

B.S. SANDHU

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v.

GOVERNMENT OF INDIA & ORS. & ETC.  
(Civil Appeal Nos. 4682-4683 of 2005 & ETC).

MAY 21, 2014.

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**[A. K. PATNAIK AND FAKKIR MOHAMED  
IBRAHIM KALIFULLA, JJ.]**

*Punjab Land Preservation Act, 1900 – ss. 3, 4 and 5 – Forest (Conservation) Act, 1980 – Status of land – Forest land or non-forest land – Allegation that appellants developed Golf Club in village 'K' in violation of environmental and forest laws, by changing the land use – Writ petition – High Court holding that land notified u/s. 3 of the PLP Act and regulated by prohibitory directions notified u/s 4 and 5 of the PLP Act, is 'forest land' — Direction issued to close down the club and demolish the illegal erected building – Correctness of – Held: Finding of the High Court not correct and set aside – Issue whether the land on which the Golf Club was situated was forest land as on 25.10.1980 irrespective of its classification or ownership, is factual question – High Court should have decided on the basis of Government records as on 25.10.1980 and other materials filed before it – However, High Court instead decided the issue by reference to the provisions of the PLP Act, 1900 and the records of the Forest Department in which the land was shown to be under the Forest Department because the land was closed under the PLP Act, 1900 decades before the enactment of the Forest (Conservation) Act, 1980 which was not correct – Forest.*

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**An issue arose with regard to the development of the Forest Hill Golf and Country Club in village 'K', near Chandigarh by the appellant- proprietor/managing director of the Golf Club in violation of the environmental**

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A and forest laws as well as the orders passed by this  
Court. The High Court held that the entire land of village  
'K' notified u/s. 3 of the Punjab Land Preservation 1900  
Act and regulated by the prohibitory directions notified  
u/ss. 4 and 5 of the PLP Act, is 'forest land' and attracts  
B the provisions of s. 2 of the Forest (Conservation) Act,  
1980 if sought to be used for 'non-forest purpose'; that  
in the records of the Forest Department of the  
Government of Punjab, the entire land of village was  
shown to be 'forest land' and the entries in the revenue  
C record regarding the nature of the land were changed by  
the officers of the Revenue Department of the  
Government of Punjab at the behest of appellant; and  
that in *T.N.Godavarma*'s case, this Court has defined the  
D term 'forest land' occurring in Section 2 of the Forest  
(Conservation) Act, 1980 to include not only 'forest' as  
understood in the dictionary sense, but also any area  
recorded as forest in the Government record irrespective  
of the ownership. The High Court directed the appellant  
to immediately close down the 'Forest Hill Golf and  
E Country Club and demolish all the illegally erected  
buildings within a period of three months and to  
handover the 'management' and 'control' of the land in  
question to the State Forest Department. Hence, the  
instant appeals by the appellant, the agriculturists, house  
F owners and shop owners of village and the union of  
farmers.

Allowing the appeal, the Court

HELD: 1.1. It will be clear from the language of  
Section 3 of the Punjab Land Preservation 1900 Act that  
for the better preservation and protection of any local  
G area, situated within or adjacent to Shivalik Mountain  
Range which is liable to be affected debodisment of  
forests in that range or by the action of "cho", such  
Government may by notification make a direction  
accordingly. The expression "local area" has not been  
H defined in the PLP Act, 1900 and may include not only

'forest land' but also other land. In Section 4 of the PLP Act, 1900, the local Government was empowered by general or special order, temporarily or permanently to regulate, restrict or prohibit various activities mentioned in clauses (a), (b), (c), (d), (e), (f) and (g) thereof. A reading of these clauses would show that activities such as cultivation, pasturing of sheep and goats and erection of buildings by the inhabitants of towns and villages situated within the limits of the area notified under Section 3 can be regulated, restricted or prohibited by a general or special order of the local Government. All these activities are not normally carried on in forests. Similarly, under Section 5 of the PLP Act, 1900, the local Government was empowered by special order, temporarily or permanently to regulate, restrict or prohibit the cultivating of any land or to admit, herd, pasture or retain cattle generally other than sheep and goats. These activities are also not normally carried on in forests. Therefore, land which is notified under Section 3 of the PLP Act, 1900 and regulated by orders of the local Government under Section 4 and 5 of the PLP Act, 1900 may or may not be 'forest land'. Therefore, the conclusion of the High Court that the entire land of village 'K', which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 thereof is 'forest land' is not at all correct in law. The basis for inclusion of the entire area in village 'K', in the list of forest areas in the State of Punjab pursuant to the order dated 12.12.1996 of this Court in the case of *T.N. Godavarman Thirumulkpad v. Union of India & Ors.* is legally not correct. Similarly, the conclusion of the High Court that the entire land in village 'K', having been notified under Section 3 of the PLP Act, 1900 and being under the regulatory regime of Sections 4 and 5 of the said Act is 'forest land' is also legally not correct. The High Court failed to appreciate the meaning of 'forest' and 'forest land' in Section 2 of the Forest

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A (Conservation) Act, 1980 as given by this Court in the  
order dated 12.12.1996 in the case of *T.N.Godavarman*  
*Thirumulkpad v. Union of India & Ors.* The order would  
show that the Forest (Conservation) Act, 1980 was  
enacted with view to check further deforestation and was  
B to apply to all forest irrespective of the nature of  
ownership or classification thereof. Thus, Section 2 of the  
Forest (Conservation) Act, 1980 puts a restriction on  
further deforestation of 'forest land' and would apply to  
any land which at the time of enactment of the Forest  
C (Conservation) Act, 1980 was 'forest land' irrespective of  
its classification or ownership. [Para 15 and 16] [345-E-  
H; 346-A-H; 347-A-B, F]

1.2. The High Court was called upon to decide  
whether the land on which the Forest Hill Golf and  
D Country Club of the appellant was situated was forest  
land as on 25.10.1980 irrespective of its classification or  
ownership, is a factual question and the High Court  
should have decided this factual question on the basis  
of Government records as on 25.10.1980 and other  
E materials filed before the High Court, but the High Court  
instead decided this question by reference to the  
provisions of the PLP Act, 1900 and the records of the  
Forest Department in which the land was shown to be  
under the Forest Department because of the fact that the  
land was closed under the PLP Act, 1900 several decades  
F before the enactment of the Forest (Conservation) Act,  
1980. Moreover, by recording a blanket finding that all land  
in village 'K', was 'forest land' for the purpose of Section  
2 of the Forest (Conservation) Act, 1980, the High Court  
G affected the legal rights of several villagers, agriculturists,  
farmers, shop owners, inhabitants of village 'K', who were  
carrying on their respective occupations on their land  
even before the enactment of the said Act on 25.10.1980.  
The High Court should have been very careful before  
recording findings which affect the property rights of  
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persons protected by Article 300A of the Constitution. A  
[Para 16] [348-F-H; 349-A-B]

1.3. In the instant case, the State Government in its affidavit stated before this Court that the basis of inclusion of the entire land of village 'K', in forest areas in the records of the Forest Department of Government of Punjab was that the land was closed under the PLP Act, 1900 and thus, was a forest area, this basis is not correct in law. B  
[Para 17] [349-F-G]

1.4. The finding of the High Court that the entire land in village 'K', is 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 is set aside. The matter is remanded to the High Court for fresh hearing and fresh order in accordance with law. All directions in the impugned order which flow out of the finding of the High Court that the land was 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 are set aside. The directions for investigation by the CBI in the impugned order is not set aside. C  
[Para 18] [349-H; 350-A-B] D

*T.N.Godavarman Thirumulkpad v. Union of India & Ors* E  
(1997) 2 SC 267:1996 (9) Suppl. SCR 982; *M.C. Mehta vs. Union of India* (2004)12 SCC 118:2004 (3) SCR 128; *M.C. Mehta vs. Union of India and Ors.* JT 2008 (6) SC 542:2008 (8) SCR 828 – Referred to.

Case Law Reference: F

(1997) 2 SC 267	Referred to	Para 3,4,5, 9,10,11,15,16
(2004)12 SCC 118	Referred to	Para 10
JT 2008 (6) SC 542	Referred to	Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. G  
4682-4683 of 2005.

From the Judgment and Order dated 12.10.2004 in Writ Petition Nos. 1134 and 1850 of 2004 of the High Court of Punjab & Haryana at Chandigarh. H

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WITH

C.A. Nos. 4799-4800 and 4798 of 2005.

Mohan Jain, ASG., Ashwini Chopra, V.K. Bali, Puneet Bali, A. Mariarputham, Ajay Bansal, AAG., Rudreshwar Singh, K.S. Rupal, Gurmeet Sullar, Devaki Anand, Raman Walia Aditya Soni, Chistina Kumar, Elizabeth Barr, Gopal Jha, Kaushik Poddar, Rameshwar Prasad Goyal, Ajit Kumar Pande, Samir Ali Khan, A. Tewari, Ashmi Mohan, Shree pal Singh, Gurman Singh, Anuj Prakash, Kanan Walia, Kaushik Poddar, Prashant Kumar, Rohit K. Singh, Alok Kumar, Ashok Dhamija, Alakh Alok Srivastava, D.K. Thakur, B.V. Balaram Das, Sukhbeer Kaur Bajwa, N.K. Karhail, M.J. Asha, P. Parmeswaran, Ashiesh Kumar, Bimal Roy Jad, B.K. Khurana, A.D.N. Rao, Rakesh Kumar, Kuldip Singh, Jagjit Singh Chhabra, Pardaman Singh, Dheeraj Yadav, Gaurav Yadav, Vivek Goyal Rajeev Kumar, N.G. Dev for the Appearing Parties.

The Judgment of the Court was delivered by

E A. K. PATNAIK, J. 1. These Civil Appeals have been filed by way of special leave under Article 136 of the Constitution against the common order dated 12.10.2004 of the Division Bench of the Punjab and Haryana High Court in CWP No. 1134 of 2004 and CWP No. 1850 of 2004.

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**Facts of the Case:**

2. CWP No. 1134 of 2004 is a Public Interest Litigation entertained by the High Court *suo motu* pursuant to a news item published on 22.01.2004 in the Hindustan Times ('HT Chandigarh Live'). This news item was titled 'Forest Hill Club under Central Government Scanner', and it stated that the Ministry of Environment and Forest, Union of India, has found that a Forest Hill Golf and Country Club in Village Karoran, District Ropar, near Chandigarh was being developed in blatant violation of the environmental and forest laws as well

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as the orders passed by this Court in December 1996. The news item further stated that the Forest Department of Government of Punjab had informed the Union Ministry of Environment and Forest that the entire area, on which the golf course had been set up, was closed under the Punjab Land Preservation Act, 1900 (for short 'PLP Act, 1900') and was a 'forest area', which attracted the provisions of the Forest (Conservation) Act, 1980, but the Punjab Government permitted change of land use as a *quid pro quo* because a large number of top IAS and IPS officers and other decision-makers have been given honorary membership of the club or have been allowed to use the premises and facilities of the Club for private functions.

3. CWP No. 1850 of 2004 was filed by one Ranjeet Singh as a writ petition under Article 226 of the Constitution. In the writ petition, it was *inter-alia* stated that village Karoran is located in Kharar Tehsil of District Ropar and is about eight kilometers to the North-west of Chandigarh and the entire area of the village measuring about 3700 acres is covered under PLP Act, 1900, and this area measuring about 3700 acres of village Karoran is also shown as 'forest area' in the Annual Administration Report and the Register of Forest Area of the forest department. It is further stated in the writ petition that pursuant to the order dated 12.12.1996 passed by this Court in *T.N. Godavarman Thirumulkpad v. Union of India & Ors.* (1997) 2 SC 267, an Expert Committee was set up by the Government of Punjab to identify the forest areas of the State of Punjab, and this Expert Committee included the entire area of Karoran village as forest area in its report, and accordingly an affidavit was filed on behalf of the State Government in March, 1997 in this Court, showing the entire area of Karoran village as part of the forest areas of the State of Punjab. It is also stated in the writ petition that the entire area of Karoran village was included as forest area in the management plan prepared by the State Forest Department and the management plan was approved by the Ministry of Environment and Forest

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A vide its letter dated 14.12.1998. The case made out in the writ  
petition was that Section 2 of the Forest (Conservation) Act,  
1980 was applicable to any land in the Karoran village and,  
therefore, the land could not have been diverted for non-forest  
activities without the prior permission of the Central  
B Government.

4. Col. B.S. Sandhu, who was the proprietor/Managing  
Director of the Forest Hill Golf and Country Club, contended  
before the High Court that merely because village Karoran is  
covered under the PLP Act 1900, the lands comprising the  
C area of village Karoran do not become 'forest land'. He further  
contended that the lands in village Karoran on which the Forest  
Hill Golf and Country Club has been constructed were private  
lands acquired by sale deeds by the Dashmesh Educational  
Society formed by him for a period of eight years from different  
D owners and some of the lands are agricultural lands and some  
of the lands are uncultivable waste lands (*Gair Mumkin Pahar*)  
and unless a formal notification was issued under Section 35  
of the Forest Act, 1927 notifying a private land as 'forest land',  
a private land cannot be treated to be 'forest land'. Col. B.S.  
E Sandhu also contended before the High Court that the fact that  
the State Forest Department had shown the entire land in  
village Karoran as under the administrative control of the Forest  
Department does not also make the entire land in Karoran  
village to be the 'forest land'. He further contended before the  
F High Court that the entries in the revenue records of the State  
Government would show that the land in village Karoran on  
which the club has been established is not 'forest land'. He,  
however, conceded before the High Court that pursuant to the  
orders passed by this Court in *T.N. Godavarman Thirumulkpad*  
G *v. Union of India & Ors.* (supra) on 12.12.1996, the Expert  
Committee constituted by the State of Punjab initially identified  
all the 'forest areas' including those owned by private land  
owners in village Karoran measuring 3700 acres as 'forest  
land' and an affidavit was also filed on 21.02.1997 on behalf  
H of the Forest Department, Government of Punjab, in this Court



[A.K. PATNAIK, J.]

accordingly, but he submitted before the High Court that pursuant to affidavits filed on behalf of the State Government, orders were passed by this Court in I.A. No.727 in *T.N. Godavarman Thirumulkpad's* case (W.P.(C) No.202 of 1995) deleting large portions of land under habitation in village Karoran from the 'list of forest areas' in the State of Punjab.

5. The High Court, however, rejected the contentions made on behalf of Col. B.S. Sandhu in Civil Appeal Nos.4682-4683 of 2005 and held that the entire land of village Karoran which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 of the aforesaid PLP Act, 1900 is 'forest land' and attracts the provisions of Section 2 of the Forest (Conservation) Act, 1980 if sought to be used for 'non-forest purpose'. The High Court also held that in the records of the Forest Department of the Government of Punjab, the entire land of village Karoran was shown to be 'forest land' and the entries in the revenue record regarding the nature of the land were changed by the officers of the Revenue Department of the Government of Punjab at the behest of Col. B.S. Sandhu for the obvious reason that he was eyeing this big chunk of land for his personal gains. The High Court, therefore, discarded the latest entries of the revenue record and instead accepted the records of the Forest Department to hold that the land in question was 'forest land'. The High Court further held that in *T.N. Godavarman's* case, this Court has in its order dated 12.12.1996 defined the term 'forest land' occurring in Section 2 of the Forest (Conservation) Act, 1980 to include not only 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. The High Court held that as the land in village Karoran was recorded in the records of the Forest Department of the Government of Punjab to be 'forest land', the same was 'forest land' within the meaning of Section 2 of the Forest (Conservation) Act, 1980. The High Court also held that the entire 3700 acres of land in the village Karoran was identified

A as 'forest land' by the Expert Committee constituted by the State of Punjab in its report dated 19.02.1997 and the State Government filed its affidavit dated 21.02.1997 before this Court along with the report of the Expert Committee. The High Court took note of the fact that pursuant to hardships B experienced by the owners of some of these lands in village Karoran and pursuant to numerous representations; the State Government did examine the issue afresh and excluded a portion of the land from the 'list of forest areas', but Col. B.S. Sandhu and his associates cannot derive any benefit or C advantage from this stand of the State Government.

6. With the aforesaid findings, the High Court allowed the writ petitions directing Col. B.S. Sandhu and the companies and/or the societies floated by him to immediately close down its entire enterprise known as 'Forest Hill Country Club Resort and Golf Course' and to demolish all the illegally erected buildings within a period of three months and to handover the D 'management' and 'control' of the land in question to the State Forest Department. The High Court also directed the Revenue Department, Government of Punjab, to carry out all necessary E corrections in the 'records of rights' regarding the 'forest land' falling within the revenue estate of village Karoran, Tehsil Kharar, District Ropar and directed the Punjab State Electricity Board, through its Chairman, to discontinue the power supply forthwith to the Forest Hill Resort and directed the Commissioner of F Excise and Taxation Department, Government of Punjab, to cancel L-2 licence issued in favour of the Forest Hill Resort. The High Court also directed the Central Bureau of Investigation through its Director to constitute a Special Investigation Team to be headed by an officer not below the rank of Deputy G Inspector General, which shall hold a through probe into the question of accountability of top executive and administrative functionaries of the departments concerned of the Government of Punjab, some officers of the Central Government in relation to establishment and development of the Forest Hill Golf and H Country Club at village Karoran and to report as to whether any

one of them indulged in taking direct or indirect gratification and/or acted in violation of the Conduct Rules and to constitute a Special Investigation Team of the Central Bureau of Investigation to inquire into and submit its report as to how much lands are actually owned by Col. B.S. Sandhu, his family members and/or the societies/companies floated by them.

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7. Aggrieved by the impugned order, Col. B.S. Sandhu has filed Civil Appeal Nos.4682-4683 of 2005. Aggrieved by the impugned order, some agriculturists, house owners and shop owners of village Karoran have filed Civil Appeal Nos. 4799-4800 OF 2005 and the Bhartiya Kisan Union, which is a union of farmers has filed Civil Appeal No.4798 of 2005, challenging, in particular, the finding of the High Court that the entire land in village Karoran is 'forest land' covered under Section 2 of the Forest (Conservation) Act, 1980 and cannot be used for non-forest purposes without the prior permission of the Central Government.

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**Contentions on behalf of the Parties:**

8. At the hearing of these appeals, learned counsel for the appellants submitted that the conclusion of the High Court in the impugned order that the entire land of village Karoran, District Ropar, which has been notified under Section 3 of PLP Act, 1900 and which is being regulated by the prohibitory directions notified under Sections 4 and 5 of the PLP Act, 1900 is 'forest land' is not correct in law. They referred to the provisions of the PLP Act, 1900 to show that the aforesaid Act was meant to preserve and protect the land situated within or adjacent to Shivalik Mountain Range. They argued that the notification issued under Section 3 of the PLP Act, 1900, therefore, covered both 'forest' and 'non-forest land' and therefore a notification under Section 3 of the PLP Act, 1900 closing a particular land under the said Act would not *per se* make the land a 'forest land'.

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9. Learned counsel for the appellants further submitted that

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A the High Court has gone by only the records of the Forest  
Department in which the entire land of 3700 acres in village  
Karoran, District Ropar, was shown as within the administrative  
control of the Forest Department. They argued that the land  
which is under the administrative control of the Forest  
B Department does not become 'forest land' only because the  
Forest Department exercises control over that land. They  
submitted that an affidavit was filed on behalf of the  
Government of Punjab in this Court pursuant to the order dated  
12.12.1996 of this Court in *T.N. Godavarman Thirumulkpad*  
C *v. Union of India & Ors.* (supra), on the basis of the report of  
the Expert Committee constituted by the State Government for  
identification of forest areas in the State of Punjab in February,  
1997 stating that the entire 3700 acres of land in village  
Karoran, District Ropar, was 'forest land' but subsequently the  
D State Government realised the mistake and filed an affidavit in  
October, 1999 before this Court for excluding portions of the  
land in village Karoran, District Ropar, from the list of 'forest  
areas' earlier furnished by the State of Punjab to this Court  
saying that such land was under cultivation and human habitation  
E and the farmers who were cultivating the land and those who  
were living in the land will suffer immense hardship if the land  
continues to be 'forest land' for the purpose of Section 2 of the  
Forest (Conservation) Act, 1980.

10. Learned counsel appearing for the State of Punjab, on  
F the other hand, submitted that whether a particular land is 'forest  
land' for the purpose of Section 2 of the Forest (Conservation)  
Act, 1980 has to be decided in accordance with the order dated  
12.12.1996 of this Court in *T.N. Godavarman Thirumulkpad*  
*v. Union of India & Ors.* (supra) as there is no definition of  
G forest either in the Forest (Conservation) Act, 1980 or in the  
Indian Forest Act, 1927. He submitted that this Court in *M.C.*  
*Mehta vs. Union of India* [(2004)12 SCC 118 – (hereinafter  
referred to as 'the first M.C. Mehta case') has taken the view  
that if the State Forest Department has been treating and  
H showing a particular area as forest, that area is to be treated

as forest and if such area was to be used for non-forest purposes, it was necessary to comply with the provisions of the Forest (Conservation) Act, 1980. He submitted that this view was again endorsed by this Court in *M.C. Mehta vs. Union of India and Ors.* [JT 2008 (6) SC 542 – (hereinafter referred to as ‘the second M.C. Mehta case’). He referred to the Annual Report of the East Punjab (Forest Department) to show that the entire land in village Karoran, District Ropar, under the PLP Act, 1900 was under the Forest Department and submitted that in view of the decisions of this Court in the first and the second M.C. Mehta cases, the entire land in village Karoran, District Ropar, including the land of Col. B.S. Sandhu was ‘forest land’ and could not be diverted for non-forest purposes without the permission of the Central Government as provided in Section 2 of the Forest (Conservation) Act, 1980.

11. The Member Secretary of the Central Empowered Committee (for short ‘the CEC’) referred to the records of I.A. 727 in *T.N. Godavarman Thirumulkpad v. Union of India & Ors.* (supra) (Writ Petition No.202 of 1995) to show that the proposal of the State Government to exclude an area of 69,367 ha. out of 1,68,224 ha. closed under the PLP Act, 1900 from the list of forest areas was examined by the CEC and the CEC was of the view that the deletion of the areas which were under cultivation of the habitation prior to 25.10.1980 i.e. when the Forest (Conservation) Act, 1980 was enacted, would not be against the spirit of the Forest (Conservation) Act, 1980. He submitted that the CEC, however, was also of the view that for deleting such areas from the list of forest areas, the procedure as laid down in the Forest (Conservation) Rules, 1981 and the guidelines issued by the Central Government for implementation of the Forest (Conservation) Act, 1980, must be followed.

**Conclusions of this Court:**

12. After hearing learned counsel for the parties, we find

A that the reason why the entire 3700 acres of land in Karoran,  
District Ropar, was included in the list of 'forest land' submitted  
by the State Government to this Court in February, 1997 is that  
in the records of the Forest Department, Government of Punjab,  
the said land was shown to be under the Forest Department,  
B Government of Punjab. We have, therefore, examined the  
Annual Report of the East Punjab (Forest Department) included  
in the compilation filed on behalf of the State Government on  
22.02.2014 and we find that the land in the village Karoran,  
District Ropar, is recorded as land under the control of the  
C Forest Department because the land was closed under the PLP  
Act, 1900. This is also clear from paragraph 5 of the affidavit  
of Shri J.S. Kesar, IAS, Financial Commissioner and Secretary  
to Government of Punjab, Department of Forests and Wildlife  
Preservation, filed in this Court in October, 1999 extracted  
D hereinbelow:

"5. The basis for inclusion of all the areas closed under the  
PLPA, 1900 as "Forest areas" in the earlier affidavits was  
that the same were being reported in the Annual  
Administrative Reports of the Forest Department since  
E several decades under the category "closed under PLPA  
1900". Though the areas closed under PLPA 1900 were  
not specifically recorded as forest areas because of the  
fact that they were included in Annual Administrative  
Reports of the State Forest Department. As such, besides  
F the areas with tree cover even cultivated fields and  
habitations in the areas notified under the PLPA, 1900  
were depicted as 'Forest areas' by the Expert Committee  
and included in Annexure-G of the affidavit dated  
21.2.1997 filed by the State Government in the Hon'ble  
G Apex Court. It is thus reiterated that the Expert Committee  
included the cultivated/habitation areas closed under the  
PLPA, 1900 in the list of forest areas only because these  
stood included in the Annual Administrative Reports of the  
Department as "Areas closed under the PLPA 1900."

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Thus, the basis of including the entire land in village Karoran as forest area in the affidavit of the State Government in this Court is that the land was closed under the PLP Act, 1900 and therefore was forest area.

13. The High Court has also taken a view in the impugned order that as the entire land of village Karoran, District Ropar, was closed in the PLP Act, 1900, it was 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980. Paragraph 53 of the impugned order of the High Court is quoted hereinbelow:

53. For the reasons afore-mentioned and relying upon the expression "forest" and "forest lands" as defined by their Lordships in T.N, Godavarman's case (supra) and the principles laid down in M.C. Mehta's case (supra), we hold that the entire land of village Karoran which has been notified under section 3 of the PLPA, 1900 and is regulated by the prohibitory directions notified under section 4 and 5 thereof, is a "forest land" and attract the provisions of section 2 of the Conservation Act, 1980, if sought to be used for 'non forest purposes'.

14. Hence, the first question that we have to decide is whether the conclusion of the High Court that the land which is notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 of the aforesaid Act is 'forest land' is correct in law. Sections 3, 4 and 5 of the PLP Act, 1900 as it was originally enacted are extracted hereinbelow:

"3. Whenever it appears to the Local Government that it is desirable to provide for the better preservation and protection of any local area, situated within or adjacent to the Sivalik mountain range or affected or liable to be affected by the debodisement of forest in that range or by the action of *chhos*, such Government may, by notification, make a direction accordingly.

- A 4. In respect of areas notified under section 3 generally, or the whole or any part of any such area, the Local Government may, by general or special order, temporarily or permanently, regulate, restrict or prohibit-
- B (a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3;
- C (b) the quarrying of stone, or the burning of lime, at places where such stone or lime had not ordinarily been so-quarried or burnt prior to the publication of the notification under section 3;
- D (c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce other than grass, save for *bona fide* domestic or agricultural purposes;
- E (d) the setting on fire of trees, timber or forest produce;
- (e) the admission, herding, pasturing or retention of sheep or goats;
- F (f) the examination of forest-produce passing out of any such area; and
- G (g) the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom, or to pasture sheep or goats or to cultivate or erect buildings therein and the production and return of such permits by such persons,
- H 5. In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area



notified under section 3, the Local Government may, by special order, temporarily regulate, restrict or prohibit-

(a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3:

(b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under section 3;

(c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce for *bona fide* domestic or agricultural purposes; and

(d) the admission, herding, pasturing or retention of cattle generally, other than sheep and goats, or of any class or description of such cattle."

15. It will be clear from the language of Section 3 of the PLP Act, 1900 extracted above that for the better preservation and protection of any local area, situated within or adjacent to Shivalik Mountain Range which is liable to be affected deboisement of forests in that range or by the action of "*cho*", such Government may by notification make a direction accordingly. The expression "local area" has not been defined also other land. In Section 4 of the PLP Act, 1900 extracted above, the local Government was empowered by general or special order, temporarily or permanently to regulate, restrict or prohibit various activities mentioned in clauses (a), (b), (c), (d), (e), (f) and (g) thereof. A reading of these clauses would show that activities such as cultivation, pasturing of sheep and goats and erection of buildings by the inhabitants of towns and villages situated within the limits of the area notified under Section 3 can be regulated, restricted or prohibited by a

A general or special order of the local Government. All these activities are not normally carried on in forests. Similarly, under Section 5 of the PLP Act, 1900, the local Government was empowered by special order, temporarily or permanently to regulate, restrict or prohibit the cultivating of any land or to admit, herd, pasture or retain cattle generally other than sheep and goats. These activities are also not normally carried on in forests. In our view, therefore, land which is notified under Section 3 of the PLP Act, 1900 and regulated by orders of the local Government under Section 4 and 5 of the PLP Act, 1900 may or may not be 'forest land'. Therefore, the conclusion of the High Court in the impugned order that the entire land of village Karoran, District Ropar, which has been notified under Section 3 of the PLP Act, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 thereof is 'forest land' is not at all correct in law. The basis for inclusion of the entire area in village Karoran, District Ropar, in the list of forest areas in the State of Punjab pursuant to the order dated 12.12.1996 of this Court in the case of *T.N.Godavarman Thirumulkpad v. Union of India & Ors.* (supra) is legally not correct. Similarly, the conclusion of the High Court in the impugned order that the entire land in village Karoran, District Ropar, having been notified under Section 3 of the PLP Act, 1900 and being under the regulatory regime of Sections 4 and 5 of the said Act is 'forest land' is also legally not correct.

16. In fact, the High Court failed to appreciate the meaning of 'forest' and 'forest land' in Section 2 of the Forest (Conservation) Act, 1980 as given by this court in the order dated 12.12.1996 in the case of *T.N.Godavarman Thirumulkpad v. Union of India & Ors.* (supra). The relevant portions of the order dated 12.12.1996 of this Court in the case of *T.N.Godavarman Thirumulkpad v. Union of India & Ors.* (supra) on the meaning of the words 'forest' and 'forest land' is extracted hereinbelow:

“4. The Forest Conservation Act, 1980 was enacted with

a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest: must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof."

The underlined portion of the order dated 12.12.1996 in the case of *T.N.Godavarman Thirumulkpad v. Union of India & Ors.* (supra) would show that the Forest (Conservation) Act, 1980 was enacted with a view to check "further deforestation" and was to apply to all forest irrespective of the nature of ownership or classification thereof. Hence, Section 2 of the Forest (Conservation) Act, 1980 puts a restriction on further deforestation of 'forest land' and would apply to any land which at the time of enactment of the Forest (Conservation) Act, 1980 was 'forest land' irrespective of its classification or ownership. This is exactly the view taken also by the CEC in its recommendations dated 10.09.2003 in I.A. 727 in *T.N.Godavarman's* case (W.P. [C] No.202 of 1995). Paragraph 8 of the recommendations dated 10.09.2003 of the CEC in I.A. No.727 is extracted hereinbelow:

"8. After examining the submissions made by the applicant,

A affidavit filed by the State Government of Punjab and the  
‘No Objection’ give by MoEF, the CEC is of the view that  
deletion of areas, which were under cultivation/habitation  
prior to 25.10.1980, i.e. enactment of the FC Act, would  
not be against the spirit of the FC Act, and this Hon’ble  
B Court’s order dated 12.12.1996, if such areas were  
included in the ‘list of forest area” on technical reasons  
alone. However, the areas closed under Section 4 of the  
PLPA are recorded as ‘forest’ in the Forest Department’s  
records for the last 40-50 years. This Hon’ble Court by  
C order dated 12.12.1996 has held that areas recorded as  
‘forest’ in Government records are forest for the purpose  
of the Section 2 of the FC Act. It would therefore be  
necessary to obtain prior approval of the Central  
Government under Section 2 of the FC Act, for deleting  
D such areas from the “list of the forest area” after following  
the procedure as laid down in the Forest (Conservation)  
Rules, 1981, and the guidelines issued by the Central  
Government for implementation of the said Act. Irrespective  
of the merits of the case, it would not be  
E appropriate to allow deletion of such area from the ‘list of  
forest area” without following the prescribed procedure and  
provisions of the Forest (Conservation) Act.”

Thus, what the High Court was called upon to decide is  
whether the land on which the Forest Hill Golf and Country Club  
F of Col. B.S. Sandhu was situated was forest land as on  
25.10.1980 irrespective of its classification or ownership. This  
is a factual question and the High Court should have decided  
this factual question on the basis of Government records as on  
25.10.1980 and other materials filed before the High Court, but  
G the High Court has instead decided this question by reference  
to the provisions of the PLP Act, 1900 and the records of the  
Forest Department in which the land was shown to be under  
the Forest Department because of the fact that the land was  
closed under the PLP Act, 1900 several decades before the  
H enactment of the Forest (Conservation) Act, 1980. Moreover,

by recording a blanket finding that all land in village Karoran, District Ropar, was 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980, the High Court has affected the legal rights of several villagers, agriculturists, farmers, shop owners, inhabitants of village Karoran, District Ropar, who were carrying on their respective occupations on their land even before the enactment of the said Act on 25.10.1980. In our view, the High Court should have been very careful before recording findings which affect the property rights of persons protected by Article 300A of the Constitution.

17. We have also examined the two decisions of this Court in the first and second cases of M.C. Mehta cited on behalf of the State of Punjab and we find that the aforesaid decisions have been rendered in the case of Aravali Hills in the State of Haryana and it was held therein that as the State Forest Department had been treating and showing the areas as 'forest', in fact and in law, the area was forest and non-forest activities could not be allowed in such areas without the prior permission of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. In these two decisions, this Court has not enquired into the basis of inclusion of the areas in forest by the State Forest Department nor has this Court considered as to whether a land becomes 'forest land' by mere inclusion of the same under the notification under Section 3 of the PLP Act, 1900. In the present case, on the other hand, the State Government has in its affidavit stated before this Court that the basis of inclusion of the entire land of village Karoran, District Ropar, in forest areas in the records of the Forest Department of Government of Punjab was that the land was closed under the PLP Act, 1900 and we have found this basis as not correct in law.

18. We, therefore, set aside the finding of the High Court that the entire land in village Karoran, District Ropar, is 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 and remand the matter to the High Court for fresh

- A hearing and fresh order in accordance with law. Consequently, all directions in the impugned order which flow out of the aforesaid finding of the High Court that the land was 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 are set aside. We, however, make it clear that we have
- B not set aside the directions for investigation by the CBI in the impugned order.

Nidhi Jain

Appeal allowed.