16
ENVIRONMENTAL LAW

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I INTRODUCTION

TOWARDS THE fag end of the year the Supreme Court had an occasion to observe[1] that "Certainly some development projects would have to be undertaken but without infringing on the protection to the forests or the environment. These are ecologically and climatically sensitive areas. It must be ensured that development does not impinge upon the purity of the environment beyond restricted and permissible limits. The doctrine of sustainable development and precautionary principle would be the guiding factors for the courts to pass such directions."These observations were made in the context of the court taking a judicial notice on its own from the newspaper reports about the lack of necessary facilities, essential amenities and the risk to the lives of the *yatris*, en route and around the "Holy Cave of Amarnath." The apex court rightly observed in 2006 that "the World has reached a level of growth in the 21st Century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the Courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of the humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. .."[2] These two observations reflect the judicial trend regarding the environmental protection that continued during the year under survey. In this survey an effort has been made to analyse some of the important decisions rendered during last year. It may be mentioned that the list of cases discussed in this survey is not exhaustive in any way and is mostly illustrative. However adequate care has been taken to include all the major decisions relating to environmental protection.

II ANTHROPOCENTRISM V. ECOCENTRISM

Saving the Asiatic wild buffalo

In *T.N. Godavaraman Thirumulpad* v.*Union of India,*[3] the Supreme Court

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1 In *Court on its own Motion* v *Union Of India*. Judgment in *suo motu* Writ Petition (Civil) No. 284 of 2012 decided on 13-12-2012 *available at* http://www.stplindia.in /SCJFiles/2012_STPL%28Web%29_733_SC.pdf (Last visited on 19.03.2013) in, para 30.

2 *Intellectuals Forum, Triupathi* v. *State of Andhra Pradesh,* AIR 2006 SC 1350.

3 AIR 2012 SC 1254.

speaking through K S Radhakrishnan J dealt with the issue relating to Asiatic wild buffalo which is reported to be the most impressive and magnificent animal in the world and which is found in the Western and Eastern ghats of the country. The amicus curiae in the case moved the court seeking a direction to the Union of India and the State of Chhattisgarh to prepare a rescue plan to save the wild buffalo. Another direction sought was to take immediate steps to ensure that interbreeding between the wild and domestic buffalo does not take place and the genetic purity of the wild species is maintained. Directions were also sought for, to prepare a scheme in consultation with the villagers for relocation of villagers from the Udanti Sanctuary to ensure the survival of the endangered wild buffalo and ensure that all research and monitoring inputs including scientific management of the wild buffalo and its habitat be made available on long term basis by involving institutes such as the Wildlife Institute of India, and the Bombay Natural History Society. While noting that the steps taken by the State of Chhattisgarh to preserve and conserve the wild buffalo which was declared as a state animal are far from satisfactory, the court made a very interesting and important observation in the context of human-wildlife conflict. The Court made the following pertinent observations in the context:[4]

> Human-wildlife conflict is fast becoming a critical threat to the survival of many endangered species, like wild buffalo, elephants, tiger, lion etc. such conflicts affect not only its population but also has broadened environmental impacts on ecosystem equilibrium and biodiversity conservation. Laws are man-made, hence there is likelihood of anthropocentric bias towards man, and rights of wild animals often tend to be of secondary importance but in the universe man and animal are equally placed, but human rights approach to environmental protection in case of conflict, is often based on anthropocentricity.
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> Man-animal conflict often results not because animals encroach human territories but vice-versa. Often, man thinks otherwise, because man's thinking is rooted in anthropocentrism. Remember, we are talking about the conflict between man and endangered species, endangered not because of natural causes alone but because man failed to preserve and protect them, the attitude was destructive, for pleasure and gain. Often, it is said such conflicts is due human population growth, land use transformation, species habitat loss, degradation and fragmentation, increase in eco-tourism, access to natural reserves, increase in livestock population, *etc*. Proper management practices have to be accepted, like conservation education for local population, resettlement of villages, curbing grazing by livestock and domestic animals in forest, etc., including prey-preservation for the wild animals. Provision for availability of natural water, less or no disturbance from the tourists has to be assured. State also has to take steps to remove encroachments and, if necessary, can also cancel the Patta already granted and initiate acquisition proceedings to preserve and protect wildlife and its corridors. Areas outside PAs is reported to have the maximum

4 *Id*. at 1258.

> number of man- animal conflict, they fall prey to poachers easily, and often invite ire of the cultivators when they cause damage to their crops. These issues have to be scientifically managed so as to preserve and protect the endangered species, like wild buffalo and other species included in Schedule 1 Part 1 of the Wildlife Protection Act, as well as other species which face extinction.

The court further observed that:

> Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, inter-generational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focused and non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature centered where humans are part of nature and non-human has intrinsic value. In other words, human interest do not take automatic precedence and humans have obligations to non- humans independently of human interest. Ecocentrism is therefore life-centered, nature-centered where nature includes both human and non-humans. National Wildlife Action Plan 2002-2012 and centrally sponsored scheme (Integrated Development of Wildlife Habitats) is centered on the principle of ecocentrism.[5]

The court, disposed of the case with the direction to the State of Chhattisgarh to give effect fully to the centrally sponsored scheme – "the Integrated Development of Wildlife Habitats", so as to save wild buffalo from extinction .The state was also directed to take immediate steps to ensure that interbreeding between wild and domestic buffalos does not take place and genetic purity of the wild species is maintained , to take immediate steps to undertake intensive research and monitor the wild buffalo population in Udanti Wildlife Sanctuary and other areas, where the wild buffalo may still be found, including preparing them their genetic profile for future reference. Thus the apex court has rendered a landmark judgment which has far reaching consequences on protection of wildlife in India.

In another landmark judgment delivered in the year 2012 in *T. N. Godavarman Thirumulpad* v.*Union of India,*[6] the Supreme Court was approached seeking a direction to the Central Government to declare red sandalwood also known as red sanders (lal chandan/rakta chandan in Hindi) as a "specified plant" under the Wildlife (Protection) Act, 1972. The red sander is an endemic and endangered species, found only in the State of Andhra Pradesh and the State Government has banned the sale of red sanders even by private parties. The wood which is very costly is of huge demand in Japan, China and Western world and it is included in the negative list of plant species for export purposes, implemented by the directorate general of foreign trade, ministry of commerce, placing restrictions on international trade of red

5 *Id*. at 1259.

6 AIR 2012 SC 1254.

sanders. Large scale smuggling of red sanders is however reported from various quarters. In order to protect the species, a proposal was made by the State of Andhra Pradesh to Government of India for its inclusion in schedule VI of the Act.

In the considered opinion of the apex court, the Sandalwood as such finds no place in CITES[7] but it is included in the red list of IUCN[8] as vulnerable' and hence call for serious attention by the Central Government, considering the fact that all the sandalwood growing states have stated that it faces extinction. Section 61 of the Act empowers the Central Government to add or delete any entry to or from any schedule if it is known that it is expedient so to do. Section 5 deals with the constitution of national board for wildlife (NBWL) which is headed by the Prime Minister as chairman. Section 5C deals with the functions of the NBWL which states that it shall be the duty of the national board to promote the conservation and development of wildlife and forests by such measures as it thinks fit. In such circumstances rather than giving a positive direction to include sandalwood in schedule VI the court was inclined to give a direction to the Central Government to examine the issue at length in consultation with NBWL and take a decision within a period of six months as to whether it is to be notified as a specific plant and be included in schedule VI of the Act.

The court also compared anthropocentrism which considers humans to be the most important factor and value in the Universe and states that humans have greater intrinsic value than other species, with ecocentrism which supports the protection of all life forms, not just those which are of value to humans or their needs and underlines the fact that humans are just one among the various life forms on earth[9] .The court also was of the view that time has also come to think of a legislation similar to the Endangered Species Act, enacted in the United States which protects both endangered species defined as those "in danger of extinction throughout all or a significant portion of their range" and "threatened species", those likely to become endangered "within foreseeable time". The term species includes species and sub-species of fish, wildlife and plants as well as geographically distinct populations of vertebrate wildlife even though the species as a whole may not be endangered. India, the Parliament would bestow serious attention in this regard.

Thus the Supreme Court has exhibited a welcoming judicial activism to ensure that an endangered plant species is protected and preserved. It may be noted that earlier in the year also the court has emphatically declared the desirability of prevalence of ecocentrism over anthropocentrism.

A division bench of the Madras High Court also expressed similar opinion in the context of wildlife management in the case of protection of elephants, their habitats and corridors under the 'project elephant' launched by the Government of India in *Defence of Environment and Animals* v. *Principal Chief Conservator of*

7 The Convention on International Trade in Endangered Species of Wild Fauna and Flora which is also known as the Washington Convention. It entered into force on 01.06 1975. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species in the wild.

8 The International Union for Conservation of Nature is the world's oldest and largest global environmental organization.

9 *Supra* note 7.

Forest.[10] The court held that the Central Government is empowered to issue advisories/directions from time to time to take appropriate action for conservation and protection of wild life and its habitats. The court directed 52 states and Union territories the resort owners and other private land owners are to vacate and hand over vacant possession of the lands falling within the notified 'elephant corridor' to the District Collector, Nilgiris within three months for the purpose of protection of elephants, their habitats and corridors.[11]

III ACQUISITION OF PRIVATE LAND BY GOVERNMENT FOR URBANIZASTION

In *Surinder Singh Brar* v. *Union of India,*[12] the apex court considered the validity of acquisition of land belonging to private individuals sought to be acquired for setting-up /expansion of a technology park, citing a public purpose. The court noted that the Chandigarh administration itself has neither developed nor is it running the technology park but has allotted the land to a private entrepreneur for this purpose and that the private company has profiteered by selling the area further to other private companies. Thus the whole idea behind the impugned acquisition proceedings was to assist a private entrepreneur to profiteer. No person from the ordinary public will be benefited in any way. In today's age and economy a private entrepreneur can very well purchase land by private negotiations instead of the state assisting him.

The court also considered the potential violation of environmental and forest laws consequent on acquisition of the said private land and observed that the land in dispute is very close to the Sukhna lake and adjacent to the Sukhna Choe and the area was declared as a reserved forest. If the land in dispute and its surrounding areas are allowed to be urbanized it will result in the degradation of the habitat and disturb the thousands of migratory birds which come every year to the Sukhna lake. It may be mentioned here that the Sukhna lake is a wetland declared by the Central Government and is a protected area and is known as the Sukhna Wildlife Sanctuary. If high rise buildings are allowed to be constructed on the land being acquired under the impugned notification it will affect the migratory route of the thousands of birds which make their nests in the Sukhna lake area after migrating from as far as Siberia in Russia. Permitting urbanization next to the Sukhna lake and next to the surrounding reserve forest will be a death knell for the precious wildlife and fauna existing there.

Though trees may be able to survive the onslaught of urbanization, wild animals and birds certainly will not be able to do so and they would have to move to safer habitats away from human habitation. It would also be pertinent to mention here that the land sought to be acquired was forest land as also agricultural land. The proposed acquisition will result in the extinction, uprooting & leveling of these trees which are in the prime of life. The proposed acquisition is violative of the climate and environmental laws.

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10 2012 (2) FLT 49 (Mad. H.C.)]: (2011) 4 MLJ 20.

11 *Supra* note 11.

12 [2012] INSC 617: (2013) 1 SCC 403.

The acquisition of the land in dispute would involve chopping down of fruit bearing trees and non fruit bearing trees. Under the provisions of the Forest Act no tree in Chandigarh can be cut without permission of the Central Government. In case the Central Government decides not to grant the permission to the Chandigarh administration to chop down trees standing on the land in dispute, the entire acquisition proceedings would end up in a nullity with wastage of huge sums of money and man-hours.

The land sought to be acquired under the impugned notification is basically agricultural land on which, apart from crops, there are hundreds of fruit bearing trees and non-fruit bearing trees standing. This green area acts as a barrier between the urbanized areas in Chandigarh and Panchkula in Haryana. This green and forested area also helps in stopping soil erosion into the Sukhna Choe. The removal of this green and forested area would result in soil erosion which is like to cause flash floods in the rainy season thus putting in danger the city of Chandigarh itself. As such the dangers to the ecology and subsequently to the city itself can well be imagined if the acquisition under the impugned notification is allowed to stand.

The apex court observed that with the urbanization and choking of Sukhna Choe/lake catchment area , Chandigarh itself will be liable to immense danger of floods which can be life threatening to its citizen as seen in the recent past. It was also pointed out that the Chandigarh administration has not carried out an environmental impact assessment study which is extremely necessary before an exercise of this magnitude is carried out.

It was noted by the court that the proposed acquisition would also disturb the ecological plants, flora and fauna of the area because the proposed acquisition will also disturb the dense forest area having more than 50,000 grown trees which are more than 30 years old. Forests and orchards are the lungs of a city and have a very important environmental function to perform. Such lands cannot be acquired under the provisions of Land Acquisition Act, 1894.

The court speaking through G S Singhvi J observed that "nature is beautiful but it does demand obedience to its ordinances. When violated the earth erupts and we have earthquakes. Man cannot continue to 'pick nature's pocket'. He must discipline himself." Consequently the court held that the said acquisition was void on the grounds including the ground of violation of environmental law.

Touching upon a similar issue, in Union *Territory of Lakshadweep* v. *Seashells Beach Resort,*[13] the apex court was called upon to determine the validity of the High Court of Kerala ordering the processing of the applications of the respondents to run the business of resorts at Agatti on the Lakshadweep islands.[14]

13 [2012] INSC 319 (11 May 2012) *available at:* http://www.liiofindia.org (Last visited on 17.03.13)

14 Lakshadweep or Laccadive is a cluster of islands situate at a distance ranging from 200 to 440 kms from the main land known for their natural beauty but fragile, ecological and environmental balance. Most of the islands are not inhabited, the total population living on the islands including Agatti, which is the largest in size, being just about sixty thousand. The island is of great attraction for tourists both domestic and international who approach this unique destination by sea as also by air. The islands are centrally administered and have been the concern of the administrators as much as the environmentalists.(See para 18 of the judgment).

The Lakshadweep administration found fault with the direction issued by the high court on several grounds including the ground that respondent-writ petitioner before the high court had no licence from the tourism department and no clearance from the coastal zone regulatory authority or the pollution control board to run the resort established by it. The administration also pointed out that diversion of land use *qua* different survey numbers in Agatti was obtained by one of the partners of the respondent for construction of dwelling houses and not for establishing a commercial establishment like a tourist resort and that respondent had misused the said permission by constructing a resort in the no development zone (NDZ) falling within 50 meters of high tide line and thereby violated the, costal regulation zone (CRZ) norms. The respondent has, according to the Administration, constructed cottage at a distance of 28 meters from the high tide line on the western side of the sea and thus violated the terms of the permission given to it.

The administration further alleged that it had never permitted the respondent to run a resort and that it had on the basis of a permission obtained from the local panchayat, which had no authority to issue such permission, started bringing tourists, including foreign tourists, to the resort on the pretext that the accommodation was in the nature of a home stay. The administration also relied upon a notification dated 06.01.11 issued by the Government of India in exercise of its powers under section 3 of the Environment (Protection) Act, 1986 which notification was intended to promote conservation and protection of the island's unique environment and its marine area and to promote development through a sustainable integrated management plan based on scientific principles, taking into account the vulnerability of the coast to natural hazards.

In view of the conflicting claims and in the absence of an integrated island management plan (IIMP) for Agatti island in pursuance of the notification dated 06.01.11 of Ministry of Environment and Forests (MoEF), Government of India, the court directed the constitution of a committee of experts with R V Raveendran J, former judge, Supreme Court of India, as the Chairman for evaluation of the draft IIMPs in view of the development already in existence and the future developments, conservation and preservation of the entire area, and to look in to the impact of the proposed development on the livelihood of indigenous population and the various vulnerability issues, and to examine the allegations regarding violation of the CRZ *etc*.

This judgment highlights the conflict between the so called developmental issues and the need to protect the natural environment.

IV SAND MINING ON EITHER SIDE OF THE RIVER: ENVIRONMENT DEGRADATION AND THREAT TO BIODIVERSITY

In *Deepak Kumar* v. *State of Haryana*[15], the Supreme Court dealt with the validity of notices proposing to auction the extraction of minor mineral boulder, gravel and sand quarries of an area around 5 hectares in different districts of Uttar Pradesh, Rajasthan and Haryana. The court was concerned in particular with the

15 AIR 2012 SC 1386: (2012) 4 SCC 629.

disturbing trend of serious illegal and unrestricted upstream, in-stream and flood plain sand mining activities and the prevailing degree of degradation of the sites and the environment, especially on the river beds.

The court speaking through K S Radhakrishnan J, observed that sand mining on either side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of river beds, destruction of natural habitats of organisms living on the river beds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers *etc*. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day-by-day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

The court expressed its deep concern since it faced with a situation where the auction notices permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on bio-diversity as well[16].

The court found that no study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued and observed thus:[17]

> We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a river bed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 kilometer, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.

While taking note that the MoEF has constituted a Core Group under the Chairmanship of the Secretary (E&F) to look into the environmental aspects associated with mining of minor minerals, *vide* its order dated 24.03.2009, and that the Core Group has made certain important recommendations including the

16 *Ibid.*

17 *Supra* note 15 at para 9.

definition of minor mineral, size of the mine lease, period of the mine lease, cluster of mine approach for small sized mines, requirement of mine plan for minor minerals, creation of separate corpus for reclamation / rehabilitation of mines of minor minerals, depth of mining, and desirability of uniform minor mineral concession rules, the Supreme Court has relied upon the following recommendations:

(a) In the case of mining leases for riverbed sand mining, specific river stretches should be identified and mining permits/lease should be granted stretch wise, so that the requisite safeguard measures are duly implemented and are effectively monitored by the respective regulatory authorities.
(b) The depth of mining may be restricted to 3m/water level, whichever is less; and
(c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone should be worked out on case to case basis, taking into account the structural parameters, locational aspects, flow rate *etc*. and no mining should be carried out in the safety zone so worked out.

The court found that the MoEF, wrote a letter dated 01.06.10 to all the chief ministers of the states to examine the report and to issue necessary instructions for incorporating the recommendations made in the report in the Mineral Concession Rules for mining of minor minerals under section 15 of Mines and Mineral (Development and Regulation) Act, 1957. Following are the key recommendations re-iterated in the letter: [18]

(1) Minimum size of mine lease should be 5 ha.
(2) Minimum period of mine lease should be 5 years.
(3) A cluster approach to mines should be taken in case of smaller mines leases operating currently.
(4) Mine plans should be made mandatory for minor minerals as well.
(5) A separate corpus should be created for reclamation and rehabilitation of mined out areas.
(6) Hydro-geological reports should be prepared for mining proposed below groundwater table.
(7) For river bed mining, leases should be granted stretch wise, depth may be restricted to 3m/water level, whichever is less, and safety zones should be worked out.
(8) The present classification of minerals into major and minor categories should be re-examined by the Ministry of Mines in consultation with the States.

The Ministry of Mines, Government of India sent a communication no. 296/7/2000/MRC dated 16.05.2011 called "Environmental aspects of quarrying and of minor minerals - evolving of model guidelines" along with a draft model guidelines calling for inputs before 30. 06. 2011. Draft rules called Minor Minerals Conservation and Development rules, 2010 were also put on the website. Further, it may be noted section 15(1A) (i) of the Act specifies the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like

18 *Supra* note 15 at 1394.

destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area once selected by the state government, whether by way of reimbursement of the cost of rehabilitation or otherwise by the persons holding the quarrying or mining lease.[19]

The court was of the view that all state governments / union territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the state governments and union territories. Model rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and bio-diversity point of view and therefore the state governments have to frame proper rules in accordance with the recommendations, under section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.[20]

The court recognized that quarrying of river sand, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. In stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the streams physical habitat characteristics.[21]

The court opined that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. The court while taking note of the technical, scientific and environmental matters, also found that, the MoEF, government of India, had issued various recommendations in March 2010 followed by the Model rules, 2010 framed by the Ministry of Mines have to be given effect to, for inculcating the spirit of article 48A, article 51A (g) read with article 21 of the Constitution.[22]

V UNAUTHORIZED CONSTRUCTION IN CITES AND IMPACT ON SOCIETY

In *Dipak Kumar Mukherjee* v. *Kolkata Municipal Corporation*[23] the apex court speaking through G S Singhvi J considered the menace of illegal and unauthorized constructions of buildings and other structures in different parts of the country that has acquired monstrous proportion. While reminding the stakeholders that the court has repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the high court or itself gave directions for

19 *Ibid.*
20 *Ibid.*
21 *Supra* note 15 AIR 2012 SC 1386-1395.
22 *Ibid.*
23 AIR 2013 SC 927.

demolition of illegal constructions, a reference was made to *K. Ramadas Shenoy* v. *Chief Officers*, *Town Municipal Council,*[24] *Virender Gaur* v. *State of Haryana,*[25] *Pleasant Stay Hotel* v. *Palani Hills Conservation Council,*[26] *Pratibha Coop. Housing Society Ltd*. v. *State of Maharashtra,*[27] *G.N. Khajuria* v. Delhi Development Authority,[28] *Manju Bhatia* v. *New Delhi Municipal Council*,[29] *M.I. Builders Pvt. Ltd*. v. *Radhey Shyam Sahu*,[30] *Friends Colony Development Committee* v. *State of Orissa*,[31] *Shanti Sports Club* v. *Union of India*[32] and *Priyanka Estates International Pvt. Ltd*. v. *State of Assam*.[33]

The court while ordering the demolition of an unauthorized construction in Kolkata after taking adequate precautionary measures, observed *inter alia* that: [34]

> …….respondent No.7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed there under but also of cheating those who purchased portions of unauthorized construction under a bona fide belief that respondent No.7 had constructed the building as per the sanctioned plan. With the demolition of unauthorized construction some of such persons will become shelter less. It is, therefore, necessary that respondent No.7 is directed to compensate them by refunding the cost of the flat, etc., with interest. Respondent No that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.
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> It may be noted that this judgment undoubtedly makes a severe impact on the illegal and unauthorized constructions which also have a hazardous effect on the environment.

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24 (1974) 2 SCC 506.
25 (1995) 2 SCC 577.
26 (1995) 6 SCC 127. Also see *Cantonment Board, Jabalpur* v. *S.N. Awasthi,* 1995 Supp.(4) SCC 595.
27 (1991) 3 SCC 341.
28 (1995) 5 SCC 762.
29 (1997) 6 SCC 370.
30 (1999) 6 SCC 464.
31 (2004) 8 SCC 733.
32 (2009) 15 SCC 705.
33 AIR 2010 SC 1030.
34 *Id.*, para 27.

VI BHOPAL GAS LEAK AND CONTINUING SAGA OF VICTIMS

In *Bhopal Gas Peedith Mahilau Sangat* v. *Union of India,*[35] the court dealt with the continuing plight of the Bhopal gas leakage victims even after about 28 years of the avoidable disaster. Noting that "unlike natural calamities that are beyond human control, avoidable disasters resulting from human error/negligence prove more tragic and completely imbalance the inter-generational equity and cause irretrievable damage to the health and environment for generations to come. Such tragedy may occur from pure negligence, contributory negligence or even failure to take necessary precautions in carrying on certain industrial activities"[36] and that the relief and rehabilitation measures for the victims are far from satisfactory, the court directed the Madhya Pradesh High Court to monitor the implementation of such measures effectively on a day-to-day basis.

Keeping in view the provisions and scheme of the National green Tribunal Act (NGTA), the court directed that all matters instituted after coming into force of the Act or in schedule I to the Act be transferred, to render expeditious and specialized justice in the field of environment to all concerned.[37] Similarly, it was also directed that the cases filed and pending prior to coming into force of the NGTA, involving questions of environmental laws to the national green tribunal.[38]

The court also noted that huge toxic materials/waste are still lying in and around the factory of Union Carbide Corp. (I) Ltd. in Bhopal and that its very existence is hazardous to health. The court therefore directed the disposal of the said waste at the earliest and in a scientific manner. Thus, it was directed that the Union of India and the State of Madhya Pradesh should take immediate steps for disposal of this toxic waste lying in and around the Union Carbide factory, Bhopal, on the recommendations of the empowered monitoring committee, advisory committee and the NIREH within six months from the date of the judgment. The court further clarified that the disposal should be strictly in a scientific manner which may cause no further damage to human health and environment in Bhopal.[39]

VII DISMANTALING OF FOREIGN SHIPS ON INDIAN COASTS AND ENVIRONMENT PROTECTION

In *Research Foundation for Science, Technology & Natural Resource Policy* v. *Union of India*[40] the Supreme Court considered the issue of dismantling of ships or ship-breaking which often generates large quantities of toxic wastes that may be hazardous to environment. In the instant case, the Supreme Court was dealing with the validity of the recommendations of the Gujarat Maritime Board and the Gujarat Pollution Control Board to allow the vessel a specific ship named Oriental Nicetyâ (formerly known as Exxon Valdez), which had entered into Indian territorial waters for the purpose of dismantling at Alang port in Gujarat.

35 AIR 2012 SC 3081
36 *Id*. at 3082.
37 *Id.* at 3093.
38 *Ibid.*
39 *Supra* note para 35.
40 AIR 2012 SC 2927.

The court after carefully considering the submissions made on behalf of the respective parties expressed the view thus:

> Once clearance has been given by the State Pollution Control Board, State Maritime Board as well as the Atomic Energy Regulatory Board for the vessel to beach for the purpose of dismantling, it has to be presumed that the ship is free from all hazardous or toxic substances, except for such substances such as asbestos, thermocol or electronic equipment, which may be a part of the ship's superstructure and can be exposed only at the time of actual dismantling of the ship. The reports have been submitted on the basis of actual inspection carried out on board by the above-mentioned authorities, which also include the Customs authorities. The Atomic Energy Regulatory Board has come up with suggestions regarding the removal of certain items of the ship during its dismantling. The suggestions are reasonable and look to balance the equities between the parties.

The court therefore directed the concerned authorities to allow the ship in question to beach and to permit the ship owner to proceed with the dismantling of the ship, after complying with all the requirements of the Gujarat Maritime Board, the Gujarat Pollution Control Board and atomic energy regulatory board. However, the court made it clear that if any toxic wastes embedded in the ship structure are discovered during its dismantling, the concerned authorities shall take immediate steps for their disposal at the cost of the owner of the vessel, M/s. Best Oasis Ltd. or its nominee or nominees obviously following the "polluter pays principle".

The court emphasized that in all future cases of a similar nature, the concerned authorities shall strictly comply with the norms laid down in the Basel Convention or any other subsequent provisions that may be adopted by the Central Government in aid of a clean and pollution free maritime environment, before permitting entry of any vessel suspected to be carrying toxic and hazardous material into Indian territorial waters.

VIII INDISCRIMINATE INDUSTRIALIZATION AND IMPACT ON SURVIVAL OF THE LIVESTOCK AND ENVIRONMENT

The well-known saying in the context of industrialization was 'industrialize or perish'. This saying seems to have been replaced by another saying 'industrialize and perish' in case of indiscriminate industrialization. This phenomenon was highlighted by an unreported judgment of the Andhra Pradesh High Court in *M/s. Qureshi Internationl* v. *The Director of Factories A.P., Hyderabad.*[41] The court while dealing with the validity of demolition of compound wall of an abattoir by the local administration, found that permissions were granted initially by the concerned departments like industries, gram panchayat and the state pollution Control Board to the petitioner industry to establish an abattoir in a hurry, and that subsequently the gram panchayat withdrew the permission. The court speaking through L Narasimha Reddy J observed that, whether on account of the indifference

41 Writ Petition No.25219 of 2012 and judgment dated 06.08.2012 2013(1) ALT 502.

on the part of the government, or the desperate attempt of businessmen to earn money through whatever means, Medak District, which derives its name as rice bowl (Methuku Seema in Telugu), has become the bowl of beef and slaughter capital of the state. The existing modern abettors have contributed to the rich profits for the owners thereof, but have successfully made the livestock in Medak and surrounding districts, almost to vanish.[42]

The court further noted that: [43]

(i) In the name of industrial development, the topography of Medak District was changed to such an extent, that a major portion of it has become unfit for inhabitation of human beings, and animals in any way, have been submitted to the abettors.

(ii) In India, and particularly, in the State of Andhra Pradesh, it is difficult to imagine life in a village, without the existence of animals, such as the bullocks, cows, buffaloes, sheep, and goats. Rural life is interdependent upon such animals. Unfortunately, on account of shortsighted policies of the State and greed of the businessmen, serious threat has come to the very existence of the livestock. The situation has reached such serious proportions, that the Ongole Breed, which was a pride of the State, is facing extinction in India, even while it is grown as a best source of meat in other countries. Cow, which figures next after mother, and gives the milk, a source of energy for children and adults alike, just by eating gross, is now looked upon as a raw material for slaughter houses.

On account of phenomenal profits earned by the modern slaughter houses, they are prepared to purchase such animals at higher cost. Poor farmers are tempted to sell them, driven by their indebtedness and worries. Added to this, theft of animals is on the rampage. The cost of milk, naturally increased manifold. Agriculture has almost becoming secondary even in villages. A rural economy, which flourished even during alien regimes, has slowly become paralyzed, after the country became independent.[44]

(iii) Successive Governments have proclaimed their policy to make villages, free of huts. Cattle sheds unfortunately are mostly in the huts. Obviously not to stand in the way of the Government, which is determined to make villages, huts free, the farmers have also chosen to forego the huts as well as animals. Separate ministry is created for protection of environment by diversity, *etc*. On the one hand, hundreds of crores are spent to protect handful tigers and lions, and on the other hand, phenomenal income is earned in the form of taxes and duties by giving licences liberally, for killing hundreds of cows and buffaloes, each minute and export of the meat. The results are not difficult to imagine. If a country feels that the income derived by it by selling meat would add to its economy, one can safely conclude that it is drifting away from the values of nature, ecology

42 *Ibid.*

43 *Supra* note 41 at paras 6-8.

44 *Id*., para 7.

> and economy, and it is a matter of time, that it would perish.[45]

Therefore, while dismissing the writ petition, this court directed this:[46]

> No more permissions shall be accorded for establishment of abettors in Medak District, having regard to the capacity of the existing ones;
>
> Whenever an application is made for establishment of abettors in any other district, the same shall be considered by the concerned authorities, and in particular, the Gram Panchayats, only when the population of the cows/ buffaloes exceeds 10% and that of sheep exceeds, 20% of the human population in the district, as a unit; to be certified by the Head of the Animal Husbandry Department of the District and countersigned by the District Collector; and
>
> The authorities shall also insist on establishment and maintenance of breeding centers for production of the animals of the concerned category and the abettors shall function only after adequate raw material/livestock is produced.

This judgment therefore reflects the systemic failure in preservation and conservation of livestock, and should work as a warning in case of indiscriminate industrialization.

IX MINING AND FOREST LAWS

The year under survey witnessed certain important judgments being passed by the Supreme Court and High Courts in India in relation to mining. In B.L.Nanda v. State of M.P .[47] The Madhya Pradesh High Court reiterated that no person has a vested right for grant of mining lease. Admittedly the court relied upon the Supreme Court's judgment in the case of *State Tamil Nadu* v. *M/s. Hind Stone* wherein it was held that, "...No one has a vested right to grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in any one an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application."

In *Monnet Ispat and Energy Ltd* v. *Union of India*[48] the appellants claiming to be the companies interested in developing iron and steel projects sought grant of leases of iron ore mines situated in the state of Jharkhand. Applications of ten such companies including the appellants were forwarded by the Government of Jharkhand sometime around August 2004 to the Union of India, for its consideration for grant

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45 *Id*., para 8.

46 *Supra* note 41.

47 [2012 (2) FLT 40(M.P. H.C.)]: ILR [2011] MP 1954: 2011(4) MPLJ83.

48 [2012] INSC 406 (26 July 2012) *available at* http://www.liiofindia.org (Last visited on 19.03.13)

of lease in certain areas. Subsequently, on realizing that those areas were reserved for exploitation in the public sector, the State Government by its letter dated 13.09.2005, sought to withdraw nine of these proposals including those of all the appellants. The Central Government however, did not merely return the nine proposals, but rejected the same by its letter dated 06.03.2006 addressed to the government of Jharkhand. All those appellants therefore, along with some others filed writ petitions to challenge these two letters dated 13.09.2005 and 06.03.2006, and sought a direction to grant the mining leases to them in the proposed areas, and to seek appropriate reliefs.

The court held that the State of Jharkhand was fully justified in declining the grant of leases to the private sector operators, and in reserving the areas for the public sector undertakings on the basis of notifications of 1962, 1969 and 2006. All that the state government has done is to act in furtherance of the policy of the statute and it cannot be faulted for the same.

In *Samaj Parivartana Samudaya* v. *State of Karnataka*[49] the Supreme Court considered the rampant pilferage and illegal extraction of natural wealth and resources and the environment degradation and disaster due to unchecked intrusion into the forest areas which prevailed for a considerable time in the State of Andhra Pradesh and Karnataka. In this writ petition ,apex court was compelled to intervene in spite of the reported ongoing investigation into the said affairs and observed the facts of the present case reveal an unfortunate state of affairs which has prevailed for a considerable time in certain districts of both the States of Andhra Pradesh and Karnataka. The centrally empowered committee (CEC) has recommended, and the complainant and petitioners have also highlighted, a complete failure of the state machinery in relation to controlling and protecting the environment, forests and minerals from being illegally mined and exploited[50]

The court reiterated that wherever and whenever the State fails to perform its duties, the court shall step into ensure that rule of law prevails over the abuse of process of law. Such abuse may result from inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or legal obligations in consonance with the procedural and penal statutes. This court recalled that it expressed its concern about the rampant pilferage and illegal extraction of natural wealth and resources, particularly, iron ore, as also the environmental degradation and disaster that may result from unchecked intrusion into the forest areas and *vide* its order dated 29.07.11 invoked the precautionary principle, which is the essence of article 21 of the Constitution of India as per the dictum of this Court in the case of *M.C. Mehta* v. *Union of India*[51], and had consequently issued a ban on illegal mining. The court also directed Relief and Rehabilitation Programmes to be carried out in contiguous stages to promote inter-generational equity and the regeneration of the forest reserves. This is the ethos of the approach consistently taken by this court, but this aspect primarily deals with the future concerns. In respect of the past actions, the only option is to examine in

49 (2012) 11 SCC1.

50 (2012) 7 SCC 407.

51 *Supra* note 50.

depth the huge monetary transactions which were effected at the cost of national wealth, natural resources, and to punish the offenders for their illegal, irregular activities. The protection of these resources was, and is the constitutional duty of the state and its instrumentalities, the court should adopt a holistic approach and direct comprehensive and specialized investigation into such events of the past.[52]

Compelled by the above circumstances and keeping in mind the clear position of law, the court referred certain issues specified in the CEC report dated 20.04.12 for investigation by the Central Bureau of Investigation (CBI) and further directed that all the proceedings in relation to these items, if pending before any court, shall remain stayed till further orders of this court. The CBI was directed to undertake investigation in a most fair, proper and unbiased manner uninfluenced by the stature of the persons and the political or corporate clout, involved in the present case .The court also directed all the parties, including the Government of the States of Andhra Pradesh, Karnataka and all other government departments of that and/or any other state, to fully cooperate and provide required information to CBI.[53]

Thus the apex court took up the mantle of even the investigation upon itself in order to protect the environment. This judgment assumes importance in view of the serious allegations made in respect of mining of iron ore in certain parts of the states concerned, and should serve as an eye opener to all the concerned involved in the indiscriminate mining activities.

X HAZARDOUS WASTE MANAGEMENT

In *Research Foundation for Science* v. *Union of India,*[54] the Supreme Court dealt with a PIL filed for the following reliefs:

1. Direction to the Union of India banning all imports of all hazardous/toxic wastes;
2. Direction for amendment of rules in conformity with the BASEL convention and article 21, 47 and 48A of the Constitution as interpreted by the court; and
3. Declaration that without adequate protection to the workers and public and without any provision of sound environment management of disposal of hazardous/toxic wastes, the Hazardous Wastes (Management & Handling) Rules, 1989 are violative of Fundamental Rights and, therefore, unconstitutional.

The basic grievance of the writ petitioner was with regard to the import of toxic wastes from industrialized countries to India, despite such wastes being hazardous to the environment and life of the people of this country. The writ petitioner sought to challenge the decision of the Ministry of Environment and Forests permitting import of toxic wastes in India under the cover of recycling, which, according to the petitioner, made India a dumping ground for toxic wastes.

52 *Id*., para 44.

53 *Supra* note 50.

54 [2012] INSC 363 (6 July 2012) *available at:* http://www.liiofindia.org (Last visited on 10.03.2013).

It was alleged that these decisions were contrary to the provisions of articles 14 and 21 of the Constitution and also article 47, which enjoins a duty on the state to raise the standards of living and to improve public health. In the writ petition it was also contended that Article 48A provides that the state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

In view of the important issues raised the writ petition was treated by all concerned not as any kind of adversarial litigation, but litigation to protect the environment from contamination on account of attempts made to dump hazardous wastes in the country, which would ultimately result in the destruction, not only of the environment, but also the ecology as well and, in particular, the fragile marine bio-diversity along the Indian coastline. The court appreciated the fact that the petitioner Foundation has played a very significant role in bringing into focus some very serious questions involving the introduction of hazardous substances into the country, which needed the Court's attention to be drawn having regard to the BASEL Convention, aimed at protecting marine biology and countries having coast-lines alongside seas and oceans.[55]

The writ petition was disposed of by reasserting the interim directions given with regard to the handling of hazardous wastes and ship breaking in the various orders passed in the writ petition from time to time and, in particular, the orders dated 13.10.97 and 14.10.03. The central government was also directed to ban import of all hazardous/toxic wastes which had been identified and declared to be so under the BASEL convention and its different protocols. The Central Government was also directed to bring the Hazardous Wastes (Management & Handling) Rules, 1989, in line with the BASEL Convention and articles 21, 47 and 48A of the Constitution.[56] This is an important judgment having a bearing on the management and handling of hazardous wastes in India.

In *Harpal Singh* v. *State of Punjab,*[57] a division bench of the Punjab and Haryana High Court dealt with an opposition to the setting up of a municipal solid waste project. The petitioner in this case contended that pollution or nuisance would be created by setting up the solid waste project at the site in question. They also alleged that there is inhabitation near the site .On the other hand, the Municipal Corporation of Patiala contended that the site plan is more than 1 km from the nearby village. Apart from the above, the court was satisfied that steps taken by the municipal corporation were in consonance with the specification provided in schedule III of the Municipal Solid Wastes (Management and Handling) Rules, 2000.

The municipal corporation had made specific averments that it has chalked out a methodology for waste collection, segregation, transportation and disposal at site, which is as follows:

(i) Door to door waste collection system to ensure segregated collection of waste.
(ii) Appropriate storage of mixed/segregated waste at Transfer Stations. Transportation of Waste shall be done in covered vehicles.

55 *Supra* note 55.
56 *Id.* at 2638.
57 2012(2) FLT 287 (P&H. H.C.) .

(iii) After unloading M.S.W. on the tipping floor/pits at processing plant, it shall be immediately sprayed with herbal insecticide to retard its rate of decomposition thereby reducing any chance of foul smell.
(iv) M.S.W. shall not be allowed to stay unprocessed in the building, for more than 2 days.
(v) The proper cleaning of tipping floor shall be taken up once in 24 hours.
(vi) Construction equipments shall be fitted with noise shields
(vii) Noisy construction equipment would not be permitted during night hours.
(viii) Air emission standards envisaged for the project shall be superior to applicable National Standards, resulting in better air quality.
(ix) In order to repel rodents, the liquid discharge produced by washings and leachate, if any shall be taken out through proper water traps and underground pipes rather than through open drains.
(x) Further, about 75% to 80% of solid waste is expected to be converted/ recycled into usable form and only inert (20-25%) will be sent for disposal at Scientific Landfill site. The proposed project will also lead to employment generation from nearby villages and will have a positive impact on the socio-economic environment."

The court dismissed the petition on the ground that the petitioners seemed to create unnecessary hurdles in setting up of the Municipal Solid Waste Project.

XI AIR AND WATER POLLUTION

In *Ashim Kumar Benerjee* v. *State of West Bengal,*[58] orders of closure issued by West Bengal Pollution Control Board to the petitioners who were running auto emission testing centers for petro/diesel vehicles after obtaining license issued by the office of public vehicles department were challenged. The court found that in exercise of powers under section 17 (1) (e) (g) and (j) of the Air (Prevention and Control of Pollution) Act, 1981, the West Bengal Pollution Control Board is authorized to issue such orders for regulating air pollution resulting from vehicular emission and vehicular pollution, and held that powers conferred on the state pollution control board and public vehicles department for withdrawing license and suspending the defaulting P.U.C. Centre is in consonance with law.

In *Yakubbhai Sharifbhai Aaglodiya* v. *Collector & District Magistrate, Sabarkantha,*[59] a division bench of Gujarat High Court dealt with the environmental pollution more particularly the air pollution caused by stone crushing units. The court noted that the distance between a crushing unit and residential locality should not be less than one km as fixed by the Supreme Court in *Mohammed Harron Ansari* v. *District Collector, Ranga Reddy District*[60] and that such declaration would be law of the land under article 141 of the Constitution. It was also pointed out in the judgment that besides human beings, animals and vegetation including crops

58 2012(2) FLT 375 (Cal. H.C).
59 2013 (3) FLT 64 (GUJ., HC) *per* Bhaskar Bhattacharya ACJ and J B Pardiwala J in W.P.(PIL) No.70 of 2011 judgment dated 12.03.12.
60 AIR 2004 SC 823.

are also affected by such crushing units. The court observed that the most disturbing feature of the litigation which arose out of the permission granted by the Gujarat Pollution Control Board was the complete misreading of rule 22(7) of the Gujarat Minor Minerals Rules, 1966 and that taking shelter of this particular rule, the Gujarat Pollution Control Board and other concerned authorities granted permission though the distance between the residential locality and the crushing unit was only 645 meters which is far less than the 1 km distance as laid down by the Supreme Court.

The court was of the view that the Gujarat Pollution Control Board is obliged in public interest to plan a comprehensive programme for prevention, control or abatement of air pollution and to secure execution thereof, as it is authorized to take steps for prevention, control or abatement of air pollution. It was further suggested that the guidelines must be in the form of general information to all the industrial units which are proposed to be established or operating in accordance with guidelines[61].

In *Santosh Govind* v. *State of Maharashtra*[62] the Aurangabad bench of the Bombay High Court reiterated that the right of access to clean drinking water is fundamental to life and that the state is bound to supply potable water to citizens. When the local administration of Aurangabad filed an affidavit that it was not in a position to supply drinking water every day, to the residents of the Aurangabad city as the supply mainly depends upon the stored water at Jaikwadi dam, and the distance between Jaikwadi to Aurangabad is about 45 k.m.There were multiple problems as per the local administration such as electricity problems, problems with pipeline, the age, life and fixed diameter of the pipeline, the growth in population, floating population, occasional mechanical faults *etc*. Thus the municipal corporation is not in a position to supply water every day to the citizens, therefore, AMC is supplying water on every alternate day for 40-50 minutes on an average,[63] the court refereed to the ratio of the relevant Supreme court judgments namely *A.P. Pollution Control Board II* v. *Prof. M.V. Nayudu*[64] and *M.K. Balakrishnan and Ors.* v. *Union of Indi,*[65] where it was held that right to life includes right of access to clean drinking and that water is fundamental to life. The court thus directed that since the duty is cast on the respondents to supply potable water to the citizens, naturally they will have to answer and provide solution to the problems and that how the said solution can be provided is the matter to be looked into by the respondents themselves.

XII BIO-SAFETY CONCERNS DUE TO RELEASE OF GENTICALLY MODIFIED ORGANISMS (GMOs)

In Aruna *Rodrigues* v. *Union of India*,[66] the apex court speaking through Swatanter Kumar J dealt with a PIL filed by certain public spirited individuals

61 Para 16 of the Gujarat High Court judgment.

62 2013 (3) FLT 56 (Bombay High Court – Aurangabad Bench) *per* S.S.Shinde J in Contempt Petition No.379 of 2011 in WP No. 466 of 1988 dated 17.07.12.

63 Para 14 of the judgment

64 (2001) 2 SCC 62j

65 AIR 2009 SC (Supp) 1916.

66 (2012) 5 SC 331.

possessing requisite expertise and with the access to information who stated that a grave and hazardous situation, raising bio safety concerns, is developing in our country due to release of genetically modified organisms (GMOs). They contended that the GMOs are allowed to be released in the environment without proper scientific examination of bio safety concerns and affecting both the environment and human health and pleaded for a protocol to maintain scientific examination of all relevant aspects of bio safety before such release, if release were to be at all permissible. They prayed for issuance of a direction or order to the Union of India, not to allow any release of GMOs into the environment by way of import, manufacture, use or any other manner. The ancillary prayers sought prescribing a protocol, to which all GMOs released would be subjected and that the Union of India should frame relevant rules in this regard and ensure its implementation.

The court recollected that, *vide* its order dated 01.05.06, it directed that till further orders, field trials of GMOs shall be conducted only with the approval of the Genetic Engineering Approval Committee (GEAC) and *vide* its order dated 22.09.09 further directed the GEAC to withhold approvals till further directions are issued by the Court, after hearing all parties. It was further observed that as of 2007, nearly 91 varieties of plants, *i.e.,* GMOs, were being subjected to open field tests, though in terms of the orders of the court, no further open field tests were permitted nor had the GEAC granted any such approval except with the authorization of the court. Thus the main issue before the court was whether or not to ban the field tests of GMOs, wholly or partially, in the entire country.

In view of the technical nature of the matter involving scientific questions, the court directed the constitution of a Technical Expert Committee:

a. To review and recommend the nature of sequencing of risk assessment (environment and health safety) studies that need to be done for all GM crops before they are released into the environment.
b. To recommend the sequencing of these tests in order to specify the point at which environmental release though Open Field Trials can be permitted.
c. To advise on whether a proper evaluation of the genetically engineered crop/plants is scientifically tenable in the green house conditions and whether it is possible to replicate the conditions for testing under different agro ecological regions and seasons in greenhouse?
d. To advise on whether specific conditions imposed by the regulatory agencies for Open Field Trials are adequate. If not, recommend what additional measures/safeguards are required to prevent potential risks to the environment.
e. Examine the feasibility of prescribing validated protocols and active testing for contamination at a level that would preclude any escaped material from causing an adverse effect on the environment.; and
f. To advise on whether institutions/laboratories in India have the state-of-art testing facilities and professional expertise to conduct various biosafety tests and recommend mechanism to strengthen the same. If no such institutions are available in India, recommend setting up an independent testing laboratory/institution.

It was also further directed that in the event and for any reason whatsoever, the Committee is unable to submit its final report to the Court within the time stipulated in this order, the Committee should instead submit its interim report within the same period to the Court on the following issue: Whether there should or should not be any ban, partial or otherwise, upon conducting of open field tests of the GMOs? In the event open field trials are permitted, what protocol should be followed and conditions, if any, that may be imposed by the Court for implementation of open field trials? This is an important direction having a bearing on not only the health but also the environmental issues in India.

XIII CONCLUSION

An analysis of some of the most important judgments rendered by the apex court and various high courts in India shows that the Indian higher judiciary has continued the tradition of playing an activist role in the matter of protecting ecology, natural environment even during the year under survey *i.e.,* 2012. The activist traits of the courts could be seen from the directions given by certain courts to the Government which are akin to judicial policy making. The directions given in respect of the permission to GMOs, the establishment of luxury resorts in Lakshadweep Islands, and the protection of asiatic wild buffalo and red sanders *etc*, reflect the said trend. Similarly, the courts also acted tough with certain controversial issues like indiscriminate industrialization, illegal mining and rampant urbanization at the cost of environmental degradation. In the case of protection of wild life including the animal and plant life, the Supreme Court once again brought to the fore, the conflict between Anthropocentrism and Ecocentrism, and reiterated the necessity of balancing the both. Another landmark judgment has been in the case of indiscriminate sand-mining which prompted the state to take fresh look at this practice in spite of the imminent necessity of sand for construction and development.

There have been other issues like removal of black film from the car glasses, the challenge to the practice of *Makara Jyothi* at *Sabarimalai* temple, and the permission to establish abattoirs in drought affected districts at the cost of dwindling size of livestock, which also attracted the attention of the judiciary during the last year. In conclusion it can be said that the Indian judiciary has as usual played a commendable role in protection of environment and enforcement of environmental and forest laws in the year under survey.