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Planters Forum Vs. State of Kerala

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Court : Kerala

Decided On : Nov-17-2014

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Planters Forum

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON MONDAY,THE17H DAY OF NOVEMBER201426TH KARTHIKA, 1936 WP(C).No. 26691 of 2010 (J) --------------------------- PETITIONER(S): -------------------------- 1. PLANTERS FORUM, APRIVATE TRUST REGISTERED UNDER THE INDIAN TRUSTS ACT, 1882 HAVING ITS OFFICE IN DOOR NO.5/214 BYE PASS ROAD, ERANHIPALAM, CALICUT-673 006, REPRESENTED BY ITS SECRETARY.

2. DR.CHUMMAR CHANDY, PULICAKATHAARA HOUSE, KANJIRAPILLY, KOTTAYAM DISTRICT. BY SRI.E.K.NANDAKUMAR,SENIOR ADVOCATE ADVS. SRI.K.JOHN MATHAI SRI.P.BENNY THOMAS SRI.P.GOPINATH SRI.RAJ PANJWANI SRI. C.U.SINGH,SENIOR ADVOCATE SRI. SANJAY UPADHYAY RESPONDENT(S): --------------------------- 1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,SECRETARIAT.P.O.,

THIRUVANANTHAPURAM-1.

2. THE SECRETARY TO GOVERNMENT, FOREST & WILD LIFE DEPARTMENT, GOVERNMENT SECRETARIAT,SECRETARIAT.P.O., THIRUVANANTHAPURAM-1. R1 & R2 BY SRI.K.V.VISWANATHAN,SENIOR ADVOCATE BY SPL. GOVT. PLEADER (FOREST) SRI.M.P.MADHAVANKUTTY THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1710-2014, ALONG WITH WPC.NO. 24819/2003 AND CONNECTED CASES, THE COURT ON1711-2014 DELIVERED THE FOLLOWING: sts WP(C).NO.26691/2010 APPENDIX PETITIONER'S EXHIBITS: P1 COPY OF THE NOTIFICATION NO.EFL.1-134/2006 DATED246/2006, WHICH WAS PUBLISHED IN THE KERALA GAZETTE (VOLUME51 NO.31 DATED18/2006 P2 COPY OF THE PLANTATION TAX ASSESSMENT FOR THE YEAR20082009 IN RESPECT OF MS. MANALAROO ESTATE (AN ESTATE OF THE NELLIAMPATHY TEE & PRODUCE COMPANY LIMITED) DATED229/2008 P3 COPY OF THE CERTIFICATE OF REGISTRATION ISSUED UNDER THE PROVISIONS OF THE COFFEE ACT,1942 IN RESPECT OF THE VERY SAME ESTATE DATED2212/62. P4 COPY OF THE CERTIFICATE OF REGISTRATION ISSUED UNDER THE PROVISIONS OF THE CARDAMOM RULES DATED1612/1982. P5 COPY OF THE NOTIFICATION NO.C4-21437/2000, DATED268/2000 RESPONDENT'S EXHIBITS: NIL /TRUE COPY/ P.S.TO.JUDGE sts "C.R." ASHOK BHUSHAN, AG. C.J.

and P.R. RAMACHANDRA MENON, J.

============================== W.P(C) Nos.26691 of 2010, W.P(C) Nos.24819 & 32825 of 2003, W.P(C) Nos.10738, 11110, 30785, 9843, 3795, 7042, 34524, 30930 and 18134 of 2006 W.P(C) Nos.29245, 22661, 29466, 27296, 32740, 32767, 36454, 29199, 14064, 34575, 25801, 12594, 14298, 2871, 8127, 1006, 1767, 8412, 10770, 20694, 25835, 25867, 34554, 27821, 29101 & 30462 of 2007, W.P(C) Nos.3210, 23798, 1114, 24503, 15142 & 11899 of 2008, W.P(C) Nos.10235, 14797, 31479, 15324, 34320 & 32064 of 2009, W.P(C) No.22764 of 2010, 32309 & 1951 of 2010 W.P(C) No.6814 of 2013, W.P(C) No.3757 of 2014 & W.A. No.535 of 2014 ============================ Dated this the 17th

day of November, 2014

JUDGMENT

Ashok Bhushan, Ag. C.J.

The Principal Challenge in this bunch of Writ W.P(C) No.26691 of 2010, etc. -:

2. :- Petitions is to the constitutional validity of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (hereinafter referred to as "the 2003 Act"). Apart from the above challenge, other reliefs have also been claimed in some of the Writ Petitions. The bunch also includes a few Writ Petitions filed as Public Interest Litigation supporting the 2003 Act and challenging the action of the respondents in excluding some of the estates as not being ecologically fragile land. The issues raised in this bunch of Writ Petitions are of public importance and relevant for human life and nature.

2. For appreciating the issues raised in these Writ Petitions and for answering the issues, it is necessary to note the facts of some of the Writ Petitions of this bunch. Most of the Writ Petitions raise similar question of facts and law and hence it shall be sufficient W.P(C) No.26691 of 2010, etc. -:

3. :- to note facts of some of the Writ Petitions which may suffice the decision in all the Writ Petitions. Writ Petition No.26691 of 2010 which has been argued in extenso is being treated as the leading Writ Petition. Apart from noticing the facts of Writ Petition No.26691 of 2010, facts in some other Writ Petitions including some Writ Petitions filed as Public Interest Litigation need to be noted for having a complete view of the issues and challenges raised before us. Writ Petition No.26691 of 2010 - (Planters Forum and Another v. State of Kerala (Leading Writ Petition) 3. First petitioner is a registered private Trust formed with the object of benefiting planters and cultivators of cardamom, pepper, vanila, others spices, rubber, tea, coffee, other cash crops and food crops. One of the objects of the Trust is to take up issues pertaining to planters and cultivators who are the W.P(C) No.26691 of 2010, etc. -:

4. :- beneficiaries of the Trust and particularly to challenge the 2003 Act on behalf of the beneficiaries. Second petitioner along with his sisters owned an extent of 25 hectares of land in Old Sy. No.1226 (part) of Vellarimala Village in Vythiri Taluk of Wayanad District. After enforcement of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as "the 1971 Act) petitioners' land was treated as having vested in the State Government. Petitioner raised a challenge before the Forest Tribunal under Sec.8 of the 1971 Act. The Tribunal allowed the claim of the petitioner and held that the property of the second petitioner is plantation being exempted under the 1971 Act from vesting. A Notification under Sec.3(2) of the 2003 Act dated 24.06.2006 was issued notifying 25 hectares of land of the 2nd petitioner as ecologically fragile land vested in the Government as per Sec.3(1) of the 2003 Act. W.P(C) No.26691 of 2010, etc. -:

5. :- Petitioners filed W.P(C) No.29049 of 2007 before this Court challenging the Notification on the ground that the land found to be a plantation and exempted from vesting under the 1971 Act could not be the subject matter of vesting under Sec.3 of the 2003 Act. In the above Writ Petition this Court directed the Custodian of ecologically fragile land to adjudicate the matter under Sec.19(3)(b) of the 2003 Act. The second petitioner filed S.L.P(C) No.8374 of 2009 before the Supreme Court against the above judgment of the High Court which SLP is said to be pending. In this Writ Petition the petitioners challenge the constitutional validity of the 2003 Act. The 2003 Act was preceded by Ordinance Nos.6/2000, 8/2000, 3/2001 and 16/2001. The 2003 Act was passed by the State Legislature and notified on 06.06.2005. Section 1(2) further provided that the 2003 Act shall be deemed to have come into force on W.P(C) No.26691 of 2010, etc. -:

6. :- the 2nd day of June, 2000. The 2003 Act also received the assent of the President of India on 25.04.2005. Petitioners challenge the constitutional validity of the 2003 Act principally on the grounds of (i) lack of legislative competence, (ii) violation of specific fundamental rights under Part III of the Constitution of India (the Act not being saved by operation of Articles 31A/31C of the Constitution of India), (iii) The Act is a product of colurable exercise of legislative power and in relation to the matters already covered by State and Central Acts and (iv) insofar as the Act does not make provision for payment of compensation in respect of

lands covered under Section 3, it is illegal and confiscatory besides being arbitrary and discriminatory.

4. The following reliefs have been claimed by the petitioners in the Writ Petition. (i) issue an appropriate writ, order or direction holding and declaring that the provisions of the Kerala W.P(C) No.26691 of 2010, etc. -:

7. :- Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 are ultravires the legislative competence of the Kerala Legislature and are therefore null and void; (ii) issue an appropriate writ, order or direction holding and declaring that the provisions of Section 3 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 are unconstitutional, arbitrary and unjust and strike down that provision; (iii) In the alternative this Hon'ble Court may be pleaded to declare the provisions of Article 14 of the Constitution of India insofar as no provisions is made for the payment of compensation in respect of lands vesting under Section 3, whereas compensation is provided for lands which may be declared as ecologically fragile under Section 4 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003; (iv) In the alternative this Hon'ble Court may be pleased to hold and declare that even lands vesting under Section 3(1) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 can be vested only upon payment of compensation determined in a just manner in accordance with law; (v) To issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to restore the lands already vested under the provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 in the State of Kerala to the respective owners including W.P(C) No.26691 of 2010, etc. -:

8. :- the 2nd petitioner and other members of the first petitioner Trust; (vi) Issue a writ of prohibition or a writ in the nature of prohibition permanently prohibiting the respondent state from taking over any land under the provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003' (vii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents not to enforce the provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003; (viii) Declare

that the members of the first petitioner, including the 2nd petitioner whose lands have been vested by operation of Section 3 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 are entitled to damages for wrongful dispossession of their lands and deprivation of enjoyment and income from the same; (ix) Issue such other writs, orders or directions which this Honourable Court may deem fit, and proper in the facts and circumstances of the case." W.P(C) No.6814 of 2003 - (Parisons Estates & Industries (P) Ltd & Another v. State of Kerala and Others) 5. The first petitioner is a Company incorporated under the Companies Act, 1956 and the second W.P(C) No.26691 of 2010, etc. -:

9. :- petitioner is the shareholder of the company. The Company owned 7.501 hectares of land in Sy.No.61/2A1A of Thavinjal Village in Mananthavady Taluk, Wayanad District which is a tea estate planted with shaded trees. The first petitioner also has an extent of 32 hectares of land in Sy. No.4/10/1 in Thirunelli Village of Mananthavady Taluk in Wayanad District. Petitioners purchased the aforesaid properties by sale deed No.2798/2004. By Notification under Sec.3(2) of the 2003 Act dated 21.01.2011 published in the Kerala Gazette dated 08.02.2011 the above 7.501 hectares of land has been notified as ecologically fragile land. 32 hectares of land as mentioned above has also been notified under Sec.3(2) of the 2003 Act by Notification dated 12.03.2007 published in the Official Gazette on 03.04.2007.

6. A detailed counter affidavit dated 25.10.2013 W.P(C) No.26691 of 2010, etc. -:

10. :- sworn by G.J.Teggi, Custodian of ecologically fragile land has been filed. Another additional counter affidavit has been filed by the 3rd respondent on 27.11.2013. Petitioner has also filed a memo dated 27.11.2013 stating that merits of the matter were contested before the Forest Tribunal under Sec.8 of the 2003 Act by application, O.A. No.2/12 in which judgment dated 31.08.2013 has been delivered against the petitioners. Petitioners stated in the memo that they are preferring an appeal against the judgment wherein merits of the matter in detail are taken and the Writ Petition is limited to the challenge of the constitutional validity of the Act. W.P(C) No.9843 of 2006 (N.K. Kumari Thampatti v. The Divisional Forest Officer) 7. The mother of petitioner owned 16.5 acres of self

cultivated fully planted with teak trees. Petitioner being daughter is in management of the property after the death of her mother, Sarada Thambatty as per W.P(C) No.26691 of 2010, etc. -:

11. :- registered Power of Attorney dated 13.05.1993. Property is situated in Nilabnur Taluk and comprised in Sy.No.31/2 part of Akampadam Village. Teak plantation was raised after obtaining permission from the authorities under the Madras Preservation of Private Forest Act, 1949. Petitioner entered into an agreement on 15.03.2006 for cutting and removing the trees and informed the Divisional Forest Officer seeking permission for transportation. The Divisional Forest Officer wrote letter dated 23.03.2006 to the petitioner informing that the land is already proposed to be notified under the 2003 Act, hence the agreement is null and void. Petitioner filed the Writ Petitioner praying for setting aside Ext.P3, i.e., the letter of the Divisional Forest Officer dated 23.03.2006 and further prayed for a declaration that the petitioner is entitled to cut and appropriate the timber of teak trees and further W.P(C) No.26691 of 2010, etc. -:

12. :- declaring that 16.5 acres is not vested in the Government. Subsequently, the above 16.5 acres of land has been notified under Sec.3(2) of the 2003 Act dated 10.08.2006 published in the Official Gazette dated 12.09.2006. All the legal heirs of Sarada Thampatty have also filed W.P(C) No.8412 of 2007 praying for setting aside the Notification dated 12.09.2006 and further to declare that Secs.3(1) and 8(2) of the 2003 Act are unconstitutional and void. W.P(C) No.1951/2010 (M/s.Nelliampathy Plantations Ltd. v. State of Kerala and Others) 8. Petitioner Company owns an estate, a Cardamom plantation known as Nelliampathy Plantation at Palakkad called as Meenampara Estate. Leasehold right was acquired for plantation on 14.03.1967. On 10.05.1971 i.e., on the date of enactment of the 1971 Act, petitioner was in possession of 785.04 acres. The land of petitioner was treated to W.P(C) No.26691 of 2010, etc. -:

13. :- be vested under the 1971 Act. Petitioner filed O.A. No.42 of 1977 before the Tribunal which held that 200 acres alone come under exclusion clause out of Scheduled area, 618 acres. Both the petitioner and the State filed appeal as M.F.A. Nos.357 of 1981 and 223 of 1981. This Court vide its judgment dated

25.06.1987 allowed the appeal of the State holding that the order of Tribunal, insofar as it excludes 200 acres in excess of that which was already excluded is unsustainable, the appeal of the petitioner was dismissed. Review application was filed where observations were made that more or less 200 acres is plantation. Notification dated 19.09.2000 was issued under Ordinance No.8 of 2000 notifying 81.49 Acres as ecologically fragile land. Challenging the Notification as well as the constitutional validity of the 2003 Act, the Writ Petition has been filed. W.P(C) No.26691 of 2010, etc. -:

14. :- W.P(C) No.27821 of 2007 (M/s.Southern Field Ventures Private Limited v. State of Kerala) 9. Petitioner has purchased 707.23 Acres of Tea Estate with a factory, namely, Merchiston Estate on 30.03.2005. The Tea Estate was earlier owned by Jay Shree Tea and Industries Ltd. Jay Shree Tea Limited, i.e., the predecessor-in-interest of the petitioner had obtained possession of the above property from one Richar John Moor, Planter who was residing at Merchiston Estate by sale deed dated 08.04.1954. The tea factory situated therein is about 150 years old and claimed to have bben functioning in the tea estate with buildings, structures, plantations, plants and machinery, fixtures, etc. Out of the said 707.23 acres of land, an extent of 23.7371 hectares of land was vested with the Government under the 1971 Act. The predecessor-in- interest of the petitioner filed O.A. No.100 of 1980 before the Forest Tribunal, Palakkad which held that W.P(C) No.26691 of 2010, etc. -:

15. :- the entire estate excluding the vested portion of 23.7371 hectares is tea estate. M.F.A. No.652 of 1989 was filed by the petitioner where this Court held that the entire Merchiston estate is tea estate and even the disputed 23.7371 hectares stood excluded from the 1971 Act. The above finding was recorded by this Court in its judgment dated 12.09.1997 in M.F.A. No.652 of 1989. Petitioner stated in the Writ Petition that in January, 2006 after receiving a postal article addressed to Jay Shree Tea Industries, they came to know that a litigation was going on at the instance of the previous owner of the estate against the Notification issued under the Ordinance notifying the land as ecologically fragile land. Two Original Petitions were filed by the predecessor-in-interest of the petitioner before this Court, namely, O.P. No.3212 of 2000 and O.P. No.35714 of 2000. In O.P. No.35714

16. :- of 2000 the petitioner sought a mandamus directing the respondents to restore the land mentioned in Ext.P1 judgment, noticing the fact that the land has already been notified under Sec.3 of the 2003 Act the Original Petition was closed without prejudice to the liberty of petitioner to pursue the matter in appropriate proceedings. Another Writ Petition, O.P. No.35714 of 2000 was filed by the predecessor-in-interest of the petitioner in which declaration was sought that Ordinance No.16 of 2001 is unconstitutional, illegal and inoperative. In the Original Petition it was mentioned before the Court that the petitioner has already approached the Custodian under Sec.19(3)(b) of the 2003 Act. A Full Bench of this Court disposed of the Original Petition along with a batch of Original Petitions by judgment dated 24.05.2006 with liberty to the petitioner to challenge the Act which had replaced the W.P(C) No.26691 of 2010, etc. -:

17. :- Ordinance. It was further observed that if the matter is pending before the Custodian under Sec.19(3), the petitioner may approach the Custodian for early disposal The entire land of Merchiston Estate was notified under the Ordinance by Notification dated 20.10.2000 published in the Gazette on 10.01.2001. The petitioner submitted an application on 30.03.2007 before the Custodian for removing petitioner's estate from the Notification published under Ordinance. Application of the petitioner was forwarded to the Conservator of Forest, Kollam for enquiry through committee consisting of the Divisional Forest Officer, Technical Assistant of Conservator of forests and Working Plan Officer. The committee inspected the site and submitted a report through the Conservator of Forests to the custodian. The Committee found that the estate is a tea plantation and not eligible for W.P(C) No.26691 of 2010, etc. -:

18. :- declaring it as ecologically fragile land except the area of 24.409 hectares. The Custodian passed an order dated 12.06.2007 allowing the application filed by the petitioner and directed for restoration of the land to the petitioner except an area of 24.409 hectares. The petitioner in the meantime in response to an advertisement issued by the Indian Space Research Orgnization on 13.12.2006 where requirement of land with certain specification was notified submitted its offer

and after negotiation proposed to transfer 81.5 acres of land of the estate to ISRO. Petitioner by sale deed dated 20.7.2007 has transferred the land of 81.5 acres to ISRO. Notice dated 7.9.2007 was issued by the Custodian declaring that the land is still vested with the Government and without consent or permission from the Custodian no transfer could be made which is detrimental. Another notice was issued on 8.09.2007 by W.P(C) No.26691 of 2010, etc. -:

19. :- the Divisional Forest Officer directing the petitioner company to vacate the land within 30 days. In the above backdrop of facts petitioner has filed the Writ Petition with the following prayers. (i) Declare that the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance 2000 (No.6/2000) and Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance 2001 (No.16/2001) are ultravires of the Constitution and hence unconstitutional and void ab initio. (ii) Declare that Kerala Forest (Vesting and Management of of Ecologically Fragile Lands) Act 2003 is ultravires of the Constitution and hence unconstitutional and void ab inihtio. (iii) quash Exhibit P17 notification by issuance of a writ of certiorari or any other appropriate writ, order or direction. (iv) Call for the records relating to Ext.P26 and P27 and issue a writ of certiorari or any other appropriate writ, order or direction quashing the same. (v) Issue such other writ, order or direction which this Honourable Court deems fit in the nature and circumstances of the case. W.P(C) No.3210 of 2008 (M/s.Southerin Field Ventures Private Ltd. v. State of Kerala and Others) W.P(C) No.26691 of 2010, etc. -:

20. :- 10. The petitioner had already filed W.P(C) No.27821 of 2007 as noted above challenging the notices dated 07.09.2007 and 08.09.2007. An order dated 12.06.2007 had already been passed in favour of the petitioner holding that the entire Merchiston estate except the area of 24.409 hectares is tea estate not qualified for ecologically fragile land. Petitioner's case is that after passing the order dated 12.06.2007 by the Custodian due to certain extraneous reason notice was issued on 26.12.2007 by the Custodian directing the petitioner to show cause as to why the earlier order be not recalled. Petitioner filed objection. The Custodian/Chief Conservator of Forests by his order dated 08.01.2008 recalled his earlier order dated 12.06.2007. Petitioner's case is that the Custodian had no jurisdiction to recall the order since there is no power of review vested in him. It is

further pleaded that there W.P(C) No.26691 of 2010, etc. -:

21. :- are no valid grounds for recalling the order. On the facts stated in the earlier order dated 12.06.2007, the order could not have been recalled. It was further submitted that the order dated 8.01.2008 was passed by the Custodian under the dictate of the 5th respondent who had made defamatory statement against the petitioner. In the Writ Petition petitioner has also prayed for quashing Ext.P8, i.e., notice dated 26.12.2007 issued by the Custodian as well as Ext.P40, i.e., the order dated 08.01.2008. W.P(C) No.29101 of 2007 (Indian Institute of Space Science and Technology v. State of Kerala and Others) 11. Writ Petition has been filed challenging the notice dated 08.09.2007 issued by the Divisional Forest Officer informing the institute that the land of the Merchiston estate is notified on 20.10.2000 as ecologically fragile land with effect from 02.06.2000 and a portion of the land is occupied by the institute and the W.P(C) No.26691 of 2010, etc. -:

22. :- institute was directed to stop all activity and vacate the land within 30 days. The petitioner's case in the Writ Petition is that the idea of setting up a world class Institute for imparting education relating to Planetary Science, Atmospheric Dynamics, Celestial Mechanic, Astronomy, Galaxies, Cosmology and Astrophysics was conceived by the Department of Space, Government of India. The land was to be searched with atmospheric pressure of 25o celsius. Cabinet approval from the Government of India was obtained. It was decided to find out possible locations within Thiruvananthapuram of about 100 acres. District Collector was requested to provide for suitable land. An advertisement was issued in prominent English and vernacular newspaper on a public tender basis/negotiation which appeared in the newspapers on 13.12.2006. M/s.Southern Field Ventures Private Limited has offered part of the Merchinston Estate. Negotiation was made. The Collector has W.P(C) No.26691 of 2010, etc. -:

23. :- already sent report dated 05.02.207 about the non availability of the land. Consent was also obtained from the Government of Kerala for setting up the institute. The State Government was informed about land of M/s.Merchiston estate and the State Government was requested to intervene in the matter. Custodian passed an order dated 12.06.2007 holding that Merchinston estate except an area

of 24.709 does not qualify for ecologically fragile land. After the said decision, the petitioner purchased 81.05 Acres vide sale deed dated 20.07.2007 forming part of the Merchinston Estate excluding the land found as ecologically fragile land as per order dated 12.06.2007. Notice dated 08.09.2007 was issued by the Divisional Forest Officer, Thiruvananthapuram asking the petitioner to vacate the land. Petitioner filed the Original Petition praying for the following reliefs: (1) to call for the records leading to Ext.P-30 Notice dated 08.09.2007 of the 3rd respondent and to W.P(C) No.26691 of 2010, etc. -:

24. :- quash the same by the issuance of a writ of certiorari or other appropriate writ, direction or order; (2) to issue a writ of mandamus or other appropriate writ, direction or order directing the respondents 1 to 3 not to interfere in any manner or to obstruct the petitioner Society in carrying out the work for setting up Indian Institute of Space Science and Technology in the land covered by Ext.P-23 Sale Deed. (3) to issue other appropriate writ, direction or order which this Hon'ble Court deem fit, just and proper in the circumstances of the case.

12. This batch of Writ Petitions also contain few public interest litigations filed by different organisations and persons supporting the Ordinances and 2003 Act. It is useful to note the facts and pleadings in various public interest litigations. W.P(C).No.32767 of 2007 (PIL) (Lawyers Environmental Awareness Forum v. Union of India) 13. This Writ Petition has been filed by a registered organisation of Lawyers of this Court involved in increasing awareness among lawyers and general public about the necessity for conservation of nature W.P(C) No.26691 of 2010, etc. -:

25. :- and ecology and prevention of environmental pollution. The grievance raised in the Writ Petition is with regard to establishment of a campus of the Indian Institute of Space, Science & Technology in Merchiston Tea Estate by purchasing 82 acres of land in July, 2007. The petitioner pleads that the Merchiston Tea Estate is situated in Ponmudi Hills. The Ponmudi hills area is located in Palode - Kulathupuzha forest ranges. The Merchiston tea estate in the Ponmudi Hills is an enclosure inside the Palode Reserve Forest. The Ponmudi Hills is part of agasthyamalai Hills (Asambu Hills). The ecosystems and evergreen forests of the

Agasthyamalai Biosphere Reserve are among the richest in the whole world in terms of flora and fauna and biodiversity. This area is a natural unit of the mountain system of the Western Ghats at the southern end of Indian Peninsula. It represents a pristine part of the paleotropic biogeographic region with very high floral W.P(C) No.26691 of 2010, etc. -:

26. :- endemism and unique biodiversity. Agasthyamalai Biosphere Reserve has the richest tropical eco system with proportionately a higher number of endemic and rare elements than in any other part of Western Ghats mountain system and is renowned world over for its rare and unique eco system and endemism. The petitioner further pleads that Agasthyamalai Biosphere reserve was declared as the 13th Biosphere Reserve in India by the Union of India as per notification dated 12.11.2001 under UNESCO's Man and Biosphere Programme. The basic function of Biosphere Reserve is conservation of landscapes, eco-systems, species and genetic variation within species for fostering human development, which is ecologically sustainable. It is pleaded that the Merchiston Tea Estate is located around the central portion of Agasthyamalai Biosphere Reserve, in which no activity which prejudicially affect the conservation and protection of ecology be permitted. It is pleaded W.P(C) No.26691 of 2010, etc. -:

27. :- that the Western Ghats has been recognised as one of 18 biodiversity hotspots recognised in the world. The highest levels of endemism are found in the evergreen forests. The petitioner has brought on record various reports and research documents pertaining to Agasthyamalai Biosphere Reserve. It is pleaded that establishment of the second respondent (Indian Institute of space, science & Technology), an institute at Ponmudy Hills will destroy the ecological functions of the wild life corridor. It is further pleaded that the intrusion will severely affect the wild life and flora of the adjacent areas and destablise the eco-system and bio-diversity and in-situ conservation of the Ponmudi Hill tract. The petitioner organisation has submitted representation dated 7.8.2007 before the Union of India as well as the Chief Minister and Minister of Forest and Wild Life, Government of Kerala. The report submitted by the members of the petitioner organisation dated W.P(C) No.26691 of 2010, etc. -:

28. :- 24.8.2007 has been referred to where it is stated that if a township or any mode of construction or change in land use or landscape pattern or any change in the present environment is allowed within the proposed area or in any place in the Merchiston Tea Estate, the same definitely would adversely affect the ecological balance of an already fragile and sensitive forest area. The petitioner in this Writ Petition has prayed for the following reliefs: "i) declare that the land in Merchiston Estate is a ecologically fragile and sensitive land. ii) declare that multi-storied or large scale constructions or change of landscape or land use pattern of the land in Merchiston Estate including fencing of the said land by respondents 2 and 7 amount to violation of right of the citizens to ecology and environment guaranteed under Article 21 of the Constitution of India. iii) declare that the 2nd respondent has no right to undertake any construction or change of landscape at the proposed site (purchased under Exhibit P34) as no vaid and clear title had been transferred from Jay Shree Tea and Industries to the 7th respondent, which transfer was void ab initio and W.P(C) No.26691 of 2010, etc. -:

29. :- nonest in the eye of law. iii) Issue a writ of mandamus or any other appropriate writ, direction or order, directing the respondents 1 and 3 to 6 to take immediate steps to conduct environmental impact study in respect of the proposed project of the 2nd respondent on the land in Merchiston Estate and direct the respondents 1 and 3 to 6 to take steps to preserve the ecological balance and biodiversity of the area. iv) Issue a writ of mandamus or any other appropriate writ, direction or order, directing the rspondents not to use the land in Merchiston Estate for construction activities or any other known forest purposes and further direct them not to use the said land in violation of the Kerala Land Utilization Order. v) Issue a writ of mandamus or any other appropriate writ, direction or order, directing the respondents 1 and 4 to immediately take appropriate steps on their part to get the Agasthyamalai Biosphere Reserve included in the World Network of Biosphere Reserves. vi) and to issue such other reliefs as this Honourable Court may deem fit and proper in the circumstances of this case." W.P(C).No.27296 of 2007 (Friends of Environment v. State of Kerala) 14. This Writ Petition as a public interest litigation W.P(C) No.26691 of 2010, etc. -:

30. :- has been filed by a registered organisation, which claims to be working in the field of protecting environment and taking the issues in public interest. In the Writ Petition the petitioner has challenged the order dated 12.6.2007 passed by the Custodian by which order the entire Merchiston Tea Estate, excluding an area of 24.409 hectares of land has been declared as not an ecologically fragile land. The petitioner's case is that the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Ordinance 08/2000 was issued on 1.6.2000 with a view to vest in Government ecologically fragile lands and manage such lands to maintain ecological balance and conserve the biodiversity. It is stated that by the said Ordinance, the State wanted to protect biological diversity, which is possible only by conserving the ecosystem and natural habitat. The Ordinance aimed at minimizing the degradation of ecosystem and biological diversity by managing

31. :- ecologically fragile lands in an integrated and uniform manner within their ecological boundaries. The petitioner's case is that a notification dated 20.10.2000 was issued under the Ordinance notifying the Merchiston Tea Estate included in the Ponmudi Estate. It is clear that the notification was not challenged before the Tribunal and the vesting of the property in the Government has become final. The Ordinance has been subsequently converted into Act, 2003. The third respondent obtained a deed in March, 2005 from M/s.Jay Shree Estate, whereas the title of the previous owner had been extinguished by publication of notification under the Ordinance. The third respondent made certain applications to the Custodian and has obtained order dated 12.6.2007 declaring that Merchiston Tea Estate (excluding 24 hectares of land) is not an ecologically fragile land, which order is illegal and unsustainable. The petitioner further pleaded that Rules 17 to 20 of the

32. :- Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Rules, 2007 are ultra vires to the 2003 Act. The petitioner prayed for quashing the order dated 12.6.2007 as well as for declaring the Rule 2007 as void and inoperative.

15. Four other Writ Petitions have been filed as public interest litigations relating to Merchinston Tea Estate. They are W.P(C).Nos.29466, 3270 and 245 of 2007, Petitioners in all these Writ Petitions claim to be social workers. The petitioner in W.P(C).No.29466 of 2007 claims to be former President and Member of the Peringamala Grama Panchayat. It is pleaded that major portion of the Merchinston Tea Estate is a thick forest. The land over which the erstwhile owner had lost title by virtue of statutory vesting in the Government, has been transferred in favour of the fourth respondent, i.e., Southern Field Ventures, who, in turn, has transferred a portion of the said property in favour of the Vikram W.P(C) No.26691 of 2010, etc. -:

33. :- Sarabhai Space Centre for establishment of an institute. Reference of notification dated 20.10.2000 has been made under which the Merchinston Tea Estate was declared as ecologically fragile land. The petitioner has also questioned the delegation of power under Section 19(3)(b) of the 2003 Act to the custodian. The petitioner has prayed for setting aside Exhibit P2 order, i.e., order dated 12.6.2007. W.P(C).No.24245 of 2007 16. This Writ Petition is also filed as a public interest litigation. The petitioner's case is that after vesting of Merchinston Tea Estate in the State by notification dated 20.10.2000, the land could not have been dealt with by erstwhile owner. It is submitted that illegal transaction took place with regard to land in question. The land has been transferred to Vikram Sarabhai Space Centre on 20.7.2007 to which the third respondent had no authority. The petitioner has prayed W.P(C) No.26691 of 2010, etc. -:

34. :- for a direction to conduct thorough investigation in the transaction and has prayed for a declaration that any transaction entered into in respect of land vested under Sections 3 or 4 of the 2003 Act shall not bind the State Government unless declared otherwise by competent Tribunal under Section 10 of the Act. The petitioner has also prayed for quashing letter dated 12.6.2007 issued by the Custodian with regard to Merchiston Tea Estate. W.P(C).No.32740 of 2007 17. This Writ Petition is again a public interest litigation filed by the petitioner, who claims to be former Minister for Food and Civil Supplies, Government of Kerala. It is pleaded that major portion of the Merchiston Tea Estate is thick forest. It is pleaded that in view of the notification issued under the Ordinance, the land is to

be vested in the State. The petitioner also challenges Exhibit P2 order dated 12.6.2007 and has also prayed for a direction to the third respondent to W.P(C) No.26691 of 2010, etc. -:

35. :- take up the investigation regarding the matters commencing from the issuance of Exhibit P7 reply dated 15.12.2006 by the Deputy Collector to the Director, Vikram Sarabhai Space Centre that the extent of land requested is not available in Thiruvananthapuram District. W.P(C).No.36454 of 2007 18. This is again a public interest litigation filed praying for quashing of Exhibit P6 Government Order dated 22.11.2007 by which the State of Kerala has assigned 100 acres of land near Ponmudi Hills to the Vikram Sarabhai Space Research Institute.

19. Facts of few more Writ Petitions, in which learned counsel for the petitioners have made submissions, need to be noted. W.P(C).No.30930 of 2006 20. This Writ Petition is filed with regard to Peruthadi Estate situated at Pananthadi Village. The W.P(C) No.26691 of 2010, etc. -:

36. :- estate measuring 806.72 acres of land in R.S.No.291 was in ownership and possession of Arch Diocese of Changanacherry. After enforcement of 1971 Act the estate was claimed to be vested in the State as a private forest. O.A.No.158/1976 was filed before the Forest Tribunal. The Forest Tribunal declared 45 acres of land as vested under 1971 Act. Appeals in this Court were filed both by State and owners. This Court remanded the matter back to the Forest Tribunal after confirming the finding that 400 acres was a cardamom and 81 acres was rubber plantation. On remand, the Tribunal rejected all the contentions of the petitioner except to an extent of 10 acres of land which was found necessary for ancillary land for purpose of firewood. The petitioner filed O.S.No.134/1998 in which a compromise dated 28.7.2003 was entered into between the parties in which Forest Department claimed only 87.44 hectares of land. The suit was disposed of on W.P(C) No.26691 of 2010, etc. -:

37. :- 31.7.2003. A Notification under Section 3(2) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act was issued on 26.7.2006 notifying the entire estate as ecologically fragile land. The petitioner has come up

in the Writ Petition praying for quashing notification dated 26.7.2003. The petitioner has also prayed that Sections 2(b), 3 and 8 of the 2003 Act be held to be violative of Article 14 of the Constitution of India, which provide for unguided power to the State to notify any land as forest without notice and without payment of any compensation. A prayer has also been made for a declaration that the respondents are bound by the judgment passed in M.F.A.Nos.432 & 437 of 1985 as well as O.S.No.134 of 1998. W.P(C).No.15324 of 2009 (State of Kerala v. N.A.Plantations) 21. This Writ Petition has been filed by the State of Kerala, where the State has prayed that Exhibit P9 compromise and Exhibit P10 judgment dated 31.7.2003 W.P(C) No.26691 of 2010, etc. -:

38. :- in O.S.No.134 of 1998 be declared as not binding and be quashed. W.P(C).No.1006 of 2007 22. This Writ Petition has been filed claiming the petitioner to be owner of 400 acres of land, which was a cardamom estate since 1970. After enforcement of 1971 Act, the land was notified to be vested as private forest. The petitioner filed O.A.No.145 of 1997 before the Forest Tribunal. By judgment dated 19.12.1979, the Tribunal held entire 400 acres as cardamom plantation being exempted under 1971 Act. The State filed MFA.No.149/1980, which was dismissed by this Court vide judgment dated 4.3.1981. R.P.No.42 of 1984 was also filed by the State, which was dismissed on 31.7.1987. SLP(C).661/1988 filed by the State was also dismissed by the Supreme Court on 5.3.1993. On 29.12.1994 the estate was restored to the petitioner. The petitioner claims to have purchased the estate on W.P(C) No.26691 of 2010, etc. -:

39. :- 12.10.1993 from earlier owner. The petitioner filed O.P.No.13078 of 1999 seeking a direction to the respondents to allow the petitioner to do necessary agricultural work. The Original Petition was allowed by this Court by judgment dated 15.9.1999. Writ Appeal was filed by the State, where this Court allowed the Writ Petition to carry on necessary agricultural work, except cutting of trees. SLP.No.3818/2000 was filed before the Supreme Court, which was also dismissed. Notification dated 4.10.2000 was issued under Ordinance 8 of 2000 notifying the land as ecologically fragile land. On 11.6.2005 the petitioner gave an application to the Custodian under Section 19(3) of the Act. It is pleaded that the Custodian has not yet taken any decision on the application submitted by the

petitioner.

23. Two Writ Petitions as well as a Writ Appeal have been filed by the State of Kerala. It is relevant to note the facts and prayers made in W.P(C).No.25867 W.P(C) No.26691 of 2010, etc. -:

40. :- of 2007 (State of Kerala v. Glen Leven Estates Private Ltd.). The Writ Petition has been filed praying for quashing order dated 18.7.2007 passed by the Subordinate Judge's Court, Sultan Battery in O.S.No.70/2002 filed by the first respondent for prohibitory injunction. The learned Subordinate Judge issued a temporary injunction dated 18.7.2007, which has been challenged in the Writ Petition. This Court has already passed an interim order dated 24.8.2007 directing to maintain status quo. W.P(C).No.15324 of 2009 (State of Kerala v. N.A.Plantations) 24. Writ Petition is filed by the State challenging Exhibit P9 compromise entered between the parties in the Civil Court as well as Exhibit P10 judgment of the Civil Court deciding the suit on the basis of the compromise. O.S.No.134 of 1998 was filed by the respondent in the Munsiff's Court for prohibitory injunction. In the said suit it was stated that Exhibit P9 W.P(C) No.26691 of 2010, etc. -:

41. :- compromise was submitted. The learned Munsiff decided the suit on 31.7.2003. The State's case in the Writ Petition is that the compromise was entered by certain officers of the State to which they were not entitled. It was submitted that in accordance with the provisions of the 2003 Act, the Civil Court had no jurisdiction to entertain the suit. W.A.No.535 of 2014 (State of Kerala v. M/s.Athani Bricks and Metals (P) Ltd.) 25. Writ Appeal is filed by the State against the interim order passed in W.P(C).No.5605 of 2014 staying the notification issued under Section 3(2) in so far as item 45 is concerned. In the Writ Petition constitutional validity of 2003 Act has also been challenged. The Writ Petition was filed by the respondent in which interim order has been passed by the learned Single Judge, against which the Writ Appeal has been filed.

26. The facts of other Writ Petitions in this batch of cases are more or less similar, which need no W.P(C) No.26691 of 2010, etc. -:

42. :- repetition. Some of the Writ Petitions only challenges the constitutional validity of 2003 Act.

27. In W.P(C).No.6814 of 2013 a detailed counter affidavit dated 25.10.2013 has been filed by the third respondent, the Custodian, Ecologically Fragile Lands & Additional Principal Chief Conservator of Forests. An additional counter affidavit dated 27.11.2013 by the third respondent has also been filed. The above counter affidavit and the additional counter affidavit have been filed in several other Writ Petitions by adoption memo adopting the said counter affidavit as the reply. The counter affidavit states that as per Article 48A of the Constitution of India, the State is obliged to endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. The 2003 Act is in conformity with Article 48A and 51A(g) of the Constitution. The subject 'forest', coming as item No.17A under the concurrent List of the Constitution, the W.P(C) No.26691 of 2010, etc. -:

43. :- State is competent to enact legislation with the concurrence of the President. An ongoing global biodiversity crisis due to unprecedented loss of eco systems, conservation of forests is an essential pre- requisite for conservation of biodiversity. Forests have widely been recognized all over the world as the Public Trusts with the Government and that cannot be destroyed for private and commercial gains. Looking to the depletion of forests of the country over years, the Government of India had reviewed its existing national forest policy of 1952 and adopted a fresh national forest policy in th year 1988 to be followed by all the States. As per the forest policy, for the conservation of total biological diversity, the network of national parks, sanctuaries, biosphere reserves and other protected areas should be strengthened and extended adequately. The forest renders ecological services, which are made available not only to the community in and around the W.P(C) No.26691 of 2010, etc. -:

44. :- forests, but also to all the human being in the region and all over the world. In the absence of forests, it would not be possible to retain water in the soil in high ranges and to sustain flow in the streams and rivers. The tropical rain forests in Western Ghats are rich repositories of biodiversity and provide maximum ecological services. Although the extent of legally declared forest land in the State

of Kerala is about 29%, the total forest cover with natural vegetation and forest plantation is only about 25%. The scheme of 2003 Act clearly shows that the said legislation is precisely to operate the legal principles laid down by the Constitution. Several State Governments have enacted various laws for coastal zone regulation, prevention of water and air pollution and for protection of forests in Government ownership etc. But, there has been no specific law for protecting forests and other ecologically fragile lands under private ownership. Forest and other W.P(C) No.26691 of 2010, etc. -:

45. :- ecologically fragile land cannot be allowed to be maintained by private persons for commercial purpose. The State, as trustees of such lands, have a duty to take them over and manage scientifically for public good. The Forest (Conservation) Act, 1980 has been enacted prohibiting non-forest activities in the forest land without prior permission of the Central Government. Two decades after the enactment of the Forest (Conservation) Act, 1980 have witnessed many changes in the understanding of and perspectives on environmental problems and conservation of natural resources. The 2003 Act is intended to take over forest areas and other ecologically fragile lands under private ownership and to safeguard and manage them scientifically.

28. Various other facts have been pleaded in the counter affidavit, which shall be referred to while considering the issues in detail. W.P(C) No.26691 of 2010, etc. -:

46. :- 29. We have heard Shri C.U. Singh, Senior Advocate, Shri M.K.S.Menon, Shri N.N. Sugunapalan, Senior Advocate, Shri O.V.Radhakrishnan, Senior Advocate, Shri Devan Ramachndran, Shri P.K. Ibhrahim, Shri Bechu Kurian Thomas, Shri James Koshy, Shri T.M.Sreedharan, Senior Advocate, Shri P.Chandrasekhar, Shri P.K.Vijayamohanan, Shri Philip Antony Chacko, Smt.Daisy Philipose, Shri Green T.Mathew, Shri C. Rajendran, Shri M.I.Johnson and Shri Antony C.Ettukettil for the petitioners. Shri K.V. Viswanathan, Senior Advocate and Shri M.P.Madhavan Kutty, Special Government Pleader have been heard for the State.

30. Submissions advanced by the learned counsel for the petitioners can be divided into three parts. First part contains submissions challenging constitutional

validity of the 2003 Act as well as the Ordinances issued. There is also challenge to the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Rules, W.P(C) No.26691 of 2010, etc. -:

47. :- 2007 (hereinafter shall be referred to as "the 2007 Rules"). The second part of the submissions advanced by the learned counsel for the petitioners is challenging the action of the State in notifying their land under the Ordinances and Act on several other grounds. The third part of the submissions is the one raised by the learned counsel for the petitioners who have filed public interest litigations as noted above. We shall notice the submissions in the above order. Constitutional validity.

31. Petitioners submitted that the 2003 Act is unconstitutional, void, inoperative and liable to be struck down. Challenge to the constitutional validity has been raised on the following grounds: (i) The Act is ultravires of the legislative competence of the Kerala Legislature. The State Legislature has no power to enact the Act. (ii) Only Parliament is competent under the residuary power to enact the law as the ecology is not W.P(C) No.26691 of 2010, etc. -:

48. :- specifically included in any of the lists, hence it falls under entry No.97 of List I of VII Schedule of the Constitution of India. (iii) The Act is violative of Article 14 of the Constitution of India as the Act provides for two types of vesting of land. (iv) Compensation is provided only under Sec.4 and no compensation is provided when the land is vested under Sec.3 of the Act. (v) The Act is violative of Article 31A of the Constitution as the lands which were under the personal cultivation of the petitioners have been taken without paying compensation and the Act has no presidential assent under Article 31A of the Constitution. (vi) The Act is not protected under Article 31C of the Constitution. (vii) The object of the Act is not to give effect to any directive Principles of State Policy nor subject matter of the Act is referable to Article 39(b) and 39(c) of the Constitution. (viii) No specific assent is obtained under Article 31C from the W.P(C) No.26691 of 2010, etc. -:

49. :- President of India. Assent obtained for other purposes cannot be treated as an assent for a different purpose. (ix) The Act is violative of Article 300A of the Constitution as the owners of the land are deprived of their property notified

without authority of any valid law and without paying compensation. (x) As per Article 254 of the Constitution the Act being repugnant to various Central Laws is inoperative and void. The Act is enacted to take over property of private persons under the guise of protecting forests. Provisions of the Act are violative of the provisions of the Indian Forest Act, 1927 and Wild Life Protection Act, 1972, hence the provisions of the 2003 Act to take over private properties are legally unenforceable. (xi) The State Legislature has no authority to enact any law to give effect to any International Treaty. Under Article 253 of the Constitution, the Parliament is the competent authority to make any such law. (xii) Provisions of the W.P(C) No.26691 of 2010, etc. -:

50. :- Act are arbitrary and illegal. Sections 3 and 4 are unreasonable and violative of the fundamental rights. Section 4 provides that the land can be taken only on the basis of advice by an expert committee whereas arbitrary and unbriddled power has been given under Sec.3(2) of the Act to notify any land as ecologically fragile land without the advice of the expert committee. Other submissions:

32. There is no scientific definition to ecologically fragile land under the 2003 Act. The mere fact that land of petitioners are in contiguity to any reserved forest or vested forest is no ground to declare the lands of the petitioners as ecologically fragile land. Most of the lands notified under the 2003 Act were those land which were initially under the 1971 Act were treated as vested private forest which action was challenged and ultimately the forest Tribunal and the High Court declared the said land as plantation W.P(C) No.26691 of 2010, etc. -:

51. :- exempted from the applicability of the 1971 Act. Thus lands which have been held by competent court as plantation cannot be declared as ecologically fragile land under the 2003 Act or the Ordinances. In most of the cases, the State, instead of complying with the orders passed by the Forest Tribunal and the High Court to restore the land to the owners, it having been held as plantation, continued illegally with the possession and has come up with the 2003 Act to avoid giving possession to the owners. Definition of forest land as initially contained in Ordinance No.6/2000 was substantially changed in the 2003 Act which definition under Sec.2(c) now excludes the land which is used for cultivation of long duration

crops such as pepper, cardamom etc. But in spite of the changed definition in Sec.2(c), the State did not return those lands which were excluded in the 2003 Act itself and continued with the possession of the land treating it as ecologically fragile W.P(C) No.26691 of 2010, etc. -:

52. :- land. Although Sec.19 of the Act obliged the Custodian to suo motu scrutinise the earlier Notifications issued under the Ordinances which were on different basis, the Custodian did not discharge his statutory obligation and allowed the Notification issued under the Ordinances to continue to unduly benefit the State. The judgments delivered by the Forest Tribunal and the High Court in the context of the 1971 Act declaring the petitioners' land as exempted from vesting as a private forest have been made ineffective by virtue of Sec.3(1) of the Act which power is not vested in the Legislature. Judgment and orders passed by the Forest Tribunal and the High Court in the context of the 1971 Act are relevant judgments which have to be given effect to by the State. But instead of following such judgments, the same have been disregarded under the guise of Sec.3(1). The State while notifying petitioners' land under Ordinances and the 2003 Act did not even W.P(C) No.26691 of 2010, etc. -:

53. :- look into the registration of the land as plantation under different State Acts and factum of payment of plantation tax which were relevant factors to be considered while taking a decision regarding the ecologically fragile land. It has been further submitted that the Custodian has no power of review of the orders passed by him under Sec.19(3)(b). Custodian exercises a quasi judicial power under Sec.19(3)(b) and there being no specific provision in the Act vesting power of review in the Custodian, review of orders passed under Sec.19(3)(b) was without jurisdiction and void. The State illegally retained possession of the petitioners' land alleging vesting of land under the 1971 Act and in spite of orders passed by the Forest Tribunal and the High Court did not restore the land and allowed the plantation to be damaged, State cannot take the benefit of its wrong in pleading now that during the period after enforcement of the 1971 Act and W.P(C) No.26691 of 2010, etc. -:

54. :- enforcement of the 2003 Act land has become forest. Forest sites and land have been notified as ecologically fragile land even though they were not contiguous to any reserve or vested forest and were separated by river or touching with reserve or vested forest only at edges. There was no dominent purpose of the Act except to grab the land of petitioners. Ordinances issued prior to the enactment of the 2003 Act having lapsed, the Notifications issued under the Ordinances cease to operate. But the State without issuing any Notification under the 2003 Act has been treating the land notified under the Ordinances as ecologically fragile land. Submissions in Public Interest Litigations 33. The doctrine of public trust, inter-generational equity and precautionary principle, are essential part of the environmental jurisprudence. The material resources of the community like forest, hillock, mountains, etc., are nature's bounty and are essential to W.P(C) No.26691 of 2010, etc. -:

55. :- maintain the ecological balance and they need to be protected for a proper and healthy environment which enable the people to enjoy life which is the essence of the right guaranteed under Article 21 of the Constitution of India. Hillocks and mountain valley of the Western Ghats have already been substantially damaged by damage of western slope of the western valley. Western ghats have been regarded as one of the two richest types bio-diversity centres. Petitioners have challenged the decision of the Custodian dated 12.06.2007 wherein the Merchinston Estate has been declared as not to be a ecologically fragile land except the area of 24.709 hectares. Challenge has also been raised to construction of the proposed Institute by the Indian Institute of Space Science and Technology, at 82 Acres of land of the Merchinston Estate. It is pleaded that by permitting construction of the Institute, ecology and bio-diversity of the area shall be prejudicially W.P(C) No.26691 of 2010, etc. -:

56. :- affected. Petitioners prayed that the State may take immediate steps to conduct environmental study in the matter of the proposed establishment of the Indian Institute of Space, Science and Technology and the land to be not used for any constructional activities. Petitioners supports the Notifications issued declaring different land as ecologically fragile under the Ordinances and the 2003 Act.

34. Shri K.V. Viswanathan, Senior Advocate appearing for the State has defended the constitutional validity of the 2003 Act and refuted the other submissions raised by the learned counsel for the petitioners challenging the Notifications under the Ordinances under the 2003 Act notifying their land as ecologically fragile land. It is submitted that the 2003 Act has been enacted to conserve effectively the ecologically fragile land and to manage such land in a scientific manner in accordance with the management W.P(C) No.26691 of 2010, etc. -:

57. :- plans based on sound principles. Ecologically fragile lands are those lands which qualified for being a forest and are lying contiguous to a reserved forest or vested forest or any other land owned by Government and supporting natural vegetation. It does not include any land which is used principally for the cultivation of crops of long duration such as cardamom, pepper, tea, arecanut, coconut or any other size. It is submitted that deforestation along the western ghats manifests its results by way of recurrent natural calamities such as flood, landslides, droughts, etc. There being no specific enactment for protecting the ecologically fragile land under the private ownership, as a precautionary measure Government have enacted the 2003 Act. Over exploitation and unsound management of the private forest owned by private persons would result in irreversible degradation, and ecological imbalance. Notified ecologically fragile land is managed as per W.P(C) No.26691 of 2010, etc. -:

58. :- working plans approved by the Government of India for each forest division.

35. Refuting the submission of the learned counsel for the petitioners on the constitutional validity of the 2003 Act, it is contended that the State Legislature have legislative competence to enact the law. It is submitted that the forest is covered by entry No.17A of List II of the VII Schedule and the 2003 Act being essentially the legislation regarding forest is fully within the competence of the State Legislature. It is submitted that other Parliamentary enactments referred to by the petitioners occupies different fields and while examining the legislative competent of the State, the pith and substance of the enactment has to be looked into. It is submitted that the legislative entries in the VII Schedule have to be widely interpreted to give liberal meaning. It is submitted that the Act is neither

discretionary nor arbitrary. There is valid classification W.P(C) No.26691 of 2010, etc. -:

59. :- between the land notified under Section 3(2) and those of under Sec.4. It is submitted that the enactment which provided for extinction of the ownership vesting of interest in the State is solely for the purpose of management of such land and is not a law for acquisition of property for public purpose as commonly understood for building, town, industries, etc. The primary purpose of the legislation is protection of these lands. Law is clearly inter alia for protection of the public health and prevention of danger to human life. Legislation is also protected by Article 31C. Legislation has been enacted to give effect to the directive principle of State Policy as referred to in Article 39(b) of the Constitution. It is submitted that the assent on 25.04.2005 is the assent granted by the President to the Act which is a general assent which shall enure for the purpose of saving the legislation under Article 31C of the Constitution also. The principle of eminent domain W.P(C) No.26691 of 2010, etc. -:

60. :- could not be read into Article 300A after deletion of right to property from fundamental right. Petitioners cannot as a matter of right claim compensation for deprivation of their property. Article 300A enjoins the State not to deprive a person of his property save by authority of law. Deprivation of property is by authority of law, i.e., the 2003 Act. No violation of Article 300A can be canvassed. The argument that there are Parliamentary laws already covering the fields has no basis. The 2003 Act is a special Act which shall exclude general laws. Central legislation referred to and relied by petitioners are in different field. Section 3(1) is fully valid. It does not override any judgment of the Forest Tribunal or High Court rather it removes the basis of such judgment which is fully permissible to a Legislature. Power under Sec.19(3)(b) of the Custodian is an administrative power and he is fully entitled to review, recall any order passed under Sec.19(3)(b). W.P(C) No.26691 of 2010, etc. -:

61. :- Even if it is held to be quasi judicial power there is no dearth of authorities holding that quasi judicial authorities shall have power to review an order if it was obtained by not placing all relevant facts or concealment of facts. The review order

dated 08.01.2008 passed by the Custodian was fully justified.

36. Learned counsel for the parties have placed reliance on various judgments of the Apex Court and this Court which shall be referred to while considering the submissions in detail.

37. From the pleadings of the parties on record and the submissions advanced by learned counsel for parties, the following are the principal issues which arise for consideration in this batch of Writ Petitions. I. Whether State Legislature has legislative competence to enact the 2003 Act or whether it was only the Parliament competent to enact law in the nature of the 2003 Act under the residuary power under entry No.97 of List 1 of the VII Schedule of the Constitution of India? W.P(C) No.26691 of 2010, etc. -:

62. :- II. Whether the State Legislature has any authority to enact the 2003 Act whereas the said Act has been enacted for implementing decision made at International conference/International Treaty and whether the 2003 Act violates Art.253 of the Constitution? III. Whether the 2003 Act is void as per Article 254 of the Constitution of India as the Act violates several Parliamentary enactments? IV. Whether the Act is protected by Article 31A of the Constitution of India from challenge on the ground that it is inconsistent with, or takes away on abridge any of the rights conferred by Article 14 or Article 19 of the Constitution of India? V. Whether the 2003 Act can be held to be an Act for giving effect to the directive principles of State policy under Article 39(b) of the Constitution? VI. Whether the Presidential assent dated 24.4.2005 can be treated to be an assent under Article 31A and Article 31C whereas no specific assent was prayed for or granted by the President? VII. Whether the Act is violative of Article 14 of the Constitution of India as the Act provides for two types of vesting of lands and compensation is provided only under Section 4 and no compensation is provided for land vested under Section 3 of the Act and whether there is any rational classification under Secs.3 and 4 of the 2003 Act? W.P(C) No.26691 of 2010, etc. -:

63. :- VIII. Whether Sec.3(1) in so far as it overrides judgments/orders of Forest Tribunal and High Court rendered in the context of the 1971 Act are void and inoperative since authority to override the judgments is not possessed by the

Legislature and whether judgments/orders of Forest Tribunal and High Court rendered in the context of the 1971 Act declaring properties of petitioners as plantation are irrelevant while considering the issue as to whether land of the petitioners are Ecologically fragile land or not? IX. Whether the 2007 Rules framed under the 2003 Act are ultravires to the Act and void? X. What is the relevant date for determining the eligibility of a land to be declared as ecologically fragile land under the 2003 Act? XI. Whether the Notifications issued under the four ordinances as noted above became inoperative after lapse of the ordinances and whether it was necessary to scrutinise such Notifications issued under the Ordinances by the Custodian as required by Sec.19 of the 2003 Act? XII. Whether the Custodian in exercise of his power under Sec.19(3)(b) has power to review an order passed by him under Sec.19(3)(b)? XIII. Reliefs? 38. Before we proceed to consider the above issues it is necessary to have a look over the statutory

 provisions governing forest in the State of Kerala. The Madras Private Forest Act, 1882 governed those areas of the State which were part of the Madras Presidency. The Provincial Government was empowered to constitute a reserve forest under the enactment. The Travancore Forest Regulation, 1068 governed the Travancore area which were subsequently covered in the Trav-Cochin Forest Act, 1901. There was another enactment, namely, the Madras Preservation of Private Forest Act, 1949 which was enacted for the preservation of private forest in the District of Malabar and South Canera. Another enactment which needs to be noticed is the Plantation Rubber Act, 1951 and the Kerala Plantation Rubber Rules, 1991 which managed registration of all plantations of 5 acres or more in which 15 or more persons were employed. Registration certificate recorded the extent of the plantation, nature of plantation and other relevant facts. The Kerala

 Plantations (Additional Tax) Act, 1960 was enacted by the State Legislature covering the plantations of rubber, tea, cardomom. Every person holding an extent of 5 acres or more were required to furnish returns pursuant to which the assessing authority was required to determine the extent of the plantation by an order in writing and what is the amount of plantation tax payable. After formation of

the Kerala State, Kerala Forest Act, 1961 was enacted to consolidate the law contained in the Travancore Forest Act 1901 and the Madras Forest Act 1882. Kerala Land Reforms Act, 1963 was enacted which provided inter alia for ceiling of holdings of agricultural lands and redetermination of plantation holdings. Thereafter came the 1971 Act which was enforced with effect from 10.05.1971. The 1971 Act was enacted with the object of utilizing the private forest which was agricultural lands to increase the agricultural production in the State and to promote W.P(C) No.26691 of 2010, etc. -:

66. :- agricultural welfare of the population in the State. Government with the above object decided to vest all private forest in the Government. Section 3(1) provides that with effect from the appointed day, ownership and possession of private forest in the State Government shall stand transferred and vested in the Government free from all encumbrances, right, title and interest of the owner of any person of the private forest shall stand extinguished.

39. Ordinance No.6/2000 was promulgated by the Government of Kerala with effect from 1.6.2000 providing for vesting in the Government of all ecologically fragile lands in the State of Kerala and management of such lands with a view to manage the plantations and conserving the bio-diversity. Before the above Ordinance could lapse, another Ordinance, No.8/2000 was promulgated by the Government with effect from 22.07.2000. The Bill could not be presented W.P(C) No.26691 of 2010, etc. -:

67. :- before the Legislative Assembly and hence Ordinance No.3/2001 dated 27.1.2001 was again issued and lastly Ordinance No.16/2001 was issued with effect from 13.03.2001. Ordinance No.16/2001 ceased to operate from 17.7.2001 but a Bill to replace Ordinance No.16/2001 by an Act could not be introduced and passed in the Legislative Assembly. The Government considered it necessary to keep provisions of Ordinance No.16/2001 alive by suitable legislation. A Bill, namely, Kerala Forest (Vesting and Management of Ecologically Fragile Land) Bill, 2001 was published as Bill No.28 in the Kerala Gazette Extraordinary dated 3.11.2001. The Bill was introduced in the Legislative Assembly and referred to a Select Committee. The Select Committee suggested various amendments and

thereafter the Bill was considered by the Legislative Assembly and passed with certain modification. The Bill was sent to the Governor for his assent. The Governor reserved the Bill W.P(C) No.26691 of 2010, etc. -:

68. :- for consideration of the President. The President assented to the Bill on 25.4.2005 and thereafter the 2003 Act was published in the Kerala Gazette dated 8.6.2005. Section 1(2) provided that the Act shall be deemed to have come into force on the second day of June, 2000. Provisions of the Act and the Ordinances in detail shall be referred to while considering the respective submissions of the parties. Issue Nos.I to III40 These issues relating to legislative competence of the State Legislature being interconnected are taken together: The grounds urged by the petitioners in support of their submissions that the State Legislature lacks legislative competence to enact the 2003 Act are as follows: "'...It is submitted that maintenance of ecological balance or conservation and protection of biodiversity is not coming under List II and III of Schedule 7 and hence the State Legislature has no legislative competence to enact any law in the nature of W.P(C) No.26691 of 2010, etc. -:

69. :- the Act in question. The subject matter of the Act is in pith and substance one that falls squarely within the legislative competence of the Indian Parliament under the Entry 97 of List I is to the 7th Schedule of the Constitution of India and therefore clearly beyond the constitutional limits of the Kerala Legislature. Article 248(1) of the Constitution of India clearly prohibits such an enactment in the following terms:

"48. Residuary powers of Legislation - (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent List or State List" The Act of 2003 is also without legislative competence inasmuch as the subject matter of the Act is squarely and directly covered by the Environment (Protection) Act, 1986 (hereinafter referred as the Central Act, 1986). The said Act is clearly referable to Entry 97 and provides in its Preamble as under: "An Act to provide for the protection and improvement of environment and for matters connected therewith. WHEREAS decisions were taken at the United Nations Conference on Human Environment held at Stockholm in June, 1972, in which

India participated, to take appropriate steps for the protection and improvement of human environment; AND WHERAS it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and W.P(C) No.26691 of 2010, etc. -:

70. :- the prevention of hazards to human beings, other living creatures, plants and property": Various central enactments directly cover/or control the field sought to be taken over by the Act of 2003, particularly in respect of the lands sought to be taken over thereunder: These acts include:

1. The Indian Forests Act, 1927.

2. The Coffee Act, 1942.

3. The Rubber Act, 1947.

4. The Tea Act, 1953.

5. The Wildlife (Protection) Act, 1980.

6. The Forest (Conservation) Act, 1980.

7. The Spices Board Act, 1986.

8. The Biological Diversity Act, 2002. These Central Acts directly and squarely occupy the field now sought to be taken over by the Act of 2003. This is clearly because the lands in question, though defined under he Act of 2003 as, "ecological fragile lands" the same are actually agricultural/plantation lands and have been recognized as such under the above mentioned central acts. The owners of the lands in question including the petitioners have been in fact carrying on their activities constitutionally guaranteed under Article 19(1)(g) in compliance with and upon obtaining necessary permission under some or all the acts referred above, particularly in respect of their activities as plantation owners producing tea, coffee, rubber and spices as the case may be. Thus the Act 2003 is also challenged on the ground that it seeks to encroach upon fields already occupied by diverse Central Acts. W.P(C) No.26691 of 2010, etc. -:

71. :- 41. The petitioner also challenges the Act 2003 as being directly contrary to mandate to article 253 which reads as under:

"53. Legislation for giving effect to International Agreements - notwithstanding anything in the forgoing provisions of this chapter, Parliament has power to make any law for the whole or any of the Territory of India for implementing any treaty, agreement or convention with any other country or countries or any decisions made at any International Conference, Association or other body." The Act in its preamble refers to the declaration of the Western Ghats as a biodiversity hot-spot by the International Union for Conservation of Nature and Natural Resources. Assuming without admitting that such a declaration is sufficient for legislative exercise the power to legislate vests exclusively with the union legislature and therefore the impugned Act is void and ultravires the provisions of Article 253 (supra). It is relevant to look into the 2003 Act to find out the nature W.P(C) No.26691 of 2010, etc. -:

72. :- and content of the legislation. The Preamble of the Act provides as follows: "Preamble.- WHEREAS the earth's biological resources with their intrinsic ecological, genetic, economic,social, cultural, scientific, educational, recreational and aesthetic values are global assets and public trust vital to the sustained economic and social development, maintenance of ecological balance and the very existence of humanity; AND WHEREAS the fundamental requirement for the conservation of biological diversity is the insitu conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings; AND WHEREAS the tropical forests in western which has been declared as a bio-diversity hot-spot by the International Union for Conservation of Nature and Natural resources are very rich repositories of bio- diversity extremely susceptible to rapid irreversible degradation. AND WHEREAS it has become inevitable to conserve effectively the ecologically fragile lands, minimising the reduction of degradation of these ecosystems and biological diversity therein, which evolved through millions of years; AND WHEREAS it is considered necessary to manage such lands in an integrated and uniform manner within their ecological boundaries in accordance with the W.P(C) No.26691 of 2010, etc. -:

73. :- management plans based on sound scientific principles". Section 2(b) defines ecologically fragile land, Sec.2(c) defines forest and Sec.3 provides for vesting. Section 3 is quoted as below: "3. Ecologically fragile land to vest in Government.- (1) Notwithstanding anything contained in any other law for the time being in force, or in any judgment, decree or order of any Court or Tribunal or in any custom, contract or other documents, with effect from the date of commencement of this Act, the ownership and possession of all ecologically fragile lands held by any person or any other form of right over them, shall stand transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner of any other person thereon shall stand exstinguished from the said date. (2) The lands vested in the Government under sub-section (1) shall be notified in the Gazette and the owner shall be informed in writing by the custodian and the notification shall be placed before the Advisory Committee constituted under Section 15 for perusal".. Section 4 is another provision where the Government is empowered to declare any notified area to be ecologically fragile land on the recommendation of the W.P(C) No.26691 of 2010, etc. -:

74. :- Advisory Committee appointed for the purpose under Sec.15 of the 2003 Act. Section 4 is quoted as below: "4. Power to declare ecologically fragile land.- (1) The Government shall have power to declare by notification in the Gazette, any land to be ecologically fragile land on the recommendation of the Advisory Committee appointed for the purpose under Section 15 of this Act. (2) No declaration under sub-section (1) shall be made without giving the owner a notice of thirty days for being heard. (3) No person shall change the legal or physical status or ownership of the land proposed to be declared as an ecologically fragile land after the notice issued under sub-section (2). (4) With effect from the date of declaration of any land as ecologically fragile land under sub-section (1), the ownership and possession of the land or any other form of right over it, shall subject to the provisions of this Act, stand transferred to and vested in the Government tree from all encumbrance and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date." Section 5 provides that ecologically fragile land to be deemed to be reserved forests which is to the following effect: W.P(C) No.26691 of 2010, etc. -:

75. :- "5. Ecologically fragile land to be deemed to be reserved forests.- Subject to the provisions of Section 16, all ecologically fragile lands vested in Government under Section 3 and Section 4 shall be deemed to be reserved forests constituted under the Kerala Forest Act, 1961(4 of 1962) and the provisions of that Act shall, so far as may be, apply to such lands." Section 10 provides for settlement of dispute by the Tribunal where a dispute is raised as to whether the land is ecologically fragile or not and whether the ecologically fragile land or a portion thereto is vested in the Government or not or with regard to compensation. Sections 10A, 10B are other provisions pertain to dispute redressal. Section 16 provides for management of the ecologically fragile land by the Forest Department as per the management plans. Section 16 is quoted as below:

"6. Ecologically fragile lands to be managed by Forest Department as per Management Plans.- (1) all ecologically fragile lands vested in the Government shall be managed by the Forest department in accordance with the provisions of the management plans approved by the Government from time to time. (2) The management plans shall be prepared in W.P(C) No.26691 of 2010, etc. -:

76. :- accordance h the guidelines issued from time to time by the State government and the government of India for the preparation of Working Plans and Management Plans for the reserved forest areas and protected areas with a view to- (i) conserving natural resources; (ii) arresting depletion and degradation of flora and fauna; (iii) improving productivity and sustainability; and (iv) maintaining ecological balance in the ecologically fragile lands: Provided that the management plans prepared under this sub-section shall be such as to retaining the rights of the local Scheduled Tribe Communities regarding their means of livelihood." Scheme of the Act as delineated above indicatesw that the State has enacted the law for vesting ecologically fragile lands in the State which are to be deemed to be reserved forest. Under Sec.4, on the recommendation of the Advisory Committee, the Government can notify any land as ecologically fragile land for which compensation is also to be paid under Sec.8. After providing for dispute redressal Forum, Section 16 provides that all ecologically fragile lands vested in the W.P(C) No.26691 of 2010, etc. -:

77. :- Government shall be managed by the Forest Department in accordance with the provisions of management plans approved by the Government from time to time. Management plans are to be prepared in accordance with the guidelines issued by the Central and State Governments from time to time. The salient features of the legislation is - (i) vesting of all ecologically fragile land in the State as defined in Sec.2 (b) read with Sec.2(c). (ii) The power of the State Government to notify any land as ecologically fragile land after recommendation is made by the Advisory Committee for which land compensation is also payable. (iii) Ecologically fragile land to be deemed to be reserved forest constituted under the Kerala Forest Act, 1961, Kerala Forest Act is made applicable as far as possible. (iv) Provisions of dispute redressal have also be made in the Act. (v) Ecologically fragile land is to be W.P(C) No.26691 of 2010, etc. -:

78. :- managed by the Forest Department as per the management plans. Chapter I of Part XI of the Constitution of India Provides for "Distribution of Legislative Powers". Article 246 of the Constitution provides for "subject matter of laws made by Parliament and by the Legislature of the State". Article 246 is quoted as below:

"46. Subject-matter of laws made by Parliament and by the Legislatures of States.--(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List"). (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List"). (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List"). W.P(C) No.26691 of 2010, etc. -:

79. :- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List." Article 248 is for residuary powers

of legislation which is to the following effect:

"48. Residuary powers of legislation.--(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. (2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists." Article 253 provides for giving effect to international agreements which is to the following effect:

"53. Legislation for giving effect to international agreements.-- Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body." Article 254 deals with inconsistency between laws made by Parliament and laws made by the Legislatures of the W.P(C) No.26691 of 2010, etc. -:

80. :- State which is to the following effect:

"54. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.--(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State." The Seventh Schedule of the Constitution

provides for W.P(C) No.26691 of 2010, etc. -:

81. :- three list; List I - Union List, List II - State List and List III - Concurrent List. Contention of the petitioners is that it is only the Parliament which had authority to legislate since the subject "ecologically fragile land" on which the 2003 Act was enacted does not fall in any entry either in List I, List II or List III. Entry 97 of List I is quoted below:

"7. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". Entry 18 of List II which is also relevant is to the following effect:

"8. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization". By the 42nd Amendment, 1976, Entry Nos.17A and 17B have been included in the Concurrent List which are to the following effect: "17A. Forests. W.P(C) No.26691 of 2010, etc. -:

82. :- 17B. Protection of wild animals and birds".

42. Petitioners in support of the above submission relied on the decision reported in Union of India v. Shri. Harbhajan Singh Dhillon [(1971) 2 SCC779 and State of Karnataka v. Union of India [(1977) 4 SCC608. The Apex Court in Harbhajan Singh Dhillon's case (supra) had occasion to consider Entry No.97 of List I in paragraph 14 which is to the following effect:

"4. Reading Article 246 with the three lists in the Seventh Schedule, it is quite clear that Parliament has exclusive power to make laws with respect to all the matters enumerated in List I and this notwithstanding anything in clauses (2) and (3) of Article 246. The State Legislatures have exclusive powers to make laws with respect to any of the matters enumerated in List II, but this is subject to clauses (1) and (2) of Article 246. The object of this subjection is to make Parliamentary legislation on matters in Lists I and III paramount. Under clause (4) of Article 246 Parliament is competent also to legislate on a matter enumerated in State List for

any part of the territory of India not included in a State. Article 248 gives the residuary powers of legislation to the Union Parliament. It provides: W.P(C) No.26691 of 2010, etc. -:

83. :-

"48. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. (2) Such power shall include the power of making any law imposing a tax not mentioned in either of those lists." Under Article 250 Parliament can legislate with respect to any matter in the State List if a proclamation of emergency is in operation. Under Article 253 Parliament has power to make any law for the whole or part of the territory of India for the purpose of implementing any international treaty, agreement or convention. The issue which fell for consideration where the words "exclusive of agricultural land" in Entry No.86 of List I. The Apex Court laid down the following in paragraphs 21 and 23:

"1. It seems to us that the function of Article 246 (1), read with Entries 1-96, List I, is to give positive power to Parliament to legislate in respect of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. Accordingly we do not interpret the words "any other matter" occurring in Entry 97, List I, to W.P(C) No.26691 of 2010, etc. -:

84. :- mean a topic mentioned by way of exclusion. These words really refer to the matters contained in each of the Entries 1 to 96. The words "any other matter" had to be used because Entry 97, List I follows Entries 1-96, List I. It is true that the field of legislation is demarcated by Entries 1-96, List I, but demarcation does not mean that if Entry 97, List I confers additional powers, we should refuse to give effect to it. At any rate, whatever doubt there may be on the interpretation of Entry 97, List I is removed by the wide terms of Article 248. It is framed in the widest possible terms. On its terms the only question to be asked is: Is the matter sought to be legislated or included in List II or in List III or is the tax sought to be levied mentioned in List II or in List III: No question has to be asked about List I. If the answer is in the negative then it follows that Parliament has power to make laws

with respect to that matter or tax.

23. In Harakchand Ratanchand Banthia v. Union of India2, Ramaswami, J., speaking on behalf of the Court, while dealing with the Gold (Control) Act (45 of 1968), observed: "Before construing these entries it is useful to notice some of the well-settled rules of interpretation laid down by the Federal Court and by this Court in the matter of construing the entries. The power to legislate is given to the appropriate Legislature by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation, they demarcate the area over which the appropriate Legislatures can W.P(C) No.26691 of 2010, etc. -:

85. :- operate." The Apex Court in the above case held that exclusion in Entry 86 did not prohibit Parliament from legislating under Entry No.97 of List I. The ratio which can be culled from the above pronouncement of the Apex Court is whether the matter sought to be legislated is included in List II or List III. If the answer is in the negative it follows that the Parliament has power to make laws. The Apex Court in State of Karnataka v. Union of India [(1977) 4 SCC608 following Dhillon's case, laid down the following in paragraphs 95, 96 and 97.

"5. In particular, the plenitude of power to legislate, indicated by a legislative entry, has to be given as wide and liberal an interpretation as is reasonably possible. Thus, in Jagannath Baksh Singh v. State of U.P., this Court said: "...it is an elementary cardinal rule of interpretation that the words used in the Constitution which confer legislative power must receive the most liberal construction and if they are words of wide amplitude, they must be interpreted so as to give effect to that amplitude. It would be out of place to put a narrow or restricted construction on words of wide amplitude in a Constitution. A W.P(C) No.26691 of 2010, etc. -:

86. :- general word used in an entry like the present one must be construed to extend to all ancillary or subsidiary matters which can fairly and reasonably be held to be included in it." 96. In Union of India v. H.S. Dhillon, Sikri, C.J., after discussing the tests adopted both in India and in Canada for determining whether a particular subject falls within the Union or the State list observed: (at p. 51) (SCC pp. 791- 92) "It seems to us that the function of Article 246(1), read with Entries 1-96, List I, is to give positive power to Parliament to legislate in respect of these

entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. Accordingly, we do not interpret the words "any other matter"occurring in Entry 97 List I to mean a topic mentioned by way of exclusion. These words really refer to the matters contained in each of the Entries 1 to 96. The words "any other matter" had to be used because Entry 97 List I follows Entries 1-96 List I. It is true that the field of legislation is demarcated by Entries 1-96 List I, but demarcation does not mean that if Entry 97 List I confers additional powers we should refuse to give effect to it. At any rate, whatever doubt there may be on the interpretation of Entry 97 List I is removed by the- wide terms of Article 248. It is framed in the widest possible terms. On its terms the only question to be asked is: Is the matter sought to be legislated on included in List II or in List III or is the tax sought to be levied mentioned in List II or in List III? No question has to be asked about List I. If the answer is in the negative, then it follows that Parliament has power to make Laws with respect to that matter of tax."

 97. It will be seen that the test adopted in Dhillon case was that if a subject does not fall within a specifically demarcated field found in List II or List III it would fall in List I apparently because of the amplitude of the residuary field indicated by Entry 97, List I. Legislative entries only denote fields of operation of legislative power which is actually conferred by one of the articles of the Constitution. It was pointed out that Article 248 of the Constitution conferring legislative power is "framed in the widest possible terms". The validity of the Wealth Tax Act was upheld in that case. The argument that a wide range given to Entry 97 of List I, read with Article 248 of the Constitution, would destroy the "federal structure" of our Republic was rejected there. On an application of a similar test here, the powers given to the Central Government by Section 3 of the Act, now before us, could not be held to be invalid on the ground that the federal structure of the State is jeopardized by the view we are adopting in conformity with the previous decisions of this Court." Thus legislation by the Parliament under Entry No.97 of List I can be made when the subject is not covered by List II or List III. The provisions of the 2003 Act as noted above clearly indicate that the legislation is with regard to forest and legislation is referable to Entry Nos.17A and 17B. The 2003 Act has also been reserved for the

88. :- assent of the President which was granted on 25.4.2005. Learned counsel for the petitioner submitted that since the Environment Protection Act 1986 which has been enacted for protection and improvement of environment is referable to Entry No.97 of List I, the Act 2003 which is also with the intention of improvement of environment to be treated as covered by Entry No.97.

43. Article 48A of the Constitution which has been inserted in the Constitution by the 42nd Amendment Act, 1976 provides as follows: "48A. Protection and improvement of environment and safeguarding of forests and wild life.- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". The State while enacting a law has to follow the directive principles of the State Policy as mentioned in Part IV of the Constitution. 'Directive principles of State Policy' is not the legislative head in itself. For giving W.P(C) No.26691 of 2010, etc. -:

89. :- effect to the directive of principles of state policy, the legislation can fall in one or other entry. The fact that the 2003 Act has been enacted also keeping in view of the directive principle of state policy under Article 48A does not allow the assumption that the Legislation is with regard to environment only.

44. When we look into the provisions of the 2003 Act it is clear that the enactment primarily relates to forest and regulate the ecologically fragile land as part of the reserved forest as noted above. Whether an enactment falls in List I or any other List in the Seventh Schedule the pith and substance of the enactment is to be found out which is a well settled proposition of law laid down by the Apex Court in several cases. In this context reference is made to the Constitution Bench judgment of the Apex Court in E.V.Chinnaiah v. State of Andhra Pradesh [(2005)1 SCC394. The following was laid down in paragraph 29: W.P(C) No.26691 of 2010, etc. -:

90. :-

"9. One of the proven methods of examining the legislative competence of an enactment is by the application of doctrine of pith and substance. This doctrine is applied when the legislative competence of a legislature with regard to a particular

enactment is challenged with reference to the entries in various lists and if there is a challenge to the legislative competence the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. (See Kartar Singh v. State of Punjab.) In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State under the constitutional scheme." 45. It is on the record that the State Government while forwarding Bill, 2001 to his Excellency, the President seeking assent as per order of the Governor has detailed the chronological events, in which letter also mentioned the relevant entries under which the said legislation fell. References to entry 17A of List III and entry 18 and 42 of List II were clearly mentioned in the letter. The State thus came with a clear case that the enactment fell under the legislative competence of W.P(C) No.26691 of 2010, etc. -:

91. :- the State.

46. From the above discussion we are of the considered opinion that the legislation, the 2003 Act is fully covered by Entry Nos.17A and 17B of list III and entries 18 and 42 of list II and the submission of the petitioners that it was only the Parliament which could have enacted law under Entry No.97 in list I cannot be accepted.

47. The submission which had been pressed by the petitioners is that the enactment, 2003 Act seeks to encroach upon fields already occupied by the provisions of the Central Act. Various Central enactments as noted above have been relied on by the learned counsel for the petitioners to submit that the 2003 Act is unenforceable in view of Article 254 of the Constitution of India. While examining the repugnancy between the State Act and the Parliamentary enactment, the Apex Court had laid down the principles of such W.P(C) No.26691 of 2010, etc. -:

92. :- determination. The Apex Court in M.Karunanidhi v. Union of India [1979 (3) SCC431 dealing with repugnancy observed in paragraphs 35 and 36 as follows:

"5. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

36. In the light of the propositions enunciated above, there can be no doubt that the State Act creates distinct and separate offences with different ingredients and different punishments and it does not in any way collide with the Central Acts. On the other hand, the State Act itself permits the Central Act, namely, the Criminal Law (Amendment) Act W.P(C) No.26691 of 2010, etc. -:

93. :- to come to its aid after an investigation is completed and a report is submitted by the Commissioner or the Additional Commissioner. It was contended however by Mr Venugopal that by virtue of the fact that the State Act has obtained the assent of the President, it will be deemed to be a dominant legislation, and, therefore, it would overrule the Central Acts. Doubtless, the State Act is the dominant legislation but we are unable to agree with Mr Venugopal that there are any provisions in the State Act which are irreconcilably or directly inconsistent with the Central Acts so as to overrule them." The Apex Court had again occasion to examine repugnancy under Article 254 in K.T.Plantation v. State of Karnataka [(2011) 4 SCC1. The Apex Court in the said case was examining the provisions of the Land Acquisition Act, 1894 and Provisions of the Kerala Land Reforms Act

1961. The following was laid down by the Apex Court in paragraphs 108, 109 and 110, 112 and 112.

"08. The question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are fully inconsistent or are absolutely irreconcilable and it is impossible without disturbing the other, or conflicting results are produced, when both the statutes covering the W.P(C) No.26691 of 2010, etc. -:

94. :- same field are applied to a given set of facts. Repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupy the same field. Reference may be made to the decisions of this Court in Deep Chand v. State of U.P., Prem Nath Kaul v. State of J&K, Ukha Kolhe v. State of Maharashtra, Bar Council of U.P. v. State of U.P., T. Barai v. Henry Ah Hoe, Hoechst Pharmaceuticals Ltd. v. State of Bihar, Lingappa Pochanna Appelwar v. State of Maharashtra and Vijay Kumar Sharma v. State of Karnataka.

109. When the repugnancy between the Central and State legislations is pleaded we have to first examine whether the two legislations cover or relate to the same subject-matter. The test for determining the same is to find out the dominant intention of the two legislations and if the dominant intention of the two legislations is different and they cover different subject-matter then merely because the two legislations refer to some allied or cognate subjects, they do not cover the same field.

110. A provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial coverage of the same area in a different context and to achieve a different purpose does not bring about repugnancy which is intended to be covered by Article 254(2). In other words, both the legislations must be substantially on the same subject to attract Article 254. In this connection, reference may be made to the decisions of W.P(C) No.26691 of 2010, etc. -:

95. :- this Court in Municipal Council, Palai v. T.J.

Joseph65, Tika Ramji v. State of U.P.66, State of Karnataka v. Ranganatha Reddy, M. Karunanidhi v. Union of India and Vijay Kumar Sharma v. State of Karnataka.

111. We are of the considered view that the Acquisition Act, in this case, as rightly contended by the State, primarily falls under List II Entry 18, since the dominant intention of the legislature was to preserve and protect Roerichs Estate covered by the provisions of the Land Reforms Act, on the State Government withdrawing the exemption in respect of the land used for linaloe cultivation. The Acquisition Act, though primarily falls under List II Entry 18 incidentally also deals with the acquisition of paintings, artefacts and other valuable belongings of the Roerichs and, hence, the Act partly falls under List III Entry 42 as well. Since the dominant purpose of the Act was to preserve and protect Roerichs Estate as part of agrarian reforms, the inclusion of ancillary measures would not throw the law out of the protection of Article 31-A(1)(a).

112. On the other hand, the Land Acquisition Act, 1894 is an Act which fell exclusively under List III Entry 42 and enacted for the purpose of acquisition of land needed for public purposes for companies and for determining the amount of compensation to be made on account of such acquisition, which is substantially and materially different from the impugned Act whose dominant purpose is to preserve and protect "estate" governed by Article 31-A(1) (a) read with Article 31-A(2)(a)(iii) of the Constitution." W.P(C) No.26691 of 2010, etc. -:

96. :- The Apex Court in Rajiv Sarin v. State of Utrakhand ([2011] 8 SCC708had again occasion to examine the repugnancy under Article 254 and laid similar ratio was laid down the following in paragraphs 29, 33 and 45.

"9. The learned Senior Counsel appearing for the appellants raised two contentions in the context of the interrelation of the Forest Act, 1927 and the KUZALR Act; firstly, the case of alleged discrimination inasmuch as the Central Act i.e. the Forest Act provides for compensation under the Land Acquisition Act, 1894, which is higher; and secondly, the case of alleged repugnancy.

33. It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule to the Constitution. Under Article 254 of the Constitution, a State law passed in respect of a subject-matter comprised in List III i.e. the Concurrent List of the Seventh Schedule to the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only in a situation if both the laws i.e. one made by the State Legislature and another made by Parliament cannot exist together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other and it is impossible without disturbing the W.P(C) No.26691 of 2010, etc. -:

97. :- other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by Parliament and of State Legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject- matter or different.

45. For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a "repugnancy" between a Central and State Act; and secondly, the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intention of both the legislations and whether such dominant intentions of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In a nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject. W.P(C) No.26691 of 2010, etc. -:

98. :- 48. All the Central enactments which have been relied on by the learned counsel for the petitioner, to submit that the 2003 Act is repugnant, we are of the view that the Central enactment as referred above were in fact on different subject and do not cover the same field as covered by the 2003 Act. The pith and substance of the 2003 Act is clearly different from the aforesaid enactments.

49. Learned Senior counsel for the State has stated that the Indian Forest Act, 1927 was never applicable in the State of Kerala and prior to enforcement of the Kerala Forest Act, 1961, Forest was governed by the Travancore Cochin Forest Act, 1951 and the Madras Forest Act, 1982. Shri K.V. Viswanathan, learned Senior Advocate has relied on Section 1(2) of Forest Act, 1927 and provisions of the State Reorganization Act, 1956.

50. In any view of the matter the enactment W.P(C) No.26691 of 2010, etc. -:

99. :- having been reserved for consideration of the President and having been assented on 25.4.2005, the 2003 enactment is saved by virtue of Article 254(2) of the Constitution. We thus do not accept the submission of the learned counsel for the petitioners that the 2003 Act is repugnant to various Central enactments as referred to above.

51. One more submission of the petitioners needs to be noted is whether the 2003 Act violates Article 253 of the Constitution. Article 253 of the Constitution as noted above empowered the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any International conference, Association or other body. There cannot be any dispute to the ambit and scope of Article 253 of the Constitution and empowerment of the Parliament to legislate. The 2003 W.P(C) No.26691 of 2010, etc. -:

100. :- enactment cannot be held to be an enactment to give effect to any International agreement. As noted above, Article 48A of the directive principle of state policy has to be implemented by the legislature while making its policies and laws. Article 48A of the Constitution was inserted in the Constitution by the 42nd Amendment Act, 1976 in recognition of and consequent to various International

declarations and conferences. The Stock Holme Declaration on the Human Rights in the United Nation conference from 5 to 16 June, 1972, one of the principal International declarations was a factor in the insertion of Article 48A in the Constitution. But it cannot be said that the 2003 enactment has been enacted by the State Legislature to give effect to any international agreement. Submission of the learned counsel that the 2003 Act violates Article 253 of the Constitution thus cannot be accepted. ISSUE NO.IV: W.P(C) No.26691 of 2010, etc. -:

101. :- 52. The submission of the petitioners is that Act, 2003 is violative of Article 14 of the Constitution of India. Protection under Article 31A of the Constitution of India is not available to the Act, 2003, since it is not an Act relating to agrarian reform. A reference to the preamble of the Act, 2003 will show that it has nothing to do with the agrarian reform. Thus the Act is not protected from challenge on the ground that it violates Articles 14 and 19 of the Constitution. The Act denies compensation to the lands declared as ecologically fragile in terms of Section 3(1) of the Act, 2003 while compensation is payable to land notified under Section 4(2) of the Act, which is unsustainable. The question is as to whether the Act, 2003 can be saved with the aid of Article 31A of the Constitution. Article 31A of the Constitution is as follows: "31-A. Saving of laws providing for acquisition of estates, etc.--[(1) Notwithstanding anything contained in Article 13, no law providing for-- W.P(C) No.26691 of 2010, etc. -:

102. :- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be

void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [Article 14 or Article 19]: Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:] [Provided further that where any law makes any W.P(C) No.26691 of 2010, etc. -:

103. :- provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.] (2) In this article,-- [(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-- (i) any jagir, inam or muafi or other similar grant and in the States of [Tamil Nadu] and Kerala, any janmam right; (ii) any land held under ryotwari settlement; (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;] (b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub- proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat] or other intermediary and any rights or W.P(C) No.26691 of 2010, etc. -:

104. :- privileges in respect of land revenue." 53. Article 31A of the Constitution was introduced in the Constitution by the Constitution (First Amendment) Act, 1951. As it originally stood, the said Article only provided that no law affecting rights of any proprietor or intermediate holder in any estate shall be void on the ground that it is inconsistent with any of the fundamental rights included in Part III of the Constitution. Article 31A of the Constitution was further amended by the Constitution (fourth Amendment) Act, 1955. The object of the amendment was explained in the statement of objects and reasons for Constitution (fourth

Amendment) Act, 1955. The statement of objects reads as follows: "It will be recalled that the Zamindari abolition laws which came first in our programme of social welfare legislation were attacked by the interests affected mainly with reference to Articles 14, 19 and 31, and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenge in the courts, Articles W.P(C) No.26691 of 2010, etc. -:

105. :- 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting Articles 14, 19 and 31 have raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g., the following: (i) While the abolition of Zamindaries and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reform are the fixing of limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings. xx xx xx It is accordingly proposed in clause 3 of the Bill to extend the scope of Article 31A so as to cover these categories of essential welfare legislation." 54. The Apex Court in two earlier judgments, i.e., Sri Ram Ram Narain v. state of Bombay (AIR 1959 SC459 and Atma Ram v. State of Punjab (AIR 1959 SC519 had held that Article 31A of the Constitution had been enacted to save legislation affecting agrarian W.P(C) No.26691 of 2010, etc. -:

106. :- reforms. In Atma Ram's case (Supra) the following was laid down at page 526: "Keeping in view the fact that Article 31A was enacted by two successive amendments - one in 1951 (First amendment), and the second in 1955 (Fourth Amendment) - with retrospective effect, in order to save legislation effecting agrarian reforms, we have every reason to hold that those expressions have been used in their widest amplitude, consistent with the purpose behind those amendments".

55. A Constitution Bench of this Court had occasion to consider Article 31A in Kavalappa Kochuny v. State of Madras & others (AIR 1960 SC1080. In the above

case, validity of the Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) was challenged. In 1955 Act the legislature confers shares in the property on other members of the Tarwad. It declares particular sthanams to have always been Tarwads. The result was that the sole title of the sthanee is not recognised and the members of the Tarwad were given rights therein. That was challenged W.P(C) No.26691 of 2010, etc. -:

107. :- by sthanee on the ground that it has extinguished its right and title in the property by reducing share, which is violative of Articles 14 and 19 of the Constitution. One of the submissions, which was raised on behalf of the State was that legislation is protected by Article 31A of the Constitution. The Apex Court in Kavalappa Kochuny's case (supra) rejected the above submission of the State and held that the enactment does not effectuate any agrarian reform and regulate the rights inter se between landlords and tenants, hence, was not protected by Article 31A of the Constitution. Following was laid down in paragraph 19 of the judgment:

"19. The impugned Act does not purport to modify or extinguish any right in an estate. The avowed object of it is only to delcare particular sthanams to be Marumakkathayam tarwads and the property pertaining to such sthanams as the property of the said tarwads. It declares particular sthanams to have always been tarwads and their property to have always been tarwad property. The result is that the sole title of the sthanee is not recognised and the members of the tarwad area given rights therein. The impugned Act does not effectuate any W.P(C) No.26691 of 2010, etc. -:

108. :- agrarian reform and regulate the rights inter se between landlords and tenants. We, therefore, hold that the respondents cannot rely upon art.31A to deprive the petitioner of his fundamental rights." 56. Another judgment of the Apex Court, which needs to be noted is of a Constitution Bench in Balmadies Plantations v. State of Tamil Nadu (AIR 1972 SC2240. Article 31A came to be considered in the said case. The following was laid down by the Apex Court in paragraphs 16 and 17 of the judgment:

"6. The next question which arises for consideration is whether the acquisition of the lands in question is for agrarian reform. It is well established that in order to

invoke the protection of Article 31-A, it has to be shown that the acquisition of the estate was with a view to implement agrarian reform. The said article is confined only to agrarian reform and its provisions would apply only to reform a law made for the acquisition by the State of any rights therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is connected with agrarian reform (see P. Vajravelu Mudaliar v. Special Deputy Collector, Madras)7.

17. We have referred in the earlier part of this judgment to the various provisions of the Act, and it is W.P(C) No.26691 of 2010, etc. -:

109. :- manifest from their perusal that the object and general scheme of the Act is to abolish intermediaries between the State and the cultivator and to help the actual cultivator by giving him the status of direct relationship between himself and the State. The Act, as such, in its broad outlines should be held to be a measure of agrarian reform and would consequently be protected by Article 31-A of the Constitution. The said article provides that notwithstanding anything contained in Article 13, no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such right shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31, provided that where such law is a law made by the Legislature of a State, the provisions of Article 31-A shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent. The impugned Act, as stated earlier, received the assent of the President on December 6, 1969. As the Act is protected by Article 31-A of the Constitution, it is immune from attack on the ground of being violative of Article 14, Article 19 or Article 31. This fact would not, however, stand in the way of the court examining the constitutional validity of any particular provision of the Act." 57. Constitution Bench of the Supreme Court had occasion to consider challenge to constitutionality of the W.P(C) No.26691 of 2010, etc. -:

110. :- Kerala Private Forest (Vesting and Assignment) Act 1971. By the 1971 Act the private forest, by virtue of Section 3(1) of the Act, is vested in the Government

free from all encumbrances, right, title and interest. Validity of the Act was challenged as violative of Articles 14 and 19 of the Constitution. It was contended that private forest has been vested in the Government without payment of compensation, since Section 9 of the 1971 Act provided that no compensation will be payable for vesting in the Government of any private forest. Section 9 of the Act was to the following effect: "Section 9 provides that "No compensation shall be payable for the vesting in the Government of any private forest or for the extinguishment of the right, title and interest of the owner or any other person in any private forest under sub- section (1) of Section 3." 58. The State's submission in support of the Act was that the Act is protected by Article 31A of the Constitution. After noticing the scheme of 1971 Act, W.P(C) No.26691 of 2010, etc. -:

111. :- especially Section 10, which contemplated assignment of private forests to agriculturists and agricultural labourers, the Apex Court has laid down in paragraphs 20 and 35 as follows:

"0. In short the Act purports to acquire forest lands without payment of compensation for implementing a scheme of agrarian reform by assigning lands on registry or by way of lease to the poorer sections of the rural agricultural population. This is done after reserving portions of the forests as may be necessary for purposes "directed towards the promotion of agriculture or the welfare of the agricultural population or for purposes ancillary thereto". This scheme of agrarian reform is intended to be completed within two years. xx xx xx 35. What then is the scheme of agrarian reform envisaged in the impugned Act? The title of the Act shows that it is an act to provide for the vesting in the Government of private forests for the assignment thereof to agriculturists and agricultural labourers for cultivation. The Preamble shows that such private forests which the legislature thought to be agricultural lands in the sense, already explained, should be so utilised as to increase their agricultural production in the State and to promote the welfare of the agricultural population in the State. It is further stated in the Preamble that in order to give effect to the above objects it W.P(C) No.26691 of 2010, etc. -:

112. :- was necessary that the private forests should vest in the Government. The objectives of increasingthe agricultural production and the promotion of the welfare of the agricultural population are clearly a predominant element in agrarian reform. How these objectives are to be implemented are generally stated in Sections 10 and 11. All the private forests, after certain reservations, are to be assigned to agriculturists or agricultural labourers and to the poorer classes of the rural population desiring bona fide to take up agriculture as a means of their livelihood. The reservation in respect of certain portions of the forests is also made in the interest of the agricultural population because the section says that the reservations will be such as may be necessary for purposes directed towards the promotion of agriculture or welfare of the agricultural population or for purposes ancillary thereto. Section 11 further provides that after making the necessary reservations the scheme for the assignment of the private forests to the various beneficiaries described in Section 10 shall as far as may be, completed within two years from the date of the publication of the Act. The conditions and restrictions under which the assignments are to take place have to be prescribed by rules. We understand that in view of the stay granted by the courts, the rules have not been framed. But it is clear that the rules will have to be framed forthwith because of the urgency of the matter as seen in Section 11 and these rules will undoubtedly unfold the details of the scheme generally envisaged in Section 10. It W.P(C) No.26691 of 2010, etc. -:

113. :- would not be necessary to emphasize that the rules will have to be consistent with the purposes of the Act. In Statutes of this nature, provision can only be generally made to indicate the broad details of the scheme for agrarian inform and that is what is done in the Act. In Balmadies case, referred to above no such scheme had been envisaged. But in another case, namely, Kannan Devan Hills Produce v. State of Kerala,5 the Statute viz. The Kannan Devan Hills (Resumption of Lands) Act 5 of 1971 disclosed a scheme in Section 9 which is very similar to our own Section 10 of the impugned Act, Section 9 of that Act was as follows: "9. Assignment of lands.--(1) The Government shall, after reserving such extent of the lands, the possession of which has vested in the Government under sub-clause (1) of Section 3 ... as may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population to

be settled on such lands, assign on registry the remaining lands to agriculturists and agricultural labourers in such manner, on such terms and subject to such conditions and restrictions, as may be prescribed." That scheme as envisaged in this section was upheld by this Court as a scheme for agrarian reform and we do not see any good reason why we should take a different view with regard to the scheme envisaged in Section 10 of the W.P(C) No.26691 of 2010, etc. -:

114. :- impugned Act." 59. The Apex Court in the said case, accepting the contention of the State on the strength of Article 31A of the Constitution laid down following in paragraph 38 of the judgment:

"8. In an attempt to show that the impugned Act was a piece of colourable legislation, reference was made to the Karala Private Forests Acquisition Bill, 1968 LA Bill No. 33 of 1968 which provided for the acquisition of private forests on payment of compensation for the acquisition. That Bill, it is contended, was allowed to lapse and the present Act was enacted with the obvious intention of expropriating vast forest lands without paying compensation. We can hardly countenance such an argument. The question really is, in the first place, of the competence of the legislature to pass the impugned Act and, in the second, whether the Act is constitutional in the sense that it is protected by Section 31-A(1). So far as the competence of the legislature is concerned, no objection is made before us. As to its constitutionality we have shown that the Act purports to vast the janman rights to the forests in the Government as a step in the implementation of agrarian reform. If this could be constitutionally done by the legislature, the fact that at an earlier stage the Government was toying with the idea of W.P(C) No.26691 of 2010, etc. -:

115. :- paying compensation to owners of private forests is of little consequence. The dominant purpose of the impugned Act, as already pointed out, is to distribute forest lands for agricultural purposes after making reservations of portions of the forests for the benefit of the agricultural community. The fear is expressed that such a course if, genuinely implemented, may lead to deforestation on a large scale leading to soil erosion and silting of rivers and streams and will actually turn out to be detrimental to the interests of the agricultural community in the long run.

It is undoubtedly true that rackless deforestation might lead to very unhappy results. But we have no material before us for expressing opinion on such a matter. It is for the legislature to balance the comparative advantages of a scheme like the one envisaged in the Act against the possible disadvantages of resulting deforestation. There are many imponderables to which we have no safe guides. It is presumed that the legislature knows the needs of its people and will balance the present advantages against possible future disadvantages. If there is pressure on land and the legislature feels that forest lands in some areas can be conveniently and, without much damage to the community as a whole, utilized for settling a large proportion of the agricultural population, it is perfectly open, under the constitutional powers vested in the legislature, to make a suitable law, and if the law is constitutionally valid this Court can hardly strike it down on the ground that in the long run the legislation instead W.P(C) No.26691 of 2010, etc. -:

116. :- of turning out to be a boon will turn out to be a curse." 60. Justice V.R.Krishna Iyer, for himself and for Justice Bhagwati, delivered a concurrent opinion. Constitutional history of Section 31A was traced out, especially in context of 1971 Act. Following was observed by Justice V.R.Krishna Iyer in paragraphs 43, 44 and 45 in Balmadies Plantations's case (supra):

"3. The State wields the shield of Article 31-A to ward off the private owners, sword thrust of Article 13 read with Articles 14, 19 and 31. We must examine the application of Article 31-A to the Forest Act.

44. Any law providing for the acquisition by the State of an "estate" is saved by Article 31-A subject to certain conditions, violation of Articles 14, 19 and 31 notwithstanding. Sub-article (2) explains the concept of "estate" and includes therein janman rights. Although Article 31-A is worded widely enough to rope in acquisition of any estate by the State regardless of purpose, the Supreme Court has cut back on this amplitude by limiting entitlement to constitutional protection to agrarian reform legislation only. Subba Rao, J., in Kochuni case speaking for the Court, reviewed the earlier decisions under Article 31-A and interpreted the provision against the back-drop of the objects of the Constitution (Fourth Amendment) Act, 1955 and the W.P(C) No.26691 of 2010, etc. -:

117. :- earlier Constitution (First Amendment) Act, 1951, to arrive at the conclusion that Article 31-A was meant "to facilitate agrarian reforms". This Court in the aforesaid decision struck down the Madras Marumakkathayam (Removal of Doubts) Act, 1955, because "the impugned Act does not effectuate any agrarian reforms and regulate the rights inter-se between landlords and tenants". Article 31-A deprives citizens of their fundamental rights and such an article cannot be extended, by interpretation, to overreach the object implicit in the article, observed Subba Rao, J., and this judicial gloss has come to stay. Forensic debate has since centered round what is agrarian reform, and counsel here have joined issue on the claim of the Forest Act to wear this protective mantle.

45. Article 31-A having been read down to relate to agrarian reform -- rightly, if we may say so -- in the feudal context of the country and the founding faith in modernisation of agriculture informed by distributive justice, the controversy in the present case demands a study of the anatomy and cardiology of the statute, not its formal structure but its heart beats." 61. There are several other decisions of the Supreme Court to the same effect. In Prag Ice Oil Mills v. Union of India [(1978)3 SCC459 the Apex Court has laid down that Article 31A of the Constitution does not protect legislation, which does not relate to agrarian W.P(C) No.26691 of 2010, etc. -:

118. :- reform.

62. Thus, for availing protection under Article 31A of the Constitution, the enactment should be an enactment with the object of bringing agrarian reform. Now, we proceed to examine 2003 Act to decide as to whether by the said enactment any agrarian reform has been brought by the Legislature. The 2003 Act has been enacted to provide for the vesting in the Government of the Ecologically Fragile Land and for the management of such lands with a view to maintaining ecological balance and conserving the bio-diversity. The preamble of the Act contains purpose and object of the enactment. The preamble of the Act is to the following effect: "Preamble.- WHEREAS the earth's biological resources with their intrinsic ecological, genetic, economic, social, cultural, scientific, educational, recreational and aesthetic values are global assets and public trust vital to the

sustained economic and social development, maintenance of ecological balance and the W.P(C) No.26691 of 2010, etc. -:

119. :- very existence of humanity; AND WHEREAS the fundamental requirement for the conservation of biological diversity is the insitu conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural suroundings; AND WHEREAS the tropical forests in the western ghats, which has been declared a bio-diversity hot-spot by the International Union for Conservation of Nature and Natural Resources, are very rich repositories of bio- diversity extremely susceptible to rapid irreversible degradation; AND WHEREAS it has become inevitable to conserve effectively the ecologically fragile lands, minimising the reduction or degradation of these ecosystems and biological diversity therein, which evolved through millions of years; AND WHEREAS it is considered necessary to manage such lands in an integrated and uniform manner within their ecological boundaries in accordance with the management plans based on sound scientific principles." 63. The provisions of the Act as has been noted above do not indicate that any of the provisions has been enacted with a view to bring any agrarian reform. Ecologically fragile land vests in the state and is managed by the Forest Department as per the W.P(C) No.26691 of 2010, etc. -:

120. :- management plan. 2003 Act does not, thus, in any manner indicate that the said enactment has been brought as the measure for agrarian reform. In view of the law laid down by the Apex Court as noted above, protection of Article 31A of the Constitution is not applicable. We, thus, conclude that 2003 Act is not protected by Article 31A of the Constitution of India. ISSUE NO.V64 Question to be answered is as to whether the 2003 Act has been enacted by the State Legislature to give effect to the directive principles of state policy as contained in Article 39(b) of the Constitution? Chapter IV of the Constitution deals with directive principles of state policy. Directive principle of state policy embodies importance, aim and object of the State under the Constitution. 'Directive principles of State Policy'. embodies the idea of socio economic justice which is the core guiding principle of the welfare of State. W.P(C) No.26691 of 2010, etc. -:

121. :- Legislation 2003 whether can be treated to be legislation in furtherance of the directive principles of state policy as enjoined on the State under Article 39(b) is the core question to be answered. Article 39(b) provides as follows:

"9. Certain principles of policy to be followed by the State. - The state shall, in particular, direct its policy towards securing - xx xx xx (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;" Article 48A which has been inserted in the Constitution by the 42nd Amendment Act, 1976 enumerates the directive principle of policy that the State shall endeavour to protect and improve the forest and wild life of the country. Salient feature of the 2003 Act has to be looked into for understanding the true nature and spirit of the legislation.

65. Preamble of the Act as quoted above throws W.P(C) No.26691 of 2010, etc. -:

122. :- considerable light on the object and reason for enactment of the Act. Ecologically fragile land as defined in Sec.2(b)(1) of the 2003 Act extinguish the right, title and interest of the owner or any other person thereof. Section 2(b), 2(c) and 3(1) are quoted as below: "2(b). 'ecologically fragile lands' means.- (i) any forest land or any portion thereof held by any person and lying contiguous to or encircled by a reserved forest or a vested forest or any other forest land owned by the Government and predominantly supporting natural vegetation; and (ii) any land declared to be ecologically fragile land by the Government by notification in the Gazette under Sec.4. 2(c) "forest" means any land principally covered with naturally grown trees and undergrowth and includes any forests statutorily recognized and declared as reserved forest, protected forest or otherwise, but does not include any land which is used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other sites of residential buildings and surroundings essential for the convenient use of such buildings". Safeguarding of forest and wild life is with the object of W.P(C) No.26691 of 2010, etc. -:

123. :- serving the common good and for protection of lives on the earth. The Supreme Court In M.C. Mehta v. Kamal Nath [(1997) 1 SCC388 had elaborately considered the subject. The Public Trust doctrine was held applicable to Indian

Law and natural resources such as air, river, water, etc., have to be protected for the purpose of protecting the ecosystem. Elaborating the Public Trust doctrine, the Apex Court had laid down the following in paragraphs 23, 24, 25 and 35 which are to the following effect:

"3. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled An ecological perspective on property : A call for judicial protection of the public's interest in environmentally critical resources published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words: "Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human

 activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained. `[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.' Professor Barbara Ward has written of this ecological imperative in particularly vivid language: `We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about

phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".' There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws W.P(C) No.26691 of 2010, etc. -:

125. :- and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened. Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources -- for example, wetlands and riparian forests -- can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature. In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions.

24. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded W.P(C) No.26691 of 2010, etc. -:

126. :- use of the general public. Our contemporary concern about "the environment" bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullious) or by every one in common (res communious). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect

was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan -- proponent of the Modern Public Trust Doctrine -- in an erudite article "Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under: "The source of modern public trust law is found in a concept that received much attention in Roman and English law -- the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties -- such as the seashore, highways, and W.P(C) No.26691 of 2010, etc. -:

127. :- running water -- `perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government." 25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority: "Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the

property must be maintained for particular types of uses.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those W.P(C) No.26691 of 2010, etc. -:

128. :- members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources". The Apex Court in T.N. Godavarman v.Union of India ([2002] 10 SCC606 had emphasised that it is the duty and constitutional obligation of the Government to protect the environment enshrined in Articles, 21, 48A W.P(C) No.26691 of 2010, etc. -:

129. :- and 51A(g) of the Constitution. Following was laid down in paragraphs 17 and 24: '"17. Article 48-A in Part IV (Directive Principles) of the Constitution of India, 1950 brought by the Constitution (Forty-second Amendment) Act, 1976, enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes, rivers and wildlife and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is,

therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, hygienic environment W.P(C) No.26691 of 2010, etc. -:

130. :- is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is constitutional imperative on the Central Government, State Governments and bodies like municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the man- made environment and natural environment.

24. The tide of judicial considerations in environmental litigation in India symbolizes the anxiety of courts in finding out appropriate remedies for environmental maladies. At global level, the right to live is now recognized as a fundamental right to an environment adequate for health and well-being of human beings. [See World Commission on Environment and Development -- Our Common Future (1987).] To commemorate the tenth anniversary of the Stockholm Conference, the world community of States assembled in Nairobi (May 10-18, 1982) to review the action taken on to implement the Stockholm Declaration. It expressed serious concern about the state of environment worldwide and recognized the urgent need of intensifying the effort at the global, regional and national levels to protect and improve it. The above view was again reiterated by the Apex Court W.P(C) No.26691 of 2010, etc. -:

131. :- in T.N.Godavarman v. Union of India [(2006) 1 SCC1 where the Apex Court noted the following in paragraphs 1 and 3: "1. Natural resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Under Article 51-A, it is the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

3. Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation development is also necessary but it has to be consistent with protection of environments and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systemic approach so as to balance economic development and environmental protection. Both have to go hand in hand. In the ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long-lasting. W.P(C) No.26691 of 2010, etc. -:

132. :- Such development would be counterproductive. Therefore, there is an absolute need to take all precautionary measures when forest lands are sought to be directed for non-forest use". The importance and necessity to conserve natural resources including forest have been emphasised time and again. Tropical forest of western ghats, has been declared as a bio-diversity hot-spot by the International Union for Conservation of Nature and natural resources, the 2003 Act been passed to conserve natural resources which are rich repositories of bio-diversity extremely susceptible to rapid irreversible degradation. Forest cover in the State had been depleting and dwindling from time to time. The State who is constitutionally obliged to maintain the forest cover has to discharge its obligation by giving effect to the directive principle of State policy as noted above. Salient features of the 2003 Act have already been noticed above, the object and purpose

of the 2003 Act W.P(C) No.26691 of 2010, etc. -:

133. :- is to increase the forest cover and vest the same in the State for its proper management. Section 16 of the Act contains the objectives of the State to manage the ecologically fragile land vested in the Government in accordance with the provisions of the management plans approved by the Government from time to time.

66. Article 39(b) refers to "ownership and control of the material resources of the community" and further employs that ownership and control are so distributed as best to subserve the common good. There cannot be any dispute that the material resources of the community include forest. The Apex Court had occasion to consider the concept of material resources as enshrined in Article 39B of the Constitution. The Apex Court in State of T.N. v. L. Abu Kavur Bai, 1984 (1) SCC515laid down the following in paragraph 77:

"7. With due respect, this view is not correct and proceeds on a misconception of the law and interpretation of the words `material resources' as mentioned in Article W.P(C) No.26691 of 2010, etc. -:

134. :- 39(b). In fact, Article 39(b) does not mention either movable or immovable property. The actual expression used is "material resources of the community". Material resources as enshrined in Article 39(b) are wide enough to cover not only natural or physical resources but also movable or immovable properties. Black's Law Dictionary defined the word `resources' thus: "Money or any property that can be converted to meet needs; means of raising money or supplies; capabilities of raising wealth or to supply necessary wants." Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd., (1983) 1 SCC147, a Constitution Bench of the Apex Court held that resources of the community are not confined to natural resources and it includes resources and land both public owned or private owned. In the said case also the Apex Court had occasion to consider the word "distribute" as used in Article 39(b). The question which arose in the above case was as to whether the provisions of the Act, 1972 is saved by Article 31 C and whether the said Act has been protected to secure the objective of Article 39(b). The W.P(C) No.26691 of 2010, etc. -:

135. :- following was laid down by the Apex Court in the said in paragraphs 19 and 20 as follows:

"9. The nationalisation of the coking coal mines and the coke oven plants was "with a view to reorganising and reconstructing such mines and plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal needed to meet the growing requirements of the iron and steel industry and for matters connected therewith or incidental thereto". We do not entertain the slightest doubt that the nationalisation of the coking coal mines and the specified coke oven plants for the above purpose was towards securing that "the ownership and control of the material resources of the community are so distributed as best to subserve the common good". The submission of Shri A.K. Sen was that neither a coal mine nor a coke oven plant owned by private parties was a "material resource of the community". According to the learned counsel they would become material resources of the community only after they were acquired by the State and not until then. In order to qualify as material resources of the community the ownership of the resources must vest in the community i.e. the State. A legislation such as the Coking Coal Mines (Nationalisation) Act may be a legislation for the acquisition by the State of coking coal mines and coke oven plants belonging to private parties but it is not a legislation towards securing that the ownership and control of the material resources W.P(C) No.26691 of 2010, etc. -:

136. :- are so distributed as best to subserve the common good. Shri Sen invited our attention to the emphasis which Krishna Iyer, J.

laid on the word "distribute" occurring in Article 39(b) of the Constitution in State of Karnataka v. Ranganatha Reddy5 and Krishna Iyer, J.'s description of it as "the key word" and the dissertation on "the genius of the Article". Shri Sen urged that if the word "distribute" was given its proper emphasis, it would inevitably follow that material resources must belong to the community as a whole, that is to say, to the State or the public, before they could be distributed as best to subserve the common good. Since those material resources which belonged to the State only could be distributed by the State, Shri Sen argued that material resources had first

to be acquired by the State before they could be distributed. A law providing for acquisition was not a law for distribution. We are unable to appreciate the submission of Shri Sen. The expression "material resources of the community" means all things which are capable of producing wealth for the community. There is no warrant for interpreting the expression in so narrow a fashion as suggested by Shri Sen and confine it to public-owned material resources and exclude private-owned material resources. The expression involves no dichotomy. The words must be understood in the context of the constitutional goal of establishing a sovereign, socialist, secular, democratic republic. Though the word "socialist" was introduced into the Preamble by a late amendment of the Constitution, that socialism has always been the goal is evident from

 the Directive Principles of State Policy. The amendment was only to emphasise the urgency. Ownership, control and distribution of national productive wealth for the benefit and use of the community and the rejection of a system of misuse of its resources for selfish ends is what socialism is about and the words and thought of Article 39 (b) but echo the familiar language and philosophy of socialism as expounded generally by all socialist writers. To quote a recent writer: "Socialism is first of all, a protest against the material and cultural poverty inflicted by capitalism on the mass of the people. It expresses a concern for the social welfare of the oppressed, the unfortunate and the disadvantaged. It affirms the values of equality, a classless society, freedom and democracy. It rejects the capitalist system and its competitive ethos as being inefficient in its use of resources .... They (Socialists) want a new system, whether by reform or revolution, in which productive wealth is owned and controlled by the community and used for communal ends." We may also look at it this way. When we say that the State of Himachal Pradesh possesses immense forest wealth or that the State of Bihar possesses immense mineral wealth, we do not mean that the Governments of the States of Himachal Pradesh and Bihar own the forest and mineral wealth; what we mean is that there is immense forest and mineral wealth in the territories of the two States, whether such wealth is owned by the people as a whole or by individuals. Again, when we talk of, say, a certain area in Delhi being a Bengali, Punjabi or

138. :- South Indian area, we do not mean that the area is owned by Bengalis, Punjabis or South Indians but only that large numbers of Bengalis, Punjabis or South Indians live in that area. When Article 39(b) refers to material resources of the community it does not refer only to resources owned by the community as a whole but it refers also to resources owned by individual members of the community. Resources of the community do not mean public resources only but include private resources as well. Nor do we understand the word "distribute" to be used in Article 39(b) in the limited sense in which Shri Sen wants us to say it is used, that is, in the sense only of retail distribution to individuals. It is used in a wider sense so as to take in all manner and method of distribution such as distribution between regions, distribution between industries, distribution between classes and distribution between public, private and joint sectors. The distribution envisaged by Article 39(b) necessarily takes within its stride the transformation of wealth from private ownership into public ownership and is not confined to that which is already public-owned. The submissions of Shri Sen are well-answered by the observations of Krishna Iyer, J.

in State of Karnataka v. Ranganatha Reddy5 which we quote below: (SCC pp. 515-16, paras 80-82) "The key word is "distribute" and the genius of the article, if we may say so, cannot but be given full play as it fulfills the basic purpose of restructuring the economic order. Each word in the article has a strategic role
 and the whole article a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is so to undertake distribution as best to subserve the common good. It reorganizes by such distribution the ownership and control. `Resources' is a sweeping expression and covers not only cash resources but even ability to borrow (credit resources). Its meaning given in Black's Law Dictionary is: "Money or any property that can be converted into supplies; means of raising money or supplies; capabilities of raising wealth or to supply, necessary wants; available means or capability of any kind." And material resources of the community in the context of reordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not merely public

possessions. Every thing of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community. To exclude ownership of private resources from the coils of Article 39(b) is to cipherise its very purpose of redistribution the socialist way. A directive to the State with a deliberate design to dismantle feudal and capitalist citadels of property must be interpreted in that spirit and hostility to such a purpose alone can be hospitable to the meaning which excludes private means of production or goods produced from the instruments of production. Sri A.K. Sen agrees that private means of production are included in `material W.P(C) No.26691 of 2010, etc. -:

140. :- resources of the community' but by some baffling logic excludes things produced. If a car factory is a material resource, why not cars manufactured? `Material' may cover everything wordly and `resources', according to Random House Dictionary, takes in `the collective wealth of a country or its means of producing wealth money or any property that can be converted into money assets'. No further argument is needed to conclude that Article 39 (b) is ample enough to rope in buses. The motor vehicles are part of the material resources of the operators. The next question is whether nationalisation can have nexus with distribution. Should we assign a narrow or spacious sense to this concept? Doubtless, the latter, for reasons so apparent and eloquent. To "distribute", even in its simple dictionary meaning, is to `allot, to divide into classes or into groups' and `distribution' embraces `arrangement, classification, placement, disposition, apportionment, the way in which items, a quantity, or the like, is divided or apportioned; the system of dispersing goods throughout a community'. (see Random House Dictionary). To classify and allocate certain industries or services or utilities or articles between the private and public sectors of the national economy is to distribute those resources. Socially conscious economists will find little difficulty in treating nationalisation of transport as a distributive process for the good of the community. You cannot condemn the concept of nationalisation in our Plan on the score that Article 39(b) does not envelope it. It is a matter of public policy left to legislative wisdom W.P(C) No.26691 of 2010, etc. -:

141. :- whether a particular scheme of take-over should be undertaken." We hold that the expression "material resources of the community" is not confined to natural resources; it is not confined to resources owned by the public; it means and includes all resources, natural and man-made, public and private-owned.

22. In view of the foregoing discussion, we hold that the Coking Coal Mines (Nationalisation) Act, 1972 is a legislation for giving effect to the policy of the State towards securing the principle specified in Article 39(b) of the Constitution and is, therefore, immune, under Article 31-C, from attack on the ground that it offends the fundamental right guaranteed by Article 14.

67. The Apex Court in 1984(1) SCC515(supra) had occasion to consider Article 39(b) especially in the context of what the material resources and distribution are. The following was laid down in paragraphs 78 to 80:

"8. The mere fact that the resources are material will make no difference in the concept of the word `resources'. In Stroud's Judicial Dictionary (Vol. 3) at p. 1634, the word `material' is defined thus: "Materials, tools, or implements, to be W.P(C) No.26691 of 2010, etc. -:

142. :- used by such artificer in this trade or occupation, if such artificer be employed in mining;. . . wooden props or `sprags' though neither "tools or implements" were `materials' within these words. . . . `Material' includes a painter's bucket of distemper and brush." 79. In Webster's Third New International Dictionary at p. 1934 the word `resources' has been defined thus: "available means (as of a country or business): computable wealth (as in money, property)." 80. In Words and Phrases (Permanent Edition), Vol. 37-A, the word `Resources' has been defined at p. 16 thus: "Resources included products of farm, forest, manufacture, art, education, etc. . . . The `resources' of a country include its land, timber, coal, crops, improvements, railways, factories and everything that goes to make up its wealth or to render it desirable." 68. Explaining the concept of distribution under Article 39(b) the following was laid down in paragraphs 89, 90, 91 and 92.

"9. The last contention raised by the respondents was that the conditions or objects mentioned in Article 39 (b) and (c) are not subserved by the nationalisation policy codified by the Statute because there is no distribution at W.P(C) No.26691 of 2010, etc. -:

143. :- all in the sense that the property taken over is distributed to various members of the community for their benefit. Moreover, the members of the community have been deprived of the services rendered to them by the operators under permits issued by the transport authority. So far as this argument is concerned, it is based on a serious misconception of understanding the real position. The word `distribution' used in Article 39(b) must be broadly construed so that a court may give full and comprehensive effect to the statutory intent contained in Article 39 (b). A narrow construction of the word `distribution' might defeat or frustrate the very object which the Article seeks to subserve. In Black's Law Dictionary the word `distribution' has been defined thus: "The giving out or division among a number, sharing or parcelling out, allotting, dispensing, apportioning." (p. 426) 90. Similarly, Webster's Third International Dictionary at p. 660 defines `distribution' thus: "the position, placement, or arrangement (as of a mass or the members of a group); the disposition or arrangement in rational groups or classes: CLASSIFICATION -- the accurate distribution of several rare zoological specimens; delivery or conveyance (as of newspapers or goods) to the members of a group (the distribution of telephone directories to consumers) in charge of company sales and distribution; a device, mechanism, or system by which something is distributed (as from a main source); the marketing or merchandising of commodities." 91. In Family Word Finder published by Reader's Digest the word `distribution' has been defined at p. 237 thus: W.P(C) No.26691 of 2010, etc. -:

144. :- "dissemination, scattering, spreading, circulation, grouping, organisation, apportionment, allotment, allocation, division." 92. It is obvious, therefore, that in view of the vast range of transactions contemplated by the word `distribution' as mentioned in the dictionaries referred to above, it will not be correct to construe the word `distribution' in a purely literal sense so as to mean only division of a particular kind or to particular persons. The words, apportionment, allotment,

allocation, classification, clearly fall within the broad sweep of the word `distribution'. So construed, the word `distribution' as used in Article 39(b) will include various facets, aspects, methods and terminology of a broad-based concept of distribution. In other words, the word `distribution' does not merely mean that property of one should be taken over and distributed to others like land reforms where the lands from the big landlords are taken away and given to landless labourers or for that matter the various urban and rural ceiling Acts. That is only one of the modes of distribution but not the only mode. In the instant case, as we have already pointed out, distribution is undoubtedly there though in a different shape. So far as the operators were concerned they were mainly motivated by making huge profits and were most reluctant to go to villages or places where the passenger traffic is low or the track is difficult. This naturally caused serious inconvenience to the poor members of the community who were denied the facility of visiting the towns or other areas in a transport. By nationalising the transport as also the units the W.P(C) No.26691 of 2010, etc. -:

145. :- vehicles would be able to go to the farthest corner of the State and penetrate as deep as possible and provide better and quicker and more efficacious facilities. This would undoubtedly be a distribution for the common good of the people and would be clearly covered by clause (b) of Article 39." 69. A seven Judges Bench of the Apex Court in State of Karnataka v. Ranganath Reddy [(1977) 4 SCC471 had occasion to consider Article 39(b) and the concept of material resources and distribution. Krishna Iyer, J (as His Lordship then was) interpreting the concept of distribution as engrained in Article 39(b) has laid down the following in paragraphs 80 and 81.

"0. This takes us to the non-negotiable minimum of nexus between the purpose of the acquisition and Article 39(b). Article 39(c) was feebly mentioned but Article 39(b) was forcefully pressed by the appellant. Better read Article 39(b) before discussing its full import:

"9. (b) Certain principles of policy to be followed by the State-- The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to W.P(C)

No.26691 of 2010, etc. -:

146. :- subserve the common good." The key word is "distribute" and the genius of the Article, if we may say so, cannot but be given full play as it fulfils the basic purpose of restructuring the economic order. Each word in the article has a strategic role and the whole article a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is so to undertake distribution as best to subserve the common good. It re- organizes by such distribution the ownership and control.

81. "Resources" is a sweeping expression and covers not only cash resources but even ability to borrow (credit resources). Its meaning given in Black's Legal Dictionary is: "Money or any property that can be converted into supplies; means of raising money or supplies; capabilities of raising wealth or to supply necessary wants; available means or capability of any kind." And material resources of the community in the context of re-ordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not merely public possessions. Every thing of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community. To exclude ownership of private resources from the coils of Article 39(b) is to W.P(C) No.26691 of 2010, etc. -:

147. :- cipherise its very purpose of redistribution the socialist way. A directive to the State with a deliberate design to dismantle feudal and capitalist citadels of property must be interpreted in that spirit and hostility to such a purpose alone can be hospitable to the meaning which excludes private means of production or goods produced from the instruments of production. Sri A.K. Sen agrees that private means of production are included in "material resources of the community" but by some baffling logic excludes things produced. If a car factory is a material resource, why not cars manufactured? "Material" may cover everything worldly and "resources", according to Random House Dictionary, takes in "the collective wealth of a country or its means of producing wealth: money or any property that can be converted into money assets". No further argument is needed to conclude

that Article 39 (b) is ample enough to rope in buses. The motor vehicles are part of the material resources of the operators.

70. Thus the word "distribution" in Article 39(b) cannot be understood as physical distribution of any material resources only. Control and management of the material resources is envisaged to distribute as best to subserve the common good is now accepted principle which cannot be disputed by anyone. Learned counsel for the petitioners submitted that at W.P(C) No.26691 of 2010, etc. -:

148. :- best the legislation 2003 can be understood to be a legislation to give effect to the directive principle of state policy under Article 48A of the Constitution and cannot be considered to be an enactment to give effect to Article 39(b). Legislation to give effect to the directive principle of state policy as contemplated in Article 39(b) can very well encompass in itself the state policy delineated by Article 48A. It cannot be said that legislation to give effect to the directive principles of state policy under Article 39(b) and the legislation to give effect to the directive principle of state policy under Article 48A are mutually exclusive. Thus even if the submission of the learned counsel for the petitioners that the 2003 Act has been enacted to give effect to Article 48A is accepted, the same does not militate against the legislation being covered by Article 39(b). Learned counsel for the petitioner has further contended W.P(C) No.26691 of 2010, etc. -:

149. :- that the fact that legislation 2003 was not enacted to give effect to the directive principles of state policy under Article 39(b) is apparent from the fact that the State when it has filed its counter affidavit in the Writ Petition had not even stated that the legislation has been made to give effect to the directive principle of state policy under Article 39(b). It is submitted that it was only after the first hearing that additional counter affidavit has been filed taking the stand that legislation has been enacted to give effect to the directive principle of state policy under Article 39(b). We are of the view that the mere fact that initially the State did not take the stand in the original counter affidavit that the enactment is to give effect to the directive principle of state policy under Article 39(b) is inconsequential. In the additional counter affidavit filed by the State on 3.9.2014 in W.P(C) No.6814 of 2003 following has been W.P(C) No.26691 of 2010, etc. -:

150. :- stated in paragraph 4. "4. It is humbly submitted that the Act, which has been challenged in the present writ petition is entitled for the protection of Article 31-C of the Constitution. It is submitted that the present Act besides being enacted to further the principles laid down in Articles 37, 48A r/w 51A(g) has also been passed to further the principles under Article 39(b) of the Constitution. According to the said Article, material resources of the community have to be so distributed so as to best subserve the common good. It is submitted that the present Act clearly fulfills the mandate of the said article by vesting these lands to protect the same for the common good of not only the present generation but even future generations." More so, when it is to be examined whether an act has been enacted to give effect to the directive principle of state policy under Article 39(b), the said consideration cannot be limited by the pleading of the parties. The Apex Court in Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd., (1983) 1 SCC147(supra) had laid down that when constitutional validity of an Act is challenged, validity of the legislation is not to be W.P(C) No.26691 of 2010, etc. -:

151. :- defended merely by an affidavit filed on behalf of the State. It is useful to quote paragraph 25 of the judgment.

"5. Shri Ashoke Sen drew pointed attention to the earlier affidavits filed on behalf of Bharat Coking Coal Limited and commented severely on the alleged contradictory reasons given therein for the exclusion of certain coke oven plants from the Coking Coal Mines (Nationalisation) Act. But, in the ultimate analysis, we are not really to concern ourselves with the hollowness or the self-condemnatory nature of the statements made in the affidavits filed by the respondents to justify and sustain the legislation. The deponents of the affidavits filed into court may speak for the parties on whose behalf they swear to the statements. They do not speak for the Parliament. No one may speak for the Parliament and Parliament is never before the court. After Parliament has said what it intends to say, only the court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the court their understanding of what Parliament has said or intended to

say or what they think was Parliament's object and all the facts and circumstances which in their view led to the legislation. W.P(C) No.26691 of 2010, etc. -:

152. :- When they do so, they do not speak for Parliament. No Act of Parliament may be struck down because of the understanding or misunderstanding of parliamentary intention by the executive Government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the court may ultimately find and more especially by what may be gathered from what the legislature has itself said. We have mentioned the facts as found by us and we do not think that there has been any infringement of the right guaranteed by Article 14. After vesting of ecologically fragile land under the 2003 Act, the same is to be managed as per Sec.16 of the 2003 Act with the objectives as enumerated in Sec.16 (2) of the Act. Objectives of the management as enshrined in Sec.16(2), are is quoted for ready reference; "Ecologically fragile lands to be managed by Forest Department as per Management Plans.- xx xx (2) The management plans shall be prepared in W.P(C) No.26691 of 2010, etc. -:

153. :- accordance with the guidelines issued from time to time by the State Government and the Government of India for the preparation of Working Plans and Management Plans for the reserved forest areas and protected areas with a view to- (i) conserving natural resources; (ii) arresting depletion and degradation of flora and fauna; (iii) improving productivity and sustainability; and (iv) maintaining ecological balance in the ecologically fragile lands: Provided that the management plans prepared under this sub-section shall be such as to retaining the rights of the local Scheduled Tribe Communities regarding their means of livelihood." Sec.16(2) clearly indicates that management is with the intent to subserve the common good. Benefit flowing from the forest, protection of ecology subserves the common good and benefit extends to the public in general.

71. In view of the forging discussion we are of the considered opinion that the 2003 Act has been enacted to give effect to the directive principle of state policy

as W.P(C) No.26691 of 2010, etc. -:

154. :- enshrined in Article 39(b) of the Constitution. The issue is answered accordingly. ISSUE NO.VI72 Learned counsel for both the parties have made elaborate submissions regarding assent by the President dated 25.4.2005 on the Bill, namely, "The Kerala Forest (Vesting and Management of Ecologically Fragile Land) Bill, 2001" ("2001- ([ ] "). Learned counsel for the petitioners have contended that the presidential assent dated 25.4.2005 cannot be treated to be an assent given under Articles 31A and 31C of the Constitution of India, hence the 2003 Act is not protected from challenge on the ground of violation of Articles 14 and 19 of the Constitution. On the other hand, the learned W.P(C) No.26691 of 2010, etc. -:

155. :- Senior Counsel for the State contended that the assent dated 25.4.2005 shall also be treated as an assent given by the President within the meaning of Article 31C of the Constitution.

73. Before we proceed to consider the rival contentions of learned counsel for the parties, it is useful to note the chronological events and facts leading to presidential assent dated 25.4.2005. The Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2000 was promulgated by the Governor on 2.6.2000. Thereafter Ordinance No.8 of 2000 and 3 of 2001 was promulgated. Ordinance No.16 of 2000 was promulgated by the Government of Kerala on 26.1.2001. A Bill, namely, Kerala Forest (Vesting and Management of ecologically Fragile Lands) Bill, 2001 was introduced and published as Bill No.28 in Kerala Gazette Extraordinary dated 3.11.2001. The Bill was W.P(C) No.26691 of 2010, etc. -:

156. :- introduced in the Legislative Assembly on 4.12.2001 and referred to the Select Committee on the same day. The Select Committee, after detailed discussion, considered the Bill and recommended the Bill with certain modifications. On 7.8.2003 the Bill was passed by the Legislative Assembly with certain modifications. When the bill was circulated to the Governor for his assent, the Governor reserved the Bill for consideration of the President. Letter dated 27.2.2004 was sent by the Law Secretary to the Government of India. The Ministry of Environment and Forests conducted certain proceedings on 6.7.2004 and

conveyed the consent to the enactment. On 15.7.2004 the Ministry of Urban Development and Poverty Aleviation issued an Office Memorandum stating that the above Ministry has no objection if the assent of the President is accorded to the above Bill. Certain clarification was also called for W.P(C) No.26691 of 2010, etc. -:

157. :- and submitted by the State Government. The President assented to the Bill on 25.4.2005. Letter was communicated to the Governor and thereafter the Bill became the Law and was published in the Kerala Gazette Extraordinary dated 8.6.2005.

74. The Law Department of the State submitted a note that the draft of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2000, as approved by the Council of Ministers requires instructions from the President vide Articles 31A and 254(2) of the Constitution. Opinion of the Advocate General was obtained, who gave a detailed opinion dated 25.5.2000 opining that the Ordinance can be promulgated without instructions from the President of India. The Governor noticed conflicting opinion submitted before him, one strongly advising that it requires previous sanction of the President, and the W.P(C) No.26691 of 2010, etc. -:

158. :- other refuting that. Following order was passed by the Governor on 3.12.2001: "I RESERVE THIS BILL FOR THE CONSIDERATION OF THE PRESIDENT." 75. The Bill was forwarded by letter of the Law Secretary dated 15.1.2004. On 27.2.2004 the Law Secretary sent a revised draft letter for onward transmission to the Government of India for obtaining the assent of the President of India.

76. The learned Government Pleader has submitted a compilation regarding the presidential assent containing certain correspondence and notes. In the revised draft letter addressed to the Secretary to the Government of India, Ministry of Home Affairs, certain facts have been stated, which are at page 39 of the compilation. It is useful to extract the following relevant portion of the letter: "To The Secretary to the Government W.P(C) No.26691 of 2010, etc. -:

159. :- of India, Ministry of Hiome Affairs, Government of India, Jaisalmer House, Mansingh Road, New Delhi-110 011. Sir, Sub:- The Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Bill, 2001 - Assent of the President of India - request for - reg. Ref:- Letter No.1619/99-Judl dated 29th October, 1999, Ministry of Home Affairs, Government of India, New Delhi. I am directed to forward herewith three copies of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Bill, 2001, as passed by the Kerala Legislative Assembly and authenticated by the Speaker, which has been reserved by the Governor of Kerala, for consideration of the President of India. I am further directed to state that:- The Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Bill, 2001 has been passed by the Kerala Legislative Assembly on the 7th day of August, 2003. International Union for Conservation of Nature and Natural Resources (IUCN) has declared the Western Ghats as one of the Biodiversity Hotspots in the world. As signatory to the Convention of Biological Diversity (CBD) our nation has the responsibility to conserve the biological W.P(C) No.26691 of 2010, etc. -:

160. :- resources for the sustained economic and social development of the society and for the maintenance of ecological stability. The Honourable Supreme Court of India has ordered that natural resources such as forests, rivers etc. shall be conserved as Public Trust for the welfare of the Society at large. The Apex Court while laying down the principle and guidelines of the 'Public Trust Doctrine' has stipulated that resources like air, sea, water and the forest have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The Honourable Supreme Court has further ordered that the 'Public Trust Doctrine' as laid down by it shall be part of the law of the land, that the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation, and that, where there are threats of serious and irreversiable damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. It has been observed that many ecologically fragile areas in the State are under the private ownership. Over- exploitation and unsound management of the resources therein would lead to irreversible degradation of social, economic and ecological stability of the State. As a precautionary and preventive measure,

the Government consider it necessary to enact a legislation to bring the ecologically fragile areas under the ownership of the State and to ensure their conservation for the welfare of the W.P(C) No.26691 of 2010, etc. -:

161. :- society and of the nation at large....." 77. The letter, after noticing the entire chronological details of promulgation of Ordinance, recommendation of the Select Committee and noting of the Governor, in the end, made the following request: "I am directed to request you that the assent of the President of India to the Bill may kindly be obtained and communicated." 78. There has been correspondence, including letter from the Government of India, Ministry of Environment and Forests (Forest Policy Division) and reply to the clarification sent by the Secretary to the Governor and ultimately, the President of India assented to the Bill. On the Bill itself, which contains endorsement of the Governor, the President of India recorded his assent on 25.4.2005 to the following effect: "I ASSENT TO THIS BILL." 79. Learned counsel for the petitioners submits W.P(C) No.26691 of 2010, etc. -:

162. :- that in the note put by the Governor there was no reference to Article 31C of the Constitution nor in the letters, which were forwarded from the State Government there was any reference to Article 31C, hence the assent having not been specifically sought for with regard to Article 31C, the assent dated 25.4.2005 shall be treated and assented only in context of Article 254(2) of the Constitution of India. It is submitted that actually the Governor has reserved the Bill finding out certain repugnancy with the Central Act, including Forest Conservation Act, 1980.On the contrary, the learned Senior Advocate for the State submits that the presidential assent need not be specific. It is submitted that the presidential assent is the general assent. He submits that when the assent is sought for and given in general terms, it is effective for all purposes. Learned counsel for the parties have placed reliance on various W.P(C) No.26691 of 2010, etc. -:

163. :- judgments of the Apex Court, which need to be considered first.

80. Learned counsel for both the parties have referred to Constitution Bench judgment reported in Gram Panchayat of Village, Jamalpur v. Malwinder Singh and others [(1985)3 SCC661. In the above case, presidential assent was sought

for by the State Legislature on Punjab Village Common Lands (Regulation) Act, 1953, under which Shamlat-deh lands have vested in the Panchayat. The above provisions were repugnant to Administration of Evacuee Property Act, 1950. The Punjab Village Common Lands (Regulation) Act, 1053 was reserved for the assent of the President for specific purpose under Articles 31 and 31A of the Constitution. The Act was not reserved for the assent of the President on the ground that it was repugnant to earlier Act passed by the Parliament, W.P(C) No.26691 of 2010, etc. -:

164. :- namely, 1950 Act. The Apex Court in the aforesaid case has laid down the following in paragraph 12 of the judgment:

"2. The Punjab Act of 1953 was reserved for consideration of the President and received his assent on December 26, 1953. Prima facie, by reason of the assent of the President, the Punjab Act would prevail in the State of Punjab over the Act of the Parliament and the Panchayats would be at liberty to deal with the Shamlat-deh lands according to the relevant Rules or bye-laws governing the matter, including the evacuee interest therein. But, there is a complication of some nicety arising out of the fact that the Punjab Act was reserved for the assent of the President, though for the specific and limited purpose of Articles 31 and 31-A of the Constitution. Article 31, which was deleted by the Constitution (Forty-fourth Amendment) Act, 1978 provided for compulsory acquisition of property. Clause (3) of that article provided that, no law referred to in clause (2), made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent. Article 31-A confers protection upon laws falling within clauses (a) to (e) of that article, provided that such laws, if made by a State Legislature, have received the assent of the President. Clause (a) of Article 31-A comprehends laws of agrarian reform. Since the Punjab Act of 1953 extinguished all W.P(C) No.26691 of 2010, etc. -:

165. :- private interests in Shamlat-deh lands and vested those lands in the Village Panchayats and since, the Act was a measure of agrarian reform, it was reserved for the consideration of the President. The judgment of the High Court shows that the hearing of the writ petitions was adjourned to enable the State Government to

place material before the Court showing the purpose for which the Punjab Act of 1953 was forwarded to the President for his assent. The record shows, and it was not disputed either before us or in the High Court, that the Act was not reserved for the assent of the President on the ground that it was repugnant to an earlier Act passed by the Parliament, namely, the Central Act of 1950. In these circumstances, we agree with the High Court that the Punjab Act of 1953 cannot be said to have been reserved for the assent of the President within the meaning of clause (2) of Article 254 of the Constitution insofar as its repugnancy with the Central Act of 1950 is concerned. The assent of the President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, as in the instant case, the assent of the President is sought to the Law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it. Not only was the President not apprised in the instant case that his W.P(C) No.26691 of 2010, etc. -:

166. :- assent was sought because of the repugnancy between the State Act and the pre-existing Central Act on the vesting of evacuee properties but, his assent was sought for a different, specific purpose altogether. Therefore, that assent cannot avail the State Government for the purpose of according precedence to the law made by the State Legislature, namely, the Punjab Act of 1953, over the law made by the Parliament, even within the jurisdiction of the State." 81. It is relevant to note that in the above observations the Apex Court had observed that "If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise.....".

82. The next judgment, which has been relied upon by learned counsel for the petitioners is Kaiser-I- Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd. [(2002)8 SCC182, which again was a Constitution Bench judgment. The contention that once President grants the "assent" to the State legislation, the state law would prevail on the W.P(C) No.26691 of 2010, etc. -:

167. :- said subject and such "assent" would be deemed to be an assent quo all earlier enactments made by the Parliament on the subject was negativated. Paragraphs 2 and 3 of the judgment are quoted below: "2. The contention is, once the President grants the "assent" to the State legislation, the State law would prevail on the said subject and such "assent" would be deemed to be an assent qua all earlier enactments made by Parliament on the subject.

3. This contention is negatived for the reasons recorded hereinafter. It is held that "consideration" by the President and his "assent" under Article 254(2) is limited to the proposal made by the State Government; the State legislation would prevail only qua the laws for which repugnancy was pointed out and the "assent" of the President was sought for. Proposal by the State is a sine qua non for "consideration" and "assent"." In the above case it was held that assent under Article 254(2) of the Constitution is limited to the proposal made by the State Government. The Apex Court in paragraph 14 of the judgment has observed as follows:

"4. In view of the aforesaid requirements, before obtaining the assent of the President, the State W.P(C) No.26691 of 2010, etc. -:

168. :- Government has to point out that the law made by the State Legislature is in respect of one of the matters enumerated in the Concurrent List by mentioning entry/entries of the Concurrent List and that it contains provision or provisions repugnant to the law made by Parliament or existing law. Further, the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by Parliament and the necessity of having such a law, in the facts and circumstances of the matter, which is repugnant to a law enacted by Parliament prevailing in a State. The word "consideration" would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by Parliament, the President may grant assent. This aspect is further reaffirmed by use of the word "assent" in clause (2), which implies knowledge of the President to the repugnancy between the State law and the earlier law made

by Parliament on the same subject-matter and the reasons for grant of such assent. The word "assent" would mean in the context as an expressed agreement of mind to what is proposed by the State." 83. Another Constitution Bench judgment, which has been referred to and relied in extenso by the W.P(C) No.26691 of 2010, etc. -:

169. :- parties is Rajiv Sarin and another v. State of Uttarakhand and others [(2011)8 SCC708 Kumaun and Uttarkhand Zamindari Abolition and Land Reforms Act, 1960, which provided for vesting of private forest lands in State due to agrarian reform came up for consideration. It was contended that the provisions of 1960 Act were repugnant to the Forest Act, 1927. Section 4A providing for vesting was introduced in the 1960 Act by amendment in the year 1978. On the requirement of obtaining presidential assent in the above case the following was laid down by the Apex Court in paragraph 58 of the judgment:

"8. Having discussed the law as applicable in the aforesaid manner and upon scrutiny of subject-matters of both the concurrent Acts, it is crystal clear that no case of repugnancy is made out in the present case as both the Forest Act, 1927 and the KUZALR Act operate in two different and distinct fields as pointed out hereinbefore. Accordingly, both the Acts are legally valid and constitutional. That being so, there was no requirement of obtaining any Presidential assent. Consequently, Article W.P(C) No.26691 of 2010, etc. -:

170. :- 254(2) of the Constitution has also no application in the instant case. However, it would be appropriate to discuss the issue as elaborate argument was made on this issue as well." 84. The Constitution Bench noted both the earlier Constitutional Bench judgments in Gram Panchayat of Village, Jamalpur's case (supra) and Kaiser-I- Hind (P) Ltd.'s case (supra). After noticing the relevant observations in both the above judgments in paragraphs 61 and 62, the following was laid down in paragraphs 64 and 65 of the judgment:

"4. If it is to be contended that Kaiser lays down the proposition that there can be no general Presidential assent, then such an interpretation would be clearly contrary to the observation of the Bench in para 27 itself where it states that it is not examining the issue whether such an assent can be taken as an assent.

65. Such an interpretation would also open the judgment to a charge of being, with respect, per incuriam as even though while noting the Jamalpur case, it overlooks the extracts in Jamalpur case dealing with the aspect of general assent: (SCC p. 669, para 12)

"2. ... The assent of the President under W.P(C) No.26691 of 2010, etc. -:

171. :- Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, as in the instant case, the assent of the President is sought to the law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it." 85. Another judgment of the Apex Court, which needs to be noticed is P.N.Krishna Lal v. Government of Kerala [(995)2 SCC187. In paragraphs 13 and 14 of the judgment the following was laid down:

"3. It is not the requirement of law under Article 254 that the State Government should seek assent of the President in respect of each and every specified provisions of the Central Act or Acts in respect of which there would be inconsistency or repugnancy in the operation of the Central provisions and the State W.P(C) No.26691 of 2010, etc. -:

172. :- enactment. It is enough that once the assent of the President is sought and given to the State amendment, though to some extent inconsistency or repugnancy exists between any provision, part or parts of any Act or Acts of any Central statutes, the repugnancy or inconsistency ceases to operate in relation to the State in which the assented State enactment operates.

14. In Jamalpur Gram Panchayat case the facts were that specific assent of the President was sought, namely, Article 31 and Article 31-A of the Constitution vis-`-vis Entry 18 of List II of the Seventh Schedule of the Constitution. The President had given specific assent. The Shamlat-deh lands in Punjab were owned by the proprietors of the village, in proportion to their share in the property of the lands

held by them. After the partition, the proprietary interests in the lands of the migrants and proportionate to share of their lands vest in the Union of India. The question arose whether the Punjab Village Common Lands (Regulation) Act, 1953 prevails over Evacuee Property Act, 1950. It was contended that in view of the assent given by the President, the State Act prevails over the Central Act. This Court in that context considered the scope of the limited assent. Chandrachud, C.J.

speaking for majority, held that the Central Act, 1950 prevails over the Punjab Act, 1953 and the assent of the President which was obtained for a specific purpose cannot be utilised for according precedence to the Punjab Act. At page 42, placitum `B' to `E', this Court held that W.P(C) No.26691 of 2010, etc. -:

173. :- "the assent of the President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise." Thus it is clear that this Court did not intend to hold that it is necessary that in every case the assent of the President in specific terms had to be sought and given for special reasons in respect of each enactment or provision or provisions. On the other hand, the observation clearly indicates that if the assent is sought and given in general terms it would be effective for all purposes. In other words, this Court observed that the assent sought for and given by the President in general terms could be effective for all purposes unless specific assent is sought and given in which event it would be operative only to that limited extent." The proposition was reiterated that if the assent is sought and given by the President in general terms, it could be effective for all purposes unless a specific assent is sought and given, in which event it would be operative only to that limited extent. W.P(C) No.26691 of 2010, etc. -:

174. :- 86. In the correspondence regarding the presidential assent, which has been submitted by the learned Government Pleader, the noting of the Governor on the Bill for reserving the Bill for consideration of the President has been referred to in his minutes. The endorsement dated 3.12.2003 as noted by the Governor in the

Bill has already been extracted, which only stated that "I reserve this Bill for the consideration of the President". From the letter of the Law Secretary, which was dated 15.1.2004, sent to the Secretary to Governor along with letter addressed to the Secretary to Government of India as well as the revised letter dated 27.2.2004, although all chronological events, passing of Ordinance and recommendation of Select Committee have been noticed as well as the minutes recorded by the Governor, there was no specific proposal praying for presidential assent limited to any particular W.P(C) No.26691 of 2010, etc. -:

175. :- enactment. The Law Secretary sent letter dated 27.2.2004 stating "a revised draft letter for onward transmission to the Government of India for obtaining assent of the President of India is enclosed as desired in the letter cited". Copy of the revised draft letter for onward transmission to the Government of India is on the compilation from pages 39 to 51. It is relevant to extract the last portion of the letter, which also extracted the minutes recorded by the Governor, which is to the following effect: "When the file was circulated to the Governor for his assent to the Bill, His Excellency reserving the Bill for the consideration of the Honourable President has minuted as follows: "I have carefully gone through the provisions of the Bill that is before me. In the proposal for the original legislation (pages 45-52 of vol.II and 137-147 of vol.I of file No17277/E2/99/F&WLD), I find conflicting legal opinions, one strongly advising that it requires the previous sanction of the President, and the other refuting that. In any case, being a fait accompli, this is a matter that is W.P(C) No.26691 of 2010, etc. -:

176. :- outside my consideration now. I am afraid, the Bill seeks to encroach on the powers of the Government of India. Dereservation of forests, any land which currently is classified as Forest, is a function that comes within the jurisdiction of the Government of India, as the law stands now. Section 2 of the Forest Conservation Act, 1980 says: "2. Restriction on the dereservation of forestrs or use of forest land for non forest purpose-Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or

any portion thereof, shall cease to be reserved; (ii) that any forest lar any portion thereof may be used for any non-forest purpose: (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government. (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion for the purpsoe of using it for re- afforestation. Explanation- For the purpose of this section 'Non- W.P(C) No.26691 of 2010, etc. -:

177. :- forest purpose" means the breaking up or clearing of any forest land or portion thereof for- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants; (b) any purpose other than re-afforestation." Even the very definition given to the term "Forest" in the present Bill:- '"forest" means any land principally covered with naturally grown trees and undergrowth and includes any forest statutorily recognised and declared as reserved forest, protected forest or otherwise, but does not include any land which is used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other sites of residential buildings and surrounding essential for the convenient use of such buildings;' cannot, in any way, be repugnant to the provisions of Forest Conservation Act, 1980, as both have broadly the very same objectives. The above observations are in light of the provisions of Article 254 of the Constitution of India. (The subject 'Forests' is listed as Entry 17-A, List III (Concurrent List), Seventhy Schedule in the Constitution.) In view of these circumstances, I am constrained to reserve this Bill for consideration of the Honourable President of India. Action may kindly be taken in this regard.". I am directed to request you that the assent of the W.P(C) No.26691 of 2010, etc. -:

178. :- President of India to the Bill may kindly be obtained and communicated, at an early date. Six copies each of the following documents are also enclosed:- 1. The Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Bill, 2001, as introduced in the Legislative Assembly and its English translation.

2. The Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Bill, 2001, as reported by the Select committee.

3. The Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Bill, 2001, as passed by the Kerala Legislative Assembly and its English translation." 87. The Bill was reserved by the Governor for assent of the President under Articles 200 and 2001 of the Constitution. Articles 200 and 2001 are quoted as below:

"00. Assent to Bills.--When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President: Provided that the Governor may, as soon as W.P(C) No.26691 of 2010, etc. -:

179. :- possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom: Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

201. Bills reserved for consideration.--When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom: Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State

together with such a message as is mentioned in the first proviso to Article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the W.P(C) No.26691 of 2010, etc. -:

180. :- House or Houses with or without amendment, it shall be presented again to the President for his consideration." 88. When the Bill is reserved for consideration of the President, it is to be presumed that entire Bill has been considered and assented by the President. All provisions of the Bill shall be treated to be assented by the President. A provision in the Bill, which subsequently became the Act, 2003, which contains provision giving effect to the directive principles in Article 39(b) of the Constitution, shall also be treated to have been assented by the President. As noted above, present is not a case where a specific proposal praying for presidential assent with regard to a particular purpose has been prayed for. In the minutes the Governor has noted certain reasons, but the reason given for reserving the Bill does not limit the consideration by the President all the provisions of the W.P(C) No.26691 of 2010, etc. -:

181. :- Bill in any manner, especially when there is no specific proposal seeking limited or specific assent of the President. There is one more reason, which requires us giving full effect to the presidential assent dated 25.4.2005. After the Bill is received by the Government of India, there are several noting by the Government, discussions and consultations. The Government of India being not a party in the leading Writ Petition, W.P (C).No.26691 of 2010 or W.P(C).No.14064 of 2007, in which detailed counter affidavit and additional counter affidavit have been filed by the State, it is not safe to conclude that the President was not appraised of all facts and consequences of 2001 Bill. It is well settled that assent by the President is not justiciable. Assent of the President being part of the legislative process, has to be given its due weight and effect. The Constitution Bench judgments of the Apex Court as relied on by the W.P(C) No.26691 of 2010, etc. -:

182. :- parties as noted above, do contemplate both a specific proposal and specific assent as well as general assent. When there is no specific proposal for

any specific or qualified assent, the assent dated 25.4.2005 has to be treated as a general assent, which will also enure to the benefit of Article 31C as well as Article 31A of the Constitution of India. The issue No.VI is answered accordingly. ISSUE NO.VII89 We have already held that the 2003 Act is protected from the challenge under Articles 14 and 19 of the Constitution of India in view of the protection extended to the Act under Article 31C of the Constitution. However looking into the elaborate submissions made by the learned counsel for the petitioners characterising the 2003 Act arbitrary, discriminatory, devoid of rational classification, we are W.P(C) No.26691 of 2010, etc. -:

183. :- of the view that said submissions also need to be considered on merits to decide the real nature and character of the Act. Thus we proceed to examine the submissions challenging the Act as violative of Article 14 and 19 of the Constitution on merits also.

90. Grounds which have been pressed by the learned counsel for the petitioners challenging the Act under Articles 14 and 19 of the Constitution include that (i) the Act takes away land of the petitioners without providing for any compensation for the land taken whereas Article 300A inhears payment of compensation; (ii) there is no rational classification between the land which is notified under Sec.3 and the land which is notified under Sec.4 and denying compensation to one category of owners, i.e., whose lands are notified under Sec.3 which is arbitrary and discriminatory. (iii) The mere fact that petitioner's land W.P(C) No.26691 of 2010, etc. -:

184. :- are lying contiguous to or encircled by reserved forest, vested forest or any other land owned by the Government does not furnish any valid reason for classification of the land. What is contiguous has neither been defined in the Act nor there is any rational definition. Whether the entire land has to be contiguous or even if it is only a fraction of the land is contiguous, the entire land is taken, are issues for which there is no indication in the Act and there is no specific explanation. Definition of the ecologically fragile land is an unsatisfactory definition without being based on any rational basis. Submissions in detail have already been noted above which needs no repetition. Before we take up the challenge to

the aforesaid grounds to the Act it is relevant to note certain basic facts and principles governing the environmental law. The Apex Court by its various judgments has laid down various W.P(C) No.26691 of 2010, etc. -:

185. :- principles and directions to the Central and State Governments regarding environment, ecology and forest. As noted above, Article 48A obliges the State to endeavour to protect and improve the environment and safeguard the forest and wild life of the country, to have a clean environment have also been read under Article 21 of the Constitution of India. Public Trust doctrine that the natural resources of the earth "air, water, forest, hills, etc., are held by the State in trust which have to be utilised for the welfare of the common people.

91. More than three decades ago, Justice O.Chinnapa Reddy in State of Tamil Nadu v. M/s.HInd Stone and others [A.I.R1981SC711 sounded a note of caution to all governments in following words: "6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are W.P(C) No.26691 of 2010, etc. -:

186. :- not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in thew interest of the nation.............." 92. A judgment sounding great concern on the environmental law was delivered by the Supreme Court in M.C.Mehta v. Kamal Nath ([1997] 1 SCC388. The Apex Court in the said judgment held that the public has a right to expect certain lands and natural areas to retain their natural characteristic which concept is finding its way into the law of the land. It is useful to quote paragraph 23 of the judgment.

23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled An ecological perspective on property : A call for judicial protection of the public's interest in environmentally critical resources published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words: W.P(C) No.26691 of 2010, etc. -:

187. :- "Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained. `Human activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.' Professor Barbara Ward has written of this ecological imperative in particularly vivid language: W.P(C) No.26691 of 2010, etc. -:

188. :- `We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".' There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened. Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources -- for example, wetlands and riparian forests -- can no longer

be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature. W.P(C) No.26691 of 2010, etc. -:

189. :- In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions." Elaborating the public trust doctrine it was further observed by the Apex Court in the said case that judicial concern has been so in protecting all ecologically important lands. In paragraphs 25 and 33 the following was laid down.

"5. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental W.P(C) No.26691 of 2010, etc. -:

190. :- authority: "Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses." 33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically

important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in Mono Lake case to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In Phillips Petroleum Co. v. Mississippi the United States W.P(C) No.26691 of 2010, etc. -:

191. :- Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. The concept of ecologically fragile land was also noticed in the above judgment. It was laid down that State is the trustee of all natural resources and under legal duty to protect the natural resources. It is further held that these resources cannot be converted into private ownership. Following was laid down in paragraph 34.

"4. Our legal system -- based on English common law -- includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for W.P(C) No.26691 of 2010, etc. -:

192. :- public use cannot be converted into private ownership.

93. The next judgment is T.N.Godavarman Thirumulpad v. Union of India and Others [(1997) 2 SCC267. The Apex Court in the above case held that the words "forest must be understood according to its dictionary meaning and the forest be identified by the Government irrespective of ownership. Following is laid down by

the Supreme Court in the said case. "4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The W.P(C) No.26691 of 2010, etc. -:

193. :- provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat Rural Litigation and Entitlement Kendra v. State of U.P. and recently in the order dated 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay. In paragraph 5 of the judgment general directions were issued by the Apex Court. It is relevant to quote W.P(C) No.26691 of 2010, etc. -:

194. :- direction No.5 which is to the following effect:

5. We further direct as under: I. GENERAL1 In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction. W.P(C) No.26691 of 2010, etc. -:

195. :- 3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North- Eastern States to any other State of the country either by rail, road or waterways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for

defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

5. Each State Government should constitute within one month an Expert Committee to: (i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest; (ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and W.P(C) No.26691 of 2010, etc. -:

196. :- (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

94. In T.N.Godavarman Thirumulpad v. Union of India and Others [(2002) 10 SCC606 further directions were also issued by the Apex Court on 30.10.2002. In the above case the Apex Court has extracted the off quoted reply of the wise Indian Chief of Seattle to the offer of the Great White Chief in Washington to buy their land. The reply contained a wisdom of ages which has been extensively extracted in paragraph 14 of the judgment which we quote as below:

"4. "Environment" is a difficult word to define. Its normal meaning relates to the surroundings, but obviously that is a concept which is relatable to whatever object it is which is surrounded. Einstein had once observed, "The environment is everything that isn't me." About one-and-a-half century ago, in 1854, as the famous story goes, the wise Indian Chief of Seattle replied to the offer of the Great White Chief in Washington to buy their land. The reply is profound. It is W.P(C) No.26691 of 2010, etc. -:

197. :- beautiful. It is timeless. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. The whole of it is worth quoting as any extract from it is to destroy its beauty: "How can you buy or sell the sky, the warmth of the land? The idea is strange to us. If we do not own the freshness of the air and the sparkle of the water, how can you buy them? Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people. The sap which courses through the

trees carries the memories of the red man. `the white man's dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man -- all belong to the same family'. So, when the Great Chief in Washington sends word and he wishes to buy our land, he asks much of us. The Great Chief sends word he will reserve us a place so that we can live comfortably to ourselves. He will be our father and we will be his children. So we will consider your offer to buy our land. But it will not be easy. For this land is sacred to us.
 This shining water moves in the streams and rivers is not just water but the blood of our ancestors. If we sell you land, you must remember that it is sacred, and you must teach your children that it is sacred and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father. The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and feed our children. If we sell you our land you must remember, and teach your children, that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother. We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy and when he has conquered it, he moves on. He leaves his father's graves behind, and he does not care. He kidnaps the earth from his children. His father's grave and his children's birthright are forgotten. He treats his mother, the earth, and his brother, the sky, as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert. I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and
 does not understand. There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring or the rustle of an insect's wings. But

perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there in life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell of the wind itself, cleansed by a midday rain, or scented with the piqon pine. The air is precious to the red man, for all things share the same breath -- the beast, the tree, the man, they all share the same breath. The white man does not seem to notice the air he breathes. Like a man lying for many days, he is numb to the stench. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grandfather his first breath also receives the last sign. And if we sell you our land, you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadow's flowers. So we will consider your offer to buy our land. If we decide to accept, I will make one condition. The white man must treat the beasts of this land as his brothers. I am a savage and I do not understand any other way. I have seen a thousand rotting buffaloes on the prairie, left W.P(C) No.26691 of 2010, etc. -:

200. :- by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive. What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected. You must teach your children that the ground beneath their feet is the ashes of our grandfathers, so that they will respect the land. Tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth is our mother. Whatever befalls the earth befalls the sons of the earth. If man spits upon the ground, they spit upon themselves. This we know: the earth does not belong to man, man belongs to the earth. This we know: all things are connected like the blood which unites one family. All things are connected. Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life; he is merely a strand in it. Whatever he does to the web he does to himself. Even the white man, whose God walks and talks with him as friend to

friend cannot be exempt from the common destiny. We may be brothers after all. We shall see. One thing we know, which the white man may one day discover -- our God is the same God. You may think now that you own him as you wish to own our land; but you W.P(C) No.26691 of 2010, etc. -:

201. :- cannot. He is the God of man, and his compassion is equal for the red man and the white. This earth is precious to him, and to harm the earth is to heap contempt on the creator. The white too shall pass perhaps sooner than all other tribes. Contaminate your bed and you will one night suffocate in your own waste. But in your perishing you will shine brightly, fired by the strength of the God who brought you this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us, for we do not understand when the wild buffaloes are slaughtered, the wild horses are tamed, the secret corners of the forest heavy with scent of many men and the view of the ripe hills blotted by talking wires. Where is the thicket? Gone. Where is the eagle? Gone. The end of living and the beginning of survival." The Apex Court noted that environmental protection has become a matter of great concern for human existence. It was held that it is the constitutional imperative on the Central and State Governments to safeguard the environment and also take measures to protect and improve the interest following was laid down in paragraphs 17 and 29. W.P(C) No.26691 of 2010, etc. -:

202. :-

"7. Article 48-A in Part IV (Directive Principles) of the Constitution of India, 1950 brought by the Constitution (Forty-second Amendment) Act, 1976, enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes, rivers and wildlife and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic

environment. The State, in particular has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, W.P(C) No.26691 of 2010, etc. -:

203. :- therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is constitutional imperative on the Central Government, State Governments and bodies like municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the man- made environment and natural environment. xx xx xx 29. To protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The world is under an impenetrable cloud. In view of enormous challenges thrown by the industrial revolution, the legislatures throughout the world are busy in their exercise to find out means to protect the world. Every individual in the society has a duty to protect nature. People worship the objects of nature. The trees, water, land and animals had gained important positions in the ancient times. As Manu VIII, p. 282 says, different punishments were prescribed for causing injuries to plants. Kautilya went a step further and fixed the punishment on the basis of importance of the part of the tree." 95. The next judgment we need to be noted is the judgment of the Apex Court in T.N. Godavarman W.P(C) No.26691 of 2010, etc. -:

204. :- Thirumulpad v. Union of India and Others [(2006) 1 SCC1. After noticing the constitutional provisions regarding protection and improvement of natural

environment including forest, river, well, etc, the following was laid down in paragraphs 3 and 68. "3. Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation development is also necessary but it has to be consistent with protection of environments and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systemic approach so as to balance economic development and environmental protection. Both have to go hand in hand. In the ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long-lasting. Such development would be counterproductive. Therefore, there is an absolute need to take all precautionary measures when forest lands are sought to be directed for non-forest use. xx xx xx 68. The duty to preserve natural resources in pristine purity has been highlighted in M.C. Mehta v. W.P(C) No.26691 of 2010, etc. -:

205. :- Kamal Nath. After considering the opinion of various renowned authors and decisions rendered by other countries as well on environment and ecology, this Court held that the notion that the public has a right to expect certain lands and natural areas to retain their natural characteristics is finding its way into the law of the land. The Court accepted the applicability of public trust doctrine and held that it was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. These natural resources have a great importance to the people as a whole that it would be wholly unjustified to make them subject to private ownership. These resources being a gift of nature, 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. It was held that our legal system -- based on English common law -- includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of these resources. The

State as a trustee is under a legal duty to protect these natural resources. Summing up the Court said: (SCC p. 413, para 35)

"5. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public W.P(C) No.26691 of 2010, etc. -:

206. :- who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining the legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources." In view of the above, we hold that the natural resources are not the ownership of any one State or individual, the public at large is its beneficiary and, therefore, the contention of Mr. Venugopal that the amount of NPV shall be made over to the State Government cannot be accepted." The Apex Court further noticed the Forest Policy, 1988 of the Central Government. Following was laid down in paragraphs 72 and 73: W.P(C) No.26691 of 2010, etc. -:

207. :-

"2. The Forest Policy has a statutory flavour. The non-fulfilment of the aforesaid principle aim would be violative of Articles 14 and 21 of the Constitution. The basic objectives of the Forest Policy, 1988 are: "2.1. The basic objectives that should govern the National Forest Policy are the following: -- Maintenance of environmental stability through preservation and, where necessary, restoration of

the ecological balance that has been adversely disturbed by serious depletion of the forests of the country. -- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country. -- Checking soil erosion and denudation in the catchment areas of rivers, lakes and reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs. -- Checking the extension of sand dunes in the desert areas of Rajasthan and along the coastal tracts. -- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands. -- Meeting the requirements of fuelwood, fodder, minor forest produce and small timber of the rural and tribal populations. -- Increasing the productivity of forests W.P(C) No.26691 of 2010, etc. -:

208. :- to meet essential national needs. -- Encouraging efficient utilisation of forest produce and maximum substitution of wood. -- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests. 2.2. The principal aim of the Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim." 73. It has been recognised that one of the essentials for forest management is the conservation of total biological diversity, the network of national parks, sanctuaries, biosphere reserves and other protected areas to be strengthened and extended adequately." After noticing the aforesaid pronouncements of the Supreme Court it is also relevant to note the reasons given by the State Government in its counter affidavit for enacting the 2003 Act. A detailed counter affidavit has been filed in Writ Petition No.6814 of 2013 which has been adopted in almost all the Writ Petitions by the W.P(C) No.26691 of 2010, etc. -:

209. :- State. Counter affidavits notice the relevant constitutional provisions. As stated above, there is an ongoing global biodiversity crisis due to unprecedented

loss of natural ecosystem. Paragraphs 12 and 13 of the counter affidavit are quoted below:

"2. Further on notice of the alarming depletion of Forests of the country over years, the Government of India have decided to review and revise the existing national Forest Policy of 1952 and hence adopted a fresh national Forest Policy in the year 1988 to be followed by all the States. The prime objectives of the National Forest Policy, 1988 are:- a. Maintenance of environmental stability through preservation and where necessary, restoration of ecological balance that has been adversely disturbed by serious depletion of the forests of the country. b. Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country. c. The principal aim of forest policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.(Para 2.1 & 2.02 of National Forest Policy 1988). The National Forest Policy 1988 also provides for essential of forest management. As per para 3.3 of the W.P(C) No.26691 of 2010, etc. -:

210. :- Policy, "for the conservation of total biological diversity, the network of national parks, sanctuaries, biosphere reserves and other protected areas should be strengthened and extend adequately." Further para 4.3.1 of the policy provides that "schemes and project which interfere with forests that clothe steep slopes, catchments of rivers, lakes and reservoirs, geologically unstable terrain and such other ecologically sensitive areas should be severely restricted. Tropical rain/moist forests particularly in areas like Arunachal Pradesh, Kerala, Andaman and Nicobar Islands, should be totally safeguarded". It is evident from the above policy that the importance of protection of tropical forest of Kerala have been recognized by Government of India itself.

13. Thus it may be seen that the constitutional provisions and the laws as laid down by Honourable Supreme Court and Honourable High Court and the National Forest Policy 1988 adopted by Government of India stipulate that:

1. The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country(Art.48A).

2. It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures(Art.51A(g).

3. The State is the trustee of all natural resources such as seashore, running W.P(C) No.26691 of 2010, etc. -:

211. :- waters, airs, forests and ecologically fragile lands (M.C.Mehta vs. Kamalnath and others [(1997) 1 SCC388. " Referring to the above conservation of biodiversity and sustenance of ecological services from the forest, the following was stated in paragraph 15.

"5. Conservation of biodiversity and sustenance of ecological services from forests are the serious concerns of every Government, every community and every citizen. Timber, firewood and non-timber forest produce which are merchantable products are no longer the major concerns of forest management. But more valuable are the ecological services rendered by the forests which shall be made available not only to the community in and around the forests, but also to all the human beings in the region and all over the world. It has now been widely accepted that water is the most important product from forest. In the absence of forest it would not be possible to retain water in the soil in high ranges and to sustain flow in the streams and rivers. Forests control floods, sustain perennial streams and rivers during lean summer months, regulate greenhouse gases in the atmosphere, minimize global warming, regulate climate change, act as carbon sink and release oxygen. They conserve biodiversity and genetic resources of the decease resistant and medicinally valuable plants which from the resource base for W.P(C) No.26691 of 2010, etc. -:

212. :- manufacture of medicines in all systems of medicines such as Ayurveda, Allopothy, Homeo, Unani, Sidha etc and for very large number of local health traditions(Naattu Vaidyam). The tropical rain forests in Western ghats are rich repositories of biodiversity and provide maximum ecological services as

mentioned above. It is in view of this fact, the Conservation International have declared Western ghats to be a biodiversity hot spot (World's biological richest and most threatened eco system). Over 50% of the Earth's species are confined to the tropical latitudes, where poverty and population pressure put tremendous demands on natural eco systems. Even within the tropics, some regions have higher levels of biodiversity and endemism and need to be prioritized for conservation. Therefore, the concept of biodiversity hot spot was first put forward by Myers and the Western Ghats of India and Sri Lanka were included in the first list of 18 global diversity hot spots due to high levels of species endemism. The list of biodiversity hot spots has now increased to 34 reflecting a severe threat to biodiversity. For example, in the Western Ghats/Sri.Lanka (WG/SL) biodiversity hot spot, forest loss has been so rapid that out of the original extent of 182,500 km2 of primary vegetation only 12,480 km2 (i.e. 6.8%) remains (current science volume 93, No.11, 10 December, 2007). All forest area in the State of Kerala are either on the slopes of the Western Ghats or at its foot hills and form part and parcel of the biodiversity hot spot. It has been specifically stated in para 4.3.1 in the National Forest W.P(C) No.26691 of 2010, etc. -:

213. :- Policy that tropical rain forests in Kerala, Arunachal Pradesh and Andamans are most precious ecosystems which shall be conserved for the benefit of the entire humanity. Therefore it is imperative that forest areas in this biodiversity hot spots are to be conserved for the present and future generations."
96. It has been further stated that the 2003 Act is a legislation precisely to operationalise the legal principle laid down by the Constitution, the Supreme Court as well as different High Courts. Regarding mismanagement of ecologically fragile land, the following was stated in paragraphs 19 and 20.

"9. An examination of the scheme of law as per the Kerala Forest (Vesting and Management of Ecologically Fragile Land) Act, 2003 (hereinafter referred to as EFL Act) will clearly show that the said legislation is precisely to operationalise the legal principles laid down by the Constitution, the Honourable Supreme Court and Honourable High Court. In M C Mehta Case, the Honourable Supreme Court has stated that public at large is the beneficiary of sea shore, running water, airs, forests and ecological fragile lands. Central and State Governments have enacted

various laws for coastal zone regulation, prevention of water and air pollution
 and for protection of forests in Government ownership etc. But there has been no specific law for protecting forests and other ecologically fragile lands under private ownership. As pronounced by the Honourable Supreme Court and this Honourable Court, such forests and other ecologically fragile lands cannot be allowed to be managed by private persons and for commercial purposes. State, as trustees of such lands, have a duty to take them over and manage scientifically for public good. The impugned EFL Act is precisely to make up the deficiency in this regard in the present legal system.

20. Kerala has several examples of mismanagement of ecologically fragile lands. If is well known fact that estuaries and lakes with mangroves vegetation around them are the best spawning ground for fishes. Depending upon seasons, fish population, in large numbers accumulate in such spawning areas. Private individuals owning such areas indulge in intensive fishing similar is the case in respect of roosting and feeding areas of migratory birds and nesting sites of water birds. Private individuals hunt birds from such sites. It is also well known that marine turtles travels thousands of kilometers to go to the beaches chosen by them and lay eggs there. These eggs are stolen and eaten by local people as delicacy. Several such examples of mismanagement and greed in areas of immense ecological values can be cited within the State. If they are not managed
 scientifically and prudently many species would face threat of poaching and extinction." From the above it is clear that legislation 2003 is an enactment by the State Legislature to give effect to the directive principle of state policy as contained in Part IV of the Constitution and the various pronouncements and directions issued by the Supreme Court by its various judgments. As noted above, tropical forest in the western ghats, which has been declared as a bio- diversity hot-spot by the International Union for Conservation of Nature and natural resources, the 2003 Act been passed to conserve natural resources which are rich repositories of bio-diversity extremely susceptible to rapid irreversible degradation. The

enactment is an arbitrary legislation does not commend us.

97. Ecological fragile land has been defined in Sec.2(b) as any forest land or any portion thereof held W.P(C) No.26691 of 2010, etc. -:

216. :- by any person and lying contiguous to or encircled by a reserved forest or a vested forest or any other forest land owned by the Government and predominantly supporting natural vegetation. Forest has been defined in Sec.2(c). For a land to be ecologically fragile land the pre-condition is that it should be for predominantly supporting natural vegetation. The land lying contiguous or encircled by a reserved forest or a vested forest or any other forest is with an object of protecting forest and managing the same as per the provision in Sec.16 of the 2003 Act. To maintain forest cover as far as possible to support lives on the earth is an eminent necessity. Forest protect the water, streams and the ground water is an accepted phenomina. In view of the pronouncements of the Supreme Court and the constitutional obligation no one can dispute that it is becoming the necessity of the day W.P(C) No.26691 of 2010, etc. -:

217. :- to maintain forest in its pristine form. Thus we are not satisfied that there is no rational basis for defining ecologically fragile land or vesting lands in the State. It is to be noted that it is only the forest predominantly supporting natural vegetation which has been taken under the fold of the Act. Even within the forest there are several land which have been exempted i.e.(i) which is used principally for the cultivation of crops of long duration (ii) any other sites of residential buildings and surroundings essential for the convenient use of the said building. The forest land which is used principally for cultivation of crops of long duration, sites of residential buildings and surroundings have been exempted from the ambit of ecologically fragile land makes the provision reasonable non-arbitrary.

98. Much emphasis has been given that there is no valid classification between the land notified under Sec.3 as well as the land notified under Sec.4. Section 3 W.P(C) No.26691 of 2010, etc. -:

218. :- vests ownership and possession of ecologically fragile land held by any person in the State with effect from the commencement of the Act. The aforesaid

vesting is automatic by operation of law. The vesting of the above land is as per the definition under Sec.2(b) and 2(c) of the 2003 Act. Such land which is vested under Sec.3 is an identifiable land by the contiguity with the reserve and vested forest. Or land which is encircled by reserve forest and vested forest. It cannot be said that there is no basis for defining the said land. It is submitted that the word contiguous has not been satisfactorily defined and may lead to uncertainty and arbitrary exercise of power for issuing Notification under Sec.3(2). The word "contiguous" has been defined in Law Lexicon by P.Ramanatha Aiyar, 11th Edn., in the following manner: "Contiguous. Adjoining; adjacent. "What is contiguous must be fitted to touch entirely on one side : fields are adjoining to each other; houses contiguous to each other."(Crabbe. Synonyms)" W.P(C) No.26691 of 2010, etc. -:

219. :- It has also been submitted that lands which are separated by river, or streams have also treated as contiguous. It is useful to note Sec.2(d) which defined land as "land includes rivers, streams and its origin and other water bodies." The mere fact that the river flows between vested forest and land owned by a person cannot lead to the conclusion that such land is not contiguous. Exercise of declaring and notifying any land which is not contiguous under Sec.3(2) may be incorrect exercise of power by the authorities which can be corrected by machinery provided in law, but that cannot be a ground to declare the invalidity of statute. The land which is covered by Sec.4 Notification is within the power vested in the Government to declare any land as ecologically fragile land after receiving recommendation of the Advisory Committee. Under Sec.15 of the Act a High Power Committee has been W.P(C) No.26691 of 2010, etc. -:

220. :- constituted consisting of the Principal Chief Conservator of Forest, Secretary of the Forest Department and other experts on the subject. Further for the land notified under Sec.4 compensation is also contemplated by virtue of Section 8 of the Act . Those land which is vested under Sec.3(1) and lands which is to be contemplated to be notified under Sec.4 are entirely different and based on different criteria. There is valid classification between land which is vested under Sec.3 (1) and subsequently notified under Sec.3(2) as well as the land notified under the Sec.4. It cannot be said that classification is irrational or without

any basis. One more reason for rational classification between land vested under section 3 and notified under section 4(2) has been explained which gives justification for classification. If is useful to refer paragraph 77 of the counter affidavit (relevant portion) in which following W.P(C) No.26691 of 2010, etc. -:

221. :- was stated. "........ The lands which vests in th Government by virtue of Section 3 are those lands covered by Section 2 (b) (i) of the above Act. In those lands, there is no human skill, labour and effort has been made into effect. In such class of forest land or portion thereof , there is no need to pay any compensation to the person who is holding the same. There is clear distinction between the properties covered by Section 2(b)(i) and 2(b)(ii). The properties covered by 2(b)(i) are those properties on which no human skill, labour and resources have been spent for agricultural operations. Therefore, the owners of such forest lands or portions thereof are not entitled to any amount as compensation.

"99. Now we come to another ground of challenge of the petitioners to the Sec.3 of the Act. Submissions of the petitioners are to the effect that Sec.3 contemplated vesting of ecologically fragile land without payment of compensation. It is submitted that land of petitioners cannot be vested in the State without payment of compensation and the vesting of land is arbitrary and discriminatory and violates Article 14 of W.P(C) No.26691 of 2010, etc. -:

222. :- the Constitution. It is submitted that even though right of property is not fundamental right, the entitlement to receive compensation for the land acquired cannot be denied. Right to property stood as a fundamental right as contained in the Constitution initially.

100. Article 31A was inserted by the Constitution (1st Amendment Act, 1951) to protect Zamindari Laws. By the 44th Amendment Act, 1978, Articles 19(1)(f) and 31 were deleted from the Constitution and Article 300A was inserted in Part XII. A Chapter, Chapter IV, "Right To Property". It is useful to quote paragraphs 3, 4 and 5 of the Statements of Objects and Reasons of the Constitution (44th Amendment) which are to the following effect: "3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be a fundamental

right and become only a legal right. Necessary amendments for this purpose are being made to Article 19 and Article 31 W.P(C) No.26691 of 2010, etc. -:

223. :- is being deleted. It would, however be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.

4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.

5. Property, while ceasing to be fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law." Noticing the amendment made by constitution 44th Amendment, it has been held by a Constitution Bench of this Court that right to property is no longer fundamental right. It is useful to quote paragraph 77 of the judgment of the Apex Court in Rajiv Sarin v. State of Uttarakhand [(2011) 8 SCC708.

"7. Article 31(2) of the Constitution has since been repealed by the Constitution (Forty-fourth Amendment) Act, 1978. It is to be noted that Article 300-A was inserted by the Constitution (Forty-fourth Amendment) Act, 1978 by practically re-inserting Article 31(1) of the Constitution. Therefore, right to property is no longer a fundamental right but a right envisaged and conferred by the W.P(C) No.26691 of 2010, etc. -:

224. :- Constitution and that also by retaining only Article 31(1) of the Constitution and specifically deleting Article 31(2), as it stood. In view of the aforesaid position the entire concept of right to property has to be viewed with a different mindset than the mindset which was prevalent during the period when the concept of eminent domain was the embodied provision of fundamental rights. But even now as provided under Article 300-A of the Constitution the State can proceed to acquire land for specified use but by enacting a law through State Legislature or by Parliament and in the manner having force of law.

101. The question which is to be considered is as to whether Article 300A can be read to mean that for taking away a property of an owner by law, payment of compensation is must. It is clear that when the State exercise the power of the eminent domain for acquiring private property, provision is generally made in the Statute to pay compensation to be fixed or determined according to the criteria made in the Statute. But a law without payment of compensation may or may not attract the vice of arbitrariness. Constitution Bench of this Court in K.T. Plantation Private Limited and W.P(C) No.26691 of 2010, etc. -:

225. :- another v. State of Karnataka [(2011) 9 SCC1 had elaborately considered Article 300A and payment of compensation. After noticing the entire constitutional history of right to property, the following was laid down in paragraphs 166 to 178.

"66. Article 300-A, when examined in the light of the circumstances under which it was inserted, would reveal the following changes:

1. Right to acquire, hold and dispose of property has ceased to be a fundamental right under the Constitution of India.

2. Legislature can deprive a person of his property only by authority of law.

3. Right to acquire, hold and dispose of property is not a basic feature of the Constitution, but only a constitutional right.

4. Right to property, since no more a fundamental right, the jurisdiction of the Supreme Court under Article 32 cannot be generally invoked, aggrieved person has to approach the High Court under Article 226 of the Constitution.

167. Arguments have been advanced before us stating that the concept of eminent domain and its key components be read into Article 300-A and if a statute deprives a person of his property unauthorisedly, without adequate compensation, then the statute is liable to be challenged as violative of Articles 14, 19 and 21 and on the principle of the rule of law, which is the basic structure of our Constitution. Further, it was also contended that W.P(C) No.26691 of 2010, etc. -:

226. :- the interpretation given by this Court on the scope of Articles 31(1) and (2) in various judgments be not ignored while examining the meaning and content of Article 300- A.

168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.

169. This Court in State of W.B. v. Vishnunarayan and Associates (P) Ltd., while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300- A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights.

170. Article 300-A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also argued that the twin requirements of "public purpose" and "compensation" in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of W.P(C) No.26691 of 2010, etc. -:

227. :- eminent domain and, therefore, of List III Entry 42, as well and, hence, would apply when the validity of a statute is in question.

171. On the other hand, it was the contention of the State that since the Constitution consciously omitted Article 19(1)(f), Articles 31(1) and 31(2), the intention of Parliament was to do away the doctrine of eminent domain which highlights the principles of public purpose and compensation.

172. Seervai in his celebrated book Constitutional Law of India (4th Edn.), spent a whole Chapter XIV on the Forty-fourth Amendment, while dealing with Article 300-A. In Para 15.2 (pp. 1157-58) the author opined that confiscation of property of innocent people for the benefit of private persons is a kind of confiscation unknown to our law and whatever meaning the word "acquisition" may have does not cover "confiscation" for, to confiscate means "to appropriate to the public treasury (by way of penalty)". Consequently, the law taking private property for a public purpose without compensation would fall outside List III Entry 42 and cannot be supported by another entry in List III.

173. Requirements of a public purpose and the payment of compensation, according to the learned author, be read into List III Entry 42. Further, the learned author has also opined that the repeal of Articles 19(1)(f) and 31(2) could have repercussions on other fundamental rights or other provisions which are to be regarded as part of the basic structure and also stated that notwithstanding
 the repeal of Article 31(2), the word "compensation" or the concept thereof is still retained in Article 30(1-A) and in the second proviso to Article 31-A(1) meaning thereby that payment of compensation is a condition of legislative power in List III Entry 42.

174. The learned Senior Counsel Shri T.R. Andhyarujina, also referred to the opinion expressed by another learned author Prof. P.K. Tripathi, in his article "Right to Property After Forty-fourth Amendment--Better Protected Than Ever Before". The learned author expressed the opinion that the right of the individual to receive compensation when his property is acquired or requisitioned by the State, continues to be available in the form of an implied condition of the power of the State to legislate on "acquisition or requisition of property" while all the exceptions and limitations set up against and around it in Articles 31, 31-A and 31-B have disappeared. The learned author opined that Article 300-A will require obviously, that the law must be a valid law and no law of acquisition or requisition can be valid unless the acquisition or requisition is for a public purpose, unless there is provision in law for paying compensation, will continue to have a meaning given to

it, by Bela Banerjee case.

175. The learned author, Shri S.B. Sathe, in his article "Right to Property After the Forty-fourth Amendment: Reflections on Prof. P.K. Tripathi's Observations", to some extent, endorsed the view of Prof. Tripathi and opined that the Forty-fourth Amendment has W.P(C) No.26691 of 2010, etc. -:

229. :- increased the scope of judicial review in respect of right to property. The learned author has stated although Article 300-A says that no one shall be deprived of his property save by authority of law, there is no reason to expect that this provision would protect private property only against executive action. The learned author also expresses the wish that Article 21 may provide viable check upon Article 300-A.

176. Durga Das Basu in his book Shorter Constitution of India, 13th Edn., dealt with Article 300-A in Chapter IV wherein the learned author expressed some reservation about the views expressed by Seervai, as well as Prof. Tripathi. The learned author expressed the view, that after the Forty-fourth Amendment Act there is no express provision in the Constitution outside the two cases specified under Article 30(1-A) and the second proviso to 31-A(1) requiring the State to pay compensation to an expropriated owner. The learned author also expressed the opinion that no reliance could be placed on the legislative List III Entry 42 so as to claim compensation on the touchstone of fundamental rights since the entry in a legislative list does not confer any legislative power but only enumerates fields of legislation.

177. The learned counsel on the either side, apart from other contentions, highlighted the above views expressed by the learned authors to urge their respective contentions.

178. The principles of eminent domain, as such, are not seen incorporated in Article 300-A, as we see, in W.P(C) No.26691 of 2010, etc. -:

230. :- Article 30(1-A), as well as in the second proviso to Article 31-A(1) though we can infer those principles in Article 300-A. The provision for payment of

compensation has been specifically incorporated in Article 30(1-A) as well as in the second proviso to Article 31-A(1) for achieving specific objectives. The Constitution (Forty-fourth Amendment) Act, 1978 while omitting Article 31 brought in a substantive provision clause (1-A) to Article 30. Resultantly, though no individual or even educational institution belonging to majority community shall have any fundamental right to compensation in case of compulsory acquisition of his property by the State, an educational institution belonging to a minority community shall have such fundamental right to claim compensation in case the State enacts a law providing for compulsory acquisition of any property of an educational institution established and administered by a minority community. Further, the second proviso to Article 31-A(1) prohibits the legislature from making a law which does not contain a provision for payment of compensation at a rate not less than the market value which follows that a law which does not contain such provision shall be invalid and the acquisition proceedings would be rendered void. The Constitution Bench elaborately considered Article 300A of the Constitution. Following was laid down in paragraphs 182 to 192.

"82. We have found that the requirement of W.P(C) No.26691 of 2010, etc. -:

231. :- public purpose is invariably the rule for depriving a person of his property, violation of which is amenable to judicial review. Let us now examine whether the requirement of payment of compensation is the rule after the deletion of Article 31(2).

183. Payment of compensation amount is a constitutional requirement under Article 30(1-A) and under the second proviso to Article 31-A(1), unlike Article 300-A. After the Forty-fourth Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. Article 300-A, however, does not prohibit the payment of just compensation when a person is deprived of his property, but the question is whether a person is entitled to get compensation, as a matter of right, in the absence of any stipulation in the statute, depriving him of his property.

184. Before answering those questions, let us examine whether the right to claim compensation on deprivation of one's property can be traced to List III Entry 42.

185. The Constitution (Seventh Amendment) Act, 1956 deleted List I Entry 33, List II Entry 36 and reworded List III Entry 42 relating to W.P(C) No.26691 of 2010, etc. -:

232. :- "acquisition and requisitioning of property". It was urged that the above words be read with the requirements of public purpose and compensation. Reference was placed on the following judgment of this Court in support of that contention. In State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.97 (SCR at p. 413) this Court considered Schedule VII List II Entry 48 of the Government of India Act, 1935, "Taxes on the sale of goods", in accordance with the established legal sense of the word "sale", which had acquired a definite precise sense and held that the legislature must have intended the "sale", should be understood in that sense. But, we fail to see why we trace the meaning of a constitutional provision when the only safe and correct way of construing the statute is to apply the plain meaning of the words. List III Entry 42 has used the words "acquisition" and "requisitioning", but Article 300-A has used the expression "deprivation", though the word "deprived" or "deprivation" takes in its fold "acquisition" and "requisitioning", the initial presumption is in favour of the literal meaning since Parliament is taken to mean as it says.

186. A Constitution Bench of this Court in Hoechst Pharmaceuticals Ltd. case, held that the various entries in List III are not "powers" of legislation but "fields" of legislation. Later, a W.P(C) No.26691 of 2010, etc. -:

233. :- Constitution Bench of this Court in State of W.B. v. Kesoram Industries Ltd. held that Article 245 of the Constitution is the fountain source of legislative power. It provides that subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.

187. The legislative field between Parliament and the legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make

laws with respect to any of the matters enumerated in Schedule VII List I, called the Union List and subject to the said power of Parliament, the legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called the Concurrent List. Subject to the above, the legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the State List. Under Article 248, the exclusive power of Parliament to make laws extends to any matter not enumerated either in the Concurrent List or State List.

188. We find no apparent conflict with the words used in List III Entry 42 so as to infer that the payment of compensation is inbuilt or inherent either W.P(C) No.26691 of 2010, etc. -:

234. :- in the words "acquisition and requisitioning" under List III Entry 42. Right to claim compensation, therefore, cannot be read into the legislative List III Entry 42.

189. Requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.

190. Article 300-A would be equally violated if the provisions of law authorising deprivation of property have not been complied with. While enacting Article 300-A Parliament has only borrowed Article 31(1) (the "Rule of Law" doctrine) and not Article 31(2) (which had embodied the doctrine of eminent domain). Article 300-A enables the State to put restrictions on the right to property by law. That W.P(C) No.26691 of 2010, etc. -:

235. :- law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive.

191. The legislation providing for deprivation of property under Article 300-A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301, etc. Thus in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above.

192. At this stage, we may clarify that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private property for public purpose cannot say that "no compensation shall be paid". However, there could be a law awarding "nil" compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the Government to establish validity of such law. In the latter case, the Court in exercise of judicial review will test such a law keeping in mind W.P(C) No.26691 of 2010, etc. -:

236. :- the above parameters. Further in paragraphs 205, 209 and 210 the following was laid down.

"05. Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right. Otherwise the court will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy.

209. Statutes are many which though deprive a person of his property, have the protection of Article 30 (1-A), Articles 31-A, 31-B, 31-C and hence are immune from challenge under Article 19 or Article 14. On deletion of Article 19(1)(f) the available grounds of challenge are Article 14, the basic structure and the rule of

law, apart from the ground of legislative competence. In I.R. Coelho case the basic structure was defined in terms of fundamental rights as reflected under Articles 14, 15, 19, 20, 21 and 32. In that case the Court held that statutes mentioned in Schedule IX are immune from challenge on the ground of violation of fundamental rights, but if such laws violate the basic structure, they no longer enjoy the immunity offered by Schedule IX.

210. The Acquisition Act, it may be noted, has not been included in Schedule IX but since the Act is W.P(C) No.26691 of 2010, etc. -:

237. :- protected by Article 31-A, it is immune from the challenge on the ground of violation of Article 14, but in a given case, if a statute violates the rule of law or the basic structure of the Constitution, is it the law that it is immune from challenge under Article 32 and Article 226 of the Constitution of India? 102. The Apex Court in Jibubhai Nanbhai Khachar v. Stateog Gujarat [(1995) 1 Suppl. SCC596 has also elaborately considered the right to property under Article 300A. In paragraph 13 it was held that right to property under Article 300A is not basic feature of the Constitution. It is only a constitutional right. It was further held that the obligation to pay compensation to the deprived owner of the property was inherent is untenable. Following was laid down in paragraphs 30 and 33.

30. Thus it is clear that right to property under Article 300-A is not a basic feature or structure of the Constitution. It is only a constitutional right. The Amendment Act having had the protective umbrella of Ninth Schedule habitat under Article 31-B, its invalidity is immuned from attack by operation of Article 31-A. Even W.P(C) No.26691 of 2010, etc. -:

238. :- otherwise it would fall under Articles 39(b) and (c) as contended by the appellants. It is saved by Article 31-C. Though in the first Minerva Mills case, per majority, Article 14 was held to be a basic structure, the afore- referred and other preceding and subsequent to the first Minerva Mills case consistently held that Article 14 is not a basic structure. Article 14 of the Constitution in the context of right to property is not a basic feature or basic structure. The Constitution 66th Amendment Act, 1990 bringing the Amendment Act 8 of 1982 under Ninth Schedule to the Constitution does not destroy the basic structure of the

Constitution.

33. It is true as contended by Shri Jhaveri that clause (2) of Article 31 was not suitably incorporated in Article 300-A but the obligation to pay compensation to the deprived owner of his property was enjoined as an inherent incident of acquisition under law is equally untenable for the following reasons. Ramanatha Aiyar's The Law Lexicon Reprint Edn. 1987, p. 385, defined "eminent domain" thus: "The right of the State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the sovereign to take it for a public purpose. This right is called `eminent domain'." At p. 386 it was further stated that: "The sovereign power vested in the State to W.P(C) No.26691 of 2010, etc. -:

239. :- take private property for the public use, providing first a just compensation therefor. A superior right to apply private property to public use. A superior right inherent in society, and exercised by the sovereign power, or upon delegation from it, whereby the subject-matter of rights of property may be taken from the owner and appropriated for the general welfare. The right belonging to the society or to the sovereign, of disposing in cases of necessity, and for the public safety, of all the wealth contained in the State is called eminent domain. The right of every Government to appropriate, otherwise than by taxation and its police authority, private property for public use. The ultimate right of sovereign power to appropriate not only the public property but the private property of all citizens within the territorial sovereignty, to public purposes. Eminent domain is in the nature of a compulsory purchase of the property of the citizen for the purpose of applying to the public use." In Black's Law Dictionary, 6th Edn., at p. 523 "eminent domain" is defined as: "The power to take private property for public use by the State, municipalities, and private persons or corporations authorised to exercise functions of public character.... In the United States, the power of eminent domain is founded in both the Federal (Fifth Amendment) and State Constitutions. The Constitution limits the power to taking for a public purpose and prohibits the exercise of the power of eminent domain without just compensation to the owners of the property W.P(C) No.26691 of 2010, etc. -:

240. :- which is taken. The process of exercising the power of eminent domain is commonly referred to as `condemnation' or `expropriation'." The Apex Court further laid down that each case must be considered in the facts and circumstances of its setting. Following was laid down in paragraph 48.

48. The word `property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase "deprivation of the property of a person" must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has W.P(C) No.26691 of 2010, etc. -:

241. :- always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300-A" The Apex Court also noted provision for payment of compensation. It was

held that by way of interpretation the doctrine of compensation or deprivation of property under Article 300A of the Constitution cannot be introduced. The following was laid down in paragraph 52.

"2. The constitutional history of the interpretation W.P(C) No.26691 of 2010, etc. -:

242. :- of the power of Parliament to amend the Constitution under Article 368 from Kameshwar Singh to Kesavananda Bharati to give effect to the directive principles in Part IV vis-`-vis the right to property in Articles 19(1)(f) and 31 as well as the interpretation of `compensation' from Bela Banerjee to Banks Nationalisation case do establish that Parliament has ultimately wrested the power to amend the Constitution, without violating its basic features or structure. Concomitantly legislature has power to acquire the property of private person exercising the power of eminent domain by a law for public purpose. The law may fix an amount or which may be determined in accordance with such principles as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the grounds that the amount so fixed or amount determined is not adequate. The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount. The doctrine of illusory amount or fixation of the principles to be arbitrary were evolved drawing support from the language originally couched in the unamended Entry 42 of List III which stood amended by the Constitution 7th Amendment Act with the words merely "Acquisition and Requisition of Property". Nevertheless even thereafter this Court reiterated the same principles. Therefore, the amendment to Entry 42 of List III has little bearing on the validity of those principles. We are conscious that Parliament omitted Article 31(2) altogether. However when the State W.P(C) No.26691 of 2010, etc. -:

243. :- exercises its power of eminent domain and acquires the property of private person or deprives him of his property for public purpose, concomitantly fixation of the amount or its determination be must in accordance with such principles as laid therein and the amount given in such manner as may be specified in such a law. However judicial interpretation should not be a tool to reinduct the doctrine of compensation as concomitance to acquisition or deprivation of property under

Article 300-A. This would be manifest from two related relevant provisions of the Constitution itself -- Article 30(1-A) and second proviso to Article 31-A as exceptions to the other type of acquisition or deprivation of the property under Article 300-A.

103. From the law as laid down above it is clear that the right under Article 300A is to be interpreted according to the particular legislation. Non-payment of compensation may in some cases be held to be violative of Article 300A and in some cases it may not be that the right of compensation is necessary ingredient. Each case has to be looked into and decided in its own setting. In the light of the provisions of the 2003 Act as detailed above and the W.P(C) No.26691 of 2010, etc. -:

244. :- constitutional principles and law laid down by the Supreme Court as above, we are of the view that non- payment of compensation for land which is vested under Sec.3 cannot be held to be violative of the rights of petitioners under Article 300A of the Constitution. We have held that there is valid classification in the land vested under Secs.3 and notified under Section 4 of the Act regarding payment of compensation. We thus hold that the 2003 Act does not violate Article 14 and 19 of the Constitution nor can be held to be arbitrary, discriminatory, devoid of any rational classification. There is valid rational basis for non-payment of compensation for the land under Sec.3 as compared to payment of compensation for a land notified under Sec.4. We thus answer the issue accordingly. ISSUE NO.VIII104 Learned counsel for the petitioners submits that Section 3(1) of the 2003 Act overrides the W.P(C) No.26691 of 2010, etc. -:

245. :- judgment and decree or order of any Court or tribunal which provision has been enacted only for the purpose of overriding the judgment of Forest Tribunal, High Court as well as Supreme Court delivered in the context of 1971 Act wherein the lands of petitioners have been held to be exempted from private forest. It is submitted that when the Forest Tribunal, High Court and Supreme Court held a particular estate as a plantation being exempted from the 1971 Act, the Legislature by its device has overruled the judgment which jurisdiction is not vested in the legislature. The Legislature cannot override the judgments of the Court hence

Section 3(1) deserves to be struck down. Elaborating their submission, the learned counsel for the petitioners have referred to the definition of 'private forest' as contained in Section 2(f) of the 1971 Act and also Section 3 which provided for vesting of private W.P(C) No.26691 of 2010, etc. -:

246. :- forest in Government which is quoted as below: "2(f) "private forest" means- (1) in relation to the Malabar district referred to in sub-section(2) of Section 5 of the State Reorginasation Act, 1956 (Central Act 37 of 1956)- (i) any land to which the Madras Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding- (A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964): (B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market." 3. Private Forests to vest in Government.- (1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished. (2) Nothing contained in sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as is W.P(C) No.26691 of 2010, etc. -:

247. :- within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto. Explanation.- For the purposes of this sub-section, "cultivation" includes cultivation of trees or plants of any species. (3) Nothing contained in sub-section (1) shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling are applicable to him under Section 82 of the said

Act. (4) Notwithstanding anything contained in the Kerala Land Reforms Act, 1963, private forests shall, for the purposes of sub-section (2) or sub-section (3), be deemed to be lands to which Chapter III of the said Act is applicable and for the purposes of calculating the ceiling limit applicable to an owner, private forests shall be deemed to be "other dry lands" specified in Schedule II to the said Act." 105. Learned counsel for the petitioners submitted that by virtue of Section 3(2) of 1971 Act, the land comprised in private forest held by the owner under his personal cultivation within the ceiling limit applicable to W.P(C) No.26691 of 2010, etc. -:

248. :- him was not vested and the action of the State treating the land under personal cultivation as vested in State was challenged by the petitioner before the Forest Tribunal, thereafter in High Court as well as in Supreme Court wherein the land was exempted holding it to be in personal cultivation. The land which has to be held in personal cultivation is now sought to be vested as per the 2003 Act. The judgment/decree or order of Court or Tribunal has been overridden and made ineffective by Section 3(1). Whether the legislature has jurisdiction or power to override the judgment of Court has been the subject matter of consideration before the Apex Court in large number of cases.

106. It is necessary to look into some pronouncement of the Apex Court to find out the ratio laid down. The Constitution Bench judgment of the Apex Court in Shri. Prithvi Cotton Mills Ltd. v. Broach Borough Municipality and others [AIR1970W.P(C) No.26691 of 2010, etc. -:

249. :- SC192 has laid down that a Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. It is useful to quote paragraph 4 which is to the following effect: "4. Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the

action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute W.P(C) No.26691 of 2010, etc. -:

250. :- or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax." W.P(C) No.26691 of 2010, etc. -:

251. :- 107. In 1993 Supp(1) SCC96II) in the matter of Cauvery Water Disputes Tribunal the proposition of law was again reiterated in paragraphs 74 to 76 which have to the following effect:

"4. In this connection, we may refer to a decision of this Court in Municipal Corporation of the City of Ahmedabad v. New Shrock Spg. & Wvg. Co. Ltd. The facts in this case were that the High Court as well as this Court had held that property tax collected for certain years by the Ahmedabad Municipal Corporation was illegal. In order to nullify the effect of the decision, the State Government introduced Section 152-A by amendment to the Bombay Provincial Municipal Corporation Act, the effect of which was to command the Municipal Corporation, to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. This Court held that the said provision makes a direct inroad into the judicial powers of the State. The legislatures under the Constitution have, within the prescribed limits, power to make laws prospectively as well as retrospectively. By exercise of those powers a legislature can remove the basis of a decision rendered by a competent court thereby rendering the decision ineffective. But no legislature in the country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by the courts. W.P(C) No.26691 of 2010, etc. -:

252. :- Consequently, the provisions of sub-section (3) of Section 152-A were held repugnant to the Constitution and were struck down. To the same effect is another decision of this Court in Madan Mohan Pathak v. Union of India. In this case a settlement arrived at between the Life Insurance Corporation and its employees had become the basis of a decision of the High Court of Calcutta. This settlement was sought to be scuttled by the Corporation on the ground that they had received instructions from the Central Government that no payment of bonus should be made by the Corporation to its employees without getting the same cleared by the Government. The employees, therefore, moved the High Court, and the High Court allowed the petition. Against that, a letters patent appeal was filed and while it was pending, the Parliament passed the Life Insurance Corporation (Modification of Settlement) Act, 1976 the effect of which was to deprive the employees of bonus payable to them in accordance with the terms of the settlement and the decision of the Single Judge of the High Court. On this amendment of the Act, the Corporation withdrew its appeal and refused to pay the bonus. The employees having approached this Court challenging the constitutional validity of the said legislation, the Court held that it would be unfair to adopt legislative procedure to

undo a settlement which had become the basis of a decision of the High Court. Even if legislation can remove the basis of a decision, it has to do it by alteration of general rights of a class but not by simply excluding the W.P(C) No.26691 of 2010, etc. -:

253. :- specific settlement which had been held to be valid and enforceable by a High Court. The object of the Act was in effect to take away the force of the judgment of the High Court. The rights under the judgment would be said to arise independently of Article 19 of the Constitution.

75. Yet another decision of this Court on the point is P. Sambamurthy v. State of A.P. In this case what was called in question was the insertion of Article 371-D of the Constitution. Clause (5) of the article provided that the order of the Administrative Tribunal finally disposing of the case would become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order was made, whichever was earlier. The proviso to the clause provided that the State Government may by special order made in writing for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it became effective and in such a case the order of the Tribunal shall have effect only in such modified form or be of no effect. This Court held that it is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law, and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of the law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional W.P(C) No.26691 of 2010, etc. -:

254. :- authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. If the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death knell of the rule of law. The rule of law would be meaningless as it would be open to the State Government to defy the law and yet get away with it. The proviso to clause (5) of

Article 371-D was, therefore, violative of the basic structure doctrine.

76. The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal." 108. To the same effect is the Apex Court judgment in K. Sankaran Nair v. Devaki Amma Malathy Amma and others [(1996) 11 SCC428 is relevant to note. The Apex Court in the said case had occasion to consider the Kerala Land Reforms Act, 1963. Section 6C was introduced with effect from 07.07.1979. W.P(C) No.26691 of 2010, etc. -:

255. :- Section 74 of the Kerala Land Reforms Act which totally barred creation of leases after 01.04.1964. Plaintiff's case was that his claim of tenancy right was on the basis of the registered lease deed dated 10.01.1969. The Tribunal held that the defendant/respondent was not a tenant which was confirmed by the High Court on 31.03.1978. The Special Leave Petition filed before Supreme Court was dismissed on 28.08.1978. Section 6C was brought on the Statute book by Kerala Land Reforms Amendment Act, 1979. Section 6C of the Kerala Land Reforms Act provides as follows: "6C. Certain lessees who have made substantial improvements, etc., to be deemed tenants.- Notwithstanding anything contained in Section 74, or in any contract, or in any judgment, decree or order of any Court or other authority, any person in occupation at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, of the land of another person on the basis of a lease deed executed after the 1st day of April, 1964, shall be deemed to be a tenant if- (a) be (including any member of his family) did not own or hold land in excess of four acres in extent on the W.P(C) No.26691 of 2010, etc. -:

256. :- date of execution of the lease deed; and (b) he or any member of his family has made substantial improvements on the land. Explanation.- For the purpose of this section, improvements shall be deemed to be substantial improvements if the value of such improvements is more than fifty per cent of the value of the land on

the date of execution of the lease deed.

"109. The claim of deemed tenancy was rejected. Thereupon the matter was taken to Supreme Court. The provision of Section 6C was challenged on the ground that to bypass the final judgments, the legislature had tried to override the binding judgment. The Apex Court while considering the issue in K. Sankaran Nair's case (supra) made following observations in paragraphs 5: "......It is now well settled that the legislature cannot overrule any judicial decision without removing the substratum or the foundation of that judgment by a retrospective amendment of the legal provision concerned." XX XX XX .... "It is now well settled by a catena of decisions of this Court that unless the legislature by enacting a competent W.P(C) No.26691 of 2010, etc. -:

257. :- legislative provision retrospectively removes the substratum or foundation of any judgment of a competent court the said judgment would remain binding and operative and in the absence of such a legislative exercise by a competent legislature the attempt to upset the binding effect of such judgments rendered against the parties would remain an incompetent and forbidden exercise which could be dubbed as an abortive attempt to legislatively overrule binding decisions of courts. A Constitution Bench of this Court in the case of Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality1 speaking through Hidayatullah, C.J., made the following pertinent observations in this connection: (SCC pp. 286-87, para 4) ".... When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances." W.P(C) No.26691 of 2010, etc. -:

258. :- 110. The Constitution Bench in State of Tamil Nadu v. Aroon Sugars Ltd. [(1997) 1 SCC326 has laid down in paragraphs 16, 17 and 18 as follows:

"6. The scope of a non obstante clause and of Validating Act has been examined by this Court from time to time. Reference in this connection be made to the judgment in the case of Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, where Hidayatullah, C.J.

speaking for the Constitution Bench said: (SCC pp. 286-87, para 4) "When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re- enacted law. Sometimes the legislature gives its own W.P(C) No.26691 of 2010, etc. -:

259. :- meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the

change of the law." The same view was reiterated in the cases of West Ramnad Electric Distribution Co. Ltd. v. State of Madras; Udai Ram Sharma v. Union of India; Tirath Ram Rajindra Nath v. State of U.P.; Krishna Chandra Gangopadhyaya v. Union of India; Hindustan Gum & Chemicals Ltd. v. State of Haryana; Utkal Contractors and Joinery (P) Ltd. v. State of Orissa; D. Cawasji & Co v. State of Mysore and Bhubaneshwar Singh v. Union of India. It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect. This is what has happened in the present case. The judgment of the High Court in Writ Petition No. 1464 of 1974, dated 8-10- 1976 was solely based on the amendments which had been introduced by Act 7 of 1974. If those amendments so introduced have been effaced by Act 25 of 1978 with retrospective effect saying that it shall be deemed that no W.P(C) No.26691 of 2010, etc. -:

260. :- such amendments had ever been introduced in the Principal Act, then full effect has to be given to the provisions of the later Act unless they are held to be ultra vires or unconstitutional.

17. On behalf of the respondent, it was pointed out that the High Court in its judgment dated 8-10-1976 in Writ Petition No. 1464 of 1974 has not declared any provision to be invalid because of which a Validating Act was required. The said judgment had also not pointed out any defect in any Act which had to be rectified by a Validating Act. It had simply proceeded on the provisions of Act 7 of 1974 and had issued direction to the State Government to proceed in accordance with those provisions. This Court has examined the power of the legislature to amend the provisions of the Act in question after a court verdict. Reference in this connection may be made to the case of Govt. of A.P. v. Hindustan Machine Tools Ltd., where

it was observed: (SCC pp. 278-79, paras 10-12) "We see no substance in the respondent's contention that by re-defining the term `house' with retrospective effect and by validating the levies imposed under the unamended Act as if notwithstanding anything contained in any judgment, decree or order of any court, that Act as amended was in force on the date when the tax was levied, the legislature has encroached upon a judicial function. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively, the one no less than the other. Within the scope of its legislative competence and subject to other constitutional limitations, the power of the legislature to enact laws is plenary. In United Provinces v. Atiqa Begum, Gwyer, C.J.

while repelling the argument that Indian Legislatures had no power to alter the existing laws retrospectively observed that within the limits of their powers the Indian Legislatures were as supreme and sovereign as the British Parliament itself and that those powers were not subject to the `strange and unusual prohibition against retrospective legislation'. The power to validate a law retrospectively is, subject to the W.P(C) No.26691 of 2010, etc. -:

261. :- limitations aforesaid, an ancillary power to legislate on the particular subject. The State Legislature, it is significant, has not overruled or set aside the judgment of the High Court. It has amended the definition of `house' by the substitution of a new Section 2(15) for the old section and it has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances. If the old Section 2(15) were to define `house' in the manner that the amended Section 2(15) does, there is no doubt that the decision of the High Court would have been otherwise. In fact, it was not disputed before us that the buildings constructed by the respondent meet fully the requirements of Section 2(15) as amended by the Act of 1974. In Tirath Ram Rajindra Nath v. State of U.P., the legislature amended the law retrospectively and thereby removed the basis of the decision rendered by the High Court of Allahabad. It was held by this Court that this was within the permissible limits and validation of the old Act by amending it retrospectively did

not constitute an encroachment on the functions of the Judiciary." 18. Again in the case of Sunder Dass v. Ram Prakash, it was said: (SCC p. 669, para 6) "The appellant, however, urged that the introduction of the proviso in Section 3 should not be given greater retrospective operation than necessary and it should not be so construed as to affect decrees for eviction which had already become final between the parties. Now, it is true, and that is a settled principle of construction, that the court ought not to give a larger retrospective operation to a statutory provision than what can plainly be seen to have been meant by the legislature. This rule of interpretation is hallowed by time and sanctified by decisions, though we are not at all sure whether it should have validity in the context of changed social norms and values. But even so, we do not see how the retrospective introduction of the proviso in Section 3 can be construed so as to leave unimpaired a decree for eviction already passed, when the question arises in execution whether it is a nullity. W.P(C) No.26691 of 2010, etc. -:

262. :- The logical and inevitable consequence of the introduction of the proviso in Section 3 with retrospective effect would be to read the proviso as if it were part of the section at the date when the Delhi Rent Control Act, 1958 was enacted and the legal fiction created by the retrospective operation must be carried to its logical extent and all the consequences and incidents must be worked out as if the proviso formed part of the section right from the beginning. This would clearly render the decree for eviction a nullity and since in execution proceeding, an objection as to nullity of a decree can always be raised and the executing court can examine whether the decree is a nullity, the principle of finality of the decree cannot be invoked by the appellant to avoid the consequences and incidents flowing from the retrospective introduction of the proviso in Section 3. Moreover, the words `notwithstanding any judgment, decree or order of any court or other authority' in the proviso make it clear and leave no doubt that the legislature intended that the finality of `judgment, decree or order of any court or other authority' should not stand in the way of giving full effect to the retrospective introduction of the proviso in Section 3 and applying the provisions of the Delhi Rent Control Act, 1958 in cases falling within the proviso." Same was the situation in the case of Bhubaneshwar Singh v. Union of India where taking note of the subsequent amendments in the Act concerned the Court came to the conclusion:

(SCC pp. 85-86, paras 13-14) "In the present case as already pointed out above, if sub-section (2) as introduced by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 in Section 10 had existed since the very inception, there was no occasion for the High Court or this Court to issue a direction for taking into account the price which was payable for the stock of coke lying on the date before the appointed day. The authority to introduce sub- section (2) in Section 10 of the aforesaid Act with retrospective effect cannot be questioned. Once the amendment has been introduced retrospectively, courts have to act on the basis that such provision was there since the beginning. The role of the deeming provision W.P(C) No.26691 of 2010, etc. -:

263. :- need not be emphasised in view of series of judgments of this Court. * * * In the present case, the lacuna or defect has been removed by introduction of sub-section (2) in Section 10 of the Act with retrospective effect. Sub-section (2) of Section 10 as well as Section 19, both have specified that the amount which is to be paid as compensation mentioned in the schedule shall be deemed to include and deemed always to have included, the amount required to be paid to such owner in respect of all coal in stock on the date immediately before the appointed day. As such the earlier judgment of this Court is of no help to the petitioner."" 111. The judgment in Indian Aluminium Co. and others v. State of Kerala and others [(1996) 7 SCC637 was again a case where the jurisdiction of Legislature to override the judgment has been considered. Following was laid down in paragraphs 35 and 56:

"5. The question, therefore, is whether Section 11 is an anti-judicial power interfering with or encroaching on judicial review entrusted to the courts, a basic feature of the Constitution, and whether it directly overrules the W.P(C) No.26691 of 2010, etc. -:

264. :- judgment of the High Court? In view of specific stand and vehement contention that the legislature can, under no circumstance, nullify mandamus or direction issued by a court, we have to survey the decided cases in which relevant principles were laid by this Court. The primary question is whether the legislature has trespassed and trenched into the preserve of the basic feature of judicial

review. The principle of power of validation vested in the legislature is no longer res integra. A Constitution Bench of this Court in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality which is an erudite leading judgment on this topic, laid by a unanimous Constitution Bench of five Judges that Section 17 of the Bombay Municipal Boroughs Act, 1925 empowers the municipality to levy "rate on buildings or lands or both situate within the municipality". The rules made under the Act applied the rates on percentage basis on the capital value of lands and buildings. In Patel Gordhandas Hargovindas v. Municipal Commr. this Court had held that the term `rate' must be given the special meaning it had acquired in English law and must be confined to an impost on the basis of the annual letting value; it could not be validly levied on the basis of capital value though capital value could be used for the purpose of working out the annual letting value. Thereafter, Gujarat Legislature amended the Act and enacted Gujarat Imposition of Tax by Municipalities (Validation) Act, 1963. Section 3 thereof which validated past assessments and collections on rate, on lands and buildings, on the basis of capital value or a percentage of capital value, was declared W.P(C) No.26691 of 2010, etc. -:

265. :- valid, despite any judgment of a court or tribunal to the contrary. Future assessment and collection on the basis of capital value for the period from and after the Validation Act was authorised. Section 99 was enacted in the Gujarat Municipalities Act to provide for the levy of a tax on lands and buildings "to be based on the annual letting value or the capital value or a percentage of capital value of the buildings or lands or both". The same was questioned and the High Court dismissed the writ petition. On appeal, when the constitutionality thereof was challenged, this Court observed as under: (SCC pp. 286-87, para 4) "... When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or

exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the W.P(C) No.26691 of 2010, etc. -:

266. :- legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax." This Court upheld the constitutionality of the impugned enactment.

"6. The validity of the Validating Act is to be judged by the following tests: (i) whether the legislature enacting the Validating Act has competence over the subject-matter; (ii) whether by validation, the legislature has removed the defect which the court had found in the previous law; (iii) whether the validating law is inconsistent (sic consistent) with the provisions of Chapter III of the Constitution. If these tests are satisfied, the Act can confer jurisdiction upon the court with retrospective effect and validate the past transactions which were declared to be

unconstitutional. The legislature cannot assume power of adjudicating a case by virtue of its enactment of the law without leaving it to the judiciary to decide it with reference to the law in force. The legislature also is incompetent to W.P(C) No.26691 of 2010, etc. -:

267. :- overrule the decision of a court without properly removing the base on which the judgment is founded." 112. In S.S. Bola and others v. B.D. Sardana and others [(1997) 8 SCC522 was again a case where provisions of the enactment namely Haryana Service Engineers, Class I, Public Works Department (Buildings and Roads Branch), (Public Health Branch) and (Irrigation Branch) Act, 1995 was under consideration. The act repealed various earlier service rules and gave it retrospective effect. It was contended that the judgment of the Apex Court where finding regarding the seniority was given; was overruled by legislative action which is illegal. The Apex Court after referring to several earlier judgments laid down in paragraphs 172 and 174 as follows:

"72. Let us now examine the validity of the Act itself which was challenged by the direct recruits in filing writ petitions in the High Court of Punjab and Haryana and those writ petitions stood transferred to this Court. Mr Sachar, learned counsel appearing for the writ W.P(C) No.26691 of 2010, etc. -:

268. :- petitioners-direct recruits, contended that the Act is nothing but a usurpation of judicial power by the legislature to annul the judgments of this Court in Sehgal and Chopra and it merely declares the earlier judgments to be invalid without anything more and as such is invalid and inoperative. Further the Act takes away the rights accrued in favour of the direct recruits pursuant to the judgments of this Court in Sehgal and Chopra and consequently the Act must be struck down. The learned counsel also urged that the mandamus issued by this Court in Sehgal and Chopra has to be complied with and the State Legislature has no power to make the mandamus ineffective by enacting an Act to override the judgment of this Court which tantamounts to a direct inroad into the sphere occupied by the judiciary and consequently the Act has to be struck down. This argument of Mr Sachar was also supported by Mr Mahabir Singh, learned counsel appearing for the petitioners in TP (Civil) No. 46 of 1997 in his written submissions and it was

urged that in any view of the matter the legislature could not have given retrospective operation to the Act itself with reference to a situation that was in existence 25 years ago and such an Act of the legislature must be held to be invalid as was held by this Court in the case of State of Gujarat v. Raman Lal Keshav Lal Soni. In elaborating the contention that the Act merely purports to override the judgment of this Court in Sehgal and Chopra the learned counsel referred to the Statement of Objects and Reasons of the Act as well as the affidavit filed on W.P(C) No.26691 of 2010, etc. -:

269. :- behalf of the State Government which would unequivocally indicate that the Act was enacted to get over the judgments of this Court in Sehgal and Chopra. xx xx xx xx 174. At the outset it must be borne in mind that in the case of Sehgal as well as Chopra this Court had not invalidated any provisions of the recruitment rules but merely interpreted some provisions of the Rules for determining the inter se seniority between the direct recruits and the promotees. The Act passed by the legislature, therefore, is not a validation Act but merely an Act passed by the State Legislature giving it retrospective effect from the date the State of Haryana came into existence and consequently from the date the Service in question came into existence. The power of the legislature under Article 246(3) of the Constitution to make law for the State with respect to the matters enumerated in List II of the Seventh Schedule to the Constitution is wide enough to make law determining the service conditions of the employees of the State. In the case in hand there has been no challenge to the legislative competence of the State Legislature to enact the legislation in question and in our view rightly, nor has there been any challenge on the ground of contravention of Part III of the Constitution. Under the constitutional scheme the power of the legislature to make law is paramount subject to the field of legislation as enumerated in the entries in different lists. The function of the judiciary is to interpret the law and to adjudicate the rights of the parties in accordance with the W.P(C) No.26691 of 2010, etc. -:

270. :- law made by the legislature. When a particular Rule or the Act is interpreted by a court of law in a specified manner and the law-making authority forms the opinion that such an interpretation would adversely affect the rights of the parties and would be grossly inequitous and accordingly a new set of rules or laws is

enacted, it is very often challenged as in the present case on the ground that the legislatures have usurped the judicial power. In such a case the Court has a delicate function to examine the new set of laws enacted by the legislatures and to find out whether in fact the legislatures have exercised the legislative power by merely declaring an earlier judicial decision to be invalid and ineffective or the legislatures have altered and changed the character of the legislation which ultimately may render the judicial decision ineffective. It cannot be disputed that the legislatures can always render a judicial decision ineffective by enacting a valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively as was held by this Court in the case of Indian Aluminium Co. v. State of Kerala. What is really prohibited is that the legislature cannot in exercise of its plenary power under Articles 245 and 246 of the Constitution merely declare a decision of a court of law to be invalid or to be inoperative in which case it would be held to be an exercise of judicial power. Undoubtedly under the scheme of the Constitution the legislature does not possess the same. Bearing in mind the aforesaid principles it is necessary to examine the legality of the Act W.P(C) No.26691 of 2010, etc. -:

271. :- in question. If we do not examine the substantive provisions of the Act and merely go by the Statement of Objects and Reasons as given for the enactment of the Act as well as the counter-affidavit filed on behalf of the State then the Act would be possibly held to be an intrusion into the judicial sphere by the legislature. The Statement of Objects and Reasons while introducing the Bill in Haryana Vidhan Sabha is extracted hereinbelow in extenso: "There were separate rules regulating service conditions and fixation of seniority in the Engineering Services in PWD, B&R, Public Health and PWD Irrigation Branches. These rules although different for the three branches were on identical lines with minor variations. These rules have been interpreted in the Supreme Court in the case of A.N. Sehgal v. R.R. Sheoran and S.L. Chopra v. State of Haryana. Subsequently, the judgment has been interpreted further in the case of A.N. Sehgal v. R.R. Sheoran by an order dated 31-3-1995 of the Supreme Court in a contempt petition filed by Shri R.R. Sheoran. In the Public Health side, the seniority list prepared under the directions of the Supreme Court in S.L. Chopra v. State of Haryana case was challenged in the High Court which struck down the list. Thereafter, an appeal was

filed by the State in the Supreme Court against the order of the High Court in the case of State v. B.D. Sardana. The appeal was admitted by the Supreme Court and the operative portion of the judgment of the High Court was stayed. The matter is pending for final decision in the Supreme Court, and meanwhile the seniority list prepared by the State is being operated by Public Health Branch.

2. Meanwhile, consequent to the directions given by the Supreme Court in the case of A.N. Sehgal v. R.R. Sheoran and orders of the Supreme Court dated 31-3-1995 in the contempt petition filed by R.R. Sheoran subsequently the seniority list had to be redrawn in the case of B&R Branch, which was totally at variance with the manner in which the seniority was drawn up in the case of Public Health Branch. Thus, the directions of the Supreme Court in the case of B&R W.P(C) No.26691 of 2010, etc. -:

272. :- Branch had created a lot of administrative problems with certain very junior officers getting undue seniority and becoming senior to the officers under whom they were previously working. This naturally resulted in severe groupism and tension between officers of the department in their day-to-day working.

3. In order to have uniform rules for all three branches of Engineering Services and to clarify the position in an unambiguous manner so as to have uniformity and clarity in interpretation, it became necessary to make certain amendments with retrospective effect. This was possible only by enacting a legislation in this regard. As the Haryana Vidhan Sabha was not in session, it was decided to achieve the purpose through issue of an Ordinance on 13-5-1995. The Ordinance replaced the existing rules for all the three branches of the PWD and the common enactment was to govern the service matters of Class I service B&R Branch, Public Health Branch and Irrigation Branch."" 113. To the same effect there is yet another judgment of the Apex Court reported in Virender Singh Hooda and others v. State of Haryana and another [(2004) 12 SCC588 wherein following was laid down in paragraphs 45 and 46:

"5. It is well settled that if the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a

validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found W.P(C) No.26691 of 2010, etc. -:

273. :- in the existing law.

46. It is equally well settled that the legislature cannot by a bare declaration, without anything more, directly overrule, reverse or override a judicial decision; it may, at any time in exercise of the plenary power conferred on it by the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field, fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based (I.N. Saksena v. State of M.P.). In Saksena case facts in brief were that the appellant attained the age of 55 years on 22-8-1963. On 28-2-1963, by a memorandum, the State Government raised the age of compulsory retirement to 58 years. It, however, empowered the Government to retire an employee after the age of 55 years. This provision, however, was not incorporated in the statutory rules. On 11-9-1963, the respondent passed an order retiring the appellant. The order of retirement of the appellant was quashed by this Court. The Government, however, amended the rules under which the retirement age was raised to 58 years and the Government was empowered to retire the government servant after completion of 55 years of age. By a deeming clause, the rules were made effective from 1-3-1963. By Act of 1967, the State Legislature validated the retirement of certain government servants including the appellant, despite the judgment of this Court. Upholding the validity of the 1967 Act, this Court held that adjudication of the rights of the parties according to the law enacted by the legislature is W.P(C) No.26691 of 2010, etc. -:

274. :- a judicial function. In the performance of this function, the Court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the laws prescribing norms of conduct which will govern parties and transactions and to require the court to give effect to that law. It was held that the rendering ineffective of

judgments of courts and tribunals by changing their basis by legislative enactment is a well-known pattern of all validating Acts. It would be useful to reproduce para 22 as under: (SCC p. 756)

"2. While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based. As pointed out by Ray, C.J.

in Indira Nehru Gandhi v. Raj Narain rendering ineffective of judgments or orders of competent courts and tribunals by changing their basis by legislative enactment is a well-known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power."" 114. The ratio of the above judgment is that legislature cannot directly overrule a judgment of the Court. However, it can be enacted in a manner to make a judgment ineffective by changing the basis of the W.P(C) No.26691 of 2010, etc. -:

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115. Whether Section 3(1) of the Act overrides the judgment given by Forest Tribunal, High Court and Supreme Court in the context of 1971 Act is a question to be answered. The 1971 Act was in force with effect from 10.05.1971. i.e. the vesting of ownership and possession of all private forests in the State was with effect from 10.05.1971. Private Forest is defined in Section 2(f) and Section 3(2) of the Act which exempts the land comprised in private forests held by an owner under his personal cultivation and is within the ceiling limit applicable with effect from 10.05.1971. When vesting of private forests took place on 10.05.1971 by virtue of operation of law, the judgments of Forest Tribunal, High Court and Supreme Court obviously determined the issue of vesting of private forests as on 10.05.1971. The 2003 Act has been enforced with effect from 02.06.2000 and vesting of Ecologically W.P(C) No.26691 of 2010, etc. -:

276. :- Fragile Lands in the State shall be deemed to have been taken place on 02.06.2000. Thus the Ecologically Fragile Land as defined in the 2003 Act under Section 2 (b) read with Section 2(c) is of a particular category of land. There cannot be any assumption that the land which had already been vested with the State has again to be vested in the State on 02.06.2000. The relevant date for vesting of Ecologically Fragile Land under Section 3 being entirely different from vesting of private forest under the 1971 Act or exemption from private forest as on 10.05.1971 are two distinct and different happenings and events. The non obstante clause in Section 3(1) is to give overriding effect to Section 3(1) despite any judgment/decree or order of Tribunal. The judgments rendered in the context of the 1971 Act were on a different operation of law and the definition of Ecologically Fragile Land being different from private W.P(C) No.26691 of 2010, etc. -:

277. :- forest under the 1971 Act, Section 3(1) of the 2003 Act can in no manner be faulted. The judgment and decree or order which is referred to in Section 3(1) of the 2003 Act are obviously the judgment and decree or order which were rendered prior to 02.06.2000. The 2003 Act envisaged definition on the concept i.e. Ecologically Fragile Land, and gave the overriding effect to override the judgment or order is fully covered within the valid legislation and Section 3(1) cannot be treated to be a legislation overriding the judgment rendered on the 1971 Act.

116. The second part of the issue is as to whether

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of Forest Tribunal, High Court and Supreme Court in the context of 1971 Act declaring the properties of the petitioners as plantation are relevant or not. It is relevant to note that the scope of non obstante clause in a Statute has been examined by the W.P(C) No.26691 of 2010, etc. -:

278. :- Apex Court in several cases. In State of Tamil Nadu v. Arooran Sugars Ltd. (supra) the Supreme Court has laid down in paragraph 16 as quoted above. When Section 3(1) gives an overriding effect, overriding the judgment/decree or order of

Court or Tribunal, the determination of Forest Tribunal, High Court or Supreme Court in the context of 1971 Act can in no way affect the vesting of Ecologically Fragile Land within the meaning of 2003 Act with effect from 02.06.2000. The binding effect of judgment of any issue relevant for vesting of Ecologically Fragile Land has been taken away expressly by Section 3(1). Although the judgments rendered in the context of 1971 Act are not binding but whether such judgment can be held to be relevant for any purpose is also to be examined. The judgments rendered by Forest Tribunal, High Court or Supreme Court are relevant under Section 42 of Indian W.P(C) No.26691 of 2010, etc. -:

279. :- Evidence Act. Section 42 of the Evidence Act which is relevant for the purpose of this case is quoted as below:

"2. Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41.- Judgment, orders or decrees other than those relevant to the enquiry; but such judgments, orders or decrees other than those mentioned in Section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state." 109. In view of the definition of Forest as contained in Section 2(c) and the Ecologically Fragile Land as contained in Section 2(b) of the 2003 Act which exclude the land which is principally covered with naturally grown trees and undergrowth and includes any forests statutorily recognised and declared as reserved forest, protected forest or otherwise, but does not include any land which is used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other W.P(C) No.26691 of 2010, etc. -:

280. :- sites of residential buildings and surroundings essential for the convenient use of such buildings. Thus the lands which are used principally for the cultivation shall not be Ecologically Fragile Land and the issue whether they are principally used for cultivation of crops is relevant and is to be enquired into. Thus the judgments which were rendered by Forest Tribunal, High Court and Supreme Court under the 1971 Act are clearly relevant judgments within the meaning of Section 42 of the Indian Evidence Act and can be looked into as a piece of

evidence for determining the issue. We are thus of the view that any enquiry or decision under Section 19 or Section 9(3) and 10(b), the judgments delivered in the context of plantation for personal cultivation etc are relevant and can be relied for in appropriate cases.

117. Learned counsel for the petitioners have placed heavy reliance on the Division Bench Judgment in State of Kerala v. Kumari Varma (2011 (1) KLT

281. :- 1008) of which one of us (P.R.Ramachandra Menon, J) was also a party. In the aforesaid case, father of the petitioner held vast extent of land approximately 2776.76 Acres. In proceedings under the Kerala Land Reforms Act, 1963 he was directed to surrender 1232.26 Acres as excess land. The 1971 Act was enacted vesting ownership and possession of private forest in the State. Notification under Rule 2A of the 1974 Rules read with Sec.6 of the 1971 Act was issued declaring 348 Acres to be private forest. Matter was taken to the Forest Tribunal by filing O.A. No.90 of 1979. After certain litigations, the matter was taken before the High Court in appeal in M.F.A. No.658 of 1990. The High Court remanded the matter to the Tribunal for fresh consideration. The Tribunal passed an order declaring an extent of 100.05 Acres as area covered by cardamom plantation. Appeal preferred by the State of Kerala against the said order was dismissed. The matter was

282. :- further carried to the Supreme Court by both parties. The Supreme Court dismissed the appeal vide its order dated 04.08.2006 in Kumari Varma v. State of Kerala ([2006] 6 SCC505. During the pendency of the aforesaid Notification the land was notified under the 2003 Act. Notification was published on 15.05.2001 under the Ordinances extinguishing the right and possession of the owner. Two Writ Petitions were filed challenging the Notification. The Writ Petitions were allowed by a learned Single Judge of this Court, against which order Writ Appeals were filed. A Division Bench of this Court dismissed the Writ Appeals vide its judgment dated 3.2.2011. One of the arguments raised before the Division Bench was that when it was held by the Forest Tribunal under the 1971 Act that 100.05 Acres is Cardamom Plantation, the said land cannot be notified under the 2003

Act. Argument of the learned Advocate General was that during the period from 1971 W.P(C) No.26691 of 2010, etc. -:

283. :- to 2003 the land acquired the nature of forest and hence it cannot be cleared under the 2003 Act was not accepted. The Division Bench Kumari Varma's case (supra) has laid down the following in paragraph 29, which is quoted below:

"9. We reject the submission of the learned Additional Advocate General. There was no intention on the part of the respondent to abandon the cultivation of cardamom as was pointed out by the Supreme court in para 37 of Bhavani Tea case (supra). The respondent was prevented by the State to continue the cultivation by denying possession to the respondent on a wrong interpretation of the Private Forests Act, 1971. We see substantial force in the submission made by the learned counsel for the respondent that on an appropriate interpretation of the various provisions of the Act, the State cannot be permitted to take advantage of a wrong committed by it in depriving the respondent of the legal rights to cultivate thew lands in W.P(C) No.26691 of 2010, etc. -:

284. :- dispute by wrongly invoking Kerala Private forests (Vesting and Assignment) Act. Such an interpretation, in our opinion, is not necessarily inconsistence with the purpose sought to be achieved by the Ecologically Fragile Lands Act. If the State is of the opinion that the land in question is such an ecologically fragile land as on today which is required to be protected, it is still open to the state to notify the land to be ecologically fragile land under R.4 of the said Act subject, of course, following the appropriate procedure stipulated under the Act." 118. Learned Senior Counsel for the State stated that against the above Division Bench judgment of this Court the State has filed an Special Leave Petition, in which the Supreme Court has passed an interim order directing the parties to maintain status quo, hence the judgment of the Division Bench has not become final. We have already held that although the judgments delivered under 1971 Act by virtue of Section 3(1) are W.P(C) No.26691 of 2010, etc. -:

285. :- not binding but their relevancy as an evidence cannot be impeached. The judgments rendered under 1971 Act can be looked into and each case has to be decided in accordance with own merits. We in this bunch of Writ Petitions have not

entered into or adjudicated any individual claim on merits, which need to be examined in appropriate proceedings. ISSUE NO.IX119 The validity of 2007 Rules has also been challenged on the ground that it is ultravires to the 2003 Act. Section 18 of the 2003 Act empowers the Government to make rules either prospectively or retrospectively to carry out the purpose of the Act. Section 18(1) is quoted as below:

"8. Power to make rules._ (1) The Government may, by notification in the Official Gazette, make rules, either prospectively or retrospectively to carry out the purposes of this Act." W.P(C) No.26691 of 2010, etc. -:

286. :- 120. The 2007 Rules were framed in exercise of powers conferred under Section 18 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 vide notification published in Kerala Gazette Extraordinary dated 03.02.2007. The challenge has been made to Rules 17 to 20 and prayed to be declared as ultravires to the 2003 Act and void. Rules 17, 18, 19 and 20 have already been quoted above. Rule 18 may also be extracted which is to the following effect:

"7. Owner claiming exemption to apply.- (1) Any owner or any person having the right of possession or enjoyment of any land notified under 3- (3)- may file an appication before the custodian giving details of the location, extent, survey number, crops cultivated etc; seeking a scrutiny of the notification and to decide whether such land qualify to be notified as ecologically fragile in accordance with the provision of the Act. (2) Every application field under sub-rule (1) shall be accompanied by the following documents. W.P(C) No.26691 of 2010, etc. -:

287. :- (a) documents to prove ownership or possession or enjoyment of the land; (b) documents to prove that the land is cultivated by such crops that are exempted under the Act. (c) documents to prove the existence of a residential building if any, with the details thereof; (d) any other documents as may be necessary for the verification of the particulars mentioned in the application. (3) Every application under sub-rule (1) shall be accompanied by an affidavit certifying that the records produced along with the application and the particulars mentioned therein are true and valid. (4) Every application under sub-rule(1) shall be accompanied by a court

fee stamp of Rupees One Hundred.

18. Inspection of the land.- (1) On receipt of the application under Rule 17 the custodian shall as soon as possible cause a local inspection of the land through a committee consisting of the following members: (a) Divisional Forest Officer of the Territory where the land situated of Wildlife Warden having jurisdiction of the area, as the case may be, who shall act as the convener of the Committee. (b) The technical Assistant of the Conservator of Forests of the area (c) The Working Plan Officer. W.P(C) No.26691 of 2010, etc. -:

288. :- ( ) . () . , . (2) The Committee shall inspect the land in respect of which application has been filed and shall prepare a report as to whether the notified area is consistent with the provisions of this Act or not, and submit the same to the custodian with in one month from the date of receipt of the order from the custodian for local inspection of the land.

19. The Power of the Custodian to make additional enquiries.- On receipt of report of the Committee under Rule 18, if required, the custodian may cause further enquired and call for further records, as he deems fit.

20. Issue of Revised Notification.- (1) The custodian, after verification of the particulars mentioned in the application and the documents produced along with the same and after considering the report of the Committee under Rule 18 and after such further enquiry as he deems W.P(C) No.26691 of 2010, etc. -:

289. :- necessary, if satisfied that the land notified, or part thereof; is inconsistent with the provisions of the Act, shall by order make a declaration in writing that such land or part thereof is not vested in the Government as per the act and issue accordingly: Provided that in case a revised notification is to be issued in respect of the land notified the custodian shall arrange a survey and demarcation of such land before issuing the revised notification, (2) A copy of the revised notification shall be communicated to the applicant. (3) If on scrutiny as per sub-rule(1) of Rule 20, the custodian finds that the land notified is consistent with the provisions of the act, he shall make a declaration that effect in writing and communicate to the applicant." 121. It is contended that 2007 Rules provide a forum and procedure

to challenge the notifications issued under Ordinance which has not only eclipsed the very purpose and scope of the Tribunal contemplated under the Act but also the time limit prescribed to challenge the notification. The rule further provides W.P(C) No.26691 of 2010, etc. -:

290. :- totally different procedure from one set out in the 'Act'. It is contended that the dispute as to whether the land vested in the Government is Ecologically Fragile Land or not is the dispute within the jurisdiction of the Tribunal and the assumption of power by Custodian under Rules 17 to 20 is ultravires of the Act.

122. Rules 17 to 20 of 2007 Rules are contained in Chapter V of the Rules with the heading "application for review of notification." The submission in substance is that the jurisdiction to decide the dispute as to whether land is an Ecologically Fragile Land and it is vested with the Tribunal hence the said power cannot be vested in the Custodian and rules are ultravires to the Act. Rules 17 to 20 have been framed to give effect to Section 19 of the Act. Section 19(3) is relevant and is extracted below for ready reference: "19.(3) Notwithstanding anything contained in the said Ordinance or in any judgment decree or order of any W.P(C) No.26691 of 2010, etc. -:

291. :- Court- (a) no land other than the ecologically fragile land as defined in this Act, whether notified under sub-section (3) of Section 3 of the said Ordinance or not, shall be deemed to have vested or ever to have been vested in Government; and (b) every notification issued in respect of any land under sub-section (3) of Section 3 of the said Ordinance shall be scrutinised by the custodian suo motu or on an application made by the owner or any person having the right of possession or enjoyment of such land and if necessary, such notification shall be revised and issued in accordance with the provisions of this Act." 123. Section 19(3) has been enacted only for a limited purpose. The purpose is to scrutinize the notifications issued under sub-section (3) of the Ordinance notifying the land as Ecologically Fragile land. As has been noted above, the definition of forest in the ordinance 6 of 2000 was entirely different from the definition of forest as contained in Section 2(c) of the 2003 Act. There is substantial change in the definition of forest as contained in Section 2(c). As per the W.P(C) No.26691 of 2010, etc. -:

292. :- definition of Section 2(c) 'forest' means any land principally covered with naturally grown trees and undergrowth and includes any forests statutorily recognised and declared as reserved forest, vested forest or otherwise, but does not include any land which is used principally for cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other sites of residential buildings and surroundings essential for the convenient use of such buildings. Section 2(b) defines the Ecologically Fragile Lands as any forest land or any portion thereof held by any person and lying contiguous to or encircled by a reserved forest or a vested forest or any other forest land or owned by the Government and predominantly supporting natural vegetation for notifying a land as Ecologically Fragile land. There was no such exemption from the forest W.P(C) No.26691 of 2010, etc. -:

293. :- land in the definition of forest under the ordinance as has been now contained in Section 2(c) of 2003 Act. There was substantial change in the definition. In view of the above change of definition retrospectively there ought to be machinery provided in the statute to take out those lands which were not forest within the meaning of Section 2(c) of the Act and were notified under ordinance as per the definition of Forest in the ordinance. Section 19(3) is thus for the above limited purpose and Rules 17 to 20 have been made to effectuate the purpose. The submission of learned counsel for the petitioner that Rules 17 to 20 are ultravires is without any substance.

124. The second submission to challenge the rules is that the power to decide the dispute including whether the land is ecologically fragile land is vested in the Tribunal under Section 10 and the said power ought not have been given to the Custodian as observed W.P(C) No.26691 of 2010, etc. -:

294. :- above. Section 19 confines to and control the limited purpose i.e. review of notifications which were issued under the Ordinance. There is no conflict in the mechanism of Section 10 and that of Section 19. Sections 10 and 19 thus provide a different procedure which are fully in accordance with the purpose of the aforesaid provisions. It is relevant to note that separate rules have been framed dated 10.10.2007 namely the Kerala Forest (Vesting and Management of

Ecologically Fragile Lands) Rules, 2007 which governs the procedure before the Tribunal. The Rules 2007 dated 03.02.2007 and Rules 2007 dated 10.10.2007 cover the different fields. Thus we do not find that Rule 2007 is ultravires to the 2003 Act and the submission of petitioners has no substance. ISSUE NO.X:

125. The answer to the above issue is contained in W.P(C) No.26691 of 2010, etc. -:

295. :- the provision of Section 3(1) itself. Section 3(1) provides that with effect from the date of commencement of this Act, the ownership and possession of all ecologically fragile lands held by any person or any other form of right over them, shall stand transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date. Section 1(2) provides that the Act shall be deemed to have come into force on 02.06.2000. The deeming provision under Section 2(1) has to give its full effect and meaning thereby with effect from 02.06.2000 the ownership and possession of all ecologically fragile lands shall stand transferred to and vested in the Government. Thus 02.06.2000 is the relevant date for determination of vesting under the 2003 Act and the issue is answered accordingly. W.P(C) No.26691 of 2010, etc. -:

296. :- ISSUE NOS.XI & XII126 Since issue Nos.11 and 12 are interconnected, they are taken together. Issue No.12 mainly arises in W.P.(C) No.3210 of 2008 - but has been raised in several other Writ Petitions as noted above. Merchinston Estate was notified as ecologically fragile land as per Notification dated 20.10.2000 issued under Ordinance No.8/2000. Previous owner, i.e., Jay Shree Tea Industries had filed O.P. No.35714 of 2000 - challenging the Ordinances as well as the Notification issued under Ordinance No.8/200. A Full Bench of this Court considered O.P. No.35714 of 2000 along with other Writ Petitions and disposed of the same by judgment dated 24.5.2006 giving liberty to avail remedy under Section 19 as well as to challenge the 2003 Act.

127. After the State Government framed the 2007 Rules, the petitioner filed an application under Sec.19(3) (b) of the 2003 Act praying that Merchinston Estate be

297. :- deleted from the Notification notified as ecologically fragile land. On the application, the Committee under Rule 18 of the 2007 Rules, made an inspection and submitted its report recommending that only 24.709 hectares of land is ecologically fragile land and other land is plantation which may be restored, the Custodian passed an order dated 12.06.2007 declaring 24.709 hectares as ecologically fragile land and directed for restoration of other property to the petitioner. The Custodian subsequently issued notice dated 7.9.2007 stating that the land comprised in Merchinston estate is vested in the Government. The Divisional Forest Officer also issued notice to vacate the land within 30 days. Petitioner filed W.P(C) No.27801 of 2007 - challenging the aforesaid notices. On 26.12.2007 the Custodian issued notice to the petitioner directing to show cause as to why the order dated W.P(C) No.26691 of 2010, etc. -:

298. :- 12.6.2007 be not recalled. Petitioner filed his objection on 5.1.2008. The Custodian passed order dated 8.1.2008 reviewing the earlier order dated 12.6.2007. Writ Petition No.3210 of 2008 is filed challenging the order dated 8.1.2008. Submission which have been pressed by the learned counsel for the petitioner is that the Custodian exercised a quasi judicial authority under Section 19 of the 2003 Act while deciding the application under Sec.19(3)(b) of the Act. A quasi judicial authority cannot review its order unless the Statute has specifically provided for review. It is submitted that the 2003 Act or the 2007 Rules framed thereunder do not provide for any power of review in the Custodian, hence the order dated 8.01.2008 passed by the Custodian is without jurisdiction. Refuting the submissions, learned Senior Advocate Shri K. Viswanathan submits that the Custodian exercises W.P(C) No.26691 of 2010, etc. -:

299. :- administrative powers under Sec.19 of the Act, hence there is no lack of jurisdiction in the Custodian reviewing/recalling the order earlier passed. It is submitted that the statutory authority is fully vested with the jurisdiction to recall/review its orders. Learned Senior Advocate Shri K.V.Viswanathan further submitted that for review of the order dated 12.06.2007 valid and cogent reasons have been given by the Custodian in his order dated 8.1.2008.

128. We have to thus first examine as to whether the Custodian in exercise of the power under Sec.19 exercises quasi judicial or administrative power. We have to look into the statutory scheme to find out the nature of the power exercised by the Custodian while deciding the application under Sec.19(3) (b). It is to be noted that in Ordinance No.6/2000 dated 1.06.2000 which was published on 2.6.2000, the definition of forest under Sec.2(c) of the Ordinance was as follows: W.P(C) No.26691 of 2010, etc. -:

300. :- "2.(c) "Forest" means any land covered with trees and undergrowth and includes all statutorily recognised forests, whether designated as reserved, protected or otherwise and any land recorded as forests in the Government records irrespective of the ownership." Section 2(b) of the Ordinance defined 'ecologically fragile land' in the following manner: "2(b) "ecologically fragile lands" means.- (i) any portion of forest land held by any person and lying contiguous to or encircled by a reserved forest or a vested forest or any other forest land owned by the Government and predominantly supporting natural vegetation; and (ii) any land declared to be an ecologically fragile land by the Government by notification in the official Gazette under Section 4." Under the 2003 Act, the definition of forest was substantially changed which is to the following effect. "2(c)'forest' means any land principally covered with naturally grown trees and undergrowth and includes any forests statutorily recognised and declared as reserved forest, protect forest or otherwise, but does not include any land which is used principally for cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other sites of residential buildings and surroundings essential for the convenient use W.P(C) No.26691 of 2010, etc. -:

301. :- of such buildings." The most substantial provision which has been introduced in the definition of Sec.2(c), i.e., certain land has been excluded from the definition of forest, i.e., (i) any other land which is used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut arecanut or cashew, (ii) on any other sites of residential buildings and surroundings essential for the convenient use of such buildings. Another relevant statutory provision to be noted is that by Sec.1(2) of the 2003 Act which Act has been enforced with effect from 2nd day of June, 2000.

129. The above change in the definition of forest and enforcement of the Act from 2.6.2000 clearly indicates that several categories of land which were initially included in Ordinance No.6 of 2000 in the definition of forest have been excluded and the Act W.P(C) No.26691 of 2010, etc. -:

302. :- having enforced with effect from 2.6.2000, definition of forest as contained in Sec.2(c) was liable to be deemed to be operative. Consequence is that the land which was notified under Ordinance No.6/2000 or subsequent Ordinance also includes the excluded categories of land as contained in Sec.2(c) of the Act.

130. In view of the above substantial changes made by the 2003 Act, Sec.19(3) was enacted. Section 19(3) is quoted as below: "19.(3) Notwithstanding anything contained in the said Ordinance or in any judgment decree or order of any Court- (a) no land other than the ecologically fragile land as defined in this Act, whether notified under sub-section(3) of Section 3 of the said Ordinance or not, shall be deemed to have vested or ever to have been vested in Government; and (b) every notification issued in respect of any land under sub-section (3) of Section 3 of the said Ordinance shall be scrutinised by the custodian suo motu or on an application made by the owner or any person having the right of possession or W.P(C) No.26691 of 2010, etc. -:

303. :- enjoyment of such land and if necessary, such notification shall be revised and issued in accordance with the provisions of this Act." Section 19(3) starts with a non-obstante clause, i.e., "notwithstanding anything contained in the said Ordinance......" Section 19(3)(a) provided that no land other than the ecologically fragile land as defined in this Act, whether notified under sub-section (3) of the said Ordinance or not, shall be deemed to have vested or ever to have been vested in Government. This provision clearly mentioned that only land which is ecologically fragile land within the meaning of the Act 2003 Act shall vest in the Government. The other land which is excluded under the Act even if notified under the Ordinance shall not vest. Consequence of the provision is that any land used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut arecanut or cashew of any W.P(C) No.26691 of 2010, etc. -:

304. :- other sites of residential buildings and surroundings essential for the convenient use of such buildings shall not vest in the State despite they having been notified in the Ordinance. On account of the above reason, Sec.19(3)(b) thus mandated a scrutiny by the Custodian suo motu or on application made by owner or any person over right, possession or enjoyment of the land. The scrutiny as contemplated in Sec.19(3)(b) assumes great importance and significance since the lands which have been notified in the Ordinances which is principally used for cultivation of crops of long duration has gone out of the purview of ecologically fragile land under the 2003 Act and Notification was required to be revised accordingly. Scrutiny is contemplated both suo motu or on a claim made by the owner person having right or possession. Thus the custodian is determining the lis regarding the land W.P(C) No.26691 of 2010, etc. -:

305. :- covered by ecologically fragile land under the Act or not. The 2007 Rules have been framed to give effect to Sec.19. Rule 17 gives detailed proceeding for making an application and the relevant documents to be accompanied by the application proving ownership, possession and enjoyment. Rule 17(1) has already been quoted above.

131. Rule 19 empowers the Custodian to make further enquiry and call for further reports as he deems fit. Rules 19 and Rule 20 have been quoted as above.

132. Whether the exercise undertaken by the Custodian is administrative or quasi judicial is the issue which is to be answered.

133. H.W.R.Wade & C.F.Forsyth in the Administrative Law, 10th Edition while explaining the concept, administration and quasi judicial functions has stated: "The one distinction which would seem to be workable W.P(C) No.26691 of 2010, etc. -:

306. :- is that between judicial and administrative functions. A judicial decision is made according to rules. An administrative decision is made according to administrative policy. A judge attempts to find what is the correct solution according to legal rules and principles. An administrator attempts to find what is the most expedient and desirable solution in the public interest. It is true, of course, that many decisions of the courts can be said to be made on grounds of

legal policy and that the courts sometimes have to choose between alternative solutions with little else than the public interest to guide them. xx xx xx xx A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A typical example is a minister deciding whether or not to confirm a compulsory purchase order or to allow a planning appeal after a public inquiry. The decision itself is administrative, dictated by policy and expediency. But the procedure is subject to the principles of natural justice, which require the minister to act fairly towards the objectors and not (for example) to take fresh evidence without disclosing it to them. A quasi judicial decision is therefore an administrative decision which is subject to some measure of judicial procedure." The Apex Court had also occasion to consider in several cases the distinction between administrative and quasi judicial functions. It is sufficient to refer to the judgment of the Apex Court in Indian National W.P(C) No.26691 of 2010, etc. -:

307. :- Congress v. Institute of Social Welfare [(2002) 5 SCC685. The Apex Court in the said case had occasion to examine Section 29A of the Representation of Peoples Act, 1951 in the context of nature of function which is performed by the Election Commission. Section 29A provided for registration of political parties. In a Judgment the Kerala High Court issued a direction permitting cancellation of registration of political parties who violated the constitution by holding forcible bandh which had been declared illegal. In the above context the High Court permitted to make application to the Election Commission of India to initiate steps for cancellation of registration of political parties. It was submitted that in exercise of a quasi judicial power there being no provision for review, the order registering political parties cannot be reviewed.

134. The Apex Court in the said case found out whether function is administrative or quasi judicial. W.P(C) No.26691 of 2010, etc. -:

308. :- Following was laid down in paragraph 20 to 23.

20. On the argument of parties, the question that arises for our consideration is, whether the Election Commission, in exercise of its powers under Section 29-A of the Act, acts administratively or quasi-judicially. We shall first advert to the

argument raised by learned counsel for the respondent to the effect that in the absence of any lis or contest between the two contending parties before the Election Commission under Section 29- A of the Act, the function discharged by it is administrative in nature and not a quasi-judicial one. The dictionary meaning of the word quasi is "not exactly" and it is just in between a judicial and administrative function. It is true, in many cases, the statutory authorities were held to be quasi-judicial authorities and decisions rendered by them were regarded as quasi-judicial, where there was contest between the two contending parties and the statutory authority was required to adjudicate upon the rights of the parties. In Cooper v. Wilson6 it is stated that "the definition of a quasi-judicial decision clearly suggests that there must be two or more contending parties and an outside authority to decide those disputes". In view of the aforesaid statement of law, where there are two or more parties contesting each other's claim and the statutory authority is required to adjudicate the rival claims between the parties, such a statutory authority was held to be quasi-judicial and decision rendered by it as a quasi-judicial order. Thus, where there is a lis or two W.P(C) No.26691 of 2010, etc. -:

309. :- contesting parties making rival claims and the statutory authority under the statutory provision is required to decide such a dispute, in the absence of any other attributes of a quasi-judicial authority, such a statutory authority is quasi-judicial authority.

21. But there are cases where there is no lis or two contending parties before a statutory authority yet such a statutory authority has been held to be quasi-judicial and decision rendered by it as a quasi-judicial decision when such a statutory authority is required to act judicially. In R. v. Dublin Corpn.7 it was held thus: "In this connection the term judicial does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for purpose of this question, a judicial act seems to be an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights. And if there be a body empowered by law to enquire into facts, makes estimates to impose a rate on a district, it would seem to me that the acts of such a body involving such consequence would be judicial acts." 22. Atkin, L.J.

as he then was, in R. v. Electricity Commrs. stated that when any body of persons has legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, such body of persons is a quasi-judicial body and decision given by them is a quasi-judicial decision. In the said decision, there was no contest or lis between the two contending parties before the Commissioner. The Commissioner, after W.P(C) No.26691 of 2010, etc. -:

310. :- making an enquiry and hearing the objections was required to pass order. In a nutshell, what was held in the aforesaid decision was, where a statutory authority is empowered to take a decision which affects the rights of persons and such an authority is under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act.

23. In Province of Bombay v. Khushaldas S. Advani2 it was held thus: (AIR p. 260, para 173) "(i) that if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a lis and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially. In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to W.P(C) No.26691 of 2010, etc. -:

311. :- act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially." In paragraph 24 the Apex Court noted the legal principles holding that when act of statutory authority would

be quasi judicial or administrative. Paragraphs 24 and 25 are quoted below:

24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions are these: Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

25. Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial authority. However, in the absence of a lis before a statutory authority, the W.P(C) No.26691 of 2010, etc. -:

312. :- authority would be quasi-judicial authority if it is required to act judicially.

135. The Apex Court in the said case further laid down that what distinguishes administrative from a quasi judicial function. Following was further laid down in paragraphs 27, 28 and 29.

"7. What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority.

28. Learned counsel for the respondent then contended that a quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial and in that view of the matter, the function discharged by the Election Commission under Section 29-A of the Act is totally administrative in nature. Learned counsel in support of his argument relied upon the following passage from Wade & Forsyth's Administrative Law: "A quasi-judicial function is an administrative function which the law requires to be exercised in

some respects as if it were judicial. A typical example is W.P(C) No.26691 of 2010, etc. -:

313. :- a minister deciding whether or not to confirm a compulsory purchase order or to allow a planning appeal after a public inquiry. The decision itself is administrative, dictated by policy and expediency. But the procedure is subject to the principles of natural justice, which require the minister to act fairly towards the objections and not (for example) to take fresh evidence without disclosing it to them. A quasi-judicial decision is therefore an administrative decision which is subject to some measure of judicial procedure." 29. We do not find any merit in the submission. At the outset, it must be borne in mind that another test which distinguishes administrative function from quasi- judicial function is, the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency. In the present case, the Election Commission is not required to register a political party in accordance with any policy or expediency but strictly in accordance with the statutory provisions. The aforequoted passage from Administrative Law by Wade & Forsyth is wholly inapplicable to the present case. Rather, it goes against the argument of learned counsel for the respondent. The aforequoted passage shows that where W.P(C) No.26691 of 2010, etc. -:

314. :- an authority whose decision is dictated by policy and expediency exercises administratively although it may be exercising functions in some respects as if it were judicial, which is not the case here." 136. Now applying the ratio of the aforesaid judgment, let us proceed to examine the nature of function of the Custodian while acting under Sec.19(3) (b). When a person makes an application under Sec.19 (3)(b) challenging the Notification issued under the Ordinances notifying the area as ecologically fragile land and contends that it is exempted under the 2003 Act, the lis very much arises. The lis of course is between the State Government and the applicant. This attribute is fully attracted in the function of the Custodian envisaged under Sec.19(3)(b). It is further relevant to note that the Custodian is statutorily obliged to conduct an enquiry and he has to act according to Rules 2007 as noted above and his action is not to be dictated by the policy and expediency. W.P(C) No.26691 of 2010, etc. -:

315. :- 137. The fact that the Custodian is also required to conduct an enquiry and obtain reports indicates that he has to decide judicially as to whether the land is ecologically fragile land or not. Rule 17(1) uses the words "to decide whether such land qualified to be notified as ecologically fragile land in accordance with the provisions of the Act." Rules 2007 explain the statutory functions of the Custodian and the Scheme delineated by Sec.19 as well as Rules 17, 19 and 20 fully proves that the Custodian acts quasi judicially while deciding an application under Sec.19(3)(b).

138. Shri K.V. Viswanathan, learned Senior Advocate for the State has placed reliance on a judgment of the Apex Court reported in 1980 (3) SCC402and the Apex Court in the said judgment laid down the following in paragraph 5: "5. The last point raised by Shri Garg was that the Central Government had no power to review its earlier W.P(C) No.26691 of 2010, etc. -:

316. :- orders as the rules do not vest the government with any such power. Shri Garg relied on certain decisions of this Court in support of his submission: Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji; D.N. Roy v. State of Bihar and State of Assam v. J.N. Roy Biswas. All the cases cited by Shri Garg are cases where the government was exercising quasi-judicial power vested in them by statute. We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Here again, we emphasise that if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds W.P(C) No.26691 of 2010, etc. -:

317. :- on which an administrative decision may be questioned in a court. We see no force in this submission of the learned Counsel. The appeal is, therefore, dismissed. In the said case the Apex Court laid down that power to review must be conferred by Statute either specifically or by necessary implication is not applicable to decision purely of an administrative nature. The said judgment was in the context of an administrative decision. As observed above, the Custodian exercises the quasi judicial function and said judgment is of no help.

139. The 2003 Act or Rule 19 of the 2007 Rules does not confer any specific power of review to the Custodian. Whether quasi judicial authority shall have any power to review or recall his orders is the next question to be considered. It is relevant to note that in Indian National Congress's case, the Apex Court held that the Election Commission exercises a quasi judicial function under Sec.29A of the Representation of Peoples W.P(C) No.26691 of 2010, etc. -:

318. :- Act. The Apex Court in the said case observed that absence of any statutory provision the quasi judicial authority may not have any power to review. In paragraph 32, the following was laid down.

32. This matter may be examined from another angle. If the directions of the High Court for considering the complaint of the respondent that some of the appellant political parties are not functioning in conformity with the provisions of Section 29-A is to be implemented, the result will be that a detailed enquiry has to be conducted where evidence may have to be adduced to substantiate or deny the allegations against the parties. Thus, a lis would arise. Then there would be two contending parties opposed to each other and the Commission has to decide the matter of deregistration of a political party. In such a situation the proceedings before the Commission would partake the character of quasi-judicial proceeding. Deregistration of a political party is a serious matter as it involves divesting of the party of the statutory status of a registered political party. We are, therefore, of the view that unless there is W.P(C) No.26691 of 2010, etc. -:

319. :- express power of review conferred upon the Election Commission, the Commission has no power to entertain or enquire into the complaint for deregistering a political party for having violated the constitutional provisions. The

Apex Court further held that there are three exceptions that the Commission can review its order registering a political party. In paragraph 33 the Apex Court noticed that three exceptions. Paragraph 33 is quoted as below:

"3. However, there are three exceptions where the Commission can review its order registering a political party. One is where a political party obtained its registration by playing fraud on the Commission, secondly, it arises out of sub-section (9) of Section 29-A of the Act and thirdly, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law. W.P(C) No.26691 of 2010, etc. -:

320. :- One exception was that when the order is obtained by playing fraud. In paragraph 34 of the judgment, the Apex Court considered the exception and laid down the following:

"4. Coming to the first exception, it is almost settled law that fraud vitiates any act or order passed by any quasi-judicial authority even if no power of review is conferred upon it. In fact, fraud vitiates all actions. In Smith v. East Elloe Rural Distt. Council it was stated that the effect of fraud would normally be to vitiate all acts and orders. In Indian Bank v. Satyam Fibres (India) (P) Ltd. it was held that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to courts of law, but also to statutory tribunals which do not have power of review. Thus, fraud or forgery practised by a political party while obtaining a registration, if comes to the notice of the Election Commission, it is open to the Commission to deregister such a political party. In paragraph 35, the 2nd and 3rd exceptions were elaborated. In paragraph 35 the following pertinent W.P(C) No.26691 of 2010, etc. -:

321. :- observations were made.

"5. The second exception is where a political party changes its nomenclature of association, rules and regulations abrogating the provisions therein conforming to the provisions of Section 29-A(5) or intimating the Commission that it has ceased

to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy, or it would not uphold the sovereignty, unity and integrity of India so as to comply with the provisions of Section 29-A(5). In such cases, the very substratum on which the party obtained registration is knocked off and the Commission in its ancillary power can undo the registration of a political party. Similar case is in respect of any like ground where no enquiry is called for on the part of the Commission. In this category of cases, the case would be where a registered political party is declared unlawful by the Central Government under the provisions of the Unlawful Activities (Prevention) Act, 1967 or any other similar law. In such cases, power of the Commission to cancel the registration of a political party is sustainable on the settled legal principle that when a statutory authority is conferred W.P(C) No.26691 of 2010, etc. -:

322. :- with a power, all incidental and ancillary powers to effectuate such power are within the conferment of the power, although not expressly conferred. But such an ancillary and incidental power of the Commission is not an implied power of revocation. The ancillary and incidental power of the Commission cannot be extended to a case where a registered political party admits that it has faith in the Constitution and principles of socialism, secularism and democracy, but some people repudiate such admission and call for an enquiry by the Election Commission, reason being, an incidental and ancillary power of a statutory authority is not the substitute of an express power of review. One of the submissions which was advanced by learned Senior Advocate Shri K.V. Viswanathan is that under Sec.21 of the General Clauses Act quasi judicial authority can always review or cancel its order. The Apex Court in the above case has laid down that provisions of Sec.21 of the General Clauses Act are not applicable where a statutory authority is required to W.P(C) No.26691 of 2010, etc. -:

323. :- act quasi judicially. The following was laid down in paragraphs 38 and 39.

"8. We have already extensively examined the matter and found that Parliament consciously had not chosen to confer any power on the Election Commission to deregister a political party on the premise that it has contravened the provisions of

sub-section (5) of Section 29-A. The question which arises for our consideration is whether in the absence of any express or implied power, the Election Commission is empowered to cancel the registration of a political party on the strength of the provisions of Section 21 of the General Clauses Act. Section 21 of the General Clauses Act runs as under:

"1. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.-- Where, by any Central Act or regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and W.P(C) No.26691 of 2010, etc. -:

324. :- conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued." 39. On perusal of Section 21 of the General Clauses Act, we find that the expression "order" employed in Section 21 shows that such an order must be in the nature of notification, rules and bye-laws etc. The order which can be modified or rescinded on the application of Section 21 has to be either executive or legislative in nature. But the order which the Commission is required to pass under Section 29-A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of the matter in the foregoing paragraph and held that the function exercisable by the Commission under Section 29-A is essentially quasi-judicial in nature and order passed thereunder is a quasi-judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of deregistration/cancellation of registration after enquiry by the Election Commission. We, therefore, hold that Section 21 of the General Clauses Act has no application where a statutory authority is required to act quasi-judicially. W.P(C) No.26691 of 2010, etc. -:

325. :- Whether the order dated 8.1.2008 passed by the Custodian can fall in any of the exceptions enumerated by the Apex Court in Indian National Congress's case. In answering this we have to look into the order dated 8.1.2008 and notice the grounds on which the Custodian proceeded to pass orders recalling his earlier order dated 12.6.2007, since the order of review by the Custodian can be saved

when it falls in any of the exception as noted above. Otherwise exercising a quasi judicial function the Custodian has no jurisdiction to review, power of review not having specifically conferred. For considering W.P(C) No.3210 of 2008, we have to examine whether the said order dated 8.1.2008 is sustainable. The Custodian in his notice dated 26.12.2007 has stated as follows: "As per proceedings order cited 5, the Revenue Divisional officer, Thiruvananthapuram has cancelled the transfer Registry effected in the name of M/s.Southern Field Ventures Limited. W.P(C) No.26691 of 2010, etc. -:

326. :- As per Order cited 6 above, the Hon'ble High Court of Kerala has passed an interim order. The Government as per communication cited 7 above, has requested the Custodian to take appropriate Action. The above facts were considered by the Custodian of Ecologically Fragile Lands and is prima facie satisfied that the proceedings cited 3 above which has not come into force was issued without taking into account consideration certain vital factors and also the result of facts suppressed by you and also is issued without jurisdiction. Hence Custodian of Ecologically Fragile lands is prima facie satisfied that the proceedings cited 3 above should be recalled for the following among other reasons:- 1. The application cited 2 above is not maintainable since the person who filed the application was not the owner of a person who had right of possession or enjoyment of the land notified as Ecologically Fragile Land.

2. Even the sale deed executed by M/s.Jay Shree Tea & Industries Limited in favour of Southern Field Ventures Private Limited is invalid in view of Section 84 of the Kerala Land Reforms Act. This fact including pendency of the ceiling case was suppressed by you while filing the application.

3. The question whether as on W.P(C) No.26691 of 2010, etc. -:

327. :- 02.06.2000, the land was actually Ecologically Fragile land is not gone into and considered by mistake, while issuing proceedings cited 3 above.

4. The core question whether the land in question will come within the definition of Ecologically Fragile land was not considered in proceedings cited 3 above. Take notice that Custodian of Ecologically Fragile Lands is holding a sitting to consider

these aspects on 2.06.2008 at 11.00 in the office of the Custodian of Ecologically Fragile Lands, Forest Head Quarters, Vazhuthacaud, Thiruvanthapuram to ake a final decision whether to recall the proceedings cite 3 or not. You are therefore given a chance to explain your side on the above points before the Custodian, Ecologically Fragile Lands. Hence you are requested to attend the siting on 2.01.2008 at 11.00 a.m. Without fail. Since the matter is very urgent especially since the batch of cases are posted on 9.1.2008 before the Honourable High Court of Kerala, no adjournment will be given in the above matter. Hence you are requested to attend the sitting without fail." 140. One of the grounds noticed in the order is that registry in favour of the petitioner M/s.Southern Field Ventrues has been cancelled by the Revenue Divisional W.P(C) No.26691 of 2010, etc. -:

328. :- Divisional Officer by order dated 3.10.2007. Application dated 30.3.2007 was filed by the petitioner on the basis of registered sale deed dated 30.3.2005. Allegations have also been made in the notice that several material facts including proceeding of ceiling pending in Case No.K2-7561/84 of the Taluk Land Board has been concealed. Allegation of suppression of facts was also alleged. It was alleged in the notice that application filed by the petitioner under Sec.19(3)(b) was not maintainable. In view of the reasons as noted above in the show cause notice we are satisfied that there were sufficient cause to initiate proceedings for recalling the order dated 12.6.2007. The present case falls well within the exceptions as noted in Indian National Congress's case. We thus found no infirmity in issuing the show cause notice dated 26.12.2007 for recall of the impugned order. W.P(C) No.26691 of 2010, etc. -:

329. :- 141. Now we come to the order dated 8.1.2008 passed by the Custodian recalling the order dated 12.6.2007. The order dated 8.1.2008 gives various reasons for recalling the order dated 12.6.2007. One of the reasons given by the Custodian is that the order dated 26.12.2007 was passed on state of affairs as existed on 12.6.2007 and not as on 2.6.2000 which was the relevant date, the Custodian has observed that the said order was passed on a mistake due to which the order deserves to be recalled.

142. Pendency of Ceiling Case No.614 of 1984 which fact was suppressed pursuant to remand in C.R.P. No.2346 of 1984. One more reason which has been given in the order is that the land having vested under Notification dated 20.10.2000 issued under Ordinances there was no title with the erstwhile owner, Jay Shree Tea to transfer any land in favour of the W.P(C) No.26691 of 2010, etc. -:

330. :- petitioner. It is useful to note the following observations of the Custodian in paragraph 19. Hence M/s.Jay Shree Tea and Industries Ltd., which was the previous owner of the property, had no right, title or interest in the property after 2.6.2000. In view of Section 19(3) read with Rule 17 of Kerala Forest (Vesting & Management of Ecologically Fragile Lands) Rules, only three category of persons, has right to apply before the Custodian, as regards the Ecologically Fragile Lands are concerned. They are (1) owner, (2) any person having right of possession and (3) any person having right of enjoyment of any land notified under Section 3 of the Ordinance. Owner is define under Section 2(1) of the Kerala Forest (Vesting & Management of Ecologically Fragile Lands) Act 2003, or any person having right of possession or right of enj' of the above said land prior to 2.6.2000 has locus standi to apply before the Custodian under Section 19(3) of the Act read with Rule 17 of the Rules. In the present case, M/s.Southern Field Venrtures Pvt. Ltd. is the person who had filed application under Section 19(3) of the Act. In view Rule 17(2)(a) of the Kerala Forest (Vesting & Management of Ecologically Fragile Lands), Rules, every application shall be accompanied by documents to prove ownership or enjoyment of the land. This means that the application should be accompanied by documents showing that the applicant has legal title or possession or right of enjoyment of the said land. In the present case, W.P(C) No.26691 of 2010, etc. -:

331. :- M/s.Southern Field Ventures had produced Photostat copies of three Sale Deeds No.732/2005 dt.30.3.2005, 733/2005 dt.30.3.2005 and 734/2000 dated 30.3.2005 registered in the Palode Sub Registry Office. The said sale deeds are allegedly executed on behalf of M/s.Jay Shree Tea and Industries Ltd. in favour of M/s.Southern Field Ventures, allegedly transferring the entire land. It is pertinent to note that as on the date of the above said sale deeds dt.30.3.2005, M/s.Jay Shree

Tea and Industries Ltd., had no legal right, title or legal possession of the above said land, which was vested with the Government w.e.f. 2.6.2000. Hence the sale deeds as aforesaid does not covey any legal title, ownership or possession in favour of Southern Field Ventures Ltd. Hence M/s.Southern Field Ventures Pvt.Ltd. Has no "ownership", "right of possession", or "right of enjoyment" of the above said properties, so as to enable the Company to file application under Section 19(3) of the Kerala Forest (Vesting & Management of Ecologically Fragile Lands) Rules. However, this jurisdictional precondition for entertaining an application was not noted, by a mistake when proceedings cited 5 above was issued. As can be seen from the proceedings cited 5 above, the Custodian had not considered the question regarding the right of Southern Field Ventures to file application, under Section 19(3) of Rule 17. This an apparent mistake.." It is to be noted that by recalling the order dated 12.6.2007, application filed by the petitioner under W.P(C) No.26691 of 2010, etc. -:

332. :- Sec.19(3)(b) revived and was to be decided afresh. Order dated 8.1.2008 does not reject the application filed by the petitioner dated 30.3.2007. Rather the observation in the order is to the effect that relevant aspect is to be considered. Following observations were made by the Custodian in paragraph 24. ....A reading of the proceedings cited 5 above will clearly show that the said proceedings is only relating to to the state of affairs as on 24.05.2007 and not as on 02.06.2000 and prior to such date, when the actual vesting took place. This aspect was overlooked by mistake while issuing proceedings cited 5 above. The consideration of this aspect is crucial, for a complete and final disposal of the application under Section 19(3)(b) of the Kerala Forest (Vesting & Management of Ecologically Fragile Lands) Act, 2003 and to decided whether the land is Ecologically Fragile Land or not".

143. The Custodian having taken the view that application under Sec.19(3)(b) is to be decided again after taking into consideration all relevant facts and W.P(C) No.26691 of 2010, etc. -:

333. :- circumstances, we are of the view that the Custodian ought not to have expressed any concluded opinions regarding the merits of the application as has

been done by him in the order. Notice dated 26.12.2007 only was a notice to the effect as to whether the proceeding dated 12.6.2007 be recalled or not.

144. We are thus of the view that, although the Custodian was considering the issue of recall of the order dated 12.6.2007, it was sufficient for him to give reason to recall the order, but since the application was not decided by that order, he ought not to have expressed any final opinion. For eg., one of the opinions expressed by the Custodian in his order dated 8.1.2008 is that the petitioner has no right to file application under Sec.19(3)(b) of the 2003 Act, which does not appear to be correct. The reason given by him is that his previous owner, M/s.Jay Shree Tea Industries, has no right to transfer the estate to the W.P(C) No.26691 of 2010, etc. -:

334. :- petitioner since it was already vested on 2.6.2000 in the State as notified by Notification dated 20.10.2000 in the Kerala Gazette. As noticed above, the definition of forest in Sec.2(c) Ordinance No.6/2000 was different which did not contain any exclusion. The definition under Sec.2(c) of forest as per the 2003 Act was substantially changed which provided for exclusion of plantations and buildings Sec.1(1) further provided that the Act shall be deemed to come into force on the 2nd day of June, 2000. Section 19(3)(a) further provided that the ecologically fragile land as defined in the 2003 Act shall only be vested in the State. Thus the ecologically fragile land as defined under the 2003 Act shall only vest in the State Government as on 2.6.2000 which clearly means that plantations were exempted. Thus by the operation of law it will be deemed that excluded plantations do not vest in the State. Case of W.P(C) No.26691 of 2010, etc. -:

335. :- the petitioner was that his estate was tea plantation and did not vest in the State. Thus the issue which was to be decided in the application was as to whether the estate was a plantation excluded or was forest land as per the 2003 Act. Hence the assumption by the Custodian that the land vested on 2.6.2000 in the State and Jay Shree Tea Industries has no jurisdiction to transfer was not correct and was an issue which was yet to be decided in application. There are materials on record including the Three Member Committee Report which was obtained by the Custodian for passing the order dated 12.6.2007 which indicates

that apart from plantation there were buildings and structures existing in the building. Observation of the Custodian that the application was not maintainable thus is unsustainable. An application which is claiming a right and inviting the Custodian to decide the issue on merits cannot be W.P(C) No.26691 of 2010, etc. -:

336. :- thrown out observing that the application is not maintainable. Observations of the Custodian thus, that the application was not maintainable are unsustainable. We further observe that the other observations of the Custodian expressing any concluded opinion on the merits of the application has also to be set aside to enable the custodian to decide the application afresh without being influenced by any observations made in the order dated 8.1.2008.

145. We have noted the statutory scheme of Sec.19(3). According to Sec.19(3) the Custodian had to scrutinise the notifications. Section 19(3)(b) mandates the Custodian to scrutinise any land notified under Ordinances. Every Notification issued in respect of any land under 19(3) of Sec.3 of the said Ordinance "shall be scruitised by the Cutodian...." The key words are "shall be scrutinised by the Custodian suo motu. There is reason for using the word "shall" which is in W.P(C) No.26691 of 2010, etc. -:

337. :- mandatory form in Sec.19(3)(b). As noted above, Sec.19(3) begins with a a non-obstante clause. The definition of forest under Sec.2(c) has been substantially changed under the 2003 Act excluding plantation and buildings, etc., from the ambit of ecologically fragile land. An overriding effect has been given to the provisions of the Act. Use of the words, "notwithstanding anything contained in the said Ordinance" clearly indicate that Ordinances or Notifications are to be overridden by the provisions of the Act regarding the definition of ecologically fragile land as given in the Act. As noted above, Sec.1(2) deems the 2003 Act to have into force with effect from 2.6.2000. The provisions of the Act thus shall be deemed to have come into force from 2.6.2000. Section 1(2) gives retrospective enforcement of the Act. Deeming provisions are to be given its full effect as laid W.P(C) No.26691 of 2010, etc. -:

338. :- down by the Apex Court in Arooran Sugars Ltd's case (supra). Paragraphs 11 and 13 which are relevant are quoted as below.

11. Sections 5 and 6 of Act 25 of 1978 contain deeming fiction in its different clauses while purporting to omit and remove the amendments which had been introduced by Act 7 of 1974 in the Principal Act. The role of a provision in a statute creating legal fiction is by now well settled. When a statute creates legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain as to for what purpose and between what persons such a statutory fiction is to be resorted to. Thereafter courts have to give full effect to such a statutory fiction and it has to be carried to its logical conclusion. In the well-known case of East End Dwellings Co. Ltd. v. Finsbury Borough Council, Lord Asquith while dealing with the provisions of the Town and Country Planning Act, 1947, observed: "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. ... The statute says that you must imagine a certain W.P(C) No.26691 of 2010, etc. -:

339. :- state of affairs. It does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs." That statement of law aforesaid in respect of a statutory fiction is being consistently followed by this Court. Reference in this connection may be made to the cases of State of Bombay v. Pandurang Vinayak Chaphalkar; Chief Inspector of Mines v. Karam Chand Thapar; J.K. Cotton Spg. and Wvg. Mills Ltd. v. Union of India; M. Venugopal v. Divisional Manager, LIC and Harish Tandon v. A.D.M.

13. The legislature by different deeming clauses and through statutory fiction requires the court to treat that amendments so introduced by Act 7 of 1974 had never been introduced in the Principal Act. The power of the legislature to amend, delete or obliterate a statute or to enact a statute prospectively or retrospectively cannot be questioned and challenged unless the court is of the view that such exercise is in violation of Article 14 of the Constitution. It need not be impressed

that whenever any Act or amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be affected one way or the other. In every case, it cannot be urged that the exercise by the legislature while introducing a new provision or deleting an existing provision with retrospective effect per se shall be violative of Article 14 of the Constitution. If that stand is accepted, then the

 necessary corollary shall be that legislature has no power to legislate retrospectively, because in that event a vested right is effected; of course, in special situation this Court has held that such exercise was violative of Article 14 of the Constitution. Reference in this connection may be made to the cases of State of Gujarat v. Raman Lal Keshav Lal Soni, T.R. Kapur v. State of Haryana and Union of India v. Tushar Ranjan Mohanty. In the case of State of Gujarat v. Raman Lal a Constitution Bench on the facts and circumstances of that case observed: (SCC pp. 61-62, para 52) "The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature- made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable

 and a negation of history." In same terms this Court expressed the opinion in the cases of T.R. Kapur v. State of Haryana and Union of India v. Tushar Ranjan Mohanty in respect of alterations in rules framed under Article 309 of the

Constitution retrospectively regarding conditions of service. Ordinances having overridden to the extent of definition of forest land and ecologically fragile land, earlier Notification issued in the Ordinances notifying the land as ecologically fragile land thus has to be reconsidered which is the requirement of the statutory scheme. Legislature consciously used the words "shall be scrutinised by the Custodian". Thus it was the statutory duty of the Custodian to scrutinise the issue. It is further relevant to note that notifications issued under the Ordinances notifying the land as ecologically fragile land shall not become inoperative after lapse of Ordinance. Section 19(1) contains a transitory provision, which is quoted as below: W.P(C) No.26691 of 2010, etc. -:

342. :-

"9. Validation and Transitory Provisions.- (1) Notwithstanding the expiry of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2001 (16 of 2001) (hereinafter referred to as the said Ordiance)- (a) all ecologically fragile lands vested in the Government under the said Ordinance shall insofar as it is not inconsistent with the provisions of this Act, be deemed to have been vested under this Act; (b) anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall, insofar it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under this Act." Section 19(1)(b) provided that anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall in so far as it is not inconsistent with the provisions of the Act be deemed to have been done or taken under the Act. Thus under the Ordinances actions taken including the Notifications issued shall be deemed W.P(C) No.26691 of 2010, etc. -:

343. :- to have been taken under the Act in so far as they are not inconsistent with the provisions of the Act shall operate. Thus by lapse of Ordinances Notifications shall not automatically come to an end. The Notifications issued under the Ordinances shall not become inoperative after lapse of the Ordinances since they shall be deemed to have taken under the 2003 Act in so far as they are not inconsistent with the provisions of the Act and further the Custodian has to

scrutinise the Notifications issued under the Ordinances which is required by Sec.19(3)(b) of the Act for the purpose and object as noted above. ISSUE No.XIII146 In view of the forgoing discussion now we proceed to examine as to what relief the petitioners, if any, are entitled in this batch of Writ Petitions.

147. In view of our decision on above issues W.P(C) No.26691 of 2010, etc. -:

344. :- especially Issue No.12, W.P(C).No.3210/2008 (M/s.Southern Field Ventures Private Ltd. v. State of Kerala) and few other Writ Petitions relating to the said issue need to be decided in the following manner: W.P(C).No.3210 of 2008 (M/s.Southern Field Ventures Private Ltd. v. State of Kerala):

148. The prayer for quashing Exhibit P38 show cause notice dated 26.12.2007 is refused. Exhibit P40 order dated 8.1.2008 in so far as it recalls the order dated 12.6.2007 is affirmed, we direct the Custodian of Ecologically Fragile Lands to decide the application filed by the petitioner dated 30.3.2007 afresh without taking into consideration any of the observations and findings referred to in his order dated 8.1.2008 and in accordance with this judgment.

149. The prayer in W.P(C).No.27821 of 2007 for quashing Exhibit P17 notification published on 20.10.2000 cannot be granted, since we have already W.P(C) No.26691 of 2010, etc. -:

345. :- passed order in W.P(C).No.3210 of 2008 directing the Custodian to decide the application dated 30.3.2007. Exhibit P26 notice dated 7.9.2007 and Exhibit P27 notice dated 8.9.2007 shall be subject to the decision of the Custodian on the application dated 30.3.2007 of the petitioner as directed in W.P(C).No.3210 of 2008. The Writ Petition is disposed of accordingly. W.P(C).No.29101 of 2007 (Indian Institute of Space Science and Technology v. State of Kerala & others):

150. The prayer for quashing Exhibit P3 notice dated 8.9.2007 shall abide by the decision on the application of M/s.Southern Field Ventures Private Ltd. dated 30.3.2007 as directed in W.P(C).No.3210 of 2008. The Writ Petition is disposed of accordingly. WP(C).No.27296 of 2007 (PIL) (The Friends of Environment v. State of Kerala & others):

151. The prayer of the petitioner to quash Rules 17 to 20 of the Kerala Forests (Vesting and Management W.P(C) No.26691 of 2010, etc. -:

346. :- of Ecologically Fragile Lands) 2007 is refused. Exhibit P6 order dated 12.6.2007 having already been recalled by order dated 8.1.2008, which has been confirmed in W.P (C).No.3210 of 2008, the prayer for quashing Exhibit P6 has become infructuous. The Writ Petition is disposed of accordingly. W.P(C).No.32767 of 2007 (PIL) (Lawyers Environmental Awareness Forum v. Union of India):

152. In view of our order in W.P(C).No.3210 of 2008 directing the Custodian to decide the application dated 30.3.2007 regarding claim of Merchiston Tea Estate to be exempted from notification issued under Ordinance, the prayer for declaring Merchiston Tea Estate as ecologically fragile land cannot be granted. However, we direct that no construction in Merchiston Tea Estate shall be undertaken without conducting an environmental impact study to be conducted under the W.P(C) No.26691 of 2010, etc. -:

347. :- supervision of the sixth respondent. The Writ Petition is disposed of accordingly. W.P(C).No.29466 of 2009 (PIL) (D.Reghunathan Nair v. State of Kerala:

153. The prayer of the petitioner to quash Exhibit P2 order dated 12.6.2007 has become infructuous, in view of order dated 12.6.2007 having been recalled by further oder dated 8.1.2008, which recalling has been confirmed by our order in W.P(C).No.3210 of 2008. Rest of the prayers are refused. The Writ Petition is disposed of accordingly. W.P(C).No.32740 of 2007(PIL) (T.H.Mustaffa v. State of Kerala):

154. In view of our order passed in W.P(C). No.3210 of 2008, the prayer of the petitioner to quash Exhibit P2 order dated 12.6.2007 has become infructuous, in view of the recalling of the said order by subsequent order dated 8.1.2008 which recalling has W.P(C) No.26691 of 2010, etc. -:

348. :- been confirmed by us by order of the date in W.P(C). No.3210 of 2008. Rest of the prayers are refused. The Writ Petition is disposed of accordingly. W.P(C).No.29245 of 2007 (PIL) (P.A.Sekharan v. State of Kerala & others):

155. The prayer of the petitioner to quash Exhibit P2 dated 12.6.2007 has become infructuous, in view of recalling of the said order by subsequent order dated 8.1.2008, which recalling has been confirmed by our order of the day passed in W.P(C).No.3210 of 2008. Rest of the prayers are refused. The Writ Petition is disposed of accordingly.

156. The prayer in W.P(C) No.30930 of 2006 N.A.Plantations v. State of Kerala & Others for issuance of a declaration that the State is bound by the judgment of the civil court in O.S. No.134 of 1998 is refused. W.P(C) No.15324 of 2009 - State of Kerala v. W.P(C) No.26691 of 2010, etc. -:

349. :- N.A.Plantations filed by the State is allowed. The Compromise Ext.P8 as well as the judgment of the civil court, Ext.P10 dated 31.02.2003 in O.S. No.134 of 1998 are quashed.

157. W.A. No.535 of 2014 - State Kerala & Others v. M/s.Athani Bricks & Metals (P) Ltd. Varabetta is allowed. Interim order passed by the learned Single Judge in W.P(C) No.5605 of 2014 is set aside. W.P(C) No.1767 of 2007 - (Pallippath Shylaj & Others v. Forest Range, Kottiuyoor & Others) 158. Respondent in the counter having come up with the stand that no Notification regarding petitioner's land has been published under the 2003 Act, the reliefs claimed have become infructuous. There will be liberty to the petitioner to file afresh Writ Petition if any cause of action arises. W.P(C) No.36454/2007 - (Kizhakkanela Sudhakaran v. Union of India & Others) W.P(C) No.26691 of 2010, etc. -:

350. :- 159. Prayer of the petitioner to quash Ext.P6, Government Order dated 22.11.2007 is refused, however the petitioner shall be at liberty to submit a representation to the State Government.

160. As noted above, there are two Writ Petitions filed by the State challenging the orders passed by the Civil Court granting interim injunction in the civil suit filed by

the owners of the land. In one Writ Petition compromise was also entered by the officers of the State and the suit was decided in terms of the compromise as noted above. The ground taken in the Writ Petition is that the Civil Court has no jurisdiction to entertain a suit, which is barred by Section 13 of the 2003 Act. It is useful to quote Section 13 of the 2003 Act, which is to the following effect:

"3. Bar of jurisdiction of Civil Court.- Except as otherwise provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question or to W.P(C) No.26691 of 2010, etc. -:

351. :- determine any matter which is, by or under this Act, required to be decided or dealt with or to be determined by the Tribunal, the custodian or any other officer." In view of the specific bar in entertainment of Civil Suit by the Civil Court, we are of the view that the suit filed by the owners of the land was clearly not maintainable and the Civil Court has committed error in granting interim injunction as well as deciding the suit on the basis of the compromise. The orders passed by the Civil Court were clearly without jurisdiction and deserve to be set aside.

161. We have already upheld the constitutional validity of the 2003 Act. The prayer in the Writ Petitions to declare the Act unconstitutional is refused.

162. The constitutional validity having upheld the claim of petitioners needs to be considered on merit. Some of the petitioners have availed remedy under W.P(C) No.26691 of 2010, etc. -:

352. :- Sections 19, 10, 10A and 10B of 2003 Act, but many have been awaiting the outcome of challenge to the constitutional validity. For determining the claim of each owner, the facts, evidence, spot position have all to be considered which cannot be appropriately done in writ proceedings. For an application under Section 19, no time limit is provided and he Custodian is also obliged to suo motu examine the notifications, but for a dispute to be raised under Sections 10, 10A and 10B there are time constraints. But looking to the fact that constitutional validity is being decided today, we deem it fit and proper to give opportunity to all to avail the statutory remedy under Sections 19, 10, 10A and 10B as the case may be. The Custodian and the Tribunal may decide the respective claims in light of the

observations as made above.

163. In addition to what has been directed above in paragraphs 147 to 159, we dispose of all the Writ W.P(C) No.26691 of 2010, etc. -:

353. :- Petitions in following manner. (i) We uphold the constitutional validity of the 2003 Act. The prayer in the Writ Petitions to declare the 2003 Act unconstitutional is refused. The challenge to Rules 17 to 20 of 2007 Rule is also repelled. (ii) Those petitioners who have challenged the Notifications issued under the Ordinances, notifying their land as ecologically fragile land under Ordinance Nos.6/2000, 8/2000, 3/2001 and 16/2001 are given liberty to submit an application to the Custodian under Sec.19 of the 2003 Act for reviewing the Notification within one month from this day if not already made. (iii) The Custodian shall proceed to examine the above applications taking into W.P(C) No.26691 of 2010, etc. -:

354. :- consideration the relevant materials and averments and observations made in this judgment. The decision be taken thereon within three months from the date of filing the application along with copy of this judgment. The pending applications be also decided within three months. (iv) Petitioners who have challenged the Notifications issued under Sec.3 of the Act are also allowed one month's time to submit an application under Sec.10(1) and 10A as the case may be to the Tribunal which may be considered and decided by the Tribunal in accordance with law expeditiously within a period of six months from the date of submitting the applications. W.P(C) No.26691 of 2010, etc. -:

355. :- (v) The other reliefs claimed in the different Writ Petitions not specifically dealt with as above are refused.

164. Before we part, we record our deep appreciation for the learned counsel for the petitioners as well as learned Counsel for the State who have placed the case with great industry and knowledge. With their valuable assistance we could decide various involved issues with ease. Parties shall bear their own costs. ASHOK BHUSHAN ACTING CHIEF JUSTICE P.R.RAMACHANDRA MENON JUDGE vsv/vgs/ttb

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