

(2000) 07 BOM CK 0089
In the Bombay High Court
Case No : Writ Petition No. 113 of 1992

Goa Foundation and Others	Vs	APPELLANT
State of Goa and Others		RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Constitution of India, 1950 — Article 21
Forest (Conservation) Act, 1980 — Section 2, 4
Forest (Conservation) Rules, 1981 — Rule 4, 5, 6

Citation : AIR 2001 Bom 318 : (2001) 3 BomCR 813 : (2001) 3 MhLj 769

Hon'ble Judges : V.C. Daga, J; F.I. Rebello, J

Bench : Division Bench

Advocate : Norma Alvares, for the Appellant; H.R. Bharne, G.A. for Respondents 1 and 2; Joseph Vaz, Addl. Central Govt. S.C. for Respondent No. 3; S.K. Kakodkar, Sr.Adv. and R.V. Kamat, for the Respondent

Judgement

F.I. Rebello, J.—Petitioners 1 and 2 are Societies registered under the Societies Registration Act. Petitioner No. 2 is also an environmental society. Members of both the petitioners are nationals and citizens of India. The objects of the petitioner No. 1, amongst others, are to halt the ecological degradation of environment and to formulate and implement programmes for the rehabilitation and development of the Goan environment and to restore an ecological balance. Members of both the petitioner societies as citizens of India have the fundamental duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

2. Respondent No. 1 granted to respondent No. 4 a lease of land bearing Survey No. 12 of village Potrem in Sanguem Taluka for the purpose of erecting a beneficiation plant and purposes related therewith. Petitioners pleaded that a rich forest lies on the said plot. Respondent No. 2 is responsible for the conservation of the forest wealth in Goa State particularly the conservation of the ecologically fragile areas in which the lease falls. Respondent No. 3 is the authority which issues clearance under the Forest (Conservation) Act. The plot in question, it is

contended, constitutes one of the last remaining vestiges of primary forest in the ecologically sensitive region of the western ghats. The plot leased has more than the density of trees which means the forest is of the nature of a closed forest system. On account of this respondent No. 1 has given his intent to convert the contiguous plots into reserved forests. Survey No. 12, overnight and contrary to Government intent, was mysteriously leased to respondent No. 4. It is averred that this was done after a revenue official in collusion with respondent No. 4 filed fraudulent report underestimating the number of trees on the plot. Petitioners pray that a copy of the report be placed on record.

When the lease was granted the diversion of forest land to non-forestry purposes in private lands or so called private forest and revenue lands was thought not to come in the purview of the Forest (Conservation) Act, 1980. On account of judgment passed by this Court, the position has now altered. Felling of trees in the State of Goa is also governed by the Goa, Daman and Diu Preservation of Trees Act, 1984. Respondent No. 4, it is contended, on injuries made by the petitioners with the local people, clear-felled 2 hectares of rich forest illegally and without any permission from any of the statutory authorities. This was in violation of Clause 9 of the lease agreement dated 1st November, 1989. This monstrous act of environmental terrorism was followed by using a bulldozer to remove all the roots of the trees. Pits were dug to lay foundation stone for the beneficiation plant without any permission from any authority under the law. The petitioners approached the Court to prohibit the respondent No. 4 from further felling any trees from the plot. Forest once destroyed, it is contended, cannot be replaced, the beneficiation plant can be relocated. Respondent No. 1 had to consider as to what was more important, the last few green patches left in this country which are essential for the survival of the Nation and its environment or the saving of few rupees of the respondent No. 4. The environment would be placed at irreparable risk if respondent No. 4 was not restrained from proceeding with further development. Respondent No. 4 could not proceed with any diversion or change of user without permission under the provisions of the Forest (Conservation) Act, 1980. Therefore the reliefs as prayed for.

3. On behalf of respondent No. 4, one T. Ramaswamy, General Manager of Mining Division and its Constituted Attorney filed a reply. Various preliminary objections have been raised which are not referred to as, in our opinion, they are to be rejected at the threshold. The Government of Goa, it is contended, granted the lease in December 1988 for setting up a beneficiation plant for iron ore for company's mines at Tudou about 1 kilometre away. The Tudou mines, it is contended, are estimated to about 78 million tons of low grade iron ore. A formal memorandum of lease was executed by the company on 1st November, 1989 and possession of 12 hectares of land was delivered on 6th June, 1990. NKK, Japan agreed to purchase the iron ore concentrates and lumps. Government of India on 25th January 1991 issued a letter of intent to the company to treat the company's project as a 100% export oriented unit. On 14th June, 1991 the Government of India applied the company's application to obtain suppliers credit

for import of capital goods from Okura and Co. Ltd. of US \$ 4.26 million. On 10th July, 1991 Sanad was granted permitting the use of land for industrial purposes on payment of Rs. 6 lakhs. Machinery worth 12 crores for setting up the beneficiation plant has already been shipped from Sweden on 24th February, 1992. The Electricity Department on 4th March 1992 has sanctioned to the company a supply of 33-KV power. The company's project is worth Rs. 25 crores. The actual plant and access, occupy an area of 1 hectare of land which must be developed and the beneficiation plant erected immediately failing which the company will suffer huge losses. The 1 hectare of land contains about 49 trees and other firewood and shrubs which will have to be felled. It was denied that the said land has 60% of trees. The land was not covered by the notification in the Government Gazette No. 15, III Series dated 10th July, 1986. It was denied that the land in question constitutes one of the last vestiges of primary forest. It was denied that there was any collusion with the revenue official and/or that the revenue official underestimated the number of trees on the plot. There are various other denials which need not be adverted to.

4. R. Nagbhushan Rao, Deputy Conservator of Forest has filed an affidavit on behalf of respondent No. 2. The Survey No. 12 in the survey records was shown as revenue land and classified as land meant for dry crops. When the respondent No. 4 started developing the area the Forest Department found that they had felled trees standing in the said land without permission being taken under the Goa Trees and Preservation Act, 1984. A case has been booked against respondent No. 4 for violation of Forest (Conservation) Act, 1980 as well as Preservation of Trees Act, 1984. What is more material is the averment that the Forest Department found that the entire area of 12 hectares is covered by forest, there being on an average 250 trees per hectare and the plot was contiguous to Government forest. In other words, the 12 hectare had 3000 standing trees.

In reply to the affidavit T. Ramaswamy has filed an affidavit denying that on an average there are about 250 trees per hectare. It is stated that there are about 150 trees per hectare, there was also firewood and undergrowth.

During the pendency of the petition, on 21st June, 2000 V.T. Thomas, Deputy Conservator of Forest (South) has filed an affidavit which, according to him, is to place the factual position on record. It is set out that the Government of India by Letter No. 8/31/93-FC dated 7th November 1997 has conveyed its approval for diversion of 4.44 hectares of the land in favour of M/s. Chowgule and Co. In view of that approval, the company had to restrict its activities within the area of 4.44 hectares.

5. On behalf of the petitioners it is contended that the lease granted is contrary to the provisions of section 2 of the Forest (Conservation) Act, 1980. The lease, therefore, will have to be cancelled. Prayer (a) as sought for by the petitioners though styled as writ of certiorari, is in fact a declaration to cancel the lease dated 1st November 1989 and for a further writ to respondent No. 4 to restore the forest clear-felled, to its original state. In the alternative it is submitted that

at any rate even considering the letter of the Government of India, Ministry of Environment and Forests dated 7th November 1997, the respondent No. 4 cannot divert more than 4.44. hectares of the leased land.

6. On the other hand on behalf of respondent No. 4 it is contended that once the Government of India gave permission to set up the beneficiation plant, it must be deemed that permission has also been granted under the provisions of the Forest (Conservation) Act. At any rate, it is contended, that the area is not a forest considering the number of trees existing. In the alternative, it is contended, that they have permission for 4.44 hectares, at least that area can be used.

7. Before we address ourselves to the issue it must be remembered that Article 48-A of the Constitution of India, in Part IV, containing directives of principles of State Policy, specifically provides that the State shall endeavour to protect and improve the environment and safeguard the forest and wild life of the country. In the Stockholm Declaration of 1972 it was proclaimed, that we see around us growing evidence of man-made harm in many regions of the earth; dangerous levels of pollution in water, air, earth and human beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources and gross deficiencies harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment. Man it is stated is both creature and molder of his environment. Both aspects of man's environment, the natural and the man made are essential to his well-being and to the enjoyment of basic human rights, even the right to life itself. One of the principles enunciated at the convention is that the natural resources of the earth, including the air, water, land, flora and fauna and specific representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. As principle 3 it was set out that the capacity of the earth to produce vital renewable resources must be maintained and wherever practicable, restored or improved. As principle, it was enunciated that man has a special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors. Nature conservation, including wild life, must, therefore, receive importance in planning for economic development. In the Rio Declaration, principle 1, recognised that human beings are a centre of concern for sustainable development. They are entitled to a healthy and productive life in harmony with nature. Principle 3 enunciated the principle of "sustainable development". The principle states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. In order to achieve sustainable development, environmental protection shall constitute an integral part and cannot be considered in isolation from it. As principle 15 it was declared that in order to protect the environment, the precautionary approach shall be widely applied by the State where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for

postponing cost-effective measures to prevent environmental degradation. The principles enunciated at the Stockholm Convention and the Rio Declaration have been considered by the Apex Court as enforceable in the Municipal/Domestic courts.

Beginning with Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others, ; Vellore Citizens Welfare Forum Vs. Union of India and others, ; S. Jagannath Vs. Union of India and others, and culminating with A.P. Pollution Control Board Vs. Prof. M.V. Nayadu (Retd.) and Others, "sustainable development" has now been accepted as a part of our Municipal Law.

In Vellore Citizens Welfare Forum (supra) the Apex Court has observed as under :---

"During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs." We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the Customary International law though its salient features have yet to be finalised by the International law Jurists."

The Apex Court proceeded further and observed as under :---

"Some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and co-operate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development."

Proceeding further, the Apex Court observed as under :--

"Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of law that the rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, , Jolly George Varghese and Another Vs. The Bank of Cochin, and Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and Others, ."

In A.P. Pollution Control Board (supra) the principle of Inter-Generational Equity has also been accepted.

Therefore "Sustainable Development" is now recognised as a part of our Municipal law, involves the precautionary principle, the Polluter Pays Principle, the new burden of proof as set out and accepted in S. Jagannath (supra) and Inter-Generational Equity as now accepted in A.P. Pollution Control Board (supra).

The Apex Court in A.P. Pollution Control Board has specifically accepted that Article 21 consists of two broad principles the right to life and liberty. Environmental aspects constitute a part of the fundamental right to life. Human right aspect concerns liberty. Both flow from Article 21.

9. Realisation has finally dawned on man about the immense damage that he has caused to the environment and ecology by massive destruction of the forest. All over the world attempts have been made for afforestation and the species known to the area. Afforestation or reforestation therefore have acquired importance in protecting, preserving and revitalising the ecosystem of any land or region in the larger interests of the respective country and its people. The Western Ghats are important next only to the Himalayas. The hill range runs in a length of about 1600 kms. almost parallel to the west coast of India starting from the mouth of river Tapi in Gujarat and ending at Kanyakumari. The Western Ghat region of Goa constitutes an important component of these hill ranges, which is spread over three talukas, viz., Sattari, Sanguem and Canacona. Forest cover extends over 50% of the total area of this important and beautiful region. The area forms catchment to the State's prestigious Irrigation Projects such as the Anjunem Irrigation Project, Selaulim Irrigation Project and Proposed Tillari Irrigation projects. Due to the undulating terrain, the Western Ghats region of Goa is marked by thousands of micro-water sheds of varying sizes. In view of that, the Government of Goa has initiated various steps for protecting the ecology of the area from soil erosion to afforestation. The hill chain of the Western Ghats run parallel to the west coast of India. The Ghats descend steeply to coastal plains on the west, but merge rather gently through a series of hills with the Deccan plateau. The Western Ghats force the moisture laden winds coming off the Arabian sea and receive consequently heavy precipitation of 2000 mm. or more a year. Given this rainfall regime the Western slopes of the Ghats have a natural cover of evergreen forest, which changes to moist and then dry deciduous types as one comes to the eastern slopes. The Western Ghats are the treasure use of plants and animal life, next only to the Himalayan tracts in the variety of biological plants and animal species. The Ghats harbour a number of wild relatives of cultivated plants, including pepper, cardamon, mango, jackfruit and plantain. This biological wealth has paid rich dividends over the years. This diversity has been on continual decline over the last century and more especially in recent decades, with many biological community types almost totally eliminated. Ms. Bharati K. Dessai in her thesis Ecological Condition of Western Ghats has given the four animal classes found in the World, India, Animal

The importance of forests and mountains is beautifully set out in Malaipadukadam, the Sangam classic is eloquent about the blessings of the

mountains :

"The jungle men, who live on high hill slopes have honey, roots, crates filled with meat and pork.

.....

And baskets full of other kinds of meat."

.....

"The mountain in portion of the King's domain is better than the land described. Now hear what kind of food they'll receive, The meat of iguana hunted by the bitch, The rich flesh of the deer killed in its flight, And meat of porcupines, the blood still fresh. Thou will then drink much toddy well matured with honey mixed and served in a bamboo pipe."

These were the hills that supported earlier life.

Human beings need the basic life supporting systems namely, flora, fauna, air, water and land for their survival. Both renewable and non-renewable resources contribute significantly to the developmental processes. The biological systems are the renewable ones which have been harvested for human use over history. Non-renewable resources with increasingly higher rates of consumption would disappear and their judicious exploitation has to be ensured. With continued deforestation and species loss on the surface of the earth, very soon, the renewable resources would disappear in terms of original ecosystem. It is, therefore, reasonable and essential that for the purpose of sustainable development that we preserve the ecosystem which means protecting the biodiversity. Biodiversity is the basis of livelihood and ecological security. Wild plants and traditional cultivators among other biological resources, represent the raw genetic material for crop improvement, drug development and biotechnology industry. Biodiversity manifests itself at all levels of the biological hierarchy from genes to ecosystems, all equally important, and none can be dispensed with.

10. We may now examine the issue before us with this background. The first question, therefore, is whether the permission granted by the Ministry of Industry, Government of India, can be said to be a clearance by the Government of India also under the provisions of the Forest (Conservation) Act, 1980. It is contended that business rules cannot be relied upon for that purpose. The Government acts as one and, therefore, when permission is granted, it is deemed to be a permission by the Government of India. This principle, it is contended, has been accepted by a Division Bench of this Court in the case of *The Goa Foundation and another Vs. The Konkan Railway Corporation and others*, . Specific reference for that purpose is relied upon on the following observations :

"The grievance is that the alignment passes through the forest land and the Corporation has not secured prior approval for the use of the land for non-forest

purpose. There is no merit in the submission because the project has been approved by the Central Government and the Railway Ministry which is carrying out the exercise is a part of the Central Government."

We are unable to find authority for the proposition which is relied upon by the learned Counsel. All that is stated therein is that the Railway Ministry had not taken permission from the Government of India. To that the answer was that the Railway Ministry was a part of the Government of India. The Government of India had approved the project. This is not an argument to support the contention that if the permission is given by one Department of the Government of India, it can constitute permission under any other Act. The observation must be also borne in mind considering the subsequent finding of the Division Bench that the Railways Act is a legislation enacted subsequent to the Environment Act and the Corporation was right in claiming that for the purpose of providing railway line, clearance is not required even though the line passes over rivers, creeks etc.

11. We will now examine whether in fact on record such an argument could have been countenanced. By letter of 17th August, 1989 Chowgule and Co. wrote to the Secretary for Industrial Approvals, Ministry of Industries, Department of Industrial Development, New Delhi that they proposed to set up an Integrated Unit, including a beneficiation plant at Tudou Mines and that the proposed Integrated Project be permitted to operate as a 100% Export Oriented Unit. The Government of India, Ministry of Industry, Department of Industrial Development, by letter of 25th January, 1991 referring to the application of 28th August, 1989 informed the respondent No. 4 that the Government is prepared to issue an industrial licence under the Industries (Development & Regulation) Act, 1951 for the establishment of a new undertaking under the 100% Export Oriented Scheme on certain terms and conditions as placed therein. It is, therefore, clear that the permission was granted to respondent No. 4 under the Industries (Development & Regulation) Act, 1951. Can this permission be said to be a permission under the Forest (Conservation) Act, 1980? We will reproduce section 2 as it would be essential for the purpose of subsequent discussion. Section 2 reads as under:---

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.--Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing--

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease

or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation.

Explanation.-- For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for--

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than re-afforestation.

but does not include any work relating or ancillary to conservation, development and management of forest and wild life, namely, the establishment of check-posts, fire lines ,wireless communications and construction of fencing, bridges and culverts, dams, water-holes, trench marks, boundary marks, pipelines or other like purpose."

Therefore prior approval of the Central Government was required in terms of the Forest (Conservation) Rules, 1981. In terms of Rule 4 every State Government or other authority seeking the prior approval u/s 2 shall send its proposal to the Central Government in the form appended. Under Rule 6 after considering the advice of the Committee and after such inquiry approval could be granted. The form for applying has also been set out. The Ministry to which the form should be forwarded to is also set out. Under sections 3A and 3B any contravention of the provisions is liable for punishment. The object of the Act has been set out by the Apex Court in the case of *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 . The Apex Court noted that the 1980 Act was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have social manages and further deforestation and logical should be prevented. It is, therefore, clear that merely because one of the Ministries of the Government of India had granted permission, that permission would not be permission for the purpose of the Forest (Conservation) Act, 1980. That argument must be rejected. Under the Forest (Conservation) Act, 1980 though ultimately it is the Government of India that grants permission, in terms of the Rules framed, the matter must be considered by the Committee constituted under Rule 2-A of the Forest (Conservation) Rules, 1981 and only thereafter can the Government after following the procedure under Rules 5 and 6 grant approval. The first contention must be, therefore, rejected.

12. We now come to the second contention that the area concerned was not a forest. It is contended that the affidavit of Deputy Conservator of Forest does not speak of the height and girth of the trees. It is, therefore, not possible to find out, whether what were standing thereon were actual trees. We could have appreciated that argument if not for the affidavit of T. Ramaswamy on behalf of

respondent No. 4. He has understood the affidavit of the Deputy Conservator and his only answer is that there are about 150 trees per hectare on the said land. That there are trees is not disputed. Apart from that, T. Ramaswamy says that there are also firewood and undergrowth. R. Nagbhushan Rao is the Deputy Conservator of Forests. He specifically set out that the Forest Department found that the entire area of 12 hectares are covered by forest. There being on an average 250 trees per hectare. The only dispute between his affidavit and that of T. Ramaswamy is about the number of trees. We have no reason to reject the affidavit filed on behalf of respondent No. 2 that there are on an average 250 trees per hectare. It is contended that the judgment of a Division Bench of this Court in *Shri Shivanand V. Salgaocar v. Tree Officer & Deputy Conservator of Forests* and another, Writ Petition No. 162 of 1987 dated 27th November 1990 is no authority for the proposition as to what is a forest, based on the number of trees. In that case the entire property admeasured 16.51 hectares. Permission was sought to clear-fell 1 hectare on which stood 77 trees. On the entire 16.51 hectares there were 250 trees. This Court on a consideration of the matter and relying on a Full Bench judgment of this Court in *Janu Chandra Waghmare and Others Vs. The State of Maharashtra and Others*, held that the land was forest land. In our case there are two additional factors. The entire land consists of about 3000 trees. It is contiguous to a Government forest. Though the land has been described in the revenue records as dry crop land, that by itself would be no answer as what the section 2 of the Act contemplates is not only forest but forest land. In that case in the Index of Land it was shown as *bharad* the Division Bench rejected the argument sought to be advanced based on the ground that it was not forest by stating that a wrong description of the land cannot prevent the application of the Forest (Conservation) Act, if it is otherwise applicable. We have no reason to depart from the view taken by the Division Bench.

13. The issue, in our opinion, for determining as to what is forest land is no longer *res integra*. The matter stands concluded by the judgment of the Apex Court in *T.N. Godavarman Thirumulkpad Vs. Union of India and others*, . The Apex Court has observed as under:---

"(1) The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of section 2(i) of the Forest Conservation Act.

(2) The term "forest land" occurring in section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.

(3) For the purpose of (1) and (2) and for the purpose of section 2 that is how it is to be understood.

(4) The provisions enacted in the Forest Conservation Act, 1980 of the conservation of forests and the matters connected therewith must apply clearly

to all forests so understood irrespective of the ownership or classification thereof."

14. What is a "forest"? Various definitions may be now set out:---

In Words and Phrases Legally Defined "forest" means:

"A certain territories of woody grounds and fruitful pastures, privileged for wild beasts and fowls of forest, chase and warren, to rest and abide in, in the safe protection of the King, for his princely delight and pleasure, which territory of ground, so privileged, is metered and bounded with unremovable marks, meeres, and boundaries, either known by matter of record or else by prescription, and also replenished with wild beasts of vineries or chase, and with great coverts of vert (i.e. green-leaved trees, bushes, etc.) for the succor of the said wild beasts, to have their abode in; for the preservation and continuance of which said place, together with the vert and venison, there are certain particular laws, privileges, and officers belonging to the same, meet for that purpose, that are only proper unto a forest, and not to any other place."

According to Mozley and Whiteley's Law Dictionary, "forest" as a legal right is defined as a right of keeping, for the purpose of hunting, the wild beasts and fowls of forest, chase, park, and warren, in a territory or precinct of woody ground of pasture set apart for the purpose.

According to Black Law Dictionary, "forest" means a tract of land covered with trees and one usually of considerable extent.

The World of the knowledge Encyclopaedia Vol. 10 defines "forest" at page 2201 as "a circuit of wooded ground and pastures, known in its bounds and privileged for the abiding of wild beasts and fowls of forest, chase and Carron to be under the king's protection for his princely delight". Under the Abridged Glossary of Technical Terms published by Forest Research Institute and Colleges Dehra Dun, Page 52, the term "forest" was understood as an area set side for the production of timber and other forest produce, or maintained under woody vegetation for certain indirect benefits which it provided. For example, climatic or protective.

In Oxford English Dictionary "forest" means:

- (1) an extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture also the trees collectively of a forest;
- (2) a woodland distinct, usually belonging to the king, set apart for hunting wild beasts, game and etc.; and
- (3) a wild uncultivated waste, wilderness .

A perusal of these definitions can leave no manner of doubt that the land involved is a "forest" if not forest land. We have also no reason, not to accept the affidavit of the Deputy Conservator of Forest, who is personally conversant and has stated that the entire 12 hectares was covered by forest.

15. Once we hold that the land is a forest, the consequences must follow. In the

first instance the respondent No. 1 could not have created a lease in favour of respondent No. 4 without taking prior permission u/s 2 of the Forest (Conservation) Act, 1980. Any action taken in contravention of section 2 is punishable under sections 3A and 3B of the Forest (Conservation) Act, 1980. It was, therefore, unlawful being contrary to section 23 of the Indian Contract Act, 1872. The contract being therefore unlawful is a nullity in law. Section 2 contemplates prior permission of the Central Government. This permission admittedly in the present case has not been taken. The Apex Court had occasion to consider the expression "prior" in the case of Life Insurance Corporation of India Vs. Escorts Ltd. and Others, . The Court noted the expressions "prior" and "previous" permission and held that it was distinct from general permission. One was prior and the other in the course of and not necessarily as an antecedent.

16. In Indian Council for Enviro-Legal Action (supra), the Apex Court noted that Governmental authorities were showing scant respect in the matter of enforcement of the Acts and developments were taking place for personal gains at the expense of the environment and with disregard to the law. Thanks to public spirited persons initiating public interest, Courts are examining matters and issuing directions. The Court observed as under:---

"With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard to the mandatory provisions of law, some public spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effect of the Court, while dealing with the environmental related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the law. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the Court to see the day to day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law."

17. Does the subsequent act of granting permission communicated by letter of 18th May, 1993 enable respondent No. 4 to carry on with those development activities on the 4.44 hectares? The letter of 8th July, 1997 seeks prior approval

of Central Government. In the instant case as we have seen there is no prior approval for entering into a lease deed any of the term of lease can be set out. Condition No. 1 shows that the legal status of the forest land shall remain unchanged. The permission is co-terminus with leave lease granted by the State Government with effect from 1st November, 1989. Therefore, it proceeded on the footing that prior approval is being sought. In the instant case the records show that prior approval was not taken. In that context mere permission granted for development will have of no consequence. It is true that the petitioner has not challenged the subsequent permission granted. However, what is material to notice is that the area was a forest. In spite of that, without prior permission, the respondent No. 1 granted the lease in favour of the respondent No. 4. The lease was contrary to law. Once the lease was contrary to law, the question of the State Government approval at the behest of respondent No. 4 for permission does not arise.

Even otherwise the land is situated to an adjacent Government Forest and the land is sought to be used for setting up of a beneficiation plant which involves dust and water pollution and consequent destruction of the adjoining forest. It will substantially affect the environment and ecology of the area. This, in fact, would affect the right to life. The petitioners in the petition have averred that the cutting of trees without obtaining permission was resorted to. In matters of ecology and environment and considering the principle of sustainable development, no person or organization, however, high and mighty they may be, can be permitted to flout the law of the land.

18. Considering that, in our opinion, the lease granted in favour of respondent No. 4 is still born, null and void. Respondent No. 1 is directed to restore the land to its original use.

19. Rule made absolute in the aforesaid terms. In the circumstances, there shall be no order as to costs.

Rule made absolute.