

2004(3) Bom.C.R. 244

(O.S.)

Before :

Thakker C.K., C.J. & Radhakrishnan S., J.

Bombay Environmental Action Group & others Petitioners.

Versus

A.R. Bharati, Deputy Conservator of Forest & others Respondents.

Writ Petition No. 305 of 1995 with Notice of Motion Nos. 124, 364 of 2001 with Notice of Motion No. 117 of 2002 with Notice of Motion Nos. 293, 294 of 2003 with in (A.S.) W.P. Nos. 2054, 2189, 4382, 4383, 4384, 4385, 4386, 4387, 1771, 1241, 1761, 1762, 1763, 1764, 1765, 1766, 1211, 1463, 1464, 1465, 1579, 1802, 2062, 1126 of 2000 in (O.S.) W.P. Nos. 513, 515, 2157 of 1998 with Contempt Petition No. 12 of 1999 in W.P. No. 2031 of 1997 with W.P. No. 689 of 1999 with W.P. No. 1790, of 2000 along with Notice of Motion No. 242 of 2000 with Contempt Petition No. 85 of 2000 in W.P. No. 1579 of 2000 with W.P. No. 1119 of 2000 with Notice of Motion No. 167 of 2001 and Notice of Motion No. 280 of 2003 with Notice of Motion No. 410 of 2000 in W.P. No. 1099 of 2000 with W.P. No. 694 of 2003 with Pauper Petition No. 2 of 2001, decided on 31-7/15-9-2003.

(A) Land Acquisition Act, 1894, Secs. 4 & 6—Wild Life (Protection) Act, 1972, Sec. 35—Legality of notification under section 6—Petition by Environmental Action Group against encroachments on forest land of National Park—Contention that Government

Notification for acquisition of land of encroachers was not legal or valid—Held, once it is accepted that notification not issued mala fide or with oblique motives, the action cannot be held to be bad. (Paras 156 to 160)

(B) Land Acquisition Act, 1894, Secs. 4 & 6—Wild Life (Protection) Act, 1972, Sec. 35—Acquisition of land—Whether for public purpose—Encroachers on National Park challenging Government Notification for acquisition of land inter alia on the ground that it was not acquired for public purposes—Held, there is distinction between acquisition under Land Acquisition Act or acquisition under Wild Life Act. Whereas acquisition under the Land Acquisition Act can be for a public purposes the acquisition under Wild Life Act must be for purposes specified under the said Act i.e. for protection of ecological, faunal, floral, geomorphological or zoological development. Notification was legal and valid. (Paras 161 to 164, 168 & 171)

(C) Wild Life (Protection) Act, 1972, Sec. 35—Acquisition of land—Direction of Court—Whether wilfully ignored—Contention Government Survey Department has not carried out survey of the land in their possession properly and forest department has therefore, included their land in the acquisition which was different from the land marked for acquisition—Further that certain consent terms between some other petitioners were filed but are not binding on present petitioners—Held, though there has not been strict compliance with the direction but the matter having been settled as per consent terms filed between the concerned parties earlier and present petitioners being stranger to these proceedings and having no proof of any legal title to the land cannot agitate or challenge said terms. Matter having then been finally decided right up to Apex Court, is no more res integra. (Paras 183 to 186 & 198)

(D) Specific Relief Act, 1963, Secs. 5 & 6—Wild Life (Protection) Act, 1972, Sec. 35—Possession of land—Over years—Rights of encroachers on the land of National Park—Contention that occupiers are occupying the land and the structures made thereon since many years, they are in "settled possession" and their possession cannot be disturbed without due process of law—Earlier the encroachers had compromised the matter with Government as per consent terms—Held, a person to invoke the principle of possession has to show that prima facie he was in rightful possession of the property. A person shown to be in unlawful possession of the land cannot invoke the said principle or say that he cannot be dispossessed. (Paras 199 to 210)

Cases referred :

1. T.N. Godavarman Thirumalkpad v. Union of India, 1997(2) S.C.C. 267.
2. Pradeep Krishen v. Union of India, 1996(8) S.C.C. 599.
3. State of Bihar v. Murad Ali Khan, 1988(4) S.C.C. 655.
4. Sachidanand Pandey v. State of West Bengal, 1987(2) S.C.C. 295.
5. M.C. Mehta v. Kamal Nath, 1997(1) S.C.C. 388.
6. Illinois Central Railroad Co. v. People of the State of Illinois, 1892(146) U.S. 387 : 36 L.Ed. 1018.
7. Tarun Bharat Sangh, Alwar v. Union of India, 1992 (Supp. 2) S.C.C. 448.
8. Jaishi Ram Goel v. State of Punjab, through Secretary, Industries Department, Punjab Government, Chandigarh, A.I.R. 1962 Punjab 177.
9. M.P. Kuttappa Kurup v. Sub-Collector, Chengannur, A.I.R. 1962 Ker. 252.
10. Mrs. Ambujam Menon v. State of Kerala, A.I.R. 1966 Ker. 187.
11. State Bank of Punjab v. Gurdial Singh, A.I.R. 1980 S.C. 319.
12. Smt. Somawanti v. The State of Punjab, A.I.R. 1963 S.C. 151.
13. Janu Chandra Waghmare v. State of Maharashtra, A.I.R. 1978 Bom. 119(F.B.).
14. Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, 1990(1) Bom.C.R. 405 : A.I.R. 1989 S.C. 1642.
15. Mahabir Auto Stores v. Indian Oil Corporation, A.I.R. 1990 S.C. 1031.
16. Mukari Shrilekha Vidyarthi etc. v. State of U.P., A.I.R. 1991 S.C. 537.
17. Prabodh Verma v. State of U.P., 1984(4) S.C.C. 251.
18. Commissioner of Income Tax, Madras v. Vinod Kumar, A.I.R. 1987 S.C. 1260.
19. Gopi Aqua Farms v. Union of India, 1997(6) S.C.C. 577.
20. Ram Rattan v. State of U.P., A.I.R. 1977 S.C. 619.
21. Premji Ratansey Shah v. Union of India, 1995(2) Bom.C.R. 374 : 1994(5) S.C.C.

547.

22. Tamil Nadu Housing Board v. A. Viswan (dead) by L.Rs., 1996(8) S.C.C. 259.

23. Mahadeo Savlaram v. Pune Municipal Corporation, 1995(3) Bom.C.R. (S.C.)441 : 1995(3) S.C.C. 33.

24. Lallu Yeshwant Singh (dead) by his L.Rs. v. Rao Jagdish Singh, A.I.R. 1968 S.C. 620.

25. Nair Service Society Limited v. K.C. Alexander, A.I.R. 1968 S.C. 1165.

Advocates appeared :

Gautam Patel with M.S. Doctor, i/b. M.V. Jaykar & Co., in W.P. No. 305/1995, in Notice of Motion Nos. 124/2001, 117/2002 & 293, 294/2003, for petitioners.

Rafiq Dada, Sr.C., in W.P. No. 305/1995, for Committee (amicus curiae).

R.M. Sawant, G.P. with K.R. Belosey, A.G.P., in W.P. Nos. 305/1995, 513, 515, 2157/1998, 689/1999, 1771, 1241, 1766, 1211, 1465, 1802, 2062, 1126/2000, in Notice of Motion Nos. 124/2001, 117/2002, 293, 294/2003, in Contempt Petition No. 85/2000 in W.P. No. 1579/2000, in Notice of Motion No. 410/2000 in W.P. No. 1999/2000, for State & in Contempt Petition No. 12/1999 in W.P. No. 2031/1997, for respondents.

Mrs. P.A. Purandare, in W.P. No. 305/1995, W.P. Nos. 1211/2000, 1802/2000, in Notice of Motion Nos. 124/2001, 293, 294/2003, in W.P. No. 1790/2000 along with Notice of Motion No. 242/2000, in W.P. No. 1119/2000 with Notice of Motion No. 167/2001 & Notice of Motion No. 280/2003, for Bombay Municipal Corporation & in Notice of Motion No. 117/2002, for respondent No. 4.

Mrs. J.M. Sidhwa i/b. L.C. Tolat & Co., in Notice of Motion No. 124/2001, for applicants.

M.P. Vashi, in Notice of Motion No. 364/2001, for applicant and in W.P. Nos. 2157/1998, 2062/2000, 694/2003, for petitioners.

Ms. Maharukh Adenwalla, in Notice of Motion No. 294/2003, for applicants, in Contempt Petition No. 12/1999 in W.P. No. 2031/1997, for petitioners..

Anand Grover with Ms. Firdosh Moosa & Prakash Mahadik, in W.P. No. 2189/2000,

for petitioners.

C.J. Sawant S.C. with V.P. Malvankar, A.G.P., in W.P. No. 2189/2000, for State.

Om Prakash Shukla i/b. Mehta & Girdharlal, in W.P. No. 4387/2000, for petitioners.

V.P. Malvankar, A.G.P., in W.P. No. 4387/2000, for State.

J.N. Shetty, in W.P. Nos. 513, 515/1998, for petitioners.

Mihir Desai, in W.P. No. 689/1999, for petitioners.

Niranjan S. Parab, in W.P. No. 1771/2000, for petitioner.

M.L. Upadhyay, in W.P. No. 1241/2000, for petitioner.

Dhanesh R. Shah, in W.P. No. 1766/2000, for petitioners.

Mrs. Achala Saxena, in W.P. No. 1790/2000 along with Notice of Motion No. 242/2000, for petitioners.

M.V. Bhat, in W.P. No. 1211/2000, for petitioners.

M.V. Holamagi, in W.P. No. 1802/2000, for petitioners.

Abhay S. Oka with Vinod N. Singh, in W.P. No. 1119/2000 with Notice of Motion No. 167 of 2001 and Notice of Motion No. 280/2003, for petitioners.

C.J. Sawant, S.C. with R.M. Sawant, G.P. with K.R. Belosey, A.G.P., in W.P. No. 694/2003, in W.P. No. 1119/2000 with Notice of Motion No. 167/2001 & Notice of Motion No. 280/2003, for State.

O.P. Singh, Notice of Motion No. 410/2000 in W.P. No. 1999/2000, petitioner.

M.V. D'mello, in W.P. No. 1126/2000, for petitioners.

R.M. Sawant, G.P. with P.G. Lad. A.G.P., in W.P. No. 6942/2001, for State.

Ms. Rajani Iyer with P.N. Modi i/b. Kishore D. Abichandani, in W.P. No. 6942/2001, for respondent No. 4.

Per THAKKER C.K., C.J.:---In all these petitions, common questions of fact and law have been involved. It is, therefore, appropriate to deal with and decide all the petitions by a common judgment.

2. To appreciate the controversy raised in various petitions, few facts in the first matter, i.e. Writ Petition No. 305 of 1995, may now be stated.

3. The said petition is filed by Bombay Environmental Action Group, for an appropriate writ, direction or order directing authorities of the State Government as well as the Central Government to remove forthwith respondent Nos. 7 and 8 and other encroachers from the National Park and re-locate them in non-forest areas by demolishing all unauthorised and illegal structures from National Park. A prayer is also sought directing the respondents to take all necessary and precautionary steps, including construction of a boundary wall to prevent further encroachment and unauthorised structure in the said park. It is prayed that respondents be permanently restrained from providing encroachers any amenities and regularising in any manner encroachment and unauthorised structures in National Park. Legality and validity of the order dated 12th February, 1997 by which quarrying licence was granted in favour of respondents Nos. 7 and 8 is also questioned.

4. Petitioner No. 1 is a society registered under the Societies Registration Act, 1860, whose aims and objects are, inter alia, to look after environment in all its aspects. Petitioner No. 2 is the Chairman of petitioner No. 1, who is a citizen of India and has been carrying on such activities in various parts of India, and in particular, in the State of Maharashtra since many years. Respondent No. 1 is Deputy Conservator of Forests, Sanjay Gandhi National Park ("SGNP" for short). Respondent No. 2 is the Conservator of Forest (Wild Life), SGNP and is in charge of National Parks and Wild Life Sanctuaries in the western region of the State of Maharashtra. Respondent No. 3, State Wild Life Advisory Board, is a body constituted under the Wild Life (Protection) Act, 1972, for advising the State Government under the Act. Respondent Nos. 7 and 8 are some of the persons who have illegally encroached and have made unauthorised structures and/or constructions on land of SGNP. They were, therefore, joined as party respondents in their individual as well as representative capacity.

5. It is stated by this petitioners that the petition has been filed in public interest, challenging illegal encroachments and unauthorised structures which were constantly increasing in the area of SGNP. According to the petitioners, after the announcement of election in December, 1994, there had been a sudden spurt in the number of encroachments which had been, encouraged by political parties. Illegal encroachments

and unauthorised constructions had ecologically disastrous effect which had led to massive deforestation. It had been proved a threat to the green oasis to prevent it from performing its dual role as "lungs and the water source of the teeming metropolis of Bombay". According to the petitioners, over 200 hectares of land worth rupees one thousand crores had been swallowed by encroachers and about 50,000 illegal and unauthorised structures existed within the area.

SANJAY GANDHI NATIONAL PARK: "JEWEL IN MUMBAI'S CROWN".

6. The petitioners have stated that in the year 1945, the erstwhile Government of Bombay owned nearly 47 sq.kms. of land. Tulsi and Vihar lake catchment areas having about 10 sq.kms. were also vested in the Government and under the control of Forest Department. Moreover, about 20 sq.kms. of land, popularly known as "Krishnagiri Upwan", was transferred to forest department in 1969. About 10 sq.kms. of land of Thane village and 15 sq.mts. of land of private forests was acquired in 1974-75. All the above said areas formed SGNP comprising of more than 100 sq.kms. SGNP is partly situate in Thane and partly in Bombay Suburban District. It extends over more than 100 sq.kms. and is rich in variety of flora and fauna. It includes a number of species, fish, mammals, birds, reptiles, amphibians, tigers etc. It has been described as a "jewel in Mumbai's crown". The total area of park is more than 25,000 acres.

7. Due to increase in deforestation in the area, however, it is no longer a suitable habitat for tiger, panther, sambhar, spotted deer, barking deer, chowsingha, wild boar, peacock, jungle fowl, black naped hares, civet cats, mongoose, jungle cat, langur, bonnet and rhesus monkeys, etc.

8. SGNP encompasses within its boundaries the famous 2000 year old Kanheri Caves administered by Archaeological Survey of India as also Tulsi and Vihar Lakes which are important catchment areas and provide drinking water to the city of Bombay.

9. With a view to develop national management and observation systems. SGNP has been divided into three types of areas viz.

- (i) Nature Reserve which aims at preserving inviolate the pristine beauty of the park;
- (ii) Recreational and educational sector which would cater to the recreational, educational and aesthetic needs of the people;
- (iii) Administrative sector.

10. Large amount of wild life as well as important flora and fauna are found within the boundaries of this National Park. The naturalists from the Bombay Natural History Society (BNHS) have listed the following species in this park:-

- (a) About 800 flowering plants, including the exquisite purple bloom, *Strobilanthes* (Karvi) the flowers once every seven years.
- (b) 274 bird species (a quarter of all the birds in India) including the Pied-crested Cuckoo, said to be the harbinger of the monsoon.
- (c) 42 mammal species, including chital, sambar and the elusive leopard, plus 17 bat species vital to most tropical forests.
- (d) 38 species of reptiles, including crocodiles and the extremely rare ceylonese cart snake.
- (e) A staggering 8,000 insect species, including over 150 butterfly species (twice the number in the whole of Great Britain). The largest moth in the world, the Atlas moth is also found here.

LEGISLATIVE ACTIONS

11. SGNP was notified as protected forest under section 27 of the Indian Forest Act, 1927. It was also declared as "National Park" under section 35 of the Wild Life (Protection) Act, 1972, by issuing a notification in 1983. Both the above statutes viz. Indian Forest Act, 1927 and Wild Life (Protection) Act, 1972, have been enacted with a view to safeguard the environment and protect Indian Forests and Wild Life by adopting ecologically, friendly and scientific methods of conservation. The rapid decline of Indian Forests and Wild Life, one of the richest and most varied in the world, had been a cause for grave concern for all interested in environment and environmental protection. Some wild life and birds have already become extinct in the country and others are in the danger of becoming so. Maintenance and preservation of forest is a matter of vital

importance particularly in India inasmuch as the maintenance of forest is necessary for preserving ecological balance, conserving soil moisture, preventing soil erosion, ensuring adequate rainfall, water resources and preventing floods. It has been found that due to encroachments and deforestation, there has been a substantial loss of forests which has been estimated as 1.3 million hectares of forest land per annum. The study has revealed that about 6 million hectares of land was under the jurisdiction of forest department in the State of Maharashtra. The area actually remained as a forest has been reduced to only 4.07 million hectares in 1970's and had diminished to 3.4 million hectares in early 1980's. This has been clear from aerial survey and satellite photographs of the SGNP. The petitioners have, therefore, sought a relief by directing respondent-authorities to produce survey and satellite photographs of SGNP, as those maps, photographs and surveys would show the extent of deforestation, forest degradation and increasing encroachments. The adverse effect of reduction in forest is disastrous on the survival of wild life and had resulted in extinction of certain species.

12. The importance of conservation of forest has been recognised by the Constitution vide the Constitution (Forty Second Amendment) Act, 1976. By the said amendment, the legislative power relating to forests which had been with the State List was placed in the Concurrent List in Schedule VII to the Constitution (Entry No. 17-A "Forests"; Concurrent List, Schedule VII). Article 48-A of the Constitution as inserted by the same amendment requires the State to endeavour to protect and improve the environment and safeguard forests. Likewise, Article 51-A(g) makes it a 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.

13. The State of Maharashtra is conscious of preservation and protection of forests and has enacted a statute known as the Maharashtra Private Forests (Acquisition) Act, 1975 which provides for acquisition of private forest land by the State. The Preamble of the Act declares that the Act has been enacted with a view to preserving and conserving forests in order to maintaining ecological balance, conserving soil moisture, improving water and rain, raising water sources, preserving soil, conserving water and preventing soil erosion.

14. Regulation of forests is the subject matter of Indian Forest Act, 1927 as well. It, inter alia, prohibits certain acts, including cultivation of land in reserved forests.

Provisions have also been made empowering the State Government to declare lands to be protected forest preventing cultivation.

15. The President of India initially promulgated the Forest (Conservation) Ordinance in 1980 which was substituted by the Forest (Conservation) Act, 1980 passed by Parliament. The said Act provides that notwithstanding anything contained in any other law for the time being in force, no State Government can, except with the prior approval of the Central Government, either reduce the area of a reserved forest or permit the use of any forest land for a non-forest purpose. The Wild Life (Protection) Act, 1972 protects wild animals and their habitat. It also makes provisions for creation of Sanctuaries and National Parks, patrolled and administered by specialised Wild Life Officers who are trained, equipped and statutorily empowered to protect endangered species.

16. It is stated in the petition that even though the area of forest in Maharashtra has substantially diminished, there are still many areas under forests. Such forest land, however, has been steadily and stealthily encroached upon and forest covered areas are being denuded by local population and by encroachers for cultivation and other purposes. Because of inaction, connivance by the authorities and politicians and inadequate remedial measures, such encroachments are increasing. About 200 hectares of land valued at rupees one thousand crore approximately has been illegally squatted and houses have been constructed. Large area of SGNP is having slum colonies. Local politicians encouraged encroachers to encroach into the forest lands promising that their illegal encroachment will be regularised later on. The petitioners have come to know that certain slumlords are selling and/or letting out shanties within SGNP. Illegal water connection, electricity and telephone line had been supplied to some slum dwellers. Vested interests have thereby been benefited. This, has resulted in massive deforestation and diminishing wild life. Wild animals are unable to move freely in their habitat and occasionally they are found in the areas where illegal construction has been made and encroachers are staying. It has caused a serious threat to both the wild life as well as human beings. It has also adversely affected Tulsi and Vaitarna Lakes. Naturalists fear that if the present trend will continue for a decade or so, both the lakes may be dried up owing to direct water consumption and silting. The petitioners have, therefore, approached this Court to direct the respondent authorities to perform their functions and discharge their duties, keeping in mind the provisions of laws in force and by taking appropriate measures.

17. The petitioners have stated that they have come to know that the State Government has allowed quarrying operation in forest land in SGNP. The said action is illegal and contrary to law. A prayer is, therefore, made by the petitioners to pass appropriate orders against the State Authorities.

INTERIM ORDERS

18. The petition was filed on 8th February, 1995. Rule was issued on 13th April, 1995. Several orders were thereafter passed by this Court from time to time. We may refer to important orders in which directions were issued by this Court for protection of forests and prevention of encroachment and unauthorised construction. Directions were also issued to the authorities with a view to prevent and curb unauthorised encroachment and illegal construction. On 15th January, 1997, a statement was made by the Government Pleader, which has been recorded in the order of the Court that "the respondents would evolve a scheme for shifting the unauthorised occupants" from SGNP. In the order dated 12th February, 1997, the Division Bench on the contention of the petitioners, observed that there was wide encroachment in SGNP and lot of forest area was destroyed because of inaction on the part of the Forest Officers. There was increase in the encroachment and encroachers were using forest area for commercial and industrial activities with impunity. They were having electricity and telephone connections. Other facilities were also provided by the Municipal Corporation. If such facilities would be continued, large area of SGNP would be destroyed within few years. It was, therefore, submitted by the learned Counsel for the parties that a Committee be appointed of the Officers of the State Government to look into the matter and to suggest short-term measures for preventing encroachment and destruction of forest area in SGNP. A Committee of the following officers was, therefore, appointed by the Court:

1. Shri Jagir Singh, Chief Conservator of Forests, Wildlife.
2. Shri Y.C. Pawar, Additional Commissioner of Police.
3. Shri D.T. Joseph, CEO, Slum Rehabilitation Authority.
4. Shri Anand Bharati, Deputy Conservator of Forests.
5. Deputy Municipal Commissioner of West and East Zones.

The Court stated that the said Committee would suggest short-term measures for the following items:

- (a) for preventing further encroachment in the forest area.

(b) for preventing grant of licenses by the Municipal Corporation for carrying out commercial activities as well as industries and for withdrawing such licenses, if granted.

(c) for preventing and disconnecting telephone lines taken by unauthorised occupants.

(d) for preventing and controlling use of public transport in the forest area.

It was observed that the Committee would submit its report on or before 15th March, 1997 about the action which could be taken as short-term measures. Regarding long-term measures, an appropriate order would be passed after the receipt of the report of the Committee. The Committee submitted its report on 13th March, 1997.

19. 7th May, 1997 was a material date on which an important interim order was passed by the Division Bench of this Court on the recommendations of the Committee and on the basis of the "Minutes of Order". The said order may be reproduced:

"Heard the learned Counsel for the parties.

1. Minutes of order taken on record, marked "X" and the following order is passed.

This petition is filed in the public interest by the Bombay Environmental Action Group in order to challenge large scale encroachments within the boundaries of the Sanjay Gandhi National Park Division.

2. The Sanjay Gandhi National Park Division is a protected forest under the Indian Forest Act and has also been notified as a National Park under the provisions of the Wildlife Protection Act. The National Park Division contains within its boundaries two lakes that provide drinking water to the city of Bombay viz. Vihar and Tulsi Lakes. It is unique in that it is perhaps the only National park in protected forest area within an urban metropolis. A large amount of wildlife as well as important flora and fauna area also to be found within the boundaries of the National Park.

3. The above mentioned petition was filed in February, 1995. At that time the State Government had filed an affidavit and admitted that the problem of such encroachments within the National Park existed.

4. However, it was stated by the State Government that they are taking measures and steps in order to prevent further encroachments. Therefore at this stage this Court had not passed any orders in that matter.

5. It was stated in the affidavit that a rough eye estimate of the encroachments was 78,000/86,000/- huts approximately. According to the Satellite Survey Report of the

Space Application Centre, Ahmedabad, there was an encroachment of 772.82 hectares within the park. The bulk of the encroachments of 511.65 hectares was of hutments and 111.49 hectares was due to quarrying within the National Park. The bulk of the encroachments of 511.65 hectares was of hutments and 111.49 hectares was due to quarrying within the National Park Division. However, as per the physical survey carried out by the Forest Department, 187 hectares of land are under actual encroachments by hutments and 772.82 hectares is encroached upon by quarries and agriculture.

6. After a period of about one and half years, in August 1996 the petitioners took out a Notice of Motion in this Court being Notice of Motion No. 334 of 1996 praying for expeditious hearing of the petition on the grounds that in spite of the Government's assurances, the problem of encroachments persisted and was getting larger and larger. The petitioners request in this context were brought to our attention.

7. On the 12th December, 1996 the Hon'ble Supreme Court had passed an order in Writ Petition (Civil) No. 202 of 1995 that the word 'forest' must be understood according to its dictionary meaning. This description covers the statutory recommendations of the Forests Act including "reserved, protected or otherwise" for the purposes of section 2.1 of the Forest Conservation Act. The term 'forest land' in section 2 will not only include forest in the dictionary sense but also the area recorded as forests in the Government records irrespective of ownership. This is how it has to be understood for the purposes of section 2 of the Act. The provisions indicated in the Forest Conservation Act for conservation of forests and matters connected therein must apply clearly to all forests irrespective of the ownership or classification thereof. The Supreme Court has further held that it would be reasonable to argue that any State Government which had failed to provide the correct position in law so far, would forthwith correct its stance and take necessary remedial measures without any further delay.

8. On the 15th of January, 1997 we had requested the State Government to see that there is no further encroachment within the National Park Division and also to take effective steps to stop further encroachments by hutment dwellers who are residing in the area. The learned Government Pleader at that stage stated that the responsibility to evolve a scheme for shifting the non-authorized occupants from the said park. The petitioners had suggested that a Committee of Experts should be appointed in order to evolve a scheme for the slum and problems of environment. It was submitted by the petitioners that the Committee should consist of their representatives as well as Government officials. The learned Government Pleader however requested that the Committee to be appointed should consist only of Government Officials who would be in the best position to deal with the matters.

9. Under the circumstances, by an order dated 12th February, 1997 we had directed a

Committee consisting of officers of the State Government to look into the matters and suggest short term measures for preventing the encroachment and destruction of forest area in the National Park Division. The Committee after two meetings has furnished its report dated 13th March, 1997 to this Court.

10. Based on the recommendations contained in the report of the Committee we think it necessary to pass the following order so that the Committee's recommendations are given effect to and carried out in a time bound manner:

(a) The Deputy Conservator of Forests of the Sanjay Gandhi National Park Division is directed to prepare a map to show the boundaries of the National Park Division with reference to the existing roads and send the same to the Municipal Corporation and also to the General Manager, BEST and the General Manager MTNL. (West 3) within a period of four weeks from today. The above mentioned statutory authorities are directed not to grant any permissionor allow any non forest activity/ies within the boundaries of the said National Park Division.

(b) The General Manager, BEST is directed to allow bus services only upto boundary of the National Park and not to permit bus services or bus routes to either run through or enter the National Park Division.

(c) Except for buses going to Kanheri Caves (and the 100 or so buses, plying once a year, on Mahashivratri day) no buses will be allowed within the boundaries of the National Park Division henceforth. Besides which are allowed to Kanheri Caves (or on Mahashivratri day) will be allowed to go only to the specified area of the caves but not elsewhere in the forest area.

(d) The Deputy Conservator of Forests of the National Park Division is directed to make barriers and gates within a period of eight weeks from today to stop public transport such as taxis, autos from entering the forest area.

(e) The General Manager, MTNL is directed that no telephone connections shall be granted to any person within the boundaries of the National Park Division.

(f) The General Manager, MTNL is directed to forthwith issue seven days notice to all person having telephone connections within the boundaries of the National Park Division and to disconnect all telephone lines within the boundaries of the National Park Division after seven days of such notice.

(g) The MTNL is directed not to lay telephone lines through the National Park Division.

h) The BMC is directed not to issue any permissions under the BMC Act in the National Park Division area for any commercial or industrial activity. Similarly the BMC is

directed not to register any person under the Shops & Establishment Act within the boundaries of the National Park Division. Exception is to be made only in the case of public authorities.

(i) The BMC is directed to cancel all sanctions and registrations and permissions granted within the National Park Division after giving 15 days notice of the same. The BMC is directed to give such notices forthwith. All structures having commercial establishments, schools etc. within the National Park Division are to be demolished within one year from today and all building materials are to be confiscated so that the same is not used to re-erect the structures.

(j) It is ordered that no permission be granted by any authority for repair or reconstruction of structures within the National Park Division, except in the case of structures belonging to public authorities.

(k) The authorities are directed to conduct a survey of the inhabitants of the National Park Division within a period of two months from today. Any person found to be in possession of a hut for which he himself does not have a valid photo pass must be evicted forthwith and the structure demolished. It is further directed that no transfer of photo pass pertaining to structures within the National Park Division be permitted.

(l) Authorities are directed to prosecute any person refusing to vacate the forest land under the provisions of the Forest Conservation Act, 1980, Indian Forest Act, 1977 and Wild Life (Protection) Act, 1972.

(m) On carrying out the above mentioned survey the authorities are directed to forthwith demolish all unoccupied huts, structures found within the National Park Division. All material shall be confiscated so that the same is not used to re-erect the structure.

(n) It is ordered that after carrying out the above mentioned survey all persons whose names are not found in the electoral rolls prepared with reference to 1st January, 1995 or any date prior thereto shall be forthwith removed from the National Park Division and structures inhabited by them shall be demolished. All material shall be confiscated so that the same is not used to re-erect the structures.

(o) With respect to slum dwellers residing within the National Park Division whose names appear on the electoral rolls prepared with reference to 1st January, 1995 or any date prior thereto and who continue to live in the same structure, it is directed that the State Government shall within 18 months from date, relocate these persons outside the boundaries of the National Park Division and thereafter demolish the structures occupied by them. Until such time electricity and water supply to the structure will also be allowed to be continued.

(p) The State Government shall publish a notice in at least 2 Marathi and 2 Hindi newspapers with reference to their intentions of demolishing structures within the National Park Division. Such notice shall state that any person who is able to satisfy the Government that his name appears in the electoral rolls as on 1st January, 1995 or any date prior thereto and that he continues to live in the same structure shall be given an opportunity of six weeks to so satisfy the Government of the same before demolishing work progresses.

(q) BSES and BMC are directed to disconnect all electric and water supply connections in respect of hutments that will be demolished as per the above mentioned directions.

(r) The Food & Civil Supplies Department is directed not to issue further sanctions to any more ration shops in the National Park Division area. All ration shops presently functioning must be demolished within one year from today, provided the State Government relocates the persons covered by Clause (o) above.

(s) The State Government-within a period of six months from today-shall increase the strength of the Forest Department staff manning the said National Park Division by fifty people.

(t) The State Government is also directed to make adequate machinery such as one JCB and 4 dumpers available to the forest officials manning the National Park Division within a period of two months from to day.

(u) The State Government is also directed to consider making a helicopter available for the use of the National Park Division staff.

(v) The State Government is directed to make available at least one battalion of the SRP to help in the process of demolition and removal of encroachments within the National Park Division. If the State Government considers it necessary even more than one battalion of the SRP may be made available for the above mentioned purpose.

(w) The State Government is directed to construct a boundary wall with watch towers every 500 metres to protect the National Park Division within a period of one year from today. Any interference in such construction work shall be deemed to be a violation of the order of this Court and will be dealt with as contempt of the Court.

(x) The State Government is directed that in all cases where there is any injunction or stay order of any Court operating which restricts them from taking action against encroachments, they must apply for vacating such order after showing a copy of this order to the concerned Court.

(y) It is brought to our attention that in spite of our orders in the past quarrying

operations still continue within the National Park Division. The State Government is directed to stop all quarrying operations within the National Park forthwith and to cancel all permissions and sanctions that have been granted for the same.

(z) As suggested by the Committee appointed by the Court, a High Level Monitoring Committee is appointed under the Chairmanship of the Collector, Mumbai Suburban District with the following members:

Deputy Municipal Commissioner, Zone IV.

Deputy Municipal Commissioner, Zone VI.

Additional Commissioner of Police of the respective zones.

Deputy Director, (Town Planning) SRA.

Additional Collector, Encroachment.

Controller of Slums and Additional Collector.

Commandant, SRP (to be created)

Deputy Conservator of Forests (Wildlife)

Deputy Conservator of Forests, SGNP-Secretary.

The Committee shall meet once in two weeks and will take action to ensure that the forest area is kept free of any further encroachments and will also make sure that this order is being implemented. The Committee is free to make further suggestions with respect to safe guarding the National Park as and when it feels necessary. Apart from the points mentioned above any action proposed to be taken by the above mentioned Monitoring Committee in pursuance of this order shall not require any further notice to be given to the encroachers/slum dwellers. The authorities are directed that if there is any difficulty in the implementation of any aspect of this order they are free to approach this Court at any time."

19-A. From the above order passed by this Court, it is clear that several directions were issued by the Division Bench so as to protect SGNP Division.

20. It may be stated at this stage that in view of the above directions, a substantive petition being Writ Petition No. 803 of 1997 was instituted by the petitioners

contending, inter alia, that the petitioners were having their business in the SGNP and they were catering eatables, soft drinks, beverages, juices, ice-creams and other eatable items to the tourists who were visiting SGNP. It was also stated that they were paying rent as fixed by the forest department. The Bombay Municipal Corporation had granted licences in their favour for carrying trading activities and they were doing business since more than three decades. The order dated 8th May, 1997 was passed without hearing them, and if it would be implemented, the petitioners livelihood would be taken away which would be violative of Article 21 of the Constitution. It was also contended that the Court could not have passed the order directing the Municipal Corporation and State Government of not permitting the business of the petitioners particularly when they were not parties and they were not heard.

21. The Court, however, rejected all the arguments. The Court observed that non-forest activities were carried on a large scale in SGNP. Besides residing in the forest area, several persons were carrying on unauthorised trading activities and some of them had established even factories on a small scale basis. The said action was clearly illegal and unlawful. The State Government also submitted that in the light of the provisions of the Forest (Conservation) Act, 1980, the State Government had not renewed licences allowing the petitioner to carry on non-forest activities in forest area. Directors were, therefore, issued on 7th May, 1997, keeping in view the provisions of law and the order passed by the Supreme Court in (T.N. Godavarman Thirumalkpad v. Union of India and others)¹, 1997(2) S.C.C. 267. The Court, therefore, observed that the order dated 7th May, 1997 passed in Writ Petition No. 305 of 1995 did not call for any modification. The matter was, however, directed to be placed for hearing along with Writ Petition No. 305 of 1995.

22. It may also be stated that the above order passed by this Court on 12th June, 1997 in Writ Petition No. 803 of 1997 was challenged by the petitioners by filing SLP (Civil) No. 19050-19051 of 1997 and the said SLP was dismissed by the Supreme Court on 20th October, 1997.

23. On 2nd December, 1997, a Notice of Motion was taken out in Writ Petition No. 305 of 1995. It was contended by the applicants that they were residing in non-forest area, and hence they would be entitled to protection. As against that, the learned Government Pleader stated that the applicants were residing within forest area of SGNP.

The Court, however, observed that the question was not required to be decided and noted that "admittedly the applicants are unauthorisedly occupying Government land. May be, it is forest land. May be, it is non-forest land." In the circumstances, the Court observed that it was open to the Government to take appropriate action for demolition of unauthorised construction in accordance with law. The Court also indicated that in the order dated 7th May, 1997, it was provided that as per Government policy those persons who were in occupation of the premises on or before 1st January, 1995 and whose names appeared on electoral roll on the said date would be given alternate site if their premises were to be demolished. In view of the said direction, no further protection was necessary, even if the applicants were staying beyond the forest area. The Court also directed the State authorities to issue a public notice at least fifteen days before demolishing the unauthorised construction. If the record indicated that the applicants were in possession on or before 1st January, 1995 and their names appeared on the electoral roll, they would be provided with alternative accommodation as per Government policy.

24. On 28th April, 1999, the Division Bench permitted the Corporation to instal, in consultation with the Deputy Conservator of forests, stand-post water connections, one connection per 15 hutments who were eligible for re-settlement as per the policy i.e. those who were there prior to or on 1st January, 1995. The Court, however, observed that it would not confer any right whatsoever on the hutment dwellers. Such water connection would be temporary and would be removed on resettlement of hutment dwellers. An order was passed for shifting of MAFCO's Bacon factory. Other directions were also issued for resettlement of encroachments in Kalyan Taluka. The said order was challenged before the Apex Court by Nivara Hakk Welfare Centre, Bombay, by filing SLP (Civil) No. 3284-3295 of 2000. The Supreme Court by an order dated 8th May, 2000, however, dismissed special leave petition observing that no illegality had been committed by the High Court in passing the order. The Apex Court observed that the High Court was seized of the matter since 1995 and had been constantly monitoring it. The Court stated:

"A very fair scheme was developed for resettling the occupants who have been there since 1995."

The Court indicated that if there would be any justifiable grievance, appropriate orders would be passed by the High Court.

25. On 17th July, 1999, another important interim order was passed by the Division

Bench. It was observed in the order that, according to the Government, there were about 60,000 unauthorised structures in SGNP. The learned Advocate General stated that out of 60,000, approximately 33,000 were pre-1st January, 1995 structures, and hence they were eligible for alternative sites. Regarding remaining structures, the Advocate General stated that the authorities had undertaken demolition programme and about 20,000 structures had already been demolished. The Court, therefore, in the light of the statement made by learned Advocate General, observed that large number of eligible slum-dwellers would be re-located in Kalyan. The Court hoped that the Deputy Conservator of Forests would ensure that there would be no further construction in SGNP. A direction was also issued that no other Court or Tribunal would entertain any proceedings in that behalf.

26. In order to ensure compliance of order dated 7th May, 1997, the following directions were issued:

"(a) We hereby constitute a Committee consisting of the following persons:---

(i) The Collector, Thane District,

(ii) The Collector, Bombay Suburban District;

(iii) The Additional Collector (Encroachments); and

(iv) The Deputy Conservator of Forest, Sanjay Gandhi National Park.

(b) The aforesaid Committee (hereinafter called the Monitoring Committee) is to monitor and ensure that the slum-dwellers within the Sanjay Gandhi National Park Division, who are eligible for alternate accommodation will be re-located on the land identified in the affidavit of the Chief Secretary dated 15th July, 1999.

(c) This Monitoring Committee will allot pitches of 15 ft. x 10 ft. to eligible encroachers in the above mentioned plots.

(d) The Monitoring Committee shall ensure that the structures of the encroachers within the Sanjay Gandhi National Park Division are demolished as soon as the aforesaid pitches are allotted in the plots mentioned above.

(e) It shall be the duty of the concerned authorities under supervisions of the Monitoring Committee, to ensure that the newly allotted sites are provided with basic amenities such as roads, drainage, electricity, water supply etc. However, it is clarified that none of the encroachers shall be entitled to remain within the National Park after the allotment of

pitches at the new site.

(f) The work of preparation of layout, its approval and actual marking of roads/plots as per layout on site and preparation of estimates etc., as stipulated in the order dated 28th April, 1999, will be completed by 30th September, 1999.

(g) The encroachers, as stated in the affidavit of the Chief Secretary, would first be re-located at land in Kalyan. The work of construction of pitches, roads, civic amenities etc. will be completed by 31st January, 2000.

(h) The vacant MHADA land will be placed at the disposal of the Government by end of July, 1999, so that steps, as aforesaid, for making the said land ready for re-location of the remaining may also be taken without any further delay.

8. According to the Government, despite the fact that land is being provided by it free of any charge, huge amounts will have to be spent for carrying out various works on the said land before offering the pitches to the eligible squatters, despite certain amounts being made available under the schemes mentioned in the affidavit of the Chief Secretary. It has been suggested that the eligible encroachers per family should pay to the Government Rs. 10,000/-. However, considering the totality of the circumstances we feel that a sum of Rs. 7,000/- (Rupees Seven Thousand only) per family from eligible encroachers would be just, fair and equitable. Regarding the suggestion in the affidavit that the eligible encroachers be required to pay the amount within 15 days, we fix the following schedule for payment of Rs. 7,000/- per family of the eligible encroacher to the Deputy Conservator of Forest:-

(i) Sum of Rs. 1,000/- on or before 31st August, 1999;

(ii) Sum of Rs. 2,000/- on or before 29th October, 1999;

(iii) Sum of Rs. 2,000/- on or before 28th January, 2000; and

(iv) the remaining Rs. 2,000/- within two weeks of delivery of letter informing the encroacher about the pitch being available for allotment.

We further direct as under:

(i) The list of the eligible encroachers would be displayed in the office of the Deputy Conservator of Forest.

(ii) In order to implement the above directions, the above mentioned Monitoring Committee will meet at least once every fortnight. It will meet under the Chairmanship of the Collector, Thane. The Deputy Conservator of Forest, Sanjay Gandhi National

Park, will be Principal Secretary and Convener of this Committee. The Monitoring Committee will start allotting pitches to eligible encroachers as soon as possible after 31st January, 2000. The encroachers will be permitted to take away the construction material and other household goods from their existing structures. However, no forest produce will be allowed to be removed. After allotment of the pitches as aforesaid, none of the encroachers shall be entitled to remain within the National Park. The Government would provide necessary posts of Forest Guards and vehicles to facilitate the removal of encroachers and protection of the National Park.

10. We also hereby constitute a Committee of two retired judicial officers (to be named later) and Additional Collector (Encroachments). This Committee shall hereinafter be called Grievance Redressal Committee.

11. If any party has any grievance with regard to implementation of the order passed by any of the statutory authorities, he will take up the matter with the said Grievance Redressal Committee. The 'Grievance Redressal Committee will examine each case and pass appropriate orders. In the event of this Committee considering it appropriate or necessary to seek any further orders or clarification from this Court, unless and until the same has been vetted by the Grievance Redressal Committee and the Committee considers it fit and/or appropriate to be referred to this Court. No other Court or Tribunal will entertain any proceedings in this behalf. The Government will fix appropriate honorarium to be paid to the two judicial officers on the Committee. The decision of the Collector shall be final and shall not be called in question in any Court or Tribunal.

12. We also hereby constitute a Committee for the purpose of afforestation of the encroached area and preservation of the National Park. The Chairman of this Committee would be Justice R.A. Jahagirdar, a former Judge of this Court. Justice Jahagirdar would nominate a representative of Bombay Environmental Action Group on this Committee. Besides, the Deputy Conservator of Forest, Sanjay Gandhi National Park, shall also be a member of this Committee. We request the Committee to submit a progress report after every two months.

13. In case of any dispute regarding boundary of Sanjay Gandhi National Park, it is clarified that the map prepared and survey carried out by the Forest Department, pursuant to the order dated 7th May, 1997 of this Court, shall be final."

27. A motion being Notice of Motion No. 270 of 1999 was taken out in Writ Petition No. 2157 of 1998 seeking a declaration that the order dated 17th July, 1999

referred to above in Writ Petition No. 305 of 1999 would not affect the rights of the petitioners and the members of petitioner sangh and they were not bound to deposit an amount of Rs. 7,000/- as directed by the Court. It was contended that as the land on which the petitioners were staying did not fall under the forest area, they could not be removed. The Court, however, did not accept the contention that the area was "outside the forest area". The Court proceeded to state further:

"Assuming what petitioners say is correct then too, it has to be kept in view that petitioners in terms of the order dated 17th July, 1999 are being provided with alternate accommodation in the form of pitches. It is not their case that they are owners of the land on which they are encroaching. The direction for providing alternate accommodation in terms of order dated 17th July, 1999 and preservation of forest area cannot be worked/implemented in case the matters are reopened on the stated grounds."

The Court, therefore, held that the petitioners were not entitled to the relief sought and Notice of Motion was accordingly dismissed and the ad interim relief granted earlier was vacated. Similar order was passed in Writ Petition No. 5742 of 1997 on the same day. It may be stated that the above order was confirmed by the Supreme Court in SLP (Civil) No. 16549 of 1999 which was dismissed.

28. On 2nd March, 2000, the Division Bench was constrained to observe:

"Having heard the parties, it is quite clear that for one reason or other, though since 1997 orders after orders are passed and directions have been issued, the actual implementation has not been done. Except for symbolic exercise, very little has been done. The report of Mr. Justice S.C. Pratap Committee is submitted to us under covering letter dated 12-11-1999 followed by report of the Monitoring Committee as also the Affidavit of Mr. S.C. Gairola. However, looking to the pleadings and materials on record, it is very sorry picture. Sorry in the sense is that everyone is mindful of the human problems but for the National Park in question, unfortunately very little has been done."

The Court proceeded to state:

"Time, therefore, has come to send a clear message. They should clearly be told that if any such promise is given, it is baseless. The promises given by the persons have no authority whatsoever to do so. If necessary such persons should be named and the squatters of the unit holders should be told that these people have no business to say anything for and on behalf of State of Maharashtra. They are further to be told that their

occupancy is totally, untenable and they will have to vacate sooner or later. They are further to be told that it is better for them to avail of the opportunity given to them under the orders of this Court about contributing the amount of Rs. 7,000/-.

Thereafter, the consequence of their not joining the scheme should also be brought to their attention in the languages they understand."

Certain further directions were thereafter issued by the Court vide its order dated 13th March, 2000.

29. On 26th April, 2000, the Court was informed by the learned Counsel for the petitioners about the notice of some distressing press reports appearing in Times of India, Indian Express, Free Press Journal and two Marathi daily newspapers regarding certain incidents which took place in connection with removal of encroachments within SGNP. It was stated that some political leaders had addressed rallies within the park. It was, therefore, prayed by the authorities to issue necessary directions.

29-A. Considering rival contentions, the Court called upon Senior Police Inspector of Dindoshi Police Station to submit a report relating to the incidents on 25th and 26th April, 2000 as also any incident which might have taken place thereafter till submission of the report. He was also directed to give details of the incident, the persons who participated, the effect on encroachment removal operation and the extent of damage caused to the equipment employed by the authorities to remove encroachments. In particular, he was asked to state the steps taken by police authorities to prevent unseemly incidents. Col. Nambiar, who was working on behalf of the Committee and was present, was called upon to submit a detailed report relating to the incident. The Court stated that thereafter appropriate order would be passed. It was, however, directed that the authorities shall not permit any person to hold a rally, meeting or dharna within the area comprising of SGNP.

30. On 17th January, 2001, a prayer was made by the petitioners to issue directions for rehabilitation and re-settlement of evictees. Necessary directions were, therefore, issued by the Court. The Court appreciated the stand taken by the learned Counsel for the parties and their co-operative attitude in dealing with human problem. The Court expressed hope that the State would undertake a scheme of rehabilitation as expeditiously as possible in the true spirit of rehabilitation thereby causing least inconvenience to the

affected persons.

31. On 4th July, 2001, Chamber Summons No. 1 of 2001 in Miscellaneous Petition No. 1465 of 1975 was filed. It was stated in Chamber Summons that some area was wrongly included in the plan treating the land as "forest land". The Chamber Summons was placed along with Writ Petition No. 2238 of 2000. Miscellaneous Petition No. 1465 of 1975 related to disputes between private parties. The applicants of the Chamber Summons were not parties to the main proceeding. The main matter was finally disposed of with consent of the parties in 1979 on the basis of consent terms. Writ Petition No. 2238 of 2000 was a substantive petition raising a similar grievance. Since large number of applications were filed before the Court for a declaration that the area occupied by applicants did not fall within the SGNP, the Court constituted a Committee presided over by retired High Court Judge to consider such applications and to pass appropriate orders thereon. The Court vide its order dated 7th May, 1997 called upon the authorities to demarcate the area of SGNP and accordingly actions were taken. The Court noted that the applicants had accordingly moved the Grievance Redressal Committee and by an order dated 20th March, 2001, the claim was rejected by the Committee. A finding was recorded that the land was part of SGNP. Hence, the applicants were not entitled to any relief.

32. It may be stated here that this order of the Division Bench was challenged in the Supreme Court by filing SLP (Civil) No. 13771 of 2001 but the said SLP was ultimately withdrawn.

STAND OF STATE GOVERNMENT

33. Several affidavits, counter affidavits and further affidavits have been filed in the main petition (Writ Petition No. 305 of 1995). The Conservator of Forests (Wild Life), Western Region, Borivli, in his affidavit dated 7th April, 1995, even before rule was issued, conceded the problem of encroachment in SGNP. It was stated that the said problem brought about by tremendous magnitude of human pressure on land and particularly in and around highly urbanised city like Bombay where people throng, inter alia, for finding a source of livelihood. But it was a global phenomenon which was experienced all over the world and not only in Bombay. Deforestation/loss of forest area was a massive problem and efforts were made continuously to deal with the said problem. He, however, stated that several other matters involving human, political, social and

economic angles could not be looked at only from limited point of view of removing such encroachments en masse as suggested by the petitioners. It was, however, stated that the respondents had made several efforts to deal with the problem in as effective a manner as possible.

34. It was stated that the area under the control of DFO, SGNP was 103.09 sq. kms. which was legally classified into three parts, namely :

- (i) 82.23 sq.kms. reserved forest under the provisions of the Indian Forest Act, 1927;
- (ii) 20.76 sq. kms., unclassed forest;
- (iii) 0.10 sq. kms., protected forest.

It was also stated that for scientific management, the total area under the control of DFO, SGNP, had been divided into three zones viz. (i) by a notification of the Government of Maharashtra dated 4th February, 1983, an area of 86.96 sq.kms. was intended to be declared as "a National Park" in accordance with the provisions of the Wild Life (Protection) Act, 1972; (ii) the tourism zone of SGNP comprising 8.66 sq.kms.; and (iii) 66.25 sq.kms. was a buffer zone area. It was stated that the Indian Forest Act, 1927 and the Wild Life (Protection) Act, 1972 were applicable to protection of forest and wild life animals. Under the Maharashtra Private Forest (Acquisition) Act, 1975, and the Forest (Conservation) Act, 1980, provisions were made for regulating diversion of forest land for non-forestry purposes.

35. The deponent asserted that because of concerted efforts of respondent Nos. 1, 2 and 5, it had been possible to keep most of the areas of SGNP free from encroachment but it was conceded that encroachments still existed in few patches along the periphery on the eastern and western boundaries of SGNP. The deponent also relied upon the Satellite Survey Report of Space Application Centre. Ahmedabad (which was made available to respondents on 6th April, 1995). It showed the encroachment as under :

(Area in hectares)

Category	Upto 1990	1990-95	1994-95	Total
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Agriculture	35.13	--	--	35.13
Hutment	296.30		161.89	53.46 511.65
Quarrying	88.58	22.91	--	111.49
Agriculture				
Hutment	29.02	64.15	--	93.17
Damage due to Revenue Village	21.38	--	---	21.38

Total	470.41	248.95	53.46	772.82

Details as to cases filed against the encroachers and efforts to prevent removal of encroachment have also been mentioned. It was stated:

"The respondents 1, 2 and 5 do admit that the SGNP is a national asset and is rich in flora and fauna and is a unique patch of green in the Bombay Municipal Corporation area. The Park plays an important role in ecology and maintenance of environmental balance. The respondents 1, 2 and 5 have done and are doing their best to protect the SGNP from encroachments and plans"

36. It is further stated that as per the "State of the Forest Report, 1993" published by the Government of India, the area actually under forest in Maharashtra is 4.30 million hectares and not 3.4 million hectares as stated by the petitioners. But the deponent has stated that the loss of forest cover of SGNP due to encroachments is admitted. He stated :

"It is correct that in the long run, reduction in the forest area is likely to disturb the ecological balance and have an adverse impact on the climate and rainfall as also wildlife and its habitat."

It is stated in the affidavit that encroachment in SGNP and involvement of anti-social elements cannot be ruled out.

37. In an affidavit filed by respondent No. 1, Deputy Conservator of Forests dated 9th February, 1998, actions taken in pursuance of an order passed by this Court on 7th May, 1997 have been mentioned. It was, inter alia stated:

"1. The maps of the National Park Division are prepared with reference to the existing roads and sent to the Municipal Corporation, Mumbai and Thane and also to MTNL and BEST.

2. BEST Bus Services except to Kanheri Caves and other bus services except on educational tours are stopped from plying inside the National Park. However buses going to MSEB Staff Colony and MAFCO are still plying on the road inside the park. The MSEB authority has been asked to construct road to their colony from outside the park boundary and MAFCO has been asked to shift outside the park area.

3. Apart from existing gates and barriers three new barriers at three places have been corrected. All the public transport such as taxis, autos, taungas, is stopped from entering into the forest area.

4. No new telephone connections are granted within the boundaries of the National Park, 372 telephone connections have been disconnected. No telephone lines are being laid down through the park.

5. Mumbai Municipal Corporation and Thane Municipal Corporation have cancelled 530 licence issued to the Commercial establishments Demolition of commercial structure has been started and would be completed within one year i.e. by 7th of May, 1998.

6. No permission is being granted by any authority to repair or reconstruct their structures within the park division except in case of public authority.

7. Survey has been conducted of huts belonging to dwellers and huts of those found eligible for getting alternative site have been numbered, and huts belonging to the persons who are not eligible for protection under the present Government Policy are being demolished. So far around 12,000 huts have been demolished and around 50 acres area is freed from encroachment.

8. After publishing notice in Two Marathi and two Hindi Newspapers a survey of the hutments dwellers was conducted. As per the survey, around 31430 slum dwellers are found to be eligible for relocation on alternate site outside the park in keeping with the present Government policy. For relocation of these eligible hutment dwellers outside the park, an area of around 200 acres is required. As an urgent measure, an area of 20 acres has been identified in Survey No. 263, Malvani which is a no development zone and therefore categorised as CRZ III for the temporary relocation of these encroachers and

process such as issuance of order, demarcation pitches etc. has been started. Temporary relocation on this plots will be done soon. Efforts at highest Government levels are on for identification of the required area of about 200 acres for the permanent relocation of eligible hutment dwellers.

9. BSES has disconnected the unauthorised electric connections in respect of huts that are to be demolished. However, MSEB has not disconnected the electric supply in Yeoor's site of the park because of the people's resistance. They have been asked to disconnect the same.

10. No new ration shops are sanctioned in the park.

11. Action to increase the staff by manning 50 people is being taken.

12. Machinery such as JCB and dumpers are being hired for removal of encroachment. State Government's helicopter is being made available as and when required.

13. Adequate police force is being made as and when required.

14. Construction of boundary wall is in progress in order to prevent further encroachment in the area erection of chain link fencing is also done.

15. Quarrying operation within the National Park is not in progress. However, two quarries in Survey No. 345-A Dahisar are in progress with the order of this Hon'ble High Court.

16. The Committee appointed by this Hon'ble Court under the Chairmanship of Collector, B.S.D., Bandra is meeting regularly to take the review of the progress of implementations of the order and taking necessary steps to ensure that the order is implemented effectively and the National Park Division is freed from encroachment.

17. Government of Maharashtra has also appointed a very high level Committee under the Chairmanship of Chief Secretary, Government of Maharashtra for the purpose of identifying the land for relocation or rehabilitation of all the encroachers in National Park and for over all implementation of High Courts order.

18. The said Committee consists of the following members.

i. The Chief Secretary, Chairman.

ii. Additional Chief Secretary-member.

iii. Principal Secretary, Finance-Member.

- iv. Principal Secretary, Revenue-Member.
- v. Principal Secretary, Rehabilitation Member.
- vi. Principal Secretary, Public Works Department-Member.
- vii. Secretary, Housing & Special Assistance Department-Member.
- viii. Secretary, Forest-Member.
- ix. Chief Officer, MHADA-Slum Rehabilitation Authority-Member.
- x. Commissioner, Mumbai Municipal Corporation-Member.
- xi. Collector, Mumbai Suburban District-Member.
- xii. Collector, Thane-Member.
- xiii. Conservator of Forests, Wild Life-Member.
- xiv. Permanent invitees
 - i. The General Manager, B.E.S.T.
 - ii. The General Manager, M.T.N.L.
 - iii. Chairman & Managing Director, B.S.E.S.
 - iv. The Commissioner, Thane Municipal Corporation.
 - v. The Deputy Conservator of Forest, Sanjay Gandhi National Park."

37-A. It was also stated that on 10th December, 1997, a meeting of 26 "very high ranking officers" was convened in which a decision was taken covering important aspects as mentioned in the order of this Court. A decision was also taken for re-settlement of persons at Malwani providing them with pitches of 15' x 10' and also providing with basic amenities. The minutes of the meeting have also been annexed.

38. In an affidavit filed in November, 1998 by Mr. Debi Goenka, it was stated that the order passed by this Court on 7th May, 1997 was not satisfactorily implemented. The State Government contended that it was not necessary to have a boundary wall along the entire boundary of park which admeasured 98 kilometres and a boundary wall of 13.5

kilometres would be sufficient. Paucity of funds was also put forward as one of the grounds. It was also stated that SRP batallion was required to be provided, as in the process of removing encroachment, the encroachers used to attack forest guards by criminals connected with timber mafia.

39. In an affidavit dated 11th November, 1998 by the Chief Secretary to the Government of Maharashtra, it was stated that a High Level Monitoring Committee, constituted under an order dated 7th May, 1997, considered the questions. The Government also independently passed an order constituting a Committee known as Review Committee under the Chairmanship of the Chief Secretary. Meetings were held to consider the issues raised in the petition. Both the Committees deliberated the question of re-location of eligible families from the area of SGNP. About 33,000 families were required to be re-settled and it was very difficult for the State to get a huge open land required for those families due to non-availability of such land. It was also stated that exercise of identification of persons who were eligible for re-settlement was carried out. The persons who were not eligible and the structures which were required to be removed were also identified and about 15000 hutments were removed and an area of about 70 acres had been cleared. The said area was under the programme of re-plantation. The Chief Secretary further stated in the affidavit that efforts were being made to see that the areas so cleared are protected and plantation made.

40. In an affidavit dated 15th July, 1999, the Chief Secretary has stated about to the steps taken by the Government in pursuance of the orders passed by this Court on April 28, 1999 and July 9, 1999. The Conservator of Forests (Wild Life), in his affidavit dated 19th November, 1999 stated that out of 33000 eligible encroachers, only 464 encroachers had paid first instalment of Rs. 1,000/- and out of 464 only 253 encroachers had paid two instalments. Thus, barring 253, rest of the eligible encroachers had not abided by the direction of this Court. He, therefore, sought direction of the Court, whether the encroachers who had not paid the amount of instalments as directed should be treated as ineligible for re-location and removed without giving any alternative land outside SGNP. As already observed in the earlier part of the judgment, in an order dated 2nd March, 2000, the Division Bench observed that out of 33000 encroachers, hardly one per cent or two per cent had come forward to pay the amount of instalments. It was, therefore, stated that the time had come "to send a clear message". The Court, therefore, stated that it would be better for them to avail of the opportunity given to them under the order to contribute the amount of Rs. 7,000/- or to vacate.

41. Mr. Suresh Chandra Gairola, Conservator of Forest (Wild Life), Borivli, in an affidavit dated 20th January, 2000 highlighted the steps taken by the respondents in pursuance of an order passed by the Division Bench on 19th November, 1999. He also filed further affidavit on 7th November, 2000 stating the progress report in pursuance of the order passed by this Court. It was stated that as far as removal of the encroachment was concerned, out of 61,000 unauthorised structures, 49,269 structures had already been demolished. Regarding remaining encroachers, it was stated that "some of them" were eligible for re-location. It was also stated that insofar as demolition of the structure of the remaining ineligible encroachers were concerned, it was temporarily stopped/suspended due to rainy season. The deponent also stated that 6 SRP platoons had been deployed in SGNP for protection of forest area and prevention of recurrence of encroachments. It had been adequately distributed over the forest area. It was also engaged in night patrolling of forest areas including the areas where construction of boundary wall was in progress. In addition to SRP platoons, forest officials were also regularly partolling sensitive areas to ensure prevention of fresh encroachments.

Other petitions.

42. In Writ Petition Nos. 2054 of 2000 and 2189 of 2000, the petitioners have prayed for a declaration that the map prepared by SGNP could not be said to be final and certain areas mentioned in the petitions did not form part of forest area. A prayer is also sought that the orders dated 7th May, 1997 and 17th July, 1997 would not apply to the petitioners. The petitioners prayed that notification dated 16th January, 1996 issued under section 35 of the Wild Life (Protection) Act be quashed and set aside so far as above areas are concerned.

43. On 21st February, 2001, after hearing the learned Counsel for the parties, the Division Bench, having regard to the peculiar facts and circumstances, permitted the petitioners to move the Grievance Redressal Committee within two weeks from the date of the order and the Grievance Redressal Committee was directed to dispose of the application of the petitioners expeditiously. The Committee considered the claim put forward by the petitioners and by an order dated 24th April, 2001 rejected the claim of the petitioners. The Committee noted that the area was part of "reserved forest". It was also observed that the map which was prepared was conclusive, and hence the petitioners could not get any relief. It may be stated that by an amendment the petitioners had

challenged the report of the Grievance Redressal Committee also.

44. Affidavit in reply is filed by the Deputy Conservator of Forests on 5th September, 2000, stating therein that the area was reserved forest within the meaning of Indian Forest Act and was part of SGNP. He also stated that as per the order dated 7th May, 1997, the area was within the boundaries of SGNP Division and the petitioners were not entitled to any relief.

45. After the order passed by the Grievance Redressal Committee, a further affidavit was filed by Deputy Conservator of Forests stating therein that in pursuance of liberty granted by this Court, the petitioners and other occupants had approached the Grievance Redressal Committee complaining that the areas occupied by them did not fall within the boundaries of SGNP. The Committee considered the material produced by the petitioners and by an order dated 24th April, 2001, came to the conclusion that the area was part and parcel of S.G.N.P. and rejected the claim of the petitioners. After the order passed by the Committee, it was not open to the petitioners to contend that the area occupied by them was not part of S.G.N.P.

46. It was also stated that the petitioners of Writ Petition No. 2189 of 2000 had earlier filed writ petition raising an identical issue and the petition was disposed of by a Division Bench of this Court and S.L.P. against the said order was also disposed of by the Hon'ble Supreme Court. The Apex Court granted liberty to the petitioners to move the High Court by an appropriate application which could only be for seeking relief as and by way of rehabilitation. The petitioners, in the circumstances, by filing independent petition, could not re-agitate the issue again contending that the place occupied by them was not part of S.G.N.P.

47. Writ Petition Nos. 4382 of 2000 to 4387 of 2000 have been filed by the petitioners for similar reliefs claimed by the petitioners of Writ Petition Nos. 2054 of 2000 and 2189 of 2000 with a further grievance that the action taken by the respondents in demolishing structures of the petitioners was illegal and unlawful and by directing respondents to permit the petitioners to put up structures again. A prayer was also made restraining the respondents from changing character of the land or constructing boundary wall and/or fencing and/or putting any structure whatsoever in the land of the petitioners

and also from obstructing the petitioners, their family members and office-bearers from entering upon the land occupied by the petitioners.

48. It may be stated at this stage that the petitioners had also approached the Grievance Redressal Committee, S.G.N.P. The Committee, however, by an order dated 16th March, 2001 rejected the claim of the petitioners observing that there was "no merit in the grievance of the petitioners". The Grievance Redressal Committee considered the contention of the petitioners that the cases of the petitioners was that the property occupied by them did not come under the forest land or even private forest. It also considered the litigation and consent terms filed in Miscellaneous Petition No. 1465 of 1975. The Committee noted that by an order passed by a Division Bench in October, 2000, the petitioners were directed to approach the Committee. The Committee took into account the assertion of Mr. Shukla, the learned Counsel for the petitioners and Mr. Pakhare, learned Counsel on behalf of the respondents also as also the Deputy Conservator of Forests. It also considered the litigation which was finalised in this Court in Miscellaneous Petition No. 1465 of 1975 and held that by virtue of section 3(1) of the Maharashtra Private Forests (Acquisition) Act, all rights of all persons had been extinguished. It also observed that there was no merit in the prayer made by the petitioners and accordingly the applications were dismissed.

49. An affidavit in reply is filed by the Deputy Conservator of Forests reiterating that the land on which claim was put forward by the petitioners was a part of S.G.N.P. and the petitioners were not entitled to any relief claimed by them. It was also stated that having failed before the Grievance Redressal Committee set up by this Court, the petitioners could not claim relief from this Court in the present petition. It was stated that the petitioners had illegally encroached upon land and they were liable to be evicted and the action taken by the respondents could not be termed as illegal, unlawful or otherwise objectionable.

50. Regarding Miscellaneous Petition No. 1465 of 1975 filed in this Court and the consent terms arrived at between the parties, the deponent stated that those consent terms had been arrived at on December 3, 1979 and were acted upon also. Thereafter the land was vested in the State Government and notification under section 35 was issued under the Wild Life (Protection) Act, 1972 and the land became part of S.G.N.P. It was, therefore, submitted that the petition were liable to be dismissed.

51. Writ Petition Nos. 513 of 1998 and 515 of 1998 were filed by Adi Shakti Welfare Association and Shrikrishna Chawl Committee stating therein that they were occupying the land prior to 1995 and their names have been shown in the electoral roll of 1st January, 1995. It was, therefore, prayed that the respondents have no right to demolish the structure of the petitioners and the members of the Association/Committee, without providing alternative accommodation.

52. It may be stated that neither the petitioners of Writ Petition No. 513 of 1998 nor 515 of 1998 had approached the Grievance Redressal Committee as per the order dated 12th October, 2000.

53. Writ Petition No. 2157 of 1998 was filed by Lok Shahir Anna Bhav Sathe Seva Sangh and others asserting their right over the property occupied by them. It was their case that the petitioners were on private property and it did not belong to Government nor it was a forest land and they were not liable to be evicted/disturbed. It was also their case that the order passed by the Division Bench on 7th May, 1997 would not apply to them or to the members of the Sangh. A prayer was, therefore, made not to take further steps against the petitioners and the members of petitioner No. 1 in pursuance of order dated 7th May, 1997. A further prayer was made to carry out survey of the plot land and if the structure of the members of the first petitioner is found to be on forest land, the members of the first petitioner should be provided alternative accommodation.

54. A Notice of Motion No. 270 of 1999 in the said petition was taken out by the petitioners. By the said Notice of Motion, a declaration was sought that the petitioners would not be bound to deposit/pay an amount of Rs. 7,000/- as per the order of the Court dated 17th July, 1999. The Court, however, could not persuade itself to uphold the contention that the area was "outside the forest area". It was observed that it was not even the case of the petitioners that they were owners of the land on which they had made encroachment. The Notice of Motion was, therefore, dismissed.

55. It may be stated that the petitioners had not approached Grievance Redressal Committee as per the order dated 12th October, 2000.

56. In Writ Petition No. 2031 of 1997 (which was disposed of on 2nd December, 1997). Contempt Petition No. 12 of 1999 was instituted on 18th February, 1999. The case of the petitioners in the above contempt petition was that the respondents demolished legal and lawful structures without re-locating the occupants. The petitioners, therefore, preferred Writ Petition No. 2031 of 1997 on 15th November, 1997. On 17th November, 1997, the Court directed the respondents to comply with the order dated 7th May, 1997 passed in Writ Petition No. 305 of 1995. On 2nd December, 1997, the respondents assured the Court that eligible structures will not be demolished without providing alternative site. In spite of the said assurance, the dispensary of the first petitioner was demolished by the respondents on 6th May, 1998. According to the petitioners, thereby the respondents had committed contempt of Court. A prayer was, therefore, made to direct respondents to pay exemplary costs to the petitioners and also to re-located the petitioners.

57. In Writ Petition No. 689 of 1999, the case of petitioner No. 1-Mandal and others was that the area occupied by them fell outside the boundary of S.G.N.P. In the alternative, a prayer was made that declaration, notification or other Government orders to the extent that it included the area occupied by the petitioners within the boundaries of S.G.N.P. be quashed and set aside.

58. The petitioners had not approached the Grievance Redressal Committee as per the order dated 12th October, 2000.

59. Writ Petition Nos. 1771 of 2000 and 1241 of 2000 were instituted by Rajpati Prajapati and Vijay Pratap Tribhuvan Singh for a writ of mandamus directing the respondents not to demolish the structure of the petitioners on land bearing Survey No. 239/2 (City Survey No. 827 A-3C) of Village Malad (East) as it was not a forest land. It was also their case that in spite of direction by the Hon'ble Minister of State for Housing, no survey of the land was carried out. 11/12th May, 2000 the huts situated on the said land were demolished high-handedly, arbitrarily and in undue haste. The petitioners were, therefore, constrained to approach the Court.

60. It is pertinent to note that the Grievance Redressal Committee disposed of the

representations of the petitioners of Writ Petition No. 1771 of 2000 by an order dated 27th February, 2001 and of Writ Petition No. 1241 of 2000 by an order dated 16th March, 2001.

61. Writ Petition Nos. 1761, 1762, 1763, 1764, 1765 and 1766 of 2000 have been filed by the petitioners contending that the public notice issued for demolition of structures of the petitioners situated on land forming part of Survey No. 345-A of village Dahisar, Tal. Borivali was illegal, ultra vires and bad in law as the structure constructed and occupied by the petitioners was declared as slum under the Maharashtra Slum (Improvement, Clearance and Redevelopment) Act, 1971. The Bombay Municipal Corporation, Bombay Suburban Electric Supply Limited (BSES), Slum Board, Government and Semi-Government authorities had provided various facilities to the occupants of the land and hence no action could be taken by the respondent-authorities for demolition of structure. The land never vested in the Government and it was neither forest nor private forest and the order passed by this Court in Writ Petition No. 305 of 1995 would not apply to the land occupied by the petitioners nor did it form part of S.G.N.P.

62. None of the petitioners approached the Grievance Redressal Committee as per the order dated 12th October, 2000.

63. Writ Petition No. 1790 of 2000 was filed by the petitioners, inter alia contending that respondents had no authority to treat the structure of the petitioner-sangh illegal and for permanent injunction restraining them from demolishing the structure. A direction was also sought that the petitioners be permitted to deposit the amount for alternative land/premises and till allotment of alternative land, to protect the petitioners from the land occupied by them. According to the petitioners, it is a private property, and hence respondents had no authority to demolish it.

64. Notice of Motion No. 242 of 2000 is also pending in which a prayer is made to permit the petitioner-Sangh to make a boundary wall on land bearing Survey No. 86.

65. The petitioner-Sangh had not approached the Grievance Redressal Committee as

per the order dated 12th October, 2000.

66. In Writ Petition No. 1211 of 2000, the claim of the petitioners was that they were doing agricultural activities on the land in question. They were occupying the land since last several years. The Municipal Corporation of Greater Bombay constructed road and provided all amenities. The petitioners were having ration cards, voters identity cards, electricity bills, etc. On or about 23rd May, 2000, the petitioners were threatened that huts/structures occupied by them would be demolished. A representation was, therefore, made by the petitioners to the authorities stating therein that they were the owners of the property and the structure made by them was lawful. Since, however, the respondents did not pay any heed to the said prayer, they were constrained to approach this Court.

67. It may be stated that the petitioners had not approached the Grievance Redressal Committee as per the order dated 12th October, 2000.

68. Writ Petition Nos. 1463, 1464 and 1465 of 2000 were filed by co-operative Societies, looking after the interest of their members. According to them, their members were staying in land bearing Survey No. 239 since more than thirty years. All necessary amenities have been provided to the members of the societies. Their possession was lawful and legal. It was also their say that in pursuance of consent terms arrived at between Nusli Wadia and others in Misc. Petition No. 1465 of 1975, the respondent-authorities had taken possession of the area more than the area mentioned in the consent terms. It was, therefore, not open to the respondents to disturb the possession of the members of the petitioners-societies. As the petitioners societies came to know that the respondent-authorities would demolish the structure occupied by the members of the society, they had approached this Court.

69. Writ Petition No. 1579 of 2000 is by a petitioner directing the respondents not to demolish the structure of the petitioner on land bearing Survey No. 239(1) of Malad. It was the case of the petitioner that one Smt. Tulsibai had given land on lease to the petitioner under an agreement dated 31st December, 1973. By a declaration dated 24th November, 1983, Tulsibai confirmed that the petitioner was in absolute use, occupation and possession of the said land since 1973. It was also the case of the petitioner that as per the assertion of N.E. Dinshaw Trust in Misc. Petition No. 1465 of 1975, excluding

private forest, rest of the land was given back to the owner. The said land, therefore, did not form part of forest and the petitioner, therefore, could not be evicted. According to the petitioner, the land occupied by her was not within the boundary of forest. It was not part of S.G.N.P. and no proceedings could be initiated for demolition of the structure of the petitioner.

70. An affidavit in reply is filed by Assistant Conservator of Forest, S.G.N.P., Borivli on 31st August, 2000. In the counter, it was stated that the petitioner was claiming through Tulsibai but she had nothing to do with Survey No. 239(1) which was part of "reserved forest and also part of the notified National Park". The deponent also stated that Tulsibai was never declared tenant under section 32(g) of the Bombay Tenancy and Agricultural Lands Act, 1948. Reliance on the declaration dated 24th November, 1983 by Tulsibai was also of no consequence as Tulsibai had no right, title or interest in Survey No. 239(1). Survey No. 239(1), according to the deponent, was part of area of 848 acres, 20 gunthas and 12 annas which continued to be reserved forest notwithstanding consent terms filed in Misc. Petition No. 1465 of 1975.

71. As the structure of the petitioner was within the boundary limits of S.G.N.P. the petitioner was liable to be evicted. The structure of the petitioner, therefore, was demolished on 10th May, 2000 along with other structures in the vicinity in the demolition drive on that day.

72. Contempt Petition No. 85 of 2000 is also pending. The petitioner had not approached the Grievance Redressal Committee as per the order dated 12th October, 2000.

73. Writ Petition No. 1802 of 2000 was filed by Kranti Nagar Rahivashi Sangatan (Regd.) and another. It was stated that petitioner No. 1 is a Trust registered under the Societies Registration Act, 1860 as also Bombay Public Trusts Act, 1950. There was a dispute between the petitioner and Gaurakshak Mandli panch, Mumbai. In 1986, the property was declared slum. In view of the dispute between the petitioner and F.E. Dinshaw Trust, thereat was administered by the respondents for demolition of structure of the residents of Kranti Nagar and hence they were constrained to approach the Court. A prayer was made directing the City Survey Department to carry out survey

independently and jointly and to demarcate the boundaries in accordance with law.

74. The petitioners had not approached the Grievance Redressal Committee as per the order dated 12th October, 2000.

75. Writ Petition No. 2062 of 2000 was filed by 183 petitioners for a declaration that the impugned notice issued by respondent No. 3 Forest Officer (Exhibit-E) was not legal, valid and enforceable. A direction is also sought to withdraw/cancel the said notice so far as it affected the petitioners who are occupants of the land bearing Survey No. 377(P) of Hanumanpada of village Mulund. According to the petitioners, they were in possession prior to 1950 and constructed their hutments. The area was declared as de-forest and the Revenue Department was in possession thereof. It was also notified and declared slum.

76. In view of institution of Writ Petition No. 305 of 1995 by Bombay Environmental Group and others, notices were issued for demolition against which they had approached the Grievance Redressal Committee. The Grievance Redressal Committee noted that in the reply, the case of the forest department was that the applicants were neither in legal occupation and possession nor they had any title to the property. The structures made by them in forest land were unauthorised. The Committee did not find any merit in the contention of the petitioners that they were lawful occupants and hence the claim of the petitioners was negated.

77. (Writ Petition Nos. 61 of 2001 and 63 of 2001 have been shown on Board, but as per the endorsement dated 8th August, 2000, the petitioners and/or their Advocates were to remove office objections and to get the same numbered on or before 22nd August, 2000 failing which the petitions were to stand rejected under Rule 986. It appears that office objections were not removed and the matters automatically stood dismissed for non-prosecution after 22nd August, 2002 and accordingly they stood dismissed.

78. It may be stated that the case of the petitioners is similar to Writ Petition No. 1761 to 1766 of 2000. It may also be stated that none of the petitioners of both the petitions had approached the Grievance Redressal Committee as per the order dated 12th October, 2000.)

79. Writ Petition No. 1119 of 2000 is filed by Vaibhavnagar (Janupada) Rahivashi Sangh and its President for several reliefs prayed in the petition. It is the case of the petitioners that petitioner No. 1 is a society registered under the Societies Registration Act and working for betterment of residents of Vaibhavnagar (Janupada). Petitioner No. 2 is the President of petitioner No. 1. According to the petitioners, Vaibhavnagar (Janupada) is situated on land bearing Survey No. 42-A of Village Poisar, Tal. Borivli. Correspondent City Survey No. 42-A is C.T.S. No. 874-D. The said land belonged to M/s. Byramjee Jeejeebhoy Private Limited. The said land is neither "forest" nor covered by any notification, and hence, the occupants of the said land have right to occupy the land and stay thereon. The order passed by this Court in Writ Petition No. 305 of 1995, therefore, will not apply to them.

80. It is stated by the petitioners that a notice under section 35(3) of the Indian Forest Act, 1927 was issued to M/s. Byramjee Jeejeebhoy Private Limited for the whole Survey No. 42-A. The Tahsildar submitted a report stating therein that only 44 acres and 7½ gunthas was available for acquisition. Sub-Divisional Officer (SDO), therefore, issued a notice for acquisition of 44 acres and 7½ gunthas. No plan or boundaries were annexed to the said notice. On 3rd October, 1980. Sub-Divisional Officer held that said 44 acres and 7½ gunthas was a forest land. That order was confirmed by the Revenue Tribunal on 20th August, 1984. M/s. Byramjee Jeejeebhoy contested the finding which culminated into Writ Petition No. 4446 of 1984. The Circle Inspector, Borivli, had alleged to have taken over possession of the land bearing Survey No. 46 (Part) as per order passed by Sub-Divisional Officer on 20th September, 1984. According to the petitioners, they were not concerned with Survey No. 46 (Part). This Court allowed Writ Petition No. 4446 of 1984 and the order passed by the Sub-Divisional Officer and confirmed by the Revenue Tribunal was set aside and the matter was remanded for fresh adjudication.

81. On 4th February, 1983, the Government issued a notification under sub-sections (1) and (2) of section 35 of the Wild Life (Protection) Act, 1972, (preliminary notification) expressing its intention to constitute the area known as "Sanjay Gandhi Rashtriya Udyan". By a notification dated 16th January, 1996, final notification was issued under sub-section (4) of section 35 of the Act and the area mentioned in the Schedule to the said notification was declared as Sanjay Gandhi Rashtriya Udyan (Sanjay Gandhi National Park) (S.G.N.P.). According to the petitioners, Survey No. 42A of Village Poisar had not been included in the said notification and it is specifically

mentioned that the said area is West to S.G.N.P. The area was required to be identified. Bare look at the map makes it clear that the area occupied by the petitioner was never part of S.G.N.P. or even S.G.N.P. Division.

82. It was further stated by the petitioners that pursuant to an order passed by this Court. Grievance Redressal Committee was constituted and the persons who had grievance against an action taken by the authorities could approach the said Committee. During the pendency of the present petition, the petitioners were directed to approach the Grievance Redressal Committee. For the said purpose, Notice of Motion No. 167 of 2000 was taken out by the petitioners. It was, inter alia, prayed in the said Notice of Motion that Grievance Redressal Committee be directed to decide the application of the petitioners after due consideration of report of the basis of survey carried out by the authorities. The petitioners approached the Committee. The Grievance Redressal Committee, however, by an order dated 27th April, 2001, rejected the claim of the petitioners observing that the petitioners were encroachers and they have no right to remain on the land. The Committee also observed that Survey No. 42 comprised of 237 acres and 34 gunthas out of which 132 acres and 04 gunthas was acquired under the Land Acquisition Act, 1894 for National Park, Borivali. It was Survey No. 42-B. Remaining land of 105 acres and 30 gunthas was numbered Survey No. 41-A. Notice under section 35(3) of the Indian Forest Act, 1927 was given of the owner, M/s. Byramjee Jeejeebhoy Pvt. Ltd.

83. On coming into force of the Maharashtra Private Forests (Acquisition) Act, 1975, the land stood vested in the State Government free from all encumbrances under section 3(1) of the Act. The said action was challenged by owner but the present petitioners were neither parties nor they intervened. The Committee also noted that possession of the land was taken over by the Department on January 19, 1987. A receipt for possession was also issued to that effect. In the opinion of the Committee, therefore, it was a futile exercise to consider the contention of the petitioners. Even otherwise, the petitioners had no locus standi. If there was some dispute, it was a matter between State Government/Forest Department and the owner. Since the petitioners were neither of the two, it could not make grievance. Accordingly, the Grievance Redressal Committee rejected the claim of the petitioners. In view of the above order, the petitioners got the petition amended by challenging the order passed by the Grievance Redressal Committee.

84. It is also stated by the petitioners that a public notice was issued on 14th March, 2000 informing the public at large that pursuant to the order dated 17th July, 1999, the encroachers on forest land should deposit an amount of Rs. 7,000/- in four instalments. Survey No. 42-A of Village Poisar had not been shown which goes to prove that the petitioners were not encroachers. The petitioners have also relied upon an order passed by us on April 17, 2002. In the said order, it was observed by us that our attention was invited to an order passed by Sub-Divisional Officer, Mumbai, on November 30, 2002, wherein certain directions were issued. Direction No. 2 related to survey and demarcation of the land admeasuring 44 acres 7 gunthas and 8 annas from Survey No. 42-A (Part) with the help of City Survey Officer within four weeks from the date of the order. It was further observed that since the said order had not been challenged, the respondents should carry out the said direction within four weeks from the date of the order. The grievance of the petitioners is that in spite of the order passed by this Court, survey had not been carried out and demarcation had not been made.

85. It may be stated that since the order passed by us was not implemented. Contempt Petition No. 21 of 2003 was filed by the petitioners. The grievance in the said contempt petition was non-compliance with the order dated 17th April, 2002 passed by us. It was stated on behalf of the authorities that an attempt was made earlier to demarcate the property but there were certain difficulties in carrying out the direction which had been recorded by filing an affidavit. In view of rival submissions, Counsel for the petitioners submitted that the petitioners may be granted liberty to move the Division Bench for appropriate directions. The contempt petition was accordingly disposed of as withdrawn.

86. The petitioners thereafter have taken out Notice of Motion No. 280 of 2003 directing the respondent to comply with the order dated April 17, 2002, by carrying out survey. It may be stated that the said motion is pending. The petitioners on the basis of the above facts urged that they are in lawful possession. Occupation of the land and construction made thereon cannot be said to be illegal or contrary to law. The respondent-authorities have, therefore, no right or authority to order demolition of structures or to evict them.

87. Affidavits have been filed by the respondents contesting the claim of the petitioners. In an affidavit dated 14th June, 2000, filed by the Deputy Conservator of Forests, it was stated that the petitioners were removed from the site occupied by them

pursuant to several orders passed by the Division Bench from time to time "as they are within the boundaries" of the S.G.N.P. It was also stated by the deponent that the petitioners are "rank trespassers" and not entitled to any relief under Article 226 of the Constitution. According to the deponent, the petitioners encroached over forest land bearing Survey No. 42-A, C.T.S. No. 874-D of Village Poisar. It was stated that part of Survey No. 42 was acquired under the Land Acquisition Act, 1894 which was numbered as Survey No. 42-B. A Notice under section 35(3) of the Indian Forest Act, 1927 was given to original owners M/s. Byramjee Jeejeebhoy Pvt. Ltd. for the remaining portion of Survey No. 42 admeasuring 44 acres 7 gunthas and 8 annas which was numbered as Survey No. 42-A C.T.S. No. 874-D. Meanwhile, the Maharashtra Private Forests (Acquisition) Act, 1975 came into force from 30th August, 1975. Under the deeming provision, the land vested in the State Government free from all encumbrances. It was also stated that the owners challenged those proceedings. The petitioners, however, have no right, title or interest in the said land. The claim of the petitioners that they are in possession since more than four decades is not correct. If the petitioners were there, their names would appear in 7/12 extracts and other revenue records but the petitioners names never appeared in revenue records. The action evicting the petitioners from forest land, therefore, cannot be held illegal or contrary to law.

88. In a further affidavit dated 16th April, 2002, the Deputy Conservator of Forests supported the order passed by the Grievance Redressal Committee. It was submitted that the petitioners while challenging the order passed by the Committee were seeking to raise an issue of identification of area of 44 acres 7 gunthas and 8 annas which was declared 'forest' and stood acquired and vested in the State Government under the Maharashtra Private Forests (Acquisition) Act, 1975. Narrating the history of the litigation, the deponent stated that the petitioners were not the owners of the land and they had no right to raise any objection. According to the deponent, the Committee recorded a finding on the basis of factual aspects and rightly held that the land was declared "forest" and was a part of S.G.N.P. Division.

89. An affidavit in reply is filed by City Survey Officer, Goregaon after our order dated 17th April, 2002 to carry out survey and demarcation. In the said affidavit, it was stated that in view of several orders passed in various matters it was established that the land bearing Survey No. 42-A was "forest". An attempt was also made to explain why the order dated April 17, 2002 passed by us could not be implemented. We will deal with this aspect at a later stage.

90. Writ Petition No. 1099 of 2000 was filed by the petitioners against notice dated 30th November, 1999 (Exhibit-G) issued by Forest Officer, S.G.N.P., Borivali praying therein that the notice was illegal, invalid and inoperative. The case of the petitioners is that they came to reside by constructing their hutments prior to 1950. The entire area occupied by the petitioners was notified and declared "slum" in 1982. S.G.N.P. authority issued no objection certificate in order to carry out development of the petitioners hutments in 1982.

91. In 1999, however, the impugned notice was issued by the respondents, in pursuance of an order passed by the High Court on 17th July, 1999 in Writ Petition No. 305 of 1995 ordering demolition of the hutments constructed, possessed and occupied by the petitioners. The said action, therefore, compelled the petitioners to approach this Court.

92. The petitioners had not approached the Grievance Redressal Committee as per the order dated 12th October, 2000. This petition was disposed of.

93. In Notice of Motion No. 410 of 2000 in Writ Petition No. 1099 of 2000 (which is pending). Petitioner No. 1 stated that all the petitioners were allowed to pay an amount of Rs. 7,000/-. The petitioners paid the amount under protest. It was their case that about 4000 hutments existed in Survey No. 377 were declared de-forest zone and not a part of S.G.N.P. It was also stated in the said Notice of Motion that other petitioners had been referred to Grievance Redressal Committee but the petitioners had not been referred to the said forum. It was asserted by the petitioners that they had ample documents to prove that the hutment dwellers of the petitioners were "out of forest zone". A prayer is, therefore, made to refer the case of the petitioners to Grievance Redressal Committee.

94. The case of the petitioners of Writ Petition No. 1126 of 2000 is that they were in possession of their respective structures since 1980. Their names are in the electoral roll. They have been issued ration cards. In January, 2000, the respondents offered alternative accommodation to all those whose structures were in existence prior to 1st January, 1995. Those persons were required to produce electoral roll and ration cards against payment of Rs. 7,000/- to be made. Though the petitioners were eligible, they were persuaded by the

leaders not to pay the amount saying that they would get the said amount waived off. Moreover, they were required to borrow the money at high rate of interest and because of assurance that they need not pay the amount, they did not make payment. Some of them, however, had paid such amount.

95. In May, 2000, the respondents started demolishing the structures of those who were not eligible and also of those who were eligible but had not paid Rs. 7,000/-. The respondents refused to accept the amount, since the cut off date was March, 2000 and had expired. The petitioners, therefore, approached this Court calling upon the respondents to accept the amount and allot alternate site to them and in the meantime not to demolish the structure made by the petitioners.

96. Writ Petition No. 694 of 2003 is filed by the petitioner, a society registered under the Societies Registration Act. According to the petitioner, there were about 4000 occupants in a slum colony known as "Bhimnagar (Damunanaar) (Damupada) out of which about 1800 occupants are the members of the society. They had constructed their own structures on the plot of land bearing Survey No. 86 : C.T.S. 175 (Part) (old) (now C.T.S. No. 171) of Kandivali. They came to occupy the plot of land in or about 1972. It belonged to Gorakshak Mandali panch, a private trust. By letter dated 2nd July, 1987 written by District Deputy Collector, Borivali, to the Manager S.G.N.P., Borivli, it was confirmed that the petitioners were on Survey No. 86 which was a private property.

97. On or about May 11, 2000, however, officers of the Forest Department came to the site and threatened the occupiers of the structures that the structures would be demolished as they were on forest land. The petitioners, therefore, filed a petition being Writ Petition No. 1068 of 2000 on or about May 13, 2000. An interim order was also passed by the learned vacation Judge against the respondents. The matter was thereafter ordered to be placed before the group of matters known as "forest matters". In spite of the order passed by this Court, out of about 4000 structures, 3520 were demolished between 11th May, 2000 and 26th May, 2000. Many structures and other slum colonies were demolished without carrying out survey. All of them, therefore, approached the Hon'ble Chief Minister who directed the revenue authorities to carry out survey to find out whether Survey No. 86 on which the petitioners structures were situate was forest land or not. On survey being carried out, it was found that Survey No. 86 was not part of forest land. The Advocate for the petitioners wrote a letter on 5th September, 2001. It was,

however, revealed that the demolition was carried out in view of interim orders passed in Writ Petition No. 305 of 1995. The said fact was confirmed by a reply from City Survey Office, Goregaon but the petitioners were informed that the copy of the survey report could not be supplied to them. Again, on 31st October, 2001, the Forest Officers demolished temporary structures which the petitioners had constructed, and hence fresh petition was filed. The prayer of the petitioners in the present petition is to direct respondents to produce records of survey carried out under section 135 of the Maharashtra Land Revenue Code, 1966 of City Survey No. 175 known as Damunagar/Damupada. Interim relief was also prayed. The petition was admitted by the Division Bench on June 11, 2003 but interim relief was refused.

98. An affidavit in reply is filed by the Deputy Conservator of Forest on 5th March, 2003 stating that the members of the petitioners-mandal were encroachers on a plot of land bearing Survey No. 87-A of village Akurli. They have no semblance of right over the land on which their structures were situated. The petitioners were, therefore, not entitled to any relief. It was also stated that in pursuance of an order dated 7th May, 1997 illegal constructions and encroachments were removed. As per the said order, respondents had given general notice to all the encroachers who were found to be ineligible for allotment of alternative accommodation under the rehabilitation policy framed for the encroachers of SGNP as they had to vacate else their structure would be demolished. It was also stated that the structures of the petitioners were demolished on 11th May, 2000, much before an interim order passed by the learned vacation Judge on 14th May, 2001.

99. The deponent also stated that the efforts of the petitioners were to show that the structures were in Survey No. 86 whereas in fact they were in Survey No. 87-A, a part of SGNP Division. It was also claimed that the demolition was carried out by the department after taking proper precautions and satisfying itself that the structures fell within the boundary of SGNP. The order passed by the learned vacation Judge pertained to Survey No. 86 and not to 87-A, which is the forest land.

100. Regarding one of the grievances of the petitioners that though about 500 encroachers had paid Rs. 7000/- under the rehabilitation scheme and yet were not provided alternative accommodation as per the rehabilitation policy of the State Government, the deponent has stated that those persons were reluctant to shift to the new site for the reasons best known to them.

101. The assertion of the petitioners that the Hon'ble Chief Minister of Maharashtra directed re-survey to be done was denied. According to the deponent, no such direction or order had been passed by the Hon'ble the Chief Minister. It was further stated that a similar attempt was made to get re-survey done in Pauper Petition No. 2 of 2001 but the learned Advocate General appearing in the matter clarified the position that no assurance was given or statement made either by the Hon'ble the Chief Minister or the then Hon'ble Minister for Housing. It was also stated that it was not true that after carrying out survey, the City Survey Officer submitted the report to the Collector. No such report had been furnished to the Forest Department by the office of the Collector. Since demolitions were carried out in Survey No. 87-A which is forest land and part of SGNP much prior to passing of an order passed by the learned vacation Judge on 14th May, 2001, the petitioners were not entitled to relief and the petition was liable to be dismissed.

102. Pauper Petition No. 2 of 2001 is filed by Dr. Babasaheb Ambedkar Rahivashi Sangh and others for a declaration that the land admeasuring 848 acres, 20 gunthas and 12 annas of Survey No. 239(1) Malad is the only forest land and the respondents have no right whatsoever to claim the balance land of Survey No. 239(1) nor to disturb the possession of the members of the first petitioner on the ground that it is a forest land. A declaration is also sought that the demolition of the slum colony including school, office, temple, etc. by the respondents was high-handed, illegal, arbitrary and violative of fundamental rights of the petitioners. A prayer is also made to issue direction to carry out joint survey of the land of Survey No. 239(1) of village Malad admeasuring 1492 acres by the Superintendent of Land Records or a Surveyor working under him and to submit report to this Court. A relief is also sought that interim orders passed by this Court in Writ Petition No. 305 of 1995 were not binding on the petitioners and the same be declared null and void, being passed in violation of principles of natural justice and without hearing the petitioners. By ad interim relief, the petitioners prayed to direct respondents 1, 2 and 3 to reconstruct 4465 structures in the slum colony alongwith school, office, temple, etc. at their cost or in the alternative be directed to deposit in Court an amount of Rs. 20 crores. Other reliefs have also been prayed.

103. The case of the petitioners is that the members of the first petitioner came to reside on the plot of Survey No. 239(1) of Malad prior to 1990, 4665 slum-dwellers are residing since then. According to the petitioners, it is not a forest land. In a public interest

litigation, the petitioners were not joined as parties. The Division Bench passed certain orders. In March, 2000, the petitioners took out a Chamber Summons to be joined as parties but they were not joined as parties. The structures of the petitioners were demolished in May, 2000. In December, 2000, the petitioners came to know about the consent terms filed in Misc. Petition No. 1465 of 1975. Since the petitioners were aggrieved by demolition of structures, they had approached this Court.

104. On behalf of F.E. Dinshaw Trust, respondent No. 4 herein, an affidavit in reply is filed by one Vinodrai Pritamlal Shah on 10th July, 2003. In the said affidavit, the deponent has stated that the petitioners have annexed at Exhibit B a plan allegedly showing the forest land shaded green and non-forest land as red. The plan is alleged to be a copy of the plan annexed to the consent terms dated 3rd December, 1979 in Misc Petition No. 1465 of 1979 (1975) between the Government and the Trustees of F.E. Dinshaw Trust and the Administrator of the estate of E.F. Dinshaw. According to the deponent, the plan at Exhibit B to the Pauper petition was incorrect, misleading and did not tally with the plan annexed to the consent terms dated 3rd December, 1979.

105. It was further stated that the revenue authorities had surveyed and demarcated the non-forest land of the fourth respondent and issued property register cards on the basis of the consent terms dated 3rd December, 1979. It was also stated by the deponent that the writ of summons in pauper petition had yet not been served upon respondent No. 4 and hence he had no occasion to file its say in the matter. A limited affidavit was filed pursuant to liberty granted by the Court on 4th July, 2003 only for the purpose of placing before the Court relevant and correct facts regarding consent terms, plan and survey and demarcation by revenue authorities. It was finally stated that the petitioners were not claiming nor entitled to any reliefs against fourth respondent and prayed that the petition is liable to be dismissed.

106. Notice of Motion No. 604 of 2001 has also been taken out by petitioners for interim relief. It was placed before the Division Bench of this Court. The Division Bench by an order dated 8th August, 2001 directed the registry to place it before a learned Judge on the Original Side of the Court in accordance with law.

107. In pursuance of the above direction, it appears that the registry had placed the

matter before the learned Single Judge on Original Side. The learned Single Judge vide an order dated 10th October, 2001 observed that the structures of the petitioners had already been demolished. It was further observed that prima facie structures were on forest land, and hence there was no room to grant any ad interim order in favour of the petitioners.

108. The learned Single Judge also observed that on behalf of the Government an affidavit was filed stating that the persons who were eligible for alternative accommodation and who had deposited requisite amount had been provided with such facility, though the said statement was disputed. In the opinion of the learned Single Judge, the said question could not be gone into at that stage. A direction was, therefore, issued to place Notice of Motion for final hearing only after Pauper Petition No. 2 of 2001 would be decided.

109. It may be stated at this stage that on 24th October, 2002, the learned Counsel for the applicant withdrew the Notice of Motion "with liberty to take out fresh Notice of Motion after Pauper Petition No. 2 of 2001 is decided". Accordingly, the Motion stood disposed of as withdrawn.

110. We have heard the learned Counsel for the parties.

SUBMISSIONS

111. Mr. Gautam Patel, learned Counsel for the petitioners (Writ Petition No. 305 of 1995), submitted that keeping in view unique position of SGNP as natural biosphere reserved and a home of different species of flora and fauna, it deserves to be preserved. It is the duty of the respondents to protect and safeguard the Park. According to the Counsel, Article 48-A had been inserted which requires the State to endeavour to protect and improve the environment and safeguard forests. Article 51-A(g) makes it fundamental duty of every citizen of India to protect and improve natural environment including forests, lakes, rivers and wild life. With a view to protecting environment, several Acts have been enacted by Parliament as well as by the State Legislature. It was, therefore, incumbent on the authorities to implement such laws and to prevent encroachment and

unauthorised construction. The grievance of the petitioners is that the respondents not only failed in discharging their duties in accordance with law but they indirectly encouraged such encroachments and unauthorised constructions by providing facilities and amenities. The Counsel stated that it has come on record that electricity and water connections were supplied to encroachers. Telephone connections were given. Bus services were provided. Leases for carrying out quarrying activities were issued. Licenses under Bombay Shops and Establishments Act were also granted. Illegal activities were also carried on by anti-social elements. Political parties have encouraged such encroachment and unauthorised structures. It is no doubt true that the Court was conscious of seriousness of the matter and first effective order was passed on 7th May, 1997 whereby several directions were issued. Thereafter orders were passed from time to time. The Counsel conceded that rehabilitation of persons staying since long in SGNP is a humane problem and it has to be tackled not only within four corners of law but keeping in mind rehabilitation and re-location of such persons. The Court was conscious and mindful of the problem and orders were passed directing the Government to rehabilitate, resettle and relocate such families at alternative sites. Considering their financial constraints, a direction was issued on 17th April, 1999 and the "eligible encroachers" were asked to pay a sum of Rs. 7,000/- per family in four instalments. It was, therefore, submitted that the encroachers and unauthorised occupants cannot insist to stay in SGNP and they are liable to be evicted.

112. The State of Maharashtra and its officers are also conscious of the situation. In various affidavits, to which reference has already been made by us in the earlier part of the judgment, they have admitted that the area in the vicinity of SGNP should be protected and preserved. It is also admitted that the State authorities are required to implement the provisions of law and they have made several attempts to prevent unauthorised encroachments and illegal constructions. It was also admitted that several families have illegally occupied forest land. In pursuance of various orders passed by this Court from time to time, the respondents have taken requisite steps to re-settle and relocate eligible encroachers by providing alternate site. The authorities thus did not dispute the averments made and contentions raised in the petition.

113. On behalf of the occupants, contentions raised and submissions made by the petitioners were controverted. A number of independent petitions were also filed by them. It was, inter alia, contended in those petitions that the petitioners of Writ Petition No. 305 of 1995 have not joined them party respondents. The petition, therefore, was not maintainable. Interim orders were passed from time to time by this Court adversely

affecting the owners and occupiers of such structures who are neither trespassers nor encroachers nor in unauthorised occupation. Without issuing notice to them, without calling for their explanation and without affording hearing orders were passed. All orders are, therefore, null and void, being violative of principles of natural justice and fair play and cannot bind the occupiers. It was also their case that they were neither on "forest" land nor on Government land, and hence, they have right to remain in occupation of the land.

114. It was urged that the Court was misled by the petitioners and committed an error in passing interim orders and issuing several directions in respect of Sanjay Gandhi National Park Division. Sanjay Gandhi National Park (SGNP) and Sanjay Gandhi National Park Division (SGNP Division) are distinct, different and separate. A notification under section 35 of the Wild Life (Protection) Act, 1972 deals with only SGNP and SGNP Division. It was, therefore, not open to the Court to order respondent-authorities to evict all the persons who are in SGNP Division and not in SGNP. It was also not open to the Court to order eviction of the persons who are staying in SGNP Division. The action, therefore, is *de hors* the Act and cannot be implemented.

115. It was also contended that the notification dated 16th January, 1996 issued under section 35 of the Wild Life (Protection) Act, 1972 is illegal, *ultra vires* and liable to be declared as such on the ground that there is non-application of mind inasmuch as conditions laid down in the Act before issuance of such notification had not been complied with. Once the notification is held illegal, all actions in pursuance of such notification also fall to the ground and must be held without authority of law. The notification is also arbitrary, discriminatory and violative of Article 14 of the Constitution in that several areas were included in SGNP while issuing notification under section 35 of the Act, some villages have been left out. Heavy reliance was placed in this connection upon a fact that a village known as Yeoor is excluded from operation of the notification. It was stated that other areas situated in the neighbourhood have been declared SGNP but village Yeoor was left out with *mala fide* object and oblique motive to extend undue benefits to certain politicians and influential persons. The action has been taken in colourable exercise of power and deserves to be interfered with by this Court. It was also stated that certain parts were excluded earlier from the operation of the Forest Act but thereafter they were included illegally and unlawfully.

116. The petitioners asserted that the area occupied by them is of private ownership. Neither the provisions of the Indian Forest Act, 1927 nor of the Wild Life (Protection) Act, 1972 would apply to such land and on that ground also no order of eviction can be passed against them. The petitioners have settled in the said area since several years and having satisfied about lawful possession and occupation, governmental and semi-governmental authorities have granted facilities and provided amenities to them, such as, water and electricity supply, telephone connection, grant of leases and licenses, issuance of certificates, providing conveyance facilities, etc. Had the petitioners of Writ Petition No. 305 of 1995 joined the occupiers or at least some of them in representatives capacity and had the Court issued notices to them before passing interim orders and issuing directions, they would have satisfied the Court about legal possession and occupation by them. It was because of absence of the occupiers and residents before the Court that certain directions were issued. It was hence prayed that those directions may be recalled.

117. It was also submitted that no survey has been carried out under section 135 of the Maharashtra Land Revenue Code, 1966. Earlier, such survey was carried out and it was reported that the land did not belong to Government and was not "forest". Occupation of the said land, therefore, cannot be held illegal or contrary to law. This Court, in the first effective order, dated 7th May, 1997, directed the authorities to carry out survey. But even that order has not been complied with. It was, therefore, prayed that the revenue authorities may be directed to carry out survey under section 135 of the Maharashtra Land Revenue Code, 1966 and to submit a report to this Court.

118. It was strenuously argued that in Miscellaneous Petition No. 1465 of 1975, consent terms had been arrived at between the parties on 3rd December, 1979 but fraud was committed and the Court was misled. It is, therefore, not only the power but the duty of the Court to protect innocent persons by issuing necessary directions.

119. A grievance was made that the Grievance Redressal Committee, without applying mind and without considering relevant evidence and material, disposed of all the applications mechanically and blindly though this Court directed the Committee to consider the claim of the petitioners. It refused to look into relevant documents. It also did not take into account an important and vital consideration of settled possession of the applicants and negated the claim of one and all. It was urged that when a person is in settled possession, he cannot be dispossessed and thrown away without due process of law.

This proposition of law is very well settled and needs no further argument. It was, therefore, obligatory on the Committee to consider the claims put forward and grievances voiced by the occupiers. Since the Committee failed to discharge its duty in accordance with law, the orders passed by the Committee are liable to be set aside.

120. Some of the occupants have also made grievance that though they were prepared to pay amount of instalments as per the order of this Court dated 17th July, 1999, the authorities refused to accept the amount under the excuse that the time for making such payment was over. It was also contended that the amount fixed by this Court is highly excessive and it would not be possible for poor persons to pay Rs. 7,000/-. A complaint is also made that the alternative site is not proper and appropriate. Moreover, it is inadequate to re-locate the families who were in SGNP since many years. It was, therefore, submitted that the petition deserves to be dismissed and the interim orders are liable to be vacated.

STATUTORY PROVISIONS

121. Before we deal with rival contentions, of the parties, it is appropriate to refer to the relevant provisions of law.

122. Article 48-A as inserted by the Constitution (42nd Amendment) Act, 1976 enacts that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Likewise, Clause (g) of Article 51-A declares that it shall be the 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.

123. The Indian Forest Act, 1927 consolidated the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest-produce. Provisions were made for reserved forests, village forests and protected forests.

124. The State of Maharashtra enacted a law known as the Maharashtra Private Forests (Acquisition) Act, 1975. The preamble of the Act states as under:

"An Act to acquire private forests in the State and to provide for certain other matters.---

WHEREAS the forest land in the State is inadequate;

AND WHEREAS the private forest in the State is generally in highly degraded and over-exploited state, and is adversely affecting agriculture and agricultural population;

AND WHEREAS it is, therefore, expedient to acquire private forests in the State of Maharashtra generally for conserving their material resources and protecting them from destruction or over-exploitation by their owners and for promoting systematic and scientific development and management of such forests for the purpose of attaining and maintaining ecological balance in the public interest, for improving the socio-economic conditions of the rural population, and particularly of the adivasis and other backward communities who generally live in forest areas, for developing as pasture the forest suitable for the purpose, for assigning a part of the private forest to the rural community, for controlling the soil erosion both in the forest areas and in the lower level agricultural lands, for conserving soil moisture, for improvement of the water regime and raising the water table, for retarding the siltation of dams and tanks, for distribution of forest produce for the common good and preventing the concentration of forest wealth to the common detriment, for distribution of the mature exploitable forest produce as best to subserve the common good, for promoting employment opportunities based on forest, for meeting the requirements of forest produce including fire-wood with a view to inter alia to decrease the dependence on cow-dung, and in particular, for afforestation of private forest wherever feasible on scientific lines, and thereby create conditions for the preservation of soil conservation of water, prevention of erosion of soil and for improvement of land and underground water resources to the best interests of agriculture and agriculturists in such private forest and other land in the State, and for undertaking schemes for such purposes.

AND WHEREAS it is also expedient to provide that in the case of owners of private forests (other than those whose lands were used for extracting minor minerals such as quarries) whose total holdings of lands became less than twelve hectares on the appointed day on account of acquisition of their forest lands under this Act, or whose total holdings of lands was already less than twelve hectares on the day immediately preceding the appointed day, the whole or the appropriate portion of their forest lands so acquired shall be restored to, and revested in, them, so that their total holdings of lands may be twelve hectares or else, as the case may be, and they may be able to continue to earn their livelihood from such lands; and to provide for certain other purposes hereinafter appearing."

The Indian Forest Act, 1927 does not define the expression "forest", but the State Act defines "forest" thus:

"Forest" means a tract of land covered with trees (whether standing, felled, found or otherwise), shrubs, bushes, or woody vegetation, whether of natural growth or planted by human agency and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, stream flow, protection of land from erosion, or other such matters and includes---

- (i) land covered with stumps of trees of forest;
- (ii) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the 30th day of August 1975;
- (iii) such pasture land, water-logged or cultivable or non-cultivable land, lying within or linked to a forest, as may be declared to be forest by the State Government;
- (iv) forest land held or let for purpose of agriculture or for any purposes ancillary thereto;
- (v) all the forest produce therein, whether standing, felled, found or otherwise;"

It also defines "private forest" as "any forest which is not the property of the Government". The definition is inclusive and takes within its sweep the properties mentioned in Clause (f) of section 2". Section 3 enacts that all private forests will vest in the State Government. Section 4 enumerates steps to be taken by the Government on acquisition of private forests. Section 5 empowers the State Government to take over possession of private forests. Sections 6 to 19 deal with settlement of disputes, determination of amount, payment to owners of private forests, deduction of encumbrances, appeals and revisions, etc.

125. The Forest (Conservation) Act, 1980 had been enacted by Parliament "for the conservation of forests and for matters connected therewith or ancillary or incidental thereto". The Act places restrictions on reservation of forests or use of forest land for non-forest purposes except with the prior approval of the Central Government. For the said purpose, it provides for constitution of an Advisory Committee by the Central Government.

126. The Wild Life (Protection) Act, 1972 is a major step in the direction of providing

protection to wild animals, birds and plants and deals with matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country.

127. In the Statement of Objects and Reasons, it has been observed:

"The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912), has become completely outmoded. The existing State laws are not only out-dated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further such laws mainly relate to control of hunting and do not emphasis the other factors which are also prime reasons for the decline of India's wild life, namely, taxidermy and trade in wild life and products derived therefrom.

2. Having considered the relevant local provisions existing in the States, the Government came to the conclusion that these are neither adequate nor satisfactory. There is therefore, an urgent need for introducing a comprehensive legislation, which would provide for the protection of wild animals and birds and for all matters connected therewith or ancillary and incidental thereto.

3. Legislation in respect of the aforesaid subject-matters relatable to Entry 20 of the State list in the Seventh Schedule to the Constitution, namely, protection of wild animals and birds and Parliament has no power to make a law in this regard applicable to the State (apart from the provisions of Articles 249 and 250 of the Constitution) unless the legislatures of two or more States pass a resolution in pursuance of Article 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal have passed such resolutions.

4. The bill seeks to---

- (a) constitute a Wild Life Advisory Board for each State;
- (b) regulate hunting of wild animals and birds;
- (c) lay down the procedure for declaring areas as Sanctuaries, National Parks, etc.

(d) regulate possession, acquisition or transfer of, or trade in wild animals, animal articles and trophies and taxidermy thereof;

(e) provide penalties for contravention of the Act."

128. Chapter II specifies authorities to be appointed or constituted under the Act. Chapter III prohibits hunting of wild animals. Chapter III-A protects specified plants. Chapter IV is material for the purpose of controversy raised in the present group of petitioners. It protects Sanctuaries and National Parks. Section 18 enables the State Government by issuing a notification to declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary. Sections 18-A to 34-A deal with sanctuaries.

129. Section 35 is a salutary provision and enables the State Government to issue notification for declaration of National Parks. The said sanction is material for our purpose and may be quoted in extenso:

"35. Declaration of National Parks.---(1) Whenever it appears to the State Government that an area, whether within a sanctuary or not, is, by reason of its ecological, faunal, floral, geomorphological or zoological association of importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park;

Provided that where any part of the territorial waters is proposed to be included in such National Park, the provisions of section 26-A shall, as far as may be, apply in relation to the declaration of a National Park as they apply in relation to the declaration of a sanctuary.

(2) The notification referred to in sub-section (1) shall define the limits of the area which is intended to be declared as a National Park.

(3) Where any area is intended to be declared as a National Park, the provisions of sections 19 to 26-A (both inclusive except Clause (c) of sub-section (2), of section 24 shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of rights, in relation to any land in such area as they apply to the said matters in relation to any land in a sanctuary.

(4) When the following events have occurred, namely---

(a) the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a National Park, have been disposed of by the State Government, and

(b) all rights in respect of lands proposed to be included in the National Park have become vested in the State Government,

the State Government shall publish a notification specifying the limits of the area which shall be comprised within the National Park and declare that the said area shall be a National Park on and from such date as may be specified in the notification.

(5) No alteration of the boundaries of a National Park by the State Government shall be made except on a recommendation of the National Board.

(6) No person shall destroy, exploit or remove any wild life including forest produce from a National Park or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the National Park, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the National Board that such removal of wild life from the National Park or the change in the flow of water into or outside the National Park is necessary for the improvement and better management of wild life therein, authorises the issue of such permit.

Provided that where the forest produce is removed from a National Park, the same may be used for meeting the personal bona fide needs of the people living in and around the National Park and shall not be used for any commercial purpose.

(7) No grazing of any livestock shall be permitted in a National Park and no livestock shall be allowed to enter therein except where such livestock is used as a vehicle by a person authorised to enter such National Park.

(8) The provisions of sections 27 and 28, sections 30 to 32 (both inclusive), and Clauses (a), (b) and (c) of section 33, section 33-A and section 34, shall, as far as may be apply in relation to a National Park as they apply in relation to a sanctuary.

Explanation.---For the purposes of this section, in case of an area, whether within a sanctuary or not, where the rights have been extinguished and the land has become vested in the State Government under any Act or otherwise, such area may be notified by it, by a notification, as a National Park and the proceedings under sections 19 to 26 (both inclusive) and the provisions of sub-sections (3) and (4) of this section shall not apply."

It may be stated here that section 35 was amended from time to time. Proviso to sub-

section (1) was inserted by the Amendment Act, 1991 (Act 44 of 1991). In the Statement of Objects and Reasons, it was stated thus:

"The Wild Life (Protection) Act, 1972 provides for the protection of wild animals and birds.

2. In the implementation of the Act over 18 years, the need for amendment of certain provisions of the Act to bring them in line with the requirements of the present times has been felt. The Indian Board for Wild Life also endorsed the need for these amendments. Ministry of Environment and Forests has worked out the proposals for amendment of the Act on the basis of recommendations of the Standing Committee of Indian Board for Wild Life and various ministries of the Government.

3. Poaching of wild animals and illegal trade of products derived therefrom together with degradation and depletion of habitats have seriously affected wild life population. In order to check this trend, it is proposed to prohibit hunting of all wild animals (other than vermin). However, hunting of wild animals in exceptional circumstances, particularly for the purpose of protection of life and property and for education research, scientific management and captive breeding, would continue. It is being made mandatory for every transporter not to transport any wild life product without proper permission. The penalties for various offences are proposed to be suitably enhanced to make them deterrent. The Central Government Officers as well as individuals now can also file complaints in the courts for offences under the Act. It is also proposed to provide for appointment of Honorary Wild Life Wardens and payment of rewards to person helping in apprehension of offenders.

4. To curb large scale mortalities in wild animals due to communicable diseases, it is proposed to make provisions for compulsory immunisation of live-stocks in and around National Parks and Sanctuaries.

5. Realising the need to protect offshore marine flora and fauna, the provisions of National Parks and Sanctuaries are proposed to be extended to the territorial waters. It is also being provided that while declaring any part of territorial waters as a sanctuary, due precaution shall be taken to safeguard the occupational interests of local fishermen.

6. While making the provisions of the Act more effective and stringent, due regard has also been given to the rights of the local people, particularly the tribals. It is being provided that except for the areas under reserve forests, (where the rights of the people have already been settled) and the territorial waters, no area can be declared a sanctuary unless the rights of the people have been settled. State Wild Life Advisory Boards are also being made responsible for suggesting ways and means to harmonise the needs of tribals

and the protection of wild life.

7. In the recent times, there has been a mushroom growth of zoos in India. Zoos, if managed properly, serve a useful role in the preservation of wild animals. So far there is no legislation dealing with zoos. Provisions are now being made for setting up of a Central Zoo Authority responsible for overseeing the functioning and development of zoos in the country. Only such zoos would be allowed to operate as are recognised and maintain animals in accordance with the norms and standards prescribed by the Zoo Authority. Activities causing disturbance to animals in a Zoo are being made a punishable offence.

8. Over-exploitation has endangered the survival of certain species of plants. Although the export of these plants and their derivatives is restricted under the provisions of the export policy and the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" to which India is a party, yet there is no restriction on collection of these species from the wild. Provision to prohibit collection and exploitation of wild plants which are threatened with extinction, is being made. Cultivation and trade of such plants would, however, be permitted under licence. The provisions, however, would not affect the collection of traditionally used plants for the bona fide personal use of the tribals.

9. It also be recalled that the parties to the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" (CITES), being greatly concerned by the declining in population of African elephants due to illegal trade in ivory, have included this animal in Appendix 1 of the Convention in October, 1989. Due to this change, the import and export of African ivory for commercial purposes has been prohibited. As a result, import of ivory would no longer be possible to meet the requirements of the domestic ivory trade. If the ivory trade is allowed to continue, it will lead to large scale poaching of Indian elephants. With this point in view the trade in imported ivory within the country is proposed to be banned after giving the opportunity to ivory traders to dispose of their existing stock.

10. The existing legal provisions do not permit the collection of snake venom for producing life saving drugs from snakes like Cobra and Russel's Viper. This is causing hardship. It is, therefore, proposed to amend the Act to provide for extraction of and dealing in snake venom in a regulated manner."

Sub-sections (5) and (6) were substituted by the Wild Life (Protection) Amendment Act, 2002 (Act 16 of 2003), which came into force with effect from 1st April, 2003. In the Statement of Objects and Reasons, it was stated as under:

"The Wild Life (Protection) Act, 1972 provides for the protection of wild animals, birds

and plants. The said Act provides, inter alia, for the legal framework for the protection of various species of wild animals, management of their habitats and regulation and control of trade in parts and products derived from various species of wild animals.

2. Taking into consideration the increase in wild life crimes and growing alienation of local communities from wild life conservation programmes, the Central Government constituted an inter-State Committee in the year 1995, comprising representatives from the Central and State Governments, non-governmental organisations and various institutions and experts to review the Wild Life Act with the basic objectives of maintaining and managing the wild life habitats on co-operative and scientific lines as well as effective control of increased poaching and illegal trade of wild life products. The proposed legislation is also needed to provide for scientific and participatory management of the buffers around national parks and sanctuaries as well as the corridors linking them.

3. The report of the inter-State Committee was considered by the Indian Board for Wild Life and its Standing Committee, which further recommended comprehensive amendments to the Wild Life Act, on the basis of the proposals of the said Committee.

4. A provision is proposed to be made in the Wild Life Act for creation of two new types of reserves, i.e. Conservation Reserves and Community Reserves. Conservation reserve would be an area owned by the State Governments adjacent to national parks and sanctuaries for protecting the landscape, seascape and habitat of fauna and flora. Further, it is also proposed to empower the State Governments to notify any Community land or private land as community reserve provided that the members of that Community or individuals concerned are agreeable to offer such areas for protecting the fauna and flora, as well as their traditions, cultures and practices. The declaration of these two types of reserves, i.e. conservation reserve and community reserve are aimed at improving the socio-economic conditions of the people living in those areas as well as conservation of wild life. Conservation reserve and community reserve, would be managed on the principles of sustainable utilisation of forest produce. The members of the local communities would be involved in their management through management committees.

The Wild Life (Protection) Amendment Bill, 2002 proposes:---

- (i) To highlight the ecological and environmental objective in the long title of the Wild Life Act;
- (ii) To add new definitions in view of the amendments proposed in the Wild Life Act;
- (iii) To give statutory status to the National Board for Wild Life and restructuring of State Wild Life Advisory Boards giving wider representation to all concerned;

- (iv) To provide certain safeguards to stop killing of animals on the pretext of being dangerous to human life and property;
- (v) To rationalise and expedite the process of final notification of sanctuaries and national parks and safeguard the decline of bio-diversity during the intervening period between the first and final notification;
- (vi) To provide that any alteration in the boundaries of National Parks and sanctuaries shall be made only on the basis of the recommendations of the National Board for Wild Life;
- (vii) To ban commercial sale of forest produce removed from national parks and sanctuaries for better management of Wild Life;
- (viii) To provide that no construction of commercial tourist lodges, hotels, zoos and safari parks shall be allowed inside the national parks and sanctuaries except with the prior approval of the National Board for Wild Life;
- (ix) To empower the officers to evict encroachment from the national parks and sanctuaries;
- (x) To provide for the creation and management of community reserves as well as conservation reserves;
- (xi) That zoos shall not acquire, or dispose of any wild or captive animals to any organisation other than a recognised zoo;
- (xii) To provide that captive animals and wild animals included in Schedule I and Part H of Schedule II of Wild Life Act and their parts and products can be acquired only by way of inheritance;
- (xiii) To enhance and rationalize penalties prescribed under the Act including the making of suitable provisions on the lines of the provisions of Chapter V-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 in cases of offences pertaining to wild animals included in Schedule I and Part II of Schedule II of the Act;
- (xiv) To enhance the amount of rewards payable to persons rendering assistance in detection of offences and apprehension of offenders;
- (xv) To increase the amount that can be realized as compensation from Rs. 2,000 to Rs. 25,000.
- (xvi) To provide that the vehicles, weapons and tools, etc. used in committing compoundable offences are not to be returned to the offenders.

5. The bill seeks to achieve the aforesaid objects."

Before substitution, sub-sections (5) and (6) read thus:

"(5) No alteration of the boundaries of a National Park shall be made except on a resolution passed by the Legislature of the State.

(6) No person shall destroy, exploit or remove any wild life from a National Park or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such National Park except under and in accordance with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied that such destruction, exploitation or removal of wild life from the National Park is necessary for the improvement and better management of wild life therein, authorises the issue of such permit."

Explanation to the section came to be inserted by the Amendment Act, 2002. In Notes on clauses, it has been stated:

"This clause seeks to amend section 35 of the Act to provide for final notification of those areas where the rights of the people have been extinguished and the land has become vested in the State Government without going through the process of settlement required under sub-section (3) of section 35. A provision is being made not to alter the boundaries of National Parks without the recommendation of the National Board for Wild Life. The destruction of habitat, exploitation and removal of wild life from the National Park has been restricted; and forest produce, if removed, are to be utilised only for the personal bona fide needs of the local people. It is also proposed to prohibit the removal of forest produce for commercial purposes."

130. The Maharashtra Land Revenue Code, 1966 relates to land and land revenue in the State of Maharashtra. It has been enacted with a view to unify and amend the law relating to land and land revenue in the State of Maharashtra and to provide for matters connected therewith. Chapter IX deals with boundary and boundary marks. It provides for fixation and demarcation of boundaries, determination of village boundaries and field boundaries. Whereas section 135 deals with disputes as to boundaries between villages, survey numbers and sub-divisions. Section 138 declares the effect of settlement of boundary.

INTERPRETATION

131. While interpreting the provisions of law relating to environment, relevant, fundamental and well-settled principles will have to be kept in mind by us.

132. As already noticed, Articles 48-A and 51-A(g) require the State and the citizen respectively to protect and improve the natural environment and to safeguard the forest and wild life of the country. As observed in (Pradeep Krishen v. Union of India and others)², 1996(8) S.C.C. 599, statutory as well as constitutional message is 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 wild life 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 objective.

133. In (State of Bihar v. Murad Ali Khan and others)³, 1988(4) S.C.C. 655, the Supreme Court quoted with approval the following observations of Duke of Edinburgh referred to by H.R.H. Prince Philip in the foreword to International Wild Life Law.

"Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that....."

.....As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress in this direction is proving disastrously slow." (Emphasis supplied)

The Court considered "The world charter for nature" adopted by the United Nations General Assembly on October 29, 1982. It related to preservation and protection of environment. It declared:

"(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.

(b) Civilisation is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation."

The Court also took into account the concept of preservation of wild life and environment before more than two thousand years when King Asoka issued a decree in the third century B.C. The King wrote:

"Twenty-six years after my coronation, I declared that the following animals were not to be killed: parrots, mynas, the Aruna, ruddy geese, wild geese, the nandimukha, cranes, bats, queen ants, terrapins, boneless fish, rhinoceroses..... and all quadrupeds which are not useful or edible.....Forests must not be burned."

134. In *(Sachidanand Pandey and another v. State of West Bengal and others)*⁴, 1987(2) S.C.C. 295, in All India Tourism Conference presided over by the Union Minister for Tourism, it was resolved that the State Governments will provide plots in good locations at concessional rates for construction of hotel industry. In pursuance of the said Resolution, the State of West Bengal decided to allot a plot for construction of Five Star Hotel at Calcutta to the Taj Group of Hotels. For that purpose, land was offered which was originally Government land and was transferred to the zoological garden on certain conditions. The said action was challenged by the petitioners. The High Court dismissed the petition. Though the Supreme Court confirmed the order passed by the High Court, it observed that 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". The Court proceeded to state that when it 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 irrelevant factors excluded. In appropriate cases, it may still go further but "now much further must depend on the circumstances of the case".

135. Putting emphasis on clean environment, Chinnappa Reddy, J., quoted:

"A hundred and thirty-two years ago, in 1854, 'the wise Indian Chief of Seattle' replied to the offer of 'the great White Chief in Washington' to buy their land. The reply is profound. It is beautiful. It is timeless. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. It is worth quoting. To abridge it or to quote extracts from it is to destroy its beauty. You cannot scratch a

painting and not diminish its beauty. We will quote the whole of it:

How can you buy or sell the sky, the warmth of the land? the idea is strange to us.

If we do not own the freshness of the air and the sparkle of the water, how can you buy them?

Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in memory and experience of my people. The sap which courses through the trees carries the memories of the red man.

The white man's dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man—all belong to the same family.

So, when the Great Chief in Washington sends word that he wishes to buy our land, he asks much of us. The Great Chief sends word he will reserve us a place so that we can live comfortably to ourselves. He will be our father and we will be his children. So we will consider your offer to buy our land. But it will not be easy. For this land is sacred to us.

This shining water moves in the streams and rivers is not just water but the blood of our ancestors. If we sell you land, you must remember that it is sacred and you must teach your children that it is sacred and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father.

The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and feed our children. If we sell you our land, you must remember, and teach your children, that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother.

We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy, and when he has conquered it, he moves on. He leaves his father's graves behind, and he does not care.

He kidnaps the earth from his children. His father's grave and his children's birthright are forgotten. He treats his mother, the earth, and his brother, the sky, as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.

There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring, or the rustle of an insect's wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there to life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell of the wind itself, cleansed by a midday rain, or scented with the pinon pine.

The air is precious to the red man, for all things share the same breath—the beast, the tree, the man, they all share the same breath. The white man does not seem to notice the air he breathes. Like a man dying for many days, he is numb to the stench. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grandfather his first breath also receives the last sigh. And if we sell you our land, you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadow's flowers.

So we will consider your offer to buy our land. If we decide to accept, I will make one condition. The white man must treat the beasts of this land as his brothers.

I am a savage and I do not understand any other way. I have seen a thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.

What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected.

You must teach your children that the ground beneath their feet is the ashes of our grandfathers. So that they will respect the land. Tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth is our mother. Whatever befalls the earth befalls the sons of the earth. If men spit upon the ground, they spit upon themselves.

This we know: The earth does not belong to man; man belongs to the earth. This we know: All things are connected like the blood which unites one family. All things are connected.

Whatever befalls the earth befalls the sons of the earth. 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.

Even the white man, whose God walks and talks with him as friend to friend, cannot be exempt from the common destiny. We may be brothers after all. We shall see. One thing we know, which the white man may one day discover our God is the same God. You may think now that you own him as you wish to own our land; but you cannot. He is the God of man, and his compassion is equal for the red man and the white. This earth is precious to him, and to harm the earth is to heap contempt on its creator. The while too shall pass; perhaps sooner than all other tribes, contaminate your bed and you will one night suffocate in your own waste.

But in your perishing you will shine brightly, fired by the strength of the God who brought you to this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us, for we do not understand when the wild buffalo are all slaughtered, the wild horses are tamed, the secret corners of the forest heavy with scent of many men and the view of the ripe hills blotted by talking wires. Where is the thicket? Gone. Where is the eagle? Gone. The end of living and the beginning of survival."

His Lordship proceeded to state and made the following instructive observations:

"Today society's interaction with nature is so extensive that the environmental question has assumed proportions affecting all humanity. Industrialisation urbanisation, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oases, he is also leaving behind deserts in the place of oases. In the last century, a great German materialist philosopher warned mankind;

Let us not, however, flatter ourselves overmuch on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different, unforeseen effects which only too often cancel the first.

Ecologists are of the opinion that the most important ecological and social problem is the widespread disappearance all over the world of certain species of living organisms.

Biologists forecast the extinction of animals and plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2000 years did so after 1900. The International Association for the protection of Nature and Natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1000 bird and animal species are facing extinction at present. So it is that the environmental question has become urgent and it has to be properly understood and squarely met by man. Nature and history, it has been said, are two component parts of the environment in which we live, move and prove ourselves." (Emphasis supplied)

136. In *(M.C. Mehta v. Kamal Nath and others)*⁵, 1997(1) S.C.C. 388, a news item appeared in Indian Express stating that a Private Company (Span Motels Pvt. Ltd.) in which the family of respondent No. 1 Kamal Nath (former Minister for Environment and Forests) had direct link, had built a club (motel) at the bank of River Beas in Kullu Valley, by encroaching forest land which was later on regularised and leased out to the company when the first respondent was the Minister. It was alleged that the Motel used earth-movers and bulldozers to turn the course of river Beas. The Supreme Court took notice of the news items because the facts disclosed therein, if true, were a serious act of environmental degradation on the part of the Motel.

137. Allowing the petition and issuing various directions, the Court observed that the notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The Court referred to an article titled". An ecological perspective on property: A call for judicial protection of the public's interest in environmentally critical resources, published in Harvard Environmental Law Review, Vol. 12, 1988 page 311, by David B. Humer (University of Michigan) on the need to protect environment and ecology. Part of the said Article read thus:

"Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment,

when coupled with, human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

Human activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service.....growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

"We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on O₂. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".

There is a commonly recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources- for example, wetlands and riparian forests- can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions." (Emphasis supplied)

The Court noted that under the ancient Roman Empire, a legal theory known as "Doctrine of the Public Trust" had developed. It founded on an idea that certain

common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for free and unimpeded use of the general public. Our contemporary concern about the environment bear a very close conceptual relationship to the said doctrine. Under the Roman law, such resources were either owned by no one (*res nullius*) or by every one in common (*res communis*). Under the English common law, however, the sovereign could own these resources but the ownership was limited in nature, the crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources of this nature were deemed to be held in trust by the Crown for the benefit of the public at large.

138. In this connection, the Court referred to an erudite article "Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", by Joseph L. Sax, Professor of Law, University of Michigan, published in *Michigan Law Review*, Vol. 68, Part 1 page 473:

"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 preserved 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 public rights could be legally asserted against a recalcitrant Government."

According to the Court, 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 the subject of private ownership. Those resources being a gift of nature must 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 for commercial purpose.

139. The Court referred to a decision of the United States Supreme Court in *(Illinois Central Railroad Co. v. People of the State of Illinois)*⁶, 1892(146) U.S. 387 : 36 L.Ed. 1018, in which a lease was granted in favour of A which was subsequently revoked. When A instituted a suit for rights under the lease, it was resisted by the State contending that the land in dispute was a title different in character from that which the State held in lands intended for sale.

140. Upholding the argument, the Court held that title which the United States held in public land which were open to pre-emption and sale was a title held in trust-for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The action, therefore, could not be held bad. According to Professor Sax, the Supreme Court in *Illinois Central Railroad Co.* "articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a Court will look with considerable scepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties".

141. The Court after considering several cases propounded:

"Our legal system-based on English common law-includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."

(Emphasis supplied)

142. In *(Tarun Bharat Sangh, Alwar v. Union of India and others)*⁷, 1992 (Supp. 2) S.C.C. 448, a social action group concerned and working for protection of environment and preservation of wild life preferred public interest action for the enforcement of statutory notifications promulgated under the Wild Life (Protection) Act, 1972 for protection of Reserved Forests in Alwar District of the State of Rajasthan. Certain mining operations were carried on under the licenses granted by the State Government impairing

environment and wild life within the Sariska Tiger Park declared to be reserved forest, game reserve and sanctuary.

143. Issuing directions and referring to Murud Ali Khan, the Court indicated that it was required by the State to ensure enforcement of environmental laws and to prevent devastation of environment and wild life within the protected area. The Court observed:

"This litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose high on the national agenda. Petitioner's concern for the environment, ecology and the wild life should be shared by the Government. No oblique motives are even suggested to the petitioner's motivation in this litigation. It is of utmost importance that the law sought to be effectuated through these notifications should be enforced strictly. We were initially of the opinion that we should forthwith interdict any further mining operations in the protected area, but there are certain minor problems and controversies which might have to be resolved on the spot. It is possible that some of the mining operators carry on their operations in such close proximity of the protected area that it may be difficult, at first sight, to determine whether they fall within or without the prohibitory interlocutory orders. It might equally be possible, as predicted by Sri Jaitley, that a part of the mining area in a particular case might fall within the prohibited area and the rest outside it. These are matters to be sorted out on the spot with reference to the revenue records and the relevant notifications. It is difficult for this Court to decide these disputes on the basis of affidavits alone."

144. In Pradeep Krishen referred to above, the Court considered the ambit and scope of the Wild Life (Protection) Act, 1972. Dealing with the submission on behalf of the petitioners that forest cover in the State of Madhya Pradesh was gradually shrinking, the Court stated:

"The petitioner contends that the forest cover in the State of Madhya Pradesh is gradually shrinking. As pointed out earlier, there is a shrinkage to the extent of 145 sq.kms. between 1991 and 1993. In our country, the total forest cover is far less than the ideal minimum of one-third of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the Sanctuaries and the National Parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wild life in those areas. If the only

reason which compels the State Government to permit entry and collection of tendu leaves is it not having acquired the rights of villagers/tribals and having failed to locate any area for their rehabilitation, we think that inertia in this behalf cannot be tolerated. We are, therefore, of the opinion that while we do not quash the order of 28-3-1995, we think that the State Government must be directed to decide on the question of completing the process for issuing final notifications and then take urgent steps to complete the procedure for declaring/notifying the areas as Sanctuaries and National Parks under sections 26-A and 35 of the Act. We, therefore, direct that the State Government shall take immediate action under Chapter IV of the Act and institute an inquiry, acquire the rights of those who claim any right in or over any land proposed to be included in the Sanctuary/National Park and thereafter proceed to issue a final notification under sections 26-A and 35 of the Act declaring such areas as Sanctuaries/National parks. We direct the State Government to initiate action in this behalf within a period of 6 months from today and expeditiously conclude the same showing that sense of urgency as is expected of a State Government in such matters as enjoined by Article 48-A of the Constitution and at the same time keeping in view the duty enshrined in Article 51-A(g) of the Constitution. We are sure, and we have no reason to doubt, that the State Government would show the required zeal to expeditiously declare and notify the areas as Sanctuaries/National Parks." (Emphasis supplied)

145. In T.N. Godavarman, the Apex Court considered the provisions of the Forest (Conservation) Act, 1980. The Court stated that there was a misconception in certain quarters about the true scope of the Act and the meaning of the word "forest" used therein. There was also resulting misconception about the need of prior approval of the Central Government as required under section 2 of the Act in respect of certain activities in forest area which are more often of a commercial nature. The Court, therefore, clarified the legal position. The Court said:

"Each State Government should constitute within one month an Expert Committee to:

- (i) identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;
- (ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and
- (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons."

The Court thereafter issued directions requiring every State Government to promptly

ensure total cessation of non-forest activities in all forests forthwith.

GRIEVANCES: WHETHER JUSTIFIED

146. In the light of the above principles enunciated by the Apex Court of the country, if the facts of the present case are seen, by no stretch of imagination, it can be said that the grievance of the petitioners is ill founded. Like Tarun Bharat Sangh, Alwar, the petitioners are acting in the aid of a purpose high on the national agenda. Petitioners' concern for environment, ecology and the wild life should, therefore, be shared by the Government and authorities under various environmental laws. No mala fide intention or oblique motive can be attributed or even suggested against the petitioners. It must be fairly stated here that by filing various affidavits the State authorities have also realised the importance of protection of environment and the steps taken by them. It is in the light of these considerations that the Court will decide the issues raised by the parties.

147. Mr. Anand Grover, learned Counsel for petitioners (Writ Petition Nos. 2054 of 2000 and 2189 of 2000) urged that notification issued under section 35 of the Wild Life (Protection) Act, 1972 is vitiated and must be declared illegal and ultra vires on the ground that there was non-application of mind on the part of the Government in issuing it. Section 35 of the Wild Life (Protection) Act deals with declaration of National Parks. We have considered the provisions of section 35 as also the Statement of Objects and Reasons in the earlier part of the judgment. Sub-section (1) of section 35 enacts that whenever it appears to the State Government that an area, whether within a sanctuary or not, is, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, by notification declare its intention to constitute such area as a National Park.

148. Sub-section (1) of section 35, therefore, will get attracted when it appears to the State Government that a particular area is needed to be constituted a National Park for the purposes mentioned in the said provision. On formation of such opinion, the State Government will issue a notification declaring its intention to constitute the area as a National Park. In other words, therefore, a notification under sub-section (1) of section 35 is a preliminary notification. Sub-section (2) of section 35 then states that the notification should define the limits of the area intended to be declared a National Park. In the instant case, such notification was issued by the State Government on 4th

February, 1983 stating therein that it appeared to the Government of Maharashtra that the areas specified in the Schedule appended to the said notification was by reason by its ecological, faunal and floral importance, needed to be constituted a National Park for the purpose of protecting, propagating or developing wild life therein or its environment. It was, therefore, decided by the Government of Maharashtra that the said area should be known as "Sanjay Gandhi Rashtriya Udyan".

149. The said Notification reads thus:

"Whereas it appears to the Government of Maharashtra, that the area specified in the Schedule appended hereto (hereinafter referred to as "the said area") is by reason of its ecological, faunal and floral importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment:

And whereas the Government of Maharashtra has decided that the said area shall be known as the "Sanjay Gandhi Rashtriya Udyan".

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (2) of section 35 of the Wild Life (Protection) Act, 1972 (53 of 1972), and in supersession of Government Notification, Revenue and Forests Department No. PGS-1072/73915-F-1, dated the 31st January, 1976, the Government of Maharashtra, hereby

(1) declares its intention to constitute the said area as a National Park to be known as the "Sanjay Gandhi Rashtriya Udyan" and

(2) defines the limits thereof as set out in the Schedule appended hereto.

SCHEDULE....."

150. Sub-section (4) of section 35 then declares that the State Government shall publish a notification specifying the limits of the National Park and declare the area to be National Park after the period for preferring claims has elapsed and all claims made in relation to any land in an area intended to be declared as National Park had been disposed of by the State Government and all rights in respect of lands proposed to be included in the National Park have become vested in the State Government. This may be called as "final notification". It may be stated that after 13 years from issuance of preliminary notification under sub-sections (1) and (2) of section 35 of the Act, the State Government issued the final notification under sub-section (4) on 16th January, 1996. In the said notification, it was stated that a preliminary notification under sub-sections (1) and (2) of

section 35 was issued by the Government on 4th February, 1983, by declaring its intention to constitute the area specified in the Schedule thereto as National Park to be known as Sanjay Gandhi Rashtriya Udyan and had defined the limits thereof. It was then observed that since the period for preferring the claims had elapsed and all claims made in relation to lands in the area intended to be declared as Sanjay Gandhi Rashtriya Udyan had been disposed of by the State Government, the final notification was issued.

151. The final notification reads as under:

"Whereas by Government Notification, Revenue and Forests Department No. PGS. 1081/131724/F-S, dated the 4th February, 1983, issued under sub-sections (1) and (2) of section 35 of the Wild Life (Protection) Act, 1972 (53 of 1972), the Government of Maharashtra had declared its intention to constitute the area specified in the Schedule thereto appended as National Park to be known as the "Sanjay Gandhi Rashtriya Udyan" and had defined the limits thereof;

AND WHEREAS the period for preferring the claims has elapsed and all claims made in relation to lands in the area intended to be declared as a National Park to be known as "Sanjay Gandhi Rashtriya Udyan" have been disposed of by the State Government;

AND WHEREAS all rights in respect of lands proposed to be included in the National Park to be known as "Sanjay Gandhi Rashtriya Udyan" have become vested in the State Government.

NOW, THEREFORE, in exercise of the powers conferred by sub-section (4) of section 35 of the Wild Life (Protection) Act, 1972 (53 of 1972), the Government of Maharashtra hereby---

(a) specifies the limits of the area, as specified in schedule appended hereto, which shall be comprised within the National Park to be known as "Sanjay Gandhi Rashtriya Udyan".

(b) declares that, on and from the date of publication of this notification in the Official Gazette, the said area shall be a National Park to be known as "Sanjay Gandhi Rashtriya Udyan".

SCHEDULE....."

The contention of Mr. Grover is that in the final notification dated 16th January, 1996, there is no whisper about satisfaction or formation of opinion on the part of the Government as to the need of the area by reason of its ecological, faunal, floral, geomorphological or zoological association or importance for the purpose of protecting,

propagating or developing wild life therein or its environment. According to the Counsel, need of the area for the purposes mentioned in sub-section (1) of section 35 of the Act is sine qua non or condition precedent. It is a jurisdictional fact which empowers the State to exercise power. Since it is not mentioned in the final notification under sub-section (4) of section 35 of the Act, the notification is vitiated and must be declared void, without jurisdiction and de hors the Act. The Counsel also contended that even if it is assumed for the sake of argument that it is open to the Government to urge that the area was needed for the purposes mentioned in sub-section (1) of section 35 of the Act, the burden is on the Government to satisfy the Court. Having not discharged such burden even at this stage, the notification must be held illegal and unlawful.

152. The learned Counsel, in this connection, relied on certain decisions. In (Jaishi Ram Goel and others v. State of Punjab, through Secretary, Industries Department, Punjab Government, Chandigarh and others)⁸, A.I.R. 1962 Punjab 177, the legality of notifications under the Land Acquisition Act, 1894 was questioned. It was held by the High Court that a decision as to public purpose under sections 4 and 6 of the Act by the Government can be examined by the Court. The determination by the State as to whether or not the purpose for which the land is being acquired is public purpose is not final and the Court can determine the nature of the purpose when the question is raised before the Court. The presumption that the decision of the State Government on that question is correct is a "rebuttable".

153. Likewise, in (M.P. Kuttappa Kurup and others v. Sub-Collector, Chengannur and others)⁹, A.I.R. 1962 Ker. 252, also, it was held that when a question is raised that particular acquisition is not for public purpose, the Court has jurisdiction under Article 226 of the Constitution to consider all materials placed before it and find out whether the acquisition is or is not for public purpose.

154. Again, in (Mrs. Ambujam Menon and others v. State of Kerala and others)¹⁰, A.I.R. 1966 Ker. 187, the same Court held that a declaration for acquisition of land under section 6 of the Land Acquisition Act by the State Government without application of mind is vitiated. If there is failure on the part of the Government in applying its mind to all the relevant facts, the acquisition must be held to be bad in law.

155. Reference was also made to a decision of the Supreme Court in (State Bank of Punjab and another v. Gurdial Singh and others)¹¹, A.I.R. 1980 S.C. 319. In that case the Apex Court held that acquisition for public purpose and selection of land is in the discretion of the State. Such power, however, must be exercised lawfully, legally and in consonance with law and subject to Articles 14, 19 and 31 (as it stood then) of the Constitution. If the choice is made with mala fide intention/motive or with oblique ends or is otherwise void, such acquisition must be held bad and can invalidate exercise of power.

156. So far as the last authority is concerned, the proposition is well founded. It has not been disputed even by the learned Government Pleader. It is trite to state that every power must be exercised legally, validly, reasonably and in good faith. Once the Court comes to the conclusion that the power has been exercised illegally, unreasonably or otherwise than in good faith, the action must be held bad.

157. In the instant case, there is nothing to show that with mala fide intention or oblique motive, a notification under section 35 of the Wild Life (Protection) Act, 1972 had been issued by the State Government. It, therefore, cannot be said that the principles laid down in Gurudayal Singh, will apply. That case hence, does not assist the petitioners.

158. As to other cases referred to by the learned Counsel, a direct decision of the Supreme Court in (Smt. Somawanti and others v. The State of Punjab and others)¹², A.I.R. 1963 S.C. 151, may be noted. In the said case, the Court considered sub-section (3) of section 6 of the Act which uses the expression "conclusive evidence". It was held that once the law says that certain evidence is "conclusive", it shuts out any other evidence which would detract from the conclusiveness of that evidence. The Court also observed that there is no difference between "conclusive evidence" and "conclusive proof". It stated:

"In substance, therefore, there is no difference between conclusive evidence and conclusive proof. Statutes may use the expression conclusive proof where the object is to make a fact non-justifiable. But the legislature may use some other expression such as 'conclusive evidence' for achieving the same result. There is thus no difference between the effect of the expression 'conclusive evidence' from that of 'conclusive proof', the aim of both being to give finality to the establishment of the existence of a fact from the proof of another."

In our opinion, therefore, in view of declaration of law in Somawanti, once a notification under section 6 of the Land Acquisition Act is issued, it is no more open to an aggrieved party to contend that the land was not needed for public purpose. To the extent of public purpose, judicial scrutiny is ousted by the use of expression 'conclusive evidence' under sub-section (3) of section 6 of the Act.

159. We may, however, hasten to add that such a scrutiny is permissible when a contention is raised that acquisition is mala fide or with oblique motive or is otherwise void as indicated in Gurudayal Singh.

160. The matter can be looked at from different angle as well. A notification under the Wild Life (Protection) Act cannot be compared with a notification issued under the Land Acquisition Act, 1894. The preamble of the Land Acquisition Act, 1894 states that it is an Act to amend the law for the acquisition of land for public purposes and for companies. It states "Whereas it is expedient to amend the law of acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition", the Act has been enacted. It is thus clear that under the said Act, acquisition may be made for public purpose or for companies. Section 4 of the Act provides for issuance of preliminary notification for "any public purpose" or "for a company". No "public purpose", however, is defined or specified in the Act. It is, therefore, necessary to show for what purpose the land is likely to be needed.

161. On the other hand, under the Wild Life (Protection) Act, 1972, acquisition of land must be only for the purposes mentioned. Language of sub-section (1) of section 35 is clear and explicit that a notification under the said provision can be issued when it appears to the State Government that an area is needed by reason of its ecological, faunal, floral, geomorphological or zoological association importance to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment.

162. In our judgment, therefore, it is clear that under the Land Acquisition Act, 1894, unless public purpose is specified no acquisition can be made. Acquisition under the Wild Life (Protection) Act, 1972, on the other hand, is limited to purposes specified in sub-

section (1) of section 35 of the Act and for no other purpose such a notification can be issued. The law and the decisions on the Land Acquisition Act, 1894 would have no application to cases under the Wild Life (Protection) Act, 1972.

163. There is still another reason for rejecting the contention of the learned Counsel for the petitioners. True it is, that final notification dated January 16, 1996 issued under sub-section (4) of section 35 of the Wild Life (Protection) Act, 1972 does not state for what purpose, such notification was issued. But it cannot be overlooked that a preliminary notification under sub-sections (1) and (2) of section 35 of the Act was issued on February 4, 1983 stating therein that it appeared to the Government of Maharashtra that the area mentioned in the Schedule to the said notification was needed by reason of its ecological, faunal, floral, geomorphological or zoological association. It is, therefore, not necessary that in the final notification under sub-section (4) of section 35 of the Act, need referred to in sub-section (1) of section 35 should be reiterated. It is also not the requirement of law.

164. In the present case, as already adverted to, preliminary notification under sub-sections (1) and (2) of section 35 specifically and explicitly recited that it appeared to the Government of Maharashtra that the area specified in the Schedule appended thereto was by reason of its ecological, faunal, floral, geomorphological or zoological association, was needed to constitute a National Park for protecting, propagating or developing wild life therein or its environment and hence, the State Government declared its intention to constitute the said area to be known as "Sanjay Gandhi Rashtriya Udyan". The preliminary notification under sub-sections (1) and (2) of section 35 was therefore, legal, valid and in consonance with law. So far as final notification dated 16th January, 1996 is concerned, it expressly referred to preliminary notification issued under sub-sections (1) and (2) of section 35 of the Act. It further stated that the period for preferring the claims had elapsed and all claims made in relation to the lands in the area intended to be declared as National Park had been disposed of by the State Government. The final notification, therefore, is in consonance with law and has been issued in accordance with the requirement of the section and cannot be declared illegal, unlawful or de hors the Act.

165. The next contention of Mr. Grover is that the notification has been issued in mala fide exercise of power since it favoured a privileged class who were having their property in Yeoor and the said area had been left out only with a view to extent benefits to

"favourable few" although it is deep in the National Park region.

166. It has been stated by the learned Government Pleader that Yeoor is not the only area which is excluded. Kanheri Caves which is a protected monument managed by the Archaeological Survey of India is excluded. Normally, it is for the State Government to form an opinion and to take a decision in accordance with law. It, therefore, cannot be said that exclusion of Yeoor village is with a view to oblige influential persons. The contention therefore, cannot be upheld and is hereby negated.

167. It was urged by Mr. Oka, Mr. Grover and Mr. Vashi that Sanjay Gandhi National Park and Sanjay Gandhi National Park Division are two independent areas. SGNP cannot be equated with a SGNP Division. The notifications under sub-sections (1) and (2) of section 35 (preliminary notification) and under sub-section (4) of section 35 of the Wild Life (Protection) Act, 1972 (final notification), referred to only National Park and not National Park Division. Several areas which have not been included in National Park (SGNP), therefore, cannot form part and parcel of National Park and the notifications will not apply to those areas. It was also submitted that Schedule to both the notifications referred the areas to be included in National Park and the boundaries situated in or around such National Parks. Occupiers of the areas not within SGNP, therefore, would not be affected and no proceedings can be initiated against them. It was submitted that in view of the legal position, though in an order dated 7th May, 1997 the Division Bench of this Court has issued certain directions in respect of occupiers of SGNP Division, they would not apply to the SGNP Division but their application would be limited to occupiers in SGNP.

168. We are unable to accept the submission of the learned Counsel, the map annexed to the petition, though it is captioned as Sanjay Gandhi National Park (SGNP), is really a map of the Sanjay Gandhi National Park Division (SGNP Division). Several orders which have been passed by this Court as well as by the Supreme Court from time to time also refers to SGNP Division. It, therefore, cannot be contended that the application of notification should be made limited to SGNP.

169. It is also pertinent to note at this stage that it does not make any difference whether the area is part of SGNP or SGNP Division. All the land in the Division is

"forest" within the meaning of Maharashtra Private Forests (Acquisition) Act, 1975 or the Indian Forest Act, 1927. Once the land is held to be "forest", no relief can be granted to the occupiers as the directions issued in Godavarman would squarely apply to such land. Godavarman goes further and declares that the expression "forest" should not be read in a restrictive manner and it must be understood according to its dictionary meaning which would cover all statutory forests, whether designated as reserved protected or otherwise, and would also include any area recorded as forest in the Government record, irrespective of ownership. In the present case, the case of the State Government is that the area is "forest" and has been recorded as such in the Government record. Hence, the ratio laid down in Godavarman will apply.

170. There is yet one more reason why the argument of the learned Counsel cannot be accepted. None of the petitioners of several petitions is able to establish his right over the land or property occupied by him. According to the State Government and various affidavits filed by Officers of the State from time to time, the petitioners have encroached upon the land and have made unauthorised structures. They are thus encroachers. We will deal with in detail this point little later. Suffice to say, however, that when there is no right in favour of the petitioners, it is not open to them to contend that since the area is not included in the notification issued under section 35 of the Wild Life (Protection) Act, 1972 they should not be evicted.

171. We are unable to accept the argument of Mr. Oka that until the area of 44 acres, 7 gunthas and 8 annas from Survey No. 42-A is identified, the petitioners cannot be evicted. As submitted by the learned Government Pleader, the area was already identified. Even if there was dispute or difference as to identification, it does not confer right in favour of the petitioners. The land originally belonged to M/s. Byramjee Jeejeebhoy and as per demarcation, the land was declared as "forest" and the petitioners had no right thereon. Even the Grievance Redressal Committee did not see substance in the grievance of the petitioners and rejected the representation.

172. It was then contended by Mr. Oka, Mr. Shukla and Mr. Vashi that survey had not been carried out in accordance with section 135 of the Maharashtra Land Revenue Code, 1966 by the revenue authorities. To recall, the Maharashtra Land Revenue Code relates to land and land revenue in the State of Maharashtra. It has been enacted with a view to unify and amend the law relating to land and land revenue. Chapter IX deals with

boundary and boundary marks.

173. Section 135 on which reliance was placed reads as under :

"Disputes regarding boundaries between villages, survey numbers and sub-divisions. If any dispute arises concerning the boundary of a village or a field or a holding which has not been surveyed, or if at any time after the completion of a survey a dispute arises concerning the boundary of any village or survey number or sub-division of a survey number, it shall be decided by the Collector after holding a formal inquiry at which the village officers and all persons interested shall have an opportunity of appearing and producing evidence."

A bare reading of the above section makes it abundantly clear that if there is any dispute concerning the boundary of a village or field or a holding which has not been surveyed or if at any time after completion of survey, there is a dispute concerning boundaries of any sub-division of a survey number, the same shall be decided by Collector after holding a formal inquiry laid down in the said section.

174. The learned Counsel for the petitioners (W.P. 305 of 1995) and the learned Government Pleader are, therefore, right in contending that the provisions of Chapter IX of the Maharashtra Land Revenue Code, 1966 would not apply to the case on hand. The case does not relate to dispute concerning the boundary of a village or field or a holding. The area is forest and there is no doubt in our minds that section 135 of the Maharashtra Land Revenue Code has no application to such area. The boundaries of such areas are to be determined, keeping in mind the relevant provisions of the Indian Forest Act, 1927 the Maharashtra Private Forests (Acquisition) Act, 1975 and the Wild Life (Protection) Act, 1972.

175. It was alternatively argued that this Court in the order dated 7th May, 1997 issued certain directions including a direction to carry out which had not been complied with. It was, therefore, prayed that authorities may be ordered to comply with the said direction by carrying out survey by revenue authorities.

176. We are unable to uphold even this contention. To us, it is clear that no such direction had been issued by this Court in its order dated 7th May, 1997. Our attention was invited to direction (k) of the said order. The said direction reads;

"The authorities are directed to conduct a survey of the inhabitants of the National Park Division within a period of two months from today. Any person found to be in possession of a hut for which he himself does not have a valid photo pass must be evicted forthwith and the structure demolished. It is further directed that no transfer of photo pass pertaining to structures within the National Park Division be permitted."

Reading the above direction, it is clear that what was directed was "to conduct a survey of the inhabitants of the National Park Division within the stipulated period. It was further ordered that the authorities were to ascertain whether a person found to be in possession of hut for which he had valid photo pass. If not, he should be evicted forthwith and the structure demolished. In other words, what was directed to be done was a sort of "head count" or census. Reading subsequent directions in the same order regarding electoral rolls, re-location etc. it is amply clear that the survey was in respect of inhabitants and not as to land.

177. It is further clear from direction (a) which provides for preparation of maps of SGNP Division. The said direction related to the areas and boundaries of the SGNP Division. It is also clear from direction which provides for re-location of slum dwellers residing within SGNP Division and whose names appear on electoral rolls prepared as on 1st January, 1995 or any date prior thereto and who continued to live in the same structure.

178. It is on the basis of those directions that survey of the "inhabitants" of the SGNP Division was ordered. It has, in our considered opinion, nothing to do with the survey contemplated by section 135 of the Maharashtra Land Revenue Code, 1966 relating to disputes regarding boundaries between villages, survey numbers and sub divisions. We, therefore, see no substance in the contention and it is hereby negated.

179. We may, however, deal with one point raised by Mr. Oka in Writ Petition No.

1119 of 2000. The learned Counsel submitted that in case of petitioners of Writ Petition No. 1119 of 2000 an order was passed by the sub-Divisional Officer, Mumbai Suburban District on November 30, 2000. Certain directions were issued by the Sub-Divisional Officer, Direction No. (ii) related to survey to be carried out. The Sub-Divisional Officer, SGNP was directed to survey and demarcate the land admeasuring 44 acres, 7 gunthas and 8 annas from Survey No. 42-A (Part) with the help of concerned City Survey Officer as per the observations made in the order within four weeks from the date of the order.

180. Counsel submitted that as the said direction was not carried out, a grievance was made before this Court and by an order dated April 17, 2002 this Court directed the authorities to carry out the order passed by the Sub-Divisional Officer on November 30, 2000. A complaint was made that neither the order passed by the Sub-Divisional Officer on November, 30, 2000 nor the order passed by this Court on April 17, 2002 had been obeyed or implemented. The petitioners were, hence constrained to file a Contempt petition which was ultimately withdrawn by the petitioners with liberty to move the Division Bench for appropriate orders. The petitioners have thereupon filed Notice of Motion No. 280 of 2003 in which a prayer is made to direct the authorities to implement the order by carrying out survey.

181. It is not disputed even by the respondents that the direction has not been complied with and survey has not been carried out. An affidavit in reply is no doubt filed by City Survey Officer, Goregaon on 1st October, 2002 placing on record developments which took place and the circumstances in which the direction could not be implemented. It was also stated that in pursuance of direction issued in Writ Petition No. 305 of 1995, a map was prepared by the Forest Department which had been taken on record by this Hon'ble Court. As per the said map, the land was "forest". It was , therefore, stated that the area identified as forest by Sub-Divisional Officer was different from the area identified as forest in the map submitted to this Court. If survey would be carried out, the demarcation and identification would be in conflict with the identification and demarcation in respect of such land. It was also submitted that the Sub-Divisional Officer had passed the order on November 30, 2000 without making them a party and hearing them.

182. In paragraph 10, the deponent stated:

"I say that for the above reasons, it is very difficult to identify the said area of 44 acres 7 gunthas and 8 annas as per the SDO's order dated 30-11-2000 and finalise measurement plan".

183. We are constrained to observe that it was not proper on the part of the respondents to ignore the direction issued by this Court vide its order dated April 17, 2002. The order was passed after hearing the learned Counsel for the petitioners as well as learned Government Pleader for respondent No. 1. It was open to the respondent-State to challenge the order passed by this Court, if they felt aggrieved by the said order. It was also open to the State authorities to take out appropriate Notice of Motion/Civil Application/Review petition, if they were of the view that in the light of the difficulties highlighted in the affidavit filed by the City Survey Officer, Goregaon as late as on 1st October, 2002, praying to recall/revoke/modify the order. But it was indeed not open to the authorities to ignore the direction and try to justify it when a complaint is made by the petitioners for disobedience/non-implementation of the order.

184. Keeping in view the reasons stated in the affidavit in reply as also the circumstances mentioned in the counter, we feel that no strict action is necessary, and hence we do not intend to take further proceedings. We would, however, be failing in our duty if we do not state that the State Government would be more careful in future and take appropriate steps known to law even if they feel that certain directions/orders/decisions issued by the Court are unworkable or create difficulties/problems. Let the matter lie there.

185. It was vehemently argued by Mr. Shukla that fraud was committed and the Court was misled when, in Miscellaneous Petition No. 1465 of 1975, consent terms were arrived at between the parties on 3rd December, 1979 and on the basis of such consent terms, the matter was disposed of. Under the consent terms, it was agreed that out of total area of 1488 acres and 33 gunthas of Survey No. 239/1 an area of 848 acres, 20 gunthas and 12 annas would vest in the Government as Private Forest and remaining area would not be claimed by the State. A part of the area was given to Bombay Municipal Corporation and a part thereof was returned for quarry purposes. One of the prayers of the petitioners (Writ Petition No. 4382 of 2000 and cognate matters) is to declare consent terms illegal and unlawful and to protect the structures of the petitioners, since

the land never vested either in the State Government or in Municipal Corporation of Bombay.

186. In our opinion, the respondent-authorities are right in submitting that petitioners have no right, title or interest over the land which according to the authorities, have encroached upon by them. Nothing is stated in the petition as to the right of the petitioners to claim and/or retain possession. No document has been placed on record showing their lawful possession and occupation. The origin of possession, therefore, is not known. The authorities, in our view, are also right in contending that challenge to the consent terms by the petitioners who were totally strangers and aliens to the parties to the litigation is misconceived and ill-founded. Such consent terms have been arrived at between the contesting parties before the Court, were produced in the petition accepted by the Court, an order was passed on such consent terms and the matter was disposed of. The rights had been created and crystallised on the basis of those terms. They had been acted upon. Everything was done before more than two decades. It is, therefore not open to the petitioners who could not show any right to remain in possession to challenge such consent terms. It was also submitted that the consent terms were challenged in Public Interest Litigation No. 2811 of 2001 and the Division Bench of this Court dismissed the petition by an order dated 14th March, 2003. In that petition, consent terms were challenged on similar lines on which the petitioners have challenged in the present group of petitions. The issue, therefore, is no more *res integra* and is finally concluded.

187. It may also be stated that the petitioners had approached the Grievance Redressal Committee and the Committee, after hearing the leaned Counsel for the petitioners, rejected the applications by an order dated 16th March, 2001. The Committee also considered the maps produced before it and recorded a finding that old Survey No. 163 (Part) was included in Survey No. 239 (Part) which came to Forest Department under the consent terms. It also observed that by virtue of section 3(1) of the Maharashtra Private Forest (Acquisition) Act, 1975, the land stood vested in the Government free from all encumbrances, and thereafter the petitioners had no right over the land.

188. The Committee stated:

"The department has filed two maps one of them is a part of the consent terms. It shows

that the structure of the petitioners namely Wagheshwari Rahivashi Mandal is in S. No. 239 (Part) which is old Survey No. 163 (Part). It is further to be noted that pursuant to the directions of the High Court in Writ Petition No. 305 of 1995 a map was drawn and even therein the structure of the applicants are inside the boundary of the forest land S. No. 239/1. That is to be conclusive as per High Court orders. It is to be noted that notification has been issued by the State Government and 239/1 is a part of the Sanjay Gandhi Rashtriya Udyan, Borivli. By virtue of the provisions of section 3(1) of the Maharashtra Private Forest (Acquisition) Act all private forests in the State shall stand acquired and vest free from all encumbrances in, and shall be deemed to be with all rights in or over the same or appertaining thereto the property of the State Government and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished. It is to be noted that before the coming into force of the said Act, action was taken under section 35 of the Indian Forest Act by the Government. In the circumstances, the petitioners cannot be heard to say that they cannot be evicted from the land, if it is found that they are in Survey No. 239/1."

189. In view of the above facts and circumstances, in our opinion, contention raised by Mr. Shukla cannot be upheld and is hereby rejected.

190. The decision of the Full Bench of this Court in (Janu Chandra Waghmare & others v. State of Maharashtra & others)¹³, A.I.R. 1978 Bom. 119(F.B.) does not carry the case of the petitioners further. Considering the relevant provisions of the Maharashtra Private Forests (Acquisition) Act, 1975 in juxtaposition of the Indian Forest Act, 1927, the Full Bench held the State Act to be constitutional and inter vires.

191. Mr. Shukla then contended that action of State authorities should not be arbitrary, discriminatory or unreasonable. State is expected to act fairly and, as in the instant cases, illegal and arbitrary actions have been taken, they deserve to be quashed and set aside by issuing necessary directions restoring possession to the petitioners and by ordering the authorities to follow provisions of law and to pass appropriate orders. Our attention in this connection was invited by the learned Counsel to the following decisions of the Apex Court:

- (i) (*M/s. Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay*)¹⁴, 1990(1) Bom.C.R. 405 : A.I.R. 1989 S.C. 1642;
- (ii) (*Mahabir Auto Stores and others v. Indian Oil Corporation and others*)¹⁵, A.I.R. 1990 S.C. 1031; and
- (iii) (*Mukari Shrilekha Vidyarthi etc. v. State of U.P. and others*)¹⁶, A.I.R. 1991 S.C. 537.

192. There is no dispute so far as the principle laid down by the Supreme Court in the above cases. Considering the facts of the present cases, however, it is clear that the petitioners have no right whatsoever to remain on the land. If it is so, in our opinion, ratio laid down in the above cases would not get attracted and would not help the petitioners.

193. Mr. Vashi, learned Counsel appearing in Pauper Petition No. 2 of 2001, contended that the occupiers within and outside SNGP/SGNP Division were not arraigned as respondents in Writ Petition No. 305 of 1995 by the petitioners. No notice was issued to them and no opportunity was afforded to them as to what they had to say about their rights. In the circumstances, no order could have been passed against them. The Counsel submitted that order dated 7th May, 1997 and all subsequent interim orders passed and directions issued, therefore, are violative of principles of natural justice and fair play as the orders were interim and interlocutory in nature and when the Court decides all the matters finally, those orders must be held to be without jurisdiction by restoring status quo ante prior to issuance of interim orders/directions.

194. The Counsel in this connection invited our attention to a decision of the Supreme Court in (*Prabodh Verma and others v. State of U.P. and others*)¹⁷, 1984(4) S.C.C. 251. In *Prabodh Verma*, certain posts were required to be filled in by reserved pool teachers in accordance with ordinance issued by the State. The teachers, however, could not be appointed in view of interim injunction granted by the High Court. Meanwhile, other teachers came to be appointed and even confirmed. Finally, however, the Ordinance was held valid and right of reserved pool teachers was upheld by the Supreme Court. The consequential relief of granting appointment of teachers from the reserved pool would be the order of the Court. But it would, in the circumstances, have resulted into prejudice to those teachers who were already appointed while refusing relief to reserved pool teachers

and caused serious prejudice and injustice. The Supreme Court, in the circumstances, directed the authorities to appoint all reserved pool teachers, irrespective of the fact whether they had approached the Court or not, to substantive vacancies to be filled in by direct recruitment as and when such vacancies were to arise.

195. In *(Commissioner of Income Tax, Madras v. Vinod Kumar)*¹⁸, A.I.R. 1987 S.C. 1260, against a prohibitory order issued by the Income tax authorities, the petitioner filed a writ petition and obtained ex parte interim order prohibiting the authorities from enforcing those orders. The petitioners then removed the goods under ex parte order, without payment of amount. He thereafter withdrew the petition. The department approached the Supreme Court. Observing that the process of law was completely abused for the purpose of gaining an undeserved benefit, the Supreme Court held that the petitioner cannot be allowed to retain undue advantage obtained by him under the interim order.

196. The principle laid down in the above cases needs no further discussion. The question for our consideration is whether, in the facts and circumstance, the said principle would be attracted. In our judgment, since the petitioners are unable to show any right whatsoever, they are not entitled to any relief from this Court and the law laid down in the above cases would be of no help to them.

197. Learned Counsel for the petitioners in Writ Petition No. 305 of 1995, in our opinion, rightly relied upon a decision of the Supreme Court in *(Gopi Aqua Farms and others v. Union of India and others)*¹⁹, 1997(6) S.C.C. 577. Almost in similar situation, the Apex Court held the action taken in public interest litigation to be legal and valid and not violative of principles of natural justice and fair play. It was observed that pursuant to the petition filed by the petitioners, public notices were issued and all the persons likely to be affected were made aware of the pendency of petition.

198. In the instant case also, the petition was filed as early as in February, 1995. Several interim orders were passed and directions were issued. In pursuance of such orders and directions, public notices were issued, occupants were informed about the orders passed by this Court and various steps were taken. It, therefore, cannot be contended that the occupants of SGNP Division were not aware of the pendency of the petition and orders

passed by this Court from time to time. Moreover, as already indicated earlier, the order passed by the Division Bench on May 7, 1997 in Writ Petition No. 305 of 1995 was challenged by the petitioners in Writ Petition No. 803 of 1997, but no relief was granted by this Court and even the Supreme Court dismissed special petition on October 20, 1997. We, therefore, see no substance in the contention raised by the learned Counsel for the occupants.

199. It was also contended by Mr. Vashi and Mr. Shukla that the occupiers are occupying the land and the structures made thereon since many years. In other words, they are in "settled possession" and their possession cannot be disturbed without due process of law. It was submitted that even a trespasser cannot be forcibly dispossessed by any other person. The said doctrine would apply with much more vigour to the "State" and its instrumentalities. Since the respondent-authorities attempted to evict the occupiers, the least they were required to do was to follow procedure known to law. As it was not done, the action must be held unlawful, illegal and improper.

200. We see no force in the above contention also. It is true that when a person is in lawful possession, he cannot be dispossessed without following procedure of law. But, in our judgment, it is equally well settled that when a person seeks to protect his possession, prima facie, he must show that he is in lawful possession of the property. A person who has no right whatsoever, or who is unable to show any authority on the basis of which he is in possession or is found to be on property illegally or is a rank trespasser, cannot invoke the principle and argue that he cannot be dispossessed.

201. In (Ram Rattan and others v. State of U.P.)²⁰, A.I.R. 1977 S.C. 619, the Supreme Court observed:

"It is well settled that a true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing and has not accomplished his possession, but this right is not available to the true owner if the trespasser has successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law."

202. In (Premji Ratansey Shah and others v. Union of India and others)²¹, 1995(2) Bom.C.R. 374 : 1994(5) S.C.C. 547, injunction was sought by the plaintiff against the defendant. The Court observed that issuance of an order of injunction is in the discretion of the Court and is an equitable relief. Such injunction may be granted to protect possession of the owner or person in lawful possession. The interest of right not shown to be in existence, cannot be protected by injunction. Such injunction also cannot be issued against the true owner. The plaintiff must have personal interest in the matter.

203. In that case, as no right could be shown by the plaintiff and the courts below rejected the relief of injunction in favour of the plaintiffs, the Supreme Court confirmed the orders passed by the courts below and observed:

"Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner."

204. In (Tamil Nadu Housing Board v. A. Viswan (dead) by L.Rs.)²², 1996(8) S.C.C. 259, the Supreme Court observed that once a person is divested of the title, neither he nor any one claiming from him can acquire right over the property and claim injunction on that basis. When the property vested in the Housing Board, no injunction can be granted thereafter as there is no right in favour of a person. The Court observed that a trespasser cannot claim injunction against the owner nor can the Court pass such order.

205. In (Mahadeo Savlaram and others v. Pune Municipal Corporation and another)²³, 1995(3) Bom.C.R. (S.C.)441 : 1995(3) S.C.C. 33, orders of eviction were passed following due process of law and became final. No right thereafter was created in favour of the appellants to remain in possession. The possession of the appellants was, therefore, unlawful and they could not claim injunction against the rightful owner from evicting them.

206. Relying on "Law relating to injunction" (second revised and enlarged edition) (1992) page 56 para 30.01), the Court observed that an interference by injunction is founded on the existence of a legal right, and the applicant must be able to show a fair

prima facie case in support of the title which he associates.

207. In that case, the acquisition proceedings had attached finality and hence possession could be taken over by the Corporation for public purpose for which the acquisition was made. Since the appellants had no prima facie right to remain in possession, such possession was unlawful and they could not seek injunction against the rightful owner from evicting them.

208. Observations made by the Supreme Court in (Lallu Yeshwant Singh (dead) by his L.Rs. v. Rao Jagdish Singh and others)²⁴, A.I.R. 1968 S.C. 620, do not carry the case of the petitioner anywhere. There tenancy rights were created in favour of A. The tenancy was thereafter terminated under the relevant law. It was held by the Supreme Court that the tenant in possession could not be dispossessed forcibly. Once the right of the Khatedar is extinguished, it may be open to the owner to obtain possession but he has no right to re-enter dispossessing the tenant as the tenant cannot be said to be a trespasser.

209. To the similar effect are the observations in (Nair Service Society Limited v. K.C. Alexander and others)²⁵, A.I.R. 1968 S.C. 1165. In that case the appellants relied on the principle that "possession follows title". The Court observed that no one can deny that possession may prima facie raise a presumption of title but such presumption can hardly arise when the facts are known. When they disclose no title in either party, the possession would decide the issue.

210. In the cases before us, the occupiers have not even prima facie shown as to how they came in possession and continue to remain there. No relief, hence, can be granted in their favour. On the contrary, in view of the provisions of Forest Laws and in the light of the notification issued under the Wild Life (Protection) Act, 1972, the petitioners have no right whatsoever to remain in possession and the action of the State authorities cannot be held illegal, improper or inequitable.

211. We are also unable to uphold the argument of the learned Counsel for the petitioners that there was non-application of mind by the Grievance Redressal Committee. The Committee, in our view, rightly referred to the relevant statutes and the

orders passed by this Court from time to time. It also considered the documents produced by the aggrieved parties and negated the claim put forward by them. The submission of the learned Counsel, therefore, that the orders passed by the Grievance Redressal Committee deserve interference is not well-founded and cannot be accepted.

212. For the reasons aforesaid:

(i) Writ Petition No. 305 of 1995 deserves to be allowed and is accordingly allowed by directing respondents to remove all encroachers from SGNP Division by taking necessary steps within six months from today.

These directions are in consonance with the constitutional provisions of Article 48-A as well as Article 51-A(g) of the Constitution and the State Government is enjoined to carry out these directions with a sense of responsibility. Rule is made absolute to the extent indicated above.

(ii) In view of the above order, Notices of Motion Nos. 124 of 2001, 364 of 2001, 117 of 2002, 293 of 2003 and 294 of 2003 in Writ Petition No. 305 of 1995 stand disposed of.

(iii) All other petitions and Notices of Motion taken out therein deserve to be dismissed and are accordingly dismissed. Rule is discharged in all those petitions.

(iv) Pauper Petition No. 2 of 2001 is liable to be dismissed and is accordingly dismissed.

(It may be stated that on 24th October, 2002, the learned Counsel for the applicant withdrew Notice of Motion No. 604 of 2001 "with liberty to take out fresh Notice of Motion after Pauper Petition No. 2 of 2001 is decided. Accordingly the Motion stood disposed of as withdrawn).

(v) Contempt Petition No. 12 of 1999 in Writ Petition No. 2031 of 1997 and 85 of 2000 in Writ Petition No. 1579 of 2000 are also dismissed.

(vi) In the facts and circumstances of the case, all parties to bear their own costs.

213. Before parting with the matters, we may observe that as per order dated July 17, 1999, the eligible encroachers were required to make payment of Rs. 7,000/- in four instalments for getting re-location. No doubt, several eligible encroachers had not paid the said amount either because, according to them, they were in legal and lawful

possession of the huts/houses and hence, they were not required to pay the said amount or because of the fact that this Court was seized of the matter. Many of them have also filed substantive petitions. Since we are finally deciding all the members, it would be appropriate if the respondent-authorities will keep this fact in mind, consider and construe the direction of this Court in letter and spirit and give three months time from today so that such eligible encroachers would be able to pay the amount as per the order dated 17th July, 1999. We may, however, clarify that the above benefit will be available and will be extended only to those slum-dwellers who, according to the respondent-authorities, were "eligible encroachers" i.e. whose names appeared in the electoral rolls" as on 1st January, 1995 or before that day".

Parties be given copies of this order duly authenticated by the Associate/Sheristedar/Private Secretary.

214. The learned Counsel for the petitioners in various petitions, whose petitions have been dismissed, have prayed that the petitioners intend to challenge the orders passed by us by approaching the Supreme Court. They, therefore, prayed that the operation of the judgment be stayed for ten weeks.

215. In our opinion, it would be appropriate, if we grant stay for eight weeks from today. Order accordingly.

216. It may also be stated that in Writ Petition No. 925 of 2000, we had issued directions to the authorities with regard to tribals/adivasis and to extend the benefit of the provisions of the Wild Life (Protection) Act, 1972, as amended from time to time, the National Forest Policy, Resolutions of the Government of Maharashtra issued from time to time and various decisions of the Supreme Court. We may state that if any of the petitioners in the present group of petitions fall within that category, similar benefits be made available to them also.
