

(1999) 09 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 36638 of 1999

C. Kenchappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-09-1999

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 28
Constitution of India, 1950 — Article 14, 19 (2), 21, 253, 32
Karnataka Industries Areas Development Act, 1966 — Section 3 (1)
Karnataka Land Revenue Act, 1964 — Section 95, 97

Citation : (2000) 4 KarLJ 1

Hon'ble Judges : Y. Bhaskar Rao, C.J;A.V. Sreenivasa Reddy, J

Bench : Division Bench

Advocate : Sri B.L. Acharyafor Sri H. Kumara Swamy, for the Appellant; Sri N.K. Ramesh, Government Advocate, Sri S. Vijayashankar for Sri Ashok B. Hinchigeri, Sri P. Chidambaram for Sri D.N. Nanjareddy and Sri K.S. Hanumanth Rao, for the Respondent

Judgement

1. This writ petition is filed as a public interest litigation by the inhabitants of Hoodi, Pattandur, Nallurahalli and Kundalahalli villages of K.R. Puram Hobli, Bangalore South Taluk, questioning the validity of the notification issued u/s 3(1) of the Karnataka Industrial Area Development Act (hereinafter called the "Act") insofar as it relates to lands bearing Sy. Nos. 29 to 39 of Kundalahalli Village, Sy. No. 107 of Pattandur Agrahara Village. They have sought for a writ of certiorari for quashing and/or setting aside the order of allotment dated 20-9-1999 made by respondent 2 in respect of Sy. No. 152 of Hoodi Village; Sy. Nos. 80 and 81 of Nallurahalli Village and Sy. Nos. 34 and 35 of Kundalahalli Village in favour of respondent 3. They have also sought for a further direction to restrain respondent 2 from handing over the aforesaid lands to respondent 3.

2. The brief facts of the case are that the petitioners are residents of the aforesaid villages and they are agriculturists. Their case is that the lands bearing Sy. Nos. 79 and 80 of Nallurahalli Village are gomal lands. Sy. No. 81 is a part of

green belt in the Comprehensive Development Plan (CDP) and Sy. No. 34 are reserved for residential purposes. Their case is that the gomal land, if converted into industrial area, the villagers will lose the land reserved for grazing their cattle and the same will cause hardship to the villages as well as cattle. Further, there will be an adverse effect on the environment of the villages as industrial area increases. Their prayer is that the gomal lands and lands reserved for residential purposes in green belt should not be acquired and allotted for any non-agricultural purpose including industrial purpose. The lands earmarked for a specific purpose in the revenue records and CDP should be continued to be used as such to maintain pollution-free air and ecological balance, keeping in view the health of the villagers who are residing there. Otherwise, if the entire land is acquired and industrial area is developed, it will not only deprive the villagers of the gomal land, but also deprive them of the pollution-free air and water. The deprivation of the same is violative of the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. It is stated that the authorities have violated the zonal regulations in allotting the land to the 3rd respondent. It is stated that the allotment is made hurriedly without following the regular procedure and therefore, the same is illegal and arbitrary. They have filed this petition on the ground that without hearing the affected parties, notification u/s 3(1) of the Act has been issued. Therefore, they have sought for quashing of the said notification insofar as it relates to the aforesaid survey numbers and for a direction to restrain the respondents 1 and 2 from converting the lands in question for any industrial purpose and to retain the lands for use for which they are reserved for.

3. Respondent 2 has filed objections denying the allegations made in the writ petition. It is stated that it is a fact that the said survey numbers are gomal lands and form green belt under the CDP, but the said lands are not used as gomal lands as urbanisation has spread in the area and number of industries have come up in the area. They have ceased to be pasture lands. The 2nd respondent has got ample power to issue notification u/s 3(1) of the Act and to acquire the land u/s 28 of the Act and take possession for industrial purpose. Respondent 2 has followed the entire procedure in issuing the notification and acquiring the lands. Even when allotting to 3rd respondent, the procedure laid down under law is followed. The 3rd respondent is going to establish only a Research and Development Project and not for any manufacturing process which will emit any polluted air or create polluted atmosphere. The land allotted to 3rd respondent is out of Sy. No. 80 which is a Government Land to an extent of 20 acres only and the remaining land is acquired by the 2nd respondent from private owners. If the petitioners have any objection, it is open for them to file the same when the proceedings u/s 28 of the Act are initiated. There is no provision u/s 3(1) of the Act for issuing notice to any individual or public before the declaration is published u/s 3(1) of the Act. Respondent 2 has followed the entire procedure meticulously and there is no violation of procedure or any irregularity in the declaration and allotment of land to respondent 3.

4. Respondent 3 has filed counter denying the allegations made in the writ petition and has stated that respondent 3-company is one of the reputed companies and they are going to establish a Research and Development project built as per GE's world class environmental health and safety standards employing latest state of the art technology for waste handling and disposal. The GE has a R & D centre of the scale as proposed in Bangalore only in New York State in U.S.A. Therefore the apprehension of the petitioners that the project would cause environmental degradation is misconceived. The environmental, health and safety standards of the present project would exceed or equal GE's international standards. Respondent 3 is not going to set up heavy industry in the land allotted to it and would be used only for R & D project and they will not manufacture electronics goods/materials on this land. It is stated that the respondent 3 recognising the intellectual talent, has established a world class R & D Centre to conduct high value research and development activities to reverse the process of "brain drain" that is taking place in India. The 3rd respondent has chosen Bangalore as centre for Research and Development considering the location and the Karnataka State attaching importance for setting up R & D institutions. They have paid heavy price for the land allotted to them. After a long correspondence, this land was allotted to them. It is contended that the 3rd respondent is going to employ about 500 scientists and 150 staff members and another additional 250 technical people. R & D activity will cover wide areas of technology including but not limited to the areas of computer modelling, chemistry, polymer science, materials technology (copolymer, blends, composites) and productive engineering. GE technology centres through state-of-the-art communication network and a world class literature and competitive patent search and communication capability including patent filing and they are planning to invest rupees forty crores on the first phase of the project and ultimately, the total investment would be Rs. 250 crores. There are no merits in the writ petition and the same is liable to be dismissed. Along with the objections, they have also filed annexures showing the plan of the building and also steps taken for pollution control etc.

5. The Government has adopted the objections filed by respondent 2.

6. On the basis of the allegations and counter allegations made in the pleadings, the first point that arises for consideration is what is the importance of environment and ecology and rights of a citizen to have pollution-free air and water. Article 21 of the Constitution guarantees that no individual shall be deprived of his life or personal liberty except according to procedure established by law. The life and liberty guaranteed under the Constitution has been interpreted by the Supreme Court that a citizen is entitled to enjoy the life as a free citizen without any restriction except the reasonable restriction imposed in Article 19(2) of the Constitution. Environmental protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty-second Amendment) Act of 1976. Article 48-A was added to the directive principles of the State policy. It declares: The State shall make endeavour to

protect and improve the environment and to safeguard the forests and wild life of the country. Article 51-A(g) in a new chapter entitled "Fundamental Duties", Chapter IV-A imposes a similar responsibility on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Together, the provisions highlight the national consensus on the importance of environmental protection and improvement.

7. The Supreme Court has strengthened Article 21 in two ways. First, it required laws affecting personal liberty also to pass the tests of Article 14 and Article 19 of the Constitution, thereby ensuring that the procedure depriving a person of his or her personal liberty be reasonable, fair and just. Second, the Court recognised several unarticulated liberties that were implied by Article 21. By adopting the second method, the Supreme Court interpreted the right to life and personal liberty to include the right to a wholesome environment. The right to a wholesome environment may be traced to the case of *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, . The Supreme Court also recognised the environmental protection under Article 21. Thus, the right to environment has been recognised as a fundamental right. It is to be noticed that it would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. The slow poisoning of the environment caused by environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the Constitution. Article 47 casts duty on the State to raise the level of nutrition and the standard of living and to improve public health. The standard of living and public health cannot be improved unless there is pollution-free air and water. Article 48 provides that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and take steps to improving and preserving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle. As stated supra, Article 48-A delegates the State to protect and preserve the environment and to safeguard the forests and wildlife of the country. Article 51-A(g) casts a fundamental duty on the State to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. It is necessary here to note that living creatures include cattle, sheep, goats, poultry and other animals in the villages. Whenever fundamental rights are violated, one can approach the Apex Court directly under Article 32 of the Constitution and the High Court under Article 226 of the Constitution. These are the constitutional provisions provided to an aggrieved person or a citizen whenever there is an attempt to imbalance the ecological equilibrium, to bring it to the notice of the constitutional Courts for redressal.

8. The Karnataka Land Revenue Act which governs about the land revenue in the State provides that a gomal land cannot be changed for any other purpose, except with prior permission of the authority concerned. u/s 71 of the KLR Act,

power is given to the Deputy Commissioner to reduce or increase the gomal land (grazing land) according to the exigencies of requirement for providing house sites to weaker sections and Scheduled Castes/Scheduled Tribes/(SCs/STs) and to regularise unauthorised occupation of the land by weaker sections of the people and SCs/STs and assign the land to them. But, there is no power to the Deputy Commissioner to allot the agricultural land or gomal land to industrial purpose without conversion as provided under Sections 95 and 97 of the KLR Act. It is also to be noticed here that Section 95 of the KLR Act is amended. Section 95(3-A) and (3-B) provides that where any area is declared as a green belt by issuing a notification under the said provision, the same cannot be rescinded by the Government by issuing a notification, except by amending the Act itself. Further, the Karnataka Country and Town Planning Act provides to specify the green belt area while preparing the plan for urban area, and rural area so that pollution-free area is available to the residents of the locality and the Act also provides for reserving sites for civic amenities like parks, hospitals and other public requirements which cannot be converted for other use, unless specific permission is obtained as provided under the said Act. Thus, the scheme of the Constitution as well as the KLR Act and Karnataka Country and Town Planning Act makes it abundantly clear that protection of environment and maintaining ecological balance is essential for human life.

9. The Forty-second Amendment expanded the list of concurrent powers in the Constitution. The amendment introduced a new entry, "Population Control and Family Planning", while "Forests" and "Protection of Wild Animals and Birds" were moved from the State List to the Concurrent List. Article 253 of the Constitution empowers Parliament to make laws implementing India's international obligations as well as any decision made at an international conference, association or other body. By virtue of the said power, the Parliament enacted Air (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986. The preambles to both laws state that these Acts were enacted to implement the decisions reached at the United Nations Conference on the Human Environment held at Stockholm in 1972. At the conference, members of the United Nations agreed to work to preserve the world's natural resources, and called on each country to carry out this goal. The broad language of Article 253 suggests that in the wake of the Stockholm Conference in 1972, Parliament has the power to legislate on all matters linked to the preservation of natural resources. The crucial need for environmental protection has been widely recognised by the higher judiciary in the country,

10. At this stage, we think it just and proper to consider the case laws relating to environmental law.

11. The right to a wholesome environment can be traced to Dehradun Quarrying case, *supra*. The facts of the case are that in July 1983, representatives of the Rural Litigation and Entitlement Kendra, Dehradun, wrote to the Supreme Court alleging that illegal limestone mining in the Mussorie-Dehradun region was

devastating the fragile ecosystems in the area. The Court issued notice to the Government of Uttar Pradesh and the Collector of Dehradun. Thereafter, it appointed number of committees and passed interim orders and thereafter directed closure of lime quarries as they were affecting ecological equilibrium.

12. Similarly, in *M.C. Mehta Vs. Union of India (UOI) and Others*, (popularly called as Ganga Pollution Tanneries case), the Supreme Court directed closure of polluting tanneries. The Court observed: "we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people".

(emphasis supplied)

13. In *Banwasi Seva Ashram Vs. State of U.P. and Others*, , the Supreme Court directed to protect tribal forest dwellers who were being ousted from their forest land by the National Thermal Power Corporation Limited (NTPC) for establishing a thermal project. The Court permitted the acquisition of the land only after NTPC agreed to provide certain Court-approved facilities to the ousted forest dwellers. The Court observed that "the tribals, for generations had been using the jungles around for collecting the requirements for their livelihood--"fruits, vegetables, fodder, flowers, timber, animals by way of sport and fuel wood". For protecting those rights, of the tribals, the observation of Court indicates that the rights guaranteed to the tribals under Article 21 has to be protected, though not specifically stated in the order.

14. In *M.C. Mehta Vs. Kamal Nath and Others*, , the Apex Court was considering whether the grant of land on the bank of river Beas for construction of a Motel, would interfere with the natural flow of water by blocking natural relief/spill channel of the river. It was held that the State committed a breach of public trust, as public imposed trust on the Government of India and other State authorities for protecting natural resources such as rivers, forests, sea shores, etc., for the purpose of protecting eco-system. The Court held that Government committed breach of public trust and held that prior approval granted by Government of India, Ministry of Environment and Forest are not legal and the lease granted in favour of the Motel was quashed, and further observed that the polluter company is liable to compensate in terms of costs for protection and restitution of environment and ecology of the area and issued certain directions. This judgment lays down the principle that protection of ecological system and natural resources and landscapes are essential and the public trust doctrine primarily rests on the principle that certain resources like sea, forest, etc., have such a great importance to the people as a whole. It is wholly unjustified to make them subject to private ownership. The said resources being gift of nature, should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

15. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Supreme Court pointed out the duty to protect and improve forests, lakes, wildlife, etc., and also enunciated the principle of sustainable Development and Precautionary Principle and directed banning of construction activity within a radius of 1 km from tourist resorts of Badkhal Lake and Surajkund in the State of Haryana as arbitrary and discriminatory and not based on technical reasons and further issued clarificatory directions.

16. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Supreme Court accepted the undertaking given by the State to protect the monument and green belt, directed constitution of committee of the officers of ASI, officer of Agra Development Authority and one officer of Ministry of Environment and Forest to ensure effective compliance and also gave suitable directions. This judgment enunciates that protection of green belt and environment is essential.

17. The Apex Court in *Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others*, , has entertained environmental complaints alleging that the operations of limestone quarries in the Himalayan Range of Mussoorie resulted in the depredation of the environment affecting ecological balance.

18. The Andhra Pradesh High Court in *T. Damodhar Rao and Others Vs. The Special Officer, Municipal Corporation of Hyderabad and Others*, , has observed that ". . . it would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Article 21 of the Constitution". . . . , while considering the construction of residential homes in a recreational zone.

19. The Rajasthan High Court in *L.K. Koolwal Vs. State of Rajasthan and Others*, , Kerala High Court in *Madhavi v Tilakan* and the Himachal Pradesh High Court in *Kinkri Devi and Another Vs. State of Himachal Pradesh and Others*, , observed that environmental degradation violates the fundamental right to life. Thus the doctrine laid down by the Apex Court with respect to right to a wholesome environment seems to be referred and followed by the higher judiciary of the country.

20. The above stated constitutional provisions, other statutes, principles laid down by the Apex Court and High Courts, manifest that the right to pollution-free environment is a fundamental right. In the present case, it is not disputed that the land bearing Sy. Nos. 79 and 80 are reserved as gomal lands and fall under green belt. It is relevant here to note what is the meaning of a "gomal land"--it means land meant of grazing, and specially reserved for grazing purpose in the

villages. The Kamataka Land Revenue Act classifies the land as patta land which is occupied by persons either they can use for grazing or cultivation. "Karaz khata" lands originally belonged to pattedars and after they resigned from the pattedarship or otherwise, they were cancelled as patta land and reserved as Government land for being used mostly to assign these lands to landless poor. Gomal land (grazing land) is specifically reserved from time immemorial in every State for the purpose of grazing of the cattle in the village. It is well-known act that in the village, earlier to Land Ceiling and Tenancy laws, some of the landlords used to own vast lands. About 80 to 90% population of the village had no lands, but used to have cows, buffaloes, sheep, goats, poultry, etc. Taking these factors into consideration, even in those days of Rulers' rule, certain lands were reserved for grazing to facilitate these poor people of the society to use this land for grazing their cattle so that they could survive. The cattle in India is treated as a wealth of the society. It is also a fact that shepherds purely survived on sheep and goat rearing and they are continuing this occupation since time immemorial. Therefore, grazing lands are essential for a village. Further, as provided in Article 51-A(g), the conditions for better living of the creatures is one of the essential ingredients of fundamental rights read with Articles 41 and 48-A of the Constitution. Therefore, grazing lands reserved are essential for village life. Merely because that such lands are granted for cultivation to the weaker sections of the society, does not mean that lands are entirely ousted from the greenery. Even if some land is granted for cultivation, there would be greenery on the land. Even for such allotment, the Deputy Commissioner has to decide what is the requirement of grazing land taking into consideration the number of cattle in the village, though in some exceptional cases power is given to grant the land to weaker sections of the people and SC/STs. It is to be noticed that by providing greenery as part of grazing land, it will not only provide fodder to the cattle, but also provides good environmental atmosphere in the village and surrounding areas. Therefore, there is requirement that every village must have abundant area to be cultivated or area reserved as grazing land to maintain ecological equilibrium resulting in unpolluted air and water, which is the cardinal requirement of human life and other lives on the earth.

21. The learned Counsel for the petitioners contended that as the lands are reserved as gomal lands, lands coming under green belt and reserved as residential area in the revenue records and CDP, diversion of such lands for industrial purpose affects the village life and atmosphere. We agree with the said submission and there is no dispute about it. But the question is, what extent of land must be reserved will have to be looked into now.

22. In a village, there are two areas - one inhabitant area or goat an or gramatana area in which the residential sites, cattle sheds and other requirement for residence are established and the land is used for that. It is not a revenue land. The remaining lands which are used for cultivation, grazing and forestry are the revenue and forest lands. Therefore to protect the ecological balance of the village, there is requirement to preserve the land surrounding the village from

the outer boundary of the gramatana at least to a distance of 1 k.m., to be used for the purpose of cultivation, grazing and the greenery purposes which are reserved as per the revenue records and CDP Plan. For this principle, we get the guidance from the case in M.C. Mehta, supra. In this case, a public interest litigation, the petitioner therein had sought for a direction to preserve the environment and control pollution-Mining operations should be stopped within the radius of 5 kms. radius from the tourist resorts of Badkhal Lake and Surajkund in the State of Haryana. Ultimately, after considering all the contentions and keeping in view the concept of development and ecology, the Court observed that there is requirement to draw the balance between both and held that--"No construction of any type shall be permitted, now onwards, within the green belt area as shown in Ex. A and Ex. B. The environment and ecology of this area shall be protected and preserved by all concerned. A very small area shall be permitted, if it is of utmost necessity, for recreational and tourism purposes. The said permission shall be granted with the prior approval of "the Authority, the Central Pollution Control Board and the Haryana Pollution Control Board.

23. The said principle squarely applies to protect the ecological balance and environment of the villages. Therefore, we think just and proper to hold that maintenance of ecological equilibrium and pollution free atmosphere is essential to the villages.

24. The learned Counsel for the respondents contended that the Act has got a overriding effect on the Land Revenue Act by virtue of Section 47 of the Act, which reads as follows:

"47. Effect of provisions inconsistent with other laws: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

The provision of Section 47 of the Act must be given over-riding effect vis-a-vis the provisions of the Karnataka Town and Country Planning Act".

By reading the said provision, it is evident that Section 47 has got overriding effect. It has been held so by the two judgments of this Court in H.G. Kulkarni v Assistant Commissioner, Belgaum and Others and M.S. Moses Vs. State of Karnataka, . There is no dispute about the principle laid down in the above judgments.

25. The learned Counsel for the petitioners argued that by reading Section 47, it is clear that whenever a provision of an enactment is conflicting with the Act, then only the Act has overriding effect and not otherwise. For this proposition, he relied on the decision in Baldev Singh and Others Vs. State of Himachal Pradesh and Others, , (at 1242) wherein a principle has been laid down to find out whether the Act is a legislative Act, administrative Act or judicial Act:

"It is a fact that the Orissa Act provides in clear terms a right of hearing whereas

Section 256 of the Himachal Act makes no such provision but the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. We accept the submission on behalf of the appellants that before the notified area was constituted in terms of Section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the views of the residents. Denial of such opportunity is not in consonance with the scheme of the Rule of Law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way".

26. There is no dispute about the principle. But in the above stated two judgments of this Court, this Court specifically considered the notification u/s 3 of the Act; particularly in one of the cases, the notification related to I phase of acquisition by respondent 2, Therefore, in view of the above stated facts, we are not able to agree with the learned Counsel for the petitioners.

27. The question now is whether the Karnataka Act will yield to the Environmental Protection Act and fundamental rights as enshrined in the Constitution. Once the environmental protection and ecological balance requirement of the village is held as fundamental right read with other obligations of the State provided in Articles 47, 48-A and 51-A(g) of the Constitution, the other statutory provisions have to yield to the fundamental rights.

28. Though we accept the contention of the learned Senior Counsel Mr. P. Chidambaram for respondent 3 that the provisions of Karnataka Land Revenue Act and other enactments will yield to the overriding effect of the KIADB Act, which is a special Act, we have to hold that the rights created under the provisions in a statutory body or authority, are subject to fundamental rights of the citizens guaranteed under Articles 21, 47, 48, 48-A and 51-A(g) of the Constitution. The learned Counsel for respondent 3 also submitted that there is a distinction between delegated legislative power and delegated administrative power and relied on the judgments in *Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.*, and *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, and contended that declaring an area as an industrial area u/s 3(1) of the Act is a legislative Act. Therefore, the question of hearing the affected persons or public at large does not arise. On the other hand, the learned Counsel for the petitioners relied on *Wade on Administrative Law 6th Edition (884)* and contended that the act of taking the land is administrative in nature and in such cases at least a public notice must be issued, if not an individual notice and affected parties must be heard as their civil rights are affected and for this proposition he relied on the judgment of the Supreme Court in the case of *Saij Gram Panchayat Vs. The State of Gujarat and Others*, , (para 22):

"It was also contended by the appellants that before any notification could be issued u/s 16 of the Gujarat Industrial Development Act, 1962, a hearing should have been given to the residents, because notifying an area u/s 16 of the said Act has civil consequences. If the residents had any objections, they should have been considered. Reliance was placed upon a decision of this Court in Baldev Singh's case, supra. In that case, under the Himachal Pradesh Municipal Act, a notified area had been declared u/s 256, This Court said that the inclusion of an area governed by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances, it is necessary that people who will be affected by the change should be given an opportunity of being heard otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the like. Although the section did not, in clear terms, provide a right of hearing, the Court held that denial of such an opportunity was not in consonance with the scheme of the rule of law governing our society. A similar view has been taken in State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., at 334. In this case, delimitation of panchayat areas and Gram Sabhas under the U.P. Panchayat Raj Act of 1947 was considered by this Court. It said that an opportunity of being heard should have been given to the people of the areas concerned. In that case, action having already been taken without giving an opportunity of hearing, in view of the urgency, a post- decisional hearing was considered as sufficient compliance with the principle of audi alteram partem. In the present case, however, there has been a long-drawn-out exchange of views, consultations as well as consideration of objections over the issuing of a notification u/s 16 of the Gujarat Industrial Development Act, 1962 which was also linked with the exclusion of this area from the panchayat area u/s 9(2) of the Gujarat Panchayats Act, 1961. It was precisely because of these consultations that the GR of 30-8-1993 was also issued to provide revenue to the Gram Panchayats from out of the taxes collected from notified areas which were removed from the jurisdiction of Gram Panchayats. Therefore, the appellants cannot complain of any violation of the principles of natural justice in the present case".

Pradhan Sangh Kshettra Samiti's case, supra (headnote (L)) is as follows:

"(L) Constitution of India, Article 14 -- U.P. Panchayat Raj Act (26 of 1947), Sections 3 and 11-F -- Panchayat area -- Finalisation -- Reasonable opportunity for raising objections and hearing them ought to be given before finalisation of area -- Change in area of local bodies does involve civil consequences".

And Baldev Singh's case, supra (paras 4 and 5) is as under:

"Appellant's Counsel has raised a more serious issue, namely, denial of an opportunity of being heard before the notified area has been constituted. Since Section 256 of the Act requires certain aspects to be satisfied before a notified area can be constituted, factual determination had to be made as to whether those statutory conditions were satisfied. Ours is a democratic polity. At every

level, from the villages up to the national level, democratic institutions have been introduced. The villages are under Gram Panchayats, urban areas under Municipalities and Corporations, districts are under parishads; for the State there is a legislature and for the entire country, we have the Parliament. People residing within Gram Panchayats have their electoral rights to exercise and in exercise of such rights, they have elected their representatives. Citizens of India have a right to decide, what should be the nature of their society in which they live - agrarian, semi-urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the like.

Reliance was placed on two decisions of this Court in support of the appellant's stand that natural justice required an opportunity of being heard to be extended to the people of the area before the administrative decision to constitute the notified area was taken. The first is the case of *S.L. Kapoor Vs. Jagmohan and Others*, , That was a case where the committee constituted under the Municipal Act was superseded. This Court held that where the administrative action entails civil consequences, observance of natural justice would be warranted and unless the law excludes the application of natural justice it should be taken as implanted into the scheme. The other is the case of *State of Orissa Vs. Sridhar Kumar Mallik and Others*, , where the validity of the action taken u/s 417-A of the Orissa Municipal Act in constituting a notified area was being examined. The Court, referring to the statutory scheme, found (at p. 1413 of AIR):

"The extension of the Orissa Municipality Act to an area other than a municipality is a matter of serious moment to the residents of the area. It results in the provision of amenities and conveniences necessary to civil life and their regulation by a local body. But the Act also provides for the imposition of taxes of different kinds on the residents. The tax structure does not embody an integrated unified impost expressed in a single tax measure. Different kinds of taxes are contemplated by the Act. The scheme set forth in Chapter XXX-A of the Act intends that before the Government extends the operation of the Act to an area under a municipality it must afford an opportunity to the local residents to object to the proposed action. The objections are submitted to the District Magistrate, who forwards them along with his views to the State Government. The State Government must take into consideration all the material before it and decide thereafter what should be the precise area to which the Act should be extended, and indeed whether all the provisions of the Act or only certain specified provisions should be so extended. The possibility of some only of the provisions of the Act being applied to the notified area is evident from the terms in which the grant of power has been conferred on the State Government. Sub-section (1) of Section 417-A specifically envisages that when issuing the

notification contemplated therein the State Government must decide whether administrative provision needs to be made "for all or any of the purposes" of the Act in the area proposed to be notified. Unless the proposal formulated in the proclamation made under sub-section (1-A) of Section 417-A is precise and clear, and indicate with sufficient accuracy the area intended to be notified, and further indicates whether the administrative provision is proposed for all the purposes of the Act or only some of them, and if only some of them then which of them, it will not be possible for the residents to properly avail of the right conferred on them by the statute to make their objections to the proposal of the State Government. We do not see how it can be otherwise.....".

"It is a fact that the Orissa Act provides in clear terms a right of hearing whereas Section 256 of the Himachal Pradesh Municipal Act makes no such provision but the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. We accept the submission on behalf of the appellants that before the notified area was constituted in terms of Section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the views of the residents. Denial of such opportunity is not in consonance with the scheme of the Rule of Law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way".

There is no dispute about the proposition and principles laid down in each case, but the same has to be applied in the facts and circumstances of each case.

29. In this case we are concerned with the right to issue a notification declaring an area as an industrial area. Respondent 2 has got the power and authority, but the same is subject to fundamental rights and as we have held, the rights of the villagers to enjoy the grazing land and land to be reserved for green belt is a fundamental right. Whenever it is violated, notification and the consequential acquisition has to be quashed.

30. Learned Counsel for respondent 3 contended that none of the petitioners own land and they have not stated as to how many cattle they have. Therefore, the writ petition, as a public interest litigation, is not maintainable. The scope of the PIL has been thoroughly discussed and principles are laid down by the Apex Court and various High Courts. In a number of cases referred to supra, it is held that a writ petition is maintainable in the nature of PIL at the instance of any person to safeguard and protect environment and to espouse the public cause and protect the rights of those weaker sections who are not able to espouse their own cause. There is no rule that a person espousing a public cause must also own the land or cattle. We are therefore not able to agree with the contention of respondent 3 in this regard.

31. It is further contended that once the Act holds the field, all the terms and actions are governed by the said Act and Sections 13, 14 and 41 of the Act read with Regulation 5 provide power to the Board to make regulations and for disposal of the lands acquired under the Act. Therefore, the lease executed in the present case is quite valid and within the power and competence of respondent 2. There is no dispute about this aspect also. But we, must point out here that in this case how the things have taken place. The application for allotment was made on 16-7-1999; allotment letter was issued on 17-7-1999 and possession was delivered on 20-9-1999 and lease-cum-sale deed agreement was executed on 30-9-1999. The lease-cum-sale deed mentioned only Sy. Nos. but not the extent of each survey number. It is also shown to us from the records that the Single Window Agency (SWA) has granted clearance. The SWA consists of members belonging to various Departments including Pollution Control Board. Though the Pollution Control Board Chairman was to be present, an Assistant Secretary was deputed in his place. Under the provisions of the Pollution Control Act, 1986, the Pollution Control Board has got power to grant clearance. Clause (12) of the Lease deed provides that the 3rd respondent should obtain Pollution Control clearance. Issuing a notification declaring an area as industrial area and putting in possession of the land even before execution of the lease deed and not obtaining the clearance of the Pollution Control Board as contemplated u/s 21 of the Act, all shows that how the things have taken place hurriedly. This practice on the part of respondent 2 is deprecated.

32. Therefore, in view of the above circumstances, we hold that in order to maintain ecological equilibrium and pollution-free atmosphere of the villages, the authorities under the KIADB Act are directed to leave land area of 1 k.m. as a buffer zone from the outer periphery of the village in order to maintain a "green area" towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry and to develop the area into green belt. This would measure the preservation of ecology without hindering the much needed industrial growth thus striking a balance between industrial development and ecological preservice.

33. But, having regard to the circumstances of the case and nature of establishment of respondent 3 and its activities, which is essential to the growth of computer industry and research and development in information technology, we do not wish to disturb the allotment made to 3rd respondent, but the notification u/s 3(1) of the Act and consequential proceedings or notification or orders issued in regard to the other disputed lands in the writ petition are quashed, to the extent of the lands which are reserved for grazing, agricultural and residential purposes. We further direct that whenever there is acquisition of land for industrial purpose or commercial or on non-agricultural purposes, except residential area, the authorities must leave 1 k.m. area from the village limit as a free zone or green area to maintain ecological equilibrium as stated above.

34. Petition is partly allowed.