

Supreme Court of India
Nature Lovers Movement Vs. State Of Kerala & Ors. on 20 March, 2009
Author: G Singhvi
Bench: B.N. Agrawal, G.S. Singhvi, Aftab Alam
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2116 OF 2000

Nature Lovers Movement ... Appellant

Versus

State of Kerala and others ... Respondents

JUDGMENT

G.S. Singhvi, J.

1. Whether Section 2 of the Forest (Conservation) Act, 1980 (for short 'the 1980 Act') is prospective in operation and whether the Government of Kerala could, without obtaining prior approval of the Central Government grant pattas/lease hold rights to the unauthorised occupants/encroachers of forest land are the questions which arise for determination in this appeal filed against the order of the Full Bench of the Kerala High Court.

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

3. With a view to make provision for better protection and management of forests in the State, Maharaja of Travancore enacted 'The Travancore Forest

Regulations of 1068" [for short, "the Regulations"]. Clause 3 of the Regulations provided that Diwan of the State could, with the sanction of Maharaja constitute any land at the disposal of Government a reserved forest after following the procedure prescribed in Clause 4, i.e., publication of notification in Government Gazette containing proposal for declaring the particular land as a reserved forest, holding of inquiry by the Forest Settlement Officer and issue of proclamation under Clause 6 inviting claims from the affected persons. Clause 7 of the Regulations contained a bar against acquisition of right in or over the land included in the proclamation between the date of publication of proclamation and the date fixed by final notification to be issued under Clause 18. It was also provided that no fresh clearings for cultivation or for any other purpose shall be made on the land to be declared as reserved forest except with the written permission of the Forest Settlement Officer. Clauses 8 to 17 contained procedure for dealing with the claims of the individuals, disposal thereof by the Forest Settlement Officer, hearing of appeals by Zila Court and the High Court. Clause 20 of the Regulations provided for dereservation of reserved forest. Clause 21 provided for penalties against trespass and damage to reserved forest and acts prohibited in such forests. In terms of Clause 22 of the Regulations, the Government could make rules to regulate the use of pastures and natural produce of any land at the disposal of the Government, which may not have been included in a reserved forest. By virtue of Clause 25, the Government was empowered to issue notification for regulating or prohibiting vegetation in any forest or waste land not belonging to the Government, the breaking up or clearing of land or the firing or clearing of vegetation. If the owner of the land was to decline compliance of the directions contained in the notification, the Government could resume the forest or land on lease for a specified period.

4. Notwithstanding the enactment of afore-mentioned Regulations, parts of reserved forests in the erstwhile State of Travancore were unauthorisedly occupied by

landless persons who undertook agricultural operations for their survival. In 1940, the Government of the State of Travancore sanctioned 'Kuthakappattom' grants in the reserved forests. Thereafter, a policy was framed for leasing out forest lands to individuals, co-operative societies and associations for cultivation of food crops. In 1944, Maharaja of Travancore made Kuthakappattom Rules for grant of lease of government land and trees by public auction. During that period, forest lands in the erstwhile State of Cochin were also made available for cultivation of food crops. In view of the liberal attitude and policies of the Governments of the erstwhile States, large tracts of reserved forest/forest land were unauthorisedly occupied/encroached and used for non-forest purposes. After formation of the new State, the Government took a serious view of the unauthorised occupation/encroachment of forest land and decided that encroachments made after 1.4.1957 will be removed. However, that decision remained on papers and nothing appears to have been done to remove unauthorised occupation/encroachments of forest land despite the fact that the legislature of the new State enacted the Kerala Forest Act, 1961 [for short, 'the 1961 Act'] for protecting forests. After about four years, the State Government constituted range based committees for demarcation of encroached portions of forest land. The State Government also constituted a committee under the chairmanship of Shri K.P. Radhakrishna Menon, Special Collector (Forest Conservation) for preparing a scheme for protection of valuable forests in the State and also for suggesting solution to the problem created due to settlement of large number of persons in the areas declared as reserved forests. After considering the report of the committee, the State Government issued G.O.(P)98/63/Agri. dated 30.01.1963 for regularization of unauthorised occupation/encroachment of forest land made before 1.1.1960. However, this time also effective steps do not appear to have been taken for freeing the forest land from those who unauthorisedly occupied or made encroachments after 1.1.1960. As a result, more and more areas of forest land were

encroached, sometimes by landless poor and on other occasions by not so poor segments of the society. In order to find out a permanent solution to this perennial problem, the State Government constituted another committee, which came to be known as Maniyangadan Committee. The report submitted by that committee was considered by the Parliamentary Consultative Committee on Kerala, which made several recommendations including the one that cut off date fixed for regularization of unauthorised occupation/encroachment of forest land be changed from 1.1.1960 to 1.1.1968. The State Government accepted some of the recommendations and issued GO(P)98/68/Agri. dated 7.6.1968. Even this did not deter people from making further encroachment on forest land and use the same for non forest purposes and due to lack of political will the Government continued to postpone drastic action till it was decided that all encroachments of forest land made prior to 1.1.1977 will be regularized by framing a policy and those made on or after 1.1.1977 will be removed. However, before that decision could be implemented, the 1980 Act was enacted by Parliament and in view of the non obstante clause contained in Section 2 thereof, the State Government could not pass any order for regularizing unauthorised occupation/encroachments of forest land.

5. After almost six years of the enforcement of the 1980 Act, Agricultural

Production Commissioner and Secretary (Agriculture and Forests), Government of Kerala, vide his letter No.51289/FGI/83/AD dated 26.6.1986 apprised his counter-part

in the Government of India, i.e., the Secretary, Ministry of Forest and Environment,

Department of Forest and Wildlife with the human face of the problem of

encroachment/unauthorised occupation of forest land and requested that the Central

Government may permit regularization of such occupation/encroachment by issue of

title deeds under the Kerala Land Assignment Rules. For the sake of reference that

letter is reproduced below:

"GOVERNMENT OF KERALA

Forest Environment & Wild Life (C) Department

No. 51289/FGI/83/AD

Trivandrum

Dated: 26.6.1986

From

The Agricultural Production Commissioner &

Secretary (Agriculture & Forests)

To,

The Secretary to Government of India,

Ministry of Forest and Environment,

Department of Forest and Wild Life,

Government of India,

Krishi Bhavan,

New Delhi.

Sir,

Sub: Forests-Assignment of Forest Lands which have already come under Agricultural occupations-clearance under Forest Conservation Act requested.

Several forest areas in Kerala came to be exposed to human occupation particularly since 1956, primarily due to the very heavy pressure of population and secondarily due to Governmental programmes like colonization schemes, grow more food schemes, arable land scheme, hydro power projects, plantations etc. In the sixties and seventies, the perspective was one of providing land based employment to landless people. It was on account of this that some of the above schemes came under implementation. Forest lands were transferred for non forest purposes. Pressure built up for further expansion into forest areas adjoining converted lands. Government did carry out evictions of unauthorised encroachments from time to time from forest as well as project areas. Nonetheless, this kind of pressure continued and by the time the Central Forest Conservation law came into force in 1980, there still were a large number of unauthorised occupations in forest areas. In the meantime, Government took the decision to regularize all the occupations that had come into being prior to 1.1.1977.

The matter was taken up by the Chief Minister of

Kerala with the Prime Minister in a letter dated 20th of March 1984. He sought the special intervention of the Prime Minister in the matter of regularization of pre-1.1.1977 occupations. The Union Minister for Agriculture, Shri Rao Birendra Singh in his letter number 1598-Minister(Agriculture)/8 dated 23rd of March 1984 (Copy enclosed) replied to the Chief Minister stating that the Government of India agree in principle that occupations prior to 1.1.1977 may be regularized by issue of title deeds under the Kerala Land Assignment

Rules to eligible persons. However, he wanted full details regarding extent, period of occupation, pattern of cultivation, impact of encroachments on conservation aspects etc.

Largely, the encroachments are in five Revenue

Districts (14 Forest Divisions). Detailed joint field verification has been got conducted by teams of Revenue and Forest officials to determine the particulars of occupants, estimated area of individual holding, nature of cultivation, age of occupations etc.

To be specific, the following are the division-wise details of the encroachments:-

(The estimated number of holdings is over 50,000)

Name of Forest District Estimated area of Division the occupations (in hectares)

1. Chalakudy Trichur 380.00
2. Trichur Trichur 2340.00
3. Munnar Ernakulam 185.00
4. Munnar Idukki 180.00
5. Munnar Idukki 6940.65 (Cardamom Hill Reserve)
6. Kothamangalam Ernakulam 160.00
7. Kothamangalam Idukki 2430.00
8. Malayattur Ernakulam 30.00
9. Malayattur Idukki 410.00
10. Kottayam Idukki 1500.00
11. Kottayam Idukki 13443.94 (Cardamom Hill Reserve)
12. Periyar Wild Life Idukki 480.00 Sanctuary
13. Konni Pathanamthitta 60.00
14. Thenmala Quilon 70.00 Total 28588.159

So far as Udumpanchola Taluk (Kottayam Division) is concerned it was re-surveyed during the period from 1974 to 1977. This re-survey was done close to the crucial date of 1.1.1977. Resurvey records are also very authentic having been prepared after following the statutory formalities under the Survey and Boundaries Act including detailed field survey. So far occupations in Udumpanchola taluk have not been subjected to further joint field verification referred to above.

The lands proposed to be assigned have actually ceased to be forest lands years back. They are forest lands only on record. Townships with colleges, Schools, hospitals, etc. have come up in many of these places. These lands cannot be restored to their original status of vegetation or ecology and for that purpose thousands of

families occupying these areas cannot be evicted.

So far as the areas other than Udumpanchola taluk are concerned, extent of occupations has been assessed only on the basis of ocular estimation. Permanent demarcation of the line of control through a regular survey will have to be done before the occupants are assigned lands.

In the occupied lands, there is some residual tree growth of very sparse distribution. Such residual tree growth can be salvaged before title deeds are given.

The Chief Conservator of Forests has recommended

that for compensatory afforestation revenue land will have to be made available. This recommendation is not feasible of implementation. Vacant revenue lands of the extent required for compensatory afforestation are just not available.

We cannot also acquire lands, costs being prohibitive. Acquisition will also involve displacement of the occupants which exactly Government are trying to avoid in the unauthorisedly occupied areas.

Proforma statements and maps are submitted herewith Division wise. While proforma statements have been authenticated by forest officials including the Chief Conservator of Forests, the attached maps have not been authenticated by them. The reasons is that, as already stated, in regard to areas other than Udumpanchola occupations wise survey have not been done. So the maps have been prepared only approximately indicating the life of the occupations on copies of the relevant survey of India sheets.

Government of India may be pleased to convey their concurrence under the Forest Conservation Act for the purpose of enabling issue of title deeds to the occupants of these forest areas which already stand converted on ground for agricultural purpose for a number of years now.

Yours faithfully

Sd/-

For The Agricultural Production Commissioner

& Secretary (Agriculture & Forests)"

6. On receipt of the afore-mentioned letter, the Government of India,

Ministry of Environment and Forests sent letter dated 2.4.1992 to Secretary, Forest

and Wildlife (C) Department, Kerala, requiring the latter to furnish information

about the assurance given by the Chief Minister, Kerala on the floor of the legislature

and also asked for the details of the encroachment of forest area sought to be

regularized in different districts and the scheme of compensatory afforestation. The

State Government furnished the necessary information. Thereafter, the Central

Government granted conditional approval for regularization of pre-1.1.1977

encroachments of forest land. This was conveyed by the Ministry of Forest and Environment, Government of India to the Government of Kerala vide letter No.8-118/86-FC dated 23.3.1993, the relevant portions of which are extracted below:

“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 forest land in Idukki, Pathanamthitta, Thrissur, Ernakulam and Kollam Districts for regularization of pre-1.1.1977 encroachments in Kerala subject to the fulfillment of following conditions,

(i) Ground verification & demarcation of area to be regularized 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 Periyar Tiger Reserve/Wildlife Sanctuary. Such encroachers are to be shifted on the fringe of the forests, for which excess area available for eligible encroachers may be utilized.

(iii) Detailed map showing demarcation of the area to be regularized 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 utilized for shifting eligible encroachers from the midst of the forest

areas or from Periyar 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 siltation of dams taking place in the

area.

(vi) The State Government shall give firm commitment that funds for the compensatory afforestation over double the degraded forest land shall be provided to the Forest Dept. as per the phased compensatory

afforestation scheme. The compensatory

afforestation shall be done within a period not

exceeding 5 years.

3. After receipt of compliance report on the fulfillment 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."

7. In the meanwhile, the Government of Kerala in exercise of the power vested in it under Section 7 of the Kerala Government Land Assignment Act, 1960 framed the Kerala Land Assignment (Regularization of Occupation of Forest Lands Prior to 1.1.1977) Special Rules, 1993 (for short, 'the 1993 Rules') for regularization of occupation of forest lands by way of assignment subject to fulfillment of certain conditions including payment of value of the land at the prescribed rate apart from land revenue, taxes and rates. The State Government also gave an assurance to the Central Government that sufficient funds will be made available for compensatory afforestation. After taking cognizance of the State Government's response, the Central Government vide its letter No.8-118/86-FC dated 31.1.1995 accorded final approval under Section 2 of the 1980 Act for diversion of 28,588.159 hectares forest land in Idukki, Pathanamthitta, Thrissur, Ernakulam and Kollam districts for regularization of pre-1.1.1977 unauthorised occupation/encroachments.

8. The appellant, which is a society formed for protection of environment and ecology in the State of Kerala, challenged the decision of the government to regularize unauthorised occupation/encroachment of forest lands by filing writ petition under Article 226 of the Constitution. It prayed for grant of a declaration that the Government of Kerala is not entitled to dereserve the reserved forest or permit use of forest land for any non-forest purpose without obtaining approval of the Central Government in terms of Section 2(iii) of the 1980 Act. The appellant further prayed that pattayams (title deeds) issued in respect of forest land without obtaining approval of the Central Government should be quashed. In the affidavit filed on behalf of the appellant before the High Court, it was claimed that regularization of unauthorised occupation/encroachments of forest land will adversely affect the environment and wildlife and ultimately the population of the State.

9. In the counter affidavit filed on behalf of the State Government, it was averred that due to pressure of population and due to implementation of 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; that in those days people were not conscious of the fact that the maintenance of forest was required for ecological balance and substantial extent of forest lands had been transformed into agricultural holdings and human settlements and there is no scope for reverting them into forests; that 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; that because of the pressing need for production of more food grains, the Governments had in the past allowed cultivation in the forest lands; that the decision to regularize the encroachments made prior to 1.1.1977 was taken because it was impossible to rehabilitate all the occupants if they were evicted; that the Government of India has already clarified that no sanction under Section 2 of the 1980 Act is necessary for utilizing the forest lands de-reserved for non-forest purposes prior to the promulgation of the Act and that eligibility of persons to whom the holdings are to be assigned has been decided after a field verification of the entire area by a joint team of officials of forest and revenue departments. On the issue of compensatory afforestation, the counter affidavit contained the following assertions:

"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 Governments 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."

In the counter affidavit the following further averments were made:-

"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 cut 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."

10. In a separate affidavit filed on behalf of the Central Government, it was averred that approval was accorded to the diversion of forest land measuring 28,588.159 hectares because the State Government had given assurance to make available funds for compensatory afforestation and compliance of other conditions specified in letter dated 23.3.1993. It was further averred that approval was granted in terms of Section 2 of the 1980 Act in the backdrop of the fact that forest land was being used for non-forest purposes for many years prior to the enactment of the 1980 Act.

11. By the impugned judgment, the Full Bench of the High Court after a detailed discussion on the issues of locus standi of the appellant, constitutional imperatives, sustainable development and environment protection, held as under:

1. The petitioner has the locus to invoke jurisdiction of the High Court under Article 226 of the Constitution of India and make a prayer for quashing the decision of the State Government to regularize unauthorised occupation / encroachment of forest land.

2. The 1980 Act is prospective in operation and the provisions contained therein are not applicable to the cases in which the forest land has already been used for non-forest purpose prior to 25.10.1980.

3. The scheme framed by the State Government for compensatory afforestation satisfies the condition imposed by the Government of India in its letter dated 23.3.1993 and the decision of the State Government to grant pattas/lease hold rights to pre-1.1.1977

unauthorised occupants/encroachers of forest land did not involve violation of any constitutional or legal provision.

4. The decision of the Central Government to grant approval to the use of forest land for non-forest purpose is not violative of Article 48A or 51A of the Constitution.

5. The provisions of the 1993 Rules are legal and valid.

6. The cut off date, i.e., 1.1.1977 fixed for assignment of forest land is not arbitrary.

7. The unauthorised occupants/encroachers are liable to pay compensation for the injury caused to the general public by using forest land for non-forest purposes.

12. Learned counsel for the appellant submitted that his client is not serious in pressing the challenge to Central Government's decision to approve the use of forest land for non-forest purpose, namely, assignment of forest land to pre-1.1.1977 unauthorised occupants/encroachers because the said decision was taken for solving the problem being faced by 50,000 families which are settled in forest areas for last more than five decades, but argued that the declaration made by the Full Bench of the High Court that the 1980 Act is prospective and is not applicable to the cases involving use of forest land for non-forest purpose prior to 25.10.1980 is ex facie erroneous and is liable to be set aside, else the same is likely to be misused by the State Governments for regularizing the encroachments of forest land made prior to 25.10.1980 without seeking prior approval of the Central Government. He further argued that the State Government should not be permitted to regularize unauthorised occupation/encroachment of 10,000 hectares of forest land made after 1.1.1977 without obtaining prior approval of the Central Government and the latter should not give such approval else the encroachment of forest land will continue. In the end, learned counsel argued that a mandamus be issued to the Central Government to ensure total compliance of the conditions incorporated in letter dated 23.3.1993.

13. Shri Amarendra Sharan, learned Additional Solicitor General argued that in view of non obstante clause contained in Section 2 of the 1980 Act, the Government

of Kerala could not have assigned any part of forest land or reserved forest to unauthorised occupants/encroachers irrespective of the tenure of such occupation/encroachment without obtaining approval of the Central Government. Shri Sharan referred to the guidelines framed by the Central Government for regularization of encroachments on forest land and submitted that the State Government had rightly sought approval of the Central Government for assignment of land to unauthorised occupants/encroachers even though such occupation/encroachment had been made many decades prior to 25.10.1980. Learned Additional Solicitor General submitted that the view expressed by the Full Bench on the issue of non applicability of the 1980 Act to pre-25.10.1980 use of forest land for non-forest purposes is contrary to the law laid down by this Court and the same should be overruled, else the directions given by this Court in last 30 years for protection of reserved forests, forest lands, environment and ecology will become redundant.

14. Shri T.L.V. Iyer, learned senior counsel appearing for the State of Kerala submitted that exercise for assignment of forest land has been undertaken strictly in accordance with the approval accorded by the Central Government and so far no action has been initiated for regularization of occupation/encroachment of 10,000 hectares of forest land. Learned senior counsel emphasized that the unauthorised occupation/encroachments have been regularized keeping in view the history of such occupation/encroachment and the fact that 50,000 families would have been displaced if the Central Government had decided against such regularization by way of assignment under the Kerala Land Assignment Act and the 1993 Rules.

15. Shri L. Nageswara Rao, learned senior counsel appearing for the private respondents argued that his clients are not at all concerned with the issue of retrospective application of 1980 Act because on a reference made by the State

Government, the Central Government has already approved assignment of land to pre-1.1.1977 occupants/encroachers. At the same time, he submitted that while considering such an issue the court is duty bound to keep in view the human face of the problem. He pointed out that thousands of landless families had occupied the land declared as reserved forest and used the same for cultivation because they had no other source of sustenance.

16. We have given serious thought to the entire matter and scrutinized the records. Sections 3, 4, 7 and 22 of the Kerala Forest Act, 1961 (for short `the 1961 Act), Sections 2, 3 and 3A of the 1980 Act and the relevant portions of the policy framed by the Government of India for regularization of encroachments on forest land, which have bearing on the decision of this appeal, read as under:-

Kerala Forest Act, 1961

3. Power to reserve forests.- The Government may constitute any land at the disposal of the Government a Reserved Forest in the manner hereinafter provided.

4. Notification by Government.- Whenever it is proposed to constitute any land a Reserved Forest, the Government shall publish a notification in the Gazette.-

(a) specifying as nearly as possible, the situation and limits of such land;

(b) declaring that it is proposed to constitute such land a Reserved Forest; and

(c) appointing an officer (hereinafter called the Forest Settlement Officer) to inquire into and determine

the existence, nature and extent of any rights

claimed, by or alleged to exist in favour of any

person in or over any land comprised within such

limits, or to any forest produce of such land and to deal with the same as provided in this Act.

The officer appointed under clause (c) of this section shall ordinarily be a person other than a Forest Officer; but a Forest Officer may be appointed by the Government to attend, on behalf of the Government at the enquiry prescribed by this Chapter.

7. Bar of accrual of forest right, prohibition of clearings, etc.- (1) During the interval between the publication of the notification under S.4 and the date fixed by the notification under section 19, no right shall be acquired in or over the land included in such notification under S.4 except under a grant or contract in writing made or entered into by or on behalf of the Government, or by, or on behalf of, some person in whom such right or

power to create the same was vested when the notification under S.4 was published or by succession from such person; and no clearings shall be made on such land, nor shall any person cut, collect, or remove any forest produce nor shall set fire to such land or kindle or leave burning any fire in such manner as to endanger the same.

(2) No patta shall, without the previous sanction of the Government, be granted in such land, and every patta granted without such sanction shall be null and void.

(3) Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest Settlement Officer.

22. No right acquired over Reserved Forests except as herein provided.- No right of any description shall be acquired in or over a Reserved Forest except under a grant or contract in writing made by or on behalf of the Government or by or on behalf of some person in whom such right or the power to create such right was vested when the notification under section 19 was published or by succession from such person:

Provided that no patta shall, without the previous sanction of the Government, be granted for any land included within a Reserved Forest and every patta granted without such sanction shall be null and void.

Forest (Conservation) Act, 1980 [As amended by Act 69 of 1988]

2. Restriction on the de-reservation 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

reafforestation.

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

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

(b) any purpose other than reafforestation;

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, 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.

3. Constitution of Advisory Committee.-- The Central Government may constitute a Committee consisting of such number of persons as it may deem fit to advise that the Government with regard to-

(i) the grant of approval under Section 2; and

(ii) any other matter connected with the conservation of forests which may be referred to it by the Central Government.

3-A. Penalty for contravention of the provisions of the Act.-- Whoever contravenes or abets the contravention of any of the provisions of Section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

Regularisation of Encroachments on Forest Land

Encroachment of forest land for cultivation and other purposes continues to be the most pernicious practice endangering forest resources throughout the country. Statistical information compiled by Ministry of Agriculture during early 1980s revealed that nearly 7 lakh hectares of forest land was under encroachment in the country about a decade back. This is despite the fact that prior to 1980, a number of States had regularized such encroachments periodically and approximately 43 lakh hectares of forest land was diverted for various purposes between 1951 and 1980, more than half of it for agriculture. The decisions of the State Government to regularize encroachments from time to time seem to have acted as strong inducement for further encroachments in forest areas and the problem remained as elusive as ever for want of effective and concerted drive against this evil practice.

2. The National Forest Policy, 1988 has also observed the increasing trend in encroachments on forest land and stated that these should not be regularized. Implementation of this pronouncement has been examined by this Ministry keeping in view the constraints of various State Governments some of whom have expressed that they stand committed to regularize encroachments of a period prior to 1980. The issue figured prominently in the Conference of the Forest Ministers held in May, 1989 and was later examined by an inter-Ministerial Committee, set up by this Ministry in consultation with the representatives of some of the States. Keeping in view the recommendations of the Forest Ministers' Conference and the Committee referred to the above, and with due approval of the competent authority, the following measures are suggested for review of the old encroachments and effective implementation of the pronouncement made in this regard in the National Forest Policy, 1988.

2.1 All the cases of subsisting encroachments where the State Governments stand committed to regularize on account of past commitments may be submitted to this Ministry for seeking prior approval under the Forest (Conservation) Act, 1980. Such proposals should invariably conform to the criteria given below:

1. PRE-1980 ENCROACHMENTS WHERE

THE STATE GOVERNMENT HAD

TAKEN A DECISION BEFORE

ENACTMENT OF THE FOREST

(CONSERVATION) ACT, 1980, TO

REGULARIZE 'ELIGIBLE' CATEGORY

OF ENCROACHMENTS.

1.1 Such cases are those where the State Governments had evolved certain eligibility criteria in accordance with local needs and conditions and had taken a decision to regularize such encroachments but could not implement their decision either wholly or partially before the enactment of the Forest (Conservation) Act, on 25.10.80.

1.2 All such cases should be individually reviewed. For this purpose the State Government may appoint a joint team of the Revenue, Forest and Tribal Welfare Departments for this work and complete it as a time-bound programme.

1.3 In case where proposals are yet to be formulated, the final picture after taking into considerations all the stipulations specified here may be placed before the concerned Gaon Sabha with a view to avoid disputes in future.

1.4 All encroached lands proposed for regularization should be properly surveyed.

1.5 Encroachments proposed to be regularized must have taken place before 25.10.1980.

This must be ascertained from the First Offence Report issued under the relevant

Forest Act at that point of time.

1.6 Encroachments must subsist on the field and the encroached land must be under continuous possession of the encroachers.

1.7 The encroacher must be eligible to avail the benefits of regularization as per the eligibility criteria already fixed by the State.

1.8 As far as possible scattered encroachments proposed to be regularized should be consolidated/relocated near the outer boundaries of the forests.

1.9 The outer boundaries of the areas to be denotified for regularization of encroachments should be demarcated on the ground with permanent boundary marks.

1.10 All the cases proposed to be regularized under this category should be covered in one proposal and it should give district-wise details.

1.11 All cases of proposed regularization of encroachments should be accompanied by a proposal for compensatory afforestation as per existing guidelines.

1.12 No agricultural practices should be allowed on certain specified slopes.

x x x x x

CLARIFICATION

x x x x x

2. Doubts have been raised as to whether all encroachments that had taken place up to 25.10.1980 could be regularized in accordance with an eligibility formula by which some earlier encroachments were regularized.

3. A perusal of the paragraph reproduced above will make it clear that there are 2 pre-conditions for any encroachments to be considered for regularization. These are:-

(a) The State Government should have taken the decision on regularization of encroachments before 25.10.1980; and

(b) that the decision should be with reference to some eligibility criteria (normally expected to be related to social and economic status of encroachers, location and extent or encroachment, cut off date of encroachment, etc.,)

4. It would be seen that the encroachments which are proposed to be considered for regularization, subject to the prescribed conditions, are those which fulfilled the eligibility criteria evolved by the State Government as per decision taken before 25.10.1980 for regularization of encroachments. The objective is limited to permitting implementation of decisions taken before 25.10.1980 which could not be implemented because the enactment of Forest (Conservation) Act, 1980 intervened. It is therefore quite clear that while all encroachments that can be considered as eligible for regularization would have taken place before 25.10.1980, all encroachments that had taken place before 25.10.1980 would not be eligible for regularization - they may be ineligible because either they do not meet the eligibility criteria or are not covered by any decision taken before 25.10.1980. Thus, if the decision on regularization of encroachments in a State covered only encroachments up to a date earlier than 25.10.1980, the guidelines on regularization of encroachments do not envisage that the State Government would now survey encroachments between that date and 25.10.1980 and propose regularization. The latter encroachments though occurring before 25.10.1980 are not covered by any regularization decision taken prior to that date and hence cannot be considered for regularization at this juncture.

5. Accordingly, the State Government may take up for implementation only such decision of pre 25.10.1980 period which could not be implemented because of Forest (Conservation) Act, 1980 intervening and propose regularization of encroachments as per those decisions and in accordance with the eligibility criteria laid down in those decisions. No encroachments not covered by any pre 25.10.1980 decisions - even though they might have occurred prior to that date - should now be considered for regularization in terms of our guidelines.

17. An analysis of the above reproduced provisions of the 1961 Act makes it clear that once a land was declared reserved forest, no right could be acquired by

anyone after issue of notification under Section 4 except under a grant or contract in

writing made or entered into by or on behalf of the Government, or by or on behalf of

some person in whom such right or power to create the same was vested or by

succession from such person and no activity of clearing such land or collection of

forest produce could be made. Sub-section 2 of Section 4 of the 1961 Act also imposes

prohibition against grant of patta in such land without previous sanction of the

Government. The 1980 Act was enacted by virtue of Entry 17-A of List III in the

Seventh Schedule of the Constitution. Section 2 (as originally enacted) contains a non

obstante clause. It lays down that notwithstanding anything contained in any other

law for the time being in force in a State, no State Government or authority shall without prior approval of the Central Government make any order directing that any reserved forest or any portion thereof, shall cease to be reserved or that any forest land or any portion thereof may be used for any non-forest purpose. By Act 69 of 1988 clause (iii) was inserted in Section 2 and what was implicit in clause (ii) was made explicit. Explanation appearing below Section 2 was also amended and it was made clear that the phrase `non-forest purpose' will mean breaking up or clearing of any forest land or portion thereof for cultivation of tea, coffee, spices, etc. and any purpose other than reforestation. However, activity or work relating or ancillary to conservation, development and management of forest and wildlife was excluded from the ambit of the phrase `non-forest purpose'.

18. We shall now consider whether Section 2 of the 1980 Act is prospective in operation and the State Government etc. are not required to obtain prior approval of the Central Government before regularizing use of any forest land for any non-forest purpose or issue patta or grant lease to unauthorised occupants/encroachers of forest land, or the provision contained in Section 2 is applicable qua any action which the State Government or other authority may take with reference to activity undertaken in any reserved forest or any forest land prior to 25.10.1980.

Undisputedly, the object of the 1980 Act is conservation of forest and to prevent depletion thereof. Therefore, the Court is bound to interpret the provisions of that Act which would further the object of the legislation. After enforcement of the 1980 Act, the State Governments were denuded of suo moto power to deal with reserved forest or forest land and permit use thereof for non-forest purposes. They could do so only after obtaining prior approval of the Central Government. However, as large tracts of reserved forests and forest land had been occupied by landless poor, who also undertook cultivation for their sustenance many decades before the enactment of the 1980 Act, and there was demand from several quarters that old occupation of the

forest land may be regularised, the Government of India, after taking note of the recommendations made in the Forest Ministers Conference and committee appointed by it, issued guidelines for grant of approval to the decision taken by the State Governments before the enforcement of the 1980 Act, i.e., 25.10.1980 to regularize encroachments made on forest land and/or use thereof for non-forest purpose. This necessarily implies that where the State Government had not taken any policy decision to regularize pre-25.10.1980 occupation/encroachment of forest land no order for regularization of such occupation/encroachment can be passed without obtaining prior approval of the Central Government in terms of Section 2 of the 1980 Act which, as mentioned above, contains a non obstante clause.

19. The question whether prior approval of the Central Government is required for use of any forest land or any portion thereof for non-forest purpose came up for consideration in State of Bihar v. Banshi Ram Modi and others [(1985) 3 SCC 643]. The facts of that case were that 80 acres of land which formed part of reserved forest was allotted to the respondents for undertaking mining operations much before enactment of the 1980 Act. After enforcement of the 1980 Act, the State Government renewed the mining lease without obtaining prior approval of the Central Government. Divisional Forest Officer, Kodarma Forest Division restrained the respondents from continuing the mining activity on the ground that prior approval of the Central Government had not been obtained. The respondents challenged the said restriction by filing writ petition in the High Court of Patna (Ranchi Bench). The High Court ruled that Section 2(ii) of the 1980 Act was not attracted in the respondents case because the area had already been broken for mining activity. This Court approved the decision of the High Court and held:

“Reading clause (ii) of and Explanation to Section 2 of the Act it is clear that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government. But if such permission has been accorded before the coming into force of the Act and the forest land is broken up or cleared then the section cannot apply.

In the present case the State Government had not violated Section 2 in permitting the lessee by the amendment of the lease deed to win and remove felspar and quartz also in addition to mica because thereby no permission for fresh breaking up of forest land is being given. The result of taking the contrary view will be that while the digging for purposes of winning mica can go on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operations for winning mica."

20. The above judgment was considered in *Ambica Quarry Works v. State of Gujarat and others* [(1987) 1 SCC 213]. That was a case of renewal of lease for the minor mineral granted in Village Morai of District Valsad, State of Gujarat. The lease was granted on 8.11.1971 for a period of 10 years. Just before the expiry of the term of lease, the appellant applied for its renewal under Rule 18 of the Gujarat

Minor Mineral Rules, 1966. The concerned Assistant Collector rejected the application on the ground that the land is a part of the reserved forest and in terms of

the 1980 Act renewal cannot be granted without approval of the Central Government.

The appellant challenged the action of the Assistant Collector by filing writ petition in the High Court of Gujarat, which was dismissed. Before this Court, learned counsel for the appellant relied upon the judgment in *Banshi Ram Modi's* case and argued that the prior approval of the Central Government was not necessary because it was a case of renewal of the existing quarry lease. After extracting relevant portion of the judgment in *Banshi Ram Modi's* case, this Court explained and distinguished the same by making the following observations:-

".....It is true that this Court held that if the permission had been granted before the coming into operation of the 1980 Act and the forest land has been broken up or cleared, clause (ii) of Section 2 of 1980 Act would not apply in such a case. But that decision was rendered in the background of the facts of that case. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in *Quinn v. Leatham*). But in view of the mandate of Article 141 that the ratio of the decision of this Court is a law of the land, Shri Gobind Das submitted that the ratio of a decision must be found out from finding out if the converse was not correct. But this Court, however, was cautious in expressing the reasons for the said decision in *State of Bihar v. Banshi Ram Modi*. This Court observed in that decision that the result of taking the contrary view would be (SCC p. 648, para 10) that while the digging for purposes of winning mica can go on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operations for winning mica. That would lead to an unreasonable result which would not in any way subserve the object of the Act. There was an existing lease where mining operation was being carried on and what was due by incorporation of a new term was that while mining operations were being carried on some other minerals were available, he was giving right to collect those. The new lease only permitted utilisation or collection of the said other minerals. In the instant appeals the situation is entirely different. The appellants are asking for a renewal of the quarry leases. It will lead to

further deforestation or at least it will not help reclaiming back the areas where deforestations have taken place. In that view of the matter, in the facts and circumstances of the case, in our opinion, the ratio of the said decision cannot be made applicable to support the appellants' demands in these cases because the facts are entirely different here. The primary purpose of the Act which must subservise the interpretation in order to implement the Act is to prevent further deforestation. The Central Government has not granted approval. If the State Government is of the opinion that it is not a case where the State Government should seek approval of the Central Government, the State Government cannot apparently seek such approval in a matter in respect of which, in our opinion, it has come to the conclusion that no renewal should be granted."

21. In Tarun Bharat Sangh. Alwar v. Union of India and others [1993 Supp

(3) SCC 115], this Court held that once an area is declared as protected forest, it

becomes forest within the meaning of Section 2 of the 1980 Act and prior approval of

the Central Government is a condition precedent for grant of lease under the

Rajasthan Minor Mineral Concession Rules, 1986. The ratio of the judgment is

contained in para 18, which is extracted below:-

"Once an area is declared as a protected forest, it comes within the purview of the Forest (Conservation) Act, 1980. It becomes a forest land within the meaning of Section 2. The effect of this position is that no non-forest activity can be carried on in the said area except with the prior approval of the Central Government. Even the State Government cannot carry on any such non-forest activity in the said area without such prior approval. That the mining activity amounts to non-forest purpose is beyond dispute. Thus, the grant of mining leases/licences and their renewal by the State Government, without obtaining the prior approval of the Central Government, in respect of the mines situated within the protected forest, after January 1, 1975 is contrary to law. All the mines listed in Appendix `A' to the committee's report do fall within the areas declared as protected forest while the mines listed in Appendix `B' fall partly within and partly outside such areas. According to Rule 4(6) of the Rajasthan Minor Mineral Concession Rules, 1986 too, no mining lease could have been granted or renewed within the forest "without clearance from the Central Government in accordance with the Forest (Conservation) Act, 1980 and the rules made thereunder". Admittedly, no such prior approval or clearance of Central Government was obtained. The Chairman of the committee, Shri Justice M.L. Jain has recommended that 215 mines mentioned in Appendix `A' to his report, which are situated wholly within the protected forest should be closed forthwith. There can hardly be any valid objection in law to the said recommendation. Similarly, with respect to 47 mines mentioned in Appendix `B' to the report, the learned Chairman has recommended that they should be closed forthwith insofar as they fall within the protected forest. To this recommendation also, there can be no valid objection in law."

22. In State of A.P. and others v. Anupama Minerals and others [1995 Supp

(2) SCC 117], the Court referred to the earlier judgment in Ambica Quarry Works v.

State of Gujarat and others (supra) and held:

"The purpose of the Act is conservation of forests and to prevent the depletion of forests. In other words the Act intended not only to protect the existing forests but also to conserve and protect the existing forests in accordance with the provisions of the Act. In view of the prohibition for grant of lease in the reserved forest area, grant of renewal in the face of the prohibited area will be in violation of law. Therefore, the authorities though had the power, but had duty while conserving the forest to refuse to grant renewal. In that view the Government's refusal to grant renewal, therefore, cannot be said to be illegal. If they consider that renewal

could be granted, even then the prior approval of the Central Government is mandatory under Section 2 of the Act."

23. In T.N. Godavarman Thirumulkpad v. Union of India and others [(1997) 2

SCC 267], this Court adverted to the misconception entertained in certain quarters

about the true scope of the 1980 Act and the meaning of the word "forest" used

therein and held:

"The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat, Rural Litigation and Entitlement Kendra v. State of U.P. and recently in the order dated 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

24. The ratio of the above noted judgments is that the 1980 Act is applicable to

all forests irrespective of the ownership or classification thereof and after 25.10.1980,

i.e., date of enforcement of the 1980 Act, no State Government or other authority can

pass an order or give a direction for de-reservation of reserved forest or any portion

thereof or permit use of any forest land or any portion thereof for any non-forest

purpose or grant any lease, etc. in respect of forest land to any private person or any

authority, corporation, agency or organization which is not owned, managed or

controlled by the Government. Another principle which emerges from these

judgments is that even if any forest land or any portion thereof has been used for

non-forest purpose, like undertaking of mining activity for a particular length of

time, prior to the enforcement of the 1980 Act, the tenure of such activity cannot be extended by way of renewal of lease or otherwise after 25.10.1980 without obtaining prior approval of the Central Government.

25. We may now revert to the facts of the case in hand. It is not in dispute that before the enactment of the 1980 Act, the Government of Kerala had taken a policy decision to regularize the illegal/unauthorised occupation and encroachments of forest land made prior to 1.1.1977 and also to remove all unauthorised occupation/encroachments made on and after 1.1.1977. For implementation of that decision, the State Government approached and succeeded in persuading the Central Government to grant approval for diversion of 28,588.159 hectares of land by way of assignment to the unauthorized occupants/encroachers. The approval granted by the Central Government was in consonance with the guidelines framed by it for regularization of encroachments on forest land. Therefore, we do not find any valid reason to interfere with the High Court's refusal to nullify the action taken by the State Government to regularize the unauthorised occupation/encroachment of 28588.159 hectares of forest land in five districts.

26. As regards 10,000 hectares of forest land, the State Government has not taken any decision for assignment thereof to unauthorised occupants/encroachers.

This has been made clear in the additional affidavit dated 13.1.2009 of Shri B.R.

Mohan Kumar (Law Officer to Government of Kerala), paragraph 7 whereof reads as under:

“It is submitted that the State Government has initiated steps to move Government of India with suitable proposal for obtaining clearance under Forest (Conservation) Act, 1980 for assignment of about 10,000/- ha. of forest land to the occupants prior to 01.01.1977. Alternate non-forest lands are being identified for compensatory afforestation in various districts. For regularization of these forest lands encroached prior to 01.01.1977, prior approval of the Govt. of India is necessary. The respondent will submit an additional proposal to Government of India for grant of approval for diversion of forest land, as and when joint verification is completed. It may be pointed out that instructions have been issued in unequivocal terms to take stern action to evict the encroachments after 01.01.1977.”

In view of the stand taken by the State Government, the grievance made by

the appellant in that regard will have to be treated as pre-mature. However, we deem it necessary to clarify that as and when the State Government takes a decision to assign 10,000 hectares of forest land or permit use thereof for any non-forest purpose and approaches the Central Government for grant of approval in terms of Section 2

(ii) and (iii), the latter shall be duty bound to examine the proposal keeping in view the object of the 1980 Act and the guidelines framed in the light of the National Forest

Policy and then take appropriate decision. Needless to say that the appellant or any other person who may feel aggrieved by the decision of the State Government to assign 10,000 hectares of forest land or any portion thereof or permit use of forest land for any non-forest purpose shall be free to avail appropriate legal remedy.

27. In the result, the appeal is disposed of in the following terms:

- (1) The policy decision taken by the Government of Kerala to assign 28,588.159 hectares of forest land to unauthorized occupants/ encroachers after seeking approval from the Central Government does not suffer from any legal infirmity and the High Court rightly declined to interfere with the said decision.
- (2) After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for de-reservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or assign any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organization not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government.
- (3) Conclusion No.D recorded by the High Court in para 103 of the impugned judgment is legally unsustainable and is set aside.
- (4) As and when the State Government decides to assign 10,000 hectares of forest land to unauthorised occupants/encroachers, it shall do so only after obtaining prior approval of the Central Government and the latter shall take appropriate

decision keeping in view the object of the 1980 Act and the guidelines framed for regularization of encroachments on forest land.

.....J.

[B.N. AGRAWAL]

.....J.

[G.S. SINGHVI]

.....J.

[AFTAB ALAM]

New Delhi,

March 30, 2009.