2025 INSC 701

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

IN RE: CONSTRUCTION OF MULTI STOREYED BUILDINGS IN FOREST LAND MAHARASHTRA

I.A.NO. 2079 OF 2007
[Application for Impleadment and Directions]

WITH

I.A. NOS.2301-2302 OF 2008
[Applications for Impleadment and Directions in I.A. No. 2079 OF 2007]

WITH

I.A. NOS.3044-3045 OF 2011
[Application for Impleadment and Directions in I.A. No. 2079 OF 2007]

WITH

I.A. NO.254946 OF 2023
[Application for Directions in I.A. Nos. 2301-2302 of 2008 in I.A. No. 2079 OF 2007]

WITH

I.A. NO.39711 OF 2024
[Application for permission to file Additional Documents in I.A. No.254946 of 2023]

IN

WRIT PETITION (C) NO. 202 OF 1995

IN RE: T.N. GODAVARMAN THIRUMALPAD ....PETITIONER

VERSUS

UNION OF INDIA & ORS. ....RESPONDENTS

Signature Not Verified
Digitally signed by DEEPAK SINGH
Date: 2025.05.15 16:12:03 IST
Reason:

WITH

WRIT PETITION (C) NO.301 OF 2008

WITH

I.A. No. 9108 OF 2024 in WRIT PETITION (C) NO.301 OF 2008

J U D G M E N T

B.R. GAVAI, CJI

I. INTRODUCTION

1. The present matter is a classic example as to how the nexus between the Politicians, Bureaucrats and the Builders can result in the conversion of precious Forest Land for commercial purposes under the garb of resettlement of people belonging to the backward class from whose ancestors, agricultural land was acquired for public purpose.

II. FACTUAL POSITION

2. The facts in brief, shorn of unnecessary details, giving rise to present proceedings are as under:

a. Background

2.1 An area admeasuring 32 Acres 35 Gunthas at Survey No. 20 of Village Kondhwa Budruk in Pune District was notified as a Reserved Forest under the provisions of Section 34 of the Indian Forest Act, 1878 (hereinafter referred to as "the 1878 Act") vide Notification dated 1st March 1879.

2.2 A portion of the land admeasuring 3 Acres 20 Gunthas was de-reserved by the State Government vide Notification dated 5th January 1934.

2.3 It is pertinent to note that no further orders for de-reservation were passed post 1934. As a result of which the remaining area of 29 Acres and 15 Gunthas, which was numbered as Survey No.20-A and subsequently renumbered as Survey No.21 of Village Kondhwa Budruk remained to be a Forest Land (hereinafter referred to as "the subject land").

2.4 During the 1960s, a different parcel of land in Survey No.37 of Kondhwa Budruk belonging to one 'Chavan Family' was acquired by the State Government for the purposes of construction of "Dr. Bandorwala Leprosy Hospital".

2.5 It appears from the record that no compensation was paid to the 'Chavan Family'. As such, a request was made by them for allotment of the subject land as an alternative for their resettlement.

2.6 It further appears from the record that in response to the request made by the 'Chavan Family', the Tehsildar, Haveli vide his communication dated 13th May 1968, released the subject land to the 'Chavan Family' for cultivation for a period

of one year. The subject land was allotted on "*Eksali*" (yearly) basis for the year 1968-69.

2.7 The said allotment was accepted by the 'Chavan Family'. The members of the 'Chavan Family' had also given an undertaking to the Mamlatdar, Taluka-Haveli, District Pune. The relevant part of the said undertaking reads thus:

> "I accept and agree that the said assessment is allotted to me under the provision of Bombay Land Revenue Code 1879 and rules thereunder and shall be subjected to following terms and conditions.
>
> 1. That, no part of the said land shall be leased out, mortgaged, sold, excavated or no lien shall be created by me (the term includes self, heirs, executers, assignees, administrators) without prior written approval of the Collector.
>
> 2. That, I will handover the possession of the land to any person nominated by the Collector without any hassle on or before 15/12/1967.
>
> 3. That, I will not use the said assessment for any purpose other than cultivation.
>
> 4. That, I do not have any right of the trees standing on the land and I will behave as per the rules annexed herewith."

2.8 It is pertinent to note that a perusal of the record would reveal that the said *Eksali* (yearly) lease was never renewed thereafter.

2.9 It further appears from the record that on 22nd March 1969, the State Government took a decision that the Forest

Land given on lease for cultivation on *Eksali* basis should be permanently released for cultivation to the *Eksali* leaseholders after de-reservation.

2.10 It appears that in pursuance of this resolution, the 'Chavan Family' made an application for permanent release of the subject land in the year 1988.

2.11 It is relevant to note that in the meanwhile, the Forest (Conservation) Act, 1980 (hereinafter referred to as, "the 1980 FC Act") came into force with effect from 25th October 1980. Under the provisions of Section 2 of the 1980 FC Act, no Forest Land could be de-reserved or used for any non-forest purposes without the permission of the Central Government.

b. Actions of the State Government

2.12 A perusal of the record would reveal that there was a lot of inter-departmental correspondence between the different authorities. It appears that the District Collector vide his letter dated 19th June 1991 found that the members of the 'Chavan Family' were cultivating only 3 Acres and 20 Gunthas and, therefore, recommended that the said area which was under actual cultivation be allotted to them in view of the Government Resolution dated 22nd March 1969. He further

recommended that the possession of the remaining land be handed over to the Forest Department.

2.13 However, surprisingly, the Divisional Commissioner vide his recommendation to the State Government dated 30th November 1994, though, specifically recorded that as per the Collector's report, the members of the 'Chavan Family' were in cultivation only in 3 Acres and 20 Gunthas, recommended allotment of the entire subject land to the 'Chavan Family'. It is further surprising to note that the Divisional Commissioner also observed that there is no necessity to obtain the prior approval of the Central Government for allotment of the said land. It is also surprising to note that the Divisional Commissioner also noted that the subject land was a Reserved Forest.

2.14 It appears that thereafter the file was pending before the State Government. At that stage, the then Minister for Revenue opined that the said land was granted by the Government for Agricultural purpose and that the applicants (the 'Chavan Family') were using the said land continuously for such purpose and, therefore, the provisions of the 1980 FC Act were not applicable in the said case. He therefore sought

legal advice on the point from the Law and Judiciary Department of the Government of Maharashtra. This could be gathered from the reply given by the Deputy Secretary to the Government, Revenue and Forest Department dated 8th April 2008 to the Central Empowered Committee ("CEC" for short) in response to certain queries.

2.15 It would further appear that thereafter on 27th July 1998, the Deputy Secretary to Government, Law and Judiciary Department, gave his opinion that there is no necessity for obtaining prior sanction of the Government of India if the Forest Land is already broken up and acquired before coming into force of the 1980 FC Act. Accordingly, the Minister for Revenue, the Government of Maharashtra sanctioned the allotment of the subject land and an order came to be issued by the Government of Maharashtra vide Memorandum dated 4th August 1998 to that effect.

2.16 In pursuance to the order passed by the State Government, the Collector issued an order of allotment of land on 28th August 1998. The said allotment, however, was subject to certain conditions. It will be relevant to refer to

Condition Nos. 2, 4, 5 and 7 of the said allotment order dated 28th August 1998, which read thus:

> "2) The allottee shall not be entitled to mortgage, donate, sell, partition or exchange in any other manner without the prior permission of the District Collector, Pune. Similarly, shall not sell or transfer the said land or any part thereof.
>
> xxx xxx xxx
>
> 4) The allotee shall not lease the aforesaid land granted to him to any other person.
>
> 5) It is necessary for the allottee to bring the said land under cultivation within a period of two years from the date of this order.
>
> xxx xxx xxx
>
> 7) The said land shall be used for agricultural purposes. Except agriculture, it shall not be used for any other purpose."

c. Acquisition and Construction by RRCHS

2.17 It would further appear from the record that immediately after the land was allotted, the Divisional Commissioner vide order dated 30th October 1999 granted permission to the 'Chavan Family' to sell the land in question to one Mr. Aniruddha P. Deshpande, the Chief Promotor of Richie Rich Cooperative Housing Society Limited ("RRCHS" for short) for residential purposes.

2.18 However, a perusal of the material on record would reveal that much prior to the said permission or even much prior to the actual allotment of the subject land to the 'Chavan Family', the transactions were entered into by the members of the 'Chavan Family' with Mr. Aniruddha P. Deshpande, Chief Promoter, RRCHS. We will be referring to those documents when we discuss the rival submissions.

2.19 The District Collector, Pune thereafter vide order dated 8th July 2005 granted permission for use of the subject land for Non-Agricultural purposes i.e. for construction of the residential buildings.

2.20 On 27th February 2006, the Pune Municipal Corporation issued a Commencement Certificate and sanctioned the Building Plan.

2.21 Thereafter, on 3rd July 2007, the Ministry of Environment and Forest (MoEF) granted environmental clearance for construction of "Raheja Richmond Park", a Residential, Shopping and IT Complex.

d. Proceedings before this Court

2.22 After noticing the aforesaid aspects, one Nagrik Chetna Manch filed I.A. No. 2079-2080 of 2007 in Writ Petition (Civil)

No. 202 of 1995 before this Court challenging the allotment of Reserved Forest Land to private persons and its use for construction of multi-storeyed buildings in violation of the 1980 FC Act.

2.23 In the said proceedings, this Court vide order dated 23rd November 2007, directed the CEC to enquire into the matter and submit its report.

2.24 In pursuance to the orders passed by this Court, the CEC started conducting enquiries into the matter and held various meetings. When the CEC started conducting enquiries, various queries were made to the State Government. The Revenue and Forest Department of the State of Maharashtra issued a notice dated 2nd July 2008 to the RRCHS and one of the members of the 'Chavan Family' thereby informing them about the Government's decision to review the Government Order dated 4th August 1998 vide which the land was allotted to the 'Chavan Family'.

2.25 It would further appear that the Forest Department issued a notice to the RRCHS dated 4th July 2008, notifying the RRCHS that the possession of the subject land was required to be taken back. Aggrieved thereby, the RRCHS filed

I.A. No.2301-2302 of 2008 in I.A. No.2079 of 2007 praying for impleadment as well as challenging the aforementioned notices dated 2nd July 2008 and 4th July 2008.

2.26 The said RRCHS also filed a writ petition being Writ Petition (Civil) No.301 of 2008, praying for the following reliefs:

> "(a) Issue a writ of certiorari or any other appropriate writ order or direction under Article 32 of the Constitution of India for quashing the notice dated 2.7.2008 bearing no. Land-3408/1025/PKP 935/Part 2/J-5, issued by the State Government; and/or
>
> (b) Issue a writ of certiorari or any other appropriate writ order or direction under Article 32 of the Constitution of India for quashing the notice dated 4.7.2008 bearing no. 57 of 2008-09, issued by the Forest Department, Government of Maharashtra; and/or
>
> (c) Pass such other of further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2.27 After an elaborate enquiry, the CEC submitted its report dated 27th November 2008 and recommended thus:

> i) the allotment of 11.89 ha of Reserve Forest land in Survey No.21 (old Survey No.20A) Kondhwa Bk in District Pune for agriculture purposes and subsequent permission given for its sale in favour of M/s Richie Rich Co-operative Housing Society Ltd. and construction of buildings should be cancelled.
>
> ii) the area should be restored back as forest;

iii) the senior functionaries and officers of the Government of Maharashtra responsible for the allotment/use of the said Reserve Forest land in violation of the provision of the FC Act and this Hon'ble Court's order dated 12.12.1996 should be prosecuted for criminal breach of trust and other provisions of the Indian Penal Code. It is imperative that amongst others the then Revenue Minister, Maharashtra, who approved the land allotment along with the then Divisional Commissioner, Pune who granted the permission for the sale of the land in favour of private person for the construction of buildings, Mr. Ashok Khadse, the then Deputy Conservator of Forests, Pune who has issued "No Objection Certificate" not only in this case but in many other cases facilitating illegal use of the forest land for private gains and Mr. Aniruddha P. Deshpande, Developer, who entered into various Development Agreements for purchase and use of the Reserve Forest for construction of buildings are prosecuted.

iv) Mr. Khadse who is presently under suspension should not be reinstated without obtaining permission of this Hon'ble Court;

v) the Chairman, Central Empowered Committee may be authorized to constitute a multi disciplinary "Special Investigation Team" to examine the details of all the Reserve Forest under the administrative control of the Revenue Department in Pune and which have been allotted/allowed to be used in the past without obtaining approval under the FC Act. All such allotment/uses should be treated as null and void and the Government of Maharashtra should be directed to cancel all such orders. State functionaries/officers who are found to be responsible for allotment/use of the forest land in all such cases, should be prosecuted for criminal breach of trust; and

vi) the Chief Secretary, Government of Maharashtra should be directed to ensure immediate compliance of this Hon'ble Court's order dated 22.9.2006 in IA No.1483 regarding transfer of forest land in charge of the Revenue Department to the Forest Department. Till the entire exercise is completed, he should be directed to file fortnightly Action Taken Report before the Hon'ble Court as well as the CEC."

2.28 Subsequent reports have been filed by the CEC on 1st November 2010 and 14th August 2013.

2.29 I.A. Nos. 3044-45 of 2011 are filed by one Greenfield Cooperative Housing Society ("GCHS" for short) praying for impleadment in the matter and for quashing of the order dated 29th September 2008 by which the Divisional Commissioner, Pune had cancelled the permission to sell by virtue of which the GCHS had purchased the land from the original leaseholder.

2.30 I.A. No.254946 of 2023 for directions has been filed by RRCHS contending that the Gazette Notification dated 9th March 1944 did not show the subject land as the Forest Land and, therefore, prayed for disposal of the present proceedings in view of the said Gazette Notification.

2.31 I.A. No.39711 of 2024 has been filed by the State to place on record the original Gazette Notification dated 9th March 1944. It was contended by the State that the Gazette Notification dated 9th March 1944 placed by RRCHS was a fabricated document.

2.32 This Court, therefore, vide order dated 9th May 2024, directed enquiry to be conducted by the Additional Director General of State CID, Pune. The Additional Director General of State CID, Pune conducted an enquiry and submitted his report on 16th August 2024 pointing out therein that the Gazette Notification dated 9th March 1944 placed by the RRCHS was a forged one and not genuine one.

2.33 That is how the present proceedings have reached this stage.

III. SUBMISSIONS

3. We have heard Shri K. Parameshwar, learned Senior Counsel (Amicus Curiae) ably assisted by Mr. M.V. Mukunda, Ms. Kanti, Ms. Raji Gururaj and Mr. Shreenivas Patil, learned counsel. We have also heard Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the RRCHS and Shri Shekhar Naphade, learned Senior Counsel appearing on

behalf of the GCHS and Shri Aniruddha Joshi, learned Senior Counsel appearing on behalf of the State.

4. Shri K. Parameshwar submitted that the allotment of the Forest Land to the 'Chavan Family' was in flagrant breach of the orders of this Court and the provisions of the 1980 FC Act. He submits that though the record would clearly reveal that the subject land was recorded as a Forest Land, the land was allotted to the 'Chavan Family' in flagrant violation of the law. He submits that the record would reveal that the 'Chavan Family' was only a front, while, in fact, the allotment was made by the State Government in favour of a Builder. He submits that the record would reveal that much prior to 1998 when the land was actually allotted in favour of the 'Chavan Family', the 'Chavan Family' had already entered into a deal with Mr. Aniruddha P. Deshpande, the Chief Promoter of RRCHS.

5. The learned Amicus submits that in the present case it would clearly reveal that the then Revenue Minister and the then Divisional Commissioner of Pune had acted in total breach of the doctrine of public trust and misused their power to aid the illegal activities of the Builder. The learned Amicus further submits that, considering for a moment that the

allotment of the subject land in favour of the 'Chavan Family' was legal, it is clear that the subsequent allocation thereof in favour of RRCHS was totally in contravention of the conditions on which the land was allotted to the 'Chavan Family'. He further submits that the record would reveal that the subject land was in fact used for the purposes of plantation.

6. The learned Amicus, therefore, would submit that this Court should accept the report of the CEC and set aside the allotment in favour of the 'Chavan Family'.

7. Shri Abhishek Manu Singhvi, learned Senior Counsel submitted that the subject land was not used as a Forest Land for a long period. It is submitted that the land in question was allotted to the 'Chavan Family' in lieu of compensation for acquisition of their land. It is submitted that the subject land lost its character as a Forest Land on account of non-use of it for a long time for the said purpose. It is therefore submitted that in view of the doctrine of *desuetude*, the subject land no longer remained a Forest Land and, therefore, the allotment of the subject land in favour of the 'Chavan Family' was totally valid in law. In this respect, he relied on the judgment of this

Court in the case of ***Municipal Corporation for City of Pune and another v. Bharat Forge Co. Ltd. and others***[1]

8. The learned Senior Counsel further contended that the RRCHS is the *bona fide* purchaser of the subject land from the 'Chavan Family'. It is submitted that the records viz., the revenue records as well as the Final Regional Plan of Pune Region would show that the land in question was shown in a Public/Semi Public Zone which could be used for residential purposes. It is submitted that the Final Regional Plan of Pune Region was published in accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966, which is a complete code in itself. It is submitted that since the subject land was not shown in a green zone, the RRCHS was the *bona fide* purchaser and, therefore, it cannot be penalized for purchasing the said land.

9. An alternative submission made by the learned Senior Counsel is that, as held by this Court in ***In Re: "Construction of Multi Storeyed Buildings in Forest Land Maharashtra***[2]***"***, the RRCHS should be allotted an alternate

[1] (1995) 3 SCC 434 : 1995 INSC 181
[2] I.A. No.2771-2772 of 2009 etc. dated 9th September 2024

piece of land inasmuch as the land allotted to the 'Chavan Family' was in lieu of their land acquired by the Government.

10. Shri K. Parameshwar, learned Amicus, in rejoinder, submitted that the doctrine of *desuetude* would not be applicable to the facts of the present case. He relied on the following judgments of this Court in this regard:

(i) ***State of Maharashtra v. Narayan Shamrao Puranik and Others***[3]***;***

(ii) ***Cantonment Board, MHOW and Another v. M.P. State Road Transport Corpn.***[4]***; and***

(iii) ***Monnet Ispat and Energy Limited v. Union of India and Others***[5]

IV. ISSUES FOR CONSIDERATION

11. In the background of these submissions, the following points arise for consideration:

a. As to whether the subject land is a Forest Land;

b. As to whether the Divisional Commissioner was justified in recommending the allotment of subject land in favour of the 'Chavan Family' and as to

[3] **(1982) 3 SCC 519 : 1982 INSC 78**
[4] **(1997) 9 SCC 450 : 1997 INSC 401**
[5] **(2012) 11 SCC 1 : 2012 INSC 305**

whether the State Government was justified in accepting the said recommendation;

c. As to whether the doctrine of *desuetude* would be applicable to the facts of the present case;

d. As to whether the RRCHS could be said to be *bona fide* purchaser of the subject land;

e. As to whether the RRCHS would be entitled to allotment of alternate piece of land in view of the order passed by this Court in ***In Re: "Construction of Multi Storeyed Buildings in Forest Land Maharashtra"***[6];

f. As to whether the doctrine of public trust would be applicable in the facts and circumstances of the present case.

V. DISCUSSION AND ANALYSIS

a. As to whether the subject land is a Forest Land.

12. A perusal of the Gazette Notification dated 1st March 1879 would reveal that it declares the lands described in the Schedule annexed thereto to be Reserved Forest in the Poona

[6] I.A. No.2771-2772 of 2009 in WP(C) No.202 of 1995 etc. dated 9th September 2024

Collectorate. The said Notification has been issued in exercise of the powers conferred by Section 34 of the 1878 Act. A perusal of the Schedule thereto would reveal that the land in Village Kondhwa Budruk having survey No. 20, admeasuring an area of 32 Acres and 35 Gunthas (13.27 ha) has been included in the said Schedule. Subsequently, by way of Notification issued on 5th January 1934, it was declared that out of the said area in Survey No.20, an area admeasuring 3 Acres and 20 Gunthas would cease to be a Reserved Forest. As such, after deforestation of 3 Acres and 20 Gunthas, the balance area of 29 Acres and 15 Gunthas (11.89 ha) continued to be notified as a Reserved Forest. The said area of 29 Acres and 15 Gunthas was numbered as Survey No.20-A, which was subsequently renumbered as Survey No.21 Kondhwa Budruk.

13. A perusal of the records of the Forest Department would reveal that the said area continued to be shown as notified 'Reserved Forest'.

14. However, in the records maintained by the Revenue Department, the said area of Survey No.21 Kondhwa Budruk has been recorded as "Government Grazing Ground".

15. It will be relevant to note that in order to clear this anomaly, the officers of the Forest Department have addressed number of letters to the Collector, Pune for rectification of the revenue records, which are as under:

(i) Letter dated 18.3.1991 from Deputy Conservator of Forests, Pune to District Collector, Pune.

(ii) Letter dated 5.1.1994 from the Deputy Conservator of Forests to the Tahsildar, Haveli.

(iii) Letter dated 9.7.1998 from the Range Forest Office to the Tahsildar, Haveli

(iv) Letter dated 29.7.1998 from the Deputy Conservator of Forests to the Collector, Pune

(v) Letter dated 10.9.1998 from the Range Forest Officer to the Tahsildar, Haveli

(vi) Letter dated September, 1998 from the Deputy Conservator of Forests to the Collector, Pune.

(vii) Letter dated 11.9.1998 from the Deputy Conservator of Forests to the Collector, Pune.

(viii) Letter dated 17.12.1998 from the Deputy Conservator of Forests to the Collector, Pune

16. Not only this, but the perusal of the communication dated 26th August 1994, addressed by the District Collector, Pune to the Executive Engineer (Estd.), Maharashtra State Electricity Board ("MSEB" for short) would reveal that it is reserved as a "Forest Land". It is to be noted that the MSEB had sought allotment of this land for construction of High-

Tension Sub-Station. While refusing the said request, the Collector, Pune informed the MSEB vide letter dated 26th August 1994 as under:

> "In reference to your above letter please note that the land referred by you is reserved as "Forest Land" as per the Indian Forest Rules, 1897 vide circular No. 24F dt. 1st March, 1879 and amended in 1890. Hence same cannot be allotted to you. The application is therefore filed."

17. It is further relevant to note that the Collector, Pune while forwarding the request of the 'Chavan Family' to the State Government vide communication dated 19th June 1991, referred to the said land as "Government Forest Land". However, noting that the 'Chavan Family' was in cultivation of the land admeasuring 3 Acres and 20 Gunthas, he recommended allotment of the said land to the 'Chavan Family'. He also recommended that the possession of the remaining land be handed over to the Forest Department. In the said letter, the Collector noted thus:

> "S.No.20 is reserved for afforestation. As per the Govt. notification No. AS/36/13//14032 dt 5.01.1934 (Pg 175) the rights for cultivation of the area admeasuring 3 Acres 20 Gunthas out of S.No.20A have been allotted to Shri Chauhan family for which the Forest Dept has given their consent. The Forest Department has requested for the possession of the remaining land i.e. 29 Acres 15 Gunthas since reserved for Forest only."

18. It could thus be seen that the though the Collector recorded that Survey No. 20 was reserved for afforestation, he recommended the allotment of the land admeasuring 3 Acres 20 Gunthas to 'Chavan Family'. While doing so, he recorded "No Objection" of the Forest Department. We will be referring to the said aspect subsequently inasmuch as the said "No Objection given by one of the Forest Officers, was subsequently cancelled by the Forest Authorities.

19. Surprisingly, the Divisional Commissioner vide his communication dated 30th November 1994, addressed to the Secretary, Revenue and Forest Department, noticing the stand taken by the Collector, Pune, recommended the entire land be allotted to the 'Chavan Family'. It is further to be noted that in the said communication, the Divisional Commissioner also specifically recorded that the 'Chavan Family' was in illegal possession of the land after 1969.

20. After the 1980 FC Act came into effect, no Forest Land could have been de-reserved without the permission of the Central Government. It is to be noted that though the reliance is placed by the RRCHS on the Gazette Notification dated 9th March 1944 to contend that the said subject land was de-

reserved, on an enquiry conducted by the Additional Superintendent of Police State CID under the orders of this Court, the said Gazette Notification is found to be fabricated.

21. It would thus be amply clear from the record that the said land was notified as early as in 1879 as Reserved Forest and which reservation continues to be so till date.

b. As to whether the Divisional Commissioner was justified in recommending the allotment of subject land in favour of the 'Chavan Family' and as to whether the State Government was justified in accepting the said recommendation.

22. Having held that the subject land is a reserved Forest Land, the next question that would be required to be considered is as to whether the said land could have been allotted to the 'Chavan Family'.

23. It will be relevant to refer to Section 2 of the 1980 FC Act (as it originally exists, without amendment), which reads thus:

> "**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 organization 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 purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for—

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

(b) any purpose other than reafforestation, but does not include any work relating to 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."

24. It would thus be clear that after the 1980 FC Act was brought into effect, no State Government or any other authority, unless there is prior approval by the Central

Government, could have directed any Reserved Forest or any portion thereof to cease to be under the status of "reserved" or any forest land or any portion thereof to be used for any non-forest purposes. Nor could it have assigned any forest land or any portion thereof, by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization.

25. Reliance is placed by the RRCHS on the judgment of this Court in the case of ***State of Bihar v. Banshi Ram Modi and Others***[7]. The legal opinion given by the Deputy Secretary, Law and Judiciary Department, Government of Maharashtra also relies on the said judgment.

26. No doubt that in the case of ***Banshi Ram Modi*** (supra), this Court held that if an area had already been dug up and mining operations were carried on prior to coming into force of the 1980 FC Act, the State Government, for continuing the said lease for the purposes of mining, shall not need prior approval of the Central Government. It has been held that though it would be necessary to seek prior approval of the Central Government for starting mining operations on a virgin

[7] (1985) 3 SCC 643 : 1985 INSC 126

area, it would not be necessary to seek such approval for the purposes of carrying out mining operations in a forest area which is broken up or cleared before the commencement of the 1980 FC Act.

27. We find that even on facts, the said judgment would not be applicable. There is no order permitting the subject land to be used for non-forest purposes by any of the competent authorities. A reliance is sought to be placed on the letter issued by the Tehsildar, Taluka Haveli dated 13th May 1968, thereby informing the 'Chavan Family' about its decision to lease the subject land on "Eksali" basis for the year 1968-69. However, it is to be noted that the said lease was only for a period of one year. It is further to be noted that while accepting the said yearly lease, the 'Chavan Family' has given an undertaking that they will hand over the vacant and peaceful possession on 15.12.1967 (sic) i.e. prior to 1980.

28. In any case, nothing is placed on record to show that the land was permitted to be used by the State for any non-forest purposes prior to 1980. In any event, since the lease deed was valid only for one year, after the 1980 FC Act came into effect, in view of the restrictions imposed in clause (iii) of Section 2 of

the 1980 FC Act, the forest land could not have been assigned either by way of lease or any other mode to any private person unless there was prior approval of the Central Government.

29. In the case of ***Ambica Quarry Works v. State of Gujarat and Others***[8], this Court while distinguishing the judgment in the case of ***Banshi Ram Modi*** (supra) observed thus:

> "**15.** The rules dealt with a situation prior to the coming into operation of 1980 Act. ***The "1980 Act" was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and further deforestation and ecological imbalances should be prevented***. That was the primary purpose *writ large* in the Act of 1980. ***Therefore the concept that power coupled with the duty enjoined upon the respondents to renew the lease stands eroded by the mandate of the legislation as manifest in 1980 Act in the facts and circumstances of these cases. The primary duty was to the community and that duty took precedence, in our opinion, in these cases. The obligation to the society must predominate over the obligation to the individuals***.
>
> *** *** ***
>
> **18.** The aforesaid observations have been set out in detail in order to understand the true ratio of the said decision in the background of the facts of that case. 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

[8] **(1987) 1 SCC 213 : 1986 INSC 267**

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. *Leathem*) [(1901) AC 495] . 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 [(1985) 3 SCC 643]***. 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***.

19. 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 subserve 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."

[Emphasis supplied]

30. It could thus be seen that this Court in unequivocal terms held that the obligation to society must predominate over the obligation to the individuals. This Court held that in the case of ***Banshi Ram Modi*** (supra), there was an existing lease where mining operations were 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 given right to collect those. This Court observed that, however, in ***Ambica Quarry Works*** (supra), the situation is entirely different. The appellants therein were asking for a renewal of the quarry leases. It would lead to further deforestation or at least it will not help reclaiming back the areas where deforestations have taken place. The Court, therefore, observed thus:

> "**20.** In that view of the matter and the scheme of the Act, in our opinion, the respondents were right and the appellants were wrong. ***All interpretations must subserve and help implementation of the intention of the Act.*** This interpretation, in our opinion, will subserve the predominant purpose of the Act."
>
> [Emphasis supplied]

31. It is thus clear that this Court in unequivocal terms held that taking into consideration the Scheme of the Act, all interpretations which subserve and help implementation of the intention of the Act i.e. the protection of the forests must be accepted.

32. It would further be apposite to note that this Court in the present proceedings had an occasion to consider the judgments in the cases of ***Banshi Ram Modi*** (supra) and ***Ambica Quarry Works*** (supra). In the order dated 12th December 1996, this Court observed thus:

> "**4.** The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only

include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works* v. *State of Gujarat* [(1987) 1 SCC 213] , *Rural Litigation and Entitlement Kendra* v. *State of U.P.* [1989 Supp (1) SCC 504] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority* [WP (C) No 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in *State of Bihar* v. *Banshi Ram Modi* [(1985) 3 SCC 643] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

5. We further direct as under:

I. General

1. ***In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2***

> ***of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith***. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith."
>
> [Emphasis supplied]

33. A perusal of the aforesaid observation of this Court in the present proceedings would reveal that this Court after considering the judgment in ***Banshi Ram Modi*** (supra) has in unequivocal terms held that in accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must be ceased immediately. It can thus clearly be seen that this Court has in unequivocal terms overruled what was held in ***Banshi Ram Modi*** (supra).

34. It is thus amply clear that for permitting any non-forest activity within the area of any "forest", it was necessary to have prior approval of the Central Government. It has

unequivocally been directed that all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. This Court specifically directed that running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and they are not permissible without prior approval of the Central Government.

35. It is further to be noted that this court in the case of ***Nature Lovers Movement v. State of Kerala***[9] has observed thus:

> "**52.** In the result, the appeal is disposed of in the following terms:
>
> (*1*) .....
>
> (*2*) ***After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for dereservation 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 organisation not owned, managed or controlled by the Government except after obtaining prior approval of the***

[9] **(2009) 5 SCC 373 : 2009 INSC 371**

Central Government.

(*3*) Conclusion 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 ha 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 regularisation of encroachments on forest land."

[Emphasis supplied]

36. The legal position, therefore, has been clarified by this Court in the case of ***Nature Lovers Movement*** (supra) after considering the earlier judgments reiterating the position that neither the State Government nor any other authority can make an order or issue 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. Neither is it permissible to 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.

37. It is further to be noted that in the present case, the opinion given by the Deputy Secretary to the Government, Law and Judiciary Department was on 27th July 1998. The order approving allotment of land in favour of the 'Chavan Family' was issued by the Government of Maharashtra on 4th August 1998 and the order of allotment by the Collector was passed on 28th August 1998. It is thus clear that all these events have taken place well after the directions were issued by this Court on 12th December 1996 in the present proceedings.

38. It is thus clear that the Deputy Secretary to the Government of Maharashtra had totally erred in relying on the judgment of this Court in the case of ***Banshi Ram Modi*** (supra) by ignoring the observations made by this Court in the case of ***Ambica Quarry Works*** (supra) and specific directions issued by this Court in the present proceedings. For that very said reason, the decision of the State Government of allotting the land and implementing the same by the Collector is not at all sustainable in law. In that view of the matter, we have no hesitation in holding that the allotment of the land in favour of the 'Chavan Family' vide orders dated 4th August 1998 and 28th August 1998 is not sustainable in law.

c. As to whether the doctrine of desuetude would be applicable to the facts of the present case.

39. An argument is sought to be raised on behalf of the RRCHS that the doctrine of *desuetude* would be applicable to the facts of the present case. Let us test the correctness of the said argument.

40. Reliance in this respect is sought to be placed on behalf of the RRCHS on the judgment of this Court in the case of ***Bharat Forge Co. Ltd.*** (supra). In the said case, the liability of the respondents therein to pay octroi to the Municipal Corporation was under consideration. It was sought to be argued that since the 1918 Notifications had not been implemented, they stood repealed '*quasily*' by the time new Octroi Rules came to be framed in 1963 and, in fact, they were applied to realize octroi from the respondents. In this background, this Court observed thus:

> "**34.** Though in India the doctrine of desuetude does not appear to have been used so far to hold that any statute has stood repealed because of this process, we find no objection in principle to apply this doctrine to our statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the "dead letter". We would think it would advance the cause of justice to accept the application of doctrine of desuetude in our country

> also. Our soil is ready to accept this principle; indeed, there is need for its implantation, because persons residing in *free* India, who have assured fundamental rights including what has been stated in Article 21, must be protected from their being, say, prosecuted and punished for violation of a law which has become "dead letter". A new path is, therefore, required to be laid and trodden.
>
> **35.** In written submissions filed on behalf of respondents, it has been stated that the theory of desuetude can have no application to the facts of the present case, since the challenge by the respondents is to the levy and calculation under the 1963 Schedule, and not to the rates enforced since 1918. This submission has been characterised as "most important". As to this we would observe that if Notification of 1818 were to prevail despite 1918 Notifications, the fact that some changes were made in the Schedule in 1963 has no legal bearing on the question under examination. The theory of desuetude has been pressed into service by the appellant only to take care of relevant 1918 Notifications. If those notifications can be said to stand eclipsed, the fact that changes were made in the rates etc. in 1963 cannot stand in the way of application of the theory of desuetude."

41. It could thus be seen that the Court observed that the doctrine of *desuetude* would apply to our statutes as well for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the "dead letter". It has been observed that it would advance the cause of justice to accept the application of doctrine of

desuetude in our country as well. The Court observed that in view of the fundamental rights enshrined in Article 21 of the Constitution of India, a citizen must be protected from being prosecuted and punished for violation of a law which has become "dead letter".

42. However, it is clear from the aforesaid observations that for applicability of the doctrine of *desuetude*, the statute must not only be required to be in disuse for long duration but instead a contrary practice must also be prevalent.

43. We fail to understand as to how the said doctrine of *desuetude* would be applicable in the facts of the present case.

44. It is sought to be contended on behalf of the RRCHS that though the subject land was shown as Reserved Forest Land, as far back as in 1879, it was not used as a Forest Land for a long period and therefore it ceased to be Reserved Forest Land. We fail to appreciate such a submission. The subject land has continuously been recorded as 'Reserved Forest' in the Forest Records. Not only that, as we have already reproduced hereinabove, the Forest Authorities through a number of communications had requested the Revenue Authorities to correct the revenue entries and transfer the land to the Forest

Department. In any case, this Court in the case of ***Monnet Ispat and Energy Limited*** (supra) has correctly laid down the legal position as under:

> "**201.** From the above, the essentials of the doctrine of desuetude may be summarised as follows:
>
> (*i*) The doctrine of desuetude denotes a principle of quasi-repeal but this doctrine is ordinarily seen with disfavour.
>
> (*ii*) Although the doctrine of desuetude has been made applicable in India on few occasions ***but for its applicability, two factors, namely, (i) that the statute or legislation has not been in operation for a very considerable period, and (ii) the contrary practice has been followed over a period of time must be clearly satisfied. Both ingredients are essential and want of any one of them would not attract the doctrine of desuetude***. In other words, a mere neglect of a statute or legislation over a period of time is not sufficient but it must be firmly established that not only the statute or legislation was completely neglected but also the practice contrary to such statute or legislation has been followed for a considerably long period."
>
> [Emphasis supplied]

45. It could thus be seen that this Court has held that the doctrine of *desuetude* is ordinarily seen with disfavour. It has also been held that although this doctrine has been made applicable in India on a few occasions, however, for its applicability, two factors are necessary, namely, (*i*) that the

statute or legislation has not been in operation for a very considerable period, and (*ii*) the contrary practice has been followed over a period of time. It has been held that, not one but, both the conditions must be available to attract the applicability of the said doctrine of *desuetude*.

46. In the present case, the legislative history would clearly show that, right from 1878, when the 1878 Act was enacted, under Section 34 of the said Act, the law with regard to protection and conservation of forest has been consistently evolving more and more in favour of protection of forests.

47. We do not find any substance in the argument that the Notification dated 1st March 1879 issued under Section 34 of the 1878 Act has been put to disuse for a long time. In any case, nothing has been brought on record to show that a practice contrary to the provisions of the said Act was being applied. In that view of the matter, such an argument has to be heard only to be rejected.

d. As to whether the RRCHS could be said to be a bona fide purchaser of the subject land.

48. It is sought to be urged on behalf of the RRCHS that they are the *bona fide* purchaser of the subject land in question. It

is submitted on behalf of the RRCHS that the land in question was reflected as revenue land. It is submitted that the Final Regional Plan of Pune Region, which has statutory force, had shown the subject land as municipal land. It is further submitted that even prior to that in the Pune Regional Plan implemented on 17th May 1976, the land in question was included in the agricultural zone. As such, by no stretch of imagination, the RRCHS could have known that the subject land was Forest Land and not Revenue Land. It is further stated that even the revenue record pertaining to the subject land had shown the possession of the 'Chavan Family' over the said land. It is, therefore, submitted that the RRCHS, which is a *bona fide* purchaser of the land in question, could not be faulted with and penalized for no fault of theirs.

49. As already stated herein above, the subject land was allotted to the 'Chavan Family' by the Tehsildar, Haveli on 13th May 1968 on *Eksali* (yearly) lease for the year 1968-69. Not only that, the 'Chavan Family' had given an undertaking to the Mamlatdar, Haveli to surrender the said land prior to completion of one year. The 'Chavan Family' had further given an undertaking that the said land would not be put to any

other use except for the agricultural purposes. It is further pertinent to note that after the grant of lease for one year, there has been no renewal of the said lease, although the names of the 'Chavan Family' do appear in the 7/12 extracts of revenue records.

50. This Court in the case of ***Suraj Bhan and others v. Financial Commissioner and Others***[10] has held as follows:

> "**9.** ..... It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or *jamabandi* have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide *Jattu Ram* v. *Hakam Singh* [(1993) 4 SCC 403 : AIR 1994 SC 1653]). As already noted earlier, civil proceedings in regard to genuineness of will are pending with the High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition."

51. Recently, this Court in the case of ***P. Kishor Kumar v. Vittal K. Patkar***[11] has also observed thus:

> "**13.** .... mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question."

[10] (2007) 6 SCC 186 : 2007 INSC 424
[11] 2023 SCC OnLine SC 1483

52. It is well-settled law that the entries in the revenue record do not confer a title to the property.

53. It would further appear from the record that after the lease was not renewed in 1969, for a period of about 20 years, the members of the 'Chavan Family' kept silent. It appears that only in the year 1988, they started moving the authorities for allotment of land in lieu of compensation. However, much prior to the actual allotment of land in their favour, they had already entered into transactions with the Builders. A perusal of the record would reveal that one Mr. Rajesh Shah had filed a civil suit, being Civil Suit No. 1023 of 1998 for permanent injunction against Mr. Raghunath Shripati Chavan and others. In the said suit, Mr. Aniruddha P. Deshpande, Chief Promoter of the RRCHS, was also made a party respondent. The other members of the 'Chavan Family' were also made respondents. In the said suit, Mr. Rajesh Shah had claimed that he had purchased 75% share of the subject land from some of the co-owners of the said land. The said co-owners had executed the Development Agreement dated 16th February 1995 and had granted development rights as well as executed

Power of Attorney to the plaintiff along with one Mr. Yogesh Kariya. In the said proceedings, Mr. Aniruddha P. Deshpande, Chief Promoter of the RRCHS had filed an affidavit dated 28th August 1998, wherein it was stated that the owners/holders of the said land had executed the Development Agreement dated 25th July 1992 and thereafter the Supplementary Agreement dated 23rd June 1995 in his favour and that the possession of the said property to the extent of their share had been delivered to him. He had also placed on record the copies of the General Power of Attorney dated 22nd June 1995 and 12th February 1996 executed by one Mr. Kesu Hari Chavan and others in his favour.

54. It will be relevant to reproduce Para 2 of the Affidavit dated 28th August 1998 filed by Mr. Aniruddha P. Deshpande, Chief Promoter, RRCHS in Civil Suit No. 1023 of 1998, which reads thus:

> "2. It is submitted that the owners/holders of the suit property Shri Abu G. Chavan, Sarubai S. Chavan, Pandurang Bhau Chavan, Kesu Hari Chavan, Dattatraya R. Chavan, Narayan Nana Chavan, Rakhmabai Vithal Chavan and others have executed Development agreement 25/7/92 and thereafter supplementary agreement dated 23/6/95 in favour of this applicant. The said owners have also delivered the possession of the suit property to the extent of their share to this applicant. As such this

applicant is in possession of the suit property to the extent of the undivided share of the above owners. In view of the said fact this applicant is necessary party to the suit. It is submitted that if any order is passed in the suit the same may seriously affect the right of this applicant and the applicant may suffer irreparable loss and hardship. The orders passed in the suit may also lead to multiplicity of litigation as such it is necessary that this third party may be added as the Defendant to the suit. If this applicant is added as the necessary party to the suit no hardship or injustice will be caused either to the plaintiff or the Defendant, on the contrary this applicant may suffer irreparable loss and hardship, hence in the interest of justice this applicant may please be added as the necessary party to the suit. The details of this applicant is as under:

SHRI ANIRUDDH P. DESHPANDE
AGE : 37 YEARS, OCC : BUSINESS
RESIDING AT : 66/2, APEKSHA,
OPPOSITE LAW COLLEGE,
PUNE 411 004."

55. It is further to be noted that another suit being Civil Suit No.1364 of 1998 was filed by one Mr. Raju Shivaji Bhonsale and another challenging the allotment of the subject land to the 'Chavan Family'. In the said suit also, Mr. Aniruddha P. Deshpande, Chief Promoter of the RRCHS was made a party respondent. Mr. Aniruddha P. Deshpande had also filed an affidavit dated 14th February 2005 in the said suit *inter alia* stating therein that during 1995 Mr. Chavan and others had granted the Development Rights in his favour.

56. It is further to be noted that the members of the 'Chavan Family' had entered into Development Agreement with Mr. Aniruddha P. Deshpande on 18th August 1998.

57. It is further to be noted that an order approving the allotment of the land in favour of the 'Chavan Family' was passed by the Government vide order dated 4th August 1998, whereas the actual allotment of land by the Collector is by order dated 28th August 1998.

58. It is relevant to note that in the civil suit filed by Mr. Rajesh Shah, a Compromise *Pursis* dated 29th August 1998 was filed by the members of the 'Chavan Family', Mr. Aniruddha P. Deshpande and Mr. Rajesh Shah, which reads thus:

> "i) the members of the Chavan family (allottees of the said land) and Mr. Aniruddha P. Deshpande (Chief Promoter of the Richie Rich Co-operative Housing Society) admit, agree and confirm that (a) the Development Agreement dated 16.2.1995 pertaining to the said land has been executed by the three members of the Chavan family in favour of Mr. Rajesh Shah and Mr. Yogesh Kariya, and (b) the possession of the said property was delivered to Mr. Rajesh Shah and Yogesh Shah to the extent of shares of owners executing the agreement.
>
> ii) the Agreement dated 25.7.1992 and the Supplementary Agreement dated 23.6.1995 and Agreement dated 16.2.1995 executed by

the other owners in favour of Mr. Aniruddha P. Deshpande is also valid and subsisting and that the possession of the said property has been given to him to the extent of shares of the owners executing the said agreement.

iii) the said land is exclusively in the joint possession of Mr. Rajesh Shah, Mr. Yogesh Kariya, Raghunath Chavan and Aniruddha P. Deshpande.

iv) an Agreement has been reached between Mr. Rajesh Shah and Aniruddha P. Deshpande that out of the said land Mr. Shah and Mr. Kariya shall be entitled to an area of 8 acres and Mr. Aniruddha P. Deshpande shall be entitled to the balance area. They shall be deemed to be in possession of the respective area; and

v) Mr. Raghunath Chavan and other 19 members of Chavan family have agreed to sell/grant development rights for the respective area to Mr. Rajesh Chavan and Mr. Yogesh Kariya and Mr. Aniruddha P. Deshpande."

59. On the very same date i.e., 29th August 1998, after recording the Compromise *Pursis*, the said civil suit being Civil Suit No. 1023 of 1998 came to be disposed of.

60. We ask a question to ourselves as to whether the short span within which the decision was taken by the Government to allot the land in favour of the 'Chavan Family', the actual allotment of the land to the 'Chavan Family' by the Collector and the disposal of the suit in terms of the compromise on the very next day, is merely a coincidence.

61. It is further to be noted that the allotment order dated 28th August 1998, specifically prohibited the 'Chavan Family' in view of conditions (2) and (4), reproduced hereinabove, from mortgaging, donating, selling, partitioning or exchanging in any other manner, or allotting the said land on lease to any other person without the prior permission of the District Collector. The allotment order further mandated the 'Chavan Family' to bring the said land under cultivation within a period of two years from the date of the allotment. It further prohibited the said land from being used for any other purpose than agricultural purpose.

62. In the light of these glaring facts, can it be said that the RRCHS is a *bona fide* purchaser? The records amply speak for themselves.

63. It is amply clear that though the *Eksali* (yearly) lease expired in 1969, the members of the 'Chavan Family' were silent for a period of almost 20 years. Things started moving only in 1988. During the said period, much before the allotment could be done, the members of the 'Chavan Family' had already started negotiating the deals with Mr. Aniruddha P. Deshpande, the Chief Promoter of RRCHS and Mr. Rajesh

Shah. The files were moving at different levels from 1991 to 1998, culminating in the final allotment in the year 1998. In the meantime, all the Development Rights in the land already stood transferred either to Mr. Aniruddha P. Deshpande, the Chief Promoter of the RRCHS or to Mr. Rajesh Shah. For the said purpose, not only had some of the members of the 'Chavan Family' entered into a Development Agreement, but they had also executed Power of Attorney in favour of said Mr. Aniruddha P. Deshpande surrendering their entire rights in his favour.

64. In that view of the matter, we find no substance in the argument that the RRCHS was a *bona fide* purchaser of the subject land. The facts point out that the 'Chavan Family' was only set up as a front for the benefit of the Developers. The fact that the agricultural land of the 'Chavan Family' was acquired, was being misused by the Developers as a pretext for grabbing the valuable piece of Forest Land for the purposes of commercial development. For doing so, even the status of a person who belongs to backward class was being misused.

e. As to whether the RRCHS would be entitled to allotment of alternate piece of land in view of the order passed by this Court in In Re: "Construction of Multi Storeyed Buildings in Forest Land Maharashtra".

65. An alternate submission made on behalf of the RRCHS is that since they are the *bona fide* purchaser of the subject land from the members of the 'Chavan Family', they would be entitled to allotment of an alternate piece of land as has been done by this Court in I.A. No.2771 of 2009.

66. The facts in the present case and the facts in I.A. No.2771 of 2009 are totally different. In the said case (i.e. I.A. No.2771 of 2009), the State had illegally taken possession of the land belonging to the predecessor-in-title of the applicants therein. Not only that, but the said land was given to the Armament Research Development Establishment Institute ("ARDEI" for short), which was a unit of Defence Department of the Union of India. There was no acquisition proceeding. The applicants therein fought right from the Trial Court to this Court and succeeded in getting a decree for possession of the land. When they put the decree in execution, the ARDEI opposed the same contending therein that an Armament Defence establishment was constructed thereon.

67. Faced with this situation and realizing its mistake, the State Government allotted another piece of land in lieu of the land which was already given in possession of the ARDEI. However, the record subsequently revealed that the land which was allotted to the applicants therein was notified as a Forest Land.

68. The Court noted the following special circumstances in the said case:

(i) "That the applicants had succeeded upto this Court and as such, they cannot be denied the benefits of the decree passed in their favour;

(ii) That the action of the State Government in encroaching upon the land of a citizen was itself illegal;

(iii) The State Government ought to have taken due precautions before allotting an alternate piece of land to the applicants;

(iv) That the land which was notified as a Forest Land could not have been allotted;

(v) That the State ought to have allotted a land, which had a clear title and also had a marketable value; and

(vi) That after the proceedings had reached finality in favour of the petitioners/applicants, the matter was lingering in the Court for almost 15 years."

69. In the aforesaid factual scenario, this Court passed the order dated 23rd July 2024, which is as under:

> "8. We, therefore, direct the State Government to come with a clear stand:
>
> i. As to whether another piece of equivalent land will be offered to the petitioner(s)/applicant(s); or
>
> ii. As to whether adequate compensation would be paid to the petitioner(s)/applicant(s); or
>
> iii. As to whether the State Government proposes to move the Central Government for denotification of the said land as forest land."

70. Thereafter, the Additional Chief Secretary, Revenue and Forest Department, Mantralaya, Mumbai tendered an undertaking before this Court, agreeing to allot an alternate piece of land in favour of the applicants therein. Accepting the said undertaking, this Court passed the order dated 9th September, 2024, which is as under:

> "7. We accept the undertaking and take it on record. However, in addition, we direct that the Collector, Pune shall personally ensure that the alternate land admeasuring 24 acres 38 guntas out of Survey No.7 situated at Mouje Yewalewadi, Tq. Haveli, District Pune would be measured and demarcated and thereafter peaceful and vacant possession of the said land would be handed over to the applicants/petitioners.
>
> 8. It is needless to state that if any encroachments are there on the said land, the same shall be removed prior to the said land being handed over to the applicants/petitioners.

> 9. Insofar as the modification to be issued under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 for changing the land use in question from Private/Semi-Private to Residential is concerned, we direct that the said procedure shall be completed within a period of three months from today.
>
> 10. It is further directed that all the formalities for conveying the title of the said land in favour of the applicants/petitioners shall be completed within a period of six weeks from today."

71. That is not the case here. The RRCHS knowing very well that the land was a Forest Land had entered into transactions with the members of the 'Chavan Family' much prior to the land even being allotted in their favour. The transactions between the RRCHS and the members of the 'Chavan Family' were totally illegal and contrary to the conditions on which the land was allotted to the 'Chavan Family'. As per the conditions of allotment, the land or any part thereof could not have been transferred by the 'Chavan Family' to anyone without the prior permission of the District Collector. The land was required to be brought under cultivation within a period of two years from the date of the allotment and that the land or any part thereof was not to be used for any other purpose than the agricultural purpose.

72. As already discussed hereinabove, the RRCHS through Mr. Aniruddha P. Deshpande had already entered into transactions with the members of the 'Chavan Family' much before the land was allotted in their favour. The members of the 'Chavan Family' had given the developmental rights as well as executed Power of Attorney in favour of said Mr. Aniruddha P. Deshpande even prior to the allotment of land in their favour. As discussed hereinabove, immediately on the next day on which the land was allotted in favour of the 'Chavan Family', the suit with regard to the subject property was compromised between Mr. Rajesh Shah, plaintiff and Mr. Aniruddha P. Deshpande. It is thus clear that the case of the RRCHS, in no way, bears any resemblance to the case in I.A.No. 2771 of 2009.

73. The RRCHS through Mr. Aniruddha P. Deshpande had, with open eyes, entered into illegal transactions with the members of the 'Chavan Family'. If a direction, as sought by the applicant-RRCHS is issued, it will amount to granting a premium to the RRCHS for the illegalities committed by them.

74. In that view of the matter, we do not find any merit in the said submission.

f. As to whether the doctrine of public trust would be applicable in the facts and circumstances of the present case.

75. That leaves us with the issue with regard to the doctrine of public trust.

76. Recently, this Court in the case of ***In Re: T.N. Godavarman Thirumulpad v. Union of India and others***[12] had an occasion to consider the importance of doctrine of public trust in the environmental matters. It will be apposite to refer to the following observations of this Court:

> "**151.** The importance of the 'Public Trust' doctrine in environmental and ecological matters has been explained by this Court in the case of *M.C. Mehta* v. *Kamal Nath*. This Court has elaborately referred to various articles and the judgments on the issue to come to a conclusion that the 'public trust' doctrine is a part of the law of the land in the following paragraphs:
>
> > **"23.** The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled *An ecological perspective on property* : *A call for judicial protection of the public's interest in environmentally critical resources* published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:

[12] **(2025) 2 SCC 641 : 2024 INSC 178**

> “Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.
>
> ‘Human activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service … growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.’

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

'We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".'

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources — for example, wetlands and riparian forests — can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value

choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions."

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

an erudite article "*Public Trust Doctrine in Natural Resource Law* : *Effective Judicial Intervention*", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

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

25.The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the

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

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

26. The American law on the subject is primarily based on the decision of the United States Supreme Court in *Illinois Central Railroad Co.* v. *People of the State of Illinois*, [146 US 387 (1892) : 36 L.Ed. 1018]. In the year 1869 the Illinois Legislature made a substantial grant of submerged lands — a mile strip along the shores of Lake Michigan extending one mile out from the shoreline — to the Illinois Central Railroad. In 1873, the Legislature changed its mind and repealed the 1869 grant. The State of Illinois sued to quit title. The Court while accepting the

stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to preemption and sale. It was a title held in trust — for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public. According to Professor Sax the Court in *Illinois Central* [146 US 387 : 36 L.Ed. 1018 (1892)] "articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties".

27. In *Gould* v. *Greylock Reservation Commission*, [350 Mass 410 (1966)] the Supreme Judicial Court of Massachusetts took the first major step in developing the doctrine applicable to changes in the use of lands dedicated to the public interest. In 1886 a group of citizens interested in preserving Mount Greylock as an unspoiled natural forest, promoted the creation of an association for

the purpose of laying out a public park on it. The State ultimately acquired about 9000 acres, and the legislature enacted a statute creating the Greylock Reservation Commission. In the year 1953, the legislature enacted a statute creating an Authority to construct and operate on Mount Greylock an Aerial Tramway and certain other facilities and it authorised the Commission to lease to the Authority any portion of the Mount Greylock Reservation. Before the project commenced, five citizens brought an action against both the Greylock Reservation Commission and the Tramway Authority. The plaintiffs brought the suit as beneficiaries of the public trust. The Court held both the lease and the management agreement invalid on the ground that they were in excess of the statutory grant of the authority. The crucial passage in the judgment of the Court is as under:

> "The profit-sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority or power to permit use of public lands and of the Authority's borrowed funds for what seems, in part at least, a commercial venture for private profit."

Professor Sax's comments on the above-quoted paragraph from *Gould* decision are as under:

> "It hardly seems surprising, then,

that the court questioned why a State should subordinate a public park, serving a useful purpose as relatively undeveloped land, to the demands of private investors for building such a commercial facility. The court, faced with such a situation, could hardly have been expected to have treated the case as if it involved nothing but formal legal issues concerning the State's authority to change the use of a certain tract of land.... *Gould*, like *Illinois Central*, was concerned with the most overt sort of imposition on the public interest : commercial interests had obtained advantages which infringed directly on public uses and promoted private profits. But the Massachusetts court has also confronted a more pervasive, if more subtle, problem — that concerning projects which clearly have some public justification. Such cases arise when, for example, a highway department seeks to take a piece of parkland or to fill a wetland."

28.In *Sacco* v. *Development of Public Works*, [532 Mass 670], the Massachusetts Court restrained the Department of Public Works from filling a great pond as part of its plan to relocate part of State Highway. The Department purported to act under the legislative authority. The court found the statutory power inadequate and held as under:

"the improvement of public lands contemplated by this section does not include the widening of a State highway. It seems rather that the improvement of public lands which

> the legislature provided for … is to preserve such lands so that they may be enjoyed by the people for recreational purposes."

29. In *Robbins* v. *Deptt. of Public Works*, [244 NE 2d 577], the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, "wetlands of considerable natural beauty … often used for nature study and recreation" for highway use.

30. Professor Sax in the article (Michigan Law Review) refers to *Priewev* v. *Wisconsin State Land and Improvement Co.*, [93 Wis 534 (1896)], *Crawford County Lever and Drainage Distt. No. 1*, [182 Wis 404], *City of Milwaukee* v. *State*, [193 Wis 423], *State* v. *Public Service Commission*, [275 Wis 112] and opines that "the Supreme Court of Wisconsin has probably made a more conscientious effort to rise above rhetoric and to work out a reasonable meaning for the public trust doctrine than have the courts of any other State".

31. Professor Sax stated the scope of the public trust doctrine in the following words:

> "If any of the analysis in this Article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust pro blems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which

> diffused public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the delicate mixture of procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining of wetland filling on private lands in a State where governmental permits are required."

32. We may at this stage refer to the judgment of the Supreme Court of California in *National Audubon Society* v. *Superior Court of Alpine County*, [33 Cal 3d 419]. The case is popularly known as "*the Mono Lake case*". Mono Lake is the second largest lake in California. The lake is saline. It contains no fish but supports a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tura (*sic*) on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the City of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls

were abandoning the lake and the scenic beauty and the ecological values of Mono Lake were imperilled. The plaintiffs environmentalist — using the public trust doctrine — filed a law suit against Los Angeles Water Diversions. The case eventually came to the California Supreme Court, on a Federal Trial Judge's request for clarification of the State's public trust doctrine. The Court explained the concept of public trust doctrine in the following words:

> "'By the law of nature these things are common to mankind — the air, running water, the sea and consequently the shores of the sea.' (Institutes of Justinian 2.1.1) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns 'all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people.'"

The Court explained the purpose of the public trust as under:

> "The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in *Marks* v. *Whitney*, [6 Cal 3d 251], '[p]ublic trust easements (were) traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable

waters of the State, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses — navigation, commerce and fishing — did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that '[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the State is not burdened with an outmoded classification favouring one mode of utilization over another. There is a growing public recognition that one of the important public uses of the tidelands — a use encompassed within the tidelands trust — is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favourably affect the scenery and climate of the area.'

Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavour probably qualifies the lake as a 'fishery' under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological — the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds.

> Under *Marks* v. *Whitney*, [6 Cal 3d 251], it is clear that protection of these values is among the purposes of the public trust."

The Court summed up the powers of the State as trustee in the following words:

> "Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust…."

The Supreme Court of California, inter alia, reached the following conclusion:

> "The State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this State shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (*See* Johnson, 14 U.C. Davis L. Rev. 233, 256-57/; Robie, *Some Reflections on Environmental Considerations in Water Rights Administration*, 2 Ecology L.Q. 695, 710-711 (1972);

> Comment, 33 Hastings L.J. 653, 654.) As a matter of practical necessity, the State may have to approve appropriations despite foreseeable harm to public trust uses.
> In so doing, however, the State must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see *United Plainsmen* v. *N.D. State Water Cons. Comm'n*, [247 NW 2d 457 (ND 1976)] at pp. 462-463, and to preserve, so far as consistent with the public interest, the uses protected by the trust."

The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin.

33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case*, [33 Cal 3d 419] clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in *Mono Lake case*, [33 Cal 3d 419] to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor

to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In *Phillips Petroleum Co.* v. *Mississippi*, [108 S.Ct. 791 (1988)] the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case*, [108 S.Ct. 791 (1988)] assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.

34. Our legal system-based on English common law-includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the 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.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of

> the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

152. This Court in unequivocal terms has held that the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

153. The law with regard to the importance of the 'public trust' doctrine in ecological/environmental matters has further been evolved and expanded by this Court in subsequent judgments. In the case of *Association for Environment Protection* v. *State of Kerala*[11], this Court has referred to some of the judgments which followed the law laid down in the case of *Kamal Nath* (supra), which are as under:

> **"6.** In *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*, [(1999) 6 SCC 464], the Court applied the public trust doctrine for upholding the order of the Allahabad High Court which had quashed the decision of Lucknow Nagar Mahapalika permitting appellant M.I. Builders (P) Ltd. to construct an underground shopping complex in Jhandewala Park, Aminabad Market, Lucknow, and directed demolition of the construction made on the park land. The High Court had noted that Lucknow Nagar Mahapalika had entered into an agreement with the appellant for construction of shopping complex and given it full freedom to lease out the shops and also to sign agreement on its behalf and held that this was impermissible. On appeal by the builders, this Court held that the terms of agreement were unreasonable, unfair and atrocious. The Court then invoked the public trust doctrine and held that being a trustee of the park on behalf of the public, the Nagar Mahapalika could not have transferred the same to the private builder and thereby deprived the residents of the area of the quality of life to which they were entitled under the Constitution and municipal laws.
>
> **7.** In *Intellectuals Forum* v. *State of A.P.*, [(2006) 3 SCC 549], this Court again invoked the public trust doctrine in a

matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati Town, referred to some judicial precedents including *M.C. Mehta* v. *Kamal Nath* [*M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388], *M.I. Builders (P) Ltd.*, [(1999) 6 SCC 464], *National Audubon Society* [*National Audubon Society* v. *Superior Court*, 658 P 2d 709 : 33 Cal 3d 419 (1983)] and observed : (*Intellectuals Forum case*, [(2006) 3 SCC 549], SCC p. 575, para 76)

> "*76.* … This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly *prohibit* the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources…."
>
> (emphasis in original)

8. In *Fomento Resorts and Hotels Ltd.* v. *Minguel Martins*, [(2009) 3 SCC 571 : (2009) 1 SCC (Civ) 877], this Court

was called upon to consider whether the appellant was entitled to block the passage to the beach by erecting a fence in the garb of protecting its property. After noticing the judgments to which reference has been made hereinabove, the Court held : (SCC pp. 614-15 & 619, paras 53-55 & 65)

> "*53.* The public trust doctrine enjoin s upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.
>
> *54.* The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and

other public assets. Professor Joseph L. Sax in his classic article, 'The Public Trust Doctrine in Natural Resources Law : Effective Judicial Intervention' (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including downslope lands, waters and resources.

***

65. We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These

> constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems."
>
> **154.** The importance of the doctrine of 'public trust' has further been emphasized in the case of *Tata Housing Development Company Limited* v. *Aalok Jagga (2020) 15 SCC 784* to which one of us (B.R. Gavai, J.) was a party."

77. In the present case, it appears that the then Minister for Revenue and the then Divisional Commissioner had totally given a go-bye to the doctrine of public trust. The facts appearing on the record are glaring.

78. As already discussed hereinabove, as per the order of the Tehsildar, Haveli, the land was allotted to the 'Chavan Family' on *Eksali* (yearly) lease and as per the undertaking of the 'Chavan Family' the possession of the land was to be returned on the expiry of the one year and there has been no further renewal. It further appears that thereafter the members of the 'Chavan Family' were in deep slumber.

79. From the records, it appears that one Mr. R.S. Chauhan, a retired Police Inspector, residing in Pune and others, for the first time, started agitating their rights on 4th August 1988. They had addressed communications dated 4th August 1988, 30th August 1988 and 27th December 1990 for allotment of subject land on permanent basis for cultivation in lieu of their land at Survey No. 37, acquired for Kondhwa Leprosy Hospital.

80. It appears that thereafter for the first time the Collector, Pune on 19th June 1991 recommended the permanent allotment of the subject land to the 'Chavan Family' only insofar as 3 Acres and 20 Gunthas are concerned. The Collector, Pune specifically observed that the 'Chavan Family' had the cultivation rights from 1969 only on 3 Acres and 20 Gunthas, whereas the rest of the land was reserved for village animal feeding. The Collector, Pune, therefore, recommended allotment of only 3 Acres and 20 Gunthas to the 'Chavan Family' and also recommended that possession of rest of the land should be handed over to the Forest Department.

81. It is to be noted that the office of the Collector, Pune on 26th August 1994, rejected the request of the Executive Engineer, MSEB for establishment of High-Tension Sub-

Station on the ground that the land in question was reserved as “Forest Land”.

82. The Divisional Commissioner in his letter dated 30th November 1994 addressed to the Secretary, Revenue and Forest Department, Mantralaya noted that the Collector, Pune had opined that the ‘Chavan Family’ was entitled only to 3 Acres and 20 Gunthas. He also recorded the objection of the Forest Department to the effect that the Forest Department had asked for possession of the subject land for the purposes of afforestation.

83. In spite of noticing all of these facts, the Divisional Commissioner recommended that the entire subject land of 11 Hectare 89 Are be granted to the ‘Chavan Family’. Thereafter the matter remained pending at the level of the State Government.

84. The then Minister for Revenue considered the proposal and came to a conclusion that the provisions of the 1980 FC Act were not applicable to the present case. However, he decided to seek the opinion of the Law and Judiciary Department of the Government of Maharashtra. The Deputy Secretary to Government, Law and Judiciary Department on

27th July 1998, relying on the judgment of this Court in the case of ***Banshi Ram Modi*** (supra) opined that the permission of the Government of India is not necessary. While doing so, he specifically ignored the specific judgment of this Court in the case of ***Ambica Quarry Works*** (supra) and the direction of this Court dated 12th December 1996 in the present proceedings.

85. Almost within a week thereafter, i.e. on 4th August 1998, the Government of Maharashtra issued an order allotting the land in favour of the 'Chavan Family'. A corrigendum thereto, vide order dated 13th August 1998, specifically provided that the allotment of land was specifically for "Agricultural purpose". The Collector, Pune thereafter within a short span, i.e. on 28th August 1998, allotted the subject land in favour of the 'Chavan Family'.

86. The alarming speed with which the events took place from July to August 1998 speaks volumes.

87. As already discussed hereinabove, though the 'Chavan Family' had already entered into transactions with Mr. Aniruddha P. Deshpande, the Chief Promoter of the RRCHS, they transferred the land in favour of RRCHS on 19th

December 1998. This is again done in breach of the allotment order of 28th August 1998. The Divisional Commissioner thereafter vide order dated 30th October 1999, permitted the sale of the subject land to the RRCHS on payment of 75% of the price fixed by the Collector, Assistant Director, Town Planning Department, Pune.

88. It is to be noted that though the powers for grant of permission are with the Collector, it is the Divisional Commissioner who exercised the said powers for reasons best known to him. Thereafter the District Collector granted permission for use of the subject land for Non-Agricultural purposes on 8th July 2005.

89. It is to be noted that all this has been done in the teeth of various communications of the Forest Department since 1991 requesting the Revenue Department to transfer the land to the Forest Department. It was also brought to the notice of the Revenue Authorities by the Forest Department that a plantation had already been carried out on the subject land in the year 1995-96.

90. In the light of these glaring facts, we have no hesitation in holding that the then Minister for Revenue, Government of

Maharashtra and the then Divisional Commissioner, Pune have acted totally in breach of public trust to illegally cause gain to private individuals at the cost of sacrificing precious Forest Land.

91. In the conclusion, we have no hesitation to hold that the allotment of the subject land to the 'Chavan Family' was in blatant disregard to the provisions of the law inasmuch as it was violative of Section 2 of the 1980 FC Act as well as the directions issued by this Court from time to time. We also hold that the allotment of the subject land was made, ignoring the communications of the Forest Department which had insisted that the said land could not be allotted inasmuch as, the same was classified as a Forest Land. We also have no hesitation to hold that the then Minister for Revenue and the then Divisional Commissioner, Pune have given a total go-bye to the doctrine of public trust inasmuch as, valuable forest land was allotted to the 'Chavan Family' *de hors* the provisions of the law.

92. While hearing this matter, another glaring issue has come to the notice of the Court. It has been noticed that a vast stretch of the land which is notified as 'Forest Land' is still in

possession of the Revenue Department. Such a situation creates many complexities as is evident in the present matter. The Revenue Department, despite resistance from the Forest Department, allotted the land to private individuals/institutions for non-forestry purposes. This, in turn, reduced the vital green cover. We, therefore, find that it is necessary that a direction needs to be issued to all the State Government and the Union Territories to hand over the possession of the lands which are recorded as 'Forest Land' and which are in possession of the Revenue Department to the Forest Department.

93. The report of the CEC would also reveal that there is material to show that many of the Forest Lands have been allotted to private individuals/institutions for non-forestry purposes. Any such allotment after 12th December 1996, i.e., the date on which the directions were given by this Court in the present proceedings, would not be sustainable in law.

94. It would, therefore, be imperative that wherever it is possible to take back the possession of such land, the State/Union Territory should do so and hand over the possession to the Forest Department for forestry purposes.

However, if on account of such lands already being converted for non-forest activities, it is found that taking back the possession of the land would not be in the larger public interest, then the States/Union Territories should recover the cost of the land from such individuals/institutions and use the said amount for the purpose of afforestation, restoration and conservation.

VI. CONCLUSION

95. We, therefore, dispose of the Interlocutory Applications and the Writ Petition in the following terms:

(i) We hold that the allotment of 11.89 ha of Reserve Forest land in Survey No.21 (old Survey No.20A) Kondhwa Budruk in District Pune for agriculture purposes on 28th August 1998 and subsequent permission given for its sale in favour of RRCHS on 30th October 1999 was totally illegal;

(ii) We further hold that Environmental Clearance granted by the MoEF on 3rd July 2007 to RRCHS is illegal and is accordingly quashed and set aside;

(iii) Since the State of Maharashtra has recalled the communication dated 4th August 1998 approving the allotment of the subject land to the 'Chavan Family', we uphold the same;

(iv) We direct that the possession of the subject land, which is reserved as a Forest Land, but is in possession of the Revenue Department, should be handed over to the Forest Department within a period of three months from today;

(v) We further direct the Chief Secretaries of all the States and the Administrators of all the Union Territories to constitute Special Investigation Teams for the purpose of examining as to whether any of the reserved Forest Land in the possession of the Revenue Department has been allotted to any private individuals/institutions for any purpose other than the forestry purpose;

(vi) The State Governments and the Union Territories are also directed to take steps to

take back the possession of the land from the persons/institutions in possession of such lands and handover the same to the Forest Department. In case, it is found that taking back the possession of the land would not be in the larger public interest, the State Governments/Union Territories should recover the cost of the said land from the persons/institutions to whom they were allotted and use the said amount for the purpose of development of forests; and

(vii) We further direct the Chief Secretaries of all the States and the Administrators of all the Union Territories to constitute Special Teams to ensure that all such transfers take place within a period of one year from today. Needless to state that hereinafter such land should be used only for the purpose of afforestation.

96. Before we part with this judgment, we place on record our deep appreciation for Shri K. Parameshwar, learned Senior Counsel, ably assisted by Mr. M.V. Mukunda, Ms. Kanti, Ms. Raji Gururaj and Mr. Shreenivas Patil, learned counsel, for rendering valuable assistance to this Court as Amicus Curiae. We also place on record our appreciation for the efforts put in by Dr. Abhishek Manu Singhvi, Shri Shekhar Naphade and Shri Aniruddha Joshi, learned Senior Counsel appearing for the parties.

.....CJI
(B.R. GAVAI)

.....J
(AUGUSTINE GEORGE MASIH)

.....J
(K. VINOD CHANDRAN)

NEW DELHI;
MAY 15, 2025.