IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.18253 of 2009

Court on its own motion

.....Petitioner

Versus

Chandigarh Administration

.....Respondent

2. COCP No.2613 of 2013

Shri Ram

.....Petitioner

Versus

Yashpal Saini & Ors.

.....Respondent

3. CWP No.5809 of 2015

Court on its own motion

.....Petitioner

Versus

State of Punbjab and Ors.

.....Respondent

4. COCP No.3088 of 2015

Karanbir Singh

.....Petitioner

Versus

Parveen Kansal @ Rocky and Ors.

.....Respondents

5. CWP No.12280 of 2017

Madhu Bala & Ors.

.....Petitioners

Versus

State of Punjab and Ors.

.....Respondents

6. CWP No.12284 of 2017

Sukhna Enclave Residents Welfare Association Kansal

.....Petitioner

Versus

State of Punjab and Ors.

.....Respondent

7. CWP No.12355 of 2017

Yashpal and Ors.

.....Petitioners

Versus

State of Punjab and Ors.

.....Respondent

Reserved on : 16.01.2020
Date of Decision: 02.03.2020

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Ms. Tanu Bedi, Advocate (Amicus curiae) &
Ms. Pushp Jain, Advocate
Mr. M. L. Sarin, Senior Advocate (Amicus Curiae) with
Mr. Nitin Sarin, Advocate, in CWP No.18253 of 2009.
Mr. Akshay Bhan, Sr. Advocate with
Mr. Amandeep Singh, Advocate for the petitioner in
CWP No.12284 of 2017.

Mr. Siddharth Gupta, Advocate for the petitioner
in CWP No.12280 of 2017.

Mr. Pankaj Jain, Sr. Standing Counsel UT Chandigarh with
Mr. Jai Veer Chandail, Addl. Government Pleader
Ms. Deepali Puri, Advocate for UT Chandigarh.

Ms. Shubhra Singh, Addl.AG, Haryana.

Mr. Vikas Mohan Gupta, Addl.AG, Punjab.

Mr. Chetan Mittal, Assistant Solicitor General of India with
Mr. Varun Issar, Central Government Standing Counsel-
respondent No.3.

Mr. Gurminder Singh, Sr. Advocate with
Mr. Gurnoor Singh Sandhu, Advocate for the respondent in
CWP No.18253 of 2009.

Mr. Sandeep Khunger, Ms. Ramneeq Kaur and
Ms. Nitika Jaura, Advocates for MC Naya Gaon,
in CWP Nos.12280, 12355 of 2017 and
COCP No.3088 of 2015 and CWP No.18253 of 2009.

Mr. Ajay Aggarwal, Advocate
for the applicant in CM No.15057-CWP of 2018
in CWP No.12284 of 2017.

Mr. Vikas Suri, Advocate, Court Commissioner.

Mr.Sube Sharma, Advocate for respondents no.6 to 13
in CWP No.18253 of 2009.

Mr. Sandeep Moudgill, Advocate for MC Panchkula
in CWP No.18253 of 2009.

Mr. Harit Sharma, Advocate for respondent No.3 in
COCP No.3088 of 2015.

Dr. B Singh in person.

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RAJIV SHARMA,J

This common order shall dispose of all the aforesaid seven petitions since identical questions of facts and law are involved in the same.

A letter was sent by one Sh. Gautam Khanna drawing the attention of this Court towards the problems faced by the Sukhna Lake in Chandigarh. The Court took cognizance of the same and the notice was issued to the Chandigarh Administration,returnable for 21.12.2009 vide order dated 28.11.2009.

Ms. Tanu Bedi, Advocate was appointed as Amicus Curiae to represent the cause espoused in this writ petition. The registry was directed to hand over one copy of the paper book to her within a peiod of seven days. Ms. Tanu Bedi, Advocate was directed to file formal writ petition incorporating all the pleas, which were sought to be raised during the course of arguments.

Learned Amicus Curiae filed formal writ petition. In the writ petition, there was averment to the letter dated 18.11.2009 written by one resident named Sh. Gautam Khanna, who had drawn the attention of this Court towards the problems of silt in the lake which has resulted in drying up of lake and reduction of its original size of about 2.5 kms in length to 1.5 kms. It was also highlighted in the letter that the Administration was spending money on frivolous construction around lake. There is further a

reference to written note (P.1) wherein the brief description of Sukhna Lake has been given and the problem of siltation, loss of water space, the quality of water and problem of weeds and the Flood gates at the regulatory end in the Catchment area is discussed.

This Court on 05.08.2010, directed the respondents to file reply within four weeks. Sh. Sanjay Kaushal, learned counsel for UT apprised this Court that the desilting work was going on and 60 tippers, 04 Pocklanes and 04 JCBs were being employed for the said purpose. Vide order dated 26.04.2010, UT Administration was directed to make efforts to treat the desilting process on a very urgent basis. The State of Punjab was directed to be arrayed as party as the catchment area of Sukhna Lake falls in the State of Punjab.

Thereafter, vide order dated 26.05.2010, the State of Haryana, Punjab and UT Chandigarh through the Secretary Forest and Environment Departments were impleaded as party. Respondents were granted six weeks' time to file their respective replies.

Learned Amicus Curiae had also placed before this Court certain news clippings, which would suggest that in the catchment area under the jurisdiction of the State of Haryana, housing colonies were proposed to be built. Sh. Anil Rathee, learned Addl. A.G, Haryana had assured the Court of the commitment of State of Haryana to maintain the environment including the necessity of protecting the catchment area.

Learned counsel appearing for UT Administration, State of Punjab and Haryana were directed to identify a expert and authorized body or organization, which was engaged in such work i.e de-siltation of Sukhna Lake and would be in position to undertake the work.

In sequel to order dated 13.1.2011, the State of Haryana filed an affidavit dated 15.02.2011 through the Deputy Conservator of Forests, Morni Pinjore Forest Division, Pinjore to the effect that approximately 1055 Ha. of catchment area of the lake falls within the territory of Haryana. Neither any construction activity is going on, nor there is any existing plan for future in the catchment area of the lake. Court not being satisfied with the affidavit of the Deputy Conservator, Forests directed the Town and Country Planning Department, Haryana to file an affidavit explaining the stand of the State.

In sequel to the direction dated 22.02.2011, Sh. T.C Gupta, Director General, Town and Country Planning, Haryana filed an affidavit dated 04.03.2011 stating therein that the Department of Town and Country Planning, Haryana administers the Periphery Control Area notified under Section 3 of the Punjab New Capital (Periphery) Control Act, 1952 for its regulated development. In order to achieve the object of regulted planned development, the Department has prepared a Development Plan for the Periphery Control Area (Haryana portion). The detailed plan in the name of Mata Mansa Devi Urban Complex has been prepared by the Department. A copy of the Plan (R.2) of catchment area has been placed on record by the State of Haryana, which was signed by the Director, Punjab & Haryana, Survey of India, Chandigarh on 14.9.2004. The map of development Plan namely Mata Mansa Devi Urban Complex was placed on record with the affidavit dated 07.08.2012 filed by the District Town Planner, Panchkula. The catchment area of Sukhna Lake was demarcated by the Surveyor General of India, in accordance with the directions dated 16.07.2004 issued by this Court in CM No.11170 to 11172 of 2003 in CWP No.7649 of 2003

titled Dr. B Singh vs. State of Haryana. The examination of the map would indicate that the part of Sector-1, Mansa Devi Complex forms part of the catchment area delineated by Survey of India. This area forming part of catchment area of Sukhna Lake was designated as Open Space Zone and no construction activity has been proposed within this zone. A perusal of the plan submitted by the Survey of India while demarcating the catchment area of Sukhna Lake shows that the natural drainage channels namely Nagthewala Nadi, Nepli Nadi and Gherari Nadi are passing through the catchment area located in the State of Haryana. It was averred that the Department of Town and Country Planning, Haryana had neither proposed any township development project within the forest area nor contemplated to approve such projects in future.

In the meantime, the Superintending Engineer, Construction Circle-II, Chandigarh Administration filed reply by way of an affidavit dated 01.02.2011 averring that the Chandigarh Administration was fully conscious and deeply concened about the situation regarding drying up of Sukhna Lake and dip in its water levels over a period of time. Sukhna Lake is a prominent feature of the City Beautiful not only from the viewpoint of its original creative planning but also from the point of view of maintaining the aesthetic and environmentally clean image of the City of Chandigarh. Sukhna Lake was built in the year 1958 across Sukhna Choe and was conceived as a place of relaxation, seclusion and sport.

The soil in the catchment area is sandy, embedded with pockets of clay, which is highly susceptible to erosion by surface run-off. The slope of the hilly catchment area is very steep ranging from 30 degree to 75 degree. The flow in the seasonal streams is turbulent and exposed hill

slopes result in massive soil erosion. All these reasons have led to heavy siltation of the Sukhna Lake from 1958 to 1988. The heavy siltation of the Lake over a period of time has in turn resulted in reduction in pondage capacity, reduction in water spread area, threat to flora and fauna, decline in number of migratory birds etc. The following statistics would bear out this grim scenario:

Description	***In the year 1958***	***In the year 2005***
Capacity of the Lake	1074.4 Hectare Metre	513.28 Hectare Metre
Water Spread area	228.64 Hectare	148.28 Hectare
Average depth	4.694 meter at embankment level	3.484 meter at embankment level

Following measures as stated in the reply were taken by the UT Chandigarh Administration:

i) Till date 192 silt retention dams and 200 check dams have been constructed. 110 dams have been silted/partially silted and 82 dams are having perennial water bodies/water holes/reservoirs behind them. These water bodies are providing/acting as good water holes for the wildlife.

ii) Construction of masonry spurs, revetments, grade stabilizers, retaining walls, crate-wire structures and small loose-stone structures to minimize soil erosion, retention of silt and train the course of the streams.

Iii) Vegetative measures of soil conservation are in the form of planting live hedge of Arundo-donex, ipomea and kana along choe banks, bhabhar grass plantation on exposed slopes and brushwood structures to control soil erosion.

iv) Massive plantation of endemic tree species like Khair, Kikar, Neem, Peepal, Papri, Karonda, Jungle Jalebi, Jamun, Gullar, Khejri, Shisham etc in the lower hills.

v) Contour trenching and direct seed sowing of the seeds of Jungle

Jalebi, Kikar, Khar, Neem etc in the higher reaches of the hills.

Hilly catchment area of Sukhna Lake under U.T Chandigarh has been notified as Sukhna Wildlife Sanctuary. Massive Plantations and seed sowing of indigenous species in the Sanctuary is responsible for the development and improvement of natural habitat for the wildlife in the Sanctuary. Consequenty, there is proliferation of wildlife in the sanctuary. Wild animals like Sambhar, Cheetal, Wild boar, Porcupine, Pangolin, Jackal, Fox, Civet etc and birds like Peacocks, Red jungle Fowl, Partridge etc are found in abundance in the sanctuary. In order to study and evaluate the various impacts of soil and moisture conservation works on the ground water, soil, geology, vegetation etc in the catchment area of Sukhna Lake, a study was commissioned by the Department of Environment, UT Chandigarh in the year 2007-2008. The study was conducted by the Society for Promotion and Conservation of Environment (SPACE). This Expert Group has submitted its report to the Forest Department, UT Chandigarh. As per the report titled "Study on Impact of Soil Conservation Measures in the Catchment of Sukhna Lake on Ground Water, Soil and Geology" the siltation rate if reduced from 150 tonnes per hectare per year to less than 5 tonnes per hectare per year. It was proposed to carry out dry mechanical desiltation at the Regulator End of the Sukhna Lake during the month of March, April and May 2010. By way of this proposed project, a total of 1,63,325.60 cum of silt was likely to be removed from the Lake. Soil conservation measures were to be intensified and expedited and Massive afforestation in the Catchment area was to be undertaken.

Sh. Vinod Kumar Bhalla, Additional Secretary, Local Government, Punjab filed a short affidavit dated 05.11.2011 on behalf of

respondent No.3 to the effect that the City of Chandigarh was planned and developed during the years 1950-1960. The area around 16 kilometers of sectoral grid of Chandigarh was defined as Periphery area. It was admitted that large number of construction had been raised in the Peripheral and adjoining areas falling within the States of Punjab, Haryana and Union Territory of Chandigarh i.e in the Towns of SAS Nagar (Mohali), Zirakpur, Panchkula, Manimajra and Naya Gaon. It was also admitted that large number of buildings were raised in the area of Kansal, Karoran and Nada situated in the Peripheral areas which now constitute Nagar Panchayat, Naya Gaon and approximately 20500 persons were residing in the town of Karoran as per 2001 census. The Government had decided to constitute Nagar Panchayat Naya Goan vide Notification dated 18.10.2006. In order to ensure the planned growth within the area of Naya Goan, the Government declared the Local Government Department as Planning Agency to prepare and notify the Master Plan for Naya Gaon, as envisaged under the Punjab Regional Town Planning and Development Act, 1995. The powers under Section 10 of the Punjab New Capital (Periphery) Controlled Area Act, 1952 and Chapter VIII to X of the Punjab Regional and Town Planningn and Development (Amendment) Act, 2006 had been delegated to the Principal Secretary to Government of Punjab, Department of Local Government to impose restrictions upon use and development of land and to prepare, approve and publish/notify the Master Plans of the area falling within the jurisdiction of Nagar Panchayat, Naya Gaon. The Local Government Department notified the Master Plan of Naya Goan vide notification No.10/12/2008-(2LG3)/4LG3/54 dated 02.01.2009. The Local Planning area of Naya Goan was divided into five zones for the purposes of

preparation of Zonal Development Plans. The State of Punjab issued Notification dated 15.03.1963 before re-organization of Punjab forming States of Haryana and UT, Chandigarh in 1966. Total 4660 acres of land of villages Khuda Ali Sher, Kansal, Dhamala and Saketri were acquired for the purpose of carrying out soil conservation measures in the Sukhna Lake catchment area out of which 2099 acres of land falls in the revenue village of Kansal. The construction had taken place on 259 Acres and 232 acres remained vacant. The area of the revenue village of Kansal which falls within the Nagar Panchayat limits was never included in the catchment area as per Notification dated 15.03.1963. It is further averred that the areas of Naya Gaon and Karoran need development.

The Superintending Engineer, Construction Circle-II, Union Territory, Chandigarh filed an affidavit dated 09.11.2011 wherein it is averred that a Meeting was held on 04.10.2011. The agenda in respect of conservation and beautification projects of Sukhna Lake and its surrounding area was to be taken. In the meeting held on 04.10.2011, as per agenda No.1 & 2, all the members unanimously agreed that Engineering Department should provide complete detailed history of the Sukhna Lake and its past and present Management practices. It was decided that the complete water dynamics of the lake should be studied so as to have clear picture about the lake. It was decided that Engineering Department may explore the possibility of carrying out physio-chemical analysis of the water of the lake at regular intervals. It was also decided that the Engineering Department which was carrying out de-weeding should provide details of de-weeding operation including the procedure adopted for physical removal. The Committee Members were informed in the meeting that there is a

sewerage nallah from Punjab in the backside of Rock Garden from where sewerage water is reaching Sukhna Lake Reserved Forest disturbing the ecology of the Lake Forest. The following role of various stakeholders was identified:

i) Engineering Department
ii) Forest Department
iii) CITCO
iv) Municipal Corporation
v) Fisheries Department
vi) Police department

There is reference to Minutes of Meeting held under the Chairmanship of Secretary, Local Government, UT Chandigarh in the Conference Hall on 10.02.2012. Meeting was held to decide the issue with regard to demarcation of catchment area of Sukhna Lake. Superintending Surveyor, Representative of Addl. Surveyor General North Zone, Survey of India gave a brief background regarding the demarcation of catchment area of Sukhna Lake. According to him, Aerial survey was carried out in 1995 and proper contouring was drawn and depicted on the survey plan, which was further verified on the ground. The map so prepared was also authenticated by the officials of both the State of Punjab and Haryana. According to him, Sh. Santosh Kumar, Conservator of Forests, UT, Chandigarh stated that the catchment area was prepared by joining contour of any natural feature on the ground and Survey of India was the competent technical agency to do so. He further stated that Survey of India had already prepared the map of catchment area of Sukhna Lake in the year 2004 and it was not likely to change within such small period of time. Sh. Pankaj Mishra also clarified that catchment area cannot be altered with passage of time until and unless a natural upheaval like an earthquake etc

takes place. Otherwise, catchment area remains intact. As such there will be no change in the catchment area as well as the demarcation of catchment boundary.

According to learned counsel appearing on behalf of the State of Punjab, the survey was required to be done again and the changes which had taken place during intervening period from 1963 till date may be depicted on the survey map. Sh. M.L. Sarin, Senior Advocate brought to the notice of the Committee that the Notification of 1963 being referred to by the Addl. A.G Punjab was not pertaining to the whole catchment area but only to that hilly part of the catchment area where the State of Punjab decided to acquire land for carrying out soil conservation measures. The stand taken by the State of Haryana was that the entire catchment area had been depicted in the map prepared by Survey of India in 1995 which was further re-authenticated in the year 2004 and submitted to this Court in C.W (P) No.7649 of 2003 in the matter of Dr. B Singh vs. State of Haryana. It was also emphasized that Survey of India was the competent authority to prepare the catchment map of any wetland including Sukhna Lake. Sh. Pankaj Mishra, Superintending Surveyor informed the Committee that the issue raised by the Addl. Advocate General, Punjab did not have any effect on the catchment area of Sukhna Lake.

It was unanimously decided as under:

> *"i) The catchment area cannot be changed and altered unless a natural upheaval takes place which consequently alters and catchment area. The man made interventions cannot change the catchment area as they can only hinder the surface flow of water. Despite man made interventions it was noted that there will be surface flow of water as well despite some hindrances here and there enroute. Further the subsoil flow of water will not be impacted at all by the man made interventions and will definitely flow to the lake.*

ii) The Survey of India will submit detailed report in the next meeting including the documents pertaining to conduct of survey for demarcation of catchment area of Sukhna Lake in past.

Iii) It was also decided that the representative of Ministry of Environment & Forests, Govtof India should also be requested to be present in the next meeting so as to have more useful deliberation and their viewpoint on the issue of demarcation of catchment area of Sukhna Lake."

The next meeting was convened on 07.05.2012 regarding demarcation of catchment area of Sukhna Lake wherein the Chairman emphasized that the mandate of the Committee given by the High Court was regarding demarcation of catchment area of Sukhna Lake and the Committee should restrict to this issue only. In order to demarcate the catchment area, two options have to be explored:

"A) The demarcation of Catchment Area of Sukhna Lake as already defined in Topographical map provided by the Survey of India which also stands filed in the Hon'ble Punjab and Haryana High Court.

B) Experts Opinion to authenticate the demarcation of Catchment area."

Sh. Pankaj Mishra informed the Chairman of the Committee that a Mosaic Plan had been published by their organization on the request of HUDA authorities, which was submitted to the High Court by the Haryana Government. The physical features and terrain as shown on the map had been done with 1:40000 scale data having contour interval of 20 mtrs. This map was made using aerial photography & ground verification thereto of the topographical information and as such the Catchment Boundary and terrain shown in the map are correct. Learned Amicus Curiae brought to the notice of the Committee that the Mosaic Map

prepared at a scale of 1:40000 scale data with a contour interval of 20 mtrs submitted to the High Court by the Haryana Government was published by the Survey of India and was authentic and correct. However, fact of the matter is that vide order dated 14.05.2012, this Court observed that in the light of the map of the Survey of India having already been prepared and validated by the participating parties, there was no necessity for the Sub-committee of the technical experts to prepare fresh map as suggested in the minutes dated 07.05.2012. This Court had proceeded with the map of Survey of India, which was taken on record by this Court vide order dated 24.09.2004 rendered in CWP No.7649 of 2003. It is, in these circumstances, that this Court had specifically directed UT Administration to give wide publicity to the catchment area as depicted in the map prepared by the Survey of India, which was taken on record by this Court on 24.09.2004 and adopted by the Chandigarh Administration thereafter officially as map of catchment area of Sukhna Lake.

The Special Secretary, Department of Local Government, Punjab filed an affidavit on 22.05.2012 averring that the writ petition bearing CWP No.7649 of 2003 mainly pertains to the protection of the forest area in the periphery of Chandigarh. Rather an attempt has been made that fresh demarcation of catchment area was necessary.

Sh. Vinod Kumar Bhalla, Special Secretary, Department of Local Government, Punjab, Chandigarh also filed another affidavit dated 04.09.2012 stating therein that the Executive Officer, Nagar Panchayat Nagagon was directed vide memo dated 17.05.2012 to verify that no construction was being carried out or had taken place in violation of orders of this Court dated 14.3.2011. The construction which was being carried

out in violation of the orders of this Court, was to be stopped immediately. The Executive Officer, Nagar Panchayat, Nayagaon further stated that 55 building plans were submitted for sanction with Nagar Panchayat Nayagoan after 14.03.2011. The construction had started on 32 sites, which was completely stopped. Another 12 structures were being constructed illegally. The Executive Officer, Nagar Panchayat, Nayagaon further stated that wide publicity in terms of directions of this Court was made through publication of notices in newspapers, including by beat of drums.

The Meeting of the Committee constituted for Conservation & Beautification projects of Sukhna Lake and its surrounding areas (including catchment area) was held on 02.03.2012, and as per agenda/item No.3 & 4, the issues in respect of Use of Mechanical Devices in Sukhna Lake for weed removal and Desiltation of Sukhna lake respectively were discussed. Vide meeting dated 19.03.2012 of the Committee constituted for Conservation & Beautification Projects of the Sukhna Lake and its surrounding areas, minutes of 4th meeting of the Committee were confirmed. The issue was again discussed including water and silt problem of Sukhna Lake. Minutes of 6th meeting of the Committee were approved on 18.04.2012.

Thereafter, Sh. Tilak Raj, HCS, Land Acquisition Officer, Union Territory, Chandigarh filed an affidavit on 10.7.2012 stating that wide publicity was given pursuant to order dated 22.5.2012. The general public was also informed that construction after 21.05.2012 was completely banned and people should not indulge themselves in any housing or construction activity in the catchment area of Sukhna Lake as depicted in the map prepared by the Survey of India. A list of persons, who had

constructed the buildings unauthorizedly between 14.3.2011 to 21.05.2012 also in village Kaimbwala and Khuda Ali Sher in catchment area of Sukhna Lake was placed on record along with the affidavit as Annexures A.5 and A.6.

Sh. Vinod Kumar Bhalla, Secretary, Department of Local Government, Punjab, Chandigarh filed affidavit on 17.07.2012. It is reiterated in the affidavit that the Master Plan of Naya Gaon Nagar Panchayat area had been notified. It was also stated that the map prepared by the Survey of India did not project the correct position qua catchment area of Sukhna Lake.

The District Town Planner, Panchkula also filed an affidavit dated 07.08.2012 stating therein that in order to comply with the directions, a survey of existing construction in the catchment area of Sukhna Lake as identified by Survey of India was undertaken. No new construction had come up within the catchment area of Sukhna Lake after the orders passed by this Court on 14.3.2011. The Department of Town and Country Planning, Haryana had neither proposed any township development project within the catchment area of Sukhna Lake and the Forest area nor contemplated to approve such projects in future.

The Chief Engineer, Union Territory, Chandigarh also filed an affidavit on 18.10.2012 stating therein that Integrated Hydrological investigation qua conservation and management of Sukhna Lake was entrusted to the National Institute of Hydrology and Management, Roorkee (Uttarakhand).

Respondent Nos.12 to 16 filed their written statement. According to them, they were residents of Chandigarh and were owners of

the land in the notified Master Plan area of Kansal. There is reference to various orders passed by this Court as well as the affidavits by the respondents from time to time. According to them, applicant Nos.1 to 4 had purchased land in the year 2008 whereas applicant No.5 had purchased the land in February 2011. Applicant Nos.1 & 2 were joint owners of land measuring 14 marlas. Applicant No.3 was joint owner to the extent of half share in land measuring 3 kanal 1-2 marlas whereas applicant No.4 was joint owner to the extent of half share in land measuring 3 kanal 1-2 marla. Applicant No.5 was joint owner to the extent of 1-2 share in land measuring 1 kanal 2.5 marlas. They were directly affected by order dated 14.5.2012. According to them, the habitated area of Village Kansal did not form part of catchment area. There is reference to Notification issued on 12.09.2005 inviting public objections for constitution of Nagar Panchayat, Naya Gaon. Nagar Panchayat Naya Gaon was constituted vide notification dated 18.10.2006. Master Plan-2021 as well as existing land use map for the Local Planning Area of Naya Gaon was published on 14.08.2008. These were published under Section 70(3) of the Punjab Regional and Town Planning and Development (Amendment) Act, 2006 on 23.08.2008 by inviting objections/suggestions. Thereafter, the Government in exercise of powers under under Section 70(5) of the Punjab Regional and Town Planning and Development (Amendment) Act, 2006 notified the final Master Plan-2021. The draft Zonal Development Plans for Zone A and Zone B were prepared and the final plan was published and notified in October 2010 to enable building permissions, initiating urban infrastructure development and recovery of the development costs etc. The stand taken by them is similar to the stand taken by the State of Punjab in their various

affidavits. There is reference to 2004 map prepared by the Survey of India concerning catchment area of Sukhna Lake.

Respondent No.17 also filed a separate reply.

It is also pertinent to notice here that respondent No.21 filed a detailed synopsis, the gist of which is that the map of Survey of India has been prepared without carrying out any ground/physical survey. It was based on certain data of 1995-1996. The scope of PIL has also been highlighted. The Master Plan 2021 for Nagar Panchayat Naya Gaon was notified vide Notification No.10/12/2008-(2LG3)/4LG3/54 on 02.01.2009 and the action if any was to be taken under Section 157 of the Punjab Regional and Town Planning and Development Act, 1995. The residents were paying several taxes including house tax. There is reference to the Notification dated 15.3.1963, as per which the 'Kansal Nadi' was diverted in the year 1973. There is reference to judgment dated 12.04.2017 passed by Delhi High Court.

The National Institute of Hydrology and Management, Roorkee placed on record draft final report.

The Superintending Engineer, Construction Circle-IIm, UT, Chandigarh filed an affidavit pursuant to direction dated 08.7.2013 vide which the Chandigarh Administration was directed to file status report regarding constitution of an independent authority for the purpose of monitoring and coordinating the efforts of various departments of Chandigarh Administration in respect of Conservation and Beautification Projects of Sukhna Lake and surrounding areas.

National Institute of Hydrology, Roorkee vide letter dated 18.11.2013 had informed the Sr. Standing Counsel for Government of India

that in case of non-communication about the comments or suggestions by the Chandigarh Administration, the contents of the final report would remain the same as "draft final report".

Thereafter, the Conservator of Forests & Chief Wild Life Warden, Chandigarh Administration, Chandigarh filed an affidavit dated 03.03.2014 vide which the Draft Final Report as submitted by NIH was circulated to all the members to give their comments and a meeting was held in this regard on 03.12.2013.

Learned Amicus Curiae has also placed on record suggestions in tabulation form to preserve Sukhna Lake at page 1486 of the paper book. Various stakeholders have given valuable suggestions to preserve Sukhna Lake by way of E-mail or personally.

The Chief Conservator of Forests & Chief Wild Life Warden, Chandigarh Administration, Chandigarh has filed an affidavit dated 18.5.2017 stating therein that the task of cleaning all choes inside Sukhna Wildlife Sanctuary area as well as choes leading upto Sukhna Lake was handed over to the Department of Forests & Wildlife, UT, Chandigarh and the same was being done on regular basis.

The Divisional Forest Officer, Morni Pinjore, Forest Division, Pinjore, Panchkula also filed an affidavit dated 04.07.2018 mentioning therein of the measures taken to repair the mud silt dams.

The Executive Officer, Municipal Council, Naya Gaon, District SAS Nagar (Mohali) also filed an affidavit to the effect that the moment it came to the notice of the Authorities that a three storey building was being raised in villlage Kansal, falling in the catchment area, notice dated 05.11.2015 was issued to M/s Royal Associate, however, the construction

was not stopped. Thereafter, second notice was issued on 19.02.2016. There is reference to three writ petitions bearing CWP Nos.12280, 12284 and 12355 of 2017 filed by the persons to whom notices were issued by the Municipal Council wherein learned Single Judge vide orders dated 03.05.2017 and 17.12.2018 restrained the Council from carrying out any demolition.

During the course of contempt petition bearing COCP No.3088 of 2015, Sh.K.K. Yadav, the then Director-cum-Special Secretary, Local Bodies, Punjab apprised the Court that about 80 illegal constructions were identified and notices were issued. In pursuance of undertaking given by the Special Secretary, Local Bodies, the Deputy Commissioner, SAS Nagar (Mohali) was requested to appoint the Duty Magistrate. Since the Executive Officer was restrained from demolishing the building vide order dated 30.5.2017, the building could not be demolished. Photographs have been placed on record showing the new construction in Village Kansal in November 2018 at page 2681 of paper book.

In sequel to order dated 22.11.2018 passed by this Court, the Court Commissioner filed a detailed report. He was assisted by the officials/officers of the UT Administration as also the State of Punjab. It is averred in the report that a Chandigarh Police Drone was used to scan the area from some height. The first drone flight was taken from Kansal Enclave (Punjab). The snapshots from the drone video footage are placed on record as Annexure C.4. The second drone flight in the State of Punjab was taken from near the point of construction activity (in Kansal). The photographs depicting construction activity in the said area and stage of construction are annexed as Annexure C.6. The Court Commissioner also

noticed fresh mixed mud and straw (gara), generally used for laying on the roof before fixing roof brick tiles in front of a large two storied house (still under construction). As per snapshots (C.11) from the said drone video footage adjoining the area of Kansal, there was apparently new construction in close proximity of Royal Lake Suites. The next drone flight was taken from a few yards away from the under construction site. The snapshots from the drone video footage are annexed as Annexure C.13. The Court Commissioner also noticed certain partially constructed structures vide photographs as Annexure C.14. He further noticed huge quantity of bricks stacked outside a farmhouse near Khuda Ali Sher. The snapshots taken from the drone video footage and photographs are annexed as Annexure C.15. Learned Court Commissioner also noticed ongoing construction activity in the market/habitation area of village Khuda Ali Sher. People present on the spot tried to explain that the said construction was within the abaddi area (Lal Dora). The photographs are annexed as C.16. Likewise, the snapshots and photographs taken from the road adjoining a large pond in Kaimbwala and further from the road going to Saketri are annexed as C.17 and C.18 respectively. The last drone flight was taken to see construction activity falling in Saketri area (Haryana). Photographs showing the said activity are annexed herewith as C.19. He also noticed certain ongoing construction activities at the stage of completion apart from witnessing that some ongoing activities were stopped temporarily on the date of his visit. The construction activity could also be seen by browsing "Google Earth Pro" as far as Village Kansal Punjab is concerned. He further noticed many under construction houses/buildings which were provided electricity supply by the State Electricity Department. In other

words, his submission is that the State instrumentality was supporting new construction in the area. The potable water was supplied from tubewells in Kansal area.

Kanwar Sandhu, MLA, Kharar has also filed an affidavit. He has referred to a Master plan-2021 notified on 02.01.2009 and regarding carving out of zones A & B. He has also stated in the affidavit that the State Government departments have been providing electricity and water connections from time to time to the houses under construction. Besides, they have been charging property tax from the house owners in Kansal area since 2013-2014. According to him, NAC, Municipal Committee, Nayagaon has not warned the people about the construction activities being carried out. He also referred to the history of Sukhna Lake and referred to the Government Notification dated 03.02.1961. According to him, if reliance is placed on the Survey of India map 2004, it would put a question mark on the master plan. He also also made observations over the report submitted by the Court Commissioner and emphasized that the expert should re-visit the concept of "Check Dams".

Sh. T.C. Nautiyal, Conservator of Forests, Department of Forest & Wildlife, Chandigarh Administration, UT, Chandigarh filed a status report on 16.03.2019 wherein it is averred that vide Notification dated 06.07.1988 (R.1), the area of Sukhna Lake has been declared as common wetland. Thereafter, the Ministry of Environment, Forest and Climate Change issued Notification dated 26.09.2017 (R.2) notifying the Wetland (Conservation and Management) Rules, 2017. Vide Notification dated 06.12.2017, the Administrator, UT Chandigarh constituted the "Union Territory of Chandigarh Wetlands Authority". A Technical

Committee was constituted vide order dated 21.8.2018. The Grievance Committee was constituted vide order dated 21.8.2018. The Technical Committee held several meetings.

The Chief Conservator of Forests, Department of Forest & Wildlife, Chandigarh Administration, UT Chandigarh also filed a status report. It is stated that the Second Meeting of the Union Territory of Chandigarh Wetlands Authority was held on 23.7.2019 under the chairpersonship of the Administrator-cum-Chairperson, Union Territory of Chandigarh Wetlands Authority, UT Chandigarh. It was decided to declare Sukhna Lake as Wetland under Wetlands (Conservation & Management) Rules, 2017. It was highlighted in the meeting held on 23.7.2019 that the Governments of Haryana and Punjab should also take similar necessary action for regulating the activities as prohibited/regulated/protected in their respective part of Sukhna Catchment area. A draft notification was published and placed in public domain and objections/suggestions were invited against the proposed draft notification within 60 days from the date of such publiccation in public domain. The draft notification was issued on 21.10.2019. The Chandigarh Administration by way of notification issued by the Home Department (Forest and Wildlife) dated 17.02.1998 declared 7548.43 Acres of land in Chandigarh to be a reserved forest. The notification has been issued under Section 20 of the Forest Act, 1927 which include forest area between Rock Garden and Lake, Village Kaimbwala, Village Khuda Ali Sher, Kansal and Saketri. This area was also declared as 'Sanctuary' vide notification dated 06.03.1998. The Ministry of Environment, Forest and Climate Change, Government of India in an endeavour to conserve and protect the area has notified 1050 hectares to an

extent varying 2.0 to 2.75 kilometres from the boundary of Sukhna Wildlife Sanctuary as 'Sukhna Wildlife Sanctuary Eco-sensitive zone' vide notification dated 18.1.2017.

The Divisional Forest Officer (Wildlife), Department of Forest and Wildlife Preservation, Ropar also filed affidavit dated 08.12.2019 stating that the State Government has decided to keep Eco-Sensitive Zone to the extent of 100 metres. The matter remained under correspondence with the Government of India. It was reiterated in the communication that the area of Eco-Sensitive Zone upto 1 kms was not feasible and it should be 100 metres. Reminders were also issued. Strong reliance has been placed on the meeting of Council of Ministers dated 08.08.2013 whereby decision was taken that in entire State of Punjab, for all protected areas, the Eco-Sensitive Zone would be upto 100 metres.

CWP No.12355 of 2017

The facts of this case are that though the Court had passed orders dated 14.3.2011 and 14.05.2012 staying the construction activities but the Court orders were not given wide publicity. The petitioners came to know about the demolition through Gram Panchayat/General public. They came to know that the Nagar Council Nayagaon was going to demolish their houses on 31.05.2017. The house of petitioner No.1 was neither in forest area nor agricultural area. The house was old. The petitioners have given the details of their houses in the petition.

According to them, list of 80 persons had been prepared arbitrarily. The petitioners have sought for issuance of mandamus directing the respondents not to demolish their houses.

Learned Single Judge vide order dated 30.05.2017 restrained

the Executive Officer, Municipal Council, Naya Gaon from carrying out any demolition.

CWP No.12284 of 2017

Brief facts of this writ petition are that the members of the Registered Association were aggrieved by the public notice issued on 27.05.2017 regarding the demolition of the properties situated in the area of village Kansal, NAC Nayagaon, District SAS Nagar. The individuals had purchased the land by way of registered sale deed. Few of them were paying property tax. There is reference to orders dated 14.3.2011 and 14.5.2012. Individually valid notices were not issued to the concerned persons, who had raised the construction, which was being demolished.

The petitioners have sought a writ of Certiorari for quashing of public notice dated 27.5.2017 and also for staying the operation of impugned public notice dated 27.5.2017.

Learned Single Judge vide order dated 30.5.2017 directed the Executive Officer, M.C Nayagaon not to carry out any demolition.

CWP No.12280 of 2017

This petition has been filed with the averments that the petitioners are residents of village Kansal. They have given the details of their properties. According to them, the village Kansal falls immediately on the outskirts of Union Territory of Chandigarh. The village was thickly populated. The State of Punjab had decided to constitute Nagar Panchayat Naya Goan vide Notification dated 18.10.2006. The State Government issued Final Master Plan of Nayagaon vide Notification dated 02.01.2009. The said Master Plan is called as Final Master Plan Nagar Panchayat Nayagaon-2021. No publicity was given to the orders passed by this Court

from time to time. There is reference to the Punjab Municipal Act, 1911. The State of Punjab has regularized all the unauthorized colonies under the Punjab Laws (Special Provisions) Act, 2014.

The petitioners have sought for issuance of a writ in the nature of prohibition, prohibiting the respondents from demolishing their houses.

Learned Single Judge vide order dated 30.05.2017 restrained the Executive Officer, Municipal Council, Naya Gaon from carrying out any demolition.

COCP No.3088 of 2015

One Karanbir has filed this petition under Section 12 of the Contempt of Courts Act for punishing the respondents for wilfully violating order dated 14.5.2012 passed by this Court in CWP No.18253 of 2009.

Respondent No.2 has filed a counter affidavit averring that he had nothing to do with the shops. Reply was also filed by the Joint Secretary, Local Government, Punjab wherein it is stated that in compliance of orders passed by this Court, the Executive Officer, Municipal Council, Nayagaon vide memo dated 06.01.2017 was directed to videograph the area in question. The Executive Officer, M.C, Nayagaon vide memo dated 17.1.2017 was directed to take legal action against the unauthorized construction. He has tendered unconditional apology. The Deputy Commissioner UT Chandigarh-respondent No.6 also filed a reply wherein it is averred that the Chandigarh Administration had given wide publicity to the catchment area as depicted in the map prepared by the Survey of India. The Public Notices were published on 05.06.2012 and 17.6.2012 in most leading English, Hindi and Punjabi newspapers namely Indian Express, Hindustan Times, Amar Ujala, Dainik Bhaskar, Jagbani and Times of India

wherein the public at large was informed not to raise construction in the Sukhna catchment area after 21.05.2012.

Baljinder Kaur, President, M.C Nayagaon, District SAS Nagar-respondent No.4 also filed a reply. According to her, with a view to maintain the law and order during the removal of the encroachments on 17.01.2017, the Deputy Commissioner, SAS Nagar vide letter dated was requested to appoint the Duty Magistrate. Neither the police help was provided nor the Duty Magistrate was appointed. Thereafter, the Municipal Council fixed another date as 27.1.2017 for demolition of the illegal constructions. The Deputy Commissioner, SAS Nagar was again requested to provide police help. It was specificallky undertaken by the President that after the appointment of Duty Magistrate is made and on availability of the police force, the necessary action be taken to demolish the illegal construction.

Thereafter, the Land Acquisition Officer, UT, Chandigarh filed an affidavit stating that due publicity was given by Chandigarh Administration of the catchment area as depicted in the map prepared by Survey of India. The Land Acquisition Officer, UT Chandigarh vide order dated 18.7.2012 had directed to daily inspect the periphery area falling in the UT Chandigarh and take immediate action. Enforcement Team was prepared and that several demolition operations were undertaken to remove unauthorized construction in Sukhna catchment area in villages Kaimbwala and Khuda Ali sher.

Respondent No.3 has also filed reply to the contempt petition stating that no notice was ever received by respondent No.3 from NAC or any other authority.

CWP No.5809 of 2015

The Court has taken cognizance of the nuisance created by stray dogs. Replies were filed from time to time including the one filed by the Director-cum-Special Secretary to Government of Haryana, Urban Local bodies Department, Panchkula. As per its averments, the State has started a comprehensive scheme for controlling dog population.

COCP No.2613 of 2013

This petition was filed to initiate proceedings under contempt proceedings against the respondents for wilful disobedience of orders dated 14.3.2011 and 14.5.2012.

The Deputy Commissioner, SAS Nagar filed an affidavit dated 19.11.2013 stating that the notice was issued on 12.11.2013 to respondent No.1-Yashpal Saini who was raising illegal construction. The deponent had also directed the Executive Officer, Nagar Panchayat, Nayagaon vide letter dated 15.11.2013 to ensure that no illegal construction be allowed in the respective areas.

Inspector Shinder Pal Singh Bhullar also filed a reply with the undertaking that as and when the police assistance would be required, the same would be provided immediately.

Thereafter, the Executive Officer, Nagar Panchayat, Nayagaon-respondent No.3 filed a reply by way of affidavit dated 09.1.2014 averring that appropriate action was taken against respondent No.1.

Respondent No.1 also filed a reply wherein it is stated that neither the houses fall in Sukhna catchment area nor Forest or Agricultural area. According to it, electricity meter was installed in the year 1984.

Before proceeding any further, it would be relevant to

reproduce main orders passed by this Court on different dates, which read as under:

Dated: 14.03.2011

> *"We have heard the learned counsel for the parties at some length and it is our considered view that the following order should govern the matter.*
>
> *From the affidavit dated 04.03.2011 filed by the Director General, Town & Country Planning, Haryana it appears that Sector-1 of Mansa Devi Urban Complex, which has been developed as a part of the development plan under the New Capital (Periphery) Control Act, 1952, is included in the catchment area of the lake as identified in the map prepared by the Survey of India in accordance with the directions dated 16.7.2004 passed in CM Nos.11170 to 11172 of 2003 in CWP No.7649 of 2003 Dr. B Singh V. State of Haryana. Though in paragraph No.4 of the said affidavit it has been stated that the said area has been designated as Open Space Zone and no building construction activity has been proposed within this zone, learned Amicus Curiae has suggested that the aforesaid statement may not be fully correct.*
>
> *In view of the stand taken by the State of Haryana in the affidavit filed today we are of the view that we should not be asking the States as to whether they have any plans to have any housing colonies/building construction activities in the catchment area falling within their respective jurisdictions. Rather, the necessity of maintaining the catchment area as such, being vital for restoring the lake to its former glory, we are of the view that until further orders we should direct that no housing colonies or building activities of any kind will take place in the 'catchment area' (either within the forest area or the agricultural area) falling within the jurisdiction of the two States of Punjab and Haryana in terms of the map prepared by the Survey of India, as*

mentioned above.

In so far as the services of the Bhakra Beas Management Board for plugging the leakage in the sluice gates is concerned, we have interated with Shri S.K Chawla, Executive Engineer, Workshop Division, Nangal (B.B.M.B) who is present in person. Shri chawla has submitted that the Board is presently understaffed and the primary duty of the Board is to look after the Bhakra Nangal Dam and therefore, he is not very confident as to what extent man power can be made available by the Board for doing the work in Sukhna lake. Shri Chawla, has however, submitted that if the original drawings of the Sluice Gates of Sukhna Lake are made available, the authorities of bhakra Beas Management Board will study the same, offer their suggestions and opinions and gtheir help to the extent that is possible. While acknowledging the assistance offered on behalf of the Board we direct the UT Administration, Chandigarh to make available the relevant drawings to the Board, whereafter, the Board will render necessary advice and suggestions to the U.T Administration which will be placed before the Court on the next date fixed. In the meantime, UT Administration will make all endeavours to identify a competent organization who would be in a position to undertake the repair work of the sluice gates. The advice of such expert body with regard to necessary measures as may be obtained by the U.T Administration be placed before the Court on the next date fixed.

Apart from the immediate problem of attending to the leakage in the sluice gates and keeping the catchment area free from inroads in order to facilitate free flow of water into the SukhnaLake, there are certain other issues that have been identified by the learned Amicus Curiae. We direct the learned Amicus Curiae as well as the learned Standing Counsels for the UT Chandigarh, States of Punjab and Haryana to identify a expert and authorized body or

organization which is engaged in such work and who will be in a position to undertake the work in the lake and lay before the Court the particulars of the said organizxation/body.

All these matters will now be listed for consideration on 03.05.2011."

Dated: 14.5.2012

"The minutes of the meeting dated 7.5.2012 have been placed on record. The minutes reveal that the map prepared by Survey of India has been accepted in principle although there are minor objections regarding the scale. The State of Punjab has adoted an unacceptable attitude and still the subissions are being made that the map of the Survey of India is not acceptable despite the fact that in the proceedings concerning CWP No.7649 of 2003 the State of Punjab has endorsed the map then prepared by Survey of India as authentic one in respect of catchment area of lake. The minutes of various meetings have been placed on record. Reference may be made to Annexure P-25 (colly). Perusal of the same shows that the State of Punjab attended the meetings dadted 28.7.2004, 18.8.2004, 13.9.2004 during which the map prepared by survey of India was accepted as the correct map of catchment area of Sukhna Lake. Vide an order dated 24.9.2004, the improved version f map of catchment area of Sukhna Lake dated 21.9.2004 prepared by Survey of India was taken on record. The State of Punjab had participated in the aforesaid proceedings and never objected to the map. Now, they cannot go back from the aforesaid stand taken.

In the order dated 14.3.2011, directiions were issued for maintaining the catchment area for restoring the lake to its formal glory by observing that no housing cology or building activity f any kind would take place in the catchment area (either within the forest area or the

agricultural area) falling within the jurisdiction of the two States of Punjab and Haryana in terms of the map prepared by the Survey of India as mentioned in that order. We have been apprised that despite the aforesaid directions, the construction activities are going on and even the SMSs are being sent to the counsel for the parties, which shows a defiant attitude on the part of the builders. While condemning such an endeavour on the part of anyone, who has been sending such SMSs, we direct the States of Punjab and Haryana as well as UT, Chandigarh to put their enforcement agencies in action and any construction activities, which are going on in the catchment area as per the map of Survey of India, should be immediately stopped and any construction raised in violation of the directions issued by this Court be demolished without issuing any notice. Both the States as well as UT Chandigarh shall submit their report with regard to the violations of the directions issued in the order dated 14.3.2011 and the action taken against the violators.

We also grant liberty to the learned counsel for the parties to move an appropriate application bringing to the notice of the Court the names of the violators who have plans to raise construction in the catchment area and who might have been sending SMSs.

However, in view of the fact that map of the Survey of India has already been prepared and validated by the participating parties, there was no necessity for the Sub-committee of the technical experts to prepare fresh map as suggested in the minutes dated 07.05.2012, would need to prepare fresh map. Accordingly, we shall proceed in accordance with the map of the Survey of India, which was taken on record by this Court vide order dated 24.09.2004 passed in CWP No.7649 of 2003. The U.T Administration shall give wide publicity to the catchment

area as depicted in the map prepared by the Survey of India, which was taken on record by this Court in its order dated 24.09.2004 and adopted by the Chandigarh Administration thereafter officially as map of catchment area of Sukhna Lake (P.14), so that general public is made aware that no construction is permitted in that area. Let the order of this Court, passed today and on 14.3.2011 be also given wide publicity so that anyone indulging in violation of this order may become aware. The publicity be carried in the print media as well as in the electronic media.

Mr. Pritpal Singh Sodhi has not been invited to the meeting as has been told to the Court by him in person. We hope and trust that ths was an inadvertent omission which shall not be repeated in future."

Dated: 25.10.2018

"Learned amicus curiae (Ms. Tanu Bedi, Advocate) requested that copies of writ petitions bearing CWP Nos.12280, 12284 and 12355 of 2017 be supplied to her. Registry is directed to supply the photocopies of the said petitions to amicus curiae forthwith.

Learned amicus curiae has pointed out that vide order dated 14.05.2012 passed in CWP No.18253 of 2009 further construction in the catchment area of Sukhna Lake was stayed by this Court.

However, learned counsel for the petitioner(s) submitted that in CWP Nos.12280, 12284 and 12355 of 2017 learned Single Bench vide order dated 30.05.2017 has stayed the demolition.

After hearing learned counsel for the parties and amicus curiae, it is directed that State of Punjab shall ensure the strict compliance of order dated 14.05.2012. In other words, no further construction shall be allowed to be raised in the catchment area.

For further consideration, to come up on 22.11.2018 as

prayed.

Photocopy of this order be placed on the file of other connected cases.

Dated: 22.11.2018

"Status report along with annexures filed on behalf of Municipal Corporation, Panchkula in Court today is taken on record. Office to tag the same at appropriate place.

Mr. Sarin, learned senior counsel has produced the photographs dated 10.11.2018 regarding construction in Kansal, Punjab. Copy of the same has also been given to learned counsel for State of Punjab.

Prima facie the pictures show that the construction in Kansal is continuing in violation of the order passed by this Court on 25.10.2018 whereby further construction in the catchment area was stayed. However, this position is disputed by learned State counsel.

Learned State counsel, Punjab on instructions from Mr. Jagjit Singh, Executive Officer, M.C., Naya Gaon submitted that he joined the office on 15.11.2018 and assures the Court that no construction will take place in future in the catchment area.

Be that as it may, Mr. Vikas Suri, Advocate is appointed as Court Commissioner, who along with amicus curiae and counsel for State of Punjab will visit the site at 11.00 am on 08.12.2018. He can also seek the assistance of the expert and shall submit his report as to whether any construction is being carried out in the catchment area in violation of the orders of this Court.

Chandigarh Admnistration shall provide the assistance of expert and a photographer for the said purpose.

The expenses and fees of the Court Commissioner to be fixed by this Court will be borne by the Government of Punjab.

For further consideration, to come up on 17.12.2018 as

prayed.

Photocopy of this order be placed on the file of other connected cases.

Dated: 17.12.2018

"Mr. Vikas Suri, Advocate appointed as Court Commissioner has submitted the report in terms of order dated 22.11.2018 in Court today and the same is taken on record. Office to tag the same at appropriate place. Copy of the same has been supplied to learned Amicus Curiae. The registry shall supply copy of the report to other stake holders as well, whosoever apply for it.

The Court commissioner has handed over a video recording as Annexure C-3 (Pen Drive) alongwith the report. The Pen Drive be kept in a sealed cover alongwith the file. We record our appreciation for the work done by the Court Commissioner, Shri Vikas Suri, Advocate.

Let a sum of `50,000/- each (inclusive of all expenses) be paid by States of Punjab, Haryana and U.T. Chandigarh separately as remuneration to Shri Vikas Suri, Advocate for performing the duties of the Court Commissioner.

According to the Court Commissioner, there are violations/unauthorized constructions raised in the area falling under States of Punjab, Haryana and U.T. Chandigarh.

For further consideration, to come up on 10.01.2019 at 02.00 p.m.

The Court Commissioner is requested to remain present on the said date to assist the Court.

A photocopy of this order be placed on the files of other connected cases.

Dated: 05.02.2019

Annexures P2-A to G produced by Dr. B.Singh, co-petitioner, are taken on record.

Learned Amicus Curiae has partly made her submissions.

For remaining arguments, to come up on 12.02.2019 at 02.00 P.M.

In the meantime, interim order dated 25.10.2018 to continue. However, it is clarified that no construction raised till today shall be demolished, which shall be subject to final directions that may be issued by this Court.

Dated: 06.03.2019

"Amicus curiae during the course of arguments submitted that the issues involved in the writ petition can be categorized under the following heads:

i) Preservation of Sukhna Lake

ii) Beautification of Chandigarh and Tricity

iii) Management of the encroachment area

iv) Menace of stray animals/dogs.

Amicus curiae has concluded her submissions in respect of first issue relating to ' Preservation of Sukhna Lake'.

In response thereto, Mr. Pankaj Jain, Advocate for UT, Chandigarh has partly made submissions and prays for time to produce the documents relating to notification whereby Sukhna Lake Area has been declared as wet land area or not according to the Technical Committee, which was constituted under the National Wetland Conservation and Management Programme (Rules 2017).

Mr. M.L.Sarin, Sr. Advocate has pointed out that vide order dated 05.02.2019, interim protection was ordered to be continued. However, it was clarified that construction raised till date shall not be demolished subject to final direction that may be issued by this Court. He further submitted that there was no ambiguity in the order passed by this Court but construction activities are going on in the catchment area.

Accordingly, it is directed that there shall be no

demolition/ construction carried out during the pendency of the present writ petition and the concerned authorities shall ensure the strict compliance of this order.

Mr. Sandeep Moudgil, learned State counsel prayed that the construction of sewerage treatment plant at Mansa Devi Complex and village Saketri has been held up due to the interim orders passed by this Court and the tender could not be finalised, which has been floated for the allotment of the work.

Accordingly, it is clarified that it shall be open for the State of Haryana to consider the construction of Sewerage Treatment Plant at Mansa Devi Complex and village Saketri irrespective of the fact that it may fall in the catchment area.

Mr. Kanwar Sandhu, MLA, Kharar has also made certain submissions, which remained inconclusive.

Amicus curiae as well as the State authorities shall bring to the notice of this Court any violation of the interim order passed by this Court.

For further consideration to come upon 18.03.2019 at 2.00 pm.

Photocopy of this order be placed on the file of other connected cases."

The Punjab Assembly has enacted the Act called as The Capital of Punjab (Development and Regulation) Act, 1952 (for brevity "1952 Act"). Statement of Objects and Reasons of the same read as under:

" The construction of the New Capital of Punjab at Chandigarh is in progress. It is considered necessary to vest the State Government with legal authority to regulate the sale of building sites and to promulgate building rules on the lines of Municipal Byelaws so long as a properly constituted local body does not take over the administration of the city. The Capital of Punjab (Development and Regulation) Bill,

> *1952, seeks to carry out the above objects and to repeal the Capital of Punjab (Development and Regulation) Act, 1952, which is a President's Act and is due to expire in April, 1953. Vide Punjab Govt. Gazette Extraordinary, dated the 23rd July,* 1952, pp. 677."

It extends to the City of Chandigarh which shall comprise the areas of the site of the Capital of Punjab as notified by the Government of Punjab before the Ist November, 1966 and to such areas as may be notified by the Central Government from time to time [as substituted by Punjab Re-organisation (Chd) (Adaptation of Laws) Order, 1968 for "State Government".]

Section 3 provides for Declaration of Controlled Area.

Section 4 deals with Publication of plans of Controlled Area whereas Section 5 provides for Restrictions in a Controlled Area. The Punjab New Capital (Periphery) Control Rules, 1959 provides for the form of plan of Controlled Area and manner of publication of notification of Controlled Area.

Section 4 of 1952 Act mandates that for the purpose of proper planning or development of Chandigarh, the Central Government or the Chief Administrator can issue such directions, as may he considered necessary, in respect of any site or building, either generally for the whole of Chandigarh or for any particular locality thereof, regarding any one or more of the following matters, namely :-

> *(a) architectural features of the elevation or frontage of any building;*
>
> *(b) erection of detached or semi-detached buildings or both and the area of the land appurtenant to such building;*
>
> *(c) the number of residential buildings which may be*

erected on any site in any locality

(d) prohibition regarding erection of shops, workshops, ware-houses, factories or buildings of a specified architectural character or buildings designed for particular purposes in any locality;

(e) maintenance of height and position of walls, fences, hedges or any other structural or architectural construction;

(f) restrictions regarding the use of site for purposes other than erection of buildings;

(2) Every transferee shall comply with the directions issued under sub-section(1) and shall as expeditiously as possible, erect any building or take such other steps as may be necessary, to comply with such directions.

Section 5 bars to erection of buildings in contravention of building rules.

Section 7 empowers the Chief Administrator from time to time by notification in the official gazette, and with the previous approval of the Administrator of the Union Territory of Chandigarh, to apply to Chandigarh or any part thereof with such adaptations and modifications not affecting the substance as may be specified in the notification, all or any of the provisions of the Punjab Municipal Corporation Act, 1976.

Section 11 empowers the Chief Administrator to pass orders to preserve or plant trees generally or of specified kind in Chandigarh.

Section 14 imposes penalty for contravention of Trees Preservation Order and Advertisements Control Order.

The Administrator, Union Territory, Chandigarh had framed Chandigarh Building Rules (Urban), 2017 (hereinafter referred to be as "2017 Rules").

Rule 3 of 2017 Rules defines the "Act", "Architect", "Building", "Building line", "Class of Building" etc. It deals with the Residential use, Residential (Group Housing), Commercial Use, Commercial (Governed by Individual Zoning), Commercial (Governed by Individual Zoning), Public/Semi Public Buildings, Cultural and Non Academic Institutional & Religious, Educational Institutes, I.T Park, I.T Habitat, Residential & Government Housing, Integrated Projects and Transit Oriented Development. It also provides for the procedure for making application for approval of Building Plan. It also deals with the Mandatory provisions for Differently-Abled Persons, Provisions for High Rise Development.

The construction activity is required to be carried out in Union Territory, Chandigarh as per the norms laid down in the 1952 Act and 2017 Rules.

The Punjab Assembly has enacted the Act called as The Punjab Regional and Town Planning and Development Act, 1995 (for brevity "1995 Act") with the following Statement of Objects and Reasons:

> *"STATEMENT OF OBJECTS AND REASONS- Rapid urbanisation today is an all pervasive and irreversible facet of development. Unfortunately, urbanisation in the State has largely taken the form of unplanned and uncontrolled private colonisation and massive building activity in and around cities and along the highways. As a result, slums, uncongenial environment, only nominal civic amenities, choked city roads, encroached public lands and congested highways are a common feature visible everywhere. The different laws meant to control and guide urban development tended to tackle the problems on a piecemeal basis. The overlapping roles and functions of the multiple authorities*

enforcing these laws and carrying out the policies of the Government without proper direction and control from a central agency have only aggravated the situation. Moreover, the process of urban development has been too dependent on the availability of Government funds.

At the various national for a, it has been repeatedly stressed that every State should have a comprehensive law to provide for the preparation, strict enforcement and rapid implementation of regional and city master plans. At present, there is no such law in the State.

The Punjab Housing Development Board set up under the Punjab Housing Development Board Act, 1972 (Punjab Act No.6 of 1973) has not succeeded in bringing about a substantial increase in the housing stock especially for the Economically Weaker Sections of the Society. For generating the required funds for a massive house building programme, it is felt that a close interlink between land development and house construction should be built in so as to facilitate optimum exploitation of the valuable asset of urban land.

For meeting the challenges of urban growth and to provide for a workable framework for comprehensive planned and regulated development of regions and urban areas, the constitution of a State Level Urban Planning and Development Authority is considered very essential.

The existence of a reliable and wide road net work system facilitating smooth traffic movdement within the cities as well as over different regions is the single most important requirement of planned development and good living environment. It is felt that the existing law dealing with this issue namely the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963, is not fully effective and many of the provisions need to be made more stringent while some need to be deleted.

It is, therefore, intended to achieve the following main

objectives:

> *(i) to consolidate, with suitable modifications, in one place laws dealing with the different aspects of urban development;*
> *(ii) to set up a high powered Board to advise the State Government and to guide and direct planning and development agencies, with respect to matters pertaining to the planning, development and use of urban and rural land;*
> *(iii) to set up a State level Urban Planning and Development Authority and to provide for the setting up of Special Urban Planning and Development Authorities and New Town Planning and Development Authorities to promote and secure better planning and development of different regions, areas and cities;*
> *(iv) to create a legal and administrative set up for the preparation and enforcement of Master Plans for regions, areas and for existing and new cities;*
> *(v) to make the whole programme of urban development mainly a self-sustaining and self paying process;*
> *(vi) to interlink land development and house construction permitting full exploitation of the urban land resource to provide a boost to the programme of house construction, especially for the Economically weaker Sections of the Society.*
> *(vii) to provide a legal, administrative and financial framework for the preparation and execugtion of Town Development Schemes aimed at filling the gaps in the required civic infrastructure and securing the renewal and redevelopment of congested and decayed areas in the existing towns."*

Section 2 defines : (a) "agriculture"; (b) "amenities"; (f) "building"; (g) "building operations" for development of land.

Section 3 provides for constitution of the Board called as the Punjab Regional and Town Planning and Development Board.

Section 17 provides for establishment and constitution of the Authority.

Section 28 provides for the Objects and functions of the Authority whereas Section 29 deals with the Special Urban Planning and Development Authorities.

Section 56 stipulates that the State Government may from time

to time by notification in the Official Gazette, declare any area in the State to be a Regional Planning Area, a Local Planning Area or the site for a New Town. The State Government may after following procedure as laid down in this Section, alter the limits of any Regional Planning Area, local planning area or the site for a new town.

Section 59 deals with preparation of present Land Use Map. The preparation of Regional Plan is provided under Section 61 of 1995 Act where Section 62 provides for the contents of Regional Plan.

Section 63 lays down the procedure to be followed in preparing and approving Regional Plan.

Section 64 provides that immediately after a Regional Plan has been approved by the State Government under Section 63, the Designated Planning Agency concerned, shall publish in the prescribed form and manner, a notice stating that the Regional Plan has been approved, and naming a place, where a copy thereof, may be inspected at all reasonable hours and shall specify therein, a date on which the Regional Plan shall come into operation.

Section 67 lays down the procedure and the manner in which the application is submitted by every person including a Department of State Government or the Central Government desiring to obtain permission under sub-section (2) of Section 64.

Chapter X deals with the Preparation and Approval of Master Plans.

Section 70 of 1995 Act provides that as soon as may be after the declaration of a planning area and after the designation of a Planning Agency for that area, the Designated Planning Agency shall, not later than

one year after such declaration or within such time as the [State Government may, from time to time, extend, prepare and submit to the State Government for its approval a plan (hereinafter called the "Master Plan")] for the planning area or any or its parts and the Master Plan would indicate as under:

> *(a) indicate broadly the manner in which the land in the area should be used;*
> *(b) allocate areas or zones of land for use for different purposes;*
> *(c) indicate, define and provide the existing and proposed highways, roads, major streets and other lines of communication;*
> *[(cc) indicate areas covered under heritage site and the manner in which protection, preservation and conservation of such site including its regulation and control of development, which is either affecting the heritage site or its vicinity, shall be carried out.]*
> *(d) indicate, regulations (hereinafter called "Zoning Regulations") to regulate within each zone the location, height, number of storeys and size of buildings and other structures open spaces and the use of building, structures and land.*

As soon as after the master plan has been prepared under sub-section (1), by the Designated Planning Agency, the State Government, not later than such time, as may be prescribed, shall direct the Designated Planning agency to publish the existing land use Plan and Master Plan and the place or places, where copies of the same may be inspected, for inviting objections.

Chapter XI provides for Control of Development and Use of Land in the Area where Master Plan is in Operation.

Section 80 prohibits of development without permission and without/payment of development charge and betterment charge.

Section 86 deals with Penalty for unauthorised development or for use otherwise than in conformity with Master Plan.

Section 87 empowers the Authority to require removal of unauthorised development.

Section 88 empowers the Agency to discontinue unauthorised development.

Chapter XII deals with Town Development Schemes whereas Chapter XIV provides for Control and Development along Scheduled Roads.

The Government of Punjab framed the Rules called as The Punjab Regional and Town Planning and Development (General) Rules, 1995 (for short "1995 Rules").

Part V of 1995 Rules deals with Planning Area and Regional Plans. Rule 23 provides for Form of Regional Plan whereas Form and manner of publication of notice of draft Regional Plan under Section 63 is provided under Rule 24. Rule 25 deals with the form and manner of publication of notice of Regional Plan under Section 64.

Part VI of 1995 Rules provides for Preparation and Approval of Master Plan.

Rule 30 provides for Form and content of outline Master plan.

Rule 33 deals with the Public Notice of draft Comprehensive Master Plan provided under Section 73 (1) and 180(2)(zc).

Part VII of 1995 Rules deals with Control of Development and Use of Land in the Area where Master Plan is in operation. Rule 36

provides for the Form of application for permission under Section 81 of the Act.

Part VIII deals with Town Development Schemes.

Part X deals with Control and Development along Scheduled Roads.

The Central Government has framed the Rules called as The Wetlands (Conservation and Management) Rules, 2017 (for brevity "2017 Rules").

Rule 2 defines the Authority, Committee, ecological character, integrated management plan, Ramsar Convention, wetland, wetlands complexes, wise use of wetlands and zone of influence.

As per Rule 3 of 2017 Rules, these rules shall apply to the wetland or wetland complexes, namely (a) wetlands categorised as "wetlands of international importance" under the Ramsar Convention; (b) wetlands as notified by the Central Government, State Government and Union Territory Administration.

According to Rule 4, the wetlands shall be conserved and managed in accordance with the principle of "wise use" as determined by the Wetlands Authority. The following activities shall be prohibited within the wetlands, namely:

> *(i) conversion for non-wetland uses including encroachment of any kind;*
> *(ii) setting up of any industry and expansion of existing indutries;*
> *(iii) manufacture or handling or storage or disposal of construction and demolition waste covered under the Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the*

Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically Engineered Organisms or Cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste (Management) Rules, 2016.

(iv) solid waste dumping;

(v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,

(vii) poaching

Provided that the Central Government may consider proposals from the State Government or Union Territory Administration for omitting any of the activities on the recommendation of the Authority.

It is worthwhile to notice here that the State of Haryana has made applicable Punjab New Capital (Periphery) Control Act, 1952. It extends to such part of the area in the State of Haryana as is adjacent to and within a distance of ten miles on all sides from the outer boundary of the land acquired for the Capital of the State at Chandigarh as it existed immediately before the 1st November, 1966.

Section 3 empowers the State Government to notify in the official Gazette and declare the whole or any part of the area to which this Act extends to be a controlled area for the purposes of this Act.

Section 4 provides for Publication of plans of controlled area.

It is provided in this Section that the Director shall within three months of the declaration under Sub-section (1) of Section 3 deposit at his office and at such other places as he considers necessary, plan showing the area declared to be a "Controlled area" for the purposes of this Act, signifying therein the nature of the restrictions applicable to the controlled area.

Section 5 deals with the restrictions in a controlled area.

Section 6 provides for the applications for permission and the grant of or refusal of such permission. Offences and penalties are provided in Section 12.

The Punjab New Capital (Periphery) Control Rules, 1959 as adopted by the State of Haryana provides for Form of register, Form of applications, Power to reject incomplete application, Lapse of sanction, Principles to be taken into consideration before granting or refusing applications and the form in which orders passed thereon are to be communicated.

Similarly, the State of Punjab has also made applicable the Punjab New Capital (Periphery) Control Act, 1952. It extends to that area of the State of Punjab which is adjacent to and is within a distance of ten miles on all sides from the outer boundary of the land acquired for the Capital of the State at Chandigarh as that Capital and State existed immediately before the 1st November, 1966.

Section 3 provides for Declaration of controlled area.

Section 4 deals with Publication of plans of controlled area whereas Section 5 provides for Restrictions in a controlled area. The Punjab New Capital (Periphery) Control Rules, 1959 provides for the form of plan of controlled area and manner of publication of notification of

controlled area.

The Punjab New Capital (Periphery) Control Rules, 1959 as adopted by the State of Punjab provides for manner of publication of notification of controlled area, form of plan of controlled area, form of register, form of application.

Their Lordships of the Hon'ble Supreme Court in **Anil Hoble vs. Kashinath Jairam Shetye, (2016) 10 Supreme Court Cases 701** have upheld the demolition of unauthorized construction falling within the prohibited area endangering river and coastal ecosystem. Their Lordships further held that permission granted by Goa Coastal Zone Management Authority would not be of any assistance as it was contrary to directions of High Court. Relevant paras of this judgment read as under:

> 13. The moot question then is: whether the structure as it existed when the respondents moved the Tribunal complaining about violation within the CRZ area was the same structure as on 19th February, 1991 when the CRZ Policy came into being. That finding of fact has been answered against the appellant by the Tribunal and we must agree with the same. For, the structure as it existed when the plot was purchased by the appellant on 3rd August, 1992 was a small structure at the corner of the subject plot and was used only as a garage or for repairs of vehicles and allied activity. The structure in respect of which complaint has been made before the Tribunal was completely different in shape, size and also location for which reason the Tribunal issued direction to remove the same. The view taken by the Tribunal relying on the decision of the Bombay High Court, which the Tribunal was bound to follow, permitted retention of only dwelling units within CRZ III area and constructed prior to 19th February, 1991. The direction given by the High Court in the case of Goa Foundation (supra) have been reproduced by the Tribunal in para 12 of the impugned judgment, which reads thus :-
>
> "12. The Hon'ble High Court summarized findings and gave directions in paragraph 32 as follows :
>
> A) To conduct survey and enquiry as regards the number of dwelling units and all other structures and constructions which were existing in the CRZ- III Zone in Goa, village or town wise as on 19-2-1991 and increase the number thereof thereafter, date-wise.

B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing 19-2-1991.

C) To identify all types of structures and constructions made in CRZ-III zone, except the dwelling units, after 19-2-1991 in the locality comprised of the dwelling units and to take action against the same for the demolition in accordance with the provisions of law.

D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization thereof they are being allowed to be utilized for such construction activities.

E) Till the survey and enquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and enquiry to be held as directed above and this should be specifically stated in the licences to be granted for the purpose of repairs and/or renovation of the existing houses.

F) The Respondent No.5 to conduct an enquiry and fix responsibility for the violation of CRZ notification in relation to clause-III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.

G) All this directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

H) The survey and enquiry should be conducted as expeditiously as possible and should be concluded preferably within the period of six months, and in any case, by 30-5-2007, and report in that regard should be placed before this court in the first week after the summer vacation of 2007, for necessary for the order.

I) Meanwhile, on conclusion of the survey and inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above effort report.

J) Respondent No.3 and 4 shall ensure prompt compliance of the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

K) All the records relating to the survey and the inquiry should be made available to the public available to the public and in that regard a website should be opened and the entire material should be displaced on the website. The Respondent No.3 should ensure due compliance of this direction by 10.6.2007.

L) The respondent No.1 and 3 shall pay costs of Rs.10,000/- in each of the petitions to the petitioners.

M) Report to be received from the respondents should be placed before this court in the third week of June, 2007.

N) Rule is made absolute in above terms."

So long as these directions are in force, the State Authorities or Municipal Authorities were bound by the same and they could not have granted permission

to any applicant in breach thereof. Any permission given contrary to those directions must be viewed as nullity and non-est, having been given in complete disregard of the directions of the High Court. Thus, the permission granted to the appellant by GCZMA would be of no avail, as it is not consistent with the directions of the High Court.

14. The fact remains that the structure directed to be demolished by the Tribunal, was obviously erected after 19-2-1991. That being an unauthorized structure within the meaning of sub-clause (i) quoted above, could not be used for any purpose whatsoever and was required to be demolished. Therefore, the finding recorded by the Tribunal and the consequential directions given in that behalf are unassailable.

15. In this view of the matter, it is not necessary for us to dilate on the argument as to whether the CRZ Policy prohibits change of user of the structure which was in existence on 19-2-1991, so as to be used as a Restaurant and Bar. In our opinion, on the facts of the present case, no substantial question of law much less of great public importance arises for our consideration."

Their Lordships of the Hon'ble Supreme Court in **Lal Bahadur vs. State of Uttar Pradesh and Others (2018) 15 Supreme Court Cases 407** have held that it is the duty of Government and Court to protect environment. There is need of open spaces for recreation and fresh air in urban areas. It is further held that statutory power to modify Master Plan/to change greenbelt into residential area cannot be exercised in violation of Public Trust Doctrine. It is apposite to reproduce paras 13 to 21, 22 & 23 of this judgment, which read thus:

13. Articles 48A and 51A(g) are extracted hereunder:

"48A. Protection and improvement of environment and safeguarding of forests and wild life.— The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

51A(g). to protect and improve the natural en- vironment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

14. Law is well settled in this regard. In Bangalore Medical Trust v. B.S. Muddappa & Ors. (1991) 4 SCC 54, this Court had considered the

question whether area reserved for a public park can be converted for other purposes. The State Government by the subsequent order had allotted the area reserved for public parks to a Medical Trust, for the purposes of constructing a hospital. This Court has laid down the importance of open spaces and public parks in the said case and held that said spaces are a "gift from people to themselves". It observed that:

> "23.The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the City of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from the ill-effects of urbanisation. It is meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, 'ventilation' and fresh air. This is clear from the Act itself as it C.A.NO.5606/2010 originally stood. The amendments inserting Sections 16(1)(d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the City of Bangalore and the area adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by the preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.
>
> 24. Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.
>
> 25. Reservation of open spaces for parks and playgrounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill effects of urbanisation.
>
> 26. In Agins vs. City of Tiburon,the Supreme Court of the United States upheld a zoning ordinance which provided `... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as ..... pollution, ... destruction

of scenic beauty. Disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said: (SCC OnLine US SC paras 12 & 13)

> '12. .... The State of California has determined that the development of local open-space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill-effects of urbanization. Such governmental purposes long have been recognized as legitimate....
>
> 13 .....The zoning ordinances benefit the appellants as well public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas.'

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a `gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development, it occupies an important place in social ecology. A private nursing home, on the other hand, is essentiality a commercial venture, a profit-oriented industry. Service may be its morn but earning is the objective. Its utility may not be undermined but a park is a necessity, not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air. In 1984 the BD Act itself provided for reservation of not less than fifteen percent of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may given rise to health hazard. Maybe that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home? To say, therefore, that by conversion of a site reserved for low-lying into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."

(Emphasis supplied)

15. This Court had clearly laid down that such spaces could not be changed from green belt to residential or commercial one. It is not permissible to the State Government to change the parks and

playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities. No doubt, in the instant case, the legislative process had been undertaken. The Master Plan had been prepared under the Act of 1973. Ultimately, the respondents have realized the importance of such spaces. It was, therefore, their bounden duty not to change its very purpose when they knew very well that this is a low-lying area and this area is otherwise thickly populated and provides an outlet for water to prevent flood like situation. In fact, the flood-like situation occurred in the area in question. This Court has permitted the protection by raising Bandh.

16. We have seen the photographs that are placed on record by the learned counsel for the respondents. It is a beautiful park that has come up inter alia in the area in question having lake and a large number of trees. Though park has been beautifully developed the very action of change of purpose was wholly uncalled for. The importance of park is of universal recognition. It was against public interest, protection of the environment and such spaces reduce the ill effects of urbanisation, it was not permissible to change this area into urban area as the garden/ Greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. The provision of the Act of 1973 and other enactments relating to environment could not be permitted to become statutory mockery by changing the purpose in the master plan from green belts to residential one. Authorities are enjoined with duty maintain them as such as per doctrine of public trust.

17. This Court has considered the preservation of such spaces in Animal and Environment Legal Defence Fund v. Union of India & Ors. (1997) 3 SCC 549. This Court has observed that duty is to preserve the ecology of the forest area and regulating of public trust based on the ancient theory of Roman Empire. Considering depletion of forest areas and to preserve fragile ecology urgent steps are required. This court observed: (SCC pp 553-55, paras 11 & 15)

> "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 out- side 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 con- tain 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 is- lands 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 Na- tional 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 notifica- tion under Section 35(4) is issued by the State Government as expeditiously as possible. In Pradeep Krishen v. Union of India 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 fi- nal 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."

18. In M.C Mehta v. Kamal Nath, this Court has observed that the idea of this theory was that the Government in trusteeship held certain common properties for smooth and unimpaired use of public such as land, water, and air. Air, sea, waters, forests, parks and open land have such a great importance to the people that it would be wholly unjustified to make them a subject of private ownership. this Court has held that the State Government has committed patent breach of doctrine of "public trust" by leasing the ecologically important area. Considering human dependency

on the environment, Court cannot sit as a silent spectator and it has to ensure restoration of such areas. The Court observed:

(SCC pp 405-08 & 413, paras 23-25 & 34-35)

> "23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled An ecological perspective on property : A call for judicial protection of the public's interest in environ- mentally critical resources published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:
>
> > "Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activ- ity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially cata- strophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable re- sult that human activities will at some point be constrained.
> >
> > '[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scien- tific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service … growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.'
>
> Professor Barbara Ward has written of this ecological imperative in particularly vivid language:
>
> > 'We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".'
>
> There is a commonly-recognized link between laws and social values, but to ecologists a bal- ance between laws and values is not alone suffi- cient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, cur- rent legal doctrine rarely

> accounts for such constraints, and thus environmental stability is threatened.
>
> Historically, we have changed the environ- ment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important re- sources — for example, wetlands and riparian forests — can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the neces- sary result of objective observations of the laws of nature.
>
> In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, re- strict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions."

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 con- ceptual relationship to this legal doctrine. Un- der 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 proper- ties to private owners if the effect was to in- terfere 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 back- ground of the Public Trust Doctrine as under:

> "The source of modern public trust law is found in a concept that received much atten- tion in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given consid- erable 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 com- mon properties — such as the seashore, high- ways, 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 inter- ests. 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 sub- ject 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 en- joyment 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 re- strictions on governmental authority:

> "Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public pur- pose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for par- ticular types of uses."

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, run- ning 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 be- tween those members of the public who would pre- serve 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 increas- ingly 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 deter- mining legislative intent in the exercise of its powers of judicial review under the Constitu- tion. 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 per- mitted to be eroded for private, commercial or any other use unless the courts find it neces- sary, in good faith, for the public good and in public interest to encroach upon the said resources." (Emphasis supplied)

19. In Vellore Citizens' Welfare Forum v. Union of India, this Court has observed that protection of environment is one of the legal duties. The concept of sustainable development has been emphasized. Balancing has to be made between ecology and development. While setting up the industries is essential for the economic development, measures should be taken to reduce the risk for community by taking all necessary steps for protection of

environment. This court observed: (SCC pp. 657-58 & 660-61, paras 10 & 16)

> "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.N. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and World Wide 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 blue print 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 eco-systems. "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 won 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 persons 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 this 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 laedas;" 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 heriditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a water-course, 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 upto ourselves." (emphasis supplied)

20. In M.C Mehta v. Union of India, this Court had issued certain directions appointing Commissioner regarding hazardous chemicals, relying on Article 21 and considering that life, public health, and property cannot be lost sight.

21. This Court in Subhash Kumar v. State of Bihar has held that right to pollution-free air falls within Article 21. It observed: (SCC pp. 604-05, para 7)

> "7. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary proce- dure to safeguard the Fundamental Rights of a citizen. Right to live is a fundamental right under Article 21 of the Constitution and it in- cludes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitu- tion for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceed- ing under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the commu- nity. Public interest litigation cannot be in- voked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest can- not be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamen- tal rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the ju- risdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extra- ordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation,

see Bandhua Mukti Morcha v. Union of India ; Sachindanand Pandey v. State of W.B. ; Ramsharan Autyanuprasi v. Union of India and Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P."

(Emphasis supplied)

22. In M.C Mehta v. Kamal Nath, it was held that any disturbance to the basic environment, air or water, and soil which are necessary for life, would be hazardous to life within the meaning of Article 21 of the Constitution. In such cases "polluter pay principle" can also be invoked to restore the environment and to control it. It held: (SCC pp. 219-20, paras 8-10)

"8. Apart from the above statutes and the rules made thereunder, Article 48-A of the Constitu- tion provides that the State shall endeavour to protect and improve the environment and to safe- guard 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 arti- cles have to be considered in the light of Arti- cle 21 of the Constitution which provides that no person shall be deprived of his life and lib- erty except in accordance with the procedure es- tablished 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 Arti- cle 21 of the Constitution.

9. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, be- sides enforcing the provisions of the Acts re- ferred to above, has also given effect to funda- mental 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 vic- tims who have suffered due to that disturbance. In order to protect "life", in order to protect "environment" and in order to protect "air, wa- ter 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 Constitu- tion. 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 do- main, the Court, in exercise of its powers under Article 32 of the Constitution, has awarded dam- ages against those who have been responsible for disturbing the ecological balance either by run- ning the industries or any other activity which has the effect of causing pollution in the envi- ronment. 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."

23. In M.C Mehta v. Union of India, it was held to be duty of the State to anticipate, prevent and attack the causes of environmental degradation. Considering the Articles 21 and 48-A and also the fundamental duty it has been observed by the concerned officials, it was incumbent upon them to protect such spaces. Residential use of such area would have been contrary to the public interest as such not tolerable. The court held: (SCC p. 719, para 9)

> "9. This Court in Rural Litigation and Entitle- ment Kendra v. State of U.P. held as under:
>
> > "The consequence of this order made by us would be that the lessee of limestone quarries would be thrown out of business. This would undoubtedly cause hardship to them, but it is a price that has to be paid for C.A.NO.5606/2010 protecting and safeguarding the right of the people to live in a healthy environ- ment with minimal disturbance of ecologi- cal balance and without avoidable hazard to them, to their cattle, homes and agri- culture and undue affectation of air, water and environment."

Their Lordships of the Hon'ble Supreme Court in **Kerala State Coastal Zone Management Authority vs. State of Kerala, Maradu Municipality and Others, (2019) 7 Supreme Court Cases 248** ordered that the construction activity in question, which was found in violation of Coastal Regulation Zones, be demolished/removed. Their Lordship further held as under:

> *" 5. The area in which the respondents have carried out construction activities is part of tidal influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ Notifications. Uncontrolled construction activities in these areas would have devastating effects on the natural water flow that may ultimately result in severe natural calamities. The expert opinions suggest that the devastated floods faced by Uttarakhand in recent years and Tamil Nadu this year are immediate result of uncontrolled construction activities on river shores and unscrupulous trespass into the natural path of backwaters. The Coastal Zone Management Plan (in short, 'CZMP') has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP.*

13. It is necessary for the local authority to follow the restrictions imposed by the notification, as amended from time to time. Thus, it was not open to the local authority, i.e., Panchayat, in view of the notification of 1991 to grant any kind of permission without concurrence of Kerala State Coastal Zone Management Authority. Admittedly, Panchayat has not forwarded any such application sfor building permissions and there is no concurrence or permission granted by the Kerala State Coastal Zone Management Authority. As such, we find that once due inquiry has been held by the Committee, there is no escape from the conclusion that the area fell within CRZ-III, it was wholly impermissible and unauthorised construction within the prohibited area. We take judicial notice of recent devastation in Kerala which had taken place due to such unbriddled construction activities resulting into collossal loss of human life and property due to such unauthorised activity.

16. Further, reference has also been made to a decision of the Kerala High Court in Ratheesh K.R v. State of Kerala. The same is extracted below : (SCC OnLine Ker paras 98 & 107-108)

> "98. However, we would rather rest our decision without pronouncing on the validity of the permits as such. We have found that the Notification is applicable to the island, the island falls in CRZ-I and construction is impermissible. By merely getting a permit under the Building Rules, it cannot be in the region of any doubt that the company cannot arrogate to itself, the right to flout the terms of the Notification. We have already noticed Rule 23(4) of the Kerala Municipality Building Rules, 1999 and Rule 26(4) of the Kerala Panchayat Building Rules, 2011. In this case, we may also note that there is no permission sought from the authority. It is apposite to note that paragraph 3 (v) clearly mandates that for investment of Rs.5 crores and above, permission must be obtained from the Ministry of Environment and Forests. In this case, the investment of the company is far above Rs.5 crores. In respect of investments below Rs.5 crores, for activities which are not prohibited, permission must be obtained from the concerned authority in the State. The company has not made any such attempt at getting permission. That apart, this is a case where, even if permission had been applied for, the terms of the Notification would stand in the way of any such permission being granted in so far as the island is treated as falling in CRZ-I. Construction of buildings as has been done by the company was absolutely impermissible. The fact that in a situation where the construction activity was permissible under the Notification and if the company had obtained permit from the local body, would have made its activities legal, cannot avail the company for the reason that under the terms of the Notification, such permit obtained from the panchayat will be of little avail to it in the light of the nature of the restrictions brought about by the Regulations in respect of CRZ-I in which zone the island falls. According to the panchayat, no doubt, the conditions have been imposed also as

> recommended by the Assistant Engineer who is alleged to have even visited the island. Whatever that be, as observed by us, in the light of the view we have taken, namely that the 1991 Notification applies to the island, it is squarely covered by the same being included in CRZ-I and the constructions were begun even during the currency of the 1991 Notification. The conclusion is inescapable that it is in the teeth of the prohibition contained in the 1991 Notification and, therefore, it is palpably illegal.
>
> * * *
>
> 107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world class resort has been put up which will promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safe- guards essential for the preservation of environment.
>
> 108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument."
>
> (emphasis supplied)

18. In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place. In view of the findings of the Enquiry Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court.

It is apparent from the Notification dated 15.03.1963 issued by the State of Punjab that the Governor of Punjab having been satisfied that the land was required to be taken by the Government at the public expense for the public purpose, namely for carrying out soil conservation measures in Sukhna Lake Catchment Area in Kharar Tehsil, District Ambala issued the same under the provisions of Section 6 of the Land Acquisition Act, 1894 (for brevity "1894 Act"). Affected persons were invited to inspect the plan in the office of the Land Acquisition Officer (Estate Office Building,

Chandigarh). The Government of Punjab, in exercise of the powers under Section 17 (1) of 1894 Act was further pleased to direct that the Land Acquisition Collector, Chandigarh, shall proceed to take possession of the waste and arable land, houses and other structures on the land as per the specifications therein.

In the affidavit dated 15.02.2011 filed by the State of Haryana, the Deputy Conservator of Forests, Morni Pinjore has admitted categorically that approximately 1055 Ha. of catchment area of the lake falls within the territory of Haryana. He further stated that no construction activity was going on nor was there any existing plan for future in the catchment area of the lake. The Stand of the State of Haryana is that it has prepared a Development Plan for the Periphery Control Area (Haryana portion) and the detailed plan in the name of Mansa Devi Urban Complex has been prepared.

The catchment area of Sukhna Lake was demarcated by the Surveyor General of India, in accordance with the direction dated 16.07.2004 issued by this Court in writ petition bearing CWP No.7649 of 2003. It is admitted in the affidavit that the examination of the map would indicate that the part of Sector-1, Mansa Devi Complex forms part of the catchment area delineated by Survey of India.

In the affidavit dated 05.11.2011 filed by the Additional Secretary, Local Government, Punjab, it is specifically admitted that large number of constructions had been raised in the Peripheral and adjoining areas falling within the States of Punjab, Haryana and Union Territory of Chandigarh i.e in the Towns of SAS Nagar (Mohali), Zirakpur, Panchkula, Manimajra and Naya Gaon. Large number of buildings were constructed in

the area of Kansal, Karoran and Nada situated in the Peripheral areas constituting Nagar Panchayat, Naya Gaon. The Government had decided to constitute Nagar Panchayat Naya Gaon vide Notification dated 18.10.2006. In order to ensure the planned growth within the area of Naya Gaon, the Government declared the Local Government Department as Planning Agency to prepare and notify the Master Plan for Naya Gaon, as envisaged under the Punjab Regional Town Planning and Development Act, 1995. The powers under Section 10 of 1952 Act and Chapter VIII to X of the Punjab Regional and Town Planning and Development (Amendment) Act, 2006 were delegated to the Principal Secretary to Government of Punjab, Department of Local Government to impose restrictions upon use and development of land and to prepare, approve and publish/notify the Master Plans of the area falling within the jurisdiction of Nagar Panchayat, Naya Gaon. The Master Plan was notified on 02.01.2009. The Local Planning area of Naya Gaon was divided into five zones.

What would emerge from the affidavit is that the Nagar Panchayat Naya Gaon was constituted vide Notification dated 18.10.2006. The Master plan-2021 and the existing land use map for the Local Planning Area of Naya Gaon was published on 14.08.2008. Master plan was notified by the Government under Section 70(5) of the Punjab Regional and Town Planning and Development (Amendment) Act, 2006 on 02.01.2009. The draft Zonal Development Plans for Zone A and Zone B were prepared and the final plan was published and notified in October 2010. The State of Punjab throughout was aware of the Map prepared by Survey of India which was notified on 21.09.2004. The State of Punjab was party to the proceeding which led to finalisation of the Map of catchment area. The

area falling in the catchment areas delineated by the Survey of India in 2004 Map could not be included in the Master Plan of Nagar Panchayat Naya Gaon.

The stand of the State of Haryana throughout is that 1055 Ha. of catchment area falls within the territory of Haryana. The Department of Town and Country Planning, Haryana administered the Periphery Control Area notified under Section 3 of 1952 Act for its regulation. The Development Plan for the Periphery Control Area (Haryana portion) was prepared in this regard called as "Mansa Devi Urban Complex". It has also been admitted by the State of Haryana that the Map of Survey of India indicate that part of Sector-1, Mansa Devi Complex forms part of the catchment area delineated by Survey of India.

The Executive Officer, Nagar Panchayat, Nayagaon has stated that 55 building plans were submitted for sanction with Nagar Panchayat Nayagoan after 14.03.2011. The construction had started on 32 sites.

It is further noticed from the affidavit sworn by the Land Acquisition Officer, UT Chandigarh that wide publicity was given pursuant to order dated 22.5.2012. The general public was also informed that construction after 21.05.2012 was completely banned and people should not indulge themselves in any housing or construction activity in the catchment area of Sukhna Lake. List of persons, who were constructing buildings unauthorisedly in Villages Kaimbwala and Khuda Ali Sher in catchment area of Sukhna Lake was placed on record.

The Chief Conservator of Forests, Department of Forest & Wildlife, Chandigarh Administration, UT Chandigarh in his elaborate status report to apprise the Court about the issue of Wetland Sukhna Lake

Sanctuary Eco-sensitive zone has stated that due to alarming rate of soil erosion and fast siltation the erstwhile Government of Punjab acquired the Hilly catchment area of the lake. About 26 kms of the land was acquired for soil and moisture conservation measures. In order to minimize and control soil erosion from the Hilly catchment area various vegetative and engineering methods were adopted by Forest Department. The area of 26 km due to ecological floral, geo-morphological, natural and zoological was declared as Wildlife Sanctuary on 06.03.1998. The Chandigarh Administration vide Notification dated 06.07.1988 had declared the area of Sukhna Lake as "Wetland". The steps were being taken in compliance of the Wetland (Conservation and Management) Rules, 2017. Second meeting of the Union Territory, Chandigrh Wetlands Authority was held on 23.07.2019 under the chairpersonship of the Administrator-cum-Chairperson, UT Chandigarh wherein the senior officers (Additional Chief Secretary (Forest) & Principal Chief Conservator of Forests (Wildlife) of the respective States of Punjab & Haryana were invited as Special Invitees. It was decided to declare Sukhna Lake as Wetland under 2017 Rules. The Forest Department had sent a letter dated 19.08.2019 to the Additional Chief Secretary (Forests) and the Principal Chief Conservator of Forests (Wildlife), Department of Forest & Wildlife Preservation, Government of Punjab, as per recommendations of the UT Chandigarh Wetlands Authority and in pursuance to 2017 Rules for compliance of the Minutes of Meeting dated 23.07.2019 as the part of the catchment area also falls within the administrative boundary of Punjab and to take similar necessary action for regulating the activities as prohibited/regulated/promoted in the part of Sukhna Catchment falling within the State boundary of Punjab. The

contents of letter dated 19.08.2019 are reproduced hereinbelow:

> *"Subject: Compliance of Minutes of Second Meeting of the Union Territory of Chandigarh Wetlands Authority held on 23rd July, 2019.*
>
> *Sir,*
>
> *Please refer to the letter No.5598-5603 dated 31.7.2019 wherein Minutes of the 2nd meeting of the Union Territory of Chandigarh Wetlands Authority held on 23rd July, 2019 under the Chairpersonship of Shri V.P Singh Badnore, Hon'ble Governor of Punjab and the Administrator, UT Chandigarh in Punjab Raj Bhawan, Chandigarh was forwarded.*
>
> *In this connection, it is to submit that since the part of the catchment area also falls within the administrative boundary of Punjab, you are requested to issue necessary notification to take similar action as enlisted therein the Minutes of the meeting dated 23.7.2019 for regulating the activities as prohibited/regulated/promoted in the part of the Sukhna Catchment falling within your State boundary. This action is essential for maintaining proper ecological health of the Sukhna Wetland so that Sukhna Wetland is managed well on a landscape basis."*

Similarly, a letter was written on 19.08.2019 addressed to the Additional Chief Secretary (Forests) and the Principal Chief Conservator of Forests (Wildlife), Forest Department, Government of Haryana, as per recommendations of the UT Chandigarh Wetlands Authority and in pursuance to the Wetlands (Conservation & Management) Rules, 2017 for compliance of the Minutes of the Meeting dated 23.7.2019 as the part of the catchment area also falls within the administrative boundary of Haryana and

to take similar necessary action for regulating the activities as prohibited/regulated/promoted in the part of the Sukhna Catchment falling within the State boundary of Haryana. The contents of this letter reads as under:

> *"Subject: Compliance of Minutes of Second Meeting of the Union Territory of Chandigarh Wetlands Authority held on 23rd July, 2019.*
>
> *Sir,*
>
> *Please refer to the letter No.5598-5603 dated 31.7.2019 wherein Minutes of the 2nd meeting of the Union Territory of Chandigarh Wetlands Authority held on 23rd July, 2019 under the Chairpersonship of Shri V.P Singh Badnore, Hon'ble Governor of Punjab and the Administrator, UT Chandigarh in Punjab Raj Bhawan, Chandigarh was forwarded.*
>
> *In this connection, it is to submit that since the part of the catchment area also falls within the administrative boundary of Haryana, you are requested to issue necessary notification to take similar action as enlisted therein the Minutes of the meeting dated 23.7.2019 for regulating the activities as prohibited/regulated/promoted in the part of the Sukhna Catchment falling within your State boundary. This action is essential for maintaining proper ecological health of the Sukhna Wetland so that Sukhna Wetland is managed well on a landscape basis."*

The total area of Sukhna Wildlife Sanctuary is 25.9849 Sq. Kms (6420.99 Acres). The Ministry of Environment, Forest and Climate Change, Government of India in an endeavor to conserve and protect the area has notified 1050 hectares to an extent varying 2.0 to 2.75 kilometres from the boundary of Sukhna Wildlife Sanctuary as 'Sukhna Wildlife Sanctuary Eco-sensitive zone' vide Notification dated 18.01.2017 (R.16).

The relevant extract of the Notification reads as under:

> *"S.O.185(E)- whereas, a draft notification was published in the Gazette of India, Extraordinary, vide notification of the Government of the India in the Ministry of Environment, forest and Climate Change number FS.O.2541 (E), dated the 2nd September, 2015, inviting objections and suggestions from all persons likely to be affected thereby within the period of sixty days from date on which copies of the gazette containing the said notification were made available to the public;*
>
> *And whereas, objections and suggestions were received from all persons and stakeholders in response to the draft notification have been duly considered by the Central Government.*
>
> *And whereas, the Sukhna Wildlife Sanctuary in the Union Territory of Chandigarh shares the boundary with two other States viz Punjab and Haryana and Sukhna Wildlife Sanctuary falls in the Shivalik Hills which are ecologically sensitive and geologically unstable and thus are highly prone to soil erosion during rains and the total area of Sukhna wildlife Sanctuary is 25.9849 square kilometres (6420.99 acres).*
>
> *And whereas, due to its ecological, faunal, floral, geo-morphological, natural and geological significance for the purpose of protecting, propagating and developing wildlife and its environment, this area was declared as Wildlife Sanctuary vide Chandigarh Administration notification No.694-HII(4)-98/4519, dated the 6th March, 1998.*
>
> *And whereas, as per Wildlife Census, carried out under the guidance of Wildlife Insftitute of India, during 2010, two species of Schedules I and II and three species of Schedule III and many species of Schedule IV of Wildlife (Protection) Act, 1972 (53 of 1972), were reported in*

Sukhna Wildlife Sanctuary; among proninent species present in the Sukhna Wildlife Sanctuary are-Leopar (Panthera sp) Sambar (Rusa sp), Indian Pangolin (Manis sp.), Golden Jackal (Canis), Grey Langur (Semnopithecus sp), Wild Boar (Sus sp), Red Jungle Fowl (Gallus sp), Indian Peafowl (Pavo sp), Chital (Axis sp), Golden Oriole (Oriolus sp), Cobra (Ophiophagus sp), Russell's Viper (Dobia sp), Indian Python (Python sp) etc apart from this a wide variety of butterflies (more than 70 species) and other inspects are found in abundance.

And whereas, it is necessary to conserve and protect the area, the extent and boundaries of which are specified in paragraph 1 of this notification, around the protected area of the sukhna Wildlife Sanctuary as Eco-sensigtive Zone from ecological and environmental point of view and to prohibit industries or class of industries and their operations and processes in the said Eco-sensitive Zone;

Now, therefore, in exercise of the powers conferred by sub-section (1), clause (v) and cluase (xiv) of sub-section (2) and sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby notifies an area of 1050 hectares, to an extent varying from 2.0 kilometres to 2.75 kilometres from the boundary of the Sukhna Wildlife Sanctuary in the Union territory of Chandigarh on the side of Chandigarh as the Sukhna Wildlife Sanctuary Eco-sensitive Zone (hereinafter referred to as the Eco-sensitive Zone), details of which are as under, namely:

1. ***Extent and boundaries of Eco-sensitive zone- (1)*** *The extent of Eco-sensitive Zone varies fro 2.0 kilometres to 2.75 kilometres from the boundary of the*

Sukhna Wildlife Sanctuary in the Union territory of Chandigarh; the Union territory Administration of Chandigarh has divided the Eco-sensitive Zone in two zones i.e, Zone-I and Zone-II and The extent of Zone-I is upto 0.5 of from the boundary of the Sukhna Wildlife Sanctuary and the balance area shall be in Zone-II and this has been done with the purpose of having stricter norms in Zone-I for protection of wildlife habitat; the area of Eco-sensitive Zone is 1050.0 hectates (on the side of Union territory of Chandigarh).

(2) The map of Eco-sensitive Zone boundary together with its latitudes and longitudes is appended as ***Annexure I.***

*(3) The boundary description of the Eco-sensitive Zone and co-ordinates of Sukhna Wildlife Sanctuary are appended as -****Annexure II and Annexure IIA.***

(4) The coordinates of Eco-sensitive Zone with its latitudes and longitudes is appended as ***Annexure III.***

(5) There are three villages falling within the Eco-sensitive Zone namely, Khuda Alisher, Kishangarh and Kaimbwala.

2. Zonal Master Plan for Eco-sensitive Zone.- *(1) The Union territory of Chandigarh shall, for the purpose of the Eco-sensitive Zone prepare, a Zonal Master Plan, within a period of two years from the date of publication of this notification in the Official Gazette, in consultation with local people and adhering to the stipulations given in this notification.*

(2) The Zonal Master Plan shall be approved by the Competent Authority in the Union territory Government.

(3) The Zonal Master Plan for the Eco-sensitive Zone shall be prepared by the Union territory Government in such manner as is specified in this notification and also in consonance with the Central and Union territory laws and the guidelines issued by the Central Government, if

any.

(4) The said Plan shall be prepared in consultation with all Union territory Government Departments, namely:

(i) Environment;

(ii) Forest;

(iii) Urban Development;

(iv) Tourism;

(v) Municipal;

(vi) Revenue;

(vii) Agriculture;

(viii) Chandigarh Pollution Control Committee;

(ix) Irrigation; and

(x) Public Works Department,

for integrating environmental and ecological considerations into it.

(5) The Zonal Master Plan shall not impose any restriction on the approved existing land use, infrastructure and activities, unless so specified in this notification and the Zonal Master Plan shall factor in improvement of all infrastructure and activities to be more efficient and eco-friendly.

(6) The Zonal Master plan shall provide the details of restoration of denuded areas, conservation of existing water bodies, management of catchment areas, watershed management, groundwater management, soil and moisture conservation, needs of local community and such other aspects of the ecology and environment that need attention.

(7) The Zonal Master Plan shall demarcate all the existing worshipping places, village and urban settlements, types and kinds of forests, agricultural areas, fertile lands, green area, such as, parks and like places, horticultural areas, orchards, lakes and other water bodies.

(8) The Zonal Master Plan shall regulte development in Eco-sensitive Zone so as to ensure Eco-friendly development and livelihood security of local communities.

3. ***Measures to be taken by Union territory Government-*** *The Union territory Government shall take the following measures for giving effect to the provisions of this notification, namely:*

(1) Landuse- Forests, horticulture areas, parks and open spaces earmarked for recreational purposes in the Eco-sensitive Zone shall not be used or converted into areas for commercial or industrial related development activities:

Provided that the conversion of agricultural lands within the Eco-sensitive Zone may be permitted on the recommendation of the Monitoring Committee, and with the prior approval of the Union territory Government, to meet the residential needs of local residents, and for the activities listed against serial numbers 21,23,29 and 34 in column (2) of the Table in paragraph 4, namely:

(i) eco-friendly cottages for temporary occupation of tourists such as tents, wooden houses, for eco-friendly tourism activities;

(ii) small scale industries not causing pollution;

(iii) rainwater harvesting; and

(iv) cottage industries including village artisans;

Provided further that no use of tribal land shall be permitted for commercial and industrial development activities without the prior approval of the Union territory Government and without compliance of the provisions of article 244 of the Constitution or the law for the time being in force, including the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);

Provided also that any error appearing in the land

records within the Eco-sensitive Zone shall be corrected by the Union territory Government, after obtaining the views of the Monitoring Committee, once in each case and the correction of said error shall be intimated to the Central Government in the Ministry of Environment, Forest and Climate Change:

Provided also that the above correction of error shall not include change of land use in any case except as provided under this sub-paragraph:

Provided also that there shall be no consequential reduction in green area, such as forest area and agricultural area etc and efforts shall be made to reforest the unused or unproductive agricultural areas.

A public notice was issued by the office of the Deputy Commissioner, Union Territory, Chandigarh pursuant to order dated 14.3.2011 along with the Map of Survey of India. It was also published in the newspapers namely The Hindustan Times, Amar Ujala, Dainik Bhaskar, The Tribune and Jagbani Punjabi. The contents of the same reads as under:

"Public Notice

It is for the information and immediate compliance of the general public that the Hon'ble Punjab & Haryana High Court in CWP No.18253 of 2009 vide orders dated 14.3.2011 has issued directions for maintaining the catchment area as such being vital for restoring the Sukhna lake to its formal glory by ordering that no housing colonies or building activities of any kind would take place in the catchment area either within the forest area or the agricultural area falling within the jurisdiction of the two states of Punjab and Haryana as well as UT, Chandigarh in terms of the map prepared by the Survey of India. Further Hon'ble Punjab & Haryana High Court in C.M No.5427 of 2012 in/and CWP No.18253 of 2009 (O&M) vide

orders dated 14.5.2012 has directed the States of Punjab, Haryana as well as UT, Chandigarh to put their enforcement agencies in action and any construction activities, which are going on in the catchment area of Sukhna Lake as per the map of Survey of India, should be immediately stopped and any construction raised in violation of the directions issued by this Court be demolished, without issuing any notice. The Hon'ble Supreme Court of India in orders dated 22.5.2002 passed in SLP (C)D.No(s).17889/2012 (from the judgment and order dated 14.3.2011 and 14.5.2012 in CWP No.18253/2009 of the Hon'ble High Court of Punjab & Haryana) has directed the petitioners and all other persons that they would not make any constructions in the area in question and the respondents would not demolish the constructions, which have already been made till 21.5.2012. The Hon'ble Supreme Court further ordered that if any of the petitioners or any other person would still continue to make construction, then the court would be at liberty to get the construction of such person demolished. The Hon'ble Punjab & Haryana High Court in C.M No.5427 of 2012 in/and CWP No.18253 of 2009 (O&M) vide orders dated 23.5.2012 has again reaffirmed that the construction after 21.5.2012 is completely banned as per the direction of Hon'ble Supreme Court and the same must be strictly complied with by all the respondents. Any violation of the orders shall be immediately reported so that suitable action be initiated against the violators.

The catchment area as depicted in the map prepared by the Survey of India taken on record by the Hon'ble Punjab & Haryana High Court vide orders dated 24.09.2004 and adopted by Chandigarh Administration thereafter officially as map of catchment area of

> *Sukhna Lake is hereby published for the information of general public. The general public is hereby informed that construction after 21.5.2012 is completely banned. By this public notice, general public indulging in violation of the orders of the Hon'ble Court is hereby informed and warned not to raise any housing and construction activity in the catchment area of the Sukhna Lake as depicted in the map prepared by the Survey of India."*

The stand of the State of Punjab qua declaration of Sukhna lake as Wildlife Sanctuary Eco-Sensitive Zone is that Hon'ble the Chief Minister, Punjab on 11.06.2014 had sent a letter to the Union of India, informing the stand of the Punjab Government to keep 100 mts area as Eco-Sensitive Zone followed by reminder dated 28.07.2014.

The Government of India, Ministry of Environment, Forest & Climate Change vide letter dated 16.07.2018 had issued guidelines for declaration of Eco-Sensitive Zone around National park and Wild Life Sanctuary, which have been placed on record by the Government of Punjab by way of affidavit sworn by the Divisional Forest Officer (Wildlife), Department of Forest and Wildlife Preservation, Ropar.

The Chief Wildlife Warden, UT Chandigarh had sent a communication to the Deputy Inspector General (Wildlife) to justify 100 metres area as Eco-Sensitive Zone around Sukhna Wildlife Sanctuary. The Addl. Secretary has sent a communication dated 04.07.2018 to the Chief Secretary, Government of Punjab that an extent of 100 metres around the Sanctuary in the area falling towards Punjab was proposed by the Government of Punjab against the extent of 2 kms to 2.75 kms finalized for the area falling in the UT of Chandigarh. The Government of Punjab was

accordingly advised to explore the possibility of extending the extent of ESZ to at least 1.0 km and therefore, revised proposal was sought for. The contents of the letter reads as under:

> *"A proposal for declaration of Eco-sensitive Zone around Sukhna Wild Life Sanctuary was received from the Government of Punjab vide letter dated 19.09.2013. An extent of 100 metres around the Sanctuary in the area falling towards Punjab was proposed by the Government of Punjab against the extent of 2 kms t 2.75 kms finalized for the area falling in the UT of Chandigarh. Government of Punjab was accordingly advised to explore the possibility of extending the extent of ESZ to at least 1.0 km and, therefore, revised proposal was sought by this Ministry (copy of letters annexed for ready reference). Two such communications were sent by the then Hon'ble Minister for Environment and Forest to the Hon'ble Governor of Punjab. One of the key objectives of revised proposal is to ensure compatibility of proposal of UT of Chandigarh and Punjab Government containing details as per template enclosed. However, the revised proposal is still awaited.*
>
> *I would request your personal intervention in the matter of soliciting an early response for further necessary action by this Ministry."*

However, the State of Punjab again vide letter dated 08.05.2019 sent to the Addl. Chief Secretary, Forest & Wildlife Preservation, Punjab reiterated that the Eco-sensitive Zone area should be 100 metres around Sukhna Wildlife Sanctuary. Identical request was made on 04.12.2019.

We can take judicial notice of the news item which appeared in the daily edition of The Times of India vide which the Centre has advised

the Punjab Government to extend the area to 1 kms from the boundary of Sukhna Wildlife Sanctuary. In order to ascertain the authenticity in this regard, we had requested the Chief Conservator of Forests, Department of Forest & Wildlife, Chandigarh Administration, UT Chandigarh to verify the said fact. In response thereto, a communication dated 12.2.2020 was sent to us vide which the Ministry of Environment, Forest & Climate Change ESZ Division, Government of India has sought for comments on the issues raised by UT Chandigarh on the ESQ proposal of Sukhna Wildlife Sanctuary, Punjab, from the PCCF (Chief Wildlife Warden), Government of Punjab.

Vide Notification dated 18.01.2017, the extent of Eco-sensitive zone varies from 2.0 kilometres to 2.75 kilometres from the boundary of the Sukhna Wildlife Sanctuary in the Union territory of Chandigarh. The Union territory Administration of Chandigarh has divided the Eco-sensitive Zone in two zones i.e, Zone-I and Zone-II and the extent of Zone-I is upto 0.5 of from the boundary of the Sukhna Wildlife Sanctuary and the balance area shall be in Zone-II and this has been done with the purpose of having stricter norms in Zone-I for protection of wildlife habitat; the area of Eco-sensitive Zone is 1050.0 hectates (on the side of Union territory of Chandigarh. The map of Eco-sensitive Zone has already been prepared vide this Notification. There are three villages falling within the Eco-sensitive Zone namely Khuda Alisher, Kishangarh and Kaimbwala. The U.T Chandigarh has also sent letters dated 19.08.2019 to the States of Punjab and Haryana to take similar action as per Second Meeting of the Union Territory of Chandigarh Wetlands Authority held on 23.07.2019. The State of Haryana has till date not issued any Notification for declaring

Eco-sensitive zone around Sukhna Lake Wildlife Sanctuary falling in its area. The State of Punjab, for the reasons best known to it, without any data had been harping to declare only 100 metres as Eco-sensitive zone falling in its area around Sukhna Lake Wildlife Sanctuary. The Union of India had been impressing upon the State of Punjab as per letter dated 12.02.2020 of which we have taken cognizance that at least 1.0 km area should be declared as Eco-sensitive zone around Sukhna Lake Wildlife Sanctuary falling in the State of Punjab.

We place on record our sincere appreciation for the exercise undertaken by the learned Court Commissioner. We have carefully seen the photographs placed on record besides examining the scanned material. It is evident that large scale unauthorized construction activities was noticed by the learned Court Commissioner in Village Kansal, Kaimbwala, Saketri (Haryana) as well as catchment area of UT Chandigarh. Learned Court Commissioner has noticed that the State instrumentality has supplied the electricity and water connection to the persons indulged in unauthorized construction activities.

In a contempt petition bearing COCP No.3088 of 2015, Sh.K.K. Yadav, the then Director-cum-Special Secretary, Local Bodies, Punjab apprised the Court that about 80 illegal constructions were identified and notices were issued. Even the Court Commissioner has also tendered a status report qua unauthorised construction activities carried out in the catchment area more particulary in the area of Villages Kaimbwala, Saketri and Kansal.

A perusal of order dated 14.3.2011 reveals that this Court had directed that in order to maintain the catchment area, no housing colonies or

building activities of any kind would take place in the catchment area until further orders (either within the forest area or the agricultural area) falling within the jurisdiction of the two States of Punjab and Haryana in terms of the map prepared by the Survey of India. Further, this Court on 14.5.2012 had categorically held that in the light of Map of the Survey of India having already been prepared and validated by the participating parties, there was no necessity for preparation of fresh Map. In other words, the Map of the catchment area prepared by the Survey of India was taken on record vide order dated 24.09.2004 and adopted by the Chandigarh Administration thereafter officially as map of catchment area of Sukhna Lake (P.14) so that general public was made aware of the same. The publicity was ordered to be given in the print media as well as in the electronic media. This Court vide order dated 14.05.2012 had specifically directed the States of Punjab, Haryana and UT Chandigarh to ensure that no unauthorized construction activity be carried out in the catchment area as per the Map prepared by the Survey of India and any construction raised in violation of the directions issued by this Court be demolished without issuing any notice.

The Law Enforcement Agencies have issued notices to the defaulters but the learned Single Judge as noticed hereinabove, had stayed the demolition in writ petition bearing CWP Nos.12280, 12284 and 12355 of 2017. Learned Single Bench could not pass orders contrary to the orders passed by the Division Bench. Thus, the matter was placed before the Division Bench.

The State of Punjab was directed to ensure strict compliance of orders dated 14.05.2012 and 25.10.2018.

The defaulters throughout knew about the existence of the Map

of the Survey of India of catchment area of Sukhna Lake dated 21.9.2004 and adopted by the Chandigarh Administration but despite it the construction activity was carried out in the catchment area with impunity.

Initially, Sukhna Lake was declared as common wetland on 06.07.1988. The Chandigarh Administration had constituted "Union Territory of Chandigarh Wetlands Authority". A Technical Committee was constituted vide order dated 21.8.2018 whereas the Grievance Committee was also constituted vide order dated 21.8.2018. The Chandigarh Administration by way of notification issued by the Home Department (Forest and Wildlife) dated 17.02.1998 declared 7548.43 Acres of land in Chandigarh to be a reserved forest. The Ministry of Environment, Forest and Climate Change, Government of India in an endeavor to conserve and protect the area has notified 1050 hectares to an extent varying 2.0 to 2.75 kilometres from the boundary of Sukhna Wildlife Sanctuary as 'Sukhna Wildlife Sanctuary Eco-sensitive zone' vide notification dated 18.1.2017.

There is no merit in the contention of learned counsel appearing for the State of Punjab that Eco-sensitive zone should be restricted to 100 meters only. It is the prime duty of the State of Punjab to protect the ecology and environment around Sukhna Lake to save it from extinction.

It is evident that the draft Notification was published and placed in public domain and objections/suggestions were invited against the proposed draft notification within 60 days from the date of such publication in public domain for declaration of Sukhna Lake as wetland.

We accept the report placed before us by the National Institute of Hydrology Roorkee (Uttarakhand) as per the orders passed by this Court

from time to time. It is highlighted in the report that the most severe problem of Sukhna Lake is siltation. The degraded Shivalik hills, at the foothills of which the lake is located, are prone to heavy erosion. For longer life, desilting (dredging) of the lake needs to be carried out regularly. However, the dredging should be carried out scientifically, both in terms of the quantity of silt to be removed from the lake as well as the areas of the lake where dredging should be carried out. The runoff coefficient and the runoff from the catchment of the lake has been significantly reduced after the 1970's construction of the check dams. Maintaining a specific water level in the lake is an important aspect in any lake. Water levels of 1952 ft, 1954 ft and 1956 ft are the possible levels that can be kept as management (maintenance) goals for water level for Sukhna Lake. Because of being destination for a variety of migratory and resident birds, maintaining a good water quality in Sukhna Lake should be another important management goal. The problem of aquatic weeds was significantly and severely visible during 2011. Every lake has a birth, life and death. In case of many lakes, death is hastened by human activities through processes such as increased sedimentation rates. The life of Sukhna lake has already been reduced due to heavy natural siltation in the initial decades after its construction in 1958. To prevent untimely extinction of the lake and to ensure longer useful life for the lake, certain conservation and management measures are needed and recommended. It was also highlighted that the lake is not only a hydrological unit but an ecosystem also.

The Courts are duty bound to protect the environmental ecology under the 'New Environment Justice Jurisprudence' and also under the principles of *parens patriae*.

The principle of *parens patraie* has been evoked by the Hon. U.S. Supreme Corut in 136 U.S. 1 (1890) in the case of Mormon Church v. United States, 136 U.S. 1 as under: -

> *"If it should be conceded that a case like the present transcends the ordinary jurisdiction of the court of chancery and requires for its determination the interposition of the parens patriae of the state, it may then be contended that in this country there is no royal person to act as parens patriae and to give direction for the application of charities which cannot be administered by the court. It is true we have no such chief magistrate. But here the legislature is the parens patriae, and unless restrained by constitutional limitations, possesses all the powers in this regard which the sovereign possesses in England. Chief Justice Marshall, in the Dartmouth College Case, said: "By the Revolution, the duties as well as the powers of government devolved on the people. . . . It is admitted that among the latter was comprehended the transcendent power of Parliament, as well as that of the executive department."*
>
> *And Mr. Justice Baldwin, in Magill v. Brown, Brightly 346, 373, a case arising on Sarah Zane's will, referring to this declaration of Chief Justice Marshall, said:*
>
> *"The Revolution devolved on the state all the transcendent power of Parliament, and the prerogative of the Crown, and gave their acts the same force and effect."*
>
> *Chancellor Kent says:*
>
> *"In this country, the legislature or government of the state, as parens patriae, has the right to enforce all charities of a public nature by virtue of its general superintending authority over the public interests where no other person is in trusted with it."*

In Fontain v. Ravenel, 17 How. 369, 58 U. S. 384, Mr. Justice McLean, delivering the opinion of this Court in a charity case, said: "When this country achieved its independence, the prerogatives of the Crown devolved upon the people of the states. And this power still remains with them except so far as they have delegated a portion of it to the federal government. The sovereign will is made known to us by legislative enactment. The state, as a sovereign, is the parens patriae." This prerogative of parens patriae is inherent in the supreme power of every state, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarchs to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interests of humanity, and for the prevention of injury to those who cannot protect themselves. Lord Chancellor Somers, in Cary v. Bertie, 2 Vernon 333, 342, said: "It is true infants are always favored. In this court there are several things which belong to the King as pater patriae and fall under the care and direction of this court, as charities, infants, idiots, lunatics, etc." The Supreme Judicial Court of Massachusetts well said in Sohier v. Mass.Gen. Hospital, 3 Cush. 483, 497:

"It is deemed indispensable that there should be a power in the legislature to authorize a sale of the estates of infants, idiots, insane persons, and persons not known, or not in being, who cannot act for themselves. The best interest of these persons, and justice to other persons, often require that such sales should be made. It would be attended with incalculable mischiefs, injuries, and losses if estates in which persons are interested, who have not capacity to act for themselves, or who cannot be

certainly ascertained, or are not in being, could under no circumstances be sold and perfect titles effected. But in such cases, the legislature, as parens patriae, can disentangle and unfetter the estates by authorizing a sale, taking precaution that the substantial rights of all parties are protected and secured." These remarks in reference to infants, insane persons, and persons not known or not in being apply to the beneficiaries of charities, who are often incapable of vindicating their rights, and justly look for protection to the sovereign authority, acting as parens patriae. They show that this beneficent function has not ceased to exist under the change of government from a monarchy to a republic, but that it now resides in the legislative department, ready to be called into exercise whenever required for the purposes of justice and right, and is clearly capable of being exercised in cases of charities as in any other cases whatever.

It is true that in some of the states of the union in which charities are not favored, gifts to unlawful or impracticable objects, and even gifts affected by merely technical difficulties, are held to be void, and the property is allowed to revert to the donor or his heirs or other representatives. But this is in cases where such heirs or representatives are at hand to claim the property and are ascertainable. It is difficult to see how this could be done in a case where it would be impossible for any such claim to be made, as where the property has been the resulting accumulation of ten thousand petty contributions extending through a long period of time, as is the case with all ecclesiastical and community funds. In such a case, the only course that could be satisfactorily pursued would be that pointed out by the general law of charities -- namely, for the government or the court of chancery to assume the control of the fund

and devote it to lawful objects of charity most nearly corresponding to those to which it was originally destined. It could not be returned to the donors nor distributed among the beneficiaries.

The impracticability of pursuing a different course, however, is not the true ground of this rule of charity law. The true ground is that the property given to a charity becomes in a measure public property, only applicable as far as may be, it is true, to the specific purposes to which it is devoted, but within those limits consecrated to the public use, and become part of the public resources for promoting the happiness and wellbeing of the people of the state. Hence, when such property ceases to have any other owner, by the failure of the trustees, by forfeiture for illegal application, or for any other cause, the ownership naturally and necessarily falls upon the sovereign power of the state, and thereupon the court of chancery, in the exercise of its ordinary jurisdiction, will appoint a new trustee to take the place of the trustees that have failed or that have been set aside, and will give directions for the further management and administration of the property, or, if the case is beyond the ordinary jurisdiction of the court, the legislature may interpose and make such disposition of the matter as will accord with the purposes of justice and right. The funds are not lost to the public as charity funds; they are not lost to the general objects or class of objects which they were intended to subserve or effect. The state, by its legislature or its judiciary, interposes to preserve them from dissipation and destruction and to set them up on a new basis of usefulness, directed to lawful ends coincident as far as may be with the objects originally proposed.

The Hon. U.S. Supreme Court in 185 U.S. 125 (1902) in the case of 'Kansas v. Colorado' has held that: -

> *"In Missouri v. Illinois, 180 U. S. 208, it was alleged that an artificial channel or drain constructed by the sanitary district for purposes of sewerage, under authority derived from the State of Illinois, created a continuing nuisance dangerous to the health of the people of the State of Missouri, and the bill charged that the acts of defendants, if not restrained, would result in poisoning the water supply of the inhabitants of Missouri and in injuriously affecting that portion of the bed of the Mississippi River lying within its territory. In disposing of a demurrer to the bill, numerous cases involving the exercise of original jurisdiction by this Court were examined, and the court, speaking through MR. JUSTICE SHIRAS, said:*
>
> *"The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases directly affecting the property rights and interests of a state. But such cases manifestly do not cover the entire field in which such controversies may arise and for which the Constitution has provided a remedy, and it would be objectionable and indeed impossible for the Court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this Court. An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this Court at the suit of the State of Missouri. It is true that no question of boundary is involved, nor of direct property rights belonging to the complainant state, but it must surely be conceded that if the health and comfort of the inhabitants of a state are threatened, the state is the proper party to represent and defend them. If Missouri were an independent and*

sovereign state, all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that, upon the latter would be devolved the duty of providing a remedy, and that remedy, we think, is found in the constitutional provisions we are considering. The allegations of the bill plainly present such a case. The health and comfort of the large communities inhabiting those parts of the state situated on the Mississippi River are not alone concerned, but contagious and typhoidal diseases introduced in the river communities may spread themselves throughout the territory of the state. Moreover, substantial impairment of the health and prosperity of the towns and cities of the state situated on the Mississippi River, including its commercial metropolis, would injuriously affect the entire state. That suits brought by individuals, each for personal injuries, threatened or received, would be wholly inadequate and disproportionate remedies, requires no argument."

As will be perceived, the court there ruled that the mere fact that a state had no pecuniary interest in the controversy would not defeat the original jurisdiction of this Court, which might be invoked by the state as parens patriae, trustee, guardian, or representative of all or a considerable portion of its citizens, and that the threatened pollution of the waters of a river flowing between states, under the authority of one of them, thereby putting the health and comfort of the citizens of the other in jeopardy, presented a cause of action justiciable under the Constitution.

In the case before us, the State of Kansas files her bill as representing and on behalf of her citizens, as well as in vindication of her alleged rights as an individual owner, and seeks relief in respect of being deprived of the waters

> *of the river accustomed to flow through and across the state, and the consequent destruction of the property of herself and of her citizens and injury to their health and comfort. The action complained of is state action, and not the action of state officers in abuse or excess of their powers."*

The Hon. U.S. Supreme Court in 304 U.S. (1938) in the case of 'Oklahoma ex. Rel. Johnson v. Cook' has dealt with the issue of *parens patriae*: -

> *"In determining whether the State is entitled to avail itself of the original jurisdiction of this Court in a matter that is justiciable (see Massachusetts v. Mellon, 262 U. S. 447, 262 U. S. 485), the interests of the State are not deemed to be confined to those of a strictly proprietary character, but embrace its "quasi-sovereign" interests which are "independent of and behind the titles of its citizens, in all the earth and air within its domain." Georgia v. Tennessee Copper Co., 206 U. S. 230, 206 U. S. 237. Thus, we have held that a State may sue to restrain the diversion of water from an interstate stream (Kansas v. Colorado, 206 U. S. 46, 206 U. S. 95-96) or an interference with the flow of natural gas in interstate commerce (Pennsylvania v. West Virginia, 262 U. S. 553, 262 U. S. 592); or to prevent injuries through the pollution of streams or the poisoning of the air by the generation of noxious gases destructive of crops and forests, whether the injury be due to the action of another State or of individuals. Missouri v. Illinois, 180 U. S. 208; 200 U. S. 200 U.S. 496; Georgia v. Tennessee Copper Company, supra; North Dakota v. Minnesota, 263 U. S. 365, 263 U. S. 373-374; Wisconsin v. Illinois, 278 U. S. 367; 281 U. S. 281 U.S. 179."*

The Hon. U.S. Supreme Court in 458 U.S. 592 (1982) in the case of Snapp & Son, inc. v. Puerto Rico ex rel. Barez. has explained parens patriae as under: -

> *"Parens patriae means literally "parent of the country." The parens patriae action has its roots in the common law concept of the "royal prerogative." The royal prerogative included the right or responsibility to take care of persons who are legally unable, on account of mental incapacity, whether it proceed from 1st. nonage: 2. idiocy: or 3. lunacy: to take proper care of themselves and their property. "*
>
> *At a fairly early date, American courts recognized this common law concept, but now in the form of a legislative prerogative:*
>
> *"This prerogative of parens patriae is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature [and] is a most beneficent function . . . often necessary to be exercised in the interests of humanity, and for the prevention of injury to those who cannot protect themselves."*
>
> *Mormon Church v. United States, (1890).*
>
> *This common law approach, however, has relatively little to do with the concept of parens patriae standing that has developed in American law. That concept does not involve the State's stepping in to represent the interests of particular citizens who, for whatever reason, cannot represent themselves. In fact, if nothing more than this is involved -- i.e., if the State is only a nominal party without a real interest of its own -- then it will not have standing under the parens patriae doctrine. See Pennsylvania v. New Jersey, 426 U. S. 660 (1976); Oklahoma ex rel. Johnson v. Cook, 304 U. S. 387 (1938); Oklahoma v.*

Atchison, T. & S. F. R. Co., 220 U.S. 277 (1911). Rather, to have such standing, the State must assert an injury to what has been characterized as a "quasi- sovereign" interest, which is a judicial construct that does not lend itself to a simple or exact definition. Its nature is perhaps best understood by comparing it to other kinds of interests that a State may pursue, and then by examining those interests that have historically been found to fall within this category.

Two sovereign interests are easily identified: first, the exercise of sovereign power over individuals and entities within the relevant jurisdiction -- this involves the power to create and enforce a legal code, both civil and criminal; second, the demand for recognition from other sovereigns -- most frequently this involves the maintenance and recognition of borders. The former is regularly at issue in constitutional litigation. The latter is also a frequent subject of litigation, particularly in this Court:

"The original jurisdiction of this Court is one of the mighty instruments which the framers of the Constitution provided so that adequate machinery might be available for the peaceful settlement of disputes between States and between a State and citizens of another State. . . . The traditional methods available to a sovereign for the settlement of such disputes were diplomacy and war. Suit in this Court was provided as an alternative."

Georgia v. Pennsylvania R. Co., 324 U. S. 439, 324 U. S. 450 (1945).

Not all that a State does, however, is based on its sovereign character. Two kinds of nonsovereign interests are to be distinguished. First, like other associations and private parties, a State is bound to have a variety of proprietary interests. A State may, for example, own land or participate in a business venture. As a proprietor, it is

likely to have the same interests as other similarly situated proprietors. And like other such proprietors, it may at times need to pursue those interests in court. Second, a State may, for a variety of reasons, attempt to pursue the interests of a private party, and pursue those interests only for the sake of the real party in interest. Interests of private parties are obviously not, in themselves, sovereign interests, and they do not become such simply by virtue of the State's aiding in their achievement. In such situations, the State is no more than a nominal party.

Quasi-sovereign interests stand apart from all three of the above: they are not sovereign interests, proprietary interests, or private interests pursued by the State as a nominal party. They consist of a set of interests that the State has in the wellbeing of its populace. Formulated so broadly, the concept risks being too vague to survive the standing requirements of Art. III: a quasi- sovereign interest must be sufficiently concrete to create an actual controversy between the State and the defendant. The vagueness of this concept can only be filled in by turning to individual cases.

That a parens patriae action could rest upon the articulation of a "quasi-sovereign" interest was first recognized by this Court in Louisiana v. Texas, 176 U. S. 1 (1900). In that case, Louisiana unsuccessfully sought to enjoin a quarantine maintained by Texas officials, which had the effect of limiting trade between Texas and the port of New Orleans. The Court labeled Louisiana's interest in the litigation as that of parens patriae, and went on to describe that interest by distinguishing it from the sovereign and proprietary interests of the State:

"Inasmuch as the vindication of the freedom of interstate commerce is not committed to the State of Louisiana, and that State is not engaged in such commerce, the cause of

action must be regarded not as involving any infringement of the powers of the State of Louisiana, or any special injury to her property, but as asserting that the State is entitled to seek relief in this way because the complained of affect her citizens at large."

Id. at 176 U. S. 19. Although Louisiana was unsuccessful in that case in pursuing the commercial interests of its residents, a line of cases followed in which States successfully sought to represent the interests of their citizens in enjoining public nuisances. North Dakota v. Minnesota, 263 U. S. 365 (1923); Wyoming v. Colorado, 259 U. S. 419 (1922); New York v. New Jersey, 256 U. S. 296 (1921); Kansas v. Colorado, 206 U. S. 46 (1907); Georgia v. Tennessee Copper Co., 206 U. S. 230 (1907); Kansas v. Colorado, 185 U. S. 125 (1902); Missouri v. Illinois, 180 U. S. 208 (1901).

In the earliest of these, Missouri v. Illinois, Missouri sought to enjoin the defendants from discharging sewage in such a way as to pollute the Mississippi River in Missouri. The Court relied upon an analogy to independent countries in order to delineate those interests that a State could pursue in federal court as parens patriae, apart from its sovereign and proprietary interests:

"It is true that no question of boundary is involved, nor of direct property rights belonging to the complainant State. But it must surely be conceded that, if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them. If Missouri were an independent and sovereign State, all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy, and

that remedy, we think, is found in the constitutional provisions we are considering."

Id. at 241. This analogy to an independent country was also articulated in Georgia v. Tennessee Copper Co., supra, at 206 U. S. 237, a case involving air pollution in Georgia caused by the discharge of noxious gasses from the defendant's plant in Tennessee. Justice Holmes, writing for the Court, described the State's interest under these circumstances as follows:

"[T]he State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power. . . ."

". . . When the States, by their union, made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests."

Both the Missouri case and the Georgia case involved the State's interest in the abatement of public nuisances, instances in which the injury to the public health and comfort was graphic and direct. Although there are numerous examples of such parens patriae suits, e.g., North Dakota v. Minnesota, supra, (flooding); New York v. New Jersey, supra (water pollution); Kansas v. Colorado, 185 U. S. 125 (1902) (diversion of water), parens patriae interests extend well beyond the prevention of such traditional public nuisances.

In Pennsylvania v. West Virginia, 262 U. S. 553 (1923), for example, Pennsylvania was recognized as a proper party to represent the interests of its residents in

maintaining access to natural gas produced in West Virginia:

"The private consumers in each State . . . constitute a substantial portion of the State's population. Their health, comfort and welfare are seriously jeopardized by the threatened withdrawal of the gas from the interstate stream. This is a matter of grave public concern in which the State, as representative of the public, has an interest apart from that of the individuals affected. It is not merely a remote or ethical interest, but one which is immediate and recognized by law."

Id. at 262 U. S. 592.

The public nuisance and economic wellbeing lines of cases were specifically brought together in Georgia v. Pennsylvania R. Co., 324 U. S. 439 (1945), in which Georgia alleged that some 20 railroads had conspired to fix freight rates in a manner that discriminated against Georgia shippers in violation of the federal antitrust laws:

"If the allegations of the bill are taken as true, the economy of Georgia and the welfare of her citizens have seriously suffered as the result of this alleged conspiracy. . . . [Trade barriers] may cause a blight no less serious than the spread of noxious gas over the land or the deposit of sewage in the streams. They may affect the prosperity and welfare of a State as profoundly as any diversion of waters from the rivers. . . . Georgia, as a representative of the public, is complaining of a wrong which, if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected."

Id. at 324 U. S. 450-451.

This summary of the case law involving parens patriae actions leads to the following conclusions. In order to maintain such an action, the State must articulate an interest apart from the interests of particular private parties, i.e., the State must be more than a nominal party. The State must express a quasi-sovereign interest. Although the articulation of such interests is a matter for case-by-case development -- neither an exhaustive formal definition nor a definitive list of qualifying interests can be presented in the abstract -- certain characteristics of such interests are so far evident. These characteristics fall into two general categories. First, a State has a quasi-sovereign interest in the health and wellbeing -- both physical and economic -- of its residents in general. Second, a State has a quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system.

The Court has not attempted to draw any definitive limits on the proportion of the population of the State that must be adversely affected by the challenged behavior. Although more must be alleged than injury to an identifiable group of individual residents, the indirect effects of the injury must be considered as well in determining whether the State has alleged injury to a sufficiently substantial segment of its population. One helpful indication in determining whether an alleged injury to the health and welfare of its citizens suffices to give the State standing to sue as parens patriae is whether the injury is one that the State, if it could, would likely attempt to address through its sovereign lawmaking powers.

Distinct from but related to the general wellbeing of its residents, the State has an interest in securing observance of the terms under which it participates in the federal system. In the context of parens patriae actions, this

> *means ensuring that the State and its residents are not excluded from the benefits that are to flow from participation in the federal system. Thus, the State need not wait for the Federal Government to vindicate the State's interest in the removal of barriers to the participation by its residents in the free flow of interstate commerce. See Pennsylvania v. West Virginia, 262 U. S. 553 (1923). Similarly, federal statutes creating benefits or alleviating hardships create interests that a State will obviously wish to have accrue to its residents. See Georgia v. Pennsylvania R. Co., 324 U. S. 439 (1945) (federal antitrust laws); Maryland v. Louisiana, 451 U. S. 725 (1981) (Natural Gas Act). Once again, we caution that the State must be more than a nominal party. But a State does have an interest, independent of the benefits that might accrue to any particular individual, in assuring that the benefits of the federal system are not denied to its general population. We turn now to the allegations of the complaint to determine whether they satisfy either or both of these criteria.*

The term *parens patriae* has been explained in an equally important Law Journal authored by Michael L. Rustad & Thomas H. Koenig titled as 'Reconceptualizing Parens Patraie as Environmental Crimtorts' in Harvard Law Journal, which reads as under: -

> *"The "royal prerogative" and the "parens patriae" function of the King was imported from England into the U.S. legal system.174 The doctrine of parens patriae enabled the state to "make decisions regarding treatment on behalf of one who is mentally incompetent to make the decision on his or her own behalf, but the extent of the state's intrusion is limited to reasonable and necessary treatment." This "judicial patriarchy" gave the judges*

great discretion in protecting the welfare of minors and other vulnerable persons.

The parens patriae doctrine is a well-established legal institution in the United States. "For more than a century, the Supreme Court has endorsed" parens patriae by the states "for the prevention of injury to those who cannot protect themselves," a category that includes vulnerable consumers. The U.S. Supreme Court recognized that the "prerogative of parens patriae is inherent in the supreme power of every state, whether that power is lodged in a royal person or in the legislature [and] is a most beneficent function often necessary to be exercised in the interest of humanity, and for the prevention of injury to those who cannot protect themselves." After the American Revolution, the U.S. states extended this quasi-sovereign doctrine to cover "disputes between the interests of separate states with regard to natural resources and territory." The doctrine has a lengthy history of application to protect "rivers, the sea, and the seashore... [that] is especially important to the community's well being.

(2) Environmental Parens Patriae Actions -Parens patriae public nuisance claims for water and air pollution were used in several interstate environmental lawsuits in the early twentieth century. By the turn of the twentieth century, states were suing other states using their parens patriae powers to protect natural resources and territory. The United States Supreme Court decided an environmental parens patriae case in 1906, in Georgia v. Tennessee Copper Co. Here, the Court reviewed Georgia's request to enjoin a Tennessee manufacturing company from emitting sulphurous acid gas over Georgia's territory. These state versus state actions declined with the enactment of federal (and state) environment regulations.

(3)The Parens Patriae Action as a Fourth Branch of Government Critics fear that the unseemly alliance of greedy trial lawyers and publicity-seeking government lawyers will undermine the public interest. Public health torts by state AGs raise the objectionable prospect of trial lawyers receiving multi-billion dollar payouts, among other public policy and ethical concerns. The state AGs solicited trial lawyers to pursue contingent fee lawsuits, which meant that if the state lost, the private attorneys would bear the expenses. The concern is that these contingency fee arrangements may prevent government lawyers from properly representing their state's citizenry. Cash-strapped states may be tempted to misuse the legal system by extorting concessions from deep-pocked corporations even when the legal liability is unclear. Financial, careerist and/or ideological incentives may encourage AGs to violate their fiduciary duty to protect the public, creating a crisis of legitimacy.

239 American Psychiatric Association, News Release, American Psychiatric Association Calls for Payment of Oil Spill Mental Health Claims (Aug. 13, 2010) http://www.psych.org/ MainMenu/Newsroom/NewsReleases/2010-News-Releases/Oil- Spill-Mental-Health-Claims-.aspx?FT=.pdf (last visited Aug. 26, 2010) ("'Mental illnesses brought on by difficult situations surrounding the BP oil spill may be less visible than other injuries, but they are real. An entire way of life has been destroyed, and this is causing anxiety, depression, posttraumatic stress disorder, substance use disorders, thoughts of suicide and other problems,' said APA President Deborah Hensler, a prominent critic of these "social policy torts" asks whether it is appropriate for state AGs and trial lawyers to be bypassing the legislature in regulating by government litigation:

Social policy torts have been criticized as 'a form of regulation through litigation' in that attorneys general not only seek payments for government programs that help those who have been injured but also seek changes in the business practices of the industries being sued. The tobacco litigation has inspired new private/public partnerships in handgun, lead paint, and managed care litigation. She asks whether it is good public policy to entrust changes in industry practice to private litigants. 'Should legislatures validate the results of privately negotiated lawsuit settlements?' Is it good social policy to permit private litigators to receive large fees from such litigation?

"During the course of this litigation, defendants sought a ruling by the Superior Court that the contingent fee agreement was unenforceable and void because, in defendants' view, said agreement (1) constituted an unlawful delegation of the Attorney General's authority and (2) was violative of public policy." State v. Lead Industries, Ass'n, Inc. 951 A.2d 428, 467 (R.I. 2008) (discussing ethic and public policy issues in the Rhode Island state AG action against lead paint manufacturers where law firms were to received 16.67% of the total recovery on behalf of the state);

243 Editorial, The Pay-to-Sue Business: Write a Check, Get No- Bid Contract to Litigate for the State, WALL ST. J. (April 16, 2009).

244A government lawyer's goal is to represent the sovereignty "whose obligation...is not that it shall win a case but that justice be done." Berger v. United States, 295 U.S. 78 (1935).

245 Michael L. Rustad, Smoke Signals from Private Attorneys General in Mega Social Policy Cases, 51 DEPAUL L. REV. 511, 514 (2001).

> *Despite these risks, a "de facto fourth branch of government" may be a pragmatic necessity. Hundreds of thousands of potential plaintiffs will not be able to find representation if no collective injury mechanism is available. Tort reforms such as caps on damages enacted in Gulf Coast states makes it likely that attorneys will screen out many worthy cases. To the extent that many businesses and others injured by the oil spill do not sue, there will be a problem of under-deterrence. Government-sponsored parens patriae lawsuits result in a deterrence gain from bringing cases not cost-efficient if filed by individual claimants. Crimtorts in parens patriae actions are public torts that punish corporate wrongdoers when regulators and prosecutors fail. In Part III of this essay, we suggest a principled approach to develop a system of checks and balances in these parens patriae actions."*

The term *parens patraie* has also been dealt with by Margaret H. Lemos in 'Aggregate Litigation Goes Public: Representative Suits by State Attorneys General' in Harvard Law Review, Vol.126 (486) as under: -

> *"A. Public Aggregate Litigation*
>
> *In its modern form,22 the common law doctrine of parens patriae permits states to sue to vindicate sovereign or quasi-sovereign interests. The state's sovereign interests include "the power to create and enforce a legal code, both civil and criminal."24 Quasi- sovereign interests are harder to define, but include the state's "interest in the health and well-being -- both physical and economic -- of its residents in general."*
>
> *Plainly, a state's interest in the well-being of its residents might overlap with the personal interests of the residents themselves, raising difficult questions about the relationship between public and private standing. In Alfred L. Snapp & Son, Inc. v. Puerto Rico*

-- the leading modern case on the scope of parens patriae power

-- the Supreme Court stated that in order to establish common law standing as parens patriae, "the [s]tate must articulate an interest apart from the interests of particular private parties, i.e., the [s]tate must be more than a no-minal party." Thus, the state itself must have an interest in the case. Some courts have interpreted Snapp to preclude states from us-ing parens patriae authority to pursue damages that could be recov-ered through private litigation, on the view that the state in such cases is not the real party in interest.30 Properly understood, however, Snapp supports the majority view that the state's interest may be par- asitic on the interests of individual citizens. The Court explained that parens patriae authority will lie if the state acts on behalf of "its residents in general" rather than "particular individuals," and as-serts a "general interest" in the welfare of its citizens of the sort that a state might try "to address through its sovereign lawmaking powers." In other words, private interests can rise to the level of a quasi-sovereign state interest when sufficiently aggregated. The operative question is whether the injury in question affects a "sufficiently sub-stantial segment of [the state's] population." The Court has not sought to specify the necessary proportion, but the cases make clear that the affected population need not account for all or even most of the state's residents. Snapp itself "involved '787 [temporary] job op-portunities' for residents of Puerto Rico, which had a population at the time of about 3 million."

Even if the restrictive reading of Snapp were correct, it would have little bearing on the majority of cases, where the state's litigation au-thority derives not from the common law doctrine of parens patriae but from state or federal statutes that explicitly authorize the attorney

general to sue on behalf of the state's citizens to redress particular wrongs. Modern federal consumer protection statutes frequently contain provisions empowering state attorneys general to sue as parens patriae to recover damages for state citizens injured by violations of federal law. Many state statutes, particularly in the area of antitrust, grant similar authority to their attorneys general. The only courts to consider the question have held that state actions under such statutes present cases or controversies that satisfy the irreducible minima of Article III standing in federal court. The federal courts have described parens patriae standing requirements as prudential, meaning that any limitations they contain can be abrogated by Congress. And, of course, the intricacies of federal standing doctrine have no bearing on state courts.

Doctrinal puzzles aside, states do use parens patriae actions to obtain damages and other monetary remedies for their citizens. As noted above, most state attorneys general also have statutory authority to pursue restitution on behalf of their citizens. Many states' consumer protection laws explicitly empower the attorney general to seek restitution, and others have been interpreted to embrace such a power. The differences between restitution and other monetary damages are immaterial for present purposes, and for ease of exposition I will adopt the common shorthand of referring to state suits seeking financial recoveries for identifiable citizens as parens patriae actions. Such suits run the gamut from multimillion-dollar, multistate treble-damages antitrust suits to single-state actions against unscrupulous businesses that bilked residents out of a few hundred dollars.49 There is no easy way to identify the universe of relevant cases, in part be-cause they almost always settle. But attorneys general take pains to publicize their

litigation successes, and their press releases paint a colorful picture of public attorneys going to bat for the "little guy" against a variety of bad actors.

B. Relationship to Class Actions As others have recognized, parens patriae and other public actions that put money in the pockets of state citizens share much in common with damages class actions51: "The nature of these suits is to achieve broad compensation, to deter wrongful conduct by one or more defendants, and to focus on injuries to a large set of state citizens." In-deed, parens patriae suits often serve as a substitute for private aggregate litigation.53 In other cases, parens patriae and private class actions proceed in tandem, with public and private attorneys working together to seek common remedies. Like class actions, representative suits by state attorneys general adjudicate the rights of individuals who play no direct role in the conduct of the case. Although the case law on the preclusive effect of public aggregate litigation is surprisingly sparse, the prevailing view is that the judgment in a state case is binding "on every person whom the state represents as parens patriae."55 That view rests on the conventional principle that no party should get multiple bites at the apple: if a citizen's interests are advanced in litigation by the state, then that citizen is a "'part[y]' to the . . . suit within the meaning of res judicata."

Despite their apparent similarities, damages class actions and parens patriae suits are governed by markedly different procedural regimes. As described in more detail below, private class actions are subject to careful controls to safeguard the interests of class members and to ensure adequacy of representation. Scholars have used the terms "exit," "voice," and "loyalty" to describe the core procedural requirements for class actions -- terms borrowed, quite intentionally, from literature addressing

the rights individuals enjoy in more familiar governance schemes, including as citizens of a state. Perhaps unsurprisingly, therefore, most of those procedures have no bearing on suits brought by states themselves.

This section provides an overview of the procedural requirements for public and private aggregate litigation. The rules governing private class actions reflect the uneasy position that aggregate litigation occupies in the modern legal order. Aggregation offers an economical way of resolving multiple related disputes, but it collides with the venerable principle "that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." Aggregate litigation also stands in tension with traditional notions of affirmative client con-sent -- consent to be represented by a particular attorney, and consent to any settlement that the attorney negotiates.

In the context of private class actions, federal law has struck the balance in favor of claim aggregation, but only where it appears that aggregation is both efficient and fair. To that end, Rule 23(a) of the Federal Rules of Civil Procedure requires judges to scrutinize any pro-posed class action and to certify the action only if four requirements are satisfied: numerosity, commonality, typicality, and adequacy of representation. The numerosity requirement ensures that there is some benefit to aggregation -- that is, resort to the class mechanism should prove to be an economical way of resolving multiple disputes. The remaining requirements promote fairness by demanding that the representative parties share interests in common with, and will vigorously represent, the absent class members. Some, but not all, of the Rule 23(a) requirements apply to public aggregate actions by virtue of the basic standing rules

outlined above. The common law rules governing parens patriae actions effectively in- corporate a numerosity requirement by demanding that the state act on behalf of a "sufficiently substantial segment" of its population. And, while courts assessing claims of parens patriae authority do not make any explicit inquiry into commonality, the fact that the state must assert an injury to the members of the parens patriae group -- the equivalent of a Rule 23 "class" -- effectively ensures that there will be some legal or factual questions common to the group.

Matters become more complicated when one turns to the requirement of typicality, because the state -- the equivalent of the representative party in a private class action -- may not be asserting a claim that can be analogized to a private plaintiff's claim. In an antitrust parens patriae action, for example, the state need not assert that it has suffered antitrust damages, but may simply claim an interest in remedy-=ing the antitrust injury suffered by its citizens. The state is therefore representing the parens patriae group in the way that an organization might represent its members, not in the way contemplated by Rule 23. And in cases where the state is asserting proprietary claims in addition to claims on behalf of its citizens, there is no judicial inquiry into whether the former claims are typical of the latter.

Most important for present purposes is the question of adequacy of representation. Rule 23(a) requires the certifying court to determine that "the representative parties will fairly and adequately protect the interests of the class." Rule 23(g) demands a similar inquiry regarding class counsel. These "loyalty" requirements transcend Rule 23, forming the bedrock constitutional protections for absent class members. Questions of adequate representation recede from view when aggregate litigation moves into the public sphere. Although it seems

clear that a public suit should not preclude subsequent private litigation (either individual or aggregate) absent some assurance of adequate representation, there is no mechanism for an inquiry into the adequacy of representation in parens patriae suits akin to that mandated by Rule

23. At best, the question of adequacy could be addressed collaterally in a subsequent private suit seeking to relitigate the issues presented in the state action. Yet the available evidence suggests that courts will tend to presume that the attorney general will work diligently to vindicate the interests of the citizens whom he purports to represent.68 The Supreme Court has not addressed the issue directly, but it has re-served the question "whether public officials are always constitutional-ly adequate representatives of all persons over whom they have juris-diction when . . . the underlying right is personal in nature"-- intimating that the litigant seeking to show inadequate representation by a state attorney general will face an uphill battle.

In addition to the certification provisions discussed above, Rule 23 requires the court in any class action to assess whether a proposed settlement is "fair, reasonable, and adequate." Although scholars have questioned the efficacy of the approval requirement, the purpose is clear enough. Judicial review of settlements supplements the front-end requirement of adequate representation by adding a second opportunity for scrutiny at the close of the case. As such, it helps ensure that lack-luster or conflicted representation does not saddle absent class members with a judgment that does nothing to advance their interests. Again, the requirement applies only to private actions. Some statutes prescribe a similar approval process for parens patriae settlements, but courts tend to rely heavily on the fact that the litigation is controlled by public rather

than private attorneys. As one court put it, "[t]he Court cannot overlook the governmental nature of these parens patriae suits in which the primary concern of the Attorneys General is the protection of and compensation for the States' resident consumers, rather than insuring a fee for themselves." In other contexts, there is no require-ment whatsoever of court approval of public aggregate settlements.

The discussion thus far has focused on procedural requirements that apply to all class actions, regardless of type. Damages class actions -- which bundle together what might otherwise be autonomous individual claims -- must clear an additional set of hurdles.75 In order to certify a damages class under Rule 23(b)(3), the court must find that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Both inquiries are designed to ensure that there is good reason to abandon the norm of individualized representation in favor of claim aggregation, and "further cement the cohesion between class representative and class members."

Neither finding is necessary in the typical parens patriae action. On the contrary, because the state is technically the sole plaintiff in a parens patriae suit, it can avoid difficult questions of predominance that might arise in a class action in which individualized evidence of injury or causation would be necessary. As for superiority, not only do courts forgo such an inquiry in public aggregate litigation, but they also tend to presume that public adjudication is superior to private alternatives. Thus, federal courts regularly permit parens patriae actions to take the place of class actions, holding that the class mechanism is an "inferior method of adjudication" if the

attorney general is pursuing81 a parens patriae action seeking the same sort of remedies from the same defendant.82 The reasoning in the cases is spotty but tends to run along two lines. Some courts stress that government actions can avoid the difficult procedural requirements that apply to private class actions.83 On that view, public aggregate litigation is superior to a private class action simply because it is easier. Other courts express a preference for public litigation because it is public. They assume that the attorney general will ably represent the interests of the state's citizens. And, because the attorney general's fee will likely be far. Smaller than that of private counsel, courts reason that public representation will put more money in the hands of the interested individuals.

Finally, consider Rule 23(c), which mandates that the members of any damages class action be afforded "the best notice [of the class ac-tion] that is practicable under the circumstances." The purpose of the notice requirement is to inform the class members that the case exists and to give them an opportunity to be heard in the action or to opt out of it. As others have explained, the rights of notice and opt-out "serve as 'procedural safeguards' of adequate representation" by bringing intraclass conflicts to light, encouraging class representatives to attend to absent class members' interests, and allowing those with conflicting interests to escape the preclusive effect of the aggregate judgment.89 Here, too, the requirements of Rule 23 take on constitutional overtones, as the Court has indicated that absent members of a damages class action may not be bound by the judgment if they do not enjoy rights of "voice" and "exit" -- that is, if they are not afforded notice and an opportunity to be heard or to opt out of the class. And here, too, public aggregate suits are treated differently. Some statutes that authorize state parens patriae actions contain provisions for notice to the

represented individuals. Notice by publication is the norm, though federal and some state antitrust statutes provide that the court may demand other forms of notice if it concludes that publication is inadequate to satisfy due process. Other parens patriae statutes93 -- and all state statutes authorizing attorneys general to seek restitution for injured citizens -- omit any requirement of notice.

Once again, the difference in treatment of public and private aggregate litigation seems to stem from a presumption that state attorneys general will protect the interests of the individuals they represent, making it unnecessary for those individuals to take a hand in (or ex-clude themselves from) the litigation. That presumption has been made explicit in the context of decisions considering whether private individuals may intervene in a public action under federal Rule 24. Proposed intervenors must show, among other things, that existing parties in the litigation will not adequately represent their interests.94 Normally, the movant's burden is "minimal" and "is satisfied if the applicant shows that representation of his interest 'may be' inade-quate."95 In a parens patriae or other representative governmental ac-tion, however, "a governmental entity is presumed to represent its citizens adequately." Although the presumption is rebuttable, most courts have erected a significant hurdle to intervention in such cases, requiring the movant to make "a strong affirmative showing that the sovereign is not fairly representing the interests of the applicant."97 That burden cannot be discharged simply by pointing to a disagreement over "litigation strategy" or the "type or amount of damages to be claimed." Instead, the movant must show that the governmental party is "ill-equipped or unwilling to protect" the asserted interest, that the "applicant's interest cannot be subsumed within the shared interest of the citizens,"101 or that the "parens patriae has

committed misfeasance or nonfeasance in protecting the public."102 The prevailing approach to private intervention in parens patriae litigation stands in sharp contrast to intervention practice in damages class actions. As noted, Rule 23 ensures that absent members of damages class actions receive notice of the action informing them "that a class member may enter an appearance through an attorney if the member so desires," and the Court has indicated that the Due Process Clause may demand such notice, together with an opportunity to be heard in the action.104 The upshot is that members of the class have an automatic right to take part in the litigation, and other individuals -- those whose rights are not being directly adjudicated in the action -- need only satisfy the "minimal" burden of Rule 24 to intervene. Yet when an individual's interests are represented by the state attorney general rather than another private party (and a private attorney), adequacy of representation is presumed and the individual has no procedural right to be heard.

Given that parens patriae actions serve the same aggregative function as private damages class actions, one might expect the two categories of litigation to labor under similar procedural rules. As we have seen, the reality is quite different. To the extent that courts inquire in-to the adequacy of public representation, they tend to assume that the attorney general's "loyalty" to the individuals he represents is assured by his elected status.105 Therefore, the assumption seems to run, there is no need for a complicated set of procedural rules to protect the purported beneficiaries of aggregate litigation.

The remainder of this Article challenges the assumption of adequate public representation. Part II applies familiar critiques of class actions to parens patriae suits, demonstrating that many of the problems thought to bedevil private aggregate actions are present in state suits

> *as well. In short, there is good reason to fear that state attorneys general will not in fact adequately represent the interests of the citizens whose rights are at stake in parens patriae suits. Part III returns to the question of procedure. There, I argue that the current state of affairs -- in which state suits can supplant class actions while avoiding the elaborate procedures that govern private suits -- violates fundamental principles of due process.*

In yet another well-researched article, learned author Patrick Hayden, under the caption '*Parens Patriae* Standing and the Path Forward, published in 'The Yale Law Journal' November, 2014 (Vol.124, No.2), has explained *parens patriae* as under: -

PARENS PATRIAE STANDING AND THE PATH FORWARD

> *"The remedy to this problem might come from an unlikely source: the federal court doctrine of parens patriae standing. After all, the analytical issue at the heart of the perceived abuse is not one about removability or the superiority of the federal forum; rather, it is whether the state is truly acting as a state--not as a class action representative in disguise.*
>
> *This inquiry bears a striking resemblance to standing analysis: it asks whether or not the state is seeking to redress its own injury or that of only a handful of its citizens. This is precisely the inquiry that federal courts have developed in determining whether a state has standing to bring an action as parens patriae. Under Alfred L. Snapp & Son v. Puerto Rico and its progeny, a state may not proceed as parens patriae if it acts as "only a nominal party without a real interest of its own"; rather, it must "(1) articulate an interest apart from the interests of particular private parties, (2) express a quasi-sovereign interest, and (3) allege injury to a sufficiently substantial segment of its population." This inquiry--*

which is independent from the question of removal under CAFA--is the appropriate analytical starting point for evaluating whether a state is abusing its authority to proceed as parens patriae.

Why, then, has the issue of standing been overlooked by those, like Chief Justice Roberts, who have puzzled over the tension between CAFA and parens patriae? One reason might be the view that standing doctrine governs only federal courts and does not control what the Mississippi Attorney General might do in the courts of his own state. This view is right as a formal matter but wrong in practice. The reality is that state courts have incorporated Snapp's standing requirements in determining whether the state attorney general has the authority to bring an action as parens patriae. In fact, state courts routinely apply Snapp's general standard--set forth by federal actors, including Chief Justice Roberts himself--to see whether the interests of their attorneys general are sufficient.47 State courts have often found that the state may proceed as parens patriae, but they have also often found such authority lacking.

Federal actors may therefore continue to play a role in determining what state attorneys general may do in their own courts by refining the law of parens patriae standing and allowing this law to filter down to the state courts. In particular, if federal judges are concerned about class actions masquerading as parens patriae actions to evade CAFA, then they could clarify that the availability of a class action for harmed individuals is a factor counselling against a finding of parens patriae standing. Considering the availability of class actions in parens patriae standing analysis is consistent with Snapp, since this consideration helps courts understand whether a state has an "interest apart from the interests of particular private parties." A state is less likely to have such an interest when its parens

patriae action mirrors the class action "particular private parties" could bring instead. So by considering whether class actions would be available to private parties, courts would vindicate the core teachings of Snapp and clarify the relationship between class actions and parens patriae. As an illustration of this approach, the Supreme Court of New Hampshire recently considered the availability of class actions as an alternative to a parens patriae action. Remanding the state's action against gasoline suppliers seeking damages for groundwater contamination, the New Hampshire Supreme Court explained that in evaluating the state's parens patriae authority, the trial court should consider as a factor whether individual property owners could bring a class action against the gasoline companies.51 By adopting this consideration in analyzing parens patriae standing, federal courts thus prevent the use of parens patriae to evade CAFA; states would generally not be able to bring parens patriae actions where class actions are available, and the injured individuals would be forced to bring a separate action--one likely subject to CAFA's provisions.

The question of whether class actions are available should be practical in nature. The goal I endorse here is to limit the use of parens patriae to situations in which private litigants cannot, as either a formal or practical matter, bring suit on their own. In some cases, the practical availability of a class action will be obvious based on real world examples of class actions asserting identical or similar claims. In Hood, for example, over one hundred claims against LCD manufacturers had successfully been certified as class actions before Mississippi filed a similar claim. In other instances, however, a court may need to consider several factors in evaluating the feasibility of a class action. These factors could include, for example, procedural barriers, such as

sovereign or statutes of limitations,54 that may stand in the way of a class action but not a parens patriae suit. Courts could also consider the challenge of ascertaining class members, the amount of recovery sought,56 and the relative resources of the parties in determining whether a parens patriae claim could instead be brought as a class action. These factors will, of course, be resolved as a matter of degree, but courts could apply them flexibly with the goal of ensuring that a state becomes neither beholden to class action lawyers nor incapable of protecting those of its citizens who cannot protect themselves.

This Comment thus proposes that courts engaging in parens patriae standing analysis consider the availability of class actions as a factor counting against standing. This approach yields three key advantages over the most obvious--and most likely-- alternative: a legislative fix providing for the removability of parens patriae actions to federal courts. First, the standing-based approach preserves the states' general ability to sue in their own courts. As a result, this approach respects the states' dignity and sovereignty interests, provides the convenience that state attorneys general want in accessing courts, and--given the role of state attorneys general as regulators whose actions often jump- start national regulation--provides for the variance and experimentation across court systems that makes the most of the modern state attorney general's role. Second, the standing-based approach is preferable to amending CAFA because it is analytically cleaner: whereas any amendments to CAFA necessarily involve questions regarding the superiority of one forum over another, standing analysis allows decision makers to focus squarely on the issue of whether a state attorney general is truly acting on behalf of the state's citizens, without

> *allowing concerns about removability and forum to cloud the analysis.*
>
> *Finally, as a matter of institutional competence, state courts are likely superior at determining whether their attorneys general are truly representing state interests. Whereas federal courts may balk at questioning a state's self-stated interest in suing as parens patriae, state courts--however less effective they might be in managing class actions--are perfectly capable of distinguishing between "real" state interests and private actions under the veil of parens patriae. So, for example, a New York judge can determine whether its attorney general has parens patriae authority to challenge excessive executive compensation at a stock exchange, while a Mississippi judge can determine whether a scheme to fix the prices of certain household goods affected a sufficient number of households in its state to support parens patriae authority. To summarize, the standing solution is superior to a legislative fix because it allows the right actors to do the right analysis in the right forum."*

Besides our constitutional and legal duties, it is our moral duty to protect the environment and ecology.

The terms 'Morality and Law' have been explained in article written by 'Peter Cane' under the caption 'Morality, law and Conflicting Reasons for Action' reported in the Cambridge Law Journal (March, 2012), Vol.71, 2012 C.L.J. as under:-

> *"Law and morality are both concerned with practical reasoning- that is , with reasoning about what to do, what goals to aim for and what sort of person to be. In this sense, both law and morality are about right and wrong, good and bad, virtue and vice. These contrasts are "normative" : they express value judgments. Sometimes the terms "moral" and "morality" are used in*

> *contrast to "immoral" and "immorality" to distinguish normatively between right and wrong, good and bad, virtue and vice. In the similar way, what is "legal" may be contrasted with what is "illegal", "legality" with "illegality". On the other hand, the terms "morality" and "law" may also be used to distinguish between different aspects of social life and different domains of practical reasoning. Thus morality may be contrasted with tradition or etiquette or custom and, of course, with law. We may, that is, use the words descriptively, contrasting the moral not with the immoral but with the non-moral."*

In **Yogendra Nath Naskar v. Commission of Income-Tax, Calcutta, 1969 (1) SCC 555**, their Lordships of the Hon'ble Supreme Court have held that a Hindu idol is a juristic entity capable of holding property and of being taxed through its Shebaits who are entrusted with the possession and management of its property. In paragraph no.6, their Lordships have held as under: -

> *"6. That the consecrated idol in a Hindu temple is a juridical person has been expressly laid down in Manohar Ganesh's case, I.L.R. 12 Bom. 247 which Mr. Prannath Saraswati, the author of the 'Tagore Lectures on Endowments' rightly enough speaks of as one ranking as the leading case on the subject, and in which West J., discusses the whole matter with much erudition. And in more than one case, the decision of the Judicial Committee proceeds on precisely the same footing (Maharanee Shibessourec Dehia v. Mothocrapath Acharjo 13 M.I.A. 270 and Prosanna Kumari Debya v. Golab Chand Baboo L.R. 2 IndAp145 Such ascription of legal personality to an idol must however be incomplete unless it be linked of human guardians for them variously designated in Debya v. Golab Chand Baboo L.R. 2 IndAp145 the Judicial Committee observed thus :*

> *'It is only in an ideal sense that property can be said to belong to an idol and the possession and management must in the nature of things be entrusted with some person as shebait or manager. It would seem to follow that the person so entrusted must be necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir'-words which seem to be almost on echo of what was said in relation to a church in a judgment of the days of Edward I: 'A church is always under age and is to be treated as an infant and it is not according to law that infants should be disinherited by the negligence of their guardians or be barred of an action in case they would complain of things wrongfully done by their guardians while they are under age' (Pollock and Maitland's 'History of English Law', Volume I, 483."*

66. In **Ram Jankijee Deities & others v. State of Bihar & others 1999 (5) SCC 50**, their Lordships of the Hon'ble Apex Court have held that Images according to Hindu authorities, are of two kinds: the first is known as Sayambhu or self-existent or self-revealed, while the other is Pratisthita or established. A Sayambhu or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or Pratistha but a manmade image requires consecration. This manmade image may be painted on a wall or canvas. God is Omnipotent and Omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent: It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in images of the Supreme Being. It was further held that the deity/idol are the juridical

person entitled to hold the property. In paragraph nos.14, 16 and 19, their Lordships have held as under: -

> *"14. Images according to Hindu authorities, are of two kinds: the first is known as Sayambhu or self-existent or self-revealed, while the other is Pratisthita or established. The Padma Purana says: "the image of Hari (God) prepared of stone earth, wood, metal or the like and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established images...where the self- possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed." (B.K. Mukherjea -Hindu Law of Religious and Charitable Trusts: 5th Edn.) A Sayambhu or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or Pratistha but a manmade image requires consecration. This manmade image may be painted on a wall or canvas. The Salgram Shila depicts Narayana being the Lord of the Lords and represents Vishnu Bhagwan. It is a Shila - the shalagram form partaking the form of Lord of the Lords Narayana and Vishnu.*
>
> *16. The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the people believe in the temples' religious efficacy no other requirement exists as regards other areas and the learned Judge it seems has completely overlooked this*

aspect of Hindu Shastras - In any event, Hindus have in Shastras "Agni" Devta; "Vayu" Devta - these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The Ahuti to the deity is the ultimate - the learned Single Judge however was pleased not to put any reliance thereon. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image.

19. God is Omnipotent and Omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent: It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in images of the Supreme Being. 'The Supreme Being has no attribute, which consists of pure spirit and which is without a second being, i.e. God is the only Being existing in reality, there is no other being in real existence excepting Him - (see in this context Golap Chandra Sarkar, Sastri's Hindu Law: 8th Edn.). It is the human concept of the Lord of the Lords - it is the human vision of the Lord of the Lords: How one sees the deity: how one feels the deity and recognises the deity and then establishes the same in the temple upon however performance of the consecration ceremony. Shastras do provide as to how to consecrate and the usual ceremonies of Sankalpa and Utsarga shall have to be performed for proper and effective dedication of the property to a deity and in order to be termed as a juristic person. In the conception of Debutter, two essential ideas are required to be performed: In the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up

> *with natural personality of the shebait, being the manager or being the Dharam karta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. The Deva Pratistha Tatwa of Raghunandan and Matsya and Devi Puranas though may not be uniform in its description as to how Pratistha or consecration of image does take place but it is customary that the image is first carried to the Snan Mandap and thereafter the founder utters the Sankalpa Mantra and upon completion thereof, the image is given bath with Holy water, Ghee, Dahi, Honey and Rose water and thereafter the oblation to the sacred fire by which the Pran Pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which gives it the shape, the size and the colour. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however, lend any assistance to the matter in issue and the Principles of Hindu Law seems to have been totally misread by the learned Single Judge."*

67. In **Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others, AIR 2000 SC 1421**, their Lordships of the Hon;ble Supreme Court have held that the concept 'Juristic Person' arose out of necessities in the human development- Recognition of an entity as juristic person- is for subserving the needs and faith of society. In paragraph nos.11, 13 and 14, their Lordships held as under: -

> *"11. The very words "Juristic Person" connote recognition of an entity to be in law a person which*

otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person. Essentially, every human person is a person. If we trace the history of a "Person" in the various countries we find surprisingly it has projected differently at different times. In some countries even human beings were not treated to be as persons in law. Under the Roman Law a "Slave" was not a person. He had no right to a family. He was treated like an animal or chattel. In French Colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons only through a statute. Similarly, in the U.S. the African-Americans had no legal rights though they were not treated as chattel. xxx xxx xxx

13. With the development of society, 'where an individual's interaction fell short, to upsurge social development, co-operation of a larger circle of individuals was necessitated. Thus, institutions like corporations and companies were created, to help the society in achieving the desired result. The very Constitution of State, municipal corporation, company etc. are all creations of the law and these "Juristic Persons" arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognised in law to be a legal unit. Corpus Juris Secundum, Vol. LXV, page 40 says:

Natural person. A natural person is a human being; a man, woman, or child, as opposed to a corporation, which has a certain personality impressed on it by law and is called an artificial person. In the C.J.S. definition 'Person' it is stated that the word "person," in its primary sense, means natural person, but that the generally

accepted meaning of the word as used in law includes natural persons and artificial, conventional, or juristic persons.

Corpus Juris Secundum, Vol. VI, page 778 says:

Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic. Salmond on Jurisprudence, 12th Edn., 305 says:

A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human being is one of the most noteworthy feats of the legal imagination.... Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases. Those which are actually recognised by our own system, however, are of comparatively few types. Corporations are undoubtedly legal persons, and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations. ... If, however, we take account of other systems than our own, we find that the conception of legal personality is not so limited in its application, and that there are several distinct varieties, of which three may be selected for special mention... 1. The first class of legal persons consists of corporations, as already defined, namely, those which are constituted by the personification of groups or series of individuals. The individuals who thus form the corpus of the legal person are termed its members....

2. The second class is that in which the corpus, or object selected for personification, is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute

personality, not to any group of persons connected with the institution, but to the institution itself....

3. The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses - a charitable fund, for example or a trust estate...

Jurisprudence by Paton, 3rd Edn. page 349 and 350 says:

It has already been asserted that legal personality is an artificial creation of the law. Legal persons are all entities capable of being right-and-duty-bearing units - all entities recognised by the law as capable of being parties to legal relationship. Salmond said: 'So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties...

...Legal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, an idol. Twenty men may form a corporation which may sue and be sued in the corporate name. An idol may be regarded as a legal persona in itself, or a particular fund may be incorporated. It is clear that neither the idol nor the fund can carry out the activities incidental to litigation or other activities incidental to the carrying on of legal relationships, e.g., the signing of a contract: and, of necessity, the law recognises certain human agents as representatives of the idol or of the fund. The acts of such agents, however (within limits set by the law and when they are acting as such), are imputed to the legal persona of the idol and are not the juristic acts of the human agents themselves. This is no mere academic distinction, for it is the legal persona of the idol that is bound to the legal relationships created, not that of the agent. Legal personality then refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities." Analytical and Historical Jurisprudence, 3rd Edn. At page 357 describes "person";

We may, therefore, define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights or duties may be attributed.

14. Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-politicalscientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol, was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church hospital, gurudwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an Idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the

> *purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such."*

71. In **Moorti Shree Behari ji v. Prem Dass others, AIR 1972 Allahabad 287**, learned Single Judge of the Allahabad High Court has held that a deity can sue as a pauper. In paragraph no.6, it was held as under: -

> *"6. The question then that arises is why a deity who is juristic person and can sue or be sued through its Pujari, Shebait or any other person interested, cannot sue as a pauper? To my mind when an incorporated limited company has been held by this Court capable of suing as a pauper, a fortiori it follows that a deity can also sue as a pauper. The learned Judge of the court below was in error in explaining away the Full Bench decision of this Court in the case of AIR 1959 All 540 (FB) (supra) on the observation that It related to a joint stock company, hence not applicable. The court below thus was in error in rejecting the application of the deity for that reason.*

72. Mr. Justice Douglas, has given a dissenting judgment in the case of "**Sierra Club vs. Morton, Sec. Int.", 405 U.S. 727**. Hon'ble Judge has held that critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, de-faced, or invaded by roads and bulldozers and where injury is the subject of public outrage. A ship has a legal personality, a fiction found useful for maritime purposes. The river, for example, is the living symbol of all the life it sustains or nourishes -- fish,

aquatic in-sects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man. Those people who have a meaningful relation to that body of water -- whether it be a fisherman, a canoeist, a zoologist, or a logger -- must be able to speak for the values which the river represents and which are threatened with destruction. The voice of the inanimate object, therefore, should not be stilled. Hon'ble Judge has held as under:-

> *"I share the views of my Brother BLACK-MUN and would reverse the judgment below. The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, de-faced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation. See Stone, Should Trees Have Standing? -- Toward Legal Rights for Natural Objects, 45 S. Cal. L. Rev. 450 (1972). This suit would therefore be more properly labeled as Mineral King v. Morton.*
>
> *Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole -- a creature of ecclesiastical law -- is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.*
>
> *So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive*

pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes -- fish, aquatic in-sects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plain-tiff speaks for the ecological unit of life that is part of it. Those people who have a meaning-ful relation to that body of water -- whether it be a fisherman, a canoeist, a zoologist, or a logger -- must be able to speak for the values which the river represents and which are threatened with destruction.

Mineral King is doubtless like other wonders of the Sierra Nevada such as Tuolumne Meadows and the John Muir Trail. Those who hike it, fish it, 28 hunt it, camp in it, frequent it, or visit it merely to sit in solitude and wonderment are legitimate spokesmen for it, whether they may be few or many. Those who have that intimate relation with the inanimate object about to be injured, polluted, or other-wise despoiled are its legitimate spokesmen.

The voice of the inanimate object, therefore, should not be stilled. That does not mean that the judiciary takes over the managerial functions from the federal agency. It merely means that before these price-less bits of Americana (such as a valley, an alpine meadow, a river, or a lake) are forever lost or are so transformed as to be reduced to the eventual rubble of our urban environment, the voice of the existing beneficiaries of these environmental wonders should be heard. Perhaps they will not win.

Perhaps the bulldozers of "progress" will plow under all the aesthetic wonders of this beautiful land. That is not the present question. The sole question is, who has standing to be heard?"

74. The "person" and "personality" in English Law has been discussed in depth in English Private Law, Edited by Professor Peter Birks Qc FBA, Volume I, including that of non-human animal as under:-

> *"**(a) Natural and artificial persons distinguished***
>
> *3.18 The word 'person' is now generally used in English to denote a human being, but the word is also used in a technical legal sense, to denote a subject of legal rights and duties. English law recognizes two categories of persons in this legal sense: 'natural persons' and 'artificial persons'. Natural persons are those animate beings which possess a capacity to own legal rights and to owe legal duties; artificial persons are those inanimate entities which possess such a capacity. Artificial persons are sometimes also described as 'legal' or 'juristic' persons, but this usage can be confusing, as the latter terms are also used of both animate beings and inanimate entities, to denote the fact that they have an existence as legal actors, rather than the fact that they exist only in the legal, and not in the biologicial sphere.*
>
> ***(b) Natural persons***
>
> *3.19 The only animate beings currently recognized by English law as natural persons are human beings. Other animals have not been thought capable of bearing legal responsibility for their actions since the thirteenth century, although the idea that a non-human animal or indeed an inanimate object should itself be punished for causing the death of a human being underlay the old rule, which was not abolished until 1846, that in such circumstances the animal or object should be forfeit as 'deodand' to the Crown or other franchise-holder. English law has never regarded non-human animals as possessing the capacity to enjoy legal rights, although the argument has been made by some theorists that in principle they should be regarded as possessing this capacity. In the case of human*

beings, English law assigns them 'status', or standing in law, according to their individual attributes and characteristics, and a human being's legal rights and duties are then determined on a case-by-case basis by reference to relevant aspects of his status. Thus, for example, a human being's capacity to enter a contract can be affected by whether he is a minor or full age, bankrupt or solvent, mentally capable or incapable. Questions going to the attributes and characteristics of a human being which may or may not have legal significance in different circumstances include: (i) has he been born? (ii) has he acquired full age? (iii) has he died? (iv) what is his gender? (v) is he legitimate, illegitimate, or adopted? (vi) is he single, married, divorced, or in an unmarried cohabiting relation (heterosexual or homosexual)? (vii) is he a British citizen, a foreign national, a foreign diplomat, or a refugee? (viii) is he bodily capable? (ix) is he mentally capable? (x) is he a prisoner? (xi) is he solvent? (xii) is he a layperson or a cleric? (xiii) is he a member of the armed forces? (xiv) is he a Member of Parliament? (xv) is he a member of the Royal Family?

(c) Artificial persons

3.20 Prior to the Supreme Court of Judicature Act 1873, the Admiralty courts sometimes ascribed artificial personality to ships, as a means of circumventing the writs of prohibition issued by the common law courts to restrain the expansion of the Admiralty in personam jurisdiction. However, the theory that the ship is the real defendant in an Admiralty action in rem fell into decline after 1873, and the only bodies now recognized by English law as artificial persons are 'groups or series of [human] individuals', conceptualized as abstract entities, but possessing 'an essentially animate content'. Thus, English law currently ascribes artificial personality to certain private groups of associates, as discussed in the following

parts of this chapter, to various public bodies, religious bodies, and their officers, and also to various foreign states and international organizations.

However, 'formidable conceptual difficulties' would lie in the English courts' way if they wished to recognize a tangible inanimate object as an artificial person, 'something [like a Hindu temple] which on one view is little more than a pile of stones'. They would also find it difficult to permit an action by or against an abstraction such as a fund of money, for as a general rule this is 'a form of proceeding unknown to English law'. Thus, for example, English law does not consider a trust estate to possess the capacity to sue or be sued, and requires trust funds to be vested in trustees with the personal capacity to sue (and to be sued) in their own names in the course of administering the trust business, executors and administrators (collectively termed personal representatives) perform a similar function with respect to a deceased person's estate, as do receivers and liquidators when a company goes into receivership or liquidation.

(d) The nature of personality

3.22 Many legal theorists have written on the nature of personality, and have addressed themselves to such questions as whether personality entails anything more than the possession of a set of duty-owing, right-owning capacities, and whether the possession of such capacities is necessarily a legal construct or can derive from some extra-legal source. Questions of this sort do not often strike the English courts as having a practical bearing on the cases which they must decide, and even when they declare themselves to be 'concerned with abstract jurisprudential concepts [so far as these] assist towards clarity of thought', they generally recoil from discussing them in any detail. In consequence, they have not often

expressly considered, still less committed themselves to, any particular jurisprudential theory of personality. However, it has rightly been observed that 'realist theories of the company in which the company is viewed as a real person have had a limited influence on the development of [English company law, by comparison with]… Continental Europe, where that theory has been much more significant', and some recent judicial statements confirm that the English courts have no liking for realist theories of artificial personality in general. 3.23 In Bumper Development Corp Ltd. v Metropolitan Police Commissioner, Purchas LJ approved the statement in Salmond on Jurisprudence, that [artificial] persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases', and went on to hold that a Hindu temple recognized as an artificial person by the law of Tamil Nadu could therefore be a party to proceedings in the English courts, even though it would not be recognized as a person by English Law. In Meridian Global Funds Management Asia Ltd v Securities Commission, Lord Hoffmann stated that 'a company exists because there is [legal] rule… which says that a persona ficta shall be deeded to exist,' and that although 'a reference to company…[there] is in fact no such thing as the company as such, no Ding an sich, only the applicable rules' which enable the shareholders of the company to conduct their collective activities through the medium of the corporate form. And writing extrajudicially, Lord Cooke has since interpreted Lord Hoffmann's reference to 'Ding an sich' in the Meridian case as an allusion to Kant's noumenon, a thing whose existence is postulated but ultimately unknowable as it is in itself, and also as a 'dig' at Viscout Haldane LC's supposed acceptance of German realist theory in Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd, where he spoke of a company possessing an

'active and directing will'. In Lord Cooke's view, however, 'too much has been ascribed to alleged metaphysics by Viscount Haldane', and it is 'very doubtful' whether his exposition in the Lennard's case was in fact influenced by the German realists.

(e) The use of the terms 'person' and 'personality' in English legal practice

(i) The possession of personality does not entail the possession of a fixed set of legal capacities

3.24 Three broad observations should be made here about the English legal terms 'person' and 'personality'. First, the question whether a human being or abstract entity should be regarded as possessing the capacity to enforce a particular right, or to owe a particular duty, is one that lawmakers can rationally answer by considering the nature of the right or duty in question, by looking at the character of the fruitfully, have approached the question by considering instead whether it lies in the public interest to fix a company with criminal liability for, say, personal injuries or deaths caused by particular types of corporate actions or omissions; on a positive answer being given, they could then have formulated a new set of rules to govern the determination of corporate liability in terms reflecting the reality that human being or entity in question, and by assessing in the light of these matters, whether it would be consistent with the goals of society at large, and of the legal system in particular, to give a positive answer. But the need to approach the question in this way can be overlooked if the terms 'person' and 'personality' are used carelessly. A human being or entity which has been said by Parliament or the courts to be capable of enforcing a particular right, or of owing a particular duty, can properly be described as a person with that particular capacity. But it can be easy to forget the qualifier, and to assume when the question later

arises, whether the individual or entity has the further capacity to enforce some other right, or to owe some other duty, that this must be so because he or it has previously been said to be a person with an unlimited set of capacities, or to be a person who possesses the 'powers normally attendant on legal personality'. In other words, the careless use of the terms 'person' and 'personality' can create the false impression that a particular human being or entity has been said to possess a larger set of right-owning, duty-owning capacities than is in fact the case.

3.25 Thus, for example, English registered companies are frequently said to possess 'personality', but it would be wrong to infer from this that they necessarily possess the capacity to enjoy a privilege against self-incrimination, or the capacity to perjure themselves, or the capacity to be the subject of defamatory statements, or the capacity to enjoy a right to privacy under Article 8 of the European Convention on Human Rights. Whether they possess these or any other capacities must be considered from first principles when the question arises. To say that a human being or entity possesses the 'powers normally attendant on legal personality' is to suggest that the ascription of personality entails the ascription of a generally agreed and particularized set of capacities, possession of which can be safely assumed of every natural and artificial person. But this is not so. Different human beings and entities may properly be characterized as natural or artificial persons for different purposes even though they possess different capacities from one another."

Corpus Juris Secundum, Vol.6, page 778 explains the concept of juristic persons/artificial persons thus: "Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic." A juristic

person can be any subject matter other than a human being to which the law attributes personality for good and sufficient reasons. Juristic persons being the arbitrary creations of law, as many kinds of juristic persons have been created by law as the society require for its development. (See Salmond on Jurisprudence 12th Edition Pages 305 and 306).

Thus Sukhna Lake is required to be declared as the legal entity/legal person/juristic person/ juridicial person/moral person/artificial person for its survival, preservation and conservation.

The construction activity in the Chandigarh and its periphery area was required to be undertaken strictly as per the provisions of the The Capital of Punjab (Development and Regulation) Act, 1952 and the Rules framed thereunder from time to time as well as Punjab New Capital (Periphery) Control Act, 1952 as applicable to the State of Punjab and the Rules framed thereunder and Haryana New Capital (Periphery) Control Act, 1952 as applicable to the State of Haryana as well as UT Chandigarh and the Rules framed thereunder. The Authorities implementing these Acts were remiss in discharge of their statutory duties. The purpose of enactment of The Capital of Punjab (Development and Regulation) Act, 1952 was to ensure healthy and planned develoment of a new City. Non-implementation of these Acts in and around the periphery of Chandigarh has led to mushrooming of unauthorized construction activities leading to lowering the civic life. According to the provisions of Punjab New Capital (Periphery) Control Act, 1952 as applicable to the Punjab and Haryana and UT Chandigarh, it was required to declare the controlled area and to impose restrictions in the controlled area and to decide the applications, in accordance with law for granting permission or refusing the permission

including prohibition on use of land. The statutory authorities implementing the building enactments are the repository of faith imposed in them by the law.

The preservation, conservation and saving of environment is based on the doctrine of 'public trust'. Large scale unauthorized construction activities in the catchment area of States of Punjab, Haryana and UT, Chandigarh as per the Map notified by the Survey of India has impeded the flow of free water into Sukhna Lake. Maintaining water bodies is of utmost importance to preserve the environment and ecology including flora and fauna.

The Union Territory, Chandigarh has declared the Eco-sensitive zone around Sukhna Lake. In the present case, the State of Punjab and Haryana have not taken any decision till date to constitute eco-sensitive zones in their respective areas around Sukhna Lake leading to further degradation of environment and ecology.

It has come on record that aerial survey was carried out for preparation of the catchment area by the Survey of India in 1995 by doing proper contouring, which was further verified on the ground. It was further re-authenticated in the year 2004 and submitted to this Court in CWP No.7649 of 2003. Map dated 21.09.2004 has been accepted in the said writ petition to be correct and that it was also upheld that the Map prepared by the Survey of India in the catchment area of Sukhna Lake on 21.9.2004 is authenticated, valid particularly when the same has been adopted by the U.T Chandigarh.

In the meeting held on 23.7.2019 under the Chairpersonship of Shri V.P Singh Badnore, Governor of Punjab and the Administrator, UT

Chandigarh, it was highlighted that both the States of Punjab and Haryana should also extend necessary cooperation for declaring Sukhna Lake as Wetland. The Chairperson found that since both the States of Punjab and Haryana are beneficiaries, they should also take necessary action to protect the catchment area of Sukhna. It was decided to declare Sukhna Lake comprising 565 acres as Wetland under Wetlands (Conservation and Management) Rules, 2017. The Chief Conservator of Forests & Special Secretary (Forests) had sent a communication to the Addl. Chief Secretary (Forests), Department of Forest & Wild Life Preservation, Punjab on 19.08.2019 as well as to the Addl. Chief Secretary (Forests), Forest Department, Government of Haryana on 19.08.2009. Thereafter, draft Notification was issued on 21.10.2019 for declaring Sukhna Land as Wetland. Neither the States of Punjab nor State of Haryana have taken any steps to declare Sukhna as Wetland under Wetlands (Conservation & Management) Rules, 2017 to protect Sukhna Lake being ecologically sensitive.

This Court while imposing the ban on construction activity in the catchment area in the States of Punjab, Haryana and UT Chandigarh had asked the Authorities to give due publicity to the orders passed by this Court. It has come in the affidavits filed by the functionaries of the States that due publicity was given in the electronic as well as print media. However, despite the people being put to notice, the construction activity has continued unabated as per the affidavits filed by the states of Punjab, Haryana and UT Chandigarh as also the Executive Officer of the Nagar Panchayat, Naya Gaon. The Court in its wisdom had also directed the Chandigarh Administration to give widest possible coverage to the Map

dated 21.9.2004 prepared by the Survey of India delineating the catchment area. The UT Administration, Chandigarh has specifically averred in its reply that due publicity was given to the map prepared by the Survey of India on 21.9.2004, more particularly the same was also adopted by the UT Chandigarh.

The State functionaries could not be oblivious of the large scale construction activities which were going on in the catchment area and its surrounding areas in negation of law including the provisions of The Capital of Punjab (Development and Regulation) Act, 1952 and the Rules framed thereunder as well as the Punjab New Capital (Periphery) Control Act, 1952 as applicable to the State of Haryana and State of Punjab. The act of the State of Haryana of preparing Master Plan 2021 called as "Mansa Devi Complex", and to extend it to the areas which are covered by the Survey of India Map 2004 was against the public interest. It was the stand of the State of Haryana as it was admitted in its affidavit as discussed hereinabove that it was bound by the map prepared by the Survey of India. How could the State of Punjab Notify Naya Gaon Master Plan-2021 knowing fully well that the area covered in the Master Plan/zones impinged upon the catchment area of Map prepared by the Survey of India on 21.9.2004 especially when the higher functionaries of the State had attended the meetings at the time of preparation of the Map and all their objections being considered in this regard?

The Court had ordered, at one stage, demolition of the building without issuing notice but the State Adminsitration have not rendered assistance to the Law Enforcing Agencies by providing sufficient police force. The states of Punjab, Haryana and UT Chandigarh kept on assuring

this Court that no unauthorized construction would be undertaken but the fact of the matter is that the same remains unabated leading to grim situation. The State has connived with the defaulters by providing them with the electricity and water connections. It is expected from the functionaries discharging sovereign/regal functions to be on the right side of law. The States cannot run with the hare and hunt with the hounds. The weak administration had permitted mushrooming of unauthorized constructions in a very fragile eco-sensitive areas/catchment area causing irreparable damage to the ecology.

The notices issued to the defaulters by the Law Enforcing Agencies against the raising of unauthorized construction in the catchment area as delineated in the Map prepared by the Survey of India dated 21.09.2004 are valid. The construction could not be commenced in the areas delineated by the Survey of India Map. The notices are required to be implemented against the defaulters.

Stray dogs are common sight in public places including parks, roads, streets and Sukhna lake area. There are numerous cases of dogs bites. The owners take their dogs out for walk but do not pick up/remove their poop. Children belonging to the weaker sections of the Society are vulnerable to dog bites. The Municipal Authorities have failed to seriously address the issue of putting an end to menace of stray dogs in their respective jurisdictions.

The acts of States of Punjab, Haryana have caused permanent damage to the catchment area of Sukhna Lake. It was expected from the State agencies to foresee that the permanent structures in a catchment area would impede the flow of water in Sukhna Lake. The States should have

taken precautionary measures to save the catchment of Sukhna Lake. It is the duty of the States of Punjab and Haryana to restore the catchment area. The State Government has also failed to take precautionary measures to save the catchment area. The damage caused to the catchment area is enormous. The State is bound to pay exemplary/penal damages under the doctrine of 'Polluter Pays'. The Officers/officials of the States of Punjab and Haryana instead of protecting/conserving/saving the catchment area have permitted raising of permanent structures in this area. Since immense damage has been caused to the catchment area of Sukhna Lake at least Rupees two hundred crores would be required to restore the catchment area.

Accordingly, writ petitions bearing CWP Nos.12280, 12284, 12355 & 5809 of 2015 of 2017 are dismissed and interim orders are vacated whereas the contempt petitions bearing COCP Nos.2613 of 2013 and 3088 of 2015 stand disposed of with the direction to proceed against the private respondents, in accordance with law. Orders dated 17.12.2018 and 06.03.2019 passed by this Court in CWP No.18253 restraining the demolition also stand vacated.

Accordingly, writ petitions bearing CWP Nos.18253 of 2009 and 5809 of 2015 are disposed of with the following mandatory directions/declarations:

A. The States of Punjab and Haryana are directed to pay Rupees one hundred crores each as exemplary/punitive/special damages for restoration of catchment area of Sukhna Lake falling in their respective areas. This amount shall be deposited with the Ministry of Environment, Forest and Climate Change within a period of three months from today. The Ministry of

Environment, Forest and Climate Change shall utilize the funds for restoration of Sukhna Lake by framing statutory scheme under the Environment Protection Act within a period of three months and to complete the restoration work within a period of one year thereafter on urgent basis.

B. We, by invoking our *parens patriae* jurisdiction, declare Sukhna Lake as legal entity/legal person/juristic person/ juridicial person/moral person/artificial person for its survival, preservation and conservation having distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens of U.T, Chandigarh are hereby declared as *loco parentis* as the human face to save Sukhna Lake from extinction.

C. All commercial/residential and/or other structures constructed in the catchment area of Sukhna Lake falling in the areas of Punjab, Haryana and UT Chandigarh as delineated in the map prepared by the Survey of India on 21.9.2004 are declared illegal/unauthorized.

D. The illegal/unauthorized constructions raised in the catchment area as delineated by the Survey of India Map dated 21.9.2004 falling in the areas of States of Punjab and Haryana and UT Chandigarh are ordered to be demolished within a period of three months from today.

E. The States of Punjab and Haryana and UT Chandigarh are directed to provide alternative sites in

close proximity of Chandigarh to the owners whose building maps were approved and who have constructed their buildings in the catchment area for their rehabilitation after the demolition of their houses in the catchment areas. The States of Punjab, Haryana and UT Chandigarh shall also pay compensation of Rs.25 lacs uniformally to these owners, who had got their building maps approved but constructed the houses in the catchment area of Sukhna Lake.

F. The Union Territory, Chandigarh is directed to issue final Notification declaring Sukhna Lake as

Wetland under the Wetland (Conservation and Management) Rules, 2017 within a period of three months from today.

G. The States of Punjab and Haryana are directed to issue necessary Notifications for declaring Sukhna as Wetland falling in their respective areas under the Wetland (Conservation and Management) Rules, 2017 within a period of three months from today to protect fragile ecology and to support the lake eco system.

H. The Ministry of Environment, Forest and Climate Change is directed to notify at least 1.0 km area from the boundary of Sukhna Lake Wildlife Sanctuary as Eco-ensitive zone falling in the areas of the States of Punjab & Haryana within a period of three months.

I. The "Naya Gaon Master Plan 2021" notified vide Notification No.10/12/2008-(2LG3)/4LG3/54 on 02.01.2009 and the Development Plan called as Shri Mata Mansa Devi Urban Complex are declared illegal/void to the extent that these Maps/plans cover the areas depicted by Survey of India Map dated 21.9.2004 taken on record in CWP No.7649 of 2003 on 24.09.2004 and also approved by us by applying the principle of severability.

J. New construction is completely banned in the catchment areas as delineated in the Survey of India map dated 21.9.2004 falling in the States of Punjab, Haryana and UT Chandigarh as well as in the Sukhna Wetland, Sukhna Wildlife Sanctuary.

K. The Chief Secretaries of the States of Punjab, Haryana and also the Advisor, UT Chandigarh are directed to constitute High Power Committees comprising of such Officers not below the rank of Senior Secretaries to fix the responsibilities of the Officers/Officials, who have permitted such large scale unauthorized construction, more particularly in the catchment area within a period of four weeks from today. The respective S.I.Ts would complete their task within a period of three months and after fixing the responsibilities of serving/retired Officers/Officials commence disciplinary proceedings against them for permitting unauthorized construction in violation of law.

L. We direct the Union Territory, Chandigarh to ensure that the average capacity of the lake is increased by atleast about 100-150 Ha. by one-time large scale desilting (dredging) of the lake. Thereafter the capacity once created should be maintained through regular dredging. The States of Punjab, Haryana and Union Territory, Chandigarh are directed to lower the storage capacity of the check dams to ensure regular flow of water into Sukhna Lake. The Union Territory, Chandigarh is further directed to ensure that there is no seepage losses in the lake and have permananent discharge measurement site about half a km upstream in the channel with automatic system to check sedimentation.

M. The States of Punjab, Haryana and Chandigarh are also directed that no waste water/sewage flows into the river from the villages i.e Kansal, Kaimbwala and Saketri. The aquatic weeds are ordered to be removed within a period of six months from today by controlling the weeds even by using chemical methods as well as manual removal.

N. All the dog owners are required to register their dogs with the Municipal Authorities. The Municipal Authorities are required to issue tokens. The owners of the dogs must ensure that the dogs' poop must be picked up/removed and put in a bag/container to be disposed of

at home in a hygienic manner.

O. The Municipal Authorities in the States of Punjab, Haryana and UT Chandigarh Authorities are directed to construct 4/5 dog pounds in their jurisdiction to house the stray dogs. The States of Punjab, Haryana and UT Chandigarh are directed to strictly enforce the provisions of the Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017. All the dog breeders in the States of Punjab, Haryana and UT Chandigarh should be registered. The breeding of dogs without registration is banned.

P. All the dogs being taken to streets/roads must be collared besides being leashed. The Municipal Authorities shall maintain the record of all the licensed dogs within a period of three months from today.

P. The cartakers of dog pounds would ensure to protect the dogs from extreme wheather conditions and to maintain proper ventilation and also to provide appropriate space. All the dogs should be vaccinated and should be kept in clean environment. The surface of the pound should be cleaned regularly. There should be proper drainage and waste disposal. It should be the duty of the Administration to provide uncontaminated and palatable food in sufficient quantity. The diet should be sufficient according to the age and health of dogs. All the dogs kept in the pounds should be vaccinated against

rabies preferably also against canine distemper, parvovirus, leptospirosis and viral hepatitis.

In holy **Guru Granth Sahebji,** it is written that "Pavan paani dharati aakas ghar mandar har bani", (Air, water, earth and sky are God's home and temple).

Since the main petitions have already been disposed of, no further orders are required to be passed on the miscellaneous applications.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 02, 2020
manoj

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No