

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

WRIT PETITION Nos.20185 and 7988 of 2020

#

W.P.No.20185 OF 2020 & another

Smt. S. Maheswari,
w/o G. Ramesh Babu
Kuntrapakam Villae, Tirupati,
Chittoor District – 517 006

..... Petitioners

Vs.

\$

The State of Andhra Pradesh
Rep. by its Principal Secretary
Revenue Department
Secretariat Buildings, Velagapudi
Guntur District

..Respondents

! Counsel for the petitioner : Ms. Sodum Anvesha

^ Counsel for the respondent :

1. Learned Government Pleader for Revenue

JUDGMENT PRONOUNCED ON: 28.10.2021

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ WRIT PETITION Nos.20185 and 7988 of 2020

% Dated 28.10.2021

#

W.P.No.20185 OF 2020 & another

Smt. S. Maheswari,
w/o G. Ramesh Babu
Kuntrapakam Villae, Tirupati,
Chittoor District – 517 006

..... Petitioners

Vs.

\$

The State of Andhra Pradesh
Rep. by its Principal Secretary
Revenue Department
Secretariat Buildings, Velagapudi
Guntur District

..Respondents

! Counsel for the petitioner : Ms. Sodum Anvesha

^ Counsel for the respondent :

Learned Government Pleader for Revenue

<GIST:

> HEAD NOTE:

? Cases referred

1. (2001) 6 Supreme Court Cases 496
2. (1997) 1 Supreme Court Cases 388
3. (1997) 1 SCC 388
4. (2020) 15 SCC 63
5. (2012) 5 SCC 1
6. (2010) 3 SCC 402
7. (2006) 3 SCC 549
8. (2004) 9 SCC 362
9. (2019) 15 SCC 401
10. (2002) 10 SCC 606
11. (2006) 3 SCC 549
12. (2019) 4 SCC 500
13. (2018) 15 SCC 407
14. 31 ILM 818 (1992)
15. 31 ILM 849 (1992)
16. AIR 2020 SC 3471
17. 2019 (17) SCALE 29
18. WP(MD) No.18575 of 2019 dated 26.04.2021
19. AIR 2011 SC 1123
20. 1972 (1) SCC 521 (529)

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
WRIT PETITION Nos.20185 and 7988 of 2020

COMMON ORDER:

These two Writ Petitions are filed under Article 226 of the Constitution of India by two different concerns claiming identical reliefs. Therefore, I find that it is expedient to decide both the Writ Petitions by a common order:-

1. Writ Petition No.20185 of 2020 is filed under Article 226 of the Constitution of India, claiming the following relief:

"....to issue a Writ Order or Direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in taking steps for conversion of Yetteramma Gutta @ Yetteri Gutta @ Siddeswara Gutta hillock comprising Ac.131-45 cents in Sy.No.612 of Kuntrapakam Village, Tirupati Rural Mandal, Chittoor District for eventual assignment of house sites by removal of existing idols and temples and other religious places as illegal, arbitrary and consequently direct the respondents to preserve all the existing temples, idols and other features of the Yetteri Gutta and pass such other order....."

2. Writ Petition No.7988 of 2020 is filed under Article 226 of the Constitution of India, claiming the following relief:

"....to issue a Writ Order or Direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in taking steps for conversion of Yetteramma Gutta @ Yetteri Gutta @ Siddeswara Gutta hillock comprising Ac.119-45 cents in Sy.No.612 of Kuntrapakam Village, Tirupati Rural Mandal, Chittoor District for eventual assignment of house sites and to cause the disappearance of the grazing lands and hillock itself in view of the programme of "Navaratnalu-Pedalandariki Illu" announced by 1st respondent as illegal, arbitrary and consequently direct the respondents to protect all the existing features of the Yetteri Gutta without subjecting it to any alteration/ change of nature of the hillock and pass such other order....."

3. Since the contentions in both the writ petitions are one and the same, to avoid repetition of facts, W.P.No.20185 of 2020 is taken as a leading case.

4. The petitioner in W.P.No.20185 of 2020 is a person having background to protect environment and filed this petition only to protect and to conserve the mountains as her right to life is affected on account of proposed action of the respondents.

5. The petitioner born and brought up at Kuntrapakam Village and after marriage also she is living at Kuntrapakam Village as her husband also belongs to same village. She possessed Master Degree in Telugu, English and also in Education, worked as Lecturer in Philosophy and Environmental Education for 16 years and served as Incharge Principal. She did many environmental protection activities along with SV University NSS, Sri Padmavathi Mahila University NSS, Oriental College and elected unanimously as President of Water users Association of Yeguva Cheruvu Dhiguva Cheruvu, Kuntrapakam. During her period as President, she took a project with the help of locals to harvest rain water and increase ground water levels. She planted thousands of plants with SV and Padmavathi Mahila Universities NSS volunteers and invited many great people to their village to get suggestions for environmental protection. She being a Chairman of Yeguva Chervuvu and Diguva Cheruvu Water Users Association submitted that land measuring Ac.131-45 cents in Sy.No.612 at Kuntrapakam Village, Tirupati Rural is classified as Gayalu (Gutta) Poramboke and it is locally called as Yetteri Gutta (Yetteramma

Gutta). The land is situated about 2 Kms from Kuntrapakam and Kupuchandrapet Villages and 8 Kms from Tirupati. It is a hillock with abundance of trees, plantations and plays a vital role in sustaining the flora and fauna. The Eguva Cheruvu meaning upper tank, spread in an extent of Ac.119-34 cents situated in S.No.599 and Diguva Cheruvu meaning lower tank, spread in an extent of Ac.165-23 cents situated in Sy.No.575/1 of Kuntrapakam Village. While Eguva Cheruvu has an ayacut of Ac.112-70 cents, Diguva Cheruvu is having an ayacut of Ac.117-74 cents and both these tanks are adjoining to the land in Sy.No.612 and the land in Sy.No.612 is the subject land of the Writ Petition.

6. The land in Sy.No.612 is classified as '**gutta poramboke**' in revenue records and it is popularly called as "Yetteri Gutta". The gutta consists of several temples of different deities viz., Katama Raju Temple, Dharan Charan Mandali Samyatha Girandha Nilayam, Ellamma Temple, Vigneshwara Temple, Veerabrahmendra Swamy Temple, Anjaneya Swamy Temple, Rathisambala Mandapam, Muslim Eidgah. The local public visits the above said temples for offering their prayers, more particularly during festival occasions, large number of people would attend those temples. The said gutta is used for grazing cattle for the last many decades by the people of surrounding village who are cultivating their patta land in the neighbouring villages. In the year 2000, the Andhra Pradesh Government has

cancelled quarry licenses to protect the environment based on the complaints by the farmers and people of neighbouring villages. The idols belonging to 9th and 10th century are discovered on the hillock, they are being preserved in Sri Tirumala Museum and students are carrying out NSS and other social activities of planting trees for the preservation of the said hillock and its surroundings for many decades.

7. Way back on 19.11.1999, the Mandal Revenue Officer, Ramachandrapuram has granted permission and distributed 1000 plants to NSS volunteers of S.P.Mahila Viswa Vidyalayam and they have carried out the activities of plantation of trees.

8. The Chairman of Tirupati Urban Development Authority (herein after referred as TUDA) requested for government lands in revenue villages in and around Tirupati to transfer in favour of TUDA in terms of G.O.Rt.No.1606/MA & UDA (112) Department, dated 01.12.2005 and further reference of CM Office Lr.No.3304/CMP/2009, dated 17.08.2009 for necessary action. Further, the Collector vide Roc.E1/8113/2009, dated 10.09.2009 has directed to examine and take necessary action on the request and further stated that the lands mentioned in Annexure-I that are objectionable porambokes and covered by directions of the Hon'ble Apex Court in **Hinch Lal Tiwari v.**

Kamala Devi¹ and in the list of Annexure-I, Sy.No.612 of Kuntrapakam Village is mentioned.

9. While the matter stood thus, in the year 2007 Vice Chairman of TUDA has requested the Tahsildar to allot the land in Sy.No.612 of Kuntrapakam Village admeasuring Ac.131-45 cents for plantation of trees to TUDA. The Tahsildar vide ROC No.866/2007, dated 30.08.2007 forwarded his no objection to the Collector and observations that in Ac.131-45 cents, Ac.12-00 is covered by thorny bushes and boulders and certain structures are already existing on the ground. On the orders of the Collector, the Revenue Divisional Officer has issued order in favour of TUDA for plantation of trees vide Lr.No.Roc.C/1690/2007, dated 20.09.2007 with the following observations and conditions:

“The land in Sy.No.612 measuring an extent of 131-45 cents is classified as gayalu (gutta) poramboke and it is locally called as Yetteri Gutta (Yetteramma Gutta). The land is situated about 2 Kms from Kuntrapakam and Kupuchandrapet Villages and 8 Kms from Tirupati. The entire land is covered by boulders and a part of gutta with an extent of Ac.12-00 is covered by thorny bushes and other structures. The land is being used for communal purposes like annual ceremonies, cattle grazing, Sankranti festivals and that the said land is sub-divided as 612/2 and 612/3. The remaining land with an extent of Ac.119-45 cents has been sub-divided as 612/1 and proposed in favour of TUDA for plantation of trees”.

¹ (2001) 6 Supreme Court Cases 496

10. In the circumstances reported by the Revenue Divisional Officer, Tirupati in the reference read above and after examining the issues, permission is accorded to the Tahsildar, Tirupati Rural Mandal to handover an extent of Ac.119-45 cents in Sy.No.612/1 of Kuntrapakam Village, Tirupati Rural Mandal in favour of Vice-Chairman, TUDA for plantation of trees as per BSO-19-B subject to the following conditions:

- a) The TUDA authorities confer no right over the land
- b) No fence shall be raised by the TUDA authorities, except for the separate protection of each young plant
- c) The permission will be subject to cancellation. The TUDA authorities shall not be entitled to compensation for any trees planted or for any improvements made in the land
- d) The communal interests of the villagers should not be affected.

11. Recently, the Government has proposed the distribution of large number of pattas in the State. Under the guise of issuance of allotment of house site to various beneficiaries, the Revenue Authorities have proposed to distribute house site ignoring their nature, classification, usage and the purpose of utilization till now. They are converting the riverbeds, vagu & vanka porambokes, hillocks, grazing lands etc., for allotment of house site and they are not leaving the environment also and proposing to change the existing features. Now the respondents have taken up the cause of conversion of the above said lands for distribution of house

sites. They have mobilized the proclains and JCBs at hillock about a week back and changing the nature of the hillock. They are deforesting by cutting the trees and the shape of the hillock will be changed and destroyed. There are number of other government lands for allotment of house site, but it is only because the local politicians wanted to allot the house site on the hillock place by changing the nature of hillock, the respondents are proposing to allot house site to the landless poor.

12. The action of the authorities in allowing destruction of the environment on the hillock and changing physical features existing there and to prevent the illegal raising down of the hillock, petitioner preferred Original Application No.42/2020 (SZ) before the National Green Tribunal (NGT) at Southern Zone at Chennai invoking Section 18(1) r/w Sections 14 and 15 of National Green Tribunal Act, 2010. The Tribunal by its order dated 28.05.2020 constituted a Joint Committee to inspect the area in question and to submit the status as well as action taken report. The Joint Committee consists of the District Collector, Chittoor, the Vice-Chairman, Tirupati Urban Development Authority and the Environmental Engineer, A.P. Pollution Control Board at Tirupati. The Committee filed his report before the Green Tribunal stating that necessary action has to be taken for the removal of idols erected on the hillocks.

The Committee stated as if in the land proposed for house sites, some miscreants authorizedly erected some idols of Hindu, Christian and Muslim community. The Committee stated that some portion of the land which is at the foothill of the hillock is identified and proposed for house sites to the landless poor under the Government housing scheme and the matter is pending before the Green Tribunal.

13. The petitioner and other villagers made a representation before the concerned authorities with a request not to convert the nature of hillock into house sites and distribute the same which would disturb the environment and hillock with its greenery would be protected through their active involvement. The then Deputy Chief Minister, by Roc No.E6/5199/2014, dated 25.09.2014 instructed the Tahsildar to take steps for protection of the Yetterigutta by staying the issue of any house site pattas. On 03.01.2015 the Gram Panchayat also opposed the issue of such house site pattas by passing a unanimous resolution by involving Grama Sabha. The present District Collector on 21.02.2020 announced allotment of Yetterigutta for house site as it is a Gayalu Poramboke. The other authorities have taken the consequential steps for allotment of house site. She further submitted that while the matter stood thus, the test of time with idols recovered from 10th Century, the communal gathering and harmony of celebrating Sankranti festival of neighbouring villages and grazing of livestock and

praying for their well being is interwoven fabric of the culture and the land is witness to that harmony and well being. It is quoted in the citizens report about the curse of Meghalaya *“Although, we have been endowed with abundant forests and minerals, these resources have not contributed to the good of our society, because they have been extracted without any regulation or concern for the larger common good. This unregulated, narrow, self-interest based use of natural resources has exacerbated socio-economic inequality, destroyed the environment, heightened criminality and torn as under our egalitarian tribal social fabric”* this statement applies to the present scenario to the petitioner locality also and therefore taking a property for allotment of house site to the landless poor would cause substantial damage to the environment and therefore, the same cannot be allotted. Hence, the Writ Petition.

14. The respondents filed counter-affidavit denying the material allegations while admitting nature of classification and proposal of allotment of house site to the landless poor to 300 beneficiaries and remaining extent Ac.121-45 cents is reserved for future need. It is also contended that the land was levelled clearing bushes and ready for house site layout formation. No valuable trees were fallen down; only the shrub growth was levelled. There is no harm either to the environment or to the local villagers due to allotment of land as house site. The ecology and environment of the area is not disturbed at any

point of time. The respondents are taking every step to protect the public interested communal land from land grabbers.

15. It is further submitted that, since the public interest stands on priority and an extent of Ac.10.00 cents out of Ac.131-45 cents is alone proposed for housing and there is no disturbance to the ecological balance and grazing of cattle of the villagers and that no harm either to the surrounding land or plant life as pointed out by the petitioner.

16. The land in Sy.No.612 is classified as Gayalu i.e. Un-Assessed waste Dry (UAD) an extent of Ac.10-00 was alone proposed for house site allotment and the remaining land is kept intact. The main contention of the petitioner is that, the environment and ecological balance of the area and plant life in the area will be disturbed due to allotment of house sites which is not based on any material.

17. Finally, it is contended that since the land is unobjectionable government land, the Government is at liberty to utilize the land for communal needs and the petitioner or anybody cannot question the same. There is no contravention of the orders of the Government or orders of the Courts to maintain ecological balance. The petitioner has filed the Writ Petition as pre-emptive litigation to restrain the revenue authorities in allotting house sites to weaker sections people, if

this Court grants any sort of relief, then the petitioner will try to perturb the Government programme by virtue of the orders but not on merits. Therefore, absolutely no ground to grant the relief. Hence, dismiss the petition at the stage of admission.

18. Writ Petition No.7988 of 2020 is filed by one Smt. Yamanaboina Vijaya Lakshmi who is claiming to be a social activist while reiterating the allegations made in the other Writ Petition No.20185 of 2020. The allegations in both the Writ Petitions are one and the same.

19. During hearing, Sri P.Veera Reddy, learned Senior Counsel representing Ms. Sodum Anvesha, learned counsel for the petitioner would contend that the land in Sy.No.612 is classified as Gayalu (Gutta Poramboke) and it is a hillock and the same cannot be identified for allotment of house sites in terms of G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019 and apart from that it would seriously infringe the environment disturbing ecological imbalance endangering to bio-diversity instead of preserving the maintenance, the States and its officers are trying to destroy the maintenance environment, ecology and biodiversity which is contrary to the law laid down by the Hon'ble Apex Court in **M.C.Mehta v. Kamal Nath and Others**² and other judgment in **Hinch Lal Tiwari v. Kamala Devi** (referred supra). On the strength of the above two judgments and based on orders passed by National

² (1997) 1 Supreme Court Cases 388

Green Tribunal (SZ), he contended that both in contravention of G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019 and contravention of law, proposed action of the Revenue Department to allot house sites to 300 beneficiaries in an extent of Ac.10-00 in Sy.No.612 of Kuntrapakam Village, Tirupati Rural Mandal, Chittoor District, is illegal and arbitrary and it infringes the rights of community at large.

20. Whereas, the learned Assistant Government Pleader for Revenue contended that the land in an extent of Ac.10-00 in Sy.No.612 of Kuntrapakam Village is vacant and classified as Gayalu which is unassessed waste and it is a Government land and it can be used for any purpose of the Government and to allot house sites to the houseless people under the scheme “**Navaratnalu-Pedalandariki Illu**”. The orders passed by the South Zone Bench did not prevent the State and its authorities to distribute house site to 300 beneficiaries in an extent of Ac.10-00 in Sy.No.612 of Kuntrapakam Village. Hence, the contention of the petitioner is without any basis and requested to dismiss the Writ Petition at the stage of admission itself.

21. Considering rival contentions, perusing the material available on record, the points that arose for consideration are as follows:

- 1) Whether the petitioners in both the Writ Petitions being members of a community of Kuntrapakam Village are entitled to question the act of the respondents?**

2) Whether the allotment of house sites to 300 beneficiaries in an extent of Ac.10-00 in Sy.No.612 of Kuntrapakam Village is contrary to the order dated 29.01.2021 in O.A.No.42 of 2020 passed by the National Green Tribunal, Southern Zone, Chennai and the proposed allotment of house site causing disturbance to the environment besides serious effect on bio-diversity, if any? Whether the respondent-Tahsildar be restrained from allotting house site in an extent of Ac.10-00 in Sy.No.612 of Kuntrapakam Village to the houseless poor?

POINT No.1:

22. The first and foremost contention of the petitioners is that they are residents of Kuntrapakam Village and that hillock in Sy.No.612 of Kuntrapakam Village is classified as communal land reserved for communal purpose and therefore, the petitioners being members of the community in the village are entitled to claim the relief. Whereas, learned Assistant Government Pleader for Revenue submitted that in the absence of proof that the right of any individual is infringed a writ of Mandamus of maintenance cannot be issued as it is purely a discretionary extra-ordinary relief under Article 226 of the Constitution of India and requested to reject the claim of the petitioners on the sole ground that the right of the petitioners is not infringed by the acts of the respondents.

23. Undisputedly, both the petitioners are social activists and always working to protect the environment in the Village besides taking programmes on plantation etc. The major

contention of the petitioners in the affidavit filed along with writ petitions is that the land in Sy.No.612 of Kuntrapakam Village is a communal land being used for communal purpose including grazing of cattle and celebrating Sankranti festival. This is not denied by the respondents in the counter. On the other hand, in the counter-affidavit filed by the respondent-Tahsildar in both the writ petitions specifically admitted that the land is communal land and at Page No.3 of the counter in W.P.No.20185 of 2020, at Para No.6, it is pleaded that the land is un-objectionable Government land which is earmarked for “communal purpose”. At the same time, in Para No.8 of the same counter, it is contended that the respondents are taking every step to protect the public interested “communal land” from land grabbers. Similarly in Para No.8 of the counter filed in W.P.No.7988 of 2020, it is specifically contended that there is no disturbance to the ecological balance and for “grazing the cattle” of the villages and no harm either to the surrounding lands or plant life as pointed out by the petitioners. Therefore, the classification of the land or reservation of the land in Sy.No.612 of Kuntrapakam Village for communal purpose is an undisputed fact. When the land is reserved for communal purpose, every member of community is entitled to enjoy / use the land meant for communal purpose. Therefore, the petitioners being members of community are entitled to claim

the relief as their right is likely to be infringed in the event of allotment of house site in the subject property.

24. When the land is classified or reserved for communal purpose i.e. a community at large more particularly for grazing cattle and for performing pujas in Temples on the hillocks besides using the land for celebrating Sankranti festival, it can safely be concluded that unless its nature is changed from communal purpose, the communal land is classified as Gayalu i.e. Un-Assessed Waste Dry (UAD), it cannot be assigned to any landless poor in view of the bar under Para 4 of B.S.O-15. As on date of classification of the land is not changed by following procedure prescribed under B.S.O-15 (2) and even otherwise, there is a direct prohibition of assignment of communal land under clause (h) of B.S.O(15)(4). But here petitioners were not assigned the land under the scheme “**Navaratnalu-Pedalandariki Illu**” strictly adhering to B.S.O-15, but by invoking B.S.O-21. However, State is allotting the land as house site and collecting one rupee as its nominal value by executing registered document of deed of conveyance for its purpose. Hence, this allotment is not under B.S.O, but it is an outright sale.

25. In any view of the matter and in view of the prohibition containing under B.S.O-15, the land neither be allotted to houseless poor under the scheme nor assigning under B.S.O-21 to landless poor.

26. Moreover, as per G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019, the Government directed the District Collectors not to identify the following lands.

*“The powers are delegated to District Collectors for providing house sites only under the flagship programme **“NAVARATNALU- PEDALANDARIKI ILLU”**.*

The District Collectors are further instructed that not to propose any lands belongs to Endowments, Educational Institutions, Wakf or any other religious related lands, environmentally sensitive and fragile areas such as, tank beds, river beds, other water bodies and “hillocks with afforestation etc.,” for house site purposes”.

27. Later, G.O.Ms.No.558 (Panchayat Raj & Rural Development (Pts.III) Department, dated 02.03.2020 was issued de-notifying certain pormaboake lands in the State, which are vested with Gram Panchayats under sub-section (1) of Section 58 of the Andhra Pradesh Panchayat Raj Act, 1994 and they shall cease to vest in the Gram Panchayat and they shall vest with the Government. But, G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019 is not superseded. But merely because the land i.e., on hillock or hill top is vested on the Government, it cannot be allotted to houseless poor either under the scheme **“Navaratnalu-Pedalandariki Illu”** or under any other scheme, unless, it is converted from communal land to Un-Assessed waste Dry (UAD) by following procedure under B.S.O-15(2) of the Andhra Pradesh Board of Revenue Standing Orders. Even otherwise, in view of the bar under B.S.O-15(4), it cannot be assigned or allotted being communal land as admitted by the respondents. Hence, the petitioners being

members of the community, their rights are effected along with other members of the community and are having locus to challenge the act of the respondents and thereby, the contention of the Assistant Government Pleader that the land is hereby rejected while holding that petitioners are being the members of the community are entitled to claim relief as the rights of the community is being infringed or invaded due to allotment of Ac.10-00 of land to houseless poor under the scheme “***Navaratnalu-Pedalandariki Illu***”. Accordingly, the point is answered in favour of the petitioners and against the respondents.

POINT No.2:

28. It is undisputed fact that the subject land is classified as gutta which is locally known as Yetteramma Gutta since the land in Sy.No.612 of Kundrapakam Village is classified as hillock and the same cannot be converted into house site due to impact on the environment and bio-diversity in the area. Though the total extent of land is Ac.131-45 cents, only Ac.10-00 cents is being converted into house sites as admitted by the respondents, the same is illegal and contrary to the law laid down by the Hon’ble Apex Court.

28. Learned Senior Counsel Sri P.Veera Reddy in support of his contentions has drawn the attention of this Court in

M.C.Mehta vs. Kamal Nath and Others³. It is now well settled that the Government as well as the citizens have a constitutional obligation to protect environment and ecology(Article 48-A and Article 51-A(g)). The doctrine of inter-generational equity adumbrates that environment is not only for the benefit of the present but also the future generations. The Supreme Court in eloquent enunciation of the doctrine of public trust held that the State as a trustee of all natural resources is under a duty to protect them. Resources meant for public use cannot be converted into private ownership. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution of India. (vide **Bengaluru Development Authority Vs. Sudhakar Hegde and Others**⁴). In **Ramlila Maidan Incident, In re**⁵) it was observed that the Constitution also speaks of preservation and protection of animals, all creatures, plants, rivers, hills and environment. In **State of Uttaranchal Vs. Balwant Singh Chaufal**⁶, it was noted that in the second phase of evolution of public interest litigation, because of vast destruction of environment, the Courts gave directions in a large number of cases and made a serious endeavour to protect and preserve ecology, environment, forests, hills, rivers, marine

³ (1997) 1 SCC 388

⁴ (2020) 15 SCC 63

⁵ (2012) 5 SCC 1

⁶ (2010) 3 SCC 402

life, wildlife etc. In **Intellectuals Forum Vs. State of A.P**⁷, it was held that it is the responsibility of the State to protect the environment. The following Clause from the 1972 Stockholm declaration was extracted:

"The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate. "

29. In **N.D.Jayal and Others V. Union of India and Others**⁸, the Supreme Court observed that the right to environment has been declared as a fundamental right. In **Hanuman Laxman Aroskar V. Union of India**⁹, it was noted that in 2016, the First World Environmental Law Congress, co-sponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law which outlines the following 13 principles for developing and implementing solutions for ecologically sustainable development:

- (i) Obligation to Protect Nature*
- (ii) Right to Nature and Rights of Nature*
- (iii) Right to Environment.*
- (iv) Ecological Sustainability and Resilience.*
- (v) In Dubio Pro Natura*
- (vi) Ecological Functions of Property*
- (vii) Intragenerational Equity*
- (viii) Intergenerational Equity*

⁷ ((2006) 3 SCC 549

⁸ (2004) 9 SCC 362

⁹ (2019) 15 SCC 401

- (ix) *Gender Equality*
- (x) *Participation of Minority and Vulnerable Groups*
- (xi) *Indigenous and Tribal Peoples*
- (xii) *Non-regression*
- (xiii) *Progression*

30. In **T.N.Godavarman Thirumalpad V. Union of India**¹⁰, the Supreme Court held that the right to live is now recognised as a fundamental right to an environment adequate for health and well being of human beings.

31. In another judgment of Hon'ble Apex Court in **Hinch Lal Tiwari vs. Kamala Devi and Others** (supra), the Court held that:

“The material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature’s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention on developing the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment of non-abadi sites”.

¹⁰ (2002) 10 SCC 606

32. Thus, in both the judgments, the Hon'ble Supreme Court specifically held that hillocks and other natural resources are the bounty of the nature and the same cannot be allotted to any public and no private ownership can be created on such lands.

33. In the present case, if the hillock is allotted to 300 beneficiaries in an extent of Ac.10-00, certainly it would amounts to creating private ownership on the natural resources like hillocks, hill tops etc.

34. On the other hand, in terms of Articles 48-A and 51-A(g) of the Constitution, it is the duty of the State to protect and improve the environment and to safeguard the forests and wild life of the country. The citizens of the country have fundamental right to a wholesome, clean and decent environment. Instead of protecting and preserving the natural resources, the respondent-Tahsildar is proposing to allot the same to landless poor under the scheme "***Navaratnalu-Pedalandariki Illu***" which is in violation of Articles 48-A and 51-A(g) of the Constitution.

35. Time and again the Apex Court in **Intellectuals Forum, Tirupati Vs. State of A.P¹¹ and Sarvepalli Ramaiah and others vs. District Collector, Chittoor District¹²**, the Apex Court consistently held that tank beds and tank poramboke

¹¹ (2006) 3 SCC 549

¹² (2019) 4 SCC 500

cannot be converted into house sites as it is violative of Articles 48-A and 51(g) of the Constitution of India. In view of the law declared by the Apex Court, the proposed allotment of hillock without following the procedure contemplated under 15(2) of B.S.O. is in total contravention of Articles 48-A, 51-A(g) and 21 of the Constitution of India.

36. India being a democratic republic, it is not open to the Government of the day to arbitrarily give away hills and hillocks for exploitation. Merely because the process of allotment of house sites to houseless poor under the scheme 'Navaratnalu Pedalandariki Illu', that would not confer any immunity against judicial scrutiny. Unless there are supervening public interest considerations, hills and hillocks cannot be given away as house site to houseless poor.

37. In recent decision of the Supreme Court reported in **Lal Bahadur Vs. State of U.P. and Others**¹³. After tracing the evolution of environmental jurisprudence, the Supreme Court of India quashed the master plan whereby use of area in question for green belt in the master plan was changed. If an area has been earmarked as park in the lay-out or in the master plan, conversion of the land for any other purpose is normally not permitted. If man-made demarcation is given so much importance in the laws relating to town planning and development, certainly greater sanctity must be accorded to

¹³ (2018) 15 SCC 407

what was earmarked by Nature. The Supreme Court called the parks as “gifts given by people to themselves”. If such human gifts have to be cherished, how much more value is to be given to gifts given by Nature?

38. The petitioner in W.P.No.20185 of 2020 approached National Green Tribunal and obtained an order from the Tribunal (Southern Zone) Bench passed the following order in O.A.No.42 of 2020 (SZ). During enquiry in the petition the sub-committee is appointed and after hearing both parties, the petition was disposed of with the following observations.

- i) The report submitted by the Joint Committee appointed by this Tribunal received on 16.09.2020 is recorded and accepted and the objection raised by the applicant is also considered.
- ii) The authorities are directed not to make any encroachment into the water bodies mentioned in the report and they are directed to keep the buffer zone from the Full Tank Level (FTL) while carrying out the housing scheme in the area of **10 cents** selected by them from the unassessed waste land as per the revenue records in Sy.No.612 of Kuntrapakam Village, Tirupathi Rural Mandal of Chittoor District.
- iii) The authorities are also directed not to make much destruction of the hillock while proceeding with the housing scheme without complying with necessary environmental study as to how far this will affect the environment before undertaking any further development in that area.
- iv) While carrying out the housing scheme, the authorities are also directed to comply with all the environmental laws and also make all provisions for the purpose of implementing the Solid Waste Management Rules, 2016 and also treating of the sewage that is likely to be generated from the area in a scientific manner, without allowing the same to be discharged into the water bodies. Merely because, there is no water in the water bodies, it cannot be said

that they are not water bodies. Even non-perennial water bodies are also expected to be maintained as they play a great role in protecting environment, as when water is available during rainy season it acts as a barrier to avoid flood in such areas. In many States on account of allowing such non-perennial river basin being encroached in the guise of development, has led to affecting the existing ecological system of that river basin, resulting in disaster and as such they are to be protected.

v) The authorities are at liberty to take action against encroachers into the Government land in accordance with law.

vi) Considering the circumstances, the parties are directed to bear their respective costs in the application.

vii) The Registry is directed to communicate this order to the official respondents by e-mail immediately for strict compliance.

39. A bare reading of the order would show that 10 cents of land is proposed for allotment of house sites but not Ac.10-00, may be due to mistake or otherwise, but it has not got it rectified. In view of the directions issued, the hillock cannot be converted into house sites with existing ecological and biodiversity must be protected.

40. Undisputedly the land in Sy.No.612 of Kuntrapakam Village is a hillock and the same is required to be protected though no law for preservation of mountains is adopted in the country except Forests Conservation Act. Further in view of the effect on bio-diversity and ecologically it is necessary to preserve such mountains as it will have its impact on the climatic conditions. Mountain environments cover 27% of the world's land surface, and directly support the 22% of the world's population who live within mountain regions. Low land people

also depend on mountain environments for a wide range of goods and services, including water, energy, timber, biodiversity maintenance and opportunities for recreation and spiritual renewal. Mountains provide for the fresh water needs of more than half of humanity and are, in effect, the water towers of the world. The World's mountains encompass some of the most spectacular landscapes, a great diversity of species and habitat types, and distinctive human communities. Mountains occur on all continents, in all latitude zones, and within all the world's principal biome types – from hyper-arid hot desert and tropical forest to arid polar icecaps – and support a wide variety of ecosystems. Mountain ecosystems are important for biological diversity, particularly in the tropics and warmer temperate latitudes. Isolated mountain blocks are often rich in endemic species. As noted in the report of the Secretary-General of the United Nations when he proclaimed 2002 as the “International Year of Mountains”, mountains harbour a significant portion of distinct ethnic groups, varied remnants of cultural traditions, environmental knowledge and habitat adaptations. They host some of the world's most complex agro-cultural gene pools and traditional management practices. Mountain biodiversity plays a key role in the support of global environmental, economic, social and cultural sectors through connections to; invasive species, air pollution, climate change, mining, hydropower, tourism, forests, agriculture. Therefore,

the challenge is to sustainably manage mountain regions to avoid degradation and avoid subsequent increases in poverty and hunger.

41. Mountain ecosystems are an important source of biological diversity, along with water and mineral resources where mountains are ecosystems with a distinct identity just like the flood plains, deltas, mangroves, wetlands, and deserts. Mountain ecosystems are particularly fragile, subject to both natural and anthropogenic drivers of change. Therefore, their effective management is not only important for mountain communities, but also for a sizeable proportion of the global population.

- Ecosystems are of fundamental important to environmental functioning and sustainability, and they provide many goods and services critical to individuals and societies. Beyond their common characteristics of high relative relief and steep slopes, mountains are remarkably diverse and globally important as centres of biological diversity.
- Recent scientific opinion led by the Intergovernmental Panel on Climate Change (IPCC) is that global climate change is happening and will present practical challenges to local ecosystems. The analysis and predictions showing an increase in the magnitude of climate change with altitude (in terms of both temperature and variation in precipitation).
- Ecosystems in the mountains are being impaired and destroyed by a wide variety of human activities. The survival of the ecosystems and wildlife in the mountains is being threatened by human activities like timber harvesting, intensive grazing by livestock, and agricultural expansion into forest land.
- Rapid and unsustainable economic and population growth in the mountainous regions is imposing increasing stress on the natural environment. As a result, environmental deterioration in mountains

is driven by numerous factors, including deforestation, overgrazing by livestock, and the cultivation of marginal soils leading to soil erosion, landslides, and the rapid loss of habitat and genetic diversity.

- Forest ecosystems are stressed by habitat change and fragmentation, which occurs as humans sub divide forest plots into ever smaller and more isolated sections.
- Pollution can also stress forest trees, especially in urban, industrial, and heavily populated areas. Non-native fungal diseases and insect pests can severely stress forests and cause the effective extinction of previously dominant trees and threaten others.
- Species in high altitude areas – especially in the transition zone between subalpine and alpine – are more vulnerable to climate change. In addition, the region's wetlands are being affected by the erratic weather observed in many parts of the region.
- Invasive species that outcompete native species and synergistically interact with climate change to threaten native organisms. Further synergistic action between commercial harvesting and climate change will have detrimental impacts on subtropical and temperate timber forests.
- Environmental contamination – Nutrient enrichment from agricultural runoff could act synergistically with various factors due to increasing changes in biodiversity to enhance eutrophication in fresh water systems.

42. Proper management of mountain resources and the socio-economic development of people need immediate action. But the act of the respondents proposing to allot part of the hillock i.e. mountain is having lot of effect on biodiversity and ecosystem as discussed in the earlier lines.

43. Though several enactments were enacted by the Parliament, but no act is brought into force to conserve mountains to protect her claimate and biodiversity, ecosystem except one or two acts with reference to Himalayas and Ladakh

Autonomous Hill Development Council Act of 1995 (LAHDCA), Eastern ghats no other enactments were passed.

44. In India, the risks associated with Devolution of power to local communities is generally believed to be a good idea. Among other things, it often enhances local incentives for sustainable natural resource management. The Ladakh Autonomous Hill Development Council Act of 1995 (LAHDCA), which was passed by the Central government, resulted in a devolution of power that for several reasons did not have the desired effect. The LAHDCA limited the independence of the local councils by requiring approval of plans and budgets by the State government, while the Central government controls most external funding. Thus, no other orders are passed by the State or Central government to preserve or conserve mountains to meet the needs of the public to maintain ecological balance, to prevent degradation of mountains and to maintain biodiversity. But several instructions were passed by UNO and other organizations. Though UNO taken decision besides passing instructions, the implementation in country is limited.

45. There is an instrument which is one of the Treaties and other international conventions are binding upon states that sign and ratify them, and along with what is understood to be customary international law among nation states, are considered to be "hard law"(Brownlie, 1990; Brownlie, 1970).

Enforcement however, is particularly problematic for many international law instruments and norms, because there is often no clear enforcement mechanism. In theory, parties to a treaty or convention can prescribe compliance by other parties through arbitration, an action before the International Court of Justice or by using other institutionalized dispute resolution mechanisms. The following hard-law treaties or conventions have an important role to play in efforts to ensure the conservation and sustainable development of mountain ecosystems. Most of these conventions are "framework" conventions. As such, they lay out objectives, overall obligations and rights of the parties, and general parameters. Framework conventions rely upon protocols and other supplementary instruments to regulate the parties' activities with regard to specific aspects of the instrument.

46. At the Fourth Meeting of the Conference of the Parties (COP) to the Convention on Biological Diversity, held in Bratislava in 1998, mountain ecosystems were listed as an item for "in-depth consideration" in the Programme for Work for the Seventh COP to be held in 2004. Article 8(j) of the Convention, meanwhile, mandates protection of the traditional knowledge, innovations and practices of indigenous and other local communities. (vide **Convention on Biological Diversity, 1992,¹⁴⁾**

¹⁴ 31 ILM 818 (1992)

47. United Nations Framework Convention on Climate Change prepared the Convention on Climate Change (CCC) provides a normative framework for addressing the complex processes that are causing global warming and other climatic changes. It attempts to balance two seemingly incompatible goals: 1) the need for industrialized countries to reduce human-induced greenhouse gas emissions; and 2) the equally compelling priority of developing countries to achieve socio-economic development either through accelerated use of forest products and fossil fuels, or through the transfer from industrialized countries of clean production-focused financial and technical resources. It addresses the general effects of global warming on the global environment as a whole. It offers minimal guidance for tackling the unique and possibly devastating consequences of climate change for mountain habitats and their human communities. By recognizing that human activities have increased greenhouse gases and are adversely affecting natural ecosystems, the CCC does provides a normative starting point for recognizing the impact on mountain environments. In addition, the CCC notes the special vulnerability of specific biomes, including "fragile mountain ecosystems".

48. Article 2 deals with "natural heritage" and is particularly important for conserving mountain areas; it refers to inclusion

of "geological and physiographical formations" and "natural sites and precisely delineated areas." (vide **United Nations Framework Convention on Climate Change, 1992**¹⁵)

49. The Kathmandu Declaration on Mountain Activities," International Union of Alpinist Associations (UIAA) in its 44th General Assembly held on 16 October 1982 resolved to adopt ten principles and guidelines as a program for action. These were included in Articles of Declaration averring, among other things, that "*There is an urgent need for effective protection of the mountain environment and landscape;*" "*The cultural heritage and dignity of the local population are inviolable;*" and "*The use of appropriate technology for energy needs and proper disposal of waste in the mountain areas are matters of immediate concern.*"

50. United Nations Environment Programme (UNEP) culled out Ecological Guidelines for Balanced Land Use, conservation and Development in High Mountains to foster ecologically sound development of mountain resources. Besides providing guidelines for ecologically appropriate development programs, it urges that any new laws or regulations include an environmental impact assessment.

51. Draft Declaration of Principles on Human Rights and the Environment (1994) comprehensively addresses the linkage

¹⁵ 31 ILM 849 (1992)

between human rights and the environment. The declaration reaffirms that accepted environmental and human rights principles include the right of each person to a secure, healthy and ecologically sound environment. It highlights the environmental dimensions of legally recognized human rights such as the right to life, health and culture. It also describes procedural rights, such as the right to participation that are necessary for the realization of substantive human and environmental rights.

52. Despite these instruments and policy based taken by the regional level and international level, no purpose is being served and in most of the cases, the State is following those principles laid down in the instruments both regional and international level though India is signatory to those instruments or conventions.

53. If the issue is considered in human rights perspective, the protection of environment is a human right. Article 25 of universal declaration guarantees everyone a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Article 12 of International covenant on economic social

and cultural rights deals with human rights to enjoy pollution free environment. Article 12 is extracted hereunder for better appreciation:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

54. Thus, clause-2(b) obligates State parties to the covenant to improve all aspects of environmental and industrial hygiene. To implement those human rights guaranteed under Article 12 (2)(b) several covenant declarations are formulated, including World Summit on sustainable development, 2002 and prepared draft principles of human rights and the environment, which are as follows :

“Draft Declaration of Human Rights and the Environment:

Preamble

Guided by the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Vienna Declaration and Program of Action of the World Conference of Human Rights, and other relevant international human rights instruments,

Guided also by the Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio Declaration on Environment and Development, Agenda 21: Programme of Action for Sustainable Development, and other relevant instruments of international environmental law,

Guided also by the Declaration on the Right to Development, which recognizes that the right to development is an essential human right and that the human person is the central subject of development,

Guided further by fundamental principles of international humanitarian law,

Reaffirming the universality, indivisibility and interdependence of all human rights,

Recognizing that sustainable development links the right to development and the right to a secure, healthy and ecologically sound environment,

Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Deeply concerned by the severe human rights consequences of environmental harm caused by poverty, structural adjustment and debt programmes and by international trade and intellectual property regimes,

Convinced that the potential irreversibility of environmental harm gives rise to special responsibility to prevent such harm,

Concerned that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations,

Declare the following principles :

Part I

1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.

3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.

4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Part II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.

6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.

7. All persons have the right to the highest attainable standard of health free from environmental

8. All persons have the right to safe and healthy food and water adequate to their well-being.

9. All persons have the right to a safe and healthy working environment.

10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.

11 . All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means. All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.

12. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.

13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health,

livelihood, recreational, spiritual or other purposes. This Includes ecologically sound access to nature.

Everyone has the right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area.

14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

Part III

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions and courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

16. All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.

17. All persons have the right to environmental and human rights education.

18. All persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.

19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.

20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

Part IV

21. All persons, individually and in association with others, have a duty to protect and preserve the environment.

22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt the administrative, legislative and other measures necessary to effectively implement the rights in this Declaration.

These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, *inter alia*,

collection and dissemination of information concerning the environment;

- prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;
- public participation in environmental decision-making;
- effective administrative and judicial remedies and redress for environmental harm and the threat of such harm;
- monitoring, management and equitable sharing of natural resources;
- measures to reduce wasteful processes of production and patterns of consumption;
- measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and
- measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights and duties in this Declaration.

23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.

24. All international organizations and agencies shall observe the rights and duties in this Declaration.

Part V

25. In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.

26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to protect public order, health and the fundamental rights and freedoms of others.

27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realized.”

55. Keeping in view all those principles and various instrumental conventions both at regional and international level in addition to Articles 48-A and 51-A(g) r/w Article 21, the action of the respondent-Tahsildar to propose Ac.10-00 of land on the hillock is in total contravention of the guidelines referred above and various articles of the Constitution of India. Besides degradation of climate which drastically effects the system of biodiversity and mountains on account of converting hillock into residential plots to allot the same to houseless poor under the scheme “**Navaratnalu-Pedalandariki Illu**”. At the same time though a direction was issued to the Collectors not to identify the hillocks for allotment of house sites, still the respondent-Tahsildar is identified hillock reserved for communal purpose for allotment of house site. Therefore, the action of the respondent-Tahsildar is illegal, arbitrary and violative of Articles 21, 48-A and 51-A(g) of the Constitution besides regional and International instruments or convention

on preservation and maintenance to Mountains, ecological balance, biodiversity and to prevent degradation of climate.

56. In recent judgment reported in **Director General (road Development) National High-ways Authority of India vs. Aam Aadmi Lokmanch and Others**¹⁶, the Hon'ble Supreme Court held as follows:

“This Court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate with the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment that includes water, air and land "and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities”.

¹⁶ AIR 2020 SC 3471

57. In **Jitendra Singh Vs. Minsitry of Environment and Others**¹⁷, the Hon'ble Apex Court held that "Protection of such village commons is essential to safeguard the fundamental right guaranteed by Article 21 of our Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. There remains therefore no doubt that it is the responsibility of the respondents to ensure the protection and integrity of the environment, especially one which is a source for livelihood for rural population and life for local flora and fauna.

58. In **K.Santhanam vs. The District Collector, Virudhunagar**¹⁸, the learned Single Judge of the Madras High Court held that "unless there are supervening public interest considerations, hills and hillocks cannot be given away for mining". It was also further observed that "Mountains, forests, hills, hillocks and rivers are Nature's gifts and it is the duty of the Government and the administration to ensure that they are preserved for future generations. This principle of inter-generational equity has been highlighted in a catena of cases. At the same time, we cannot lose sight of the harm caused to the present generation. It is not as if the benefits of exploitation are equitably distributed among all. Invariably a miniscule minority corners the benefits, while the burden falls on the rest. Right to environment means that one has the right to retain the

¹⁷ 2019 (17) SCALE 29

¹⁸ WP(MD) No.18575 of 2019, dated 26.04.2021

advantages and benefits conferred naturally on the environment”.

59. On account of proposal to allot house site on the hillock which is a communal land for grazing cattle by the community of Kuntrapakam Village, they are being deprived of their livelihood which is a facet of right to life under Article 21 of the Constitution of India. Similarly, right to environment is also another facet of right to life guaranteed under Article 21 of the Constitution of India. Since the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty, maintaining delicate ecological balance, they need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. In **Hinch Lal Tiwari v. Kamala Devi** (referred supra), the Government, including the Revenue Authorities, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites. Even if the present issue is considered in the perspective of **Hinch Lal Tiwari v. Kamala Devi** (referred supra), it is the duty of the revenue authorities to protect the hillock which is nature's bounty to ecology and biodiversity

converting hillock into house site, which is impermissible under law. Though Respondent No.5 – Tahsildar has no obligation to protect such hillock(s), as observed in **Hinch Lal Tiwari v. Kamala Devi** (referred supra), such act is illegal and arbitrary.

60. Yet, another contention of learned senior counsel for the petitioner is that, when the land is a communal land, undisputedly i.e. for grazing cattle, it cannot be allotted to any third party as house site either under scheme of 'Navaratnalu Pedalandriki Illu' or either under any under scheme, depriving the community to enjoy the benefits of communal land even after converting the same from communal land to Assessed Waste Dry. In support of his contention, learned counsel has drawn attention of this Court In **Jagpal Singh & Others v. State of Punjab & Others**¹⁹, at paragraph No.4, the Apex Court held as follows:

*"The protection of common rights of the villagers were so zealously protected that some legislation expressly mentioned that even the vesting of the property with the State did not mean that the common rights of villagers were lost by such vesting. Thus, in **Chigurupati Venkata Subbayya v. Paladuge Anjappa**²⁰, this Court observed :*

"It is true that the suit lands in view of Section 3 of the Estates Abolition Act did vest in the Government. That by itself does not mean that the rights of the community over it were taken away. Our attention has not been invited to any provision of law under which the rights of the community over those lands can be said to have been taken away. The rights of the community over the suit lands were not created by the landholder. Hence those rights cannot be said to have been abrogated by Section 3) of the Estates Abolition Act."

¹⁹ AIR 2011 SC 1123

²⁰ 1972(1) SCC 521 (529)

61. In view of the principle laid down by the Supreme Court in the judgment referred above, particular piece of land is earmarked for public or communal purpose, it shall not be alienated even after change of classification of the land.

62. If the principle laid down in the above judgment to the present facts of the case, it is an undisputed fact that, it is a communal land, but the State proposed to allot the same to houseless poor under the scheme 'Navaratnalu Pedalandariki Illu', which is impermissible under law. On this count also, the respondents cannot be allowed to allot house site to landless poor on the hillock to the disadvantage of community of Kuntrapakam Village, Tirupati Rural Mandal, Chittoor District.

63. In view of the law laid down by the Hon'ble Apex Court and upon regional and international instruments, Draft Declaration of Human Rights and Environment, passed by several regions and United Nations Organization to which India is signatory, the State in utter violation of the guidelines and the law laid down by various Courts referred above including law laid down in **M.C.Mehta's, Hinchlal Tiwari's** and other judgments referred supra, the proposal of Respondent No.5 to allot Ac.10-00 of site on the hillock in contravention of G.O.Ms.No.510, dated 30.12.2019 to the houseless poor under the scheme "**Navaratnalu- Pedalandariki Illu**" is illegal, arbitrary and violative of Articles 14 and 21 of the Constitution

of India. Therefore, the act of the respondents, more particularly, Respondent No.5-Tahsildar is declared as illegal, arbitrary and consequently directed the Respondent No.5 not to allot house site under the scheme “**Navaratnalu-Pedalandariki Illu**” or any other scheme in any extent on the hillock in Sy.No.612 of Kuntrapakam Village. Accordingly, the point is answered in favour of the petitioner and against the respondents.

64. In the result, W.P.No.20185 of 2020 is allowed declaring the action of respondents in taking steps/proposal for conversion of Yetteramma Gutta @ Yetteri Gutta @ Siddeswara Gutta hillock comprising Ac.131-45 cents in Sy.No.612 of Kuntrapakam Village, Tirupati Rural Mandal, Chittoor District for eventual allotment of house site under the programme of “**Navaratnalu-Pedalandariki Illu**” as illegal and arbitrary, consequently directed the respondents, more particularly Respondent No.5-Tahsildar not to allot house site to houseless poor on Yetteramma Gutta @ Yetteri Gutta @ Siddeswara Gutta hillock in Sy.No.612 of Kuntrapakam Village, Tirupati Rural Mandal, under the programme of “**Navaratnalu-Pedalandariki Illu**” or under any other scheme.

65. In view of my findings in W.P.No.20185 of 2020, W.P.No.7988 of 2020 is allowed declaring the action of respondents in taking steps/proposal for conversion of

Yetteramma Gutta @ Yetteri Gutta @ Siddeswara Gutta hillock comprising Ac.119-45 cents in Sy.No.612 of Kuntrapakam Village, Tirupati Rural Mandal, Chittoor District for eventual allotment of house site under the programme of “**Navaratnalu-Pedalandariki Illu**” as illegal and arbitrary, consequently directed the respondents, more particularly Respondent No.5 - Tahsildar not to allot house site to houseless poor on Yetteramma Gutta @ Yetteri Gutta @ Siddeswara Gutta hillock in Sy.No.612 of Kuntrapakam Village, Tirupati Rural Mandal, under the programme of “**Navaratnalu-Pedalandariki Illu**” or under any other scheme. No costs.

As a sequel, miscellaneous application, pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 28.10.2021

Note:
LR copy to be marked
b/o
KA/Sp