

SUPREME COURT OF INDIA

Tata Housing Development Company Ltd.

Vs.

Aalok Jagga

C.A.No.8398-8399 of 2019

(Arun Mishra,J., M.R.Shah and B.R.Gavai,JJ.,)

05.11.2019

JUDGMENT

Arun Mishra,J.,

SLP(C)No.21375-21376 of 2017

1. The appellant has questioned the judgment and order dated 12.04.2017 passed by the High Court of Delhi, concerning the housing project, on the ground that the area in question falls within the catchment area of Sukhna Lake and is 123 meters away from the boundary of Sukhna Wildlife Sanctuary. The Survey Map of India dated 21.09.2004, demarcating the area of Sukhna Lake, is binding on the State of Punjab. The permission dated 05.07.2013, granted by the Nagar Panchayat, Naya Gaon to Tata Housing Development Company Ltd. (Tata HDCL), is invalid. The environment clearance dated 17.09.2013, granted by State Level Impact Assessment Authority (SEIAA) for development of the project is not in conformity with the Notification dated 14.09.2006 of Ministry of Environment and Forest (MoEF), has also been set aside. It has also been ordered that if the permission is granted by the State of Punjab in favour of the appellant if it so desires, it may apply to Central Government for environmental clearance treating project category 'A.'

2. The Tata HDCL proposed to develop a project, namely, "CAMELOT" in the revenue estate of village-Kansal, Tehsil-Kharar, District-Mohali, State of Punjab. The total project area is 52.66 acres, out of which 41.54 acres is to be developed for group housing built-up area of 4,63,144.54 sqm. The parking facility is to be provided for 3645 ESS. The estimated population of the project area was about 9788. The proposed maximum height of the building was to be 92.65 meters. Environmental clearance was required in terms of the Notification dated 14.09.2006 issued by MoEF, which mandates prior to environmental clearance from the Central Government or by the SEIAA. The Notification has a statutory force having been issued under Section 3(1) and 3(2)(v) of the Environmental (Protection) Act, 1986 ("E.P. Act") read with Rule 5(3)(d) of the Environment (Protection) Rules, 1996 ("E.P. Rules"). Tata HDCL applied for environmental clearance from SEIAA, Punjab. The

application was forwarded to the State Expert Appraisal Committee (SEAC). In the meeting dated 06.06.2009, the committee awarded “gold grading” to the proposed project and recommended to forward the project to SEIAA for grant of environmental clearance subject to the conditions specified therein. The MoEF recommended for environmental clearance in its meeting held on 09-10.11.2010. However, MoEF had called a report from Northern Regional Office, Chandigarh vide letter dated 14.10.2010 regarding the proposed project. A team of officers inspected the project site, and, in the report, the distance of the housing-cum-retail project “CAMELOT” from Sukhna Wildlife Sanctuary is found to be 123 meters on Northern side and 183 meters on the Eastern side. Besides, the report stated that the project falls in the catchment area of Sukhna Lake as per the Survey of India Map.

3. On 12.01.2011, Tata HDCL addressed a letter to MoEF stating that the project site does not contribute to the catchment area of Sukhna Lake as physically the project area does not obstruct the natural flow of water towards Sukhna Lake.

4. In the meanwhile, C.W.P. No.20425/2010 titled “Aalok Jagga vs. Union of India and others” was filed in the High Court of Punjab and Haryana at Chandigarh, challenging the project to be in violation of the provisions of Punjab New Capital (Periphery) Control Act, 1952 as well as the E.P. Act claiming that the project lies in the eco-sensitive and protected area, apart from falling within the catchment area of Sukhna Lake.

5. The SEIAA sought clarification from MoEF as to whether it is competent to consider the application since the Sukhna Wildlife Sanctuary is located at a distance of 123 meters from the project site as per the report of Northern Regional Office of MoEF. The High Court vide order dated 26.03.2012 directed the Tata HDCL to comply with the requirements of the E.P. Act and Wildlife (Protection) Act for obtaining grant of necessary clearances/sanctions/permissions from the competent authorities.

6. Sarin Memorial Legal Foundation filed Writ Petition (Civil) No.994/2013 in this Court on 09.11.2013, under Article 32 of the Constitution of India challenging the decision of SEIAA, Punjab dated 06.09.2013.

7. Order dated 21.08.2013 was passed by the High Court of Punjab and Haryana in which it was ordered that the project of Tata HDCL would not be affected by the orders passed on 14.03.2011 and 14.05.2012 in CWP No.18253/2009. Sarin Memorial Legal Foundation also questioned the said order in this Court. This Court vide order dated 22.04.2014 disposed of W.P.(C) No.994/13 and Civil Appeal No.4848/2014 filed by Sarin Legal Memorial Foundation. The order passed by the High Court of Punjab and Haryana on 26.03.2012 was set aside. The writ petition was restored; the matters were transferred for the decision to the High Court of Delhi.

8. Municipal Area of Naya Gaon was notified on 18.10.2006 as the 'Local Planning Area' of Naya Gaon. 'Existing Land Use Plan' and 'Draft Master Plan' for Nagar Panchayat Naya Gaon were prepared. Nagar Panchayat Naya Gaon granted permission to raise the construction to Tata HDCL on 09.04.2012. The Tata HDCL claimed, because of the

permission granted, under Section 6(2) of the Periphery Control Act, 1952, and the environmental clearance granted under the EP Act, that they were entitled to proceed with the construction of the project in question. However, the petitioners, as well as the Chandigarh Administration, disputed the stand taken by the State of Punjab.

9. Union Territory of Chandigarh has taken the stand that the area falls within the catchment area of Sukhna Lake as such no construction can be raised as per the Survey of India Map. It was adjacent to the wildlife sanctuary, and the distance was 123 meters. There was a violation of the Periphery Control Act, and also clearance was not granted in terms of Notification dated 14.09.2006 of MoEF.

10. It is pointed out that under the order passed by this Court to specify the area as the eco-sensitive zone around wildlife sanctuary, the State of Punjab had forwarded a proposal to the MoEF for permitting the construction beyond 100 meters that has not been accepted by MoEF. It is also submitted that towards the other side of the Sukhna Wildlife Sanctuary Lake area of 2 km. to 2.75 km. has been declared as an eco-sensitive zone. The MoEF had asked the State of Punjab to send a proposal for keeping the eco-sensitive zone within 1 km. to which the State of Punjab has not responded for the reasons best known to it.

11. It is also the case set up that initially, the housing project was proposed for the 'Punjab MLA Society' for construction of residential houses of MLAs of Punjab Legislature. Subsequently, the said land was sold to M/s. Hash Builders Private Limited with an understanding that each member of Punjab MLA Society would be allotted one flat. The impugned environment clearance dated 17.09.2013 has also suffered from legal malafides, and it amounts to colourable exercise of power since about 95 MLAs of the State of Punjab are the beneficiaries of the proposed project.

12. In W.P.(C) No.2999/2014, it was submitted that the proposed project for extraneous considerations is illegal. The proposed project is located about 1500 meters from Sukhna Lake and 123 meters from the Wildlife Sanctuary. The project is zero kilometers from the periphery of Chandigarh. The project would destroy the wildlife sanctuary and would cause a serious threat to Sukhna Lake. The High Court had banned all construction activities in the catchment area of Sukhna Lake in C.W.P. No.7649/2003. The project would adversely affect the environment within Chandigarh and increase noise pollution by several manifolds, which would harm the wildlife present in the adjoining Sukhna Wildlife Sanctuary. Impact of a high-rise building having 28-storeys on the edict and norms of the city of Chandigarh has not been properly considered.

13. The State of Punjab has supported the case set up by Tata HDCL, the edict of Chandigarh is not applicable in the area in question. Survey of India Map regarding the catchment area of Sukhna Lake, is not conclusive since the objections are yet to be heard. SEIAA rightly considered the application since the nearest distance of Sukhna Wildlife Sanctuary from the project boundary on the northern side is 123 meters., as per the Office Memorandum dated 02.12.2009 of MoEF. Tata HDCL has to obtain clearance from the Standing Committee of the National Board for Wildlife before starting any work on the

site.

14. In the counter affidavit filed by the Union Territory of Chandigarh, it is submitted that the area in question falls in the catchment area of Sukhna Lake and the heritage zone of the Capitol Complex, the project would have a direct impact on the existence of Sukhna Lake and the environs of Chandigarh City. The Northern side of the Chandigarh, which is also the catchment area of Sukhna Lake, is an ecologically fragile area and substantial part thereof comprises of forest area that has been declared a Wildlife Sanctuary. The Chandigarh Administration is fully committed to saving the heritage of Chandigarh, its forest area, wildlife sanctuaries, and preserve Sukhna Lake. The Conservator of Forests of Chandigarh has written a letter to the Chief Architect, UT of Chandigarh, for the inclusion of the area proposed as Wildlife Corridor along with the approval accorded by the Planning Commission of India in the Master Plan of Chandigarh. It is also submitted that the project is located within the eco-sensitive zone and 10 km. from Sukhna Wildlife Sanctuary, thus the prior clearance from the Standing Committee of National Board of Wildlife before seeking environmental clearance was required to be obtained. The High Court has passed the orders for protection of Sukhna Lake and its catchment area that no housing, commercial, or industrial project can be allowed on the North of the Capitol Complex of Chandigarh. Thus, it is submitted that no construction may be permitted to the North of the Chandigarh. The environmental clearance has been illegally granted. There was no jurisdiction to SEIAA, Punjab to grant environmental clearance as the project in question is category 'A.' The High Court vide order dated 14.05.2012 has also noted that the Chandigarh Administration had adopted the Survey of India Map as a map of the catchment area of Sukhna Lake. The order was passed to give wide publicity to the general public that no construction is permitted in that area. In paragraph 60 of the impugned judgment, in respect of Survey of India Map, following finding has been recorded:

“60. xxx xxx xxx

(i) The Survey of India map dated 21.09.2004 is the only document available on record identifying and demarcating the catchment area of Sukhna Lake. Admittedly the said map was prepared under the directions of the High Court of Punjab and Haryana in CWP No.7649/2003 (Dr. B. Singh vs. Union of India). It is also not in dispute that the demarcation of boundaries of catchment area was made after carrying out a survey by Technical Experts and in due consultation with the State of Punjab, State of Haryana and U.T. Chandigarh.”

15. The High Court has also referred to the joint inspection report made on 10.01.2011 by a team of the officer from different, department along with Tata HDCL. The observations of the inspecting team are extracted hereinunder:

“1. The nearest distance from the boundary of the project site was measured by the staff members of Forest Department of U.T. Administration Chandigarh using measuring tape at two points:

1. The nearest distance of Sukhna Wildlife Sanctuary from the project boundary on

northern side is 123 meters.

ii. The distance of Sukhna Wildlife Sanctuary from the boundary of project area on Eastern side is 185 meters. It is clarified that a part of the catchment area of Sukhna Lake has been declared as Sukhna Wildlife Sanctuary under Section 26-A of the Wildlife (Protection) Act, 1972 by Chandigarh Administration vide Notification No.694-HII(4)98/4519 dated 6th March 1998 (copy enclosed). The Tata Housing Project falls in the jurisdiction of Nagar Panchayat, Naya Gaon, District Mohali, State of Punjab, which is approximately 1500 metres away from Sukhna Lake (aerial distance). Further, it also falls under the catchment area of Sukhna Lake as per the Survey of India map.

2. It has been observed by the team that no construction activities have been started by the Project authorities at site. Only wire fencing has been done to demarcate the boundary of the acquired land area. In addition to it, solar light posts have been raised at different spots of the boundary, and a site office comprising three rooms has been constructed. It is stated by the Project Proponent that these offices were constructed by the Defence Services Cooperative Housing Building Society Ltd., and the Tata Housing Development Company has only renovated them for using as a site office. The photographs of different locations of the sites are attached to show that there is no construction activity at the site so far. It is also mentioned here that there are existing houses and other constructed buildings in Kansal area, which are a part of Kansal village in Punjab and other spontaneous construction. During the inspection, it has been informed that any notification declaring eco-sensitive zones has not been issued by U.T. Chandigarh Administration and State Government of Punjab till date. The report is submitted to the Ministry of Environment and Forests for kind information and further necessary action."

The High Court has ultimately given the finding that the project site is found to be a part of the area of Sukhna Lake. The permission granted by Nagar Panchayat on 05.07.2013 to Tata HDCL has been set aside. Verification was sought from the MoEF as Sukhna Wildlife Sanctuary was located at a distance of 123 meters away from the proposed project. SEAC, Punjab, considered the matter on 18.04.2013. Pursuant to that, Tata HDCL filed a revised application on 08.05.2013 in Form I and Form IA. In Form I, the project was described as "Group Housing (CAMELOT) Project" and it falls under Item 8(b) of the Schedule. The plot area was shown as 52.66 acres, and the net plot area (after the surrender of area for services) was shown as 46.10 acres. The built-up area was shown as 4,63,144.54 sq.m. Concerning the information as to whether the proposal involves approval/clearance under the Wildlife Protection Act, 1972, in the form it was stated:

"Clearance required from Standing Committee of National Wildlife Board, New Delhi being project within 10 km. from the boundaries of Sukhna Wildlife Sanctuary, as on date Eco-Sensitive Zone has not been declared around Sukhna Wildlife Sanctuary."

16. With respect to wildlife sanctuary, the High Court has made the following

observations:

“183. It is relevant to note that the consideration by EAC of MoEF, Government of India, was on the basis of the Tata HDCL's first application dated 25.03.2009. In the light of the stand taken by SEIAA Punjab in its counter affidavit, it is clear that no EIA Report was prepared after the submission of the revised application dated 08.05.2013 by Tata HDCL. In the revised application dated 08.05.2013, it was for the first time admitted by Tata HDCL that its proposed project is situated within the prohibited distance of 10 km. from Sukhna Wildlife Sanctuary. It was also admitted that the ariel distance from the proposed project and Sukhna Lake is 123 meters (N) and 185 meters (E).”

184. xxx xxx xxx

185. Significantly, this is a case where the project in question is situated within 123 meters from Sukhna Wildlife Sanctuary as recorded in the Site Inspection Report dated 10.01.2011 on the basis of the inspection of the project site conducted by a team of officers in the presence of the representatives of Tata HDCL in compliance with the direction of MoEF vide letter dated 14.10.2010. Though Tata HDCL addressed a letter dated 12.01.2011 to MoEF explaining that the project area does not obstruct the natural flow of water towards Sukhna Lake, the factum of location of Sukhna Wildlife Sanctuary within 123 meters on Northern side and 183 meters on the Eastern side of the project was not disputed. In the light of the said admitted fact, SEIAA, Punjab in its meeting dated 15.12.2011 decided to get a clarification from MoEF as to whether SEIAA, Punjab is competent to consider the application and accordingly addressed a letter to MoEF.”

17. Concerning the declaration of the Buffer Zone around Wildlife Sanctuary, the following facts have been noted by the High Court:

“193. Regarding the representation of UT Chandigarh dated 09.05.2013 under Section 3 of the Environment (Protection) Act, requesting to declare a Buffer Zone up to 2 - 2.75 km. around all sanctuaries, including Sukhna Wildlife Sanctuary, it is submitted by the learned Senior Counsel that the State of Punjab by its proposal dated 18.09.2013 thought it fit to confine the Buffer Zone to 100 meters only. It is also pointed out by the learned Senior Counsel that so far no notification has been issued by the Central Government under Section 3 of the Environment Protection Act. Thus, it is sought to contend that there is no area earmarked as eco sensitive zone around the Sukhna Wildlife Sanctuary nor a Buffer Zone has been declared as of today.

194. xxx xxx xxx

195. It is also pointed out by Sh. Gopal Subramaniam that in fact State of Punjab, had sent a proposal dated 18.09.2013 requesting the Union of India/MoEF to

confine the buffer zone to 100 mtrs. only in the context of Section 3 of Environment (Protection) Act, 1986.”

18. The High Court has noted that after reserving the matter, a short affidavit dated 09.03.2017 has been filed on behalf of the Union Territory, Chandigarh, stating that Ministry of Environment Forests and Climate Change, in exercise of the powers conferred by Section 3(2) and 3(3) of the E.P. Act read with Rule 5(3) of the E.P. Rules has notified an area of 1050 hectares, to an extent varying from 2 km. to 2.75 km. from the boundary of Sukhna Wildlife Sanctuary in the Union Territory of Chandigarh, for that Notification dated 18.01.2017 has been issued. The High Court has also relied on the conditions of Notification, which is extracted herein under:

“197 However, after reserving the judgment in the petitions, a short affidavit dated 09.03.2017 came to be filed on behalf of U.T. Chandigarh in W.P.(C) No.2924/2014 stating that the Central Government, Ministry of Environment, Forests and Climate Change, in exercise of the powers conferred by Section 3(2) and (3) of the Environment (Protection) Act, 1986 read with Rule 5(3) of the Environment (Protection) Rules, 1986 notified an area of 1050 hectares, to an extent varying from 2.0 kilometers to 2.75 kilometers from the boundary of Sukhna Wildlife Sanctuary in the Union Territory of Chandigarh on the side of Chandigarh as the Sukhna Wildlife Sanctuary, Eco-Sensitive Zone vide Notification dated 18.01.2017. A copy of the said Notification has also been produced, and Para 4 thereof contains the list of activities prohibited or to be regulated within Eco-sensitive Zone. "Construction Activities" have been included in the said list under Part B-"Regulated Activities." Rule 4 to the extent, it is relevant for the present case may be extracted hereunder:

"4. list of activities prohibited or to be regulated within Eco-Sensitive Zone. - All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment (Protection) Act, 1986 (29 of 1986) and the rules made thereunder and shall be regulated in the manner specified in the Table below, namely:-

TABLE

A. Prohibited Activities

B. Regulated Activities

12. Construction activities:

No new commercial construction of any kind shall be permitted within 0.5 kilometre (Zone-I) from the boundary of protected area or up to the boundary of the Eco-sensitive Zone whichever is nearer: Provided that, local people shall be permitted to undertake construction in their land for their residential use, including the activities listed in sub-paragraph (1) of paragraph 3.

(a) Construction of all types of new buildings and houses up to a distance of 0.5 kilometer i.e., in the zone-I shall be prohibited; from 0.5 kilometre to 1.25 kilometre

from the boundary of Sukhna Wildlife Sanctuary, construction of low density (ground coverage less than half of the plot size) and low rise building (height up to 15 feet) can be allowed if permissible under the prescribed land use plan of the area; any construction will have to adhere to the Development Regulation applicable to the area and shall be regulated as per the Eco-sensitive Zone management plan; beyond 1.25 kilometre construction of new buildings and houses shall be regulated as per existing Chandigarh Administration Building Bylaws and Architectural Control/Zoning regulation of Union territory Administration. Construction of basement in Zone-I of Eco-sensitive Zone shall not be allowed, however, reconstruction/repair of building in Zone-I shall be allowed subject to the restriction as above i.e. construction of low density (ground coverage less than half of the plot size) and low rise building (height upto 15 feet).

(b) The construction activity related to small scale industries not causing pollution shall be regulated and kept at the minimum, with the prior permission from the competent authority as per the applicable rules and regulations, if any.

(c) The further construction and augmentation of civic amenities shall be regulated as per the Zonal Master Plan. 198. As could be seen from Para 4 of the above Notification, the construction activities in the Eco-sensitive Zone apart from being governed by the provisions of the Environment (Protection) Act, 1986 and the Rules made thereunder shall be regulated in the manner specified therein. Admittedly, the project in question is located at a distance of 123 meters from Sukhna Wildlife Sanctuary. Therefore, the construction of the proposed project not only requires the environmental clearance as provided under the Notification dated 14.09.2006, but it is also subject to the regulations provided under Para 4 of the Notification dated 18.01.2017 issued by the Ministry of Environment, Forests and Climate Change.”

(emphasis supplied)

19. The Notification makes it clear that no new commercial construction of any kind shall be permitted within 0.5 km. from the boundary of protected area or up to the boundary of the eco-sensitive zone. Construction of all types of new buildings and houses up to a distance of 0.5 km. in the zone-I shall be prohibited from 0.5 km. to 1.2 km, construction of low density (ground coverage less than half of the plot size) and low rise building about 15 feet can be permitted.

20. Given the findings above, recorded by the High Court as to the distance from the Wildlife Sanctuary, we have heard learned counsel for the parties on the issue at length. Whether housing activities are permissible within a short distance of 123 meters from Sukhna Wildlife Sanctuary, such a project can be permitted to come up.

21. It is not in dispute that proposal, which was sent by the Government of Punjab to the MoEF, to keep the Buffer Zone within 100 meters from Sukhna Wildlife Sanctuary, had not been accepted and the direction was issued to resubmit the proposal for at least 1 km

Buffer Zone has not been forwarded by State of Punjab.

22. In *Goa Foundation vs. Union of India*¹, order for the purpose of protection of wildlife sanctuary and eco-sensitive zone has been passed to following effect:

“1. The order dated 16-10-2006 refers to a Letter dated 27-5-2005, which was addressed by the Ministry of Environment and Forests (MoEF) to the Chief Wildlife Wardens of all States/Union Territories requiring them to initiate measures for identification of suitable areas and submit detailed proposals at the earliest. The order passed on that date was that MoEF shall file an affidavit stating whether the proposals received pursuant to the letter of 27-5-2005 have been referred to the Standing Committee of the National Board for Wildlife under the Wildlife (Protection) Act, 1972 or not. It was further directed that such of the States/Union Territories who have not responded to the letter dated 27-5-2005 shall do the needful within four weeks of the communication of the directions of this Court by the Ministry to them.

2. It seems that despite the letter dated 27-5-2005 and despite the Ministry having issued reminders and also bringing to the notice of the States/Union Territories the orders of this Court dated 16-10-2006, the States/Union Territories have not responded. However, we are told that the State of Goa alone has sent the proposal, but that too does not appear to be in full conformity with what was sought for in the letter dated 27-5-2005.

3. The order earlier passed on 30-1-2006 refers to the decision which was taken on 21-1-2002 to notify the areas within 10 km of the boundaries of national parks and sanctuaries as eco-sensitive areas. The letter dated 27-5-2005 is a departure from the decision of 21-1-2002. For the present, in this case, we are not considering the correctness of this departure. That is being examined in another case separately. Be that as it may, it is evident that the States/Union Territories have not given the importance that is required to be given to most of the laws to protect environment made after Rio Declaration, 1992.

4. The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21-1-2002, namely, Notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.

5. The MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5-B and 5-C(2) of the Wildlife (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km zone.

6. List the matter after eight weeks.”

(emphasis supplied)

23. It was incumbent upon the State of Punjab to send a proposal to the MoEF, as required but it appears that it has not chosen to do so for a reason precious project concerning the MLAs is involved, and MoEF has not accepted its proposal for keeping Buffer Zone to 100 meters. It has also been pointed out from the respondent side that Naya Gaon forms part of the Greater Mohali Region in the State of Punjab. In the statutory, Greater Mohali Area Development Authority, Regional Plan for Greater Mohali Region in paragraph 14.3.1, it has been mentioned that no development is possible within 5 kms buffer distance from existing forest i.e., Sukhna Wildlife Sanctuary. Thus, apart from Shivalik there are several pockets of forests distributed all over the Greater Mohali Region. These have to be conserved, and the buffer zone recommended should be protected against urban development.

24. It is also clear that 2-2.75 km area has been ordered as eco-sensitive zone by the MoEF and the notification dated 18.1.2017 has been issued as to the adjacent area towards Chandigarh side of the Sukhna Wildlife Sanctuary.

25. The most potent threat faced by the earth and human civilization as a whole which is confronted with, today, is environmental degradation and wildlife degeneration. The need to protect flora and fauna which constitutes a major portion of our ecosystem is immediate. Development and urbanization coming at the cost of adversely affecting our natural surroundings will in turn impact and be the cause of human devastation as was seen in the 2013 floods in Uttarakhand and in 2018 in Kerala. The climate change is impacting wildlife by disrupting the timing of natural events. With warmer temperatures, flowering plants are blooming earlier in the year and migratory birds are returning from their wintering grounds earlier in the spring. Wildlife conservation in India has a long history, dating back to the colonial period when it was rather very restrictive to only targeted species and that too in a defined geographical area. Then, the formation of the Wildlife Board at the national level and enactment of Wildlife Act in 1972 laid the foundation of present day “wildlife conservation” era in post-independent India. Project Tiger in the 1970s and the Project Elephant in 1992-both with flagship species-attracted global attention. India then also became a member of all major international conservation treaties related to habitat, species and environment like Ramsar Convention, 1971; Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973; Convention on Migratory Species, 1979; Convention on Biological Diversity, 1992, among others.

26. The human as well as the wildlife are completely dependent upon environment for their

survival. Human is completely dependent on the environment. Like the human, the wild life is also dependent on the environment for its survival and also get effected by the environment. The relationship between the human and animal can be understood by the food-chain and food-web. The wildlife is affected by several reasons such as population, deforestation, urbanization, high number of industries, chemical effluents, unplanned land-use policies, and reckless use of natural resources etc.

27. The Directive Principles of State Policy provide that protection and improvement of environment, safeguarding forest and wildlife have been duly enjoined upon the Government. Those principles have found statutory expression in various enactments i.e., Wildlife (Protection) Act, E.P. Act etc., which have been enforced by this Court in various decisions. The inaction of State to constitutional and statutory duties cannot be permitted. The Court has to issue appropriate directions to fulfil the mandate. Article 51(A) provides fundamental duty to protect and preserve environment, wild life etc.

28. Articles 48(A) and 51(A)(g) of the Constitution of India reads as under:

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

51A. Fundamental duties.- It shall be the duty of every citizen of India- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;”

29. In *Animal and Environment Legal Defence Fund v. Union of India*², the Court in order to protect wildlife, forest, tiger reserve, fragile ecology, dealt with public trust doctrine thus:

“11. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the present case it would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation. Totladoh dam where fishing is permitted is in the heart of the National Park area. There are other parts of the reservoir which extend to the borders of the National Park. We are not in a position to say whether these outlying parts of the reservoir are accessible or whether they are suitable for fishing, in the absence of any material being placed before us by the State of Madhya Pradesh or by the petitioner. Some attempts, however, seem to have been made by the State of Madhya Pradesh to contain the damage by imposing conditions on these fishing permits. The permissions which have been given are subject to the following conditions:

- (1) The identified families will be given photo identity cards on the basis of which only fishing and transport will be permitted;
- (2) During the rainy season (months: July to October) fishing will be totally banned;
- (3) During the rest of the year, entry will be permitted in the water from 12 p.m. to 4 p.m. and transport of fish will be allowed before sunset;
- (4) The photo identity card-holders will not be allowed to enter the National Park or the islands in the reservoir nor will they be allowed to make night halts;
- (5) Transport of fish will be allowed only on Totladoh-Thuepani Road from Totladoh reservoir.

15. Since all the claims in respect of the National Park area in the State of Madhya Pradesh as notified under Section 35(1) have been taken care of, it is necessary that a final notification under Section 35(4) is issued by the State Government as expeditiously as possible. In the case of *Pradeep Krishen v. Union of India*³, this Court had pointed out that the total forest cover in our country is far less than the ideal minimum of 1/3rd of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Park there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas. The State Government is, therefore, expected to act with a sense of urgency in matters enjoined by Article 48-A of the Constitution keeping in mind the duty enshrined in Article 51-A(g). We, therefore, direct that the State Government of the State of Madhya Pradesh shall expeditiously issue the final notification under Section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh.”

30. The Doctrine of Public Trust has been considered by this Court in *M.C. Mehta vs. Kamal Nath and others*⁴. This Court has made the following observations:

“24. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust." It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about “the environment” bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullious) or by every one in common (res communious). Under the English common law, however, the Sovereign could own these resources, but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the

Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article “Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention, Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

“The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — 'perpetual use was dedicated to the public,' it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”

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

33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce, and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case, 33 Cal 3d 419, clearly show the judicial concern in protecting all ecologically important lands, for example, freshwater, wetlands, or riparian forests. The observations of the Court in Mono Lake case to the effect that the protection of ecological values is among the purposes of public trust may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In *Phillips Petroleum Co. v. Mississippi*⁵, the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tidelands. Phillips Petroleum case assumes importance

because the Supreme Court expanded the public trust doctrine to identify the tidelands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.”

31. In *Vellore Citizens' Welfare Forum v. Union of India*⁶, the Court considered the concept of sustainable development thus:

“10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. “Sustainable Development” is the answer. In the international sphere, “Sustainable Development” as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called “Our Common Future”. The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as “Brundtland Report”. In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called “Caring for the Earth” which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio “Sustainable Development” has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. “Sustainable Development” as defined by the Brundtland Report means “Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. We have no hesitation in holding that “Sustainable Development” as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.

16. The constitutional and statutory provisions protect a person’s right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone’s commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876. Chapter XIII, “Of Nuisance” depicts the law on the subject in the following words:

“Also, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one’s neighbour sets up and exercises any offensive trade; as a tanner’s, a tallow-chandler’s, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, ‘sic utere tuo, ut alienum non leadas’; this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one’s immediate neighbourhood may be a nuisance. ... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another’s meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one’s neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of ‘doing to others, as we would they should do unto ourselves’.”

32. In *Intellectuals Forum, Tirupathi vs. State of A.P. and others*⁷ principle of sustainable development has been considered by this Court, which reads as under:

“84. The world has reached a level of growth in the 21st century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us to the conception of growth and development, which sustains from one generation to the next in order to secure "our common future." In pursuit of development, focus has to be on sustainability of development, and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic stress". It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally.”

33. In *M.C. Mehta v. Kamal Nath*⁸, the Court evolved polluter pays principle and observed: “8. Apart from the above statutes and the rules made thereunder,

Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51-A(g)

is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for “life”, would be hazardous to “life” within the meaning of Article 21 of the Constitution.

9. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to fundamental rights under Articles 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect “life”, in order to protect “environment” and in order to protect “air, water and soil” from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution. The judgment for removal of hazardous and obnoxious industries from the residential areas, the directions for closure of certain hazardous industries, the directions for closure of slaughterhouse and its relocation, the various directions issued for the protection of the Ridge area in Delhi, the directions for setting up effluent treatment plants to the industries located in Delhi, the directions to tanneries etc., are all judgments which seek to protect the environment.

10. In the matter of enforcement of fundamental rights under Article 21, under public law domain, the Court, in exercise of its powers under Article 32 of the Constitution, has awarded damages against those who have been responsible for disturbing the ecological balance either by running the industries or any other activity which has the effect of causing pollution in the environment. The Court while awarding damages also enforces the “POLLUTER-PAYS PRINCIPLE” which is widely accepted as a means of paying for the cost of pollution and control. To put in other words, the wrongdoer, the polluter, is under an obligation to make good the damage caused to the environment.”

34. In *M.C. Mehta (Badkhal and Surajkund Lakes matter) vs. Union of India and others*⁹, this Court had observed:

“6. Mr. Shanti Bhushan, learned Senior Advocate, appearing for some of the builders had vehemently contended that banning construction within one km radius from Badkhal and Surajkund is arbitrary. According to him, it is not based on technical reasons. He has referred to the directions issued by the Government of India under the Environment Protection Act and has contended that the construction can at the most be banned within 200 to 500 metres as was done by the Government of India in the coastal areas. He has also contended that restriction on construction only in the areas surrounding Surajkund and Badkhal lakes is hit by Article 14 of the Constitution of India as it is not being extended to other lakes in the country. We do not agree with Mr. Shanti Bhushan. The functioning of ecosystems and the

status of environment cannot be the same in the country. Preventive measures have to be taken, keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi. We have on record the Inspection Report in respect of these lakes by the National Environmental Engineering Research Institute (NEERI) dated 20- 4-1996, indicating the surroundings, geological features, land use, and soil types and archaeological significance of the areas surrounding the lakes. According to the report, Surajkund lake impounds water from rain and natural springs. Badkhal Lake is an impoundment formed due to the construction of an earthen dam. The catchment areas of these lakes are shown in a figure attached with the report. The land use and soil types, as explained in the report, show that the Badkhal Lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large- scale construction in the vicinity of these tourist resorts may disturb the rainwater drains, which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of ground water. The hydrology of the area may also be disturbed.”

35. In *Indian Council for Enviro-Legal Action vs. Union of India and others*¹⁰, this Court has made the following observations:

“41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby seeking to protect the fundamental rights of the citizens is now well settled by various decisions of this Court. The primary effort of the Court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights, but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though it is not the function of the Court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.”

36. In the aforesaid facts and circumstances of the case, considering the distance of 123

meters from the Northern side and 183 meters from the Eastern side of the project in question from wildlife sanctuary, in our opinion, no such project can be allowed to come up in the area in question. The State of Punjab was required to act on the basis of Doctrine of Public Trust. It has failed to do so. The origination of the project itself indicates that State of Punjab was not acting in furtherance of Doctrine of Public Trust as 95 MLAs were to be the recipients of the flats. It is clear why Government has not been able to protect the eco-sensitive zone around a Wildlife and has permitted setting up of high-rise buildings up to 92 meters in the area in question, which is not at all permissible.

37. Resultantly, we hold that such projects cannot be permitted to come up within such a short distance from the wildlife sanctuary. Moreso, in view of the Notification issued with respect to the Sukhna wildlife sanctuary towards the side of Chandigarh Union Territory and also considering the fact that proposal made by the Punjab Government, confining the Buffer Zone to 100 meters, has rightly not been accepted by MoEF, as the Government of Punjab as well as the MoEF, cannot be the final arbiter in the matter. The Court has to perform its duty in such a scenario when the authorities have failed to protect the wildlife sanctuary eco-sensitive zone. The entire exercise of obtaining clearance relating to the project is quashed. We regret that such a scenario has emerged in the matter and that it involved a large number of MLAs of Punjab Legislative Assembly. The entire exercise smacks of arbitrariness on the part of Government including functionaries. Thus, we dismiss the appeals with the directions mentioned above.

Judgment Referred.

¹(2011) 15 SCC 0791

⁴(1997) 1 SCC 0388

⁷(2006) 3 SCC 0549

¹⁰(1996) 5 SCC 0281

²(1997) 3 SCC 0549

⁵108 SCT 791 (1988)

⁸(2000) 6 SCC 0213

³(1996) 8 SCC 0599

⁶(1996) 5 SCC 0647

⁹(1997) 3 SCC 0715