Kerala High Court
Nature Lovers Movement vs State Of Kerala And Ors. on 7 October, 1999
Equivalent citations: AIR 2000 Ker 131
Author: Mohammed
Bench: P Mohammed, G Sivarajan, M H Nair
JUDGMENT Mohammed, J.

1. What is before us is a theme of intense debate involving the use and occupation of forest lands and its inevi-

table reaction to ecological balance and environmental outfit. This is brought to us by way of a 'public interest litigation' moved by a registered Society known as "Nature Lovers Movement".

2. 'Love of nature' is not a modern phenomenon. It existed from the beginning of the humanity itself. "Man is the measure oi all things." so said Plato. Man loves nature and nature in turn nourishes him. Man serves society and society in turn preserves him. Nature and society are thus interdependent and the duty of man to them is inherent. These basic percepts envisage the protection of environment and preservation of humanity. But "For the greenest of environmentalists, humans are oflesser importance than the abundant and diverse flora and fauna of the planet. Humans are defined as a recent addition to the livestock and are considered to have been a wholly disruptive influence on a world which was paradise before their arrival. "(1) But the globalizatlon of economic development as a result of constant endeavour of humans cannot be whittled down or destroyed for the sake of environment and preservation of ecology. Therefore when we say 'love of nature' it is a love for ecology, it is a love for environment and above all it is a love for human beings.

3. The globalizatlon of the economic development by its very nature increases its impact on the environment. All the countries that have recorded economic growth have added to the environmental degradation as well. An eminent Ecologist Edward Goldsmith in an illustrative article said:

"By now, it should be clear that the environment is becoming ever less capable of sustaining the growing impact of our economic activities. Everywhere our forests are overlogged, our agricultural lands overcropped, our grasslands overgrazed, our wetlands overdrained, our ground-waters overlapped, our seas overfished, and Just about the whole terrestrial and marine environment overpolluted with chemical and radioactive poisons. Worse still, if that is possible, our atmospheric environment is becoming ever less capable of absorbing either the ozone depleting gases or the greenhouse gases generated by our economic activities without creating new climatic conditions to which we cannot indefinitely adapt."

This quote portraits the magnitude of the environmental degradation that is being faced with by all the countries in the world. "We have either been ignorant or uninterested in all of this in our pell-mell race for more productivity, more goods and more leisure. We are only beginning to realize the accumulated debts that must be paid." But Professor Anders Victorin had somewhat a different

thought:

"We are no longer only the inheritors of the earth, we are also Earth's children, fellow travellers pn a ship in space. And a growing number of people are prepared to act on this new view of the world. This is jp a sense a Copernican counter-revolution Earth has again become the centre of the universe."

4. In the year 1972 a major change in the spectrum took place as a result of United Nations Conference of the Human Environment at Stockholm in order to shape human actions according to their environmental effects. Principle 1 of the Stockholm Declaration Ordained "man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations." What Rio de Janiro Summit held in 1992 declared is 'human beings are entitled to a healthy and productive life in harmony with nature,' It is said that these two Declarations are anthropocentric in their character. That means the human beings are placed at the centre of environmental concerns as against the wish of protagonists of ecological equilibrium. Needs and aspirations of the humans escalate day by day in parallel to the scientific and technological developments in the society. That necessarily affords greater opportunities to man to intrude into the environmental balance. But when man is at the centre stage of universe, the duty is in him to galvanize the balance between the economic growth and environmental degradation. Therefore the attempt has always been a reconciliation and repproachment between these two diverse forces. The promoters of free market economy transmit the idea of having compatibility between economic growth and environmental degradation.

5. This underlying telling-topic of general importance came to us for being dealt with pursuant to the order of reference dated 2nd August 1995 which is reproduced hereunder:

"In this Original Petition the main prayer is to declare that the State of Kerala is not entitled to de-reserve the forest land to any other purpose without obtaining the approval contemplated under Section 3 of the Forest Conservation Act, 1980. The stand of the State Government is that prior approval has been obtained from the Central Government as per Ext. P-42 which is a communication given to the Secretary. Forest and Wildlife Department, Government of Kerala. Ext. P-42 shows that the Central Government had granted the approval subject to the conditions laid down in Ext. P-17. The main contention is that without complying with the conditions enumerated in Ext. P-17 State Government are proposing to grant pattayam in favour of a large number of encroachers. Learned Advocate General contended that Ext. P-17 has been modified by the Central Government through Ext. P-42 and therefore the conditions enumerated in Ext. P-17 have to be read in that light.

2. After hearing learned counsel for the petitioner and learned Advocate General for sometime, we feel that the points involved in this original petition are of great moment and affecting a large number of persons. It has got great public importance also. Learned counsel for the petitioner addressed arguments on the scope of Articles 48-A and 51 -A of the Constitution.

We, therefore, deem it necessary that the constitutional questions raised in the Original Petition should be heard and decided by a larger Bench. Registry will bring it to the notice of the Hon'ble Chief Justice for orders."

6. The writ petitioner is a Society registered under the Travancore-Cochin Scientific, Cultural and Charitable Societies Registration Act, 1955 functioning at Muvattupuzha Road, Thiruvamkulam. It is a voluntary organization functioning with the main object of protection of wild life and ecology. The main prayers in the writ petition as amended are as follows:

(1) declare that the first respondent is not entitled to divert or de-reserve forest land to any other purposes without obtaining the due approval contemplated under Section 2(3) of the Forest (Conservation) Act, 1980 after complying with the procedures and formalities including the compliance of all the conditions mentioned in Ext. P-17.

l(a) declare that the pattayams (title deeds) issued in respect of forest land on any day without obtaining due and proper approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980 have no sanctity in law and the same are per se illegal and void ab initio.

1(b) Issue a writ of certiorari or any other appropriate writ, direction or order quashing Ext. P-42 as illegal and void.

(ii) issue a writ of certiorari or any other appropriate writ, direction or order quashing Exts. P-17, P-19 and P-20 in full and those parts of Exts. P-1 to P-3 and other arbitrary steps taken by the first respondent for the purpose of assigning any piece of forest land either to encroachers or to anybody else, as illegal, unconstitutional and hence void.

7. The case of the petitioner as set out in the writ petition is summarised in nut-shell as thus: The petitioner-society seeks the process of judicial review of administrative action in order to avoid an environmental disaster to the mankind which may occur due to ecological imbalance and devastation of the major portion of the forest land in the State of Kerala. There are sufficient provisions in Articles 48-A and 51-A of the Constitution to persuade the State and its citizens to protect and improve environmental equilibrium but they are flouted and disobeyed by them. For the protection of the forest wealth, ecological balance and the preservation of wild life there are large number of Acts, Rules, Regulations etc. issued by the Government from time to time. However, the provisions of those enactments were flouted incessantly and encroachers to the forests were not pushed out by enforcing the relevant provisions. When there was hue and cry from persons like the petitioner, Government Issued Ext. P-1 letter dated 8-7-1977 to the Chief Conservator of Forests.

Trivandrum by which he was informed of the policy decisions taken in the discussion held by the Chief Minister on 26-6-1977 on the problems relating to forest encroachment. In that meeting it was, inter alia, decided not to allow new encroachments and all new encroachments after 1-1-1977 would be evicted. It was also decided that as regards the encroachments prior to 1-1-1977 policy decision would be taken later. On the basis of Ext. P-l, Government issued Ext. P-2 order directing that stern action should be taken to evict the encroachers occupied after 1-1-1977. By Ext P-3

Government letter dated 2-9-1998 Government directed to evict large encroachments and encroachments by raising plantations in the interest of forest reservation. Even thereafter no effective steps were taken in that regard and therefore the members of a voluntary organization at Munnar filed O.P. No. 1696 of 1994 for Issuing necessary directions to respondents 1 and 3 and subordinate officials. In that writ petition this Court directed the Revenue Secretary to file an affidavit on points required to be clarified before this Court as per Ext. P-4 order dated 17-3-1997. Encroachments even thereafter continued. Later the said writ petition was referred to a Division Bench as per Ext. P-5 order of reference. That writ petition was ultimately disposed of by the Division Bench consisting of Chief Justice V.S. Maltmath and Justice T.L. Viswanatha lyer as per Ext. P-6 judgment dated 30-4-1991. Subsequently the Central Government Issued Ext. P-7 letter dated 6-2-1992 to the Chief Secretaries of all States directing that no State Government or any other authorities shall make any order directing dereservation of any reserved forests or for using the forest land for non-forest purpose except with the prior approval of the Government of India. Even after the above orders and Judgments, provisions of the Forest Conservation Act, 1980 were flouted and there were encroachments on reserved forests. The newspapers flashed news item regarding Illegal encroachments on reserved forests and Exts. P-8 to P-11 copies of the paper reports evidence such unauthorised encroachments and such encroachers were promised by the authorities that lands would be assigned in their favour. Subsequently the first respondent announced a 'pattayamela', a function for giving away title deeds to encroachers on the forest lands owned and controlled by the Government and fifth respondent and Kerala State Electricity Board in Idukki district. If the proposed 'Pattayamela' was allowed to be materialised the environment and wild life would be seriously affected and it would create untold miseries and problems to the mankind. It was learnt that authorities had decided to give such 'pattayams' to the persons who encroached prior to 1-1-1977. This cut off date has no relevancy in view of the provisions of the Forest (Conservation) Act, 1980. No decision was taken by the Government with regard to the occupations of forest land prior to 1-1-1977. However, the attempt appears to be to accommodate the encroachers by giving away pattayams as settlers of forest area.

The first respondent had not taken any decision to give away title to pre-1980 encroachers of the forest land till 1991. However, the letter dated 1-12-1991 of the first respondent addressed to the Government of India for giving approval contains a false statement that a decision had already been taken by the first respondent to give away title to pre-1980 encroachers of the forest land. From Ext. P-15 letter dated 11-8-1992 it is evident that no formal order had been issued by the first respondent in the matter of assignment of forest area occupied prior to 1-1-1997. On receipt of Ext. P-15, the Assistant Inspector General of Forests, the Government of India, wrote Ext. P-16 letter dated 2-4-1992 requesting the State Government to specify the details of the forest area to be regularised and for the commitment to provide funds for afforestation. The claim of the first respondent for afforestation was baseless. The political pressures had been brought upon the Government of India and hence they sent Ext. P-17 letter dated 23-3-1993 agreeing in principle for approval for diversion of 28,588.159 hectares' (more than fifty thousand acres) of forest land in Idukki. Pathanamthitta, Thrissur, Ernakulam and Koilam districts. However, without getting formal or required approval of the Central Government for de-reservation of forest, the Kerala Government issued Ext. P-19 dated 19-3-1993 notification prescribing the Rules for assignment of forest land to private parties. Thereafter in violation of the rules the assignments of forest lands were ordered by the authorities.

Later news items (Ext. P-29) appeared in Malayalam daily pointing out that there was no legal sanction for issuing pattayams in respect of forest lands. The petitioner came to know about so many documents which would reveal foul play in issuing pattayam and Exts- P-31 to P-39 documents would reveal such exercises. While so, the Government of India sent Ext. P-42 letter dated 31-1-1995 granting approval under Section 2 of the Forest (Conservation) Act, 1980 for diversion of 28,588.159 hectares of forest land for regularisation of pre 1-1-1977 encroachments and to assign lands under the Kerala Land Assignment (Regularisation of Occupants of Forest lands prior to 1-1-1977) Special Rules 1993. The third respondent has no power to issue sanction or approval under Section 2 of the said Act without complying with the formalities prescribed in that behalf.

8. The above allegations contained in the writ petition were answered/explained by the first respondent in the counter-affidavit dated 6th June 1995 as briefly put thus: Due to pressure of population and due to Government programme like Colonisation Scheme, Arable Land Assignment Scheme, Grow more Food Programme, Hydro-Electric Irrigation projects, plantations etc. considerable extent of forest lands in the State had been exposed to human habitation and such forest lands had been actually used for non-forest purposes and converted into populated areas with structures and improvements. The people were not conscious of the fact that the maintenance of forest was required for ecological balance in those days. The substantial extent of forest lands has now been transferred into agricultural holdings and human settlements and hence there was no scope for reverting them into forest areas. Since almost the entire lands in the State have been developed and because of high density of population any scheme for evicting the occupants of those converted forest lands and providing them with rehabilitation facilities is unworkable. The occupants have developed the land with valuable improvements and therefore the State Government decided to regularise the occupation that took place in the forest lands prior to 1-1-1977. The regularisation of the occupants by granting title deeds does not involve clear felling of trees any more. The regularisation of occupants by granting pattayam in no way affects the existing conditions of ecology and environment. Be-

cause of the pressing need for production of more foodgrains. the Government have themselves in the past allowed cultivation in the forest lands. New projects have substantially contributed to the economic growth and the intention behind these projects was not destruction of forests. The decision to regularise the conversions that took place prior to 1-1-1977 was taken since it was impossible to rehabilitate the entire occupants if they were evicted. The area earmarked for assignment is that converted into agricultural holdings prior to 1-1-1977 and therefore the liquidation of any existing forest is not involved in regularising the possession and occupation.

The Government of India clarified that no sanction under Section 2 of the Act is necessary for utilising the forest lands de-reserved for non-forest purposes prior to the promulgation of the Act. The State Government had been appealing to the Government of India for sanction to regularise the conversions which took place prior to 1-1-1977 and not prior to 25-10-1980. The eligibility of persons to whom the holdings to be assigned was decided after a field to field verification of the entire holdings by a joint team of officials of Forest and Revenue Departments in order to satisfy that the conversion took place prior to 1-1-1977. Out of the total occupied area of 25,363 hectares in Idukki

district major portion, namely 20,363 hectares is cardamom hill reserve and as early as in the year 1958, this area has been transferred to the control of Revenue Department and therefore no clearance from the Government of India under Section 2 of the Forest (Conservation) Act was required for the assignment of cardamon hill reserve land. However, out of concern of the State Government to adhere to the principles of forest preservation, it included those areas also for seeking clearance of the Government of India.

As a measure to compensate the loss of forest land and with a view to create an awareness among the people about the need to maintain the tree growth, the State Government have been implementing the social forestry programme and compensatory afforestation programme for last several years. In view of the approval of regularisation of diversion of forest lands, the State Government have formulated a scheme for compensatory afforestation covering an area of 57.180/- hectare of degraded forest area which represents double the area approved for regularisation. Administrative sanction has already been accorded to the said scheme which is estimated to cost Rs. 113 crores and fund has been earmarked to this project. Till 1994 the Scheme had been implemented in an area of 1233 hectares spread over the districts of Trivandrum, Kollam, Idukki, Thrissur, Wynad and Kasargode.

The policy of the Government is that all post-1977 conversions should be evicted. There was no intention for the Government to regularise the entire conversion up to 25-10-1980. The Assembly passed a unanimous resolution and the exit off date was fixed as 1-1-1977 as against 1-7-1977. After an extensive correspondence for several years the Union Government agreed to the diversion of 28,588 hectares of forest land occupied prior to 1-1-1977. This decision was announced in a public function organized in Nadumkandom in Idukki district on 20-3-1993. The State Government's policy decision was taken and declared by the then Chief Minister of the State to regularise the encroachments made prior to 1-1-1977 and action was pursued as per the guidelines issued by the Government of India for regularisation of encroachments. The cut off date was decided after careful consideration of the population pressure on forest land and the need for protecting the forest land. Ext. P-19 rules are notified for assignment of the encroached land after obtaining sanction and those rules are valid. These rules are framed for speedy regularisation on getting concurrence from Government of India. No new forest lands are assigned for creation of township. There is no cause for attracting the proceedings under Article 226 of the Constitution. No prejudice is caused to the petitioner and hence the petitioner is not entitled to claim relief against the respondents.

9. On behalf of the third respondent a counter affidavit has been filed on 3-11-1997 by the Conservator of Forests (Central). Ministry of Environment and Forests, Government of India, Regional Office (South Zone) Bangalore. Their case is that the first respondent had submitted a proposal in June 1986 under Forest (Conservation) Act, 1980 for regularisation of encroachments and furnished information that those en-

croachments had taken place prior to 1-1-1977. The said proposal was examined in accordance with the provisions of the Act and guidelines. Accordingly the said proposal for diversion of forest area for regular! -sation of encroachment was agreed in principle under the Ministry's (Ext. R-3(a)) letter dated 23-3-1993 (Ext. P-17 in the O.P.). After receipt of this compliance report from the first

respondent approval under Section 2 of the Act for diversion of 28.588.19 hectare of forest area for regularisatlon of encroachment in five districts taken place prior to 1-1-1977 was issued as per Ministry's letter Ext. R-3(b) dated 31-1 -1995 (Ext. P-42 in the O.P.) The decision to regularise the encroachments that had taken place prior to 1-1-1977. i.e. before the enactment of Forest (Conservation) Act, 1980 on 25-10-1980 was taken in terms of letter dated 31-1-1995. It is the duty of the first respondent to ensure that all stipulated conditions are complied with before pattayam is Issued in respect of the forest area in favour of the eligible en-croachers.

1O. Sixteen persons filed C.M.P. No. 17959 of 1995 in O.P. No. 14276 of 1993 praying to implead them as additional respondents 6 to 21 in the original petition alleging that they are necessary parties. They alleged that they are in occupation of small portions of land in Idukki district and their predecessors were occupying the aforesaid lands for more than 40 years. They came to Idukki district and were in occupation due to government programmes like colonisation schemes and Grow More Food programme. It is also alleged that no interested parties were made party respondents in the original petition by the first respondent. After hearing both sides, a Division Bench of this Court allowed the said petition observing as below:

This is an application to make these petitioners as additional respondents 6 to 21 in the original petition. This application is opposed on the ground that they have no locus standi in the matter. On behalf of the applicants it is contended that if the reliefs claimed in the O.P. are granted, the victims would be the applicants and persons similarly situated. In such a situation, there is no point in preventing these petitioners from being heard in the matter. We, therefore, allow this C.M.P."

The additional respondents 6 to 21 filed a counter-affidavit stating thus: The writ petition is not maintainable and the petitioners are not entitled to any relief. The approval under Section 2 of the Act was granted after complying all the prescribed formalities and Exts. P-17 and P-42 are not having any illegalities. As per Ext. P-19 the maximum area to be sanctioned to a family is limited to 4 acres, and the land in excess of the said area would be resumed by the Government. The allegation as to the violation of Articles 48-A and 51-A of the Constitution is unavailable in view of the fact that the regularisation sanctioned by Exts. P-17, P-42 and P-19 regulated such occupation.

11. The petitioners in C.M.P. No. 32131 of 1999 in O.P. No. 14276 of 1993 who is a permanent resident of Upputhodu in Udumpanchola taluk of Idukki district filed the said petition on 29-7-1999 praying to implead him as additional 22nd respondent in the original petition. His case is that he is a social worker and an advocate by profession. He was a member of the Kerala Legislative Assembly from Thodupuzha during the year 1991-1992. He says that many of the settlers in Idukki district are holding government land holding as lease or encroached by them. The said land was improved-with several cash crops and all of them had erected homestead in the said land. Most of them have no other land and they are depending on the said land for their livelihood. A large number of persons who are eligible to get the land assigned in their name, were not given the assignment and hence they sought transfer of the lands on registry in their name. Since the land remained as government land, those persons were not able to avail of any bank loan for agriculture. The Government was compelled to recognise the issue of regularisation as a human problem and a legislative sub committee known as 'Maniyangadan Committee' appointed to study the problems and submit a

report. On the basis of the recommendation of the Committee the Government of Kerala issued an order on 7-6-1968 (Annexure 1) accepting the recommendation with slight changes. One of the important recommendations was that any attempt to draw a distinction between the encroachers and lessees on the one hand and encroachers before and after a particular date i.e. 1-1-1960 will only lead to further confusion.

However the Government after studying the report had fixed the cut off date as 1 -1 -1968. The said date was later extended up to 1-1-1977.

On the basis of the report of the Sub Committee and Special Rules, already pattayams were issued and they were enjoying the property with full right. In certain cases they have mortgaged the property with Banks and other governmental Institutions. Therefore if these pattayams are cancelled it would not be possible for such governmental institutions to realise the amount. Because of the stay orders Issued by this Court the issuance of pattayams are not held. From the above averments we have noticed that the petitioner in the C.M.P. is Interested in the welfare of the persons who are sought to be evicted. Though we have not allowed the impleadment sought for we have ordered to hear the petitioner at the hearing.

The detailed pleadings of the petitioner and respondents in their original form as above are found to be essential in as much as we are called upon to arbitrate a dispute on the original side, involving conflicting Interest of the citizens and the State.

12. When the writ petition came up for consideration on 26th July 1999, we have heard Sri B. Gopakumar, Counsel for the petitioner and Sri M.K. Damodaran, Advocate General for the respondents 1 to 3 at some length. In the course of hearing we found It necessary to go into certain documents and hence Advocate General was directed to produce the following documents.

1. Maniyangadan Committee Report 1968

2. Joint Verification Report

3. Sketches showing the forest land as well as private land in Idukki district.

4. Correspondence culminating in Ext. P-42.

In compliance with the aforesaid direction the first respondent produced these documents before this Court. The copy of the Maniyangadan Committee report and the map showing area between Chinnar-Pariyar and Kalyanapparathandu covering 30000 acres of encroachments recommended by Maniyangadan Committee for permanent registry but deferred by Government in 1968 are marked as Exts. R-1(f) and R-1(g) respectively. Two original government files produced are marked as Exts. R-1(h) and R-1 (i). All other documents including the corre-

spondence produced by the State are marked as Exts. R-l(j) to R-1(z) and R-l(z) to R-l(z) 48.

13. Subsequently the writ petition was heard in detail on several dates. Besides the counsel for the petitioner and Advocate General for the respondents 1 to 3, we heard Sri Johnson Manayani for additional respondents 6 to 21 and Sri Raju Joseph for the petitioner in C.M.P. No. 32131 of 1999.

14. In view of the acrimonious debate involved in this case we prefer to have the full text of the documents relied on by the parties, wherever necessary in order to have a full appreciation and understanding. Since Exts. P-17 and P-42 are mainly sought to be quashed in the writ petition those orders are reproduced hereunder.

Ext. P-17 No. 8-118/86-FC Government of India Ministry of Environment and Forests Paryavaran Bhavan C.G.O. Complex Lodi Road, New Delhi 110003 23-3-1993 To The Secretary, Forest Department, Government of Kerala, Thiruvananthapuram.

Sub : Diversion of Forests land for agricultural and other non-forest uses- Proposal - regarding Sir, I am directed to refer to your letter No. 51289/FG/1/80 'dated 26-6-1986 on the above mentioned subject seeking prior approval of the Central Government in accordance with Section 2 of the Forest (Conservation) Act, 1980.

2. After careful consideration of the proposal of the State Government, the Central Government hereby agrees in principle for approval for diversion of 28,588.159 hectares as forest land in Idukki, Pathanamthitta, Thrissur, Ernakulam and Kollam districts for regularisation of pre-1-1-1977 encroachments in Kerala subject to the fulfilment of following conditions.

i) Ground verification and demarcation of area to be regularised in favour of individual encroachers shall be done by the State Government.

ii) Regularisation of encroachments shall not be done in favour of encroachers (otherwise found eligible) either in the midst of the forest area or in the Periyar Tiger Reserve/ wild life sanctuary. Such encroachers are to be shifted on the fringe of the forests, for which excess area available for eligible encroachers may be utilised.

iii) Detailed map showing demarcation of the area to be regularised in favour of individual encroachers shall be got prepared.

iv) Regularisation of encroachments in favour of eligible encroachers shall not be done in excess of assignment permissible as per Kerala Land Assignment Rules, 1988, the excess area with such encroachers shall be taken back from the possession of the encroachers and shall be utilised for shifting eligible encroachers from the midst of the forest area or from Pariyar Tiger Reserve area.

v) A comprehensive scheme for soil conservation and agro forestry shall be prepared and implemented as a time bound programme to check accelerated soil erosion and siltat of dams taking place in the area.

vi) The State Government shall give firm committing that funds for the compensation afforestation over double the degraded forest land shall be provided to the Forest Department as per the phased compensatory afforestation scheme compensatory afforestation shall be done with a period not exceeding five years.

3. After receipt of compliance report on the fulfilment of the above conditions from the State Government, formal approval will be issued in this regard under Section 2 of the Forest (Conservation) Act, 1980. Transfer of forest land to user agency should not be effected by the State Government till formal order approving diversion of forest land are issued by the Central Government.

Yours faithfully, Sd/-

Asst. Inspector General of Forest."

Ext. P-42 "No. 8-118/86-FC Government of India Ministry of Environment and Forests Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi 110003.

The Secretary, Forest and Wildlife Department, Government of Kerala, Thiruvanathapuram, Kerala.

Sub : Diversion of forest land for agricultural and non-forest uses-proposal regarding.

Sir, I am directed to refer to this Ministry's letter of even number dated 23rd March, 1993 and to D.O. letter No. 9242/C-1/91 FWCD dated 17-1-1995 of Secretary, Forest and Wildlife Department. Government of Kerala addressed to the Inspector General of Forests.

After careful consideration of the proposal of the State Government contained in the above mentioned D.O. letter, the Central Government hereby grants approval under Section 2 of Forest (Conservation) Act, 1980 for diversion of 28,588.159 hect. forest land in the Idukki, Pathanamthitta. Thrissur, Ernakulam and Kollam districts for regularisation of pre 1-1-1977 encroachments and to assign land under the Kerala Land Assignment (Regularisation) of Occupations of Forest Lands prior to 1-1-1977 Special Rules, 1993 subject to the conditions laid down in letter No. 8-118/85-FC dated 23-3-1993 of the Ministry of Environment and Forests. The State Government shall furnish monthly reports to the Ministry of Environment and Forest lands so assigned. Yours faithfully, Sd/-

R.K. Choudary Asst. Inspector General of Forests."

15. Before proceeding further, it would be worthwhile to comprehend ourselves to the arguments put forth by the counsel for the petitioner and hence they are being condensed as hereunder.

(1) That the Exts. P-17, P-42 etc. are opposed to the constitutional imperatives contained in Articles 48-A and 51-A.

(2) That the Exts. P-17 and P-42 orders issued by the Government of India, if Implemented would result in environmental degradation and ecological imbalance.

(3) That the first respondent, the State of Kerala is not entitled to divert or dereserve forest land for any other purpose without obtaining 'due approval' as contemplated under Section 2 of the Forest (Conservation) Act, 1980.

(4) That the Ext. P-42 granting approval by the Central Government is unauthorised. Illegal and inoperative inasmuch as the conditions prescribed under Ext. P-17 are not satisfied.

(5) That Ext. P-19 rules namely, Kerala Land Assignment (Regularisation of Occupation of forest land prior to 1 -1 -1977) Special Rules, 1993 introduced by the State of . Kerala on 19-3-1993 are invalid and inoperative.

(6) That the afforestation scheme in order to compensate the de-reservation of forest is Inadequate and insufficient.

(7) That the proposal to distribute 'pattayam' to the encroachers is unauthorised and invalid, in the absence of fulfilment of pre-requisites contained in Ext. P-17.

'LOCUS STANDI' AND PUBLIC INTEREST LITIGATION

16. Before we advert to the above points it is essential to deal with a preliminary point as to the locus standi' of the petitioner to move the present writ petition and aptness of its filing as 'public interest litigation' as argued by the counsel for the respondents. While dealing with this topic let us look at the modern trend of the 'Doctrine of locus standi' as Professor Wade puts it. "(T)he current tendency is to relax requirements as to standing, and this is in accordance with an elightened system of public law. The House of Lords has given the subject a new and broader basis in the Inland Revenue Commissioners case, and the principles of that decision should be applicable also to special statutory remedies. In several cases the Courts had already favoured a generous interpretation of 'person aggrieved' and it is now less likely that these words will be made an obstacle to any person who may reasonably consider himself aggrieved. Judicial statements suggest that they are likely to cover any person who has a genuine grievance of whatever kind - and that is tanta-

mount to any person who reasonably wishes to bring proceedings. The House of Lords construed them liberally in a rating case, holding that a ratepayer had standing to object to the under assessment of another property in the same area, but that the interest of a taxpayer would be too remote." The Supreme Court of India marvellously dictated the entire doctrine of 'locus standi' in S.P. Gupta's case wherein it has been laid down that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal using or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated. S.P. Gupta v. Union of India, AIR 1982 SC 149. Such person or determinate class or group of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the Court for relief

any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 (Ibid)." The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitations and if any practice is adopted by the executive which is in flagrant and systematic violation of its constitutional limitations, petitioner 1 as a member of the public would have sufficient Interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice. We must therefore reject the preliminary contention raised on behalf of the respondents challenging the locus of the petitioners to maintain these writ petitions" D.C. Wadhwav. State of Bihar, (1987) 1 SCC 378 : (AIR 1987 SC 579). When a citizen belongs to an organisation which has special interest in the subject-matter, if he has some concern deeper than that of a busybody a writ petition by such a citizen would have been permissible under Article 226 of the Constitution. Public Interest Litigation is part of the process of participate justice and 'standing' in civil litigation of that pattern must have liberal reception at the judicial door-steps. Fertilizer Corporation Kamagar Union v. Union of India, AIR 1981 SC 344.

"Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on Justice to the common man." The Mumbai Kamgar Sabha v. Abdulbhai Falzullabhai, AIR 1976 SC 1455 "Public Interest is promoted by a spacious construction of locus stand! in our socio-economic circumstances. (Ibid)"

In the aforesaid spacious field of 'standing' we must examine the case of the petitioner-society to litigate on behalf of the unknown citizens who love environment and wish for ecological balance. It stands for protection of wild life and ecology as evident from Ext. P-52 bye-laws. One of the objectives of the society is to make the people conscious of the environmental pollutions and to protect the wild life and wild animals. Exts. P-53 to P-59 reveal that the society was engaged in studying the environmental problems as also the protection of wild animals. These notable features, no doubt recognise 'locus standi' of the petitioner to make the present writ petition. In pro bono publico. This exercise is in consonance with the principle that the Court can examine the previous record of the public service of the litigant as laid down by the Apex Court. Raunaq international Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492 : (AIR 1999 SC 393).

17. Public Interest litigation contemplates legal proceeding for vindication or enforcement of fundamental 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. Subash Kumar v. State of Bihar, AIR 1991 SC 420. "It is the 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 extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation." (See also the following decisions.)

18. The abovesaid decisions require that the Court shall exercise much care and caution in entertaining the public interest litigations by a person or body of persons. The first and foremost thing that gets adjudication at the outset is that any personal Interest is involved in the litigation

even though it is moved as public interest litigation. In this context it is apt to remember what Lord Denning said:

"The ordinary citizen who comes to the Court in this way is usually the vigilant one. Sometimes he is a mere busybody Interfering with things which do not concern him. Then let him be turned down. But when he has a point which affects the rights and liberties of all the citizens, then I would hope that he would be heard; for there is no other person or body to whom he can appeal. The Discipline of Law - page 144.

Khalid, J. (as the learned Judge then was) said in the Taj Group of Hotels' case. Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109.

"This case goes by the name 'Public Interest litigation.' I wish to delineate the parameters of public Interest litigation concisely, against the background of the facts of this case so that this salutary type of litigation does not lose its credibility. Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must Inspire confidence in Courts and among the public. They must be above suspicions. See the facts of this case and the end result."

The learned judge cautiously put thus; "Public interest litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the Courts of law. Instead of dispensing justice, will have to take upon themselves administrative and executive functions (Ibid)." Therefore what is required is 'to have some self Imposed restraint on public interest litigants.' When we analyse the whole problem of public interest litigation the Courts are bound to examine with great care and caution the bona fides of the litigant who moves the Court under the banner of pro bono publico and allowance or adaptation of the reliefs claimed.

CONSTITUTIONAL IMPERATIVES

19. The Constitution (Forty-second Amendment) Act, 1977 has brought out drastic and revolutionary changes in the constitutional perspectives enshrined in the Constitution. In unequivocal terms it declared that India is a socialist secular State. In substance 'socialism' is part of the basic structure of the Constitution as 'secularism' is declared to be by the Supreme Court in Bommai's case S.R. Bommai v. Union of India, (1994) 3 SCC 1 : AIR 1994 SC 1918. The concept of social justice forms part of socialist theory in a democratic society. It is now settled legal position that 'social Justice' is a fundamental right. 'Social justice is the recognition of greater good to larger number without deprivation of accrual of legal right of anybody. Sadhuram Bansal v. Pulin Behari Sarkar, AIR 1984 SC 1471. Therefore, while interpreting the provisions contained in the Constitution, the concept of 'social justice' as also the 'economic justice' enshrined in the preamble shall be the guiding force and spirit.

20. By virtue of the aforesaid Amendment Act, Article 48-A was incorporated in Part IV of the Constitution dealing with the directive principles of State Policy. Likewise Article 51-A dealing with fundamental duties was added under Part IV A. Article 48-A is as follows:

"48 A. Protection and improvement of environment and safeguarding of forests and wild life -

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

Among the fundamental duties under Article 51-A we are at present concerned with Clause (g) thereof which runs thus:

"51 A. It shall be the duty of every citizen of India -

(a) to (f) .....

(g) to protect and Improve the natural-environment Including forests, lakes, rivers and wild life, and to have compassion for living creatures."

Article 48-A prescribes a duty on the State whereas Article 51-A(g) imposes a fundamental duty on every citizen. While implementing or obeying these provisions the social and economic justice shall be observed by the State as well as the citizen.

That is the constitutional imperatives.

21. What is seen from these constitutional changes is that while we constitute India into a Socialist Democratic Republic we impose certain obligations on the State as also the new duties pn the citizen. In the modern technological development every citizen has to forego livable environment for his economic perceptibility. The democratic conception of the rule of law balances individual rights with individual legal responsibility. ..... .The relation between Individual right and individual duty is in constant development, and its forms vary from system to system. Legal Theory - by W. Friedmann page 424." The preservation of ecology, environment and forests is a function not only of the State but of every individual. But the question now poses is while preserving and protecting the environment Including forests how far the State can restrict the desire of the man to hold the land for his benefits or for the benefit of the community. It may be an economic activity of a man and his adventures in this regard can be totally routed while enforcing the protection of environment and preservation of the forests, if the State so deserve (desires). But the State can act only in accordance with Justice and fair play, otherwise it would amount to an arbitrary action forgetting the history of the land and the growth of world economy. Exts. P-17 and P-42 orders of the Central Government granting approval for diversion of 28,588.159 hectares of forest land cannot be read in Isolation. The history behind the occupation of the forest land and other government land cannot be forgotten. Such occupation ipso facto becomes the history of economic growth of the State in the field of agriculture, trade industry and the like. Article 48 contained in the Directive Principles of State policy mandates that the State shall endeavour to organise agriculture and animal husbandry on

modern and scientific lines. Therefore it cannot be said that while making emphasis on Articles 48-A and 51-A all other constitutional imperatives should be jettisoned.

22. The appropriate adjustability and transparent reconciliation between the preservation of environment and development of economy are the constitutional imperatives in the field of processing the restructure of our society as existed now. On the one side, the society wants to protect and preserve the environment, but on the other it demands exploitation of the environment and forests for the individual economic development of a person or a group of persons. The endeavour of the Government would be to attain peaceful co-existence of these two diverse factors which is found to be mutually exclusive. Large number of preventive measures and protectlonal valves will not solve the problem unless the citizens owe a desire to obey the said measures. Gregorious nature of the man coupled with poverty and economic backwardness will not always tend to observe the measures but to defeat it in whatever manner possible. Therefore we are faced with a very acute agonising problem of preservation of forests on the one side and throwing out of the helpless and hapless from the soil on the other. In this context we cannot attenuate or exterminate the gigantic and elephantine work done by them on the soil for its improvement or for general development of agriculture. Today society's inter-action with nature is so extensive that the environmental questions assume proportions affecting all humanity. Man is now able to transform deserts into oases. In short we are able to see this kind of transformations in the forest land as a result of various leases granted by the Administrators. The advances the State made in the field of agriculture is unprecedented. It is said that the significant strides had been made in the agricultural production ensuring food security as a result of maximum utilisation of the land including the forest land. Therefore we cannot remain dogmatic Ignoring the major headway the country has made as a result of the exploitation of the natural resources. What the Constitution paramountly expects from the citizen is his 'strive towards excelence in all spheres of individual and collective activity so that the nation constantly rises to higher level of endeavour and achievement' as enshrined in Article 51-A(j). 'Excellence' means surpassing merit, virtue, honest performance. What is intended by this provision is that the citizens of this country shall perform their duties in an excellent manner rather than performing it halfheartedly. The above discussion would reveal that Exts. P-17 and P-42 are not against constitutional imperatives contained in Article 48-A or 51-A of the Constitution.

HARMONY BETWEEN ECONOMIC DEVELOPMENT AND PRESERVATION OF ENVIRONMENT

23. The Supreme Court in Span Resort case M.P. Mehta v. Kamal Nath, (1997) 1 SCC 388 held:

"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 seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."

Thus the 'public trust doctrine is now part of the law of land. Very recently, Justice V.R. Krishna Iyer extolled:

"Judges (and lawyers) are trustees of the human estate, the world's great heritage; and the robes have a responsibility obligating the use of writ power to regulate modern industry and technology"

What the learned judge said is regulation and not total restriction. Regulation may be in varying degrees depending on facts and facts alone. That is where the 'robes' display dexterity and resoluteness. "The difficulty faced by environmental Courts in dealing with highly technological or scientific data appears to be a global phenomenon." so said the Supreme Court recently. A.P. Pollution Control Board v. Prof. M.V. Nayudu, (1999) 2 SCC 718 para 24 : (AIR 1999 SC 812).

24. It appears to be a mudslinging slogan that man is upsetting the equilibrium of the ecology and destroying his life's support system. There is no denying the fact that the scientific and technological developments afforded greater opportunities to man to meet his needs and aspirations. It is admitted that over industrialisation and indiscriminate application of science and technology to economic development have been the principal cause for the impairment of the quality of the human environment.

The environmental degradation is a social problem and considering its impact on the society, law Courts have to deal with the situation according to justice and fairness. It is well-settled that the socio economic development and its impact on the environ* mental balance cannot be ignored by the Courts. In A.P. Pollution Control Board's case (AIR 1999 SC 812) (Ibid) the Supreme Court held:

"Environmental concerns arising in this Court under Article 32 or under Article 136 or under Article 226 in the High Court are, in our view, of equal importance as human rights concerns. In fact, both are to be traced to Article 21 which deals with the fundamental right to life and liberty. While environmental aspects concern 'life' human rights aspects concern 'liberty'. In our view, in the context of emerging jurisprudence relating to environmental matters, as is the case in matters relating to human rights, it is the duty of this Court to render justice by taking all aspects into consideration. With a view to ensure that there is neither danger to the environment nor to the ecology and at the same time, ensuring sustatnable development, this Court in our view, can refer scientific and, technical aspects for investigation and opinion to expert bodies such as appellate authority under the National Environmental Appellate Authority Act, 1997."

Thus the Court's power to harmonise between "danger to the environment" and "sustainable development" by supplying appropriate directions is a concept which refers to the objective of continuing to develop economics of the world while protecting the environment for the benefit of all present nations of the world and all future generations. "It is one of the best examples both of the idealism of environmental movement and of the failure to accord environmental initiatives a scientific base." The concept of 'sustainable development' was adopted by the World Commission of Environmental and Development (W.C.E.D.) and endorsed by 176 Nations in the United Nations Conference on Environmental and Development.

25. In Ratlam Municipality's case, the Supreme Court paved the way for the citizens to bring action against public bodies to compel them to keep the environmental balance making it free from the pollution of whatever kind. It held that the State would realise that Article 47 makes it a paramount

principle of governance that steps are taken for the improvement of public health as amongst its primary duties and human right has to be respected regardless of budgetary provision. The Court further said: "(T)he new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and therefore the people must be able to trigger off the jurisdiction vested for their benefit. . . . ." [Municipal Council, Ratlam v. Vardh Chand, AIR 1980 SC 1622.]

26. The question that arose before the Supreme Court in Rural Litigation and Entitlement Kendra's case, AIR 1985 SC 652 was unique and distinctive. The above case was related to environment and ecological balance. The questions arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range forming part of the Himalayas but also in their implications tc the welfare of the generality of the people living in the country. It brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in the larger Interest of the country. In paragraph 12 of the above decision the impact of the orders passed by the Court has been considered. The Court observed:

The consequence of this Order made by us would be that the lessees of lime-stone quarries which have been directed to be closed down permanently under this Order or which may be directed to be closed down permanently after consideration of the report of the Bandopadhyay Committee, would be thrown out of business in which they have invested large sums of money and expanded considerable time and effort. This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment. However, in order to mitigate their hardship we would direct the Government of India and the State of Uttar Pradesh that whenever any other area in the State of Uttar Pradesh is thrown open for grant of lime-stone or dolomite quarrying, the les-

sees who are displaced as a result of this order shall be afforded priority in grant of lease of such area and intimation that such area is available for grant of lease shall be given to the lessees who are displaced so that they can apply for grant of lease of such area and on the basis of such application, priority may be given to them subject, of course, to their otherwise being found fit and eligible. We have no doubt that while throwing open new areas for grant of lease for limestone or dolomite quarrying, the Government of India and the State of Uttar Pradesh will take into account the considerations to which we have adverted in this order."

This decision sufficiently brings forth the tiresome task of the Court in reconciling the force of 'sustainable development' and 'environmental degradation.'

27. Now let us turn to the development which took place after the decision of the Supreme Court on 12-3-1985, AIR 1985 SC 652 whereby the Court had issued certain directions in respect of limestone quarries in Dehra Dun district. The question that came up for consideration was whether the schemes submitted by the mine lessees to the Bandopadhyaya Committee under the earlier Supreme Court order have been rightly rejected or not by the Committee and whether under those schemes,

the mine lessees can be allowed to carry on mining operations without in any way adversely affecting environment or ecological balance or causing hazard to individuals, cattle and agricultural lands. The Supreme Court in that case held that it is for the Government and the Nation, and not for the Court, to decide whether the limestone deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied. It may be perhaps possible to exercise greater control and vigil over the operation and strike a balance between preservation and utilisation that would indeed be a matter for an expert body to examine and on the basis of appropriate advice. Government should take a policy decision and firmly implement the same. The Court further said that the consequence of interference with ecology and environment have now come to be realised. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact. Of course, natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that ecology and environment may not be affected Many serious way. there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation. Preservation of the environment and keeping the ecological balance unaffected is a task which, not only Government but also every citizen must undertake.

28. Chinnappareddy, J. (as the learned Judge then was) in Taj Group of Hotel's case [Sachidanand Pandey v. State of W.B., AIR 1987 SC 1109 (supra)] observed (At p. 1133):

"On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established. State-owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias. Jobbery or nepotism.

Applying these tests, we find it is impossible to hold that the Government of West Bengal did not act with probity in not inviting tenders or in not holding a public auction but negotiating straightaway at arm's length with the Taj Group of Hotels."

The learned Judge further said (At Pp. 1114-15 of AIR):

"Obviously, if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a con-

sees who are displaced as a result of this order shall be afforded priority in grant of lease of such area and intimation that such area is available for grant of lease shall be given to the lessees who are displaced so that they can apply for grant of lease of such area and on the basis of such application, priority may be given to them subject, of course, to their otherwise being found fit and eligible. We have no doubt that while throwing open new areas for grant of lease for limestone or dolomite quarrying, the Government of India and the State of Uttar Pradesh will take into account the considerations to which we have adverted in this order."

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The learned Judge further said (At Pp. 1114-15 of AIR):

"Obviously, if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a con-

scious decision after taking them into account, it may not be for this Court to interfere in the absence of mala fides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations Influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. ..... When the court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may fee) justified in resigning Itself to acceptance of the decision of the concerned authority."

29. In Banwasl Seva Ashram's case, AIR 1987 SC 374 the Supreme Court was dealing with a case under the U.P. Public premises (Eviction of Unauthorised Occupants) Act, 1972. State Government declared part of the jungle lands in the two Tehslls as reserved forests as provided under Section) of the Forest Act. 1927 and in regard to the other areas notification under Section 4 of the Act was made and proceedings for final declaration of those areas also as reserved forests were undertaken. It is common knowledge that the Adivasis and other backward people living within thg jungle used the forest area as their habitat. They had raised several villages within these two Tehslls and for generations had been using the Jungles around for collecting the requirements for their livelihood, fruits, vegetables, fodder, flowers, timber, animals by way of sports and fuel wood. When a part of the jungle became reserved forest and in regard to other proceedings under the Act were taken, the forest officers started interfering with their operations in those areas. Criminal cases for encroachments as also other forest offences were registered and systematic attempt was made to obstruct them from free movement. Even steps for throwing them out under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 were taken. The Supreme Court further observed as follows:

"Indisputably, forests are a much wanted national asset. On account of the depletion thereof ecology has been disturbed; climate has undergone a major change and rains have become scanty. These have long term adverse effects on national economy as also on the living process. At the same time, we cannot lose sight of the fact that for industrial growth as also for provision of improved living facilities there is great demand in this country for energy such as electricity. In fact, for quite some time the entire country in general and specific parts thereof in particular, have suffered a tremendous sqt b;ack in industrial activity for want of energy, A scheme to generate electricity therefore is equally of national importance and cannot be deferred. Keeping all these aspects in view and after hearing learned counsel for the parties in the presence of officers of the State Government and NTPC and representatives of the Banwasi Seva Ashram, we proceed to give the following directions. [AIR 1987 SC 374) (Ibid, para 10.]

30. Ext. P-42 shall be read together with Ext. P-17. By Ext. P-17 the Central Government has stipulated conditions (1) to (vi) for granting approval for diversion of 28,588.159 hectares of forest land. Those conditions are; (i) ground verification and demarcation of the area to be regularised, (ii) regulation of encroachments shall not be done in favour of encroachers either in the midst of the forest area or in the Periyar tiger reserve, (iii) preparation of detailed map showing the demarcation of the area to be regularised; (vi) regularisation of the encroachments shall not be done in excess of the area permissible as per the Kerala Land Assignment Act, (v) a comprehensive scheme for soil preparation and agro forestry shall be prepared and Implemented as a time bound programme, and (vi] the State Government shall give firm commitment that the funds for the compensation and afforestation over double the degraded forest land shall be provided as per the phased compensatory afforestation scheme. We do not propose to discuss width of these conditions at this stage except to say that it properly regulates the exploitation of environment and natural resources. These conditions do not assume the role of total prohibition being imposed in the matter of enjoyment of environment. It no doubt supplies sufficient guarantee for development of agriculture, trade and industry. That means, there is adjustment and reconciliation between the preservation of environment and development of economy. That being so, all the steps taken by the Central Government as per Exts. P-17 and P-42 do not stand against the concept of sustainable development' and environmental protection.

31. In People United for Better Living in Calcutta's case, AIR 1993 Calcutta 215. Umesh Chandra Banerjee, J. (as the learned Judge then was) had occasion to deal with an issue involving protection of environment and Courts duty to find balance between development programme and environment. In paragraph 2 of the decision the learned judge said:

'The present day society has a responsibility towards the posterity for their proper growth and development so as to allow the posterity to breathe normally and live in a cleaner environment and have a consequent fuller development. Time has now come therefore, to check and control the degradation of the environment and since the Law Courts also have a duty towards the society for its proper growth and further development and more so by reason of definite legislations in regard thereto as noted hereafter. It is a plain exercise of the judicial power to see that there is no such degradation of the society and there ought not to be any hesitation in regard thereto - but does that mean and imply stoppage of every developmental programme - the answer is again 'no'. There shall

have to be a proper balance between the development and the environment so that both can co-exist without affecting the other. On the wake of the 21st century, in my view, it is neither feasible nor practicable to have a negative approach to the development process of the country or of the society. but that does not mean, without any consideration for the environment. As noted above, there should be a proper balance between the protection of environment and the development process. The society shall have to prosper, but not at the cost of the environment and in the similar vein, the environment shall have to be protected but not at the cost of the development of the society -there shall have to be both development and proper environment and as such, a balance has to be found out and administrative actions ought to proceed in accordance there-with and not dehors the same."

The learned judge further observed in para 30 thus:

There is no manner of doubt that this issue of environmental degradation cannot but be termed to be a social problem and considering the growing awareness and considering the impact of this problem on the society in regard thereto, in my view, Law Courts should also rise up to the occasion to deal with the situation as it demands in the present day context: Law Courts have a social duty since it is a part of the society and as such, must always function having due regard to the present day problems which the society faces. It is now a well-settled principle of law that socio-economic condition of the country cannot be ignored by a Court of law. It is now a well-settled principle of law that while dealing with the matter the social problems shall have to be dealt with in the way and in the manner it calls for, since benefit to the society ought to be the prime consideration pf the Law Courts and ecological imbalance being a social problem ought to be decided by a Court of law so that the society may thrive and prosper without any affection."

In paragraph 38 the learned Judge again emphasised the need for balancing exercise as thus:

"While it is true that Law Court ought not put an embargo to the development project which is in the offing and Law Courts shall have to strike a balance between the development and ecology and there should be no compromise with each other but on what basis this striking of balance shall take place."

32. Before a Division Bench of the Bombay High Court a publiq interest litigation was filed by an organization known as the Goa Foundation, for protection of environment while laying of new broad gauge railway line passing through three States. The Court in that case observed:

The Courts are bound to take into consideration the comparative hardship which the people in the region will suffer by stalling the project of great public utility. The cost of the project escalates from day to day and, as pointed out by the Corporation, the extent of the interest and cost which will be suffered by the Corporation every day is to the tune of Rs. 45 lakhs. No developments possible without some adverse effeet on the ecology and environment but the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests and this exercise must be left to the persons who are familiar and specialized in the field. (Goa Foundation v. Konkan Railway Corporation. AIR 1992 Bom 471".]

33. Julius Stone said:

"While the use of either ideas or social conditions as the constant involves abstraction from the concrete chronology of history, the abstraction seems less violent when social conditions are taken as the base of comparison. If the principle of good faith became important in an expanding commercial era at Rome and also 1500 years later in an expanding commercial era in England, it may be proper to link its appearance with the impact of commercial activity upon a body of strict ceremonious and antiquated law. And so laises faire as a dominant principle of law making in both England and the United States, in an age of rapid extension of control over natural resources, may suggest a correlation with the expansive techniques of large-scale industrialisation. Even if we reject the economic determinist position, law is rather the product of social conditions than the embodiment ideas with a life eycle of their own. And this is so even on the full recognition given, for instance by Weber, to the 'causative' role of ideas and ideals in influencing social and economic conditions and change. The vital point is the primacy of the larger social context over any part constrained within it." [Social Dimensions of Law and Justice page 144-1 What is emphasised here is that the law is the produpt of social condition existing in the society. Social change and transformations by way of people's movements no doubt make impact on the development of law. Conditions in the society influence the framers and interpreters of law. The law must be in tune with the social context and historical returns. No Court can ignore the existing social condi-

tions while dealing with a subject which paramountly involves live problems of society. Social conditions existing at present in the society can be extrapolated reasonably and fairly only when the Court takes upon the burden of opening the chapters of history around the issue under consideration.

HISTORY BEHIND THE OCCUPATION OF GOVERNMENT LAND

34. Roscoe Pound told the jurists:

"It was the task of the jurists to build and shape the law on the basis of the old local materials so as to make it an Instrument for satisfying the wants of a whole world while at the same time insuring uniformity and predictability." [An introduction to the Philosophy of Law-page 11.1 The history behind the occupation of the Government land has to be traced from the days of Maharajas. The land assignment rule of the former Travancore State provided for registry of revenue lands in favour of the names of the occupants on payment of value of land and trees. Consequently the occupants of the land had obtained registry of the land in their names. In the year 1940 the Travancore-Cochin Government ordered sanctioning of 'Kuthakappattom' grant in reserved forests. At that time Government felt it necessary that certain reserve Forest areas would be given for cultivation of food crops. In a press communication issued on 20-10-1942 Government of Travancore announced the policy of leasing out forest lands to individuals, co-operative societies and associations. As a result of that all swampy areas including those in inaccessible interior parts of reserve forest were thrown open for cultivation. As per Government order dated 24-11-1942 swamps in Devikulam, Peermedu and other taluks, grassy areas in minor reserves and grassy areas over 2,000 ft. In elevation in the taluks of Devikulam. Peermedu and Thodupuzha totalling 24,000 acres were made available for

cultivation of food crops. In exercise of the powers conferred on them by Section 7 of the Government Land Assignment Act, Act 111 of 1097, Government of His Highness Maharaja were pleased to make the Kuthakappaltom rules for the grant of leage of Government lands for cultivation in G.O. R.Q.C. 4848/42/Rev. dated 28-11-1944. Rule 4 thereof provides that all government lands or trees standing thereon available for being leased shall be leased on public auction.

As far as the cultivation of cardamom is concerned, His Highness Maharaja of Travancore issued rules under Section 7 of the Land Assignment Regulation 130/9/35. During the above period forest lands in Cochin also were made available for food production. The departmental cultivation of paddy was attempted in easily accessible areas with sparse tree growth. Ultimately a conference was held in the Secretarial at Trivandrum on 26-12-1949 and in that conference it was decided that the availability of forest land for permanent assignment should be investigated. Though the Government passed orders in the year 1951 sanctioning permanent exclusion from reserve forests of 30,714 acres, Government did not stop with the above order but continued the policy of granting lease. Leases including those to various organisations like the N.S.S. and S.N.D.P. continued. The Revenue Department had sanctioned fresh leases for twenty years subject to the conditions that the maximum extent per family should be five acres. In the year 1954 Government felt the need of stopping the granting of leases and measures were adopted to restrict the grant. However, in G.O. LR 5-5569/54/RD dated 22-6-1954 it was ordered that in case of unauthorised occupants whether by encroachment or by transfer or assignment, the question of lease of land to the occupant would be considered only after payment of rent for the whole period of occupation at the rate of Rs. 7 per acre. Such occupants are eligible for assignment of lands occupied by them only if they are resident cultivators. A special officer in the grade of District Collector was sanctioned for survey and settlement of the lands occupied by the cultivators.

In G.O. LR. 5-5569/54/RD dated 22-6-1954 it was ordered that in the case of forest lands the question whether they should be classified as revertible or non-revertible to Forest Department should be decided. After that further discussions were held in a conference at Kottayam and it was decided that the revertible and non-revertible areas in the Forest Reserve under unobjectionable occupation, should be handed over to the Revenue Department for being leased out under Kuthakappattom rules. About 34, 100 acres of occupied areas either by way of allotments or encroachment in C.H.R. In Kottayam division were declared non-revertible and handed over to Revenue Department in 1956. Subsequently the Board of Revenue reported that further areas of 12,000 acres would be available in the taluks of Devikulam and Peermade for transfer to the Revenue Department Thereupon a conference was held in the Secretariat on 14-12-1955 wherein it was decided to continue all leases provisionally till the end of March 1956 on condition that for all land to be de-reserved, rent of Rs. 3.8 per acre for wet land should be collected. Later in G.O. Dis 2759/56/RD dated 12-5-1956 60,000 acres of reserve forests had come under the occupation out of which 54.000 acres were more or less on the periphery of the forest and 6.000 acres were pockets inside reserve forest. Government ordered that the occupants from this 6,000 acres should be evicted. On 3-6-1957 Government issued a Press Release to the effect that all available forest land had already been given out for habitation and that encroaehments of forest lands after 1-4-1957 would be viewed seriously. In July 1957 Government constituted the popular committees on a range basis in order to demarcate on a permanent basis, without disturbing the poor landless cultivators

who had developed the land by being in possession before 26-4-1957. The Department was left free to take steps against encroachments after 1-4-1957.

However in the year 1961 as per order G.O.MS. 134/61-AD dated 18-2-1961 Government approved a scheme for survey and demarcation of forest areas and sanctioned three R.D.Os to carry out this work. By G.O. Ms. 385/61/Agrl. dated 27-4-1961, the area immediately required for forest conservation was defined and instructions for eviction operations were issued. Consequently evictions took place and the evicted persons were rehabilitated in some areas. Later by G.O. MS 1203/Agri. dated 30-11-1961 Government constituted a Committee under the Chairmanship of Shri Radhakrishna Menon to go into the entire unauthorised occupation and leaseholds within the reserve forest areas. That Committee submitted its report in July 1952. After considering the report Government issued an order G.O. (P)98/63/ Agri, dated 30-1-1963 and by the order Government practically decided to solve once for all the vexed problem of the settlers in government land. But the provisions of the G.O. were subsequently modified at the con-

ference of Ministers and Officers. Thereafter implementation of eviction of unauthorised occupants from government lands was not taken up seriously. Thus the problem of evicting the encroachers from forest land was found to be an agonising problem and it became a social and human problem.

The successive governments in Kerala tried to deal with this social problem but failed.

On the initiative of some members of Parliament from Kerala, this question came up before the Consultative Committee on Kerala Legislation and discussions were held at the Second and Third Meetings of the Committee. The Third Meeting of the Committee held on 12-8-1965 took the following decision:

"It was decided that a Sub Committee consisting of Members of the Consultative Committee on Kerala Legislation should be appointed to go into the various issues involved and to suggest short-range and long-range solutions to the problem. They might also consider whether a high-power commission with an outsider as the Chairman should be set up by the Government to review the entire question and present a thorough going report on the basis of which a suitable policy could be evolved; if the Sub Committee considered such a Commission necessary they might also suggest what its terms of reference should be. The Sub Committee, if it so desired, might also visit the affected areas prior to submitting its report."

Accordingly a Sub Committee was formed consisting G. Ramachandran, P.K. Vasudevan Nair, Joseph Mathen, P.K. Koya, B.K.P. Sinha, Cherian J. Kappenand Mathew Mainagadan as members. Ultimately the Committee after conducting the detailed enquiry furnished a report to the Government which is popularly known as Maniangadan Committee Report.

35. The above report was considered by the Government on 7-6-1968 and thereafter issued G.0.9 PO 289/68/AGRI. The preamble of the said order is as follows:

"The Government have considered the recommendations of the Consultative Committee of Parliament on Kerala Legislation on the report of the Sub Committee of Parliament on Kerala Legislation on the report of the Sub Committee (The Maniyanadan Committee) on the question of eviction of en-

croachers etc. from Government forest lands and are pleased to issue the following orders:--

The sub committee has recommended that the number of families to be evicted should be reduced to the utmost minimum by limiting such evictions to areas which are absolutely essential for projects and that those evicted should be paid adequate compensation and provided with rehabilitation facilities.

The Government accept the recommendation in principle but consider that it should also cover a few areas which are indispensable for forest conservation. In fact the evictions should be only from a very few areas which are indispensable for forest conservation, limiting the number of families to be evicted to the minimum possible."

The recommendation of the sub committee was accepted by the Government subject to the change that the relevant date should be 1st January 1968. Paragraph 2(a) to 2(e) of the above order which are quite relevant are extracted hereunder.

2(a) The Sub Committee has recommended that any attempt to draw a distinction between the encroachers and lessees on the one hand and encroachers before and after a particular date (i.e. 1-1-1960) will only lead to further confusion.

The Government agree that the occupations as listed in the present survey and enumeration work of each area be accepted as the basis except that the date 1-1-1960 will be changed to 1 January, 1968.

2(b) The Sub Committee has recommended that all resident cultivators should be treated on the same footing irrespective of the time or manner, they came into possession.

The Government accept the Sub Committee's recommendations.

2(c) The Sub Committee has recommended that the list of families of resident cultivators should be prepared and Identity cards issued and that after this work is finished persons without identity cards should be summarily evicted.

2(d) The sub committee has recommended that there is no reason to differentiate between persons occupying the areas to be preserved as forests and those in the areas not needed for forest preservation.

The Sub Committee's recommendation is accepted subject to the modification that the areas which are indispensable for forest conservation should also come within, the scope of the evictions which however should be limited to the minimum possible.

2(e) The Sub Committee has recommended that each evicted family ahould be given alternative land suitable for habitation and cultivation equal to the ares in possession subject to a maximum of five, acres and a minimum of one acre.

The Sub Committee's recommendation is accepted but the maximum should be reduced from five to three acres.

36. From the Government order dated 7-6-1968 referred to above it would reveal, the Government have decided that the occupations as listed in the recent survey and enumeration work of each area be accepted on the basis of 1st January 1968 and not 1-1-1960. That means, the Maniangadan Committee report though submitted in July 1962 it would be operative as such as on 1-1-1968. In other words, the list of families of resident cultivators should be prepared as on 1-1-1968. The position thus turns to be that all the encroachments made from 1-1-1960 to 1-1-1968 would also come within the operative field of the above Committee report. Fresh occupations and encroachments continued in the forest land. Subsequently the Additional Secretary to Government wrote a letter dated 8-7-1977 (Ext. P1) to the Chief Conservator of Forests. It is as follows :

"I am directed to inform you that the following policy decisions were taken in the discussion held by Chief Minister on 27-6-77 on the problems relating to Forest encroachment.

1. No new encroachments will be allowed. All such attempts for encroachments from any quarters will be firmly dealt with.

2. All new encroachments after 1-1-1977 will be evicted.

3. At Kannamkuzhy and Vellakkarithadani in Pariyaram and Peechi ranges where Plantation programme had best obstructed in respect of 48.14 hectares and 22.24 hectares respectively, planting need not be attempted now.

4. As regards the encroachments prior to 1 -1 -77 the policy will be considered and a decision taken later.

I am to request that further action may be pursued accordingly."

What is prominently revealed from Ext. PI is that all new encroachments after 1-1-1977 will be evicted and as regards encroachments prior to 1-1-1377 the policy decision will be taken later. Subsequently, after considering the question of encroachments Into reserve forests, the Government Issued a letter dated 14-8-1978 (Ext.-P2) directing to take stern action to evict the encroachments which had been taken place after 1-1-1977. Ultimately the Government issued Ext. Plb letter dated 11-3-1992 by which it was ordered to assign those forest areas which... have been in the possession and enjoyment of encroachers prior to 1-1-1977. The full text of the said letter is reproduced hereunder.

"Government of Kerala No. 9241 /C1/91 /T&WLD Forest & Wild Life (C) Department Dated, Thiruvananthapuram 11-3-1992 From The Commissioner & Secretary to Government To The Inspector General of Forests Government of India, Ministry of Environment & Forests Paryavaran Bhavan, C.G.O. Complex Lodi Road, New Delhi-110003 Sir, Sub: Assignment of Forest Land-clearance under Forest Conservation Act 1980-details furnishing of Ref: 1. Government of India's letter No. 8-118-86-FC dated 15-1-92

2. State Government letter of even number dated 12-2-92.

.....

I am directed to invite your attention to the letter first cited and to inform you as follows :--

(i) No formal orders have been issued by Government in the matter. The decision to assign those forest areas which have been in the possession and enjoyment of encroachers prior to 1-1-1977 was announced in an assurance given by the then Chief Minister (Shri A.K. Anthony) on the floor of the legislature.

(ii) In joint verification in certain forest Divisions are yet to be completed. It is estimated that approximately 10,000 hectares of forest land is occupied by the encroachers prior to 1-1-77 in those areas. This is in addition to the 28.588 hectares for which proposal is already before the Government of India.

(iii) Details of forest areas proposed to be regularised in favour of encroachers, rough demarcation of the area eligible encroachments and ineligible encroachments are marked in the maps already forwarded with the State Government's letter second cited. Maps of the other Districts wherein Joint verification is yet to be completed will be submitted soon.

(iv) The forest areas proposed to be regularised in the names of encroachments are mostly moist deciduous forests. A small extent of semi evergreen forest is also involved.

(v) No such area falls in the elephant corridor.

(vi) Equivalent non-forest area is not available in Kerala for compensatory afforestation since this is to state with higher density of population in the occupied areas; and cultivated wet lands do not exist.

Yours faithfully , Sd/-

For Commissioner & Secretary to Govt."

THE FOREST (CONSERVATION) ACT. 1980 AND RULES

37. The counsel on both sides advanced hair-splitting arguments on the question of approval under Section 2 of the Forest (Conservation) Act, 1980 which swayed us to have an in-depth study of the said Act and Rules framed thereunder in so far as they are relevant to the questions involved.

The Forest (Conservation) Act, 1980 (hereinafter referred to as 'the Act') was originally introduced in the year 1980 and it was amended on 15-3-1987 by Act 69 of 1988. The main purpose of the Act is to provide for conservation of forests. By virtue of the provision contained in the Constitution (Forty-second Amendment Act) 1976, Entry 17A dealing with the topic "forests' was included in List III -- Concurrent List. The Parliament enacted the above Act under Article 246(2) read with Entry 17A of List III. The statement of objects and reasons of the above enactment are as follows :

"Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it had caused widespread concern.

2. With a view to checking further deforestation, the President promulgated on the 25th October. 1980. the Forest (Conservation) Ordinance 1980. The Ordinance made the prior approval of the Central Government necessary for dereservation of reserved forests and for use of forest land for non-forest purposes. The Ordinance also provided for the constitution of an advisory committee to advise the Central Government with regard to grant of such approval.

3. The Bill seeks to replace the aforesaid Ordinance-Gaz. of India 2-12-1980, Pt. II S-2 Ext. P. 1183."

38. The salient features of the Act arc as follows :

1. The Act which is having only 7 Sections is Intended to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

2. Section 2 deals with restriction on the dereservation of forests or use of forest land for non-forest purpose. This provision will prevail over all other laws for the time being in force in the State of Kerala.

3. The constitution of Advisory Committee to advise the Central Government with regard to the approval under Section 2 is provided under Section 3.

4. If any person contravenes the provisions of the Act, he shall be punished with simple imprisonment for a period riot, exceeding fifteen days and that is provided under Section 3A.

5. The penal provision contained in Section 3A is extended to Government Departments by virtue of Section 3B.

6. The Central Government is authorised to frame rules for carrying out the provisions of the Act vide Section 4 of the Act.

39. The prior approval of the Central Government is necessary for the diversion of any forest land as required under Section 2 of the Act which runs as follows :

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.-- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

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

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

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

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

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

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

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

4O. By virtue of Section 4, the Central Government have framed "The Forest (Conservation) Rules, 1981 which contains only eight rules. Rule 2-A deals with the composition of Advisory Committee and Rule 2-B deals with its terms of appointment of non-official members. Rule 3 deals with conduct of business of the Committee. Rule 4(1) provides that every State Government or other authority seeking the prior approval under Section 2 shall send its proposal to the Central Government in the form prescribed therein. All proposals involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for re-afforestation shall be sent in the form of Working Plan/Management Plan. It further provides that all proposals involving forest land upto twenty freetares and proposal involving clearing of naturally grown trees in forest land of portion thereof for the purpose of using it for re-afforestation shall be sent to the Chief Conservator of Forests of the concerned Regional Office of the Ministry of Environment and Forests. Rule 5 provides that Central Government shall refer every proposal received by it under Sub-rule (1) of Rule 4 to the Committee for its advice if the area of the forest land involved is more than twenty

hectares. It also provides that if the proposal involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for re-afforestation shall not be referred to the Committee. Under Sub-rule (2) of Rule 5 the Committee shall have due regard to the following matters, while tendering its advice on the proposal.

(i) Whether the forest land proposed to be used for non-forest purpose forms part of a nature reserve, national park, wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered threatened species of flora and fauna or of an area lying in severely eroded catchment;

(ii) Whether the use of any forest land is for agricultural purpose or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project;

(iii) Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that required area is the minimum needed for the purpose; and

(iv) Whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of equivalent area and afforestation thereof.

41. We have assiduously seen the provisions contained in the Act and Rules and two things that strongly draw our attention deserve to be stated. Firstly the word 'forest' or 'forest-land' has not been defined either in the Act or in the Rules though it occupies a base and substance for study. Secondly in the process of granting approval by the Central Government under Section 2 the contribution and involvement of the State Government is confined to forwarding the proposal. The actual decision making operation is totally left to the Central Government which may sometimes sound against the principle of federal regime in so far as envi-

ronment, ecology, flora and fauna, bio diversity etc. This question no doubt assumes prominence when we strategically see the whole issue as one sensitive because of involvement of human beings.

42. New Websters Dictionary gives the meaning of the word 'forest' thus: "A large tract of land covered with trees, a tract of wood land and open uncultivated ground; a cluster". Black's Law Dictionary gives the meaning of the said word as thus : "A tract of land covered with trees and one usually of considerable extent. In old English law, a certain territory of wooded ground and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide in the safe protection of the prince for his princely delight and pleasure, having a peculiar Court and officers." It may be for the reason that term 'forest land' has not been defined in the Act, the Supreme Court in T. N. Godavarman Thirumulpad's case AIR 1997 SC 1228 said that the word 'forest' must be understood according to its dictionary meaning. In that case, the Court further keld thus (para 4) :

This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(1) of the Forest Conservation Act. The term 'forest land' occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, but also

any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act."

43. We will now turn to the argument advanced on the question of 'prior approval' under Section 2 of the Act. The petitioner pleads, there was no 'due approval' and hence the State was not entitled to divert or dereserve the forest land for any other purpose. Under Section 2, the prior approval is mandatory for issuing following directions.

(i) Making 'reserved forests' as unreserved.

(ii) Using the forest land for non-forest purpose.

(iii) Assigning the forest land by lease or otherwise.

(iv) Clearing of naturally grown trees for using it for afforestation.

What is 'reserved forest'? In view of Section 2(1) of the Act, the meaning of the expression 'reserved forest' used in the State Act in force is adopted. That means we have to examine the State law in force, namely the Kerala Forest Act, 1961, an Act which is Intended to unify and amend the law relating to the protection and management of forests in the State of Kerala. Chapter II of the said Act deals with 'reserved forests'. Section 3 thereof provides that the Government may constitute any land at the disposal of the Government as 'reserved forests' in the manner prescribed therein. Section 4 mandates that whenever it is proposed to constitute any land, a 'reserved forests' the Government shall publish a notification in the gazette. This question is beyond the pale of controversy in so far as the present case is concerned.

44. The question that the 'prior approval' envisaged under Section 2 applies to which of the period Involved in this case, has necessarily to be decided. As discussed herein above, the Maniyangadan Committee report relating to the occupations and encroachments was operative as on 1-1-1968. As per Ext. P1 all new encroachments after 1-1-1977 will be evicted and as regards encroachments prior to 1-1-1977 the policy decision will be taken. Subsequently a policy decision was taken by the Government as per Ext. P 15 to assign the forest areas which have been in possession and enjoyment of encroachers prior to 1-1-1977. The stand of the Central Government on the question is definite inasmuch as they clarified that no sanction under Section 2 of the Act is necessary for utilising the forest lands dereserved for non-forest purpose prior to the promulgation of the Act, namely 25-10-1980. The case of the State is that they have sought regularisation with regard to the encroachments made prior to 1-1-1977 only.

45. The question that the 'prior approval' is necessary or not in so far as the encroachments made prior to 1-1-1977 is dependent on the decision whether the Act is prospective or retrospective in character. The Constitution Bench of the Supreme Court in Rai Ramakrishna's case AIR 1963 SC 1667 held (Para 10) :

"Where the Legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law but it can also provide for the retrospective operation of the said provisions."

In Hiralal Ratanlal's case it further held that it is well settled that subject to constitutional restrictions a power to legislate includes a power to legislate prospectively as well as retrospectively [Hiralal Ratan Lal v. Sales Tax Officer Kanpur, AIR 1973 SC 1034]. But the question Is as to how we construe a statute whether it is prospective or retrospective. It is a fundamental principle that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication [West v. Gwynne, (1911) 2 Ch. 1]. The statutes are construed as operating only in cases or on which come into existence after the statutes were passed unless a retrospective effect is clearly intended [Maxwell on The Interpretation of Statutes', Twelfth Edition page 215]. When the provisions of the Act are examined with the aid of aforesaid guiding principles of interpretation no intention is discernible therefrom that the Act is intended to be retrospective in operation. The predominant purpose of the Act with which we are concerned in this case is to give prior approval under Section 2 for dereserving the reserved forest or for using the forest land for any non-forest purpose. There is no question of granting prior approval for the encroachments already made and it is only redundant. No intention can be gathered from the provisions of the Act that the encroachments made prior to the coming into force of the Act can be recognized by giving ex post facto approval.

46. Let us now turn to the other side of the issue that is to say, whether there is any positive intention to make the statute prospective alone. The statement of object and reasons of the enactment significantly reveals that the Forest (Conservation) Ordinance, 1980 has been enacted by the President with a view to checking further deforestation. The further deforestation necessarily implies that it will not take in the deforestation already taken place. If the intention was otherwise, the Legislature would not have used the word 'further' in the object and reasons. The penalty provision in Section 3A will apply only to post-act contraventions and not pre-act contraventions. Thus the paramount purpose of the Act is to check further deforestation or future deforestation. In Sundararamier v. State of A. P., AIR 1958 SC 468 the Supreme Court said that in order to understand the true nature and scope of an Act it Is necessary to ascertain what the evils were which were intended to be redressed by it. A statute should be so construed as to prevent the mischief and advance the remedy according to the true intention of the makers of the statute. In construing a section of the act and in determining its true scope, the apex Court said in Shivanarayan Kabra's case, AIR 1967 SC 986 that it is permissible to have regard to all such factors as can legitimately be taken into account in ascertaining the intention of legislature such as the history of the statute, the reason which led to its being passed, the mischief which is intended to suppress and the remedy provided by the statute for curing the mischief. In S. S. Sola's case AIR 1997 SC 3127 the Supreme Court observed that the statement of objects and reasons and the preamble of an Act opens the mind of the makers in enacting the law. It cannot altogether be eschewed from the consideration of the relevant provisions of the Act, when its constitutionality is tested and objects of the Act sought to be achieved.

47. Let us see how the preamble of the Act has been framed. It is an act to provide for the conservation of forests which only indicates the prospective course of action for attaining conservation. Pollock, C. B. said: "But the preamble is undoubtedly a part of the act, and may be used to explain it" Salkeld v. Johnson, (1848) 2 Ex 256 at 283. The preamble may be consulted in order to keep the true effect of the enactment, within its intended scope and object, provided of course there is reasonable doubt about its precise and true scope and effect.

48. It was well established rule of law that in ascertaining the meaning of the statute it was not permissible to refer to the proceedings in either House of Parliament [Davis v. Johnson, (1979) AC 264; Hadmor Productions Ltd. v. Hamilton, (1983) 1 AC 191]. However in the light of the matters to which the attention of the House had been drawn, an appellate committee of seven was then assembled to hear argument on whether this rule should be abrogated. Their conclusion was that 'the exclusionary rule should be relaxed so as to permit reference to Parliamentary materials where (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied upon consists of one or more statements by a minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (c) the statements relied upon are clear' [Pepper v. Hart (1992) 3 WLR 1032].

49. The crux of the point at issue being the 'prior approval' contained in Section 2, the scope and effect of the said provision if scanned minutely would reveal that the legislature has no intention to make the provision retrospective. The 'prior approval' is required to do a present act which may not have any nexus with past actions. The rules framed under the Act also reveal that they are intended to regulate the future conduct of the persons and thus the entire gamut is only prospective. The question whether a statute operates prospectively or retrospectively is one of legislative Intent. Even if the terms of the statute do not of themselves make the intention certain and clear, then the statute must be presumed to operate prospectively (Mohammed Rashid Ahmed v. State of U. P., AIR 1979 SC 592].

50. The objects and reasons of the enactment coupled with the preamble as also the provision regarding 'prior approval' would sufficiently bring forth that the Act has no retrospective operation and it operates only prospectively. Generally speaking, "a rule and law of Parliament that regularly, nova constitutio futuris formam imponere debet, non praeteritis, as Lord Coke said. This rule, which is in effect that enactments in a statute are generally to be construed to be prospective, and intended to regulate the future conduct of persons, is deeply founded in good sense and strict justice, and has been acted upon in many cases.....But this rule, which is one of construction only, will certainly yield to the intention of the Legislature; and the question in this and in every similar case is, whether that intention has been sufficiently expressed."

51. What would be the implications on the question of 'prior approval' once the Act is found to be not retrospective. Inevitably the answer is that the 'prior approval' contemplated in Section 2 of the Act is inapplicable in so far as the occupations and encroachments of forest land made prior to the commencement of the Act, namely 25-10-1980. That necessarily scuttle the argument that Exts. P17 and P42 orders are Invalid for the absence of 'prior approval'.

52. It was painstakingly argued that inasmuch as the Advisory Committee has to advise the Government under Section 3 with regard to the grant of approval, what is intended under Section 2 is only 'due approval' and not 'prior approval'. This argument is wholly against the plain words contained in the Section and no Court is entitled to substitute or add new words in the place of the original words contained in the statute unless there is some ambiguity. When the intention is discernible from plain words, it shall be adopted and then it is not a case of ambiguity. "A statute, even more than a contract must be construed, ut res magis valeat guam pereat. so that the Intentions of the legislature may not be treated as vain or left to operate in the air" [Curtis v. Stovin, (1989) 22 QBD 513]. The above maxim means this: It is better for a thing to have effect than to be made void. [Notham v. Barnet London Borough Council, (1978) 1 WLR 220] Lord Denning said : "The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the purposive approach." What Section 2 plainly says and intends as well is 'pror approval' of the Central Government. Section 3(1) says, 'the grant of approval under Section 2' and that means it is only 'prior approval'. Probably by adopting such ail argument an interpretation can be introduced that in all cases of encroachments and occupations of forest land whether it takes place either before 1-1-1977 or thereafter, the approval shall be obtained from the Central Government for dereserving the forest land or for making its use for non-forest purposes. Now there is no scope for entertaining such an argument for, we have already held that the Act has no retrospective operation.

53. The contention that the State Government is not entitled to divert forest land for non-forest purpose cannot be entertained in so far as the period prior to 25-10-1980. Of course. If such action is attributable to the period after 25-10-1980 it would be valid if they had obtained 'prior approval' as contemplated under Section 2 of the Act. The contention urged on behalf of the State is that encroachments were not allowed after 1-1-1977 and such cases had been dealt with severely in accordance with law.

54. Now let us turn to encroachments and occupations made prior to 1-1-1977. In this context we must immediately notice the Special Rules framed by the Government of Kerala titled as 'Kerala Land Assignment (Regularisation of Occupation of Forest Lands prior to 1-1-1977) Special Rules, 1993'. These Special Rules (marked as Ext. P19) were published under notification No. G.O. (P) No. 131/93/RD dated 19-3-1993 which reads thus :

"S.R.O. No. 433/93 -- In exercise of the powers conferred by Section 7 of the Kerala Government Land Assignment Act 1960(30 of 1960) the Government of Kerala hereby make the following rules for assignment, settlement and regularisation of Forest Lands under occupation prior to 1st January, 1977."

From the above it is crystalline that Ext. P19 Special Rules have been framed by the Government in exercise of the power under Section 7 of the Kerala Land Assignment Act. 1960. The title of the Rules itself shows, it is intended to regulate the occupation of forest lands prior to 1-1-1977. The term 'Regularisation of Occupation' is defined as regularisation of occupation prior to 1-1-1977 of forest land and lands in Cardamom Hill Reserve, Idukki District.

55. Though Ext. P19 Rules are sought to be quashed in the writ petition, no legal argument has been advanced by the petitioner in the writ petition. The counsel contended that no regularisation can be granted unless the conditions stipulated in Exts. P17 and P42 are complied with. The above Rules have been framed by the Government after having series of correspondence, discussions etc. between the Government of Kerala and the Central Government. The minutes of the meeting (Ext. R1 Z(31), held on 8-3-1993 by the Chief Minister on the issues relating to the grant of title deeds in respect of forest lands occupied prior to 1-1-1977, inter alia, reveals that the Government have decided to frame Special Rules for the purpose of regularisation of occupation prior to 1-1-1977 under the provisions of the Kerala Land Assignment Act. It was in pursuance of the said decision of the Government, the Special Rules have been introduccd. Though the Special Rules are intended only for the purpose of regularisation of occupation of forest lands prior to 1-1-1977, the term 'land' takes in the list of lands recommended to the Government of India for concurrence under Section 2 of the For-

est (Conservation) Act.

56. The word 'land' is denned in Rule 2(f) as follows :

"(f) 'Land' means the Forest land subjected to joint verification defined in Sub-clause (e) and Cardamom Hill Reserve land which are converted for non Cardamom cultivation prior to 1-1-1977 in Idukki district which have been transferred from Forest Department to Revenue Department and covered in the Resurvey Records and list of lands recommended to Government of India for concurrence under Section 2 of the Forest (Conservation) Act. 1980 (Central Act 69 of 1980) but does not include lands in wild life Sanctuaries."

We have already held that Section 2 of the Act has no retrospective operation and hence the 'prior approval' is not necessary for dereserving the forest land for the occupations and encroachments made prior to 1-1-1977. That means the definition of 'land' in Rule 2(f) shall not be interpreted to mean 'prior approval' is necessary in respect of the forest lands occupied prior to 1-1-1977. Hence Rule 2(f) has to be read down in consonance with our interpretation that provisions contained in the Forest (Conservation) Act, 1980 operate prospectlvely. Inasmuch as no infirmity has been noticed, we declare that the Kerala Land Assignment (Regularisation of Occupation of Forest Land prior to 1-1-1977) Special Rules, 1993 is legal and valid. What is required to be decided is regularisation and not the prior approval.

57. As observed earlier, a policy decision had been taken by the Government on 27-6-1977 as revealed from Ext. P1 that all encroachments after 1-1-1977 would be evicted and as regards encroachments prior to 1-1-1977 the policy decision would be taken later. After the final disposal of the PIL petition O.P. No. 10797 of 1984 challenging the assignment of forest lands by the Division Bench on 3-4-1999 Central Government issued Ext. P7 directing that no State Government or other authority to dereserve any forest land for non-forest purpose except with the prior approval of the Central Government.

58. We have herein before noticed Ext. P15 order of the Government which revealed that the Chief Minister Shri A. K. Antony made an assurance on the floor of the Assembly that the forest lands in the posses-

sion and enjoyment of encroachers prior to 1-1-1977 would be assigned to them. It was further revealed that approximately 10,000 hectares of forest land as occupied by the encroachers prior to 1-1-1977 and that is in addition to the 28.588 hectares for which proposal is already pending before the Government of India. The details of forest areas proposed to be regularised in favour of encroachers, sought demarcation of the area eligible marked in maps have already been forwarded to the Central Government. It is also revealed that equivalent non-forest area is not available in Kerala for compensatory afforestation for the reason that this State is having higher density of population in the occupied areas and uncultivated wet lands do not exist.

59. The cut off date fixed as per Ext. P15 for assignment of forest land to encroachers was 1-1-1977. This has been challenged by the petitioner as arbitrary as there is no rational basis. It cannot be said so and once we look at Ext. P13 we are able to see some reliable basis. Minister for Revenue emphasised the need for taking steps for regularisation of old occupation of forest lands. We also referred to the earlier decision taken by the Government in 1978 to the effect that stern action should be taken to evict the encroachments on Reserve Forests made after 1-1-1977. The Minister also desired that the details of old occupations of Reserve Forests should be collected in order to inform the proposals to the Government of India for obtaining clearance under the Forest Conservation Act. Endorsing the views of the Minister (Revenue) the Minister (Forests) observed that there was no information regarding the actual area of occupied forests. In fact several persons claimed encroachment prior to 1-1-1977. In order to determine the genuine claims, it was essential to identify the actual area of occupation before regularising them. The Minister (Forests) therefore suggested that a joint verification should be made by the forest as well as. the revenue officials to collect the details of the occupied forest lands and the period of such occupation. Pursuant to that suggestions were called from the District Collectors. The District Collector, Idukki said that in his district a joint verification of the occupied area was made by 12 teams, consisting of Revenue and Forest Officials. He added that the cut off date 1-1-1977 was not relevant so far as the Government of India is concerned Inasmuch as Forest (Conservation) Act does not provide any provision in that behalf. Of course, this may be true that the said Act came into force in the year 1980 and it has no retrospective operation as we have already said. The problem we are now faced with is peculiar to Kerala and the cut off date has to be decided on the basis of the relevant material. In the opinion of the Special Secretary (Revenue) the cut off date namely 1-1-1977 was very essential and the occupation should be identified only with reference to the said date.

60. Fundamentally the fixation of the cut off dated namely 1-1-1977 is a policy decision taken by the State Government. The then Chief Minister declared the said policy on the floor of the Assembly after considering the above material available in that behalf. It is a solemn declaration of a public policy and no person can challenge it on the ground of mala fide or otherwise. There is also no scope for judicial review even on the limited ground as laid down by the Courts. What we have seen from Ext. P13 is the feel of the expert'. Thirty three officers of the Forest and Revenue departments and who were actually engaged in various field activities participated in the discussion held jointly by the

Ministers for Revenue and Forests on 27-10-1982 at Secretariat, Trivandrum. The opinions and views expressed by these experienced officers have considerable amount of value and strength. In M/s. Shri Sitaram Sugar Co's case AIR 1990 SC 1277 the Supreme court held thus (Para 57) :

"Judicial review is not concerned with matters of economic policy. The Court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent. It may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the land."

The Constitution bench of the Supreme Court in Indra Sawhney's case AIR 1993 SC 477 posed a question to itself whether the policy of the Government can be subjected to judicial review and answered it in the negative except on exceptional circumstances as pointed out in catena of decisions. The Court said in para 300 of the decision thus :

The action of the Government in making provision for the reservation of appointments or posts in favour of any 'backward class citizens' is a matter of policy of the Government. What is best for the 'backward class' and in what manner the policy should be formulated and Implemented bearing in mind the object to be achieved by such reservation is a matter for decision exclusively within the province of the Government and such matters do not ordinarily attract the power of judicial review or judicial interference except on the grounds which are well settled by a catena of decisions of this Court."

In Govinda Prabhu's case AIR 1986 SC 1999 it was pointed out that the Court would not strike down the revision of tariff as arbitrary unless the resulting surplus reaches such a height as to lead to the inevitable decision that the Board has shed its public utility character and is observed by the profit motive of private entrepreneur in order to generate a surplus which is extravagant. In M/s. Hindustan Zinc Ltd.'s case AIR 1991 SC 1473 the Supreme Court said (Para 27) ;

This limited scope of judicial review in striking down revision of tariffs resulting in generation of surplus applied in Govinda Prabhu, AIR 1986 SC 1999 cannot be faulted in view of the long line of decisions of this Court on the point and reiteration of the same principle by a Constitution Bench in Shri Sltaram Sugar Ltd. v. Union of India (1990) 3 SCC 223 ; (AIR 1990 SC 1277). The surplus generated by the Board as a result of revision of tariffs during the relevant period cannot be called extravagant by any standard to render it arbitrary permitting the striking down of the revision of tariffs on the ground of arbitrariness. We have already Indicated that it is not also discriminatory as was the view taken in Govinda Prabhu. It has been pointed out on behalf of the Board that the Board's action is based on the opinion of Rajadhyaksha 'Committee's Report submitted in 1980 and the formula of fuel cost adjustment is on a scientific basis linked to the Increase in the fuel cost. This is a possible view to take and, therefore, the revision of tariffs by the Board does not fall within the available scope of judicial review."

61. Ext. P42 order of the Central Government granting approval and the consequent proceedings for issue of Pattayams in favour of the occupants of forest lands prior to 1-1-1977 are challenged by the petitioner on the ground that the conditions specified in Ext P17 order have not been complied with by the State Government. It was pointed out that the Central Government had grantee approval for diversion of 28,588 hectares of forest land for agricultural and non-forest uses as per Ext. P42 subject to the fulfilment of the conditions laid down in Ext. P17. This is no doubt true and the State Government is directed to furnish monthly reports to the Ministry of Environment and Forests.

62. The diversion of forest lands is specifically for agricultural and non-forest use. The present position in our country is that the agricultural sector employs about 64% of the work force, contributes 27.4% of G.D.P. and accounts for about 18% share of the value of country's exports. No doubt the agriculture has a vital role in the economic development of the country. Significant strides have been made in agricultural production towards ensuring food security. Indian agriculture is also on the threshold of becoming globally competitive and is in a position to make major gains in the export market. The adverse agro climatic conditions had sufficient impact on the production of commercial crops. The country holds the first place in global production of bananas, mangoes, coconut and cashew. This diverse growth in the agricultural production continues constantly. In view of this phenomenal development, we cannot ignore the importance of agriculture and its impact on the socio-economic security of the State while dealing with the diversification of forest lands.

63. The Mantyangadan Committee Report (Ext, R1(f)) sufficiently brings forth the background of advancement of agricultural production in the State of Kerala. It says :

"In Kerala population density is 1, 127 per sq. mile, the highest in India and one of the highest in the whole world. Added to this is the acute unemployment problem. In these circumstances it is no wonder that people from the plains rushed to the hills when there was a call from those in authority to occupy and cultivate forest lands. The hardy peasantry fought against malaria and wild beasts and ultimately got themselves established in lands assigned to them. It is true that the original idea was only to allow cultivation of short term crops in most of the areas for more than 3 or at the most 4 years and most of the lands leased out are for a period of 20 years. Therefore, it is only natural that the people gradually started permanent cultivations like coconuts, arecanut, pepper, rubber, coffee, etc." [Chapter II para 3 of the Report).

The Committee further observes that the forest encroachment is only part of a bigger problem facing the State namely, want of living space for the growing population. Therefore what we require is to provide sufficient lands for living and agricultural purposes by diversion of forest lands or other-wise subject to the conditions to be fulfilled in preservation of environmental ecology.

64. In this context this Court cannot ignore the paramount importance given to the agricultural advancement vis-a-vis the environmental policy by the different countries in the world. For instance, we notice the comparative role played by the Common Agricultural Policy on agricultural practices across Europe.

"In common with other European Initiatives, it was originally an economic plan. It is still largely concerned with protecting farmers against economic adversity and ensuring the production of a plentiful supply of food. To that end. it exempts agriculture from the general rules on competition, fixing prices for food and granting subsidies to farmers to ensure their continuing existence. Recent discussions on the Common Agricultural Policy have included references to environmental Issues and the view has been expressed that agricultural policy must take greater account of environmental policy"

[A Guidebook to Environmental Law, supra page 1711.

Jonathan Graves and Duncan Reavey say that there would be a gradual decrease in agricultural production as a result of environmental variations as thus ;

"Future changes in the environment can act to both increase and decrease agricultural output. Most likely some regions will benefit from the environmental changes, whereas others will be adversely affected. Yet human populations will be unable to migrate to take advantage of such changes because of national Interests. This means that almost inevitably some regions will experience food shortages ["Global Environmental Change-Plants, Animals & Communities" page 164].

Food shortages is a problem facing the whole world and, therefore, the regional food security has to be preserved notwithstanding the adverse effect that may have on the environmental balance. Therefore, this aspect of the problem requires countenance while dealing with the conditions for diversification of forest lands as contemplated by the Central Government.

65. Let us study the conditions imposed by the Central Government while granting prior approval for diversion of forest lands in Idukki, Pathanamthitta, Thrissur, Ernakulam and Kollam districts for regu-larisation of encroachments prior to 1-1-1977. The following are the topics governing the conditions as per Ext. P17.

(1) Ground verification and demarcation of the area.

(2) Shifting of encroachers from the midst of forest area or from the Periyar Tiger Reserve/Wild Life sanctuary.

(3) Preparation of map showing demarcation of the area to be regularised.

(4) The extent of the permissible area for assignment and recovery of the excess area, if any.

(5) Scheme for soil conservation and agro forestry.

(6) Compensatory afforestation scheme. The case of the petitioner is that the fulfilment of the above conditions is a pre-requisite for grant of approval contemplated in Ext. P42. The abovesaid conditions are not complied with by the State Government and, therefore, the proposal to issue Pattayams in favour of the encroachers has no legal validity, so argued by the counsel. He elaborates

the point by explaining that all the conditions shall be fulfilled in advance and then only regulation can be ordered. Such an approach no doubt will make the whole scheme unproductive and unworkable apart from it being against a correct Interpretation of Exts. P17 and P42. What is done by Ext. P17 dated 23.-3-1993 is to recognize in principle the approval for diversion. On the other hand by Ext. P42 dated 31-1-1995 the Central Government granted approval after considering the proposals. During the period between 23-3-1993 and 31-1-1995 there were effective communications between the officials of the respective Governments which would indicate the major extent of compliance of the conditions. As far as the phased compensatory afforestation scheme is concerned it Involves a cost of 113 crores and requires completion within a period of five years. If the plea of the counsel is accepted the regularisation shall wait till the completion of the scheme. Such plea very much sounds for characterising the conditions as they are to be complied with stricto sensu. In other words, the contention is that the conditions are to be strictly complied with. Such plea is esoteric and one's comprehension becomes unreal as it may require total jettisioning of history of the occupation of the forest land at least from 1-1-1977. The claim for regularisation is raised not only by the affected occupants and encroachers but also by the Government who conceded the demand considering the deteriorating regional food scarcity and the need for agricultural advancement without having major set back to the environmental balance. The imposition of different kinds of conditions for diversification of natural forests for maintaining the ecological equilibrium is not uncommon in the history of environmental preservation and it cannot be said to be against the well conceived norms of 'sus-tainable development'. Therefore substantial compliance of the conditions according to us. satisfy the requirements and ease off the tension created by the protagonist of strict rule.

66. The counsel on behalf of the petitioner submitted that before complying with the requirements for diversion of forest lands, the Minister for Environment granted the approval. That means, the decision has already been taken as per Ext. R1 Z(36) and, therefore, according to the counsel, the subsequent correspondence between the Central Government and the State Government is only an 'eye-wash'. What this argument brings forth is that there is no sanctity for Government orders and correspondence in the day-to-day administrative functions. In the absence of any specific plea of dishonest Intention and mala fides on the part of the Governmental Officers we need not go into any further on this issue. But we feel that the clear facts should be brought out to dislodge any kind of apprehension in this regard. Ext. R1 Z(36) is sent by the Minister on 20th March 1993, that means, three days prior to the issue of Ext. P17. What the Minister who is in charge of Environment and Forests by Ext. R1 Z(36) informed Sri K. M. Mani, Minister for Revenue, Government of Kerala is that the proposal for the diversion of 28,588.159 hectares of forest land has been processed and approved the decision considering the importance of the proposal. The file relating to the proposal containing conditions for diversion etc. was before the Minister while ordering approval. We have no reason to think that various correspondence regarding the proposal and details of the scheme submitted by the State Government pursuant to the queries put up by the Central Government was not available before the Minister while allowing approval. Ext. R1 Z(36) is only an approval in principle, and this has been so clarified in Ext. P17.

67. Now we will examine few of the correspondence passed on between the Central Government and the State Government on the question of granting approval and allowing regularisation. While doing

so, we also propose to take up for consideration of the contention that the Advisory Committee had never been consulted in the matter of prior approval as envisaged under Section 3 of the Act. Ext. R1 Z(22) dated 17-7-1992 is the letter sent by the State Government to the Inspector General of Forests (FC), Government of India, on the subject of regularisation of occupation on forest land prior to 1-1-1977. It Inter alia provides :

The whole history of the case and the unusual circumstances for making the proposal to Govt. of India for clearance etc. are sufficiently clear from the various letters sent to Govt. of India by this Govt. vide letter No. 31289/FCI/83/AD dt. 26-6-86, 14716/ C1/91/F&WLDdt. 11-10-71 and 10-11-91 and Lr. No. 9242/C1/91 F&WLD dt. 11-3-92."

The above letter further stated that the question of regularisation of previous encroachments on eviction was considered on 9-8-1978 and the decision was announced by G.O.Ms. 1218/78/RD, dt. 14-8-78. Ext. R1 Z(23) dated 5-1-1993 is the letter sent by R. D. Pathak, Regiment Commissioner, Government of Kerala, New Delhi addressed to the Kerala Government stating that it may not be possible for the Forest Advisory Committee to recommend the approval without compensatory afforestation being arranged by the Government of Kerala. What we could see from the above communication is that the Forest Advisory Committee would recommend the proposal for diversion only if it is supported by a compensatory afforestation scheme arranged by the State. Ext. R1 Z(30) letter reveals that the Advisory Committee constituted under the Forest Conservation Act will be considering the proposal of the State Government for regularisation of pre-1-1-1977 encroachments on 16-3-1993. Therefore, the letter further requested to forward expeditiously the Scheme for the consideration of the Advisory Committee. By Ext. R1 Z(27) letter dated 23-2-1993 the State Government informed the Central Government that the proposal to effect afforestation of degraded forests in lieu of compensatory afforestation is acceptable to the State Government.

68. On 23-2-1993 a discussion was held at New Delhi between the Chief Minister, Government of Kerala and the Minister for Environment and Forest, Government of India and in that meeting it was decided that the compensatory afforestation would be carried out over double the extent in degraded forests in the State. Accordingly a scheme for undertaking compensatory afforestation in 57,080 hectares during the course of ten years had been drawn up. The total anticipated expenditure for implementation of the scheme is Rs. 113.25 crores. The expenditure for the implementation of the scheme has to be met by the State Government under non-plan. It was also decided that for preliminary work during 1993-94 an amount of 560.00 lakhs had to be provided under non-plan.

69. Sri G. Mukundan, Principal Chief Conservator of Forests (General) wrote a letter dated nil to Sri R. Ramachandran Nair, I.A.S. Commissioner and Secretary to Government of Kerala which discloses that he had attended the Advisory Committee meeting in the Ministry of Environment and Forests on 15-3-1993. The letter further revealed that the Committee considered the proposal for regularisation of pre-1-1-1977 encroachments and recommended to regularise 28,588 hectares subject to the following conditions.

(1) The status of the land will continue to be reserved forests.

(2) Survey of individual holdings should be completed before issuance of patta.

(3) Encroachments in Pertyar Tiger Reserve and Wildlife Sanctuaries will not be regularised.

(4) Eligible encroachers residing in Sanctuaries and Periyar Tiger Reserve may be given land from the excess land taken over from other encroachers.

(5) Assignment may be made as per Land Assignment Rules.

(6) All encroachments after 1-1-1977 should be evicted.

(7) Soil Conservation measures should be taken up in the proposed assignment areas.

(8) Alienation of the land should be prohibited.

The above letter was obviously written prior to the issue of Ext. P17 agreeing in principle for approval for diversion. This letter also evinces that the Advisory Committee has considered the proposal and advised the Government as to the grant of approval. That being the position, it is idle to contend that the Advisory Committee was never consulted on the issue.

70. After the issue of Ext. P17, the Government issued a G.O. dated 25-3-1993 (Ext. R1 Z(33)) by which the Government had decided to undertake compensatory afforestation of 57,200 hectares of degraded forests in lieu of the regularisation of pre 1977 encroachments in 28,588 hectares of forest lands. The said order further says that the Government are pleased to order that the task of compensatory afforestation will be entrusted to the Social Forestry Wing of the Forest Department. It also provides that an amount of Rs. 10 crores ear-marked for this purpose will be allotted to the Principal Chief Forester of Forests (Social Forestry) for undertaking the afforestation scheme during the year 1993-94.

71. Now let us examine the case of the State in so far as the fulfilment of the conditions prescribed in Ext. P17. In this context two documents, Exts. R1 Z(43) and R1 Z(44) are very much relevant. Ext. R1 Z(43) letter dated 28-11-1994 written by Sri John Mathal, Secretary, Forest and Wildlife Department, Government of Kerala to Sri M. F. Ahmed, Inspector General of Forests, Government of India supplies material to indicate as to the fulfilment of the conditions. The case put up therein with regard to conditions (i) to (vi) are extracted hereunder :

["Condition (i) Ground verification and demarcation of area has already been completed in respect of 11168.1736 Ha. covering 36010 individual encroachers whose occupation has to be regularized. A statement of progress of ground verification and demarcation of area to be regularised is enclosed.

In any regularisation, these exercises are invariably carried out and thereafter only regularisation done. Therefore, depending on the progress of this work in different districts, regularisation will be taken up by the State Government.

Condition (ii) The State Government issued Rules for regularisation of forest land under occupation prior to 1-1-1977 under the Kerala Land Assignment Act, 1960. These rules expressly exclude the land in the Wild Life Sanctuary from regularisation. Further, as you are aware the State Forest Department has forwarded an Eco-Development Project for Pertyar Tiger Reserve to the (World Bank). While implementing the scheme, the encroachers in the Periyar Wild Life Sanctuary will be shifted to the fringes of the forest.

Condition (iii) 36,010 detailed maps showing demarcation of the area to be regularised in favour of individual encroachers have so far been prepared. They are available for inspection in Special Land Assignment Officers.

Condition (iv) The Special Rules for the regularisation of forest lands under occupation prior to 1-1-1977 were issued by the State Government on 19-3-1993 under Kerala Land Assignment Act, 1960. The rules stipulates that the maximun extent of land that may be assigned to a family shall not exceed four acres as in the case of general Land Assignment Rules of the State Government. There has been no excess area taken back from the encroachers still now. As and when any excess area is available, it would be utilised for the re-habilitation of occupants shifted from the Periyar Tiger Reserve Area.

Condition (v) As the area was under cultivation for more than 15 years in most of the places soil conservation measures had already been taken up by the encroachers. Wherever it is necessary is being taken up by the Soil Conservation Department. Soil Conservation is an ongoing programme of the Agriculture and Forest Department of the State Government and adequate funds are provided every year for the purpose.

Condition (vi) As per the scheme prepared for Compensatory Afforestation of 57180 Ha of forest land, the estimated cost over 10 years' period is Rs. 113.24 crores. State Government accorded administrative sanction for the implementation of the project. The Government of Kerala have already allocated an amount of Rs. 4/- crores for 1994-95. Sufficient funds would be allotted in future years also."

Six weeks later he again wrote a letter dated 13-1-1995 (Ext. R1 Z(44)) to Sri Ahmed explaining the final shape in the process of making up the conditions. The position as stated in Ext. R1 Z(44) with regard to the conditions is extracted hereunder.

Condition (i) The condition is that ground verification and demarcation of the areas to be regularised in favour of individual encroachers done by the State Government. Joint verification by Revenue and Forest Department on the ground has been completed and the area of occupation prior to 1-1-1977 in five districts of the State is estimated as 28,588.159 Ha. The extent involved in the five revenue districts are given below.

District Extent (1) Kollam 70.00 (2) Pathanamthitta 60.00 (3) Idukki 25363.15 (4) Ernakulam 375.00 (5) Thrissur 2720.00 28588.15 In some of the districts meticulous and elaborate surveys were carried out during the period from 1972 to 77 in order to refix the boundaries of individual

HOLDINGS AS WELL AS FOR AGRICULTURAL CENSUS PURPOSES. In fact this resurvey is still continuing as regular ongoing programme of the Survey Department of the State. The resurveys have produced very authentic survey records after following the statutory formalities under the Survey and Boundaries Act. Wherever resurveys were not completed, joint verification were done on ground by revenue, survey and forest departments to assess the area of individual holdings pertaining to occupation of forest land prior to 1-1-1977. Therefore, condition (i) has been satisfied in all the above five districts.

As informed in our letter dated 28-11-94 detailed survey and demarcation of individual holdings and preparation of mahazar including enumeration of trees to be reserved as Govt. Property have been completed till October 1994, in respect of 11168.173 Ha. covering 36010 individual occupants, following the rules promulgated namely the Kerala Land Assignment (Regularisation of Occupation of Forest Lands prior to 1-1-1977) Special Rules, 1993. Title deeds have been issued in some of these cases in the function held at Nedumkandam in Idukki District by the Hon'ble Central Minister and thereafter by the Revenue Department of the State when the Hon. High Court has put the stay nuisance of further title deeds pending formal issuance of approval under Section 2 by your ministry. The preparation of mahazars and survey sketches accordingly have also been stopped and District Collectors are awaiting further orders from the Hon. High Court.

It may be reiterated again that the lands proposed to be assigned have actually ceased to be forest lands years back and they are forest lands only on records. Townships with colleges, schools, hospitals etc, have come up in many of these places. These occupations had started in the 1950s due to pressure of population and due to Govern-mental programmes like colonization schemes. Grow more Food Schemes. Arable land schemes, hydro power projects, plantations schemes etc. The concept of protection of bio-diversity and preservation of forests came much later and, therefore, the then prevailing perspective of providing land based employment to landless people cannot be faulted with. It may also be noted that the maximum area involved is in Idukki district which has 25363.15 Ha. out of the total 28588.15 being considered for regularisation of occupation. In Idukki district the majority of the above area is Cardamom Hill Reserve Land (CHR land) which are transferred to Revenue Department in the 1950s for the purpose of raising cardamom as an undergrowth plantation in the forest. The area under CHR land is 20363.15 Ha. The regularisation of these lands are also sought, even though these lands were handed over to Revenue Department prior to 1980. If CHR land is excluded the extent of land for regularisation will be drastically reduced. However, compensatory afforestation is being done for this extent also by the State Government.

Because of the above background successive Chief Ministers of the State had taken up the matter of regularisation with the Govt. of India and the Union Minister for Agriculture Shri Rao Beerendra Singh in his letter (No. 1598. M/Agri/84, dt. March 1984) informed the Chief Minister that Govt. of India agree in principle that occupations prior to 1-1-1977 be regularised by issue of title deeds under the Kerala Land Assignment Rules to eligible persons.

Individual field mahazars have been prepared in respect of 11168.173 Ha. and as mentioned above the work is stayed by Hon. High Court at present. In any regularisation of this magnitude the

exercise of preparation of individual survey sketches and plot mahazars and enumeration of tree growth to be reserved can be done only in a phased manner. Individual survey maps showing exact measurement of boundaries are also to be prepared for effecting mutation in village records. The entire exercise is time consuming and individual title deeds can be issued for the 28588.15 Ha. only in a phased manner. Special Land Assignment offices have been opened in these districts to carry out this work. Individual survey sketches and group maps are available for scrutiny by public in these offices. Therefore, your ministry may note that ground verification and demarcation in favour of individual encroachers are completed in a phased manner. The exact details of the same in terms of area, figures and names of the individual en-croachers in whose favour area is being regularised will be available according to the progress of this work. Condition (v) stipulates that comprehensive scheme for soil conservation and agro forestry shall be prepared and implemented to check accelerated soil erosion and siltation of dams taking place in the area.

The Soil Conservation Departmental well as the Forest Department are fully seized with this problem and every year schemes are drawn up especially for the catchment areas of dams to arrest soil erosion and consequent siltation. This is an ongoing programme of the State Departments of Agriculture. Soil Conservation and Forest and will be continued in future years also.

Condition (v) is thus fully complied with by the State Government.

Condition (vi) stipulates that the State Government shall give firm commitment that funds for the compensatory afforestation over double degraded forest land shall be provided to the Forest Department as per the afforestation scheme. The State Government is very keen to mplement a massive compensatory afforestation scheme in the State and accordingly have issued orders sanctioning Rs. 113.24 crores for ten years for afforestation of 57180 Ha. degraded area. The progress of afforestation till Nov. 1995 is 1232 Ha. and the CCF. Forest Department of the State has informed that an expenditure of Rs. 3.8 crores will be incurred in the financial year 1994-95 against a target of Rs. 5.6 crores. In 1995-96 the target set by the forest department Is afforestation of 8000 Ha. involving an expenditure of Rs. 8 crores. The State Government has provided Rs. 4 crores during 1994-95 and Rs. 10 crores during 1995-96 which is adequate. There is a slippage of one year for the project to commence as in 1993-94 no work could be undertaken in the field. Now sufficient nurseries are developed and preliminary work undertaken in the areas to be afforested and the slippage of one year will be made up from 1996-97 onwards. The scheme already prepared under the guidance of Govt. of India will, therefore, be worked and fresh time targets and financial targets and financial targets will be set shortly. Because of the massive afforestation of 57180 Ha. undertaken in the State in lieu of the loss of forest cover of 28588 Ha. There will be substantial ecological and environmental benefit to the_State._Thus_condition (vi) also is_fully complied with by the State Government.

The State Government is pushing forth with urgency afforestation scheme in lieu of the loss of forest cover over the last 30 years and the approval under Section 2 from your ministry will further encourage the State to Implement the scheme In an earnest manner in the coming years.

The State Government is also ready to show all the revenue records and maps prepared for individual holdings of the occupants to any agency nominated by the Government of India since all the six conditions set by Govt. of India at the time of Issuance of stage I clearance have been fully met by the State Government approval under Section 2 of Forest Conservation Act given for regularisation of occupation of an area no more than 28588.15 Ha."

The following statement furnished along with Ext. R1 Z(43) letter to the Central Government would reveal the position as to the ground verification and demarcation of area to be regularised.

Name of District Extent for which formal approval given by Govt. of India. (In hec- tares) No. of applica-tions received for regularisa-tion No. of holdings for which eligibility as-sessed after ground verification and de-marcation done.

Extent cov-ered (In hec-tares) Kollam 70,000 70,000 Pathanamthitta 60,000 13,5000 Idukki 25363,1590 70549 32804 9961,7862 Ernakulam 375,000 191,5695 Thrissur 2720,000 931,3179 Total 28588,1590 76905 36010 11168,1736 72-73. In order to establish the completion of the ground verification and demarcation of the areas to be regularised In favour of individual encroachers and other connected matters, the following documents have been produced by the State.

1. Photocopy of extract of list of persons covered in the Joint Verification showing the area and nature of cultivation signed by Forest and Revenue Officials in Kollam District. (Ext. RI(n))

2. 20 Individual survey sketches of individual holdings from Kollam District. (Ext. RI(nn))

3. Photocopy of extract of list of persons covered In the Joint Verification showing the area and nature of cultivation signed by Forest and Revenue Officials, Pathanamthitta District. (Ext. RI(o))

4. Photocopy of 5 individual survey sketches of individual holdings from Pathanamthitta District. (Ex. R1(oo))

5. Copy of extract of list of persons covered in the Joint Verification showing the area and nature of cultivation signed by Forest and Revenue Officials, Ernakulam District. (Ext. R1(p))

6. Photocopy of group survey sketches of individual holdings from Ernakulam District (Ext. RI(pp))

7. Photocopy of extract of list of persons covered in the Joint Verification showing the area and nature of cultivation signed by Forest and Revenue Officials, Thrissur. (Ext. R1(q))

8. Photocopy of one individual file of individual holding from Thrissur District. (Ext. R1(qq))

9. Copy of extract of list of persons in five sets covered in the joint verification showing the area and nature of cultivation signed by Forest and Revenue Officials in Thodupuzha of Idukki District. (Ext. R1(r))

10. Photocopy of 5 individual survey sketches of individual holdings from Thodupuzha in Idukki District. (Ext. R1(rr))

11. Copy of extract of list of persons covered in the joint verification showing the area and nature of cultivation signed by Forest and Revenue Officials in Devicolam Taluk of Idukki District. (Ext. R1(s))

12. Photocopy of 5 individual survey sketches of individual holdings from Devicolam Taluk in Idukki District. (Ext. R1(ss))

13. Copy of extract of list of persons covered in the Joint Verification showing the area and nature of cultivation signed by Forest and Revenue Officials in Peerumade Taluk of Idukki District. (Ext. R1(t))

14. Photocopy of Joint Verification File (One file) from Peerumade Taluk In Idukki District: (Ext. R1(tt))

15. Photocopy of the Abstract of Resurvey Operations in 74 Blocks in Udumbanchola Taluk (CHR) conducted during 1969 to 1976 showing Block-wise details of Patta lands, Lease lands, Land under occupation (Encroachers). (Ext. R1(u))

16. Copy of list of occupants in Five volumes prepared from the Land Register of Resurvey Records in Udumbanchola Taluk. (Ext. R1(uu))

17. Photocopy of sheets from the Land Register of Resurvey records for the Block No. 37. (Ext. R1(v))

18. Photocopy of Individual survey sketches of holdings from the Block No. 37 in Udumbanchola Taluk. (Ext. R1(w)) These documents are sufficient enough to hold that the joint verification has been made by Forest and Revenue Officials in Kollam, Pathanamthitta, Ernakulam, Thrissur and Idukki. These documents contain the particulars namely, (i) the name of the occupants, (ii) the extent of the area under occupation, (iii) the date from which occupation starts, and (iv) the nature of the cultivation etc. We are satisfied from these documents that the first condition stipulated in Ext. P17 had been complied with.

74. Ext. R1(w) is a list of occupants having lands of four acres and more prior to 1-1-1977. The condition No. (iv) in Ext. P17 stipulates that the regularisation shall not be done in so far as the excess area of assignment permissible under the Land Assignment Rules. Rule 4 of the Kerala Land Assignment (Regularisatlon of Occupation of Forest Land prior to 1-1-1977) Special Rules, 1993 provides that the extent of land that may be assigned to a family shall not exceed four acres. It also provides that the land in possession of a family in excess of four acres shall be resumed by the Government and the said family shall not be eligible for any compensation for improvements effected on such land. In view of this rule, the land in excess of four acres as seen from Ext. R1(w) shall be resumed from the occupants without paying the compensation.

75. Ext. R1(ww) is the Administrative Report of the Forest Department for the period 1991-92 published on 17-6-1993. It reveals that the joint verification of the forest land by officials of Forest and Revenue Department is continuing. It further reveals that such joint verification is continuing in Reserve Forests and Vested Forests pursuant to the orders of Revenue Divisional Officers. Annexure 11 appended to the said report contains the details of the joint verification so far conducted. But that Annexure does not contain the latest information. We have before us the statement of progress of ground verification and demarcation of area made as on 31-10-1994 which we have extracted above. The condition No. (iii) specified in Ext. P17 is the preparation of maps showing demarcation of the area to be regularized.

76. In compliance with the above condition the following maps were produced by the State.

1. Map showing areas of encroachments prior to 1-1-1977 for which sanction has been obtained from Government of India. (Ext. RI(1))

2. Map showing forest area private lands and encroachment areas in Idukki District. (Ext. RI(m)) In Ext. RI(1) the total area of encroachment in five districts is shown as 28588 hectares. The total area shown in this document tallys with the area stated in Ext. R1 Z(44) letter dated 13-1-1995.

77. As far as condition No. (iii), wild life sanctuaries have been specifically excluded from the definition 'land' contained in Rule 2(f) of the Kerala Land Assignment (Regularisation of Occupation of Forest Lands prior to 1-1-1977) Special Rules, 1993. In addition to that it must be observed that the State Forest Department has forwarded the Eco Development Project for Periyar Tiger Reserve to the World Bank. While implementing the Scheme the encroachment in the Periyar Wild Life Sanctuary will be shifted. This has been communicated to the Central Government vide the tetter dated 28-11-1994. (Ext. R1 Z(43))

78. As far as soil conservation and agro-forestry, Assistant Inspector General of Forests. Government of Kerala wrote a letter dated 8-12-1993 (Ext. R1 Z(40)) to the Secretary (Forests) Government of Kerala, Trivandrum requesting the Government to furnish scheme along with details of funds. From the letter dated 28-11-1994 (Ext. R1 Z(43)) it could be seen that as the area was under cultivation for more than 15 years in most of the places soil conservation measures had already been taken up by the encroachers. Wherever it is necessary the Soil Conservation Department is taking measures in that regard. It can also be seen that soil conservation is an ongoing programme of the Agriculture and Forest Department and adequate funds are provided every year for that purpose.

COMPENSATORY AFFORESTATION SCHEME

79. In so far as the Compensatory Afforestation Scheme the petitioner had a case that it was inadequate and insufficient to compensate environmental degradation. That would necessarily prompt us to examine the effectiveness of the Scheme as a measure to compensate dereservation of forests. It must be seen that the policy introduced by the Government in the year 1988 was intended to maintain environmental stability restoration of ecological balance, conservation of natural forests

and the genetic resources. It also encourages to time bound afforestation, social forestry and farm forestry programmes. Ext. R1(y) produced by the State shows that the compensation afforestation is one of the most important conditions stipulated by the Central Government while approving proposal for dereservation or diversion of forest land for non-forest uses.

80. The Government of Kerala have framed a Compensatory Afforestation Scheme (Ext. R1(j) as a measure to compensate the Injury that may be caused to the environment for the reason of diversion of forest land for non-forest purposes. The objective of the scheme is contained in Clause (2) which provides that the Scheme for afforestation is to compensate the loss of 28588 hectares of forest land lost by way of encroachment through afforesting double the extent and thereby (i) to enrich the forests to maximise their direct and indirect utility, (ii) to restore the ecological balance of the degraded forests, (iii) to conserve soil and moisture, (iv) to provide ideal habitat for wild life, and (v) to ensure steady flow of water in the rivers.

81. The operative field of the Scheme as seen from the introduction of the Scheme is extracted hereunder:

Kerala is one of the smaller States of the Nation occupying the south western coast of the peninsular sub-continent. The State has a geographical area of 38863 sq. km. (effective forest area is 9400 sq. kms.) As per the figures of 1991 census total population of the State is 291 lakhs. Per capita land available in the State is 0.134 Ha. and per capita forests is 0,038 Ha.

Out of the effective forest area of 9400 sq. km. moist deciduous forests occupy 4100 sq. kms. Every green and semi ever green 3470 sq. km. and dry deciduous forests 100 sq. kms.

Western side of the State is bound by Arabian Sea and the western ghats stretch all along its eastern boundary. Proximity to the Arabian sea, presence of verdant forests of the western ghats, heavy rainfall fertile soil etc. available in the State makes it highly suitable for cultivation of cash crops. Average annual rainfall in the State is 2500 mm. The State is unique in experiencing both south-west and north-east monsoons. Several million cubic metres of rain waters are annually received by the steep slopes of western ghats. Vegetal cloath on these slopes acts as buffer in absorbing and steadily releasing this mammoth quantity of water through the 44 rivers of the State round the year. The very high population, very low per capita land availability, ideal conditions for raising cash crops etc. have exposed the forests of the State to very heavy pressure leading to encroachments. Developmental and welfare activities taken up immediately after the independence like colonisation schemes. Grow More Food Scheme. Arable Land Scheme. Hydro Electric Projects. Plantations etc, have taken away considerable extent of forests of the State. In 1960s and 1970s the perspective was one of providing land-based employment to landless people. Many of the above schemes had their origin in this line of thinking. Already released forest lands acted as centres for further encroachment into the forests. Government was compelled to regularise the forest encroachments on various occasions in the past. Even then there were a large number of unauthorised occupations in the forest areas when theForest Conservation Act. 1980 came into force. The State Government took a policy-decision to regularise all forest encroachments which came into being prior to 1-1-77. Government of India also accepted this in principle. A detailed field

to field inspection was conducted and a first batch of about 28588 Ha. of pre-1-1-77 encroachments were identified. Proposals were submitted to Government of India for clearance under Forest Conservation Act (1980) for regularising the above encroachments.

82. The above Scheme further reveals that the non-forest, community waste land and other common lands do not exist in Kerala. Therefore, finding out equal extent of non-forest land for compensatory afforestation is a physical impossibility. As per the State Forest Report 1993, published by Survey of India, there is 1915 sq. kms. of the forest areas in the State are degraded and have crown density less than 0.4. Degraded forests with crown density less than 0.4 exist in ever-green, semi ever-green and moist-deciduous forests. There are primarily either logged-over areas or those which are subjected to annual fires and uncontrolled grazing. Dry deciduous forests, in general have crown density of less than 0.4 over major portions.

83. Afforestation of degraded forest has been taken up under various Schemes. The areas treated since 1987 are stated below :

Scheme Extent of de-graded for-ests treated

1. World Bank Assisted Social Forestry 14630 ha.

2. N. R. E. P.

6490 ha.

3. Rural Fuelwood Programme 960 ha.

4. R. L. E. G. P.

500 ha.

5. S. C. P.

400 ha.

6. T. S. P.

170 ha.

7. W. G. D. P.

12000 ha.

35150 ha.

17000 hectares of degraded forests are proposed for afforestation in the Phase II of Kerala Social Forestry Project. Leaving this and the areas already treated, an extent of about 1,35,000 Ha. of degraded forests are still available for treatment. It is proposed to afforest 57.180 Ha. out of this remaining area over the next ten years through compensatory afforestation.

84. From the above Compensatory Afforestation Scheme it would reveal that the State was earnest and sincere in introducing afforestation of the degraded forest in the process of fulfilling the condition No. (vi) provided in Ext. P17. We have already no-

ticed that the Government had already expended Rs. 10 crores for Afforestation Scheme as per the allotment made for the year 1993-94. It is brought to our notice that a sum of Rs. 113.25 crores will have to be expended in the process of completing the Scheme in phased manner. Therefore, it cannot be said that the State Government has not provided the effective measures under the afforestation scheme or scheme introduced is inadequate for compensating diversion of forest lands for non-forest purpose.

85. Principle 3 of the Rio Declaration on Environment and Development (1992) declares 'the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generation'. The principle 4 thereof mandates "In order to achieve sustainable development environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." The Compensatory Afforestation Scheme introduced by the State for compensating diversification of forest lands in this case is no doubt a measure for environmental protection and maintenance of ecology. Sustainable development can be had by substitution of well-built scheme or project. According to eminent authors. David W. Pearce and Jeremy J. Warlord, the economic arguments alone could justify a dramatic reduction in deforestation ['World Without End' Economics, Environment and Sustainable Development.] They further say that economic development requires a strong policy of protecting the natural resource base. Though economic activity contributes to environmental damage in one way or another, we cannot say that the Compensatory Afforestation Scheme framed within the federal province would not bring out desired results. The wisdom of executive includes experience and expertise of the present and insight of the future.

SOCIO ECONOMIC/HUMAN PROBLEM

86. We have sufficiently noticed that eviction of occupants or encroachers from forest land is a human as well as a socio-economic problem. There is a live story and telling history behind the encroachments. We have been told the history over again and Maniyangadan Committee report very vividly said it. The said report says :

""If all the areas now proposed to be cleared of occupation, it would involve about 15,000"

families. The question is whether these large number of families are to be uprooted from their present settled condition.

There is no doubt that considerations of public interest do deserve utmost priority but the human and social aspects involved are no less important. Solution of a problem should not be one which creates further and more complicated issues." The encroachment prior to 1-1-1977 which we have now in hand is in no way different in character.

87. It is said that the above problem has now developed into an uncontrollable dimensions. In this context it is appropriate for us to examine as to how this occupation or encroachment started and continued thereafter. The position has been correctly stated by the first respondent in the counter-affidavit dated 6th June, 1995 to the following effect.

Due to the pressure of population and due to Government programme like colonisation scheme, Arable Land Assignment Schemes, Grow More Food Programme, Hydro Electric/Irrigation Projects, Plantations etc. Considerable extent of forest lands in the State has been exposed to human habitation during the last so many years. It can be seen such forest lands had been actually used for non-forest purposes and converted into populated areas with structures and other improvements. It is true that those conversions have taken place during the past at a time when the awareness about the role of forests in maintaining ecological balance was almost nil among the people. Now that substantial extent of forest land has been transformed into agricultural holdings and human settlements, there is little scope to revert them into forest area. Since almost the entire lands in the State have been developed and because of the high density of population in the State, any scheme for evicting the occupants of these converted forest lands and providing them with rehabilitation facilities is Impracticable. Conversion of forest lands into agricultural holdings and human settlements have taken place years back. The physical status of these lands as forest lands has already ceased to exist because of its conversion Into agricultural holdings. As no more clear-felling of forest trees in these lands will take place the Government has decided to regularise the possession of these lands by issuing title deeds (pattayams) to the persons in occupation.

88. The Government admit that all diversions of forest lands are not unauthorised. Because of the pressing need for production of more foodgrains. the Government themselves have decided in the past and allowed cultivation in the forest lands. This was actually a practical approach to the socio-economic problems of the State at that time. When the Initial entry into the forest land by the occupants was in pursuance of such decision of the Government, it cannot be said that they are trespassers or encroachers. The eviction of such occupants from forest land is found to be impracticable in the present set up.

89. The State further emphasized that the decision to regularise the diversion of forest lands that took place prior to 1-1-1977 was taken since it was Impossible to rehabilitate the entire occupants if they were evicted. The limited area of land in the State and the financial commitment involved would not permit to think of a rehabilitation scheme. Exts. P1 and P2 would show that the decision of the State Government to regularise the occupants that took place prior to 1-1-1977 was announced two years before the promulgation of the Forest Conservation Act, 1980, The areas under occupation

have ceased to be forest lands years back. They have been converted into agricultural lands and human settlements. It is appropriate to notice in this context that in Idukki district out of the total occupied area of 25363 hectare, a major portion (20363.00 hectares) is a cardamom hill reserve and as early as in 1958, this has been transferred to the control of Revenue Department and hence there is no question of regularisation or concurrence.

90. The eviction of large number of occupants and their families from their settlements which started more than twenty years back is an abominable and revolting problem. It was submitted by the Advocate General before the Court that 66,000 families and 35 lakhs of people had to be evicted in case the regularisation of the occupation was not allowed. They have no other houses to reside anywhere and that means they have to be thrown into streets. On behalf of the Government it was also submitted that the rehabilitation of these occupants would be an unworkable and agonising problem.

Therefore, the entire issue has to be thrashed out paramountly seeing It as a human as well as a socio-economic problem.

91. Article 23 of the International Covenant on Civil and Political Rights proclaims that the family is the natural and fundamental group unit of society and is entitled to protection by the society and the State. Section 2 (d) of the Protection of Human Rights Act, 1993 defines 'Human Rights' as the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the internatioanl covenants and enforceable by Courts in India. Article 21 of the Constitution of India dealing with the protection of life and personal liberty says that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Field, J. said that the life means something more than the mere animal existence and the inhibition against the deprivation of life extends to all those limits and facilities by which life is enjoyed. Doughlas. J. observed that the right to work is the most precious liberty because it sustains and enables a man to live and the right to life is a precious freedom. A family consisting of human beings is a natural and fundamental group unit of society. A decent life of a human family cannot be imagined without a residence for them to stay. In view of the statutes' extensions it is arduous for us to say that no human problem is involved in the circle of facts before us.

92. When 66,000 families with 35 lakhs of human beings are likely to be thrown out into streets by threatened eviction, may be for environmental preservation, can we close our eyes and say it is not a socio-economic or a human problem? Can the executive remain in deep slumber and ignore revolting but pathetic upsurges in the society? This is the point of time the society knocks at the doors of Courts for justice to human beings. At this burning moment we would not say the Court is closed. But we would say it is open throughout for injecting justice with reasonable care and spreading its curative but painful force among the members of the society. Rendering justice is a 'magnificent art' drawn by experienced architects and not by unequipped carpenters. What ultimately shaped, moulded and imparted is justice within the framework of law. Sir Carleton Kemp Alien said that by disciplined experience on weighing rival contentions that a 'sense of justice' is developed in human consciousness (Aspects of Justice- at page 69).

93. Article 38 of the Constitution commands that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life. What is envisaged under this Article is the adoption of theory of 'social justice' in all institutions of national life. Since it is solemnly laid down to be the basic feature of the Constitution, no person or authority has power, direct or indirect, to cbliterate it or leave it aside while interpreting the provisions of the Constitution and laws. It is a livewire extended far and wide. This principle is adopted in Ratlam Municipality's case, AIR 1980 SC 1622 supra. The Supreme Court in Air India Statutory Corporation's case. AIR 1997 SC 645. explains the operative field of the doctrine of social justice thus :

"Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, trlbals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of society but is an essential part of complex social change to relieve the poor etc. From handicaps, penury to ward off distress and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, Just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity."

94. Fazal Ali, J. (as the learned Judge then was) while rejecting a contention that the entire question was a legal issue and there was no warrant for the learned Judges of the High Court to have imported the doctrine of social justice, said : "Living accommodation is a human problem for vast millions in our country", and "social justice must prevail over any technical rule". The Court observed further thus :

"In our opinion, there appears to be some misapprehension about what actually social justice is. There is no ritualistic formula or any magical charm in the concept of social Justice. All that it means is that as between two parties if a deal is made with one party without serious detriment to the other, then the Court would lean in favour of the weaker section of the society. Social justice is the recognition of greater good to larger number without deprivation of accrual of legal rights of anybody. If such a thing can be done then indeed social justice must prevail over any technical rule. It is in response to the felt necessities of time and situation in order to do greater good to a larger number even though it might detract from some technical rule in favour of a party. Living accommodation is a human problem for vast millions in our country. (Sadhuram Bansal v. Pulin Behari Sarkar, AIR 1984 SC 1471).

95. When the whole process of attack against regularisation accomplishes, the inevitable consequence would be the total liquidation of human settlements from the forest lands permanently. Can this Court allow such devastating event totally annihilating the human beings from their cultivated, developed and economized holding without granting a fair opportunity of hearing? The principles of natural Justice strongly strike at such wanton malversation. The administrators are not at fault and the person who pursues such process of eviction is none other

than a public spirited enthusiast. His attempt to dislodge the fair opportunity to the victims of the threatened eviction is only to be disdained. However, in the nature of the views that we have proposed to take we need not record a final conclusion on this score.

96. Advocate General in the course of argument raised a strong objection that the writ petition as framed was not maintainable for the reason of non-impleadment of all affected parties as required under Rule 148 of the Rules of the High Court of Kerala, 1971. It is pointed out that no respondent had been impleaded in the writ petition in the representative capacity though the parties affected are numerous. We have already seen that there are 66,000 families and 35 lakhs of occupants. Of course some of the affected parties had got themselves impleaded, but that would not be sufficient. It has been laid down by the House of Lords in Doody v. Secretary of State, (1993) 3 All ER 92 at page 106; "Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer." Though there is a commonality of the contentions, facts differ from case to case and from person to person. The only defence appears to be that this is a public Interest litigation on a common cause. Let it be so, but no exception at all on that count. But there is a plus point of exceptional nature in favour of the petitioner. The vacuum in argumentation created by the absence of the affected parties due to non-impleadment is attenuated or obliterated as a result of the formidable and remarkable as well defence put up by the State on their behalf thereby channelising the acceptance of the plea for regularisation of occupations. Virtually the affected parties remain unaffected in view of the agility exhibited by the State In counteracting the pleas of the suitor. In the absence of any substantial prejudice to the parties non-impleaded we do not think it wise to put the petitioner out of Court for the aforesaid lapses.

97. The 'sustainable development theory' no doubt recognizes and avows 'precautionary principle' and 'polluter pays principle'. The State is no doubt having the rights flowing from their position as parents patriae adopted in Bhopal Gas Leak Disaster case, (Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 : (AIR 1990 SC 1480)). The forest conservation and eco-management are two inevitable obligations which are to be respected when the theory of sustainable development' is put into operation. What is required is the insistence for 'gun and guard' approach in day-to-day supervisory functions of the Government. Principle 13 of the Rio declaration proclaims :

The States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also co-operate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction."

In view of the above declaration, there must be laws to safeguard and compensate the victims of polluters as a measure of our acceptability to 'liability and compensation' for adverse effects of an environmental damage causing internally and internationally. The law in India in this regard is advancing rapidly due to Court's Interventions and effects made thereby on economic growth and environmental balance is remarkable and marvellous.

98. The Supreme Court in Vellore Citizens' Welfare Forum's case, (1996) 5 SCC 647 : (AIR 1996 SC 2715) observed that the Polluter Pays Principle' and 'the Precautionary Principle' are essential features of 'sustainable development'. In Indian Council for Enviro-Legal Action's case, (1996) 3 SCC 212 : (AIR 1996 SC 1446) the Apex Court adopted 'the Polluter Pays Principle' as a sound principle to be reckoned with and followed by all agencies. Governmental or otherwise as well as the persons or institutions responsible for environmental pollution.

99. Kuldip Singh, J. in Span Resorts case, (M. C. Mehta v. Kamal Nath, (1997) 1 SCC 388) declared that the 'Precautionary Principle' and 'the Polluter Pays Principle' are parts of the environmental law of this country. The Court further said :

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

Jagannatha Rao, J. in A.P. Pollution Control Board's case, (1999) 2 SCC 718 : (AIR 1999 SC 812) while emphasising the precautionary as well as Polluter Pays Principle strongly stressed the need for appropriate amendments in the environmental statutes, rules and notifications observing thus (para 41 of AIR) :

"It appears to us from what has been stated earlier that things are not quite satisfactory and there is an urgent need to make appropriate amendments so as to ensure that at all times, the appellate authorities or tribunals consist of Judicial and also technical personnel well versed in environmental laws. Such defects in the constitution of these bodies can certainly undermine the very purpose of those legislations."

100. Let us now examine the appropriateness of directing the State Government to determine the quantum of injury caused by each occupant/encroacher and assess the compensation he is liable to pay in respect of the forest lands sought to be regularised in view of 'Polluter Pays Principle'. From the facts already set out it would reveal that there was environmental degradation in dereserving the forest land or using it for non-forest purposes by occupants/encroachers affecting the environmental equilibrium. This position is apodlctic and unassailable. The Introduction of compensatory afforestation Scheme ipso facto recognizes the existence of Injury and damage caused by them to the ecological balance. The works done in whatever manner by the occupants / encroachers in the forest area for last so many years had its antagonistic effectiveness in the environmental premise. As a compensatory remedial measure the Government had committed to spend the total project cost of Rs. 113.25 crores. The State in the exercise of its soverign functions take up the responsibility of implementing the project and it is a constitutional obligation. That does not mean all those responsible for environmental degradation shall be exculpated.

101. The adaptation of 'Polluter Pays Principle' sounds reasonable as far as the present case is concerned. Each occupier/ encroacher who prays for regularisation and consequent issue of title deeds (Pattayam) in his favour shall pay a reasonable amount of compensation to the State for the Injury caused by him to general public. The State Government shall determine the quantum of Injury and compensation payable thereon by occupants/encroachers in consultation with the Forest and Revenue Departments and with any other appropriate authority as the Government may deem fit and proper. While so determining the quantum the Government shall have due regard to the amount being spent for afforestation scheme, the extent and nature of the land under occupation, the socio-economic background of the occupants/encroachers and all other factors which the Government may consider proper and relevant. The relevant date for fixing the compensation shall be the date on which the occupant/encroacher had first filed the application for regularisation. It is further explained that the compensation is payable only with reference to the quantum of Injury and not with reference to the value of the land under occupation. In appropriate cases, the Government shall also have power to exempt any occupler/encroacher from payment of compensation considering the poverty or socio-economic backwardness. The amount of compensation so collected shall be ear-marked for the expenditure towards compensatory afforestation scheme promulgated by the Government or for other incidental or ancillary purposes as it may deem fit and proper. The collection of compensation shall be completed on or before regularisation and consequent issue of title deeds.

102. While upholding Ext. P42 order of the Government of India granting approval, we have applied the 'Polluter Pays Principle' in our environmental law and ordered to levy compensation for the injury caused by the occupants/encroachers to the general public. We are abundantly convinced that this would totally be in consonance with the concept of 'sustainable development' on the one hand and preservation of environmental equilibrium on the other.

CONCLUSIONS

103. A) That the petitioner has 'locus_ standi' and the writ petition filed as Public Interest Litigation is maintainable, (vide para 16) B) That Exts. P17 and P42 orders of the Government of India and consequent steps for issue of title deeds to occupants/encroachers are not opposed to Article 48A or 51A of the Constitution, (vide paragraph 22) C) That Exts. P17 and P42 orders of the Government of India and the consequent steps are in consonance with the concept of 'sustainable development' and environmental protection, (vide paragraph 30) D) That the provisions contained in the Forest (Conservation) Act, 1980 have no retrospective operation and they operate prospectively. (vide paragraphs 45 to 50) E) That the provisions contained in the Kerala Land Assignment (Regularisation of Occupation of Forest Land prior to 1-1-1977) Special Rules, 1993 are legal and valid, (vide paragraphs 55 and 56) F) That the cut-off date namely, 1-1-1977 fixed for assignment as per Ext. P15 is not arbitrary, (vide paragraph 59) G) That all the conditions stipulated in Ext. P17 have been substantially complied with by the Government of Kerala. (vide paragraphs 65 to 78) H) That the Compensatory Afforestation Scheme framed by the Government of Kerala is adequate and sufficient, (vide paragraph

84) I) That the issue raised herein Involves a human problem as also a socio-economic problem, (paragraphs 86 to 95) J) That the occupants/encroachers are liable to pay compensation for the injury caused by them to the general public in view of 'Polluter Pays Principle', (vide paragraph 100) K) That the State Government shall determine the quantum of injury and amount of compensation payable in consultation with the Forest and Revenue Departments, (vide paragraph 101) L) That the lands in excess of four acres in the possession of the occupants shall be resumed without paying compensation, (vide paragraph 74)

104. In the result, the writ petition, O.P. No. 14276 of 1993, is dismissed subject to the observations and directions contained in paragraphs 100 and 101 above. The Interim order of stay passed in C.M.P. No. 28540 of 1994 is vacated. In consideration of the large volume of work involved in this public interest litigation, we direct the State Government to pay a sum of Rs. 15,000/-towards costs to the petitioner or to his counsel representing before this Court. The original files produced by the State and marked in this case shall be returned.