MANU/TN/2578/2009

IN THE HIGH COURT OF MADRAS

Writ Petition No. 9319 of 2009

Decided On: 16.09.2009

Appellants: **Thervoy Gramam Munnetra Nala Sangam**
Vs.
Respondent: **The Union of India (UOI) and Ors.**
[Alongwith Contempt Petition No. 802 of 2009]

Hon'ble Judges/Coram:
F.M. Ibrahim Kalifulla and R. Banumathi, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: T. Mohan, Adv.

For Respondents/Defendant: M. Ravindran, Addl. Solicitor General of India assisted by K. Elango, ASG for R1, S.N. Kirubanandam, Spl. Government Pleader for R2, R. Thirugnanam, Spl. Government Pleader [W] for R3, 4 and 6, R. Ramanlaal, Adv. for R5 and P. Wilson, Addl. Adv. General assisted by M. Devaraj, Adv. for R7

Case Note:
Civil - Rehabilitation - Writ Petition filed to quash transferring/assigning lands to respondent no. 7 and from changing use of such land - Held, transfer of land will not amount to sanction to proceed with projects - Petitioner stated that 70% of shrubs and trees have been removed at time when petition was admitted, interim injunction was granted from cutting and removing trees - Same was modified by order restricting interim injunction only in respect of felling of trees - Court had directed Forest department to count trees and file report -Â As per report filed by Forest department, there are 844 trees available - Court is of view thatÂ before proceeding with further development, respondent no. 7 has to obtain environmental clearance from competent authority as per notificationÂ - However, respondent no. 7 entitled to secure lands by fencing area - Once environmental clearance certificate is sought for, most of points raised would be taken care while processing application for environmental clearance -Â All encroachers are said to have put up huts in land - Encroachers who have put up shed are to be provided with alternate place in nearby vicinity for putting up their residence - Respondents 3, 6 and 7 are directed to put up sheds with galvanised sheets under any of available Government scheme - Writ petition disposed of with direction to respondent no. 7 to approach Competent Authority/Ministry of Environment and Forests to get environmental clearance as per Notification before proceeding further with development activities

Contempt of Court - Disobedience - Petitioner filed contempt petition on ground that despite injunction order of Court, respondent no. 7 has not restrained itself from felling trees and cutting shrubs - Held, Additional Advocate General was right in his submission that there was no disobedience of order and that respondent no. 7 was only removing shrubs and bushes - Prima facie Court did not find any disobedience much less willful disobedience of order -Contempt Petition dismissed

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ORDER

R. Banumathi, J.

1. Writ Petition has been filed to quash G.O.Ms. No. 650 Revenue Department dated 13.11.2008 transferring/assigning the lands comprised in S. Nos. 32/2 and 33/2 in Thervoy kandigai village, Gummidipoondi Block, Tiruvallur District to the 7th Respondent and from changing the use of such land from Meikkal poramboke to any other use.

2. Brief facts which led to the filing of Writ Petition is as follows:

(i) 250 Hectares in S. Nos. 32/2 and 33/2 was classified as Meikkal poramboke. Government decided to form an Industrial park in the said lands and issued notice on 11.1.2007 regarding transfer of lands. Thervoy panchayat had passed resolution on 30.1.2007 consenting for the transfer of the above lands to State Industries Promotion Corporation of Tamil Nadu [SIPCOT]. As per G.O.Ms. 650 Revenue department dated 13.11.2008, Government alienated an extent of 250 hectares of grazing ground poramboke lands comprised in S. Nos. 32/2 and 33/2 of Thervoy village for establishment of second Industrial complex in Tiruvallur District to be transferred to the name of SIPCOT subject to certain conditions. Petitioner association claims to have been formed working for the benefit of residents of Thervoy kandigai village.

(ii) Grievance of the Petitioner association is that the lands in S. Nos. 32/2 and 33/2 are being used as grazing lands as well as afforestation programme under the village community forest programmes. An Agreement to the afforestation of about 250 hectares in S. Nos. 32/2 and 33/2 as part of social programme was entered into on 04.2.2008 by the department of Forest and Thervoy panchayat. According to Petitioner Association, after the execution of the agreement, village community and their representatives have been actively participating in the afforestation programme. While so, acquiring Meikkal poramboke lands for industrial estate would cause depletion of forest area. Further case of the Petitioner is that conditions imposed in the said G.O. do not address the problem that will be encountered by the residents of Thervoy kandigai village. Tyre manufacturing unit is a highly polluting red category industry and the lands have been acquired by the SIPCOT for Special Economic Zone [SEZ]. The environmental governance mechanisms have been given a go by the Respondents.

(iii) Case of Petitioner is that even at the initial stage of such proposal, there was strong opposition for such move from the local communities on the ground that the proposal for establishing industrial park would severely pollute the land as well as the limited water resources and the Respondents have not considered the disastrous impact that would follow to the lands of forest and grazing land and catchment area for rain water and there was no assessment of adverse impact on the eco-system. It is further averred that pollution likely to be caused by industrial activity particularly the effluent and suspended particulate matter that will be released from the tyre factory would have repercussions on the residents of Thervoy Kandigai and Petitioner Association seeks Writ of Certiorarified Mandamus to quash G.O.Ms. 650 Revenue Department dated 13.11.2008.

3. On behalf of the 1st Respondent counter filed stating that as per Notification dated

14.9.2006 under Environmental (Protection) Act, the environmental clearance for developing the land for industrial park below 500 hectare is not required if such industrial park is not housing any of the industries categorized as A or B in the said Notification.

4. Denying the Petition averments, 2nd Respondent filed counter-affidavit contending that only to thwart establishment of industrial complex by the SIPCOT, some vested interested people have formed Sangam of the Petitioner and that there is no bonafide in the Petition. It is further averred that establishment of Industrial Park will pave way for development of area to provide infrastructure besides provision of employment of the people.

5. Tamil Nadu Pollution Control Board/5th Respondent has filed counter stating that so far no application has been received for the grant of consent for the manufacture of Tyres or other in the proposed SIPCOT Complex. In its counter, 5th Respondent-Board has averred that once such application is made, Tamil Nadu Pollution Control Board would consider all relevant aspects before grant of consent to the industries proposed to be set up.

6. SIPCOT/7th Respondent has filed counter contending that the lands transferred are not forest lands and there is no prohibition to transfer such lands and the lands in question were not acquired, but transferred by the revenue department to SIPCOT. The lands are though classified as grazing lands are not used for grazing for the past many decades which are covered by thorny bushes and shrubs are only converted into industrial land without any disturbance to water bodies and there is no forest or forest land in S.F. Nos. 32/2 and 33/2. It is further averred that any industry established in any area will have to get clearance of the 5th Respondent with respect to pollution level and no effluent will be discharged as apprehended by the Petitioner and the catchment area will be preserved.

7. Submitting that only in exceptional circumstances Meikkal poramboke could be transferred, Mr. T. Mohan, learned Counsel for the Petitioner inter alia raised the following contentions:

> Without obtaining environmental clearance as per Notification of Ministry of Environment and Forests, New Delhi dated 14.09.2006, there cannot be development of industrial park.
>
> There are no reasonings in the impugned order warranting such transfer of Meikkal poramboke.
>
> Valuation of transferred land is arbitrary and there are no reasons as to why it departs from the Collector's advice.
>
> There was objection from the public, but there was no public notice before Notification transferring the land to SIPCOT. Without hearing the affected parties, the impugned Notification was issued and transfer was made without following the regular procedure.
>
> Land being with number of trees and shall be deemed to be forest, conversion of the same to industrial estate would result in depletion of forest resources by felling of trees.
>
> Eco-system will be affected affecting the water resources.

Meikkal poramboke is widely used for grazing the cattle's of Thervoy Kandigai and other surrounding villages and creation of Industrial park would greatly affect grazing cattle.

There is violation of G.O.Ms. No. 186 Animal Husbandry and Fisheries department dated 11.12.2001.

In support of his contention, learned Counsel for the Petitioner placed reliance upon MANU/SC/8159/2006 : AIR 2006 SC 2038 [Karnataka Industrial Areas Development Board v. C. Kenchappa and Ors.]; MANU/SC/2410/2006 : AIR 2006 SC 2050 [Nayini Narasimha Reddy v. Dr. K. Laxman and Ors.]; MANU/SC/0188/1997 : (1997) 2 SCC 87 [S. Jagannath v. Union of India and Ors.]; CDJ 2005 MHC 387 [Vengaivasal Village Panchayat by its President v. The State of Tamilnadu and Ors.] and 2005 (40) CTC 1 [L. Krishnan v. State of Tamil Nadu, rep. by its Secretary, Department of Revenue (Land Development), Fort St. George, Chennai-9 and Ors.].

8. On behalf of the 1st Respondent - Union of India, Mr. M. Ravindran, learned Additional Solicitor General contended that as per the Notification dated 14.9.2006 under Environmental (Protection) Act, the environmental clearance for developing the land for industrial park below 500 ha. is not required if such industrial park is not housing any of the industries categorized as 'A' or 'B' in the said Notification. Learned Additional Solicitor General would submit that the matter being in the initial stage, 1st Respondent-Union of India may not have such say in the matter.

9. Mr. S.N. Kirubanandam, learned Special Government Pleader[Forest] for 2nd Respondent submitted that S. Nos. 32/2 and 33/2 are classified as Meikkal poramboke and there was no intention to notify them as forest land. It was further argued that there is no forest land in S. Nos. 32/2 and 33/2 and therefore, provisions of Forest Conservation Act would not apply.

10. Mr. R. Ramanlaal, learned standing Counsel for 5th Respondent - Tamil Nadu Pollution Control Board [TNPCB] submitted that so far no application has been received for the proposed SIPCOT blocks and as and when application is received, 5th Respondent would examine and consider all the aspects before grant of consent to the industries proposed to be set up in the said land as per the provisions of relevant Acts.

11. Raising serious doubts about the bonafide of Petitioner Sangam, Mr. P. Wilson, learned Additional Advocate General for 7th Respondents submitted the following contentions:

Petitioner's Sangam came into existence only ten days prior to the filing of the Writ Petition and lacking in bonafide.

For development of industrial park/estate by clearing bushes and shrubs, no environmental clearance is required as per the Notification dated 14.9.2006.

Before transfer of land to SIPCOT on 11.1.2007 there was public notice in the village and statement of public was also recorded. After due hearing, G.O.Ms. No. 650 Revenue Department dated 13.11.2008 transferring the lands in S. Nos. 32/2 and 33/2 in favour of SIPCOT was passed.

The land in existence is Meikkal poramboke and not classified as a forest land.

The project would not affect water bodies and water table would be maintained.

As per the observation of Supreme Court in MANU/SC/8159/2006 : 2006 (6) SCC 371 is to carry out environmental study before acquisition and environmental study has been undertaken by ITCOT Consultancy Services.

Even after the transfer of lands 1127.00 acres, there is balance of about 241.85 acres is available for use as grazing ground. Apart from this, SIPCOT has also come forward to set apart about 100.00 acres of lands from 1127.00 acres of lands transferred for its use as grazing land to cater the needs of the livestock in the village.

12. Learned Additional Advocate General would further submit that before transfer of lands, environmental study has been undertaken by the ITCOT Consultancy Services Limited on various aspects. Placing reliance upon MANU/SC/8403/2006 : 2006 (6) SCC 543 [Susetha v. State of T.N. and Ors.]; MANU/SC/8159/2006 : 2006 (6) SCC 371 [Karnataka Industrial Areas Development Board v. C. Kenchappa and Ors.] and 2008-4-LW-220 [K. Balamurugan and 7 Ors. v. The State of Tamil Nadu, rep. by the Secretary, Environment and Forest Department, Secretariat, Fort St. George, Chennai and Ors.], the learned Additional Advocate General further submitted that the Supreme Court has approved the concept of 'Sustainable Development' and while there is an obligation to protect and preserve the environment, one cannot shut down the development.

13. Reiterating the contention of learned Additional Advocate General, Mr. R. Thirugnanam, learned Special Government Pleader for Respondent Nos. 3, 4 and 6 would contend that merely because there is an administrative classification as that of grazing land and any administrative decision to convert the same for industrial purpose cannot give any cause of action to the Writ Petitioner. Learned Special Government Pleader further submitted that Thervoy Kandigai village has passed resolution even as early as on 30.1.2007 consenting for the transfer of the above lands to SIPCOT. It was further argued that only after careful consideration of the proposal, the lands were alienated to SIPCOT for establishment of industrial complex which would pave the way for development of area.

14. Land and grounds of challenge:

The lands are located in Thervoy kandigai village about 65 kilometres from Chennai and has proximity to Ennore Port and also Gummidipoondi Industrial Estate. The proposed lands are classified as Meikkal Poramboke.

15. In Thervoy kandigai village, details of grazing ground poramboke are:

S. No.	Extent in (Hect)
32/2	348.97.0
33/2	107.30.0
33/1	6.50.0
239	91.42.0
Total	554.19.0 Hectares
	(or)
	1368.85 acres

Out of said 1368.85 acres, S. Nos. 32/2 and 33/2, an extent of 1127 acres has been transferred to SIPCOT for establishment of industrial complex. Necessary entries are made in the 'A' Register and Adangal of Thervoy kandigai village evidencing transfer of S. Nos. 32/2 and 33/2 to an extent of 348.97.0 and 107.30.0 hectares respectively.

16. The main occupation of the area is agriculture and allied activities. The land is located in industrially backward area and the educated youth are stated to be plenty and unemployed. According to the Government, to provide job opportunities besides developing the industrially backward area of Gummidipoondi, Government have proposed to set up new industrial park and identified the above lands. The alienated land infavour of SIPCOT is stated to be a barren dry land. According to 7th Respondent, it has proposed to invest around 22.50 crores for providing approach road from the State Highways 51 to Thervoy Kandigai site. SIPCOT also proposed to lay road from State Highways 52 to Thervoy Kandigai site and all the development will improve the overall area of Thervoy Kandigai village in respect of connectivity, transport facility and job opportunity. As per development plan prepared by ITCOT Consultancy and Services Ltd., the project will have socio-economic benefits and it would generate direct employment to around 5000 persons besides indirect employment generation to more than 25000 persons. According to the 7th Respondent, available man power would get opportunities to acquire advanced skills which would help them to get higher wages and technology trained persons such as ITI holders would get exposure in the advanced technology machines.

17. Transfer of land to SIPCOT and the proposed industrial estate is sought to be challenged on the ground of:

(i) Adverse impact to the eco-system to water bodies, forest and pollution were not considered;

(ii) Failure to obtain environment clearance certificate would vitiate development of industrial estate;

(iii) There was no public hearing and violation of principles of natural justice;

(iv) Impact of industrial estate on depletion of forest area and greenery was not considered;

(v) Change of user from Meikkal poramboke to industrial estate is arbitrary and not in accordance with the Policy of Government.

Though, non-obtaining of environment clearance as per Notification dated 14.9.2006 was raised as first point, we propose to deal with that contention after considering other grounds of challenge.

18. Scope of Judicial Review:

In MANU/SC/0002/1996 : 1994 (6) SCC 651[Tata Cellular v. UOI], Supreme Court observed that "Judicial quest in administrative matters is to strike the just balance between the administrative discretion to decide matters as per Government Policy, and the need of fairness. Any unfair action must be set right by judicial review."

19. Considering the scope of judicial review and referring to various case laws, in 2009 AIR SCW 4623 [Meerut Development Authority v. Association of Management Studies and Anr.], the Supreme Court has held as under:

25. ...There is no difficulty to hold that the authorities owe a duty to act fairly but it is equally well settled in judicial review, the court is not concerned with the merits or correctness of the decision, but with the manner in which the

> decision is taken or the order is made. The Court cannot substitute its own opinion for the opinion of the authority deciding the matter. The distinction between appellate power and a judicial review is well known but needs reiteration.
>
> By way of judicial review, the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then the court cannot act as an appellate court by substituting its opinion in respect of selection made for entering into such contract. But at the same time the courts can certainly examine whether 'decision making process' was reasonable, rational, not arbitrary and violative of Article 14.

Further, the Supreme Court cited in Para 25, the following speech of Lord Temple man and Lord Goff. In the concluding Section of his speech, Lord Temple man stated as under:

> 25. ...Of course in judicial review proceedings, as in any other proceedings, everything depends on the facts. But judicial review should not be allowed to run riot. The practice of delving through documents and conversations and extracting a few sentences which enable a skilled advocate to produce doubt and confusion where none exists should not be repeated.

It was further held in Para (25) as under:

> ...One has to bear in mind the caution administered by Lord Scarman in Nottinghamshire Country Council v. Secretary of State for the Environment (1986) 1 All ER 199 that 'Judicial review' is a great weapon in the hands of the Judges; but the Judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power....

20. There could be no two opinion that unreasonable decisions are susceptible to be interfered with and corrected in the judicial review proceedings. In the given facts and circumstances, it is for the Court to decide whether the action complained of is unreasonable.

21. Point falling for consideration is whether arbitrary exercise of power warranting interference in the judicial review. It is well settled that power of judicial review is not concerned with the merits or correctness of the decision, but the manner in which the decision has been taken.

22. Bearing in mind the above parameters, we proceed with the question whether the impugned notification transferring the land Meikkal poramboke to SIPCOT for forming industrial estate is vitiated by abuse of power and arbitrariness.

23. Sustainable Development:

> The neo-expansion of Article 21 of the Constitution of India guarantees two important fundamental rights, right to life and right to personal liberty. In the area of environmental justice, the right to live is most relevant. After Maneka Gandhi's case MANU/SC/0133/1978 : AIR 1978 SC 597, the right to live has

seen new dimensions and one of the new emerging facets is the right to live in a clean environment. In this wave length the Apex Court in Chhetriya Pradushan Mukti Sangharsh Samiti's case MANU/SC/0364/1990 : AIR 1990 SC 2060, once again reiterated that, "every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India." Thus anything that endangers or impairs the quality of life or living of the people, will attract the provision of Article 21 of Constitution of India.

24. In the context of human rights, right to life and liberty, pollution free Air and Water is guaranteed by our Constitution by Articles 21, 48-A and 51-A (g).

25. Article 21 reads as under:

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

26. Article 48-A reads as under:

48-A. Protection and improvement of environment and safeguarding of forests and wildlife.- The State shall, endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

27. Apart from the above we may also refer to Article 51-A(g) of the Constitution which makes it a fundamental duty of every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life". This duty can be enforced by the Court See Animal and Environment Legal Defence Fund v. Union of India MANU/SC/0249/1997 : 1997 (3) SCC 549.

28. In M.C. Mehta v. Union of India MANU/SC/1123/1997 : 1997 (3) SCC 715, the Supreme Court observed as under;

Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the cause of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

29. In a catena of cases, Supreme Court has reiterated right to clean environment is a guaranteed fundamental right. Re-stating the 'Sustainable Development', in MANU/SC/0649/2003 : 2004 (9) SCC 362 [N.D. Jayal and Anr. v. Union of India and Ors.], the Supreme Court held as under:

24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The "development" is not related only to the growth of GNP. In the classic work, Development As Freedom, the Nobel prize winner Amartya Sen pointed out that "the issue of development cannot be separated from the conceptual

framework of human right" ...The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights....

30. In MANU/SC/0686/1996 : 1996 (5) SCC 647 [Vellore Citizens' Welfare Forum v. Union of India and Ors.], the Supreme Court dealt with the principles of "Sustainable Development" as a concept recognised in the international sphere. The Supreme Court made it clear that the traditional concept of development and ecology are opposed to each other is no longer acceptable and that "Sustainable Development" is an acceptable principle in the present day context. The emergence of the concept of "Sustainable Development" as pronounced in the Stockholm Declaration of 1972 and the later decision of giving a definite shape to the said concept in the year 1987 by the World Commission on Environment and Development in its report called "Our Common Future", under the behest of the then Prime Minister of Norway, Ms. G.H.Brundtland, has been referred to in the decision in detail. The Hon'ble Supreme Court made it clear in paragraph 10 of its decision that "Sustainable Development" as a balancing concept between ecology and development has now been accepted as a part of the customary international law though its salient features were yet to be finalised by the international law jurists.

31. In paragraph 11 and 12 of the Judgment, the Supreme Court has elucidated the vital principles which reads as under:

> **11.** Some of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:
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> > (i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.
> >
> > (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
> >
> > (iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.
>
> **12.** "The Polluter Pays Principle" has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action v. Union of India. The Court observed:
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> > **...**we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.
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> The Court ruled that:

> ...once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.

Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

The Hon'ble Supreme Court went on to state that by virtue of constitutional protection provided under Article 21 contained in Chapter III as well as Articles 47, 48-A and 51-A(g) falling under Chapter IV viz., Directive Principles of State policy, the principles drawn from the "Sustainable Development" concept have become the Law of the land. Ultimately, the Hon'ble Supreme Court after referring in detail to the various provisions contained in the Environment Aets, issued 11 directions for the protection of the environment and ultimately entrusted the task of monitoring the environmental issues arising in the State of Tamil Nadu by requesting the Chief Justice of this Court to constitute a Special Bench viz., "Green Bench" to deal with the cases dealt with by the Hon'ble Supreme Court and all other environmental matters. The Hon'ble Supreme Court also made it clear that it will be open to this Bench to pass any appropriate orders or order keeping in view the directions issued by the Hon'ble Supreme Court.

32. Environment clearance for Tehri Dam Project came to be challenged on the ground of safety of the Dam. Observing that the concept "Sustainable Development" is to be treated as an integral part of life under Article 21 of Constitution of India, in MANU/SC/0649/2003 : 2004 (9) SCC 362 [N.D. Jayal and Anr. v. Union of Indian and Ors.], Supreme Court has held as under:

> 25. Therefore, the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21. Weighty concepts like intergenerational equity State of H.P. v. Ganesh Wood Products MANU/SC/0038/1996 : (1995) 6 SCC 363, public trust doctrine M.C. Mehta v. Kamal Nath MANU/SC/1007/1997 : (1997) 1 SCC 388 and precautionary principle Vellore Citizens case MANU/SC/0686/1996 : (1996) 5 SCC 647, which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

33. In MANU/SC/8047/2006 : 2006 (3) SCC 549 [Intellectuals Forum, Tirupathi v. State of A.P. and Ors.], the Supreme Court once again reiterated the Constitutional mandate

as enshrined under Articles 48 and 51-A, wherein the State is mandatorily bound to protect and improve the national environment including forests, lakes, wildlife and to have compassion for living creatures. The Hon'ble Supreme Court laid emphasis that these Articles are not only fundamental in the governance of the country but also it should be the duty of the State to apply these principles in making laws and that these Articles are to be kept in mind in extending the scope and purport of Fundamental Rights guaranteed under Article 14, 19 and 21 of the Constitution of India, along with the various laws enacted by the Parliament and State Legislature. The Hon'ble Supreme Court gave thrust to the accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that the present as well as the future generations are ensured of its maintenance and protection.

34. In the said decision, the Hon'ble Supreme Court liberally dealt with the doctrine of 'Public Trust' in the context of protection of natural resources such as lakes, forests etc., and held that such doctrine has now become part of Indian Jurisprudence. The Hon'ble Supreme Court held that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment and therefore as a trustee, the State is under a legal obligation to protect such resources.

35. In MANU/SC/0649/2003 : (2004) 9 SCC 362 [N.D. Jayal v. Union of India], the Supreme Court held as follows:

> **23.** In a catena of cases we have reiterated that right to clean environment is a guaranteed fundamental right. May be, in a different context, the right to development is also declared as a component of Article 21 in cases like Samatha v. State of A.P. MANU/SC/1325/1997 : (1997) 8 SCC 191 and in Madhu Kishwar v. State of Bihar MANU/SC/0468/1996 : (1996) 5 SCC 125.
>
> **24.** The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The "development" is not related only to the growth of GNP. In the classic work, Development As Freedom, the Nobel prize winner Amartya Sen pointed out that "the issue of development cannot be separated from the conceptual framework of human right. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples" well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.
>
> **25.** Therefore, the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21. Weighty concepts like intergenerational equity State of H.P. v. Ganesh Wood Products MANU/SC/0038/1996 : (1995) 6 SCC 363, public trust doctrine M.C.

Mehta v. Kamal Nath MANU/SC/1007/1997 : (1997) 1 SCC 388 and precautionary principle (Vellore Citizens), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

36. Observing that doctrine of "Sustainable Development" is not an empty slogan and required to be implemented taking pragmatic view and no ipse dixit of the Court and referring to various decisions, in MANU/SC/8403/2006 : 2006 (6) SCC 543 [Susetha v. State of T.N. and Ors.], Supreme Court has held as under:

> **21.** In Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group MANU/SC/1197/2006 : (2006) 3 SCC 434 referring to a large number of decisions, it was stated that whereas the need to protect the environment is a priority, it is also necessary to promote development stating:
>
> > The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.
>
> **22.** Treating the principle of sustainable development as a fundamental concept of Indian law, it was opined:
>
> > The development of the doctrine of sustainable development indeed is a welcome feature but while emphasising the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore intergenerational interest, it is also not possible to ignore the dire need which the society urgently requires.

37. Tracing development of "Sustainable Development" and referring to various case laws, in MANU/SC/8159/2006 : 2006 (6) SCC 371 [Karnataka Industrial Areas Development Board v. C. Kenchappa and Ors.], the Supreme Court has held as under:

> **66.** This Court, in Vellore Citizens' Welfare Forum v. Union of India MANU/SC/0686/1996 : (1996) 5 SCC 647, acknowledged that the traditional concept that development and ecology are opposed to each other, is no longer acceptable. Sustainable development is the answer. Some of the salient principles of "sustainable development" as culled out from Brundtland Report and other international documents are intergenerational equity. This Court observed that "the precautionary principle" and "the polluter-pays principle" are essential features of "sustainable development".
>
> **67.** A nation's progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. No Government can cope with the problem of environmental repair by itself alone; people's voluntary participation in environmental management is a must for

sustainable development. There is a need to create environmental awareness which may be propagated through formal and informal education. We must scientifically assess the ecological impact of various developmental schemes. To meet the challenge of current environmental issues, the entire globe should be considered the proper arena for environmental adjustment. Unity of mankind is not just a dream of the enlightenment but a biophysical fact.

68. In Subhas Kumar v. State of Bihar MANU/SC/0106/1991 : (1991) 1 SCC 598 : AIR 1991 SC 420, this Court has given directions that under Article 21 of the Constitution, pollution free water and air are the fundamental rights of the people.

69. In A.P. Pollution Control Board (II) v. Prof. M.V. Nayudu MANU/SC/2953/2000 : (2001) 2 SCC 62, this Court observed that the right to have access to drinking water is fundamental to life and it is the duty of the State under Article 21 to provide clean drinking water to its citizens.

70. The United Nations Water Conference in 1977 observed as under:

> All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.

71. Similarly, this Court in Narmada Bachao Andolan v. Union of India MANU/SC/0640/2000 : (2000) 10 SCC 664 observed as under:

> **248.** Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India....

72. In M.C. Mehta v. Union of India: (1991) 2 SCC 137 this Court gave a number of directions to reduce the pollution created by vehicles.

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

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

38. Development and construction activities in Mundiyambakkam lake in Villupuram District was challenged before the First Bench of this Court in 2008-4-LW-220 [K. Balamurugan and 7 Ors. v. The State of Tamil Nadu, rep. by the Secretary, Environment and Forest Department, Secretariat, Fort St. George, Chennai and Ors.]. In the said case, contention raised was that State failed to apply precautionary principles for protecting the water body in its attempt to convert the same for a different purpose. It was also urged that the project would result to depletion of ground water storage and was categorised under the heading "over exploited lake". Referring to various Supreme Court decisions, First Bench of this Court [in which one of us was a member - F.M.I.K.,J] summarised the issues relating to "Sustainable Development" as under:

> **36.** On an analysis made from the above decisions, we find that the following principles have to be kept in mind while dealing with the issue relating to environmental protection viz.,

(i) Natural resources which includes lakes, forests, rivers, wildlife are held by the State as a trustee of the public and can be disposed of only in a manner that is consistent with the nature of such a trust.

(ii) The public trust doctrine is more than an affirmation of State power to use public property for public purposes.

(iii) The Courts when confronted with a situation where violation of such public trust doctrine is put against the State, the Courts while scrutinising such actions of the State, have to make a distinction between the State's general obligation to act for the public benefit, and the special obligation which is entrusted with it as a trustee of such public resources.

(iv) The three types of restrictions on Governmental authority as stated by Prof. Sax assumes significance which are as follows:

(a) The property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;

(b) The property may not be sold, even for fair cash equivalent;

(c) The property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources.

(v) The Court has to strike a balance between sustainable development and environment protection.

Keeping in view the above principles laid down in a catena of decisions, we proceed to consider various contentions and facts involved in the case on hand.

39. Whether notification is vitiated by arbitrariness:

Taking document No. 4419 dated 25.9.2006 in respect of S. No. 251, valuation of land was taken as Rs. 4,777.50 per cent. For total extent of 393.40.0 Hectare (or) 971.70 acres, fixed the value of the land at Rs. 46,42,29,675/-. The District Collector has recommended that total amount of the above said land i.e. Rs. 92,84,59,350/- along with the value of 18 Mango trees i.e. Rs. 18,000/- totaling Rs. 92,84,77,350/- could be collected. While forwarding the report of the District Collector, in his report, Special Commissioner and Commissioner for Land Administration has expressed the views that an amount of Rs. 62,97,90,920/- could be collected from SIPCOT for approval of the lands.

40. Even though, land cost was ordered to be collected from SIPCOT for effecting transfer in the impugned order, Government ordered transfer of lands in S. Nos. 32/2 and 33/2 to SIPCOT without sale price subject to the conditions that SIPCOT has to make available the equal extent of land transferred to Animal Husbandry department within three years. In case such alternate land is not made available within three years to pay land cost along with interest and development charges. The relevant portion of the G.O. reads as under:

Vernacular (Tamil) Portion Deleted

41. Taking us through the notification, learned Counsel for the Petitioner contended that valuation of the land is arbitrary and absolutely, no reasons are forthcoming as to why the 3rd Respondent deviated from the recommendation of the District Collector and the Special Commissioner for Land Administration. It was further argued that Meikkal poramboke land had been transferred without collection of value of the land and no reasons are stated in the notification for such deviation.

42. Sanction to transfer the land to SIPCOT cannot be guided by the sale consideration of money making or profit. SIPCOT is not a commercial concern, but a Tamil Nadu Government undertaking engaged in promoting industries all over Tamil Nadu and thereby generating employment opportunities. SIPCOT is playing key role in industrialization of the State by establishing industrial complexes in the strategic locations. When State Government is wooing foreign and local investments, it automatically warrants new industrial complexes to cater to the growing needs of the industrial units. Contention of arbitrariness urged by the learned Counsel for the Petitioner challenging the notification, in our considered view does not carry any weight. The real question is whether the decision measures up to the legal standard of reasonableness. Keeping in view and applying the well settled principle of 'Sustainable Development', we do not find any unreasonableness in the notification transferring the land S. Nos. 32/2 and 33/2 to SIPCOT.

43. Meikkal poramboke lands being vested with the Government, right to transfer the same is always available with the Government. Exercise of such right cannot be said to be arbitrary. However, for ensuring the right of livestock and for safeguarding the livestock, provision is made in the notification directing the SIPCOT to make available alternate land. Even though, land cost need not be paid, as per the conditions, SIPCOT to make available the same extent of land within a period of three years. We find no force in the contention that Meikkal poramboke lands were parted with without land price.

44. We would shortly deal with the arguments advanced as to the relaxation of the condition in transfer of Meikkal poramboke vis-a-vis G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001. Exercising judicial review, court is not primarily concerned whether particular decision is taken in the fulfillment of policy; but only concerned with the manner in which the decision was taken.

45. State Industries Promotion Corporation of Tamil Nadu Limited [SIPCOT] is a wholly owned Corporation of Government of Tamil Nadu engaged in promoting industries all over Tamil Nadu and thereby generating employment opportunities besides wooing the foreign and local investments to Tamil Nadu. Learned Additional Advocate General submitted that SIPCOT has been playing a key role in the industrialization of the State by establishing industrial complexes in the strategic locations. Learned Additional Advocate General submitted that as per the industrial policy of Government of Tamil Nadu, Government of Tamil Nadu has intended for development of more industries to generate employment opportunities to the unemployed youth. For promoting industries and thereby to generate employment opportunities in Gummidipoondi Block, the Government is said to have taken decision transferring Meikkal poramboke land. In our considered view, Court must resist temptation to draw bounds tightly and according to its own opinion. As held by the Supreme Court in MANU/SC/8047/2006 : (2006) 3 SCC 549 [Intellectuals Forum v. State of A.P.] what was emphasised was higher degree of judicial scrutiny. Doctrine of 'Sustainable Development' although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the Court.

46. Violation of Principles of Natural Justice:

> Learned Counsel for the Petitioner contended that there was strong opposition for transferring the land to SIPCOT and developing industrial estate and lot of representations were sent by the people of Thervoy Kandigai village to the authorities and none of those letters evoked any response. It was further contended that even though, the impugned G.O. refers to public notice dated 11.1.2007, there was no such public notice and public hearing. Learned Counsel would further contend that local communities were not heard for conversion of land from Meikkal poramboke to industrial area. It was mainly argued that Respondents have permitted conversion of grazing land without any public hearing and the objections were not heard at all.

47. Countering the arguments, learned Additional Advocate General has drawn our attention to the notice dated 11.1.2007 calling for objections and also statement recorded from the public in response to the said notice. In the said notice dated 11.1.2007, Government called for objection for transfer of Meikkal poramboke to SIPCOT for development of industrial park. The said notice dated 11.1.2007 reads as under:

> Vernacular (Tamil) Portion Deleted

48. The said notice has been duly published in the village Thervoy Kandigai and the village public have also signed acknowledging the publication. Number of village public have also participated in the enquiry. They have also given statement stating that formation of industrial estate by SIPCOT in Thervoy kandigai village would generate employment opportunities for graduates, ITI holders and others and that they have no objection for formation of industrial estate by SIPCOT. Having regard to the materials, we do not find any merit in the contention that there was no public notice and that there was violation of principles of natural justice.

49. Learned Additional Advocate General has drawn our attention to the resolution passed by the village panchayat on 30.1.2007 saying 'no objection' for the project. Subsequently, there was a resolution dated 12.3.2007 retracting earlier resolution dated 30.1.2007. Learned Counsel for the Petitioner submitted that the panchayat resolution dated 30.1.2007 did not keep in view the Grama Sabha resolution and rules were not followed before passing the resolution on 30.1.2007. In so far as resolutions passed by Grama Sabha panchayat, drawing our attention to Tamil Nadu Grama Sabha [Quorum and Procedure for Convening and Conducting of Meetings] Rules, 1998, learned Additional Advocate General Mr. P. Wilson submitted that neither rules were complied with nor there was quorum nor agenda was prepared and therefore, no reliance could be placed upon the said resolution allegedly passed by the Grama Sabha. Learned Additional Advocate General would further submit that the said Grama Sabha meeting was held on 15.8.2009 which is a public holiday in contravention of Rule 2 of Tamil Nadu Grama Sabha [Quorum and Procedure for Convening and Conducting of Meetings] Rules, 1998.

50. On 30.1.2007, resolution was passed by Thervoy Kandigai panchayat to the effect that villagers have 'no objection' for formation of industrial estate in Thervoy Kandigai. Learned Counsel for the Petitioner laid emphasis upon the resolution passed by the Grama Sabha on 12.3.2007 where the Grama Sabha passed resolution recording objection for formation of industrial estate. Learned Counsel for the Petitioner laid emphasis upon the subsequent resolution passed by the Grama Sabha of Thervoy

Panchayat [12.3.2007] wherein also the Village Panchayat President has signed.

51. Since there are number of resolutions passed by both panchayat as well as Grama Sabha and since there are retractions, we are not inclined to place reliance upon those resolutions. Suffice it to note that before issuing notification, public notice was issued on 11.1.2007 and there was public hearing. Contention that there was no public notice and that there was violation of principles of natural justice is untenable.

52. Re-contention - Violation of provisions of Forest and Conservation Act, 1980:

> S. Nos. 32/2 and 33/2 are classified as Meikkal poramboke and not classified as forest land or reserve forest. Placing reliance upon MANU/SC/0278/1997 : (1997) 2 SCC 267 [T.N. Godavarman Thirumulkpad v. Union of India and Ors.], learned Counsel for the Petitioner contended that the word "forest" has to be understood according to its dictionary meaning and this description would cover all statutorily recognised forests, whether designated as reserved, protected or otherwise. He has further submitted that 'forest' means a large uncultivated track of land covered with trees and rude pasture. Learned Counsel for the Petitioner would further submit that protection and conservation of forest has been engaging the attention of Supreme Court of India and conversion of grazing ground into industrial area would mean felling of trees. It was therefore, contended that in order to protect and conserve the forest in the land in question, the impugned order is liable to be quashed. To substantiate his plea that the land in S. Nos. 32/2 and 33/2 shall be deemed to be forest, learned Additional Advocate General has placed reliance upon Memo of Understanding [MOU] of Forest department with Thervoy kandigai village panchayat for implementation of Tamil Nadu afforestation programme during 2008-2009. For implementation of Tamil Nadu Afforestation Programme during 2008-2009, Forest department selected an area of 250.00 hectares in S. Nos. 32/2 and 33/2 for afforestation work and Forest Ranger has entered into MOU with Thervoy kandigai panchayat President and village people in February 2008. Since Government have issued orders to transfer the lands in S. Nos. 32/2 and 33/2 to SIPCOT for setting up industrial park, the afforestation programme was shifted and carried out at Periyaveppathur village of Ponneri Taluk during 2008-2009. Hence, no afforestation works were carried out in Thervoy Kandigai village under Tamil Nadu Afforestation Programme.

53. As rightly submitted by the learned Additional Advocate General, MOU with villagers was only to have participation of the villagers in the afforestation programme wherein the rights and responsibilities of the villagers vis-a-vis Forest department have been brought out. MOU is executable only when afforestation work is taken up. Entering into MOU with villagers would not lead to an inference that the land in S. Nos. 32/2 and 33/2 are to be deemed as forest land.

54. Placing reliance upon an unreported decision in W.P. No. 20918/2008 [S. Chakravarthi v. District Collector, Thiruvallur, Thiruvallur District and Ors.], learned Counsel for the Petitioner contended that the Respondents are bound to follow the statutory prescription contained in Section 2(ii) of Forest and Conservation Act, 1980 and without getting prior approval of the Central Government, Respondents are not entitled to proceed with any construction in the lands. In the said case for construction of house under Periyar Memorial Samathuvapuram Scheme there were felling of trees. The said case is clearly distinguishable on facts. In the said case, notification under Section 6 of Tamil Nadu Forest Act, 1881 came to be issued on 01.9.1991 for the

purpose of declaring the lands as forest land. Further declaration under Section 6 of Tamil Nadu Forest Act did not ultimately fructify. The said land had extensive grown up trees and plantations have been accepted by the department of forest themselves. In such circumstances, Division Bench was of the view that the lands have virtually assumed the character of forest land over a period of time where huge growth of trees had also been undertaken at the instance of forest department. In such circumstances, Division Bench of this Court held that the authorities are bound to follow the statutory prescription contained in Section 2(ii) of Forest and Conservation Act, 1980 and without getting prior approval of the Central Government, Respondents are not entitled to proceed with any construction in the land. The present case before us is clearly distinguishable on facts. In the revenue records the lands S. Nos. 32/2 and 33/2 are classified as Meikkal poramboke and while so, it cannot be contended that statutory prescriptions contained in the provisions of Forest and Conservation Act are to be followed.

55. Admittedly, there are number of trees in S. Nos. 32/2 and 33/2. In M.P. Nos. 1 to 3/2009, interim stay was granted restraining SIPCOT by felling the trees. Alleging that in violation of the order, there is large scale felling of trees, Contempt Petition in C.P. No. 802/2009 has also been filed. By the order dated 25.8.2009, we have directed the Forest department to identify the trees located in the land. Forest department has identified about 844 trees. As and when SIPCOT applies for environmental clearance while considering the environmental impact, it is for the authorities to take note of the existing trees to consider the relevant questions. In so far as, the existing trees, it is for the competent authority to decide the relevant questions.

56. Change of land use - from Meikkal Poramboke to Industrial area:

> Now we proceed to deal with the question whether the decision to change the land use from Meikkal poramboke as industrial area is unreasonable. Learned Counsel for the Petitioner contended that S. Nos. 32/2 and 33/2 are Meikkal poraboke used as grazing ground by the livestock of Thervoy Kandigai village and other villages. It was submitted that the village has 90% literacy rate and the main occupation of the District is agriculture and allied activities and most of the farmers are marginal farmers holding small extents of land and their income is augmented by raising cattle. It was further submitted that the entire Meikkal poramboke lands in S. Nos. 32/2 and 33/2 are being used as grazing land and conversion of grazing land to industrial use will have disastrous consequences and the village communities would loose the grazing land and their livelihood.

57. Learned Counsel for the Petitioner contended that as per RSO-15 (ix), grazing ground poramboke shall not be assigned. RSO-15 (ix) reads as under:

> RSO-15 (ix) Grazing ground porambokes: Grazing ground porambokes shall not be assigned unless there is sufficient grazing ground available to serve the needs of cattle. These lands can be assigned or utilised for other purposes only with the sanction of the Government. Before sending proposals to the Government through the Commissioner of Land Administration, the Collector/District Revenue Officer should jointly inspect the land with the Joint Director of Animal Husbandry in the District concerned and obtain Joint Director's remarks. It should be sent with the report.

58. It was further argued that any such conversion of grazing land would be opposed to

the policy of the Government. Taking note of decreasing area of permanent pastures, Policy Note No. 6 for 2004-05 specifically states that Government are ordering not to transfer grazing land for other purpose unless alternate land of the same is transferred as grazing land in the same District.

59. Contention of the Petitioner is that transfer of Meikkal poramboke to SIPCOT for developing as industrial estate is in contravention of policy of the Government and G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001. It was further argued that as per G.O.Ms. No. 186 dated 11.12.2001, grazing land cannot be transferred without providing alternate land for the same extent. It was further submitted that in Thervoy kandigai population is about 5000 out of which 90% belong to SC/ST category and village people are dependent upon the grazing land for catering to their cattle and the act of the Government in transferring the land to SIPCOT has resulted in depletion of grazing land which seriously affects the rights of the residents of Thervoy Kandigai and their livestock.

60. Countering the arguments, learned Additional Advocate General submitted that admittedly, the village has 90% literacy rate and while literacy rate is higher, villagers are not highly dependent upon the cattle, goats and cattle breeding for their survival. The above contention does not merit acceptance. Though, the villagers are educated, villagers might still be dependent on their livestock to supplement their income.

61. In so far as the objection as to change of user, in our considered view, Government is the best person to decide change of land user. In (2005) 12 SCC 369 [National Centre for Human Settlements & Environment v. Union of India and Ors.], notification was issued changing the user of land from green use to office use and that notification came to be challenged. Holding that Government is the best person to decide whether a particular plot could be used for what purpose, Supreme Court held as under:

> 2. ...When a challenge is made to any notification issued by any authority in exercise of its statutory powers, the court can merely examine whether in issuance of such notification there has been any illegality or any infraction of any provision for which the court could interfere with the matter....

Upholding the notification, Supreme Court made it clear that construction of a building for the Defence Research and Development Organisation is equally an important task as a green pasture for the citizens.

62. In their counter-affidavit, SIPCOT has averred that sanction of 1127 acres of dry lands and unusable land with thorny bushes was classified as Government grazing poramboke. Having regard to the location of the land in industrially backward area where educated are plenty or unemployed, to provide job opportunity to the educated youth, Government proposed to set up industrial park and identified the lands in S. Nos. 32/2 and 33/2. Having regard to the circumstances, in the instant case, we do not find any infraction in the decision of the Government in such change of land user.

63. In MANU/SC/0037/2004 : (2004) 2 SCC 392 [Essar Oil Limited v. Halar Utkarsh Samit], the Supreme Court held as follows:

> 27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands,

cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other.

64. As per G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001, grazing lands are not to be transferred for other purposes unless alternate land of same extent is developed as grazing land in the same District. Apart from identifying alternate land, development charge at the rate of Rs. 6000/- per acre or Rs. 15,000/- per hectare should be deposited in the local fund account. The relevant Clauses in G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001 reads as under:

Vernacular (Tamil) Portion Deleted

In its Policy Note No. 6 for 2004-05, Government referred fodder development activities and increasing fodder production. In its Policy Note, Government expressed its concern over decreasing area of permanent pastures and other grazing grounds. Government noted that over-exploitation of available grazing land has led to its depletion of grazing land and Government ordered not to transfer grazing land for other purposes unless alternate land of the same extent is developed as grazing land in the same District. Reiterating G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001, Policy Note for 2004-05 also states that for the above purpose, development charges at the rate of Rs. 6000/- per acre or Rs. 15,000/- per hectare should be deposited in the local fund account.

65. In the impugned notification, G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001 is referred to and it has been stipulated upon SIPCOT to identify the alternate land of the same extent within a period of three years either in the same District or in the adjacent District. The relevant Clause reads as under:

Vernacular (Tamil) Portion Deleted

66. Of course ,Clause 5(ix) of the impugned notification states that in case if alternate grazing land is not identified, SIPCOT to pay the land cost, interest for three years and also developmental charges at the rate of Rs. 6000/- per acre. On behalf of the Petitioner, much arguments were advanced contending that Clause 5 (ix) is totally opposed to the Policy of the Government and G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001 which would vitiate the impugned notification.

67. Much emphasis was laid upon G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001 wherein Government ordered that grazing land are not to be transferred for other purpose unless alternate land of same extent is developed as grazing land in the same District. As per the impugned notification G.O.Ms. No. 650 Revenue Department dated 13.11.2008, alternate land of the same extent is to be identified either in the same District or in the adjacent District. In the impugned G.O., it is further stipulated that if SIPCOT is not able to develop alternate land, it has to pay the land cost along with interest and also developmental charges. By so saying restriction on transfer of grazing land has been relaxed. On behalf of the Petitioner, it was mainly contended that relaxation of G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001 is arbitrary. It was further submitted that as per Policy Note for 2004-05 that without developing alternate land, grazing land cannot be transferred and relaxation of restriction on transfer of grazing land is arbitrary and

unsustainable.

68. Clause 5 (ix) of Notification:

> Even though, Clause had been incorporated enjoining upon SIPCOT to provide alternate grazing land to the extent transferred to SIPCOT, the same has been diluted by Clause 5(ix) which reads as under:
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> > Vernacular (Tamil) Portion Deleted
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> Of course, restriction on transfer of grazing land has been relaxed. In lieu of transfer, sale price, interest and development charges are to be deposited if alternate land is not given/identified by SIPCOT.

69. Relaxation of restriction that SIPCOT to find alternate land of the same extent cannot be said to be arbitrary. It is not as if no other grazing land is available in Thervoy Kandigai village and surrounding villages. Apart from S. Nos. 32/2 and 33/2 alienated to SIPCOT, there are other Meikkal Porambokes in Thervoy Kandigai village in S. No. 33/1 measuring an extent of 6.50.0 hectares and S. No. 239 measuring an extent of 91.42.0 hectares [totaling 97.92.0 hectares (or) 241.86 acres]. That apart to benefit the cattle of Thervoy Kandigai village, out of the land transferred SIPCOT will be developing about 100 acres of land for fodder development. Having regard to the extent of other grazing land i.e. 241.86 acres available, Petitioner is not right in contending that Government did not address the issue at all. In our considered view, Government did keep in view the interest of the cattle.

70. Much arguments were advanced contending that relaxation of restriction to find alternate land and if not able to secure the alternate land, SIPCOT to pay money. It was contended that such relaxation would amount to bartering away the interest of cattle which is opposed to G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001 and the Policy of the Government.

71. The above contention does not merit acceptance. G.O.Ms. No. 186 Animal Husbandry and Fisheries Department dated 11.12.2001 is one of the Government Order of Animal Husbandry Department. The impugned notification cannot be examined vis-a-vis another Government Order. In the larger public interest, it is open to the Government to relax the conditions stipulated in another Government Order.

72. It is not as if Government had arbitrarily taken a decision. While the Government keep in view the interest of the villagers and also the cattle, in a welfare state duty of the Government is to proceed with the work of development also and take steps for the growth of Industries without affecting the environment. State Government to balance the need of environment, interest of villagers livestock and the need of economic development.

73. In MANU/SC/0101/2000 : (2000) 2 SCC 599 [Consumer Education & research Society v. Union of India and Ors.], State of Gujarat faced challenges from the Petitioner society to its attempt to cut down the total area of the "Narayan Sarovar Chinkara Sanctuary", which had been declared and notified under Section 18(1) of Wild Life (Protection) Act, 1972. State Government was convinced that reduction was necessary in order to economically develop the backward area of Kutch by exploiting the mineral health. Observing that where power to reduce the notified area is vested in the State Legislature, it would not be appropriate for Courts to question the decision unless there were compelling and substantial reasons for intervening, Supreme Court

held as follows:

> 6. ...The power to take a decision for reduction of the notified area is not given to the State Government but to the State Legislature. The State Legislature consists of representatives of the people and it can be presumed that those representatives know the local areas well and are also well aware of the requirements of that area. It will not be proper to question the decision of the State Legislature in a matter of this type unless there are substantial and compelling reasons to do so. Even when it is found by the Court that the decision was taken by the State Legislature hastily and without considering all the relevant aspects it will not be prudent to invalidate its decision unless there is material to show that it will have irreversible adverse effect on the wildlife and the environment.

74. Observing that proper course to be adopted is to permit restricted and controlled exploitation of mineral wealth of that area, Supreme Court has further held as under:

> 7. ...There is no other possibility of industrial development in that area, though it contains rich mineral deposits. Therefore, if an attempt is made by the State Legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principle of prohibition in such a case. The reports of the three Committees only point out the ecological importance of the area and express an apprehension, that any major mining operation within the notified area and large-scale industrialization near about the sanctuary as originally notified, may adversely affect the ecological balance and biodiversity of that area. It would, therefore, be proper and safer to apply the "principle of protection" and the "principle of polluter pays" keeping in mind the "principle of sustainable development" and the "principle of intergeneration equity".

75. To provide for alternate land of the same extent is the Policy decision of the Government. In appropriate circumstances, Government can take a decision to relax it. Petitioner cannot seek for a direction for implementation of such Policy decision. In MANU/SC/0157/1990 : (1990) 2 SCC 352 [Hindi Hitrakashak Samitiand Ors. v. Union of India and Ors.] question of holding entrance examination for pre-medical and pre-dental course for Hindi and regional language which was the Policy decision of the Government came to be challenged. Observing that there is no legal compulsion or statutory imperative for such Policy decision, Supreme Court held as follows:

> 8. It is well settled that judicial review, in order to enforce a fundamental right, is permissible of administrative, legislative and governmental action or non-action, and that the rights of the citizens of this country are to be judged by the judiciary and judicial forums and not by the administrators or executives. But it is equally true that citizens of India are not to be governed by the judges or judiciary. If the governance is illegal or violative of rights and obligations, other questions may arise but whether, as mentioned hereinbefore, it has to be a policy decision by the government or the authority and thereafter enforcement of that policy, the court should not be, and we hope would not be an appropriate forum for decision.

76. Learned Additional Advocate General has drawn our attention to the cattle census pertaining to Gummidipoondi taluk including Thervoy Kandigai village. As per cattle census [in the year 2005] the entire livestock of Thervoy Kandigai is 2432 Nos. Out of

which, 752 are Cows, 543 are Buffaloes, 138 are Sheep and 999 are Goats. Learned Additional Advocate General submitted that as on date the above cattle population further decreased and there are only about 1000 livestock in the village. Petitioner association has not produced any material to show that the livestock in the village are more than what has been stated in the cattle census 2005.

77. Learned Counsel for the Petitioner submitted that as per the standards of grazing land in Gujarat for 100 cattle 40 acres is the norm fixed. Learned Counsel for the Petitioner has not produced any material to substantiate the same. On the other hand, learned Additional Advocate General has produced recommendations of Department of Forage Crops Centre for Plant Breeding and Genetics, Tamil Nadu Agricultural University for the requirement of fodder area. As per the Tamil Nadu Agricultural University recommendation, one acre of fodder will be sufficient to take care of 8 adult milch animals viz., cows/buffaloes and one acre of forage will be sufficient to provide feedstuff to 40 sheep/goats.

78. As we have pointed out earlier, total number of cows and buffaloes available in Thervoy Kandigai village is 1295 out of which 752 are cows and 543 are buffaloes which require 161.88 acres. Similarly, available sheep are 138 and goats are 999, totally 1137 Nos. As per the Tamil Nadu Agricultural University letter dated 07.9.2009, one acre of land is required for feeding the 40 sheeps/goats. Accordingly, 1137 Nos. of sheep/goats would need 28.42 acres of land for fodder development. Thus, the total land required for the available livestocks in Thervoy Kandigai village works out to 190.30 acres.

79. As we have pointed out earlier in Para 15, the total extent of grazing ground in the village is 554.19.0 hectares or 1368.85 acres. Out of which 1127.00 acres has been transferred to SIPCOT for establishment of industrial complex. As submitted by the learned Additional Advocate General, there is balance of about 241.85 acres available for use as grazing land. That apart in the counter filed by the Respondents 3, 6 and 7, it is clearly stated that SIPCOT has come forward to set apart about 100 acres of land from out of 1127.00 acres of land transferred to it for use of grazing land to cater the needs of livestock in the village. As we pointed out as per the recommendation of Tamil Nadu Agricultural University, the total land required, available live stocks in Thervoy Kandigai village would be around 190.30 acres. Having regard to the facts and circumstances and that SIPCOT has come forward to develop 100 acres of land for use as grazing land available land of 341.86 acres of land would be more than sufficient to cater all the requirements of livestocks available.

80. That apart, so far cattle were feeding themselves with the natural vegetation grown in 1368.85 acres. In our considered view, by intensifying fodder development in 341.86 acres, loss of larger extent can be offset/compensated by such intensified development fodder. Cattle would also be benefited with such intensified fodder development.

81. However, we are of the view that relaxation of Clause in providing for alternate land of same extent might amount to depletion of grazing land.

82. So far as relaxation to find lands within three years either in the same District or in the adjacent Districts, we feel that it would be desirable that if SIPCOT would find alternate grazing land in the same District particularly around Thervoy Kandigai village. S. No. 33/1 an extent of 6.50.0 hectare and S. No. 239 an extent of 91.42.0 Hectares are Meikkal porambokes [6.50.0 + 91.42.0 = 97.92.0 hectares (or) 241.86 acres]. It is appropriate to issue direction to 7th Respondent-SIPCOT to develop fodder in S. Nos.

33/1 and 239 - 241.86 acres which are already classified as Meikkal porambokes.

83. From the letter of the District Revenue Officer, Tiruvallur District [Rc.672/2007 B2 dated 18.5.2009], we find that there are also other poramboke lands to an extent of 167.59.0 hectares (or) 413.94 acres [167.59.0 x 2.47 = 413.94]. We feel it appropriate to direct the SIPCOT that the above said extent of poramboke lands to the maximum possible extent be secured and be placed at the disposal of Animal Husbandry Department for development as grazing lands.

84. Re-contention violation of Section 134 of Tamil Nadu Panchayats Act, 1994:

> As per Section 134(2) of Tamil Nadu Panchayats Act - the following porambokes viz, grazing grounds, thrashing floors, burning and burial-grounds, cattle-stands, cart-stands and topes shall vest in the Village Panchayat, and the Village Panchayat shall have power, subject to such restrictions and control as may be prescribed to regulate the use of such porambokes, provided the porambokes are at the disposal of the Government. But as per Section 134(1) of the Act, the provision of Section 134 shall apply only in Ryotwari tracts.

85. Contending that as per Section 134(2) of Tamil Nadu Panchayats Act grazing grounds shall vest with the Village Panchayat, learned Counsel for the Petitioner urged to read Section 134 as analogous to Section 125 vesting of public roads in the Village Panchayat. It was submitted that as per Section 134 which is analogous to Section 125 of the Act, Meikkal poramboke shall vest with the Village Panchayat and Village Panchayat has got every right to regulate such poramboke. It was therefore contended that when the Village Panchayat has got right to regulate Meikkal poramboke, Government on its own cannot transfer Meikkal poramboke.

86. Section 125 of the Act with respect of vesting of public roads in village panchayat. Panchayat roads vested with Village panchyayat for maintenance of roads and other allied purposes. Contention that Section 134 is analogous to Section 125 is farfetched.

87. Placing reliance upon CDJ 2005 MHC 387 [Vengaivasal Village Panchayat by its President v. The State of Tamilnadu and Ors.], it was contended when the consent of Village Panchayat was not taken and when Government ignored the concept of Panchayatraj, transfer of land to SIPCOT is liable to be quashed. In the said case, 'Vandipathai poramboke' [cart-track] within the meaning of public road defined Under Section 2(28) of the Act was sought to be reclassified as 'Natham poramboke'. As per Section 125(1) of the Act public road vested with Village Panchayat. In view of Section 125(1), public road in question vested with Panchayat, Division Bench of this Court has held that the power conferred on the Government under Section 125(2) is not absolute and independent, but the same is subject to the power conferred under Section 125(1) of the Act protecting vested right of the Village Panchayat which is endowed with such power and authority as may be necessary to enable them to function as institutions of self-government as provided under Article 243(G) of Constitution of India. There could be no factual comparison of above decision pertaining to public road with the case on hand.

88. Under Section 134 of the Act, Village Panchayat is to regulate use of certain porambokes in Ryotwari tracts. Exercising power under Section 134(2), Government have framed the Rules - Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porambokes in Ryotwari Tracts) Rules, 2000. There is nothing to show that the poramboke land in S. Nos. 32/2 and 33/2 are in Ryotwari tracts.

89. To substantiate his contention that Village Panchayat has right of regulate poramboke, learned Counsel for the Petitioner laid emphasis upon MOU entered with the Village Panchayat by the Forest department for Afforestation Programme 2008-09. Of course ,for implementing Tamil Nadu Afforestation Programme during 2008-09, Forest department has entered into MOU with the Village Panchayat President and Village People in February 2008. MOU was entered with the Village President and Village People mainly for implementation of Afforestation Programme for involving participation of the village people. Entering into MOU with the villagers, in our considered view such MOU would not lead to the conclusion that panchayat was regulating the user of Meikkal poramboke.

90. As per Rule 3 of Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porambokes in Ryotwari Tracts) Rules, 2000 - No poramboke at the disposal of the Government, the use of which is regulated by the Village Panchayat, shall be used for any purpose other than that for which it was originally intended except with the prior approval of the Collector and such use shall be subject to such conditions and restrictions as may be imposed by the Collector.

91. As per Rule 5 of Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porambokes in Ryotwari Tracts) Rules, 2000 - The Village Panchayat shall maintain a list of porambokes (with details of survey numbers, boundaries, extent, the purpose for which each poramboke is used and the trees thereon the use of which is regulated by it under Sub-sections (2) and (4) of Section 134 of the Act.

92. As per Rule 7 of Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porambokes in Ryotwari Tracts) Rules, 2000 - The Village Panchayat may levy a fee for the use of any poramboke in accordance with the schedule of rates approved by the Collector, which shall not be less than seven per cent of the market value of the land for non-commercial purpose and fourteen per cent for commercial purpose.

93. Petitioner has not produced any document to show that poramboke land in S. Nos. 32/2 and 33/2 are included in the list of porambokes maintained by Thervoy Village Panchayat nor any document produced to show that Village Panchayat has levied any fees on the use of those poramboke lands. Absolutely, there is no iota of material to show that poramboke land in S. Nos. 32/2 and 33/2 are in Ryotwari tracts or that Thervoy village panchayat regulated its use at any point of time. In the absence of any such materials, grievance of the Petitioner as to violation of Section 134 of the Act does not merit acceptance.

94. Environmental Impact [Water catchment area and Anicut]:

> Next ground of challenge is in respect of water bodies. Learned Counsel for the Petitioner contended that anicut is being constructed to store surplus water from Thervoy Peria Eri and huge expenditure was incurred by the public exchequer if the catchment area for Thervoy Peria Eri is itself destroyed by conversion into industrial park. It was argued that there could be no justification for rendering anicut useless by destroying water catchment area. It was further argued that anicut was constructed to store surplus water from Thervoy Peria Eri and it would become useless if the catchment area, feeding Eri is disturbed. It was further argued that the area serving as catchment to the Eris which covered to the agricultural needs of the villagers and by conversion of the said land would result in loss of catchment area of Eris.

95. While considering Geology and Hydrogeology of the area, in its report, ITCOT

Consultancy and Services Limited has pointed out that the project area is bounded by water bodies like Thervoy Periya Eri, Chiterri and Karadiputhur lake.

96. Undertaking that water bodies would not be disturbed, in Para (15) of the counter, SIPCOT has averred as follows:

> 15. ...the water bodies available in the said survey Nos. are not disturbed and they will be maintained as it is and the rain water collected will also be drained to the water bodies through the storm water drains and as such, the water bodies will be preserved as it is. Further, the allotted unit will be supplied water from the desalination plant at Minjur or Poondi reservoir.

SIPCOT has clearly averred that no water bodies will be touched or altered and maintain "as is where is condition" in the entire stretch. SIPCOT also proposed to construct storm water drain which will drain the water from the industrial estate to the local Reservoir/Eri without any hindrance. Having regard to the averments in the counter-affidavit of 7th Respondent, apprehensions raised by the Petitioner as to destruction of anicut and damages caused to the water bodies are unfounded.

97. Environment clearance as per Notification of Ministry of Environment and Forests dated 14.09.2006:

> Next submission raised before us is about the failure to obtain prior environment clearance as per notification, prior to clearing of bushes and shrubs for development of industrial estate. The main plank argument advanced was that the project will have adverse impact of environment due to:
>
> Felling of trees;
>
> Pollution caused;
>
> Discharge of industrial wastage and effluents; and
>
> Industrial governance not properly followed.

98. Learned Additional Advocate General submitted that before clearing the bushes, SIPCOT has engaged services of ITCOT Consultancy and Services Limited to consider various aspects on eco-system and the development plan. Contending that prior environmental clearance was not required, learned Additional Advocate General further submitted that the land transferred is less than 500 hectares and even as per the notification dated 14.09.2006, EIA clearance is considered not necessary even as per the guidelines of Ministry of Environment and Forests, GoI. Of course, ITCOT Consultancy and Services Limited which considered the proposed SIPCOT industrial park, examined various aspects of development plan viz., (i) field inspection; (ii) geology and hydrogeology status; (iii) water availability; (iv) cost of project and means of finance and (v) socio-economic benefits. But opinion and report of private consultancy - ITCOT would not meet the requirement of obtaining environmental clearance as per Notification dated 14.9.2006.

99. In exercise of the powers conferred by Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, GoI issued notification dated 14.09.2006 imposing certain restrictions and prohibitions of new projects or activities or on the expansion of modernization of existing projects or

activities based on their potential environmental impacts as indicated in the schedule to the notification being undertaken in any part of India.

100. As per notification, prior environmental clearance for developing the land for industrial park below 500 hectares is not required if such industrial park is not housing any of the industry categorised as 'A' or 'B' in the notification. Para (2) of the notification provides that any project covered by category 'A' or category 'B' before any construction work or preparation of land by the project management except for securing the land, prior clearance has to be obtained. Para (4) categorizes 'projects and activities' as category 'A' and category 'B' based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources. All projects or activities included as category 'A' in the schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF).

101. All the projects or activities included as category 'B' in the schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the schedule, will require prior environmental clearance from the State/Union Territory Environment Impact Assessment Authority (SEIAA).

102. Environmental clearance process comprises of (i) Screening; (ii) Scoping; (iii) Public Consultation; and (iv) Appraisal Committees. In the process, there is also public consultation of affected persons and others who have plausible stake in the environmental impacts of the project or activity. Para (8) deals with Grant or Rejection of Prior Environmental Clearance (EC). Para (9) contemplates validity of environmental clearance. Para (10) provides for post environmental clearance monitoring.

103. Learned Additional Advocate General submitted that the land developed as industrial area is less than 500 hectares and therefore, prior environmental clearance may not be required for developing the land as an industrial estate.

104. The above contention ignores important aspects of notification. Clause 7(c) of schedule of notification deals with Industrial Estates/Parks/Complexes which reads as under:

Project or Activity	Category with threshold limit
A	Conditions if any
B	1
	Mining, extraction of natural resources and power generation (for a specified production capacity)
1	
2	
3	
4	
5	
7(c)	

Industrial estates/parks/complexes/areas, export processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.

If at least one industry in the proposed industrial estate falls under the Category A, entire industrial area shall be treated as Category A, irrespective of the area.

Industrial estates with area greater than 500 ha. and housing at least one Category B industry.

Industrial estates housing at least one Category B industry and area <500 ha.

Industrial estates of area > 500 ha. and not housing any industry belonging to Category A or B.

Special condition shall apply.

Note:

Industrial Estate of area below 500 ha. and not housing any industry of category A or B does not require clearance.

It is evident that prior environmental clearance certificate is necessary for the proposed industrial estate housing at least one industry under the category 'A'.

105. 7th Respondent - SIPCOT is now offing in the development stage. Now it cannot say that it will not house industry falling under category 'A' or 'B'. In fact, in Para (11) of SIPCOT's counter, it is averred that Government of Tamil Nadu proposed to enter into MOU with MNC which has 69 plants in 19 countries with an annual production of 190 million tyres and three technology centres and two natural plantations. Currently, the said MNC is said to have employed around 1.21 lakh around the world and the turnover is 16861 Billion Euros. MNC has also proposed to invest around Rs. 4000 crores in this location for setting up a tyre company in new technology. That apart it is also expected that the industrial park would also attract about Rs. 25000 crores of investment in various industries. Some of the industries so proposed would certainly be in the category 'A' which requires prior environment clearance. In our considered view that as per notification, environment clearance has to be obtained before any further development. Even though, industrial estate is less than 500 hectares even for development of industrial estate, environmental clearance has to be obtained.

106. By passing of G.O.Ms. No. 650 Revenue Department dated 13.11.2008, land is transferred to SIPCOT. Mere transfer of land will not amount to sanction to proceed with the projects. In Para (18) of Writ Petition, it is stated that 70% of the shrubs and trees have been removed At the time when the Writ Petition was admitted, interim injunction was granted on 12.5.2009 [P.J.M.,J & T.S.S.,J] from cutting and removing the trees. The same was modified by the order dated 27.5.2009 [V.D.P.,J & M.M.S.,J] restricting interim injunction only in respect of felling of trees. By the order dated 25.8.2009 [F.M.I.K.,J & R.B.I.,J], we have directed the Forest department to count the trees and file a report. As per the report filed by the Forest department, there are 844 trees available [Odiyan trees (Lannea Coramandalica) numbering more than 600).

107. We are of the view, before proceeding with further development, SIPCOT has to obtain environmental clearance from the competent authority, Ministry of Environment and Forest as per the notification dated 14.9.2006. However, SIPCOT is entitled to secure the lands by fencing the area. Once the environmental clearance certificate is sought for, most of the points raised would be taken care while processing the application for environmental clearance.

108. In fact, 7th Respondent - SIPCOT has filed an affidavit to the effect that when SIPCOT identifies suitable investors/entrepreneurs, SIPCOT would comply with the environment norms as per the GoI notification No. S.O.1533 dated 14.9.2006 and also

obtain environmental clearance in accordance to law. Developing the area by removing trees and thereafter approaching the authority for obtaining environmental clearance may not serve any useful purpose. In our considered view, even for development of industrial estate, before felling trees and developing area, SIPCOT has to obtain environmental clearance.

109. Encroachment and Directions:

> Encroachment in the lands are two categories; one encroachment is as indicated in the notification, encroachment by way of cultivation, raising trees i.e. (i) Anbazhagan - 2.00.0 hectares; (ii) Nagappan - 0.80.0 hectares; (iii) Muralikrishnan - 1.20.0 hectares and (iv) Arunachalam - 1.20.0 hectares. Respondents 3 and 6 are at liberty to remove the above said encroachers. Encroachments are to be removed in accordance with law.

110. The next category of encroachment is by putting thatched huts and villagers are residing there. In the report of Village Administrative Officer, Thervoy Kandigai village about 15 encroachers are said to have put up sheds/huts in or about 0.01.0 hectare each. Those who have so put up huts in S. No. 32/2 are:

> Vernacular (Tamil) Portion Deleted

That apart Panchayat over head tank and PWD Godown are also said to have been put up in S. No. 32/2.

111. All the encroachers excepting Kumudha, wife of Muthu are said to have put up huts in S. No. 32/2. Extent of 0.01.0 hectare approximately equivalent to 2.47 cent. In our considered view, the above said villagers/encroachers who have put up shed/huts are to be provided with an alternate place in the nearby vicinity for putting up their residence. In the alternate place so provided to the above 15 persons, Respondents 3,6 and 7 are directed to put up sheds with galvanised sheets under any of the available Government scheme. Respondents 3, 6 and 7 are directed to put up sheds in those alternate place within three months from the date of receipt of copy of this order. Till such alternate arrangement is made , those encroachments shall not be disturbed.

112. Contempt Petition No. 802 of 2009:

> In M.P. No. 1/2009, on 12.5.2009 [P.J.M.,J & T.S.S.,J] interim injunction was granted restraining SIPCOT from felling trees and cutting shrubs and clearing the forest land in S. No. 32/2 and 33/2. SIPCOT filed M.P. Nos. 2 and 3/2009 to vacate and suspend the order of injunction granted in M.P. No. 1/2009. By the order dated 27.5.2009, Court [V.D.P.,J & M.M.S.,J] has modified the injunction order dated 12.5.2009 which reads as under:
>
> > **...**the interim order of injunction granted by this Court on 12.5.2009 restraining the 7th respondent from felling trees and cutting shrubs and clearing the lands at Survey Nos. 32/3 and 33/3 be modified to the extent that the 7th respondent shall be restricted to clear the subject lands including shrubs and grasses except the land which is earmarked for grazing and fodder development programmes and in respect of the remaining land, the 7th respondent is permitted to clear the bushes and grasses, but as per the undertaking that there shall not be felling of trees and to that extent, the interim order is modified....

113. Alleging that on 02.6.2009, there was felling of trees which continued till 27th and 28th June 2009 and that SIPCOT was clearing the shrubs and bushes using Bulldozers, JCP and Porcelain and that trees are being cut, Petitioner Sangam has filed the Contempt Petition.

114. Contending that there was no disobedience of interim order, learned Additional Advocate General submitted that Contempt Petition was filed as a counter-blast to the Criminal complaint in Crime No. 176/2009 registered against the villagers. It was submitted that SIPCOT has kept the Boards to the effect that the land belongs to SIPCOT. Those Boards were removed, regarding which one Sakthivel, the Project Officer has filed the complaint on 29.5.2009. On the basis of the said complaint, case was registered in Crime No. 176/2009 under Section 379 IPC. Again alleging the prevention of work being carried on in the area, the Project Officer Sakthivel lodged another complaint before Pathirivedu Police Station which was registered as CSR No. 129/2009. Learned Additional Advocate General submitted that in connection with enquiry, some of the villagers were taken to Police custody and thereafter as counter-blast Contempt Petition has been filed.

116. As we have pointed out earlier, in Para (18) of the Writ Petition, Petitioner averred that 70% of the trees and shrubs were already removed. Evidently, even at the time of filing Writ Petition, 70% of the trees and shrubs were cleared. Modified interim order was to the effect of clearing shrubs in the earmarked as grazing land and from felling the trees. Learned Additional Advocate General submitted that there was no disobedience of the order and that SIPCOT was only removing the shrubs and bushes. Prima facie, we do not find any disobedience much less willful disobedience of the order.

117. We hold that no justifiable reasons are made out for quashing G.O.Ms. No. 650 Revenue Department dated 13.11.2008. Upholding the G.O.Ms. No. 650 Revenue Department dated 13.11.2008, the Writ Petition is disposed with the following directions:

(i) To secure the land, 7th Respondent-SIPCOT is at liberty to fence the land in S. Nos. 32/2 and 33/2 subject to compliance of the directions contained in Columns (ix) (x) and (xi) of this Order.

(ii) 7th Respondent-SIPCOT is directed to approach the Competent Authority/Ministry of Environment and Forests to get environmental clearance as per Notification dated 14.9.2006 before proceeding further with development activities.

(iii) Felling of trees identified in the report of the Forest Department dated 29.8.2009 shall be subject to the out come of the environmental clearance by the competent authorities.

(iv) Respondent Nos. 3, 6 and 7 are further directed to develop 241.86 acres [S. Nos. 33/1 and 239] and 100 acres from out of transferred land as grazing land by developing intensified fodder cultivation and formulate a scheme by which the cattle belonging to Thervoy Kandigai villagers are benefited by such cultivation.

(v) Respondents 3, 6 and 7 are directed to secure and make available the maximum extent of poramboke lands [shown as 167.59.0 Hectares in the letter of District Revenue Officer, Tiruvallur District in RC. 672/2007 B2 dated

18.5.2009] and develop the same as grazing land by growing fodder within a period of three years. This direction shall have prevalence over Clause 5 (ix) of G.O.Ms. No. 650 Revenue Department dated 13.11.2008.

(vi) Once the above fodder cultivation is developed in the above said lands, the fodder/land to be placed at the disposal of Thervoy Kandigai village panchayat so as to benefit the cattle of Thervoy Kandigai village.

(vii) 7th Respondent is directed to identify the remaining alternate land either in the same District or in the adjacent District and place at the disposal of Animal Husbandry Department within a period of three years. This direction shall have prevalence over Clause 5(ix) of Notification.

(viii) 7th Respondent-SIPCOT is at liberty to remove the encroachers in accordance with law - (1) Anbazhagan, (2) Nagappan, (3) Muralikrishnan and (4) Arunachalam who have cultivated lands in S. Nos. 32/2 and 33/2 and other such encroachments of cultivation.

(ix) In so far as, 15 encroachers mentioned in Para-110, Respondents 3 and 6 and 7 are directed to provide them alternate place in the nearby vicinity for putting up their residence.

(x) In the alternate place so provided to the above 15 persons, Respondents 3, 6 and 7 are directed to put up houses/sheds with galvanised sheets under any of the available Government scheme.

(xi) Respondents 3, 6 and 7 are directed to put up houses/sheds in those alternate place within six months from the date of receipt of copy of this order. And until such alternate arrangements are made, with regard to 15 encroachers status quo shall be maintained.

118. Contempt Petition is dismissed and the Writ Petition is disposed on the above lines. Consequently, all the M.Ps. are closed. No costs.

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