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ENVIRONMENTAL LAW

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I INTRODUCTION

DURING THE year 2018, the governments, courts and the National Green Tribunal (NGT) have played a proactive role in the matter of environmental protection in India. While the governments have come out with certain new rules as well as amended rules relating to dust protection measures, corporate environment responsibility, draft forest policy, e-pollution rules and bio-waste management rules, the courts and tribunals have continued their strong inclination to protect the ecology and environment. The areas which attracted the attention of the courts and tribunals include, mining activities and other forms of exploitation of natural resources, ground water pollution due to releases of toxic substances by industries, aggressive push by vehicle manufacturers to get permission to sell vehicles with the outdated BS-IV compliance, illegal constructions in violation of environmental norms and coastal zone regulations, noise pollution, ban on certain fire crackers, and protection of forest rights *etc*. An endeavour has been made to capture the essence of all these developments in the following summary and analysis.

II CONSTRUCTIONS IN COASTAL REGULATION ZONE

In *Secretary, Kerala State Coastal Management Authority* v. *DLF Universal Ltd.,*[1] a Division Bench of the Supreme Court dealt with the construction of about 185 residential flats in a multistoried complex located in an area of about free acres of land, which fell within coastal regulation zone (CRZ). The respondent constructed the said flats after obtaining requisite permissions from the state pollution control board, fire and rescue department and navy. However, they did not obtain permission well in advance from CRZ authorities. On the objection raised by Kerala State Coastal Management Authority (KSCMA), the lower courts imposed a fine of Rs.1 crore but the Supreme Court sustained the fine with the direction for strict adherence to the norms in future. This judgment highlights the soft approach of the courts in India in spite of clear violations of environmental norms by the house builders.

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1 2018 (8) FLT 83 (S.C.); AIR 2018 SCC 389.

III MINING AND ENVIRONMENT

In *Goa Foundation* v. *SESA Sterlite Ltd.*,[2] the Supreme Court made some strong observations against the indiscriminate and illegal mining operations in India which causes environmental degradation of the worst kind. Justice Madan B. Lokur who delivered the judgment observed: [3]

> Rapacious and rampant exploitation of our natural resources is the hallmark of our iron ore mining sector - coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. The sole motive of mining lease holders seems to be to make profits (no matter how) and the attitude seems to be that if the rule of law is required to be put on the backburner, so be it. Unfortunately, the .. State is unable to firmly stop violations of the law and other illegalities, perhaps with a view to maximize revenue, but without appreciating the long term impact of this indifference. Another excuse generally put forth by the State is that of development, conveniently forgetting that development must be sustainable and equitable development and not otherwise

Effective implementation and in some instances circumvention of the mining and environment related laws is a tragedy in itself. Laxity and sheer apathy to the rule of law gives mining lease holders a field day, being the primary beneficiaries, with the state being left with some crumbs in the form of royalty. For the state to generate adequate revenue through the mining sector and yet have sustainable and equitable development, the implementation machinery needs tremendous amount of strengthening while the law enforcement machinery needs strict vigilance. Unless the two marry, we will continue to be mute witnesses to the plunder of our natural resources and left wondering how to retrieve an irretrievable situation.[4]

The Supreme Court held that the mining lease holders who were granted the second renewal in violation of the decision and directions of the Supreme Court in an earlier case,[5] between the same parties were given time to manage their affairs and might continue their mining operations till March 15, 2018. However they were directed to stop all mining operations with effect from March 16, 2018 until fresh mining leases were granted and fresh environmental clearances were given. The court further held that the Ministry of Environment and Forest (MoEF) was obliged to grant fresh environmental clearances in respect of fresh grant of mining leases in accordance with law and the decision in *Goa Foundation.*[6] The State of Goa was also directed take all necessary steps to grant fresh mining leases in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and

2 AIR 2018 SC (Supp) 1269: 2018 (8) FLT 173 (SC) decided on Feb. 7, 2018.

3 *Id.*, para.

4 *Id.*, para 2.

5 (2014) 6 SCC 590.

6 2014 AIR SCW 6014.

the MoEF was directed to take all necessary steps to grant fresh environmental clearances to those who are successful in obtaining fresh mining leases.

In *Ramkumar Sahu* v. *State of Madhya Pradesh*,[7] a division bench of the high court reiterated the necessity of exploiting natural resources with caution. The court while referring to one of its earlier judgments in *State (NCT of Delhi)* v. *Sanjay*[8] relating to adverse and destructive environmental impact of sand mining which was discussed in the United Nations Environment Programme (UNEP) global environmental alert service report. As per the report, lack of proper scientific methodology for river and mining has led to indiscriminate sand mining while weak governance and corruption have led to widespread illegal mining. It was stated that sand trading is a lucrative business and there is evidence of illegal trading such as the case of the influential mafia in our country. Considering the doctrine of public trust, which extends to natural resources including sand, the court quoted from earlier judgments that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. Such resources are a gift of nature and they should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The relevant extract of the judgment in state (NCT of Delhi)[9] is reproduced as under:[10]

> ...There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, waters and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership.

This reminder is timely and needs to be noted by all the concerned particularly the regulatory authorities.

In *Arpit Marbles Private Limited* v. *Rajasthan Pollution Control Board* decided by the NGT, New Delhi,[11] the main issue was the validity of the order issued by the

7 AIR 2018 MP 87.

8 (2014) 9 SCC 772 : AIR 2015 SC 75.

9 AIR 2015 SC 75, para 55.

10 AIR 2015 SC 75, para 60.

11 In appeal nos. 15,16,17 and 18 of 2017 *vide* judgment dated Sep. 25, 2018.

state pollution control board in refusing to grant mining lease permits to the applicants on the ground that the mining leases in all the four appeals are situated within 1 km of the Jamuwa Ramgarh Wildlife Sanctuary in Rajasthan. The NGT held that the impugned order was passed on the basis of the case of *Goa Foundation* wherein all the mining activities have been prohibited within 1 km of the boundaries of national parks and sanctuaries. The NGT upheld the order considering the sensitiveness of the national parks and sanctuaries and the rule position that no mining activity can be permitted up to 1 km from the boundaries of the national parks and sanctuaries anywhere in the country.

In *T.D. Chandola* v. *A.P. Mines and Minerals*[12] the applicant sought protection of his property, ecology as well as life and health of the people from the illegal soapstone mining activities at Village Jagthali, Kanda and various places in District Bageshwar, Uttarakhand by respondent industry. The NGT after considering the reports of the expert committees held that held that the mining operations were carried out in violation of mining conditions in the land owned by the applicant, the mining was done without environment clearance and that the consent of the competent authority in an unscientific manner. NGT therefore, directed respondent industry to pay compensation to the applicant at the rate of Rs. 14 Lakh per ha as worked out by the committee appointed by the Central Pollution Control Board.

IV ILLEGAL CONSTRUCTIONS AND ENVIRONMENTAL CLEARANCE

In *Tanaji Bala Saheb Gambhire* v. *Union of India,*[13] the NGT noted that certain illegal structures were made without obtaining environmental clearance. An application was made before the NGT for a direction to demolish illegal structure on account of infraction of law. The tribunal declined to direct demolition of illegal structures but took cognizance of adverse impact on environment. Consequently, it directed the respondent developer to pay a compensation of Rs.100 crores or 5% of total cost of the project, whichever is less.

V MEDICAL WASTE AND POLLUTION

In *TPPL* v. *State of Chhattisgarh*[14] the high court dealt with the disposal of bio-medical waste generated by hospitals, nursing homes and pathological labs *etc*. The petitioner claimed that, he established a Common Bio-Medical Waste Treatment Facility (CBWTF) at an industrial area in Bhilai for disposal of medical waste, for which he was authorized to establish and operate the facility. After discussing the provisions of contained in the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and also referring to its earlier decision in *B.L. Wadhera* v. *Union of India*[15] wherein the Supreme Court issued directions to the Government of

12 The NGT, Principal Bench, New Delhi in OA No. 567 of 2015(M.A. No. 1342 of 2015) *vide* its judgment dated Aug.27, 2018

13 2018 (8) FLT 311 (NGT– WZ. P.B.) decided on Jan. 8, 2018.

14 2018 (8) FLT 347 (Chhattisgarh HC) decided on Mar. 23, 2018.

15 1997 CJ (SC) 112.

India, Municipal Corporation of Delhi and AIIMS to construct and install incinerators in all the hospitals and nursing homes for disposal of medical waste. The court held that, the petitioner's CBFTF which was in the locality was not operational, therefore, other such facilities can be permitted in the same locality.

VI FORESTS RIGHTS ACT AND ENVIRONMENTAL PROTECTION

In *Velu* v. *State of Kerala*[16] while dealing with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 the High Court of Kerala held that under the Act, only right to have occupation of forest land for self cultivation and planting of trees for livelihood can be transferred, however the forest dwellers or occupants who are conferred this right cannot be permitted to fell the trees from the land. Even the government cannot issue an order without previous approval of the Central Government.

In *T.N. Godavarman Thirumulkpad* v. *Union of India*[17] the Supreme Court dealt with the ban imposed by the apex court on felling of trees and the application by the State of Himachal Pradesh seeking permission to carry out silviculture felling including thinning and other operations. The state government was advised by the Central Empowered Committee (CEC) to approach the Supreme Court for modification of the earlier stay order. Having considered the factual situation the court permitted silviculture felling subject to certain conditions, in view of regeneration of trees.

In *Court on its Own Motion* v. *State of H.P.,*[18] the high court took note of the constant grievances vented out by the general public with regard to the pollution caused by ACC Cement Factory in Salapur Village of Mandi District in Himachal Pradesh. The industrial unit though obtained mandatory consent to operate under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 the Air (Prevention and Control of Pollution) Act, 1981 and authorization under Hazardous (Waste Management and Handling) Rules, 2008 it was found that with the establishment of the cement plant, flora and fauna, stand adversely effected, so also the health of the people leading to peculiar problems/diseases like Tuberculosis, Asthma, Malaria and sound pollution. In view of the above facts, the court directed the establishment of a committee appointed by the Chief Secretary to Government of Himachal Pradesh to examine the grievances of the villages affected.

In *Shri Hira Singh Markam* v. *Union of India,*[19] the NGT dealt with the validity of the order of forest clearance granted by the State of Chattisgarh for the diversion of 83.12 hectare of additional forest land in East Bhanupratappur forest division for the non-forest purpose under section 2 of the Forest (Conservation) Act, 1980 for construction of the phase I of the Dalli-Rajhara –Rawghat Railway Line. The appellant had also challenged the stage -I and stage –II forest clearances granted by the MoEF. However during submissions made on the last date of hearing they have confined

16 2018 (8) FLT 403 (Ker. HC) decided on Dec. 21, 2017; See also *Pramod* v. *State of Kerala* 2018 (8) FLT 610 (Ker. HC) decided on Dec 21, 2017.

17 2018 (8) FLT 445 (S.C.); AIR 2018 SC (Supp) 242 SC, decided on Feb.16, 2018.

18 2018 (8) FLT 541 (HP. HC) decided on Mar. 20, 2018.

19 Appeal No. 83 of 2014 decided by the NGT, New Delhi *vide* its judgment dated Sep. 14, 2018.

their appeal to forest clearance granted by the State of Chattisgarh only. The NGT dismissed the appeal on the following grounds:[20]

> ..... MoEF has vide its subsequent letter of 05.02.2013 for the projects like construction of roads, canals, laying of pipelines/ optical fibres and transmission lines etc. where linear diversion of use of forest land is involved has exempted from requirement of obtaining consent of the concerned Gram Sabha(s) as stipulated in clause (c) read with clause (b), (e) and (f) in second para of the MoEF's letter dated 03.08.2009. Therefore, from 05.02.2013 onwards there was no need to enclose consent of Gram Sabha(s) with the proposals for diversion of forest lands for non-forest purposes to be sent to MoEF unless rights of Primitive Tribal Groups and Pre-Agriculture Communities are affected.
>
> .... that the project in the present Appeal Dalli-Rajhara-Rawghat Railway Line involves linear diversion of use of forest land and the appellant has nowhere contended that the tribals or the forest dwellers in the forest land involved fall in the category of Primitive Tribal Groups or Pre- Agriculture Communities, therefore, the current proposal of diversion of 83.12 ha, of forest land for construction of this railway line is exempt from the requirements of consent of Gram Sabha(s).[21]
>
> ...... there is no requirement of pre- settlement of the rights of the Scheduled Tribes or the Forest Dwellers of the area involved in the project in the Forest (Conservation) Act, 1980. Besides, Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act, 2006 is not in the Schedule of Acts in the National Green Tribunal Act, 2010.[22]

This is a significant judgment delivered by the NGT in 2018 in relation to development of infrastructure, forest conservation and rights of forest dwellers.

In *National Green Tribunal Bar Association* v. *Union of India,*[23] the NGT awarded damages against the person who got 25 Saal trees felled illegally at the in the reserve forest land which was illegally purchased by him. Similar order was passed in *Nishant Kumar Alag* v. *Principal Chief Conservator of Forests, Department of Forest and Wildlife Preservation-Govt. of Punjab.*[24]

VII NOISE POLLUTION AND ENVIRONMENT PROTECTION

In *Desmond Judge D'Souza* v. *State of Goa,*[25] the residents of a village sought permanent injunction to restrain hosting of "Sun-Burn" celebration or any such event

20 *Id*., para 8.

21 *Id*., para 9.

22 *Id*., para 10

23 OA No. 309 of 2013 and OA No. 384 of 2015 decided by the NGT, New Delhi *vide* order dated Aug. 27, 2018

24 In Original Application No. 276/2016 (M.A. No. 512/2016) decided by the NGT, New Delhi *vide* its order dated Aug. 16, 2018.

25 2018 (8)FLT 327 (NGT – WZ. PB) decided on Feb 13, 2018.

and from conducting, performing any musical shows or events of any nature, erecting/ constructing any structure in area of the village. They also sought action against Goa State Pollution Management Authority, the village sarpanch *etc.*, for granting permissions/NOCs to such musical events. They argued that, the said landed property has porous soil and is similar to water reservoir with wide bio-diversity of plants, with grass and tree cover. They further argued that, holding of the said "Sun-Burn" Festival would affect the grass and vegetation on the said property. After hearing both the parties, the NGT rejected the plea for grant of injunction and awarding of compensation.

With regard to the ever-increasing use of loud speakers by religious places, the High Court of Madras in the case of *Ashtalakshmi Nagar* v. *I.G. of Police*[26] considered the allegation of using cone speakers/loud speakers by a church during prayer, causing noise pollution. It was noted that, the church after filing of the petition agreed to remove the speakers and also undertook to conduct the prayers in a peaceful manner. Therefore, in view of the Noise Pollution (Regulation and Control) Rules, 2000 and also its earlier judgments in *Church Of God (Full Gospel) in India* v. *K.K.R. Majestic Colony Welfare Association*[27]and *In Re Noise Pollution*[28] the court issued certain directions to stop using of loud speakers.

In *Mazdoor Kisan Shakti Sangathan* v. *Union of India,*[29]the Supreme Court was called upon to decide the validity of the prohibitory orders passed by the Delhi Police on holding processions and demonstrations; picketing or *dharnas*; *etc*., in certain specified areas of Delhi in March 2017.The Supreme Court referred to an order passed by the NGT in *Varun Seth* v. *Police Commissioner, Delhi Police*[30] wherein the tribunal judicially recognized that processions, demonstrations and agitations *etc*., had become a regular feature, which was noted by the NGT of having an adverse impact on environment due to such demonstrations on a continuous basis, more particularly the air pollution and noise pollution. It was observed that:[31]

> The protestors continuously play drums, music, microphones, etc. which disturb the peace and tranquility of the place. The noise emanating from the said area on account of aforesaid loudspeakers, etc. definitely generates noise which exceeds the permissible limit. Under the Noise Pollution (Regulation and Control) Rules, 2000 and the schedule given therewith the ambient air quality standards in respect of the noise for a residential area is 55 db (A) leq during the day time and 45 db (A) leq in the night…….The noise pollution has been increased due to installation of traditional public address system based on the horn loud speakers by protestors. Besides, assembling of large crowds which is

26 2018 (8) FLT 562 (Mad HC) decided on Feb 5, 2018
27 AIR 2000 SC 2773
28 AIR 2005 SC 3136
29 AIR 2018 SC 3476
30 2017 SCC OnLine NGT 65.
31 *Id*., para 4, 36.

> at times in thousands, also contribute to the noise pollution.That continuous noise by non-stop slogans and use of loudspeakers by the protestors, for hours together, is more than just a nuisance. It constitutes a real and present danger to people's health. Day and night, at home, at work, and at play, noise can produce serious physical and psychological stress.

The NGT thereafter discussed the ill-effects of the noise pollution by quoting various research and field studies. It also referred to various statutory provisions which aim to curb noise pollution and the judgments of Supreme Court as well as high courts, including the judgment in the case of *Ramlila Maidan Incident* v. *Home Secretary, Union of India*[32] wherein right to proper sleep has been 7 considered as fundamental right, being a facet of article 21 of the Constitution. Applying that law to the facts of the case at hand, it came to conclusion that residents of Jantar Mantar Road are not living a normal life and their difficulties were increasing by the day. Such demonstrations with loud noise were also causing various kinds of health problems like hearing problem, blood pressure, hypertension and other serious diseases relating to heart etc. The NGT found that they were suffering because of gross violation of laws, air pollution and health hazard, due to lack of cleanliness and nonperformance of duties by the authorities of the state. All this is endangering their lives. The environmental conditions at Jantar Mantar Road in relation to noise pollution, cleanliness, management of waste and public health had been grossly deteriorated. The situation was becoming alarming, day by day. On that basis, the NGT found merit in the original application filed by the residents. In the aforesaid conspectus, the NGT has given the directions, which include shifting the protestors, agitators and the people holding *dharnas* to the alternative site at Ramlila Maidan, Ajmeri Gate, Delhi.

The apex court captured the essence of the reasoning on which the judgment of the NGT was based upon and relying upon the judgments of the apex court in *Subramanian Swamy* v. *Union of India, Ministry of Law*,[33] *Asha Ranjan* v. *State of Bihar,*[34] and *Vikas Yadav* v. *State of U.P.*,[35] where the court explained the need to balance the fundamental rights, "intra-conflict of a fundamental right", "paramount collective interest"; or "sustenance of public confidence in the justice dispensation system". Accordingly, the Supreme Court directed the Commissioner of Police, New Delhi in consultation with other concerned agencies, to devise a proper mechanism for limited use of the area for such purposes but to ensure that demonstrations, etc. are regulated in such a manner that these do not cause any disturbance to the residents of Jantar Mantar road or the offices situated there. This order of the court has to be appreciated and respected not only by the state but also the citizens who want to protest and demonstrate which cannot be permitted at the cost of causing environmental

32 (2012) 5 SCC 1: 2012 AIR SCW 3660.

33 (2016) 7 SCC 221 : AIR 2016 SC 2728, para 130, 131.

34 (2017) 4 SCC 397 : AIR 2017 SC 1079, paras 49, 50, 51, 52, 53 and 54.

35 AIR 2016 SC 4614.

pollution and undue inconvenience to the people at large. After all acute inconvenience alone cannot be the route to attract the attention of the authorities.

In *Arjun Gopal* v. *Union of India,*[36] the Supreme Court continued its saga of dealing with the ill-effects of burning fire-crackers which was started by three infants by filing a writ petition in 2015,and later on continued on other petitions which were filed in 2016 and 2017 along with the interlocutory applications filed therein.[37] In the instant order, the court addressed number of issues like i) the argument that banning the sale of firecrackers may lead to extreme economic hardship, namely, on the one hand loss of substantial revenue and on the other hand unemployment to laths of persons, ii) application of the precautionary principle is based on the theory that it is better to err on the side of caution and prevent environmental harm which may indeed become irreversible, iii) absence of scientific study about the adverse affect of firecrackers during Diwali and iv) whether burning of crackers during Diwali though may not be the only reason for worsening air quality, whether it definitely contributes to air pollution in a significant way. After considering the above issues through the spectrum of laws and precedents supported by scientific studies, the court issued the following interim specific directions *inter alia:*[38]

(i) The crackers with reduced emission (improved crackers) and green crackers only would be permitted to be manufactured and sold.

(ii) As a consequence, production and sale of crackers other than those mentioned above are hereby banned.

(iii) The manufacture, sale and use of joined firecrackers (series crackers or *laris*) is hereby banned as the same causes huge air, noise and solid waste problems.

(iv)The sale shall only be through licensed traders and it shall be ensured that these licensed traders are selling those firecrackers which are permitted by this order.

(v) No e-commerce websites, including Flipkart, Amazon etc., shall accept any online orders and effect online sales. Any such e-commerce companies found selling crackers online will be hauled up for contempt of court and the Court may also pass, in that eventuality, orders of monetary penalties as well.

(vi) Barium salts in the fireworks is also hereby banned.

(vii) Petroleum and Explosives Safety Organisation (PESO) is directed to review the clinical composition of fireworks, particularly reducing Aluminum content, and shall submit its report in respect thereof within a period of two weeks

(viii) Even those crackers which have already been produced and they do not fulfill the conditions mentioned will not be allowed to be sold in Delhi and NCR.

36 AIR 2018 SC 5731.

37 See G. B. Reddy, "Environmental Law" LIII *ASIL* 367 (Indian Law Institute) 2017.

38 *Supra* note 36 at para 42.

(ix) PESO will ensure fireworks with permitted chemicals only to be purchased/possessed/sold/used during Diwali and all other religious festivals, of any religion whatsoever, and other occasions like marriages, etc. It shall test and check for the presence of banned chemicals like Lithium/Arsenic/ Antimony/ Lead/Mercury.

(x) PESO will ensure suspension of the licenses of manufacturers of such fireworks items and appropriate disposal of such stock; and

(xi) PESO will ensure that only those crackers whose decibel (sound) level are within the limits are allowed in the market and will ensure to take action by suspending the licenses of the manufacturers on such violations and disposal of such lots.

It is felt that the apex court and also all the stakeholders shall bring a logical end to this problem of fire crackers at the earliest so that the uncertainty and ambiguity are put to rest once and for all.

In *Ajay Marathe* v. *Union of India,*[39] two petitions were filed questioning the validity of a state government notification, by which the Noise Pollution (Regulation and Control) Amendment Rules, 2017 were brought into force by amending the Noise Pollution (Regulation and Control) Rules 2000 framed by the Central Government under clause (ii) of sub-section (2) of section 3, sub-section (1) and clause (b) of sub-section (2) of section 6 and section 25 of the Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection) Rules 1986. The amended rules authorized the government to permit use of loud speakers between 10.00 p.m. and 12.00 midnight on or during any cultural, religious or festive occasion of a limited duration not exceeding 15 days in all during a calendar year and the concerned state government or district authority in respect of its jurisdiction as authorized by the concerned state government shall generally specify in advance, the number and particulars of the days on which such exemption should be operative. *Prima facie*, the said rules were found to be contrary to the principal rules and also the judgments of the apex court, which prohibited the use of loudspeakers, between 10:00 p.m. and 6:00 a.m.

The high court was of the considered view that there was a very strong *prima facie* case to hold that the impugned rules are *ex-facie* unconstitutional being violative of fundamental rights guaranteed under article 21 of the Constitution of India. It was further observed that it is a case where there would be irreparable injury to the citizens especially in the light of the law laid down by the apex court that a right to live in noise pollution free atmosphere is guaranteed under article 21 of the Constitution. The court observed that: [40]

> Noise is a major health hazard on various aspects set out in its decision. No one can claim that his rights are affected in any manner if he is denied a permission to use loud-speaker within a close distance from hospitals/clinics, schools/colleges or courts. It in public interest that

39 2018 (8) FLT 813 (Bom. HC. FB.) decided on Sep. 9, 2017.

40 2018 (8) FLT 813 (Bom. HC FB) para 36

> such permissions should not be granted. By denying such permission, rights under article 19 or 25 are not at all infringed. Use of loud-speakers for celebrating a religious festival is not an essential part of any religion.

Consequently, the operation of the amended rules as notified by the state government was rightly stayed by the high court.

In *Ramji Singh Patel* v. *Gyan Chandra Jaiswal,*[41]the Supreme Court held noted that the respondent started a business of flour mill, oil mill and expeller, ice factory *etc.,* and he used electricity for running the same. The appellant/neighboring resident did not feel any inconvenience since it was run with electricity therefore he did not make any complaint. However, from the year 2003 the mill owner started using diesel generator set (DG Set) and the smoke and noise created by it had caused serious air and other pollution. The aggrieved neighbor obtained two favourable orders to prohibit the running of the mill *etc,* from two lower courts but in the second appeal filed by the mill owner, the high court reversed the same on the ground that the original suit was filed beyond the limitation period. In the civil appeal filed before the Supreme Court found that the high court had taken a very myopic view of the matter. The findings of fact which were recorded by the courts below were clear to the effect that after the use of DG Set by the respondent and because of the vibration created by it and the machines run through it, cracks on the wall of the appellant side developed at many places. This had happened after 2003 and the suit was filed in 2004. Another categorical finding was that running of the business was detrimental to the health of the appellant and his family. Consequently the Supreme Court confirmed the lower court orders granting perpetual injunction against the running of flour mill in the residential area.

In *Karnataka Live Band Restaurants Association* v. *State of Karnataka,*[42] the Supreme Court upheld the validity of the Licensing and Controlling of Places of Public Entertainment (Bangalore City) Order 2005 passed by the Police Commissioner, Bangalore with a view to regulate the running and the functioning of the restaurants providing the facility of displaying "Live Band Music", "cabaret dance" and "discotheque" in the restaurants. Initially, a single judge of the high court disposed of the writ petitions filed by the appellant hotels association and directed the Commissioner of Police to treat the Order 2005 impugned in the writ petitions to be the "draft Order" and granted an opportunity to the public at large to file their objections as provided in the Karnataka Police Act, 1963 to the proposed draft Order 2005 and then to proceed in the case in accordance with law. An appeal filed before a division bench against the said order was dismissed. In the special leave petition filed before the Supreme Court, the impugned order was upheld but the apex court also found that: [43]

> ....though clause 7 (K) of the Order 2005 rightly provides in general to ensure that the proposed premises do not cause any obstruction,

41 AIR 2018 SC (Supp) 1095.

42 AIR 2018 SC 731.

43 *Id*., para 82.

> inconvenience, annoyance, risk, danger or damage to the residents or to passerby of such premises, but what we find is that there is no specific clause/condition dealing with control of noise pollution which is likely to create or rather bound to create due to regular display and performance of the three activities in the restaurants thereby causing disturbance, annoyance and inconvenience to the near residents of the nearby area. The commissioner shall ensure that no noise pollution is caused to residents of the nearby area due to any of the three performances in any restaurant and that remedial steps are taken in that behalf.

In *Manmohan Lakhera* v. *State,*[44] the High Court of Uttarakhand treated a letter sent by a journalist highlighting therein the encroachments made on the public path by unscrupulous persons as PIL . The court observed that despite repeated directions issued by the Supreme Court, neither the state government nor the MDDA nor the Corporation of Dehradun had taken any effective steps to remove the encroachment from the public streets/pavements. The court observed:[45]

> Public streets are for public convenience. These should be free from encroachment. The citizen must have a free access to footpaths. The Court can take judicial notice of the fact that the children and elderly people also use the footpaths. The menace is so alarming that even the road, which are 30 fts. wide, have been reduced to mere 7-8 fts. The shopkeepers, firstly, are permitted to construct temporary khokhas and, thereafter, they make them pucca. There are permanent bottlenecks as noticed in the report, and highlighted by us. The footpaths are being permitted to be used for placing big generators causing noise and air pollution. The shopkeepers are permitting the vegetable and fruit vendors to sit in front of their shops. The residential premises have been converted into commercial complexes, more particularly, in the oldest colony i.e. Nehru Colony. Similar is the plight of other localities. The residential houses on the Haridwar road have been permitted to be used as commercial purposes. The basements, which are to be used primarily for parking lots, are being permitted to be used for commercial ventures. There are chaos all over Dehradun. The traffic moves at snail's pace. The public authorities cannot be oblivious to the loss of precious time of commuters. The Court can take judicial notice of the fact that the roads, encroached upon with impunity with the connivance and collusion of the authorities, are also ridden with garbage. Every citizen has a right to access to footpaths, roads, parks and public utilities under Article 21 of the Constitution of India.

The court directed municipal corporation/mdda/ state functionaries to remove all the unauthorized encroachment on public footpaths/ streets/ roads/ pavements

44 AIR 2018 Uttarakhand 187.

45 *Id.,* para 17.

including unauthorized constructions made over them within a period of four weeks from today by using its might. It shall be open for the state functionaries to impose section 144 of Cr PC while removing the demolition of illegal structures built on government and municipal land/footpaths/streets.

In *Desmond Jude D'souza* v. *State of Goa*,[46] the applicants, residents of village Anjuna sought permanent injunction, restraining hosting of 'Sun-Burn' celebration or any such event(s) and conducting, performing any musical shows/events of any nature, erecting/constructing any structure of whatsoever nature in a particular landed property of village Anjuna, Bardez, district North Goa, Goa and for further directions to State of Goa to take action against Goa State Pollution Control Board, Department of Tourism, Goa, Goa Coastal Zone Management Authority (GCZMA), Sarpanch of Anjuna and Administrator of Comunidade for illegally granting permissions/no objection certificates to such musical event(s). The applicants also further sought compensation of Rs.1Crore from respondent authorities, corporate bodies and private individuals, arranging such event(s) and restoration of the property to its original position. The NGT while refusing to grant injunction and also compensation however held that Whenever any such events/festivals are organized, the organizers should ensure that permission so granted to that effect is widely published and posted on the website at least 15 days in advance, that they should observe all norms of the Noise pollution (Regulation Control) Rules, 2000 and Solid Waste Management Rule 2016 and further that the authorities concerned should maintain regular vigil and undertake/perform functions as prescribed under their area of jurisdiction as per law.

VIII ENVIROMENT IMPACT ASSESEMENT NOTIFICATION 2006 AND BUILDING CONSTRUCTIONS

In *Goel Ganga Developers India Pvt. Ltd.* v. *Union of India,*[47]an original application was filed before the NGT that the project proponent had raised constructionin Vadgaon, Pune in violation of the environmental clearance (EC) granted for the project and also in violation of the various municipal laws was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against the SEIAA; and lastly it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. The NGT vide its order dated September 27, 2016 allowed the application by directed the project proponent to pay environmental compensation cost of Rs. 100 crores or five percent of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In

46 In App. no.122 of 2014 decided by the NGT, Pune Bench on Feb. 13, 2018.

47 2018 (8) FLT 663 (S.C.): 2018 SCC Online SC 930 decided on Aug10, 2018.

addition to this, it also directed to pay a sum of Rs. 5 crores for contravening mandatory provision of several environmental laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the board. Even the erring officers who acquiesced to the illegal activity were also fined by the NGT.

Aggrieved by the aforesaid order of the NGT, the project proponent filed civil appeal before the Supreme Court. The Pune Municipal Corporation ('PMC' for short) also challenged the said order by filing a civil appeal. In the meantime, in a review application filed by the original applicant before the NGT, the tribunal partly allowed the same by modifying the environmental compensation cost of Rs.190 crores or 5% (Five percent) of the total cost of project to be assessed by SEAC, whichever is more, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. Thereafter, the project proponent amended its appeal with permission of the Supreme Court.

The Supreme Court observed, in this case that it is expected of "... the officials of the Ministry of Environment, Forest and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment."[48] The apex court held that, "…the NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent …" and upheld the directions given by the NGT. The court particularly observed that despite notifications being clear and unambiguous, the officials of PMC had given an interpretation which was tailor-made to suit the project proponent, and that some officials of the PMC were espousing the case of the project proponent at the cost of the environment.

While, rejecting the claim of the project proponent for quantification of damages by following carbon footprint, the court pertinently held that, "Courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of Carbon Footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law."[49]

The gravity of the situation could be gauged from the following tell-tale findings of the apex court which highlight a similar story in substantial number of housing projects constructed by different project proponents in utter disregard of the environmental norms: [50]

48 2018 (8) FLT 663 (S.C.) Para 20; The Supreme Court referred to its earlier judgment in *Common Cause* v. *Union of India* (2017) 9 SCC 499 in this regard.

49 2018 (8) FLT 663 (SC) at para 54.

50 *Id*., para 57.

> ...... we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of Transfer of Development Rights (for short 'TDR') with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.

The anti-climax of the judgement however is that the court directed the grant of *ex post* facto environmental clearance , subject to deposit of the damages imposed by the court.

In *S.P. Muthuraman* v. *Union of India,*[51] the NGT Principal Bench at New Delhi considered the application for direction to refund the amount of Rs. 36 crores deposited by the applicant/project proponents with the Tamil Nadu Pollution Control Board (TNPCB) along with the interest accrued thereupon. Earlier the environmental compensation (EC) of five percent of the project value was tentatively imposed on

51 M.A. No. 18 of 2018 In OA no. 676 of 2017 (earlier OA no. 37/2015)

the applicants who commenced and carried out the construction without there being prior environmental clearance thereby exposing the environment to adverse impacts. Holding that such EC was imposed on account of not only to secure the restoration and restitution of the environment and ecology but also on account of the liability arising from the impact of the illegal and unauthorized construction carried out by the project proponent without prior environmental clearance as mandated by law under Environmental Clearance Regulation 2006,the NGT finally imposed environmental compensation of Rs. 24 crores (*i.e.* 2/3rd amount of the 5 per cent of the project value *i.e.* 36 crores) on the applicant /Builders and Promoters and permitted the refund of Rs. 12 crores to them.

IX JALLIKATTU AND GRANT OF PERMISSION

In *P.L. Ramaiah* v. *The District Collector*[52] a single judge of the Madurai Bench of the High Court of Madras dealt with the validity of an order passed by the district administration, to refuse permission to conduct *Jallikattu* (traditional bull run of the Tamilians). In this case, the issue was not about the cruelty meted out to the participating bulls, but it is about the place where such competition was to be conducted as per the provisions of Tamil Nadu Prevention of Cruelty to Animals (Conduct of *Jallikattu*) Rules, 2017. The impugned order was set-aside by the judge on the ground that the authority did not apply its mind before issuing the order of rejection.

The court noted that, there was no restriction contained in the government order that the site of *Jallikattu* should not be located nearby road and residential area, and this factor *inter alia* appears to have weighed with the court for quashing the impugned order of rejection. It is felt that, having regard to the history of *Jallikattu*, its ban by the Judiciary and resurrection by the political executive in Tamil Nadu, this judgment should have pointed out the necessity of holding Jallikattu in non-residential and in areas not thickly-populated.

X MASTER PLANS, DEVELOPMENT AND DISREGARD OF ENVIRONMENTAL PROTECTION

As pointed out by the Father of the Nation, the nature provides all that is needed by the human beings, but not enough to satisfy their greed. In the name of development, the governments of the day, and also the regulatory authorities, appear to pay scant respect to the aforementioned cardinal principle and also the concept of sustainable development. This is more visible in the area of finalizing master plans for the urban and rural areas.

In *Satish Chandra Ghildiyal* v. *State of Uttarakhand,*[53] a division bench of the High Court of Uttarakhand considered the validity of the master plan approved and subsequently notified for Mussoorrie and Dehradun. The petitioner contended that the said Master Plan was finalized without the prior approval of the MoEF, Government of India, which is mandatory and further that, the said master plan is in gross violation

52 2018 (8) FLT 755 (Mad HC Madurai Bench) decided June 1, 2018.

53 2018 (8) FLT 765 (Utt HC) decided on June 15, 2018.

of its earlier notification. The state government had not shown due sensitivity to the environmental degradation in Doon Valley. The court observed that:[54]

> There is degradation of environment and ecology. All of us are affected adversely. The climate change has already taken place. It is not understandable why the State Government has notified the Master Plan which is the magna carta for the urbanization on scientific lines by adopting the zoning principles without seeking approval from the Central Government. The entire exercise undertaken by the respondent-State of not getting sanction/approval from the Central Government, as per Notification dated 6.10.1988, is illegal. The State Government has violated the provisions of Section 5(2)(V) of the Environment Protection Act and Rule 5(3)a) of Environment (Protection) Rule, 1986 under which the restriction was imposed for location of industries, mining operations and other development activities in Doon Valley.

The court held that, it is a fit case where exemplary damages are to be imposed upon the functioning of the State which had failed to protect the environment and ecology of the Doon Valley by enforcing the notifications as per the master plan finalized without regard to environmental norms. The court imposed a cost of Rs.5.00 Lakh on the respondents to be recovered from the erring officers/officials.[55]

In *Muthaiah* v. *Secretary, Ministry of Environment and Forest, New Delhi,*[56] a Division Bench of Madurai Bench of the High Court of Madras was called upon to decide the question with respect to the tanks while undertaking the proposed expansion of the road by the government. The petitioner submitted that the existing road could be widened and a bridge can be constructed over it. Alternatively, instead of realignment of curve, an over bridge could be constructed. It was also contended that the government had not obtained the mandatory environmental clearance as per Environment (Protection) Act and Rules. The main contention was that by the proposed construction, the aquifer of the area would get affected the water is being used not only for drinking purpose but also for irrigation. It was argued that when there is a conflict between the environment and development, the former should be given primacy.[57]

The court after perusing the relevant material and data found that in the absence of any material to satisfy on the adverse environmental impact in carrying out the work it was not inclined to interfere. The technicalities appear to have played a role in the decision of the court.

54 2018 (8) FLT 765 (Utt HC) para 6.

55 2018 (8) FLT 765 (Utt HC) para 10.

56 AIR 2018 Mad. 317.

57 To buttress his submission, the petitioner relied on the decision of the National Green Tribunal, Southern Zone, Chennai in app. no. 104 of 2013 (SZ) (THC) between *Conservation of Nature Trust represented by its Chairman R.S. Lal Mohan and another* and *The District Collector, Kanyakumari District* and the decision of the Division Bench of the High Court of Madras in *Selvakumar* v. *U.O.I.* [(2011) 2 ML J 341].

In *Bijay Krishna Sarkar* v. *Inland Waterways Authority of India*[58] the applicants sought relief and compensation for the damages caused to river Ganga and its aquatic life by hydraulic structures at Uttrakhand, Uttar Pradesh and West Bengal which has allegedly resulted into loss of the livelihood to the fisherman. Their claim for compensation was on account of the environmental damage caused by eight dams, barrages and projects including dredging by Inland Waterways Authority of India, due to making of underground guide wall at Haldia and dredging operations by Kolkata Port Trust and due to abstraction of water from the Ganga and breaking longitudinal connectivity of the riverbed by the Department of Irrigation, Government of Uttar Pradesh. They made a total claim of amount of Rs. 13,101 crores every year. The NGT dismissed the applications on the ground that the cause of action in this application should have arisen when these projects were first approved and executed, which the applicant admitted were much before and in some cases almost 25 years before, the promulgation of NGT Act in 2010. Moreover under sub section 3 of section 14 of the NGT 2010, it has been provided that no application for adjudication shall be entertained by the tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose. The NGT also relied upon section 15 (3) of the NGT Act which provides that any application for grant of any compensation or relief or restitution of property or environment under shall be entertained by the tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.

XI DISCHARGE OF CHEMICAL AND TOXIC SUBSTANCES INTO UNDERGROUND BORE WELLS – CONTAMINATION OF UNDERGROUND WATER

In *Swastik Organics* v. *State of Gujarat,*[59] a Division Bench of High Court of Gujarat dealt with an important of causing ground water pollution by a chemical industry, established in the periphery of agricultural lands. As a result of release of industrial effluents by the said industry, the underground water in the area was contaminated resulting in severe water pollution and health hazards to the farmers and also consumers of agricultural products produced by using such water. This fact was also confirmed by the state pollution control board, on the insistence of which, the industry was closed. It was found that, there was contamination of underground water in the nearby areas due to discharge of effluents into the underground water in the nearby areas, a closure order was issued to the industrial unit by the Gujarat Pollution Control Board in exercise of powers conferred under the Water (Prevention & Control of Pollution) Act, the Air (Prevention & Control of Pollution) Act, and the Hazardous Waste (Management & Handling) Rules, 1989 framed under the Environment (Protection) Act, 1986. However, even after 5 years of closure, the water in the bore wells continued to be contaminated posing problems of health, and pollution. Thereafter, due to the collective efforts of the victims, state government, GPCB and the Gram Panchayat, the district court assessed the damages payable by

58 OA No. 03 of 2015 decided by the NGT, New Delhi vide its judgment dated Sep.14, 2018

59 2018 (8) FLT 773 (Guj. H.C.) decided on 08-05-2018

the industry to the victims of such ground water pollution and also towards the environmental fund. Aggrieved by that, the industry approached the high court, contending that the water pollution was due to the act of God, and that the industry was not absolutely liable to pay damages. The high court in view of the facts and circumstances of the case held that the petitioner Industry cannot be absolved from the liability to pay the compensation for the damages/harm cause by it to the environment more particularly in the present case the underground water on the ground that it was an act of God. The division bench further observed: [60]

> Now, so far as the question of quantum of damages is concerned, it is required to be noted that as such it has been established and proved that because of the discharge of effluent by the petitioner for number of years it has caused great harm and damage to the underground water and the underground water in the nearby area is found to be contaminated. Therefore, as such a great damage / harm is already caused to the nature/environment and due to which even the agriculturists/farmers in the nearby area have suffered loss. It cannot be disputed that the closure order was passed by the GPCB against the petitioner and the petitioner was compelled to close down the industry. Therefore, the villagers/ agriculturists/ farmers affected shall be entitled to the reasonable compensation once factum of suffering loss stands proved. It is cardinal principle of law that where a wrong has been committed, a wrong doer must suffer from the impossibility of accurately ascertaining the amount of damages. The petitioner being a wrong doer who has caused harm to the environment/nature and in the present case the underground water, must suffer the consequences by making the payment of cost of reversal damages and even the compensation for the damages/harm caused to the farmers/agriculturists and the villagers. A person/industry/unit, if found to have committed the wrong by polluting the nature may be air, water or earth, must be liable to pay the compensation and must be made to suffer. Nobody can be permitted to harm/damage the nature/environment, may be earth, air or water. A strong message must go that whoever because of their act and/or inaction causes the damage/harm to the nature/environment shall have to suffer by paying the compensation and even by paying the reversal cost of damages.

It can be seen that, the division bench of the high court had relied upon the precedents set by the Supreme Court in similar cases[61] on several occasions.

In *Luxmi Screening Plant* v. *State of Punjab,*[62] the petitioner is in the business of Screening-cum-Washing of Gravel, which fell within the embankment of river

60 2018 (8) FLT 773 (Guj. H.C.) See Paras 7.5 and 7.6

61 See *Vellore Citizens Welfare Forum* v. *Union of India*, AIR 1996 SC 2715; *Indian Council for Enviro Legal Action* v. *Union of India*, JT 1995 (9) SC 427 and *Deepak Nitrite Ltd*. v. *State of Gujarat*, AIR 2004 SC 3407

62 2018 (8) FLT 763 (P H. HC) decided on April 3, 2018.

Ghaggar. The petitioner being aggrieved by the notices issued by the pollution control board under section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 and section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 vide which the petitioner was directed to close down the operation of the industry and remove the entire plant and machinery, challenged the order of the PCB before the appellate authority, but the same was dismissed. In the writ petition preferred by the petitioner against the appellate authority, the High Court of Punjab and Haryana held that, as the unit of the petitioner fell in the flood protection embankment of river Ghaggar and was in violation of the Act, there is no manifest illegality and thereby upheld the orders of the appellate authority.

XII COMPLIANCE WITH BS-VI STANDARDS ON VEHICULAR POLLUTION

In *M. C. Mehta* v. *Union of India,*[63] the apex court was confronted with an issue regarding the compliance with the National Auto Policy, 2003 of Government of India based on the recommendations of the Mashelkar Committee constituted in 2001. As per this policy (Bharat Stage) BS-IV compliant vehicles were made compulsory for four wheelers in different parts of the country on different dates starting from April 1, 2005. Finally, by amendment dated August 19, 2015 it was mandated that BSIV norms would come into force throughout the country with effect from April 1, 2017. Similar guidelines were issued with regard to two wheelers also to comply with the BS-III and BS-IV norms from different dates. An issue was raised before the Supreme Court by the manufacturers of motor vehicles that they should be given reasonable and sufficient time for sale of stocks of those vehicles which are not BSIV compliant vehicles but manufactured up to March 31, 2017. However the court did not accept the submission of the manufacturers and issued the direction and in its judgment dated April 13, 2017 the court given detailed reasons for the order dated March 29, 2017 whereby the court had directed that on and from April 1, 2017, vehicles which are not BSIV compliant, shall not be sold by any manufacturer or dealer or motor vehicle company whether such vehicle is a two wheeler, three wheeler, four wheeler or commercial vehicle *etc.* The court had also by the said order prohibited registration of non- BS-IV vehicles from April 1, 2017 except if such vehicles were sold on or before March 31, 2017.

In the instant case, the Society of Indian Automobile Manufacturers (for short 'SIAM'), had submitted that though they are not averse to manufacturing BSVI compliant vehicles, they should be given some time to sell the stocks of non-BS-VI compliant vehicles manufactured up to March 31, 2020.The court's attention was drawn to various documents which clearly showed the deleterious effects of pollution on health. The court also noted that whereas in the court SIAM has been canvassing that the shift to BS-VI compliant vehicles is a long drawn out process requiring huge changes in technology, the very same manufacturers are selling and exporting BS-VI compliant vehicles to Europe and other countries.[64] The court further observed that:

63 AIR 2018 SC 5194.

64 *Id*., para 12.

i. When we compare BSVI fuel with BSIV fuel, there is a massive improvement in environmental terms. Once BSVI emission norms are enforced, there will be a 68% improvement in PM2... This is not a small change. It is a vast improvement and the faster it is brought, the better it is.... that the problem of pollution is not limited to the NCR of Delhi but it is a problem which has engulfed the entire country especially the major cities. India has the dubious distinction of having 15 out of the 20 most polluted cities in the world. The pollution in Gwalior, Raipur and Allahabad is worse than Delhi. The situation is alarming and critical. It brooks no delay.[65]

ii. The right to life not only means leading a life with dignity but includes within its ambit the right to lead a healthy, robust life in a clean atmosphere free from pollution. Obviously, such rights are not absolute and have to coexist with sustainable development. Therefore, if there is a conflict between health and wealth, obviously, health will have to be given precedence. When we are concerned with the health of not one citizen but the entire citizenry including the future citizens of the country, the larger public interest has to outweigh the much smaller pecuniary interest of the industry, in this case the automobile industry, especially when the entire wherewithal to introduce the cleaner technology exists.[66]

iii. It is therefore necessary to ensure that BS-VI compliance is uniform throughout the country so that even those areas of the country which fortunately have not suffered the ills of extreme pollution are safe in the future. The sale of automobiles and other vehicles is rising exponentially and the number of vehicles on the road is increasing day by day. Therefore, even a day's delay in enforcing BSVI norms is going to harm the health of the people.[67]

iv. The Government has developed a policy of phasing out polluting vehicles and discouraging the manufacturers of polluting vehicles. This has been done in a gradual manner. Europe introduced Euro- IV fuel in the year 2009 and Euro-VI standards in 2015. We are already many years behind them. We cannot afford to fall.[68]

In view of the fact that these proceedings had been pending in court for a long time and also in view of the fact that it is because of orders of the apex court that BS-IV and now BS-VI norms have been introduced from the dates which were not even thought of by the government, the court felt that it has to take *suo moto* notice of the rules. The court found that sub-rule 21 of rule 115 of the Central Motor Vehicle Rules, 1989 which only mentions registration of vehicles and permits registration of vehicles conforming to BSIV norms up to June 30, 2020 and in case of categories M and N, up to September 30, 2020, is violative of article 21 of the Constitution in as much as it extends time for registration of vehicles beyond March 31, 2020 and must be

65 *Id.*, para 15.
66 *Id.*, para 16.
67 *Id.*, para 17.
68 *Id.,* para 20.

accordingly read down.This judgment reflects the firms resolve of the Supreme Court to protect the citizens from the adverse effects of the vehicular pollution and also its pragmatic approach.

XIII TRANSFERRABLE DEVELOPMENT RIGHT (TDR) AND DEVELOPMENTAL CONTROL REGULATIONS (DCR) AND IMPACT ON ENVIRONMENT

In *Janhit Manch Through its President Bhagvanji Raiyani* v. *State of Maharashtra,*[69] a very interesting issue came-up for consideration of the apex court. The Government of Maharashtra had launched a comprehensive slum rehabilitation scheme by introducing an innovative concept of using land as a resource and allowing Floor Space Index (FSI) as an incentive, in the form of tenements for sale in the open market, for cross-subsidization of the slum rehabilitation tenements, which are to be provided free of cost to the slum-dwellers. The petition arose out of a prayer of the petitioner to effectively review the existing Development Control Regulations for Greater Bombay, 1991 (DCR). Appellant was an NGO espousing legal issues concerning the state and the nation, in larger public interest. A perusal of the pleadings and the impugned judgment showed that the primary question which occasioned the division bench of the High Court of Bombay to examine the matter was whether the State, on account of financial inability to provide housing to encroachers on public and private lands, residing in structures which came up before January1, 1995, could grant TDR to builders to be used in the suburbs of Mumbai, by permitting increase of FSI from 1 to 2. This was occasioned on account of the protection granted from eviction and the inability of the state to free parks, gardens, footpaths and roads from encroachment for which, in the wisdom of the government, they chose a cut-off date of January1, 1995.

The appellants raised pleas inter alia, that there must be post approval impact assessment on environment and not only a prior environment impact assessment of the DCR; that there was no genuine endeavor to provide alternative accommodation to slum dwellers, but it was only vote bank politics, as evidenced by repeated extensions of deadlines for providing alternative accommodations; that the new development plan continued to offer FSI incentive to land owners; that the commissioner exercises powers, in respect of FSI, almost as a mandatory requirement rather than a discretionary exercise; that there has been an increase in vehicular traffic in the city of Mumbai; that the increase in FSI has led to an influx of population in various regions in Mumbai; that the Pradhan Mantri Avas Yojana Scheme providing ‘pucca ghar’ to the population would result in further influx into Mumbai, *etc*.[70]

After considering the facts of the case and also the judgment of the High Court of Bombay, the Supreme Court refused to invalidate the policies of the state government with regard to the TDR and DCR on the ground that elected government of the day has the mandate of the people to take care of policy matters, that there is a democratic

69 AIR 2019 SC 986.

70 *Id.*, para 12.

structure at different levels, starting from the level of village panchayats, nagar palikas, municipal authorities, legislative assemblies and the elected Parliament; each of them has a role to perform, and that in the instant case, a consultative process which is always helpful had already been undertaken.

XIV SAFETY OF MULLAPERIYAR DAM

In *Russel Joy* v. *Union of India,*[71] a PIL was filed for directing the Government of India to appoint an international agency with the technical expertise to study and to adjudge the lifespan of Mullaperiyar Dam and ascertain the date/period on which the said dam must be de-commissioned; appoint a high powered committee to suggest to this court to declare a date/time period for de-commissioning of Mullaperiyar Dam; and to direct the state owning the dam, that is, Tamil Nadu to make financial provisions for damages to life and restoration of environment in the eventuality of a burst of Mullaperiyar Dam before it is de-commissioned.

Having noted the history of the dam, the court observed that the existence of the dam without necessary assessment is a peril to the people residing in the affected locality and it is also a continuous threat to the environment. The court while acceding to the prayer of the petitioner cautioned that its directions for constitution of exclusive sub-committees for the disaster management for the Mullaperiyar Dam do not anyway remotely suggest that there is any doubt about the safety or life span of the dam, as is alleged in the writ petition.

This judgment highlights the need to take care of environmental protection not only in relation to new projects but also to the existing and old projects.

XV MISUSE OF PIL

Echoing the observations of the Supreme Court in *Balco Employees' Union (Regd.)* v. *Union of India*[72] that: [73]

> 'PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same.

And relying on the judgment of the Supreme Court in *State of Uttaranchal* v. *Balwant Singh Chaufal,*[74] the High Court of Madhya Pradesh in *Surendra Pratap*

71 AIR 2018 SC (Supp) 127

72 (2002) 2 SCC 333: AIR 2002 SC 350.

73 *Id.*, para 80.

74 (2010) 3 SCC 402: AIR 2010 SC 2550.

Singh v. *State of Madhya Pradesh*[75] held that even though the Phase-II of PIL in India deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments *etc*, the same cannot be invoked to claim compensation for acquisition of land which is a right available only to an individual and not to a society in a representative capacity.

In *B. Janaka Sankar* v. *Central Pollution Control Board of India*[76]a division bench of the High Court of Hyderabad dealing with the PIL filed against pollution control board observed that, earlier a writ petition was filed by the same petitioner, essentially for the same relief, and directed the petitioner to make a fixed deposit receipt for Rs.1,00,000/- with the registrar general of the court within a period of one week, as a penalty for misusing the provision of PIL. The court observed the way in which PIL was being misused for vested interests observed-

"Public Interest Litigation is a device, which is honoured, revered and invoked under circumstances which warrant interference of superior courts in writ jurisdiction in larger public interest. With passage of time, experience shows that public interest litigations, which came to be called PILs., have been reduced, in many situations, to be publicity interest litigations, paisa interest litigations or prejudice interest litigations etc. During the course of submissions, it has come out that the petitioner appears to be a disgruntled former employee of Respondent establishment. We think that the case in hand, could be one among these abhorable breeds; may be, one where the petitioner is seeking publicity or trying to have paisa out of the game, or to settle scores founded on prejudice. Entertaining such matters will be only at the peril of the larger public interest, which has to be secured by us in this jurisdiction."

The court expressed a firm view that the petitioner deserves to face the peril for institution of baseless writ petitions, but however considering that the petitioner is an agriculturist, the court left the petitioner without the need for making the deposit, and urged him to use the opportunity to correct himself and work as a good citizen of this nation.

XVI LEGISLATIVE CHANGES RELATING TO ENVIRONMENTAL PROTECTION

During the year under survey, many legislative changes more particularly in the form of delegated legislation have been made in relation to the environmental law in India. Some of the notable changes are mentioned hereunder:

i. Dust mitigation measures

The Government of India has taken cognizance of the need to implement Dust Mitigation Measures for Construction and Demolition Activities Requiring Environmental Clearance during the year under Survey. The Central Government in exercise of the powers conferred by sections 6 and 25 of the Environment (Protection) Act, 1986, made the Environment (Protection) Amendment Rules, 2018,[77] to further

75 AIR 2018 MP 186 (DB).

76 AIR 2019 Hy.106

77 Through G.S.R. 94(E), *w.e.f* Jan. 25, 2018. *Available at*: http://ismenvis.nic.in/Database/Notification_25th_Jan_2018-GSR94E_16225.aspx. (last visited on Jan 10, 2020).

amend the Environment (Protection) Rules, 1986. In schedule-I thereof, the following new rules have been inserted namely:[78]

106. Mandatory implementation of dust mitigation measures for construction and demolition activities for projects requiring environmental clearance:

(i) No building or infrastructure project requiring Environmental Clearance shall be implemented without approved Environmental Management Plan inclusive of dust mitigation measures.

(ii) Roads leading to or at construction sites must be paved and blacktopped (i.e. metallic roads).

(iii) No excavation of soil shall be carried out without adequate dust mitigation measures in place.

(iv) No loose soil or sand or Construction & Demolition Waste or any other construction material that causes dust shall be left uncovered.

(v) Wind-breaker of appropriate height i.e. 1/3rd of the building height and maximum up to 10 meters shall be provided.

(vi) Water sprinkling system shall be put in place.

(vii) Dust mitigation measures shall be displayed prominently at the construction site for easy public viewing.

107. Mandatory implementation of dust mitigation measures for all construction and demolition activities:

(i) Grinding and cutting of building materials in open area shall be prohibited.

(ii) Construction material and waste should be stored only within earmarked area and road side storage of construction material and waste shall be prohibited.

(iii) No uncovered vehicles carrying construction material and waste shall be permitted.

(iv) Construction and Demolition Waste processing and disposal site shall be identified and required dust mitigation measures be notified at the site.

It may be noted that, the said two rules apply to the cities and towns where the value of particulate matter 10/ particulate matter 2.5 exceeds the prescribed limits in National Ambient Air Quality Standards (NAAQS).

These measures are meant for cities which exceed the annual prescribed limit of 40 microgram per cubic meter for PM2.5 and 60 microgram per cubic meter for PM10. Many big cities such as Delhi, Mumbai, Kolkata, Chandigarh, Lucknow, Varanasi and Kanpur among others fall in this category. These standards are part of the NAAQS developed by the Central Pollution Control Board (CPCB). According to CPCB, as many as 195 cities and towns exceeded the prescribed PM10 limit in 2016 while 31 cities were over the PM 2.5 standard.[79]

78 *Ibid.*

79 Vivek Rana, Dust Mitigation Rules Notified dated Jan. 28, 2018, *available at*: https://abhipedia.abhimanu.com/Res_page.aspx?enc=fCVTtNpHxzQQFtm1NovSdw= (last visited on Feb 4, 2020).

ii. Corporate environment responsibility:

The MoEF and CC, Government of India issued an Office Memorandum relating to Corporate Environment Responsibility (CER)[80] in order to have transparency and uniformity while recommending CER.

iii. The Environment (Protection) Amendment Rules, 2018[81]

In exercise of the powers conferred by sections 6 and 25 of the Environment (Protection) Act,1986 (29 of 1986), the Central Government made the Environment (Protection) Amendment Rules, 2018 to further amend the Environment (Protection) Rules, 1986.They are relating to Ambient Air Quality Standards with respect to Noise in Airport Noise Zone

iv. The Hazardous and Other Wastes (Management and Trans-boundary Movement) Amendment Rules, 2018[82]

v. Regulation of Persistent Organic Pollutants Rules, 2018[83]

vi. The Ministry of Environment, Forest and Climate Change has notified the Plastic Waste Management (Amendment) Rules 2018.[84]

The amended Rules lay down that the phasing out of Multilayered Plastic (MLP) is now applicable to MLP, which are "non-recyclable, or non-energy recoverable, or with no alternate use."

vii. The Bio-Medical Waste Management (Amendment) Rules, 2018[85]

viii. The E- Waste (Management) Amendment Rules, 2018[86]

ix. Draft National Forest Policy, 2018[87]

x. The Compensatory Afforestation Fund Rules, 2018[88]

XVII CONCLUSION

An analysis of the legal developments and judicial decisions during the year under survey i.e., 2018 shows that the courts and the NGT have by and large maintained

80 F.No. 22-65 /2017–IA .III dated May 1,2018.

81 G.S.R. 568(E), Ministry of Environment, Forest and Climate Change Notification, New Delhi, dated June,18 June, 2018

82 G.S.R. 544(E), Ministry of Environment, Forest and Climate Change Notification, New Delhi, the June 11, 2018.

83 Published vide Notification No. G.S.R. 207 (E), dated Mar. 5, 2018.

84 The Ministry notified the Plastic Waste Management (Amendment) Rules, 2018 on Mar. 27, 2018.

85 The amended rules stipulate that generators of bio-medical waste such as hospitals, nursing homes, clinics, and dispensaries etc will not use chlorinated plastic bags and gloves beyond March 27, 2019 in medical applications to save the environment. The Minister added that Blood bags have been exempted for phase-out, as per the amended BMW rules, 2018.

86 G.S.R. 261(E), Ministry of Environment, Forest and Climate Change Notification New Delhi, the Mar. 22, 2018.

87 F. No. 1-1/2012-FP (Vol.4) Government of India, Ministry of Environment, Forest and Climate Change ,Forest Policy Division.

88 G.S.R. 766(E), Ministry of Environment, Forest and Climate Change (Forest Conservation Division) Notification, New Delhi, the Aug. 10, 2018.

the same tempo set by themselves in the preceding years. One notable aspect is that the culture of 'regularization' of irregular and illegal activities taken-up in violation of the environmental norms and laws continued even during this year. This can be discerned from the imposition of compensatory costs for illegal constructions which were allowed to stand in several cases relating to housing projects decided by the high courts and NGT benches. At the same time it is trite to remember that even though the legal protection is provided, the real environmental protection is yet to become a reality.