19

FOREST AND TRIBAL LAWS

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I INTRODUCTION

BEFORE COMMENCING with the cases under the survey year, it will be desirable to offer some introductory remarks, explaining how the subject of forest and tribal laws which we are now to deal with, stand in relation to the general study of environmental law and other allied laws such as the provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers Act, 2005. Forests-lands as we know are regarded in the light both of a natural feature in the organisation of the earth's surface, and in that of an agency for the production of a certain class of materials.[1] As much as rivers, mountains and seas, or any other natural features, are necessity for the physical well-being of most countries, so too are forests.[2] Forest constitutes a storehouse, or rather a growing stock, of materials which are practically indispensible to human welfare, and of a kind for which no complete substitute can be found.

As per the latest information released by the Ministry of Environment and Forests and Climate Change India's forest and tree cover has increased by 5,081 sq km. While the total forest cover of the country has increased by 3,775 sq km, the tree cover has gone up by 1,306 sq km. According to the India State of Forest Report (ISFR) 2015, the total forest and tree cover is 79.42 million hectare, which is 24.16 percent of the total geographical area. The total carbon stock in the country's forest is estimated to be 7,044 million tones, an increase of 103 million tonnes, which is an increase of 1.48 in percentage terms over the previous assessments. Speaking after releasing the India State of Forest Report 2015,[3] the Union Minister of Environment, Forest and Climate Change, said that the increase in the carbon stock is an assurance to the

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1 Baden Henry Powell, *Forest Law: A Course of Lectures on the Principles of Civil and Criminal Law and the Law of Forest* 2(Bradbury, Agnew & Co, London, 1893).

2 *Ibid.*

3 Press Information Bureau , Government of India Ministry of Environment and Forests Dec. 4, 2015, *available at* :http://pib.nic.in/newsite/PrintRelease.aspx?relid=132571(last visited on July 25, 2016).

negotiators at Paris Climate Summit (COP 21) that India remains committed to increase the carbon sink. The increase in the carbon stock is in line with the Intended Nationally Determined Targets (hereinafter INDC). The target for forestry sector envisages creation of additional carbon sink of 2.5 to 3.0 billion tonnes of CO2.

II FOREST RIGHTS ACT, 2006

The Scheduled Tribes and other traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was brought into effect to fulfill the need for a comprehensive legislation to give due recognition to the forest rights of tribal communities. These rights were not recorded while consolidating state forests during the colonial period as well as in independent India. Recognising the symbiotic relationship between tribal people and forests, the National Forest Policy, 1982, made provisions to safeguard the customary rights and interests on forest land of tribals. The enactment of the (FRA) has been a very important move in taking away the burden of illegality from the shoulders of tribals, and forest dwelling and dependent communities. The Indian Forest Act, 1927 and its predecessor Act of 1878 vested control over the forest resources in the state. Forest area covers 23 percent of land mass and over the years, forest communities have been treated as encroachers and their activities in forest areas as 'forest offences'.[4]

III INVOLUNTARY DISPLACEMENT

In Committee for *C.R. of C.A.P.* v. *State of Arunachal Pradesh*,[5] a writ petition was filed under article 32 of the Constitution by Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (hereinafter "CCRC"). The said petition was filed against the union of India through the Ministry of Home Affairs to grant citizenship to the Chakma and Hajong Tribes (hereinafter "chakmas" who migrated to India in 1964-1969 and were settled in the state of Arunachal Pradesh. Before commenting, the factual matrix of the case needs to be understood in the proper logical order so that a better appreciation of the same can be done in a holistic manner. It is as follows:

A large number of Chakmas from erstwhile East Pakistan (now Bangladesh) were displaced by the Kaptai Hydel Power Project in 1964. They had taken shelter in Assam and Tripura. Most of them were settled in these states and became Indian citizens in due course of time. In 1964, after extensive discussions between the Government of India and the North East Frontier Area (NEFA) administration, it was decided to send the Chakmas for the purposes of their resettlement to the territory of the present day Arunachal Pradesh. The Chakmas were residing in the State of

4 Government of India, Report of The High Level Committee on Socio- Economic, Health and Educational Status of Tribal Communities of India (Ministry of Tribal Affairs 2014).

5 AIR 2015 SC 3750.

Arunachal Pradesh for more than three decades and had close social, religious and economic ties. In pursuance of a joint statement issued by the Prime Ministers of India and Bangladesh in February, 1972, the union government took a decision to confer citizenship on the Chakmas under Section 5(1)(a) of the Citizenship Act, 1955 but the State of Arunachal Pradesh had reservations about it. It was alleged that settlement of Chakmas in large numbers in the State would disturb its ethnic balance and destroy its culture and identity. The tribals of Arunachal Pradesh considered Chakmas as a potential threat to their tradition and culture and are therefore, keen that the latter do not entrench themselves in the state. It is stated in the judgment that the Chakma's apprehended threat from the All Arunachal Pradesh Student Union (hereinafter "AAPSU") who were reported to be enforcing economic blockades on the refugee camps, adversely affecting supply of ration, medical and essential facilities to the Chakmas. Some Chakmas had died on account of blockade as reported in dailies. Consequently the representatives of Chakmas (committees) approached the National Human Rights Commission. This resulted in the case which is known as the *National Human Rights Commission* v. *State of Arunachal Pradesh*[6] (hereinafter the NHRC case). In this landmark judgment the court issued writ of *mandamus* to the Union of India and the state of Arunachal Pradesh to ensure the safety of the Chakmas. The court stated that there exists a clear and present danger to the lives and personal liberty of the Chakmas. It made references to *Louis De Raedt* v. *Union of India*[7] and State of Arunachal Pradesh v. Khudiram Chakma,[8] in which cases the entitlement of foreigners to enjoy rights under Article 21 of the Constitution was laid down.

Though the rights of the Chakmas have been duly acknowledged by the Supreme Court in *NHRC* case, still, their legitimate right of citizenship has not so far materialized. In the present case (the CCRC) submitted before the court that they have made representations for the grant of citizenship under section 5(1) (a) of the Citizenship Act, 1955 before their local deputy commissioners but no decision has been communicated to them.

The court held:[9]

> By virtue of their long and prolonged stay in Arunachal Pradesh the Chakmas who migrated to, and those born in the State, seek citizenship under the Constitution read with Section 5 of the Act. According to the Rules, the application for registration has to be made in the prescribed form, duly affirmed, to the Collector within whose jurisdiction he resides. On a conjoint reading of Rules 8 and 9 it is crystal clear that the Collector has merely to receive the application and forward it to the Central Government. It is the authority constituted

6 (1996) 1 SCC 742.
7 (1991) 3 SCC 554.
8 1994 AIR 1461.
9 *Supra* note 5, para 19.

> under Rule 8 which is empowered to register a person as a citizen of India. It follows that only that authority can refuse to entertain an application made under Section 5 of the Act. Yet it is an admitted fact that after receipt of the application, the Deputy Collector (DC) makes an enquiry and if the report is adverse, the DC refuses to forward the application; in other words, he rejects the application at the threshold and does not forward it to the Central Government. The grievance of the Central Government is that since the DC does not forward the applications, it is not in a position to take a decision whether or not to register the person as a citizen of India. That is why it is said that the DC or Collector, who receives the application should be directed to forward the same to the Central Government to enable it to decide the request on merits. It is obvious that by refusing to forward the applications of the Chakmas to the Central Government, the DC is failing in his duty and is also preventing the Central Government from performing its duty under the Act and the Rules.

Therefore the case of the petitioners that applications were filed for citizenship but the same were not acted upon becomes clear from the above para.

It was further held that:[10]

> The Election Commission of India in the light of judgment of this Court passed orders dated 3rd March, 2004 declaring the resolution dated 14th May, 2003 passed by the State of Arunachal Pradesh against facilities to the petitioners to be unconstitutional but the authorities of the State of Arunachal Pradesh had not forwarded the applications as required under Rule 9 of the Citizenship Rules to the Central Government. Counter affidavit has been filed by the Union of India stating that the applications directly received by the Ministry of Home Affairs were forwarded to the Government of Arunachal Pradesh which had not been returned except few applications with negative recommendations. The said applications were returned back to the Government of Arunachal Pradesh. Ministry of Home Affairs had advised the Government of Arunachal Pradesh to act in compliance with the judgment of this Court. The State Government was fully bound by the direction of this Court and had taken all necessary steps to comply with the same. The State of Arunachal Pradesh had received 4382 applications. Though the popular sentiment of the indigenous tribals was different, the State of Arunachal Pradesh was honouring the order of this Court. It is further stated that Chakmas and Hajong tribes were

10 *Id.*, para 5.

> settled in NEFA from 1964 to 1969 when there were no elected bodies in the State of Arunachal Pradesh. The laws applicable in the State of Arunachal Pradesh like the Government of India Act, 1870, the Bengal Eastern Frontier Regulation, 1873, the Scheduled District Act, 1874, the Assam Frontier Tract Regulation, 1880, the Assam Frontier Forest Regulation, 1891, the Chin Hills Regulations, 1896 and the Assam Frontier (Administration of Justice) Regulation, 1945 (1 of 1945) were not taken into account. One thousand four hundred ninety seven Chakmas have been included in the electoral rolls.

The court held:[11]

> That the State Government is duty-bound to protect the threatened group from such assaults failing which it will fail to perform its constitutional as well as statutory obligations. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India. The court accordingly issued directions to the State of Arunachal Pradesh to ensure that life and liberty of Chakmas residing in the State was protected against any attempt to evict them by organized groups such as AAPSU and their applications could be forwarded to the Central Government. The court directed the State of Arunachal Pradesh to submit a comprehensive report/affidavit in respect of 4637 applications returned by the Central Government to the State Government in respect of each application. It allowed the petition and gave directions to the Government of India and the State of Arunachal Pradesh to finalise the conferment of citizenship rights on eligible Chakmas and Hajongs. The court further directed to ensure compliance of directions in previous judicial decisions including the ones rendered in NHRC case, the Hon'ble High Court of Delhi and Guahati. A time period of three months (preferably) for the completions of exercise was also made clear by the Hon'ble Supreme Court from the date of the judgment.

The present case can also be correlated with the recent introduction of land bills in Manipur where natural resource forms one of the contentious issues. It could also be a good case to study political ecology in modern day complex world. Mineral and hydro-electric resource-rich States of India tend to be the very places, which are home

11 *Id*., para 7.

to vast majority of tribal people. Upendra Baxi[12] has highlighted that people are not partners in the process of decision making regarding construction of dams, areas of submergence, environment impact, allocation of resources and allocation of benefits and adverse impacts of development. Displacement is a process in which marginalized sections, the majority being tribal people, are pushed out of their own habitat and dispossessed of their resources and indeed their universe around them. In post-independence period, their experience of displacement is as dehumanising as before independence.[13]

The traditional livelihood systems of tribal people based on shifting cultivation and collection of non-timber forest produce was rendered sustainable, by a level and pattern of utilization of land and forest resources, which ensured their self-generating capacity. Later, they took to settled agriculture and their livelihood system provided for a nutritionally balanced food consumption basket that was rooted in both subsistence and conservation ethics.[14]

The traditional livelihood system was based on customary rights of tribal communities over land and forests, which was also an 'extensive' system of production. The 'common pool' of resources supported customary rights and prevented the intensification of production, in the interest of conserving and sustaining the long-term productivity of livelihood resources.[187] The customary rights of tribal people over livelihood resources and their territorial sovereignty (in so far as land was territory, not property) came in to conflict with the forces of 'modernisation' and the development process in which they were not participants. In keeping with the politico-economic policies of the country, large projects, which came up in tribal areas rich in hydro and mineral resources, encroached on tribal people's ancestral lands and thereby displaced them.

In order to take measures against the socio-economic deterioration of displaced tribal people, it is important to understand the extent of displacement-induced impoverishment. Displacement is marginalisation, not merely economic deprival.

IV RESERVED FOREST

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is an important Act, as it has begun the process of recognising their rights and will be the legal basis for computation of compensation in case of diversion of forest for development projects. But much harm had already been caused to tribals before enactment of this law.[15]

12 Upendra Baxi, "Development, Displacement and Resettlement: A Human Rights Perspective" in India Social Development Report 2008, *Development and Displacement*. Centre for Social Development (Oxford University Press 2008).

13 *Supra* note 4.

14 Padhi Sakti and Panigrahi Nilakantha, "Tribal Movements and Livelihoods: Recent Developments in Orissa" in Working Paper no. 51 (Chronic Poverty Research Centre IIPA, 2011).

15 *Ibid.*

In *Ganesh Basumatary* v. *State of Assam*[16] the background is that a writ Petition (C) No. 2303/2008. was filed by petitioners claiming to be landless persons, the petitioners applied for allotment of government land and the Guahati Sub-Divisional Level Land Advisory Committee (hereinafter referred to as 'the Land Advisory Committee') in its meeting held on January 19, 2006 resolved to allot land to these tribal applicants. The Dy. Commissioner, Kamrup through his individual letter(s) on Feburary 27 2006 (annexure-1 series) informed the applicants of the committee's resolution and directed them to pay the premium for the allotted land. The allotees deposited the premium on March 2, 2006 and thereafter steps were taken for issuing patta (s) for the beneficiaries. The names of the allottees were recorded in the draft chitha of village Mazpara under Bholagaon Mouza of the Palashbari Revenue Circle and eventually Kheraj Miadi Patta(s) was issued to the allottees and those are enclosed as annexure-5 series, to the writ petition.

The total land allotted to the petitioners measures 60 Bigha 2 Katha 5 Lecha and this contiguous area is bounded on the West and North by paddy fields and on the Eastern side by a public works department road and on the southern side by the village. However while the petitioners were in peaceful occupation of the allotted land, the Ranger of the Rani Forest Range (respondent no. 6) obstructed the enjoyment of the land in May, 2008 and in fact attempt was made to dispossess the petitioners. However their possession was protected through interim order passed by this court.

On behalf of the petitioners, JI Barbhuiya, the counsel submits that allotment of land was made through a lawful process after resolution was taken by the land advisory committee on January19, 2006 and since the allottees had paid the premium and occupied the land for which Kheraj Miyadi Patta(s) was issued by the revenue authorities, the range forest officer (RFO) could not have disturbed the lawful occupation of the allottees.

The petitioners contend that the surrounding areas of the allotted land are being used for cultivation purpose and accordingly it is argued that the said area can't be considered as forest land. Since the revenue authorities are expected to consider the status of the land before deciding allotment, it was submitted that the land in question was obviously available for allotment and therefore it was argued that the possession of the allottees can't be disturbed, by considering the land to be part of the Reserve Forest. On the other hand, the government advocate referred to the counter affidavit filed by the Ranger of the Rani Forest Range (respondent no. 6) on July 16, 2008 to project that the concerned land falls within the third addition of the Jarasal Reserve Forest, which was notified on March 6,1929 and it was accordingly argued that since the concerned area was declared to be reserve forest under section 17 of the Assam Forest Regulation, 1891, the same could not have been allotted by the revenue authorities.

16 2015(5) FLT 875(Gau. High Court).

The government advocate referred to the two circulars on March 23, 1964 and October 28, 1965 of the revenue (settlement) department to argue that ban on settlement of reserve forest land was enforced in the state and accordingly it is contended that neither the land advisory committee nor the revenue authorities could have allotted any land falling within the Jarasal Reserve Forest, for non-forest purpose. Referring to the restriction imposed by section 2(ii) of the Forest (Conservation) Act, 1980 (hereinafter referred to as 'the Forest Conservation Act'), the government advocate argues that notified forest land can't be used for any non-forest purpose and here since the land was allotted for cultivation, the court held that such use is contended to be prohibited by the Forest Conservation Act, 1980.

The court construed the pleadings of the forest officer and held that it reflects that the Jarasal Reserve Forest was originally notified on October 17, 1878 and initially it comprised of 2376 acres of land. Subsequent addition(s) to the Jarasal Reserve Forest area was made and eventually 3104 acres were added through the first to fourth additions and these additions were made about 85 years earlier. The court held that such notified forest area is expected to be protected by all concerned and allotment of protected forest is prohibited by the two government circulars issued on March 23, 1964 and October 28, 1965 respectively.

The court further held that the protection of notified forest land is undoubtedly the requirement of law under the Assam Forest Regulation, 1995 and also under the Forest Conservation Act, 1980 but the question here is whether the allotted land is part of the subsequent addition(s) made from time to time, to the Jarasal Reserve Forest, which was originally notified on October, 17 1878. If the allotted land is part of the protected Forest, the same could not have been allotted to anyone because of the two government circulars on March 23, 1964 and October 28, 1965 but at the same time, if the land in question falls outside of the Reserve Forest area, the occupation of the petitioners can't be faulted.

Therefore in order to verify the legality of the action taken by the RFO, the court deemed it necessary to confirm whether the land allotted to the petitioners is comprised within the Jarasal Reserve Forest. As the fact of the case reveals the counsels for both sides suggested that all the concerned departmental authorities should be involved in the process. Accepting this suggestion, the court ordered that the verification be carried out jointly by the authorities of the forest, the revenue and the land survey department. It also passed order to the effect that the allottees should also be allowed to participate in the exercise and their projection should be taken into account before the matter is finally decided. According to the court if the allotted land is found to be part of the Jarasal Reserve forest, steps should be taken for cancellation of allotment and refund of premium. On the other hand, if the allotted land is not found to be reserve forest land, the right of the allottees should be protected. As per the judgment of the court the whole exercise of verification, hearing etc. should be completed within a period of four months and until the matter is finally decided, the status quo as on that date shall prevail.

V NATIONAL PARKS AND SANCTUARIES

The present case of *T.N. Godavarman Thirumulpad* v. *Union of India*[17] which was decided on October 5, 2015 concerns matters relating to wood based industries, and matters relating to National Parks/Wildlife sanctuaries, and matters relating to exemptions from the payment of the Net Present Value (NPV) *etc. Firstly,* in matters relating to wood based industries the court took up the matter and accordingly passed the following orders:[18]

(i) The State Level Committees for wood-based industries (hereinafter SLCs) are, subject to the compliance of the prescribed guidelines and procedure, authorized to take decisions regarding the grant of license/permission to the wood-based industries.

(ii) In each State/UT for which the SLC has so far not been constituted, the SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of the Ministry of Environment and Forest and Climate Change and an officer of the state forest department/industries department not below the rank of the chief conservator of forests/ equivalent rank will immediately be constituted.

(iii) The Mo EF is authorized to issue appropriate guidelines in conformation with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to assessment of timber availability for wood-based industries and grant of license/permission to the wood-based industries including addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters.

(iv) Any person aggrieved by the decision taken by the SLC may file an appeal before the Ministry of Environment and Forest and Climate Change seeking appropriate relief within 60 days' time. If, for any reason, any person is aggrieved by the orders so passed in the appeal, he may prefer an appropriate petition/application/appeal before the appropriate forum/ court for grant of appropriate reliefs).

(v) The amounts lying with the respective state forest departments (recovered from wood based industries) will be utilized for the purpose of afforestation only.

(vi) The respective State Forest Departments will intimate the amount(s) spent by them for afforestation purpose to Ministry of Environment and Forest and Climate Change at the earliest.

17 2015(13) SCALE 848.

18 *Id*., para 3

With the aforesaid observations and directions, the Supreme Court disposed of the matter pertaining to wood stock industries.

Secondly, in matters relating to national parks and wildlife sanctuaries the Supreme Court passed the following order:[19]

> All matters for grant of permissions for implementation of projects in areas falling in National parks/sanctuaries, including rationalization of boundaries etc. will be considered by the Standing Committee of the National Board for Wildlife (hereinafter NB WL) on its own merits and in conformity with the orders and directions passed by this Court from time to time, i.e. on 14.02.2000, 16.12.2002, 13.11.2000, 9.5.2002, 25.11.2005 and 14.09.2007 and other subsequent clarificatory orders/ judgment(s) passed by this Court including the Goa Foundation Judgment, i.e. Goa Foundation v. Union of India and Ors.[20] The court further held that in all those matters where there is already decision of the Standing Committee of the NBWL shall abide the parties with all the conditions imposed therein. If any party is aggrieved by the decision of the Standing Committee of the NBWL, the court held that they are at liberty to approach an appropriate forum for appropriate reliefs.

During the hearing of this case there were also several matters pending before the court relating to compliance of the orders passed by this court. In this regard the court held that the action that is taken by all the authorities relatable to the Forest (Conservation) Act, 1989 are appealable under section 16(e) before the National Green Tribunal Act, 2010.The court transferred certain other matters relating to ecologically sensitive western ghats in the state of Karnataka and construction of hotel and bus stand in reserve forest in Mcleod Ganj in the state of Himachal Pradesh to the national green tribunal.

VI NON-FOREST PURPOSE

In *State of Kerala* v. *Ravi C.A.*,[21] the issues pertained to section 2 of Forest (Conservation) Act, 1980 and section 3(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the former of which is reproduced below. The issue before the court was whether drawing of electric lines to scheduled tribes and other traditional forest dwellers alongside an access road passing through a reserve forest was an activity of 'non-forest purpose' which requires prior approval of the Central Government under section 2 of the Forest Conservation Act? The court referred to the relevant provisions of the Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006,

19 Id. at para 9.

20 (2014) 6 SCC 590.

21 2015 (5) KHC 397.

(hereinafter 'the Forest Act') which is a central Act extending to the whole of India, except the State of Jammu and Kashmir. Particularly, it laid emphasis on section 3 of the Forest Act, 2006 which deals with forest rights of forest dwelling scheduled tribes and other traditional forest dwellers, which includes right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of forest dwelling scheduled tribe or other traditional forest dwellers.

The court held that on a reading of sub-section (2), it is clear that electric and telecommunication lines is one of the facilities extended to members of the Scheduled Tribes and other traditional forest dwellers. As to whether section 2(2) of the Forest (Conservation) Act, 1980 applies to the fact situation the court replied in negative and provided the following reasons. *Firstly*, it stated that on a reading section 2, it is explicit and clear that the intention of seeking prior approval is for the purpose of carrying out the de-reservation of reserved forests or the non-forest purpose, leasing out *etc*. The drawing of electric line through an access road provided by the state government cannot be said to be an activity of non-forest purpose because explanation to section 2 as stated above, clearly specifies the nature of non-forest purposes and therefore the court held that in the fact situation drawing of electric line through the access road can be permitted without securing prior approval of the Central Government. *Secondly*, the Rajeev Gandhi Grameen Vidhyuti Karan Yojana (shortly called R.G.G.V.Y) which was launched by the Central Government with the intention of providing electricity connection to the members of Scheduled Tribes and Scheduled Castes cannot be read as having not taken into account the necessity of providing electricity connection to a tribe residing in a tribal area within the forest area, especially when it is common knowledge that the tribal people mostly reside within the forest areas.

The court held that in view of the Scheduled Tribe and other traditional forest dwellers (Recognition of Forest Rights) Act, 2006, providing electric connection to the members of the tribe is taken care of. Admittedly, the wife of the 1st Respondent is the member of a scheduled tribe and that apart, the respondent no. 1 is a member of the scheduled caste and a traditional forest dweller, which fact is not disputed by anyone. Therefore, the respondent no.1 is entitled to get benefit of the said provision also. The special government pleader has also brought our attention to section 22 of the Kerala Forest Act, 2010 and contended that no person will acquire any right in the reserved forest except under limited circumstances like grant or contract in writing made by or on behalf of the government or by or on behalf of some person in whom such right or the power to create such right was vested when the notification under section 19 was published or by succession from such person. But, according to Ext. R. 2(a) Government Order provides a 12 feet wide road through the property in question and therefore even going by section 22 of the Act, there is a grant provided to the public. Therefore, viewed in any circumstances, one cannot reach a finding that the respondent no.1 is not entitled to secure the connection extended under the scheme. The single judge has considered the entire legal and factual aspects and arrived at a conclusion that the respondent no.1 was entitled to get electric connection under the

scheme and that the prior approval if any is implicit under the scheme in view of the same launched by the Central Government. The single judge has relied on the judgment of the Bombay High Court in '*Goa Foundation* v. The *Konkan Railway Corporation*,[22] to arrive at such a conclusion.

The court held that by launching the scheme, the Central Government has the avowed object of providing electricity connection to the members of scheduled castes and scheduled tribes and therefore it cannot be heard to say that the Central Government did not take into account the provisions of the Forest (Conservation) Act, 1980. One does not find any illegality or other legal infirmities warranting our interference in the judgment of the single judge in the appeal. The single judge has directed the Kerala State Electricity Board (KSEB) to provide electric connection latest by September 15, 2015 and since that period is over, direct respondents 2 to 4 to provide electricity connection to the respondent no.1 on or before September 25, 2015 since the last date fixed for the scheme is on September 30, 2015. The appellants are directed to cooperate with the KSEB. In order to draw the line as per the stipulations contained above, in view of the scheme getting exhausted on September 30, 2015.

In *One Earth One Life* v. *State of Kerala* [23] a writ petition was filed in the form of a public interest litigation *inter alia* seeking for the following reliefs:[24]

> (i) Issue a writ of mandamus directing respondents 1 to 5 not to assign forest lands to the Scheduled Tribes and Other Traditional Forest Dwellers which is not in their actual possession as on 13.12.2005 and not more than the actual extent possessed by them.(ii) Issue a writ of certiorari, calling for the records relating to Exhibit P4 and quash the portion of Exhibit-P4 by which it was decided to return the application for claims of right by the Scheduled Tribes and Other Traditional Forest Dwellers, if the area claimed is below one acre and to get revised claims from such applicants so that at least one acre can be assigned to each claimant.(iii) Issue a writ of mandamus directing respondents no. 8 to cancel all the pattas issued on 7.12.2009 to the Scheduled Tribes and Other Traditional Forest Dwellers in respect of unoccupied forest lands coming under Mannarkkad Palakkad Divisions, Immediately.(iv) Issue a writ of mandamus directing respondents 1 to 5 to issue record of rights to the Scheduled Tribes and Other Traditional Forest Dwellers only after a joint verification by the Forest and Revenue Departments in respect of the claims.(v) Issue a writ of mandamus directing respondents 2 and 4 to fix the boundaries by putting jundas between the lands for which records of rights are issued to the Scheduled Tribes

22 AIR 1992 Bom 471.

23 WP(C).No. 35501 of 2009 (S).

24 *Ibid.*

and Other Traditional Forest Dwellers and the adjacent forest lands to protect the neighboring forest lands from being further encroached.

The court held that the facts involved in the writ petition disclose that the petitioner, being a voluntary organisation, on being aggrieved by the destruction of various forest land by revenue and tribal departments, has approached this court contending that the forest lands are being assigned illegally under the guise of implementation Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Rules framed thereunder.[25]

It is stated that in respect of lands coming within the forest range of Mannarkkad forest division of Palakkad, large scale encroachments have been made with respect of 82 acres of virgin forest land thereby destroying the undergrowth. Such an incident has been reported in newspapers as evidenced from Ext.P1 dated 30/9/2009. It is submitted by the petitioner that in implementation of the provision of the Act, a joint verification was conducted by the Revenue and Forest Department in Mannarkkad Taluk in 2006. All lands under the possession and cultivation of the dwellers have been surveyed, demarcated and the joint verification list has been prepared in respect of Vettilachola colony, which is produced as ext.P2 GPS survey was also conducted in the forest areas and all the tribal settlements have been marked by the forest department. However, in a joint meeting of the ministers for forest, tribal welfare and revenue, a decision was taken to take back the application for claims of the rights claimed by tribals below 1 acre and they were asked to submit revised claims so that at least one acre land can be assigned to them. ext. P4 is the said minutes. Petitioner points out that the aforesaid decision in the minutes is in total violation of the statutory provisions under the Act. Further, it is pointed out that the authorities proceeded to assign lands to ineligible persons and larger extent of forest land is proposed to be assigned in violation of the provisions of the Act and the rules, which according to the petitioner, will denude the forest and hence the writ petition is filed seeking the reliefs aforesaid. The allegation raised in Ground (D) it is submitted that the forest officials have not been duly intimated about the survey of land for which claims have been preferred and received by the Grama Sabha which would lead to assignment of virgin forest land in contravention of the provisions of the Forest Rights Act . This would also lead to recognizing fake claims on forest lands.[26]

The court construed that having regard to the above factual situation, there is no dispute about the fact that the tribals are entitled for assignment of land only under the provisions of Forest Right Act, 2006.[27]

25 *Id* at para 2.

26 *Id* at para 3.

27 Forest Right Act, 2006, s. 4(3) reads: The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or Other traditional Forest Dweller had occupied forest land before the 13th day of December, 2005.

The court held that:[28]

> There cannot be any dispute regarding the fact that the recognition and vesting of forest rights under the Act to the forest dwelling Scheduled Tribes and Other Traditional Forest Dweller can only be in respect of forest land. The very concept of the aforesaid statutory provision indicates that forest land can be assigned only with reference to the property in possession of the forest dweller or the tribal, as the case may be. It cannot be extended to any other area of forest. In other words, it is not open for the Government to assign any extent of land to the forest dwellers other than the land in their actual possession. When this legal position is clear, we do not think that the Government will have any right to issue any assignment orders or issue pattas based on the minutes of discussion as stated in Ext.P4

The court further held that it is for the government and its authorities especially the forest department to ensure that the forest land is not misutilised by issuing assignment orders/pattas to persons who are not eligible for the same. If there is any encroachment on the forest land, it is for the concerned officers to ensure that encroachment is removed at the earliest.

Therefore, having regard to the limited scope of the above writ petition, the court directed the respondent authorities to ensure that no land shall be assigned other than in accordance with the provisions of the Act and the Rules framed thereunder. It is made clear that para 5 of the minutes of the meeting (Ext.P4) shall not enable any person to claim 1 acre of land from the forest area, other than the land in their possession. The forest department was directed to verify whether appropriate demarcation can be made to the aforesaid habitats depending upon the ground reality involved in the matter.

VII PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996, (PESA)

In *Ajay Kumar Negi* v. *Union of India*[29] the factual matrix of the case is that a writ petition was filed before the High Court of Himachal Pradesh at Shimla in the year 2011 alleging violation of environmental norms by Nuziveedu Seeds Power Generation Pvt. Ltd. (hereinafter 'the project proponent') during the construction and development of hydro-electric power near Tidong river in the District of Kinnaur. Subsequent to that the high Court formed a one man committed to enquire into the allegations and on the basis of the report of the one man committee which confirmed that there were violations of environmental norms the high court imposed penalty on the company but let it continue its project after getting assurance from the Government

28 *Supra* note 23 at para 8.

29 2015 Indlaw NGT 13.

of Himachal Pradesh that all norms will be adhered to. The petitioner sought that environmental clearance granted to project should be recalled and project activity be closed. The petitioner also prayed for the quashing of the MoU. It is the claim of the petitioner that the fine imposed was very insufficient and hence they preferred instant applications before the National Green Tribunal (hereinafter 'the Tribunal').

It is desirable here to give a brief background as to present case. On September, 23,2004 a Memorandum of Understanding between the state of Himachal Pradesh and the project proponent was entered into, on the basis of which the latter was to set up Hydro Electric Power Project in District Kinnaur of Himachal Pradesh on River Tidong. Agreement was signed between the project proponent and the Government and forest clearance for project was granted. Later on petitioner submitted protest against execution of Electric Power Project, stating that project propend had not obtained 'No Objection Certificate' from Gram Sabha. The petitioner inter alia primarily challenged project on account that it was in violation to environmental laws and was causing serious damage to forest wealth. Applicants also made specific reference to damage being caused to the Chilgoza trees an endangered species on which the livelihood of the local community depended. As per the terms of the forest clearance granted to project proponent, it was allowed to fell a maximum of 1261 trees but trees being proposed to be felled has gone up to more than 4000 in number. Broadly, the case covers themes and Acts such as, endangered Species, exemplary Damages, environment, ecology, Forest (Conservation) Act, 1980, Sustainable Development, Indian Forest Act, 1927, afforestation, Environmental Impact Assessment ,Himachal Pradesh Panchayati Raj Act, 1994, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and the National Green Tribunal Act, 2010 but for the purpose of survey it will only be confined to important issues only, though references will be made wherever relevant.

The tribunal held that forest department had given forest clearance to the project proponent for felling 1261 trees in total and that too with condition of afforestation of ten times felled trees and no evidence was found by the tribunal that this condition has been complied with by the project proponent. Referring to the forest department of the State Himachal Pradesh, the tribunal held that it seems to be quite ignorant of compliance to conditions of forest clearance and to indiscriminate dumping of muck and boulders down slope as a consequence of heavy blasting which has damaged large number of trees of the adjoining forest. Damage to ecology, particularly upon forest area comprising of rare and endangered species of Chilgoza trees and on livelihood of people living in vicinity of project sites, cannot be disputed and is quite serious, the tribunal held.[30] The Environment impacts and their extent probably were

30 The FRA recognises various community forest rights which could potentially operate as a powerful, and meaningful, way for forest dwelling communities to protect their way of life. Till as late as 2012, however, these rights were almost entirely ignored. Most often, they were confused with the section 3(2) provisions which provide communities with education and health facilities and connectivity when there was diversion of forest land for non-forest purposes.

overlooked by concerned authorities at initial stage when forest clearance to project was given. The tribunal held that penalties imposed by authorities upon the project proponent were not sufficient for damage caused and for restoration. It observed that substantial damage has already been done, huge amount of money have been spent on projects and major construction activity including concretization and construction of tunnels are more or less complete. As prayed for by the petitioner , the tribunal held that it is difficult for it to arrive at a conclusion that environmental clearance granted to project should be recalled and project activity be closed as it would obviously would lead to tremendous wastage of public money, while damage to the nature and ecology will still persist. As also prayed for by the petitioner, the tribunal held that MoU and environmental clearance cannot be quashed following the ratio set by the High Court of Himachal Pradesh at Shimla when the matter first arose in 2011. Instead, the tribunal issued certain directions to protect environment and ecology of concerned area, particularly in regard to its restoration and restitution, as well as collection of relevant data and material, before project proponent could carry its activity any further. It directed the project proponent to plant at or around the project site at least ten-times of the uprooted/damaged trees. It reiterated that developmental project undertaken by spending huge amount for which environmental clearance was granted could not be quashed on ground of falling of trees but Tribunal could issue direction for restoration and restitution, which it did in the present case.

VIII BIODIVERSITY

In Bio Diversity Management Committee, Through President, *Chhindwara* v. *Western Coalfields Limited* [31] which is a decision rendered by the Central Zone Bench of the National Green Tribunal, Bhopal (hereinafter the 'zonal bench') on October 6, 2015, the question before the bench was whether coal can be considered as a resource under the Biodiversity Act, 2002? The fact of the case was that the applicant was a committee constituted under section 41 of the Biological Diversity Act, 2002 and section 23 of Madhya Pradesh Biodiversity Rules, 2004. The respondents were engaged in extracting coal from various mines situated within territorial jurisdiction of applicant and that operation of respondent fall within territorial jurisdiction of applicant. It was alleged by the applicant that respondents had not obtained approval for commercial utilization, nor had started sharing benefits with the applicant. It was also alleged that the respondents had not paid fees which was violation of section 24 of the Biological Diversity Act, 2002 Act. Aggrieved applicant filed application.

The zonal bench held that on principle of purposive construction, coal cannot be categorized as a biological resource as purpose and object of 2002 Act was to provide for conservation of plants, animals and other organisms and their genetic material. Tribunal are of view that bringing coal within definition of biological resource within

31 2015 Indlaw NGT 125.

2002 Act, if at all, will only dilute specific focus which 2002 Act has sought to place on conservation of living genetic resources, not only for benefit of present but also future generations. Also, if coal is treated as a biological resource, by similar analogy, fossil fuel like petroleum and natural gas may also sought to be categorized as a biological resource for purpose of 2002 Act as both these fossil fuels also have plant origin. Such extensive and over arching meaning to term biological resource in case of coal will lead to absurd consequences not only for very definition of term but also consequences for implementation, which will go much beyond what legislative intent, objective and purpose would have been. Tribunal has no hesitation in concluding that coal does not qualify to be a biological resource and does not come within purview of 2002 Act. Mechanisms and modalities for benefit sharing are to be worked out by NBA in terms of section 21 of 2002 Act. It is case of applicant that coal being a biological resource, respondent no. 1 and 2 are under legal obligation to pay them collection fees for accessing area and collecting biological resource, that is, coal. In light of discussion coal is not a biological resource, it follows that respondent no. 1 and 2 are not liable to pay any collection fees for accessing or collecting coal from area falling within territorial jurisdiction of applicants, nor are applicants entitled to levy any fees for collection of coal on respondent no. 1 and 2.

IX PROTECTION OF WILDLIFE

The courts are equally concerned with protection of wild life. In Re *Kaziranga National Park* v. *Union of India*[32] the High Court Guahati dealt with and disposed of numerous writ petitions of the year 2012, 2013 and 2015 respectively regarding evictions of human habitations around the Kaziranga National Park. The high court *suo motu* registered a PIL (no. 66/2012) to inquire into the news report regarding illegal poaching and killing of wild animals in the KNP. PIL 67/2012 was filed by one Mrinal Saikia on the same subject matter with an additional relief of removal of human habitation and encroachment in the animal corridors in and around the KNP. The petitioners in WP(C) 648/2013 contend that the petitioners are grazing cattle in the lands in the sixth addition and without settlement of compensation they should not be evicted. The counsel for the petitioner has submitted that the documents produced by the petitioner disclose that they have been permitted to graze and they have paid the revenue to the government. Petitioners are exercising rights for the past 50 to 60 years. Therefore without payment of compensation they cannot be summarily evicted.

The eight residents of the second addition of the KNP filed 4860/2013 contending that before the second addition is added to KNP the requisite formalities as required under sections 26A and 35 of the Wild Life (Protection) Act, 1972 and the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have not been complied. In that view it is submitted that without

32 2015 SCC Gau. 397.

formal compliance of the requisites of law the eviction of the residents is illegal. Therefore they seek a writ of mandamus directing the respondents to complete the process of settlement of rights under the Wildlife Protection Act, 1972 in pursuance of the notifications issued as "additions" under the Wildlife Protection Act and to constitute statutory committees under the Forest Rights Act, 1980 to ensure that no eviction takes place without the due process of law.

With respect to WP(C) 4680/2013 the petitioners are said to be residents of Haldibari village, which is a part of the fifth addition. The authorities have fully complied with the requirements of law and claims have been settled. Only formal issuance of final notification for third and fifth editions remains. The petitioners cannot claim any right over the land that has been acquired and compensation is determined and deposited. Petitioners have suppressed the material fact. They have not stated anything about their participation in the inquiry and the rights they have over the land in question. Hence, the claim of the petitioners in WP(C) 4860/2013 is held to be untenable and accordingly the writ petition is dismissed.

The court relied on the decision of the Supreme Court in *T.N Godavarman Thirumulkpad* v. *Union of India.*[33] It is argued that the definition of "forest land" elucidated by the Supreme Court not only includes "forest" but also any area recorded as forest in the government record irrespective of the ownership, and this has to be understood for the purpose of section2 of the Forest Conservation Act,1980, and that the provisions of the Forest Conservation Act, 1980 must apply clearly to all forests so understood irrespective of the ownership or classification". In that view it is argued that the Banderdubi village which is declared to be "social forestry" cannot be de-reserved and converted to revenue village. In that view of the matter the question of permitting any habitation in the said areas does not arise. The provisions of section 2(i) of the Forest Conservation Act, 1980 mandates that no state government or other authority shall make, except with prior approval of the Central Government, de-reserve any forest area. When once the government has given the land for social forestry it is impermissible for the government to de reserve and make it a revenue village without consent of the Central Government besides the said area is tiger reserve and animal corridor.

The applicants under IA 1261/2015 and 1262/2015 who sought to get impleaded to challenge the eviction proceedings pleaded that they are residents of Deocharchang and Bandardubi which are revenue villages within the territory of KNP. The claim of the petitioners is also supported by the government. However, the court held that it is unable to agree with the submissions since Deocharchang is declared by notification in 1916 that it is a reserve forest. The government gave the lands in Bandardubi for social forestry in the year 1986. There was no development of social forestry. The illegal encroachment started and a village has come up by encroachment. It is the stand of the government that since social forestry is not developed the lands of

33 (1997) 2 SCC 267.

Bandardubi was given back to the government and the lands are de reserved and shown as revenue village.

The report submitted by Director, Kaziranga National Park on the orders of this court also states, at page 167, that Bandardubi village is animal corridor. In that view, the claim of the persons, who want to get impleaded that they should not be evicted from Bandardubi and Deocharchang is untenable. In so far as these two villages are concerned, one is declared to be reserved forest and other is declared to be the social forestry and animal corridors. The human habitants of those areas cannot claim right of occupation or possession.

The court held that the individual claims for a handful of persons is in conflict with the public and national interest. There have been persistent and repeated reports of poaching of rhinoceros, elephants and other wild animals. It is irresistible inference that the habitants in KNP area would fall in suspect group and they would be well-acquainted with the areas and animal movements, therefore they would alone be in a position to do poaching successfully or abet poaching by others. The concept of national park in the Wild Life Act contemplates that there should be no human habitation.

It referred to article 48-A of the Directive Principles of the Constitution of India which mandates that the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51-A (g) fastens the fundamental duties on the citizens to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

In the face of the constitutional obligations on the part of the State with a corresponding duty on the part of the citizens it would be highly untenable on the part of the petitioners to take technical pleas and expose the wild life to a great danger of extinction. The Court held that in the instant case any rigid and technical view would only harm and endanger the wildlife of the KNP. The jurisdiction of this court under 226 of the Constitution is quite wide. The petitioners who have approached this court have no right over the land and their claims have been adjudicated. The fact that the final notification in respect of the third and fifth additions is not issued is not a ground for the petitioners to overstay on the land when their claims are adjudicated. There is also provision under the Land Acquisition Act, 1894 that in urgent situations the possession of land is taken and later on adjudication of compensation procedures are followed. In that view of the matter even if the final notification is not issued since the claims of the persons of third and fifth additions are adjudicated they cannot claim right to stay in the land. If the court, as argued by the petitioners, takes a technical view it would only endanger the wildlife in the KNP and there would be un abetted acts of poaching. Hence keeping in view the interests of the KNP, which is a World Heritage Site, we are not inclined to accept the contention of the petitioners.

Keeping in view the larger interests of the public and the Constitution mandates, the claim of the petitioners in WP(C) 4860/2013 is held to be untenable and accordingly the writ petition is dismissed. Similarly the claim of the applicants in IA 1261/2015 and 1262/2015 for the reasons stated above are dismissed. The claim of the petitioners in WP(C) 648/2013 is rejected. The court directed the Deputy Commissioners of

Golaghat, Sonitpur and Nagaon to take expeditious steps to evict the inhabitants in the second, third, fifth and as well the six additions of the Kaziranga National Park, including Deurchur Chang, Banderdubi and Palkhowa, within one month.

In *Principal Chief Conservator of Forests (The Chief Wildlife Warden)* v. *The Secretary, Paramekkavu Devaswom*,[34] which consists of four writ appeals and one writ petition raise an important issue pertaining to transfer/sale/transaction/ transportation of elephants in the State of Kerala. The issue assumes more importance in view of the fact that the State of Kerala is known for its rich wealth of elephants and large number of traditions and rituals being associated with elephants in different ceremonies being performed in temples and other places. Following were the issues, which arose for consideration in this batch of cases: [35]

i. Whether under Section 43 of the Wild Life (Protection) Act, 1972, sale or purchase of elephant is permissible and only the requirement for sale or purchase ofelephant is to intimate the Chief Wild Life Warden as required under Section 43(2), in whose jurisdiction the transfer or transport is effected?
ii. Whether under the Wild Life (Protection) Act, 1972, any kind of transfer of an elephant is permissible or there is total prohibition of transaction of an elephant under the statutory scheme?
iii. Whether the learned Single Judge, in the judgment dated 28.8.2014 in W.P (C). No. 17848 of 2014 has correctly interpreted Section 43 of the Wild Life (Protection) Act, 1972?
iv. What is the procedure statutorily prescribed under the Wild Life (Protection) Act or the Kerala Wild Life (Protection) Rules to transport elephants from outside the State or to transport elephants from the State of Kerala to any other State?

Since all the issues as stated above were interconnected the court dealt with them in the following manner:[36]

i. Whether under Section transfer of an elephant by way of sale or offer for sale or by any other mode of consideration of commercial nature and no permission can be granted under Section 40(2) for such transfer. The report of transfer or transportation to the Chief Wild Life Warden as contemplated under Section 43(2) is applicable to those transfers or transportation, which have been effected with permission under Section 40(2). Transfers or transportation, which are effected after previous permission of the Chief Wild Life Warden, are also to be reported under Section 43(2) to the Chief Wild Life Warden within 30 days of the transfer or transportation.

34 (2015) 3 KLJ 54.
35 *Id*., para 10.
36 *Id*., para 30.

ii. Under the Wild Life (Protection) Act, 1972, all transfers of elephants by way of sale or offer for sale or by any other mode of consideration of commercial nature are prohibited. Transfer falling in other categories cannot be held to be prohibited and can be made with prior permission of the Chief Wild Life Warden as contemplated under Section 40(2).

iii. The single judge in the judgment dated August 28, 2014 in W.P(C). No. 17848 of 2014 has not correctly interpreted section 43 of the Act, 1972. The single judge has erred in taking the view that after transfer or transport the only requirement is to report the transfer or transfer under section 43(2). Report as contemplated under section 43(2) is attracted in cases where transfers or transportation are affected with prior permission under section 40(2). For transportation of an elephant from another State to Kerala or within the State of Kerala, prior permission is necessary under section 40(2) of the Act, 1972, for which application in prescribed form has to be submitted by the applicant to the Chief Wild Life Warden, who has to consider the nature of transaction and after considering relevant facts and the scheme of the Act, take a decision on the application. The court in view of the above reasoning held as unsustainable the judgment of the single judge in W.P(C). No. 17848 of 2014 dated August 28, 2014which was the subject matter of challenge in W.A No. 1650 of 2014. Further, the court accordingly set aside the judgment of the learned Single Judge which followed the above judgment.

X FOREST PRODUCE

In the *Divisional Forest Officer* v. *Soibam Lenin Singh*,[37] a criminal appeal was preferred against the order on December 2, 2013 passed by the Sessions Judge, Manipur East by which the sessions judge held that 12 teak door panels seized by the authorities of the forest department cannot be termed as "timber" and hence, 'forest produce' as defined under the Indian Forest Act, 1927 and accordingly, set aside the proceeding initiated by the forest department for the alleged violation of section 41 of the Indian Forest Act, 1927 read with Rule 33 of the Manipur Forest Rules, 1971. It is against that decision that the present appeal has been filed by the divisional forest officer.

In this connection, the High Court of Manipur referred to the decision of the Supreme Court in *Suresh Lohiya* v. *State of Maharastra*[38] wherein the court while dealing with a case as to whether bamboo mat is a forest produce or not under the Indian Forest Act,1927 indicated the principle to decide as to whether an article or produce will be "forest produce" or not. The said principle can be stated as follows:[39]

37 2015(5)FLT 768.

38 (1996) 10 SCC 397.

39 *Ibid.*

> when a new product from a forest produce is created by application of human labour which is commercially different from the original forest produce and taken as a distinct product in the common parlance, it would cease to be a forest produce.

The High Court of Manipur applied the aforesaid principle adopted by the Supreme Court in *Suresh Lohiya* v. *State of Maharastra*[40] to the present case by stating that the seized articles which are door panels meant to be used for door, have not only assumed a new commercial identity but also have certain additional attributes which are not found in a normal teak timber. Certain new qualities have been added to the teak timber to make door panels which obviously have been done by addition of human labour. Therefore, the court held that the seized door panels of teak wood cannot be considered to be "timber" or "forest produce" any more.

XI CONCLUSION

Forest and tribal laws is a new topic for analysis of the interface between the environmental law *vis-a-vis* the tribal community and other forest dwelling communities. There have already been land mark decisions such as *Samatha* v. *State of Andhra Pradesh*,[41] and *T.N.Godavarman Thirumulkpad* v. *Union of India*[42] which dealt respectively with the rights of tribals and conservation of forest respectively. The above cases can be in no uncertain terms rightly called as 'Kesavananda Bharti' of environmental jurisprudence in general and forest and tribal laws in particular.[43] With the passage of time on par with other disciplines of law the contours of environmental law has also expanded bringing within its fold matters arising in the form of public interest litigation to those concerning developmental and infrastructural laws. This branch of law has not remained untouched by the concept of 'political ecology' as has been witnessed in the case of Committee *for C.R. of C.A.P.* v. *State of Arunachal Pradesh.*[44] Globalisation has brought with it technological innovation of unparalleled magnitude, but in the guise of development the harm caused to the environment particularly in ecologically fragile remote Himalayan villages has raised public consciousness of the development versus ecology debate to a new height as has been dealt in the case of *Ajay Kumar Negi* v. *Union of India.*[45] The year under survey saw the Compensatory Afforestation Bill introduced in the Parliament of India. This assumes significance in the light of India's participation in the Paris Climate Summit held in December 2015 in which India along with other countries pledged to move to a low carbon pathway to keep global

40 *Ibid.*
41 1997 8 SCC 191.
42 AIR 1997SC 1228.
43 Emphasis added
44 *Supra* note 12.
45 *Supra* note 25.

rise in temperature below 1.5 degrees C°. As per information released by the government concerning India's intended nationally determined contribution (INDC), it said that India intends to create additional Carbon Sink of 2.5 to 3 Billion Tonnes of CO_2 Equivalent through Additional Forest and Tree Cover by 2030.[46] How the decision of the Hon'ble Supreme Court in *T.N.Godavarman Thirumulkpad* v. *Union of India*[47] on Compensatroy afforestation in both creation of fund as well as an authority bears testimony to the fact that show that India can definitely emerge as a global leader in addressing the issue of climate change by keeping the adage *'Vasudhaiva Kutumbakam'* alive and relevant. In the ultimate analysis, given the delicate task that the higher appellate courts are required to perform in environmental litigation, barring a few aberrations, the Supreme Court, high courts and of lately the National Green Tribunal (NGT) have continued to play pre-eminent role in the preservation and protection of environment, at the same time, ensuring that their sensitivity and concern for the environment did not unduly strain the developmental imperatives. Having said that, it is equally incumbent on the courts and the NGT that they adopt a more holistic and pro-active approach, rather than viewing environmental problems in isolations within the strict confines of legalism.

46 Press Information Bureau Government of India Ministry of Environment and Forests, (last modified on 02-October-2015 15:18 IST)

47 AIR1997 SC 1228.