which it does not possess. The right to build on his own land is a right incidental to the ownership of that land. Within the

Municipality the exercise of that right has been regulated in the interest of the community residing within its limits of the municipal committee. If

under pretence of any authority which the law does give to the Municipality it goes beyond the limit of its authority and infringes or violates the rights

of others it becomes like all other of the courts. If sanction is given to build by contravening bye laws the jurisdiction of the courts will be invoked

on the ground that the approval by an authority of building plans which contravene the bye laws made by that authority is illegal and inoperative.

120. The statutes in force in India and abroad reserving open spaces for parks and play grounds are the legislative attempt to eliminate the misery

of disreputable housing condition caused by urbanization. Crowded urban areas tend to spread disease crime and immorality. Reservation of one

space for parks and play ground is universally recognized as a legitimate exercise of statutory power rationally related to the protection of the

residents of the locality from the ill effects of urbanisation. Thus when in the case of Bangalore Medical Trust vs. B.S. Muddappa AIR 1991 SC

1902 an attempt made to convert a part into a nursing home it was nullified and it was specifically stated that protection of the environment or open

spaces for recreation and fresh air, play grounds for children pomenade for the residents and other convenience or amenities are matters of great

public concern and of vital interest to be taken care of in a development scheme. As a matter of fact, it would be proper to quote the observations

made by Supreme Court in para 28. These read as under:

28. Any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be

respected by the Court. A duly approved scheme prepared in accordance with the provisions of the act is a legitimate attempt on the part of the

government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can

rest, breathe fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quite and healthy atmosphere to suit family needs

of persons of all stations. Any action which tends to defeat the object is invalid.

121. The U.S. Supreme Court in village Bell Terre V Bruce Borass (1974) 39 Law 2d 797: 416 US 1 opined that police power is not confined to

eliminate filth, stench and unhealthy places. It equally comes into play when lay out zones are proposed which are essential for family values, youth

values and the blessings of quiet seclusion and clean air make the air a sanctuary for people.

122. From the decisions referred to above it become apparent that:

i. the municipal authorities are supposed to act as trustees and should see to it that the property which vests in it is used for the benefit of the

residents of the city it governs; and

ii. if open spaces are sought to be used in a way which would result in pollution, destruction of scenic beauty or disturbance of the ecology then the

courts would step in and would remind the municipal authorities of their obligations. 123. Sale of eatables; cooked and uncooked is another matter

which requires attention of the Municipal Authorities. J and K Municipal Act of Samvat 2008 (1951 AD) makes elaborate and exhaustive

provision in this regard. Chapter 14 deals with those matters which if implemented properly would lead to a more healthy surroundings. There is a

power to prohibit use of uninhabitable buildings which are not fit for human habitation. There is a power to deal with glaring noxious vegetations.

The dangerous and offensive trades can be regulated in terms of Section 137 of the Act. Sections 144 and 147 deal with drains and privies.

Unauthorized buildings over drains can be removed in exercise of power u/s 144 of the Act. Discharge of sewerage is regulated by section 146. A

person discharging sewerage into a municipal drain can be punished with a fine which can extend to Rs. 250/. Public health is dealt with under

chapter 14. There is sufficient power for prohibition of sale of deceased animals or unwholesome articles intended for human food. The food

articles including which are to be sold, must satisfy the requirements as indicated in chapter 15. Slaughter houses are governed by chapter 18. The municipal authorities are required to fix premises within which animals are to be slaughtered. Any person who slaughters for sale any animal at a place within a Municipality other than one fixed by the council, then penal consequences are indicated in section 193 (4). Section 194 of the Municipal Act lays down in mandatory terms that no person can sell or exhibit for sale any animal or any meat or fish intended for human food in any place other than one fixed by the Municipality or a licensed market. The only exception which is made is that nothing in sub section (1) shall apply to meat or fish sold in any hotel or eating house for consumption on the premises.

124. Again the sale of meat and meat products is being carried on the footpaths. It is seen that the footpaths can be definitely be not marked as licensed markets for the sale of these products. As such the respondents would see to it that there is no sale of meat or meat products on the pavements or in open. As a matter of fact the respondents should notify space intended to be used as a marked from where meat and meat products can be sold. In any case the foot paths cannot be permitted to be used as a licenced markets for sale of meat and meat products. An obligation has been caste on the respondents to ear mark lincenced markets. This appears to have been note done. The Municipality would accordingly provide a space for this purpose.

125. Such a position came to be considered by the Supreme Court of India in case reported as Pyare Lal V. New Delhi Municipal Committee and another AIR 1968 SC 133. In this case New Delhi Municipal Committee passed a resolution with a view to stop the sale of cooked food on public streets. It was found that this sale was causing unhygienic conditions. This action of the Municipal Committee was challenged. The Supreme Court of India was of the opinion:

- i. that there is no fundamental right to carry on trace on public streets,
- ii. that the existence of bye laws is not necessary before the municipal committee could take steps with a view to regulate the sale of food products

: and

- iii. that making of provisions by enacting statute would be an ideal situation but

if this is not done then it cannot be said that the municipal committee is debarred from taking remedial measures.

126. I am of a opinion that the observations made by the Supreme Court of India in the above case are attracted to the present litigation also. The respondents can act even in the absence of byelaws.

127. I am also of the opinion that poultry birds would be covered by the term animal. In the Webster's New International Dictionary, Second Edition the term 'animal' stands defined as under:

Any member of the group of living being typically capable of spontaneous movement and rapid motor response to stimulation (by external or internal agents) as distinguished from a plant. Technically an animal is a living organism distinguished by possessing in greater or less degree that attributes or property character, of ingesting and digesting solid food in an internal cavity previous to its absorption (which food must include proteins derived from the bodies of other animals or from plants) and of lacking chlorophyll and failing to perform photosynthesis. This last characteristics causes the metabolism of animals to be regarded as primarily catabolic in contrast to the anabolic or synthetic processes of plants.

As one or more of these attributes may be entirely wanting in some animals and present in some plants, the various characters of an organism must be taken collectively into account in classing it as an animal or a plant; in some cases esp. of lowly organized forms the distinction is difficult or uncertain....

128. It would also be useful to refer to Corpus Juris Secundum Volume III at page 1084 the word 'animal' has been defined as under:

An animal may be broadly defined as any living creature typically capable of self movement. The legal definition restricts 'animal' to creatures other than man. The word 'animal' is very comprehensive and in the broadest sense of the word, an animal is any animate being endowed with the power of voluntary motion. In its common acceptation the word 'animal' includes all irrational beings. The term is less extensive as used in jurisprudence than in natural science and in its legal sense does not include mankind. In the language of the law the term ordinarily includes all living creatures not human or rational and endowed with the power of voluntary or self motion unless the statute or other context in which the word is

employed indicates that it should be given another or more restricted meaning. Unless the purpose of a statute or context wherein 'animal' is

employed indicates a more limited meaning, the word 'animal' must be held to include wild and noxious animals.

129. Thus the provisions which regulate slaughter of animal would include process by which life is srwffed out of poultry birds. In the present case

section 193 of the Act uses the word 'animals'. I am of the opinion that the word 'animal' as used in the statute would include any living creature

capable of self movement. The definition of this term as used in the Webster's New International Dictionary, Second Edition and Corpus Juris

Secundum, Volume III has been taken note of for coming to this conclusion. This not only 'animals' moving on four legs but also other live stock

including poultry birds would fall within the definition of the term 'animal'. The respondents would, therefore specify separate places for slaughtering

of animals. It may provide separate place for four legged animals and may also provide separate places for sniffing of life out of poultry birds. The

practice of killing these birds in open must come to an end.

130. The situation in the city of Jammu or for that matter in another city makes it apparent that all the provisions quoted above are being observed

in breach than in observance. If one was to travel on any public street, public lane, big or small, it would become apparent that person engaged in

the sale of eatables have set up their ovens and tandoorss over the public drains and ash and other waste is allowed to get into these drains

unchecked. A person who has set up a garage for servicing of motor vehicle has so raised the construction, that the waste water goes direct into

the public drain. Those who specialise in the sale of animal meat display it to all those whether they are interested in its purchase or not.

Slaughtered animals are hung in the windows having no window. These panes are directly exposed to dust and root and other poisonous gases

emitted by public and private transport. Under law sale of these articles is permissible only in a licensed market and under a license. It is doubtful if

this provision has ever been in implemented by the Municipal authorities. Slaughter houses are supposed to set up in terms of chapter 18. These

slaughter houses are not only meant for hoofed animals but these would equally apply to fish and birds. It is common scene to see poultry birds

caged in cages waiting to be slaughtered as and then the customer comes. When the choice is made, the poultry bird is taken in the back lane and life is sniffled out of the bird. Thus what has been said about the animal and the poultry meat is true of sale of other food items also. In the early hours of morning the vegetables are spread on the open road previously used by passer by both human and animals. The vegetables leaves which are not fit for human consumption are removed and dumped into the public drain. Sometimes these vegetables are washed on the road itself and then they are neatly displayed. The sale of other food items like cheese is a scene to be seen. Big chunks of cheese are covered by fine muslin cloth. Apparently the owner thereof wants to protect it but this only adds to mangling of fine dust duly filtered out of the muslin cloth into these eatables. These are again exposed to public view and are not kept in any enclosed enclosure. The purpose of mentioning this aspect in this judgement is to remind the Municipal authorities that these provisions are required to be implemented. The State Legislature in its wisdom provided some teeth in the matter of getting these implemented. These penal provisions are hardly implemented.

131. There is another aspect of the matter. This is with regard to the stray and domestic animals, moving on the streets and the national highways and also on the municipal roads. In the city of Jammu, there is Goshalla. This houses milch animals. What is required is to provide financial assistance to these organizations and request them to take care of the stray animals moving on the roads. These Goshallas have the requisite infrastructure. They have only to be asked to work on scientific lines. It has been indicated that the land belonging to the Goshalla has been encroached upon and the area which was originally available to it is not available to it now. The State authorities would see to it that if a request is made by the Goshalla authorities then they would make efforts to retrieve the land which once belonged to it. In case it is not possible to do so then such organisations can be allotted space in our outside the city. As a matter of fact, if organized on scientific lines then these projects can generate sufficient income for maintenance. The cow dung provided by these Gowshallas can be used for generating gober gas which can be used in the kitchens. The resultant liquid waste can still be used as a manure in the fields. This would be an ideal substance for raising green fodder required for

these animals. The need is to channelise the system so that the cycle starts moving and once it starts moving it will be a self financing system. Effort should also be made to improve the breed of animals and this can be done only by artificial insemination. This would stop movement of animals on the roads and streets and as a matter of fact this would be a service to the society. The Municipal authorities and State authorities are accordingly directed to implement the rules and regulations dealing with drains and markets where sales of meat, milk products and vegetables is made. Effort would be made to see to it that encroachments made over the drains are removed and as already indicated by a Division Bench of this court in the judgement given in Aggarwal Steels vs. State of J and K and others till these are removed they be called upon to pay licence fees. The concept of polluter pays is required to be implemented and this should be implemented in letter and spirit.

In view of what has been stated above, it is concluded:

- i. that the concept of public interest and aggrieved person be taken note of. The detailed discussion in this regard would be found at page 8 to 17 of the judgement;
- ii. that the doctrine of public trust is required to be taken note of. The natural resources are the resources for which the doctrine of public trust would be attracted. This aspect of the matter has been discussed in detail from pages 17 to 29 of the judgement;
- iii. the doctrine of sustainable development has been mentioned at page 29.
- iv. the doctrine of polluter pays principle is a matter which requires serious consideration. This is discussed at page 30 of the judgement. It has been noticed that everybody whether it is a private house or a commercial house is polluting the natural resources of water; right from the house refuse to industrial refuse is being dumped into the natural resource of water;
- v. the public streets have been encroached upon. If the polluter pays principle is applied then sanitation fee can be claimed from these polluting sources. The persons who have occupied public streets can be called upon to deposit licence fee and the money generated can be utilized for public purpose;
- vi. water pollution has been taken note of at pages 31 to 41 of the judgement. The directions given by the Supreme Court in the case of Ratlam

Municipality (supra) are required to be taken note of. These be taken note of and implemented in letter and spirit.

vii. the problem of Green Cover and Forests has been commented at pages 42 to 47 of the judgement. This be taken note of and the observations

made by the Supreme court in the cases referred to at pages 45 and 46 of the judgement are required to be implemented and these be

implemented in letter and spirit.

viii. air pollution caused by the vehicles has been noticed at pages 48 to 56 of the judgement. Steps be taken to minimize the pollution caused by

the motor vehicles;

ix. the various problems created by stray animals have been discussed at page 57 and also at pages 66 to 72 of the judgement. Steps be taken

with a view, to implement the suggestions and directions contained therein.

x. with regard to the encroachment on the streets the issue has been discussed in detail in OWP No. 608/95, decided on 22nd Dec' 97 . This has

again been dealt with at pages 55 to 61 of the judgement;

xi. with regard to the open spaces and the responsibility of the Municipal authorities, the issue has been discussed at pages 63 to 65 of the

judgment.

133. It is accordingly directed that the respondent authorities would take notice of the situations pointed out and discussed in this judgement and

would take remedial measures by 31st Oct 2001.

134. These petitions are disposed of accordingly.