

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.5606 OF 2010

LAL BAHADUR

APPELLANT (S)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

RESPONDENT (S)

WITH

C.A.NO.5607 OF 2010

WITH

CONMT.PET.(C)NO.494 OF 2013 IN C.A.NO.5607 OF 2010

O R D E R

1. The appeals have been preferred as against the judgment and order passed by the High Court of Allahabad, Bench at Lucknow, deciding two Writ Petitions by the common order dated 08.02.2006 questioning the change in master plan 2021 and land

acquisition proceedings.

2. The facts, in short, unfolds that the area in question was reserved for green belt in the master plan that was prepared in the year 1995. A fresh master plan was prepared and approved on 31.03.2005. The area was changed from green belt to residential one on the prayer being made by the Lucknow Development Authority. Surprisingly the act was done in tandem, the date on which the master plan was modified, the area in question was changed from green belt to the residential one. On the same day, a notification had been issued under Section 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 (in short 'the Act'). A corrigendum was issued on 05.05.2005 and later on 24.10.2005 that shows the notification had been issued under Section 4(1), 17(1) of the Land Acquisition Act in utter haste. A declaration under Section 6 was issued on 24.10.2015.

3. The area to be acquired in the notification under Section 4 was 266.661 Hectares for the purpose of expansion of Gomti Nagar at Lucknow. Out of this,

203.189 Hectares area belongs to individual landowners and rest of the area belonged to the Government. The declaration under Section 6 was confined to the area 203.189 Hectares. The total area reserved for the green belt in the master plan was 266.661 Hectares.

4. A Writ Petition was preferred in the month of June 2005. The High Court had passed an interim order of status quo with respect to the disputed property. The petitioner in the Writ Petition had prayed for the relief to issue a writ in the nature of certiorari for quashing of master plan especially challenging the legality and validity of a portion of the Master Plan of 2021 converting green belt area to residential. Adarsh Samuhik Sahkari Krishi Samiti Limited owned land in area 10.102 Hectares whereas Lal Bahadur owned 0.512 Hectares. The prayer was also made in the Writ Petition to quash the notification issued under Section 4(1) of the Land Acquisition Act invoking the urgency provision.

5. The Lucknow Development Authority had issued a Public Notice on 23.02.2005 inviting objections/suggestions to the Draft Master Plan by 04.03.2005. In the Draft Master Plan, the disputed land was shown for parks and open spaces/green belt. After considering the objections/suggestions, the Master Plan was finalised, which was later approved by the Government on 31.03.2005, and notified on 09.04.2005.

6. It was urged on behalf of the petitioners that the Master Plan of 2021 was in violation of the mandatory provisions of Section 11 of U.P. Urban Planning and Development Act, 1973 (in short "the Act of 1973"). The area could not have been changed from greenbelt/open spaces to the area reserved for development of residential colonies. The action was based on malice in law. It was unreasonable, arbitrary and tantamount to the colourable exercise of power, and it was contrary to reports of the expert's Committee. The action was in violation of Articles 21 and 48A of the Constitution of India. The authorities were guilty of acting contrary to the public interest

and duty to protect the environment that was their constitutional duty and tantamount to removing of oxygen filled lung spaces that are absolutely necessary for the healthy environment for the inhabitants of Lucknow. There is a paucity of such spaces, it would result in ecological imbalance and hazardous to the health. The notification under section 4 of the Act was bad in law; inquiry under Section 5A could not have been dispensed with.

7. The stand of the Lucknow Development Authority in the reply was that Writ was not maintainable. The Master Plan had been notified after following the due process of the Act of 1973. The objections were duly invited. Thereafter, the Master Plan had been finalised. The total 278 objections were received from the Public against the Draft Master Plan. The Lucknow Development Authority suggested that land in village Ujariyaon was required for the purpose of residential use that was accepted. It was also submitted that earlier the area had been acquired for Gomti Nagar in the year 1983 which had been developed and for its expansion some more area was necessary. As the

Government under Section 4 of the Act had issued such notification and due procedure of law had been followed for preparation of Master Plan duly considering the various aspects particularly the ever increasing population. Other facts were also denied.

8. The High Court by the impugned judgment and order had dismissed the Writ Petitions. It was held that the precaution has been taken to preserve the environment and safeguarding of forests and wildlife as required by Article 48-A of the Constitution of India. There was no violation of provisions of Articles 21 and 48-A of the Constitution of India. The provision for urgency had been rightly invoked. Aggrieved by the judgment and order passed by the High Court, the appeals have been preferred.

9. Shri Rakesh Dwivedi learned Senior Counsel appearing on behalf of the appellant has urged that the change in the Master Plan from green belt to residential one was illegal, unconstitutional and change was made to oblige the builders. The respondents have acted in tandem even before the final

publication of the Master Plan 2021 in the Gazette on 09-04-2005. The notification under Sections 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 had been issued and on the same day, the Master Plan was finalised by the State Government. Though, Master Plan was notified on 09.04.2005 but issuance of notification under Section 4, 17(1) and 17(4) on 31-03-2005 clearly indicated that it was the colourable exercise of power to oblige some builder and there was some invisible hand acting illegally to usurp the land as well as to destroy the green belt. Learned counsel has submitted that inquiry under Section 5A of the Act could not have been dispensed with as it provides a safeguard in consonance with Article 300A. Learned senior counsel has referred to the decision of this Court in *Ram Dhari Jindal Memorial Trust V. Union of India*, (2012) 11 SCC 370. He has prayed for the quashing the notifications as well as the part of Master Plan 2021 changing green belt to residential one.

10. Learned AAG appearing on behalf of the State of U.P. and learned counsel appearing for the Lucknow

Development Authority have at the outset stated that the entire area of 266.661 Hectares has been converted to "Janeshwar Mishra Park" and that this Court had permitted vide order dated 14.07.2010. It is being used as the park it shall continue to be used as park without putting up any construction and it would not be converted to residential area in future. They have further stated that the area shall not be converted for any other purpose. Its use shall not be changed in future.

They have contended that as the appellant did not file any objections to the proposed Master Plan they were precluded from filing Writ applications in the High Court as need for expansion of Gomti Nagar urgency was felt and provisions of 17(1),17(4) of the Act had been invoked but ultimately the residential scheme has been dropped. Possession had been taken. A large number of incumbent had collected the compensation as per award that has been passed. Hence, no case for interference is made out in changed circumstances due to development of the park.

11. Firstly, we take up the issue regarding change of the area from green belt to a residential one. It is not in dispute that the area had been reserved for green belt in 1995 Master Plan. We find that it was absolutely unwarranted exercise of power on the part of the respondents to change the area from green belt to residential one in Master Plan 2021. Learned Senior Counsel is right that some invisible hand was behind the change that is why the respondents acted in tandem and the notification under section 4 of the Act had been issued on the same very day on which the Master Plan had been finalised by the State Government. Even before the master plan was notified in the Gazette 09-04-2005, under the Act of 1973, the notification had been issued under section 4 of the Act on 31.03.2005. We wholly agree with the submission of the learned counsel on behalf of the appellant that change of the area from green belt to residential was, in fact, in flagrant violation of the provisions contained in Articles 21 and 48A and also 51A (g) of the Constitution. Articles 48A and 51A(g) are extracted hereunder:

"48A. Protection and improvement of environment and safeguarding of forests and wild life.- The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

51A(g). to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

12. Law is well settled in this regard. In *Bangalore Medical Trust v. B.S. Muddappa & Ors.* (1991) 4 SCC 54, this Court had considered the question whether area reserved for a public park can be converted for other purposes. The State Government by the subsequent order had allotted the area reserved for public parks to a Medical Trust, for the purposes of constructing a hospital. This Court has laid down the importance of open spaces and public parks in the said case and held that said spaces are a "gift from people to themselves". It observed that:

"23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the City of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from the ill-effects of urbanisation. It is meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, 'ventilation' and fresh air. This is clear from the Act itself as it

originally stood. The amendments inserting Sections 16(1) (d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the City of Bangalore and the area adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by the preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.

24. Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

25. Reservation of open spaces for parks and playgrounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill effects of urbanisation.

26. In *Agins vs. City of Tiburon* [447 us 255 (1980)], the Supreme Court of the United States upheld a zoning ordinance which provided '... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant

impacts, such as ..... pollution, .... destruction of scenic beauty. Disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said:

".... The State of California has determined that the development of local open-space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill-effects of urbanization. Such governmental purposes long have been recognized as legitimate.

The zoning ordinances benefit the appellants as well public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas.

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development, it occupies an important place in social ecology. A private nursing home, on the other hand, is essentially a commercial venture, a profit-oriented industry. Service may be its morn but earning is the objective. Its utility may not be undermined but a park is a necessity, not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even

private house-owners to leave open space in front and back for lawn and fresh air. In 1984 the BD Act itself provided for reservation of not less than fifteen percent of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may given rise to health hazard. Maybe that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home? To say, therefore, that by conversion of a site reserved for low-lying into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."

(Emphasis supplied)

13. This Court had clearly laid down that such spaces could not be changed from green belt to residential or commercial one. It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities. No doubt, in the instant case, the legislative process had been undertaken. The Master Plan had been prepared under the Act of 1973. Ultimately, the respondents have realized the importance of such spaces. It was, therefore, their bounden duty not to change its very

purpose when they knew very well that this is a low-lying area and this area is otherwise thickly populated and provides an outlet for water to prevent flood like situation. In fact, the flood-like situation occurred in the area in question. This Court has permitted the protection by raising Bandh.

14. We have seen the photographs that are placed on record by the learned counsel for the respondents. It's a beautiful park that has come up inter alia in the area in question having lake and a large number of trees. Though park has been beautifully developed the very action of change of purpose was wholly uncalled for. The importance of park is of universal recognition. It was against public interest, protection of the environment and such spaces reduce the ill effects of urbanisation, it was not permissible to change this area into urban area as the garden/ Greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. The provision of the Act of 1973 and other enactments relating to environment could not be permitted to become statutory

mockery by changing the purpose in the master plan from green belts to residential one. Authorities are enjoined with duty maintain them as such as per doctrine of public trust.

15. This Court has considered the preservation of such spaces in *Animal and Environment Legal Defence Fund v. Union of India & Ors.* (1997) 3 SCC 549. This Court has observed that duty is to preserve the ecology of the forest area and regulating of public trust based on the ancient theory of Roman Empire. Considering depletion of forest areas and to preserve fragile ecology urgent steps are required. This court observed:

"11. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the present case it would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation. Totladoh dam where fishing is permitted is in the heart of the National Park area. There are other parts of the reservoir which extend to the borders of the National Park. We are not in a position to say whether these outlying parts of the reservoir are acces-

sible or whether they are suitable for fishing, in the absence of any material being placed before us by the State of Madhya Pradesh or by the petitioner. Some attempts, however, seem to have been made by the State of Madhya Pradesh to contain the damage by imposing conditions on these fishing permits. The permissions which have been given are subject to the following conditions:

(1) The identified families will be given photo identity cards on the basis of which only fishing and transport will be permitted;

(2) During the rainy season (months: July to October) fishing will be totally banned;

(3) During the rest of the year, entry will be permitted in the water from 12 p.m. to 4 p.m. and transport of fish will be allowed before sunset;

(4) The photo identity card-holders will not be allowed to enter the National Park or the islands in the reservoir nor will they be allowed to make night halts;

(5) Transport of fish will be allowed only on Totladoh-Thuepani Road from Totladoh reservoir.

15. Since all the claims in respect of the National Park area in the State of Madhya Pradesh as notified under Section 35(1) have been taken care of, it is necessary that a final notification under Section 35(4) is issued by the State Government as expeditiously as possible. In the case of *Pradeep Krishen v. Union of India* (1996) 8 SCC 599 this Court had pointed out that the total forest cover in our country is far less than the ideal minimum of 1/3rd of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Park there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas. The State Government is, therefore, expected to act with a sense of urgency in matters enjoined by Article 48-A of the Constitution keeping in mind the duty enshrined in Article 51-A(g). We, therefore, di-

rect that the State Government of the State of Madhya Pradesh shall expeditiously issue the final notification under Section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh."

16. In *M.C. Mehta v. Kamal Nath & Ors.* (1997) 1 SCC 388, this Court has observed that the idea of this theory was that the Government in trusteeship held certain common properties for smooth and unimpaired use of public such as land, water, and air. Air, sea, waters, forests, parks and open land have such a great importance to the people that it would be wholly unjustified to make them a subject of private ownership. this Court has held that the State Government has committed patent breach of doctrine of "public trust" by leasing the ecologically important area. Considering human dependency on the environment, Court cannot sit as a silent spectator and it has to ensure restoration of such areas. The Court observed:

"23. *The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land.* The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled *An ecological*

*perspective on property : A call for judicial protection of the public's interest in environmentally critical resources* published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:

"Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

'[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.'

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

'We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going

to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".'

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources – for example, wetlands and riparian forests – can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions."

24. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of

the general public. Our contemporary concern about "the environment" bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (*res nullius*) or by every one in common (*res communis*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan – proponent of the Modern Public Trust Doctrine – in an erudite article "*Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention*", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

"The source of modern public trust law is found in a concept that received much attention in Roman and English law – the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties – such as the seashore, highways, and running water – 'perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government."

25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

"Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses."

34. Our legal system – based on English common law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore

considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

(Emphasis supplied)

17. In *Vellore Citizens Welfare Forum v. Union of India & Ors.* AIR 1996 SC 2715, this Court has observed that protection of environment is one of the legal duties. The concept of sustainable development has been emphasized. Balancing has to be made between ecology and development. While setting up the industries is essential for the economic development, measures should be taken to reduce the risk for community by taking all necessary steps for protection of environment. This court observed:

"10. The traditional concept that development and ecology are opposed to each other, is no longer acceptable. "Sustainable Development" is the answer. In the International sphere

"Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway Ms. G.N. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June, 1992 at Rio which saw the largest gathering of world leaders ever in the history - deliberating and chalking out a blue print for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-systems. "Sustainable Development" as defined by the Brundtland Report means "development that meets the needs of the present without compromising the ability of the future generations to meet their won needs". We have no hesitation in holding that "Sustainable Development' as a balancing concept between ecology and development has been accepted as a part of the Customary International Law though its salient features have yet to be finalised by the International Law jurists.

15. The Constitutional and statutory provisions protect a persons right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876. Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words :

Also, if a person keeps his hogs, or other noisome animals, 'or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of this house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, sic utere "tuo, ut alienum non laedas;" this therefore is an actionable nuisance. 'And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance;.... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a water-course, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; 'to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of "doing to others, as we would they should do upto ourselves."

18. In *M.C. Mehta v. Union of India* (1987) Supp. SCC 131, this Court had issued certain directions appointing Commissioner regarding hazardous chemicals, relying on Article 21 and considering that life, public health, and property cannot be lost sight.

19. This Court in *Subhash Kumar v. State of Bihar & Ors.* (1991) 1 SCC 598 has held that right to pollution-free air falls within Article 21 it observed:

"7. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen. Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine peti-

tioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation, see *Bandhua Mukti Morcha v. Union of India* (1984) 2 SCR 67; *Sachindanand Pandey v. State of W.B.* (1987) 2 SCC 295; *Ramsharan Autyanuprasi v. Union of India* (1989) Supp SCC 251 and *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.* (1990) 4 SCC 449."

(Emphasis supplied)

20. In *M.C. Mehta v. Kamal Nath* (2000) 6 SCC 213, it was held that any disturbance to the basic environment, air or water, and soil which are necessary for life, would be hazardous to life within the meaning of Article 21 of the Constitution. In such cases "polluter pay principle" can also be invoked to restore the environment and to control it. It held:

"8. Apart from the above statutes and the rules made thereunder, Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51-A(g) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution.

9. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to fundamental rights under Articles 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect "life", in order to protect "environment" and in order to protect "air, water and soil" from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution. The judgment for removal of hazardous and obnoxious industries from the residential areas, the directions for closure of certain hazardous industries, the directions for closure of slaughterhouse and its relocation, the various directions issued for the protection of the Ridge area in Delhi, the directions for setting up effluent treatment plants to the industries located in Delhi, the directions to tanneries etc., are all judgments which seek to protect the environment.

10. In the matter of enforcement of fundamental rights under Article 21, under public law domain, the Court, in exercise of its powers under Article 32 of the Constitution, has awarded damages against those who have been responsible for disturbing the ecological balance either by running the industries or any other activity which has the effect of causing pollution in the environment. The Court while awarding damages also enforces the "POLLUTER-PAYS PRINCIPLE" which is widely accepted as a means of paying for the cost of pollution and control. To put in other words, the wrongdoer, the polluter, is under an obligation to make good the damage caused to the environment."

21. In *M.C. Mehta v. Union of India & Ors.* (1997) 3 SCC 715, it was held to be duty of the State to anticipate, prevent and attack the causes of environmental degradation. Considering the Articles 21 and 48-A and also the fundamental duty it has been observed by the concerned officials, it was incumbent upon them to protect such spaces. Residential use of such area would have been contrary to the public interest as such not tolerable. The court held:

"9. This Court in *Rural Litigation and Entitlement Kendra v. State of U.P.* 1986 Supp SCC 517(*sic*) held as under:

"The consequence of this order made by us would be that the lessee of limestone quarries would be thrown out of business. This would undoubtedly cause hardship to them, but it is a price that has to be paid for

protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them, to their cattle, homes and agriculture and undue affectation of air, water and environment."

22. In our opinion, the submission raised by the learned counsel for the appellant is meritorious that the area should be preserved for green belt as done at present and the provisions made in the master plan 2021 for its conversion into residential area has to be quashed. Unhesitatingly, we agree with the same.

23. As we have held that exercise of conversion was not legal one that will have some impact on the validity of the notification under Section 4 and dispensation of enquiry to be held under Section 5A but in the instant case we find that since the first prayer of the appellant had been allowed, the area has been ultimately reserved and utilized for the purpose of green belt only and as permitted by this Court park had been developed and it shall be maintained as such. We need not go into further into question of dispensation of inquiry whether it was rightly dispensed with. In view of subsequent development and

relief granted to appellants we decline to intervene.

24. Since we have seen the photographs the park has been developed under interim order of this court including bund. After acquisition possession had been taken, award had been passed and most of the owners have collected the compensation, the petitioners may also collect compensation in case they have not received so far but non-collection so far due to pendency of matter would not affect validity of acquisition and development that has been made. We are not inclined to disturb the decision of the High Court with respect to the acquisition. We hold that land has absolutely vested in State. We order, as assured also in future the purpose shall never be changed in any other manner whatsoever. We hereby quash the Master Plan 2021 changing use of area in question from green belt to residential one. It shall be held in trusteeship only for the purpose of park in future.

25. Resultantly, in view of aforesaid discussion, the appeals are partly allowed order of high court is set-aside to the aforesaid extent. Acquisition is upheld but for different reasons. We require the

C.A.NO.5606/2010

respondents to make payment of costs of the appeals to the appellants which we quantify at Rs. 5,00,000/-to be paid in each appeal to be borne by state and Lucknow Development Authority equally within a period of three months and compliance thereof be reported to this Court.

26. In view of the interim order passed by this Court, we do not find any ground to proceed further with contempt petition. Accordingly, the Contempt Petition (C) No.494 OF 2013 is dismissed. Notice issued is discharged.

.....J.  
(ARUN MISHRA)

.....J.  
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;  
SEPTEMBER 14, 2017.

C.A.NO.5606/2010

ITEM NO.101

COURT NO.10

SECTION III-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5606/2010

LAL BAHADUR

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH &amp; ORS.

Respondent(s)

WITH

C.A. No. 5607/2010 (III-A)

WITH

CONMT.PET. (C) No. 494/2013 In C.A. No. 5607/2010 (III-A)

Date : 14-09-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

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Mr. D.K. Singh, AAG  
Mr. Ardhendumaulu Kumar Prasad, Adv.  
Ms. Komal Mundhra, Adv.  
Mr. Saurabh Agrawal, Adv.

C.A.NO.5606/2010

UPON hearing the counsel the Court made the following  
O R D E R

C.A.No.5606/2010 and 5607/2010

The appeals are partly allowed in terms of the signed reportable order.

CONMT.PET.(C) No. 494/2013 In C.A. No. 5607/2010

In view of the interim order passed by this Court, we do not find any ground to proceed further with contempt petition. Accordingly, the Contempt Petition (C) No.494 OF 2013 is dismissed. Notice issued is discharged.

(SAPNA BISHT)  
SENIOR PERSONAL ASSISTANT

(TAPAN KUMAR CHAKRABORTY)  
BRANCH OFFICER

(Signed reportable order is placed on the file)