

(2004) 10 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4328 of 2002

Punjab Urban Development Authority and Others	APPELLANT
Vs	
Dashmesh Educational Society and Another	RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 80
Constitution of India, 1950 — Article 166, 177, 77
Forest Act, 1927 — Section 35
General Clauses Act, 1897 — Section 3(26)
Punjab Land Preservation Act, 1900 — Section 11, 4, 5
Punjab New Capital (Periphery) Control Act, 1952 — Section 6(6)
Specific Relief Act, 1963 — Section 20
Transfer of Property Act, 1882 — Section 2(6)

Citation : (2005) 139 PLR 238 : (2005) 3 RCR(Civil) 245

Hon'ble Judges : Surya Kant, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Anupam Gupta, for the Appellant; Rajive Atma Ram, for the Respondent

Judgement

Surya Kant, J.—This judgment will dispose of Regular Second Appeal Nos. 4328 and 4345 of 2002, as not only common questions of facts and law are involved in these two Appeals but both have been directed against the same judgment and decree dated 30.4.2002 passed by the learned Civil Judge (Senior Division), Ropar and affirmed by the learned District Judge, Ropar vide his judgment and decree dated 26.7.2002. Needless to say that these Appeals have originated out of Civil Suit No. 65 of 2001 filed by Dasmesh Educational Society (Regd.).

2. Facts are being taken from R.S.A. No. 4328 of 2002.

3. The material facts emanating the cause of action as mentioned in the plaint are that the Dasmesh Educational Society (Regd.) (hereinafter referred to as Plaintiff/Respondent No. 1) instituted the Civil Suit No. 65 of 2001 against (i) the State of Punjab through its Secretary, Housing, (ii) Punjab Housing Urban

Development Board through its Vice Chairman, (iii) Punjab Urban Development Authority through its Chief Administrator, (iv) Punjab Urban Development Authority through its General Manager (Regulatory) and (v) Collector, Ropar (hereinafter referred to as the Appellants), for a declaration "that the Application dated 21.8.1998 moved by the plaintiff with the defendants seeking permission for setting up a Forest Hill Country Club Resort at village Karoran, Tehsil Kharar, District Ropar over the agricultural land as detailed in Annexure-A (which may be read as part of the plaint) is deemed to have been sanctioned having not been rejected in writing within the statutory period of 90 days of its submission as required under the provisions of the Punjab New Capital Periphery Control Act, 1952. Consequential relief of permanent injunction was also sought "restraining the defendants and their agents from interfering in any manner in the works undertaken by the plaintiff over the land (detailed in Annexure-A) and from demolishing the constructions/developments already made over the suit land forcibly or in any other manner." According to Respondent No. 1-Plaintiff, it is registered society: vide its application dated August 21, 1998 submitted with the Appellants, it sought permission for setting up a "Forest Hill Country Club Resort" within the area of village Karoran, Tehsil Kharar, District Ropar, the project was with the aim and object of promoting tourism, recreational activities and for fulfilling the cultural needs of the people and public at large without disturbing the natural features rather enhancing the same; the project of the Plaintiff-Respondent No. 1 was a non-polluting industry which is enhancing the flora and fauna of the area, besides providing employment to a number of persons from the area and would also generate further employment; the area over which the Plaintiff-Respondent No. 1 wanted to develop the club is covered under the provisions of the Punjab New Capital Periphery Control Act, 1952 (hereinafter referred to as the 1952 Act); pursuant to the application dated 21.8.1998 submitted by it, the Appellants vide their letter dated September 10, 1998 called upon the Plaintiff-Respondent No. 1 to submit the site plan/location plan where the country club resort was proposed to be set up; Plaintiff-Respondent No. 1 vide its letter dated September 14, 1998 complied with these requirements; however, sufficient time elapsed thereafter but the Appellants neither sanctioned nor rejected the application submitted by the Plaintiff-Respondent No. 1 despite a reminder on January 1, 1999 followed by another reminder dated March 10, 1999 and thereafter yet another reminder dated September 8, 1999 sent through its Estate Officer; since the application of the Plaintiff-Respondent No. 1 was not specifically rejected by the Appellants, it presumed that the same was sanctioned without any reservation and started development works at the site incurring the huge expenditure; even the President of the Plaintiff-Respondent No. 1 submitted a representation to the then Finance Minister, Punjab on March 2, 2000 but to no avail even though sanctions for change of land use were given by the Appellants to (a) Indus Valey resort; (b) Fun City; (c) Dr. R.K.Bansal, Lakhnaur; (d) National pesticides, Badmajra and very recently to (e) Guru Ram Das Society; thereafter a letter dated 5.5.2000 was received by the Plaintiff-Respondent No. 1 from one of the Appellants to attend a meeting convened for

the purpose of considering its application; the meeting was attended by the President, Senior Vice President, Project Manager and Estate Officer of the Plaintiff-Respondent No. 1 apart from the Chief Administrator, General Manager (Regulatory), Additional Chief Administrator, Senior Architect, Senior Town Planner and Chief Engineer of the Appellant No. 1 wherein it was principally agreed to recommend to Appellant No. 1 to accord sanction to the project; however, having received no formal communication, another representation on July 19, 2000 was made by the Chairman-cum-managing Director of the Plaintiff-Respondent No. 1 with the Minister-in-charge but after certain queries having been made in a meeting held on September 1, 2000 in the office of Chief Administrator, P.U.D.A., which were duly replied/clarified, no further step was taken; the Plaintiff-Respondent No. 1 made yet another representation to the Appellant on February 6, 2001 but notwithstanding such representation, the original application dated August 21, 1998 (Ex.P3) was neither rejected nor expressly accepted according permission for setting up a Forest Hill Country Club Resort, though such a decision was required to be taken by the Appellants within a period of 90 days under the provisions of the Act and the afore-mentioned period having expired, the application of the Plaintiff-Respondent No. 1 is deemed to have been accepted without imposition of any conditions thereby entitling it to seek a declaration that the application submitted by it seeking permission is deemed to have been sanctioned; even otherwise, the area over which the Plaintiff-Respondent No. 1 intends to develop and has partly developed by the Country Club, has already been considered by the concerned department for leisure activities including setting up of an amusement park, golf club, etc.; policy of this effect has also been cleared by the Chief Minister of Punjab on December 7, 1998 which also included the setting up of a country club; the department sought information regarding constructions which existed upto 31.12.1998 for their regularisation and permission has been accorded to various societies and persons to set up their ventures in the area and thus the Plaintiff-Respondent No. 1 could not have been singled out in this regard in an arbitrary manner; infact, the government itself had invited applications for setting up of ventures in the shape of Golf club-cum-Country Club of PGS standard; since the application submitted by the Plaintiff-Respondent No. 1 was not declined by the Appellants in written or otherwise as required under the provisions of Act, the Plaintiff-Respondent No. 1 after a period of 90 days started development of the site and has already spent about 2.75 crores of rupees till December, 2001 by executing the works like (i) survey and fencing of the entire land, (ii) boring of three deep tube-wells, (iii) carrying out necessary earth works, (iv) installation of telephone and electricity connection, (v) boundary wall, (vi) tourist huts, (vii) offices for staff, (viii) gazebo and lawns for parties, (ix) kitchen and stage for functions, (x) lakes and other landscaping features, (xi) road networks, (xii) electrical and telecommunications layouts, (xiii) water tank and laying of water supply lines, (xiv) tented accommodation within the area, etc for which the Plaintiff-Respondent No. 1 engaged world famous Architects from Singapore; the country club is functional and the activities are in progress for the last about

3 years and various types of facilities like boating; trekking, hiking etc. are being carried out; that now the defendants (Appellants) by taking advantage of the fact that the Plaintiff-Respondent No. 1 does not have a written sanction in its hands, have started threatening to demolish the constructions and works already ongoing in the area without any right or authority; once the Appellants did not decline the sanction in writing within the period of 90 days from the date of submission of the application, they cannot take the law into their hands and interfere with the on-going works as the sanction is deemed to have been granted and thus the Plaintiff-Respondent No. 1 is within its right to carry out and implement its plan; the Appellants have been requested many a time to admit the claim of the Plaintiff-Respondent No. 1 but to no avail and if the appellants succeed in their illegal designs, Plaintiff-Respondent No. 1 would suffer irreparable loss which cannot be compensated in terms of money and if obstruction is caused in the on going development works, it will cause wastage of money running into crores of rupees.

4. Alongwith the afore-mentioned plaint, an Application under order 39 Rules 1 and 2 read with Section 151 C.P.C. for interim injunction was also moved by the Plaintiff- Respondent No. 1. Another Application u/s 80(2) read with Section 151 CPC was also moved seeking dispensation of advance notice required to be served upon the State of Punjab, on the plea that the matter involved in the suit was of urgent nature and the service of afore-mentioned notice would render the suit infructuous.

5. Upon notice of the suit, two written statements namely, one by the State of Punjab and Collector, Ropar (defendants No. 1 and 5) and the other on behalf of the Appellants (defendants Nos. 2, 3 and 4), were filed by taking certain preliminary objections which may be summarised as under:

(i) in view of Section 16 C.P.C., the Civil Court at Ropar had no territorial jurisdiction to entertain the suit as the land was situated in Village Karoran, Hadbast No. 352, Tehsil Kharar, District Ropar which falls within the territorial jurisdiction of the Civil Court at Kharar; it was also clarified that even though the Collector, Ropar was impleaded as defendant No. 5 but no relief was sought against him;

(ii) the plaintiff has not approached the Court with clean hands and has suppressed the material facts inasmuch as the plaintiff-society had earlier applied for sanctioning the change of land use for establishment of Spring Dale Academy at village Karoran vide its application dated May 11, 1996 (Ex.D2) upto 10+2 standard which was duly considered and rejected (Ex.DI); these facts, however, were concealed in the present suit;

(iii) the area in dispute is a "controlled area" as declared vide government notifications dated February 27, 1953 issued under the Act, therefore, the land cannot be used for the purpose other than the purpose for which it was being used on the date of afore-mentioned notifications; further as per the

development plan, the area was declared u/s 4 of the Act as agricultural/afforestation/forest zone and in view of Section 11 of the Act, no land within in controlled area, except with the permission of the State Government, can be used for the purpose other than for which it was being used on the date of notification and as such the constructions allegedly raised by the Plaintiff-Respondent No. 1 are wholly unauthorised and illegal.

(iv) the application dated August 21, 1998 submitted by Plaintiff-Respondent No. 1 to the Appellant No. 1 nowhere mentions that the same was u/s 5 of the Act nor was this application in the prescribed proforma or accompanied by the requisite documents so as to be construed u/s 5 of the Act, to be declared within 90 days; since the land in question falls under the agricultural/afforestation/forest zone, requiring change of land use, the application, could be considered only u/s 11 of the Act, which the competent authority is not bound in law to decide within 90 days;

(v) the land in dispute falls within the purview of Punjab Land Preservation Act, 1990 (hereinafter referred to as P.L.P.A.) and attracts provisions of the Indian Forest Act, 1900 (hereinafter referred to as the Forest Laws), therefore, no change of land use was permissible as provided under the Forest Laws and the State Government was also not competent to give the permission for the change of land use for the setting up of country club at village Karoran without getting prior permission from the Government of India;

(vi) the Plaintiff-Respondent No. 1 has violated provisions of the forest Laws and six criminal cases were pending in the Court of Chief Judicial Magistrate, Ropar;

(vii) since the land in question falls under the purview of P.L.P.A. and attracts provisions of Forest Laws, the competent authorities of Forest Department of the State Government as well as Government of India are necessary parties; the suit was, therefore, bad for non-joinder of necessary parties;

(viii) the suit was not maintainable in the present form;

(ix) the plaintiff has no locus standi to file the present suit; etc.

While relying on merits, the defendants no. 1 and 5, namely the State of Punjab and the Collector, Ropar, inter alia, pleaded that the property in dispute falls under the agricultural/afforestation/forest zone as well as under the purview of P.L.P.A. and attracts the Forest Laws; the State Government, therefore formed an opinion that the change of land use was impermissible and no permission for setting up the forest hill country club resort could be given under the provisions of law; the plaintiff had raised the alleged constructions illegally and the same are unauthorised and without permission of any authority; it was denied that any agreement was ever arrived in the meeting held between officers of Appellant No. 1 and of the plaintiff-society to recommend to P.U.D.A. to accord sanction to the project; in the application dated 21.8.1998 submitted by the Plaintiff-Respondent No. 1 it was nowhere mentioned that the same was u/s 5 of the Act

required to be decided within 90 days and since the land falls under the agricultural/afforestation/forest zone, the application was maintainable only u/s 11 of the Act for which permission from Government of India was required in view of the provisions of the Forest Laws. Taking of any policy decision for setting up of amusement park, golf course by the State Government was denied reiterating that the area was covered under the forest laws, the State Government was not competent to allow the change of land use; the defendants No. 1 and 5 were not threatening to demolish the construction, though the same will be demolished as per law being illegal, unauthorised and having been raised without getting any sanction from the competent authority. Similar averments were made in their "reply on merits" by defendants Nos. 2, 3 and 4.

6. Two separate replications were filed by the Plaintiff-Respondent No. 1 to the aforementioned written statement, inter alia, denying that the Civil Court Ropar had no territorial jurisdiction as Section 16 C.P.C. was not applicable to the facts of this case because no relief qua the land is claimed and the only relief sought is declaration qua the "State of Punjab" and as such the case squarely falls within the provisions of Section 20 C.P.C., it was denied that any material facts were suppressed from the Court though it was admitted that an application dated 11.5.1996 was moved by the plaintiff to establish Spring Dale Academy at Village Karoran, however, the aforementioned applications has not been still disposed of and in fact some other application dated June 17, 1995 for establishment of the Spring Dale Academy submitted to Deputy Commissioner, Ropar was disposed of with an observation that no permission was required for setting up an educational institution; that the grounds taken for seeking permission in two sets of applications are altogether different inasmuch as vide the previous application, the Plaintiff-Respondent No. 1 wanted to establish an educational institution whereas in the changed circumstances it sought permission to raise a country club, while questioning the legality of notifications referred by the defendants in preliminary objection No. 3 of their respective written statements, it was averred that the defendants have not mentioned as to for what purpose the land was being used at the time when these notifications were issued, Section 11 of the Act has no applicability to the facts of the present case, therefore, once the application moved by the Plaintiff-Respondent No. 1 was not rejected, it is deemed to have been accepted and the defendants cannot take the plea that the land could not be used for a purpose other than the one for which it was used on the date of notification; the construction raised by the plaintiff was legal and with the deemed consent and sanction of the defendants; contesting the averments made in the preliminary objection No. 4 of the written statements, it is averred that the application was, in fact, moved u/s 6 of the Act and there is no requirement of mentioning the provision under which the application is moved; that permission u/s 11 of the Act was required only for carrying out quarrying and mining and "it is not mandatory to submit the application in the prescribed proforma, but even otherwise all the informations required by the defendants in the alleged proforma were disclosed in the application", the defendants have

been engaging, holding meeting and conversing with the plaintiff on the basis of the application in question without pointing out that it was not moved in the prescribed format, therefore, they are estopped by their act and conduct from questioning the format of the application. In relation to the preliminary objection No. 5 that the land in dispute falls under the purview of the P.L.P.A. and the Forest Laws, the Plaintiff-Respondent No. 1 contested the same asserting that the "the land over which the plaintiff is undertaking development work is not forest land", Section 2 of the 1980 Act had no applicability as there is no notification issued u/s 4 and 5 of the Indian Forest Act, 1927 declaring the land in question to be a "reserved forest", in relation to the notification issued u/s 3 of the P.L.P.A., it was averred that "no order under Sections 4,5, and 5-A of the P.L.P.A. has been produced" by the defendants and that no public notice as required u/s 7, if any issued, has been brought on record and on record of rights as contemplated by Section 16 of the Act has been prepared for the land owned by the Plaintiff-Respondent No. 1 and no munadi was got done in the locality, therefore, even provisions of the P.L.P.A. were also not attracted to the facts of this case; the legality of prosecution launched against the plaintiff-society for violation of the Forest Laws was also questioned. To overcome the preliminary objection taken by the defendants that the suit was bad for non-joinder of necessary parties as the Forest Departments of the State Government as also the Government of India were not impleaded, the Plaintiff-Respondent No. 1 pleaded that it was seeking "declaration and injunction against the State Government by asserting their claim u/s 6 of the Act; since no relief is being claimed against the Central Government, it is not a necessary party"; that the defendants were trying to inter-mix the provisions of the Act with the Forest, Laws though there was no proximity between these two sets of laws; that the "specific law" is to prevail and not the "general law". The preliminary objections No. 8, 9 and 10 were also contested by the Plaintiff-Respondent No. 1. On merits it was repeatedly averred that the application dated August 21, 1998 moved by the Plaintiff-Respondent No. 1 was u/s 5 of the Act and the same having been not rejected within a period of 90 days, the sanction is deemed to have been granted u/s 6 of the Act. The Plaintiff-Respondent No. 1 also reiterate its complaint of discrimination as, according to it, sanction was granted to several other projects, companies and individuals but the plaintiff was singled out. Based upon these averments, it reiterated its prayer for the reliefs mentioned in the plaint.

7. The plaint was presented before the learned Civil Court on 15.3.2001 in which notice to the defendants was issued for 19.3.2001. On appearance of counsel for the defendants, the case was adjourned for filing of written statement on 28.3.2001 and while adjourning the matter "the defendants were restrained from demolishing the construction at the spot". The written statements were filed on 28.3.2001 and matter was adjourned, for replication and arguments on stay application to 4.4.2001. Unfortunately the lawyers abstained from work on the aforementioned date and the matter was adjourned on 11.4.2001 on which date

the replication was filed and the cases was adjourned to 18.4.2001 for framing of issues. On this date, arguments on the stay application were also heard and the case was adjourned to 20.4.2001. On the adjourned date, the learned civil Court passed a detailed order confirming the ad-interim injunction order dated March 19, 2001 and directed that till the disposal of the suit, the defendants shall not demolish the construction raised by the plaintiff. On this very date, the following issues were framed on the basis of the pleadings of the parties:-

1. Whether the application moved by the plaintiff seeking permission to set up the Forest Hill Country Club Resort at Village Karoran is deemed to have been sanctioned as alleged? O.P.P.
2. Whether this Court has no jurisdiction to try the present suit as alleged? O.P.D.
3. Whether the plaintiff has not come to the court with clean hands, if so to what effect? O.P.D.
4. Whether is the effect of pendency of the criminal cases under the Forest Act against the plaintiff? O.P.D.
5. Whether the suit is bad for non-joinder- of the Forest Department of State Government and U.O.I.? O.P.D.
6. Whether the suit is not maintainable in the present form? O.P.D.
7. Whether the plaintiff has no locus-standi to file the present suit? O.P.D.
8. Whether the plaintiff is entitled for declaration prayed for? O.P.D.
9. Whether the plaintiff is entitled for injunction prayed for? O.P.D.
10. Relief.

8. The parties led their documentary as well as oral evidence in support of the aforementioned issues. While the Plaintiff-Respondent No. 1 closed its evidence on January 23, 2002, the defendants closed the same on April 3, 2002. The learned Civil Court, vide its judgment and decree dated April 30, 2002, decreed the suit filed by the Plaintiff-Respondent No. 1 in the following terms:-

"... the suit of the plaintiff succeeds and a decree of declaration that application dated 21.8.1998 moved by the plaintiff with the defendants seeking permission for setting up a Forest Hill Country Club Resort at Village Karoran, Tehsil Kharar, District Ropar over the suit land detailed in the title of the plaint is deemed to have been sanctioned having not been rejected in writing within the statutory period of 90 days of its submission as required under the provisions of the Punjab New periphery Control Act, is passed in favour of the plaintiff and against the defendants. The necessary permissions No objection of the P.U.D.A. for running the business, for release of any connections etc., will also be deemed to have been given, will be given. A decree for permanent injunction is further awarded in favour of the plaintiff and against the defendants, restraining the defendants and their agents from interfering in suit land and from demolishing

the construction/development already made over the suit land illegally or forcibly in any manner."

9. Two separate Appeals were filed, namely, one by the State of Punjab and the Collector, Ropar and the other by the present Appellants before the First Appellate Court. These Appeals, however, were dismissed by Shri Maghar Khan, the then District Judge, Ropar vide his judgment and decree dated July 26, 2002. The present Appellants have challenged the aforementioned judgment and decree passed by the Courts below in this Second Appeal, the State of Punjab have also come up against the same by way of connecting Regular Second Appeal bearing No. 4345 of 2002. Now both these Appeals have been heard and are being decided together by a common judgment.

10. Before advertng to the substantial questions of law raised on behalf of the Appellants, it may be mentioned here that the present Appeal came up for hearing before a learned single Judge of this Court on November 1, 2002 and the same was dismissed in limine by passing a speaking order. The connected Appeal filed by the State of Punjab, however, came up for hearing before another learned Single Judge on February 14, 2003 who issued notice of motion and also restrained the Plaintiff-Respondent No. 1 "from raising further construction". It seems that in due course of time the Appeal filed by the State of Punjab was also listed before the same learned Single Judge who had previously dismissed the Appeal filed by P.U.D.A. and others on November 1, 2002. The learned Single Judge after getting it verified that no SLP was filed against the order dated November 1, 2002 dismissing the Appeal filed by P.U.D.A. and others, suo-moto recalled his previous order dated November 1, 2002 passed in the present Appeal and admitted both the Regular Second Appeals for hearing by passing a self-speaking order vide which His Lordship also declined to modify or vacate the interim order dated February 14, 2003 whereby the Plaintiff-Respondent No. 1 was restrained from raising further constructions over the land in dispute.

11. In the meanwhile, based upon some media reports highlighting the alleged flagrant violation of Forest Laws by Colonel B.S. Sandhu who has set up the Plaintiff-Respondent No. 1 society as also few private companies, this Court took suo-moto cognisance thereof in a public interest litigation bearing Civil Writ Petition No. 1134 of 2004 wherein the nature of the land in dispute involved in the present Appeals as to whether the same is "forest land" or not, became the subject matter of judicial review. One of us ? (the Chief Justice) vide an order dated February 4, 2002, therefore, tagged these Appeals also alongwith Civil Writ Petition No. 1134 of 2004 as to be heard by a Division Bench.

12. During the course of hearing it was noticed that though in para 28 of the Memorandum of Appeals, five substantial question of laws were raised at the time of admission of the Appeals, the Hon"ble Single Judge inadvertently missed to mention the same while admitting these Appeals on May 1, 2003. Vide our order dated February 9, 2004 the following five substantial questions of law raised in the present Appeals were brought on record with liberty to the Plaintiff-

Respondent No. 1 in terms of Section 100 CPC to urge that the questions formulated are not substantial questions of law:-

1. Whether the request for setting up Forest Hill Country Club Resort made in these application dated 21.8.1998 can be considered to have been automatically granted on the expiry of 90 days even when the application was not submitted under any specific provisions of the Act or in the prescribed proforma and to the appropriate authority?

2. Whether the provisions of Land Preservation Act, 1900, Indian Forest Act, 1927. The Punjab New Capital (Periphery) Control Act, 1952 and the Forest (Conservation) Act, 1980 are attracted in the present case?

3. Whether the plaintiff/respondent could justify the legality of his actions of setting up the said Resort within the area falling under the Purview of 1952 Act on the ground of huge expenditure incurred on the alleged development works on the basis of deemed sanction?

4. Whether the Forest Guard Sunil Kumar was competent to accept the report submitted by the Patwari regarding the nature and status of land in question without any reference to either the revenue records or to the notifications issued under the Acts mentioned in para No. 9 above? More, so, when the Forest Guard was not specifically detailed for any such purposes?

5. Whether the construction made by the plaintiff/respondents without any specific and express permission from the competent authorities in violation of the provisions of the Acts mentioned in para No. 9 above is illegal and liable to be demolished?

13. Subsequently, vide Civil Misc. Application No. 1834-C of 2004, the Appellant prayed for formulating four additional substantial questions of law involved in the Appeals. When the aforementioned Application was taken up for hearing on February 24, 2004, the learned counsel for the Appellants urged that yet another substantial question of law (in addition to four already mentioned in the Civil Misc. Application) is also involved in these Appeals. We, therefore, in the interest of justice, vide our order dated February 24, 2004, permitted the Appellants to formulate and raise following five additional substantial questions of law also, of course, with liberty to the plaintiff-Respondent No. 1 to urge, if it so likes, that the questions formulated are not substantial questions of law:-

"(I) Whether in view of Section 34 of the Specific Relief Act, 1963, in the absence of non-declaration of title to the land in question the suit was maintainable?

(II) Whether in view of the stand taken by the plaintiff in the replication that no relief qua the land described in Annexure-A to the plaint is being claimed, the suit in relation to the grant of injunction was maintainable?

(III) Whether the Secretary, Department of Environment and Forest and Forest Officer of Punjab State were necessary parties to the suit?

(IV) Whether suit in absence of the notice u/s 80 of the CPC was maintainable by the Trial Court as its waiver by the Trial Court was illegal?

(V) Whether the non impleadment of the Government of India, who on the pleadings was apparently a necessary party, was vital to the maintainability of the suit?"

14. Records of the Courts below were summoned and the parties were permitted to inspect the same and/or to seek certified copies thereof.

15. We have heard Shri Balwinder Singh, Advocate for P.U.D.A. and Smt. Charu Tuli, learned Senior Deputy Advocate General, Punjab, as well as Shri Anupam Gupta, Advocate who has been duly authorised by the Advocate General, Punjab to represent the State of Punjab on behalf of the Appellants and Shri Rajiv Atma Ram, learned Senior Counsel, assisted by Shri Ashu M. Punchhi and Hem Raj Mittal, Advocates, for the plaintiff-Respondent No. I and have been also perused the voluminous record with the assistance of learned counsel for the parties.

16. Before we proceed further, we may deal with an unsavory objection raised on behalf of the Plaintiff-Respondent No. I in relation to the competence of the Advocate General, Punjab, to entrust the case to a private counsel, particularly when the same learned counsel has been appointed amicus curiae by this Court in the connected case arising out the suo moto proceedings. We have no doubt in our mind that an Advocate General, by virtue of the duties cast upon him under Article 165(2) of our Constitution, is the sole custodian of powers relating to the legal matters of a state. The fact that Article 177 of the Constitution has placed the Advocate General at par with Ministers for taking part in the proceedings and/or to speak in the legislative assembly/legislative council, except that he is not entitled to vote, does suggest that he, by virtue of the very nature of the duties entrusted to him, is the Minister-in-charge of the legal affairs. The right of the pre-audience conferred on the Attorney General, the Solicitor General and the Advocate General by Royal Warrant in the year 1814 so as to establish the holder of these offices as leaders of the Bar, has not been whittled down even after the enactment of the Advocates Act, 1961 in terms whereof the Advocate General is an ex-officio member of the State Bar Council. That apart, the Advocate General has been recognized and accepted as the representative of "public interest". His status in this regard has been duly explained by the Apex Court in the case of *Adi Pherozshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, . Certainly being the conscious keeper of the "public interest", it is the prerogative of the Advocate General of a state to see that the legal affairs of his state are managed in the best manner and its interest is well safeguarded. The Courts have always expressed immense trust and faith in the institution of Advocate General, as can be seen from a recent Order passed on August 23, 2004 by the Hon'ble Supreme Court in the case of *National Human Rights Commission v. State of Gujarat and Ors.*, (Criminal Misc. Petitions No. 3742 of 2004 and 6864 of 2004 in Writ Petition (Criminal) No. 109 of 2003 which pertains to post-Gondhra incidents, wherein their Lordships observed that:-

"We are of the view that with regard to the cases of acquittal as existing at present, namely, 213, after excluding those cases in which a decision has been taken by the State Government to file an appeal, the learned counsel Advocate General will scrutinize the balance cases of acquittal including those case which are still being processed by the State Government, to determine whether the cases of acquittal ought to be challenged by way of an appeal".

So far as the objection against entrusting the "State brief to the counsel who has been appointed Amicus Curiae by the Court in a connected case, we find no impropriety and/or clash of interest in such appointment for the reason that an Amicus Curiae is a friend of the Court and renders professional assistance for the cause of justice and not of the litigating parties.

18. Opening his submissions, Shri Anupam Gupta, learned counsel for the Appellants emphasised that despite the Statutory limitations drawn on the exercise of second appellate jurisdiction in the High Court by Section 100(1) C.P.C. which empowers it to entertain the Second Appeal only when the case involves "a substantial question of law", the High Court does not lack in terms of competence to go to even the questions of fact, if the compelling circumstances so require. According to him, Section 100 C.P.C. needs to be read along with Section 103 C.P.C. which enables the High Court to determine or to redetermine even an issue of fact on the basis of evidence on record. Reference has also made to the judgments of the Apex Court in the case of State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs., and Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., to contend that where there are glaring inconsistencies and contradictions in the evidence, the issue raised are serious or concurrent findings recorded by the Courts below are based on surmise and conjecture are perverse findings not based on legally acceptable evidence and/or patently contrary to the law declared by the Apex Court, the powers of the High Court to interfere in such findings of facts even in Second Appeal is not hampered by the provisions of Section 100 C.P.C. inasmuch as such findings cannot have any immunity from interfering in the hands of the Second Appellate Court. A point reference was made to the following observations made by their Lordships in Kulwant Kaur's case (supra):-

"32. Admittedly, Section 100 has introduced a definite restriction on the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the CPC Amendment Act, 1976 introduced such an embargo for such definite objective and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact even if erroneous will generally not be disturbed but , where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element for perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This, is, however, only in the event such a fact is brought to light by the High Court explicit and the judgment should also be

categorical as to the issue of perversity vis-a-vis the concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication - what is required is a categorical finding on the part of the High Court as to perversity."

18. It has been vehemently argued on behalf of the Appellants that the questions of law urged on their behalf which are reproduced in our orders dated February 9, 2004 and February 24, 2004 are "substantial questions of law" arising for adjudication. According to learned counsel for the Appellants, "what is a substantial question of law", would depend upon facts and circumstances of each case. Reliance has been placed upon the observations made by the Apex court in Panjak Bhargava and another Vs. Mohinder Nath and another, , to contend that a question of law to be considered as a substantial question of law, need not be one of general importance yet it can be a substantial question between the parties. However, if a question of law has already been settled by the Highest Court of the country, then irrespective of importance of such question or its ramifications, it would not be regarded as a substantial question of law

19. Often times, it is queried as to whether a question of law should be blended with facts of the totally purified with isolated legal intricacies? The Supreme Court, in Pankaj Bhargava's case (supra) held that the construction of a document which lays the foundation of the rights of the parties, raises a question of law. An inference from facts admitted or found, is a question of law if such an inference is to be drawn on the application of proper principles of law to the facts. Such determination is a mixed question of fact and law. Their Lordships, therefore, repelled the argument that while deciding such a mixed question of fact and law, the High Court treaded on the forbidden ground of fact. Having found that the construction of a document had raised a question of law and the said construction assumed importance to decide lies between the parties, therefore, the question of law, namely, construction of a document would directly and substantially affect the rights of the parties, it was held to be "substantial question of law" for the purposes of Section 100(1) C.P.C. Shri Anupam Gupta referred to Full Bench decision of the Madras High Court in case of Rimmalapudi Subba Rao Vs. Noony Veeraju and Others, where it was held that " a substantial question of law need not be a question of general importance. It is sufficient if it arises between the parties. This, however, does not mean that every question of law as between the parties is a substantial question of law... When a question of law is fairly arguable, when there is room for difference of opinion on it, then such a question would be a substantial question of law." The Full Bench, however, also held that when a point of law is practically covered by a decision of the highest Court, then it would not be a substantial question but if there is conflict of judicial opinions and there is no direct decision of the highest court on any question of law, then that would be a substantial question of law. Relying upon judgment of the Privy Council in AIR 1927 110 (Privy Council) wherein it was held that "Substantial question of law means; substantial between the parties and not one of general importance". Shri Gupta finally referred to the

view expressed by a Constitutional Bench of the Supreme Court in *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, wherein their Lordships held as under:-

"The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

20. On a combined reading of the above quoted reports, we are of the firm view that where the concurrent findings of fact recorded by the Courts are based upon surmises and conjectures, and/or perverse not based upon legally acceptable evidence or which are patently contrary to the settled law and/or such findings stand vitiated on wrong test and on the basis of assumptions, the High Court is well within its jurisdiction to deal with the issue and to return a finding of fact. In such a case the "perversity" involved in the findings of fact recorded by the Courts below itself would become a substantial question of law worth adjudication by the High Court in exercise of its powers u/s 100 read with Section 103 C.P.C. As a necessary corollary thereof, we also hold that mere erroneous finding of fact or where a different view-point on appreciation of the same set of facts is possible, does not clothe us to upset such concurrent finding of fact in the exercise of appellate jurisdiction and any such attempt is beyond the scope of Section 100(1) C.P.C.

21. In all fairness to Shri Rajiv Atma Ram, learned Senior Counsel appearing for the Plaintiff-Respondent No. 1, he has raised a preliminary objection that most of the questions of law which are sought to be raised as substantial questions of law by the Appellants were not raised before the High Court below, therefore, they cannot be permitted to be raised in second appeal. Reliance has been placed by him upon judgment of the Apex Court in *A.H. Pinto (Dead) by LRs. Vs. V. Chaniyappa and Others*, in which after taking notice of the fact that the High Court in second Appeal had decided the issues in a suit which were not ripe to be decided (emphasis applied), their Lordships in para 4 and 5 of the report held as under:-

"4. The trial Court actually considered the above issues and found regarding Issue 6 that the suit was barred by limitation. The other two issues were found in favour of the plaintiff. The first appellate court confirmed those findings and dismissed the appeal. The scope of the second appeal cannot, therefore, go beyond the said issues. But learned Judge of the High Court after deciding those issues made an observation in para 17 of the impugned judgment that:

"Once it is held that the suit is in time and the redemption has taken place, then

the other question of partition automatically follows; the 31st defendant who has purchased equitable redemption from one of the sharers will be entitled to that share being along with the plaintiff.

"5. It is difficult for us to agree with the aforesaid finding rendered by the learned judge of the High Court. He should not have embarked upon any other issue beyond Issues 6, 9 and 10 mentioned above. The findings rendered by the learned Judge regarding those 3 issues are not disturbed by us. The case, is therefore, to go back to the trial Court in regard to the remaining issues, for which we vacate the finding rendered by the Single Judge of the High Court in Paras 17 and 18 of the impugned judgment."

On the other hand Shri Gupta, learned counsel for the Appellant, while canvassing on the scope of second Appeal, vehemently argued that the questions of law can be agitated even first time in second Appeal is held in a series of judgments starting from:-

- (i) The Official Liquidator of M.E. Mooda Sons Limited v. Perin R. Burjorjee AIR 1932 PC 18;
- (ii) AIR 1949 302 (Privy Council) ;
- (iii) Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari, ;
- (iv) M.K. Ranganathan and Another Vs. Government of Madras and Others, ,
- (v) Jadu Gopal Chakravarty (dead) after him his Legal Representatives v. Pannalal Bhowmick.

He also relied upon the judgment delivered by the Apex Court after amendment of Section 100 C.P.C. in Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., , in Para 31 of which their Lordships have held as under:-

"31. Referring to the above conspectus of the matter, Mr. Mehta contended that the High Court could not, in the absence of a substantial question of law interfere with the findings of the lower Appellate Court which has otherwise the authority and jurisdiction to scrutinize and appraise the evidence. Mr. Mehta contended that suspicious features of the Will, are mere questions of fact which can be gone into upto the stage of first Appellate Court only and not beyond and the High Court in the absence of a substantial question of law framed by the parties or if not so framed by the Court itself, had no jurisdiction to entertain the appeal far less allowing it and it is an interference which is totally unauthorised or in excess of jurisdiction or having no jurisdiction whatsoever, we are however not in a position to lend concurrence to such a broad proposition as enunciated by Mr. Mehta. Judicial approach being justice oriented, exclusion of jurisdiction of the High Court under the circumstances as contended by Mr. Mehta, would lead to an incongruous situation being opposed to the concept of justice. Technicality alone by itself ought not to permit the High Court to decide the issue since justice oriented approach, is the call of the day presently. The learned Single Judge in

the matter under consideration has delved into the issue as to whether in fact the evidence on record warrant such a conclusion - whether the High Court was right in such appreciation or not - that is entirely a different issue. But the fact remains that scrutiny of evidence will be totally prohibited in the matter of exercise of jurisdiction in second appeal would be too broad a proposition and too rigid an interpretation of law not worthy of acceptance. If the concept of justice so warrant, we do not see any reason why such an exercise would be deprecated. This is however, without expression of any opinion pertaining to Section 100 of the Civil Procedure Code."

22. In the case of A.H. Pinto (supra) their Lordships having found on facts that the "question of partisan" was not an issue raised even in the plaint but the High Court had returned findings in relation thereto, held that the learned Judge of the High Court should not have embarked upon any other issue beyond issues 6, 9, 10, namely, those which were being contested by the parties. This judgment, therefore, is not an authority to hold that if a question of law is not raised before the courts below then it cannot be agitated first time in the Second Appeal.

In our view, the ratio-decidenti of the judgments relied upon by learned counsel for the Appellants carries binding force and in terms whereof it is settled law that a pure question of law can be raised first time even in Second Appeal. Accordingly, we reject the preliminary objection raised by Shri Rajiv Atma Ram, learned Senior Counsel, regarding our competence to examine the questions of law sought to be raised in these Appeals.

23. Guided by these parameters and fully alive of the fact that there is a concurrent finding of fact by the Courts below in the present case, we now proceed to deal with each of the questions of law to find out as to whether any one of them constitute a substantial question of law or not.

24. Launching a scathing attack on the findings returned by the Courts below, Shri Anupam Gupta, learned counsel for the Appellants argued that the very foundation of the civil suit, namely, the alleged application purported to have been made by the Plaintiff-Respondent No. 1 u/s 5 of the Act, is liable to fall flat like a house of cards as the courts below have gravely erred in relying upon Ex.PW3/A to hold that the plaintiff society submitted the afore-mentioned application in Form-A, namely, the prescribed format, to the Chief Administrator, P.U.D.A. after getting it attested by the Notary Public or that in view of the said application, it does not lie in the mouth of the defendants to say that no application in the prescribed proforma was given. We find that the application Ex.PW3/A (assuming that it was moved) was by the World Wide Immigration Consultancy Services Limited (W.W.I.C.S.) and not by Plaintiff-Respondent No. 1. The land described in this application pertains to the revenue estate of village Nada and not village Karoran. Obviously, the khasra numbers mentioned in the application Form Ex.P3/A are altogether different to the Khasra number of revenue estate of Karoran (as mentioned in the application Ex.P3 of the Plaintiff-Respondent No. 1 society, namely, Dasmesh Educational Society). It has been

emphatically argued on behalf of the Appellant that Ex.P3/A was never moved by Plaintiff-Respondent No. 1 and has been fabricated only to cover up the lacuna of its failure to apply in the prescribed format. The manner in which it was allegedly got attested from a Notary Public was highlighted to cause strong suspicion in relation to the genuineness of the afore-mentioned application. However, in view of the fact that allowed application in the prescribed form namely Ex.P3/A, even if moved, was neither by the Plaintiff-Respondent No. 1 society nor it relates to the lands owned by the plaintiff society, we find no legal necessity to examine and/or return findings regarding its genuineness. We, however, hold that no benefit could be drawn by the Plaintiff-Respondent No. 1 society on the basis of an application purported to have been moved by W.W.J.C.S. which is an altogether different legal entity and is not a plaintiff in the present suit. Shri Gupta drew our attention to the following observations made by the trial Court, "the plaintiff has brought on record copy of the application submitted in the prescribed proforma Ex.P3/A which is attested by the Notary on August 19, 1998 and further correspondence is Ex.P3 and the government asked for more copies of the site plan of the proposed Forest Hill Country Club Resort which were submitted vide letter Ex.P5". It is thus apparent that the Courts below have committed a patent error in placing reliance upon Ex.P3/A and to hold as if the plaintiff society had actually applied in the prescribed form u/s 5 read with Section 6 of the Act, which is nothing less than a totally perverse finding on facts.

24-A. Shri Anupam Gupta then took us to the record of the trial Court and made reference to Ex.P3 which is a letter dated August 21, 1998 addressed by Col. B.S. Sandhu as Managing Director of Dasmesh Educational Society (Regd.) to the Chief Administrator, P.U.D.A. While it highlights that Forest Hill Country Club is a unique resort as a unique site with undulating terrains and lawn farms and will attract the tourism, recreational and cultural needs of the people, it will also boost the tourism industry in Punjab and also bring an investment amounting to 5 million US \$ in its first phase and another 20 million US \$ in the subsequent phases. The letter also gave khasra numbers of the land in Village Karoran, District Kharar. On a perusal of Form-A, namely the prescribed format, we find that an application is required to disclose:-

"(i) the nature of construction, namely, is erection of building, making excavation or lay out means of excess to a road in the controlled area, etc.

(ii) the particulars of the applicant as also the description of the land including its khasra numbers;

(iii) the location of the land and description of its boundaries;

(iv) the purpose for which the building/well/road/excavation etc. it to be used;

(v) site plan of the proposed construction, if any;

(vi) building plans;

(vii) revenue map etc.

Further, the statement of facts made in the Form-A is not only required to be verified by the applicant, it needs to be attested by an Oath Commissioner or 1st Class Magistrate as well. If the contents of Ex.P3 are compared with the requirements of Form-A, with no stretch of imagination it could be held that the application Ex.P3 was made as per prescribed Form-A. The application Ex.P3 is a demi-official letter sent by the Managing Director of the plaintiff-society to the Chief Administrator, PUDA and lacks the basic ingredients of the prescribed proforma namely, Form-A.

25. Faced with this situation, Plaintiff-Respondent No. 1 society moved Civil Misc. Application No. 2601-C of 2004 u/s 151 read with Section 152 C.P.C. "for correction of mistake" averring that in the trial court, two documents were "brought on record" viz Ex.PW3/A mark B, that Ex.PW3/A is an application u/s 5 of the Act for change of land use of the land pertaining to village Nada and whereas "mark B" is notarised photostat copy of the application u/s 5 of the Act pertaining to village Karoran; that the land in dispute falls in village Karoran, therefore, document Ex.PW3/A is not relevant for the purpose of the suit" but by inadvertent mistake, the wrong document has been shown as Ex.PW3/A while the correct document has been shown as mark B the Plaintiff-Respondent No. 1 prayed that the document mark B may kindly be taken on record as Ex.PW-3/A". Vide our order dated March 18, 2004 we directed that the afore-mentioned Civil Misc. Application be heard with the main case.

26. Having heard learned counsel for the Plaintiff-Respondent No. 1 on the aforesaid Application, we find that the same is totally misconceived. Order 13 Rules 1, 4 and 7 C.P.C. provides the manner in which parties are required to produce the documentary evidence in original or copies thereof every description in their possession including one which they intend to rely and which has already been not filed in court before the statement of issues. The documents which have been placed on record and admitted in evidence are required to be endorsed by the Court in terms of Rule 4, and only those documents which have been "admitted in evidence" shall form "part of the record of the suit" (please see Rule 7). In the present case, admittedly, the document "mark-B" was neither placed on record before statement of issues nor has been relied upon by the Plaintiff-Respondent No. 1 in its plaint or replication. This document has not been admitted in evidence by the trial Court and, obviously, has not been exhibited on record. In fact, in the eyes of law, it does not exist on the record. We, therefore, do not accept the prayer of the Plaintiff-Respondent No. 1 to substitute a piece of document which has already been admitted in evidence with one which does not exist on the record. In our view, the afore-mentioned application is a device to lead additional evidence at the stage of second appeal and the same being totally cryptic and laconic as it does not satisfy even a single ingredient of Order 41 Rule 27 read with Order 42 Rule 1 C.P.C. in terms of which the Court can permit the parties to lead additional evidence or can suo-moto ask for much additional evidence at the appellate stage, it is liable to be rejected. We order accordingly.

27. Shri Rajiv Atma Ram, learned Senior Counsel appearing for the Plaintiff-Respondent No. 1 then contended that even if the application Ex.P3 was not moved in the prescribed form, yet the same having been entertained and considered on merits for a long period by the authorities of the Appellants, and in view of their subsequent conduct, they cannot be permitted to turn around and raise this belated objection of not applying in prescribed format i.e. Form-A. We are not impressed by this submission as well. The whole foundation of the suit has been led on the premise that the Plaintiff-Respondent No. 1 had applied u/s 5 read with Section 6 of the Act in the prescribed form and its application was not rejected within the maximum prescribed period of 90 days, therefore, the requisite permission/sanction is deemed to have been granted. Obviously, onus was given upon the Plaintiff-Respondent No. 1 to prove that it had actually applied u/s 5 read with Section 6 of the Act in the prescribed format with the requisite information as the plea of "estoppel" cannot be permitted to be raised against to wriggle out of the requirements of a statute. It has been averred that the plaintiff-society vide their application dated 21.8.1998 submitted with the defendant No. 2 sought permission for setting up of a Forest Hill Country Club resort within the area of village Karoran, Tehsil Kharar, District Ropar" with a further plea that "it is submitted that the area over which the plaintiff wanted to develop the country club, is covered under the provisions of the New Capital Periphery Control Act". It was argued that the Plaintiff-Respondent No. 1 having admitted the fact that provisions of the 1952 Act were applicable, it was imperative upon to it submit the application "in such form and containing such information in respect of the building.., as may be prescribed" as mandatorily provided in sub-section (1) of Section 6 of the Act. In our view, Plaintiff-Respondent No. 1 cannot be permitted to blow hot and cold inasmuch as if it wanted to take advantage of sub-section (6) of Section 6, it ought to have complied with the rest of the statutory provisions as well. Sub-section (6) of Section 6, which provides that on expiry of a period of three months if no order in writing has been passed by the competent authority, permission shall, without prejudice to the restrictions signified in plans u/s 4, be deemed to have been given without the imposition of any condition" comes into operation only when "an application under sub-section (1) has been made". As already held that the application dated 21.8.1998, Ex.P3 is neither an application in the prescribed form nor it contains the information as prescribed in Form-A. Even the trial Court also observed that "the application dated 21.8.1998 Ex.P3 was a further correspondence to the main application dated 19.8.1998 Ex. PW3/A submitted by Plaintiff- Respondent No. 1 after getting the same attested from a Notary, "

28. Thus, it stands concluded that the application Ex.PW3/A was neither submitted by the Plaintiff-Respondent No. 1 nor it pertained to the land owned by it. Even according to Plaintiff-Respondent No. 1, the application which was actually moved by it for the land in question was not exhibited on record and was merely marked as "B". Further the Courts below also have held that the application dated 21.8.1998, Ex.P3 was not the application moved by Plaintiff-

Respondent No. 1 u/s 5 read with Section 6 of the Act.

29. Shri Rajiv Atma Ram, learned Senior Counsel appearing for Plaintiff-Respondent No. 1 then argued that the Appellants are harping upon a hyper-technical objection of not applying in the prescribed Form- A under the Act without any legal basis as the object of seeking application in the prescribed form is only to get the requisite information from an applicant. He contended that in Para 4 of the judgment, the learned First Appellate Court has categorically held that if there were any defects in the application of the Plaintiff-Respondent No. 1, the same could be removed and thus, the application could be entertained on merits and disposed of within the prescribed time. In this regard, he has also placed reliance upon judgment of the Supreme Court in the case of Jawahar Lal Sharma and Another Vs. Divisional Forest Officer, U.P. and Another, wherein the Appellant No. 1 before the Supreme Court was holding a licence for establishing and operating the saw mill since 15.7.1981. For the renewal of a licence, year-to-year fee was deposited. The controversy arose when in the year 1998-1999 and 1999-2000, his prayer for renewal of the licence was refused. The Appellants approached the High Court of Allahabad which dismissed their Writ Petition by observing that the Appellants were at liberty to move a fresh application for grant of licence. Their Lordships, after taking judicial notice of the fact that the larger issue dealing with ecology, protection and conservation of forests is pending before the Apex Court in T.N. Godavarman Thirumulkpad Vs. Union of India and others, case and on account of the Supreme Court being seized of the matter and monitoring the issue, there has been reluctance on the part of the government officials to deal with saw mills licence and their renewals, further held as under:-

".....In the cases before us, the renewal fees have been deposited by the appellants but orders of renewal are not passed. A vague plea is raised on behalf of the respondents that the applications for renewal were not in prescribed proforma, if that be so, the defect could have been pointed out to the concerned applicant and appropriate application in the prescribed proforma could have been called for to be substituted in place of defective application, if any or such other particulars as may be necessary could have been called for. The relevant consideration for and the rights and obligations flowing from a prayer for renewal of a pre-existing licence are different rather substantially at variance from those for an application for the grant of afresh licence. The learned counsel for the appellants submitted that an application for the grant of a fresh licence may not be entertainable at all though the appellants may be entitled to renewal subject to such directions as the Supreme Court of India may be pleased to make. The orders made by the High Court do not therefore, meet the ends of justice. Admittedly, the licence of any of the appellants has not been cancelled." (Emphasis applied).

The facts thus speak themselves that it was a case of renewal of the already granted licence, therefore, the Apex Court held that the defect, if any, in the

application could be pointed out so as to enable the Appellants to remove the same.

29-A. Shri Anupam Gupta has then argued that even on assuming that the Plaintiff- Respondent No. 1 did apply u/s 5/6 of the Act, yet the Courts below could not have pressed into service the "deeming fiction" to hold that there was a valid sanction for developing the club. With a view to appreciate the correct construction of provisions of the Act, particularly sub-section (6) of Section 6, we may usefully reproduce the same:-

"(6) If at the expiration of a period of three months after an application under subsection (1) has been made to the Deputy Commissioner no order in writing has been passed by the Deputy Commissioner, permission shall without prejudice to the restriction signified in the plans u/s 4 be deemed to have been given without the imposition of any conditions."

30. The afore-mentioned provision merely provides that where an application under sub-section (1) has been moved before the competent authority and a period of three months has expired and if no order in writing has been passed by the competent authority, permission shall, without prejudice to the restriction incorporated in the plans published u/s 4, be deemed to have been given. We find that the words "no order in writing has been passed" are of great significance to appreciate the legislative intent behind sub-section (6), namely, to activate the prescribed authority to decide the matter promptly so as to prevent public injury. Is it true that the competent authority in the present case slept over the matter for a period of three months after the assumed application dated 21.8.1998 Ex.P3 was moved? As averred in the plaint itself that pursuant to the application dated 21.8.1998 Ex.P3, the Appellants within a period of less than one month vide their letter dated 10.9.1998 Ex.P4 called upon the Plaintiff-Respondent No. 1 to submit the site plan/location plan where the country club resort was proposed to be set up. Can there be any doubt that it was only after deliberating over the contents of the application dated 21.8.1998, Ex.P3 that the competent authority found it incomplete as the requisite documents/information in terms of Form-A was not appended thereto. The Plaintiff-Respondent No. 1 itself has admitted that the letter dated 10.9.1998, Ex.P4 was responded to by it on 14.9.1998 vide Ex.P5. There is a reference to the subsequent correspondence including the meeting held by office bearers of the Plaintiff-Respondent No. 1 with the Chief Administrator, P.U.D.A. and various other senior functionaries including the one allegedly resolving;- "It was principally agreed to recommend to defendant No. 1 to accord sanction to the project." We fail to understand as to how the Courts below came to the conclusion that "no order in writing was passed" by the competent authority before expiry of a period of three months from date of submission of the application dated 21.8.1998 (Ex.P3) and, thus, the "deemed permission" could be invoked. In our view, within a period of less than one month from the date of receipt of the application dated 21.8.1998 (Ex.P3) and the fact that the Plaintiff-Respondent No. 1 through subsequent

correspondence itself was persuading the authorities to accord the requisite sanction, the defaulting clause contained in sub-section (6) of Section 6 stood duly complied and, thus, there was no occasion to harp upon the theory of "deemed permission". Such an interpretation of sub-section (6), as given by the Courts below, if allowed to sustain, would give absurd results, cause public mischief and would militate against the legislative intent behind this provision. We, therefore, cannot sustain the view taken by the Courts below that an applicant after applying under sub-section (1) of Section 6, may keep on corresponding with the competent authority in relation to the queries raised by the latter and merely by killing a period of three months through such correspondence can come up suddenly with the plea that the authority is now helpless because of the protective umbrella of "deemed permission" available to him u/s (6) of Section 6 of the Act.

31. A provision in a statute cannot be read or interpreted in isolation by overlooking the other provisions or the legislative scheme. When an application under sub-section (1) is moved, sub-section (2) itself provides that the competent authority "after making" such inquiry as he considers necessary, shall, by an order in writing, either grant the permission subject to certain prescribed conditions or refuse to grant the same. Thus, the enquiry as contemplated by sub-section (2) is also a pre-requisite before the decision is taken by the competent authority.

We have, thus, absolutely no hesitation in holding that where an application under sub-section (1) of Section 6 is moved and the competent authority, before expiry of a period of three months, upon due application of its mind, held an inquiry under sub section (2) to satisfy as to whether the request is legally tenable or not, the period of three months prescribed under sub-section (6) shall stop running immediately and there will be no "deemed permission" unless the competent authority takes an express decision in this regard. Of course, inordinate delay on the part of the authority can always be a subject matter of judicial review. Further sub-section (6) itself provides that the "deemed permission" shall always be "without prejudice to the restriction signified in the plans published u/s 4" of the Act. There can be, thus, no doubt that even in the case where "deemed permission" stands granted, the applicant cannot be permitted to erect or re-erect a building in contravention of the plans published u/s 4 of the Act. Needless to say that whenever the plans are published u/s 4, "the same signify the nature of the restrictions applicable to the controlled area". What is in fact "deemed to have been permitted" under sub-section (6) is that no additional conditions, other than those laid down in the published plans u/s 4, can be imposed upon the applicant. In the present case, it was the plaintiff who sought a declaration that the constructions raised by him in setting up the Forest Hill Country Club resort are authorised and lawful in view of the "deemed permission/sanction" under sub-section (6) of Section 6 of the Act. The onus to prove issue No. 1 was also upon the Plaintiff-Respondent No. 1 so as to establish that the buildings erected by it are in consonance with the plans, if any,

published u/s 4 of the Act. We do not find from the record that the plans, if any, published u/s 4 were either produced on record or was even an iota of evidence led to infer that the large scale constructions raised by Plaintiff- Respondent No. 1 do not violate such published plans. We, therefore, further hold that the concept of "deemed permission", embraced in sub-section (6) is for a very limited purpose, namely that no additional conditions (other than those incorporated in the plans published u/s 4 of the Act) can be imposed by the competent authority on an application u/s 6(1) of the Act, but such "deemed permission" cannot be capitalised by the Plaintiff-Respondent No. 1 to clothe its illegally carried out large scale constructions with a legal cover. Sequel to our above discussion, it is held that the findings recorded by the Courts below on issue no. 1 are not only against the admitted facts and the documentary evidence proved on record, but the same are also based upon in total derogation and disregard of the provisions of the 1952 Act and other laws of the land. These findings, therefore, cannot be termed anything less than the perverse findings and are liable to be reversed. We hold accordingly. We also hold that the question of law No. 1 raised by the Appellants in these Second appeals goes to the root of the matter and is, therefore, a substantial question of law falling within the ambit of jurisdictional competence of the Second Appellate Court.

32. In reference to issue No. 5, namely, as to whether or not the suit was bad for non-joinder of the Forest Departments of the State Government as well as the Union of India and in relation to the question of law No. (II) raised in the present Appeals read with additional question of law No. (III), learned counsel for the Appellants strenuously urged that the Courts below have committed a patent error of law in deciding this issue by adopting a total casual approach and in complete disregard to the statutory and mandatory provisions of the forest law as interpreted by the Apex Court in more than one land-mark judgments. According to Sh. Anupam Gupta, the notification dated September 5, 1953 (Ex.D3) and dated November 9, 1987 (Ex.D4) have been completely misread, misunderstood and misconstrued by the courts below. To appreciate this submission, we may refer to the substance of these notifications. The notification dated September 5, 1953 (Ex.D3) published in the Punjab Government Gazette on September 18, 1953 was issued in exercise of powers u/s 3(2) of the Periphery Act, 1952 whereby the area comprised in the revenue estates of villages specified in the Schedule appended thereto and located in Tehsil Kharar of erstwhile District Ambala was declared as "Controlled Area" for the purposes of the Act, Village Karoran, Hadbast No. 352 is undisputedly included in the Schedule at Sr. No. 101, there can, thus, be no doubt that the provisions of the 1952 Act are very much attracted qua the land in question and as a necessary corollary thereof, no erection or re-erection of any building could take place without prior permission of the competent authority in writing (please see Section 5) nor any land within the "controlled area" can be used for purposes other than those for which it was used on the date of notification u/s 3 of the 1952 Act, particularly such land cannot be used for the purposes of charcoal kiln,

pottery-kiln, brick- kiln or for quarrying stone, bajri or kankar or for other similar extractions or ancillary operations except under or in accordance with the licence obtained from the competent authority on payment of requisite fee.

33. Coming to the notification dated November 9, 1987 (Ex.D4 published in the Punjab Government Gazette dated November 20, 1987), we find that the same has been issued by the Forest Department, Government of Punjab in exercise of the powers u/s 3 of the P.L.P.A. The notification reveals that the lands mentioned in the Schedule attached thereto were earlier notified under the same provision on 9th June, 1961 whereby certain activities in relation to the notified lands were prohibited. Since the term of the said notification was to expire, the present notification was issued in continuation thereto thereby again prohibiting several, activities u/s 4 of the P.L.P.A. including quarrying, breaking or cultivation of Malkiyat land, cutting of trees or timber or collection or removal or subjection to any kind or manufacturing process of any forest products other than grass, flower, fruit and honey except for bona fide domestic or agricultural purposes. It is not disputed that village Karoran, Hadbast No. 352 is again included in the Schedule attached to the aforesaid notification and the entire area of the village measuring 3700 acres stands included within the prohibitory activities. This notification has a material bearing on the issue we propose to decide, therefore, is reproduced in extension:-

"No. 39(13) Ft. III-86/23339.- Whereas the areas mentioned in the annexed Schedule, are comprised within the limits of the local areas notified u/s 3 of the Punjab Land Preservation Act, 1900, - vide Punjab Government Notification No. 48H-Ft. IV-61/3163, dated 9th June, 1961.

2. And whereas in respect of the said area the President of India is satisfied after the enquiry that the regulations, restrictions and prohibitions hereinafter specified are necessary for the purpose of giving effect to the provisions of the Act,

3. Now, therefore the President of India, in exercise of the powers conferred by Section 4 of the said Act, is pleased to prohibit the following acts for a period of 15 years with effect from the date of this notification in those areas:-

(1) The clearing or breaking or cultivation of Malkiyat land not ordinarily under cultivation prior to the publication of this notification, provided that the breaking up of the land for cultivation may be permitted by the Divisional Forest Officer, Forest Division, Ropar.

(2) The quarrying of stones or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of this Notification except with the permission of the Collector of Roopnagar District who will consult the Divisional Forest Officer, Forest Division, Ropar before according such permission.

(3)(i) The cutting of trees or timber or collection or removal or subjection to any

manufacturing process of any forest produce other than grass, flower, fruit and honey, save for bona fide domestic or agricultural purposes provided that the owner of the land may sell trees or timber after first obtaining the permit to do so from the Divisional Forest Officer, Forest Division, Ropar. Such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of forest conservancy.

(ii) Provided further that owner of land shall not be required to obtain permit for cutting of tree of not less than one metre girth at stump level from the cultivated fields for sale in that area.

(4) The setting on fire of trees timber or forest produce.

34. It thus clearly emerges that in the "controlled area" notified under the 1952 Act, it was by virtue of the notification dated November 9, 1987 (Ex.D4) issued by the forest Department of Government of Punjab under P.L.P.A. that statutory prohibition against "clearing" "breaking" or cultivation of the Malkiyat land (which was not under cultivation prior to the publication of this notification) were imposed. It was by invoking the powers u/s 4 of P.L.P.A. that the activities like "cutting of trees or timber or collection or removal or subjection to any manufacturing process of any forest product other than grass, flower, fruit and honey", were prohibited. According to the Plaintiff- Respondent No. 1, it had sought permission from the "Competent Authority" under the 1952 Act to raise construction and develop the Forest Hill Golf Resort. Obviously, this permission was sought for "erecting the buildings" which is otherwise prohibited u/s 5 of the 1952 Act. The question arises as to whether permission u/s 5 of the 1952 Act for "erection or re-erection" of a building can be granted or not without according simultaneous relaxation/exemption from the rigorous of prohibitory conditions imposed by the Forest Department by invoking its statutory powers u/s 4 and or 5 of P.L.P.A. vide Notification dated November 9, 1987 (Ex.D4) which expressly prohibit the "clearing" or "breaking" of the land? The answer has to be in the negative. Can there be ground for any kind of doubt, that when a statutory prohibition has been imposed u/s 4 of the P.L.P.A. against clearing, breaking or cultivation of even private land, a building cannot be erected upon such land without "breaking" or "clearing" or "cutting trees" etc. from it. What we find here is that in relation to the land of village Karoran, there is a dual statutory prohibition, namely, (1) under the provisions of the Periphery Control Act, 1952 in terms of which no building can be erected or re-erected unless permission u/s 5 of the Act is taken nor the land can be used for a purpose other than for which it was used on the date when such land was declared as a controlled area in view of the prohibition of such change of land use u/s 11 of the Act 1927 under the P.L.P.A. where the competent authority, in exercise of its power under Sections 4, 5 and 5-A, can impose several types of prohibitory conditions against use of the land which includes even "clearing" or "breaking" of the private land owned by an individual. Needless to say that the provisions of the P.L.P.A. can be invoked qua a land irrespective of its location whereas provisions of the Periphery Control Act,

1952 are capable of being enforced only qua the land which is located in a radius of 10 Kms. of Chandigarh township. The land in question being located within the radius of 10 Kms. of Chandigarh, it is governed by provisions of both the enactments which are supplementary to each other.

35. In view of what has been discussed above, we hold that in so far as a land which is covered by both, namely, the Periphery Control Act, 1952 and the P.L.P.A. even if permission to erect a building was "deemed to have been granted" by the authority under the Periphery Control Act, 1952, no such building could yet be erected in violation of statutory embargo incorporated in the Notifications issued u/s 4, 5 and/5-A of the P.L.P.A. against "clearing" of the land or "cutting of trees" etc. from such land.

36. Reverting back to the stand taken by the Appellants (including the State of Punjab through the Secretary, Housing Department) in their respective written statements, specific preliminary objection No. 5 read with No. 7 has been taken that the land in question falls under the purview of P.L.P.A. 1900 and attracts the provisions of "forest laws", therefore, the Forest Departments of the State Government and the Government of India are necessary and proper parties, and that the suit was bad for non-joinder of necessary parties. These preliminary objections were pressed by the Appellants and the State of Punjab at the time of framing of issues, therefore, issue No. 5 was framed. The onus to prove this issue was fastened upon the Appellants and the State of Punjab and it was in order to prove the same that the Notifications Ex. D3 and D4 were placed on record. The afore-mentioned preliminary objection, however, was unfortunately brushed aside by the trial Court along with issue No. 7 with a perfunctory observation that "no specific evidence" has been led on these issues and that "the complaints of the Forest Department as per documents Ex.P14 to P19 "have already been dismissed and on legal impediment has specifically been pointed out regarding the maintainability of the suit in the present form..." We have no doubt in our mind that in view of Notification dated November 9, 1987, Ex.D4 issued by the forest Department of State of Punjab, the plaintiff-Respondent No. 1 could not have undertaken any activity like "breaking", "clearing" or "cutting of trees", namely, the basic preliminaries before erection of a building, unless the afore-mentioned Notification itself was set aside by the Court. Further, no relief of setting aside the said Notification could be granted without impleading the Forest Department of State of Punjab as a party to such proceedings.

37. At this stage, we may also deal with the question of law No. 2 raised in the grounds of Appeal read with the additional question No. (III) and (V) as mentioned in our order dated February 24, 2004. The Appellants have urged that the land in dispute is "a forest land" and is governed by the provisions of the "forest laws". According to them, the Union of India through Ministry of Environment and Forest was a necessary and proper party as in view of the overriding effect of the provisions contained in Section 2 of the Forest Conservation Act, 1980, no State Government is competent to accord permission like the one

sought by the Plaintiff-Respondent No. 1 for which the competent authority is the Central government only. Under the Indian Forest Act, 1927, three types of forests are envisaged, namely, reserved forests, protected forests and private forests. The legislative scheme of the Act has provided wholesome mechanism for the protection and growth of these forests and minimal use of the forest products. The parliament, thought in tune with the federal structure of our democratic set up, has conferred many powers under the Act to be enjoined upon by the State Governments, yet has couched Section 85-A vesting the Central Government with such powers which have over-riding effect. Be that as it may, we find that Section 35 of the Indian Forest Act, 1927 is somewhat similarly worded to the provisions of Sections 4 and 5 of the P.L.P.A. in relation to the regulatory and prohibitory measures required to be taken regarding "forest land". Legislative object of these two sets of provisions is apparently same. We thus, find that the Parliament, speaking through Section 35 of the 1927 Act, and the State Legislation by enacting certain provisions of the P.L.P.A. wanted to achieve one and the same goal, namely, to stop de-afforestation, protection and promotion of forests, to stop erosion of the forest land and/or waste land, as non-erosion of the land alone would ensure the protection of the existing forest and to be planted in future. For the purposes of present case, it is, however, not disputed that there is no notification issued under provisions of the 1927 Act in relation to the land in question. Absence of such notification, however, has no material bearing for the reasons stated in the later part of the judgment.

38. Coming to the provisions of the Forest (Conservation) Act, 1980, namely the 1980 Act, we find that the word "forest" or "forest land" has not been defined in the Act. Section 2 of the Act starts with a non-abstante clause and it confers sweeping powers upon the Central Government, namely, that without its prior approval, no State Government or other authority is competent to order or direct that any reserved forest or any portion thereof shall cease to be reserved, that any "forest land" or any portion thereof may be used for any "non-forestry purposes", and that any "forest land" or any portion thereof may be cleared of trees which have grown in that entire land or portion thereof. Explanation to Section 2 defines "non-forestry " which means the breaking up or clearing of any forest land or portion thereof for any purpose other than de-afforestation. Section 2 alongwith its explanation is reproduced below:-

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

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

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

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government.

(iv) that any forest or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation. Explanation,- For the purposes of this Section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

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

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, water holes, trench marks, boundary marks, pipelines or other like purposes.

39. It has been argued on behalf of the Appellants that as per the revenue record and in terms of the Notification dated September 5, 1953 (Ex.D3) and dated November 9, 1957 (Ex.D4), the land in question is a "forest land", therefore, except with the prior approval of the Central Government it could not be permitted to be used for non forestry purposes. Shri Rajiv Atma Ram, learned Senior Counsel representing the Plaintiff-Respondent No.1, however, contended that most of the land has been shown as "agricultural land" in the revenue record though a portion thereof has also been shown as "Gair mumkin pahar". According to him, the Notification dated November 9, 1987 (Ex.D4) is inapplicable in the present case as it permits lands to be used for the same purpose for which it was being used on the date of Notification and as such the land continued to be "agricultural land" only, thus, it does not attract prohibitory provisions of the "forest laws" or P.L.P.A.

40. At the outset, it is clarified that we do not intend to decide as to whether the land in question is actually a "forest land" or not as neither such an issue was framed nor it could have been adjudicated by the Courts below in the absence of the Forest Department of the State Government and the Central Government. Our findings are confined to a limited extent as to whether, prima facie the land in question was a "forest land" or not so as to make it obligatory for the Plaintiff-Respondent No. 1 to implead the Forest Departments of the Punjab Government and of the Central Government as necessary parties to the suit and as to whether the suit is bad for non-joinder of necessary parties or not. We find that the Notification dated November 9, 1987 (Ex.D4) covers the entire land of village Karoran including the one owned by the Plaintiff-Respondent No. 1. Even in relation to an agricultural land, the aforementioned Notification prohibits "clearing" and "breaking" thereof. Prima facie, it appears that the land in question is a "forest land" in terms of its expanded definition as laid down by the

Supreme Court in T.N. Godavarman Thirumulkpad Vs. Union of India and others, wherein it was held that the term "forest land" occurring in Section 2 of the 1980 Act, will not only include "forest" as understood in the dictionary sense but also any area recorded as "forest" in the Government records irrespective of the ownership. In this regard, we may quote Para 4 of the report which reads as under:-

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance, and therefore, the provisions made therein, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests whether designated as reserved, protected or otherwise for the purpose of Section 2 (i) of the Forest Conservation Act. The term "forest land" occurring in Section 2 will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this court in *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213, *Rural Litigation and Entitlement Kendra v. State of U.P.* 1989 Supp.(1) 504 and recently in the order dated 29.11.1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*, Writ Petition (Civil) No. 749 of 1995, decided on 29.11.1996). The earlier decision of this Court in *State of Bihar Vs. Banshi Ram Modi and Others*, has, therefore, to be understood in the light of these subsequent decision. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of this stand taken on behalf of the State of Rajasthan, even at this stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

41. The land in question is located in the foothills of Shivalik mountains. When the Plaintiff-Respondent No. I had earlier applied for seeking permission to establish "Spring Dale Academy" upon this very land vide its application dated May 11, 1996 (Ex.D2), Appellant No. I had specifically declined permission vide its order dated 10.9.1996 (Ex.D1) on the ground that the site falls in agricultural/afforestation zone, therefore, permission cannot be granted to establish the Spring Dale Academy. Thus, it was in the knowledge of the Plaintiff-Respondent No. I that the land was meant for agriculture/afforestation purposes and in view of the Notification dated November 9, 1987 (Ex.D-4), it could not be used for any

other purpose except with the prior permission of the Forest Department. The Plaintiff-Respondent No. 1 cannot be permitted to turn around and contend that it being master of its plaint, could institute the same against the defendants of its own choice. We are of the further view that since the word "forest land" has been explained by their Lordships to include any land shown as such in the government records and since the land in question, has already been treated as a "forest land" in terms of the Notification issued by the Forest Department, even Union of India through Ministry of Environment and Forest was also a necessary party required to be impleaded inasmuch as no permission for using this land for non-forestry purposes can be granted except with the prior approval of the Central Government as provided in Section 2 of the 1980 Act. We may profitably refer to a very recent judgment of the Apex Court in relation to the lands located in Aravalli Hills of Haryana State and which stood notified u/s 4 and 5 of P.L.P.A., rendered in *M.C. Mehta v. Union of India* and *Ors.* J.T. 2004 (4) S.C. 214, wherein their Lordships have held as under:-

"79. u/s 3 of the aforesaid Act, whenever it appears to the State Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by Notification make a direction accordingly. u/s 4(b), the State Government has power to regulate, restrict or prohibit the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the Notification u/s 3. u/s 5(b) in respect of any specified villages or village or part or parts thereof, comprised within the limits of any area notified u/s 3, the State Government may, by special order, temporarily regulate, restrict or prohibit the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the Notification u/s 3. In respect of some mining areas Notifications have been issued u/s 4 and in respect of some, Notifications have been issued both u/s 4 and 5. The submission is that invoking of Sections 3, 4 and 5 is only to conserve sub-soil water and prevention of the area from erosion of land and is not to create any forest, it has been pointed out that in cases where the Notifications have been issued, only felling of trees had been prohibited and not quarrying of stone.

80. It cannot be disputed that the State Forest Department has been treating and showing the aforesaid areas as "forest". The contention urged on behalf of the State Government is that it was on account of erroneous view point of Forest Department. In fact and law, such area is not "forest" and mining is not prohibited and, therefore, the question of seeking permission u/s 2 of the Forest Conservation Act does not arise.

81. In the instant case, it is not necessary to decide the legal effect of issue of the Notification u/s 4 and/or 5 of the Act. Not only in their record the area has been shown as forest but the affidavits have been filed in this Court stating the area to be "forest". In *T.N. Godavarman Thirumulkpad Vs. Union of India* and

others, , this Court held that the term "forest" is to be understood in the dictionary sense and also that any area regarded as a forest in Government record irrespective of ownership would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas of forest for the purposes of the F.C. Act has been seeking prior approval for the Central Government for diversion of such land for non-forestry purpose. Reference in this connection may also be made to the affidavit dated 8th December, 1996 filed by Banarsi Das, Principal Chief Conservator of Forest, Chandigarh, Haryana, in Civil Writ No. 171 of 1996 Environmental Awareness Forum v. State of Jammu and Kashmir and Ors.. Our attention has also been drawn to letter dated 26th November, 2002 addressed by Divisional Forest Officer, Faridabad to Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad District and requesting him to ensure that the said forest areas are not affected by any mining operations as also to a letter dated 17th September, 2001 sent by Principal Chief Conservator of Forest Haryana (Panchkula) to Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete somersault in these proceedings and contend that the earlier stand that the area is forest was under some erroneous impressions. In the present case, for the purposes of the F.C. Act, these areas shall be treated as forest and for use of its for non-forestry purpose, it could be necessary to comply with the provisions of the F.C. Act.

42. While deciding issue No. 5 against the Appellant, the trial Court appears to have been heavily influenced by the fact that criminal complaints lodged by the Forest Department of the State Government against the proprietor/Managing Director of the Plaintiff-Respondent No. 1, namely Col. B.S. Sandhu, had already been dismissed by the Courts vide judgments Exs. P14 to P19. The learned First Appellate Court also did not divulge much while deciding the afore-mentioned issue and merely re-stated the findings recorded by the trial Court. We are, however, unable to appreciate the aforementioned view taken by the trial Court. We are, however, unable to appreciate the aforementioned view taken by the trial Courts below. The Constitution Bench of the Hon'ble Supreme Court in M.S. Sheriff Vs. The State of Madras and Others, , while dealing with a situation where two sets of proceedings arising out of the same facts, namely civil suit for damages for wrongful confinement and criminal prosecution u/s 344, IPC and as to whether the simultaneous prosecution of these two matters will embarrass the accused or not, held as under:-

"As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the order, or even relevant, except for certain limited purposes, such as sentence or

damages, The only relevant consideration here is the likelihood of embarrassment."

43. In the case of V.M. Shah v. State of Maharashtra J.T. 1995 (6) S.C. 413, observations were made by the Supreme Court that the finding recorded by the criminal court stand superseded by the finding record by the civil court. However, this view was not approved in a later judgment in K.G. Premshanker Vs. Inspector of Police and Another, where their Lordships held that the observations afore-mentioned made in V.M.Shah's case (supra) are not correct enunciation of law and the principles laid down by the Constitution Bench in M.S. Sheriff's case (supra) shall prevail and that civil and criminal proceedings are to be continued and decided on the evidence which may be brought on record by the parties (emphasis applied).

44. Following the above summarised dictum of AW, we hold that the courts below ought to have decided issue No. 5, namely, "whether or not the suit is bad for non-joinder of the Forest Department of the State Government and the Union of India" on the basis of the evidence moved by the parties on record instead of getting swayed by the mere fact that the criminal complaints initiated by the Forest Department of the State of Punjab against the proprietor of Plaintiff-Respondent No. 1, were dismissed.

45. Shri Rajiv Atma Ram, learned Senior Counsel representing Plaintiff-Respondent No. 1, however, insisted that there was no legal necessity to implead Union of India through Ministry of Environment and Forest or the Forest Department of the State Government, as party-defendants. According to him, the "State of Punjab" is one of the defendants and all the pleas which could possibly be taken by its Forest Department, have also been taken by the impleaded department and evidence in support of such pleas has also been brought on record. According to Shri Atma Ram, the Government of India or Government of a State are required to be sued by the name of the "Union of India" or by the name of the "State" as provided under Article 300 of the Constitution of India and Section 79 of the Code of Civil Procedure. Since the Government of the State, namely the "State of Punjab" has been sued by name, the department through whom it is sued, is immaterial. In so far as the Union of India is concerned, Shri Rajiv Atma Ram contended that no relief has been claimed against the same, therefore, it was neither a necessary nor a proper party. In this regard, he has placed reliance upon judgment of the Apex Court in the case of the Secretary, Ministry of Works and Housing Government of India and Ors. v. Sh. Mohinder Singh Jagdev and Anr., J.T. 1996 (8) S.C. 96, Para 5 of this report, as relied upon, reads as under:-

"Having given due consideration to the contentions of the counsel and having gone through the facts and circumstances of the case, first question that arises is: whether the appeal has been competently laid? It is not disputed and cannot be disputed that the Union of India can lay the suit and be sued under Article 300 of the Constitution in relation to its affairs. u/s 79 read with Order 27 Rule 1,

Code of Civil Procedure, in a suit, by or against the Central Government, the authority to be named as plaintiff/defendant shall be Union of India. The Secretary, Ministry of Works and Housing is a limb of the Union of India transacting its functions on behalf of the Government under the concerned Department as per the business rules framed under Article 77 of the Constitution. Therefore, the appeal came to be filed by the Secretary, though wrongly described. The nomenclature given in the cause title as Secretary instead of Union of India, is not conclusive. The meat of the matter is that the Secretary representing the Government of India had filed the appeal obviously on behalf of Union of India- Accordingly, we reject the first contention."

We are, however, not persuaded by the submission of Shri Atma Ram. In the case of Secretary, Ministry of Works and Housing (*supra*), an objection was raised by the respondent regarding competence of the Secretary, Ministry of Works and Housing Government of India in filing the appeal, which according to the Respondent ought to have been filed by "Union of India". Their Lordships having noticed the fact that under the Rules of Business framed under Article 77 of the Constitution, the Union of India is to be sued through the Secretary of the concerned department who is a limb of the Union is to be sued through the Secretary of the concerned department who is a limb of the Union transacting its functions on behalf of the Government, therefore, it was a case of erroneous description of the nomenclature of the appellant though the appeal was filed by and on behalf of the Union of India.

46. It is well known that the allocation of business/functions of a Government department is done by the Governor of a State in accordance with the Rules of Business framed under Article 166 and by the President of India in the case of Union in accordance with the Rules of Business framed under Article 77 of the Constitution. Under the Rules of Business, as notified by the Governor of Punjab, the Minister-in-charge is the competent authority to dispose of business in relation to the department allocated to him and all the orders of a department are to be passed in the name of Governor of Punjab and are to be issued under the signatures of the Secretary of the concerned Department. Needless to say that the business of a particular department of the State Government can be transacted by passing the appropriate orders or taking action by the Minister in charge of the said department only and the orders to this effect are also required to be issued under the signatures of the Secretary of the said department. There is no scope of overlapping in the inter-departmental functioning, therefore it is legally untenable to argue that the Business in relation to Forest Department of the State Government could be transacted by the Department of Housing and Urban Development also. Reliance may be placed in this regard upon *A. Sanjeevi Naidu, etc. Vs. State of Madras and Another*, and *Samsher Singh Vs. State of Punjab and Another*. We therefore, do not find any force in this submission of the Plaintiff- Respondent No. 1.

47. That apart, the very genesis of controversy involved in this case suggests

that the nature of the land as to whether the same is "forest land" or not, ought to have been determined at the threshold as that alone will further determine the applicability of Central/State laws, reference to which has already been made. In our view, if it is found to be a "forest land", then the State Government or its authorities have absolutely no say in the matter and the power to accord any permission falls exclusively within the domain of the Central Government. If it is not a "forest land", then power to accord necessary permission under the Periphery Control Act, 1952 or P.L.P.A. as the case may be, comes within the jurisdiction of the State Government. Unfortunately, the Plaintiff-Respondent No. 1 did not seek any declaration as to whether the suit land is "forest land" or not.

48. In view of the above discussion, we hold that the issue No. 5, which goes to the root of the matter has been decided by the Courts below with a totally erroneous approach and their findings on this issue are accordingly reversed. We further hold that the questions of law No. 2 and 5 in the Memorandum of Appeal and additional questions of law No. (III) and (V) are substantial questions of law and fall squarely within the ambit of proviso to Section 99, Civil Procedure Code.

49. Questioning the very maintainability of the suit in its present form, Shri Anupam Gupta, learned counsel for the Appellants, takes us to the plaint to apprise that the Plaintiff-Respondent No. 1 sought a declaration that its application dated 21.8.1998 seeking permission for setting up a forest hill country club report at village Karoran, Tehsil Kharar, District Ropar, over the agricultural land as detailed in Appendix-A with the plaint was deemed to have been sanctioned, as the same was not rejected in writing within the statutory period of 90 days of its submission as required under the provisions of the 1952 Act and also sought permanent injunction restraining the defendants and their agents from interfering in any manner in the works undertaken by the plaintiff over the land and from demolishing the construction/developments already made over the said land. The defendants, however, came out with a preliminary objection that the Civil Court at Ropar had no territorial jurisdiction to entertain the suit as the property in dispute is situated in village Karoran which falls within the territorial jurisdiction of the Civil Courts at Kharar and that in view of Section 16 C.P.C. a suit regarding immovable property was required to be instituted in the Court within the local limits of whose jurisdiction the property is situate. To wriggle out from this preliminary objection, the Plaintiff-Respondent No. 1, however, in its replication took up the following stand: -

"1. It is incorrect hence denied that the Court has no jurisdiction to try the instant suit. Though the land is situated in village Karoran, but this Hon'ble Court is competent to entertain the suit. The provisions of Section 16 of the CPC are not applicable to the facts of this case. None of the Clauses as referred to u/s 16 are applicable to the facts of the present case. No relief qua land has been claimed in the present suit. Only relief claimed is declaration qua the State of Punjab. The case of the plaintiff squarely falls under the provision of Section 20

of the CPC and since defendant No. 5 i.e. the Collector is working within the jurisdiction of this Hon"ble Court, thus, this Court is fully competent to try the suit. It is wrong that no relief has been claimed in the suit. It is wrong that no relief has been claimed against defendant No. 5. Through the instant suit, the plaintiff has sought declaration and restraint against the State of Punjab and as such the suit is maintainable in any Court within the State of Punjab."(Emphasis ours).

It is argued by Shri Gupta that no relief qua the land in dispute having been claimed by the Plaintiff-Respondent No. 1 as per its stand taken in the replication, the decree of declaration granted by the Courts below is a "brutum fulmen" namely, an empty decree which could give nothing. He argues that in the absence of any relief qua the land in dispute, neither the declaration sought by the Plaintiff-Respondent No. 1 could be granted nor could the Appellants be enjoined from demolishing the construction/development works "over the suit land". 49-A. To be fair to Shri Rajiv Atma Ram, learned Senior Counsel representing the Plaintiff-Respondent No. 1, he while reiterating the stand taken in the replication that no relief qua the land in dispute was sought, contended that the plaintiff was entitled to seek declaration limiting the "legal character" of the land and such a suit is very much maintainable u/s 34 of the Specific Relief Act. Reliance was placed upon the judgment of the Apex Court in the case of Ashok Kumar Srivastav v. National Insurance Company Limited A.I.R 1990 S.C. 2046 to further contend that even if a suit is not maintainable under one specific provision of the Specific Relief Act, Section 35 thereof enables to open the corridors of Civil Courts to admit suits filed for a variety of declaratory reliefs. To canvass that the grant of decree of injunction was an absolute discretion of the Courts below independent of the requirements of a declaratory relief, reliance was placed upon the judgment of the Apex Court in the case of Supreme General Films Exchange Ltd. Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Others, wherein it was held asunder:-

"Section 42 merely gives statutory recognition to a well-recognised type of declaratory relief and subjects it to a limitation, but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of Courts to give declarations of right in appropriate cases falling outside Section 42. The circumstances in which a declaratory decree u/s 42 should be awarded is a matter of discretion depending upon the facts of each case. No doubt a complete stranger whose interest is not affected by another's legal character or who has no interest in another's property could not get a declaration u/s 42 with reference to the legal character of the property involved."

50. The expression "Immovable property" has been defined in Section 3(26) of the General Clauses Act, in Section 3 of the Transfer of Property Act as well as in Section 2(6) of the Registration Act. In terms of the illustrative definitions given in these statutes which are also of inclusive in nature, "trees and shrubs", "wells and buildings", right to "fisheries in a lake" and even "interest in future rent in

relation to immovable property" are also integral part of an immovable property.

In the case of *Ananda Behera and Another Vs. The State of Orissa and Another*, , where Lordships held that:-

"The sale of a right to catch and carry away fish in specific portions of the lake over a specified future period amounts to a license to enter on the land coupled with a grant to catch and carry away the fish, that is to say, it is a profit a prendre which is regarded in India as a benefit that arises out of the land and as such is immovable property."

In the case of *Shantabai Vs. State of Bombay and Others*, , their Lordships held that "timber" are regarded as immovable property because they are attached to or rooted in the earth". In the case of *Ram Rattan (Dead) by Lrs. Vs. Bajrang Lal and Others*, , their Lordships held that "right to worship by turn of a shebait is immovable property gift of which can be made only be registered instrument and that the office of shebait is hereditary unless provision to the contrary is made in the deed creating the endowment". In the case of AIR 1936 230 (Privy Council) , wherein regarding Section 54 of the Transfer of Property Act, it was held that-

"An interest under a deed of Settlement, whereby a person is granted an income in future rents and profits of certain immovable property and also a share in the proceeds of the sale of the property in future, is immovable property within the meaning of Section 54, and sale or transfer of such interest cannot be effected, otherwise than by a registered instrument."

51. Keeping in view the broadly explained ingredients of an "immovable property", the "golf course" is an immovable property and in the absence of any relief sought by the Plaintiff-Respondent No. 1 qua the land in question, we fail to understand as to how could any declaration regarding the validity of the Golf Course or buildings appertain thereto be made or consequential injunction against their demolition be granted. No demolition of the buildings/development works could be carried out by the Appellants without "entering" over and "touching" the "land". In our view, no decree for injunction to restrain the Appellants from demolishing the buildings/development works carried out by Plaintiff-Respondent No. 1 "over the land" mentioned in Annexure-A to the plaint, could be granted unless relief qua the land is also sought by it. Similarly, the Appellants also could not be restrained from demolishing these immovable properties, therefore, the suit filed by the Plaintiff-Respondent No. 1 for the declaration in question or to injunct the Appellants from demolishing the buildings and other development works was totally misconceived and not maintainable without seeking relief in relation to the land in question. Consequently, we hold that the additional questions of Law No. (I) and (II), which relate to the very foundation and maintainability of the suit, inter se, parties, are also substantial questions of law.

52. As a necessary corollary, we further hold that the suit in question ought to have been filed by the Plaintiff-Respondent No. 1 in the Civil Courts at Kharar in

whose territorial jurisdiction, the land in question is located. We, however, refrain ourselves from expressing on the issue though vehemently argued on behalf of the Appellants that the suit was filed by the Plaintiff-Respondent No. 1 at Kharar with an ulterior motive and/or for certain extraneous considerations, as we do not find any evidence on record to draw such an inference except that the learned trial Court, while rejecting the preliminary objection in relation to its territorial jurisdiction, has made some over-jealous observations which ought to have been avoided by it.

53. Shri Gupta then argued that the Courts below has drawn an adverse inference against the Appellants (in an unfair manner and without any legal basis) for not producing the Government records which were summoned by the Plaintiff-Respondent No. 1 by moving a specific application in this regard. He took us to the record of the learned trial Court to point out that an application dated 23.5.2001 was moved by the Plaintiff-Respondent No. 1, inter alia stating that "the entire correspondence done by the plaintiff with defendant No. 3 for setting up Forest Hill Country Club Resort at village Karoran be directed to be produced so that the plaintiff may adduce his evidence in the interest of justice". This application was neither verified nor supported by an affidavit. A reply dated 19.9.2001 was filed on behalf of the Appellants in which preliminary objection No. 2 was taken that "the applicant has failed to give any details regarding the record which they want us to be produced on record. In fact, the application is vague and is liable to be dismissed". No rejoinder to this reply was filed by the Plaintiff-Respondent No. 1. the aforesaid application was taken up by the learned Civil Court on 23.5.2001 and it passed the following order:-

"an application filed by the plaintiff for producing some documents. Copies supplied. For reply, put up file on 13.6.2001."

This application was thereafter taken up on 26.9.2001 when the learned trial Court passed the order as follows:-

"Present: Counsel for the parties.

Heard on the application for production of documents. Plaintiff filed this application for production of correspondence made by the plaintiff to the defendant but defendants filed reply stating that details of the record is not mentioned. As pointed out by the counsel for the plaintiff correspondence made by the plaintiff with the defendant with regard to the project in question of the plaintiff be produced on 3.10.2001".

Thereafter, the aforesaid application was again taken up on 7.11.2001 when the following order was passed;-

"Present: Counsel for the parties.

Documents have not been filed. A number of adjournments have been taken for production of record. Necessary inference permissible under law for non production of documents could be taken at the time of arguments. However, if

the defendants produce the documents on the next date, they will be permitted to place on record.

Now put up on 5.12.2001 for P.W.s" Again on 5.12.2001, the learned Civil Court passed the following order;

"Present: Counsel for the parties.

Some documents have been filed by the P.U.D.A. today. This be placed on the file. Now for evidence of the plaintiff to come up on 9.1.2002. (Emphasis ours).

We find no other order passed by the learned Civil Court in relation to the aforementioned application. However, in Paragraph 15 of the impugned judgment dated 30.4.2002, the learned Civil Court by completely overlooking its own zimni orders, drew adverse inference against the Appellants by observing as under:-

"The plaintiff in the present case had filed application on 27.5.2001 to produce the entire correspondence done by the plaintiff with defendants for setting up Forest Hill Country Club Resort in village Karoran, but the record was not produced and when the State did not produce the record till 22.8.2001, the Court ordered that no more date is ordered to be given in the interest of justice to produce the record and in case documents are not produced, then the date for evidence will be fixed and whatever inference under law for no production of documents will be taken at the stage of arguments but defendants did not produce the record nor filed any affidavit that the summoned record is not with them...."

54. We cannot express our anguish except to say that the trial Court in its over enthusiasm to decree the suit, ought not have buried its own interlocutory orders thereby giving undesirable and avoidable inference of a favourable bias. We stop short of further observations and say nothing more. We, however, unhesitatingly hold that the application moved by Plaintiff-Respondent No. 1 regarding production of record of the Appellants was totally vague and ought to have been thrown away at the threshold in view of the preliminary objection taken by the Appellants in their reply. In any case, some of the record was produced by the Appellants and in the absence of disclosure of the specific documents or record to be produced, the Appellants were left in lurch and there was no occasion to draw an adverse inference against them. The finding, recorded by the learned trial Court in this regard and as affirmed by the learned First Appellate Court, therefore, cannot sustain and are reversed.

55. Shri Gupta has lastly contended that in the absence of notice u/s 80, Civil Procedure Code, the suit in the present case was not maintainable. We, however, find from the record that an application was moved by the Plaintiff-Respondent No. 1 seeking exemption from serving notice u/s 80, CPC upon which the order dated March 15, 2001 was passed by the learned trial Court taking note of the contention that urgent relief was sought and notice thereof was accordingly issued to the Appellants/defendants. Though the Appellants filed their reply

dated March 27, 2001 contesting the aforementioned application, however, it seems that no issue was pressed by them at the time of framing of issues by the learned trial Court on April 20, 2001. Shri Gupta, learned counsel for the Appellants, however, contends that embargo against entertaining a suit against the State, unless a notice for the requisite period has been served upon it u/s 80, CPC, is against the Court and not against the party, therefore, requirement of notice could be waived off by a party and not by the Court. We, however, find that neither the Appellants pressed for framing of an issue regarding non-maintainability of suit for want of notice u/s 80 CPC nor it was one of the grounds of Appeal before the First Appellate Court that the issue regarding non service of notice u/s 80 CPC was not correctly framed by the learned Civil Court. Even in the present Memorandum of Appeal, this issue has not been agitated. We are, therefore, of the view that the Appellants cannot be permitted to agitate this issue at this stage unless it is shown that some actual prejudice has been caused to them for want of such notice, therefore, additional question of law No. IV raised by the Appellants does not arise for consideration, much less as a substantial question of law.

56. For the reasons stated above, we reverse the findings recorded by the Courts below on issues No. 1, 2, 5, 8 and 9 and decide the same against the Plaintiff-Respondent No. 1 and in favour of the Appellants and consequently, set aside the impugned judgments and decree dated 30.4.2002 and 26.7.2002 passed by the learned Trial Court and the First Appellate Court, respectively. As a necessary corollary thereof, the suit filed by the Plaintiff-Respondent No. 1 is dismissed with costs throughout. Counsel fee assessed at Rs. 11,000/- in each case.