14

ENVIRONMENTAL LAW

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I INTRODUCTION

THERE HAVE been many developments in the field of environmental law during the year 2022.As usual ,the development agenda and ecology found themselves on opposite sides of each other on many occasions. As the National Green Tribunal (NGT) observed in one of the cases,[1] 'the need to adjudicate disputes over environmental harm within a rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by-case adjudication. Before this mode of analysis gained acceptance, we faced a situation in which, despite the existence of environmental legislation on the statute books, there was an absence of a set of overarching judicially recognized principles that could inform environmental adjudication in a manner that was stable, certain and predictable.' This cardinal principle seems to have been followed by the courts and the NGT during the year under survey.

II NEED FOR COORDINATION BETWEEN DEPARTMENTS AND AUTHORITIES

Often, it is seen that in the matter of protection of environment, the much-needed coordination between the forest, tourism and revenue authorities is missing. In *Inner Wheel Club D.O.D.* v. *State of U.P.,*[2] the High Court of Allahabad was dealing with the upkeep of a lake and bird sanctuary in Uttar Pradesh and whether any motel was constructed either by the tourism department or by the forest department of the State. The court noted that the endeavour of all involved in the present petition was to prevent the wetland area from being eroded and damaged and further to maintain and preserve the ecosystem and biodiversity at the bird sanctuary. The District Magistrate, Hardoi was, thus, directed to coordinate between different departments at the district level to sort out day-to-day problems being faced by the officials of forest department so that officers of the forest department could devote themselves with the fullest possible zeal for maintaining the lake.

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1 *Raza Ahmad* v. *State of Chhattisgarh* MANU/GT/0200/2022,para 53.

2 MANU/UP/1131/2022.

In *S.P. Chockalingam v. Principal Chief Conservator of Forests & Chief Wildlife Warden,Department of Forests, Govt. of Tamil Nadu.,*[3] the High Court of Madras issued detailed directions to be mandatorily followed inrespect of the Dhimabm Ghat Road which passes through the Sathyamangalam Tiger Reserve in Tamil Nadu state upheld the order of the collector prohibiting the plying of heavy vehicles on the ghat road during night time, imposing speed limit for such vehicles but permitted the local villagers, tribals, forest dwellers and agriculturists to pass through without paying any toll fee, for personal movement/work without time restrictions. The court took into consideration the implementation of the various laws enacted by the Central Government and the State of Tamil Nadu, with the laudable object of protection of wildlife and forests.

III PROTECTION OF FOREST LANDS, DECLARATION AS FOREST LAND AND IMPACT

In *Re: T.N. Godavarman Thirumulpad* v. *Union of India* (UOI).,[4] which is in the nature of a public interest litigation instituted for protection of forest lands in the Nilgiris district of the State of Tamil Nadu and subsequently, the scope of that writ petition was enlarged so as to protect such natural resources throughout the country. The original writ petitioner, T.N.Godavarman Thirumulpad, a well-known environmental crusader especially in the area of forest conservation had since passed away (in 2016) but being a public interest litigation, the court felt that there was no requirement for bringing on record the legal representatives of the deceased petitioner. In this significant judgment the court *inter alia* directed that each protected forest, that is national park or wildlife sanctuary must have an Eco Sensitive Zone (ESZ) of minimum one kilometre measured from the demarcated boundary ofsuch protected forest in which the activities proscribed and prescribed in the Guidelines of February 9, 2011 shall be strictly adhered to.The court further directed that, "In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained."[5]

Declaration as forest land and its subsequent de-reservation are contentious issues, sometimes even between the Union and state governments. In *Narinder Singh* v. *Divesh Bhutani*.[6] the apex court was concerned with three special orders Under Section 4 of the Punjab Land Preservation Act,1900 issued in 1992 in respect of three villages declaring that the lands referred to therein are forest lands within the meaning of Section 2 of the 1980 Forest Act. Subsequently, the state government altered their status as 'non-forest land.' The court held that even if the earlier orders are cancelled or amended or rescinded or their duration comes to an end,

3 MANU/TN/3127/2022: 2022(5) CTC 36.

4 MANU/SC/0751/2022: (2022)10SC C 544.

5 See also *Pragnesh Shah* v. *Arun Kumar Sharma*, MANU/SC/0077/2022: 2022(12)FLT 329.

6 MANU/SC/0908/2022: 2022/INSC /736: AIR 2022 SC 3479.

the status of the lands covered by the same as forest lands governed by Section 2 of the 1980 Forest Act cannot be altered without following the due process provided therein. Once a land is found to be a 'forest' within the meaning of the 1980 Forest Act, its user for non-forest purposes will be always governed by Section 2 of the 1980 Forest Act. *Secondly,* Clause (i) of Section 2 provides that even in the case of a reserved forest under the 1927 Forest Act, the state government cannot pass an order declaring that the same shall cease to be a reserved forest, without the prior approval of the Central Government. *Thirdly*, Section 2 startswith a non obstante Clause which overrides anything contained in any other law for thetime being in force in a State which will include all State and Central legislations applicable to the State. Therefore, prima facie, the 2019 Amendment Act enacted by theState Legislature would be repugnant to and violative of Section 2 of the 1980 Forest Act, if construed otherwise. Hence, whether the 2019 Amendment Act is given effect ornot, it will not change the status of the lands covered by the special orders under Section 4 of PLPA as the said lands possess all the trappings of a forest with effect from October 25, 1980 within the meaning of the 1980 Forest Act.

In *State of U.P.* v. *Sone Lal.,*[7] the Lucknow Bench of High Court of Uttar Pradesh held that once the State Government decides to constitute any land as 'reserved forest', and issue a notification in the official gazette to that effect under Section 4 of the Forest Act 1927, no right could be acquired in or over the land comprised in such notification except by succession or under a grant or contract by or on behalf of the government, particularly when the land was recorded as 'Banjar' in the revenue record and it got vested in the Gaon-Sabha (Gram Sabha).

In *Jagadish* v. *State of Karnataka,*[8] the High Court of Karnataka noted that permission was obtained from the jurisdictional Deputy Commissioner for carving steps to Sree Kaivalyeshwara Swamy temple situated at Narayanadurga Hill, submitted an application to the forest department seeking permission, since the temple is situated in notified forest area. However the Request was rejected as it would result in ecologicalimbalance and Section 29 of Wild Life (Protection) Act, 1972 would not permit such activity. Observing that in a similar case, the court considered request of the petitioner to make representation to the respondent authorities toreconsider the decision and if necessary to place the request of the petitioner before the Central Empowered Committee to take a decision which the respondents have failed to do so, the court permitted the petitioner to make a representation under the Forest Conservation Act, 1980 also since such an activity constitutes a non-forest purpose.

IV MISUSE OF PIL FOR EXTRANEOUS PURPOSE:

In *Goli Sudhakar* v. *The State of Andhra Pradesh,*[9] the High Court of Andhra Pradesh relying upon the apex court judgment in *Abraham T.J* v. *State of*

7 MANU/UP/0151/2022 : (2022) ILR 2 All 838.

8 MANU/KA/2329/2022.

9 MANU/AP/2283/2022.

Karnataka[10] found that the petitioners failed to satisfy the court as to themaintainability of the petition in view of existence of alternative remedy of preferringstatutory appeal before the NGT and that writ petition (PIL) was thus, frivolous and vexatious, preferred only with a view to frustrate the bio-medical waste treatment plant proposed to beestablished by one of the respondents. It was also stated that there was every likelihood that the petitioners, bereft of *bona fides,* approached the court for extraneous reasons being motivated by personswho want that the bio-medical waste treatment plant of the respondent, may not seethe light of the day. In such situation, observing that the court cannot remain mute spectators, leaving the petitioners go scot-free without paying any costs for wasting the precious time of the court and bringing a frivolous litigation, imposed Rs. 1,00,000/- as costs to be deposited by the petitioners with the state legal services authority.

In the context of misuse of the process of PIL in the name of environmental protection and ecology, the High court Bombay in *Chetan Kodarlal Vyas* v. *The Union of India*[11] noted that the instant PIL was filed to destroy legal rights of weaker section i.e. fishermen community for the purpose of securing commercial interest of a private resort. It was noticed by the division bench that the PIL petitioner and, possibly the said resort, succeeded in demolishing a crematorium in existence before the CRZ Notification dated February 19, 1991 came into force under the pretext that high court has directed demolition of the same and therefore observed that there is no impediment directing repairing/reconstruction of the said crematorium through government machinery.Taking a serious view of the matter, the court held that the PIL was filed for extraneous and motivated purposes, dismissed it with cost of Rs. 1,00,000/- to be paid by the PIL petitionerin equal share to respondents *viz., Bhati Machhimar Gram Vikas Mandal* and *Bhati Machhimar Sarvoday Sahakari Society.*The court also directed the Collector, Mumbai Suburban District to take immediate steps for reconstruction of the crematorium at the same place.

In *P.S. Mohan* v. *The State of Karnataka*.,[12] the High Court of Karnataka dismissed a PIL filed fir issue a directing the authorities to take action against the respondent to stop and close all the activities illegally running in the name of Jungle Lodges and Resorts Ltd., in Dubare Reserved Forest, Kushalanagar Range of Kodagu District. The respondent raised preliminary objection regarding the maintainability of the writ petition on the ground that this public interest litigation was filed with some personal vested interest of the petitioners as respondent corporation had stopped the river rafting activities in Dubare area which had adversely affected the petitioners. Agreeing with the contention of the respondents and deprecating the conduct of the petitioners for the purpose of wasting the precious time of the court, the division bench imposed costs of Rs. 50,000/- on the petitioners for misusing the PIL.

10 (2018) 12 SCC 515.

11 MANU/MH/3480/ 2022.

12 MANU/KA/0005/2022.

V PROTECTION AND REVIVAL OF WATER BODIES

In *Gondu Venkata Ramana Murthy* v. *The State of Andhra Pradesh* .[13] the High Court of Andhra Pradesh relying upon a slew of the judgments of the apex court[14] and also referred to the earlier judgment of the High Court of undivided Andhra Pradesh in Kasireddy Bhaskara Reddy v. *Principal Secretary to Government (Revenue), Government of A.P.*, Hyderabad,[15] and also a judgment of the Supreme Court of California of United States in National *Audubon Society* v. *Superior Court of Alpine Country*[16] also known as Mono Lake case[17], emphasized that : [18]

> …..when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources.

In the instant case, the court held that water bodies need to be protected and that even those water bodies, which have been abandoned or filled up, need to be revived and restored rather than allowed to be used for any other purpose including the purpose of construction of village secretariat and farmers centre by the Government in the Full Tank Level (FTL) of the lake concerned.

In *Arvind Limited Vs. Suo Motu,*[19] a division bench of High Court of Gujarat had taken up the public interest litigation *suo motu* taking cognizance of a news item reported by the 'Ahmedabad Mirror' in one of its articles dated August 4, 2021 as regards the Sewage Treatment Plant at the Pirana, Ahmedabad.This matter relatedto the extensive pollution caused in the Sabarmati Riverat Ahmedabad on account of the discharge of untreated sewage and industrial effluent into the same 24x7.The court noted that a stretch of 120 kms. of theSabarmati River, before meeting the Arabian Sea, is 'dead' and comprises of partiallytreated industrial effluent and sewage. The Sabarmati River is highlypolluted/contaminated. It appeared that since the time these industries were setup, they have been discharging lakhs of litres of their so-called treated industrial effluent everyday straight into the sewer lines of the Ahmedabad Municipal Corporation. There is a strong assertion on the part of these textile industries that not only they have a legal right

13 MANU/AP/0776/2022.

14 *Tirupathi Forum* v. *State of A.P.*, AIR 2006 SC 1350: (2006) 3 SCC 549.

15 MANU/AP/0324/2007 : 2007 (4) ALT 759.

16 MANU/FENT/0843/2002 : 33 Cali 419.

17 MANU/FENT/0843/2002 : 33 Cali 419.

18 The Court referred to the doctrine of Public Trust as commented upon by Joseph L. Sax in his article "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", 69(3) *Michigan Law Review*,471-566(Jan. 1970).

19 MANU/GJ/0368/2022.

to discharge their industrial effluent into the sewer lines of the corporation but they have also been permitted by the corporation to do so over a period of years by way of grant of valid permission.

The court observed that the picture that emerges as on date is highly disturbing. It appears that the sewage of the catchment areas, after being treated at the sewage treatment plant, is being discharged in the river Sabarmati. There is no problem indischarging directly into the river provided the sewage is treated appropriately and in accordance with the parameters laid by the state pollution control board in accordance with the provisions of the Act and the Rules which does not seem to be happening. Everyone before the court accepted the fact that the sewage treatment plant is not functioning at its best. Although the Ahmedabad Municipal Corporation has big plans to upgrade it at a cost of more than Rs.100 Crore, yet the same is going to take a pretty long time and if things continue any further the way as they are today, then it is going to lead to a serious health problem. Therefore, the first thing we need to do is to take appropriate measures to ensure that all the illegal trade effluent pipelines are detected and necessary action is taken against all such erring industries. *Secondly*, some steps need to be taken at the earliest to upgrade the capacity of the Sewage Treatment Plant to treat the sewage in a proper manner.

The court noted that the textile industries in the area do not want to switch over to the Zero Liquid Discharge Technology (ZLD) because, according to them, the implementation of the ZLD Technologyis financially not viable. This according to the court could hardly be a ground to permit the industry to discharge of lakhs of litres of effluent everyday into the public sewer. Adverting to the plea that the industry is not doing well in its business, the court directed it to pull downits shutters, but not to insist, at the cost of environment and at the cost ofecology and people at large that it should be permitted to run the industry.

These observations of the high court through Justice *J.B. Pardiwala*[20] are pertinent and reflect the sad state of affairs prevailing throughout the country. It is hoped that this well-established jurisprudence that there shall be no commercialization or development at the cost of environmental protection deserves to be kept in mind by all the stakeholders.

In *Suo Motu* v. *Ahmedabad Municipal Corporation,*[21] the High Court of Gujarat took cognizance of the Ahmedabad Municipal Corporation (AMC) has laid down a storm-water drain for the smooth disposal of the rain water that accumulates on the road or elsewhere during the rainy season. It was pointed out that over a period of time, hundreds of buildings and residential societies have come up surrounding the areas in question, *i.e.,* the three locations as above. The water floating from the said storm-water drain is untreated as it is not released through any of the sewage treatment plants, and that the disposal from is nothing but untreated sewage of all those residential societies who do not have any drain

20 *As he then was.*

21 MANU/GJ/0574/2022.

system. It was noted that the contaminated and foul-smelling waste water is being released directly into the Sabarmati riverbed, which is running dry as the Narmada water is not being released into the Sabarmati River continuously. The *Amicus* further pointed out that this contaminated waste water, after flowing through the riverbed, gets accumulated nearthe French-well, which is supposed to draw drinking water from the underground water table. In other words the sewage and drainage water were getting mixed-up with the drinking water supplied to the same citizens and gets mixed with the underground water table. This is going to contaminate the entire underground watertable, which would ultimately make the underground water table unusable or potable forthe public at large. In view of the above, the court directed the AMC to block/seal all the three outlets within a period of one week and start identifying all those societies/buildings/units releasing such contaminated sewage water directly into the Sabarmati River, for remedial action. This case highlights the selfishness and lack of respect shown by the citizens for their fundamental duties.

VI REMEDY UNDER NGT ACT:

In *Gajubha Jadeja Jesar* v. *Union of India (UOI),*[22] the Supreme Court while recognising the *suo motu* jurisdiction/powers of the NGT, approvingly quoted its earlier observations in *Municipal Corporation of Greater Mumbai* v. *Ankita Sinha* [MANU/SC/0815/ 2021] that :

> The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearlydiscernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a sui generis institution and not *unus multorum*,[23] and its special and exclusiverole to foster public interest in the area of environmental domain delineated inthe enactment of 2010 must necessarily receive legal recognition of this Court. (Para 98)

and also that –

> The NGT, with the distinct role envisaged for it, can hardly afford toremain a mute spectator when no-one knocks on its door. The forum itself hascorrectly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed towork within the established safety valves of the principles of natural justice andappeal to the Supreme Court. The hands-of mode for the NGT, when faced with exigencies

22 MANU/SC/0981/2022: 2022(12) FLT 851.

23 One of many.

24 *See also Raza Ahmad* v. *State of Chhattisgarh* MANU/SC/0311/2022: 2022/INSC /26: 2022(12) FLT537

> requiring immediate and effective response, would debilitate theforum from discharging its responsibility and this must be ruled out in the interest of justice. (Para 103)[24]

In *Kantha Vibhag Yuva Koli Samaj Parivartan Trust* v. *State of Gujarat*, [25]the Supreme Court held that the NGT cannot abdicate its jurisdiction by entrusting the core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. These observations were made in the context of compliant to the NGT against dumping of unsegregated and untreated Municipal Solid Waste in the open area without prior treatment in violation of the Municipal Solid Waste (Handling and Management) Rules 2000 and Bio-Medical Waste (Management and Handling) Rules 1998. When it was prayed for directions for restraining on dumping, restoration of environment in the surrounding areas, restitution of the landfill site to its original condition and compensation to those affected, during the pendency of proceedings, relevant committees were constituted and application was disposed with direction to be placed before the committee formed challenging such an order the Supreme Court was approached. The court held that an expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudicationhas to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained.

The apex court in *The State of Andhra Pradesh* v. *Raghu Ramakrishna Raju Kanumuru (M.P.)*[26]expressed the view that the continuation of the proceedings before the learned NGT for the same cause of action, which is seized with the high court, would not be in the interest of justice.

In *R. Venkateshwar Rao* v. *The State of A.P.,*[27] a division bench of the High Court of Andhra Pradesh held that under Section 16 of the National Green Tribunal Act 2010 dealing with the appellate jurisdiction of the NGT, any person aggrieved by the order, granting environmental clearance, is entitled to file statutory appeal before the tribunal constituted under the NGT Act. It is also very much clear from a reading of the said provision of law that such appeal can be filed before the tribunal within a period of 30 days from the date on which the order or decision or direction or determination is communicated. Proviso to Section 16 of the NGT Act stipulates that the tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, appeal can be entertainedwithin a further period of sixty days. In view of the above stated position, the High Court disposed of the writ petition directed the petitioner to file statutory appeal under Section 16 of the National GreenTribunal Act, 2010, against the

25 MANU/SC/0134/2022: 022(12) FLT 348.

26 MANU/SC/0760/2022 : 2022/INSC /632: AIR 2022 SC 2850.

27 MANU/AP/0331/2022.

impugned order passed by the PCB in issuing environmental clearance to the respondent for establishment of Bio Medical Waste Treatment Facility.[28]

In *The Goa Foundation* v. *The National Green Tribunal, Principal Bench.,*[29] a full bench of High Court of Bombay took a serious note of the constitution of a Special Bench of NGT at Delhi pertaining to matter concerned with the matters pending before the Western Zonal Bench of the NGT and about the five notices issued by so-called special bench. Such notices have resulted in cases from Goa that were being heard by the Western Zonal Bench of the NGT at Pune being abruptly taken up, for no good reasonand without clarity as to which case would be taken and when, by a so-called "Special Bench" sitting in New Delhi, and comprising members of the Northern Bench joined onVideo Conferencing by members of the Western Zonal Bench. It was contended that there is no power for theChairperson of the NGT to issue such directions or orders, there is no superior orgoverning seat or bench and further that nothing in the National Green Tribunal (Practice andProcedure) Rules 2011 or in the National Green Tribunal Act, 2010 permits this. Every one of these notices is explicitly said on itsface to be a 'notice', not an order. Each is said to have been issued by a "CompetentAuthority", without identifying that authority; and neither the NGT Act nor the ProcedureRules speak of any such 'Competent Authority.'

The full bench of three-judges observed that this is a complete usurpation of jurisdiction of the Western Zonal Bench, and it fails every test of law and judicial review. Consequently all the five impugned notices were quashed and set aside. The constitution of the Special Bench seated at New Delhi was declared as illegal. It was categorically held that only the Members of the Western Zonal Bench can hear matters pertaining to the Western Zonal Bench, including matters arising from Goa and Maharashtra.

In *M. Swaminathan* v. *The State of Tamil Nadu,*[30] the High Court of Madras quashed an order passed by the NGT, Delhi bench and referred to the observations of the Supreme Court in *Whirlpool Corporation* v. *Register of T r a d e Marks, Mumbai*[31] that:

> It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Court's jurisdiction remain unaffected…..(Para 22).

28 See also *Nimpha Rodrigues* v.*The State of Goa*, MANU/MH/1873/2022

29 MANU/MH/3432/2022:2022 (6) ABR 778: AIR 2023 Bom 1: 2023 (2) ALLMR 101.

30 MANU/TN/0393/2023 : 2023(2)CTC226, 20231WritLR 217.

31 MANU/SC/0664/1998 : (1998) 8 SCC 1.

and struck-down the NGT order which invalidated the allotment of house sites to journalists by the State Government in an alleged water body relying on the principle that "the right to development must be fulfilled so as to equitably meetdevelopmental and environmental needs of present aswell as future generation as well. The environmental and sustainable development principles ensure that the present generation does not abuse the non-renewable resources thereby depriving the future generations of their rightful claims. Destruction of certain resources is inevitable for development and economic progress. However, regard must be had to ensure that development by destruction of existing resources does not sound a death-knell to the ecology meant to be preserved for the future."(Para 19)

In *East Jaintia Coke* v. *State of Meghalaya,*[32]the High Court of Meghalaya held on the point of jurisdiction of the high court under article 226 and 227 of the Constitution, nothing in the NGT Act, ousts the jurisdiction of the high court and that, exercise of discretion, in accordance with law, will depend on the facts of each particular case[33]

In *Lakshmi Deviamma Vs. The State Bank of India,*[34] a division bench of the Telangana High Court dealt with a PIL filed alleging that certain pharmaceutical industries, which are established in Gundlamachanoor Village, Hathnoora Mandal, Sangareddy District are creating noise pollution, theyare destroying the properties of the villagers, they are creating water pollution, even the ground water is polluted, they are creating air pollution and the farmers are not able to cultivate their fields, and are suffering from cancer besides other diseases. It was also been stated that certain deaths have also taken place in the matter on account of pollution. On perusal of facts, the court found that earlier in respect of similar industries, large number of applications were filed before the tribunal and similar allegations were made by the applicants before the NGT and the tribunal has decided the matter with certain directions.In view of the above, the court did not find any reason to entertain the present public interest litigation.[35]

VII ESTABLISHMENT OF POULTRY FARMS AND ENVIRONMENTAL POLLUTION:

In *Madan Kumar Bhakt* v.*The State of Bihar.,*[36] the High Court of Patna Division Bench noted that in terms of the provisions contained in Section 21 of the Air (Prevention and Control of Pollution) Act, 1981,"Consent-to-Establish and Consent-to-Operate" is given to industrial units at the time of their establishment, but poultry farms are not included in such category of industries. However, the State Board, in order to prevent pollution related to poultry farms,thought it best

32 MANU/MG/0407/2022 2023(13) FLT 153.

33 See also *Wesley Doloi* v. *State of Meghalaya*, MANU/MG/0146/2022.

34 MANU/TL/0260/2022.

35 See also *Saimolla Mogulaiah* v. *The State of Telangana* MANU/TL/1233/2022: 2022(12)FLT398 and *Reenu Paul* v. *State of Uttarakhand* MANU/UC/0074/2022: AIR 2022 Utr 84.

36 MANU/BH/0485/2022 : 2022(3)BL J485, 2022 (12) FLT 551.

to constitute a committee comprising the Members from the Department of Forest; Animal Husbandry and Officials of the State Board to formulate guidelines for the poultry farms. Based on the recommendation of such Committee so constituted, a decision was taken which was notified on June 28 2007. According to the aforesaid notification, a poultry farm cannot be setup or be allowed to operate, if it is within the radius of 500 meters of the residential zone in urban area or 300 meters of residential zone in rural area. Ever since the coming into effect of the aforesaid notification, those poultry farms which are following the guidelines are given the "Consent-to-Establish and Consent-to-Operate" such farms. The court upheld the said notification[37]regarding a PIL against authorities seeking restraint against them from using a certain land as garbage dumping area, *Sandeep Kumar* v. *The State of Bihar*[38] regarding the regulation and establishment of saw mills in both these cases,the high court directed the respondents to consider the applications of the petitioners within a time frame.[39]

VIII PLANTATION AND FELLING OF TREES-IMPACT ON SURROUNDING ECOLOGY

In *The State of Uttar Pradesh* v. *Uday Education and Welfare Trust.,*[40] the apex court though found that for the sustainable development of the State and on accountof the availability of the timber, sanction of granting licenses can be permitted tocontinue, however, as a responsible State, it needs to ensure that environmentalconcerns are duly attended to. The court therefore, directed the state government to ensure that while granting permission for felling trees of the prohibited species, it shouldstrictly ensure that the permission is granted only when the conditions specified in theNotification are satisfied. The state government was also directed to ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against one and maintaining them for five years.

In *Shashwat v. The State of Bihar,*[41] a division bench of the High Court of Patna considered the impact of developmental activities on environmental protection and ecology with reference to the international environmental principles, the constitutional obligations etc. In this case the issue was in respect to translocation of the trees necessarily required to be felled for construction of National Highways at a length of 49 kilometres in the State of Bihar . Evidently, more than 2045 trees already stood translocated and 300 (approx.) number of trees would be required to be translocated in the near future. As per the affidavit submitted by the respondent, more than 31117 trees (14033 number of avenue and 17084 number of median plantation) would be planted within the zone termed as Median plantation and Avenue plantation.The petitioner emphasized the need for

37. See also *Rahul Kumar* v. *The State of Bihar* MANU/BH/0954/2022.

38 MANU/BH/0703/2022

39 See also *Watch Voice of the People* v. *Union of India* MANU/TL/0278/2022. See also *Swarup Roy* v. *The State of West Bengal* MANU/GT/0120/2022.

40 MANU/SC/1376/2022 : 2022/INSC /1129.

41 MANU/BH/1259/2022: 2022(5) BLJ 503, 2022(12) FLT 785.

constitution of the State Compensatory Afforestation Fund Management and Planning Authority envisaged under Section 10 of the Compensatory Afforestation Fund Act, 2016. Relying upon the court decisions in *Essar Oil Ltd.* v. *Halar Utkarsh Samiti,*[42] *Association for Protection of Democratic rights* v. *The State of West Bengal*[43] *Vikram Trivedi* v. *Union of India,*[44] *T.N. Godavarman Thirumulpad* v. *Union of India,*[45]*T.N. Godavarman Thrirumulpad* v. *Union of India*,[46]the Division Bench held that the environment is to be given an equal, if not prime, consideration as opposed to any other need to which it may be juxtaposed. The court noted that the felling and translocation of trees being undertaken in the instant case is for the purposes of construction of highway as recorded earlier and the number of trees to be planted to compensate for the loss also stands decided with an outer limit prescribed to the concessionaire by when to complete the same.

In view of the above, the court permitted the construction of the High way subject to the afforestation and directed the State, National Highway Authority of India; and the State Pollution Control Board, Bihar to monitor the progress of the afforestation being carried out by the concessionaire and to ensure compliance therewith in strict terms., *i.e.,* 31117 trees (14033 number of avenue and 17084 number of median plantation), and to consider a mechanism for Geo-Tagging the trees planted under the instant project as also others of similar nature undertaken in the future. This is a balanced judgment that considered the environmental protection and economic development both of which are the primary concerns of the State.[47]

In *Neeraj Sharma* v. *Vinay Sheel Saxena,*[48] the High Court of Delhi emphasized and reiterated the need to avoid cutting of trees. In this casethe petitioner contended hat a tree is cut down every hour in Delhi under official sanction and this is a worrying issue because on the one side endeavour is said to be underway to maintain and augment the green cover of Delhi while simultaneously fully grown trees are allowed to be cut down. He prayed that this self-defeating exercise by the Forest Department, GNCTD needs to be arrested at the earliest. Noting that the Tree Officer has permitted a fully-grown tree to be cut down, the court observed that: [49]

> It has to be borne in mind that permission is sought under the Delhi Tree Preservation Act, in which "preservation" of trees is the primary objective. The Tree Officer is repository of public faith and trust,

42 MANU/SC/0037/2004 : (2004) 2 SCC 392.

43 Order dated Mar. 25, 2021 in Special Leave Petition (Civil) No. 25047 of 2018

44 MANU/GJ/1120/2013 as decided by High Court of Gujarat

45 Writ Petition (civil) 202 of 1995, Date of Judgment Sep. 26 2005.

46 MANU/SC/0657/2022

47 See also *Rabindra A.L. Dias* v . *Fernando Almeida*, MANU/MH/0440/2022.

48 MANU/DE/1861/2022 .

49 See also *Arun Kumar* v. *Deputy Conservator of Forest*, MANU/DE/5056/2022: 2022/ DHC /005453, *Delhi Development Authority* v. *Deputy Conservator of Forests*, MANU/ DE/2689/2022.

> that trees which form an essential part ofpeople's lives are not allowed to be cut needlessly or wantonly. The statutory duty cast upon the Tree Officer necessarily requires assessment of the necessity to cut a tree forthe project for which the permission is sought. A site visit would be prudent. The shortage of Tree-Officers, necessary support staff, cannot be an excuse for grantingpermission for cutting down trees in the city. The adverse environmental impact of such denudation is all too well-known. Compensatory afforestation if at all carried out, on the fringes of the city, far-removed from the congested areas of human habitation, where the sole decades-old-tree once stood as a carbon-sump-cum-fresh oxygen generator-cum-shade provider-cum-visual respite from the ever-increasing concretization; the geographically distant and nascent compensatory plantation can hardly be of any respite or actual compensation. In any case, it will take decades for the compensatory forests to be of any reckonable benefit. In this capital city with its ever-bourgeoning populating, the cacophony of voices and rampant commercialization ofevery other street - robbing the residents of the familiar ambience of their residential neighbourhood, the ever-increasing motor-vehicular traffic, the choking air-pollutionand the ever-creeping concretization, trees hold out as welcome and assuring living entities of hope, sanity, environmental redemption and even companionship. The moresolitary the tree, the greater its significance. Therefore, the responsibility of protecting and nurturing the solitary tree is far-greater upon the tree officer and the authorities concerned.(Para 7)

In *Rahul Bhardwaj* v. *The State,*[50] a PIL was filed before the High Court of Delhi seeking a direction against the State and others to constitute a special commission on environment for bringing the policy on sustainable development for further directing concerned special commission to hear the matter expeditiously on day to day basis and further fix a timeframe within which the said matter may be decided and further direct the concerned special court to file a status report every week regarding the status of the said case so that 'one person one tree' policy can be executed and to issue a writ order or a direction in the nature of mandamus thereby directing the respondents to plan for enforceability of fundamental duty under article 48-A of the constitution and to impose penalty for not abiding the rules related to protection of environment. The court observed that it is a settled law that framing policies is the domain of the government and it is not for the court to direct framing of any policy.[51]

50 MANU/DE/0200/2022.

51 See also *P. Gopi* v. *The District Forest Officer, Velunachiar Compound ,* MANU/TN/9917/2022 : 20231Writ LR 73.

In *Re: Recent Felling of Trees in Gangtok,*[52] the High Court of Sikkim emphasized the importance of conserving trees even in the areas not considered as 'forests' under the Sikkim Forests, Water Courses and Road Reserve Preservation and Protection Act, 1988.The court was satisfied that the areas in which the trees have already been felled or are proposed to be felled do not fall under thedefinition of 'Forest'. Nevertheless, it must be borne in mind that such a circumstance does not license anyone to carry out haphazard deforestation. However the court directed that the relevant Rules of 2006 are to be invoked whenever trees are felled in non-forest land, and that Wherever trees have been felled compensatory plantation shall be done by planting of trees.

In *Ashish Kumar Garg* v. *State of Uttarakhand.* [53] a PIL was filed to seek the intervention of high court against the proposed felling of 2057 trees for the purpose of widening of the road Dehradun. The petitioner also sought a direction to the respondents to frame guidelines for any road widening exercise that may lead to consequent felling of trees. According to the petitioner, such tree felling would adversely impact the ecological and heritage value of the said trees, which are critical to thewatershed of the Doon Valley and also that the proposed felling of trees falls foul of the accepted canons of sustainable development. The court admitted that the adherence to sustainable development principle is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development. Observing that The State needs sustainable development, which means that a balance has to be struck between the environmental needs and the need of development, the State permitted the cutting and removal of 1006 Eucalyptus Trees subject to planting many more such trees where there iswater logging, or the water table is high, after approval of the ground water authority. Further the in view of the near 100% success in transplanting of other trees, the same was also permitted by the court.

In *Anil Mehta* v. *State of Rajasthan,*[54] the NGT Central Zone Bench at Bhopal considered the main question raised that related to the environment highlighting the concretization around trees happening in various areas of the city of Udaipur in the State of Rajasthan in violation of the 'Guidelines for Greening of Urban Areas and Landscape' issued by the Ministry of Urban Development. The bench noted that as per the Rules the authorities shall ensure that the concrete surrounding the trees within one metre of the trees are removed forthwith and all the trees are looked after well and due precaution is taken in future so that no concrete or construction or repairing work is done at least within one metre radius of the trunk of trees.

In *Joydeb Dash* v. *Union of India,*[55] the NGT bench at Kolkata upheld imposition of the Environmental Compensation of Rs.17,40,000/- to be paid by a

52 MANU/SI/0001/2022:2022(12) FLT 274, 2022(12) FLT 405.

53 MANU/UC/0666/2022.

54 MANU/GT/0196/2022.

55 MANU/GT/0195/2022.

cement company for failure to take-up plantation of trees to ensure 33% green area and for not setting-up any Sewage Treatment Plant (STP).The NGT held that the mathematical formula prescribed for computation of Environmental Compensation by the Central Pollution Control Board is only in the nature of a guideline and there cannot be a straightjacket formula for determining or putting a monetary value on the death or the damage caused to human life and other life forms as a result of air quality standards exceeding the prescribed standards. There can never be an accurate or exact price fixed on human life or animal or plant life, and in strict terms, damage caused to human lifeor animal and plant life can never be compensated in monetary terms.

IX CONSTRUCTIONS IN NO DEVELOPMENT ZONES

In *Faiyyaz Mullaji* v. *The Secretary, Urban Development Department.,*[56] the High Court of Bombay allowed a PIL seeking quashing and setting aside of development permission/commencement certificate granted by the Respondent authority for construction a star grade hotel on a plot falling under no development zone (NDZ). The court held that the building permissions weregranted to the company in excess of 0.2 FSI by the Corporation in breach of theprovisions of Development Control Regulations (DCRs) for the Mira Bhayandar Municipal Corporation. The court also directed the demolition of the subject construction which is in excess of 0.2 FSI.[57]

X DEVELOPMENT AND ENVIRONMENT

In *Re: Felling of Trees in Aarey Forest (Maharashtra),*[58] the apex court held that:

> In such projects involving large outlay of public funds, the court cannot beoblivious to the serious dislocation which would be caused if the public investmentwhich has gone into the project were to be disregarded. Undoubtedly, considerationspertaining to the environment are of concern because all development must, it is wellsettled, be sustainable.(Para 21)

In *Pahwa Plastics Pvt. Ltd.,* v. *Dastak NGO ,*[59] the Supreme Court reiterated that *ex post facto* environmental clearance should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of *ex post facto* approval outweigh the consequences of regularization of operations by grant of ex post facto approval, and the establishment concerned otherwise conforms to the requisite pollution norms, *ex post facto* approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may bepenalised by an imposition of heavy penalty on the principle of

56 MANU/MH/3522/2022.

57 FSI or floor space index is the ratio of the covered floor area to the available land area. It is also called FAR or floor area ratio.

58 MANU/SC/1792/2022 .

59 MANU/SC/0361/2022: 2022(12)FLT554.

'polluter pays' and the cost of restoration of environment may be recovered from it. It was reiterated that the 1986 Act does not prohibit ex post facto EC. Some relaxations and even grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this court in Electrosteel Steels Limited (supra), this court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units intheir survival.

In *D. Swamy* v. *Karnataka State Pollution Control Board.,*[60] the Supreme Court upheld the order of the NGT that when the Bio-Medical Waste Treatment facility of the appellant was being operated with the requisite consent to operate, it could not be closed on the ground of want of prior environmental clearance. The court relied upon its earlier decision in court in *Electrosteel Steels Limited* v. *Union of India*[61] and *Pahwa Plastics Pvt. Ltd.* v. *Dastak NGO.*[62] The court observed that it cannot lose sight of the fact that the operation of a Bio-Medical Waste Treatment Facility is in the interest of prevention of environmental pollution. The closure of the facility only on the ground of want of prior EC would be against public interest.

In *Ganv Bhavancho Ekvott* v. *South Western Railways,* [63] a PIL was filed at the instance of a society registered under the Societies Registration Act,1860 and three residents of Guirdolim, Chandor and Cavorim villages of Salcete taluka. The petitioners were aggrieved because the South Western Railways (SWR) and Railway Vikas Nigam Limited (RVNL) were making large scale construction for doubling of the railway track in the Vasco-Da-Gama - Kulem section of Tinaighat - Vasco-da-Gama area of the State of Goa without obtaining requisite permissions under the Goa Panchayat Raj Act, 1994 , the Goa Town And Country Planning Act , the Goa Irrigation Act, 1973 , the Goa Daman & DiuLand Revenue Code, 1968 and the Coastal Regulation Zone Notification, 2011 issued by the Department of Environment, Forest And Wild Life, Ministry of Environment And Forests, Government of India in exercise of powers conferred section 3 of the Environment Protection Act, 1986. The writ petition, revealed several attempts made by the petitioners seeking intervention of the Principal Secretary, Goa Coastal Zone Management Authority (GCZMA), the Collector, South Goa District and the Town and Country Planning Department, Government of Goa. Not only did the said respondents not take any steps against SWR and RVNL by issuing stop work orders to ensure that all mandatory permissions are first obtained and submitted to the Village Panchayat for review, there was no response and on the contrary SWR and RVNL repeatedly encroached or trespassed into private properties of

60 MANU/SC/1219/2022 : 2022/INSC /996 .

61 MANU/SC/1261/2021 .

62 MANU/SC/0361/2022.

63 MANU/MH/3946/2022: 2022(6) ALLMR 311.

the residents without any permissions or consent of the owners. The police were duly approached but the same also did not yield any result, resulting in institution of this PIL.

The court considered the arguments on both sides and also perused the precedents more particularly *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram,*[64] *G. Sundarrajan* v. *Union of India.*[65] After hearing learned advocates for the parties and considering the materials on record, the court was tasked to decide the broad question as to whether it is obligatory for SWR and RVNL, the railway authorities, to obtain environmental clearance from the GCZMA while executing a 'special railway project' which traverses a CRZ area and also as to whether permissions are required to be obtained by such railway authorities from the village panchayats under the Panchayat Act or from the other authorities under various other State legislation. The court ultimately answered the question in the negative in view of the provisions of section 11 of the Railways Act *vis-a -vis* the State legislations , the EP Act as well as the 2011 CRZ Notification; then the order dated May 9, 2022 in *T.N. Godavarman Thrirumulpad* v. *Union of India*.[66]and other judgments. The court held that SWR and RVNL (Railways) are not under any statutory compulsion to obtain environmental clearance from the GCZMA or any building permissions or other permissions from any authority under the diverse legislation.

In *The Tata Power Company Limited* v. *Union of India,*[67] the court directed the authorities to permit petitioners to execute the proposed construction of 220 KV Kalwa Salesette Transmission Line (Upgradation of old 110 KV Transmission Line in Mumbai) in mangrove area and its buffer zone in view of the public importance of the project, subject to petitioners complying with the conditions imposed in the clearances/permissions granted by the respondent authorities and the undertakings like the compensatory plantation of 5000 mangrove saplings.

With regard to establishment of a solid waste management plants near residential colonies, there have been number of instances of the local residents raising objections as to the location identified. In one such case *viz.*, *A.B. Devaraju* v. *The State of Karnataka, Department of Rural Development and Panchayath Raj,*[68] a division bench of the High Court of Karnataka directed the authorities to consider the objections raised including the possible pollution of the river nearby,the adverse impact on the nearby temples and environmental pollution before finalizing the location.

In *Poom Puhar Traditional Fishermen Welfare Association* v. *The State of Tamil Nadu,*[69] the High Court of Madras refused to invalidate the prohibition/ban

64 MANU/SC/0531/1986 : AIR 1987 SC 117.
65 MANU/SC/0466/2013 : (2013) 6 SCC 620.
66 MANU/SC/0657/2022.
67 MANU/MH/0877/2022 : 2022 (5) ABR 616:2022 (3) BomCR 421.
68 MANU/KA/1820/2022.
69 MANU/TN/0248/2022 .

stipulated in Rule 17(7) of the Tamil Nadu Marine Fishing Regulation Rules, 1983 which *inter alia* provided that "No owner or master of any fishing vessel shall carry on fishing bypair trawling or fishing with purse-seine net using any fishing vessel or craft whether country craft or mechanized boat irrespective of their size and power of the engine in the entire coastal area of the State." The plea to allow traditional fishermen of Tamil Nadu to carry the purse seine net in their country crafts and the mechanized vessels for marine fishing within the traditional waters and of Tamil Nadu and behind the traditional waters within the exclusive economic zones by liftingsuch prohibition/ban was not considered by the court which relied upon the judgment of the apex court in the case of *State of Kerala* v. *Joseph Antony.*[70]

In *Vijay Singh Punia v. Rajasthan State Board for the Prevention and Control of Water Pollution,*[71] the High Court Rajasthan dealt with the matter concerning the polluting industries involved in the business of dyeingand printing and located at Sanganer, Jaipur against which the Rajasthan PCB acted on the directions of the high court, approaching the lower courts and filing suits by suppressing the facts of adverse orders of the high court. The RPCB, raised a grievance that defaulter industrial units, to whom closure notices under Section 33-A of the Act of 1974 havebeen issued are resorting to the remedy and taking shelter before the civil courts by filing civil suits against the municipal corporation and electricity department regarding the disconnection or disruption of the electricity and water supplies and in such civil suits, without impleading the RPCB as a party. The high court directed the registry of high court to convey a copy of this order to all jurisdictional Courts of Sanganer including all district judges, all additional district judges, chief judicial magistrates, civil judges to look into various orders/directions as mentioned hereinabove issued by the high court as also by the Supreme Court.

In *Akhil Bhartiya Mengela Samaj Parishad* v. *Maharashtra Pollution Control Board,*[72] raising grievance of discharge of untreated effluents into Arabian Sea at Navapur, and into creeks and nallas in the vicinity, in flagrant violations of provisions of Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, by industries established in the industrial area, set up by Maharashtra Industrial Development Corporation (MIDC) at Tarapur, an application was filed by four applicants under Sections 14, 15, 17, 18 (1) and 20 of National Green Tribunal Act, 2010.The applicants impleaded, besides statutory bodies namely; Maharashtra Pollution Control Board, MIDC, State of Maharashtra through Principal Secretary, Environment Department, Union of India through Secretary, Ministry of Environment, Forest and Climate Change, Central Pollution Control Board, Fisheries Department through Commissioner of Fisheries Department , two private industries alleging that they are responsible for causing pollution and damage to environment,

70 MANU/SC/0156/1994 : (1994) 1 SCC 301.

71 MANU/RH/1132/2022: 2022(12) FLT 468.

72 NGT Principal Bench, New Delhi dated Jan. 24, 2022.

on account of discharge of untreated effluent in the nearby rivers, creeks and nallas which of ultimately reach to Arabian Sea at Navapur, District Palghar, in State of Maharashtra. The NGT concluded that the MIDC also has also contributed in causing pollution by failing to ensure its functions of maintenance of pipelines, non-clearance of sludge in a regular manner etc and that it is also responsible to pay compensation computed at Rs. 2 crores. The NGT Bench also lamented upon the extremely negligent and lax approach, careless aptitude, non bona fide conduct and lack of devotion to duty on the part of officials of MPCB in this regard.

XI ISSUE OF ENVIRONMENTAL CLEARANCES

In *NAREDCO West Foundation* v. *Union of India,*[73] the High Court of Bombay directed the expeditious disposal of the proposals for grant of an environmental clearance by the State Environment Impact Assessment Authority (SEIAA).

In *Isha Foundation* v. *Union of India,*[74] Isha Foundation, Coimbatore has filed a writ petition seeking a declaration that the Environmental Impact Assessment (EIA)Notification dated December 22, 2014 issued by the 1st Respondent under Section 6 of the Environment Protection Act,1986 read with Rule 5(3) of the Environment Protection Rules, 1986 in so far asit created an unreasonable classification between persons who constructed buildings prior to December 22, 2014 and after December 22, 2014 as arbitrary and *ultra vires* the Constitution and that the petitioner is entitled to the exemption grantedunder the EIA Notification 2014 is applicable with effect from the commencement of the earlier EIA Notification dated September 14, 2006.The court ,observed that when the notification bearing dated December 22, 2014 issued by makes the issue vividly clear that the industrial shed, school, college and hostel for an educational institution were exempted from obtaining prior environmental clearance, as per 8(a) of the EIA notification, the buildings constructed by the petitioner, both prior to 2006 and post 2014 were exempted from obtaining prior environmental clearance, as per 8(a) of the EIA Notification.Therefore, in the light of the settled legal position,when the notification issued by the Central Government giving retrospective effect to the buildings constructed prior to 2006 and post 2014, also makes it clear that the benefit of exemption will enure to all the educational institutions including the petitioner's yoga centre, the impugned notice issued by the State taking a contra stand as though the notification giving the benefit of exemption with retrospective effect will not apply to the yoga centre being run by the petitioner, has no legs or authority to stand to any good reason. Therefore, the impugned order was set aside. (Para 21)

In *Larsen and Toubro Limited* v. *The State of Tamil Nadu*[75] the High Court of Madras reiterated that the state government has no authority to lease out a

73 MANU/MH/0687/2023 : 2023(2)ABR 461.

74 MANU/TN/9057/2022: 2023-1-LW21, 20231WritLR 21.

75 MANU/TN/6838/2022 : 2022-5-LW546, 2022 2 WritLR 683.

forestland for a non-forest purpose that too without prior approval of the Central Government as contemplated under the Forest (Conservation) Act, 1980.

In *Chandra Bhal Singh* v. *State of Rajasthan* [76] the High Court of Rajasthan reiterated the importance of the doctrine of public trust and observed as under (Para 13)

> Once there is a breach of a public trust and the notifications of the Government of India qua environment and forest are not adhered to and necessary compliances are not made, it becomes duty of this Court to act as a custodian and to take appropriate measures and also the duty of Government of the State and the Executives concerned that the said job be carried out to preserve the natural resources in their pristine purityso as to enforce the Doctrine of Public Trust.

The court noted that industrial areas and activities are actuated on the forest land and permission is granted by the State and its Instrumentalities, activities contrary to the guidelines framed by the apex court are carried out in the sanctuaries, reserve forest and areas in and around them and the Collector, Chief Conservator of Forest and related officers are silent. It was also noted that it is only on activation of the court that they issued directions. In this background, the court deemed it appropriate to expect from the above authorities present in court, to carry out the specified orders *qua* the entry of Forests, Wild Life Sanctuaries, Forest Reserves, Tiger Reserves, *etc.,* as notified, in the revenue records so that no encroachments take place and to preserve them.

In *Aravali Power Co. Pvt. Ltd.* v. *Vedprakash,*[77] the apex court considered theappeals arising from the judgments of the NGT pertaining to the utilization and disposal of fly ash by thermal power plants. In the orders under appeal, the NGT came to the conclusion that the thermal power plants had failed to take adequate steps for the scientific disposal of fly ash in accordance with the statutory notifications issued by the Ministry of Environment and Forest and Climate Change 3 under the provisions of the Environment Protection Act, 1986.The court held that it would be necessary for the MoEF and CC to revisit whether the parameters which have been prescribed by the notification must be modified taking into account the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules 2016, to theextent to which the applicability of the Rules is attracted to the utilization, transportationand disposal of fly ash. The MoEF and CC was also directed to determine upon due analysis whether any further modification ofthe notification is necessary to comply with the provisions of the Rules of 2016 noticed above and other cognate legislation, including subordinate legislation bearing on the utilization, transport and disposal of fly ash in an environmentally sustainable manner. Accordingly the orders of NGT were set aside.

76 MANU/RH/1083/2022.

77 MANU/SC/0673/2022: 2022(12) FLT 752, 2022/INSC /546.

In *T.N. Godavarman Thirumulpad* v. *Union of India (UOI),*[78] the apex court held that it is necessary that there should be a detailed study and analysis of the impact of the proposed project on the biodiversity and ecological system of the protected areas under wildlife sanctuary.

XII NOISE POLLUTION

In *Villa Calangute Resort Pvt. Ltd.* v. *State of Goa,*[79] show-cause notices were issued to the petitioner company running a resort referring to the playing of loud music at the venue/place,*i.e.*, Villa Calangute Resort on certain nights at 00:31 and 22:33 hours pointing out the noise pollution.The petitioner took the novel defence about "Alexa"[80]playing the music or the guest in the resort playing the music but the court *prima facie*, felt that the petitioner cannot pass on the blame on its guests and even more, to Alexa. If, such defences are to be upheld, then, it will be very difficult for the Authorities to enforce the noise pollution rules. In view of the directions of the Supreme Court as well as other courts on the issueof enforcement of the Noise Pollution Rules of 2000, the court pointed out that the implementation of such rulescannot be frustrated by raising such prima facie frivolous defences.

XIII WILDLIFE PROTECTION AND ENVIRONMENT

In *State of Uttar Pradesh v. Anand Engineering College,*[81] the Supreme Court examined the powers of the Chief Wildlife Warden under Section 33 of the Wild Life (Protection) Act, 1972 .The court held that the Chief Wild LifeWarden/ appropriate authority may even pass an order of closure of the institution, if theinstitution continues to discharge the effluent in the sanctuary which may affect and/ordamage the environment as well as wild life in the sanctuary. However, at the same time, the authority cannot impose damages and for that theauthority has to initiate appropriate proceedings before the appropriate court/forum todetermine/ascertain the damages. In the instant case, straightway in exercise of powers under section 33 of the Wild Life (Protection) Act, 1972, the authority-imposed damages worth Rs.10,00,00000/- on the educational institution operating in the close vicinity of the National Chambal Sanctuary Project undertaken by the state government, which was quashed by the court.

In *Binay Kumar Dalei* v. *State of Odisha,*[82] the Supreme Court directed the State of Odisha to implement the Comprehensive Wildlife Management Plan as suggested by the Standing Committee of NBWL before permitting any mining activity in the eco-sensitive zone. The State was also directed to complete the process of declaration of the traditional elephant corridor as conservation reserve

78 MANU/SC/0657/2022 : 2022/INSC /536.

79 MANU/MH/3644/2022: AIR 2022 Bom 259: 2023 (13) FLT 194:2023 (1) MhLj 259.

80 A virtual assistant technology largely based on a Polish speech synthesizer named Ivona, bought by Amazon in 2013.

81 MANU/SC/0913/2022 :2022/INSC /710.

82 MANU/SC/0255/2022: AIR2022SC 1191, 2022(12)FLT 530.

as per section 36A of the Act expeditiously and not to permit the mining operations until then.

In *Kaustuvmani Kakati* v. *The State of Assam,*[83] a division bench of the High Court of Assam considered a PIL filed by an Advocate seeking relief(s) *inter-alia*, for restraining the State of Assam, the Forest Department,Wildlife Division, all national parks, all zoos in the State of Assam and all rescue Centres in Assam from transferring any animal, whether wild or in captivity outside the State of Assam and also to rescue these animals and to cancel all agreements, if any, made by the State of Assam. The court confined to the issue of black panthers and elephants and directed the concerned authorities that their transfer to Greens Zoological Rescue and Rehabilitation Centre, Jamnagar, Gujarat, and the other trust should be made in strict compliance with the terms of approval.

In the case of conflict between human and animal rights, the anthropocentric approach adopted by the courts has resulted in recognition of limited animal rights. In *High Court of Karnataka* v. *The State of Karnataka* and *B.S. Radhanandan* v. *State of Karnataka,*[84] a public interest litigation was initiated *suo motu* by a bench of the high court on the basis of news reports published in the leading newspapers-Indian Express, Times of India, Deccan Herald, Prajavani, *etc*., that large number of monkeys were found dead on the road side in Belur Taluk of Hassan District and also along with the dead monkeys, 15 monkeys which were alive were also put in a large bag. The bench took note of the decision of the Supreme Court in the case of *Animal Welfare Board of India* v. *A.Nagaraja,*[85] wherein the limited right to live conferred on the animals was recognized, and directed the State to follow the Standard Operating Procedure (SOP) for capture and release of monkeys by the Forest Department/BBMP/Urban Local Bodies in a scientific manner without causing any harm to them and to relocate them.

In a matter concerning the slaughtering of animals despite various provisions for prevention of cruelty to animals like the Tamil Nadu Animal Preservation Act, 1958 ; the Prevention of Cruelty to Animals Act, 1960; the Transport of Animals Rules,1978; the Prevention of Cruelty to Animals (Transportof Animals on Foot) Rules, 2001; the Prevention ofCruelty to Animals (Slaughter House) Rules, 2001;the Prevention of Cruelty in Animals (Regulation of Livestock Markets) Rules, 2017 and the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 and also the clear guidelines issued by the apex court in *Laxmi Narain Modi* v. *Union of India*,[86] to be followed by all the State Governments and Union Territories, the Madras High Court in *E. Seshan* v. *The Union of India,*[87] examined the alarming situation, which is not only in regard to illegalslaughtering of cows, but even in reference to camels being brought on foot in violation of the Rules of 2001 and their slaughtering at open places in an illegal manner. The court

83 MANU/GH/0087/2023.

84 MANU/KA/5871/2022.

85 MANU/SC/0426/2014 : (2014)7 SCC 547.

86 MANU/SC/0998/2013 : (2013) 10 SCC 227.

observed that it can happen only when the administration fails to ensure compliance of the provisions of the Acts and the Rules and does not take timely action against the defaulters. Accordingly the court issued 11 guidelines for preventing cruelty to animals in this regard.

In *Adwitiya Chakrabarti* v.*Union of India,*[88] a PIL petition was filed by a law graduate in public interest with prayers to seek issuance of show cause to the respondents as to why a writ of or in the nature of *mandamus* shall not be issued declaring that possession of all exotic animals/birds by persons is illegal and the person in possession of such exotic animals/birds be forthwith prosecuted for violation under the Customs Act by Department of Revenue Intelligence and under the Wild Life (Protection) Act, 1972. The court while dismissing the PIL observed as under: (Para 15)

> Large number of citizens across the country commonly own pets such as dogs, cats, birds, rabbits etc which may also belong to exotic species and might have beenpurchased or procured from those involved in captive breeding. Such pets may numberin millions and also breed. We have considered the submissions of the petitioner aboutsuggested wiping out of the distinction between exotic species and indigenous speciesby directing or at least recommending amendments in the two Acts. We are of the viewthat we can neither direct, nor expect the Government to take such drastic steps inhaste, without assessment of impact and without detailed study. Such amendments instatutory provisions which may result in drastic penal action against common mancannot be directed or even recommended as prayed by the petitioner. The petitionereffectively wants that even all such exotic pets in domestic possession will have to beforfeited and housed by government and their owners shall be arrested, imprisoned andprosecuted under wild life Act and compelled to disclose the source under Customs Act,1962. The step suggested by the petitioner will have very wide- and far-reachingramifications. We cannot lose sight of the facts that most people possessing such exoticspecies are animal lovers and over time such exotic species become a part of the familylike a child in the house. There are sufficient safeguards available in law to preventcruelty to animals which are also applicable to exotic species. Directing the amendments in the tow Acts as suggested or even to suggest the respondents to legislate such amendments, would lead to chaos and no public purpose will be achieved. Even otherwise in light of the judgments discussed above the Court cannotdirect the Central Government and the Central Board of Indirect Taxes to forthwith makeamendments against legislative will to include all exotic

87 MANU/TN/5738/2022 : 2022-3-LW848.
88 MANU/TR/0367/2022.

> species in the Wild Life (Protection) Act, 1972 and also in the notifications issued under Section 11B, 123 and 135 of the Customs Act, 1962. Court can neither direct seizure/confiscation contrary to existing provisions, nor can direct change I classification of such bailable offence tonon-bailable offence, to enable arrest and prosecution of all the persons concerned withsuch undeclared stock of exotic animals/exotic birds.

In *Devendra Singh Adhikari* v. *State of Uttarakhand,*[89] the High Court of Uttarakhand directed the stoppage of all the operations of a stone crushing unit within one kilometre of the Rajaji national Park/ Rajaji Tiger Reserve. The court expressed dismay over, as to how the State Government could have directed theexclusion of the State Pollution Control Board from the joint inspection process to ascertain whether any project proponent is complying with the pollution control norms. By doing so, the court observed that the state government is practically dismantling the statutory regime for protection of environment, and removing the vigilance that the state pollution control board is mandated by law to maintain in the State to prevent pollution.

In *Independent Medical Initiative Society* v. *State of Uttarakhand,*[90] the high court *inter alia* directed the State authorities to consider declaring the elephant corridors in the Jim Corbett National Park/Ramnagar Forest as 'Eco-sensitive zones' under the Environment Protection Act, not to allow construction in any form like hotels, resorts, restaurants etc. which fall within the identified elephant corridors in the area in question and to protect the already identified elephant corridors in the area.

XIV JUDICIAL APPROACH TO CURB POLLUTION

In *S.S. Industries* v. *UT of J and K.,*[91] a single judge of the High Court of Jammu and Kashmir and Ladakh at Jammu deprecated the practice of perpetrators of environmental pollution approaching the courts for relief and made the following relevant observations:

> Patience to put up with the violations and the violators of the ecological environment has now run dry. The law needs to take charge, and in fact has taken charge, of the situation to deal with the environment related violations and violatorsimpatiently and for that the enforcers of the law need to be fast paced as in the present case where the law enforcers have acted with promptness and pre-emptively and this iswhat is serving the call of duty to protect the environment. Present time in which the human society has come to drive itself, notwithstanding the credit and claim of growthand development achieved and attained in the course by it, it has now become every living person's first business, without any exception,

89 MANU/UC/0002/2023.
90 MANU/UC/0503/2022 .
91 MANU/JK/1135/2022.

> to protect and preserve the veryecological environment within which and by use of which the human society, irrespective of country wise identification, was able to journey from time of physical challenge to comfort times of the present. Time is not only running short but perhaps it may not be an exaggeration to say that the time has already run short for the human society so as to afford and allow any further pricking and poking, to be done by anyman and woman through his/her acts of omission and commission, to the already endangered ecological environment. Thus, it is now for the man to mend his business to save the earth's environment than for the Environment to mind for the man's business. In fact, pressed and driven by the environment protection exigency even the law makerscould not escape from naming the legislation enacted by them relating to the environment by any other expression than a clarion title which is "the Environment (Protection) Act, 1986. (Para 20).
>
> The Supreme Court of India, being in the forefront, in almost every case/cause dealt or being dealt with by it relating to environment and pollution related, and matter is letting no moment to go waste in confirming and reconfirming that the law is positioning itself to be on the side of the Environment than on the side of the Man. Activation and enforcement of environmental pollution related legal regime meant to curb the very tendency to act in avoidance/violation of pollution related norms and forms has to earn the legal backing of the courts of law including the constitutional courts in country like India where instinct and tendency to obey law is more on omission side than on commission side even with respect to a personal safety meant legal norm of wearing of helmet for a person driving two-wheeler.(Para 21)

The above observations sum up the tendency of the individuals running industries to omit enforcement of environmental norms

XV AIR POLLUTION

In *Hindustan Petroleum Corporation Limited* v. *Union of India,*[92] the writ petitions, to quash the impugned Notification issued by the Deputy Director (Labs), Tamil Nadu Pollution Control Board (TNPCB) and also to forbear the respondents in enforcing the Retrofitting of Emission Control Devices in DG sets, without proper study and creating infrastructure. It was submitted that the petitioners, being a Public Sector Enterprise of the Government of India are engaged in marketing the petroleum products through retail network throughout the Country, and that they also have DG sets in Plants, Terminals, Depots, Aviation Fuel Stations and in administrative offices in the State of Tamil Nadu, catering to the needs of the larger public and these plants were also established after obtaining

92 MANU/TN/2866/2022 .

all necessary clearances from the third respondent, the Tamil Nadu Pollution Control Board. It was also contended that besides the omissions from the DG sets and ambient air quality, their Plants are also regularly checked by CPCB or State PCB.

The TNPCB directed to comply with the direction of installation of Retrofit Emission Control Device/Equipment in all DG sets used by the petitioners Plants when the Retrofit Emission Control Equipment is not evenmanufactured/produced by any company either in India or abroad and when no such Retrofitted Emission Control devices are available in the market and the CPCB recognized laboratories. In view of the above facts, the court quashed the direction of TN PCB.

XVI MISCELLANEOUS

In *Jitendra Yadav* v. *Union of India,*[93] the high court took cognizance of the fact that a large majority of manufacturers, and none of the importers and brand owners, have bothered to register with the Uttarakhand, State Pollution Control Board under the Plastic Waste Management Rules, 2016 framed under the Environment Protection Act, and the respondent authorities are indifferent to this non-compliance. The court directed the respondents to immediately take steps to clear the solidwaste/non-biodegradable plastic waste, which has been collected all over the State in a mission mode.[94]

In *Jaba Mukherjee* v. *The Principal Secretary, Department of Urban Development and Municipal Affairs of West Bengal & Member Secretary*,[95] the Eastern Zone Bench of NGT found fault with the Kharagpur Municipality entrusted with the task setting up of solid waste processing and final disposal facility of Municipal solid waste/garbage generated from different wards under the jurisdiction of the Municipality, was liable for illegal dumping of more than 70 MT of garbage per day on an open land on the cremation and burial grounds of certain Villages which lie adjacent to the irrigation canal, causing pollution of the water and air thereby endangering the lives of the residents of the villages. Accordingly the municipality was directed to pay the Environmental Compensation of Rs.2,00,000/- (Rupees Two Lakhs) per month as directed by the West Bengal PollutionControl Board.

In *Kapil* v. *Central Pollution Control Board,*[96] the Principal Bench of NGT at New Delhi took cognizance of extraction of ground water by a dairy plant without any permission and for the operating dairy plant without permission and in continuous violation of environmental norms thereby causing immense pollution. The NGT held that such industry is liable to compensate the affected residents for causing immense air and water pollution as they were suffering from various harmful diseases. A total amount of Rs. 4,85,44,000/- was imposed as Environmental Compensation in this case.

93 MANU/UC/0328/2022.

94 See also *Sukhivender Kaur Gill* v. *State of Uttarakhand* MANU/UC/0013/2023:2023(1)UC 282, 2023(1)UC 282.

95 MANU/GT/0261/2022.

96 MANU/GT/0063/2022.

In view of the complaints of rampant and illegal mining the High Court of Uttarakhand took cognizance of it in *Matri Sadan Jagjeetpur, Kankhal v. Unionof India*,[97] and directed the State Government to set up a completely independent Complaint Redressal System against illegal mining, screening or crushingof river bed materials. The redressal mechanism has to remain independent of, and unconnected with the state's administration, if it has to work effectively and meaningfully. Often, complaints are received that the local administration is eitherinactive, unconcerned, or is mixed up with the mining licensees. Such complaints can, obviously, not be left for examination and disposal by the very same authorities, whoare involved in the matter of enforcement of the conditions of the mining license. The State should, therefore, evolve a completely independent complaint redressal mechanism, by, *inter alia*, drawing persons from reputed and independent retiredmembers of the Judiciary, Bureaucracy, reputed environmental experts and activists. The State was directed to place before the court, the independent complaint redressal mechanism that it may evolve for the purpose of redressal of complaints regarding illegal mining, not only in the River Ganga, but throughout the State.

In *Heilgers Chem Pvt. Ltd.* v**.** *Uttar Pradesh Pollution Control Board,*[98] the Principal Bench of NGT held that when environmental norms were not followed, by not operating ETP or by discharging partially or totally untreated pollutant or by causing other violations, which resulted in commissioning of Scheduled offence and revenue earned by committing such crime would be proceeds of crime as defined in PMLA 2002 and showing it as part of business proceeds in accounts amounts to projecting or claiming it as untainted property. The entire such activity would be covered by Section 3 of Prevention of Money Laundering Act 2002.

In *Jagdish Meena* v. *State of Rajasthan,*[99]the Bhopal bench of NGT directed the Chief Secretary, State of Rajasthan to continuously monitor illegal mining or develop a mechanism to control the illegal mining activities and to ensure that there shall not be illegal mining and there must be compliance of the Sustainable Sand Mining Management Guidelines, 2016 and The Enforcement and Monitoring Guidelines for Sand Mining, 2020. Further the State Pollution Control Board was directed to ensure the compliance of environmental rules and further to take necessary steps to control the illegal mining, to initiate proceedings for prosecution in-case the matter of illegal sand mining or illegal transportation of sand mining is found and in addition, to take necessary steps for assessment and realisation of environmental compensation as prescribed by the CPCB.[100]

In *Vijaysinh Dubbal* v**.** *Maharashtra Pollution Control Board,*[101] the Principal Bench of NGT held that no Cool Water Cane/Chilled Water Jar Units

97 MANU/UC/0886/2022 : 2023(13)FLT 147.

98 MANU/GT/0330/2022.

99 MANU/GT/0127/2022.

100 See also the NGT Principal Bench's order in *Shivpal Bhagat* v. *Union of India* MANU/GT/0038/2022, *Sushil Bhatt* v. *Moon Beverages Ltd.,* MANU/GT/0059/2022 as regards the various parameters for calculating environmental compensation

(Plants) or any other unitcarrying on similar business with any other description or title in State of Maharashtra and in particular, Nagpur and Pune shall be allowed to continue unless the concern Project Proponent possesses NOC from Central Ground Water Authority, Consent under the Water Act,1974 from the State PCB and is complying with environmental norms prescribedunder Water Act 1974, EP Act 1986 and rules, regulations and directions issued thereunder.

XVII CONCLUSION

The conflict between the human beings and the nature is never ending. In the name of development and economy,the individuals,industries and the authorities have been indulging in rampant actions causing imbalances in the nature and environment. The courts and adjudicating authorities also while resolving the complaints have expressed their limitations on number of occasions.None the less ,the year under survey has witnessed many instances wherein the concerned departments, authorities,courts and adjudicatory authorities have been called upon to decide the validity of many actions relating to various environmental aspects like the jurisdiction of the NGT *vis-a-vis* the high courts, felling and plantation of trees for minor and major projects, lack of coordination between various government departments, protection of wildlife, declaration of Eco-Sensitive Zones, air, water and noise pollution, solid waste management and granting environmental clearances etc which have been analysed in this survey.The imposition of environmental compensation and the determination of the apex court and NGT in following the 'polluter pays principal' is another highlight during this year. On the whole, the year 2022 has contributed to the continuation of developing environmental jurisprudence in India with a balanced approach.

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101MANU/GT/0074/ 2022.