The State Of Telangana vs Mohd. Abdul Qasim (Died) Per Lrs. on 18 April, 2024

Author: M. M. Sundresh

Bench: M. M. Sundresh

2024 INSC 310

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
[Arising out of SLP (C) No. 6937 of 2021]

THE STATE OF TELANGANA & ORS.

VERSUS

MOHD. ABDUL QASIM (DIED) PER LRS.

JUDGMENT

M. M. Sundresh, J.

1. Leave granted.

2. The statement made by the Tribal Chief Seattle, way back in the year 1854, in his letter to the offer of George Washington, the former First President of the United States of America, to buy their land, is a pearl of wisdom not understood by the ignorant, educated modern mind.

“Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every meadow, every humming insect. All are holy in the memory and experience of my people.

xxx xxx xxx This we know: the earth does not belong to man; man belongs to the earth. 14:29:09 IST Reason: All things are connected like the blood that unites us all. Man did not weave the web of life; he is merely a strand in it. Whatever he does to the web, he does to himself.”

3. A well merited judgment, passed in A.S. No. 145 of 1994 by the High Court of Judicature at

Hyderabad for the State of Telangana and the State of Andhra Pradesh, decided on a conscious consideration of the issues raised before it, confirming the one rendered by the Trial Court, was reviewed like an Appellate Court, based upon the materials that emanated after its filing, at the instance of a party defendant in whose favour a decree was granted and that too by acting without the requisite jurisdiction, is under challenge in this appeal.

4. We are dealing with a case where an instrumentality of the State, despite a categorical finding of the suit property being a forest land, took different stands, but finally rectified by way of an affidavit before this Court. This act of taking different stands resulted in facilitating the impugned order being passed in favour of the respondents, setting aside the concurrent judgments rendered by two courts below, on appreciation of fact and law.

5. Heard Learned Additional Solicitor General Ms. Aishwarya Bhati for Appellants and Learned Senior Counsel Mr. Neeraj Kishan Kaul, Mr. L Narsimha Reddy for Respondents, perused the entire record, including the affidavits filed.

THE ANDHRA PRADESH FOREST ACT, 1967

6. The Andhra Pradesh Forest Act, 1967 (hereinafter referred to as "the A.P. Forest Act") has been enacted with a laudable objective of conserving, protecting and extending the forest cover, with a sound mechanism to deal with all the disputes arising thereunder while declaring land as reserved forest.

"As this Act is only a Consolidating Act, it is necessary that the objects and reasons of the Madras Act are incorporated so that the objects and reasons for this Act can as well be known. The Objects and Reasons of the Madras Act were published in Fort St. George Gazette Extraordinary, dated 06th July 1882 at page 17 as follows:

> Statement of Objects and Reasons: This Act is designed to supply the want which had long been felt of legislative enactment to enable Government to carry out effectually the conservancy of forests of the Presidency, and to systematic and regulate the action of the Forest Department.
>
> The first necessity is to provide for the constitution of the more important forests as State Reserves, and either to clear them under arrangement for due compensation of private rights which mitigate against forest conservancy, or to ascertain and define such rights so that future extension of them and fresh encroachments shall be impossible. To this end, the Act enables Government to empower officers to be called Forest Settlement officers to enquire into and to commit on record all private rights in areas to be elected for constitution as reserved forests. From the decisions of the officers appeal will lie, in the case of claims involving proprietary rights, to the District Courts, in the case of rights of way, and of rights to pasture to forest produce, or to the use of water to the Collector or other Revenue Officer of not less than such standing. When the enquiry is completed and all claims disposed of and settled, the

forest will be declared by the Government to be reserved, and thereafter no fresh rights can accrue therein. The Bill also contains such provisions as are necessary for the protection of forests declared reserved…" (emphasis supplied) Section 2 of the A.P. Forest Act "2. Definitions:- In this Act, unless the context otherwise requires-

xxx xxx xxx

(f) 'forest officer' means any person appointed by the Government or by any officer empowered by the government in this behalf,-

[(i) to be the Principal Chief Conservator of Forests, Special Principal Chief Conservator of Forests, Additional Principal Chief Conservator of Forests, Chief Conservator of Forests, Conservator, Deputy Conservator, Assistant Conservator, Divisional Forest Officer, Sub-Divisional Forest Officer, Ranger, Deputy Ranger, Forester or Forest Section Officer, Forest Guard or Forest Beat Officer, Assistant Beat Officer, Thanadar, Checking Officer or Plantation Watcher or any other person or authority as may be notified;]

(ii) to perform any function of a forest officer under this Act or any rule or order made thereunder;

but does not include a Forest Settlement Officer appointed under Clause (c) of sub-section (1) of Section 4;" Section 4 of the A.P. Forest Act "4. Notification by Government:- (1) Whenever it is proposed to constitute any land as a reserved forest, the Government shall publish a notification in the Andhra Pradesh Gazette and in the District Gazette concerned in any;

(a) specifying, as nearly as possible, the situation and limits of such land;

(b) declaring that it is proposed to constitute such land as reserved forest;

(c) appointing a Forest Settlement Officer to consider the objections, if any, against the declaration under Clause (b) and to enquire into and determine the existence, nature and extent of any rights claimed by, or alleged to exist in favour of, any person in or over any land comprised within such limits, or to any forest produce of such land, and to deal with the same as provided in this Chapter.

Explanation:- (1) For the purpose of Clause (a), it shall be sufficient to describe the limits of the land by any well-known or readily intelligible boundaries, such as roads, rivers, bridges and the like. (2) A person appointed to be a Forest Settlement Officer under Clause (c) of sub-section (1) shall be an officer of the Revenue Department not below the rank of a Revenue Divisional Officer.

(3) Any forest officer may represent the Forest Department at the inquiry conducted under this Chapter." Section 7 of the A.P. Forest Act "7. Bar of accrual of fresh rights and prohibition of clearings:- (1) During the interval between the publication of a notification in the Andhra Pradesh Gazette under Section 4 and the date fixed by the notification under Section 15-

(a) no right shall be acquired by any person in or over the land included in the notification under Sec. 4 except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or any person in whom such right was vested before the publication of the notification under Section 4;

(b) no new house shall be built or plantation formed, no fresh clearing for cultivation or for any other purpose shall be made, on such land and no tress shall be cut from such land for the purpose of trade or manufacture;

Provided that nothing shall prohibit the doing of any act specified in this clause with the permission in writing of the Forest Settlement Officer; and

(c) no person shall set fire or kindle or leave burning any fire in such manner as to endanger or damage such land or forest produce. (2) No patta in such land shall be granted by or on behalf of the Government." Section 8 of the A.P. Forest Act "8. Inquiry by Forest Settlement Officer:- (1) The Forest Settlement Officer shall consider every objection and inquire into every claim made under Section 6, after recording in writing the statements made or evidence given in pursuance of the proclamation published or notice served under that section. He shall record any representation which the forest officer, if any, representing the Forest Department under sub-section (3) of Section 4, may make in respect of any such objection or claim.

(2) The evidence under sub-section (1) shall be recorded in the manner provided by the Code of Civil Procedure, 1908 in appealable cases." Section 9 of the A.P. Forest Act "9. Powers of Forest Settlement Officer:- For the purpose of an inquiry under Section 8, the Forest Settlement Officer may exercise the following powers, namely:

> (a) power to enter by himself or to authorise any officer to enter upon any land and to survey, demarcate and make a map of the land; and
>
> (b) the powers conferred on a Civil Court by the Code of Civil Procedure, 1908, for summoning and enforcing the attendance of any person and examining him on oath and requiring the production of any document or other article." Section 10 of the A.P. Forest Act "10. Claims to certain rights:- (1) Where the claims relate to a right in or over any land other than the following rights:-
>
> (a) a right of way;
>
> (b) a right to water-course, or to use of water;
>
> (c) a right of pasture; or
>
> (d) a right to forest produce;

the Forest Settlement Officer shall, after considering the particulars of such claim, and the objections of the forest officer, if any, pass, an order, admitting or rejecting the same wholly or in part after recording the reasons therefor. (2)(a) If any claim is admitted wholly or in part under sub-section (1), the Forest Settlement Officer may:-

(i) accept the voluntary surrender of the right by the claimant or determine the amount of compensation payable for the surrender of the right of the claimant, as the case may be; or

(ii) direct the exclusion of the land from the limits of the proposed forest: or

(iii) acquire such land in the manner provided by the Land Acquisition Act, 1894 (hereinafter in this sub-section referred to as the said Act).

(b) For the purpose of acquiring such land:-

(i) the acquisition shall be deemed to be for a public purpose; and the notification under Section 4 shall be deemed to be a notification under sub-section (1) of Section 4 of the said Act;

(ii) the Forest Settlement Officer shall be deemed to be a Collector under the said Act, and the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under Section 9 of the said Act;

(iii) the provisions of Sections 5-A, 6,7 and 8 of the said Act shall not be applicable; and

(iv) the Forest Settlement Officer with the consent of the claimant, or the Court as defined in the said Act-with the consent of the claimant and of the Government may, instead of money compensation, award compensation by the grant of any other land in exchange, by the grant of any right in or over land or partly by the grant of any land of any right therein and partly by the payment of money." Section 13 of the A.P. Forest Act "13. Appeals from the orders of Forest Settlement Officer:- (1) Where a claim is rejected wholly or in part, the claimant may, within ninety days from the date of the order under sub-section (1) of Section 10 and within sixty days from the date of the order under sub-section (1) of Section 11, prefer an appeal to the District Court having jurisdiction in respect of such rejection only.

(2) Where a claim is admitted under Section 10 or Section 11 in the first instance wholly or in part and where such claim does not relate to the acquisition of any land under the Land Acquisition Act, 1894, a like appeal, subject to the same period of limitation and subject to the same conditions, may be preferred to the District Court having jurisdiction on behalf of the Government by the forest officer or other person, generally or specially empowered by the Government in this behalf.

> (3) Every order passed on appeal under this section shall be final. (4) Where the District Court, on appeal, decides that the claim or such part thereof as has been rejected should be admitted, the Forest Settlement Officer shall proceed to deal with it in like manner as if it has been in the first instance admitted by himself." Section 15 of the A.P. Forest Act "15. Notification declaring Forest reserved:- (1) Upon the occurrence of the following events namely:-
>
> (a) the period fixed under Section 6 for preferring of an objection or a claim had elapsed, and every objection or claim made under that section was disposed of by the Forest Settlement Officer; and
>
> (b) in any such claim was made, the period limited by Section 13 for preferring an appeal from the order passed on such claim had elapsed, and every appeal presented within such period was disposed of by the appellate authority; and
>
> (c) all proceedings mentioned in Section 10 were taken and all lands, if any, to be included in the proposed forest, which the Forest Settlement Officer had, under Section 10, elected to acquire under the Land Acquisition Act, 1894, had become vested in the Government under Section 16 of that Act;

the Government may publish a notification specifying definitely according to the boundary marks erected or otherwise, the limits of the forest which it is intended to reserve and declaring the same to be reserved from a date to be fixed by such notification and from the date so fixed, such forest shall be deemed to be a reserved forest.

(2) Copies of the notification shall also be published in the District Gazette, if any, and in the manner provided for the proclamation under Section 6." Section 16 of the A.P. Forest Act "16. Extinction of rights not claimed:- Rights in respect of which no claim was preferred under Section 6 within the period fixed under that section shall stand extinguished on the publication of the notification under Section 15 unless, before the publication of such notification the person claiming them has convinced the Forest Settlement Officer that he had sufficient cause for not preferring such claim within that period in which case the Forest Settlement Officer shall proceed to dispose of the claim in the manner herein before provided."

7. Section 2 of the A.P. Forest Act, defines a "Forest Officer", to mean a vast category of officers. Such a forest officer is appointed to perform any function of a forest officer under the A.P. Forest Act, or any rule or order made thereunder. Clause (f) of Section 2 clarifies that such Forest Officer does not include a Forest Settlement Officer appointed under Clause (c) of sub-section (1) of Section 4, thus, making a distinction between a Forest Officer and a Forest Settlement Officer.

8. Under Section 4(2) of the A.P. Forest Act, a Forest Settlement Officer shall be an officer of the Revenue Department not below the rank of a Revenue Divisional Officer. Wide powers have been conferred upon the State Government to declare any land as a reserved forest, subject to due compliance of the other provisions. This has to be done by a notification published in Andhra

Pradesh Gazette and District Gazette under Section 4(1), by declaring its intention through a proposal.

9. The legislature consciously did not confer any role on an officer working under the forest department, by specifically naming an officer of the revenue department with his designation for determining qualification, as Forest Settlement Officer. Such an officer has to exercise quasi-judicial power.

10. After the commencement of proceedings under Section 4 of the A.P. Forest Act, even the Government is restrained from issuing any patta to any individual, for the reason that all disputes would have to be adjudicated under the Act, be it one of title under Section 10 or any other limited right as prescribed under Section 11 of the A.P. Forest Act. Under Sections 8 and 9 of the A.P. Forest Act, the Forest Settlement Officer has been conferred with powers of the civil court, as available under the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC 1908"), for the aforesaid purpose. While exercising power, the Forest Settlement Officer may even admit the claim wholly or in part under Section 10(2) by excluding any extent of land which is in dispute.

11. As per Section 13 of the A.P. Forest Act, an appeal lies before the District Court having territorial jurisdiction, which is to be filed within a period of 90 days from the date of the order passed under Section 10 by the Forest Settlement Officer. Thus, anyone who claims a right of ownership under Section 10 or any other limited right as illustrated under Section 11, has to seek an adjudication of his claim before the Forest Settlement Officer. If aggrieved, the remedy lies before the jurisdictional District Court, subject to the limitation as prescribed under Section 13.

12. After completion of the said exercise, the State Government would declare the proposed land as a reserved forest by issuing a notification under Section 15 of the A.P. Forest Act. Thereafter, the vesting of the land takes place by way of a deeming fiction i.e., giving the land the status of a reserved forest. Any right not claimed with respect to the land, shall stand extinguished after the publication under Section 15 as declared expressly under Section 16, by way of a reinforcement.

13. From the abovementioned provisions and their interpretation, it is very clear that the completion of the process as prescribed under Section 15 of the A.P. Forest Act would result in changing the character of land, including a forest land into a reserved forest. Thereafter, there shall be no question of raising any dispute on its character. The period of limitation mentioned under Section 13 of the A.P. Forest Act cannot be breached, though one might raise an objection with respect to its commencement.

SCOPE OF REVIEW

14. We shall start our discussion with the statement of law rendered by Justice V.R. Krishna Iyer.

Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167, "14. A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and

reversal of result..."

15. The legislature, in its wisdom, has chosen to restrict the scope of review from time to time. To indicate this legislative shift, Section 376 and 378 of the Code of Civil Procedure 1859 (hereinafter referred to as "the CPC 1859"), Section 623 of the Code of Civil Procedure 1877 (hereinafter referred to as "the CPC 1877"), Section 114 and Order XLVII Rule 1 of the CPC 1908 are reproduced herein below, Section 376 of the CPC 1859 "376 - Review of Judgement on discovery of new evidence: Any person considering himself aggrieved by a decree of a Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court - or by a decree of a District Court in appeal from which no special appeal shall have been admitted by the Sudder Court - or by a decree of the Sudder Court from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred no proceedings in the suit have been transmitted to Her Majesty in Council - and who from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time when such decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgement passed against him – may apply for a review of judgement by the Court which passed the decree." (emphasis supplied) Section 378 of the CPC 1859 "378 - The order of the Court for granting or refusing the review is final:

> If the Court shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if it shall be of opinion that the review desired is necessary to correct an evident error or omission or is otherwise requisite for the ends of justice, the Court shall grant the review, and its order in either case, whether for rejecting the application or granting the review, shall be final. Provided that no review of judgement shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree of which a review is solicited." (emphasis supplied)
>
> 16. Section 376 of the CPC 1859 provided a larger playing field to the court while dealing with an application to review. However, under Section 378 of the CPC 1859, a finality was sought to be given to the order of the court.

Section 623 of the CPC 1877 "623. Application for review of judgement: Any person considering himself aggrieved

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is hereby allowed; or

(c) by a judgement on a reference from a Court of Small Causes, And who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient

reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order, or to the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgement notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the appellate Court the case on which he applies for the review." (emphasis supplied)

17. Thus, taking note of the existence of a larger power to review, the legislature brought forth a change by adding the words "after the exercise of due diligence". Additionally, the words "on account of some mistake or error apparent on the face of the record" were also added. This conscious inclusion clearly restricts the power of review.

Section 114 of the CPC 1908 "114. Review.—Subject as aforesaid, any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit." Order XLVII Rule 1 of the CPC 1908 "1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a Superior Court in any other case, shall not be a ground for the review of such judgment.]" (emphasis supplied)

18. Section 114 read with Order XLVII Rule 1 of the CPC 1908 is verbatim similar to Section 623 of the CPC 1877, except for the Explanation to Order XLVII Rule 1 which was added by way of an Amendment in the year 1976.

Section 114 of the CPC 1908 speaks of the circumstances, instances and situations under which a review can be filed. The words "as it thinks fit" cannot be interpreted to mean anything beyond what is conferred under Order XLVII Rule 1. In other words, Section 114 has to be read along with Order XLVII Rule 1. While they are to be read together, Section 114 is more procedural, whereas Order XLVII Rule 1 is substantially substantive.

19. The words "due diligence", though one of fact, places onus heavily on the one who seeks a review. It has to be seen from the point of view of a reasonable and prudent man. Though an element of flexibility is given to any evidence or matter on its discovery, it has to be one which was not available to the court earlier. It could not have been produced despite due diligence, meaning thereby that it should have been available and, therefore, in existence at least at the time of passing the decree.

20. Mistake or error apparent on the face of record would debar the court from acting as an appellate court in disguise, by indulging in a re-hearing. A decision, however erroneous, can never be a factor for review, but can only be corrected in appeal. Such a mistake or error should be self-evident on the face of record. The error should be grave enough to be identified on a mere cursory look, and an omission so glaring that it requires interference in the form of a review. Being a creature of the statute, there is absolutely no room for a fresh hearing. The court has got no role to involve itself in the process of adjudication for a second time. Instead, it has to merely examine the existence of an apparent mistake or error. Even when two views are possible, the court shall not indulge itself by going into the merits.

21. The material produced, at this stage, should be of such pristine quality which, if taken into consideration, would have the logical effect of reversing the judgment. Order XLVII Rule 1 of the CPC, 1908 indicates that power of review can be exercised by courts, in three different situations, but these occasions ought to be read in an analogous manner. In other words, they should be read in a manner to mean that a restrictive power has been conferred upon the court. As stated, the words "for any other sufficient reason" ought to be read in conjunction with the earlier two categories reiterating the scope.

Being a judicial discretion, it has to be exercised with circumspection and on rare occasions. It is a power to be exercised by way of an exception, subject to the rigours of the provision.

22. A subsequent event per se cannot form the basis of a review. Sub-clause (c) of Order XLVII Rule 1 of the CPC 1908, clearly specifies that the important matter or evidence produced must have been available at the time when the decree was passed. This is a matter of rule. On a very rare occasion,

an exception can be carved out. Such an exception can only be exercised when the said matter or evidence is of unimpeachable quality. It is not only a new matter or evidence that should be taken into consideration, but it should also be an important one.

23. While exercising the said power, the court has to first check the evidentiary value of such discovery, including the circumstances under which it emanated, particularly when it inherently lacks jurisdiction or the evidence cannot be made admissible in law and therefore, is not relevant. In such a circumstance, there is no question of proceeding further in deciding the review application.

PRECEDENTS

24. Now, we shall place on record decisions rendered by this Court on the above principle of law discussed by us, Power of Review is not to be confused with Powers of Appellate Court in Appeal Jurisdiction.

Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and others, (1979) 4 SCC 389 “3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important documents Exs. A/1 and A/3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate Court to correct all manner of errors committed by the subordinate Court.” (emphasis supplied) Error Apparent on the Face of Record Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167 “8. It is well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: Sajjan Singh v. State of Rajasthan [AIR 1965 SC 845 : (1965) 1 SCR 933, 948 : (1965) 1 SCJ 377] . For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: G.L. Gupta v. D.N. Mehta [(1971) 3 SCC 189 : 1971 SCC (Cri) 279 : (1971) 3 SCR 748, 750] . The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full

and effective justice: O.N. Mohindroo v. Distt. Judge, Delhi [(1971) 3 SCC 5 : (1971) 2 SCR 11, 27] . Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order XL Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility": Sow Chandra Kante v. Sheikh Habib [(1975) 1 SCC 674 : 1975 SCC (Tax) 200 : (1975) 3 SCR 933] .

9. Now, besides the fact that most of the legal material so assiduously collected and placed before us by the learned Additional Solicitor - General, who has now been entrusted to appear for the respondent, was never brought to our attention when the appeals were heard, we may also examine whether the judgment suffers from an error apparent on the face of the record. Such an error exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record." (emphasis supplied) Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715 "9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. The observations of Sharma, J. that "accordingly, the order in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunctions were provided" and as such the case was covered by Article 182 and not Article 181 cannot be said to fall within the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25-4-1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which was not of such a nature, "which had to be detected by a long-drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment-debtors could have approached the higher forum through appropriate proceedings to

assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review" of the order of Gupta, J. on the grounds detailed in the review petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and we accordingly accept this appeal and set aside the impugned order dated 6-3-1997." (emphasis supplied) Meaning of the Words 'for any other sufficient reason' in Order XLVII Rule 1 of the CPC 1908 Chhajju Ram v. Neki, 1922 SCC OnLine PC 11 "...It will be observed that the question with which their Lordships have to deal is one concerned not with appeal to a Court of Appeal, but with review by the Court which had already disposed of the case. In England it is only under strictly limited circumstances that an application for such a review can be entertained. In India, however, provision has for long past been made by legislation for review in addition to appeal. But as the right is the creation of Indian statue law, it is necessary to see what such statutory law really allows. The law applicable to the present case is laid down by O. 47, R. 1, of the Code of Civil Procedure, 1908. This Rule is enacted in the following terms:— "Any person considering himself aggrieved, (a) by a decree or order from which an appeal is allowed, but from which no appeal has, been preferred (b) by a decree or order from which no appeal is hereby allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order." xxx xxx xxx If their Lordships felt themselves at liberty to construe the language of O. 47 of the Code of Civil Procedure, 1908 without reference to its history and to the decisions upon it, their task would not appear to be a difficult one. For it is obvious that the Code contemplates procedure by way of review by the Court which has already given judgment as being different from that by way of appeal to a Court of Appeal. The three cases in which alone mere review is permitted are those of new material overlooked by excusable misfortune, mistake or error apparent on the face of the record, or "any other sufficient reason." The first two alternatives do not apply in the present case, and the expression "sufficient," if this were all, would naturally be read as meaning sufficiency of a kind analogous to the two already specified, that is to say, to excusable failure to bring to the notice of the Court new and important matters, or error on the face of the record. But before adopting this restricted construction of the expression "sufficient," it is necessary to have in mind, in the first place, that the provision as to review was not introduced into the Code for the first time in 1908, but appears there as a modification of previous provision made in earlier legislation : and, in the second place, that the extent of the power of a Court in India to review its own decree under successive forms of legislative provision has been the subject of a good deal of judicial interpretation, not, however, in all cases harmonious. That the power given by the Indian Code is different from the very restricted power which exists in England appears plain from the decision in Charles Bright and Co. v. Seller [[1904] 1 K.B. 6.] , where the Court of Appeal discussed the history of the procedure in England and explained its limits.

xxx xxx xxx Their Lordships have examined numerous authorities, and they have found much conflict of judicial opinion on the point referred to. There is plainly no such preponderance of view in either direction as to render it clear that there is any settled course of decision which they are under obligation to follow. Some of the decisions in the earlier cases may have been influenced by

the wider form of expression then in force, and these decisions may have had weight with the learned Judges who, in cases turning on the subsequent Code, had regarded the intention of the legislature as remaining unaltered. But their Lordships are unable to assume that the language used in the Codes of 1877 and 1908 is intended to leave open the questions which were raised on the language used in the earlier legislation. They think that R. 1 of O. 47 must be read as in itself definitive of the limits within which review is to-day permitted, and that reference to practice under former and different statutes is misleading. So construing it they interpret the words "any other sufficient reason" as meaning a reason sufficient on grounds at least analogous to those specified immediately previously. Such an interpretation excludes from the power of review conferred the course taken by the second and third Division Bench, composed of Wilberforce, J., and Scott Smith, J., and by Wilberforce, J., and LeRossignol, J., respectively. The result is that the judgments given by these two Division Benches ought to be set aside, and that of the Bench of the Chief Court composed of Scott Smith, J., and Leslie Jones, J., restored, so that the suit will stand dismissed. The respondent-plaintiffs must pay the costs here and in the Courts below." (emphasis supplied) Discovery of New Matter or Evidence State of W.B. v. Kamal Sengupta, (2008) 8 SCC 612 "21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision." An Order can be reviewed only on the prescribed grounds mentioned in Order XLVII Rule 1 of the CPC 1908 Shri Ram Sahu v. Vinod Kumar Rawat, (2021) 13 SCC 1 "10. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the court, which may order or pass the decree. From the bare reading of Section 114CPC, it appears that the said substantive power of review under Section 114CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said section imposed any prohibition on the court for exercising its power to review its decision. However, an order can be reviewed by a court only on the prescribed grounds mentioned in Order 47 Rule 1CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the court of

review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review." (emphasis supplied) Evidence cannot be Reappreciated in Review Kerala SEB v. Hitech Electrothermics & Hydropower Ltd., (2005) 6 SCC 651 "10. This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production by 31-12-1996. This is a finding of fact recorded by this Court on the basis of the appreciation of evidence produced before the Court. In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise." (emphasis supplied) UNDERSTANDING OF THE FOREST: A CONSTITUTIONAL PERSPECTIVE

25. Article 48A of the Constitution of India, 1950 imposes a clear mandate upon the State as a Directive Principle of State Policy, while Article 51A(g) correspondingly casts a duty upon a citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for fellow living creatures. These two provisions qua a forest ought to be understood in light of Articles 14, 19 and 21 of the Constitution of India, 1950. We say so, as they represent the collective conscience of the Constitution. If the continued existence and protection of forests is in the interest of humanity, various species and nature, then there can be no other interpretation than to read the constitutional ethos into these provisions.

26. Part III and Part IV of the Constitution are like two wheels of a chariot, complementing each other in their commitment to a social change and development. They form the core of nation building and a progressive society.

PRECEDENTS Relevance of Directive Principles of State Policy Sachidanand Pandey v. State of W.B., (1987) 2 SCC 295 "4. In India, as elsewhere in the world, uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problem. The once Imperial City of Calcutta is no exception. The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an allotment of land for the construction of a Five Star Hotel at the expense of the zoological garden that it warrants interference by this Court? Obviously, if the government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for this Court to interfere in the absence of mala fides. On the other hand, if relevant considerations are

not borne in mind and irrelevant considerations influence the decision, the court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A of the Constitution, the Directive Principle which enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country", and Article 51-A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures". When the court is called upon to give effect to the Directive Principle and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy- making authority. The least that the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further must depend on the circumstances of the case. The court may always give necessary directions. However the court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the court may feel justified in resigning itself to acceptance of the decision of the concerned authority. We may now proceed to examine the facts of the present case." (emphasis supplied) Article 48A and 51A To Be Considered in Light of Article 21 of the Constitution of India, 1950 M.C. Mehta v. Kamal Nath, (2000) 6 SCC 213 "8. Apart from the above statutes and the rules made thereunder, Article 48- A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51-A(g) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution.

9. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to fundamental rights under Articles 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect "life", in order to protect "environment" and in order to protect "air, water and soil" from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution. The judgment for removal of hazardous and obnoxious industries from the residential areas, the directions for closure of certain hazardous industries, the directions for closure of slaughterhouse and its relocation, the various directions issued for the protection of the Ridge area in Delhi, the directions for setting up effluent treatment plants to the industries located in Delhi, the directions to tanneries etc., are all judgments which seek to protect the environment." (emphasis supplied) Article 48A And 51A Must guide the Interpretation of Laws Pradeep Krishen v. Union of India, (1996) 8 SCC 599 "15. Now as pointed out earlier, since Parliament had no power to make laws for the States except as provided by Articles 249 and 250 of the Constitution, the States were required to pass resolutions under Article 252(1) to enable Parliament to enact the law. After as many as 11 States passed resolutions to that effect, the

Act came to be enacted to provide for the protection of wild animals and birds and for matters connected therewith or ancillary or incidental thereto. Even Articles 48-A and 51-A(g) inserted in the Constitution by the 42nd Amendment oblige the State and the citizen, respectively, to protect and improve the natural environment and to safeguard the forest and wildlife of the country. The statutory as well as the constitutional message is therefore loud and clear and it is this message which we must constantly keep in focus while dealing with issues and matters concerning the environment and the forest area as well as wildlife within those forests. This objective must guide us in interpreting the laws dealing with these matters and our interpretation must, unless the expression or the context conveys otherwise, subserve and advance the aforementioned constitutional objectives. With this approach in mind we may now proceed to deal with the contentions urged by parties." (emphasis supplied) ENVIRONMENT Section 2 of the Environment (Protection) Act, 1986 "2. Definitions.—In this Act, unless the context otherwise requires,—

(a) 'environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;"

27. The word "environment" shall not be understood from a narrow perspective.

Albert Einstein once observed "environment is everything that is not me". In our considered view, the environment would include both animate and inanimate. One cannot segregate these two segments, which are broadly differentiated only for the ease of human understanding.

WHY WE NEED FORESTS ?

"Man is the most insane species. He worships an invisible God and destroys a visible Nature, unaware that this Nature he's destroying is this God he's worshiping." Hubert Reeves.

Canadian astrophysicist

28. Human beings indulge themselves in selective amnesia when it comes to fathom the significance of forests. It is the forests which give life to the Earth by replacing carbon dioxide with oxygen, thereby providing a hospitable environment for the steady growth of diverse life forms. It's the spirit of the forest that moves the Earth. History shall not be understood from the jaundiced eyes of humans but through the prism of the environment, the forest in particular.

29. Forests not only provide for and facilitate the sustenance of life, but they also continue to protect and foster it. They continue to tackle the ever-increasing carbon dioxide emissions produced by humans in the name of development, while striving to sustain all species. Despite the unblemished, selfless and motherly service rendered by forests, man in his folly continues with their destruction, unmindful of the fact that he is inadvertently destroying himself.

30. Consequent to the advent of agriculture, man has destroyed a significant portion of forests at his own peril. Forests serve the Earth in a myriad of ways ranging from regulating carbon emissions,

aiding in soil conservation and regulating the water cycle. Water being a life source, its availability for all life forms is heavily dependent upon the aquifers created by forests. Forests also play a pivotal role in controlling pollution, which significantly affects the underprivileged, violating their right to equality under Article 14 of the Constitution of India, 1950. It is the vulnerable sections of the society who would be most affected by the depletion of forests, considering the fact that the more affluent sections of society have better access to resources as compared to them. Therefore, the protection of forests is in the interest of mankind, even assuming that the other factors can be ignored.

Municipal Corpn. of Greater Mumbai v. Ankita Sinha, (2022) 13 SCC "XI. Environmental Justice and Environmental Equity

75. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition. [Schlosberg D., Defining Environmental Justice : Theories, Movements, and Nature (Oxford University Press 2009).] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalised groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

76. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer [then Assistant Attorney General, Environment and Natural Resources Division ("ENRD"), US Department of Justice] and Timothy J. Dowling (then Attorney at ENRD) in their Reflections on the Role of the Courts in Environmental Law, wrote the following evocative passage on the concept of environmental justice:

> "Environmental justice, which focuses on whether minorities and low- income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity", which is understood to mean the fair distribution of environmental risks and protection from environmental harms." [Schiffer, L.J. & Dowling, T.J. (1997), "Reflections on the Role of the Courts in Environmental Law", 27(2) Environmental Law 327-342.]

77. There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people:

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school", whereas the people who reside there do little or nothing to harm their community." [Jeff Todd, "A 'Sense of Equity' in Environmental Justice Litigation", 44 Harv Envtl L Rev 169, 193 (2020).]

78. When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "equal footing" conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalised classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

xxx xxx xxx

80. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the "Blindfold of Lady Justice", which symbolises "the ideal of administering equal justice to everyone who comes to our courts, regardless of race, creed, or economic class". [Schiffer, L.J. & Dowling, T.J. (1997), "Reflections on the Role of the Courts in Environmental Law", 27(2) Environmental Law 327-342.] The relevance of this concept is particularly apposite when we consider the inability of most marginalised communities, to access the legal machinery." (emphasis supplied) NEED FOR A CHANGE: FROM ANTHROPOCENTRIC TO ECOCENTRIC

31. There is a crying need for a change in our approach. Man being an enlightened species, is expected to act as a trustee of the Earth. It is his duty to ensure the preservation of the ecosystem and to continuously endeavour towards the protection of air, water and land. It is not his right to destroy the habitat of other species but his duty to protect them from further peril. A right to enjoy cannot be restricted to any specific group, and so also to human beings. The time has come for mankind to live sustainably and respect the rights of rivers, lakes, beaches, estuaries, ridges, trees, mountains, seas and air. It is imperative to do so as there is always a constant threat to forests due to the ever-

increasing population. Man is bound by nature's law. Therefore, the need of the hour is to transform from an anthropocentric approach to ecocentric approach which will encompass a wider perspective in the interest of the environment. Dr. Susana Borras in her paper titled "New Transitions from Human Rights to the Environment to the Rights of Nature" published in Transnational Environmental Law, Volume 5, Issue 1, April 2016 has reflected on the rights of nature (p. 114), "A new approach is emerging, however: the recognition of the rights of nature, which implies a holistic approach to all life and all ecosystems. In recent years, a series of normative precedents have surfaced, which recognize that nature has certain rights as a legal subject and holder of rights. These

precedents potentially contribute not merely a greater sensitivity to the environment, but a thorough reorientation about how to protect the Earth as the centre of life.

From this perspective, known as 'biocentrism', nature is not an object of protection but a subject with fundamental rights, such as the rights to exist, to survive, and to persist and regenerate vital cycles. The implication of this recognition is that human beings have the legal authority and responsibility to enforce these rights on behalf of nature in that rights of nature become an essential element for the sustainability and the survivability of human societies. This concept is based on the recognition that humans, as but one part of life on earth, must live within their ecological limits rather than see themselves as the purpose of environmental protection, as the 'anthropocentric' approach proposes. Humans are trustees of the Earth rather than being mere stewards. The idea is based on the proposition that ecosystems of air, water, land, and atmosphere are a public trust and should be preserved and protected as habitat for all natural beings and natural communities." (emphasis supplied) T.N. Godavarman Thirumulpad v. Union of India, (2012) 3 SCC 277 "17. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, intergenerational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and that non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature-centred where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature includes both humans and non-humans. The National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 are centred on the principle of ecocentrism." The concept of natural rights theory is being evolved, which encapsulates recognizing and acknowledging the rights of nature. As stated, such a right is meant for the benefit of nature, inclusive of all species, both present and future. The concept of trusteeship and inter-generational equity ought to be understood from this perspective, as any deviation would cause not only degradation of the environment but also serious inequality between different species as well as amongst them. The idea is to recognize the importance of forests qua the society as their significance has to be seen in the light of their effect on the Earth.

Christopher D. Stone: Should Trees Have Standing? – Toward Legal Rights For Natural Objects, Southern California Law Review, 45 (1972) (pp. 464, 473, 474, 476), "It is not inevitable, nor is it wise, that natural objects should have no rights to seek redress on their own behalf. It is no answer to say that streams and forests cannot have standing because streams and forests cannot speak. Corporations cannot speak either; nor can states, estates, infants, incompetents, municipalities or universities... ...If the environment is not to get lost in the shuffle, we would do well, I think, to adopt the guardianship approach as an additional safeguard, conceptualizing major natural objects as holders of their own rights, raisable by the court-appointed guardian.

...There is also a good case to be made for taking into account harm to the environment-in its own right. As indicated above, the traditional way of deciding whether to issue injunctions in lawsuits

affecting the environment, at least where communal property is involved, has been to strike some sort of balance regarding the economic hardships on human beings....

...Why should the environment be of importance only indirectly, as lost profits to someone else? Why not throw into the balance the cost to the environment?

...the lost environmental "values" of which we are now speaking are by definition over and above those that the market is prepared to bid for: they are priceless.

One possible measure of damages, suggested earlier, would be the cost of making the environment whole, just as, when a man is injured in an automobile accident, we impose upon the responsible party the injured man's medical expenses..."

32.Similarly, the concept of sustainable development is to be understood from an ecocentric approach. First and foremost, it is the environment that needs to be sustained, while the anthropogenic development must follow later. T.N. Godavarman Thirumulpad (87) v. Union of India, (2006) 1 SCC 1 "38. Forest sustainability is an integral part of forest management and policy that also has a unique dominating feature and calls for forest owners and society to make a long-term (50 years or longer) commitment to manage forests for future generations. One of the viewpoints for sustaining forest is a naturally functioning forest ecosystem. This viewpoint takes the man and nature relationship to the point of endorsing, to the extent possible, the notion of letting the forest develop and process without significant human intervention. A strong adoption of the naturalistic value system that whatever nature does is better than what humans do, this is almost the "nature dominates man" perspective. Parks and natural reserve creations; non-intervention in insect, disease and fire process; and reduction of human activities are typical policy situations. This viewpoint has been endorsed by the 1988 Forest Policy of the Government of India." (emphasis supplied) ECONOMIC CONSIDERATIONS

33. Wealth of a country has to be seen not only from the perspective of mere revenue, augmented through its industries and business activities. Rather, it has to be seen by giving due importance to its natural wealth which actually contributes much more than the other factors. As discussed, forests play a pivotal role in reducing carbon emissions in the atmosphere created by human activities. A substantial value needs to be attached to the contribution of forests.

34. Professor Wahlen in her paper titled "Opportunities for making the invisible visible: Towards an improved understanding of the economic contributions of NTFPs", published in the Journal of Forest Policy and Economics, Volume 84, November 2017, has considered the implications on forest governance management and policy arguing that Sustainable Development Goals (SDGs) offer an opportunity to increase attention on the non-cash contributions of forests and turn this invisible contribution into a visible one. These "invisible services" rendered by forests ought to be given due credit. Depletion and disappearance of forests would ultimately lead to a massive extinction of organisms. Appreciation of this fact shall come from the point of view of a species rather than through the prism of a State or a nation. Regulation of temperature and prevention of water depletion is the primary role of forests.

Destroying forests would lead to the depletion and destruction of our life source. It would lead to extreme droughts, rainfall would become scarce and even if it pours, there would not be any means for its natural storage. The concept of forests acting as a major sink of carbon dioxide has to be appreciated and encouraged. Destruction of forests also affects pollination and would ultimately impact the food chain.

35. A difference of one and half degree Celsius in temperature saves the global economy tens of trillions of dollars. We must realise that carbon emissions not only come from industrial activities but also agriculture. Such functions are to be valued for assessing forest wealth. The concept of carbon credit in carbon market is indeed a reality. With the need for imposing restrictions towards carbon emissions, the concept of carbon markets has come into being.

Emissions of carbon dioxide worldwide, need to be seen holistically, as emissions from each nation ultimately disperses into the atmosphere. Thus, a country with excess forest cover would be in a position to sell its excess carbon credit to the one in deficit. This in turn underlines the significance of forests in contributing to the financial wealth of a country. From the economic perspective we wish to quote the report of the Ministry of Environment and Forests, Government of India titled "India's Forest and Tree Cover:

> Contribution as a Carbon Sink" (August 2009), as an aid to assess the valuation of forests in the Indian context, "Over the last two decades, progressive national forestry legislations and policies in India aimed at conservation and sustainable management of forests have reversed deforestation and have transformed India's forests into a significant net sink of CO_2 . From 1995 to 2005, the carbon stocks stored in our forests and trees have increased from 6,245 million tonnes (mt) to 6,662 mt, registering an annual increment of 38 mt of carbon or 138 mt of CO_2 equivalent.
>
> Mitigation Service by India's Forest and Tree Cover India's forests serve as a major sink of CO_2 . Our estimates show that the annual CO_2 removals by India's forest and tree cover is enough to neutralize 11.25 % of India's total GHG emissions (CO_2 equivalent) at 1994 levels, the most recent year for which comparable data is available for developing countries based on their respective National Communications (NATCOMs) to the United Nations Framework Convention on Climate Change (UNFCCC) . This is equivalent to offsetting 100% emissions from all energy in residential and transport sectors; or 40% of total emissions from the agriculture sector. Clearly, India's forest and tree cover is serving as a major mode of carbon mitigation for India and the world.

Value of Mitigation Putting a conservative value of US$ 5 per tonne of CO_2 locked in our forests, this huge sink of about 24,000 mt of CO_2 is worth US$ 120b, or Rs 6,00,000 crores. Incremental carbon under scenario three will add a value of around US$ 1.2b, or Rs 6,000 crores every year to India's treasury of forest sink, assuming a value of US$ 7 per tonne." (emphasis supplied) A recent report of the Reserve Bank of India presents a very disturbing scenario. The report clearly suggests the enormous potential impact of climate change on the society, leading to serious job losses in

every sector. Therefore, the adverse effect will be on the future of the nation as a whole, as against an identifiable group.

"Report on Currency and Finance; Towards a Greener Cleaner India", published by the Reserve Bank of India, (2022-2023), (pp. 45, 47), "4. Macroeconomic Impact of Climate Change in India xxx xxx xxx II.32 India, along with countries such as Brazil and Mexico, face high risk of reduction in economic growth, if global warming raises temperature by 2 degree Celsius as against 1.5 degree Celsius (IPCC, 2018). Climate change manifested through rising temperature and changing patterns of monsoon rainfall in India could cost the economy 2.8 per cent of its GDP and depress the living standards of nearly half of its population by 2050 (Mani et al., 2018). India could lose anywhere around 3 per cent to 10 per cent of its GDP annually by 2100 due to climate change (Kompas et al., 2018; Picciariello et al., 2021) in the absence of adequate mitigation policies. Furthermore, Indian agriculture (along with construction activity) as well as industry are particularly vulnerable to labour productivity losses caused by heat related stress (Somnathan et al., 2021). India could account for 34 million of the projected 80 million global job losses from heat stress associated productivity decline by 2030 (World Bank, 2022). Further, up to 4.5 per cent of India's GDP could be at risk by 2030 owing to lost labour hours from extreme heat and humidity conditions. Moreover, heatwaves could also last 25 times longer, i.e., rise in severity, by 2036-2065 if current rate of carbon emissions is not contained (CMCC, 2021). These estimates, thus, underscore the importance of timely adoption and faster implementation of climate mitigation policies to reduce the adverse impact on the Indian economy." (emphasis supplied) One way of dealing with this situation is preserving the existing forests, while making an endeavour to enhance its cover. An understanding from the economic and social perspective would be the best approach.

36. The concept of "Green Accounting" in evaluating a nation's wealth, including its natural assets, would extend enormous benefits which are both tangible and intangible. There are numerous resources that are being tapped from the forests. Therefore, what is required is a comprehensive approach.

37. We shall conclude our discussion with a quote from the book "Top Soil and Civilization" by Tom Dale and Vernon Gill Carter, published by the University of Oklahoma Press, (1955) "Man, whether civilised or savage, is a child of nature — he is not the master of nature. He must conform his actions to certain natural laws if he is to maintain his dominance over his environment. When he tries to circumvent the laws of nature, he usually destroys the natural environment that sustains him. And when his environment deteriorates rapidly, his civilisation declines..." APPROACH OF THE COURT

38. This Court has repeatedly reiterated the approach required to be adopted by the courts where the onus is on the violator to prove that there is no environmental degradation. There is a constitutional duty enjoined upon every court to protect and preserve the environment. Courts will have to apply the principle of parens patriae in light of the constitutional mandate enshrined in Articles 48A, 51A, 21, 14 and 19 of the Constitution of India, 1950. Therefore, the burden of proof lies on a developer or industrialist and also on the State in a given case to prove that there is no such degradation.

39. Not being an adversarial litigation, the court shall utilise all possible resources, including scientific inventions, in its endeavour to preserve the environment. While adopting an ecocentric approach, the concept of inter-

related existence has to be kept in mind. A narrow or pedantic approach should be avoided. While considering the economic benefits, the invisible value and benefits provided by the forests shall also be factored into. There has to be an inclusive approach, which should be society centric, meaning thereby that all species should co-exist with minimum collateral damage. The effort is to minimise the damage to the environment, even in a case where the need for human development is indispensable. While having a pragmatic and practical approach, courts will have to weigh in the relevant factors and thus, perform a balancing act.

PRECEDENTS Uncertainty of Science and Burden of Proof A.P. Pollution Control Board v. Prof. M.V. Nayudu, (1999) 2 SCC 718 "36. We shall next elaborate the new concept of burden of proof referred to in the Vellore case [(1996) 5 SCC 647] at p. 658. In that case, Kuldip Singh, J. stated as follows: (SCC p. 658, para 11) "(iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign."

37. It is to be noticed that while the inadequacies of science have led to the "precautionary principle", the said "precautionary principle" in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, — is placed on those who want to change the status quo [Wynne, Uncertainty and Environmental Learning, 2 Global Envtl. Change 111 (1992) at p. 123]. This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the change would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden. [See James M. Olson: "Shifting the Burden of Proof", 20 Envtl. Law, p. 891 at p. 898 (1990).] [Quoted in Vol. 22 (1998), Harv. Env. Law Review, p. 509 at pp. 519, 550.] xxx xxx xxx

39. It is also explained that if the environmental risks being run by regulatory inaction are in some way "uncertain but non-negligible", then regulatory action is justified. This will lead to the question as to what is the "non-negligible risk". In such a situation, the burden of proof is to be placed on those attempting to alter the status quo. They are to discharge this burden by showing the absence of a "reasonable ecological or medical concern". That is the required standard of proof. The result would be that if insufficient evidence is presented by them to alleviate concern about the level of uncertainty, then the presumption should operate in favour of environmental protection. Such a presumption has been applied in Ashburton Acclimatisation Society v. Federated Farmers of New Zealand [(1988) 1 NZLR 78] . The required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable persons" test. [See Charmian Barton:

> Precautionary Principle in Australia (Vol. 22) (1998) Harv. Env. L. Rev., p. 509 at p. 549.]" (emphasis supplied) Approach of the Court: High Degree of Judicial Scrutiny

on Any Action of Government Intellectuals Forum v. State of A.P., (2006) 3 SCC 549 "Public trust doctrine

76. The Supreme Court of California, in National Audubon Society v.

Superior Court of Alpine Country [33 Cali 419] also known as Mono Lake case [33 Cali 419] summed up the substance of the doctrine. The Court said:

> "Thus the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust." This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources [Joseph L. Sax "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law Review, Vol. 68, No. 3 (Jan. 1970) pp. 471-566]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine [ibid]:
>
> 1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
>
> 2. the property may not be sold, even for fair cash equivalent;
>
> 3. the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources." (emphasis supplied) Narinder Singh and Ors. v. Divesh Bhutani and Ors., 2022 SCC OnLine SC 899 "THE APPROACH OF THE COURT IN INTERPRETING THE LAWS RELATING TO FORESTS AND THE ENVIRONMENT
>
> 25. While interpreting the laws relating to forests, the Courts will be guided by the following considerations:
>
> i. Under Clause (a) Article 48A forming a part of Chapter IV containing the Directive Principles of State Policy, it is the obligation of the State to protect and improve the

environment and to safeguard the forests;

ii. Under Clause (g) of Article 51A of the Constitution, it is a fundamental duty of every citizen to protect and preserve the natural environment, including forests, rivers, lakes and wildlife etc.;

iii. Article 21 of the Constitution confers a fundamental right on the individuals to live in a pollution-free environment. Forests are, in a sense, lungs which generate oxygen for the survival of human beings. The forests play a very important role in our ecosystem to prevent pollution. The presence of forests is necessary for enabling the citizens to enjoy their right to live in a pollution-free environment;

iv. It is well settled that the Public Trust Doctrine is a part of our jurisprudence. Under the said doctrine, the State is a trustee of natural resources, such as sea shores, running waters, forests etc. The public at large is the beneficiary of these natural resources. The State being a trustee of natural resources is under a legal duty to protect the natural resources. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gains; v. Precautionary principle has been accepted as a part of the law of the land. A conjoint reading of Articles 21, 48A and 51-A(g) of the Constitution of India will show that the State is under a mandate to protect and improve the environment and safeguard the forests. The precautionary principle requires the Government to anticipate, prevent and remedy or eradicate the causes of environmental degradation including to act sternly against the violators;

vi. While interpreting and applying the laws relating to the environment, the principle of sustainable development must be borne in mind. In the case of Rajeev Suri v. Delhi Development Authority and Ors. [(2022) 11 SCC 1], a Bench of this Court to which one of us is a party (A.M. Khanwilkar, J.) has very succinctly dealt with the concept of sustainable development. Paragraphs 507 and 508 of the said decision reads thus:

“507. The principle of sustainable development and precautionary principle need to be understood in a proper context. The expression “sustainable development” incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that sustainable development is indeed a principle of development - it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is sustainable; and this requirement of sustainability demands that the first attempt of every agency enforcing environmental Rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an

environmentally secure society. By Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:

"1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

508. The right to development, thus, is intrinsically connected to the preservance of a dignified life. It is not limited to the idea of infrastructural development, rather, it entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense interdependence between right to development and right to natural environment. In International Law and Sustainable Development, Arjun Sengupta in the chapter "Implementing the Right to Development" notes thus:

"... Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other..." vii. Even 'environmental rule of law' has a role to play. This Court in the case of Citizens for Green Doon v. Union of India and Ors. 2021 SCC OnLine SC 1243 has dealt with another important issue of lack of consistent and uniform standards for analysing the impact of development projects. This Court observed that the principle of sustainable development may create differing and arbitrary metrics depending on the nature of individual projects. Therefore, this Court advocated and accepted the need to apply and adopt the standard of 'environmental Rule of law'. Paragraph 40 of the said decision reads thus:

"40. A cogent remedy to this problem is to adopt the standard of the 'environmental Rule of law' to test governance decisions under which developmental projects are approved. In its 2015 Issue Brief titled "Environmental Rule of Law : Critical to Sustainable Development", the United Nations Environment Programme has recommended the adoption of such an approach in the following terms:

"Environmental rule of law integrates the critical environmental needs with the essential elements of the rule of law, and provides the basis for reforming environmental governance. It prioritizes environmental sustainability by connecting it with fundamental rights and obligations. It implicitly reflects universal moral values and ethical norms of behaviour, and it provides a foundation for environmental rights and obligations. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be arbitrary, that is, discretionary, subjective, and unpredictable." (emphasis supplied) Forest Constitute A National Asset Amarnath Shrine, In re, (2013) 3 SCC 247 "19. Where it is the bounden duty of the State to protect the above rights of the citizen in

discharge of its constitutional obligation in the larger public interest, there the law also casts a duty upon the State to ensure due protection to the forests and environment of the country. Forests in India are an important part of the environment. They constitute a national asset. We may, at this stage, refer to the concept of inter-generational equity, which has been treated to be an integral part of Article 21 of the Constitution of India. The courts have applied this doctrine of sustainable development and precautionary principle to the cases where development is necessary, but certainly not at the cost of environment. The courts are expected to drive a balance between the two. In other words, the onerous duty lies upon the State to ensure protection of environment and forests on the one hand as well as to undertake necessary development with due regard to the fundamental rights and values." (emphasis supplied) Environmental Rule of Law H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee, (2021) 4 SCC 309 "I.1. Environmental rule of law xxx xxx xxx "49. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges — of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi- disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the "law" element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and Judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, State and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system. The environmental rule of law

attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars of environmental regulation in the present and future. The environmental rule of law recognises the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance — of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.

xxx xxx xxx

54. In an article in Georgetown Environmental Law Review (2020), Arnold Kreilhuber and Angela Kariuki explain the manner in which the environmental rule of law seeks to resolve this imbroglio [Arnold Kreilhuber and Angela Kariuki, "Environmental Rule of Law in the Context of Sustainable Development", 32 Georgetown Environmental Law Review 591 (2020).] :

"One of the main distinctions between environmental rule of law and other areas of law is the need to make decisions to protect human health and the environment in the face of uncertainty and data gaps. Instead of being paralyzed into inaction, careful documentation of the state of knowledge and uncertainties allows the regulated community, stakeholders, and other institutions to more fully understand why certain decisions were made." The point, therefore, is simply this — the environmental rule of law calls on us, as Judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding." (emphasis supplied) Role of Courts H.P. Bus-Stand Management & Development Authority (Supra) "I.2. Role of courts in ensuring environmental protection

> 56. In a recent decision of this Court in BDA v. Sudhakar Hegde [(2020) 15 SCC 63] , this Court, speaking through one of us (D.Y. Chandrachud, J.) held : (SCC pp. 112-13, paras 94-95) "94. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth. ... Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the State and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public-spirited individuals are called to invalidate such actions. ...
>
> 95. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision-making.

Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution, proper structures for environmental decision- making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place." xxx xxx xxx

58. The UNEP Report (supra) also goes on to note [UNEP, "Environmental Rule of Law First Global Report" (January 2019), p. 213.] :

> "Courts and tribunals must be able to grant meaningful legal remedies in order to resolve disputes and enforce environmental laws. As shown in Figure 5.12, legal remedies are the actions, such as fines, jail time, and injunctions, that courts and tribunals are empowered to order. For environmental laws to have their desired effect and for there to be adequate incentives for compliance with environmental laws, the remedies must both redress the past environmental harm and deter future harm."

59. In its Global Judicial Handbook on Environmental Constitutionalism, the UNEP has further noted [UNEP, Global Judicial Handbook on Environmental Constitutionalism (3rd Edn., 2019), p. 7.] :

> "Courts matter. They are essential to the rule of law. Without courts, laws can be disregarded, executive officials left unchecked, and people left without recourse. And

the environment and the human connection to it can suffer. Judges stand in the breach."

60. The above discussion puts into perspective our decision in the present appeals, through which we shall confirm the directions given by NGT in its impugned judgment [T.N. Godavarman Thirumulpad v. Union of India, 2016 SCC OnLine NGT 1196] . The role of courts and tribunals cannot be overstated in ensuring that the "shield" of the "rule of law" can be used as a facilitative instrument in ensuring compliance with environmental regulations." (emphasis supplied)
FACTUAL BACKGROUND

40. Between the years 1950-1959, a revision of survey and settlement of village Kompally took place. It was concluded on 17.11.1960. An application was stated to have been filed by Respondent No. 1 (Original Plaintiff), invoking Section 87 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F. (hereinafter referred to as "A.P. Land Revenue Act, 1317 F."), seeking rectification of survey error. It was so filed on the premise that the Plaintiff actually owned the suit land. The suit land consists of 106.34 Acres and the Schedule reads thus – Village Kompally, District Warangal, Survey Number 171/3 to 171/7 admeasuring 106.34 Acres. This application did not surface for nearly a decade and a half, for the reasons known to the Plaintiff.

41. A notification being Gazette No. 85-B was published in the Andhra Pradesh Gazette on 11.11.1971 by the State Government, under Section 15 of the A.P. Forest Act, declaring the land, which was part of the earlier proceedings of the revenue department dated 17.11.1960, as reserved forest. It was done on the premise that the lands were forest lands and, therefore, they were accordingly declared as reserved forest.

42. Rather strangely, the application so filed by the Plaintiff was rejected by the Revenue Authority only on 10.01.1975. The revision filed by him was allowed by remitting the matter to the Joint Collector. Suffice it is to state that despite the findings rendered, neither the Forest Department nor the Forest Settlement Officer was arrayed as a party to these proceedings before the revenue department. It is also seen that the order of the Revenue Authority and the Revisional Authority were passed much after the declaration under Section 15 of the A.P. Forest Act, vesting the lands in the State by giving them the status of a reserved forest.

43. On 07.07.1981, the Joint Collector, Warangal allowed the application of the Plaintiff. Realising that the said order will not give the Plaintiff benefit of any sort, he filed an application before the Government seeking denotification of the land declared as reserved forest', which was rightly dismissed on 01.09.1984.

44. A suit was filed by the Plaintiff on 23.04.1985 in OS No. 56 of 1985 on the file of I Additional Sub-Judge, Warangal seeking a declaration of title and permanent injunction. In the said suit the Defendant no. 1 was the District Collector representing the Revenue Department with the Defendant no. 2, Forest Officer representing the Forest Department. Quite surprisingly, neither the Forest Settlement Officer nor the State of Andhra Pradesh, Forest Department was made a party defendant. The trial court while granting title to the plaintiff declined the incidental relief of

injunction.

45. On appeal, the High Court, by giving adequate reasons reversed the said finding of the trial court qua the declaration, and confirmed the findings on injunction by dismissing the suit in toto. Ultimately, it was held that the suit property is forest land. The proceedings concluded under the A.P. Forest Act, though not specifically challenged, and that too without the proper and necessary parties, were found to be just and proper.

46. The trial court and the High Court in first appeal have given factual findings against the plaintiff. Only two witnesses were examined, one on each side.

The trial court took note of the fact that there is material evidence to show that the suit land is a part of the reserved forest. The plaintiff was not at all in possession of the suit land. The suit was also held as barred under Section 5 of the A.P. Forest Act.

47. The High Court, being the final court of fact and law, went ahead and held that the plaintiff had miserably failed to show his title to the suit property.

The Plaintiff did not have any personal knowledge about the manner of his succession to the suit property. Even as per his own evidence, he is not the absolute owner of the suit property, being a co-owner. The documents relied on by him, more particularly the decision of the revenue authorities, do not establish both title and possession. A detailed discussion was made on the effect of Section 15 and 16 of the A.P. Forest Act, along with the documents marked on behalf of defendants. It took note of the fact that though a portion of the property was sold as per the evidence of the Plaintiff, there is no proof.

48. Immediately after the judgment of the High Court dated 20.07.2018, a review was filed on behalf of the plaintiff on 18.11.2018. Shockingly, Defendant No. 1, who filed a common written statement along with the Defendant No. 2 and, thus, took a stand that the suit property is a forest land which becomes part of a reserved forest area, in line with the stand taken by the Defendant No. 3, who was impleaded pending the first appeal, constituted a committee on 12.07.2019 on an application said to have been filed by the Plaintiff in the year 2017, which was obviously pending the first appeal.

49. More surprisingly, the District Forest Officer did not appear before the Committee and based upon a report submitted, it was held that the suit property is required to be excluded in favour of the plaintiff. This was done despite the fact that the District Collector, who was a party to the suit, took a specific stand, and in view of the judgment which attained finality, that the suit land is forest land, the District Collector has got no jurisdiction at all to deal with it in any manner especially in the light of Section 15 and 16 of the A.P. Forest Act. We do not wish to say anything more on this, though wisdom has dawned upon defendants again, as could be seen from the affidavit filed by the State before this Court reiterating the original stand.

50. The aforesaid decision was taken by the District Collector after the judgment of the First Appellate Court. It was accordingly marked as a court exhibit in the review. Thereafter, it was taken up for hearing and disposed of on 19.03.2021. The Learned Judge who delivered an elaborate judgment in the first appeal was transferred to Andhra Pradesh on establishment of the High Court at Amravati. The review came to be filed before another Learned Judge.

The impugned order was passed in the purported exercise of the power of review, by virtually reversing all the findings rendered in the appeal, while placing reliance upon evidence which on the face of it was inadmissible and, therefore, void from its inception, rendered by an authority which had absolutely no jurisdiction at all.

51. While doing so, the High Court in review jurisdiction once again reconsidered the evidence produced by the Defendants. In the process, the High Court fixed a heavy onus on the Defendants ignoring the fact that on the earlier occasion the Plaintiff had miserably failed to prove his title. Incidentally, it was held that Section 5 of the A.P. Forest Act which speaks about the bar of a suit can only be applied during the pendency of proceedings under the A.P. Forest Act and not thereafter. Despite no challenge either to the proceedings under the A.P. Forest Act and that too in the absence of proper and necessary parties, an adverse inference was drawn by taking note of the statement made by DW-1 who was only a Forest Officer and, therefore, not having any direct connection with the action taken. Various admissions made by the plaintiff in his deposition were conveniently ignored. The High Court went on to criticize the conflicting stand taken by two wings of the State while ignoring the fact that Defendant No. 1 had absolutely no say.

SUBMISSIONS OF THE APPELLANTS

52. Ms. Aishwarya Bhati, Learned Additional Solicitor General, appearing for the appellants, submitted that the Forest Conservation Act, 1980 defines a forest which is inclusive of all types of forests. The extensive inclusion would take in its sweep even the private forests. Revenue records do not confer title.

The High Court clearly exceeded its jurisdiction in review by entertaining a re-hearing and virtually acted as an appellate court. The Respondents did not satisfy the court on the title, which finding has not been touched.

SUBMISSIONS OF THE RESPONDENTS

53. Mr. Neeraj Kishan Kaul, Learned Senior Counsel appearing for the respondents, vehemently contended that the proceedings before the Forest Settlement Officer have become final. Even the trial court has held that the plaintiff had title. Once title is proved, possession has to follow. As there is an error apparent on the face of record, the power of review has been exercised correctly. The finding that Section 5 of the A.P. Forest Act, has got no application is correct, as there is no attempt to interdict the proceedings.

As there is no apparent perversity, this Court need not interfere with the impugned order.

DISCUSSION

54. We have already recorded the facts in detail. It is a classic case where the officials of the State who are expected to protect and preserve the forests in discharge of their public duties clearly abdicated their role. We are at a loss to understand as to how the High Court could interfere by placing reliance upon evidence produced after the decree, at the instance of a party which succeeded along with the contesting defendant, particularly in the light of the finding that the land is forest land which has become part of reserved forest.

55. There is a distinct lack of jurisdiction on two counts – one is with respect to an attempt made to circumvent the decree and, the second is in acting without jurisdiction. The land belongs to the Forest Department and therefore, Defendant No. 1 had absolutely no role in dealing with it in any manner.

Proceeding under the A.P. Land Revenue Act, 1317 F. has got no relevancy or connection with a concluded proceeding under the A. P. Forest Act. The proceeding under the A. P. Forest Act was concluded on 11.11.1971.

Thereafter, without any jurisdiction, an order was passed under Section 87 of the A.P. Land Revenue Act, 1317 F.

56. The High Court on the earlier occasion had given a clear finding that even at the time of declaration under the A.P. Land Revenue Act, 1317 F, these lands were not shown as private lands by the defendant, among other factual findings. It is indeed very strange that the High Court which is expected to act within the statutory limitation went beyond and graciously gifted the forest land to a private person who could not prove his title. While disposing of the first appeal, the High Court exercised its power under Order XLI Rule 22 of the CPC 1908 for partly reversing the trial court decree. Even otherwise, there were concurrent findings in so far as dismissal of the suit for injunction is concerned. In our considered view, the High Court showed utmost interest and benevolence in allowing the review by setting aside the well merited judgment in the appeal by replacing its views in all material aspects.

57. Let us alternatively examine the question of maintainability of a suit for the relief of declaration. The suit filed is not maintainable as the plaintiff has not challenged the proceedings under Section 15 of A. P. Forest Act. These have become final and conclusive in view of the express declaration provided under the statute in Section 16 of A. P. Forest Act. Rather, the plaintiff filed an application for denotification before the Government which was rejected.

Neither the State Government, which rejected the said application, nor the Forest Settlement Officer has been made as party defendants in the suit, with the State arrayed as respondent represented by the Principal Secretary, Forest Department, at a later stage in the appeal. Though, the Forest Officer of the Forest Department may be an interested party, the authority who otherwise could answer is the Forest Settlement Officer. He is the one who concluded the proceedings. In any case, the said exercise is irrelevant as the Plaintiff could not prove his title nor does there lie any relevance to the

action taken under the A.P. Land Revenue Act, 1317 F. Furthermore, there is no specific challenge to the concluded proceedings under the A. P. Forest Act. The Plaintiff has merely asked for declaration of title and permanent injunction restraining the Defendants from interfering with possession.

58. We, thus, conclude that the impugned judgment does not stand the legal scrutiny as it is ridden with both factual and legal errors.

59. Accordingly, the appeal stands allowed. The impugned judgment stands set aside by restoring the judgement rendered in A.S. No. 145 of 1994. We consider it appropriate to impose cost of Rs. 5,00,000/- each on appellants and respondents to be paid to the National Legal Services Authority (NALSA) within a period of two months from the date of this judgment. The appellant State is free to enquire into the lapses committed by the officers in filing collusive affidavits before the competent court, and recover the same from those officers who are responsible for facilitating and filing incorrect affidavits in the ongoing proceedings. The Contempt Case No. 624 of 2021 pending before the High Court is directed to be closed. I.A. No.65196/2021 is dismissed. All other pending applications stand closed.

.....J. (M. M. SUNDRESH) .....J. (S. V. N. BHATTI) New Delhi, April 18, 2024