Karnataka Industrial Areas ... vs Sri C. Kenchappa & Ors on 12 May, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2038, 2006 (6) SCC 371, 2006 AIR SCW 2547, 2006 (4) AIR KANT HCR 119, (2006) 3 JCR 319 (SC), (2006) 5 SUPREME 187, 2006 (6) SCALE 1, (2006) 4 KANT LJ 545, (2006) 5 SCJ 171, (2006) 6 SCALE 1, (2006) 2 LACC 46, (2006) 3 RECCIVR 130

Author: Dalveer Bhandari

Bench: Ruma Pal, Dalveer Bhandari

CASE NO.:
Appeal (civil) 7405 of 2000

PETITIONER:
KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD

RESPONDENT:
SRI C. KENCHAPPA & ORS.

DATE OF JUDGMENT: 12/05/2006

BENCH:
RUMA PAL & DALVEER BHANDARI

JUDGMENT:

JUDGMENT DALVEER BHANDARI, J. :

In consonance with the principle of `Sustainable Development', a serious endeavour has been made in the impugned judgment to strike a golden balance between the industrial development and ecological preservation.

This appeal is directed against the judgment passed in writ petition no. 36638 of 1999 dated 26.11.1999 by the High Court of Karnataka at Bangalore.

The respondent agriculturists, who were affected by the acquisition of lands of different villages, filed a writ petition under Article 226 of the Constitution with a prayer that the appellant Karnataka Industrial Areas Development Board (in short KIADB) be directed to refrain from converting the lands of the respondents for any industrial or other purposes and to retain the lands for use by the respondents for grazing their cattle. The respondents have filed a writ petition indicating that they are residents of villages and their lands bearing Survey Nos. 79 and 80 of Nallurahalli village are gomal lands (grazing lands for cattle), Survey No. 81 is part of the

green-belt in the comprehensive development plan and Survey No. 34 is reserved for the residential purposes. According to the respondents, if the entire land is acquired and an industrial area is developed, the villagers would lose the gomal lands, causing grave hardship to them as well as their cattle. It was also submitted that there would be an adverse impact on the environment of the villages as the industrial area increases. Their prayer in the petition was that the gomal lands and the lands reserved for the residential purposes in the green-belt should not be acquired and allotted for non-agricultural purposes, including industrial purposes.

It was submitted by the respondents that deprivation of their land is violative of their fundamental rights guaranteed under Articles 14 and 21 of the Constitution. The respondents have alleged that the appellant and the State of Karnataka have violated the zonal regulations in allotting the lands to Gee India Technology Centre Pvt. Ltd. (respondent no. 3 in the writ petition). It was submitted that the allotment was made hurriedly without following the regular procedure and therefore, the same was illegal and arbitrary.

The respondents also submitted that without hearing the affected parties, notification under Section 3(1) of the Karnataka Industrial Areas Development Board Act, 1966 (for short the Act) has been issued.

The appellant and the State Government have denied the allegations levelled in the writ petition. It was submitted by them that the said lands were not used as gomal lands (as alleged) as urbanization had spread in the area and a number of industries had come up.

The appellant submitted that the State has ample power to issue notification under Section 31 of the Act and acquire the land under Section 28 of the Act. It was submitted that the entire procedure of law was duly followed by the appellant.

It was submitted that Gee India Technology Centre Pvt. Ltd. was going to establish only a Research and Development Project and they were not acquiring the lands for manufacturing process which may emit any polluted air or create polluted atmosphere.

It was also stated in the counter affidavit filed by the appellant and the state of Karnataka in the writ petition that the land allotted to Gee India Technology Centre Pvt. Ltd. was a government land to the extent of 20 acres and the remaining land was acquired by the appellant from private owners. In case, the respondents have any objection, it was open for them to take appropriate steps in the proceedings when taken under Section 28 of the Act. It was submitted that there was no provision under Section 3(1) of the Act for issuing notice to the land owners before the declaration is published under Section 3(1) of the Act. It was submitted that the appellant has followed the entire procedure meticulously and there was no violation of procedure or any irregularity in the declaration and allotment of land to Gee India Technology Centre Pvt. Ltd.. It was submitted that Gee India Technology Centre Pvt. Ltd. was going to set up Research and Development Project built

as per their world class environmental health and safety standards employing latest technology in handling waste disposal. Therefore, the apprehension of the respondents that the project would cause environmental degradation is wholly misconceived. The environment, health and safety standards of the present project, according to Gee India Technology Centre Pvt. Ltd., would exceed or equal to their GE's international standards. It was stated in the High Court that Gee India Technology Centre Pvt. Ltd., recognizing the intellectual talent, has established a world class research and development centre to conduct high value research and development activities to reverse the process of `brain drain' that is taking place in India. It was also submitted that they have paid a price for allotment of the lands.

It was stated that Gee India Technology Centre Pvt. Ltd. was going to employ about 500 scientists and 150 staff members and another additional 250 technical people.

The Division Bench specifically observed that having regard to the circumstances of the case and the nature of establishment of Gee India Technology Centre Pvt. Ltd. and its activities, which is essential for the growth of the computer industry and research and development in information technology, the Court did not wish to disturb the allotment of lands made to Gee India Technology Centre Pvt. Ltd.. The Court in the impugned judgment directed that the notification under Section 3(1) of the Act and consequential proceedings or notification are orders issued in regard to the other disputed lands in the writ petition are quashed, to the extent of the lands which were reserved for gazing cattle, agricultural and residential purposes.

The Division Bench in the impugned judgment held that for maintaining ecological equilibrium and pollution free atmosphere of the villages, the KIADB be directed to leave a land of one kilo metre (for short one k.m.) as a buffer zone from the outer periphery of the village in order to maintain a `green area' towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry and to develop the area into a green belt. This measure would preserve the ecology without hindering the much needed industrial growth, thus striking a balance between the industrial development and ecological preservation. The Court further directed that whenever there was an acquisition of land for industrial, commercial or non-agricultural purposes, except for the residential purposes, the authorities must leave one k.m. area from the village limits as a free zone or green area to maintain ecological equilibrium.

The appellant KIADB preferred a special leave petition before this Court on the ground that the directions given in the impugned judgment are contrary to the express statutory provisions, in particular Section 3(1) and Section 47 of the KIADB Act.

According to the appellant, the High Court has committed a serious error in issuing directions to leave one k.m. area from the village limits as a free zone or for the green belt. According to the appellant, the effect of the impugned judgment will be that, in future, the appellant would not be able to acquire lands for the establishment and development of the industrial area in the State of Karnataka.

The appellant also submitted that the High Court has exceeded its jurisdiction under Article 226 of the Constitution by issuing blanket directions which tantamount to judicial legislation.

The appellant further submitted that the High Court has failed to appreciate that the lands in question have lost their agrarian character a few decades ago. It was also submitted that the fact of the matter was that, because of rapid urbanization; these villages have no longer remained villages, but have become part and parcel of the city of Bangalore.

The appellant also mentioned that the High Court has failed to appreciate `that the impugned notification was dated 24.11.1998 and thereafter, the industrial layout was formed, earth work was done, roads were constructed, water supply lines had been laid and other infrastructural facilities were created spending substantial sum of money.

The respondents have kept quiet all the while when civil construction in the area was going on. The appellant has prayed that the impugned judgment of the High Court be set aside and, during the pendency of this appeal, this Court may grant stay of the operation of the impugned judgment passed by the High Court. This Court, on 28.2.2000, while issuing notice to the respondents, directed stay of the operation of the impugned judgment of the High Court.

Mr. K.K. Venugopal, learned senior counsel appearing for the appellant, submitted that the entire compensation has been paid to the respondents and in view of the stay of the impugned judgment of the High Court granted by this Court, the entire developmental work has been completed and the respondents' writ petition has now become infructuous. He submitted that, perhaps, for this reason, the respondents had lost interest in this litigation and have not appeared before this Court. Since, at the time of hearing of this appeal, no one appeared on behalf of the respondents, therefore, this Court requested Mr. A. R. Madhav Rao, advocate, to assist the Court as an amicus curiae. The appeal was adjourned for a week to enable Mr. Rao to prepare the case and when the case was taken up on 25.4.2006 again, no one appeared for the respondents.

Mr. Venugopal, submitted that, at the time of issuance of the notice under Section 3(1) of the Act, no notice was required to be given to the land owners at that stage according to the scheme of the Act.

Mr. Venugopal referred to the provisions of the Karnataka Industrial Areas Development Act, 1966 and drew our attention to Section 28 of the Act which armed the appellant to acquire any land for the development. The relevant Section 28(1) of the Act reads as under:

> "28. Acquisition of Land.- (1) If at any time in the opinion of the State Government, any land is required, for the purpose of development by the Board, or for any other purpose in furtherance of the objects of this Act, the State Government may by notification, give notice of its intention to acquire such land."

Mr. Venugopal submitted that the KIADB can acquire `any land' for the purpose of development or for any other purpose in furtherance of the object of this Act. According to him, under this Act the appellant could acquire even the gomal lands. At the stage of issuance of notification under Section

28 of the Act notices have to be issued to the landowners.

Mr. Venugopal referred to Section 47 of the Act, which reads as under:

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

He submitted that, according to Section 47 of the said Act, the appellant could acquire `any land'. In other words, `any land' shown either in the `Master Plan' or `Town Planning Act' as green belt can be acquired by the appellant according to the clear language, spirit and intention of Section 47 of the Act.

He also submitted that the appellant can also acquire the land earmarked for the residential use under the `Comprehensive Area Development Plan'.

Mr. Venugopal further submitted that both the development and protection of environment were traceable to Article 21 of the Constitution.

Mr. Venugopal contended that the High Court has erroneously applied the ratio of the judgment of M.C. Mehta v. Union of India, [1997] 3 SCC 715. The fact of that case has no application so far as this case is concerned. He also placed reliance on the other decided cases of this Court.

Mr. A. R. Madhav Rao, learned amicus curiae, submitted that while acquiring the land by the appellant, the impact of industrialization on environment of the concerned area has to be taken into consideration in the larger public interest.

Mr. Rao also submitted that there must be a proper assessment of the impact and implications on environment and ecology. He has also drawn our attention to Clause 12 of the allotment letter which, according to him, requires modification. The relevant Clause 12 reads as under:

> "You are requested to obtain necessary clearance for your project from the Karnataka State Pollution Control Board and the Department of Ecology and Environment before execution of agreement wherever applicable."

He submitted that the allottee cannot have discretion in the matter of obtaining necessary clearance for the project from the Karnataka State Pollution Control Board and the Department of Ecology and Environment for execution of the agreement, but it has to be made a mandatory condition.

We have heard Mr. Venugopal and Mr. Rao, the learned amicus curiae. We are of the considered view that before acquisition of the land; the appellant must carry out necessary exercise regarding the impact of development on ecology and environment. Development and environment have to go hand in hand.

We are also clearly of the considered view that it should be made mandatory for the allottee to obtain necessary clearance for the project from the Karnataka State Pollution Control Board and the Department of Ecology and Environment before execution of the agreement. Consequently, we direct the appellant to incorporate this condition in the letter of allotment requiring the allottee to obtain clearance before putting up any industry. The condition has to be mandatory.

It may be pertinent to mention that the High Court had an occasion to examine the impact of Section 47 of the Act. The Court observed that, by reading the said provision, it is evident that Section 47 has got an overriding effect.

In this case, since the respondents have not appeared before us, in our opinion, this Court's decision on Section 47 of the Act may have far reaching impact and ramification, therefore, we are reserving our opinion. on the validity of Section 47 of the Act to be decided in an appropriate case.

Environment and Constitutional Provisions Professor Michael von Hauff of the Institute for Economics and Economic Policy, University of Kaiserlantern, Germany, in his article "The Contribution of Environmental Management Systems to Sustainable Development: Relevance of the Environmental Management and Audit Scheme"

> aptly observed that, "it is remarkable that India was the first country in the world to enshrine environmental protection as a state goal in its Constitution".

In the impugned judgment serious concern regarding degradation, of ecology and environment has been seriously articulated.

According to the impugned judgment, preservation and protection of environment are part of Article 21 of the Constitution. Article 21 reads as under:

> "21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law."

In the impugned judgment; the High Court also gave reference to the Directive Principles of the State Policy. In articles 48A and 51-A(g) of the Constitution, a strong foundation has been laid down pertaining to environment, preservation of forests, wild life, rivers and lakes.

The Constitutional philosophy enshrined in these Constitutional Provisions must be implemented. Articles 48A reads as under :

> "48A. Protection and improvement of environment and safeguarding of forests and wild life. - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

The framers of the Constitution expressed concern and importance of protection and improvement of forests, lakes, rivers and wild life for preserving the environment. According to the spirit of the

Constitution, it is the bounden duty of all to protect our natural environment. Reference to Article 51-A(g) is also very important.

Article 51-A(g) reads as under:

> "51-A(g) .....to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures' Environment degradation and its consequences:
>
> Experience of the recent past has brought to us the realization of the deadly effects of development on ecosystem. The entire world is facing a serious problem of environmental degradation due to indiscriminate development. Industrialization, burning of fossil fuels and massive deforestation are leading to degradation of environment. Today the atmospheric level of carbon dioxide, the principal source of global warming, is 26% higher than pre-industrial concentration.
>
> The earth's surface reached its record level of warming in 1990. In fact, six of the seven warmest years on record have occurred since 1980, according to the World Watch Institute's 1992 report. The rise in global temperature has also been confirmed by the Inter-Governmental Panel on Climate Change set up by the United Nations in its final report published in August 1990. The Global warming has led to unprecedented rise in the sea level. Apart from melting of the polar ice it has led to inundation of low- lying coastal regions. Global warming is expected to profoundly affect species and ecosystem. Melting of polar ice and glaciers, thermal expansion of seas would cause worldwide flooding and unprecedented rise in the sea level if gas emissions continue at the present rate. Enormous amount of gases and chemicals emitted by the industrial plants and automobiles have led to depletion of ozone layers which serve as a shield to protect life on the earth from the ultra-violet rays of the sun.
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> The dumping of hazardous and toxic wastes, both solid and liquid, released by the industrial plants is also the result of environment degradation in our country.
>
> The problem of "acid rain" which is caused mainly by the emissions of sulphur dioxide and nitrogen oxides from power stations and industrial installations is a graphic example of it. The ill-effects of acid rain can be found on vegetation, soil, marine resources; monuments as well as on humans. Air pollutants and acids generated by the industrial activities are now entering forests at an unprecedented scale.
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> Sir Edmund Hillary (Tenzing and Edmund Hillary, who scaled Mount Everest for the first time in world history) in his article "Learning About the Problems" published in Ecology 2000 - The changing face of Earth, has mentioned as under:

> "Thirty years ago conservation had not really been heard of. On our 1953 Everest expedition we just threw our empty tins and any trash into a heap on the rubble-covered ice at Base Camp. We cut huge quantities of the beautiful juniper shrub for our fires; and on the South Col at 26,000 feet we left a scattered pile of empty oxygen bottles, torn tents and the remnants of food containers.
>
> The expeditions of today are not much better in this respect, with only a few expectations. Mount Everest is littered with junk from the bottom to the top"

He also mentioned that, "one thing that has deeply conerned me has been the severe destruction that is taking place in the natural environment".

The 1972 Stockholm Conference on `Human Environment' secured its place in the history of our times with the adoption of the first global action plan for the environment. Yet, as increasingly grim statistics indicate, over the past decades our global environment and the living conditions for most of the inhabitants of the planet continue to deteriorate. This process has meant significant setback for both rich and poor.

The Declaration of the 1972 Stockholm Conference referred; obliquely to man's environment, adding that `both aspects of man's environment; the natural and the man-made, are essential for his well-being and enjoyment of basic human rights'.

In Essar Oil Ltd. v. Halar Utkarsh Samiti and Ors., [2004] 2 SCC 392, this Court aptly observed Stockholm Declaration as "Magna Carta of our environment". First time at the international level importance of environment has been articulated.

In the Stockholm Declaration principle number two provides that the natural resources of the earth including air, water, land, flora and fauna should be protected. The fourth principle of Stockholm Declaration reminds us about out responsibility to safeguard and wisely manage the heritage of wildlife and its habitat.

The Court in said judgment also observed that "this, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other."

In the said judgment, the passage has been quoted from Indian Council for Enviro-Legal Action v. Union of India, [1996] 5 SCC 281. We deem it appropriate to reproduce the same. Para 31 at page 296 in the said judgment reads as under:

> "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

The Stockholm Conference recognized the links between environment and development. But little was done to integrate this concept for international action until 1987 when the Brundtland Report, `Our Common Future' was presented to the United Nations General Assembly. The Brundtland Report stimulated debate on development policies and practices in developing and industrialized countries alike and called for an integration of our understanding of the environment and development into practical measures of action.

Armed with three years of testimony from people at hearings on five continents, the Commission came to one central conclusion:

> i) The present development trends leave, increasing numbers of people poor and vulnerable, while at the same time degrading the environment;
>
> ii) Poverty is a major cause and effect of global environmental problems and, therefore, it is futile to attempt to deal with environmental problems without a broader perspective that encompasses the factors underlying world poverty and international inequality; and;
>
> iii) A new development was required, one that sustained human progress for the entire planet into the distant future and that sustainable development becomes a goal not just for the developing nations but for the industrialized ones as well.

The Earth Summit held in Rio de Janeiro in 1992 altered the discourses of environmentalism in significant ways. Sustainability, introduced in the 1987 Brundtland Report Our Common Future - and enacted Rio agreements, became a new and accepted code word for development.

The United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, provided the fundamental principles and the programme of action for achieving sustainable development.

Peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity, are essential for achieving sustainable development and ensuring that sustainable development benefits all.

The 1992 Rio Declaration on `Environment and Development' recognizes the element of integration of environmental and developmental aspects, particularly in principles 3 & 4, which are set as

under:

> "Principle 3 The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
>
> Principle 4 In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."

The 1992 Rio Declaration on Environment and Development refers at many points to environmental needs, environmental protection, environmental degradation and so, but nowhere identifies what these include. Interestingly it eschews the term `entirely' in Principle l, declaring instead that human beings `are entitled to a healthy and productive life in harmony with nature'. One of the few bodies to proffer a definition is the European Commission. In developing an `Action Programme on the Environment', it defined "environment as the combination of elements whose complex inter-relationships make up the settings, the surroundings and the conditions of life of the individual and of society as they are and as they are felt."

Some understanding of what `the environment' may encompass can be discerned from other treaty provisions. Those agreements which define `environmental effects' `environmental impacts' or `environmental damage' typically include harm to flora, fauna, soil, water, air landscape, cultural heritage, and any interaction between these factors.

> "The World Summit on Sustainable Development' was held in Johannesburg in 2002. The purpose of the same was to evaluate the obstacles to progress and the results achieved since the 1992 World Summit at Rio de Janeiro. The same was expected to present "an opportunity to build on the knowledge gained, over the past decade, and provides a new impetus for commitments of resources and specific action towards global sustainability."

The priority of developing nations is urgent industrialization and development. We have reached at a point where it is necessary to strike a golden balance between the development and ecology.

The development should be such as it can be sustained by ecology. All this has given rise to the concept of sustainable development.

`The World Conservation Union' and `the World Wide . Fund for Nature' prepared jointly by UNEP described that "sustainable development, therefore, depends upon accepting a duty to seek harmony with other people and with nature" according to `Caring for the Earth', A strategy for Sustainable Living. The guiding rules are:

> i) People must share with each other and care for the earth;
>
> ii) Humanity must take no more from nature than man can replenish; and,

iii) People must adopt life styles and development paths that respect and work within nature's limits.

The International community expressed its commitment to treat environment and development in an integrated manner and to cooperate "in the further development of international law in the field of sustainable development. This was part of the Rio Declaration on Environment and Development. [Principle 27; Report of the UN Conference on Environment and Development] P. Sands in his celebrated book `International Law in the field of Sustainable Development" mentioned that the sustainable development requires the States to ensure that they develop and use their natural resources in ` a manner which is sustainable. According to him, sustainable development has four objectives:

First, it refers to a commitment to preserve natural resources for the benefit of present and future generations.

Second, sustainable development refers to appropriate standards for the exploitation of natural resources based upon harvests or use (examples include use which is "sustainable," "prudent," or "rational," or "wise" or "appropriate") .

Third, yet other agreements require an "equitable" use of natural resources, suggesting that the use by any State must take account of the needs of other States and people.

And a fourth category of agreements require that environmental considerations be integrated into economic and other development plans, programmes, and projects, and that the development needs are taken into account in applying environmental objectives.

Sustainable Development: Contribution of Judiciary and Others This Court, in Vellore Citizens Welfare Forum v. Union of India, [1996] 5 SCC 647, acknowledged that the traditional concept that development and ecology are opposed to each other, is no longer acceptable. Sustainable development is the answer. Some of the salient principles of "Sustainable Development" as culled out from Brundtland Report and other international documents, are Inter-Generational Equity. This Court observed that "the Precautionary Principle" and "the Polluter Pays Principle" are essential features of "Sustainable Development."

Nation's progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. No government can cope with the problem of environmental repair by itself alone; peoples' voluntary participation in environmental management is a must for sustainable development. There is a need to create environmental awareness which may be propagated through formal and informal education. We must scientifically assess the ecological impact of various developmental schemes. To meet the challenge of current environmental issues; the

> entire globe should be considered the proper arena for environmental adjustment. Unity of mankind is not just a dream of the enlightenment but a biophysical fact.
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> In Subhas Kumar v. State of Bihar, AIR (1991) SC 420, this Court has given directions that, under Article 21 of the Constitution, pollution free water and air are the fundamental rights of the people.
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> In the case of A.P. Pollution Control Board II v. M.V. Nayudu, [2001] 2 SCC 62, this Court observed that the right to have access to drinking water is fundamental to life and it is the duty of the State under Article 21 to provide clean drinking water to its citizens.
>
> The United Nations Water Conference in 1977 observed as under:
>
> "All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs."

Similarly, this Court in Narmada Bachao Andolan v. Union of India, [2000] 10 SCC 664, observed as under:

> "Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India....."

In M.C. Mehta v. Union of India, [1991] 2 SCC 137, this Court gave number of directions to reduce the pollution created by vehicles.

The need of the hour is inculcating the sense of urgency in implementing the rules relating to environmental protection which are not strictly followed. Its result would be disastrous for the health and welfare of the people.

The concept of sustainable development whose importance was the resolution of environmental problems is profound and undisputed.

Professor Ben Boer, Environmental Law, Faculty of Law, University of Sydney, New South Wales, Australia, in his article "Implementing Sustainability" observed as under:

> "Strategies for sustainable development have been formulated in many countries in the past several years. Their implementation through legal and administrative mechanisms is underway on a national and regional basis. The impetus for these strategies has come from documents such as the Stockholm Declaration of 1972, the World Conservation Strategy, the World Charter for Nature of 1982 and the report of the World Commission on Environment and Development, our Common Future. The initiatives are part of a world wide movement for the introduction of National

> Conservation Strategies based on the World Conservation Strategy. Over 50 National Conservation Strategies have been introduced over the past decade, all of which incorporate concepts of sustainable development. The document Caring for the Earth is the chief successor to the World Conservation Strategy.
>
> In the same article, Professor Boer further observed in the said article as follows:
>
> "Sustainability' is defined in `Caring for the Earth' as "a characteristic or state that can be maintained indefinitely" whilst "development" is defined as "increasing the capacity to meet human needs and improve the quality of human life. What this seems to mean is "to increase the efficiency of resource use in order to improve human living standards".

In, `Caring for the Earth' the term "sustainable development" is derived from a rough combination of these two definitions:

> Improving the quality of human life while living within the carrying capacity of supporting ecosystems."
>
> Adherence to Following Principles is imperative for Preserving Ecology (1) The Precautionary Principle:
>
> This Court in Vellore Citizens' Welfare Forum (supra) has recognized the Precautionary Principle. Again, this principle has been reiterated in the case of M.C. Mehta v. Union of India, [1997] 2 SCC 353. In the said case, the Precautionary Principle has' been explained in the context of municipal law as under:
>
> "(i) Environmental measures - by the State Government and the statutory authorities - must anticipate; prevent and attack the causes of environmental degradation.
>
> (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environment degradation.
>
> (iii) The `onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign."

The Precautionary Principle was stated in Article 7 of the Bergen Ministerial Declaration on Sustainable Development in the ECE Region, May 1990, as incorporated in the said article of Professor Ben Boer. It reads as follows:

> "Environmental measures must anticipate prevent, and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage; lack of scientific certainty should not be used as a reason for postponing

measures to prevent environmental degradation."

The Precautionary Principle can be culled out from the following observations of the Australian Conservation Foundation. (This also has been incorporated in the Professor Boer's said article.) "The implementation of this duty is that developers must assume from the fact of development activity that harm to the environment may occur, and that they should take the necessary action to prevent that harm; the onus of proof is thus placed on developers to show that their actions are environmentally benign."

(2) Polluter Pays:

> This Court had an occasion to deal with this main principle of sustainable development in the case of Indian Council for Environ-Legal Action v. Union of India, [1996] 3 SCC 212. Carolyn Shelbourn in his article "Historic Pollution - Does the Polluter Pay?" (published in the Journal of Planning and Environmental Law, Aug. 1974 issue), mentioned that the question of liability of the respondents to defray the costs of remedial measures can be looked into from another angle, which has come to be accepted universally as a sound principle, viz., the "Polluter Pays" principle.
>
> The Court in the said judgment observed as under:
>
> "The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The `Polluter Pays' principle was promoted by the Organisation for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this, time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the Polluter Pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed."

This principle has also been held to be a sound principle in the case of Vellore Citizens `Welfare Forum (supra). The Court observed that the Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. The Court in the said judgment, on the basis of the provisions of Articles 47, 48-A `and 51-A(g) of the Constitution, observed that we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental laws of the country.

(3) The Public Trust Doctrine:

The concept of public trusteeship may be accepted as a basic principle for the protection of natural resources of the land and sea. The Public Trust Doctrine (which, found its way in the ancient Roman Empire) primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public.

This Court in the case of A.P. Pollution Control Board II (supra) mentioned that there is a need to take into account the right to a healthy environment along with the right to sustainable development and balance them.

In the case of M.C. Mehta v. Kamal Nath, [1997] 1 SCC 388, this Court dealt with the Public Trust Doctrine in great detail: The Court observed: as under:

"35. We are fully aware, that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities, who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the court. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources:"
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Joseph L. Sax, Professor of Law, University of Michigan - proponent of the modern Public Trust Doctrine - in an erudite article "Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention" Michigan Law Review; Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

"The source of modern public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal

> literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be presented for the benefit of the public; accordingly; property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties - such as the seashore, highways and running water - `perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that pubic, rights could be legally asserted against a recalcitrant government."

The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The, said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

> "Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first; 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; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses."

The Supreme Court of California in National Audubon Society v. Superior Court of Alpine County, (33 Cal. 3d 419) observed as under:

> "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 that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust....."

In a recent case of Intellectuals Forum v. State of A. P., [2006] 3 SCC 549, this Court has reiterated the importance of the Doctrine of Public Trust in maintaining sustainable development.

The right to sustainable development has been declared by the UN General Assembly to be an inalienable human right (Declaration on the right to Development) (1986).

Similarly, in 1992 Rio Conference it was declared that human beings are at the centre of concerns for sustainable development. Human beings are entitled to a healthy and productive life in harmony with nature. In order to achieve sustainable development, environmental protection shall constitute an integral part of development process and the same cannot be considered in isolation of it.

The same principle was articulated in the 1997 "Earth Summit".

The European Court of Justice, emphasised in Portugal v. F.C. Council the need to promote sustainable development while taking into account the environment. (report in 3 C.M.L.R. 331) (1997) (ibid Columbia Journal of Environmental Law, p.283) In the case of M.C. Mehta v. Union of India, [1997] 2 SCC 353, this Court gave a number of directions to 292 industries located nearby Taj Mahal. This Court, in this case, observed that the old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and ecosystem have to be protected. The pollution created as a consequence of environment must be commensurate with the carrying capacity of our ecosystem. In any case, in view of the precautionary principle, the environmental measures must anticipate, prevent and attack the causes of environmental degradation.

The directions which have been given in the impugned judgment are perhaps on the lines of directions given by this Court in M.C. Mehta v. Union of India, [1997] 3 SCC 715. This Court observed that the preventive measures have to be taken keeping in view the carrying capacity of the ecosystem operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi. Two expert opinions on the record - by the Central Pollution Control Board and by the NEERI make it clear that the large-scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology. NEERI has recommended green belt at one k.m. radius all around the two lakes.

The directions given in the said judgment based on NEERI's recommendations were capable of proper implementation.

If the directions given in the impugned judgment are properly implemented then perhaps, the appellant cannot acquire any land for development, This may not have been the underlying idea behind the judgment but it seems to be the obvious consequence of a direction given by the Division Bench in this case. In this view of the matter, the said directions given in the impugned judgment are set aside.

We see significant developments when we carefully evaluate the entire journey of judicial pilgrimage from the decade of 1960 till this date. In the decade of 1960s, hardly anyone expressed concern about ecology and environment. The statement of Sir Edmund Hillary quoted in the earlier part of the judgment indicates that Mount Everest was littered with junk from the bottom to the top, and nobody hardly spoke about it or was any serious concern shown about environmental degradation. In the decade of I970s, a serious concern about the degradation of ecology and environment was articulated. The Stockholm Conference of 1972 was a major watershed in the history of the world. It was realised that for a civilised world both development and ecology are essential.

In the Rio Conference of 1992 great concern has been shown about sustainable development. "Sustainable development" means `a development which can be sustained by nature with or without

mitigation'. In other words; it is to maintain delicate balance between industrialization and ecology. While development of industry is essential for the growth of economy, at the same time, the environment and the ecosystem are required to be protected. The pollution created as a consequence of development must not exceed the carrying capacity of ecosystem. The Courts in various judgments have developed the basic and essential features of sustainable development. In order to protect sustainable development, it is necessary to implement and enforce some of its main components and ingredients such as - Precautionary Principle, Polluter Pays and Public Trust Doctrine. We can trace foundation of these ingredients in number of judgments delivered by this Court and the High Courts after the Rio Conference, 1992.

The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of `Sustainable Development'.

(1) We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.

(2) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.

This has been an interesting judicial pilgrimage for the last four decades. In our opinion, this is a significant contribution of the judiciary in making serious endeavour to preserve and protect ecology and environment in consonance with the provisions of the Constitution.

Sustainable use of natural resources should essentially be based on maintaining a balance between development and ecosystem. Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved.

The concept of sustainable development was propounded by the `World Commission on Environment and Development', which very aptly and comprehensively defined it as `development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. Survival of mankind depends on following the said definition in letter and spirit.

Before we part with this case, we would like to place on record our deep appreciation for the able assistance rendered by Mr. A. R. Madhav Rao, the learned amicus curiae.

The appeal is allowed and disposed of in terms of the aforementioned directions. In the facts and circumstances of the case, we direct the parties to bear their own costs.