

**(2015) 04 GUJ CK 0017**  
**In the Gujarat High Court**  
**Case No : Writ Petition (PIL) No. 12 of 2011**

Kheti Vikas Seva

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision :** 17-04-2015

**Acts Referred:**

**Citation :** (2015) 5 FLT 604

**Hon'ble Judges :** Mr. Vijay Manohar Sahai, ACJ. and Mr. R.P. Dholaria, J.

**Bench :** Division Bench

**Advocate :** Mr Siraj R Gori, Advocate, for the Applicants No. 1 and 3.; Mr Parth Bhatt, AGP, for the Opponents No. 1 and 3; Ms Dharmishta Raval, Advocate, for the Opponents No. 2.; Mr. Mihir Thakore, Senior Advocate Assisted By Mr. Abhishek Mehta and Mr. Vivan Shah For M/s Trivedi and Gupta, Advocates, for the Opponents No. 4; Mr. Mihir Thakore, Senior Advocate Assisted By Mr Shamik Bhatt For Singhi & Co, for the Opponents No. 5; Mr. Shakeel A. Qureshi, Advocate, for the Opponents No. 6

**Final Decision :** Dismissed

## Judgement

Mr. R.P. Dholaria, J.—The present writ petition in the nature of Public Interest Litigation is filed by the petitioner - Kheti Vikas Seva Trust as the respondent authorities have accorded permission to respondent Nos.4 and 5 to construct a power generation station as well as Port and SEZ in the area, where the members of the petitioner association are having their agricultural lands, in violation of the Environmental Laws and this writ petition is also filed in the interest of villagers of villages viz., Zarpara, Dhrob, Navinar, Siracha and Kandagara situated in Mundra Taluka, District Kutch, as the valuable and fertile agricultural land has so far badly affected because of the project undertaken by respondent Nos.4 and 5 and serious environmental issues have cropped up due to violation of laws by respondent Nos.4 and 5. The petitioner has also raised the issue of profiteering by respondent No.4 who after purchasing the land from various Government authorities at a throw away price is arbitrarily selling the land to various industries by earning a huge profit which amounts to unjust

enrichment.

2. The facts of the case of the petitioner are that the petitioner association is consisting of more than 200 villagers of the local vicinity where certain projects are undertaken by respondent Nos.4 and 5. Against the activity carried out by respondent Nos.4 and 5, the villagers have made certain representations before the respondent authorities, however the authorities have not paid any heed to their representations and as such have not taken any action against the respondents. It is the case of the petitioner that since a larger public interest is involved qua various issues, the petitioner has approached this Court by way of this present writ petition in the nature of Public Interest Litigation.

3. It is the case of the petitioner that respondent Nos.4 and 5 are carrying out excavation on a large scale which has caused serious hazard not only to the environment but also to the human habitation as well within the jurisdiction of respondent No.3 - District Collector who has made allotment of the land in favour of the respondent company at throw away price. It is the case of the petitioner that respondent No.5 is a company incorporated under the Companies Act and, after getting conditional clearance from the respondent authorities, has established a huge power plant with the established capacity of generation of 4600 MW. The respondent No.5 company has already started its operation of power generation at its plant situated within the SEZ being developed by respondent No.4.

4. It is further case of the petitioner that for the purpose of development of Special Economic Zone as per the project submitted by respondent No.4, the State Government carried out necessary exercise and, as such, huge Government land including government waste land as well as pasture land were allotted to respondent No.4. Over and above the Government waste land and pasture land, respondent No.4 was in need of other huge chunk of the land, therefore the State Government has acquired a huge parcel of land of various villages of Mundra Taluka from the agriculturists. The respondent No.4 in its SEZ allotted the land to respondent No.5 company for establishing a power plant with the capacity of 4620 MW of power. The respondent No.5 company was required to take various clearance from the authorities for establishing the power plant within the SEZ. The respondent no.5 company started the execution of its project in the year 2008 and it has achieved its substantial capacity of the power generation in the last quarter of 2010. For execution of the said project, respondent No.5 has over looked the necessary requirement as well as the conditions under which the permissions were accorded to it and committed blatant violation of the Environmental Laws, which has resulted into hardship to the local villagers within whose vicinity respondent No.5 has established its power plant.

5. It is further case of the petitioner that the area in question which is affected by the operation of the project by respondent No.5 is the following villages of Mundra Taluka, District Kutchchh. i) Zarpara, ii) Navinar, iii) Siracha, iv)

Kandagara, v) Dhrob and vi) the city of Mundra as well. The above villages of Mundra Taluka are known for its fertile land where a rare species of Indian Dates (Kachchhi Kharek) grow. Over and above the plantation of Indian Dates, the villagers were having orchards of chiccku, coconut, lemon and bijora etc. The villagers were also taking various crops from the fertile land namely crops of wheat, bajara, cotton, corn etc. The entire Mundra Taluka of District Kutch is having fertile land and the same is known as Green Belt of Kutch. The farmers of the aforesaid villages were taking two to three crops in a year. A substantial part of the above villages were having irrigation facilities and as such the agriculturists were reaping the benefits of such irrigation facilities over their fertile land and the agriculturists were earning substantial part of their income from the production of Indian Dates. Looking to the importance of fruit bearing trees of Indian Dates and its rare qualities, the Sardar Dantiwada Krushi University established its Date Palm Research Station over 51 hectares of land in Mundra Taluka. Such Date Palm Research Station was established in Mundra Taluka as in the entire country Mundra Taluka is the only place where the orchards of Indian Dates (Kharekh) are found. Nowhere in the country there is any other Date Palm Research Centre is established. Since the State Authorities were inclined to sell the entire parcel of land of Date Palm Research Station admeasuring 51 hectares to respondent No.4, the petitioner association addressed a letter to the Sardar Dantiwada Krushi University seeking certain information and pursuant thereto, the Date Palm Research Station, Sardar Dantiwada Krushi University replied that they are unable to give any details with respect to the same.

6. It is the case of the petitioner that the major part of the agricultural income of the agriculturist of the area was coming from Indian Dates (Kachhchhi Kharekh) and chiccku as the area in question was having orchards of the said fruits spread over hundreds of acres of the land and the farmers used to export the fruits of Indian Dates to various parts of the country as well as the best of the quality of Indian Dates was having market in the foreign countries also. Apart from the fruit bearing trees of Indian Dates, the orchards of chicckus were the another substantial earner of revenue for the agriculturist of the above villages. The main market of excellent quality chiccku from the orchards of the above villages was APMC, Jamnagar, Rajkot and Anjar, from where the agriculturist used to get a return of their hard work in developing the orchards of Indian Date and Chiccku.

7. It is the case of the petitioner that after the activities of respondent No.4 were started for developing the port and the establishment of power project by respondent no.5, there is a huge shortfall in the production of Indian Dates and Chiccku and annual yield from orchards of coconut, lemon and other fruits as well as yield from the agricultural fields of various crops namely wheat, bajra, corn etc. have also been badly affected and, as such, there is a sharp decline in the production from fruit bearing trees and agricultural fields.

8. As per the case of the petitioner, because of violation committed by

respondent Nos.4 and 5 in establishing their projects, serious ecological issues have been cropped up which has resulted into shortfall of agricultural produce in the Taluka of Mundra for which, the petitioner, other villagers as well as the other bodies have raised various issues with the Government authorities ventilating their grievance. So far as the project of respondent No.4 affecting the cattle is made subject matter of litigation before this Court in the PIL being Special Civil Application No.7254 of 2008. So far as the other issues concerning the fishermen are concerned, various representations are made by the bodies of the fishermen and the said issues affecting the fishermen, as per best of the knowledge of the petitioner, are still pending with the authorities.

9. It is the case of the petitioner that two main projects, which have posed serious danger from the environmental point of view, are the construction and development of west and north ports by respondent No.4 and the activities of respondent No.5. The activities of respondent Nos.4 and 5 seriously affecting from the ecological point of view are :

i) Dredging of the sub soil of the sea for filling up the creeks which are in existence since thousands of years.

ii) Large scale cutting of mangrove trees.

iii) Destroying the mangrove forests by constructing wall between the mangrove forests and the sea.

(iv) Over the area of east port, the entire mangrove forest is destroyed by respondent No.4.

(v) Respondent No.5, for the purpose of its power plant which is situated at the distance of four to five kilometers from the sea, is bringing sea water without construction a concrete canal which has wrecked havoc so far as quality of underground water is concerned.

(vi) Respondent No.5 has dug a huge pond to store the sea water for its use in the power plant. The pond is having the depth of approximately 40 meter and width of 1500 meters. Hence, it is evident that respondent No.5 is storing water drawn from sea in a very larger quantity in the huge pond for the purpose of power plant.

(vii) Large scale excavation of land by respondent Nos.4 and 5 at various places in the above villages has resulted into seepage of saline water in the area and as such the land situated in the entire area is badly affected due to the same.

(viii) Fly ash which is the byproduct of power plant has badly affected the environment of the area in question.

(ix) The respondent No.5 has not created any storage facility or any facility for disposal of the fly ash resulting into heaps of such fly ash found on the road as the same are stacked at various places near the villages, road and on the open ground without following the Provisions of Air Act, 1981.

(x) The respondent No.4 has illegally carried out the activity of dredging and has reclaimed land by filling the creeks and destroying mangrove forest in blatant violation at CRZ Notification, 1991.

(xi) The respondent No.4 is going on with the activity of destroying sand dunes which are the identity of the area. Sand dunes are having it's own importance from the ecological and religious point of view. Such sand dunes are situated in the area which falls with the jurisdiction of the Forest Department and as such the same are spread over nearly 3000 acres of land, out of which as per the best of the knowledge of the petitioner nearly 1800 acres of land is handed over to respondent No.4 for development of SEZ. In turn, respondent No.4 with a view to level the ground is in the process of destroying such sand dunes which are at places 40 to 50 feet high. In the said sand dunes, places of religious importance for Hindu and Muslim community are situated, namely temple of Khetar Pal Dada, Kakkarwado Peer, Kadi Peer, Gebi Peer, Bavdi Peer, Dhajawala Peer and temple of Bal Bhramani Maa. The above referred religious places situated within sand dunes portray uniqueness of Kutch culture which in its true spirit maintains the secular character of our Constitution.

(xii) There are large number of trees are found at the sand dunes which makes it ideal for various species of animals namely, deer, blue bulls and other animals of dog family. Near the area of sand dunes good quality grass for the cattle grows naturally and if the sand dunes are destroyed the same will result into ecological imbalance in the area.

(xiii) Mangrove forests and sand dunes are the only natural wall against salinity. However, the activity of respondent Nos.4 and 5 has posed a serious threat to the existence of both of them.

10. It is the case of the petitioner that in the nearby area another power project namely CGPL (Coastal Gujarat Power Limited) has been developed by another corporate giant - TATA having the capacity of generation of 4000 MW of power. In stark contrast to unmindful development by respondent No.5 of its power project, CGPL has taken all the required measures to curtail ingress of salinity of water in the local area. It is submitted that the aforesaid CGPL is also taking water from sea by constructing a Pakka Concrete Canal with a view to preserve the land and to protect the land of the nearby area against salinity. It is submitted that the said CGPL has also constructed three huge ponds for storing sea water for its subsequent use in the cooling tower of the power project. In stark contrast to the above, the photographs taken from the facility created by respondent No.5 clearly demonstrate that respondent No.5 is drawing water from the sea which is situated at the distance around four to five kilometers from its project by creating a Kachcha Channel which leads to spreading salinity in the surrounding areas. The resultant effect of sea water stored in the huge water body created by respondent No.5 in form of a Kachcha Pond would be damaging the under ground water as the seepage of the sea water takes place from the Kachcha Pond. As per the best of the knowledge of the petitioner, conditional

permission was given to respondent No.5 to construct a pakka concrete canal to bring sea water for the purpose of cooling tower constructed at the site. However, in blatant breach and violation of the conditions, respondent No.5 has caused the damage not only to the ecology but also to the public at large. The saline water used by the respondent company in its cooling tower is also discharged in sea by another kachcha channel. It is averred that such illegal activities carried out by respondent No.5 has led to steep decline of production from the orchards of Indian Dates, Chiccku and coconuts as well as it has affected the quality of the above fruits. It is averred that because of the salinity which has spread due to unmindful, illegal and haphazard developmental activities of respondent Nos.4 and 5, the quality of the land has also been deteriorated. Because of the salinity as well as fly ash which is resultant effect of the project of respondent No.5, almost 70% of the Chiccku trees of the area are destroyed. It is averred that due to the effect of the pollution caused by the power plant of respondent No.5, chiccku trees have over night dried down and the farmers were compelled to cut it down and the same has also caused damage to farming of Indian Dates. The existing orchards of Indian Dates has suffered a serious blow in terms of production and at the same time the quality of the Indian Dates have also been deteriorated because of the activities of respondent No.5. It is averred that before the entry of respondent Nos.4 and 5, in the local area the agricultural economy of the above villages was booming. However, as stated herein above because of the spread of salinity of the underground and ground water caused by the activities of respondent Nos.4 and 5, the poor farmers who were heavily dependent upon their agricultural income are facing the challenge of their existence and if the situation worsens, then the villagers will not have any choice but to migrate.

11. It is averred that valuable fertile land of the villagers have been badly affected due to reckless and haphazard developmental activities carried out by respondent Nos.4 and 5 in the Mundra Taluka. It is averred that agriculturists have filed their respective affidavits stating therein that their bore wells and wells are affected due to the fact that respondent Nos.4 and 5 companies are digging the pits at various places for their purposes and because of the same saline water has entered in their bore wells and wells. Since the bore wells in the fields of the agriculturists have become saline, agriculturists are now unable to take the second crop in the year.

12. It is averred that Sardar Dantiwada Krushi University is running Date Palm Research Station, wherein the best quality Indian Dates are being developed, the petitioner came to know that, the State Government is in the process of selling the said land of Date Palm Research Station to the SEZ developer. Hence, when the petitioner tried to make an inquiry about the same, the petitioner received a tight lipped response and as such the Date Palm Research Station expressed its inability to give any detail. It is submitted that in the larger public interest the activities of the Date Palm Research Station at Mundra, Kachchh is required to be preserved and the Government is required to be directed not to shift the Date

Palm Research Station from the region which is most suitable for trees of Date Palm (Katchchhi Kharek).

13. It is the case of the petitioner that though as per the necessary permission issued by respondent authorities to respondent No.5 company to appropriately dispose of the fly ash, in blatant violation of the condition attached to the permission issued by the authorities, respondent No.5 company is stacking the same either on the side of the road or on the open ground without making any provision for maintaining SPM level stipulated under the Provisions of Air Act. To the best of the knowledge of the petitioner, the respondent GPCB has not initiated any action against the erring Company under the provisions of Air Act.

14. It is the case of the petitioner that though necessary conditional permissions were given to respondent No.4 for development of various ports, respondent No.5 has committed blatant violation of the conditions by causing serious damage to the coastal area. On the coastal line of Mundra Taluka, lush green mangrove forests were existing. In a haste to develop the port over a huge tract of land on the coastal area, respondent No.4 has destroyed mangrove forest from a huge area and as such reclaimed lands by filling the dredging material. The modus operandi adopted by the respondent SEZ developer was first of all to create a clay wall so that the sea water may not enter the area of mangrove forest and the resultant effect in the instant case is total destruction of mangrove forest in the area which is known as East Port. At present, respondent No.4 herein is developing the port on the Western Side which is known as the West Port. The recent photographs taken from the site where the mangrove forests were in existence clearly indicate that the same are almost entirely destroyed. So far as East Port is concerned, the office bearers of the petitioner were not allowed to take any photographs of the same. However, recent photographs taken at the site of the West port where the work is in progress clearly go to show that the mangrove forests are badly damaged. Many of the mangrove trees have already died down which is causing serious damage to the ecology. Once upon a time the mangrove forests were lush green and as such mangrove forests are the natural wall against spreading of salinity and the same protects the main land at the time of hurricane and tsunami. It is averred that even geographical position of the area is also altered by respondent No.4 company by reclaiming land of the coastal area.

15. It is averred in the petition that in fact, at present, the work is in progress at the West Port. In the area near the West Port, number of natural creeks are in existence since thousands of years. The three major creeks situated near the area are Kotadi, Navinal and Thragdi creeks. At present, the activity of filling up the creeks is going on which is likely to have a long term impact on the ecology of the area in question. The respondent No.4 is carrying out the dredging activity on a very large scale by installing heavy machinery for the same. It is stated that the recent photographs taken from the site reveal the existence of heavy duty pipes leading to the area of creeks which is sought to be filled in by the

respondent SEZ developer. By filling up the creeks, respondent No.4 is creating reclaimed land and over which the respondent is carrying out its various activities.

16. It is further case of the petitioner that respondent No.4 has submitted its proposal for the proposed expansion of Mundra Port and SEZ by which it is evident that the company is carrying out its expansion project over the coastal area of the Mundra Taluka. As such, respondent No.4 company has proposed for expansion and construction of four ports namely West, South, North and East ports. The map showing the strategic location of the proposed expansion of the above four ports are clearly indicated in Annexure-Q to the main writ petition. Out of four ports, respondent No.4 company has almost completed the construction and development of East Port. The respondent No.4 company is at present carrying out its activity for the development of West Port and North Port. As stated herein above, for the development of East Port, respondent No.4 company has almost destroyed that lush green and thick mangrove forests and at present the company is adopting the same tactic over the area of West Port and North Port. It is stated that for the local villagers mangrove trees were like Kalp Vruksh and the fruits of mangrove trees were used by the farmers for their cattle. The agriculturists from the villages Zarpara, Dhrob, Mundra, Baroi, Navinal, Siracha etc. were used to collect the fruits of the mangrove trees which were generally used as cattle feed which results into giving good amount of milk, however, because of the destruction of the mangrove forests even the milk production has been badly affected.

17. It is averred that for the purpose of destroying the mangrove forests, respondent No.4 company has adopted various methods which have lead to large scale destruction of mangrove forest. The respondent No.4 company has also deployed heavy equipments to cut down and remove the mangrove trees. In Annexure-S to the writ petition, one of the photographs clearly indicates the small stumps of mangrove trees standing at the site after the forest was destroyed by the respondent company. It is averred that photograph taken from a website - Google shows the pre-existing mangrove forest over the coastal area of Anjar and Mundra Taluka. However, the lush green mangroves forests which were there in existence in the coastal area of Mundra Taluka since hundreds of years have been deliberately and systematically either destroyed or badly damaged, which has lead to serious ecological imbalance in the area.

18. It is averred that regarding the contention made herein above with respect to manifest violations of the norms by the respondent company was noticed by the team consisting of eight different officials from various authorities. Bare reading of the independent report based on the site visit by the subject experts clearly shows that the respondent company has carried out systematic and deliberate operation of destruction of natural resources badly affecting the ecology. The said report was submitted by the committee lead by Dr.A.Senthil Vel, Additional Director, Ministry of Environment and Forests and the other officers of GPCB and

Gujarat Ecology Commission. The said committee carried out the visit of the site of respondent company pursuant to the representation made by Machimar Adhikar Sangharsh Sangathan (MASS), Gujarat. The above report submitted by the committee of Dr.Senthil Vel addresses the issues of manifest violation of the environmental norms by respondent No.4 company as well as another entity namely M/s. OPG Power Gujarat Private Limited. It is averred that it transpires from the bare reading of the report that the aforesaid M/s OPG Power Gujarat Private Limited has committed breach of many conditions. Though the committee has not visited the site of respondent No.5 company, almost all observations made by the committee with respect to breach of condition and violation of norms by M/s OPG Power Gujarat Private Limited, can be made applicable in respect to respondent No.5 company as well.

19. It is averred that pursuant to the site visit carried out by the committee led by Dr.Senthil Vel, Additional Director, Ministry of Environment and Forest, a show cause notice has also been issued to respondent No.4 company on 15.12.2010. Even after receipt of show cause notice, respondent No.4 company has not stopped its operation which tantamount to wide spread destruction of mangrove forests. The aforesaid report of the committee as well as the show cause notice dated 15.12.2010 have not taken into account the other serious issues stated in the foregoing paragraphs namely the issues relating to excavation of clay in the local area to create a huge pond without any concrete lining as well as digging up of a Kachcha channel having the width of nearly 100 meters and depth of almost 30 to 40 meters to bring sea water (saline water). Such other issues like destruction of sand dunes which are also in existence since hundreds of year are also not the part of the report/show cause notice.

20. It is averred that another issue which the petitioner agitates in the larger public interest is the issue relating to profiteering by respondent No.4 by selling the land to other entities at different discriminatory rates. The respondent No.4 company, though is a company duly constituted under the Companies Act is required to maintain transparency in its transactions. It would be relevant to note that for the purpose of establishment of SEZ, the respondent company has purchased valuable Government land from the State Government at throw away prices. Other part of land which were of the private ownership were acquired by the State Government from the original owners/agriculturists. Even the compensation awarded for the acquired land was a very meager amount. The Government in case of respondent No.4 has acted in haste and allotted thousands of acres of land to the company hardly at Rs.2/- to Rs.4/- per square meter. A huge tract of lands from Mundra Taluka which were earmarked for the purpose of Gauchar (Pasture land) were overnight de-notified and allotted to respondent No.4 company by the State Government for the reasons best known to it. Over and above the Gauchar land, the State Government has also allotted its waste land to respondent No.4 for the development of SEZ at throw away price. The Government has also taken back the pre-existing lease of the salt pan owners and assigned the same to respondent No.4 company for its project.

Thousands of acres of lands which were purchased by respondent No.4 company from the Government at throw away price were sold to other companies at different rates by resorting to profiteering. As per the information available with the petitioner, the respondent company has purchased various lands from the Government at the rate of Rs.2/- to Rs.4/- per square meter, however the same has sought to be sold to various companies at the rate of Rs.600/- to Rs.750/- per square meter, which amounts to huge loss to public exchequer. Apparently, respondent No.4 company has connived with the Government machinery and used the same for its own purpose to purchase various parcels of land at throw away price and/or to get the land acquired from their original owners/farmers. Some of the transactions of respondent No.4 company clearly suggest that the interest of the State revenue is compromised in terms of making payment of stamp duty. Hence, the present writ petition is filed.

21. We have heard Mr.Siraj Gori, learned counsel for the petitioners, Mr.Parth Bhatt, learned AGP for respondent Nos.1 and 3, Ms.Dharmishtha Raval, learned counsel for respondent No.2, Mr.Mihir Thakore, learned senior counsel assisted by Mr.Abhishek Mehta and Mr.Vivan Shah, learned counsel for M/s Trivedi & Gupta for respondent No.4, Mr.Mihir Thakore, learned counsel assisted by Mr.Shamik Bhatt, learned counsel for Singhi & Company for respondent No.5 and Mr.Shakeel Qureshi, learned counsel for respondent No.6.

22. Heard learned counsel for both the parties at length. Learned counsels for both the parties took us to various maps, revenue records, large number of photographs, reports and other records germane to this matter. Since the question raised in this writ petition fundamentally relates to alleged environmental violations, we thought it to be deemed fit and proper to keep the judgment reserved vide order dated 10.2.2015.

23. On going through the paper-book and other records made available to us, it is noticed that affidavit-in-reply has been filed by respondent No.2-Gujarat Pollution Control Board on 21.4.2011, inter-alia, submitting that the Board has given consent to establish Thermal Power plant to the respondent-company under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and the Ministry of Environment and Forest, Government of India has granted environmental clearance to the respondent-company. They have further submitted that at the time of inspection visit, it was observed that there were certain fugitive emission occurring due to movement of fly ash loaded dumper and other heavy vehicles, hence, directions under Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 were issued to the respondent-company that regular sprinkling of water shall be ensured on such roads so that no dust is generated due to vehicular movement and there shall be regular cleaning and wetting of ground in this area so as to prevent fugitive emission. During the course of inspection visit, it was further noticed that the respondent-company was using open channel reservoir to store sea-water, hence, directions

under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 were issued to the respondent-company directing them to carry out study and detailed assessment of quality of underground water in the surrounding area of the project site for groundwater contamination including salinity ingress through an independent external agency of national repute like National Productivity Council/NEERI or IIT Bombay, etc.

24. It can further be noticed from the record that the petitioner has filed affidavit-in-rejoinder to the reply filed by respondent No.2-Gujarat Pollution Control Board, inter-alia submitting that the respondent-company has violated many conditions stipulated in various Government orders as well as CCA issued by respondent No.2. During the course of public hearing, the respondent-company has, in fact, made commitment for proper handling of the fly ash. However, the respondent-company is deliberately not complying with its commitment. The site inspection report prepared by respondent No.2-Gujarat Pollution Control Board is misleading and, as such, they are showing undue favours to the respondent companies. Even after filing this petition, the respondent companies are, in fact, throwing the fly ash generated in the power plant at various places in blatant violation of the provisions of the Act and the specific as well as general conditions imposed by the authorities. Bare reading of the affidavit-in-reply filed by respondent No.2 - Gujarat Pollution Control Board clearly shows that there is nexus between respondent No.2-Board and respondent companies as the subsequent reports prepared by respondent No.2 are inclusive.

25. It is further noticed that the petitioner has inter-alia vide affidavit dated 11.7.2011 averred that the power plant of the respondent company is actually built over the way of local Shiracha river and one arm of the river is totally blocked which may have serious impact on the lives of the public at large as well as the environment, leading to serious ecological imbalance. Therefore, serious issues posed in the present petition deserves to be studied and examined by some independent institutions having impeccable reputation in the field. The petitioner has further averred that certain parcels of land which was declared as "Reserved Forest" are allotted to the respondent SEZ developer.

26. It can further be noticed that respondent No.4-Company has filed affidavit-in-reply on 11.7.2011 denying the allegations made in the captioned writ petition and inter-alia submitted that they are running the port at Mundra since the year-1998 and as on 31.3.2011 they have invested Rs.23,586/- crores in Port and SEZ. Mundra Port is a multi user port servicing a diverse group of industries. The port is the closest sea port to the northern hinterland offering significant economical advantage to its user by way of transportation distance. Multi capability of the port enables it to handle all kinds of cargo, containers, crude oil, petroleum, edible oils, food grains, fertilizers and other essential commodities. Several export oriented units use it as the mainstay port for exports. In addition to several commercial activities, it shall create secondary and tertiary job catalyzing the effect in the social infrastructure development of Mundra taluka. It

is estimated that 2.91 lacs people will get employment and at present almost 15,921 persons are employed directly or indirectly.

27. The respondent No.4-Company has further submitted that they have obtained necessary permissions including environmental and CRZ clearances for the development and construction of the port and related back up facilities. They have carried out Environmental Impact Assessment studies before seeking such permissions. The Ministry of Environment and Forests, Government of India, after examining the Environmental Impact Assessment reports and after being satisfied about the fulfilment of the procedure have granted such clearances. Apart from the above, they have also obtained required permissions from the Gujarat Pollution Control Board. Lastly, they have submitted that not a single activity is pointed out which may amount to violation of environmental laws and as such respondent No.2 has already visited the premises of respondent No.4-Company and has issued show cause notice to them.

28. The respondent No.5 has also filed affidavit-in-reply at page 713 of the compilation. In their affidavit-in-reply, amongst other contentions, they have stated that they are a company inter-alia engaged in the business of generation of electricity and has a power plant located within the SEZ developed by respondent No.4 in Mundra Taluka of Kutch District. They have further submitted that the power plant is in 3 phases. Phase I consists of 2 units, Phase II consists of 4 units and Phase III consists of 3 units and for all the phases, the Gujarat Pollution Control Board has granted consent to establish and Ministry of Environment and Forests, Government of India has granted environmental clearances separately. They have further submitted that water requirements of the power plant was to be met from sea-water which would be conveyed through a sea-water intake channel and effluent discharge, if any, would be through an outfall facility. After securing necessary permissions from the concerned authorities, they have entered into a user agreement with respondent No.4 which permits them to use the intake and outfall facilities of respondent No.4 and as at present there is no effluent discharge, there is no requirement for outfall facility for the present. They have further submitted that the sea-water is brought into the reservoir via the common intake channel and such sea-water is mainly utilized within the plant for generation of steam and for cooling purpose. Part of the blow-down from the plant is treated in the effluent treatment plant and is utilized in the dust suppression system within the plant and other part of the blow-down is once again utilized within the plant for generation of steam and for cooling purpose along with additional sea-water from the reservoir. They have installed various equipments/facilities for environment management, such as, Electrostatic Precipitator, Chimney, Ash Handling System, Effluent treatment plant, Dust Extraction and Suppression System, Sewage Treatment Plant, etc and has invested about Rs.1225 crores and is incurring expenditure of about Rs.12 crore per annum for the maintenance of the said equipments.

29. In their affidavit-in-reply, respondent No.5 has further submitted that during

the course of inspection on 8.4.2011, the Gujarat Pollution Control Board observed that fugitive emission is occurring due to movement of fly ash loaded dumper and other heavy vehicles and therefore issued directions under Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 to sprinkle water regularly on such roads so that no dust is generated due to vehicular movement and also directed for regular cleaning and wetting of ground in the area to prevent fugitive emission. In response, they have informed the Gujarat Pollution Control Board that they have installed 5 permanent ambient air quality monitoring stations, where sampling and monitoring is being carried out twice a week at each location by external third party agency and all monitoring results are within statutory limits and such monitoring reports are regularly submitted to the Gujarat Pollution Control Board. They have also engaged 4 mobile water sprinklers for regular water spraying on roads for dust suppression on all roads used for movement of material and has also dedicated mobile water sprinkler to spray water on roads used by fly ash loaded dumpers and other heavy vehicles and a mobile mechanical road sweeping machine for cleaning the area.

30. At this stage, it is pertinent to note that the Gujarat Pollution Control Board had also issued notice under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 alleging that during the inspection, it was observed that respondent No.5 has provided kachcha open channel and kachcha reservoir for storage of sea water and directed them to carry out study and detailed assessment of quality of underground water in the surrounding area of the project site for groundwater contamination including salinity ingress through an independent external agency of national repute like National Productivity Council/ NEERI or IIT Bombay, etc. In response thereto, they have informed the Gujarat Pollution Control Board that they have been carrying out environmental monitoring including ground water quality monitoring in surrounding villages through third party external agency and the monitoring results are regularly submitted to the Gujarat Pollution Control Board on regular basis which do not show deterioration of ground water quality in the said villages. Thereafter, they have further informed that they have engaged National Productivity Council as third party external expert agency to carry out detailed assessment of quality of underground water in the surrounding area of the project site for ground water contamination including salinity ingress.

31. Affidavit-in-reply is filed by Mr.Sujoy Banerjee, Divisional Forest Officer, on behalf of respondent No.6 on 27.1.2012 inter-alia submitting that fresh proposal for diversion of 1840 ha and 168.41 ha of reserved forest land for development of port based Special Economic Zone in Mundra taluka in Kutch East Forest Division in favour of M/s.Mundra Port & Special Economic Zone was received from the Government of Gujarat vide their letter dated 22.1.2009. Upon consideration and examination, the Ministry of Environment and Forest, Government of India, New Delhi granted in principle approval to the proposal on 27.2.2009 and final approval was granted on 30.9.2009 subject to certain usual conditions. He has further submitted that this Court has vide order dated 26.4.2011 passed in

Special Civil Application No.10104 of 2010 directed the Ministry of Environment and Forest, Government of India, New Delhi to constitute a team of independent experts to undertake physical verification of the site. Pursuant to this order, a committee was constituted vide order dated 7.7.2011 with following composition:-

1. Shri J.C.Kala, IFS(Retd), Former DGF & SS, Government of India.
2. Dr.A.S.Dogra, IFS(Retd), Former PCCF, Punjab.
3. Dr.Kamal Naidu, IFS(Retd), Former PCCF, Andhra Pradesh.
4. Prof.Ashwani Kumar, Dept. of Earthquake Engineering, IIT Roorkee, Uttarakhand.

32. Thereafter, vide order dated 12.7.2011 passed in Special Civil Application No.10104 of 2010, this Court further observed as under:

"In view of the fact that the Central Government has now constituted a Committee with regard to diversion of forest land in Mundra Taluka of Kutch district and that the said Committee is now looking into the matter, we are inclined to adjourn the matter to go through the expert opinion, if any, submitted by the Committee. However, we want to add that it will be better if the Central Government also obtain some expert opinion on the viability of projects in the sea coast area of seismic zone of Gujarat (Kutch) and if the Committee can suggest which type of industries can be located within the seismic zone and which type of industries which cannot be located in such zone. It may also decide the minimum distance of such industry from the coastal area. It will be open to the Committee to give hearing to the developers and other affected persons including the petitioners."

33. The aforesaid Committee visited the site on 8th to 10th August, 2011, however, could not verify the site completely because of rough sea weather and only an interim report could be prepared which is, as such, inconclusive. He has further submitted that, further information will be filed after receipt of site inspection report to be submitted by the Committee constituted by Ministry of Environment and Forest, Government of India, New Delhi.

34. A further affidavit-in-reply is filed by Mr.A.Mehrotra, Director, Ministry of Environment and Forest, Regional Office, Bhopal, on behalf of respondent No.6, inter-alia, submitting that the Ministry of Environment and Forest, Government of India, New Delhi received the representation from one Shri Bharat Patel, General Secretary, Machimar Adhikar Sangharsh Sangathan, Gujarat, and on the basis of the said complaint, necessary action was taken and a show cause notice was issued on 15.12.2010 to M/s.Mundra Port Special Economic Zone Limited and in the said show cause notice, directions were issued for compliance by the Gujarat State Coastal Zone Management Authority (GSCZMA) constituted as per directions of the Hon"ble Supreme Court in Writ Petition No.664/1993 vide letter dated 16.5.2011. GSCZMA directed the M/s.Mundra Port Special Economic Zone

Limited to expedite the matter for obtaining the CRZ maps as desired by the Ministry of Environment and Forest, Government of India, New Delhi and also to request the Ministry to extend the time limit and to inform that GSCZMA would be able to submit its final report as and when maps are received from M/s.Mundra Port Special Economic Zone Limited.

35. It is further noticed that the affidavit has been filed by the petitioner on 19.6.2012, inter-alia submitting that the respondent companies are continuing destruction of mangrove forest and are blocking the creeks in violation of environmental laws. He has also annexed various photographs in support of his say. He has further submitted that, in view of such position, the present writ petition deserves to be studied and examined by some independent institution having impeccable reputation in the field. Further affidavit has also been filed by the petitioner on 5.3.2013 inter-alia submitting that during the pendency of this writ petition, the Ministry of Environment and Forest, Government of India, New Delhi has appointed a committee by way of office memorandum dated 14.9.2012 with broad terms of reference and requested this Court to defer the hearing of the present writ petition till submission of the report by the Committee.

36. An additional reply affidavit on behalf of Ministry of Environment and Forest has been filed by Mr.Thirunavukkarasu, Deputy Director, Ministry of Environment and Forest, Government of India, stating that in compliance of the order dated 3.7.2013 passed by this Court, they have constituted a committee under the Chairmanship of Ms.Sunitha Narain to examine the allegations and to submit a report. The Committee has submitted its report on 18.4.2013. The report has pointed out serious violations and made recommendations for effective deterrence for non-compliance and remedial measures which includes creation of an Environment Restoration Fund, mangrove conservation, strengthening the monitoring abilities, preservation of the creeks, maintenance of inter-tidal action, fly ash management and disposal, lining of intake and outfall channels, ground water quality monitoring, CSR activities for fishermen and cancellation of North Port project etc. The recommendations of the Committee have been accepted by the Ministry of Environment and Forest, Government of India, New Delhi.

37. Accordingly, show cause notices to M/s.Adani Port and SEZ Pvt. Ltd and Gujarat Maritime Board, letter to Principal Secretary, Environment Department, Government of Gujarat, letter to Gujarat Coastal Zone Management Authority have been issued with various directions. Following were the directions issued to M/s.Adani Port and SEZ Pvt. Ltd.:-

(i) North Port area and Bocha Island should be declared as conservation zone and the area should be protected. All the creeks, water bodies and reclaimed land in these areas should be restored and brought back to pre- 2005 status within six months.

(ii) Submit details of the airstrip/aerodrome including the location with coordinates, facilities, dimension etc. along with the details of clearances

obtained.

(iii) Ensure that all the projects constructed within the SE1 should possess EC under EIA Notification, 2006 as applicable. The details shall be submitted.

(iv) Prepare a specific action plan to protect the livelihood of fishermen whose marine ecology and catch and access to the sea have been seriously affected by the violations committed by the Project Proponent within six months with a specific plan for fishermen, their access and protection of their livelihood. The plan should include a clear schedule of implementation and monitoring. Further ASPE1 Ltd. shall provide necessary support for the development of exclusive fishing harbor at Badreshwar.

(v) Shall consider the voluntary return of Gauchar or village common land and also invest in improving productivity of this land with villagers.

(vi) APSEZ Ltd shall submit Disaster Management Plan of the different projects to the State Government so as to enable the State Government to put in place a District Disaster Management Plan to ensure human safety in and around the project area.

(vii) As a deterrent for non-compliance and violations, APSEZ Ltd shall set up an Environment Restoration Fund- distinct and separate from CSR activities under Company Law-amounting to Rs.200 crores or 1% of project cost, whichever is higher, to be used for remediation of environmental damage in Mundra. The Fund will be operated under the Chairmanship of Secretary E&F, and will include following activities as enumerated by the Committee.

(a) Protection of marine ecology;

(b) Protection and conservation of mangroves including development of new mangrove conservation areas;

(c) Restoration and conservation of creeks;

(d) Independent studies and monitoring of the entire project areas, including cumulative impacts and public data disclosure systems;

(e) Social infrastructure and livelihood support for fishers community including development of access of fishers from their temporary settlements to villagers.

38. The Gujarat Maritime Board has been directed to submit a time-bound action plan with cost estimates for restoration of mangroves and creeks in North Port site to their original status. The action plan should also contain provisions for conservation and maintenance of the restored ecosystems including declaration of Bocha Island as conservation zone. Pending decision on the Show Cause Notice, the status quo ante for any constructions/development in the site as on date should be maintained.

39. The Gujarat Coastal Zone Management Authority has been directed to:-

(i) Review and make assessment of the matter relating to Samundra township/ Sterling hospital. New and verifiable coordinates should be mapped and supplied to MoEF, and also put in public domain for verification. This assessment should be based on site visit and fresh collection of co-ordinates through a joint team.

(ii) A joint Monitoring Committee of GCZMA, GPCB and RO Bhopal may be put in place for at least two years or as per requirement to monitor the developments/ compliance of conditions and directions.

40. Following were the directions issued to the State Government :-

(i) As a deterrent for non-compliance and violations, M/s.APSEZ Ltd is directed to set up an Environment Restoration Fund- distinct and separate from CSR activities under Company Law- amounting to Rs.200 crores or 1% of project cost, whichever is higher, to be used for remediation of environmental damage in Mundra. The Fund will be operated under the chairmanship of Secretary E&F, and will include activities as enumerated by the Committee. In this regard a committee under the Principal Secretary (Env), Government of Gujarat be set up by Government of Gujarat including representative by MoEF (Ro, Bhopal) to finalise the action plan and modalities of the Environmental Restoration Fund and periodically report the progress to Secretary (E&F).

(ii) The State Government should initiate necessary action to build exclusive fishing harbours for the livelihood support of the fishermen of Bhareshwar in a period of two years.

(iii) The State Government shall consider linking Disaster Management Plan of the different project proponents of APSEZL to the "District Disaster Management Plan" in the interest of the vulnerable people in and around the project area to ensure human safety with early warning practices.

(iv) The State Government should review the policy of acquisition and transfer of Gauchar or village common lands with specific reference to environmental impact and livelihood.

(v) The State Government shall guide and supervise the Cumulative Impact Assessment studies to be undertaken by the APSEZPL for the projects already granted so that future developments can be assessed for clearance based on cumulative impacts.

41. It is also noticed that a further affidavit was filed by the petitioner on 24.4.2013 submitting that the committee constituted by the Ministry of Environment and Forest, Government of India, New Delhi has submitted its report. Bare reading of the recommendations of the committee goes to show that the respondent companies have flouted the norms and has committed blatant breach and, as such, has acted in a way which is detrimental to the interest of the villagers due to their unmindful developmental activities.

42. It is further noticed that an additional reply affidavit has been filed on behalf of Ministry of Environment and Forests and Climate Change, Government of India, on 26.9.2014 by Mr.Thirunavukkarasu, Joint Director, Ministry of Environment and Forests and Climate Change, Government of India, inter-alia stating that the APSEZ Ltd has submitted its reply on 14.10.2013 in response to the Show Cause Notice of MoEF. GMB has submitted reply on 25.10.2013. The Director, Environment Department, Government of Gujarat/Member Secretary, GCZMA has submitted reply on 13.10.2014. Since the matter involves various complex issues, the examination took time. It is expected that the final order in the matter could be issued within three months.

43. Thereafter, a further affidavit is filed by the petitioner on 4.12.2013 inter-alia submitting that the report of the committee constituted by the Ministry of Environment and Forest, Government of India, New Delhi does not cover all issues raised in this writ petition. One of the core issues of ingress of salinity is not dealt with by the committee. He has therefore requested to appoint an independent committee consisting of a body having impeccable reputation in the field of environment wherein the representative from the petitioner's trust may also be a member. A further affidavit is also filed by the petitioner on 25.9.2014 inter-alia stating that they are sought to be wrongly implicated in fake criminal cases at the instance of the respondent companies and they are apprehending threat to their life. They have also invoked judicial process/machinery against such fake cases.

44. Mr.Siraj Gori, learned advocate for the petitioner vehemently argued that all members of the petitioner association are farmers having their agricultural land in the area where the respondent authorities have accorded permission to respondent Nos.4 & 5 to construct power generation station as well as port and SEZ. The fertile land of the farmers has been badly affected due to the activities of the respondent companies and serious environmental issues have cropped up due to blatant violation of environmental norms. Mangrove forests has been destroyed as well as certain rare species of plants have been destroyed or are on the verge of extinction. Mundra Taluka is known for rare species of Indian Dates and orchards of chiku, coconut, lemon and other various crops. However, due to activities of the respondent companies, there is sharp decline in production from fruit bearing trees and agricultural fields. Mr.Gori has further submitted that the respondent companies are drawing sea-water through kachchha channel without construction of concrete canal and they are storing such sea water in a huge kachcha pond, thereby resulting in seepage of saline water in the area. They have not created any storage or any facility for disposal of fly ash in contravention of the provisions of Air Act, 1981.

45. Mr.Gori, learned advocate for the petitioner has further submitted that the respondent companies are going on with the activity of destroying sand dunes which are very important from the ecological as well as religious point of view as many religious places are situated within the sand dunes. Saline water has

entered the bore wells and other wells of farmers, thereby affecting various farm yields due to unmindful activities of respondent companies. Even power project is constructed on the Siracha river. Mr.Gori has also submitted that manifest violations of the norms by the respondent companies has been noticed by various authorities and show cause notice was issued by the Ministry of Environment and Forests, Government of India on 15.12.2010 which is still undecided. However, in spite of such show cause notice, the respondent companies are continuing wide spread destruction of mangrove forests. It is pertinent to submit that the aforesaid show cause notice is silent about the issues like digging kachcha channel to draw sea water or destruction of sand dunes. Therefore, in order to have a comprehensive examination of the issues raised in this writ petition, Mr.Gori has requested to appoint an independent committee of persons with impeccable repute in the field of environment. Lastly, in support of his submissions, Mr.Gori has placed reliance on the decision of the Hon"ble Supreme Court in the case of Indian Council for Enviro-Legal Action v. Union of India and Ors. reported in (2011) 8 SCC 161. The Hon"ble Supreme Court has observed in para 4, 37, 38, 149, 150, 161, 162, 194, 195, 196 and 197 are as under:-

"4. It seems that the court was prophetic when it made observation that at times men with means are successful in avoiding compliance of the orders of this court. This case is a classic illustration where even after decade and a half of the pronouncement of the judgment by this court based on the principle of "polluter pays", till date the polluters (concerned industries in this case) have taken no steps to ecologically restore the entire village and its surrounding areas or complied with the directions of this court at all. The orders of this court were not implemented by keeping the litigation alive by filing interlocutory and interim applications even after dismissal of the writ petition, the review petition and the curative petition by this court."

xxxx xxxx xxxx

"37. All issues raised in this application have been argued and determined by an authoritative judgment of this Court about fifteen years ago. This application has been filed to avoid liability to pay the amount for remediation and costs imposed by the Court on the settled legal principle that polluter pays principle. In other words, the applicant through this application is seriously making an effort to avoid compliance of the order/judgment of this Court delivered fifteen years ago. The tendency must be effectively curbed. The applicant cannot be permitted to avoid compliance of the final order of this court by abusing the legal process and keep the litigation alive.

38. The applicant is in business where sole motto of most businessmen is to earn money and increase profits. If by filing repeated applications he can delay in making payment of huge remediation costs then it makes business sense as far as the applicant is concerned but the Court must discourage such business tactics and ensure effective compliance of the Court's order. It is also the

obligation and bounden duty of the court to pass such order where litigants are prevented from abusing the system."

xxxx xxxx xxxx

"149. It is settled principle of law that no one can take advantage of his own wrong. Unless courts disgorge all benefits that a party availed by obstruction or delays or non-compliance, there will always be incentive for non compliance, and parties are ingenious enough to come up with all kinds of pleas and other tactics to achieve their end because they know that in the end the benefit will remain with them.

150. Whatever benefits a person has had or could have had by not complying with the judgment must being disgorged and paid to the judgment creditor and not, allowed to be retained by the judgment-debtor. This is the bounden duty and obligation of the court. In fact, it has to be looked from the position of the creditor. Unless the deprivation by reason of delay is fully restituted, the creditor as a beneficiary remains a loser to the extent of the un-restituted amount."

xxxx xxxx xxxx

"161. The terms "unjust enrichment" and "restitution" are like the two shades of green - one leaning towards yellow and the other towards blue. With restitution, so long as the deprivation of the other has not been fully compensated for, injustice to that extent remains. Which label is appropriate under which circumstances would depend on the facts of the particular case before the court. The courts have wide powers to grant restitution, and more so where it relates to misuse or non-compliance with court orders.

162. We may add that restitution and unjust enrichment, along with an overlap, have to be viewed with reference to the two stages, i.e., presuit and post-suit. In the former case, it becomes a substantive law (or common law) right that the court will consider; but in the latter case, when the parties are before the court and any act/omission, or simply passage of time, results in deprivation of one, or unjust enrichment of the other, the jurisdiction of the court to levelise and do justice is independent and must be readily wielded, otherwise it will be allowing the Court's own process, along with time delay, to do injustice."

xxxx xxxx xxxx

"194. We reiterate that the finality of the judgment of the Apex Court has great sanctity and unless there are extremely compelling or exceptional circumstances, the judgments of the Apex Court should not be disturbed particularly in a case where review and curative petitions have already been dismissed.

195. This Court has consistently taken the view that the judgments delivered by this Court while exercising its jurisdiction under Article 136 of the Constitution cannot be reopened in a writ petition filed under Article 32 of the Constitution. In view of this legal position, how can a final judgment of this Court be reopened by

merely filing interlocutory applications where all possible legal remedies have been fully exhausted? When we revert to the facts of this case, it becomes abundantly clear that this Court delivered final judgment in this case way back in 1996. The said judgment has not been permitted to acquire finality because the respondent Nos.4 to 8 had filed multiple interlocutory applications and has ensured non-compliance of the judgment of this Court.

196. On consideration of pleadings and relevant judgments of the various courts, following irresistible conclusion emerge:

i) The judgment of the Apex Court has great sanctity and unless there are extremely compelling, overriding and exceptional circumstances, the judgment of the Apex Court should not be disturbed particularly in a case where review and curative petitions have already been dismissed.

ii) The exception to this general rule is where in the proceedings the concerned judge failed to disclose the connection with the subject matter or the parties giving scope of an apprehension of bias and the judgment adversely affected the petitioner.

iii) The other exception to the rule is the circumstances incorporated in the review or curative petition are such that they must inevitably shake public confidence in the integrity of the administration of justice if the judgment or order is allowed to stand. These categories are illustrative and not exhaustive but only in such extremely exceptional circumstances the order can be recalled in order to avoid irreparable injustice.

197. The other aspect which has been dealt with in great details is to neutralize any unjust enrichment and undeserved gain made by the litigants. While adjudicating, the courts must keep the following principles in view.

1. It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

2. When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.

3. Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.

4. A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

5. No litigant can derive benefit from the mere pendency of a case in a court of law.

6. A party cannot be allowed to take any benefit of his own wrongs.

7. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

8. The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts."

46. On the other hand, Mr.Mihir Thakore, learned Senior Counsel appearing for the respondent company vehemently contended that they have carried out their activities on the land allotted to them, as demarcated in the maps of the revenue department and as per the terms and conditions laid down in the allotment orders and environmental clearance certificates and in any case, the Committee constituted by the Ministry of Environment and Forests, Government of India, to look into the allegations has submitted their report with recommendations and it is for the Government to take any remedial or decisive action and they would abide by such directions. In support of his submissions, Mr.Thakore has placed reliance on following decisions:-

1. In Judgment dated 8.12.2014 passed in Writ Petition (PIL) No.199 of 2014, in the matter between Kheti Vikas Seva Trust v. State of Gujarat & ors., this Honourable Court has observed in para 3, 4, 5 and 6 as under:-

"3. During the course of hearing, Mr. Gori,learned counsel for the petitioners has taken us through various environmental clearance certificates which came to be issued by the Ministry of Environment and Forest, Government of India vide various orders passed since 2007 in favour of two different respondent companies. We have also been taken to various conditions which came to be imposed as part of environmental clearance certificates alleged to have been breached by the respondent companies. On taking through the aforesaid alleged breach of special and general conditions of the environmental clearance certificates, learned counsel for the petitioners seeks revocation of conditional environmental clearance and proper implementation and monitoring of the same.

4. On going through the aforesaid environmental clearance certificates, it clearly reveals that the aforesaid specific and general conditions have been imposed for compliance thereof on the part of the respondent companies and in case of any breach thereof, it was open to the aggrieved person to file the complaint before the Ministry of Environmental and Forest for its due compliance thereof and if the person aggrieved is not satisfied with the action or reasons given by the Ministry of Environmental and Forest, then further remedy is provided under the earlier provisions of section 11 of the National Environment Appellate Act 1997 and after its repeal, under section 16(h) of the National Green Tribunal Act 2010.

5. Indisputably, on going through the material available on record, the petitioners have neither approached the Ministry of Environment and Forest, New Delhi nor the Green Tribunal for ventilating their grievance as regards the alleged breach of special as well as general conditions by the respondent companies.

6. As narrated above, efficacious remedy is provided under the provisions of the aforesaid Act and Special Tribunal is also constituted under the provisions of the National Green Tribunal Act, 2010 where the petitioners can point out their grievance by leading the evidence and after examining the rival claims along with the documentary evidence if adduced by either party, the concerned authority or the Tribunal can pass appropriate order. In this view of the matter, the present appeal in the nature of Public Interest Litigation is not maintainable. Therefore, the petition is dismissed. Notice is discharged. There shall be no order as to costs."

2. In Judgment dated 6.1.2015 passed in Writ Petition (PIL) No.247 of 2014, in the matter between Mangal Murji Ghadavi v. State of Gujarat & ors., this Honourable Court has observed in para 3, 4 and 5 as under:-

"3. During the course of hearing, learned advocate for the respective parties taken us to the material available on record. Material available on record clearly indicates that grievances, precisely raised by the present petitioner are concerning the environmental issue, arisen due to the alleged actions undertaken by respondent No.4. After having received the environmental clearance certificate, respondent No.4 Company has constructed a channel in the year 2009. Respondent No.4 - Company is using sea water for its power plant through intake channel which is not constructed but it is in a raw form and natural form. According to the petitioner, it should be a permanent pakka channel made of cement. This amounts to challenging the Environmental Clearance Certificate granted to respondent No.4. 4. Learned advocate for the respondents has made reference to Section 16 (h) of the National Green Tribunal Act, 2010, which reads thus :

"16. Tribunal to have appellate jurisdiction. (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environmental (Protection) Act, 1986 (29 of 1986)."

5. Therefore, without entering into the merits of the case, we dismiss this petition on the ground that the petitioner is having alternative remedy under Section 16 (h) of the National Green Tribunal Act, 2010. Petition is dismissed accordingly. Notice discharged. There shall be no order as to costs."

3. In CAV Judgment dated 21.1.2015 delivered in Writ Petition (PIL) No.122 of 2013, in the matter between Aasariya Lakha Gilva v. Union of India & ors., this Honourable Court has observed in para 18.1, 19 and 20 as under:-

"18.1 As regards the contention that the report has been filed without relying upon experts opinion, we do not find any force in the said contention as the Committee constituted by the Collector, Bhuj comprises of high ranking Government officials having adequate technical expertise. As regards the

contention for appointing an independent fact finding commission to look into the matter as the report of the aforesaid committee is not satisfactory, in our view and in our reading of the report, no blockage, obstruction and bunding to the natural flow of above 14 rivers in question are found. Prima-facie, in our opinion, there is no cause or concern to appoint an independent fact finding commission to look into the matter. We are also apprised of the facts that the respondent company has been granted phase-wise Environmental Clearance beginning the year 1995 by the Ministry of Environment and Forests (MOEF), Government of India, New Delhi for their project and the State Government has allotted various parcels of lands to the respondent-company and they have developed the area pursuant to such Environmental Clearance and allotment of lands. Therefore, we cannot accede to the above request made by the learned counsel for the petitioners.

19. We have gone through the decisions of this Court as well as of the Hon'ble Supreme Court relied upon by the learned Senior Counsel for the petitioners. We do not find the ratio decidendi propounded by the said decisions will be of any help to the petitioners in the facts and circumstances of the present case. The prime contention or concern which appears on the part of the petitioners is that 14 rivers were flowing and due to allotment of the land and resultant development, the respondent-company has blocked natural flow of water in above 14 rivers which has resulted into bunding of rivers. However, as narrated above, the report submitted by the Committee constituted by the Ministry of Environment and Forests (MoEF), New Delhi as well as the report of the inspection carried out by high ranking Government officials clearly reveals that no where natural flow of rivers is blocked or obstructed in such a way that it may result into bunding. Even otherwise also, 14 rivers appear to be seasonal in nature and so during rainy season, there may be flowing water and during the end of winter and summer, they must be getting dry. The nature of flowing water is such if there is any blockage in the way of canal, then naturally, it may result into bunding of adjacent land, but in both the reports referred above, nowhere bunding is noticed which itself clearly indicative that the respondent company has not done material change in the flow of water and river-bed by which major blockage results into bunding. In view of the aforesaid observations made by the committee, we are convinced that no direction is required to be issued in the matter and the complaint and grievance raised by the petitioners appears to be baseless.

20. In view of the aforesaid discussion, we do not find any merit in the writ petition. The writ petition fails and is accordingly dismissed. Notice stands discharged. No order as to cost."

47. Mr.Shakeel Qureshi, learned advocate for respondent No.6 submitted that the additional reply affidavit dated 26.9.2014 filed on behalf of Ministry of Environment and Forests and Climate Change, Government of India clinches the issue. On the basis of the report submitted by Sunitha Narain Committee, show

cause notices have been issued to M/s.Adani Port and SEZ Pvt. Ltd and Gujarat Maritime Board and letters have been addressed to Principal Secretary, Environment Department, Government of Gujarat, and Gujarat Coastal Zone Management Authority with various directions. They have duly submitted their response. However, as the matter involves complex issues, the examination took time and it is expected that the final order in the matter could be issued within three months.

48. Having heard both the parties and upon minutely perusing the records made available to us, it is evidently clear that the main grievance raised by the petitioner in this writ petition is to direct the respondent authorities to take effective steps against the respondent companies who are causing large scale damage to the ecosystem of the coastal area and also to take effective measures to protect and preserve the mangrove forests, areas, and to appoint an independent committee to examine the serious issues raised in the present writ petition. The petitioner has also prayed to restrain the respondent companies from drawing sea water by using kachcha channel, and storing saline water in kachcha pond dug at the site, and reclaiming the lands by filling up the creeks.

49. As regards the grievance for inadequate fly ash management and disposal and prayer to restrain the respondent companies from drawing sea water by using kachcha channel and storing saline water in kachcha pond dug at the site, it is noticed from the affidavit-in-reply filed by respondent No.5 that pursuant to the directions issued by the Gujarat Pollution Control Board under Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981, they have installed 5 permanent ambient air quality monitoring stations, where sampling and monitoring is being carried out twice a week at each location by external third party agency and all monitoring results are within statutory limits and such monitoring reports are regularly submitted to the Gujarat Pollution Control Board. They have also engaged 4 mobile water sprinklers for regular water spraying on roads for dust suppression on all roads used for movement of material and has also dedicated mobile water sprinkler to spray water on roads used by fly ash loaded dumpers and other heavy vehicles and a mobile mechanical road sweeping machine for cleaning the area.

50. It is further noticed from the affidavit-in-reply filed by respondent No.5 that pursuant to the notices issued by the Gujarat Pollution Control Board under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 alleging that during the inspection, it was observed that respondent No.5 has provided kachcha open channel and kachcha reservoir for storage of sea water and directed them to carry out study and detailed assessment of quality of underground water in the surrounding area of the project site for groundwater contamination including salinity ingress through an independent external agency of national repute like National Productivity Council/NEERI or IIT Bombay, etc. In response thereto, they have informed the Gujarat Pollution Control Board that they have been carrying out environmental monitoring including ground water

quality monitoring in surrounding villages through third party external agency and the monitoring results are regularly submitted to the Gujarat Pollution Control Board on regular basis which do not show deterioration of ground water quality in the said villages. Thereafter, they have further informed that they have engaged National Productivity Council as the third party external expert agency to carry out detailed assessment of quality of underground water in the surrounding area of the project site for ground water contamination including salinity ingress.

51. In view of the above position, we are convinced that adequate measures are being undertaken by the respondent company to tackle the menace of fly ash management and disposal and issue of salinity ingress.

52. As regards the contention of the learned counsel for the petitioner that even power project is constructed on the Siracha river, we have come across such similar contention while deciding Writ Petition (PIL) No.122 of 2013 and other cognate matters. The prime contention or concern on the part of the petitioner in the aforesaid matter was that 14 rivers were flowing and due to allotment of the land and resultant development, the respondent-company has blocked natural flow of water in above 14 rivers which has resulted into bunding of rivers. A committee of high ranking Government officials was constituted by the Collector, Bhuj and the said committee conducted a site inspection on 19.9.2014 and prepared rojkam and has also taken photographs. The Committee found that there is no bunding and obstruction to the natural flow of water by the national highway / state highway, railway bridge with APSEZ area.

53. As regards Siracha river, the Committee, after site inspection, had come to following conclusion:

Sl. No.

Name of the river

Remarks

1

Shiracha Chhello:

No wall has been constructed in Shiracha Chhello. In the river portion, barbed wire fencing can be seen. From the photographs it is clearly visible that the water can flow through the culvert of the Adani Railway Road Bridge, No type of obstruction or bunding could be seen in such passages.

54. Upon examining the issues raised in the aforesaid Writ Petition, this Court came to the conclusion that "even otherwise also, 14 rivers appear to be seasonal in nature and so during rainy season, there may be flowing water and during the end of winter and summer, they must be getting dry. The nature of flowing water is such if there is any blockage in the way of canal, then naturally, it may result into bunding of adjacent land, but in both the reports referred

above, nowhere bunding is noticed which itself clearly indicative that the respondent company has not done material change in the flow of water and river-bed by which major blockage results into bunding. In view of the aforesaid observations made by the committee, we are convinced that no direction is required to be issued in the matter and the complaint and grievance raised by the petitioner appear to be baseless.

55. In that view of the matter, we are convinced that the contention of the learned counsel for the petitioner that even power project is constructed on the Siracha river appears to be baseless and misplaced.

56. As regards other contention of the learned counsel for the petitioner that issues like destruction of sand dunes which are in existence since hundreds of years are not part of the report/show cause notice, we had also come across such similar issues while deciding Writ Petition (PIL) No.210 of 2014. This Court, while dealing the aforesaid issues, came to the following conclusions at para 20 & 21 of the judgment delivered 18.2.2015:-

"20. The prime contention or concern which appears on the part of the petitioner is that the respondent No.2 company has been carrying on construction / demolition / flattening activities on all sand dunes in and around Tunda and Vandh villages, Taluka : Mundra, Kutch, without any kind of permission from any authority, causing tremendous damage to the ecology of the region and continuation of such activities will lead to a situation where the loss caused to the environment will be irreversible. The sand dunes have never been allotted to the respondent No.2 company and in spite of that, they are clandestinely flattening the dhuva backwards and claiming that the land is created as a result of reclamation activities by dumping dredge spoils. However, as narrated above, the reports submitted by the Collector, Kutch, pursuant to this Court's directions clearly reveals that Bharadi Mata Dhuva, Vekri Dhuva and Bet Dhuva are not allotted to the User Agency, however, the area forming the part of the Mor Dhuva has been allotted to the User Agency in the year 2009 and during the site visit of the Committee constituted by the Collector, Kutch, it is noticed that the company has made a temporary road and on the northern side, a channel for discharge of water is seen. No other work is seen in this area. No construction activities are seen at the site proposed for ship recycling facility. This conclusion is also confirmed during the site inspection carried out by the Regional Office of the Ministry of Environment and Forests (MoEF) at Bhopal on 25.9.2014, as detailed in their affidavit dated 3.11.2014. Moreover, the committee constituted by the Ministry of Environment and Forests (MoEF), New Delhi to look into the complaints regarding severe impact upon environment safety and integrity committed by M/s.Adani Port and SEZ Ltd has submitted its detailed report with recommendation to the Government of India and the same is under consideration of the competent authorities. In view of the aforesaid observations made by the committee, we are convinced that no directions is required to be issued in the matter and the complaint and grievance raised by the petitioner

appears to be misplaced.

21. In view of the aforesaid discussion, we do not find any merit in this writ petition. This writ petition fails and is accordingly dismissed. No order as to cost."

57. In view of the aforesaid position, we find no force in the contention raised by the learned counsel for the petitioner that the respondent company is going on with the activity of destroying sand dunes which are in existence since hundreds of years.

58. On going through the records, we have noticed that a copy of report of the committee constituted by the Ministry of Environment & Forests, Government of India, New Delhi to look into the complaints regarding severe impact upon environment safety and integrity committed by M/s.Adani Port and SEZ Ltd is filed in this writ petition. It is further noticed that upon receiving various complaints regarding alleged severe impact upon environmental safety and integrity in Mundra Port and SEZ Limited in Mundra - Kutch committed by M/s.Adani Port and SEZ Ltd., and in view of the present Writ Petition in the nature of Public Interest Litigation filed in this Court alleging violation of Environmental Clearance by M/s.Adani Port and SEZ Ltd., the Ministry of Environment & Forests, Government of India, vide Office Memorandum dated 14/9/2012 constituted a Committee for inspection of M/s.Adani Port and SEZ Ltd., Mundra to look into the complaints regarding severe impact upon environment safety and integrity committed by M/s.Adani Port and SEZ Ltd. The said committee consisted of following members:-

1. Ms.Sunita Narain, Chairperson
2. Shri Anthony Gnanamuthu, Member
3. Prof. R.Ramesh, Member
4. Dr.A.Mehrotra, Member
5. Shri Lalit Kapur, Member.

59. The broad terms of reference of the Committee for inspection of M/s.Adani Port and SEZ Ltd., are to examine:-

- (a) the allegations regarding bunding /diversion / blocking of creeks and reclamation etc. and thereby distortion of original HTL.
- (b) the HTL submitted by the Proponent and HTL of approved Coastal Zone Management Plan.
- (c) whether construction of Mundra port, roads, railway was taken up prior to grant of Forest/ Environment Clearance.
- (d) the development of port with respect to the approved components.
- (e) compliance of the conditions of the Environmental and CRZ clearance granted

for the port development.

(f) the destruction of mangroves and levelling of sand dunes.

(g) the development of Power Plant with respect to the approved components.

(h) compliance to the conditions of the Environmental clearance granted for the Power Plant.

(i) the likely impacts on agriculture due to ingress of salinity due to creation of huge water body of sea water for Adani Power Plant at Mundra Taluka.

(j) the issues related to handling of fly ash by Adani Power Limited and particularly with reference to the Notification on utilisation of fly ash.

(k) the issues related to earthquake / Tsunami/ other natural calamities and soil liquefaction which may be impacted adversely by the project.

60. The said Committee visited the site and submitted its report to the Government of India on 18/4/2013. On going through the report, it is noticed that the Committee has observed at page 12 of their report that in all conditions for clearance it has been made clear that no creeks are to be blocked during the construction and operation of the project. It has also been repeatedly conveyed that the natural drainage of the area should not be affected due to the project and no filling/reclamation of creeks is allowed. Lastly, the said Committee has come to the conclusion that the Adani Waterfront and Power Plant Project, which has been granted clearance in different phases beginning the year- 1995 has led to massive ecological changes with adverse impacts. Amongst the several reformatory measures cited, the Committee has recommended following measures for project clearance conditions and post clearance monitoring:

1.The current regulatory system is not able to handle the complexity and size of projects of this nature. There is an urgent need to strengthen the monitoring abilities and to bring in public oversight.

2.The monitoring and auditing of such a large project is only possible, if the clearance conditions are specific and detailed, geo-referenced and there is a landsat imagery analysis to benchmark the project area, pre-construction. Without these benchmarks, it is not possible, to ascertain the extent and scale of the violations committed during construction and operation phase.

3. More, importantly, a system should be developed so that all monitoring data is widely accessible by local communities to use and comprehend in terms of impacts.

61. Lastly, the Committee has recommended that there is a need to create a monitoring system to ensure that corrective action suggested by this report is taken within a time-bound manner. While handing over the report to the Hon''ble Minister, Ministry of Environment and Forests, New Delhi, the Committee observed that they are aware that the issues before them are important in terms

of safeguarding coastal ecology as well as livelihoods of people and that this report will help to settle the controversy and conflict to a large extent, by presenting factual information and analysis on what has gone wrong, as well as detailed recommendation on the future plan for remedial action, and that their overall assessment is that there are instances of violations and non-compliance with environmental conditions, which need to be addressed and effective deterrents are required to be placed for the future and urgent steps are required to be taken to repair damage and to mitigate future harm.

62. As regards the grievances of the petitioner regarding destruction of mangrove forests, handling of fly ash, reclamations of the lands by filling up the creeks and to take effective measures to protect and preserve the mangrove forests and sand dune areas, and also to direct the respondent authorities to take effective steps against the respondent companies who are causing large scale damage to the ecosystem of the coastal area, we have noticed that the said grievance forms the terms of reference to the aforesaid Committee constituted for inspection of M/s.Adani Port and SEZ Ltd. The Committee is seized of the matter and has given suitable recommendations for decisive action and/or remedial action to all concerned in the matter.

63. As regards the request made by the petitioner to appoint an independent committee consisting of a body having impeccable reputation in the field of environment wherein the representative from the petitioner's trust may also be a member to examine the serious issues raised in this writ petition, we have noticed that the committee constituted by the Ministry of Environment and Forests, Government of India, New Delhi, to look into the complaints regarding severe impact upon environment safety and integrity committed by M/s.Adani Port and SEZ Ltd have come to the conclusion that the Adani Waterfront and Power Plant Project, which has been granted clearance in different phases beginning the year-1995 has led to massive ecological changes with adverse impacts. Amongst the several reformatory measures cited, the Committee has also recommended many measures for project clearance conditions and post clearance monitoring. The Committee has also recommended that there is a need to create a monitoring system to ensure that corrective action suggested by this report is taken within a time-bound manner. While handing over the report to the Hon"ble Minister, Ministry of Environment and Forests, New Delhi, the Committee observed that they are aware that the issues before them are important in terms of safeguarding coastal ecology as well as livelihoods of people and that this report will help to settle the controversy and conflict to a large extent, by presenting factual information and analysis on what has gone wrong, as well as detailed recommendation on the future plan for remedial action, and that their overall assessment is that there are instances of violations and non-compliance with environmental conditions, which need to be addressed and effective deterrents are required to be placed for the future and urgent steps are required to be taken to repair damage and to mitigate future harm. Thus, an independent committee has already been constituted and the said committee has also

submitted its report and the same is under consideration of the competent authorities. Therefore, prima facie, in our considered opinion, there is no cause or concern to appoint another independent committee to look into the matter. We are also apprised of the facts that the respondent company has been granted Environmental Clearance by the Ministry of Environment and Forests (MoEF), Government of India, New Delhi, for their project and the State Government has allotted various parcels of lands to the respondent company and they have developed the area pursuant to such environmental clearance and allotment of lands. Therefore, we cannot accede to the request made by the learned counsel for the petitioner to appoint an independent committee to look into the matter.

64. We have gone through the decision of Hon"ble Supreme Court relied upon by the learned Counsel for the petitioner in support of his submissions. We do not find the ratio decidendi propounded by the said decision will be of any help to the petitioner in the facts and circumstances of the present case. We are also apprised of the facts that the respondent-company has been granted phase-wise Environmental Clearance beginning the year-1995 by the Ministry of Environment and Forests (MOEF), Government of India, New Delhi for their project and the State Government has allotted various parcels of lands to the respondent-company and they have developed the area pursuant to such Environmental Clearance and allotment of lands. The committee constituted by the Ministry of Environment and Forests (MoEF), New Delhi to look into the complaints regarding severe impact upon environment safety and integrity committed by M/s.Adani Port and SEZ Ltd has submitted its detailed report with recommendation to the Government of India and the same is under consideration of the competent authorities. In view of the aforesaid observations made by the committee, we are convinced that no directions is required to be issued in the matter and the complaint and grievance raised by the petitioner appears to be misplaced.

65. In view of the aforesaid discussion, we do not find any merit in this writ petition. This writ petition fails and is accordingly dismissed. No order as to cost.