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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO.87 OF 2006

Bombay Environmental Action Group
and another. … Petitioners.
V/s.
The State Of Maharashtra and others. … Respondents.

WITH
WRIT PETITION NO.2741 OF 2017

Rajhans Estates And 5 Others. … Petitioner
V/S
Union Of India And Ors. … Respondents

WITH
WRIT PETITION NO.2208 OF 2004

Maharashtra Manav Seva Sangh … Petitioner
V/S
The Tahasildar and Ors. … Respondents

Mr. Navroz Seervai, Sr. Counsel a/w Jai Chhabria & Ms. Shreya Parikh & Ms. Gulnar Mistry i/b. M/s M.V. Jayakar And Co. for the Petitioner in PIL/87/2006.
Mr. Saket Mone a/w Mr.Subit Chakrabarti a/w Mr. Vishesh Kalra and Ms. Neha Joshi i/b Vidhi Partners for the Petitioner in WP/2741/2017 & the Applicant in NMW/145/2018.
Mr. Rajshekhar V. Govilkar for the Respondent No.3 in PIL/87/2006,
Ms. Sharmila Deshmukh for the Respondent No.5 in WP/2741/2017
Mr. S.S. Pakle a/w Ms. Pallavi Thakar for the Respondent - BMC.
Mr. Musharaf Shaikh i/b. Ms. Kiran Bagalia for the Respondent No.7.
Ms. Geeta Shastri, Addl. G. P for the Respondent - State in PIL/87/2006
Mr. Rui Rodrigues a/w Mr. Upendra Lokegaonkar and Mr.N.R. Prajapati for the Respondent -UOI in PIL/87/2006.
Mr. Abhishek Patil for the Applicant in CHSW/196/2007.
Ms. Uma Palsule-Desai, AGP for the Respondent-State in NMW/372/

2012 & NMW/344/2012.
Mr. S.B. Gore, AGP for the Respondent - State in WP/2741/2017.
Ms. Pooja Tated & Ms. Raksha Thakkar i/by ALMT Legal for Third Party No. 5.
Mr. M.S. Bharadwaj a/w Mr. A.M.Sethna for the Respondent No.5 in WP/2208/2004.
Mr. Abhijeet Rane for the Respondent No. 15 & 16, 18 & 19.
Mr. Amol Desai a/w Mr. Avinash K. Jalisatgi for the Respondent No.11.
Mr. G.S. Hegde i/b. M.V. Kini And Co. for the Applicant in NMWL/171/2018.
Mr. S.D. Shetty a/w Mr. Rakesh Singh i/b. M.V. Kini and Co. in NMW/555/2017 for the Applicant.
Mr.Kunal Chheda with N.R.Bubna in NMW/145/2018 for the Applicant.
Ms. Lata Desai a/w Ms. Pallavi Divekar and Mr. Salil Dabke i/b. Divekar and Co. in NMW/31/2018 for the Applicant.

CORAM : A.S. OKA AND RIYAZ I. CHAGLA, JJ.

DATE ON WHICH SUBMISSIONS WERE LASTLY HEARD : **02.08.2018**

DATE ON WHICH JUDGMENT IS PRONOUNCED : **17.09.2018**

JUDGMENT : (PER A.S. OKA, J.)

MANGROVES

1 This Public Interest Litigation (PIL) concerns the issue of destruction of mangroves in the entire State of Maharashtra. The word "Mangrove" is considered to be a combination of the Portuguese word "Mangue" and the English word "grove". Mangroves are salt-tolerant plants of tropical and subtropical intertidal regions of the world. The specific regions where these plants occur are termed as 'mangrove ecosystem'. These are highly productive but extremely sensitive and fragile. It is said about the mangroves that they are living life on the edge, with one foot on land and one in the sea. They survive in a harsh environment, adapting well to the scorching heat, deep mud and saltwater that would otherwise kill other plants. Yet they are tenacious and very useful for the environment. The occasion for filing the main

PIL is that the importance of very tenacious mangroves for the benefit of the mankind is ignored and mangroves are being destructed in the State on a very large scale.

FACTUAL ASPECTS AND PRAYERS IN PIL 87 OF 2006

2 The first petitioner is a society registered under the Societies' Registration Act, 1860. It is the case of the first petitioner that it is committed to protection and preservation of environment. It is pointed out that the State of Maharashtra has a coastline of 720 kilometers which is indented by numerous rivers, estuaries, creeks, small bays, rocky shores and muddy beaches. It is pointed out in the petition that there are 18 major estuaries along with coastline of Maharashtra harboring some of the biologically richest patches of mangroves along the entire western coast of India. It is stated that there are 52 creeks in the State along the coast which are covered by mangroves. The petitioners have relied upon a map annexed at Exhibit-A which is titled as “Mangroves Status 1997” which is said to be a satellite image of coast of Greater Mumbai in the year 1997. Basically, the petition is filed for inviting attention of the Court to the large scale destruction or denudation of mangroves. The petition seeks a declaration that the areas covered by mangroves in the State of Maharashtra in addition to those covered by mangroves forest should be declared as mangroves protection area.

3 In paragraph (i)4 of the petition, mangroves have been described. Paragraph (i)4 reads thus :-

> “(i) What are 'mangroves'?
>
> 4. **Mangroves are intertidal (growing between the high tide and low tide line) evergreen forests growing on the soft marshy lands of a creek, estuary or a bay in the tropical and sub tropical regions. The expression**

'**mangrove' does not apply to a single species of plants, but to a complete ecosystem which is a conglomeration of several species of flora, fauna and biotic features in an area, and their interaction with each other.** Mangroves are a peculiar habitat because they are found on the boundary between the land and the sea. They are found almost entirely in the tropical and sub tropical regions, that is, between 30 degrees north and 30 degrees south latitude, and are an extension of the tropical rain forests towards the sea. They are found largely in the estuarine regions where a river meets the sea, the intertidal regions of shallow bays and creeks. As extensions of the tropical rain-forests in to the sea, mangroves are functionally as important as the tropical rain-forests. Moreover, they are additionally important for the protection of the seashores from erosion, wave action, high-winds and cyclones. Mangroves being intertidal forests are equal to tropical forests, however their importance is not merely in their forest value but due to their strategic location between the land and the sea. Mangroves are the life line of any coastal area and perform invaluable protective functions for the environment. The importance of mangroves is set out below:"

(emphasis added)

4 The petition sets out the functions and importance of mangroves which can be briefly summarized as under :-

A] The mangroves play important role in protecting sea shores from erosion, high winds and cyclone;

B] Mangroves are strategically located between the land and sea and therefore, their importance is not merely in their forest value. The mangroves act as a buffer between the land and sea and play a very important role in fighting tidal erosion. The presence of mangroves does away with the need for expensive sea walls. The loss of mangroves endangers the stability of the land;

C] The mangroves facilitate reclamation of land from the sea;

D] Sometimes mangroves act as flood control by absorbing excess water from the sea;

E] Similarly, mangroves protect the land from storms and hurricanes;

F] Apart from the fact that mangroves act as natural sewage water filter systems, the same act as natural pollution coastal checks. They absorb natural waste;

G] The presence of mangroves on the fringes of the city like Mumbai which has one of the lowest open space ratios in the world ensures that some open spaces are kept open;

H] The mangroves are breeding grounds for a number of marine organism, such as shrimps, crabs and fish. The presence of mangroves keeps the fish relatively free from industrial and other pollution; and

I] The mangroves are also centres of biodiversity and are the most productive ecosystems. In Maharashtra, they house panthers, otters, jackals, wild cats, reptiles and birds of numerous varieties. It is pointed out that Thane creek is a home to about 1.5 million birds of 206 different species.

5 It is pointed out that Maharashtra has about 18 species of mangroves out of total 55 found in India. It is pointed out that out of 5 coastal districts Mumbai, Thane (now Thane and Palghar), Raigad, Ratnagiri and Sindhudurg, the mangroves in Thane district have undergone maximum destruction. It is pointed out that though comparatively there is no destruction of mangroves in District Sindhudurg, the said district is less favourable to the growth of

mangroves because of its geological condition. It is pointed out that in Mumbai also there has been a large destruction of mangroves. It is pointed out that city of Mumbai has been reclaimed from the sea by joining seven islands and it is consistently under pressure from surrounding sea. It is pointed out as to how mangroves in Mumbai have vanished. It is pointed out that in dumping grounds at Gorai and Deonar, water supply to mangroves has been blocked which resulted in destruction of mangroves. It is pointed out that rapid erosions have been noticed in the said area.

6 The prayers in prayer clause (a) of PIL are relevant which read thus:

> "(a) That this Hon'ble Court be pleased to pass a writ of mandamus or a writ in the nature of mandamus, or an other appropriate writ, order or direction directing the Respondents :
> (i) to declare the areas covered by mangrove forests in the area of Greater Mumbai as per the 1997 satellite plan annexed hereto as Exhibit 'A' as a specifically designated "mangrove protection area" with such modifications as this Hon'ble Court may deem fit.
> (ii) to forthwith forbear from permitting any destruction or denudation of mangroves in the aforesaid mangrove protection area, inter alia, by dumping, obstructing water supply, cutting of mangroves or by any other method.
> (iii) to forthwith remove all existing obstructions blocking water supply to mangroves in the mangrove protection area.
> (iv) to forthwith remove all encroachments in the mangrove protection area as per the plan annexed as Exhibit 'A';
> (v) to restore mangroves in the mangrove protection area in accordance with the aforesaid 1997 plan by re-plantation thereof;
> (vi) to take steps for the preservation of the aforesaid mangrove protection area throughout, inter alia, the establishment of eco-tourism parks on the lines

mentioned more particularly in Paragraph 4(ii) of this petition.

(vii) to earmark a special mangrove restoration fund for the preservation of the mangrove protection area.

(viii) to carry out a monthly satellite study to monitor any change of land use within the mangrove area.

(ix) to account for the application of funds received by the 1st Respondent from the 2nd Respondent's National Committee on Mangroves & Coral Reefs for the preservation of mangroves in Maharashtra."

7 PIL refers to various statutory provisions. It also refers to Ramsar Convention which is an Inter-Governmental Treaty on Wetlands which requires the State to promote conservation of wetlands habitats in the territories.

DESTRUCTION OF MANGROVES

8 In paragraph 24 of the petition, it is pointed out that there is a systematic pattern adopted in destruction of mangroves. It is pointed out that the mangroves are either set on fire or cut down and the areas occupied by mangroves are cleared for settlements. The other method is by blocking water supply to mangroves by dumping debris and constructing embankments. If water supply to mangroves is blocked, it ensures that the mangroves do not survive. It is pointed out in the petition that though large number complaints are being made regarding the destruction of mangroves, none of the authorities have taken any cognizance of the complaints.

INTERIM ORDER OF 6TH OCTOBER 2005

9 On 6th October 2005, this Court passed a detailed order. Paragraphs 7 to 13 of the said order are relevant which read thus :

"7. **The Maharashtra State using Satellite Remote Sensing is directed to prepare Phase-II of the**

mapping for carrying out mangroves study using high resolution satellite data of 65 cms. Spatial resolution/one meter spatial resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas. After receiving the satellite data, transfer of mangrove details on city survey/village maps (cadestral map) would be done. According to the learned Advocate General, this exercise is likely to take about six months. It has become imperative to pass interim order to protect the mangroves during the interregnum. We direct that this order shall not apply to all those cases which are specifically governed by injunction or stay order passed by the Courts of law before this date.

8. The State Government is directed to designate a Senior Officer not below the rank of concerned District Magistrate and Collector and Deputy Commissioner of Police/Superintendent of Police to oversee the implementation of the following directions. They would entertain complaints from citizens in respect of mangrove destruction. The name, address and contact information of such officers shall be advertised prominently in one English newspaper and two Marathi newspapers, apart from the official websites of the Maharashtra Government and the Forest Department.

(i) **That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra.** We take note of the fact that in T.N. Godavarman Thirumulkpad vs. Union of India and Ors. etc. [Writ Petition (C)No. 202 of 1995 and 171 of 1996], an affidavit was filed on behalf of the State of Maharashtra by the Chief Conservator of Forests (Administration), in which on the basis of a report of an Expert Committee, it was stated that in the Mumbai Urban Area alone, 1,534 hectares of land were, inter alia, classified as mangrove areas;

(ii) **All construction and rubble/garbage dumping on the mangrove areas shall be stopped forthwith;**

(iii) Regardless of ownership of the land, all construction taking place within 50 metres on all sides of all mangroves shall be forthwith stopped;

(iv) No development permission whatsoever shall be

issued by any authority in the State of Maharashtra in respect of any area under mangroves;

(v) The Municipal Commissioner of Greater Mumbai shall forthwith issue the necessary directions to the Municipal Corporation of Greater Mumbai Building Proposals Department not to entertain any applications for development (as defined in the Maharashtra Regional and Town Planning Act, 1966) on or in respect of the mangrove lands, regardless of the nature of ownership;

(vi) The State Government and the Maharashtra Coastal Zone Management Authority (MCZMA) are directed to file monthly report on the above action plan to this Court. The first report will be submitted within four weeks from today. The report shall specifically state, in addition to the progress/action taken,

(a) the number of complaints received, if any,
(b) the action taken thereon, if any,
(c) the number of offenders named, and
(d) the details of prosecutions/ action launched/ taken against such offenders.

(vii) The State of Maharashtra is directed to file in Court and furnish to the petitioners copies of the maps referred to in paragraph 10 of the affidavit dated 16th August, 2005, filed by Mr. Gajanand Varade, Director, Environment Department, State of Maharashtra (Page 346 on the record), within four weeks from today;

(viii) The areas shown as mangrove area in the satellite study report "Mapping of mangroves in the Maharashtra State using Satellite Remote Sensing" dated August, 2005, prepared by the Maharashtra Remote Sensing Application Centre (MRSAC) for the MCZMA which was submitted to this Court on 29th August, 2005, form part of Phase I of the mapping by MRSAC. The MRSAC will, in Phase-II, carry out mangroves study using high resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas in Mumbai and Navi Mumbai. After receiving the said satellite data, transfer of mangrove details on city survey/village maps (cadastral map) will be carried out within a period of 6 months from today;

(ix) **After the aforesaid process in clause (viii) is completed, the areas so identified which are government owned shall be declared and notified as**

"protected forests" in accordance with law after carrying out ground survey etc. The areas so identified that are privately owned shall be declared and notified as "forests" in accordance with law, after carrying out ground survey etc. The said declaration/notification will be completed within a period of 8 weeks of the completion of Phase-II mapping;

(x) The mangrove areas that are on government owned lands will be handed over to the Forest Department within a period of 12 weeks from the declaration of the same as "protected forests";

(xi) **From the list of "mangrove areas" so identified, Government owned lands will automatically be declared/notified as "protected forests". Likewise, privately owned lands from the list of mangrove areas so identified, the same will be declared/notified as "forests";**

(xii) The Secretary, Revenue Department, shall from the said date of taking over possession of the Government owned land by the Forest Department, update all the revenue records to ensure that the said Government lands are shown as "protected forests" in the said revenue records within a period of 12 weeks from the same being declared as "protected forests". In the case of lands that are private owned, the secretary, Revenue Department, shall update all the revenue records to ensure that the said private lands are shown as "forests" in the said revenue records within a period of 12 weeks of completion of the steps in clause (x) above;

(xiii) In respect of Government lands, the Forest Department and other authorities of the State of Maharashtra shall take the following necessary steps of protection, conservation and regeneration of the areas that would be declared/notified as "protected forests: in terms of clause (x) above;

(a) Removal of all obstructions that are impeding the growth of mangroves as also the impediments which restrict the flow of sea water in the mangrove areas;

(b) Wherever mangrove growth is found to be sparse and denuded (i.e. with forest density less than 0.4 which means canopy less than

40%) within these identified areas, taking necessary steps for rejuvenation;

(c) On identification of the areas as forest, the Municipal Corporation of Greater Mumbai would remove garbage and debris within these areas within a period of three months as per the instructions of the Forest Department. These areas shall be rejuvenated with mangroves;

(d) The Forest Department is directed to take necessary action against the offenders in accordance with law for damaging or destroying mangroves.

9. The Officers so designated in paragraph 8 above shall submit a report on the above action plan every three months to this Court. The first of such reports shall be submitted within four weeks from the date of declaration/notification as "protected forest". In addition to the progress/action taken, the reports shall specifically state the action taken as regards (a) number of complaints received, if any, (b) the action taken thereon, if any, (c) the number of offenders named, and (d) the details of the prosecutions/action launched/taken against such offenders.

10. The State Government shall provide the necessary staff and funds for implementing the aforesaid directions to all concerned departments of the State.

11. The Principal Secretaries of (i) Environment, (ii) Revenue and (iii) Forest Departments, Government of Maharashtra, shall be overall in-charge of ensuring total compliance of this order.

12. This order shall partly modify the order dated 9th June, 2004 of this Court passed in Writ Petition No. 2208 of 2004.

13. The Chief Secretary of the State of Maharashtra is directed to send a circular to all concerned Collectors/ Deputy Commissioners of Police/Superintendents of Police and all other concerned officials to ensure meticulous compliance of this order."

THE STATUS OF COMPLIANCE WITH THE INTERIM DIRECTIONS IN THE ORDER DATED 6TH OCTOBER 2005

10 For reporting compliance with the said directions, the State Government has filed an affidavit of Shri Milind Panditrao, Divisional Forest Officer, Mumbai Mangrove Conservation Unit. The said affidavit records that by a circular dated 21st October 2005, the State Government issued various directions in terms of the orders dated 6th October 2005. Under the said circular, the Divisional Commissioner, Konkan Division was appointed as the officer responsible to oversee the implementation of the aforesaid directions issued by this Court. It is pointed out that from the year 2005, the Divisional Commissioner has submitted 147 monthly "Action Taken Reports" to this Court. It is pointed out that 695 complaints were received by the Divisional Commissioner for various violations out of which 575 have been disposed of and 120 are pending. It is pointed out that the Maharashtra Remote Sensing and Satellite Application Centre (for short "MRSAC") carried out the mapping of mangroves areas of Mumbai and Navi Mumbai. Based on this exercise, 5469 Hectares of mangroves on Government land in Mumbai were notified as forests and the said notified forest areas have been handed over to the Forest Department. It is stated that similar exercise of mapping of mangroves in the remaining coastal areas of Maharashtra was carried out by MRSAC. It is stated that in 7 coastal districts (Mumbai, Mumbai Suburban, Thane, Palghar, Ratnagiri, Sindhudurg and Raigad), 15,087.57 Hectares of mangroves on Government lands have been notified as "Reserved Forests" under Section 4 of the Indian Forest Act, 1927 (for short "the said Act of 1927"). Out of this area, total area of 12,263.72 Hectares constituting approximately 81.28% of the total area declared as a Reserved Forest

has been transferred to the Forest Department. It is stated that in case of Thane and Mumbai Districts, the said percentage is 100% and in case of Mumbai Suburban and Ratnagiri Districts, it is more than 99%. It is pointed out that mangroves area of 1775 Hectares on private lands in Mumbai Suburban District has been declared as a "forest". In the said affidavit, certain difficulties have been expressed about the implementation of the direction of this Court to notify mangroves on private land as forests. We are dealing with the said issue in detail in the subsequent part of the judgment. It is submitted that the mangroves, irrespective of their ownership, receive protection under the Environment Protection Act, 1986 (for short "the said Act of 1986") and the Forest (Conservation) Act, 1980 (for short "the said Act of 1980"). Therefore, it was submitted that the failure to declare private lands as private forests within the meaning of the Maharashtra Private Forest (Acquisition) Act, 1975 (for short "the Private Forest Act") has not led to any adverse consequences.

11 Apart from the aforesaid statements made regarding the compliance with the directions issued under the order dated 6th October 2005, in the said affidavit, the following relevant steps taken by the State Government have been highlighted :-

1) So far approximately 541 Hectares of degraded mangrove areas have been brought under plantation;
2) On 5th January 2012, a dedicated unit called the "Mangrove Cell" was established for the protection and conservation of mangroves in Maharashtra. The officer of the rank of the Chief Conservator of Forests is heading the Mangrove Cell. From April 2017, this post has been upgraded to the level of the Additional Principal Chief Conservator of Forests;
3) For protection of mangroves in Mumbai and adjacent urban areas, the State Government has created Mumbai Mangrove Conservation Unit (MMCU) on 17th May 2013 which is headed by a Divisional Forest Officer who is

assisted by several employees of the Forest Department. Six patrolling vehicles and two patrolling boats have been provided to MMCU. It is stated that 91 personnel from Maharashtra Security Corporation have been deployed in 3 shifts round the clock in various vulnerable mangroves areas in Mumbai;

4) Over 3800 illegal structures constructed on mangroves land in different parts of Mumbai have been removed and offences have been registered;

5) Action has been taken against the vehicles involved in dumping of debris in mangrove areas. It is stated that District Collectors have lodged FIRs in respect of mangrove areas on non-forest land under the provisions of the said Act of 1986;

6) An area of 1690 Hectares having a rich cover of mangroves on the western bank of Thane Creek has been notified as Thane Creek Flamingo Sanctuary under Section 18 of the Wildlife Protection Act, 1972 with effect from 6th August 2015;

7) On 20th September 2017, the State Government has initiated a new scheme of Mangrove Conservation and Livelihood Generation in all coastal districts of Maharashtra;

8) It is claimed that in a report published by Forest Survey of India in the year 2015, it is stated that the mangrove cover in Maharashtra up to 2013 was having an area of 186 sq. km which jumped to 222 sq. km by 2015. District wise break-up of the growth of mangrove cover between 2013 and 2015 has been set out in the affidavit.

12 By the said affidavit, the State Government has sought time of six months for completing the transfer of remaining notified Reserved Forest land admeasuring about 2823.84 Hectares (of Government land) to the Forest Department.

13 There are other affidavits placed on record from time to time. There are large number of orders passed on Notices of Motion taken out granting permission for carrying out the work on mangroves

land. There is a detailed additional affidavit filed to the Notice of Motion (L) No.303 of 2015 on behalf of the petitioners by Shri Debi Goenka.

SUBMISSIONS

14 The learned senior counsel appearing for the petitioners has taken us through the averments made in the petition, the affidavits on record as well as other material on record. He has taken us through a chart containing the details of the extent of the implementation so far made with the directions contained in the order dated 6th October 2005. As regards the direction to transfer mangroves areas to the Forest Department, it is pointed out that the City and Industrial Development Corporation of Maharashtra Limited (for short "CIDCO") and the Mumbai Metropolitan Region Development Authority (for short "MMRDA") have not transferred mangroves land in their possession to the Forest Department. He also pointed out various aspects set out in the action taken reports. He pointed out that due to the failure in taking immediate action in respect of the destruction of mangroves, violators have not been identified and First Information Reports (for short "FIRs") have been filed against unknown persons. He also pointed out from the action taken reports that there is a frequent and rampant destruction of mangroves and dumping of garbage as well as debris in the mangroves area. He has relied upon statements made in various affidavits on record.

15 He further submitted that the FIRs are not taken to its logical end as the procedure under Section 19 of the said Act of 1986 is not being followed in most of the cases. He pointed out that as per the direction issued in clause 8(vi), MCZMA has not submitted any report. He stated that copies of the maps referred in the affidavit dated 16th

August 2005 of Shri Gajanan Varade have not be supplied to the petitioners. He pointed out that there is no compliance with the direction contained in clause (xiii).

16 The learned senior counsel submitted that a direction should be issued to hand over all Reserved forests to the Forest Department within a time bound schedule. He submitted that remaining action of notifying mangroves areas as forests should be also completed in a time bound schedule. He submitted that there are certain mangrove areas which are vulnerable to encroachment. Such areas must be protected by constructing a fencing/ boundary wall at a distance of 50 meters of the mangroves on its landward side. He invited our attention to wetland maps of Maharashtra prepared by MRSAC which are very useful for detection of destruction of mangroves. He pointed out several violations of the directions issued by this Court on 6th October 2005. He submitted that penal provisions under the said Act of 1986 have been rarely invoked. He also addressed the Court on the need for restoration and re-forestation. He submitted that there is a need to show mangroves areas in all Development Plans and Regional Plans along with 50 buffer zones. He made various suggestions as regards the working of the mangroves cell. He invited our attention to CRZ notifications as well as order of the Central Government approving the Coastal Zone Management Plan of Maharashtra (for short “CZMP”). The learned counsel appearing for the petitioner has also addressed us on the contents of the affidavit of Shri Milind Panditrao.

17 He invited our attention to the Judgment and Order dated 29th July 2015 in Chamber Summons No.172 of 2007 and other connected Notices of Motion. His basic submission is that the said Judgment and order does not lay down any proposition of law and

considering the peculiar facts of the case, certain plots in the layout in respect of which environmental clearance was granted in the years 2003 to 2005 were exempted from the operation of 50 meters buffer zone requirement. He urged that while approving CZMP, a condition was imposed by the Central Government of keeping 50 meter buffer zone and therefore, the said condition was in existence from the year 1996. He submitted that it is not correct to say that the requirement of having 50 meter buffer zone was brought into picture for the first time by the interim order dated 6th October 2005. He also pointed out as to how the condition of maintaining the buffer zone was in existence even prior to the order dated 6th October 2005.

18 The learned senior counsel appearing for the petitioner also addressed us on implementation of the directions contained in clause (ix) regarding declaring privately owned lands having mangroves as forests in accordance with law. He also invited our attention to the issue of implementation of the directions contained in last part of clause (xi) as well as last part of clause (xii). Firstly, he invited our attention to the decision of the Apex Court in the case of ***T.N. Godavarman Thirumulkpad vs Union Of India & Ors.***[1]. He submitted that the Apex Court has given purposive interpretation to the said Act of 1980 by holding that any forest irrespective of its ownership or its classification is entitled to protection of the provisions of the said Act of 1980. He pointed out that the Apex Court while recording the said finding has held that the word "forest" must be understood according to its dictionary meaning and the term "forest land" occurring in Section 2 of the said Act of 1980 will not only include the word "forest land" in dictionary sense but also any area recorded as a forest in the

[1] (1997) 2 SCC 267

Government record. He urged that considering the dictionary meaning of “forest” it will cover lands with mangroves and therefore, effect will have to be given to the the directions issued by the Apex Court in the case of ***T.N. Godavarman Thirumulkpad vs. Union Of India & Ors***. in case of privately owned lands having mangroves. He submitted that on such lands, non-forest activity is completely prohibited without seeking permission of the requisite authorities.

19 Thereafter, he invited our attention to the provisions of the Private forest Act and definition of “forest” in clause (c-i) of Section 2 of the Private Forest Act. He pointed out that the said definition is an inclusive definition. Inviting our attention to the definition of “private forest” in clause (f) of Section 2, he urged that even the said definition is inclusive which includes any forest which is not the property of the State Government. He would, therefore, submit that private lands having mangroves will be a private forest within the meaning of the Private Forest Act. He would, therefore, submit that by virtue of sub-section (1) of section 3 of the Private Forest Act, all such lands will vest in the State of Maharashtra irrespective of any other provisions of law.

20 He also made submissions on the basis of the Wetlands (Conservation and Management) Rules, 2017 and definition of wetlands. He urged that in addition to the interim orders issued which are already in force, directions as contended by him may be issued apart from issuing direction regarding setting criminal law in motion against the offenders.

21 The learned Additional Government Pleader Ms. Geeta Shastri has taken us through the affidavit of Shri Milind Panditrao,

Divisional Forest Officer, Mumbai Mangrove Conservation Unit and submitted that almost all interim directions have been complied with in substance. As regards the direction sought by the learned senior counsel appearing for the petitioner as regards the mangroves on private forests, she submitted that recourse will have to be taken to Section 21 of the Private Forests Act which will involve acquisition of privately owned properties having mangroves. She pointed out that Sections 34 to 37 of the Forest Act which provide for Control and Management of Forest Lands not being property of the Government have been repealed for the State of Maharashtra on coming into force of the Private Forest Act. She submitted that except the said direction, the State Government has shown willingness to implement all the other directions. We have also heard the various learned counsel representing various respondents including MCZMA as well as the learned counsel appearing for the parties in the connected petitions. Though we are disposing of Writ Petition 2741 of 2017 by a separate order, we have heard the learned counsel appearing in the said petition on certain issues especially relating to the buffer zone. The learned counsel appearing for the Petitioners in Writ Petition 2741 of 2017 made submissions in support of the order dated 29th July 2015 in Chamber Summons No. 172 of 2007. He pointed out that the said order finally concludes the issue of 50 meter buffer zone. He pointed out that the said order has been confirmed by the Apex Court by order dated 20th January 2016. He pointed out the circular issued by the State Government on the basis of the order dated 29th July 2015.

CONSIDERATION OF SUBMISSIONS

22 We have given careful consideration to the submissions. We have perused the affidavits and compilation of documents on record.

THE INDIAN FOREST ACT , 1927

23 Firstly, the legal position will have to be dealt with. Section 3 of the said Act of 1927 reads thus :-

> "3. **Power to reserve forests**. - The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided."

24 The word forest has not been defined under the said Act of 1927. In the case of ***Laxman Ichharam Vs. Divisional Forest***[2], a Division Bench of the erstwhile Nagpur High Court held that the word forest has been used in its widest significance. The Division Bench observed in paragraph 13 :-

> "13. The term 'forest' has not been defined anywhere in the Forest Act. **In the absence of such a definition the word 'forest' must be taken in its ordinary dictionary sense.** The *Shorter Oxford English Dictionary*, Vol. I, gives the following meaning to it:
>
> '1. **An extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture** …….
>
> 2. Law. A woodland district, usually belonging to the king, set apart for hunting wild beasts and game etc.,……
>
> 3. A wild uncultivated waste.'"
>
> (emphasis added)

25. The definition of a tree in sub-section (7) of Section 2 is inclusive. Therefore, a land covered by mangroves will be a forest land within the meaning of Section 3 of the said Act of 1927. Section 3 confers a power on the State Government to declare a forest land which is the property of the Government as a Reserved forest. Section 4

[2] AIR 1953 Nag 51

contemplates a notification to be issued to constitute any land as a Reserved forest. Before issuing the notification, the procedure prescribed by chapter II of the said Act of 1927 is required to be followed. Section 23 provides that no right of any description shall be acquired in or over a Reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under section 20 was issued. Section 20 contemplates a publication of a notification declaring a forest to be a Reserved forest from the date fixed by the notification. Section 26 of the said Act 1927 imposes several prohibitions in case of a Reserved forest.

26 Sections 29 and 30 of the said Act of 1927 read thus:

> "**29. Protected forests. -** (1) The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which,, is not included in a reserved forest but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.
>
> (2) The forest-land and waste-lands comprised in any such notification shall be called a "protected forest".
>
> (3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:
>
> Provided that, if, in the case of any forest-land or waste land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry

and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

30. Power to issue notification reserving trees, etc. - The State Government may, by notification in the Official Gazette,

(a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by, the notification;

(b) declare that any portion of such forest specified in the notification shall be closed for such term, rot exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such terms, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the right suspended in the portion so closed; or

(c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest."

27 The direction in clause 8(ix) of the order dated 8th October 2005 is to declare identified mangrove areas as "protected forest" within the meaning of section 29 of the said Act of 1927. The said direction has been accepted by the State Government. However, in a given case, the State Government can always declare a mangroves area as a reserved forest.

THE CONCEPT OF "FOREST" UNDER THE FOREST (CONSERVATION) ACT , 1980

28 The said Act of 1980 is also very material and in particular Section 2 thereof which reads thus :-

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose. -

Notwithstanding anything contained in any other law for the time being in force in a State, **no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, -**

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) **that any forest land or any portion thereof may be used for any non-forest purpose;**

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) **that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation.**

[Explanation. - For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for -

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than re-afforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

(emphasis added)

29 Section 2 thereof imposes a complete ban on the State Government or any other authority except with the prior approval of the

Central Government making any order for the use of any forest land or any portion thereof for non-forest purposes. Similarly, the State Government or any other authority cannot pass any order except with the approval of the Central Government permitting any forest land or any portion thereof to be cleared of all trees which have been grown naturally in that land or any portion for the purpose of using it for re-afforestation. The concept of forest in the said Act of 1980 is of a widest amplitude.

CONCEPT OF FOREST: THE DECISION IN THE CASE OF T.N. GODAVARMAN

30 In the decision in the case of *T.N. Godavarman* (supra), paragraph 4 dealt with the concept of forest under the said Act of 1980. Paragraph 4 of the said decision reads thus :-

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

Court in *Ambica Quarry Works* v. *State of Gujarat* [(1987) 1 SCC 213], *Rural Litigation and Entitlement Kendra* v. *State of U.P.* [1989 Supp (1) SCC 504] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority* [WP (C) No 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in *State of Bihar* v. *Banshi Ram Modi* [(1985)3 SCC 643] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

(emphasis added)

31 Various directions were issued under the said judgment and order. Paragraph 5 of the said decision reads thus :-

"5. We further direct as under:-

I. General

1. **In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith**. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must

promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or waterways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

5. **Each State Government should constitute within one month an Expert Committee to:**

   (*i*) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

   (*ii*) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(*iii*) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

6. Each State Government should within two months, file a report regarding:
   (*i*) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
   (*ii*) the licensed and actual capacity of these mills for stock and sawing;
   (*iii*) their proximity to the nearest forest;
   (*iv*) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess:
   (*i*) the sustainable capacity of the forests of the State qua saw mills and timber-based industry;
   (*ii*) the number of existing saw mills which can safely be sustained in the State;
   (*iii*) the optimum distance from the forest, qua that State, at which the saw mill should be located.

8. The Expert Committee so constituted should be requested to give its report within one month of being constituted.

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports."

(emphasis added)

32 If a reference is made to Cambridge dictionary, the meaning of forest therein is "a large area of land covered with trees and plants usually larger than the wood or trees and plants themselves". Considering the wide meaning given to "forest" by the Apex Court, a land covered by mangroves irrespective of its ownership is a forest within the meaning of the said Act of 1980. Hence, the embargo imposed by Section 2 of the said Act of 1980 and the directions issued

by the Apex Court will apply with all the force to mangroves areas. It will apply to mangrove areas irrespective of the fact that the lands are privately owned. That is very clear from paragraph 5(i) above. Therefore, it is obvious that prior approval of the Central Government is required for doing any non-forest activity within the area of mangroves. In accordance with Section 2 of the Act, all ongoing non- forest activity within any mangroves area without the prior approval of the Central Government, must cease forthwith.

THE ENVIRONMENT (PROTECTION) ACT , 1986

33 Another important statute with which we are concerned is the said Act of 1986. Clause (a) of sub-section (2) of the said Act of 1986 defines "environment" which reads thus :-

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

Hence, the definition of environment is very wide which includes not only water, air and land but also plants and micro-organism. Thus, it will include mangroves as well.

34 Section 3(1) of the said Act of 1986 reads thus:

> **"3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT**
>
> **(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution."**
>
> (emphasis added)

CRZ NOTIFICATION OF 1991

35 A notification dated 19th February 1991 was issued by the Government of India which is known as CRZ notification of 1991 in exercise of powers under Section 3(1) and Section 3(2)(v) of the said Act of 1986. The notification lays down what constitutes a "Coastal Regulation Zone" (for short "CRZ"). The material part of the said CRZ notification declaring CRZ reads thus :-

> "Now, therefore, in exercise of the powers conferred by Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone; and imposes with effect from the date of t his Notification, the following restrictions on the setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation zone (CRZ). For purposes of this Notification, the High Tide Line (HTL) will be defined as the line upto which the highest high tide reaches at spring tides."

36 Clause 3 provides that all other activities except those which are prohibited will be regulated as provided therein. Annexure-I to the CRZ notification deals with Coastal Area Classification and Development Regulations. CRZ-I is defined thus :-

> "Category I (CRZ-I) :
> (i) Areas that are ecologically sensitive and important, such as national parks marine parks, sanctuaries, reserve forests, wildlife habitats, **mangroves**, corals coral reefs, ares close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty historical heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the

concerned authorities at the State/ Union Territory level from time to time.

(ii) Area between the Low Tide Line and the High Tide Line."

(emphasis added)

37 Thus, mangroves fall in CRZ-I category. Annexure-I further lays down that no new structure shall be permitted within 500 meters from the High Tide Line (HTL) and no construction activities except as listed in sub-clause (xii) of clause 2 of the CRZ notification are permitted in CRZ-I area. Sub-clause (xii) of clause 2 reads thus :-

"(xii) ..... facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification; and"

38 The CRZ notification of 1991 was further amended by a notification dated 18th August 1994. The relevant modification is in clause (a) which reads thus :

"(a) in paragraph 1, for the portion beginning with the words "For purposes of this notification, the High Tide Line" and ending with the words "width of the creek, river or back water whichever is less", the following shall be submitted, namely :-

"For the purposes of this notification, the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority so authorised by the Central Government in consultation with the Surveyor General of India.

NOTE :-

> The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and back waters and may be modified on a case by case basis for reasons to be recorded while preparing the Coastal Zone Management Plans. However, this distance shall not be less than 50 metres or the width of the creek, river or back-water whichever is less. The distance upto which development along rivers, creeks and back-waters is to be regulated shall be governed by the distance upto which the tidal effect of sea is experienced in rivers, creeks or back-waters, as the case may be, and should be clearly identified in the Coastal Zone Management Plans."

39 Sub-clause (3)(i) of clause 3 of the CRZ notification of 1991 mandated that all coastal States shall prepare a Coastal Zone Management Plan (for short "CZMP") identifying and classifying CRZ areas within their respective territories in accordance with Annexures - I and II to the CRZ notification. Accordingly, CZMP for Maharashtra was submitted to the Government of India on 22nd November 1995. By a letter/ order dated 27th September 1996, the Ministry of Environment and Forest of the Government of India communicated to the Chief Secretary of the Government of Maharashtra grant of approval to the CZMP subject to conditions incorporated therein. Condition No.(xiii) reads thus :-

> "(xiii) All mangroves with an area of 1000 square metres or more would be classified as CRZ-I with a buffer zone of at least 50 metres."

The Mangroves were already included in CRZ-I in the CRZ notification of 19th February 1991. By the aforesaid order dated 27th September 1996, in case of mangroves with an area of 1000 square metres or more, a buffer zone of at least 50 metres along the mangroves was ordered to be included in CRZ-I in addition to mangroves.

40 An order was issued on 19th January 2000 by the Government of India providing that 50 meter buffer zone around mangroves of area of 1000 square meters and above, will not be required on the landward side, provided a road abutting such mangroves was constructed prior to February, 1991. Thus, under the 1991 notification, mangroves were included in CRZ-I. In the CRZ notification of 1991, there was no provision for a buffer zone. The said provision came for the first time by virtue of the order dated 27th September 1996 which was amended by the order dated 9th January 2000.

CRZ NOTIFICATION OF 2011

41 The CRZ notification of 6th January 2011 was issued under section3(1) of the said Act of 1986 which superseded the earlier CRZ notification of 1991. Relevant part of paragraph 7 reads thus:

> "7. Classification of the CRZ – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-
>
> (i) CRZ-I,–
>
> A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-
>
> **(a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50 meters along the mangroves shall be provided;**
>
> (b) Corals and coral reefs and associated biodiversity;
>
> (c) Sand Dunes;
>
> (d) Mudflats which are biologically active;
>
> (e) National parks, marine parks, sanctuaries....."
>
> (emphasis added)

Clause (xi) of paragraph 3 provides that all construction activities in CRZ-I are prohibited activities except those specified in paragraph 8. Paragraph 8 lays down the norms for regulation of the activities permissible in CRZ that:

> "I. CRZ-I,-
>
> (i) no new construction shall be permitted in CRZ-I except,-
> (a) projects relating to Department of Atomic Energy;
> (b) pipelines, conveying systems including transmission lines;
> (c) facilities that are essential for activities permissible under CRZ-I;
> (d) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;
> (e) construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.
> (f) development of green field airport already approved at only Navi Mumbai;
>
> (ii) Areas between LTL and HTL which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely:-
>
> (a) exploration and extraction of natural gas;
> (b) construction of dispensaries, schools, public rain-shelter, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants living within the biosphere reserves after obtaining approval from concerned CZMA.
> (c) necessary safety measure shall be incorporated while permitting such developmental activities in the area falling in the hazard zone;
> (d) salt harvesting by solar evaporation of seawater;
> (e) desalination plants;
> (f) storage of non-hazardous cargo such as edible oil, fertilizers and food grain within notified ports;
> (g) construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water."

In the Guidelines for preparation for CZMP incorporated in the said notification of 2011, it is stated thus:

"3. Buffer zone along mangrove areas of more than 1000 sq mts shall be stipulated with a different colour distinguishing from the mangrove area.
4. The buffer zone shall also be classified as CRZ-I area."

42 In 1991 CRZ notification, it was provided that all mangrove areas will fall in CRZ-I. By virtue of the order dated 27th September 1996, in case of mangrove areas of 1000 square meters or more, 50 meter buffer zone abutting it was also included in CRZ-I. By order dated 9th January 2000, it was provided that 50 meter buffer zone will not be required to be maintained, provided a road abutting the mangroves was constructed prior to February 1991 (prior to the date on which CRZ notification of 1991 was issued). Under the 2011 notification, all mangroves area fall in CRZ-I irrespective of its area and in case the said area is 1000 square meters or more, even a buffer zone of 50 meters along the said area shall be a part of CRZ-I. Thus, the buffer zone of 50 meters abutting mangroves having an area of 1000 square meters or more was also included in CRZ-I from 27th September 1996.

43 The CRZ notifications are in the nature of orders or directions issued under the said Act of 1986. Hence, if there is any violation of the provisions of the CRZ notifications regarding mangroves area or its buffer zone or if there is any failure to comply with the same , it will attract the penal provisions under Section 15 of the said Act of 1986 which is attracted in case of the failure to comply with the provisions of orders or directions issued under the said Act of 1986. The conditions imposed in the the letter dated 27th September 1996 will have to be construed as an order or direction under the said Act of 1986 as CZMP is required to be approved by the Central government in

view of the clause 3(i) in the CRZ notification of 1991. Hence, if there is any violation of the condition in the letter dated 27th September 1996 about the 50 meter buffer zone, it will attract penal provision of Section 15 of the said Act of 1986."

EFFECT OF THE DIRECTIVE PRINCIPLES OF STATE POLICYAND THE FUNDAMENTAL DUTIES OF CITIZENS

44 Article 48-A in Chapter IV under the title Directive Principles of State Policy of the Constitution of India reads thus :-

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

45 Article 48-A lays down that it is the duty of the State to make an endeavour to protect and improve environment and to safeguard forests. As stated earlier, environment includes plants. Mangroves are essential part of the environment. The land covered by mangroves is be covered by the concept of forest. Under Article 51(A)(g) of the Constitution, it is the fundamental duty of every citizen of India to protect and improve the natural environment including forests, rivers and wildlife and to have compassion for living creatures. In view of the constitutional mandate under Article 51(A)(g), it is the fundamental duty of every citizen to protect and improve natural environment including forest which will include mangroves. If this is the obligation of every citizen, the public bodies which are constituted by the citizens are bound by the fundamental duties under Article 51(A). Thus, it is the duty of the State and citizens to ensure that the mangroves are preserved and protected.

PUBLIC TRUST DOCTRINE

46 In the case of ***Nature Lovers Movement vs State of Kerala***[2a], in paragraph 2, the Apex Court observed thus:

> **"2.** The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. The main motto of social life is to live in harmony with nature. **It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life."**
>
> (emphasis added)

47 In the case of ***Association for Environment Protection vs. State of Kerala***[2b], the Apex Court observed thus:

> **"2.** The ancient Roman Empire developed a legal theory known as the "doctrine of the public trust". It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. **The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few."**
>
> (emphasis added)

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[2]a (2009)5 SCC 373

[2]b (2013)7 SCC 226

48 In the case of ***M.C. Mehta Vs. Kamal Nath and Ors***.[3]*,* in paragraph 34 and 35, the Apex Court held thus :

> "34. **Our legal system – based on English common law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands.** The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.
>
> 35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. **The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."**
>
> (emphasis added)

[3] (1997) 1 SCC 388

49 In the case of ***Fomento Resorts & Hotels Limited and Anr. vs. Minguel Martins and Ors***.[4], in paragraphs 53 to 55 and 65, the Apex Court held thus :

> "53. **The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.**
>
> 54. **The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations.** For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. **The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, "The Public Trust Doctrine in Natural Resources Law : Effective Judicial Intervention" (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.**
>
> 55. **The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain.** Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the

[4] (2009) 3 SCC 571

rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands, waters and resources.

65. **We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof.** The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems."

(emphasis added)

50 Public at large has a right to enjoy and have a benefit of our forests including mangroves forest. The pristine glory of such forests must be protected by the State. The mangroves protect our environment. Therefore, apart from the provisions of various statutes, the doctrine of public trust which is very much applicable in India makes it obligatory duty of the State to protect and preserve mangroves.

PRECAUTIONARY PRINCIPLE

51 In the case of ***M.C.Mehta (Badhkal and Surajkund Lakes matter) vs Union of India***[5], the Apex Court held thus:

"10. In *M.C. Mehta* v. *Union of India* [(1987) 4 SCC 463] this Court held as under:

[5] (1997) 3 SCC 715

> "The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public. Life, public health and ecology have priority over unemployment and loss of revenue problem."
> **The "Precautionary Principle" has been accepted as a part of the law of the land. 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 causes 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."
> (emphasis added)

52 It is not disputed by the State and it is also borne out from the material including the action taken reports on record submitted on behalf of the State Government that there have been instances of destruction of mangroves in the State. The photographs produced on record clearly show that there is a large scale destruction. The precautionary principle will apply to the destruction of mangroves and therefore, the State is under an obligation to anticipate, attack and prevent the reclamation of mangrove areas. It is duty bound to prevent degradation of mangroves.

ROLE OF RAMSAR CONVENTION

53 The 8th meeting of the contracting parties (which includes

India) to the Convention on Wetlands at Ramsar in Iran in the year 1971, was held in Spain in November 2002. In the said meeting, a resolution was passed as regards the mangroves which reads thus:

> "Resolution VIII.32: Conservation, integrated management,and sustainable use of mangrove ecosystems and their resources
>
> 1. **RECOGNIZING the major importance of the wide range of ecological goods and services provided by mangrove ecosystems, including their vital role in acting as spawning and nursery areas for many species of economic importance, and the economic, social and environmental importance of mangroves for, *inter alia*, fishing, biodiversity, coastal protection, recreational activities, education, and coastal and shelf water quality;**
> 2. **ALSO RECOGNIZING that the survival of a large number of local communities and indigenous peoples depends upon the productivity and health of mangrove ecosystems;**
> 3. RECOGNIZING FURTHER that mangrove ecosystems are important for regulation of natural processes and maintaining biological diversity in the coastal zones of the countries in which they occur, and that many species, notably, *inter alia*, fish, molluscs, crustaceans, migratory and resident waterbirds, and aquatic mammals, as well as threatened species, are ecologically dependent upon mangroves and their surrounding areas;
> 4. AWARE that healthy mangrove ecosystems, in conjunction with their associated coral reefs, seagrass beds, and intertidal flats, can play an important role in mitigating climate change and sea-level rise, including through carbon sequestration and the buffering of sea-level rise and storms, particularly in view of the current extent of coral bleaching and Intergovernmental Panel on Climate Change (IPCC) predictions of future increase in coral bleaching, as is recognized in document COP8 DOC. 11 and Resolution VIII.3;
> 5. **CONCERNED that, despite this widely-recognized importance of mangrove ecosystems, the area of mangrove ecosystems continues to decrease in many countries as the result of destruction and degradation through human activities that use mangroves and**

their surrounding areas, or that disrupt the flow of freshwater or tidal flows to mangrove ecosystems, without appropriate planning, management and control mechanisms;

6. **AWARE of the increasing availability of knowledge about practices related to the sustainable use of mangrove ecosystems by the ancestral communities of users and that experiences and technical knowledge about the conservation and sustainable use of these ecosystems should receive wide dissemination at the national and global levels;**
7. TAKING NOTE of the need to strengthen at the global level the mechanisms for exchanging good practices and technical knowledge about mangrove ecosystems and to benefit from those exchanges, while at the same time promoting and strengthening these activities among local communities, with the cooperation, where appropriate, of local people and national or international organizations with knowledge or interest in the sustainable use of the biological diversity of mangrove ecosystems;
8. AWARE that Contracting Parties to this Convention have concluded through Action 6.2.3 of its Strategic Plan 1997-2002 that mangrove ecosystems are under-represented in the List of Wetlands of International Importance, and that guidance on the identification and designation of mangrove ecosystems has been adopted by this meeting of the Conference of the Parties (Resolution VIII.11);
9. RECOGNIZING that mangrove ecosystems are dependent on ecological processes and influenced by socio-economic processes that occur in river basins and the wider coastal zones in which they occur, and that their capacity to continue to provide their values and functions depends upon sustainable land-use management at the wider scale, as is recognized by Resolution VII.18 concerning river basin management and the guidance adopted by this meeting concerning site-based management planning (Resolution VIII.14), water allocation and management (Resolution VIII.1), and integrated coastal zone management (Resolution VIII.4);
10. RECALLING Resolution VII.21, which specifically refers to mangrove ecosystems as an integral part of intertidal

wetlands which have been lost and degraded due to unsustainable activities; and

11. ALSO RECALLING the Annex to Resolution VIII.11 which refers to the principal factors causing loss and damage to mangrove ecosystems worldwide as a result of unsustainable exploitation practices, such as habitat destruction, hydrological changes, pollution, and unsustainable aquaculture;

THE CONFERENCE OF THE CONTRACTING PARTIES

12. **REQUESTS Contracting Parties with mangrove ecosystems in their territories to review, and as appropriate to modify their national policies and strategies that could have harmful effects on these ecosystems, and to implement measures to protect and restore their values and functions for human populations, recognizing their rights, uses and traditional customs and the maintenance of biodiversity, and to cooperate at the international level to agree regional and global strategies for their protection;**
13. ALSO REQUESTS the Contracting Parties with mangroves ecosystems in their territories to promote their conservation, integrated management and sustainable use within the context of the national policies and regulatory frameworks, and in accordance with environmental and strategic assessments of the activities that could affect, directly or indirectly, the structure and function of the mangrove ecosystems;
14. **EXHORTS relevant Contracting Parties to update information on mangrove ecosystem cover and their conservation status, as well as the forms and levels of their use,** and to provide this information to the Ramsar Bureau and the Convention's Scientific and Technical Review Panel (STRP) so as to assist their work as called for in Resolution VIII.8 concerning status and trends in wetlands;
15. ALSO EXHORTS those Contracting Parties with mangrove ecosystems within their territories to exchange information relating to their conservation, integrated management, and sustainable use, especially where this involves the full participation of local communities and indigenous peoples;
16. REQUESTS the Ramsar Bureau and the STRP, as resources permit, and the Contracting Parties to

contribute to the initiatives concerning the transfer of environmentally sound technologies for the sustainable management of mangrove ecosystems, and to make this available to the users;

17. ALSO REQUESTS Contracting Parties with mangrove ecosystems within their territories, including those of their dependent territories, according to their capacities and internal regulations, to designate mangrove ecosystems that fulfill the criteria for their inclusion in the List of Wetlands of International Importance, in order to create a coherent national and international network of designated Ramsar sites as called for in the Strategic Framework and Vision for the List of Wetlands of International Importance (Resolution VII.11), and in doing so to emphasize particularly those Ramsar sites which are important for local communities and indigenous peoples in terms of their subsistence and cultural values;
18. **ALSO REQUESTS all relevant Contracting Parties to recognize the importance of mangrove ecosystems for migratory and non-migratory birds, and to designate such areas as Ramsar sites that qualify under Criteria 4, 5, and 6 of the Strategic Framework adopted by Resolution VII.11,** in order to contribute to the establishment of coherent flyway-scale networks of Ramsar sites, in line, as appropriate, with the Joint Work Plan of the Ramsar Convention, Convention on Migratory Species, and African-Eurasian Migratory Waterbird Agreement (AEWA) as endorsed by Resolution VIII.5 and other conventions or related agreements;
19. ENCOURAGES all relevant Contracting Parties to take into account in their management planning for Ramsar sites with mangrove ecosystems, applying the *New Guidelines for management planning for Ramsar sites and other wetlands* and other guidance adopted by this meeting (Resolutions VIII.1, VIII.4, and VIII.14), the ecological and socio-economic factors that occur in river basins and coastal zones to which they are related, and to ensure that their wider land-use planning and management does not adversely affect their mangrove ecosystems, such as through the introduction of pollutants, modification of water flows, sediment inputs, and exotic species;

20. ALSO ENCOURAGES all relevant Contracting Parties to recognize fully the important role mangrove ecosystems can play in mitigating climate change and sea-level rise, especially in low-lying areas and Small Island Developing States, and to plan their management, including required adaptation measures, so as to ensure that the mangrove ecosystems may respond to impacts caused by climate change and sea-level rise;
21. URGES all relevant Contracting Parties to identify the factors degrading their mangrove ecosystems and to seek to restore such ecosystems, using the guidance on this matter adopted by this meeting (Resolution VIII.16), so that they can deliver their range of values and functions; and
22. REQUESTS the Ramsar Bureau to make all possible efforts to secure financial resources and advance technical cooperation for promoting the conservation, integrated management, and sustainable use of mangrove ecosystems and their resources through appropriate existing partnerships and agreements with international and regional organizations."

(emphasis added)

54 The Government of India and the State Government will be under a duty to implement the aforesaid Covenants. Therefore, it is all the more necessary that both the State and Central Government to make all possible efforts to preserve and protect mangroves.

ARTICLE 21 VIOLATION

55 Mangroves ecosystems play a vital role in human life. In the subsequent part of this judgment, we have quoted a decision of the Apex Court which notes that the mangroves forests are of great ecological importance and are also ecologically sensitive. Considering the vital role played by the mangroves which can be seen from what is set out above, if a citizen is to lead a meaningful life as contemplated by Article 21 of the Constitution of India, the mangroves will have to be preserved and protected . Considering the drastic effects of destruction

of mangroves on the environment, the destruction of mangroves and the failure of the State to take steps for its restoration will amount to violation of fundamental rights guaranteed by Article 21 of the Constitution.

CONTINUATION OF THE INTERIM DIRECTIONS AS THE FINAL DIRECTIONS

56 Now we turn to the interim directions contained in the order dated 6th October 2005. We have already quoted interim directions contained in the order dated 6th October 2005. One of the said direction is quoted by the Apex Court in its decision in the case of ***Krishnadevi Malchand Kamathia and ors. vs. Bombay Environmental Action Group***[5]. Paragraph 6 quotes direction No.(xii) regarding notifying mangroves areas on Government owned lands as protected forests. It refers to the notification dated 18th February 2009 issued by the Divisional Commissioner notifying the lands of the appellant before the Apex Court as such. In paragraphs 30 to 32, the Apex Court held thus :-

> "30. The CRZ Regulations define for regulating developmental activities, coastal stretches within 500 m of the landward side of the high tide line into four categories. Category I (CRZ-I) is defined as under:
>
> "(*i*) **Areas that are ecologically sensitive and important, such as, national parks/marine parks, sanctuaries, *reserved forests*, wildlife habitats, *mangroves*, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historical/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and other such areas as may be declared by the Central Government or the authorities concerned at the**

[5] 2011(3) SCC 363

State/Union Territory level from time to time."

31. The regulation of *development* or *construction* activities in CRZ-I areas is to be in accordance with the following norms:

"CRZ-I *Between LTL and HTL in areas which are not ecologically sensitive and important*, the following may be permitted: (*a*) exploration and extraction of natural gas; (*b*) activities as specified under proviso of sub-paras (*i*) and (*ii*) of Para 2; (*c*) construction of dispensaries, schools, public rain shelters, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants of the Sunderbans Biosphere Reserve Area, West Bengal, on a case-to-case basis, by the West Bengal State Coastal Zone Management Authority; (*d*) *salt harvesting by solar evaporation of seawater*; (*e*) desalination plants; (*f*) storage of non-hazardous cargo such as edible oil, fertilisers and foodgrain within notified ports; (*g*) construction of trans-harbour sea links."

32. From the above, **it is evident that mangroves fall squarely within the ambit of CRZ-I. The Regulations allow for salt harvesting by solar evaporation of seawater in CRZ-I areas *only* where such area is not ecologically sensitive and important. In the instant case it has been established that mangrove forests are of great ecological importance and are also ecologically sensitive**. Thus, salt harvesting by solar evaporation of seawater cannot be permitted in an area that is home to mangrove forests."

(emphasis added)

57 The Apex Court observed that the mangroves forests are of great ecological importance and are also ecologically sensitive. This observation is made after observing that mangroves falls squarely within the ambit of CRZ-I. Thus, even if the area abutting the mangroves which were in existence when 1991 notification came into force was already developed, the mangroves area will fall in CRZ-I and not in CRZ-II. If there are mangroves in existence between the shoreline and the developed area, the mangroves will fall in CRZ-I under both

the CRZ notifications. The Apex Court, therefore, did not permit salt harvesting activity on the mangroves areas. The Apex Court proceeded to issue several directions including the direction to restore *status-quo ante* against the appellant. It can be seen from the said decision that the Apex Court virtually approved the direction given by this Court in clause 8(xii) regarding mangroves areas on the Government owned lands to be declared as protected forests.

58 We must note here that none of the respondents have ventured to deny this factual statements made in the petition about the important role played by the mangroves eco-sytems. On the contrary, the affidavit of the State of Shri Milind Panditrao, Divisional Forest Officer shows that except for the directions regarding the mangroves on private lands, the State Government claims to have made a sincere effort to implement the directions issued by this Court under the order dated 6th October 2005. Whether the State has implemented all the directions issued or not is an altogether a different issue. What is important is that the State has shown willingness to abide by almost all directions including the direction regarding keeping buffer zone of 50 meters . Considering the applicability of the public trust doctrine and the statutory and constitutional duty of the State, the said direction for stopping all construction taking place within 50 meters on all sides of all mangroves will have to be maintained as this direction will protect the mangroves. If construction activity is permitted in the said buffer zone, it will inevitably cause damage to the mangroves. No construction/development permission can be granted in the buffer zone of 50 meters of mangroves having an area less than 1000 square meters, unless the concerned development authorities are fully satisfied that even if development is carried out, no damage whatsoever will be

caused to the mangroves. As pointed out earlier, in case of mangrove area of 1000 square meters or more, 50 meter buffer zone will be a part of CRZ-I and such a buffer zone will be subject to all the restrictions provided in CRZ Regulations.

59 Therefore, there is no difficulty in continuing the directions issued in the order dated 6th October 2005 as final directions with certain modifications. As far as the directions contained in relation to mangroves on private properties are concerned, we propose to deal with the same separately.

MANGROVES ON PRIVATE LANDS

60 Now, we turn to the issue of mangrove areas forming a part of the private lands. For that purpose, it will be necessary to make a reference to the provisions of the Private Forest Act. We have already held that a mangroves forest on a private land will be a forest within the meaning of the said Act of 1980 and therefore, necessary consequences will follow. The question is whether such areas can be transferred to the Forest Department and for that reason, it is necessary to make a reference to the provisions of the Private Forest Act.

61 Clause (f) of Section 2 defines "Private Forest" which reads thus :

> "(f) "private forest" means any forest which is not the property of Government and includes, -
>
> (I) any land declared before the appointed day to be a forest under section 34A of the Forest Act;
> (ii) any forest in respect of which any notification issued under sub-section (1) of section 35 of the Forest Act, is in force immediately before the appointed day;
> (iii) any land in respect of which a notice has been issued under sub-section (3) of section 35 of the Forest Act,

but excluding an area not exceeding two hectares in extent as the Collector may specify in this behalf;

(iv) land in respect of which a notification has been issued under section 38 of the Forest Act;

(v) in a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;

(vi) sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and lands appurtenant thereto;"

62 Section 3 of the "Private Forest Act" is material which reads thus :-

"3.(1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any Court, Tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government, and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished.

(2) Nothing contained in sub-section (1) shall apply to so much extent of land comprised in a private forest as is held by an occupant or tenant and is lawfully under cultivation on the appointed day and is not in excess of the ceiling area provided by section 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under sub-section (1) shall be deemed to be reserved forests within the meaning of the Forest Act."

63 Sub-section (1) of Section 3 applies to a “private forest” defined under clause (f) of Section 2. Thus, vesting under sub-section (1) will apply only in case of a private forest within the meaning of clause (f) of Section 2 of the Private Forest Act. Therefore, only those lands which are covered by clause (f) of section 2 will vest in the State Government in accordance with section 3 of the Private Forest Act. Such vesting will be automatic in view of sub-section (1) of Section 3. Hence, such private mangroves lands which are covered by the definition under section 2(f) will vest in the State Government on the appointed day which is 30th August 1975.

64 The second part of the direction given in clause 8(ix) of the order dated 6th October 2005 is to declare the mangrove areas which are privately owned as forests. Clause (xi) further provides that from the list of mangrove areas so identified, the Government lands shall be declared/notified as protected forests and likewise, privately owned lands from the list of mangroves areas so identified shall be declared/notified as forests. In view of the definition of forest in clause (c-i) of Section 2, a land covered by mangroves will be a “forest”. But, no consequences as provided in section 3 will follow under the Private Forest Act unless such a land is a “private forest” under clause (f) of Section 2.

65 Continuation of the interim direction to declare privately owned mangrove area as forest and to transfer the same to Forest Department poses some difficulty. Under the said Act of 1927, there are two categories of forests which could be declared by the State Government. One is the protected forest under Section 29 to which we have already made a reference. The other is reserved forest. The power to declare reserved forest is under Section 3 of the said Act of 1927. A

privately owned land cannot be declared as a protected forest or reserved forest over which the State Government has no proprietary rights. Moreover, sections 34A to 37 of the said Act of 1927 stand repealed for the State of Maharashtra by virtue of section 24 of the Private Forest Act with effect from 30th March 1975. Going back to the Private Forest Act, as observed earlier, every mangroves area which is privately owned will not fall in the definition of private forest in clause (f) of section 2. Another Section which is relevant in the Private Forest Act is Section 21. It confers a power on the State Government to declare a land which is not covered by clause (f) above as a private forest. Section 21 of the Private Forest Act reads thus :-

> "21. **Declaration of certain lands as private forests -** (1)Wherever it appears to the State Government that any tract of land not being the property of Government, contains trees and shrubs, pasture lands and any other land whatsoever, and that it should be declared in public interest and for furtherance of the objects of this Act. to be a private forest, the State Government shall publish a notification in the Official Gazette -
>
> (a) declaring that it is proposed to declare such tract of land to be a private forest; and (b) specifying, as nearly as possible, the situation and limits of such tract.
>
> (2) On the publication of such notification, the Collector or any other officer authorised in this behalf by the State Government shall issue a notice to the owner of such tract of land and to all other persons having an interest in such tract of land calling on them to show cause, within a reasonable period to be specified in such notice, why such declaration should not be made.
>
> (3) After hearing the objections if any, of the owner and other persons and considering any evidence that they may produce in support of the same, the Collector, or as the case may be, the authorised officer shall submit his report to the State Government, along with the objections, proceeding and his opinion whether the tract of land should or should not be declared to be a private forest.
>
> (4) After taking into consideration the objections,

proceeding and report and the opinion of the Collector, or as the case may be of the authorised officer, the State Government shall decide, whether such tract of land or any part thereof should or should not be declared to be a private forest, and such decision shall be final.

(5) If the State Government decides to declare such tract of land or any part thereof to be a private forest, it shall publish such decision by a notification in the Official Gazette.

(6) Upon publication of the notification under sub-section (5), the tract of land in question or any part thereof shall be deemed to be private forest and thereupon, all the provisions of this Act shall apply thereto, subject to the modification that the appointed day in relation thereto shall be deemed to be the date of the issue and publication of the notification in the Official Gazette under sub-section (5) in relation thereto.

(7) If the State Government decides not to declare such tract of land or any part thereof to be a private forest, it shall communicate its decision to all persons interested in such tract of land or any part thereof.

(8) On the publication of a notification under sub-section (1) in respect of any tract of land, it shall not be lawful for the owner of such tract of land or any other person to do therein, except with the previous permission in writing of the Divisional Forest Officer, any of the following things, for a period of one year from the date of such publication, or till the date of the publication of the notification under sub-section (5), or as the case may be, till the date of communicating the decision under sub-section (7), whichever period expires earlier,namely :---

(a) the breaking up or cleaning of the land for cultivation;

(b) the pasturing of cattle;

(c) the filing or cleaning of the vegetation ;

(d) the girdling tapping or burning of any tree of the stripping off the bark or leaves from any tree;

(e) the lopping and pollarding of tree;

(f) the cutting, sawing, conversion and removal of trees and timber; or

(g) the quarrying of stone or the burning of lime or charccoal or the collection or removal of any forest

produce or its subjection to any manufacturing process.

(9) If any person contravenes the provision of sub-section (8), he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both."

66 Under Section 21, a private land not covered by clause (f) of Section 2 can be declared as a private forest. Thus, if a privately owned mangrove land is to be declared as private forest, the procedure under Section 21 will have to be undertaken. It cannot be said that every private land containing trees and shrimps or pasture lands should be declared as a private forest by exercising power under Section 21. It is ultimately left to the State Government to take recourse to Section 21. Therefore, a writ of mandamus cannot be issued directing the State Government to exercise the power under Section 21 of the Private Forest Act of declaring every privately owned mangrove area as a private forest. However, as held earlier, whether such area is declared as a private forest under Section 21 or not, it is a forest as held by the Apex Court in the case of ***T.N. Godavarman*** *(supra)* and therefore, the same cannot be used by the owner thereof for non-forest purposes. There is one more aspect of the matter. In case of a private forest which vests in the State Government under sub-section (1) of Section 3 of the Private Forest Act, certain amounts become payable to the owners under Section 7 of the Private Forest Act as compensation. Therefore, in case of a land in respect of which the power under Section 21 of the Private Forest Act is exercised, compensation will be payable by the State Government. Therefore, we are of the view that a blanket direction to declare private mangrove areas as a private forest under the Private Forest Act cannot be issued. However, the Government will have

to be directed to consider the cases where Section 21 deserves to be invoked and initiate action to invoke Section 21 in accordance with law.

MONITORING COMMITTEE TO BE CONSTITUTED

67 In paragraph 8 of the order dated 6th October 2005, a direction was issued by the State Government to designate a senior officer not below the rank of the District Magistrate and the Collector and Deputy Commissioner of Police to oversee the implementation of the directions issued. As per the circular dated 21st October 2005 issued by the State Government, the Divisional Commissioner, Konkan Division was entrusted with the responsibility of the implementation of the directions of this Court.

68 In PIL No.218 of 2013, for the Navi Mumbai area in Thane District, a Committee headed by the Divisional Commissioner, Konkan Division has been constituted which has several members. The said Committee is entrusted with the task of coordinating the activity of protecting mangroves in the said area. The State Government by a letter dated 1st August 2018 (marked as "L 10 for identification") addressed to the learned Additional Government Pleader has agreed to constitute only one Committee headed by the Divisional Commissioner, Konkan Division for all the 7 coastal districts of Maharashtra. We accept the statements made in the said letter. It will be appropriate if such Committee consists of the District Collectors as suggested by the State Government, Nodal Police Officers for each District not below the rank of Deputy Superintendent of Police as may be nominated by the State Government, the Nodal Officers of appropriate higher rank appointed by all the Planning Authorities within the meaning of the Maharashtra Regional and Town Planning Act,1966 (for short "MRTP Act") which are having coastal areas within its jurisdiction, Higher

officers of the Forest Department, Officers of Mangroves Conservation Units/ Mangroves Cell, Member Secretary of MCZMA, Regional officer/s of the Maharashtra Pollution Control Board, representatives of NGOs working in the field, the representatives of organizations of local fisher folk communities, experts in the field of conservation etc. The State Government may consider of including the Petitioners in this PIL and PIL no.218 of 2013 in the Committee. As stated in the letter of the State Government, the Committee shall be responsible for coordinating the activity of protection and conservation of mangrove areas in all the coastal districts. Naturally, the same Committee should be given responsibility of monitoring the implementation of the directions issued by this Court for protection and conservation of mangroves and restoration of destructed mangroves. The function of the Committee will be to ensure that various agencies/ authorities/ officers who are vested with the statutory powers act promptly and effectively. The State Government shall establish a secretariat of the said Committee with a central control room to receive complaints and immediate action thereon. All the infrastructure and necessary funds should be provided to the Committee as per the requisitions issued by the Committee from time to time. The Divisional Commissioner will have to be authorised to constitute sub-committees at District/Taluka level. The Committee will have to submit quarterly action taken and compliance reports to this Court. The first report shall be submitted on 1st December 2018. The Committee shall be entitled to seek further directions by filing an application through the Government Pleader. The Committee shall regularly hold meetings. It will be open to hold meetings by use of video conferencing facility. The minutes of the meeting shall be published on the web site of the Commissioner or of the Committee.

SETTING UP GRIEVANCE REDRESS MECHANISM

69 The State Government will have to create a Grievance Redress Mechanism for enabling the members of the public to lodge complaints about the activity of destruction /removal /cutting of the mangroves or causing damage to a mangroves area. An opportunity must be made available to file complaints about any acts or omissions which may ultimately result in destruction or causing damage to the mangroves area. The State Government shall make arrangements for receiving complaints on dedicated website, on toll free numbers and in physical form to the officers or offices nominated by the State Government in all coastal districts and especially in the areas where there are mangroves. A facility shall be made available for uploading the photographs by e-mail and by whats app or similar media by use of cell phone. The State Government must also create machinery to ensure that the said complaints are immediately transferred to the Committee headed by the Divisional Commissioner. The Committees will ensure that immediate action is taken of stopping the illegal destruction or acts amounting to causing damage to the mangrove areas, if necessary with the police help. Necessary register shall be maintained of the complaints received and action taken thereon. The State Government must lay down methodology by which the complainant is kept posted about the action taken on his or her complaint. On the request made by the complainant, the identity of the complainant shall be masked and the names of the complainant shall not be disclosed to violators of law.

DEVELOPMENT PLAN UNDER MRTP ACT

70 Now it will be necessary to refer to the provisions of the MRTP Act. The said Act contemplates preparation of Regional and Development Plans. The Regional Boards established under the said Act are entrusted with the responsibility of preparation of Regional Plans

and making periodical revision of such plans. Section 14 provides for contents of a Regional Plan which reads thus:

> "**14. Subject to the provisions of this Act and any rules made thereunder for regulating the form of a Regional plan and the manner in which it may be published, any such Regional plan shall indicate the manner in which the Regional Board propose that land in the Region should be used, whether by carrying out thereon development or otherwise,the stages by which any such development is to be carried out,** the net-work of communications and transport, the proposals for conservation and development of natural resources, and such other matters as are likely to have an important influence on the development of the Region; and any such plan in particular, may provide for all or any of the following matters, or for such matters thereof as the State Government may direct, that is to say—
>
> (*a*) allocation of land for different uses, general distribution and general locations of land, and the extent to which the land may be used as residential, industrial, agricultural, or as forest, or for mineral exploitation ;
>
> (*b*) **reservation of areas for open spaces, gardens, recreation, zoological gardens, nature reserves, animal sanctuaries, dairies and health resorts**;
>
> (*c*) transport and communications, such as roads, highways, railways, waterways, canals and airports, including their development ;
>
> (*d*) water supply, drainage, sewerage, sewage disposal and other public utilities, amenities and services including electricity and gas ;
>
> (*e*) reservation of sites for new towns, industrial estates and any other large scale development or project which is required to be undertaken for proper development of the Region or new town ;
>
> (*f*) **preservation, conservation and development of areas of natural scenery, forest, wild life, natural resources, and land-scaping**;
>
> (*g*) preservation of objects, features, structures or places of historical, natural, architectural or scientific interest and educational value ;
>
> *(h)* areas required for military and defence purposes ;
>
> *(i)* prevention of erosion, provision for afforestation, or

reforestation, improvement and redevelopment of water front areas, rivers and lakes ;
(*j*) proposals for irrigation, water supply and hydro-electric works, flood control and prevention of river pollution ;
(k) providing for the relocation of population or industry from over- populated and industrially congested areas, and indicating the density or population or the concentration of industry to be allowed in any areas.
…….
…….”

(emphasis added)

71 Every Planning Authority under the MRTP Act is under a mandate to make a Development Plan and to make a revision at periodical intervals. The contents of the Development Plan are provided in section 22 which reads thus:

> **“22. Contents of Development plan.— A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out.** In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,—
>
> (*a*) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational;
>
> (*b*) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theaters and places for public entertainment, or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government;
>
> (*c*) **proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries** and dairies;

(*d*) transport and communications, such as roads, high-ways, park-ways, railways, water-ways, canals and air ports, including their extension and development;

(*e*) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;

(*f*) reservation of land for community facilities and services;

(*g*) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;

(*h*) preservation, conservation and development of areas of natural scenery and landscape;

(*I*) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value [and of heritage buildings and heritage precincts];

(*j*) proposals for flood control and prevention of river pollution;

(*k*) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to acquisition for public purpose or as specified in a Development plan, having regard to the provisions of Section 14 or for development or for securing use of the land in the manner provided by or under this Act;

(*l*) the filling up or reclamation of low lying, swampy or unhealthy areas or levelling up of land;

(*m*) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority [including imposition of fees, charges and premium, at such rate as may be fixed by the State Government or the planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of] conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of

> building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act."
>
> (emphasis added)

72 Thus, in a Development Plan, mangroves areas and buffer zones will have to be specifically shown in view of clause (c) of section 22. The Regulations framed as per clause (m) must provide for ban on construction on mangroves area and its buffer zones as laid down earlier. Mangroves areas have been already identified by using MRSAC. In any event, in view of Section 21, preparation of land use map is a condition precedent for preparation of a Development Plan. Section 14 deals with contents of a Regional Plan. Clause (b) of Section 14 is similar to clause (c) of Section 22 which provides for reservation for gardens, nature reserves etc. Therefore, The in a Regional Plan, mangroves areas and buffer zones will have to be specifically shown. The State Government will have to issue a direction under section 154 of the MRTP Act to all concerned Planning Authorities and Regional Boards, as the case may be, to implement the aforesaid directions while making or amending or revising Development Plans/Regional Plans.

RESTORATION OF MANGROVE AREAS

73 One more important issue is to restore mangroves areas which are illegally reclaimed. The said areas have to be restored to its

original condition. That is the legal obligation of the State. In what manner restoration should be done should be decided by the Committee headed by the Divisional Commissioner after consulting experts in the field. It is necessary that the Committee identifies the vulnerable mangroves areas in the State and direct its constant surveillance either by the Police or Forest Guards or Security Guards of the Maharashtra Security Corporation. The Committee shall ensure that barricades are erected for entry of vehicles in such vulnerable area for preventing illegal dumping. The Committee shall also consider of installing CCTVs along the vulnerable stretches to keep a vigil. The Committee shall also cause to undertake satellite mapping of mangroves area at periodical intervals of not more than six months by using resolution as suggested in paragraph no.28 of the note submitted by the learned senior counsel appearing for the petitioner. Any changes seen shall be considered by the Committee and remedial measures shall be immediately taken. The State Government shall sanction necessary funds for that purpose.

EFFECT OF THE ORDER DATED 29th JULY 2015 IN CHAMBER SUMMONS NO.172 OF 2007

74 Now we must refer to the order dated 29th July 2015. The prayer made before this Court was that certain plots be excluded from the applicability of the direction contained in clause 8(iii) in the order dated 6th October 2005 regarding buffer zone of 50 meters. The said order dated 29th July 2015 is confirmed by the Apex Court. The order of the Apex Court dated 2oth January 2016 shows that it is a summary dismissal. Therefore, the issue whether the said order of this Court is a binding precedent remains open. We find that on the plots subject matter of the said order, permissions were granted prior to the year 1996 for making public housing. Environmental clearances were granted prior to the order dated 6th October 2005. Before passing the

said order, the attention of the Court was not invited to the condition (xiii) imposed in the letter/order dated 27th September 1996 of the Central Government by which CZMP of the State of Maharashtra was sanctioned. The condition is that in case of mangroves with an area of 1000 square meters and more, a buffer zone of 50 meters will form a part of CRZ-I. Moreover, the CRZ notification of 2011 specifically provides that in case of mangroves with an area of 1000 square meters, a buffer zone of 50 meters will form a part of CRZ-I. Interim direction in clause 8(iii) is applicable to all mangroves area irrespective of its area. One of the reasons set out by us for confirming the said interim direction is that if construction activity is permitted within 50 meters of mangroves area, it will cause damage to the mangroves it being an ecologically fragile area. The area of 50 meters around mangroves area of less than 1000 square meters will not be a part of CRZ-I though such mangrove area will be a part thereof under the both 1991 and 2011 notifications. Only in case of mangroves lands having an area of 1000 square meters or more , it's 50 meter buffer zone will also be a part of CRZ-I.

75 The said order dated 29th July 2015 deals with the projects approved prior to the year 1996. The order ignores the provision regarding 50 meter buffer zone which was introduced on 27th September 1996. The said order dated 29th July 2015 was passed considering the peculiar facts in respect of the plots subject matter of the said order. By the said order, the issue of protecting mangroves was not finally decided. Hence, the said order cannot be held to be a binding precedent finally deciding the issue of buffer zone and CRZ classification. There is a circular/ order dated 5th March 2018 issued by the Department of Environment of the State Government on the basis of the order dated 29th July 2015. The learned Counsel for the Petitioners

in the connected writ petition has placed on record the said circular. However, now what will prevail is this Judgment and not the said circular which is based on the legal opinion of the Law Department.

PROCEDURE REGARDING SETTING CRIMINAL LAW IN MOTION

76 Whenever the offences punishable under section 15 of the said Act of 1986 are committed, criminal law has to be set in motion in accordance with section 19 of the said Act of 1986. In many cases, it is found that the police are straight-away registering First Information Reports by ignoring the provisions of section 19 of the said Act of 1986 which reads thus :-

> "**19. COGNIZANCE OF OFFENCES**
>
> No court shall take cognizance of any offence under this Act except on a complaint made by--
> (a) the Central Government or any authority or officer authorised in this behalf by that Government, or
> (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid."

77 In the Judgment and Order dated 22nd December 2016 in PIL No.218 of 2013 in the case of ***Navi Mumbai Environment Preservation Society And Anr. Vs. Ministry Of Environment, Through the Secretary, Department of Environment and Ors.***, this Court considered the procedural aspects regarding section 19 of the said act of 1986. Paragraphs 5 to 13 of the said Judgment and Order dated 22nd December 2016 in PIL No.218 of 2013 read thus :-

> "5 As far as the officers authorised under clause (a) are concerned, a notification bearing No.394(E) has been issued by the Government of India under which the

District Collectors have been appointed as authority under clause (a) of the Section 19 for their respective Districts. Chairpersons, Member-Secretaries and Regional Officers of the State Pollution Control Board who have been delegated powers under Section 24 of the Air (Prevention and Control of Pollution) Act, 1974 have been also nominated as authorities under clause (a) of Section 19. The Chairman and Member-Secretary of the State Board have jurisdiction all over the State. The jurisdiction of the Regional Officers is confined to the notified area.

6 It is brought to our notice that in certain cases, First Information Reports have been registered for the offences punishable under Section 15 of the said Act of 1986 by the Police. The question is whether the Criminal Court can take cognizance of the offence on the basis of charge sheet filed on the basis of First Information Report registered by the Police.

7 Complaint is defined under the Code of Criminal Procedure, 1973 (for short “the said Code”) under clause (d) of Section 2 which reads thus :-

> (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

8 In the present case, only District Collectors and officers of the Maharashtra Pollution Control Board as set out above have been authorised under clause (a) of Section 19. It will be advisable if the information regarding commission of an offence punishable under Section 15 is immediately communicated to the District Collector or to the Regional Officers of the Maharashtra Pollution Control Board who are authorised officers under clause (a) of Section 19 who can set criminal law in motion. The question is whether registration of FIR at the instance of a person who is not authorised under clause (a) of Section 19 and the investigation carried out on the basis of the FIR becomes illegal.

9 In this behalf, it will be necessary to make a reference to a decision of the Apex Court in the case of *State (NCT of Delhi) Vs. Sanjay*[6]. In the said case, the Apex Court was dealing with the issue of taking cognizance of offences punishable under the Mines and Minerals (Development and Regulation Act) 1957 (for short "the said Act of 1957"). Section 22 of the said Act of 1957 provides that no Court shall take cognizance of any offence punishable under the said Act or Rules made thereunder except upon a complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. One of the challenges before the Apex Court was to the decisions of Delhi High Court and Gujarat High Court dealing with the issue of legality of the First Information Reports registered by the Police. Paragraphs 9 to 12 of the said decision read thus :-

"9. The Delhi High Court after referring various provisions on the MMDR Act vis-à-vis the Code of Criminal Procedure disposed of the application directing the respondent to amend the FIR, which was registered, by converting the offence mentioned therein under Section 379/411/120B/34 of IPC to Section 21 of the MMDR Act. The High Court in para 18 of the impugned order held as under:-

"18. In view of the aforesaid and taking into consideration the provisions contained under Section 21 (6) of the said Act I hold that:

(i) The offence under the said Act being cognizable offence, the Police could have registered an FIR in this case;

(ii) However, so far as taking cognizance of offence under the said Act is concerned, it can be taken by the Magistrate only on the basis of a complaint filed by an authorized officer, which may be filed along with the police report;

(iii) Since the offence of mining of sand without permission is punishable under Section 21 of the said Act, the question of said offence being an offence under Section 379 IPC does not arise because the said Act makes illegal mining as an offence only when there is no permit/licence for such extraction

[6] (2014) 9 SCC 772

and a complaint in this regard is filed by an authorized officer.

10. On the other hand the Gujarat High Court formulated the following question for consideration:-
    (1) Whether Section 22 of the Act would debar even lodging an FIR before the police with respect to the offences punishable under the said Act and Rules made thereunder?
    (2) In Case such FIR's are not debarred and the police are permitted to investigate, can the concerned Magistrate take cognizance of the offences on a police report?
    (3) What would be the effect on the offences punishable under the Penal Code in view of the provisions contained in the Act?

11. The Gujarat High Court came to the following conclusion:-
    (I) **The offence under the said Act being cognizable offence, the Police could have registered an FIR in this case;**
    (ii) **However, so far as taking cognizance of offence under the said Act is concerned, it can be taken by the Magistrate only on the basis of a complaint filed by an authorized officer, which may be filed along with the Police report;**
    (iii) Since the offence of mining of sand without permission is punishable under Section 21 of the said Act, the question of said offence being an offence under Section 379 IPC does not arise because the said Act makes illegal mining as an offence only when there is no permit/licence for such extraction and a complaint in this regard is filed by an authorized officer.

12. The Gujarat High Court, therefore, held that:-
    1. **Section 22 of the Act does not prohibit registering an FIR by the police on information being given with respect to offences punishable under the said Act or the Rules made thereunder.**
    2. **It is however, not open for the Magistrate to**

take cognizance of the offence punishable under the Act or the Rules made there under on a mere charge-sheet filed by the police. It would, however, be open for the officer authorized by the state or the Central Government in this behalf to file a complaint in writing before the Magistrate relying upon the investigating carried out by the police and the complaint may also include the papers of the police investigation.

3. With respect to offences punishable under the Penal Code, no such bar as indicated in para (2) would apply."

(emphasis added)

10 We must note here that the offence under Sub-Section (1) of Section 15 attracts imprisonment for a term which may extend to 5 years. Therefore, as per Part II of the First Schedule to the said Code, the offence will be cognizable and therefore, Police can register the same under Sub-Section (1) of Section 154 of the said Code. Perusal of the decision of the Apex Court in the aforesaid case shows that the Apex Court has not disturbed the view taken by the Delhi High Court and Gujarat High Court which we have quoted above. Therefore, if FIR is registered by the Police for the offences punishable under Section of Section 15 of the said Act of 1986, the registration of offence and investigation carried out by the Police is not *per se* vitiated. A complaint can be made/filed by authorised officer under clause (a) of Section 19 before the concerned Court. While filing complaint, the authorised officer can always rely upon the material collected by the Police during the investigation. The Complaint can include the material collected by the Police during the investigation carried out on the basis of the FIR.

11 Another issue is about of those cases where on the basis of the First Information Reports registered for the offences punishable under Sub-Section (1) of Section 15 of the said Act of 1986 and charge sheet filed by the Police, Criminal Courts have taken cognizance. The question is whether trial in such cases is vitiated. This issue is dealt with by the Apex Court in the case of *H.N.*

Rishbud and Inder Singh Vs. State of Delhi[7]. Paragraphs 9 and 10 of the said decision read thus :-

"9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. **But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial.** No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the beading "Conditions requisite for initiation of proceedings. The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a)

[7] AIR 1955 SC 196

or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice".

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in *Prabhu V. Emperor and Lumbhardar Zutshi V. King*. These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. **We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been**

caused thereby.

10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for. Such a course is not altogether outside the contemplation of the scheme of the Code as appears from Section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge, who for purposes of procedure at the trial is virtually in the position of a Magistrate trying a warrant case. When the attention of the Court is called to such an illegality at a very early stage it would not be fair to the accused not to obviate the prejudice that may have been caused thereby, by appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under Section 537 of the Code of Criminal Procedure of making out that such an error has in fact occasioned a failure of justice. It is relevant in this context to observe that even if the trial had proceeded to conclusion and the accused had to make out that there was in fact a failure of justice as the result of such an error, explanation to Section 537 of the Code of Criminal Procedure indicates that the fact of the objection having been raised at an early stage of the proceeding is a pertinent factor. To ignore the breach in such a situation when brought to the notice of the Court would be virtually to make a dead letter of the peremptory provision which has been enacted on grounds of public policy for the benefit of such an accused. It is true that the peremptory provision itself allows an officer of a lower rank to make the

> investigation if permitted by the Magistrate. But this is not any indication by the Legislature that an investigation by an officer of a lower rank without such permission cannot be said to cause prejudice. When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The granting of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it. In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the Court have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined."
>
> 12 Thus, in cases where charge sheets have been filed and the Courts have taken cognizance on the basis of Charge sheets, the proceedings of criminal case or trial will not *per se* stand vitiated. The same will stand vitiated only if there is a miscarriage of justice.

78 Thereafter, this Court proceeded to hold that registration of offences by the police under sub-section (1) of section 15 of the said Act of 1986 investigation carried out thereon is not *per se* illegal. While filing complaints, officers authorised under clause (a) of section 19 can always rely upon the material collected during the investigation and the material forming charge sheet prepared by the police. We concur with the view taken above. We must note here that the Committee headed

by the Divisional Commissioner will have to ensure that recourse is promptly taken to section 19 for setting the criminal law in motion by the officers empowered under clause (a) of Section 19.

79 There is a need to hold regular awareness programs in schools and colleges and various educational institutions for making the students aware about the drastic effects of destruction of mangroves. The State shall take steps in that behalf for making the students aware about the dangers which may be caused to the ecology and environment in case the mangroves forests are destructed or damaged. To reiterate, the failure of the State and its agencies/ instrumentalities to maintain and conserve the mangrove areas will amount to violation of rights of the citizens under Article 21 of the Constitution of India apart from other consequences. Though we are not issuing a writ, we hope and trust that the State Government will take such initiatives.

80 The State Government has not placed any material on record to show that compliance with clause 8(vii) of order dated 6th October 2005 has been made. We propose to direct the State Government to do so within two months by providing copies to the petitioners.

81 The mangroves lands held by the public authorities like CIDCO, MMRDA are also governed by sub-clauses (ix) to (xi) of clause 8 of the aforesaid order. Therefore, they must transfer the lands in their possession to the Forest Department.

82 Considering the prayers in the Writ Petition No. 2208 of 2004, no separate order is required to be passed therein. We are passing a separate order in Writ Petition No. 2741 of 2017.

SUMMARY OF IMPORTANT FINDINGS

83 The summary of some of the important conclusions read thus:

(i) A land regardless of its ownership on which there are mangroves, is a forest within the meaning of the said Act of 1980 and therefore, the provisions of Section 2 of the said Act of 1980 and the law laid down by the Apex Court in the case of *T.N. Godavarman* will squarely apply to such land;

(ii) A mangroves area on a Government land is liable to be declared as a protected forest or a reserved forest, as the case may be, within the meaning of the said Act of 1927;

(iii) All mangroves lands irrespective of its area will fall in CRZ-I as per both the CRZ notifications of 1991 and 2011;

(iv) In 1991 CRZ notification, it is provided that all mangrove areas will fall in CRZ-I. By virtue of the order dated 27th September 1996, in case of mangrove areas of 1000 square meters or more, 50 meter buffer zone abutting it was also included in CRZ-I. By order dated 9th January 2000, it was provided that 50 meter buffer zone will not be required, provided a road abutting the mangroves was constructed prior to February 1991. Under the 2011 notification, all mangroves lands fall in CRZ-I and in case the area of such land is 1000 square meters or more, even a buffer zone of 50 meters along the said area shall be a part of

CRZ-I. But, the buffer zone of 50 meters which is required to be kept free of constructions in respect of the mangroves area of less than 1000 square meters will not be a part of CRZ-I.;

(v) if there is any violation of the CRZ notifications regarding mangroves area, it will attract penal provision under Section 15 of the said Act of 1986 which is attracted in case of the failure to comply with the provisions of orders or directions issued under the said Act of 1986. The conditions imposed in the the letter dated 27th September 1996 as amended will have to be construed as an order or direction under the said Act of 1986 as CZMP is required to be approved by the Central government in view of the clause 3(i) in the CRZ notification of 1991 which is an order or direction under the said Act of 1986. Hence, if there is any violation of the condition in the letter dated 27th September 1996 in respect of the 50 meter buffer zone, it will attract penal provision of Section 15 of the said Act of 1986.

(vi) The destruction of mangroves offends the fundamental rights of the citizens under Article 21 of the Constitution of India.

(vii) In view of the provisions of Articles 21, 47, 48A and 51A(g) of the Constitution of India, it is a mandatory duty of the State and its agencies and instrumentalities to protect and preserve mangroves;

(viii) In view of applicability of public trust doctrine, the State is duty bound to protect and preserve mangroves. The mangroves cannot be permitted to be destructed by the

State for private, commercial or any other use unless the Court finds it necessary for the public good or public interest;

(ix) The Precautionary Principle makes it mandatory for the State and its agencies and instrumentality to anticipate and attack causes and consequences of degradation of mangroves.

84 As far as Writ Petition No.2741 of 2017 is concerned, we are deciding the same by a separate order. Writ Petition No.2208 of 2014 will stand disposed of in terms of this Judgment.

85 For the reasons recorded above, we dispose of the PIL by passing the following order :-

ORDER

(A) The following directions issued in the interim order dated 6th October 2005 shall continue to operate as final directions in following terms;

(I) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra;

(II) Dumping of rubble/garbage/solid waste on the mangrove areas shall be stopped forthwith;

(III) Regardless of ownership of the land having mangroves and the area of the land, all constructions taking place within 50 metres on all sides of all mangroves areas shall be forthwith stopped. The area of 50 meters shall be kept free of construction except construction of a compound wall/fencing for its protection.;

(IV) No development permission whatsoever shall be issued by any authority in the State of Maharashtra in respect of any area under mangroves. All authorities including the Planning Authorities shall note that all mangroves lands irrespective of its area will fall in CRZ-I as per both the CRZ notifications of 1991 and 2011. In case of all mangrove areas of 1000 sq. meter or more, a buffer zone of 50 meters along the mangroves will also be a part of CRZ-I area. Though buffer zone of 50 meters in case of mangroves area of less than 1000 meters will not be a part of CRZ-I, it will be subject to above restrictions specified in clause III above;

(V) The State of Maharashtra is directed to file in this Court and furnish to the petitioner copies of the maps referred to in paragraph 10 of the affidavit dated 16th August, 2005, filed by Mr.Gajanand Varade, Director, Environment Department, State of Maharashtra (Page 346 on the record), within four weeks from today. The soft or hard copies of the maps be supplied to the Petitioner within the same period;

(B) The following direction issued in terms of clause 8(viii) of the order dated 6th October 1005 has been substantially complied with :

"The areas shown as mangrove area in the satellite study report "Mapping of mangroves in the Maharashtra State using Satellite Remote Sensing" dated August, 2005, prepared by the Maharashtra

Remote Sensing Application Centre (MRSAC) for the MCZMA which was submitted to this Court on 29th August, 2005, form part of Phase I of the mapping by MRSAC. The MRSAC will, in Phase-II, carry out mangroves study using high resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas in Mumbai and Navi Mumbai. After receiving the said satellite data, transfer of mangrove details on city survey/village maps (cadastral map) will be carried out within a period of 6 months from today";

(C) The directions in sub-clauses(ix) to (xiii) of clause 8 of the order dated 6th October 2005 shall continue to operate as final directions in respect of mangrove areas only on the government lands and the lands held by Planning Authorities like CIDCO, MMRDA etc. In respect of the lands admeasuring 2823.8493 Hectares as stated in the affidavit dated 14th February 2018 of Shri Milind Panditrao, the direction regarding transfer of the lands to the Forest Department and consequential directions regarding making revenue entries shall be complied with within a period of three months from the date on which this Judgment and Order is uploaded. The State Government shall identify the mangroves lands which were vested in it by virtue of section 3(1) of the Private Forest Act and shall take appropriate steps in respect of such lands for transferring such lands to Forest Department within a period of 18 months from today. It will be also open for the State Government to take recourse to section 21 of the Private Forest Act in appropriate cases;

(D) We direct the State Government to constitute a Committee headed by the Divisional Commissioner, as agreed by the State Government. The Committee and sub-committees shall be formed in accordance with the observations made in paragraph 68 above. The committee shall be responsible for the preservation and conservation of mangroves, for restoration of reclaimed mangroves areas set out in paragraph 73 above and for implementation of the directions in this Judgment. The Committee shall be constituted within a period of one month from today. The sub-committees as observed in paragraph 68 shall be constituted within two months from today. The Committee shall hold regular meetings and the minutes of the meeting shall be made available on public domain as observed in paragraph 68 above. As directed under the order dated 6th October 2005, the Principal Secretaries of (1) Environment, (2) Revenue and (3) Forest Department of the Government of Maharashtra shall be overall in-charge for ensuring total compliance with the directions issued under this Judgment and Order. They will monitor the working of the Committee headed by the Divisional Commissioner;

(E) The State Government shall create a Grievance Redress Mechanism for enabling the members of the public to lodge complaints about the activity of destruction /removal of the mangroves. An opportunity must be made available to file complaints about any acts or omission which may ultimately result in destruction or causing damage to the mangroves area. The State

Government shall make arrangements for receiving complaints on dedicated website, on toll free numbers and in physical form to the officers or offices nominated by the State Government in all districts and especially in the areas where there are mangroves. A facility shall be made available for uploading the photographs of the affected area by e-mail and by whats app or similar media by use of cell phone. The State Government must also create a machinery to ensure that the said complaints are immediately transferred to the Committee headed by the Divisional Commissioner. The Committees will ensure that immediate action is taken of stopping the illegal destruction or acts amounting to causing damage to the mangrove areas, if necessary with the police help. Necessary register shall be maintained of the complaints received and action taken thereon. The State Government must lay down the procedure by which complainant is kept posted about the action taken on his or her complaint. On the request made by the complainant, the identity of the complainant shall be masked and the names of the complainant shall not be disclosed to the violators;

(F) The Grievance Redress Mechanism shall be set up within a period of three months from today. Adequate publicity shall be given to the availability of the Grievance Redress Mechanism in leading newspapers as well as local newspapers. Information about availability of the Grievance Redress Mechanism shall be prominently displayed in the offices of District Collectors, Sub-

Divisional Officers, Tahasildar in the Coastal Districts as well as in the offices of the Maharashtra Pollution Control Board and the Maharashtra Maritime Board in the coastal districts. The information shall be displayed prominently in the offices of the Municipal Corporations/Municipal Councils provided any coastal area forms part of the limits of such Municipal Corporation or such Municipal Council. Publicity shall be given at regular intervals of at least six months to the details of the grievance redress mechanism in leading newspapers having good circulation in the coastal areas;

(G) We direct that it is the obligation of the State to replant destructed mangroves and to restore mangroves areas which are illegally reclaimed. The said areas shall be restored to its original condition. In what manner restoration shall be done must be decided by the Committee headed by the Divisional Commissioner after consulting experts in the field. The Committee shall identify the vulnerable mangroves areas in the State and direct its constant surveillance by the Police/Forest Guards/Security Guards of the Maharashtra Security Corporation. The Committee shall ensure that barricades are erected for preventing the entry of vehicles in such vulnerable area. The Committee shall also consider of installing CCTVs along the vulnerable stretches to keep a vigil. The Committee shall also cause to undertake satellite mapping of mangroves area in the state at periodical intervals of not more than six months by using resolution as suggested in paragraph no.28 of the note

submitted by the learned senior counsel appearing for the petitioner. Any changes seen shall be considered by the Committee and remedial measures shall be taken. The State Government shall sanction necessary amount for that purpose;

(H) The State Government shall ensure that criminal law is set in motion against all those who commit offences punishable under section 15 of the said Act of 1986 as observed in the Judgment. The Committee shall monitor implementation of this direction;

(I) The State Government shall issue a direction under section 154 of the MRTP Act to all concerned Planning Authorities and Regional Boards under the MRTP Act to to show mangroves areas and 50 meter buffer zone around it while making or revising Development Plans/Regional Plans. Such a direction shall be issued within a period of three months from today;

(J) Quarterly Compliance reports shall be filed by the Committee reporting compliance with the aforesaid directions. The first of such reports shall be filed on or before 1st December 2018;

(K) Rule issued in PIL No.87 of 2006 is disposed of on above terms;

(L) For reporting compliance, PIL shall be listed on 1st December 2018. It will be appropriate if PIL is placed for

monitoring the compliance before this Bench or a Bench of which one of us is a party. The Prothonotary and Senior Master shall seek appropriate directions in this behalf from Hon'ble the Chief Justice;

(M) Writ Petition No. 2208 of 2004 stands disposed of. No separate directions are required to be issued in this Petition. Writ Petition No. 2741 of 2004 stands disposed of by a separate order passed today;

(RIYAZ I. CHAGLA, J) **(A.S. OKA, J)**