REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No.2310/2008, I.A. Nos. 2378-2379/2009,
I.A. No. 2269, I.A. No. 2270, I.A. No. 2393,
I.A. Nos. 2381-2384

IN

W.P. (C) No. 4677 OF 1985

M.C. Mehta ....Petitioner

versus

Union of India & Ors. .... Respondents

In Re : Kant Enclave matters

WITH

I.A. Nos. 2310-2311 IN W.P. (C) No. 202/1995

J U D G M E N T

Madan B. Lokur, J.

1. The principal question that arises in this batch of substantive applications is whether, in the State of Haryana, land notified under the provisions of the Punjab Land Preservation Act, 1900 (for short the PLP Act) is forest land or is required to be treated as forest land. If so, whether construction carried out by the applicant R. Kant & Co. on this land is in contravention of the notification dated 18th August, 1992 issued under the

provisions of the PLP Act, the Forest (Conservation) Act, 1980 and decisions of this Court.

2. Our answer to both the questions is in the affirmative. We have no doubt that land notified by the State of Haryana under the provisions of the PLP Act must be treated as 'forest' and 'forest land' and has in fact been so treated for several decades by the State of Haryana. There is no reason to change or alter the factual or legal position. The construction activity carried out by the applicant R. Kant & Co. is clearly in violation of the notification dated 18th August, 1992 and in blatant defiance of orders passed by this Court from time to time. Unfortunately, the Town & Country Planning Department of the State of Haryana has been supporting the illegalities of the applicant despite strong resistance from the Forest Department of the State of Haryana. There is no doubt that at the end of the day, the State of Haryana comes out in very poor light and must be held accountable for its conflicting and self-destructive stand taken in spite of affidavits filed by the Chief Secretary of the State of Haryana from time to time supporting the Forest Department.

3. The unfortunate and distressing consequence of this is that because of a complete lack of any concern for the environmental and ecological degradation carried out in the Aravalli hills by influential colonizers like the applicant and what appears to be a very strong mining lobby in Haryana, the damage caused to the Aravalli hills is irreversible. It is not

only the future generations that have to pay a heavy price for this environmental degradation, but even the present generation is paying a heavy price for the environmental and ecological degradation inasmuch as there is an acute water shortage in the area as prophesied by the Central Ground Water Board. In addition, what was once a popular tourist destination, namely, Badkal Lake has now vanished and the entire water body has become bone dry. What are the more severe consequences that will be felt in the years to come, only time and nature will tell.

Brief background

4. By a communication dated 17th April, 1984 the Commissioner & Secretary, Town & Country Planning Department of the State of Haryana granted exemption to the applicant R. Kant & Co. for setting up a Film Studio and Allied Complex in Khasra Nos. 9 to 16 (owned by the applicant) in village Anangpur in Faridabad district. The exemption was granted under Section 23 of the Haryana Development & Regulation of Urban Areas Act, 1975 on certain terms and conditions. Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975 reads as follows:

> **"23. Power to exempt–** If the Government is of the opinion that the operation of any of the provisions of this Act causes undue hardship or circumstances exist which render it expedient so to do, it may, subject to such terms and conditions as it may impose, by a general or special order, exempt any class of persons or areas from all or any of the provisions of this Act."

5. The validity of the exemption is not before us and so we need not delve into the reasons for the exemption. Be that as it may, it appears that the applicant did not comply with the terms and conditions imposed upon it and therefore a show cause notice was issued for withdrawal of the exemption. The applicant contested the show cause notice and a hearing was given by the Chief Minister of Haryana being the Minister-in-charge of the Town & Country Planning Department. By an order dated 11th July, 1990 the show cause notice was dropped but some further terms and conditions were imposed on the applicant. It is important to note that one of the issues mentioned by the Chief Minister in his order related to the availability of water. The significance of this will be adverted to a little later. For the present, it may be noted that the order recorded in paragraph 9 is as follows:

> "Director, Town & Country Planning Department further inquired as to whether any technical as well as physical studies have been undertaken with regard to the **availability of the potable water** to meet the requirement of this population for the next 20 to 25 years. In reply to the query of the Director, Town & Country Planning Department with regard to the proposed density of the Complex and the manner in which the requirements of drinking water is proposed to be met with, the representative of the Company explained that they have already got a hydrological survey done for the area from which it has emerged that in 2/3rd of the site, **there are aquifers available at the deeper level which would be fully exploited to meet the demand of the water supply for the proposed population of about 30,000**. The Director Town & Country Planning Deptt. observed that as the company is required to maintain the studio-cum-allied complex for a period of five years after its completion, the span of availability of the water from the aquifers is of paramount because ultimately the responsibility

> for upkeep and maintenance of this particular complex would vest with the Faridabad Complex Administration or any other Local Authority. Hence, the company should keep this particular aspect in view." [Emphasis supplied by us].

6. It took quite some time for the applicant to accept the terms and conditions imposed by the Chief Minister in his order dated 11th July, 1990. Eventually, the applicant accepted the terms and conditions and entered into an agreement on 27th March, 1992 with the State of Haryana. One of the terms and conditions of the agreement was that the applicant would complete the entire project of a Film Studio and Allied Complex within a period of five years; extensions for the area earmarked for group housing could be considered on merits. It is nobody's case that the entire project was completed within a period of five years and there is nothing on record to suggest that any extension was granted to the applicant for group housing.

Notification under the PLP Act and other developments

7. The issue of environmental degradation in the Aravalli hill areas as well as in the Shivalik hill areas was a matter of concern for the State of Haryana, as it should be. In this regard, meetings were held and decisions taken for closing the area between Surajkund and Badkal Lake under the provisions of the PLP Act. The overall objective of these discussions and the reference to the PLP Act was for preventing environmental and

ecological degradation of the area due to mining and quarrying as well as construction activity.

8. On 12th September, 1990 a meeting was held in the context of closing some areas for purposes of afforestation, particularly those areas where mining activity was going on. It was suggested by the Town & Country Planning Department that areas earmarked for colonisation should not be closed but no final decision was taken and it was decided that the list of such areas should be provided or made available for further directions. The list was eventually prepared and it included the land of the applicant, but nothing further happened in this regard.

9. It appears from a reading of the documents before us (particularly a letter dated 9th June, 1993 sent by the Deputy Conservator of Forests, Faridabad to the Chief Administrator, Faridabad Complex Administration, the Administrator of the Haryana Urban Development Authority and the District Town Planner, Faridabad) that sometime in 1988 the State of Haryana constituted a High-Level Committee for the development of the area between and around Badkal Lake and Surajkund Tourist Complexes. It further appears that the High-Level Committee held several meetings between August 1988 and 1990 and apparently a Report was submitted recommending that the Aravalli hill area between these two complexes should be brought under the provisions of the PLP Act. This seems to have resulted in the issuance of a notification dated 18th August, 1992 under the

provisions of Section 4 of the PLP Act. We had requested learned counsel for the State of Haryana to provide us with a copy of the Report and the recommendations but they have not been provided, for whatever reason.

10. The notification prohibited, *inter alia*, clearing or breaking up of land not ordinarily under cultivation. Permission to break the land for cultivation could be permitted by the Divisional Forest Officer, Faridabad Forest Division. In any event, construction activity could not be permitted even by the Divisional Forest Officer.

11. We may note that one of the reasons that appears to have weighed with the State of Haryana in permitting the breaking up of land for cultivation is because Haryana is a predominantly agricultural State with 83% of the total land area under cultivation. This is to be found in the affidavit dated 25th February, 1997 of Shri S.K. Maheshwari, IAS, Commissioner & Secretary to the Government of Haryana filed in this Court in the case of ***T.N. Godavarman v. Union of India***.[1] In any event, as mentioned above, construction activity could not be permitted even by the Divisional Forest Officer.

12. The notification dated 18th August, 1992 (which included the land of the applicant and there is no dispute about this) reads as follows:

[1] W.P. No. 202 of 1995

"No. S.O.104/P.A.-2/1900/S.3/92 – Whereas the Governor of Haryana is satisfied after the due enquiry that the prohibitions hereinafter contained are necessary for the purpose of giving effect to the provisions of the Punjab Land Prevention Act, 1900;

Now, therefore in exercise of the powers conferred by section 4 of the said Act, the Governor of Haryana hereby prohibits the following acts for a period of thirty years(30 years) with effect from the date of publication of this order in the official Gazette in the areas specified in the schedule annexed hereto, the said area forming part of the village Anangpur in Ballabhgarh, Tehsil Faridabad District specified in the schedule annexed Haryana Government Forest Department Notification No.S.O.59/P.A. -2/1900/S.3/92, dated 10th April, 1992.

1. The clearing or breaking up of the land not ordinarily under cultivation prior to the publication of Haryana Government Forest Department Notification No.S.O.59/P.A.-2/1900/S.3/92 dated 10th April, 1992 provided that the breaking in the land for cultivation may be permitted by the Divisional Forest Officer, Faridabad Forest Division.

2. The quarrying of stones or the burnings of lime at place where such stone or lime had not ordinarily been as quarried or burnt prior to the publication of the said notification except with the permission of the Collector of Faridabad District who will consult the Divisional Forest Officer, Faridabad Forest Division before according such permission.

3. The cutting of trees or timber or the collection or removal or subjection to any manufacturing process of any forest produce other than grass, flower, fruit and honey save for the bona fide domestic or agricultural purpose of right holders in the land provided that owners of the land may sell trees or timber after first obtaining a permit to do so from the Divisional Forest Officer, Faridabad Forest Division. Such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of forest conservancy.

4. The setting on fire of trees, timber of forest produce.

5. The admission, herding or pasturing, retention of sheep, goats or camels provided that in case where sickness necessitates for the keeping of goats, for milk, Divisional Forest Officer, Faridabad Division may issue a permit at his discretion for the

> retention of a limited number of stall-fed goat, to be specified for a specified period."

13. In a parallel exercise, steps were taken by the State of Haryana for publishing a Development Plan for Faridabad. As a result of this exercise, the State of Haryana notified the Final Development Plan on 11th December, 1991 under Section 29 of the Faridabad Complex (Regulation and Development) Act, 1971. One of the factors mentioned in the notification justifying the necessity for amendment of the Development Plan was the rapid increase and scarcity of urbanizable area in Delhi and the rising population in the National Capital Region.

14. Also, in the meanwhile, it appears that on the basis of the exemption granted to the applicant in 1984, the Town & Country Planning Department encouraged the applicant to go ahead with its activity of colonisation of the land owned by it having an area of about 424.84 acres. The applicant prepared a layout plan for a Film Studio and Allied Complex which appears to have been approved by the Town & Country Planning Department subject to certain terms and conditions on or about 19th December, 1991.

15. Therefore, the position as it stood towards the end of August 1992 was that the applicant had the benefit of an exemption under Section 23 of the Haryana Development & Regulation of Urban Areas Act, 1975; the applicant was administratively permitted (if not encouraged) by the Town & Country Planning Department to construct upon the land owned by it in

village Anangpur; the layout plan prepared by the applicant was approved by the Town & Country Planning Department and was apparently in conformity with the Development Plan for Faridabad and finally, the applicant had entered into an agreement with the State of Haryana to complete its project of a Film Studio and Allied Complex within 5 years. On the other hand, environmental and ecological degradation in the entire area (which included the land owned by the applicant) was sought to be prevented by the State of Haryana through a statutory notification issued by the Forest Department under the provisions of the PLP Act. There was, therefore, a dichotomy of views and a conflict of interest between two Departments of the Haryana Government – one favouring colonization and the other favouring environmental protection and conservation.

16. In this back-drop, a doubt arose whether the applicant could carry on its construction activity for setting up a Film Studio and Allied Complex in the closed area of the notification.

17. This concern was voiced, amongst others, by the Principal Chief Conservator of Forests who sent a communication to the Commissioner & Secretary of the Forest Department on 31st August, 1992 inquiring whether permission for setting up a Film Studio and Allied Complex by the applicant could be issued or not. The Principal Chief Conservator of Forests mentioned in his communication that prior permission of the Central Government was compulsory for change of land use. The reason

why the Principal Chief Conservator of Forests mentioned about prior mandatory permission of the Central Government is because he believed that with the issuance of the notification under the provisions of the PLP Act, the subject land was a forest or in any event was required to be treated as a forest and therefore, under the provisions of the Forest (Conservation) Act, 1980 the permission of the Central Government was required for carrying on a non-forest activity in a forest. We will advert to this issue a little later.

18. The Principal Chief Conservator of Forests was given a somewhat casual response to the effect that he could take appropriate action according to norms.

19. Apart from the communication dated 31st August, 1992 referred to above and the response thereto, there was an exchange of letters between Departments of the State of Haryana with the focal point being the Town & Country Planning Department requesting that the land belonging to the applicant may be de-notified and taken out of the purview of the notification issued under the provisions of the PLP Act. However, nothing came out of this correspondence and the land of the applicant was admittedly not de-notified.

20. Eventually on 15th May, 1996 the Conservator of Forests wrote to the applicant that it was allowed to proceed ahead with its activities in

accordance with the agreement signed with the State of Haryana on 27th March, 1992. Perhaps this permission was granted keeping in mind that the applicant was required to complete the development works within a period of five years and also submit a bank guarantee for executing such development works in terms of the agreement dated 27th March, 1992. This 'permission' was *ex facie* contrary to the statutorily notified prohibitions under the PLP Act.

21. Apparently realising this, the above letter was followed up immediately by another communication sent by the Conservator of Forests to the Principal Chief Conservator of Forests on 17th May, 1996 requesting that the land owned by the applicant may be de-notified and that the Haryana Government is morally bound to allow the applicant to develop the project as per the sanctioned plans. Nothing came out of this and the land was not de-notified and no further event of note took place.

Initial set of orders passed by this Court

22. Around this time, a public interest litigation ***M.C. Mehta v. Union of India***[2] was pending in this Court regarding issues of deforestation coupled with other environmental issues.

23. On 10th May, 1996 this Court passed a rather significant order relating to the Aravalli hills and the areas adjoining the land of the

[2] W.P. No. 4677 of 1985

applicant. This was on the basis of a report prepared by the Haryana Pollution Control Board and another by the National Environmental Engineering Research Institute in respect of environmental degradation and pollution in the eco-sensitive zone in the Aravalli hills. By the order dated 10th May, 1996 this Court prohibited mining within a 2 km radius of Badkal Lake and Surajkund and construction activity of any type within a radius of 5 km from Badkal Lake and Surajkund.[3] In fact, all open areas were directed to be converted into green belts. As a result of this, the applicant obviously could not carry out any activities in the land owned by it, where it had proposed to establish a Film Studio and Allied Complex. The prohibition imposed by this Court was obviously in addition to the prohibition imposed by the notification issued under the PLP Act. It is quite likely that this Court was not even made aware of the notification under the PLP Act.

24. The order passed by this Court on 10th May, 1996 was sought to be modified/clarified by the Executive in Haryana on the ground that in the prohibited 5 km radius, buildings were under construction, plots had been allotted/sold under various development schemes and the plot holders had even started construction. Consequently, the vested rights of several

[3] M.C. Mehta v. Union of India, (1996) 8 SCC 462

persons were likely to be affected thereby causing them a huge financial loss.

25. After hearing learned counsel for the parties, this Court took the view, again on the basis of the above reports, that to protect the two lakes from environmental degradation, it would be necessary to limit construction activity in the close vicinity of the lakes. Consequently, by an order dated 11th October, 1996 the earlier order of 10th May, 1996 was clarified, *inter alia*, to the effect that no construction shall be permitted within the green belt around the two lakes, that is an area having roughly 1 km radius. As far as the area outside the green belt is concerned, it was directed that no construction would be permitted for a further 1 km. It was, however, clarified that the latter direction would not apply to plots already sold or allotted prior to 10th May, 1996 in the developed areas and that unallotted plots in the said areas may be sold with the prior approval of the concerned authority. All development schemes and plans for constructions in the area from 1 km to 5 km radius of the lakes shall require prior approval from the Central Pollution Control Board and the Haryana Pollution Control Board.[4] The clarification given by this Court on 11th October, 1996 reads as follows:

> "1. No construction of any type shall be permitted, now onwards, within the green belt area as shown in Ex. A and Ex. B. The environment and ecology of this area shall be protected and

[4] M.C. Mehta (Badkhal and Surajkund Lakes matter) v. Union of India, (1997) 3 SCC 715

preserved by all concerned. A very small area may be permitted, if it is of utmost necessity, for recreational and tourism purposes. The said permission shall be granted with the prior approval of "the Authority", the Central Pollution Control Board and the Haryana Pollution Control Board.

2. No construction of any type shall be permitted, now onwards, in the areas outside the green belt (as shown in Ex. A and Ex. B) up to one km radius of the Badhkal lake and Surajkund (one km to be measured from the respective lakes). This direction shall, however, not apply to the plots already sold/allotted prior to 10-5-1996 in the developed areas. If any unallotted plots in the said areas are still available, those may be sold with the prior approval of 'the Authority'. Any person owning land in the area may construct a residential house for his personal use and benefit. The construction of the said plots, however, can only be permitted up to two and a half storeys (ground, first floor and second half floor) subject to the Building Bye-laws/Rules operating in the area. The residents of the villages, if any, within this area may extend/reconstruct their houses for personal use but the said construction shall not be permitted beyond two and a half storeys subject to Building Bye-laws/Rules. Any building/house/commercial premises already under construction on the basis of the sanctioned plan, prior to 10-5-1996 shall not be affected by this direction.

3. All constructions which are permitted under directions 1 and 2 above shall have the clearance of "the Authority", the Central Pollution Control Board and the Haryana Pollution Control Board before "occupation certificates" are issued in respect of these buildings by the authorities concerned.

4. All development schemes, and the plans for all types of constructions relating to all types of buildings in the area from one km to 5 km radius of the Badkhal Lake and Surajkund (excluding Delhi areas) shall have prior approval of the Central Pollution Control Board and the Haryana Pollution Control Board."

26. According to the applicant, its land was beyond the 1 km radius but within the 5 km radius and the orders passed by this Court vitally affected it. The applicant's view was that its project was mainly a residential colony having a commercial complex, schools, hospitals and film studios, but no industry of any nature whatsoever. It had expended a huge amount in the

project, but could not proceed any further with it in view of the order dated 11th October, 1996 passed by this Court. Given the nature of the project, it was unreasonable to require the applicant to obtain no objection certificates from the Pollution Control Boards. Consequently, a Review Petition being R.P. (C) No. 914 of 1997 was filed by the applicant on or about 26th February, 1997 seeking a review of the order 11th October, 1996. It was submitted in the application that the restrictions imposed by this Court do not pertain to constructions of the applicant and that the requirement of obtaining a no objection certificate from the Pollution Control Boards does not apply to the constructions of the applicant, which fall beyond 1 km but within the 5 km radius of Badkal Lake and Surajkund.

27. The application for review came up for consideration on 17th March, 1997 when this Court noted that it did not have sufficient time to dispose of the matter that day. But by way of an interim order it was directed, *inter alia*, that a person owning land in the areas above mentioned (in the order dated 11th October, 1996) may construct a residential house up to 2 ½ floors subject to the building bye laws and rules operating in the area. Those individuals who seek to construct houses in accordance with the decision of this Court and in conformity with the relevant rules may file their plans with the competent authority who may examine and keep the plans ready until further orders. In other words, even in such cases permission for

construction was not granted, but permission to prepare plans was of course granted. It was further directed that the authorities should not insist upon the production of a no objection certificate from the State or Central Pollution Control Board. The order passed by this Court on 17th March, 1997 reads as follows:

> "The grievance of the petitioner is that when individual's who seek to construct their houses applying the plans of the Faridabad Municipal Corporation, the plans are not being approved on the ground that the clearance certificates are not obtained from the Pollution Control Board. We do not have the sufficient time to dispose of the matter today, we think that,
>
> 1) all the individuals who seek to construct their houses within 2 ½ floors' range as indicated in the judgment of this Court, they are liberty to file plans before the competent Authority. The competent Authority would examine whether the plans are in conformity with the Rules and within 2½ storeys' range laid down by this Court. If the authority finds the plans in conformity with the above Rules and the directions given by this Court, the same may be examined and kept ready until further orders.
>
> 2) For the examination of these matters, the authorities are directed not to insist upon production of no objection certificate from the State or Central Pollution Control Board."

28. On or about 2nd July, 1997 the Municipal Corporation of Faridabad filed a reply to some pending applications and the Review Petition. After detailing the facts, including the impact of the orders passed by this Court, the difficulties faced by the Municipal Corporation in implementing them and other directions, it was prayed that certain schemes in the Haryana Urban Development Authority sectors (schemes mentioned at serial nos. 3,

4 and 5 of the reply) may not be affected by the order passed by this Court on 11th October, 1996. With regard to other projects and development schemes sanctioned in accordance with the Development Plan prior to the order dated 10th May, 1996 it was prayed that they may also not be affected by the order passed by this Court on 11th October, 1996. Similarly, buildings, houses, commercial premises already sanctioned prior to 10th May, 1996 in accordance with the Development Plan may not be affected by the order of 11th October, 1996 and construction may be permitted as per the Development Plan and building by-laws in force.

29. The Review Petition was again taken up for consideration on 13th May, 1998. On that date, a modified plan and some maps were placed before this Court. Upon a perusal of these maps, it transpired that some areas got excluded from the 1 km green belt, as originally proposed. It was directed that these areas could be urbanised in accordance with the applicable laws and rules. With regard to private lands (such as that of the applicant) it was directed that in the areas adjoining the Surajkund complex, the State of Haryana may review the position so that only single-storey "hutments" are permitted to be constructed and "not tall buildings as originally conceived." The order passed by this Court was directed to be in modification or substitution of all earlier orders in that behalf. The order passed on 13th May, 1998 reads as follows:

> "A modified plan has been placed on record. The area meant to be left for Surajkund and around has been earmarked on the said plan by a zig-zag line. In the face of these altered boundaries from previous maps, certain areas have come out from the one kilometre belt as originally proposed. Whatever areas have fallen out and whatever are adjacent thereto, urbanization thereof will take place **in accordance with the laws, rules and regulations applicable to those areas as provided by the Faridabad Municipal Corporation**.
>
> Certain private areas (marked as 'ABCD') in which construction is proposed would have to be viewed again. We have desired of the learned counsel for the State of Haryana to render assistance in that regard so that **in the areas adjoining the Surajkund Complex only single storey hutments get permitted to be constructed and not tall buildings as originally conceived.**
>
> Small areas as shown red on the plan would require to be acquired for the Complex. This means that the State will have to pay compensation on acquisition. But Mr. Salve, learned Senior Counsel who appears for some of the land owners says that those land owners who are owning those two small red patches which are within the encirclement would surrender the same to the Sate without compensation.
>
> This order shall be in modification or substitution of all earlier orders in that behalf." [Emphasis supplied by us].

No further orders were passed in this regard, except an order relating to a hotel complex, with which we are not concerned. The review petition was then disposed of by this Court on 12th October, 1998.

30. It seems to us that these orders passed by this Court were not blanket orders which could permit the applicants to ignore the notification dated 18th August, 1992. The requirement, in terms of the orders passed by this Court, continued to be adherence to the laws, rules and regulations which would necessarily include the notification issued under the provisions of the PLP Act.

Issues arising out of the orders passed by this Court

31. In this background and context, it appears that some questions were raised by the Financial Commissioner and Secretary to Government, Haryana Revenue Department in a letter dated first March, 1999 with regard to the status of the land owned by the applicant. The issues raised were to the following effect: (i) whether the applicant is in unauthorised possession of the land; (ii) whether the applicant has violated any statutory provision and is using the land in the manner in which it is authorised; (iii) whether it is permissible for the applicant to develop a residential colony in the land for which it had obtained an exemption for setting up a Film Studio and Allied Complex and whether the Town & Country Planning Department had permitted this.

32. In response to these issues, the Director in the Town & Country Planning Department wrote to the Financial Commissioner & Secretary to the State of Haryana on 16th March, 1999 to the following effect:

> "Regarding issue No.1. It is to inform that as per certificates given by Dist. Revenue Authority from time to time, M/s R. Kant & Company is in authorised possession of land in Khasra No. 9-16, vill. Anangpur Distt. Faridabad. Photos of the certificates given by Revenue Authority are enclosed herewith.
>
> Regarding issue No. 2 it is to inform that the Company is using the land according to approved layout plan and service plan estimates.

> Regarding issue No. 3, it is to inform that in the revised approved layout plan of Kant Enclave Film Studio and Allied Complex, in addition to Film Studios provision of resident plots, group housing and the required social and commercial infrastructure has been made as per the exemption order of 1984 revocation order of 1990 and an agreement dated 27.3.92 executed by the company with the Government. **Therefore the provision of residential plots in Kant Enclave is permissible**." [Emphasis supplied by us].

33. It will be noticed that the Director, Town & Country Planning Department did not make any reference to the notification dated 18th August, 1992 issued under the provisions of the PLP Act. This sequence of events clearly indicates that the Town & Country Planning Department was very much in favour of the applicant colonizing its land and making constructions therein on the basis of select administrative orders. It was quite prepared to, and did, ignore orders passed by this Court from time to time and also ignore the notification of 18th August, 1992 issued under the provisions of the PLP Act. The understanding of the Town & Country Planning Department seems to be that issues of environmental degradation, pollution and groundwater were not its concern. To say the least, the Town & Country Planning Department was myopic and brazen in pushing its agenda - certainly vis-à-vis the applicant versus the environment and in disregard of a statutory notification.

Another attempt at colonization

34. In proceedings pertaining to the protection and conservation of

forests throughout the country, this Court passed an order on 12th December, 1996 which is of considerable significance. The order was passed in Writ Petition No. 202 of 1995 with Writ Petition No. 171 of 1996.[5] After hearing the learned Attorney General, learned counsel for the States, the parties and other applicants as well as the learned *Amicus Curiae* it was held by this Court that the Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation, which would ultimately result in ecological imbalance. It was held that therefore the provisions of the law for conservation of forests and for matters connected therewith, must apply to all forests, irrespective of the nature of ownership or classification thereof. It was held:

> "……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 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….."

35. It was further directed that in view of the meaning given to the word 'forest' it is obvious that prior approval of the Central Government is

[5] T.N. Godavarman v. Union of India, (1997) 2 SCC 267

required for any non-forest activity within the area of any forest. All ongoing activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. Each State Government was also directed to constitute within one month an Expert Committee to 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 and also to identify areas which were earlier forests, but stand degraded, denuded or cleared. In other words, this Court gave a realistic and pragmatic definition to the word 'forest' and 'forest land'.

36. However, even before that, as far as the State of Haryana is concerned, an affidavit was filed by Shri Banarsi Das, IFS, Principal Chief Conservator of Forests, Haryana in ***Environment Awareness Forum v. State of Jammu & Kashmir***.[6] The affidavit dated 8th December, 1996 stated that the total forest area in Haryana is 1,54,706 hectares (1995-96), which includes 11,513 hectares of PLP Act areas. It further says that earlier (1985-86) the forest area in Haryana was 1,68,543 hectares, which included 26,499 hectares of PLP Act areas. The reduction in the forest area was due to the expiry of notifications issued under the PLP Act and Section 38 of the Indian Forest Act, 1927. It was noted that steps were taken for

[6] W.P. No. 171 of 1996

protection of forests, which included the enforcement of regulations under the PLP Act. What is of significance is that even before the order was passed by this Court on 12th December, 1996 the State of Haryana had acknowledged its treatment of PLP Act areas as forest land, and as we shall see later, this was always so.

37. In ***T.N. Godavarman v. Union of India***[7] an affidavit was filed by the State of Haryana on 25th February, 1997. The affidavit was sworn by Shri S.K. Maheshwari, IAS, Commissioner & Secretary to the Government of Haryana, Forest Department. In his affidavit, reference was made to the order passed by this Court on 12th December, 1996. It was stated in the affidavit that as far as identification of areas which were forests, but stand degraded or denuded or cleared, it would not be possible to do so without prescribing some cut-off date since land that is closed under the provisions of the PLP Act "creates forests" and the Act is as old as 1900. Therefore, a cut-off date of 25th October, 1980 was selected as on that date the Forest (Conservation) Act, 1980 came into force. It was further stated that land that is closed under the provisions of the PLP Act is a forest only during the period of closure. After expiry of the closure period, the land is no longer shown as forest in the records of the Forest Department. A little later in the affidavit, it was reiterated that an area closed under the provisions of

[7] W.P. No. 202 of 1995

the PLP Act is "counted as forest" only during the currency of the closure. Taking all such areas into consideration, it was stated that the recorded forest cover in the State of Haryana is now 149,680.49 hectares.

38. Notwithstanding the affidavit, the Director in the Town & Country Planning Department issued a communication dated 16th March, 1999 to the effect that the provision of residential plots in Kant Enclave was permissible. In view of the affidavit of Shri S.K. Maheshwari, there is enough room to suspect the *bona fides* of the applicant and the Town & Country Planning Department, but we leave it at that.

Further set of orders passed by this Court

39. In the writ petition filed by M.C. Mehta an application was filed by the Delhi Ridge Management Board on 5th December, 2001 (being IA No. 1785 of 2001) to the effect that large-scale mining activity near the Delhi-Haryana border was resulting in a large quantity of ground water being pumped out from mining pits. As far as Delhi is concerned, the mining and extraction of groundwater had been banned and the Ridge in Delhi was being protected in terms of the orders passed by this Court from time to time. However, it was stated in the application that the Ridge in Haryana also needed to be protected as this was an extension of the same range. It was submitted that mining, withdrawal of groundwater and destruction of flora etc. should also be restricted outside Delhi or at least up to 5 km from

the Delhi-Haryana border towards Haryana. The significance of this application is that it jogs the memory and recalls the order passed by the Chief Minister of Haryana on 11th July, 1990 relating to the availability of potable drinking water and the span of availability of water from the aquifers and their application.

40. Acting upon the application filed by the Delhi Ridge Management Board, this Court passed an order on 6th May, 2002 as follows:

> "**IA No. 1785**
>
> Issue notice. Mr Bharat Singh accepts. Reply be filed within four weeks. Rejoinder be filed within four weeks thereafter. In the meantime, within 48 hours from today the Chief Secretary, Government of Haryana is directed to **stop all mining activities and pumping of groundwater in and from an area up to 5 kms from the Delhi-Haryana border in the Haryana side of the Ridge and also in the Aravalli Hills**. [Emphasis supplied by us].

41. The application appears to have been taken up for consideration on 22nd July, 2002. The proceedings of that date have not been reported, but have been mentioned in ***M.C. Mehta v. Union of India***.[8] This Court directed the Environment Pollution Control Authority (EPCA) to give a report with regard to the environment in the area, preferably after a personal visit. It was noted that EPCA had been constituted by the Government of India by a notification dated 29th January, 1998 issued in exercise of power conferred by Sections 3(1) and 3(3) of the Environment

[8] (2004) 12 SCC 118

(Protection) Act, 1986. Generally speaking, EPCA was constituted to protect and improve the quality of the environment and to prevent, control and abate environmental pollution.

42. EPCA did visit the subject area and also took the opinion of the Central Groundwater Board and in its report of 9th August, 2002 it recommended that the ban on mining activities and pumping of groundwater in and from an area up to 5 km from the Delhi-Haryana border in the Haryana side of the Ridge and also in the Aravalli hills must be maintained.

43. EPCA gave a further report on 21st October, 2002 reaffirming its earlier recommendations. It was further recommended that if mining is allowed to continue in this area, it would have serious implications for the groundwater reserves. EPCA also noticed uncontrolled construction activities that would expand urban habitation considerably in future and therefore recommended that unless immediate measures were taken to conserve and augment water resources in the area, an acute survival crisis could be expected. Interviews with local villagers in the vicinity of the mines confirmed that water shortage was already a serious problem in the region.

44. This Court also referred to reports by another expert body, namely the Central Empowered Committee (CEC). This expert body was

constituted by a notification dated 17th September, 2002 issued by the Ministry of Environment and Forests in exercise of power conferred by Section 3(3) of the Environment (Protection) Act, 1986. The CEC was constituted for monitoring and ensuring compliance of the orders passed by this Court in relation to forests and wildlife and other related issues arising out of the orders. The CEC was also expected to submit reports regarding non-compliance of the orders of this Court, including in respect of encroachments and removals, working plans, compensatory afforestation, plantations and other conservation issues.

Reports of the CEC

45. Among the first few reports given by the CEC, one dated 14th December, 2002 deserves mention. It is not clear what led to this report, but in any event, it was considered by this Court on 16th December, 2002 and an order was passed as a result of the report that no mining activity would be permitted in areas where there is a dispute of applicability of the Forest (Conservation) Act, 1980 till such time the dispute is resolved or approval for non-forest activity is accorded under the said Act by the Central Government.[9] This Court also directed that no mining would be permitted in areas for which a notification under Sections 4 and 5 of the PLP Act has been issued in regulating the breaking up of the land etc. and

[9] T.N. Godavarman v. Union of India, (2008) 16 SCC 401

such lands are or were recorded as 'forest' in government records even if the notification period had expired, unless there was approval under the provisions of the Forest (Conservation) Act, 1980. These directions are significant and appear, generally, to have been overlooked.

46. Separately and in compliance of orders passed by this Court on 25th November, 2002 the CEC submitted three reports, all of which primarily pertained to mining activities in the subject area. These reports were considered by this Court and dealt with in the judgment and order passed on 18th March, 2004.[10] In the report dated 22nd January, 2003 (erroneously recorded as June) it was recommended by the CEC that mining activity may be allowed in the areas closed under the provisions of the PLP Act "which for the purpose of the [Forest (Conservation)] Act are 'forest' even as per the State Government records, only after obtaining prior approval under the said Act from the MoEF (Ministry of Environment and Forests)." In another report, dated 7th February, 2003 it was recommended that the ban on mining activity may continue up to 2 km from Surajkund and Badkal Lakes in terms of the order passed by this Court on 10th May, 1996.

47. While considering the entire issue, this Court also considered the question whether areas covered under the PLP Act are 'forest' of any kind. While dealing with this, it was noted that the Forest Department of the State

[10] M.C. Mehta v. Union of India, (2004) 12 SCC 118

of Haryana has been treating and showing the closed areas as 'forest' in its records. This Court also adverted to the affidavits filed in this Court from time to time, including by Shri S.K. Maheshwari and Shri Banarsi Das. This Court also drew attention to its earlier order of 12th December, 1996 and the fact that the State of Haryana had been seeking permission of the Central Government to divert such closed land for non-forestry purposes. This Court also referred to letters dated 26th November, 2002 and 17th September, 2001 wherein a view was expressed that land closed under the PLP Act is forest land. This Court, therefore, declined to permit the State of Haryana to take a somersault and contend that land closed under the provisions of the PLP Act is not forest. This is what this Court said in paragraph 82 of the Report:

> "In the instant case, it is not necessary to decide the legal effect of issue of the notification under Sections 4 and/or 5 of the [PLP] Act. Not only in their record has the area been shown as forest but affidavits have been filed in this Court stating the area to be "forest". In *T.N. Godavarman Thirumulkpad v. Union of India* [(1997) 2 SCC 267] this Court held that the term "forest" is to be understood in the dictionary sense and also that any area regarded as a forest in government records, irrespective of ownership, would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose. Reference in this connection may also be made to the affidavit dated 8-12-1996 filed by Banarsi Das, Principal Chief Conservator of Forests, Chandigarh, Haryana in *Environmental Awareness Forum v. State of J&K* [Civil Writ No. 171 of 1996]. Our attention has also been drawn to letter dated 26-11-2002 addressed by the Divisional Forest Officer, Faridabad to the Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad district and requesting him to ensure that the said forest

> areas are not affected by any mining operations as also to a letter dated 17-9-2001 sent by the Principal Chief Conservator of Forests, Haryana (Panchkula) to the Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete somersault in these proceedings and contend that the earlier stand that the area is forest was under some erroneous impressions. In the present case, for the purposes of the FC Act, these areas shall be treated as forest and for use of it for non-forestry purpose, it would be necessary to comply with the provisions of the FC Act."

48. Having considered voluminous material on record, this Court concluded in the said judgment of 18th March, 2004 that it would be appropriate to constitute a Monitoring Committee, which it did, "to monitor the overall eco-restoration efforts in the Aravalli hills and to provide technical support to the implementing organisations and also to monitor implementation of recommendations contained in reports referred herein…" This Court also held that the order dated 6th May, 2002 as clarified in the judgment cannot be varied or vacated before consideration of the report of the Monitoring Committee. It was also concluded that on the facts of the case, the mining activity in areas covered under the provisions of the PLP Act cannot be undertaken without approval under the Forest (Conservation) Act, 1980.

49. Therefore, apart from stopping mining activity, this Court also stopped pumping of groundwater in and from an area upto 5 km from the

Delhi-Haryana border in the Haryana side of the Ridge and also in the Aravalli hills.

Further reports of the CEC

50. Notwithstanding the decisions of this Court rendered from time to time and a wealth of material to the effect that the Aravalli hills need to be protected, the issue of colonizing the land owned by the applicant, which was the subject matter of the prohibitory notification under the provisions of the PLP Act, was kept alive. Applications were filed by interested parties in this Court and the CEC was required from time to time to submit reports to this Court.

51. In a report dated 12th September, 2007 which pertained mainly to mining activities in Gurgaon and Faridabad districts of Haryana, one of the recommendations made by the CEC was to the effect that maps of appropriate scales should be prepared of areas notified under the provisions of the PLP Act, including areas for which the notifications have expired. These areas could be cross verified with the help of relevant afforestation maps, satellite imagery of the relevant times, progress reports filed in the Aravalli Afforestation Programme and other details. It was also recommended that these areas may be demarcated and treated as a prohibited zone for mining activity.

52. In a supplementary report dated 5th December, 2007 it was recorded

by the CEC that it had come to its notice that areas notified under the provisions of the PLP Act are being used or proposed to be used for colonisation, farm-houses and other construction activities. It was noted that in many cases such user has been permitted by the concerned departments of the State Government on the strength of improper no objection certificates granted in the past by the Forest Department. The CEC stated that the recommendations made in respect of mining in these areas are equally applicable to activities such as colonisation, construction of farm-houses, etc. It was recommended that areas notified under the provisions of the PLP Act, including areas for which notifications have expired, may also be treated as a prohibited zone for colonisation, construction of farm-houses and other construction activities. Such activities in the prohibited zone should be permitted only if in public interest and after obtaining permission from this Court.

53. Yet another report was required to be submitted by the CEC, which it did on 28th August, 2008. In the report, it was mentioned that a meeting was held with officers of the State of Haryana and a two-step approach was suggested. The first step was to identify areas where mining, colonisation, etc. is taking place in the Aravalli hills, but such activities are prohibited or regulated in those areas by various enactments and orders of this Court. These would include, amongst others, areas notified under the provisions of the PLP Act. The second step would be to lay down broad principles and

guidelines in respect of mining, colonisation and other non-forestry activities in the Aravalli hills which would, *inter alia*, provide for an independent monitoring mechanism. Broadly, only such non-forestry activities would be permitted, that are absolutely necessary and unavoidable and in public interest.

54. A meeting was held, as mentioned above, for detailing the procedure and methodology for identification of the prohibited areas, preparation of macro plans, including closed areas under the PLP Act and in other areas where orders of this Court have been violated as well as the provisions of the Forest (Conservation) Act, 1980 for mining and for colonisation, etc. It was decided that all this would be placed before this Court for consideration and approval. It is also proposed that after the necessary maps are prepared of the prohibited areas, macro plans and identification being completed, a detailed proposal would be placed before this Court for appropriate directions. It was expected that the State Government would ensure immediate cessation of non-forestry activity going on in any prohibited area and in violation of the orders of this Court and the provisions of law.

55. Another report was submitted by the CEC on 13th November, 2008 pursuant to directions issued by this Court to file the land-use maps and macro plans in respect of the Aravalli hills in Haryana. While the report is

considerably detailed, what is of concern to us is that the revenue map of village Anangpur super-imposed on the satellite imagery revealed that a large number of colonies, farm-houses and mines were located in areas closed under the provisions of the PLP Act. One of the prominent violators was the applicant (Kant Enclave) which had violated the orders of this Court of 14th May, 2008 (the decision of this Court will be discussed a little later). The report also mentioned that there was large-scale illegal use of areas closed under the provisions of the PLP Act for illegal private gains in blatant violation of the environmental laws and the orders of this Court. It was suggested that this could not have taken place without the active connivance and support of the concerned officials. It was also noted that the groundwater level in the area was rapidly depleting and had already been marked as 'Dark Zone for Ground Water'. In view of the somewhat alarming situation, it was recommended by the CEC that colonies, farm-houses, banquet halls and other buildings illegally constructed in areas closed under the provisions of the PLP Act, such as Kant Enclave should be demolished.

56. Yet another report (the last one that we are concerned with) was submitted by the CEC on 15th January, 2009. In this report, it was stated that the work of super-imposing on all geo-rectified village maps with the corresponding satellite imageries had been completed. In addition, village

wise land-use maps had been prepared. These comprised of three components, namely, satellite imagery, scanned village maps and super-imposed village maps on satellite imagery with marking of areas notified under the provisions of the PLP Act.

57. It was noted on the above basis that a large number of colonies, buildings, banquet halls, farm-houses, engineering colleges, schools, ashrams, etc. were located in areas notified under the provisions of the PLP Act or areas with forest cover. The CEC expressed the view that demolition of the above illegal structures and rehabilitation of such areas (including Kant Enclave) should be taken up by the State of Haryana in a time-bound manner and no sale or purchase of such lands should be permitted. The permission earlier granted, if any, for non-forestry uses in such areas should be immediately revoked. The State of Haryana had suggested that large-scale demolition might create a serious law and order problem, but the CEC did not agree with this. However, the CEC recommended the regularisation of areas notified under the provisions of the PLP Act and other forest areas falling in identified Haryana Urban Development Authority sectors, subject to effective steps being taken for the demolition of buildings and structures in the areas notified under the provisions of the PLP Act and other forest areas and rehabilitation of such areas.

58. In response to the report of the CEC dated 15th January, 2009 the

State of Haryana filed an affidavit through Shri Dharam Vir, the Chief Secretary of the State on 15th March, 2009 in ***M.C. Mehta v. Union of India***.[11] It was stated in the affidavit that as far as the Municipal Corporation of Faridabad is concerned, in view of the order dated 13th May, 1998 passed by this Court, the erection of buildings, with due permission under the applicable law cannot be said to be illegal. *Ex facie*, this is incorrect, since this Court permitted, if at all, only the construction of hutments and not buildings. As far as the Town & Country Planning Department is concerned, it was stated that Kant Enclave was granted exemption under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975 on 17th April, 1984 and therefore it would be in the interest of justice if the constructions that had come up pursuant to the above exemption may be allowed to exist. The notification dated 18th August, 1992 and the other orders of this Court were conveniently overlooked.

59. An affidavit dated 25th October, 2010 was filed by the Chief Town Planner in the Department of Town & Country Planning. It was stated in the affidavit that the Development Plan for Faridabad had been prepared in accordance with the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963 and the final

[11] W.P. No. 4677 of 1985

Development Plan was published in 1991 in consonance with the NCR Planning Board Act, 1985. The Development Plans provided, *inter alia*, areas to be used for residential, commercial, industrial, public and semi-public uses, agriculture, open space, etc. In addition, it was stated that Kant Enclave had been granted exemption under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975. In view of this, the State of Haryana through the Forest Department ought not to have published the notification under Section 4 of the PLP Act, including therein the area already earmarked for urbanisation in the final Development Plan. It was stated that the Town & Country Planning Department had taken steps to exclude the land of the applicant from the notification issued under the PLP Act and follow-up action was also taken in this regard. The affidavit is, however, silent about the fact that the land owned by the applicant was not de-notified in spite of vigorous efforts of the Town & Country Planning Department. It was stated in the affidavit that pursuant to the order passed by this Court on 13th May, 1998 the Town & Country Planning Department had approved building plans and had also issued part completion certificates on 23rd December, 2004. In view of all these facts as well as in view of the affidavit filed by the Chief Secretary of the State of Haryana, it would be in the interest of justice that constructions that had come up in pursuance of the exemption granted under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 may be

allowed to exist. It was submitted that a final decision may be taken by this Court and the State Government would abide by the directions given by this Court on this issue.

Yet another attempt at colonization is rejected

60. Not content with several letters, reports and decisions of this Court, the applicant opened up yet another front to push ahead with its colonisation and construction activity in the land owned by it being Khasra Nos. 9 to 16 in village Anangpur. The applicant filed I.A. No. 1901 of 2005 in W.P. No. 4677 of 1985 (***M.C. Mehta v. Union of India***). In this application, it was submitted by the applicant that it was in exclusive possession of Khasra Nos. 9 to 16 in village Anangpur having purchased the same from the rightful owners. It was stated that the applicant had been granted exemption under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975 for setting up its project named Kant Enclave. The exemption had been granted on 17th April, 1984. It was stated that the applicant had spent over ₹ 50 crores in carrying out and undertaking developmental work on the land. In addition, the applicant had sold or booked or allotted 1500 plots to prospective buyers out of which in about 450-500 cases, conveyance deeds had already been executed and registered with the concerned authorities. It was submitted that the decisions of this Court were mining-centric and were misconstrued by

officers of the Forest Department. Consequently, a communication dated 31st January, 2005 was issued by the Forest Department to the District Town Planner, Faridabad to the effect that the land of the applicant was a closed area under the provisions of the PLP Act, and therefore non-forest use of the land was prohibited. As a result of this communication, the District Town Planner refused to sanction building plans of the plot holders of Kant Enclave or to issue completion certificates in respect of buildings already completed in terms of sanctions or approvals earlier granted.

61. On this basis, it was submitted in the application that this Court may issue appropriate directions to the effect that only mining activities were prohibited in the subject area and that the orders of this Court did not affect the construction activities carried on by the applicant in its project as permitted by the order of this Court dated 13th May, 1998. It was prayed that directions may be issued to the State Government to permit registration of plots and sanction building plans as well as issue completion certificates.

62. By an order dated 24th July, 2006 this Court directed the Chief Secretary of Haryana to file an affidavit in response to the application I.A. No. 1901 of 2005. A detailed affidavit dated 10th September, 2006 was filed by the Chief Secretary Shri Prem Prashant, IAS in which it was stated, *inter alia*, that the notification dated 18th August, 1992 issued under the provisions of the PLP Act covered Khasra Nos. 9 to 16 in village

Anangpur, that is, the land owned by the applicant. It was categorically stated that since then this land was treated as forest and it was also included in the list of forests in the Government record. Reference was also made to the affidavit filed by the Forest Department in W.P. No. 202 of 1995 to the effect that the subject area was shown as a forest and that the provisions of the Forest (Conservation) Act, 1980 would be applicable. The affidavit also referred to the order passed by this Court on 12th December, 1996 to the effect that the term 'forest' is to be understood in the dictionary sense and also that any area regarded as forest in Government records irrespective of ownership, would be a forest. Reference was also made to the decision of this Court rendered on 18th March, 2004 in this regard.

63. The affidavit further stated that the Principal Chief Conservator of Forests, had informed the Director, Town & Country Planning Department by a letter dated 27th January, 2006 that the land of the applicant being Khasra Nos. 9 to 16 in village Anangpur is notified under Section 4 of the PLP Act. Therefore, the above area was treated as a forest in view of the orders passed by this Court on 18th March, 2004. Since the applicant had never submitted any proposal with the Forest Department for diversion of forest land for non-forestry use, the Director, Town & Country Planning had asked the applicant by letter dated 27th June, 2006 to seek the diversion of forest land in Khasra Nos. 9 to 16 in village Anangpur for non-forestry

use in accordance with the provisions of the Forest (Conservation) Act, 1980.

64. The application was taken up for consideration by this Court and by a judgment and order dated 14th May, 2008 the application was dismissed.[12] A three-judge Bench of this Court noted that the challenge was really to the communication dated 31st January, 2005. While dealing with the decisions rendered by this Court from time to time, the three-judge Bench noted that developing a plot and making construction thereon would amount to clearing up or breaking up of an area and that would be in violation of the prohibition contained in the notification of 18th August, 1992. It was held in paragraph 12 of the Report:

> "In view of the notification under Section 4 when the clearing or breaking up of the land is not permitted that itself is a bar from (sic for) fresh construction because a construction can take place only if clearing and breaking of an area/land takes place. This prohibition is clearly contained in the notification of 1992. The reliance placed by the applicants on clause (g) is clearly misconceived, inasmuch as the permissible activity allowed within clause (g) is in favour of inhabitants of town and villages within the limits or vicinity of any such area. The admitted case is that the applicants herein have developed plots in the area in question and have sold it to persons who are not inhabitants of towns and villages within such specified living area, but could be anybody from all over the country or outside, and therefore clause (g) of Section 4 has no application. The factum of developing a plot and then construction thereon would amount to clearing or breaking up of an area or land."

[12] M.C. Mehta v. Union of India, (2008) 17 SCC 294

65. This Court also noted the view of the Central Ground Water Board to the effect that the area in question in village Anangpur has been notified as a very precarious groundwater situation and that any construction activity therein without adequate water reserves will also have a negative effect. It was also noted that the groundwater table is already at a critical stage in Faridabad.

66. The decision of this Court rendered on 14th May, 2008 has attained finality and all the submissions advanced by the applicant were duly considered and rejected by a Bench of three learned judges of this Court. The issue whether the applicant could make any construction whatsoever on the notified land that is Khasra Nos. 9 to 16 in village Anangpur in violation of the notification issued under the provisions of the PLP Act was not open to discussion earlier and in any event is no longer *res integra* or open to any further discussion or examination.

An alleged discordant note

67. The issue of the status of areas closed under the provisions of the PLP Act came up for consideration in ***B.S. Sandhu v. Government of India and others***.[13] In this case, about 3,700 acres of land in village Karoran in District Ropar in Punjab was notified under the provisions of the PLP Act. Despite this, the Forest Hill Golf and Country Club was

[13] (2014) 12 SCC 172

established on closed land and was being developed allegedly in blatant violation of the environment and forest laws as well as orders passed by this Court on 12th December, 1996.

68. Learned counsel for the applicant relied heavily on this decision to contend that merely because a notification had been issued under the provisions of the PLP Act, the closed land does not become 'forest land'. This very contention had been raised by the Proprietor/Managing Director of the Country Club (Sandhu) in the Punjab & Haryana High Court. It was submitted that his land was private land and it could not be treated as forest land without a formal notification under Section 35 of the Indian Forest Act, 1927.

69. According to the State of Punjab, an Expert Committee was constituted in terms of the orders passed by this Court on 12th December, 1996 and this Expert Committee included the entire area of village Karoran as forest area in its report. The Punjab and Haryana High Court rejected the contention urged by Sandhu and that gave rise to appeals which were decided by this Court.

70. This Court noted that the notification issued under the provisions of the PLP Act resulted in the land in village Karoran being recorded as land under the control of the Forest Department and therefore forest land. In other words, the basis of the conclusion that the entire land in village

Karoran is forest land was that the land was closed under the provisions of the PLP Act and was therefore a forest. Consequently, the first question required to be decided by this Court was whether land notified under the provisions of the PLP Act is forest land or not.

71. This Court took the view that activities prohibited in closed areas under the PLP Act are such that are not normally carried on in a forest. Reference was made to activities such as cultivation, pasturing of sheep and goats, erection of buildings by inhabitants of towns and villages, herding, pasturing or retaining cattle etc. Therefore, the closed land could not be forest land. This Court observed that land notified under the provisions of PLP Act may or may not necessarily be forest land and the decision of the High Court holding that closed land was forest land was not at all correct in the law. It was held that the High Court failed to correctly appreciate the meaning of 'forest' and 'forest land' as well as the decision of this Court in ***Godavarman*** (decided on 12th December, 1996).

72. It was also held that since the Forest (Conservation) Act, 1980 came into force on 25th October, 1980 the High Court had to decide whether Sandhu's land was forest land as on that date irrespective of its classification or ownership. The High Court ought to have examined the Government record as on 25th October, 1980 before concluding that Sandhu's land was forest land and not only the provisions of the PLP Act

and the records of the Forest Department which showed the land to be forest only because of the fact that the land was closed under the provisions of the PLP Act.

73. This Court also examined the two decisions rendered in ***M.C. Mehta***[14] [15]. These decisions were distinguished on the ground that they related to the Aravalli hills in the State of Haryana and further it was held therein that the State Forest Department has been treating and showing the closed area as forest in fact and in law. Consequently, non-forest activities could not be allowed in such areas without the prior permission of the Central Government as mandated by the Forest (Conservation) Act, 1980. It was noted that this Court has not enquired into the basis of inclusion of the areas as forest by the State Forest Department. This Court also did not consider whether land became forest land by mere inclusion in terms of the notification issued under the PLP Act. On the other hand, in the case under discussion the Government of Punjab had stated that the basis of inclusion of the entire land of village Karoran as forest area in the records of the Forest Department was that the land was closed under the PLP Act and this basis was not correct in law.

74. This Court having distinguished the decisions rendered by this Court in ***M.C. Mehta*** and by necessary implication the orders passed in

[14] (2004) 12 SCC 118
[15] (2008) 17 SCC 294

Godavarman, we do not see how the decision in ***Sandhu*** can be of any assistance to the applicant. The decision in ***Sandhu*** must be confined to its own facts.

75. We may mention, without comment, that the purpose of issuing a notification under the PLP Act is to ensure that in the closed area there is no activity such as cultivation, pasturing of sheep and goats, erection of buildings, herding, pasturing or retaining cattle etc. Therefore, the notification is a clear indication that such closed areas must be forest land or treated as forest land so that such objectionable non-forest activities are not carried out therein and that activities that are not normally carried out in forests are prohibited in forest land, so as to preserve and protect such forest land. A notification under the PLP Act does not convert land into forest land but recognizes it as such or at least requires it to be treated as such.

76. We may also mention, *en passant*, the provisions of Section 35(1) of the Indian Forest Act, 1927. This refers to breaking up or clearing of land for cultivation, pasturing of cattle etc. and reads as follows:

> **"35. Protection of forests for special purposes.** – (1) The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land -
>
> (a) the breaking up or clearing of land for cultivation;
>
> (b) the pasturing of cattle; or
>
> (c) the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary for any of the following purposes: -

(i) for protection against storms, winds, rolling stones, floods and avalanches;

(ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines, and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(iii) for the maintenance of a water-supply in springs, rivers and tanks;

(iv) for the protection of roads, bridges, railways and other lines of communication;

(v) for the preservation of the public health.

(2) ……

(3) ……"

77. We leave it at that because of the distinguishing features in the ***M.C. Mehta*** set of orders as contrasted and recognized with the facts in ***Sandhu***.

Review in disguise

78. Notwithstanding unambiguous conclusions arrived at by this Court from time to time on matters pertaining to the environmental degradation of the Aravalli hills and the implications of a notification issued under the provisions of the PLP Act, the applicant persisted in pressing these applications and sought to contend that it was fully entitled, as of right, to make constructions on the land owned by it and known as Kant Enclave. Submissions were made by learned counsel for the applicant on issues that have conclusively been settled by this Court and in fact, the submissions

were only a rehash of submissions made from time to time and which have been rejected. It was submitted by learned counsel for the applicant, relying on ***Delhi Administration v. Gurdip Singh Uban***[16] that the applications filed by it and by the Residents Welfare Association were perfectly maintainable. Reference was made to Point No. 1 discussed in the decision. This Point reads as follows:

> "Whether a party who had lost his case in civil appeal could be permitted to bypass the procedure of circulation in review matters and adopt the method of filing applications for "clarification", "modification" or "recall" of the said order in civil appeals so that the matters were not listed in circulation but could be listed in Court straight away? Whether such applications could be filed even after dismissal of review applications? What is the procedure that can be followed in such cases?"

79. This Court considered the question in considerable detail and deprecated the practice of filing review applications in undeserving cases without any proper examination of the substance of the applications. It was noted that indiscriminate filing of such review petitions wastes the time of the Court and that there must be some seriousness and restraint in filing review applications. This Court answered the question in the following manner:

> "At the outset, we have to refer to the practice of filing review applications in large numbers in undeserving cases without properly examining whether the cases strictly come within the narrow confines of Rule XL of the Supreme Court Rules. In several cases, it has become almost everyday experience that

[16] (2000) 7 SCC 296

> review applications are filed mechanically as a matter of routine and the grounds for review are a mere reproduction of the grounds of special leave and there is no indication as to which ground strictly falls within the narrow limits of Rule XL of the Rules. We seriously deprecate this practice. If parties file review petitions indiscriminately, the time of the Court is unnecessarily wasted, even it be in chambers where the review petitions are listed. Greater care, seriousness and restraint is needed in filing review applications."

80. It was made clear that what is of important is the substance of the application and not the title given to it and genuine cases requiring a clarification or modification or a recall would of course be entertained. It was observed by this Court as follows:

> "We should not however be understood as saying that in no case an application for "clarification", "modification" or "recall" is maintainable after the first disposal of the matter. All that we are saying is that once such an application is listed in Court, the Court will examine whether it is, in substance, in the nature of review and is to be rejected with or without costs or requires to be withdrawn with leave to file a review petition to be listed in chambers by circulation. Point 1 is decided accordingly."

81. On this basis, it was submitted by learned counsel for the applicant that there was no bar in the applicant moving or pressing appropriate applications and that is precisely what has been done.

82. In our opinion, there is nothing in these applications before us to remotely suggest that the various orders passed by this Court need any clarification or modification or recall. All issues raised by the applicants have been considered threadbare by several Benches of this Court and all

of them have arrived at a similar conclusion namely that the environmental and ecological degradation of the Aravalli hills must stop and that everybody is bound by the terms of the notification issued under the provisions of the PLP Act and that closed land under the notification dated 18th August, 1992 is a forest and should be treated as a forest.

83. That apart, the view expressed by this Court in ***Gurdip Singh Uban*** cannot be limited only to applications for modification, clarification or recall. There is a growing tendency to provide different nomenclatures to applications to side-step the rigours and limitations imposed on an applicant and the Court in dealing with a review petition. Applications can be and are titled as applications for directions, rehearing, reconsideration, revisiting etc. etc. One has only to open a thesaurus and find an equivalent word and give an application an appropriate nomenclature so that it could be taken up for consideration in open Court and on its merits and not as a review petition by circulation. In our opinion, the nomenclature given to an application is of absolutely no consequence - what is of importance is the substance of the application and if it is found, in substance, to be an application for review, it should be dealt with by the Court as such, and by circulation.

84. Considering the substantive applications filed by the applicant, we are of the clear opinion that these applications are nothing but disguised

review petitions and they should not have been listed for hearing in open Court without an appropriate order passed by this Court. They should have first been circulated and dealt with as review petitions and if the concerned Bench was of the view that they were required to be heard in open Court, only then should they have been listed for hearing in open Court. However, we are not detaining ourselves any further in this regard since we propose to deal with these applications on merits, treating them as applications for clarification, modification, recall, reconsideration etc. of the orders passed by this Court from time to time.

85. Learned counsel for the applicants (Kant & Co. as well as the Residents Welfare Association of Kant Enclave) and the learned *Amicus* made detailed submissions over a couple of days on a variety of issues that they believed arose in these cases. Even though we are of opinion that in view of several decisions rendered by this Court from time to time, such submissions are not open to be made by learned counsel, nevertheless, the submissions having been made, we will deal with each of them.

Is the notified land a forest or treated as a forest?

86. The principal contention urged by learned counsel for the applicants is that the land in question Khasra Nos. 9 to 16 in village Anangpur notified under the provisions of the PLP Act on 18th August, 1992 was not forest land. This submission is clearly liable to be rejected.

(i) Affidavits of the State of Haryana

87. In this connection, we may refer to the affidavit of Shri Banarsi Das, IFS, Principal Chief Conservator of Forests, Haryana. The affidavit dated 8th December, 1996 was filed in ***Environmental Awareness Forum v. State of Jammu & Kashmir***.[17] In this affidavit it is stated that the total forest area in Haryana in 1985-86 was 1,68,543 hectares. This included 26,499 hectares of areas closed under the PLP Act. In other words, as far back as in 1985-86, if not earlier, the Principal Chief Conservator of Forests of the Government of Haryana considered and treated areas closed under the provisions of the PLP Act as forest land. This was well before the present controversy had arisen. The affidavit goes on to state that in 1995-96 the total forest area in Haryana was 1,54,706 hectares and this included 11,513 hectares of area closed under the PLP Act. It is quite clear to us that as far as the State of Haryana is concerned, closed areas under the PLP Act were always treated as forest land and this was well before any controversy arose in the matter.

88. Pursuant to an order passed by this Court an affidavit was filed on 25th February, 1997 by Shri S.K. Maheshwari, IAS, Commissioner & Secretary in the Forest Department. The affidavit was filed in the case of ***Godavarman***. It was stated that since the PLP Act came into force in 1900

[17] W.P. No.171 of 1996

some cut-off date was required for identification of forests and forest land. This cut-off date was taken as 25th October, 1980 that is the date on which the Forest (Conservation) Act, 1980 came into force. This date was taken only for convenience and for no other reason. This is clear from the affidavit which also states that closure under the PLP Act "creates forests" during the period of closure, after which the land is no longer shown as forest in government records. The affidavit reiterates that closed areas are "counted as forest" during the currency of the closure under the PLP Act. Therefore, identification of forest land from 1900 would have been a humungous task and to avoid an unnecessary exercise, the cut-off date of 25th October, 1980 was taken. The affidavit cannot be read or understood to mean that land not recorded as 'forest' on 25th October, 1980 in the Government records can never become or be recognised or treated as 'forest'. This would be too far-fetched and would go against the letter and spirit of the PLP Act.

89. The affidavit of Shri Prem Prashant, IAS, Chief Secretary of Haryana takes us back beyond 1985-86 and 25th October, 1980. In the affidavit dated 10th September, 2006 filed in response to I.A. No. 1901 of 2005 filed by the applicants (in ***M.C. Mehta***) Shri Prem Prashant takes us back to notifications dated 10, 1970 and 10th November, 1980 issued by the State of Haryana through the Forests and Animal Husbandry

Department and subsequent notifications dated 16th November, 1995 and 28th November, 1997. This was to bring on record that the provisions of the PLP Act have been made use of through notifications issued thereunder for several decades for the protection and preservation of forests and forest land, even if such lands are not recorded as 'forest' in Government records. This would be in consonance with the provisions and the spirit of the PLP Act.

90. In an affidavit dated 15th March, 2009 filed by Shri Dharam Vir, the Chief Secretary of Haryana with reference to the report of the CEC dated 15th January, 2009 in ***M.C. Mehta*** it was submitted that all constructions made post 17th April, 1984 (the date on which exemption was granted to the applicants under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975) may be allowed to exist. This affidavit must be read in conjunction with the notification of 18th August, 1992 and if so read, it suggests that the Chief Secretary desired that constructions made between 17th April, 1984 and 18th August, 1992 may be allowed to exist. However, even Shri Dharam Vir did not doubt or deny that closed areas under the PLP Act are forest or forest land. He only suggested a possible reprieve to the applicants.

91. The view of the Government of Haryana is therefore quite clear and consistent that land notified under the PLP Act is forest land and no

construction can be made thereon but if some dilution is to be made, then it should be only for the period between 17th April, 1984 and 18th August, 1992.

92. Quite apart from the affidavits filed by the State of Haryana through the Chief Secretary or the Principal Chief Conservator of Forests or the Commissioner & Secretary of the Forest Department, we are aware that through the conduct and correspondence of the Town & Country Planning Department that it was very keen on permitting construction in closed areas. We are not sure why the Town & Country Planning Department was persistently going out of its way to be of assistance to the applicants but whatever the reason, it was categorical in recommending the environmental degradation of the Aravalli hills.

(ii) Orders of this Court

93. In addition to the affidavits of the State of Haryana, the various orders passed by this Court from time to time in ***Godavarman*** and in ***M.C. Mehta*** make it very clear that closed areas under the PLP Act are forest and forest land and need to be treated as forest land.

94. The decisions of this Court, go back to 10th May, 1996[18] when this Court proposed to deal with preserving the environment and controlling

[18] M.C. Mehta v. Union of India, (1996) 8 SCC 462

pollution through the stoppage of mining operations within the radius of 5 km from the tourist resorts of Badkal Lake and Surajkund. This Court considered reports prepared by the Haryana Pollution Control Board and the National Environmental Engineering Research Institute. It was noted that the State of Haryana had already prohibited mining operations within the radius of 5 km from these tourist resorts and on a consideration of the reports mentioned above, it was concluded that there shall be no mining activity within a 2 km radius of the tourist resorts of Badkal Lake and Surajkund. All the mines, which fall within the said radius shall not be reopened. It was further directed that no construction activity of any type shall be permitted now onwards within the 5 km radius of Badkal Lake and Surajkund and all open areas shall be converted into green belts. Interestingly, this Court also noted as follows:

> "The Badkal lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. The mining activities in the vicinity of these tourist resorts may disturb the rainwater drains which in turn may badly affect the water level as well as the water quality of these water bodies. The mining may also cause fractures and cracks in the subsurface, rock layer causing disturbances to the aquifers which are the source of groundwater. This may disturb the hydrology of the area."

95. The order dated 10th May, 1996 was subsequently modified on 11th October, 1996[19] to the effect that now onwards construction activity would

[19] M.C. Mehta (Badkhal and Surajkund Lakes matter) v. Union of India, (1997) 3 SCC 715

not be permitted in certain areas, and there was no blanket ban. Permission to construct was subject to **utmost necessity** for recreational and tourism purposes and no other. However, exemption was granted to plots already sold or allotted prior to 10th May, 1996 in developed areas (this was varied subsequently). It was further directed as follows:

> "All development schemes, and the plans for all types of constructions relating to all types of buildings in the area from one km to 5 km radius of the Badkhal Lake and Surajkund (excluding Delhi areas) shall have prior approval of the Central Pollution Control Board and the Haryana Pollution Control Board."

96. Further, with regard to the issue of water management, this Court referred to the report of the National Environmental Engineering Research Institute and noted as follows:

> "…..According to the report Surajkund lake impounds water from rain and natural springs. Badkhal Lake is an impoundment formed due to the construction of an earthen dam. The catchment areas of these lakes are shown in a figure attached with the report. The land use and soil types as explained in the report show that the Badkhal Lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large-scale construction in the vicinity of these tourist resorts may disturb the rain water drains which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of ground water. The hydrology of the area may also be disturbed."

97. The reason why we are referring to availability of water, or the lack of it, is because even the Chief Minister of Haryana in his order of 11th July, 1990 had noted that the availability of water from the aquifers is of

paramount importance and that aquifers available at the deeper level would be fully exploited to meet the demand of water supply for the population of Kant Enclave.

98. In spite of all these concerns shown to the environment and availability of water, the fact of the matter is that today Badkal Lake is bone dry and there is no water in the 'Lake'. We had specifically asked learned counsel for the parties as well as learned A*micus* about the status of Badkal Lake and we were told quite categorically that today there is absolutely no water in Badkal Lake. The damage to the environment has been done and appears to be irreversible.

99. One of the more significant orders was passed by this Court on 12th December, 1996.[20] Through this order, this Court laid down what could be described as 'forest' and 'forest land'. The view taken was that the two expressions must be given their dictionary or natural meaning and if so considered, there can be no doubt that degraded forests and closed lands under the PLP Act are nothing but forest land. Similarly, the orders passed by this Court from time to time in ***M.C. Mehta*** make it loud and clear that the Aravalli hills need protection from environmental degradation and the laws must be strictly enforced to ensure that there is no damage caused to the ecology of the Aravalli hills. In view of the clear expression of views

[20] T.N. Godavarman v. Union of India, (1997) 2 SCC 267

and conclusions arrived at by this Court from time to time and repeated on several occasions we have no doubt that closed areas under the PLP Act are nothing but forest land and deserve to be treated as such.

100. In the decision rendered on 12th December, 1996 this Court directed the identification of 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. As a result of this, each State Government was directed, *inter alia*, 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.

101. Notwithstanding the concern shown by this Court for the environment and ecology of the Aravalli hills, the tacit support given to the applicants by the Town & Country Planning Department of the State of Haryana completely vitiated the efforts of the Forest Department as well as the orders of this Court. It came to such a pass that the Delhi Ridge Management Board was compelled to file an application on 29th November, 2001 being I.A. No. 1785 of 2001 in which it was stated that the withdrawal and pumping of ground water in the Ridge was a matter of serious concern. It was, therefore, prayed that the Government of Haryana may be directed to stop all mining activity and pumping of ground water

in and from the area of 5 km from the Delhi-Haryana border in the Haryana side of the Ridge. This application resulted in this Court passing an order on 6th May, 2002 directing the stoppage of all mining activity and pumping of ground water as prayed for. This order was followed by another order passed by this Court on 22nd July, 2002 (not reported) requiring EPCA to furnish a report, which it did on 9th August, 2002 to the effect that the order passed on 6th May, 2002 deserved to be confirmed.

102. Subsequently, EPCA gave another report on 21st October, 2002 on the basis of information obtained from the Central Ground Water Board to the effect that mining activity was going on and the mines were operating below the ground water level which was resulting in exploitation and destruction of ground water sources.

103. The blatant and open flouting of orders passed by this Court resulted in the constitution of the Central Empowered Committee (CEC) on 17th September, 2002 for monitoring and ensuring compliance of the orders passed by this Court. The CEC submitted reports to this Court from time to time. These have already been adverted to and need not be repeated.

104. In its decision dated 18th March, 2004 this Court considered all this material and addressed all the issues raised before it including issues of environmental and ecological degradation.

105. This Court specifically addressed itself to the question whether closed areas under the PLP Act are 'forest' of any kind. This Court noted that the Forest Department of the State of Haryana showed such areas as 'forest' in its records and treated such areas as 'forest'; affidavits had also been filed on behalf of the State of Haryana in cases pending in this Court to the same effect; the word 'forest' and 'forest land' had been clearly explained by this Court in its order dated 12th December, 1996 and finally the Government of Haryana itself sought permission from the Central Government to divert land closed by notifications under the PLP Act for non-forest purposes. Therefore, it was held that the State of Haryana cannot now take a somersault and contend that areas closed under the PLP Act are not forest. This Court disposed of I.A. No. 1785 of 2001 and confirmed the order passed on 6th May, 2002 and held that areas closed under the PLP Act cannot be utilized for non-forest purposes without the prior permission of the Central Government under the provisions of the Forest (Conservation) Act, 1980.

(iii) Review Petition of Kant Enclave

106. In view of the restrictions imposed by this Court, which obviously did not suit the applicants, a review petition being R.P. No. 914 of 1997 was filed by R. Kant & Co. on or about 26th February, 1997. In the review petition, it was not disclosed that a notification had been issued under the

PLP Act. While concealing this extremely important fact, a review was sought of the order passed by this Court on 11th October, 1996 to the effect that no permission is required from the Central Pollution Control Board or the Haryana Pollution Control Board in respect of the constructions made by the applicant beyond the 1 km but within the 5 km radius of Badkal Lake and Surajkund.

107. The review petition was taken up for consideration on 17th March, 1997 when it was made clear that plans for construction of houses could be filed before the Competent Authority who could examine them in accordance with the applicable rules and if the plans were in order, they could be "kept ready until further orders." Since the full facts were not placed before this Court, an order was passed to the effect that for the purposes of examination, there should be no insistence by the concerned authorities on the production of No Objection Certificate from the Central or State Pollution Control Board. It was also observed that 2 ½ storey buildings could be constructed.

108. On 13th May, 1998 the Court modified the order passed on 17th March, 1997 to the effect that in certain private areas where construction is proposed, only single storey hutments could be permitted to be constructed and not tall buildings as originally conceived. Therefore, it is quite clear from the orders passed by this Court that construction was not

permitted until further orders but that plans could be prepared and examined.

109. A reference to the above orders clearly indicates that the State of Haryana and the applicants had full knowledge of the proceedings in this Court, but showed no concern for the environment and the ecology of the area.

110. In our opinion, it was extremely important for R. Kant & Co. to have come out with full facts in the review petition filed by it, more particularly the fact of the issuance of the notification dated 18th August, 1992. The failure to disclose this material fact vitiates the proceedings initiated by the applicant in this Court.

(iv) Interlocutory Application filed by the applicant

111. Notwithstanding complete clarity on the issue of what is a forest and forest land, the status of closed areas notified under the PLP Act and issues of environmental and ecological degradation of the Aravalli hills, the applicants made bold to file I.A. No. 1901 of 2005 (in ***M.C. Mehta)*** sometime in October 2005 in which it was prayed that the decision rendered by this Court on 18th March, 2004 is restricted only to mining activities and does not affect the construction activities carried out by the applicant, which it is entitled to in view of the orders passed by this Court on 13th May, 1998.

112. In response to the application, an affidavit dated 10th September, 2006 was filed by Shri Prem Prashant, IAS, Chief Secretary of Haryana in which it was categorically stated that the provisions of the PLP Act have been taken recourse to from time to time for the protection of forests and forest land. In this regard, he annexed notifications issued by the State of Haryana on 12th March, 1970 through the Forests and Animal Husbandry Department, 10th November, 1980 through the Forest Department, 16th November, 1995 through the Forest Department and 28th November, 1997 through the Forest Department.

113. The notification dated 18th August, 1992 was one of such notifications for the protection of forests and forest lands. It was categorically stated on affidavit that from the date of the notification, that is, 18th August, 1992 the subject land was being treated as forest and it was also included in the list of forests in the Government records. This was also shown as a forest in the affidavit filed by the State of Haryana in ***Godavarman***. That the subject land was forest land was also stated by the Principal Chief Conservator of Forests in a letter dated 27th January, 2006 addressed to the Director, Town & Country Planning Department. In fact, the said Director had required the applicant to seek the diversion of the forest land for non-forestry purposes by letters dated 27th January, 2006 and 27th June, 2006 but the applicant did not do so. It was specifically

pointed out to the applicant in both the letters that constructions made by the applicant were illegal, but obviously, to no effect.

114. The application was taken up for consideration by a Bench of three learned judges who dismissed the application by a judgment and order dated 14th May, 2008.[21] The issue whether land closed by a notification issued under the provisions of the PLP Act was forest land was once again considered by this Court and the decision rendered on 18th March, 2004 was specifically and categorically reiterated.

115. We would have imagined that the applicant R. Kant & Co. would have learnt a lesson from the dismissal of its review petition, the interlocutory application as well as the orders passed by this Court from time to time and reports given by expert bodies, but it does not appear to have been so. We say this because, after the decision of this Court rendered on 14th May, 2008 R. Kant & Co. filed an application being I.A. No. 2310 of 2008 on 11th July, 2008 challenging a communication dated 23rd May, 2008 issued pursuant to the orders passed by this Court. Subsequently, the applicant also filed I.A. Nos. 2377-79 of 2009 objecting to the reports filed by the CEC. These I.A.s were not argued before us and no submissions were made in respect of these I.As.

[21] M.C. Mehta v. Union of India, (2008) 17 SCC 294

(v) Issue again raised in this Court

116. The pendency of the present applications in this Court gave occasion to the applicants to once again try and raise the issue of closed areas under the PLP Act being not forest or forest land. Reference was made to the decision of this Court in ***Sandhu***. It was submitted that this Court had struck a discordant note in ***Sandhu***. We cannot agree since the decision in ***Sandhu*** itself distinguished the ***M.C. Mehta*** set of orders both on facts and in law. The decision rendered in ***Sandhu*** cannot, by any stretch of imagination, come to the aid of the applicants.

117. We may only note that in so far as the present case is concerned, there is a wealth of material to indicate clearly that closed land under the PLP Act is forest land or in any event, is required to be treated as forest land. Several notifications issued under the PLP Act have been brought to our notice which prohibit certain activities which ought not to be carried out on forest land. The affidavits filed by responsible officers of the State of Haryana, including affidavits filed by the Chief Secretary unequivocally state that lands closed under the PLP Act are forest land. Similarly, there are judgments and orders passed by this Court to the same effect and the conduct of the State of Haryana, including the Forest Department and its relationship with the Town & Country Planning Department is a clear indication that lands closed under the provisions of the PLP Act are nothing

but forest or forest land.

118. There is absolutely no doubt that ***Sandhu*** is distinguishable both on facts and in law and it has been recognised as such by this Court in the judgment delivered in ***Sandhu***. It was suggested by learned counsel for the applicants that because this Court did not enquire into the basis of inclusion of closed areas as forest, therefore the notification dated 18th August, 1992 is vitiated. Reliance placed on an observation in ***Sandhu*** with respect, may not strictly be valid, in the sense that there was enough material to indicate why, at least since 1970 closed areas have been included as forest and treated as forest by the State of Haryana. We may add that there was a report of a Committee that eventually led to the issuance of the notification dated 18th August, 1992 but that was unfortunately not placed before us in spite of our request to learned counsel for the State of Haryana.

119. What is of crucial importance and great significance is that no one has challenged the validity or correctness of the notification dated 18th August, 1992. We do not see how the correctness or validity of the notification can be challenged without any direct attack. A collateral attack cannot be permitted more certainly so by relying upon another decision of this Court, which has nothing to do with the facts of the present case.

120. On the other hand, the applicants have 'challenged' every significant

order passed by this Court, either through a Review Petition or through Interlocutory Applications. The applicants have been unsuccessful in every such adventure.

121. Taking an overall view of all the facts in the case and the law on the subject, we have no doubt that Kant Enclave is a forest or is a forest land or is required to be treated as a forest or forest land and absolutely no construction activity could have been permitted on it with effect from 18th August, 1992. Any and all construction activity in Kant Enclave since that date is illegal and impermissible in law.

Mining centric orders

122. The next submission advanced by learned counsel for the applicants was to the effect that all the orders passed by this Court were mining centric and did not relate to construction activity in Kant Enclave. This argument is stated only to be rejected. The judgments delivered by this Court have only to be read and understood and it would be more than obvious that the concern of this Court was to preserve and protect the environment in and around the Aravalli hills and generally avoid environmental and ecological degradation of the area both through the stoppage of mining activity and constructions. Unfortunately, this Court was unable to enforce its orders in letter and spirit, thanks entirely to the apathy of the State of Haryana and the persistence of the applicants with the result that Badkal Lake is today,

admittedly, absolutely dry.

123. The culpability of some of the State authorities in ensuring this tragic situation is quite evident from I.A. No. 2269 of 2007 filed by the Administrator, Haryana Urban Development Authority, in which the first prayer is to the effect that this Court should issue an appropriate direction that the judgment and order dated 18th March, 2004 was restricted only to mining activities and did not affect the development or urbanisation or construction activities carried out as per the laws, rules and regulations of the Municipal Corporation of Faridabad or the Haryana Urban Development Authority. Despite the clear judgment and order passed by this Court, the attitude of some sections of the State Government obviously did not change and unrestricted development through mining activity and construction activity was given precedence over the environment resulting in, amongst other things a parched Badkal Lake.

Notification issued erroneously

124. It was then contended by learned counsel for the applicants that the inclusion of Khasra Nos. 9 to 16 in village Anangpur in the notification dated 18th August, 1992 was a mistake and that it was always the intention of the State of Haryana to keep this land out of the rigours of the PLP Act. This submission too is stated only to be rejected. If it was in fact the intention of the State of Haryana to keep Kant Enclave out of the purview

of the notification dated 18th August, 1992 nothing prevented the State from either issuing a corrigendum or issuing a fresh notification or taking some positive step to delete Khasra Nos. 9 to 16 in village Anangpur from the rigours of the notification.

Alleged inapplicability of the notification

125. Reliance was then placed on the provisions of sub-section (1) and sub-section (7) of Section 29 of the Faridabad Complex (Regulation and Development) Act, 1971 to submit that the notification dated 18th August, 1992 was not applicable to controlled areas. These provisions read as follows:

> "**Section 29 - Declaration of controlled area**
>
> (1) Notwithstanding any law for the time being in force the Chief Administrator may, with the previous approval of the State Government by notification, declare the whole or any part of the area within the Faridabad Complex including an area within a distance of 8 kilometers on the outer sides of the boundaries of Faridabad Complex as a controlled area.
>
> (2) to (6) ----------
>
> (7) After considering the objections, suggestions and representations, if any, and the recommendations of the Chief Administrator thereon, the State Government shall decide as to the final plans showing the controlled area and signifying therein the nature of restrictions and conditions applicable to the controlled area and publish the same in the Official gazette and in such other manner as may be prescribed."

126. In terms of Section 2(f) of the said Act, a controlled area means an area declared under Section 29 of the said Act to be a controlled area.

127. We are unable to appreciate the relevance of this submission for the reason that, as per the Statement of Objects and Reasons, there was a multiplicity of local authorities in the Faridabad-Ballabhgarh area with the result that integrated development of this area was not possible. Consequently, it was essential to devise a set up for administration of this area which would meet the objectives of rapid and integrated development and eliminate haphazard development. The said Act was intended to achieve this objective. Quite clearly, this has nothing to do with the notification dated 18th August, 1992. Moreover, Section 29(1) of the said Act related to any law for the time being in force - the notification dated 18th August, 1992 came much later and was not in force when the said Act was enacted.

Other submissions

128. It was then contended that the exemption granted on 17th April, 1984 under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 exempted the applicant or in any case Kant Enclave from all the provisions of the said Act. While this may be so, we do not see how the said Act exempts the applicant or Kant Enclave from the prohibitions imposed by the subsequent notification dated 18th August, 1992. The said Act has no relevance or reference to the provisions of the PLP Act.

129. Learned counsel for the applicants also contended that in view of the

decision rendered by this Court in ***Sandhu***, the subject land ought to have been an existing forest as on 25th October, 1980 when the Forest (Conservation) Act, 1980 came into force. In our opinion, this is not at all a correct interpretation of the decision rendered by this Court in ***Sandhu***. It is nobody's case, and indeed it cannot be anybody's case that no area can be declared as a forest after 25th October, 1980. If this were the interpretation given, then the entire purpose of the order dated 12th December, 1996 passed by this Court would be rendered meaningless since it was in terms of this order that forest land was directed to be identified, even if that land was not so recognised as forest land. Acceptance of the interpretation sought to be given by learned counsel would also emasculate the PLP Act.

130. The final submission of learned counsel for the applicants was that constructions were made in terms of the orders passed by this Court on 17th March, 1997 and 13th May, 1998 and in fact, building plans and sanction plans were approved by the concerned authorities. Therefore, it must be held by this Court that the members of the Kant Enclave Residents Welfare Association had acted *bona fide* and therefore their houses or constructions should not be demolished as suggested by the CEC.

131. In this regard, it must be appreciated that the order dated 17th March, 1997 as modified on 13th May, 1998 permitted construction only in

accordance with law and not *de hors* the notification dated 18th August, 1992. It is not the case of any of the applicants before us, and indeed it cannot be their case, that the orders of this Court gave a complete go by to the notification and virtually quashed it even though it was never under challenge at that point of time or even today. It appears that very large residential complexes have been constructed despite the orders of this Court, which did not give any blanket permission to the applicants to make constructions, according to their whims and fancies. For reasons that are not at all clear, such constructions were permitted by the concerned authorities despite the orders of this Court and even though the notification dated 18th August, 1992 prohibited breaking up of the land. It is difficult, under the circumstances, to take the view that the applicants and the concerned authorities had acted *bona fide*.

132. We had asked learned counsel for the applicants to place before us the details of the construction made in Kant Enclave. The following chart was then placed before us on 24th July, 2018. This chart indicates that out of a total of about 1600 plots said to have been carved out by R. Kant & Co. in Kant Enclave, conveyance deeds have been executed only in respect of 284 residential plots and three commercial plots. On the residential plots, only 33 houses have been constructed and it appears that not one of them is a single-storey hutment.

S.No.	Particulars	Work Done
1.	Conveyance Deeds Executed	284 residential plots
2.	Conveyance Deeds Executed	3 commercial plots
3.	Houses constructed and people living	33 houses
4.	Film Studio (FS-2) constructed	1 no.
5.	Overhead water tank of 545 KL capacity constructed and functional	3 nos.
6.	Underground water tank of 1200 KL capacity constructed and functional	3 nos.
7.	Pumping Station (Functional)	1 no.
8.	Pumping Machine (Submersible pumps) installed and functional	9 nos.
9.	Sewage Treatment Plant having cost of more than Rs. 70,00,000/- installed	1 no.
10.	Parks (fully developed)	14 nos.
11.	Roads completed	136460 Sq. Mtr. (Approx. 20 KM)
12.	Street lights poles erected and energised	627 nos.
13.	Internal sewage pipe lines completed and functional	21150 Mtrs.
14.	Storm water drain completed and functional	18000 Mtrs.
15.	Water supply pipe lines completed and functional	22700 Mtrs.
16.	Trees planted	10000 nos. (Along road side and in green belt)
17.	Fire hydrants/Fire tanks having 265 CUM capacity	3 nos.
18.	Electric sub-station for 650 KV transformer	2 nos.

133. The extent of violation of the notification dated 18th August, 1992 is quite frightening and one can only imagine the phenomenal environmental and ecological damage caused to the area by the applicants. This could not have happened without the knowledge of the State of Haryana and its officers who permitted blatant disregard of the rule of law despite affidavits

of the Chief Secretary of the State of Haryana. The rule of law seems to have broken down in Haryana and become the rule of men only to favour the applicants. At this point, we cannot help but referring to a passage from a judgment of this Court with regard to the Aravalli hills and the need for their protection. We had intended to avoid this reference only because it would be repetitive, but it is painful to see such a mockery of the law and total lack of concern for the environment and ecology of the Aravalli hills.

134. In the order dated 18th March, 2004[22] it was stated in paragraph 58 of the Report as follows:

> "The Aravallis, the most distinctive and ancient mountain chain of peninsular India, mark the site of one of the oldest geological formations in the world. Heavily eroded and with exposed outcrops of slate rock and granite, it has summits reaching 4950 feet above sea level. Due to its geological location, the Aravalli range harbours a mix of Saharan, Ethiopian, peninsular, oriental and even Malayan elements of flora and fauna. In the early part of this century, the Aravallis were well wooded. There were dense forests with waterfalls and one could encounter a large number of wild animals. Today, the changes in the environment at Aravalli are severe. Though one finds a number of tree species in the hills, timber-quality trees have almost disappeared. **Despite the increase of population resulting in increase of demand from the forest, it cannot be questioned nor has it been questioned that to save the ecology of the Aravalli mountains, the laws have to be strictly implemented**." [Emphasis supplied by us].

Relief

135. The question that now remains for consideration is whether any relief is required to be granted to the applicants and if so what relief should

[22] M.C. Mehta v. Union of India, (2004) 12 SCC 118

be granted.

136. There is no doubt that irreversible damage has been caused to the environment and ecology of the Aravalli hills. The damage was caused or allowed to be caused, despite a statutory notification issued under the provisions of the PLP Act. The brazenness of the applicants in flouting the law is quite apparent. But what is more unfortunate is the support given to the applicants by the Town & Country Department of the State of Haryana, despite the reservations of the Forest Department. The Town & Country Department in apparent collusion with R. Kant & Co. effectively led a very large number of people up the garden path. Fortunately, only 33 of them have made some personal constructions – but it is not clear whether their constructions are pre or post 18th August, 1992.

137. Therefore, we have two categories of persons who have been taken for a ride by R. Kant & Co. The first category consists of those who have been conveyed land by R. Kant & Co. and the second category consists of those who have been conveyed land and have made constructions.

138. As far as the first category of persons is concerned, the relief that can be awarded to them is a full refund of their investment along with interest at 18% per annum payable entirely by R. Kant & Co. from the date of the investment. We order accordingly.

139. As far as the second category of persons is concerned, as submitted

by Shri Dharam Vir, Chief Secretary of the State of Haryana in his affidavit of 15th March, 2009 there is an available, reasonable and appropriate course of action to adopt. This course of action is to save or allow to exist constructions made in Kant Enclave pursuant to the exemption granted to the applicant (R. Kant & Co.) on 17th April, 1984 under Section 23 of the Haryana Development and Regulation of Urban Areas Act, 1975 but before 18th August, 1992 when the notification under the provisions of the PLP Act came into force. Any construction made after 18th August, 1992 is clearly illegal and contrary to law and must be demolished as recommended by the Central Empowered Committee. We accept the submission made by Shri Dharam Vir and the CEC and do not disturb the constructions made between 17th April, 1984 and 18th August, 1992. We direct accordingly.

140. However, in respect of constructions made after 18th August, 1992 there is no option but to direct the State of Haryana to demolish the illegal and unauthorised constructions. The demolition should be completed on or before 31st December, 2018. We direct accordingly.

141. In ***Godrej & Boyce Manufacturing Company Limited v. State of Maharashtra***[23] this Court considered the issue of unauthorised construction from the point of view of a well-meaning citizen who is led

[23] (2014) 3 SCC 430

up the garden path by the State, which gives statutory permission for unauthorised constructions. In the present case of Kant Enclave, well-meaning citizens have been virtually duped into investing huge amounts despite R. Kant & Co. and the Town & Country Department of the State of Haryana being fully aware of the statutory notification dated 18th August, 1992 and the restrictions placed by the notification. R. Kant & Co. and the Town & Country Department of the State of Haryana were also fully aware that Kant Enclave is a forest or forest land or treated as a forest or forest land, and therefore any construction made on the land or utilisation of the land for non-forest purposes, without the prior approval of the Central Government, would be illegal and violative of the provisions of the Forest (Conservation) Act, 1980. Notwithstanding this, constructions were made (or allowed to be made) in Kant Enclave with the support, tacit or otherwise, of R. Kant & Co. and the Town & Country Department of the State of Haryana. They must pay for this. This is not to suggest that those who have made constructions after 18th August, 1992 are completely innocent. Nevertheless, it is necessary to compensate them in view of the role played by the Town & Country Planning Department of the State of Haryana. To compensate them for the land, we direct that R. Kant & Co. to give them a full refund of their investment in the land along with interest at 18% per annum from the date of the investment. We order accordingly.

142. As far as the cost of construction is concerned, we tentatively quantify it at ₹ 50 lakhs. This will be paid to those who constructed after 18th August, 1992 and whose construction is directed to be demolished. The quantified amount will be paid, in equal proportion, by R. Kant & Co. and the Town & Country Planning Department of the State of Haryana. The quantified amount is directed to be paid on or before 31st December, 2018. If anyone who's construction is demolished in view of our orders, is not satisfied with the quantification, that person is at liberty to proceed against R. Kant & Co. and the Town & Country Planning Department of the State of Haryana by way of a civil suit in accordance with law and with the cause of action arising as on today.

143. The Polluter Pays Principle is a wholesome principle that has been universally accepted and also adopted and applied in our country through several decisions of this Court. In this context, we may draw attention to among two of the earliest decisions rendered by this Court, namely, ***Indian Council for Enviro-Legal Action v. Union of India***[24] and ***Vellore Citizens' Welfare Forum v. Union of India***.[25] The law having been settled for more than two decades, we are of the view that it must be applied in a case such as the present. The damage caused to the Aravalli hills, as already noted, is irreversible. However, perhaps some of the damage could be remedied -

[24] (1996) 3 SCC 212
[25] (1996) 5 SCC 647

at least we hope so. According to R. Kant & Co. it has expended ₹ 50 crore in developing Kant Enclave. We do not know the exact or accurate figure but proceed on the basis as stated. In our opinion, it would be reasonable to require R. Kant & Co. to deposit 10% of this amount (that is, ₹ 5 crore) for rehabilitation of the damaged areas. This amount should be deposited by R. Kant & Co. in the Aravalli Rehabilitation Fund within one month and in any case on or before 31st October, 2018. The matter be listed only for compliance of this direction in the first half of November 2018.

144. We direct the incumbent Chief Secretary of the State of Haryana to ensure compliance with our remaining orders, both in letter and spirit on or before 31st December, 2018.

145. The substantive applications stand disposed of in the terms mentioned above.

…….J.
(Madan B. Lokur)

New Delhi; **……..J.**
September 11, 2018 **(Deepak Gupta)**