Supreme Court of India
B.S. Sandhu vs Government Of India & Ors on 21 May, 1948
Author: A K Patnaik
Bench: A.K. Patnaik, Fakkir Mohamed Kalifulla

CA Nos. 4682-4683 of 2005

ITEM NO.1A COURT NO.2 SECTION IV
[FOR JUDGMENT]

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4682-4683 OF 2005

B.S. SANDHU Appellant (s)

VERSUS

GOVERNMENT OF INDIA & ORS. Respondent(s)

WITH
Civil Appeal NO. 4684-4685 of 2005
[DASHMESH EDUCATIONAL SOCIETY V. PUNJAB URBAN DEVELOPMENT AUTHORITY & ORS.]

Civil Appeal NO. 4799-4800 of 2005
[SURESH SHARMA &ORS. V. B.S. SANDHU & ORS.]

Civil Appeal NO. 4798 of 2005
[BHARTIYA KISAN UNION TH. VICE PRESIDENT V. STATE OF PUNJAB AND ORS.]

SLP(C) NO. 19226 of 2013
[B.S. SANDHU (RETD.) V. UNION OF INDIA & ORS.]

SLP(C) NO. 20235 of 2013
[HARMESH KUMAR & ORS. V. U.O.I. & ORS.]

Date: 21/05/2014 These Appeals/Petitions were called on for pronouncement of judgment today.

For Appellant(s)
in CA 4682-83 & 4684-85
Mr. Ashwani Chopra, Sr. Adv.
Mr. Rudreshwar Singh, Adv.
Mr. Raman Walia, Adv.
Mr. Kaushik Poddar, Adv.

In CA 4799-800 Mr. Puneet Bali, Sr. Adv.

Mr. Raman Walia, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

In CA 4798
Mr. Puneet Bali, Sr. Adv.
Mr. Raman Walia, Adv.
Mr. Ajit Kumar Pande, Adv.

In SLP 19226
Mr. Ashwani Chopra, Sr. Adv.
Mr. Rudreshwar Singh, Adv.
Mr. Raman Walia, Adv.

Mr. Samir Ali Khan, Adv.

In SLP 20235
Mr. Shree Pal Singh, Adv.

For Applicant (s)
Mr. Ashwani Chopra, Sr. Adv.
Mr. Rudreshwar Singh, Adv.
Mr. Kaushik Poddar, Adv.

For Respondent(s)
in CA 4682-83
Mr. Prashant Kumar, Adv.

Mr. Alok Kumar, Adv.

Mr. B.V. Balaram Das, Adv.
Mr. P. Parmeswaran, Adv.

Mr. Ashiesh Kumar, Adv.

Mr. Bimal Roy Jad, Adv.

In CA 4682-83 & 4799-800
Mr. A.D.N. Rao, Adv.

In CA 4682-83, 4684-85 &
4799-800
Mr. Ajay Bansal, AAG.
Mr. Rakesh Kumar, Adv.
Mr. Kuldip Singh, Adv.
Mr. Jagjit Singh Chhabra, Adv.
Mr. Dheeraj Gupta, Adv.
Mr. Devendra Singh, Adv.
Mr. Rajeev Kumar, Adv.
Mr. Gaurav Yadav, Adv.
Mr. Pardaman Singh, Adv.

*****

C.A. Nos. 4682-4683 of 2005, C.A. Nos. 4799-4800 of 2005 and

C.A. No. 4798 of 2005

Hon'ble Mr. Justice A.K. Patnaik pronounced the judgment of the Court for a Bench comprising of His Lordship and Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla.

For the reasons stated in the signed reportable judgment, we set aside the finding of the High Court that the entire land in village Karoran, District

CA Nos. 4682-4683 of 2005

Ropar is 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 and remand the matter to the High Court for fresh hearing and fresh order in accordance with law. Consequently, all directions in the impugned order which flow out of the aforesaid finding of the High Court that the land was 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 are set aside. We, however, make it clear that we have not set aside the directions for investigation by the CBI in the impugned order.

The appeals stand disposed of.

C.A. Nos. 4684-4685 of 2005, SLP(C) Nos. 19226/2013 and 20235/2013

These matters being separate from the matters in which the judgment has been delivered today are de-linked and will be listed separately for

hearing.

[KALYANI GUPTA]
COURT MASTER

[RENU DIWAN]
COURT MASTER

[SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE.]

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 4682-4683 OF 2005

B.S. Sandhu … Appellant

Versus

Government of India & Ors. … Respondents

WITH

CIVIL APPEAL NOs. 4799-4800 OF 2005

AND

CIVIL APPEAL NO. 4798 OF 2005

JUDGMENT

A. K. PATNAIK, J.

These Civil Appeals have been filed by way of special leave under Article 136 of the Constitution against the common order dated 12.10.2004 of the Division Bench of the Punjab and Haryana High Court in CWP No. 1134 of 2004 and CWP No. 1850 of 2004.

Facts of the Case:

2. CWP No. 1134 of 2004 is a Public Interest Litigation entertained by the High Court suo motu pursuant to a news item published on 22.01.2004 in the Hindustan Times ('HT Chandigarh Live'). This news item was titled 'Forest Hill Club under Central Government Scanner', and it stated that the Ministry of Environment and Forest, Union of India, has found that a Forest Hill Golf and Country Club in Village Karoran, District Ropar, near Chandigarh was being developed in blatant violation of the environmental and forest laws as well as the orders passed by this Court in December 1996. The news item further stated that the Forest Department of Government of Punjab had informed the Union Ministry of Environment and Forest that the entire area, on which the golf course had been set up, was closed under the Punjab Land Preservation Act, 1900 (for short 'PLP

Act, 1900') and was a 'forest area', which attracted the provisions of the Forest (Conservation) Act, 1980, but the Punjab Government permitted change of land use as a quid pro quo because a large number of top IAS and IPS officers and other decision- makers have been given honorary membership of the club or have been allowed to use the premises and facilities of the Club for private functions.

3. CWP No. 1850 of 2004 was filed by one Ranjeet Singh as a writ petition under Article 226 of the Constitution. In the writ petition, it was inter-alia stated that village Karoran is located in Kharar Tehsil of District Ropar and is about eight kilometers to the North-west of Chandigarh and the entire area of the village measuring about 3700 acres is covered under PLP Act, 1900, and this area measuring about 3700 acres of village Karoran is also shown as 'forest area' in the Annual Administration Report and the Register of Forest Area of the forest department. It is further stated in the writ petition that pursuant to the order dated 12.12.1996 passed by this Court in T.N.Godavarman Thirumulkpad v. Union of India & Ors. (1997) 2 SC 267, an Expert Committee was set up by the Government of Punjab to identify the forest areas of the State of Punjab, and this Expert Committee included the entire area of Karoran village as forest area in its report, and accordingly an affidavit was filed on behalf of the State Government in March, 1997 in this Court, showing the entire area of Karoran village as part of the forest areas of the State of Punjab. It is also stated in the writ petition that the entire area of Karoran village was included as forest area in the management plan prepared by the State Forest Department and the management plan was approved by the Ministry of Environment and Forest vide its letter dated 14.12.1998. The case made out in the writ petition was that Section 2 of the Forest (Conservation) Act, 1980 was applicable to any land in the Karoran village and, therefore, the land could not have been diverted for non-forest activities without the prior permission of the Central Government.

4. Col. B.S. Sandhu, who was the proprietor/Managing Director of the Forest Hill Golf and Country Club, contended before the High Court that merely because village Karoran is covered under the PLP Act 1900, the lands comprising the area of village Karoran do not become 'forest land'. He further contended that the lands in village Karoran on which the Forest Hill Golf and Country Club has been constructed were private lands acquired by sale deeds by the Dashmesh Educational Society formed by him for a period of eight years from different owners and some of the lands are agricultural lands and some of the lands are uncultivable waste lands (Gair Mumkin Pahar) and unless a formal notification was issued under Section 35 of the Forest Act, 1927 notifying a private land as 'forest land', a private land cannot be treated to be 'forest land'. Col. B.S. Sandhu also contended before the High Court that the fact that the State Forest Department had shown the entire land in village Karoran as under the administrative control of the Forest Department does not also make the entire land in Karoran village to be the 'forest land'. He further contended before the High Court that the entries in the revenue records of the State Government would show that the land in village Karoran on which the club has been established is not 'forest land'. He, however, conceded before the High Court that pursuant to the orders passed by this Court in T.N.Godavarman Thirumulkpad v. Union of India & Ors. (supra) on 12.12.1996, the Expert Committee constituted by the State of Punjab initially identified all the 'forest areas' including those owned by private land owners in village Karoran measuring 3700 acres as 'forest land' and an affidavit was also filed on 21.02.1997 on behalf of the Forest Department, Government of Punjab, in

this Court accordingly, but he submitted before the High Court that pursuant to affidavits filed on behalf of the State Government, orders were passed by this Court in I.A. No.727 in T.N. Godavarman Thirumulkpad's case (W.P.(C) No.202 of 1995) deleting large portions of land under habitation in village Karoran from the 'list of forest areas' in the State of Punjab.

5. The High Court, however, rejected the contentions made on behalf of Col. B.S. Sandhu in Civil Appeal Nos.4682-4683 of 2005 and held that the entire land of village Karoran which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 of the aforesaid PLP Act, 1900 is 'forest land' and attracts the provisions of Section 2 of the Forest (Conservation) Act, 1980 if sought to be used for 'non-forest purpose'. The High Court also held that in the records of the Forest Department of the Government of Punjab, the entire land of village Karoran was shown to be 'forest land' and the entries in the revenue record regarding the nature of the land were changed by the officers of the Revenue Department of the Government of Punjab at the behest of Col. B.S. Sandhu for the obvious reason that he was eyeing this big chunk of land for his personal gains. The High Court, therefore, discarded the latest entries of the revenue record and instead accepted the records of the Forest Department to hold that the land in question was 'forest land'. The High Court further held that in T.N.Godavarman's case, this Court has in its order dated 12.12.1996 defined the term 'forest land' occurring in Section 2 of the Forest (Conservation) Act, 1980 to include not only 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. The High Court held that as the land in village Karoran was recorded in the records of the Forest Department of the Government of Punjab to be 'forest land', the same was 'forest land' within the meaning of Section 2 of the Forest (Conservation) Act, 1980. The High Court also held that the entire 3700 acres of land in the village Karoran was identified as 'forest land' by the Expert Committee constituted by the State of Punjab in its report dated 19.02.1997 and the State Government filed its affidavit dated 21.02.1997 before this Court along with the report of the Expert Committee. The High Court took note of the fact that pursuant to hardships experienced by the owners of some of these lands in village Karoran and pursuant to numerous representations, the State Government did examine the issue afresh and excluded a portion of the land from the 'list of forest areas', but Col. B.S. Sandhu and his associates cannot derive any benefit or advantage from this stand of the State Government.

6. With the aforesaid findings, the High Court allowed the writ petitions directing Col. B.S. Sandhu and the companies and/or the societies floated by him to immediately close down its entire enterprise known as 'Forest Hill Country Club Resort and Golf Course' and to demolish all the illegally erected buildings within a period of three months and to handover the 'management' and 'control' of the land in question to the State Forest Department. The High Court also directed the Revenue Department, Government of Punjab, to carry out all necessary corrections in the 'records of rights' regarding the 'forest land' falling within the revenue estate of village Karoran, Tehsil Kharar, District Ropar and directed the Punjab State Electricity Board, through its Chairman, to discontinue the power supply forthwith to the Forest Hill Resort and directed the Commissioner of Excise and Taxation Department, Government of Punjab, to cancel L-2 licence issued in favour of the Forest Hill Resort. The High Court also directed the Central Bureau of Investigation through its Director to constitute a Special Investigation Team to be headed by an officer not below the rank of Deputy

Inspector General, which shall hold a through probe into the question of accountability of top executive and administrative functionaries of the departments concerned of the Government of Punjab, some officers of the Central Government in relation to establishment and development of the Forest Hill Golf and Country Club at village Karoran and to report as to whether any one of them indulged in taking direct or indirect gratification and/or acted in violation of the Conduct Rules and to constitute a Special Investigation Team of the Central Bureau of Investigation to inquire into and submit its report as to how much lands are actually owned by Col. B.S. Sandhu, his family members and/or the societies/ companies floated by them.

7. Aggrieved by the impugned order, Col. B.S. Sandhu has filed Civil Appeal Nos.4682-4683 of 2005. Aggrieved by the impugned order, some agriculturists, house owners and shop owners of village Karoran have filed Civil Appeal Nos. 4799-4800 OF 2005 and the Bhartiya Kisan Union, which is a union of farmers has filed Civil Appeal No.4798 of 2005, challenging, in particular, the finding of the High Court that the entire land in village Karoran is 'forest land' covered under Section 2 of the Forest (Conservation) Act, 1980 and cannot be used for non-forest purposes without the prior permission of the Central Government.

Contentions on behalf of the Parties:

8. At the hearing of these appeals, learned counsel for the appellants submitted that the conclusion of the High Court in the impugned order that the entire land of village Karoran, District Ropar, which has been notified under Section 3 of PLP Act, 1900 and which is being regulated by the prohibitory directions notified under Sections 4 and 5 of the PLP Act, 1900 is 'forest land' is not correct in law. They referred to the provisions of the PLP Act, 1900 to show that the aforesaid Act was meant to preserve and protect the land situated within or adjacent to Shivalik Mountain Range. They argued that the notification issued under Section 3 of the PLP Act, 1900, therefore, covered both 'forest' and 'non- forest land' and therefore a notification under Section 3 of the PLP Act, 1900 closing a particular land under the said Act would not per se make the land a 'forest land'.

9. Learned counsel for the appellants further submitted that the High Court has gone by only the records of the Forest Department in which the entire land of 3700 acres in village Karoran, District Ropar, was shown as within the administrative control of the Forest Department. They argued that the land which is under the administrative control of the Forest Department does not become 'forest land' only because the Forest Department exercises control over that land. They submitted that an affidavit was filed on behalf of the Government of Punjab in this Court pursuant to the order dated 12.12.1996 of this Court in T.N. Godavarman Thirumulkpad v. Union of India & Ors. (supra), on the basis of the report of the Expert Committee constituted by the State Government for identification of forest areas in the State of Punjab in February, 1997 stating that the entire 3700 acres of land in village Karoran, District Ropar, was 'forest land' but subsequently the State Government realised the mistake and filed an affidavit in October, 1999 before this Court for excluding portions of the land in village Karoran, District Ropar, from the list of 'forest areas' earlier furnished by the State of Punjab to this Court saying that such land was under cultivation and human habitation and the farmers who were cultivating the land and those who were living in the land will suffer immense hardship if the land continues to be 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980.

10. Learned counsel appearing for the State of Punjab, on the other hand, submitted that whether a particular land is 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 has to be decided in accordance with the order dated 12.12.1996 of this Court in T.N. Godavarman Thirumulkpad v. Union of India & Ors. (supra) as there is no definition of forest either in the Forest (Conservation) Act, 1980 or in the Indian Forest Act, 1927. He submitted that this Court in M.C. Mehta vs. Union of India [(2004)12 SCC 118 – (hereinafter referred to as 'the first M.C. Mehta case') has taken the view that if the State Forest Department has been treating and showing a particular area as forest, that area is to be treated as forest and if such area was to be used for non-forest purposes, it was necessary to comply with the provisions of the Forest (Conservation) Act, 1980. He submitted that this view was again endorsed by this Court in M.C. Mehta vs. Union of India and Ors. [JT 2008 (6) SC 542 – (hereinafter referred to as 'the second M.C. Mehta case'). He referred to the Annual Report of the East Punjab (Forest Department) to show that the entire land in village Karoran, District Ropar, under the PLP Act, 1900 was under the Forest Department and submitted that in view of the decisions of this Court in the first and the second M.C. Mehta cases, the entire land in village Karoran, District Ropar, including the land of Col. B.S. Sandhu was 'forest land' and could not be diverted for non-forest purposes without the permission of the Central Government as provided in Section 2 of the Forest (Conservation) Act, 1980.

11. The Member Secretary of the Central Empowered Committee (for short 'the CEC') referred to the records of I.A. 727 in T.N.Godavarman Thirumulkpad v. Union of India & Ors. (supra) (Writ Petition No.202 of 1995) to show that the proposal of the State Government to exclude an area of 69,367 ha. out of 1,68,224 ha. closed under the PLP Act, 1900 from the list of forest areas was examined by the CEC and the CEC was of the view that the deletion of the areas which were under cultivation of the habitation prior to 25.10.1980 i.e. when the Forest (Conservation) Act, 1980 was enacted, would not be against the spirit of the Forest (Conservation) Act, 1980. He submitted that the CEC, however, was also of the view that for deleting such areas from the list of forest areas, the procedure as laid down in the Forest (Conservation) Rules, 1981 and the guidelines issued by the Central Government for implementation of the Forest (Conservation) Act, 1980, must be followed. Conclusions of this Court:

12. After hearing learned counsel for the parties, we find that the reason why the entire 3700 acres of land in Karoran, District Ropar, was included in the list of 'forest land' submitted by the State Government to this Court in February, 1997 is that in the records of the Forest Department, Government of Punjab, the said land was shown to be under the Forest Department, Government of Punjab. We have, therefore, examined the Annual Report of the East Punjab (Forest Department) included in the compilation filed on behalf of the State Government on 22.02.2014 and we find that the land in the village Karoran, District Ropar, is recorded as land under the control of the Forest Department because the land was closed under the PLP Act, 1900. This is also clear from paragraph 5 of the affidavit of Shri J.S. Kesar, IAS, Financial Commissioner and Secretary to Government of Punjab, Department of Forests and Wildlife Preservation, filed in this Court in October, 1999 extracted hereinbelow:

> "5. The basis for inclusion of all the areas closed under the PLPA, 1900 as "Forest areas" in the earlier affidavits was that the same were being reported in the Annual

> Administrative Reports of the Forest Department since several decades under the category "closed under PLPA 1900". Though the areas closed under PLPA 1900 were not specifically recorded as forest areas because of the fact that they were included in Annual Administrative Reports of the State Forest Department. As such, besides the areas with tree cover even cultivated fields and habitations in the areas notified under the PLPA, 1900 were depicted as 'Forest areas' by the Expert Committee and included in Annexure-G of the affidavit dated 21.2.1997 filed by the State Government in the Hon'ble Apex Court. It is thus reiterated that the Expert Committee included the cultivated/habitation areas closed under the PLPA, 1900 in the list of forest areas only because these stood included in the Annual Administrative Reports of the Department as "Areas closed under the PLPA 1900." Thus, the basis of including the entire land in village Karoran as forest area in the affidavit of the State Government in this Court is that the land was closed under the PLP Act, 1900 and therefore was forest area.

13. The High Court has also taken a view in the impugned order that as the entire land of village Karoran, District Ropar, was closed in the PLP Act, 1900, it was 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980. Paragraph 53 of the impugned order of the High Court is quoted hereinbelow:

> 53. For the reasons afore-mentioned and relying upon the expression "forest" and "forest lands" as defined by their Lordships in T.N. Godavarman's case (supra) and the principles laid down in M.C. Mehta's case (supra), we hold that the entire land of village Karoran which has been notified under section 3 of the PLPA, 1900 and is regulated by the prohibitory directions notified under section 4 and 5 thereof, is a "forest land" and attract the provisions of section 2 of the Conservation Act, 1980, if sought to be used for 'non forest purposes".

14. Hence, the first question that we have to decide is whether the conclusion of the High Court that the land which is notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 of the aforesaid Act is 'forest land' is correct in law. Sections 3, 4 and 5 of the PLP Act, 1900 as it was originally enacted are extracted hereinbelow:

> "3. Whenever it appears to the Local Government that it is desirable to provide for the better preservation and protection of any local area, situated within or adjacent to the Sivalik mountain range or affected or liable to be affected by the deboisement of forest in that range or by the action of chos, such Government may, by notification, make a direction accordingly.
>
> 4. In respect of areas notified under section 3 generally, or the whole or any part of any such area, the Local Government may, by general or special order, temporarily or permanently, regulate, restrict or prohibit-

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3;

(b) the quarrying of stone, or the burning of lime, at places where such stone or line had not ordinarily been so-quarried or burnt prior to the publication of the notification under section 3;

(c) the cutting or trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce other than grass, save for bona fide domestic or agricultural purposes;

(d) the setting on fire of trees, timber or forest produce;

(e) the admission, herding, pasturing or retention of sheep or goats;

(f) the examination of forest-produce passing out of any such area; and

(g) the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom, or to pasture sheep or goats or to cultivate or erect buildings therein and the production and return of such permits by such persons,

5. In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3, the Local Government may, by special order, temporarily regulate, restrict or prohibit-

(a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3:

(b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under section 3;

(c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce for bona fide domestic or agricultural purposes; and

(d) the admission, herding, pasturing or retention of cattle generally, other than sheep and goats, or of any class or description of such cattle."

15. It will be clear from the language of Section 3 of the PLP Act, 1900 extracted above that for the better preservation and protection of any local area, situated within or adjacent to Shivalik Mountain Range which is liable to be affected deboisment of forests in that range or by the action of

"cho", such Government may by notification make a direction accordingly. The expression "local area" has not been defined in the PLP Act, 1900 and may include not only 'forest land' but also other land. In Section 4 of the PLP Act, 1900 extracted above, the local Government was empowered by general or special order, temporarily or permanently to regulate, restrict or prohibit various activities mentioned in clauses (a), (b), (c), (d) , (e) , (f) and (g) thereof. A reading of these clauses would show that activities such as cultivation, pasturing of sheep and goats and erection of buildings by the inhabitants of towns and villages situated within the limits of the area notified under Section 3 can be regulated, restricted or prohibited by a general or special order of the local Government. All these activities are not normally carried on in forests. Similarly, under Section 5 of the PLP Act, 1900, the local Government was empowered by special order, temporarily or permanently to regulate, restrict or prohibit the cultivating of any land or to admit, herd, pasture or retain cattle generally other than sheep and goats. These activities are also not normally carried on in forests. In our view, therefore, land which is notified under Section 3 of the PLP Act, 1900 and regulated by orders of the local Government under Section 4 and 5 of the PLP Act, 1900 may or may not be 'forest land'. Therefore, the conclusion of the High Court in the impugned order that the entire land of village Karoran, District Ropar, which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 thereof is 'forest land' is not at all correct in law. The basis for inclusion of the entire area in village Karoran, District Ropar, in the list of forest areas in the State of Punjab pursuant to the order dated 12.12.1996 of this Court in the case of T.N.Godavarman Thirumulkpad v. Union of India & Ors. (supra) is legally not correct. Similarly, the conclusion of the High Court in the impugned order that the entire land in village Karoran, District Ropar, having been notified under Section 3 of the PLP Act, 1900 and being under the regulatory regime of Sections 4 and 5 of the said Act is 'forest land' is also legally not correct.

16. In fact, the High Court failed to appreciate the meaning of 'forest' and 'forest land' in Section 2 of the Forest (Conservation) Act, 1980 as given by this court in the order dated 12.12.1996 in the case of T.N.Godavarman Thirumulkpad v. Union of India & Ors. (supra). The relevant portions of the order dated 1212.1996 of this Court in the case of T.N.Godavarman Thirumulkpad v. Union of India & Ors. (supra) on the meaning of the words 'forest' and 'forest land' is extracted hereinbelow:

> "4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof . The word "forest: must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof." The underlined portion of the

order dated 12.12.1996 in the case of T.N.Godavarman Thirumulkpad v. Union of India & Ors. (supra) would show that the Forest (Conservation) Act, 1980 was enacted with a view to check "further deforestation" and was to apply to all forest irrespective of the nature of ownership or classification thereof. Hence, Section 2 of the Forest (Conservation) Act, 1980 puts a restriction on further deforestation of 'forest land' and would apply to any land which at the time of enactment of the Forest (Conservation) Act, 1980 was 'forest land' irrespective of its classification or ownership. This is exactly the view taken also by the CEC in its recommendations dated 10.09.2003 in I.A. 727 in T.N.Godavarman's case (W.P. [C] No.202 of 1995). Paragraph 8 of the recommendations dated 10.09.2003 of the CEC in I.A. No.727 is extracted hereinbelow:

"8. After examining the submissions made by the applicant, affidavit filed by the State Government of Punjab and the 'No Objection' give by MoEF, the CEC is of the view that deletion of areas, which were under cultivation/habitation prior to 25.10.1980, i.e. enactment of the FC Act, would not be against the spirit of the FC Act, and this Hon'ble Court's order dated 12.12.1996, if such areas were included in the 'list of forest area" on technical reasons alone. However, the areas closed under Section 4 of the PLPA are recorded as 'forest' in the Forest Department's records for the last 40-50 years. This Hon'ble Court by order dated 12.12.1996 has held that areas recorded as 'forest' in Government records are forest for the purpose of the Section 2 of the FC Act. It would therefore be necessary to obtain prior approval of the Central Government under Section 2 of the FC Act, for deleting such areas from the "list of the forest area" after following the procedure as laid down in the Forest (Conservation) Rules, 1981, and the guidelines issued by the Central Government for implementation of the said Act. Irrespective of the merits of the case, it would not be appropriate to allow deletion of such area from the 'list of forest area" without following the prescribed procedure and provisions of the Forest (Conservation) Act." Thus, what the High Court was called upon to decide is whether the land on which the Forest Hill Golf and Country Club of Col. B.S. Sandhu was situated was forest land as on 25.10.1980 irrespective of its classification or ownership.

This is a factual question and the High Court should have decided this factual question on the basis of Government records as on 25.10.1980 and other materials filed before the High Court, but the High Court has instead decided this question by reference to the provisions of the PLP Act, 1900 and the records of the Forest Department in which the land was shown to be under the Forest Department because of the fact that the land was closed under the PLP Act, 1900 several decades before the enactment of the Forest (Conservation) Act, 1980. Moreover, by recording a blanket finding that all land in village Karoran, District Ropar, was 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980, the High Court has affected the legal rights of several villagers, agriculturists, farmers, shop owners, inhabitants of village Karoran, District Ropar, who were carrying on their respective occupations on their land even before the enactment of the said Act on 25.10.1980. In

> our view, the High Court should have been very careful before recording findings which affect the property rights of persons protected by Article 300A of the Constitution.

16. We have also examined the two decisions of this Court in the first and second cases of M.C. Mehta cited on behalf of the State of Punjab and we find that the aforesaid decisions have been rendered in the case of Aravali Hills in the State of Haryana and it was held therein that as the State Forest Department had been treating and showing the areas as 'forest', in fact and in law, the area was forest and non-forest activities could not be allowed in such areas without the prior permission of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. In these two decisions, this Court has not enquired into the basis of inclusion of the areas in forest by the State Forest Department nor has this Court considered as to whether a land becomes 'forest land' by mere inclusion of the same under the notification under Section 3 of the PLP Act, 1900. In the present case, on the other hand, the State Government has in its affidavit stated before this Court that the basis of inclusion of the entire land of village Karoran, District Ropar, in forest areas in the records of the Forest Department of Government of Punjab was that the land was closed under the PLP Act, 1900 and we have found this basis as not correct in law.

15. We, therefore, set aside the finding of the High Court that the entire land in village Karoran, District Ropar, is 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 and remand the matter to the High Court for fresh hearing and fresh order in accordance with law. Consequently, all directions in the impugned order which flow out of the aforesaid finding of the High Court that the land was 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 are set aside. We, however, make it clear that we have not set aside the directions for investigation by the CBI in the impugned order.

.....J.

(A. K. Patnaik) .....J.

(Fakkir Mohamed Ibrahim Kalifulla) New Delhi, May 21, 2014.