

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: April 12, 2017

+ W.P.(C) 2924/2014

SARIN MEMORIAL LEGAL AID FOUNDATION Petitioner

Versus

STATE OF PUNJAB & ORS. Respondents

+ W.P.(C) 2999/2014 & CM No.9439/2014

AALOK JAGGA Petitioner

Versus

UNION OF INDIA & ORS. Respondents

Present: Mr. P.S. Patwalia, Sr. Adv. with Mr. P.S. Bindra,
Mr. Ashok Kr.Mahajan, Mr.Archit Upadhyay, Advs. for the
petitioners.
Ms. Anjana Gosain, Adv. with Mr. Vishu Agrawal, Adv. for
Union of India.
Mr. Gopal Subramaniam, Sr. Adv. with Mr. Manu Nair,
Mr. Anuj Berry, Mr. Siddhanth Kochhar, Adv. for R-8.
Mr. A.S. Chandhiok, Sr. Adv. with Ms. Manmeet Arora,
Ms. Princy Ponnann, Ms. Nidhi Mohan Parashar, Advs. for
the U.T. of Chandigarh.
Mr.Puneet Bali, Sr.Adv. with Mr.Ajay Bansal, Mr.Gaurav
Yadav, Mr.S.Bhalla and Mr.Y.Bhalla, Advs. for State of
Punjab.
Mr. Sudipto Sircar, Adv. with Mr. A.D.N. Rao, Adv. for
ASI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: MS.G.ROHINI, CHIEF JUSTICE

1. These two writ petitions have been taken up by us pursuant to the following order of the Hon'ble Supreme Court of India dated 22.04.2014 in Civil Appeal No.4847/2014, Civil Appeal No.4848/2014 and W.P.(C) No.994/2013:

"Delay is condoned in filing special leave petition in Special Leave Petition (Civil) No. 32660 of 2013.

2. Leave granted in the special leave petitions.

3. After arguing for some time, learned senior counsel for the parties, on instructions, have agreed for the following order:-

(i) (a) The judgment and order dated 26.03.2012 passed by the High Court of Punjab and Haryana in Civil Writ Petition No. 20425 of 2010, *Aalok Jagga Vs. Union of India & others*, is set aside and Writ Petition is restored to its original number and it is transferred to the Delhi High Court for its adjudication.

(b) The petitioner in the above Writ Petition, on restoration, is granted leave to amend the Writ Petition and make necessary pleadings relating to the question whether or not the project land of respondent No. 6 falls within the catchment area of Sukhna lake. This will obviously include the aspect concerning Section 48(5) of the Punjab Reorganisation Act, 1966 read with the 13th Schedule appended thereto and the notification dated 15th March, 1963 No. 1789-Ft-IV/63/898. The necessary amendment in the Writ Petition shall be made within three weeks.

(c) Respondent No. 6 and other contesting respondents may file amended counter affidavit/s within two weeks thereafter so

as to complete the pleadings in the transferred Writ Petition in all respects before the Delhi High Court closes for summer vacation.

(ii) (a) Writ Petition (Civil) No. 994 of 2013, *Sarin Memorial Legal Aid Foundation Vs. State of Punjab & Others*, filed before this Court under Article 32 of the Constitution of India is converted into Writ Petition under Article 226 of the Constitution of India and is being transferred to the Delhi High Court for consideration and disposal along with the above transferred Writ Petition.

(b) The contesting respondents waive service in the Writ Petition. They may file their written response within three weeks from today and rejoinder may be filed by the petitioner within two weeks thereafter so as to complete the pleadings in all respects before the Delhi High Court closes for summer vacation.

(iii) We clarify that the High Court of Punjab and Haryana shall not decide the Civil Writ Petition No. 18253 of 2009 (O&M), *Court on its own motion Vs. Chandigarh Administration and others*, the following issue:-

Whether or not the project land of respondent No.6 falls within the catchment area of Sukhna lake?

4. We order accordingly.

5. The above two matters, namely, Civil Writ Petition No. 20425 of 2010 and Writ Petition (Civil) No. 994 of 2013 which have been transferred to the Delhi High Court shall be heard by a Division Bench. We request the Division Bench to hear and decide the above transferred matters as early as may be possible and preferably by August 31, 2014. No fresh Writ Petition in respect of the above controversy shall be entertained by any Court.

6. We record and accept the statement of Mr. Gopal Subramaniam, learned senior counsel for the respondent No.6, that until the decision of the Delhi High Court in the above transferred matters and for a period of one month thereafter the respondent No. 6 shall maintain *status quo* as obtaining today in respect of the subject project land.

7. In view of the above statement, the impugned order dated 21.08.2013 does not survive and is rendered ineffective.

8. The Registry of this Court as well as the Registry of the High Court of Punjab and Haryana are directed to transmit the respective records of the above cases to the Delhi High Court forthwith.

9. Civil Appeals and Writ Petition are disposed of as above. No costs."

2. It may be elaborated that Tata Camelot Housing Colony (CAMELOT), a high performance residential building cum retail complex, proposed to be set up by M/s Tata Housing Development Company Ltd. (for short "Tata HDCL") in the revenue estate of Village Kansal, Tehsil Kharar, Distt. Mohali in State of Punjab is the subject matter of the dispute between the parties.

3. A Public Interest Petition being Civil Writ Petition No.20425/2010 titled ***Aalok Jagga v. Union of India and Ors.*** was filed in the High Court of Punjab & Haryana challenging the permissibility of construction of the said housing project on various grounds, including that (i) the project is in violation of the provisions of the Punjab New Capital (Periphery) Control Act, 1952 (for short 'Periphery Control Act, 1952'), (ii) that the project is not authorized under the provisions of the Environment (Protection) Act, 1986 since the same lies in the eco-sensitive and protected area, (iii) that it is in close proximity to the Sukhna

Wild Life Sanctuary and (iv) that the same has the potential of adversely affecting the claim of Chandigarh to the status of a heritage city which matter is pending before the concerned world body.

4. The said writ petition was disposed of by a Division Bench of the High Court of Punjab & Haryana by order dated 26.03.2012 holding that the Periphery Control Act, 1952 does not contemplate a complete embargo on the raising of construction in the periphery. It was also held that the provisions of the Periphery Control Act, 1952 and Punjab Regional and Town Planning & Development Act, 1995 (for short 'PRTP&D Act, 1995') are complimentary to each other. Thus, it was concluded that the provisions of both the statutes would apply to the project in question and accordingly the construction of the proposed project was allowed subject to the grant of the relevant permissions, clearances and approvals by the appropriate authorities.

5. The petitioner therein (Mr. Aalok Jagga) carried the matter to the Supreme Court by filing Special Leave Petition (C) No.32660/2013 which was numbered as Civil Appeal No.4848/2014.

6. The High Court of Punjab & Haryana on its own motion had also taken up another writ petition in public interest being Civil Writ Petition No.18253/2009 titled ***Court on its own motion v. Union Territory Chandigarh & Ors.*** and various orders came to be passed from time to time for restoring 'Sukhna Lake' to its former glory and for maintaining the catchment area. By one such order dated 14.05.2012, the States of Punjab and Haryana as well as UT Chandigarh were directed to put their enforcement agencies in action and

stop immediately any construction activities which are going on in the catchment area as per the map prepared by the Survey of India and any construction raised in violation of the directions issued by the court shall be demolished without issuing any notice. There was also a direction that the UT Administration shall give wide publicity to the catchment area as depicted in the map prepared by the Survey of India which was adopted by Chandigarh Administration officially as map of catchment area of Sukhna Lake so that general public is made aware that no construction is permitted in that area. Against the said order dated 14.05.2012 though Tata HDCL filed a Special Leave Petition before the Supreme Court, the same was dismissed as withdrawn by order dated 02.09.2013 with liberty to the petitioner/Tata HDCL to file a clarification petition before the Punjab & Haryana High Court. Accordingly, Tata HDCL filed an application, i.e., CM No.206/2012 seeking clarification of the order dated 14.05.2012 in Civil Writ Petition No.18253/2009. By order dated 21.08.2013, the High Court of Punjab & Haryana allowed CM No.206/2012 and it was clarified that the order dated 14.05.2012 would not affect the project of Tata HDCL in view of the decision rendered on 26.03.2012 in CWP No.20425/2010 which was specific to the project in question and the said order would govern the requirements to be met by Tata HDCL qua the project.

7. Aggrieved by the order dated 21.08.2013, Sarin Memorial Legal Aid Foundation filed Special Leave Petition (C) No.32659/2013 which was subsequently numbered as Civil Appeal No.4847/2014.

8. In addition to the above-noticed two Civil Appeals, Sarin Memorial Legal Aid Foundation filed W.P.(C) No.994/2013 before the Supreme Court of India under Article 32 of the Constitution of India challenging the grant of final environment clearance dated 17.09.2013 by the State Level Environment Impact Assessment Authority, Punjab for the Housing Project of Tata HDCL viz. CAMELOT.

9. The Civil Appeal Nos.4847 and 4848/2014 as well as the Writ Petition (Civil) No.994/2013 were taken up by the Supreme Court together and were disposed of by the abovementioned order dated 22.04.2014 by virtue of which (i) the order of the High Court of Punjab & Haryana dated 26.03.2012 in Civil Writ Petition No.20425/2010 (Aalok Jagga v. Union of India) was set aside and the Writ Petition was restored to its original number and transferred to this court for its adjudication; and (ii) W.P.(C) No.994/2013 (Sarin Memorial Legal Aid Foundation v. State of Punjab) filed under Article 32 of the Constitution of India was converted into a Writ Petition under Article 226 of the Constitution of India and was transferred to this court for consideration and disposal.

10. So far as Civil Appeal No.4848/2014 which was directed against the order of the High Court of Punjab & Haryana dated 21.08.2013 in CM No.206/2012 in Civil Writ Petition No.18253/2009 is concerned, it was ordered by the Supreme Court that in view of the statement of the learned Senior Counsel for Tata HDCL that until the decision of this court in the transferred matters and for a period of one month thereafter status quo obtaining as on that date would be maintained in respect of the subject project land, the order dated 21.08.2013 is

rendered ineffective. However, it was further added that the High Court of Punjab & Haryana shall not decide the issue "whether or not the project land of respondent No.6 falls within the catchment area of Sukhna Lake" which is under consideration in Civil Writ Petition No.18253/2009.

11. Pursuant to the order of the Supreme Court dated 22.04.2014, Civil Writ Petition No.20425/2010 on the file of the High Court of Punjab & Haryana titled *Aalok Jagga v. Union of India & Ors.* has been transferred to this court and has been renumbered as **W.P.(C) No.2999/2014**. Similarly, Writ Petition (Civil) No.994/2013 on the file of the Supreme Court of India (filed under Article 32 of the Constitution of India) titled *Sarin Memorial Legal Aid Foundation v. State of Punjab & Ors.* has been transferred to this court and has been renumbered as **W.P.(C) No.2924/2014**.

W.P.(C) 2999/2014 (Aalok Jagga vs. Union of India):

12. In terms of the leave granted by the Supreme Court to add the pleadings relating to the question whether or not the project land of CAMELOT falls within the catchment area of Sukhna Lake, the petitioner in W.P.(C) No.2999/2014 (*Aalok Jagga v. Union of India & Ors.*) filed CM No.6296/2014 for amendment of the writ petition and the same was allowed by us. It may be mentioned that during the pendency of the proceedings before the Supreme Court, the permission under Section 6 of the Periphery Control Act, 1952 for construction of the housing project in question was granted to Tata HDCL vide proceedings of the Executive Officer, Nagar Panchayat Naya Gaon dated 05.07.2013. Though there is no specific reference to the permission dated

05.07.2013 in the pleadings, apparently the challenge is to the said permission and the prayers included quashing of the permission granted under Periphery Control Act, 1952

13. The averments in W.P.(C) No.2999/2014 as amended are as under:-

- Tata HDCL proposed to construct 19 towers of 7 to 28 storeys in an area admeasuring 52 acres which is located about 1500 mtrs. from Sukhna Lake and 123 mtrs from the Wild Life Sanctuary. The petitioner came to know of the said fact through the local newspapers on 11.11.2010.
- The Master Plan for the city of Chandigarh was prepared by the famous French Architect, Le Corbusier who had conceptualized the same as an urban organism with its various segments being connected with different parts of a human body. As per the Master Plan so drafted by Le Corbusier, the Capitol Complex with the backdrop of the Shivalik Hills, which consisted of the Secretariat, High Court and the Legislative Assembly collectively, constituted the 'Head' and the same is the focus of the edict of the city of Chandigarh.
- The housing project in question the construction of which has been sanctioned by the State of Punjab is situated right behind the Capitol Complex, zero kilometer from the periphery of Chandigarh.
- The area over which the housing project is proposed to be constructed was initially allotted to 'Punjab MLA Society' for construction of residential houses of MLAs of Punjab Legislature. Subsequently, the said land was sold to M/s Hash Builders Private Limited with an understanding that

each member of the 'Punjab MLA Society' would be allotted one flat each. Thus, the sanction granted for the proposed project for extraneous considerations is apparently illegal.

- The building complex would completely obstruct the view of the Shivalik Hills and would create a concrete barrier between the Capitol Complex and the Shivalik Hills in complete deference to the edict of Chandigarh conceptualized by Le Corbusier.
- The land over which the project in question is proposed to be constructed falls within the catchment area of Sukhna Lake and thus poses a serious threat to the Sukhna Lake, which is the precious lake of Chandigarh. It would also result in great threat to the Wildlife Sanctuary situated just about 123 mtrs. from the proposed project and also the entire area which is ecologically fragile apart from resulting in extreme pressure on the natural resources like water, electricity, transport, etc. None of these aspects were considered by the State of Punjab while granting permission for the project in question.
- The proposed project is also in complete violation of the Periphery Control Act, 1952, which was promulgated with the intention of controlling and regulating the periphery of Chandigarh, the capital of the State of Punjab.
- It is also in violation of the policy formulated by the State of Punjab pursuant to the directions issued by the High Court of Punjab and Haryana in CWP No.14357/2002 under which no residential development project can be permitted unless the same was of a minimum area of 100 acres.

- In pursuance of the order of the High Court of Punjab and Haryana in CWP No.7649/2003 titled ***Dr.B.Singh Vs. Union of India & Ors***, the Survey of India prepared a map demarcating the catchment area of Sukhna Lake and the land over which the project in question is proposed to be constructed falls within the catchment area so demarcated.
- By order dated 19.03.2004 in CWP No.7649/2003, the High Court of Punjab & Haryana restrained the Government of Haryana from constructing low volume habitational schemes close to Sukhna Lake.
- Again by order dated 16.07.2004 in CWP No.7649/2003, the High Court of Punjab & Haryana banned all construction activity in the catchment area of Sukhna Lake.
- By order dated 24.09.2004 in C.M.No.17226/2004 in CWP No. 7649/2003, the map dated 21.09.2004 prepared by the Survey of India with regard to the catchment area of Sukhna Lake with clear demarcation of the boundaries of the catchment area was taken on record.
- In W.P.(C) No.18253/2009 titled ***Court on its own Motion vs. UT Chandigarh and Ors.*** also in High Court of Punjab and Haryana passed an interim order dated 14.03.2011 banning housing colonies or building activities of any kind in the catchment area falling within the jurisdiction of the States of Punjab and Haryana in terms of the map prepared by the Survey of India. By subsequent order dated 14.05.2012, it was also recorded by the High Court of Punjab & Haryana that having participated in the proceedings and never objecting to the map of Survey of India, the

State of Punjab could not go back and raise any objection as to the correctness of the said map.

- It was also ordered in W.P.(C) No.18253/2009 that any construction raised in violation of the orders of the Court should be demolished without any further notice.
- Though C.M.No.206/2012 filed by Tata HDCL for clarification/modification of the said order dated 14.05.2012 was allowed holding that the earlier orders dated 14.03.2011 and 14.05.2012 would not affect the project of Tata HDCL, the Supreme Court in Civil Appeal No.4847/2014 titled *Sarin Memorial Legal Aid Foundation vs. State of Punjab and Ors.* held that the order dated 21.08.2013 in C.M.No.206/2012 was rendered ineffective and would not survive. Thus, the earlier orders passed by the High Court of Punjab & Haryana restraining the constructions in the catchment area of Sukhna Lake have been in operation. Hence, the State Level Environment Impact Assessment Authority (SEIAA), Punjab should not have granted the Environmental Clearance (EC) to the project in question which falls within the catchment area of Sukhna Lake.
- As per the Survey of India map, the catchment area of Sukhna Lake comprises Sukhna Wildlife Sanctuary, lower Shivalik Hills and foothills of Shivalik, Sukhna Cho and surrounding areas declared as reserve forest. Thus the entire area is highly eco-fragile and any construction within the catchment area would cause irreversible damage to the environment.

- The Master Plan, 2021 of Nagar Panchayat Naya Gaon also acknowledged the fact that Naya Gaon is precariously located in the vicinity of lake, forest and the Capitol Complex and thus, it was stated that the planning and development of Naya Gaon has to face and meet all possible planning challenges. Contrary to the same, the impugned permission has been granted allowing high rise structure in the catchment area.
- The area on the north of the Capitol Complex extending upto the foothills of the Shivalik Hills has been approved by the Government of India on 23.12.2011 as 'Heritage Zone-1' as recommended by the Expert Heritage Committee. The natural backdrop of the Shivalik Hills and uninterrupted view of the Shivalik Hills has also been approved for heritage status. The said area on the north of the Capitol Complex was also delineated as a 'protected forest' and as 'no development zone' in the Chandigarh Urban Complex Plan and the Chandigarh Inter-State Regional Plan that were prepared through inter-state working groups assisted by the Town and Country Planning Organization in terms of the directions of the Co-ordination Committee constituted by the Government of India to ensure co-ordinate development of Chandigarh.
- The Chandigarh Administration vide letter dated 09.05.2013 submitted a draft Notification to the Ministry of Environment and Forest, Government of India for declaration of eco-sensitive zone around the Wildlife Sanctuary and the same is to be finally notified by the Central Government under Section 3 of the Environment (Protection) Act, 1986.

- The city of Chandigarh has been on the tentative list of UNESCO World Heritage Sites and the administration is actively pursuing for inclusion of the Capitol Complex designed by Le Corbusier in the UNESCO World Heritage List and, therefore, it is essential to preserve the original concept of the city and to maintain the natural backdrop of the Shivalik Hills.
- As per the recommendations dated 05.07.1997 made by the Co-ordination Committee constituted by the Government of India, the developments in the periphery area in terms of the provisions of the Punjab New Capital (Periphery) Control Act, 1952 need to be controlled and co-ordinated to ensure all development in the periphery forms part of a single Integrated Plan for sustainable regional development. Regarding Sukhna Lake and its catchment areas, it was recommended by the Co-ordination Committee that no development in the peripheral area should be taken up if the same affects the environment and the quality of the lake.
- By order dated 29.05.2012, the High Court of Punjab and Haryana constituted a Special Tribunal to identify the Government and Shamlat land and the Tribunal submitted its interim report. A portion of the land over which the project in question is proposed to be constructed falls in the Shamlat Deh land of village Kansal as per the interim report of the Special Tribunal and therefore, no construction can be carried out on the said land.
- In terms of Section 48(5) of the Punjab Re-organization Act, 1966 read with the Thirteenth Schedule, not only the lands that were acquired by the

existing State of Punjab for soil conservation measures in the catchment area of Sukhna Lake but also all areas falling within the catchment of Sukhna Lake, i.e., other areas which have been subsequently determined to be part of the catchment area, shall also vest in the Central Government and therefore, all areas defined as catchment area in the map prepared by Survey of India shall vest in Union of India and are outside the control of the States of Punjab and Haryana.

- Therefore, the Punjab Government has no authority or jurisdiction to sanction any project in the catchment area.
- Since the proposed project runs counter to the Edict of Chandigarh as visualized by its founder architect, Le Corbusier, on the basis of which the entire city of Chandigarh has been planned, on that ground also the construction of the project should not have been permitted.

14. On the basis of the above pleadings, the following relief is sought in W.P.(C) No.2999/2014:

"It is therefore prayed that this Hon'ble Court may be pleased to issue:

- (i) an appropriate writ, order or direction including a writ in the nature of mandamus calling for the records of the project namely Tata Housing Camelot Colony at Kansal with a further prayer to quash the necessary sanction/approval/permission granted for execution of the said project being in complete violation of the Punjab New Capital (Periphery) Control Act, 1952 and the rules made thereunder and also against the very edict of the city of Chandigarh as conceptualized by Le-Corbusier and in serious violation of the Sukhna Cho to which the area in question is a reservoir/catchment area;

(ii) an appropriate writ, order or direction including a writ petition in the nature of mandamus restraining the respondents from commencing the work including construction and sale, allotment for the said project which as per the knowledge of the petitioner is likely to commence shortly in view of the fact that the commencement certificate is in the process of being executed in favour of respondents 8 and 9;

(iii) an appropriate writ, order or direction including a writ in the nature of mandamus directing the respondents to maintain/preserve the aid area as vacant natural land as was conceptualized by the founder architects of the city of Chandigarh i.e. Le Corbusier and on the basis of which the entire city of Chandigarh especially the capitol complex has been planned;

(iv) direct the respondent Union Territory Chandigarh to actively pursue the application pending before the UNESCO for declaring the city of Chandigarh as a World Heritage City and to take necessary steps for enabling the said declaration.

(v) an appropriate writ, order or direction including a writ in the nature of certiorari setting aside/quashing the Nagar Panchayat Naya Gaon master plan Annexures P6 and P7 vide which the area/site of proposed colony is coming up has been declared to be residential zone of the provisions of the Punjab New Capital (Periphery) Control Act, 1952 and the rules framed thereunder.

(vi) any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of this case.

xxx xxx"

W.P.(C) No.2924/2014 (Sarin Memorial Legal Aid Foundation v. State of Punjab & Ors.):

15. The petitioner in this writ petition has fundamentally challenged the jurisdiction of SEIAA, Punjab to grant the Environmental Clearance to Tata HDCL. The grounds of challenge are as under:

- As per the General Conditions prescribed in the Note to the Notification dated 14.09.2006 issued by the Ministry of Environment and Forests (MoEF) under Section 3 of the Environment (Protection) Act, 1986, the project proposed by Tata HDCL having been located within 10 kms. from the Sukhna Wild Life Sanctuary as well as the Inter-State boundary, has to be treated as Category 'A' project/activity and consequently, Central Government, MoEF alone is the competent authority to grant the Environmental Clearance.
- The State of Punjab should not have granted the clearance in view of the acute difference of opinion between the State of Punjab and UT Chandigarh. It is pointed out that Union Territory Chandigarh has already filed an affidavit in CWP No.20425/2010 titled ***Aalok Jagga Vs. Union of India and Ors.*** opposing the location of the project in question and that apart the Department of Forests and Wild Life Sanctuary, Chandigarh by order dated 20.04.2011 had declined NOC to Tata HDCL.
- Though territorially the project in question is situated in the State of Punjab, its entire environmental impact is on the territory of Chandigarh, since the impact of sewerage, ground water, environment etc. would be on the territories of Chandigarh. In view of the divergent stands taken by the

State of Punjab and UT Chandigarh, and in view of the fact that there will be negligible environment impact in Punjab, it is imperative that the Environmental Clearance in the present case is considered by the Central Government, MoEF.

- SEIAA, Punjab failed to appreciate the fact that though technically the project in question is located in Punjab, the entire adverse impact of the project will be on the environment within Chandigarh. SEIAA has also failed to take into consideration:-
 - (a) the extreme pressure on water, electricity and transport that would be created in Chandigarh,
 - (b) the vehicular and noise pollution which will have adverse impact on Sukhna Wild Life Sanctuary,
 - (c) the three proposed roads to the project in question are extremely narrow and are passing through the Village Lal Dora land,
 - (d) the feasibility to connect the project in question to the sewerage plant proposed to be set up by Tata HDCL in Naya Gaon,
 - (e) the impact of high rise building of 28-storeys on the edict and norms of city of Chandigarh; and
 - (f) that there is no valid clearance under the Punjab New Capital (Periphery) Control Act, 1952.
- The project in question having been located within the catchment area of Sukhna Lake it will have an adverse effect on Sukhna Lake since even according to Tata HDCL, 75% - 80% of their water requirement would be met through ground water.

- The impugned environmental clearance is contrary to the order passed by the High Court of Punjab & Haryana imposing complete ban on any construction in the catchment area in view of the ecological fragility and edict of city of Chandigarh.
- The impugned environmental clearance granted by SEIAA, Punjab which has suffered from legal malafides, amounts to colourable exercise of power since about 95 MLAs of the State of Punjab are the beneficiaries of the project in question.

16. On the above pleadings, it is prayed in W.P.(C) No.2924/2014:

"In the aforesaid premises, it is, therefore, most humbly and respectfully prayed that this Hon'ble Court may be graciously pleased to:

(i) issue a writ, order or direction in the nature of certiorari quashing the agenda item No.51.10 of the State Level Environment Impact Assessment Authority, Punjab - respondent No.3 recommending environmental clearance under EIA notification dated 14.09.2006 for Group Housing-cum-Retail Complex namely 'Camelot' to be developed in the revenue estate of village Kansal, Tehsil Kharar, Distt. Mohali by M/s Tata Housing Development Company Ltd. and consequential letter dated 17.9.2013 granting environmental clearance to M/s Tata Housing Development Company Ltd. for the Group Housing-cum-Retail Complex namely 'Camelot'.

(ii) issue a writ of mandamus directing the respondents to produce a complete copy of the letter dated 17.9.2013 granting environmental clearance to respondent No.8 M/s Tata Housing Development Company Ltd. for the Group Housing-cum-Retail Complex namely 'Camelot' and thereafter to issue a writ of

certiorari quashing the aforesaid letter dated 17.09.2013 granting environmental clearance to the project of respondent No.8;

(iii) pass any other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

17. Detailed counter affidavits have been filed by the State of Punjab, UT Chandigarh and Tata HDCL in both the writ petitions. The stand taken by the said respondents may be summarized as under.

Counter Affidavits filed on behalf of State of Punjab:

W.P.(C) No.2999/2014

- a) As per the notified Master Plan of 2021 of Nagar Panchayat, Naya Gaon, the area towards north has been shown as forest. The exact distance and existence of wildlife sanctuary was noticed after the visit of the team of MoEF on 10.01.2011 and thereafter, the project proponent had applied for NOC from the Chief Wildlife Warden, Chandigarh as well as the National Wildlife Board. Though the Chief Wildlife Warden, Chandigarh had declined NOC by letter dated 20.04.2011, it is of no consequence since Chief Wildlife Warden is not a competent authority under the Act. As per the guidelines issued by MoEF dated 15.03.2011, the Chief Wildlife Warden has to forward the application for NOC with his comments to the Standing Committee of National Wildlife Board. The said fact was brought to the notice of the project proponent only on 21.07.2012 in response to application made under the Right to Information Act.

Accordingly, a revised Form-1 and Form-1A have been submitted by the project proponent.

- b) The proposed project is situated within the revenue estate of State of Punjab and as such, the edict of Chandigarh is not applicable. Even otherwise, there is no embargo for construction activity in north of Chandigarh as stated by the UT Administration itself in CWP No.20425/2010.
- c) The provisions of Periphery Control Act have to be applied while preparing the zoning regulations and/or while notifying the master plan of the area. Separate zoning regulations have already been notified by the States of Punjab and Haryana and UT Chandigarh. The Master Plan of the area Naya Gaon has been notified by the State of Punjab vide Notification dated 02.01.2009. As per the report submitted by the local Government, Punjab to SEIAA by letter dated 05.06.2013, the activity proposed by the respondent No.8 is permissible under the Zoning Regulations/notified Master Plan. The SEIAA is concerned with the permissibility of the proposed activity/project under the notified Master Plan. So far as the map prepared by Survey of India regarding the catchment area of Sukhna Lake, it is pleaded that the same is not conclusive since the objections are yet to be heard.

W.P.(C) No.2924/2014

- i) The application of Tata HDCL was rightly considered by SEIAA, Punjab since building/construction projects, area developments and township projects fall under the competency of State Environment Impact

Assessment Authority. Regarding the applicability of General Condition in the Note to the Notification dated 14.09.2006, it is pleaded that the fact that column 5 of the Schedule was silent about the applicability of General Condition or Special Condition for the projects mentioned in 8(a) and 8(b) whereas for all other categories, it has been specifically mentioned itself shows that the said condition is not applicable for projects mentioned in 8(a) and 8(b).

- ii) The reports received from the Department of Forest, Punjab, PCCF Punjab and SDO, Department of Drainage revealed that as per the verification of the site, the area of village-Kansal does not form part of the reserve forest and the same is not under the control of the Department of Forest, Punjab; that Kansal *nadi* has been diverted and a *bandh* has been constructed at 367 mtrs. above MSL to bifurcate hilly area from plain area and that the EIA Report prepared by the project proponent/Tata HDCL has already been accepted by the previous SEAC and EAC of Ministry of Environment and Forests on the basis of Model Terms of Reference prepared by MoEF. Therefore, SEAC had rightly recommended for grant of clearance.
- iii) Before granting environment clearance to the respondent No.8, the authorities have followed due process of law and satisfied themselves on each and every aspect of the project and its effect on the environment and ecology.
- iv) Though the project is located within 10 km. of interstate boundary/wildlife sanctuary, as per the Schedule attached to the

Notification 04.09.2006, the cases to which General Condition is applicable has been specifically mentioned in column (5) against each project/activity. In case of building/constructions projects/area development and township projects, there was no mention of applicability of General Condition. Moreover, in the comments offered by the Director, MoEF Regional Office, Chandigarh dated 17.04.2013, it was mentioned that since the nearest distance of Sukhana Wildlife Sanctuary from the project boundary on northern side is 123 mtrs., as per the Office Memorandum dated 02.12.2009 of MoEF, the project proponent has to obtain clearance from the Standing Committee of National Board for Wildlife before starting any work in the site. At any rate, as is evident from the Department of Drainage, Punjab, since Kansal *nadi* has been diverted and that apart a *bandh* has been constructed at 367M above MSL to bifurcate hilly area from plain area and that village-Kaimbwala is located at 363 to 365M above MSL and thus acts as a barrier between village-Kansal and Sukhana Lake, the construction of the project will not have any impact on the drainage of the area.

Counter Affidavits filed on behalf of Chandigarh Administration:

18. Chandigarh Administration has been arrayed as respondent No.4 in W.P.(C) No.2924/2014 and as respondent No.7 in W.P.(C) No.2999/2014.

W.P.(C) No.2999/2014

- a) A detailed counter affidavit dated 28.05.2014 has been filed on behalf of Chandigarh Administration in W.P.(C) No.2999/2014 followed by an additional affidavit dated 11.08.2014 stating that the project proposed to be

developed by Tata HDCL falls in the catchment area of Sukhna Lake and the heritage zone of the Capitol Complex would have a direct and adverse impact on the existence of Sukhna Lake and the environs of Chandigarh City. In para-6 and 7 of their counter affidavit, while explaining the topography of Chandigarh City and its ecologically fragile character, it is stated that Chandigarh City is now fully developed and two satellite towns, namely, SAS, Nagar Mohali (Punjab) and Panchkula (Haryana) along with suburban areas, namely, Zirakpur, Naya Gaon and Mullanpur (all in Punjab) have encircled it from three sides/directions, i.e., South, East and West; that the Northern side of Chandigarh, which incidentally is also the catchment area for the Sukhna Lake is an ecologically fragile area and a substantial part thereof comprises of forest area that has been declared a Wild Life Sanctuary; that there is hardly any space left in the periphery of Chandigarh which can be used for urbanization and that the development of the project in question in the catchment area of Sukhna Lake would jeopardize the very existence of Sukhna Lake as well as the unique character of the city of Chandigarh. While stating that Chandigarh Administration is fully committed to save the heritage of Chandigarh, its forest area, Wildlife Sanctuaries and preserve Sukhna Lake, the steps being undertaken by the Chandigarh Administration are placed on record in the form of letters written by the Conservator of Forests, UT, Chandigarh to the Chief Architect, UT Chandigarh for inclusion of the area proposed as Wild Life Corridor along with approval accorded by the Planning Commission of India in the Master Plan of Chandigarh. It is stated that

Chandigarh Administration is also pursuing its application for recognition of Capitol Complex Chandigarh for UNESCO World Heritage status for the city and that the Urban & Architectural Works of Le Corbusier in Chandigarh are on the tentative World Heritage list of UNESCO since 2006.

b) In Para-16 and 17, it is further explained as under:-

"16. That in 2010, the Government of India constituted the 'Expert Heritage Committee' under the Chairmanship of the Administrator to give its recommendations for preserving the uniqueness of the city, and for ensuring the same for eternity. The report of this Expert Committee has been approved by the Government of India vide its letter dated 23.12.2011.

17. On the recommendations of the Expert Committee, the Chandigarh's Enlisted Heritage - Heritage Zones, Heritage Precincts, Heritage Buildings, Natural Area, features and vistas have been approved along with their grading. It is pertinent to mention that the Government of India has approved the area which extends northwards beyond the administrative boundaries of the Chandigarh Administration upto the foothills of the Shivalik Hills as Heritage Zone 1."

c) It is alleged that the Nagar Panchayat Naya Gaon Township being developed by the Punjab Government on the North of the Capitol Complex is ruining the very essence and concept of the original Master Plan of Chandigarh and the extensive urbanization proposed by Punjab Government by allowing the projects such as Tata Camelot would completely overshadow the entire Shivalik Hills. It is also alleged that

though the Nagar Panchayat Naya Gaon Township area falls in the controlled area legislated by the Periphery Control Act, 1952, the plan has been prepared without approval of the Co-ordination Committee or co-ordination with the Chandigarh Administration. Raising various objections about the high-rise construction proposed to be made by Tata HDCL as permitted by Punjab Government, it is contended that the same is not in conformity with the Nagar Panchayat Naya Gaon Final Master Plan, 2021 also since the said Master Plan itself states that Naya Gaon is precariously located in the vicinity of lake, forest and the Capitol Complex, therefore, planning and development of Naya Gaon has to face and meet all possible planning challenges.

- d) While asserting that the project in question is an environmentally insensitive project, it is contended that since the project is located within the eco-sensitive zone and within 10 kms. from Sukhna Wildlife Sanctuary, the project proponent/Tata HDCL should have sought prior clearance from the Standing Committee of National Board for Wildlife before seeking the Environmental Clearance. Referring to previous orders passed by the High Court of Punjab & Haryana from time to time for protection of Sukhna Lake and its catchment area, it is further pleaded that no housing, commercial or industrial project should be allowed on the North of the Capitol Complex of Chandigarh and, therefore, the writ petitions may be allowed and no construction may be permitted to the North of Chandigarh.

W.P.(C) 2924/2014

a) In W.P.(C) No.2924/2014 the Chandigarh Administration/respondent No.4 and the Department of Forests and Wildlife, Chandigarh Administration/respondent No.5 together filed a counter affidavit dated 28.05.2014 stating that the proposed project falls within the catchment area of Sukhna Lake as identified in the map prepared by Survey of India in pursuance of the order of the Punjab & Haryana High Court in CWP No.7649/2003 titled *Dr.B.Singh Vs. Union of India & Ors.* The various grounds on which the Chandigarh Administration opposes the Environmental Clearance granted by SEIAA, Punjab have been enumerated in para-24 as under:-

- That the Tata Housing Project Site is located in the catchment area of Sukhna Lake. It is also located in the Eco-sensitive Zone of the Sukhna Wildlife Sanctuary and project site is located merely at a distance of 123 meters from the boundary of Sukhna Wild Life Sanctuary.
- That the construction of such project will definitely increase the vehicular pollution and noise pollution by several manifold, which will definitely have adverse impact on the wildlife present in the adjoining Sukhna Wildlife Sanctuary. Similarly, there will be extreme pressure on water, electricity and transport due to construction of project of such a large magnitude in this area.
- That the State Environmental Impact Assessment Authority, Punjab has completely blinded itself to the reality and has pushed through the Environmental

Clearance of the project in spite of filing of opposition by Chandigarh Administration through Conservator of Forests, Chandigarh highlighting lots of technical deficiencies in the project proposal submitted by M/s Tata Housing Pvt. Ltd. including Rapid EIA Study carried out without taking the existence of Sukhna Wildlife Sanctuary in the nearby vicinity.

- That at the first instance itself, SEIAA, Punjab should not have accepted the application submitted by respondent No.8 for seeking Environmental Clearance because the same was not submitted along with a copy of their application seeking Wildlife Clearance from Standing Committee of National Board for Wildlife as mandatorily required by Ministry of Environment & Forests, Government of India's Office Memorandum dated 02.12.2009. The same fact has also come into the knowledge of SEIAA, Punjab as well as SEAC, Punjab and directed respondent No.8 to submit the same at many occasions but the same was not done. It reveals from the Minutes of the 68th Meeting of SEAC, Punjab held on 18.03.2013 that respondent No.8 informed the SEAC, Punjab that they have applied for obtaining Wildlife Clearance from the Standing Committee of National Board for Wildlife on 28.01.2013. However, a copy of the application has not been supplied or even not available with the Minutes of the meeting. Further, this implies that SEAC, Punjab has accepted their verbal information instead of obtaining the written copy of the information as mandated by Ministry of Environment & Forests, Government of India's Office Memorandum dated 02.12.2009. Even as on today, the application for Wildlife Clearance from Standing Committee of National Board for Wildlife has not been received from respondent No.8 by the office of Chief Wildlife Warden, UT, Chandigarh,

who is in charge of Sukhna Wild Life Sanctuary, UT, Chandigarh."

- b) Thus, it is prayed that the Environmental Clearance granted to the respondent No.8/Tata HDCL by SEIAA, Punjab is liable to be quashed.

Counter Affidavits filed on behalf of Tata HDCL (Respondent No.8 in both the petitions):

19. The project proposed by the Respondent No.8 was awarded a silver grading by the State Level Expert Appraisal Committee (SEAC), Punjab in its meeting held on 14.08.2013 and on the basis of the same, SEIAA, Punjab awarded Environmental Clearance dated 17.09.2013. The contention of the petitioners that SEIAA, Punjab does not have the jurisdiction to grant the environmental clearance to the project in question. The allegation of the petitioners that the project in question ought to be classified under Category 'A' as per the Notification dated 14.09.2006 of MoEF is factually incorrect. Para 2 of the Notification dated 14.09.2006 has specified the projects or activities which require prior environmental clearance from the concerned regulatory authority, i.e. Central Government in the Ministry of Environment and Forest for matters falling under Category 'A' in the schedule and State Level Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the schedule before any construction work or preparation of land is started. Para 4 of the Notification dated 14.09.2006 has broadly categorized the projects into two categories - Category 'A' and Category 'B', based on the spatial extent of potential impacts on human health and natural and man-made resources. The schedule to the notification has enumerated the projects/ activities that are

included in Category 'A' and Category 'B'. Item No.8 of the schedule provides for building construction projects and area development projects and townships. The project in question, being a new project, falls under Para 2(i) of the Notification dated 14.09.2006. As the built-up area of the proposed construction is 4,63,144.54 sq.mtrs. which is greater than 1,50,000 sq.mtrs. as provided under Item 8(a) of the schedule, the said project falls under Item 8(b) of the Schedule. Thus, it is qualified as a Category 'B1' project. The General Conditions provided under the Notification dated 14.09.2006 are not applicable to the construction projects falling under Entry 8 of the Schedule. Therefore, the application made under Category 'B1' was rightly considered by SEIAA, Punjab and Environmental Clearance was granted.

20. So far as the harm alleged to be caused to the ecology and the environment is concerned, it is submitted that the project site is located in the residential zone as per Nagar Panchayat Naya Gaon Master Plan, 2021 notified by the Government of Punjab vide Notification dated 02.01.2009 and that the proposed project forms part of village-Kansal which is designated in zone 'A' and zone 'B' of the said Development Plan. It is also explained that out of the total area of 2989 acres of village-Kansal, an area admeasuring about 2498 acres was acquired in the year 1963 for the purpose of soil conservation in the catchment area of Sukhna Lake and the Chandigarh Capital project. Out of the remaining 491 acres in revenue estate of village Kansal, construction has taken place on 259 acres and an area admeasuring 232 acres still remains vacant as is evident from the affidavit dated 01.11.2011 filed by the Deputy Commissioner, in CWP No.18253/2004 on the file of the High Court of Punjab & Haryana at

Chandigarh. The acquired land vests with the Union of India and it is under the administrative control of UT, Chandigarh. However, the khasra numbers in which the project proposed by the Respondent No.8 is located did not form part of the Land Acquisition Notifications of 1963. This has been confirmed in the information furnished under the Right to Information Act, 2005 vide letter dated 14.11.2011 of the Department of Forests and Wildlife, Chandigarh Administration. Thus, it is clear that the project land does not fall in the catchment area of Sukhna Lake. Even as per the ground realities, no water flows from village Kansal, more particularly from the project land towards Sukhna Lake due to topographical conditions. That apart, the project proposed to be constructed is at 360 meters above Mean Sea Level (MSL) and between the project site and Sukhna Lake, there exists a natural barrier in the form of village Kaimbwala at 367 meters above MSL. Thus, it is not physically possible for water to flow from the project site to Sukhna Lake and the project site cannot be considered to be a part of the catchment area. At any rate, the area of village Kansal itself has no relation to the catchment area whatsoever and consequently no threat would be posed to the Sukhna Lake as sought to be alleged by the petitioners.

21. Regarding the map prepared by Survey of India dated 21.09.2004 in pursuance of the order of the High Court of Punjab & Haryana dated 24.09.2004 in CWP No.7649/2003, it is pleaded that the said map was taken on record subject to objections which may be raised by other parties/persons and the objections to the map are yet to be heard. Hence, there is no substance in the contention that it is binding on the parties. It is also pleaded that the catchment

area of the Sukhana Lake could be finally demarcated only after carrying out a survey of the said area, preparation of fresh maps by the Survey of India defining the boundaries and finally by authenticating the demarcation by technical experts.

22. It is also pleaded by the respondent No.8 that the State of Punjab vide Notification dated 18.10.2006 declared village Kansal as a "transitional area" for the purpose of constituting the Nagar Panchayat Naya Gaon as per the Punjab Municipal Act, 1911. Subsequently, the draft master plan was published vide Notification 14.08.2008 and approved final master plan was published vide Notification dated 02.01.2009. As per the said master plan, the entire area has been divided into five zones with four residential zones and one zone marked as forest land. The existing land use in village Kansal has been shown in the said master plan as predominantly unauthorized residential development in continuity of the abadi of two villages with the expansion consuming about 60% of village Kansal that fall within the boundaries of Nagar Panchayat Naya Gaon and about 40% area is available for future regulated planning and development. It is also pointed out that the petitioners who had failed to raise any objection to the draft master plan or to the Building By-laws framed by the State of Punjab, cannot now be allowed to contend that the project in question is impermissible or irregular despite the fact that all necessary approvals have been granted by the concerned authorities of the Nagar Panchayat Naya Gaon.

23. While stating that the Building By-laws have also been notified on 30.07.2010 for the area in question along with the Master Plan, the respondent

No.8 assured that the project in question will be developed strictly in accordance with the said rules and regulations.

24. We have heard Sh.P.S. Patwalia, the learned Senior Counsel who appeared for the petitioners in both the writ petitions and Sh.Gopal Subramaniam, the learned Senior Counsel appearing for M/s Tata Housing Development Company Ltd. and M/s Hash Builders Private Ltd. (through which the proposed project is sought to be developed) arrayed as respondent Nos.8 and 9 respectively in W.P.(C) Nos.2924 and 2999/2014. We have also heard Sh.A.S. Chandhiok, the learned Senior Counsel appearing for Chandigarh Administration, arrayed as respondent No.4 and respondent No.7 in W.P.(C) No.2924/2014 and W.P.(C) No.2999/2014 respectively as well as Sh.Puneet Bali, the learned Senior Counsel appearing for the State of Punjab arrayed as respondent No.1 and 3 in W.P.(C) No.2924/2014 and W.P.(C) No.2999/2014 respectively.

25. Before going into the merits of the case, it is necessary for us to refer to the submissions made on behalf of both the parties regarding a query that came from the Bench during the course of the hearing viz. whether the contrary stands taken by the State of Punjab and Union Territory of Chandigarh with respect to the power of State of Punjab to grant the permission for construction of the project in question needs determination by the Hon'ble Supreme Court in view of the exclusive original jurisdiction vested under Article 131 of the Constitution.

Whether the dispute involved in the present petitions needs determination under Article 131 of the Constitution?

26. At the cost of repetition, it may be stated that the building permission granted by Nagar Panchayat Naya Gaon dated 05.07.2013 and the Environmental Clearance dated 17.09.2013 granted by SEIAA, Punjab for construction of a residential township project at Village Kansal, State of Punjab has been assailed in the two petitions before us primarily on the ground that the project in question falls within the catchment area of Sukhna Lake situated in UT Chandigarh and that the same would cause irreversible damage to Sukhna Lake, Sukhna Wildlife Sanctuary and the entire eco-fragile catchment area of Sukhna Lake which falls in the States of Punjab and Haryana as well as UT Chandigarh and is governed by the provisions of Punjab New Capital (Periphery) Control Act, 1952.

27. While the State of Punjab and the respondent No.8/Tata HDCL sought to justify the impugned building permission granted by Nagar Panchayat Naya Gaon and the Environmental Clearance granted by SEIAA, Punjab for the project proposed by Tata HDCL and opposed the reliefs sought in the writ petitions, Chandigarh Administration (arrayed as respondents 4 and 7 in the present writ petitions) supported the petitioners and it is pleaded that it is in complete agreement with the grievance raised by the petitioners and that the impugned permission and clearance are liable to be quashed since no housing, commercial or industrial project can be allowed to be developed on the North of the Capitol Complex, Chandigarh.

28. In this background, we requested the learned counsel to address on the issue as to whether the dispute involved in the present petitions needs determination under Article 131 of the Constitution of India.

29. Though Sh.P.S.Patwalia, the learned Senior Counsel appearing for the petitioners initially had taken a stand that there exists a direct conflict between the State of Punjab and UT Chandigarh regarding the control over the construction of the project in question, eventually on instructions it is submitted by the learned Senior Counsel that having regard to the wide discretion conferred under Article 226 of the Constitution of India, the matters may be decided on merits especially in the light of the order of the Supreme Court dated 22.04.2014 directing this Court to adjudicate.

30. Sh.Gopal Subramaniam, the learned Senior Counsel appearing for the respondent No.8/Tata HDCL and Sh.A.S.Chandhiok, the learned Senior Counsel appearing for the UT Chandigarh submitted that the subject matter of the dispute is not covered by Article 131 of the Constitution as it does not raise any dispute of federal nature. In support of their submissions, the learned Senior Counsels have placed reliance upon *State of Bihar vs. Union of India & Anr.*; (1970) 1 SCC 67, *State of Kerala vs. General Manager, Southern Railways*; (1976) 4 SCC 265, *Union of India & Ors. vs. State of Mysore*; (1976) 4 SCC 531, *State of Rajasthan & Ors. vs. Union of India*; (1977) 3 SCC 592, *State of Karnataka vs. Union of India*; (1977) 4 SCC 608, *Tamil Nadu Cauvery Sangam vs. Union of India*; (1990) 3 SCC 440, *State of Punjab vs. Assessing Authority, Chandigarh*; (1991) Supp.(1) SCC 153 and *State of Andhra Pradesh vs. State of Maharashtra & Ors.*; (2013) 5 SCC 68.

31. Article 131 of the Constitution reads as under:-

"131. Original jurisdiction of the Supreme Court - Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute -

- (a) between the Government of India and one or more States;
or
- (b) between the Government of India and any State or States on one side and one or more other States on the other; or
- (c) between two or more States,

if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

32. In *State of Bihar vs. Union of India & Anr.* (supra), the question whether a dispute in which a private citizen, a firm or a corporation is in any way involved deserves consideration under Article 131 of the Constitution was considered and it was held:

"2. The question before this Court is, whether the dispute in these cases is within the purview of that article (quoted in the foot-note). It must be noted that the article confers jurisdiction on this Court to the exclusion of all other courts in any dispute between the parties mentioned therein. There is however an over-riding provision that such jurisdiction is subject to the provisions of the Constitution and our attention was drawn to a

few of these provisions where the disputes specified are to be adjudicated upon in entirely different manner. The most important feature of Article 131 is that it makes no mention of any party other than the Government of India or any one or more of the States who can be arrayed as a disputant. The other distinguishing feature is that the Court is not required to adjudicate upon the disputes in exactly the same way as ordinary courts of law are normally called upon to do for upholding the rights of the parties and enforcement of its orders and decisions. The words in the article “if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends” are words of limitation on the exercise of that jurisdiction. These words indicate that the disputes should be in respect of legal rights and not disputes of a political character. Moreover this Court is only concerned to give its decision on questions of law or of fact on which the existence or extent of a legal right claimed depends. Once the Court comes to its conclusion on the cases presented by any disputants and gives its adjudication on the facts or the points of law raised, the function of this Court under Article 131 is over. Article 131 does not prescribe that a suit must be filed in the Supreme Court for complete adjudication of the dispute envisaged therein or the passing of a decree capable of execution in the ordinary way as decrees of other courts are. It is open to an aggrieved party to present a petition to this Court containing a full statement of the relevant facts and praying for the declaration of its rights as against the other disputants. Once that is done, the function of this Court under Article 131 is at an end. The framers of the Constitution do not appear to have contemplated the contingency of a party to an adjudication by this Court under Article 131 not complying with the declaration made. Our law is not without instances where a court may be called upon to make an adjudication of the rights of the parties to an agreement or an award simpliciter on the basis of such rights without passing a decree.....

3. Clauses (a), (b) and (c) of the article specify the parties who can appear as disputants before this Court. Under clause (a) it is the Government of India and one or more States; under clause (b) it is the Government of India and one or more States on one side and one or more other States on the other, while under clause (c) the parties can be two or more States without the Government of India being involved in the dispute. The specification of the parties is not of an inclusive kind. The express words of clauses (a), (b) and (c) exclude the idea of a private citizen, a firm or a corporation figuring as disputant either alone or even along with a State or with the Government of India in the category of a party to the dispute. There is no scope for suggesting that a private citizen, a firm or a corporation can be arrayed as a party by itself on one side and one or more States including the Government of India on the other. Nor is there anything in the article which suggests a claim being made by or preferred against a private party jointly or in the alternative with a State or the Government of India. The framers of the Constitution appear not to have contemplated the case of a dispute in which a private citizen, a firm or a corporation is in any way involved as a fit subject for adjudication by this Court under its exclusive original jurisdiction conferred by Article 131.

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10. Although Article 131 does not define the scope of the disputes which this Court may be called upon to determine in the same way as Section 204 of the Government of India Act, and we do not find it necessary to do so this much is certain that the legal right which is the subject of dispute must arise in the context of the constitution and the Federalism it sets up. However, there can be no doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or

the other either singly or jointly with another unit or the Government of India. "

33. This question was also considered in *Union of India vs. State of Rajasthan; (1984) 4 SCC 238* while dealing with the question whether a suit filed by the State of Rajasthan against the Union of India for recovery of compensation for loss on account of the damage caused to be goods dispatched through the Indian Railways in a Civil Court at Rajasthan is maintainable or whether it should be filed in the Supreme Court under Article 131 of the Constitution. In the said case, a consignment of tents and accessories was dispatched from M.P. to the Collector, Barmer, Rajasthan through railways under R.R. for the Rehabilitation Department. But the consignment when arrived at Barmer was found to be seriously damaged and unfit for use. The goods were therefore auctioned. Since the claim of the consignee was not settled by the Railway Administration, a suit was filed by the State of Rajasthan through District Rehabilitation Officer, Barmer claiming damages against Union of India in District Court. The Union of India and the Railway Administration inter alia contended that the suit was not maintainable in view of exclusive jurisdiction of Supreme Court in the matter under Article 131. Rejecting the contention and dismissing the SLP, the Supreme Court held:-

"12. On a careful consideration of the whole matter in the light of the decisions of this Court referred to above, we feel that Article 131 of the Constitution is attracted only when a dispute arises between or amongst the States and the Union in the context of the constitutional relationship that exists between them and the powers, rights, duties, immunities, liabilities, disabilities etc. flowing therefrom. Any dispute which may arise

between a State in the capacity of an employer in a factory, a manufacturer of goods subject to excise duty, a holder of a permit to run a stage carriage, a trader or businessman carrying on business not incidental to the ordinary functions of Government, a consumer of railway services etc. like any other private party on the one hand and the Union of India on the other cannot be construed as a dispute arising between the State and the Union in discharge of their respective executive powers attracting Article 131 of the Constitution. It could never have been the intention of the framers of the Constitution that any ordinary dispute of this nature would have to be decided exclusively by the Supreme Court. It is well to remember that the constitutional proposals of the Sapru Committee advocated the strengthening of the position of the Federal Court in India and widening its jurisdiction on the original side so that the Federal Court could act as an interpreter and guardian of the Constitution and as a tribunal for the determination of the disputes between the constituent units of the Federation. The Joint Committee on Indian Constitutional Reforms was also of opinion that the object of conferring exclusive original jurisdiction on the Federal Court was that the disputes of the kind specified between the Federation and the Provinces as the constituent units of the Federation should not be left to be decided by courts of law of a particular unit but be adjudicated upon only by the highest tribunal in the land which would be beyond the influence of any one constituent unit. The Special Committee consisting of Sriyuts S. Varadachariar, Alladi Krishnaswami Ayyar, B.L. Mitter, K.M. Munshi and B.N. Rau appointed by the Constituent Assembly to consider and report on the constitution and powers of the Supreme Court suggested “that the Supreme Court, like the Federal Court under the 1935 Constitution, would be the best available forum for the adjudication of all disputes between the Union and a unit and between one unit and another and proposed that the court should have an exclusive original jurisdiction in such disputes”. (Vide *The Framing of India's Constitution—A Study* by Shri B.

Shiva Rao at p. 483). Considered in the light of the foregoing the conclusion becomes inevitable that disputes of the nature involved in this case could not have been in the contemplation of the framers of the Constitution when they adopted Article 131 of the Constitution."

34. In ***Tashi Delek Gaming Solutions Ltd. & Anr. vs. State of Karnataka & Ors.***, (2006) 1 SCC 442, the States of Sikkim and Meghalaya commenced online lotteries, *inter alia*, in the State of Karnataka. Karnataka was otherwise also a lottery-playing State. However, in exercise of the power conferred upon it under Section 5 of the Lotteries (Regulation) Act, 1998 a declaration was made that the State of Karnataka shall be a free zone from online and internet lotteries. By reason of the said Notification, sale of all computerized and online lottery tickets marketed and operated through vending machines, terminals, electronic machines and through internet in the State of Karnataka became prohibited with immediate effect. The States of Sikkim and Meghalaya together with their agents filed writ petitions before the Karnataka High Court, challenging the legality and/or validity of the said Notification, *inter alia*, on the ground that the State of Karnataka, having itself been organizing lotteries, could not have imposed the said ban. A preliminary objection was taken on behalf of the State of Karnataka that as the dispute involved in the writ petitions related to two State Governments, the writ petitions were not maintainable in view of the constitutional bar under Article 131 of the Constitution. The said contention was upheld by a Single Judge of the High Court holding, *inter alia*, that the agents of the State of Sikkim and the State of Meghalaya had no *locus standi* to maintain the writ petitions in view of the fact that they did not have any

independent right in that behalf. The questions that arose before the Supreme Court were whether (a) the writ petitions filed by the appellant agents were maintainable; and (b) the States of Sikkim and Meghalaya could maintain suits against the States of Karnataka under Article 131 of the Constitution wherein the said agents had also been impleaded. Allowing the appeals, the Supreme Court held:

"21. Article 131 of the Constitution postulates that this Court to the exclusion of any other court shall have original jurisdiction in any dispute between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States. We in this case are not concerned with the proviso to the said article. The said article would be attracted where adjudication is necessary in relation to a legal right of one State or the Union of India vis-à-vis other States, as the case may be. Indisputably, the expression "legal right" has received liberal interpretation by this Court from time to time. However, it is now well settled by various decisions of this Court that this article will not be applicable where citizens or private bodies are parties either jointly or in the alternative with the State or the Government of India.

22. The appellants herein were appointed as agents of the State, which were governed by the contract, in terms whereof, they had invested a huge amount. If the statements made in the writ petitions to which we have adverted to hereinbefore are correct, in the event the impugned notification is implemented, the appellants would not only lose a huge amount of money which they have invested but also would be liable to pay compensation to a large number of workforce appointed by them in view of the fact that they would have to close their business. The appellants are agents coupled with interest. Such agencies are contemplated under the laws of contract. The Act also postulates that in the

event an agent violates the notification issued by the State, he would face the penal consequences laid down therein. The notification has the force of law. In the aforementioned backdrop, the question which arises for consideration is as to whether the appellants herein had any independent right to question the validity of the said notification.

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48. The Division Bench of the High Court accepted the position that the appellants herein are statutory agents but it evidently failed to take into consideration the status of the appellants vis-à-vis their contractual rights and obligations with their principal coupled with their individual rights to maintain their writ petitions in proper perspective. It is no doubt true that had the State of Sikkim or the State of Meghalaya intended to sue the State of Karnataka independently; in terms of Article 131 of the Constitution the only forum where the dispute between them could have been resolved is this Court alone but when such a lis is brought by the State jointly with their agents who had also independent cause of action and had a legal right to maintain writ application questioning the legality and/or validity of the said notification issued by the State, a suit in terms of Article 131 of the Constitution would not have been maintainable.

49. The appellants herein were not busybodies. They had an interest in the subject-matter of the writ petition. They were, thus, not merely strangers having no right whatsoever in the matter."

35. It is apparent from the legal position noticed above that mere conflicting views between the State Governments on an issue cannot be brought within the scheme of Article 131, but it is only when a legal issue arises touching upon the existence or extent of a legal right that Article 131 is attracted. As is evident

from the pleadings set out above, the dispute involved in the present petitions is based on an independent cause of action, i.e., grant of environmental clearance granted by SEIAA, Punjab for the project proposed to be developed by a private party, i.e., the respondent No.8 in Village Kansal in State of Punjab. Admittedly, these petitions have been filed by way of PIL impleading the State of Punjab and UT Chandigarh as party respondents. Though conflicting stands have been taken by the State of Punjab and UT Chandigarh regarding the legality of the Environmental Clearance granted to the respondent No.8, neither the State of Punjab nor Chandigarh Administration have raised any dispute regarding the constitutional relationship between them and the powers, rights, duties, immunities, liabilities etc. It is also apparent that the subject matter of the dispute raised in the petitions involves any question of fact or law on which the existence or extent of a legal right or constitutional relationship based on the federal structure set up by the Constitution depends.

36. The dispute in the cases before us essentially relates to the correctness of the sanction/permission granted by the Nagar Panchayat Naya Gaon for construction of the Group Housing and Commercial project by the respondent No.8 as well as the Environmental Clearance granted by SEIAA, Punjab. Since the said dispute involves various issues which need adjudication in the light of the provisions of the Environment (Protection) Act, 1986, Punjab Reorganization Act, 1966 and Punjab New Capital (Periphery) Control Act, 1952 and the allied enactments, according to us, the matter squarely falls within the realm of the jurisdiction of this Court under Article 226 of the Constitution of India.

37. It may be open to the State of Punjab and UT Chandigarh to invoke the exclusive jurisdiction conferred on the Supreme Court under Article 131 of the Constitution for declaration of the extent/existence of the constitutional rights, if any flowing from the Punjab Reorganization Act, 1966 or the Periphery Control Act, 1952, however, so far as the present petitions are concerned, the dispute having been limited to the correction of error/irregularity, if any, in granting building permission by Nagar Panchayat Naya Gaon and the Environmental Clearance by SEIAA, Punjab in exercise of the statutory powers conferred upon the concerned authorities, the jurisdiction of this Court under Article 226 cannot be held to be ousted.

38. Having held so, we shall now proceed to consider the merits of the case.

Consideration on Merits:

39. We shall first notice the admitted facts borne out of the record.

- i. Tata HDCL proposed to develop a project, namely, "CAMELOT" in the revenue estate of village-Kansal, Tehsil-Kharar, District-Mohali, State of Punjab.
- ii. The total cost of the proposed project (CAMELOT) is Rs.1275 Crores. The total project area is 52.66 acres, out of which 41.54 acres will be developed for group housing having built-up area of 4,63,144.54 sqm. Landscape will be developed in an area of 86,243.48 sqm. The total parking facility will be provided for 3645 ESS. The total estimated population of the project will be about 9788 including staff and visitors. Maximum height of the building will be 92.65 Meters.

- iii. Tata HDCL made applications for grant of permission under Section 6(2) of the Punjab New Capital (Periphery Control) Act, 1952 and also the required clearance under the Environment Protection Act, 1986.
- iv. So far as the Environmental Clearance is concerned, in exercise of the power conferred by Section 3(1) and (2)(v) of the Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules, 1996, the Ministry of Environment and Forests issued Notification dated 14.9.2006 which mandates prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority (SEIAA), in respect of the construction of the new projects or activities listed in the Schedule to the said Notification.
- v. In terms of the said Notification dated 14.09.2006, Tata HDCL applied for Environmental Clearance (for short 'EC') from the SEIAA, Punjab.
- vi. The application of Tata HDCL was forwarded to the State Expert Appraisal Committee (SEAC), Punjab for its report and having considered the documents submitted along with the application, SEAC in its meeting dated 06.06.2009 awarded "gold grading" to the proposed project and recommended to forward the project to SEIAA for grant of environmental clearance subject to the conditions specified therein after the receipt of the approved building plan from the project proponent/Tata HDCL.

- vii. By letter dated 17.06.2009, SEAC, Punjab requested Tata HDCL to submit the building plan.
- viii. On 31.10.2010, Tata HDCL submitted the building plan duly approved by Nagar Panchayat Naya Gaon to SEIAA.
- ix. Since SEIAA and SEAC, Punjab were non-functional by that time, the case of Tata HDCL was sent to Ministry of Environment and Forests for further consideration.
- x. Having considered the same, Expert Appraisal Committee (EAC) of Ministry of Environment and Forests (MoEF) had recommended for environmental clearance in its meeting held on 09-10th November, 2010.
- xi. However, by letter dated 14.10.2010, MoEF called for a report from its Northern Regional Office, Chandigarh regarding the proposed project of Tata HDCL in the light of a news item published about the said project.
- xii. Pursuant thereto, a team of officers inspected the project site and submitted the Site Inspection Report dated 10.01.2011. In the said Report, the distance of housing-cum-retail project "CAMELOT" from Sukhana Wildlife Sanctuary was found to be 123M on Northern side and 183M on the Eastern side. The report also states that Tata HDCL falls within the catchment area of Sukhana Lake as per the Survey of India map.
- xiii. On 12.01.2011, Tata HDCL addressed a letter to MoEF explaining that the project site does not contribute to the catchment area of

Sukhana Lake as physically the project area does not obstruct the natural flow of water towards Sukhana Lake.

- xiv. In the meanwhile C.W.P.No.20425/2010 titled *Aalok Jagga vs. Union of India and Others* was filed in the High Court of Punjab and Haryana at Chandigarh challenging the project proposed by Tata HDCL contending *inter alia* that it is in violation of the provisions of Punjab New Capital (Periphery) Control Act, 1952 as well as Environment Protection Act, 1986 claiming that the project lies in the eco sensitive and protected area apart from falling within the catchment area of Sukhana Lake.
- xv. Tata HDCL got itself impleaded as respondent No.9 to C.W.P. No.20425/2010 by order dated 20.01.2011. By the same order, there was an interim direction by the High Court of Punjab and Haryana restraining Tata HDCL as well as all such persons who have anything to do with the proposed property from raising any construction or selling any rights creating future rights.
- xvi. After SEIAA of Punjab has become functional, the case of Tata HDCL was again placed before it for grant of environmental clearance. However, the matter was deferred by SEIAA Punjab on 07.07.2011, 15.12.2011 and 13.02.2012 on the ground that the matter is sub-judice and interim stay dated 20.01.2011 has been in operation.
- xvii. In the meanwhile, SEIAA sought a clarification from MoEF as to whether it is competent to consider the application since the

- Sukhana Wildlife Sanctuary is located at a distance of 123M from project site as per the report of Northern Regional Office of MoEF.
- xviii. C.W.P. No.20425/2010 was disposed of by the High Court of Punjab and Haryana by order dated 26.03.2012 with directions to Tata HDCL to comply with the requirements spelt out in Environment (Protection) Act and Wildlife (Protection) Act for obtaining grant of necessary clearances/sanctions/permissions from the competent authorities.
- xix. In its meeting held on 26.04.2012, it was decided by SEIAA, Punjab to remand the case to SEAC to examine Rapid EIA Study Report and other related issues in the light of the final order passed in C.W.P. No.20425/2010.
- xx. The matter was considered by SEAC in its meetings held on 20.05.2012, 18.03.2013, 18.04.2013, 08.05.2013 and 22.06.2013.
- xxi. In the meeting of SEAC held on 14.08.2013 vide Agenda Item No.74.08, it was decided to award "silver grading" to the project proposal and to recommend the case to SEIAA to grant environmental clearance.
- xxii. Pursuant thereto, it was decided by SEIAA, Punjab in its meeting dated 06.09.2013 vide Agenda Item No.51.10 to grant environmental clearance to Tata HDCL for establishment of the proposed project.
- xxiii. By letter dated 17.09.2013, the decision of SEIAA, Punjab was communicated to Tata HDCL.

- xxiv. On 09.11.2013, Sarin Memorial Legal Aid Foundation filed Writ Petition (Civil) No.994/2013 in the Supreme Court under Article 32 of the Constitution of India challenging the decision of SEIAA, Punjab dated 06.09.2013 granting environmental clearance to Tata HDCL as well as the consequential letter dated 17.09.2013.
- xxv. In the meanwhile, order dated 21.08.2013 came to be passed by the High Court of Punjab and Haryana in C.M.No.206/2012 filed by the Tata HDCL holding that the earlier orders dated 14.03.2011 and 14.05.2012 in CWP No.18253/2009 would not affect the project of Tata HDCL in view of the decision rendered on 26.03.2012 in C.W.P. No.20425/2010.
- xxvi. Against the said order dated 21.08.2013, Sarin Memorial Foundation filed Civil Appeal No.4848/2014.
- xxvii. By order dated 22.04.2014 (Para-1 Supra), both W.P.(C) No.994/2013 and Civil Appeal No.4848/2014 were disposed of by the Supreme Court setting aside the order dated 26.03.2012 in C.W.P. No.20425/2010 and restoring the writ petition for fresh consideration by this Court along with the writ petition filed by Sarin Memorial Legal Aid Foundation.
- xxviii. So far as the permission required under the Periphery Control Act, 1952 is concerned, Tata HDCL filed an application dated 09.04.2012 before Nagar Panchayat Naya Gaon seeking permission to construct the project in question. The said application was made

in terms of Section 6(2) of Periphery Control Act,1952 read with the rules made thereunder.

- xxix. Nagar Panchayat Naya Gaon has been constituted by the Government of Punjab vide Notification dated 18.10.2006 in exercise of the powers conferred under Section 4(1) of the Punjab Municipal Act, 1911 as amended by Act No.11 of 1994 comprising villages Nada, Karoran and Kansal of Tehsil Kharar, District Roop Nagar which were earlier vide Notification dated 15.11.2001 declared to be transitional area.
- xxx. Naya Gaon is one of the Planning Areas included in Greater Mohali Development Area which was declared as the Regional Planning Area vide Notification of the Government of Punjab, Department of Housing and Urban Development dated 29.01.2008 issued under Section 56(1) of PRTP and D Act, 1995 as amended by Act 30 of 2006.
- xxxi. The land use plan dated 25.0.2008 annexed to the Part Regional Plan for Nagar Panchayat Naya Gaon was sanctioned by the Governor of Punjab in terms of Section 11 of the Periphery Control Act, 1952 vide proceedings dated 28.02.2008. Under the said proceedings, the powers to give permission under Section 5 of the Periphery Control Act, 1952 have also been delegated to the Executive Officer, Nagar Panchayat Naya Gaon.
- xxxii. Public notice was issued on 28.02.2008 by the Department of Town and Country Planning, Punjab (Planning Agency, Regional

Planning Area, Mohali) inviting objections/suggestions from general public for the land use indicated in the Part Regional Plan/Nagar Panchayat Naya Gaon Master Plan. The said public notice was issued in exercise of the powers conferred under Section 63(1) of PRTP&D Act, 1995 as amended by Act 30 of 2006.

- xxxiii. One of the objections received from the Principal Secretary to the State of Punjab was that there was no legal provision in the PRTP&D Act, 1995 as amended by Act 30 of 2006 for formulation of a Part Regional Plan.
- xxxiv. In the light of the said objections, the earlier Notification of Part Regional Plan dated 28.02.2008 was withdrawn and vide proceedings dated 28.03.2008, modified notification was issued substituting the words "as per the Land Use Plan dated 25.02.2008" by words "as per the statutory provisions, policy, orders and instructions issued from time to time and applicable in this area".
- xxxv. Thereafter, vide Notification dated 30.05.2008, the powers under Section 10 of the Periphery Control Act, 1952 as well as the powers under Chapter VIII to X of PRTP&D Act, 1995 were delegated by the Governor of Punjab to Principal Secretary to Government of Punjab, Department of Local Government.
- xxxvi. In pursuance thereof, Notification dated 24.07.2008 came to be issued by the Government of Punjab, Department of Local Government under Section 56(1) of the PRTP&D Act, 1995 as amended by Act 30 of 2006 declaring the boundaries of Municipal

Area of Naya Gaon notified vide Notification dated 18.10.2006 as 'Local Planning Area' of Naya Gaon.

- xxxvii. Thereafter, an 'Existing Land Use Plan' and 'Draft Master Plan' for Nagar Panchayat Naya Gaon were prepared and the same were notified by the State of Punjab vide public notice dated 23.08.2008 inviting objections/suggestions from public as provided under Section 70(3) of the PRTP&D Act, 1995.
- xxxviii. After considering the objections and suggestions received from the general public the Final Master Plan of Nagar Panchayat of Naya Gaon dated 24.12.2008 was published vide Notification dated 02.01.2009 under Section 70(5) of PRTP&D Act, 1995.
- xxxix. Thereafter, the Regional Plan dated 12.11.2008 together with the report for GMADA Area was also approved by the Government of Punjab, Department of Town and Country Planning vide proceedings dated 12.11.2008 under Section 63 of PRTP&D Act, 1995. The said approval was published in the Gazette dated 27.01.2009.
- xl. In exercise of the powers thus conferred on Nagar Panchayat Naya Gaon, the application of Tata HDCL dated 09.04.2012 for permission under Section 6(2) of the Periphery Control Act was considered by Nagar Panchayat Naya Gaon and vide proceedings dated 05.07.2013 of the Executive Officer, Nagar Panchayat Naya Gaon, the permission was granted subject to the following conditions:

- (a) Vacation of stay on construction in the area by Hon'ble Punjab & Hayrana High Court vide order dated 14th May, 2012 in Civil Writ Petition No.18253 of 2009.
- (b) The construction in the area should be strictly accordingly to the plan approved by Nagar Panchayat Naya Gaon.
- (c) The construction in the area will start after getting the environmental clearance.

40. It is not in dispute that the area over which the project is proposed to be developed by Tata HDCL is situated in Village Kansal in the State of Punjab. The Environmental Clearance (EC) dated 17.09.2013 as required under the Notification of MoEF dated 14.09.2006 under the Environment (Protection) Act 1986 was granted by SEIAA, Punjab. So far as the permission under Section 6(2) of the Periphery Control Act, 1952 is concerned, the same was granted on 05.07.2013 by Nagar Panchayat Naya Gaon. According to the respondent No.8/Tata HDCL, the above said permission under Section 6(2) of the Periphery Control Act, 1952 and the EC granted under the Environment (Protection) Act 1986 are in compliance with the statutory requirements to enable them to proceed with the construction of the project in question. However, the petitioners and Chandigarh Administration disputed the stand taken by the respondent No.8 on various grounds.

41. The specific case of the petitioner in W.P.(C) No. 2999/2014 (AAalok Jagga vs. Union of India and Ors.) is that the area over which the project in question is proposed to be constructed falls within the catchment area of Sukhna Lake and, therefore, the construction of the proposed residential complex by

Tata HDCL is impermissible under law. It is contended that the permission for construction granted by Nagar Panchayat Naya Gaon under Section 6 of the Periphery Control Act, 1952 is in complete violation of the Periphery Control Act as well as the Edict of the City of Chandigarh. It is also contended that the area over which the project is proposed to be developed vests with the Union of India in terms of Section 48(5) of the Punjab Reorganization Act, 1966 and, therefore, the State of Punjab has no power or authority to deal with the same.

42. So far as Writ Petition No. 2924/2014 (Sarin Memorial Legal Aid Foundation vs. State of Punjab) is concerned, the challenge is to the environmental clearance granted by SEIAA, Punjab. The contention is that the Environment Clearance granted by SEIAA, Punjab is not in conformity with the Notification dated 14.09.2006 issued by MoEF under the provisions of the Environment (Protection) Act, 1986.

43. The UT Chandigarh is in agreement with the petitioners on all the aspects. However, both Tata HDCL and the Government of Punjab contested the writ petitions contending that the permission granted by Nagar Panchayat Naya Gaon under the Periphery Control Act, 1952 and the EC granted by SEIAA, Punjab under the provisions of the Environment (Protection) Act, 1966 do not suffer from any illegality or infirmity warranting interference by this Court.

44. That being broadly the controversy between the parties, the following issues arise for consideration by this Court:-

- i. Whether the land over which the project in question is proposed to be developed falls within the catchment area of Sukhna Lake?

- ii. Whether the permission dated 05.07.2013 granted by Nagar Panchayat Naya Gaon is in violation of the Punjab New Capital (Periphery) Control Act, 1952 and the Edict of the city of Chandigarh?
- iii. Whether the Environmental Clearance dated 17.09.2013 granted by SEIAA, Punjab for development of the project in question is in conformity with the Notification dated 14.09.2006?

Whether the land over which the project in question is proposed to be developed falls within the catchment area of Sukhna Lake?..

45. The specific case of the petitioner in W.P.(C) No.2999/2014 (Aalok Jagga v. UOI) is that the project in question falls within the catchment area of Sukhna Lake. As mentioned above, the said writ petition was initially filed in the High Court of Punjab & Haryana as Civil Writ Petition No.20425/2010 contending that the project in question is in violation of the provisions of the Periphery (Control) Act, 1952 as well as the Edict of the City of Chandigarh. The said writ petition was disposed of by the High Court of Punjab & Haryana by judgment dated 26.03.2012. Though no finding as such was recorded on the plea of the petitioner that the project in question falls within the catchment area, it was held that the provisions of the Periphery (Control) Act, 1952 and PRTP&D Act, 1995 which are complimentary to each other would apply to the housing project in question and that the respondents will have to comply with all the requirements spelt out by the said statutes. It was also held that the Periphery (Control) Act, 1952 does not contemplate a complete embargo on the raising of construction in the periphery and that the provisions of the said Act

would go to show that the construction activity is permissible subject to certain checks and balances and that there is no reason to hold that the provisions of the PRTP&D Act, 1995 are not applicable to the areas covered by the Periphery (Control) Act, 1952.

46. The said judgment of the High Court of Punjab and Haryana dated 26.03.2012 in Aalok Jagga vs. UOI was set aside by the Supreme Court and the writ petition having been restored was transferred to this Court for adjudication vide order dated 22.04.2014 in Civil Appeal Nos.4847 and 4848/2014 with a specific direction as under:

"(b) The petitioner in the above Writ Petition, on restoration, is granted leave to amend the Writ Petition and make necessary pleadings relating to the question whether or not the project land of respondent No.6 falls within the catchment area of Sukhna lake. This will obviously include the aspect concerning Section 48(5) of the Punjab Reorganisation Act, 1966 read with the 13th Schedule appended thereto and the notification dated 15th March, 1963 No. 1789-Ft-IV/63/898. The necessary amendment in the Writ Petition shall be made within three weeks."

47. We are thus called upon to decide the question as to whether or not the project in question proposed by Tata HDCL falls within the catchment area of Sukhna Lake.

48. Pursuant to the liberty granted by the Supreme Court, the petitioner in Aalok Jagga vs. UOI, (which has been re-numbered as W.P.(C) No.2999/2014 on transfer to this Court) got the writ petition amended and pleaded that the land over which the project in question is proposed to be constructed falls within the catchment area of Sukhna Lake as per the area demarcated in the map dated

21.09.2004 prepared by Survey of India in pursuance of the order of the High Court of Punjab and Haryana in CWP No.7649/2003 titled Dr. B.Singh v. Union of India & Ors. It is also pleaded that the said map was taken on record in CWP No.7649/2003 vide order dated 24.09.2004 in C.M. No.17226/2004 and that the State of Punjab having participated in the proceedings and having never objected to the said map of Survey of India cannot now raise any objection as to the correctness of the said map.

49. So far as the aspect concerning Section 48(5) of the Punjab Reorganisation Act, 1966 read with the 13th Schedule appended thereto, it is pleaded that not only the lands that were acquired by the existing State of Punjab for the purpose of soil conservation in the catchment area of Sukhna Lake but also other areas which have been subsequently determined to be part of the catchment area shall also vest in the Central Government and therefore all areas defined as 'catchment area' in the map prepared by Survey of India shall vest in Union of India. Thus, according to the petitioner, all areas falling within the catchment area of Sukhna Lake as defined in the Survey of India map dated 21.09.2004 are outside the control of the State of Punjab and the State of Haryana in terms of Section 48(5) of the Punjab Reorganisation Act, 1966 and thus the Punjab Government has no authority or jurisdiction to sanction any project in the catchment area of Sukhna Lake.

50. The plea of the petitioner that the project in question falls within the catchment area of Sukhna Lake is sought to be substantiated on the basis of the map dated 21.09.2004 prepared by the Survey of India.

Survey of India Map

51. Demarcation of catchment area of Sukhna Lake has been the contentious issue in various writ petitions filed before the High Court of Punjab & Haryana. The material placed before us shows that Civil Writ Petition No.7649/2003 titled Dr.B.Singh vs. Union of India was filed alleging that the proposal of the Government of Haryana to implement its Low Volume Habitational Schemes in the catchment area of Sukhna Lake was in violation of the provisions of the Periphery Control Act, 1952 and other environmental laws. The said writ petition was dismissed by the Division Bench by order dated 11.09.2003 holding that there is no merit in the apprehensions expressed by the petitioner. However, on the basis of the letter dated 13.03.2004 addressed by one Dr.D.S.Dhillon suggesting certain steps to save Sukhna Lake, the Division Bench of the High Court of Punjab & Haryana had again taken up C.W.P. No.7649/2003 and by order dated 20.01.2004 directed a joint meeting be held by the Secretaries of the Government of India, Government of Punjab, Government of Haryana and Union Territory, Chandigarh and submit a report with regard to Sukhna Lake. Fresh applications came to be filed in CWP No.7649/2003 and by order dated 16.07.2004, the construction activity around Sukhna Lake was banned observing:

"We are of the considered view that if concerned authorities of the two Governments including Mr.Rajiv Atmaram, the learned senior standing counsel for UT, Chandigarh and Sh.Ashok Aggarwal, learned Advocate General, Haryana all across a table along with all relevant maps of the locality including the Mojaik map prepared by the Surveyor General of India and have some objectivity, the unfortunate dispute in regard to catchment area of the Sukhna Lake

may disappear. In that proposal meeting, we hope that experts will also be allowed to take part including Mr.D.S.Dhillon, who had also addressed us in order to clear out the location etc. of the catchment area.

We order accordingly.

The proposed meeting is required to be held within one week from today.

We ban the construction activity, in the area concerned since it falls within the forest area subject to further orders of the Court. In this regard Mr.Ashok Aggarwal, learned Advocate General, Haryana takes up a stand before us that the area has already been denotified. On the adjourned date of hearing relevant documents will be produced to satisfy us in the fact the area has denotified in accordance with law.

Adjourned to 20.6.2004. "

52. On the next date of hearing, i.e., 20.08.2004, it was represented before the Court by the Superintendent Surveyor, Survey of India that no plan by the name of Mosaic is available in the office of the Surveyor General of India. After hearing the learned counsel for both the sides, the Division Bench passed the following Order:-

"Perused the minutes of the meetings held on July 28, 2004 and August 18, 2004. Also heard Dr.D.S.Dhillon and Shri Rajiv Atma Ram, learned Senior Standing Counsel representing Union Territory, Chandigarh. Both of them voiced concern about the stand taken by Mr.Iqbal Singh, Superintendent Surveyor, Survey of India that no plan by the name of Mojaik is available in the office of the Surveyor General of India.

Also heard Shri Ashok Aggarwal, learned Advocate General, Haryana and some other counsel.

Dr.G.S.Dhillon highlighted that on internet the digital map of entire Chandigarh is available which shows minute details of the city including Sukhna Lake.

In this view of the matter, we direct the Surveyor General of India to take part in the next meeting of the Committee along with the digital map of the City and area surrounding Sukhna Lake for submission of fresh report, so that we could come to just conclusion in regard to controversy involved.

Adjourned to 15.09.2004."

53. Thereafter, on 24.09.2004, the following order came to be passed:-

"Civil Misc.No.17226 of 2004

Through this application map dated September 21, 2004 appended as Annexure R-1 is sought to be brought on record by respondent No.1-Union of India asserting, inter alia that Brig. C.S.Bewli, Director, Punjab & Chandigarh Geo-Spatial Data Centre, Survey of India has prepared it in regard to catchment area of Sukhna Lake, which is an improved version of an earlier map dated September 14, 2004 and improvements are on the following points:-

- (a) State boundaries have been highlighted;
- (b) Forest areas have been shown in light green, cultivation in yellowish green and water bodies in blue;
- (c) Forest boundaries have been highlighted.

Heard learned counsel for the parties as well as persons who have appeared in person.

Subject to objections, which may be raised by other parties/persons, the map dated 21.9.2004 is taken on record.

This Misc. Application stands disposed of accordingly." *(emphasis supplied)*

54. Ultimately by order dated 08.04.2005, the proceedings in C.W.P. No.7649/2003 were dropped holding as under:-

"This writ petition came up for hearing before another Division Bench on September 11, 2003 which after hearing a large number of counsel representing the parties, dismissed the petition by a detailed order.

Thereafter one Dr.D.S.Dhillon sent some suggestions to the High Court in his letter dated 13.03.2004 on which the Division Bench took up the matter on 19.3.2004 and on the statement of Mr.Rajiv Atma Ram, Senior Advocate appearing on behalf of Chandigarh Administration directed that it would be in the interest of justice to restrain the Government of Haryana from implementation of its Low Volume Habitational Scheme. By an order dated July 16, 2004, the Division Bench issued further directions, banning construction activity in the area concerned as it fall within the forest area.

It has today been pointed out by the learned counsel for the respondents that as the writ petition had already been dismissed on September 11, 2003 and the aforesaid decision had attained finality, as no order of the Division Bench reviving the writ petition had ever been made, it was not in the interest of justice to continue with the present proceedings. It has also been pointed out that during the course of the arguments by Dr.B.Singh, petitioner himself and the counsel for the respondents that similar matters are also pending in the Hon'ble Supreme Court of India.

In these facts, we find no reason to continue with the present proceedings. We accordingly drop the proceedings in this writ petition but give liberty to the petitioner herein or any other person likely to be affected to move application(s) before the Hon'ble Supreme Court for directions. However, as some interim orders are continuing in these proceedings since long, we direct that the same shall ensure for a further period of four weeks from today."

55. Long thereafter, CWP No.18253/2009 (Court on its own motion vs. Union Territory of Chandigarh) was taken up suo moto by the High Court of Punjab & Haryana for restoration of Sukhna Lake to its former glory in which

the State of Haryana appears to have filed an affidavit referring to the catchment area of Sukhna Lake as identified in the map prepared by the Survey of India in accordance with the directions dated 16.07.2004 in C.Ms. No.11170 and 11172 of 2003 in CWP No.7649/2003. Referring to the said affidavit, the Division Bench of Punjab & Haryana High Court passed the order dated 14.03.2011 in CWP No.18253/2009 prohibiting building activities of any kind in the catchment area. The operative part of the said order reads as under:-

"In view of the stand taken by the State of Haryana in the affidavit filed today we are of the view that we should not be asking the States as to whether they have any plans to have any housing colonies/building construction activities in the catchment area falling within their respective jurisdictions. Rather, the necessity of maintaining the catchment area as such, being vital for restoring the lake to its former glory, we are of the view that until further orders we should direct that no housing colonies or building activities of any kind will take place in the catchment area (either within the forest area or the agricultural area) falling within the jurisdiction of two State of Punjab and Haryana in terms of the map prepared by the Survey of India, as mentioned above."

56. The issue of demarcation of catchment area of Sukhna Lake was again considered in CWP No.18253/2009 (Court on its own motion Vs. Union Territory of Chandigarh & Ors.) and after hearing all the parties, the following order came to be passed on 13.12.2011 constituting a Committee for determination of catchment area:-

"Another issue which has been debated is with regard to demarcation of catchment area of Sukhna Lake. There are divergent views expressed by the parties. The State of Punjab feels that the catchment area stand demarcated

already in the year 1963 by official notification dated 15.03.1963 whereas Ms.Tanu Bedi, learned Amicus Curiae has pointed out that there is necessity of demarcation because nobody is clear as to what is the true catchment area. One map prepared by Survey of India is already on record. We feel that the demarcation of catchment area would be first significant step and it should be clearly visible on site plan and the site itself. Therefore, we direct that a Committee comprising the nominees of the Survey of India, States of Punjab and Haryana, Mr.Sanjay Kaushal, Sr.Standing Counsel of U.T. Administration, Mr.Rajiv Atma Ram, Sr.Advocate, Ms.Tanu Bedi, learned Amicus Curiae and Mr.M.L.Sarin, Sr.Advocate may decide issue with regard to demarcation of catchment area. We will also request the Ministry of Environment and Forest to nominate a Member to the Committee who may not be below the rank of the Joint Secretary.

Let the first meeting of the Committee may take place within four weeks. Mr.Sanjay Kaushal, Sr.Standing Counsel shall coordinate the dates after conferring with all concerned. The further meeting may be held in accordance with the decision taken by the Committee. The minutes of the first meeting may be placed on the file of this case on or before 13.02.2012.

Copies of the paper book shall also be furnished to all the Members of the Committee.

List again on 21.02.2012. "

57. On the next date of hearing, i.e., 14.05.2012 it appears that it was submitted on behalf of the State of Punjab that the map of the Survey of India was not acceptable to it. However, the Division Bench did not accept the stand taken by the State of Punjab observing:-

"The minutes of meeting dated 07.05.2012 have been placed on record. The minutes reveal that the map prepared by Survey of India has been accepted in principle although there are minor objections regarding the scale. The State of Punjab has adopted an unacceptable attitude and still the submissions are being made that the map of the Survey of India is not acceptable despite the fact that in the proceedings concerning CWP No.7649 of 2003 the State of Punjab has endorsed the map then prepared by Survey of India as authentic one in respect of catchment area of lake. The minutes of various meetings have been placed on record. Reference may be made to Annexure P-25 Collectively. Perusal of the same shows that the State of Punjab attended the meetings dated 28.07.2004; 18.8.2004; 13.09.2004 during which the map prepared by Survey of India was accepted as the correct map of catchment area of Sukhna Lake. Vide an order dated 24.09.2004, the improved version of map of catchment area of Sukhna Lake dated 21.09.2004 prepared by Survey of India was taken on record. The State of Punjab had participated in the aforesaid proceedings and never objected to the map. Now, they cannot go back from the aforesaid stand taken.

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However, in view of the fact that map of the Survey of India has already been prepared and validated by the participating parties, we do not feel the necessity that the sub-committee of the technical experts, as suggested in the minutes dated 07.05.2012, would need to prepare a fresh map. Accordingly, we shall proceed in accordance with the map of the Survey of India, which was taken on record by this Court vide order dated 24.09.2004 passed in CWP No.7649 of 2003. **The U.T. Administration shall give wide publicity to the catchment area as depicted in the map prepared by the Survey of India, which was taken on record by this Court in its order dated 24.09.2004 and adopted by**

Chandigarh Administration thereafter officially as map of catchment area of Sukhna Lake (P-14), so that general public is made aware that no construction is permitted in that area. Let the order of this Court, passed today and on 14.03.2011 be also given wide publicity so that anyone indulging in violation of this order may become aware. The publicity be carried in the print media as well as in the electronic media."

(emphasis supplied)

58. In the light of the above noticed orders passed by the High Court of Punjab & Haryana from time to time, it is submitted by Sh.Patwalia, the learned Senior counsel appearing for the petitioner that the Survey of India map has attained finality as regards demarcation of catchment area of Sukhna Lake and that it is not open to the respondents to re-agitate the said issue.

59. Per contra, it is submitted by Sh.Gopal Subramaniam, the learned Senior Counsel appearing for Tata HDCL that the order dated 14.05.2012 passed by the High Court of Punjab & Haryana in CWP No.18253/2009 being an interim order cannot be treated as conclusive and the same is not binding on this Court for determination of the question posed by the Supreme Court, i.e., whether or not the project land of Tata HDCL falls within the catchment area of Sukhna Lake. Pointing out that the Supreme Court while directing this Court to adjudicate the above issue vide order dated 22.04.2014 in Civil Appeal No.4847 & 4848 of 2014 had specifically ordered that the High Court of Punjab & Haryana in CWP No.18253/2009 shall not decide the said issue of whether or not the project land of Tata HDCL falls within the catchment area of Sukhna Lake, it is vehemently contended by Sh.Gopal Subramaniam that the order of

the Punjab & Haryana High Court dated 14.05.2012 has lost its significance and it is now for this Court to carry out a *de novo* determination on the said issue.

60. Having given our thoughtful consideration to the rival submissions and having carefully perused the material available on record, we are of the view that the Survey of India Map dated 21.09.2004 has attained finality and is binding on the State of Punjab, State of Haryana and U.T. Chandigarh for the following reasons:

- (i) The Survey of India map dated 21.09.2004 is the only document available on record identifying and demarcating the catchment area of Sukhna Lake. Admittedly the said map was prepared under the directions of the High Court of Punjab and Haryana in CWP No.7649/2003 (Dr.B. Singh vs. Union of India). It is also not in dispute that the demarcation of boundaries of catchment area was made after carrying out a survey by Technical Experts and in due consultation with the State of Punjab, State of Haryana and U.T. Chandigarh.
- (ii) Before the said map was taken on record in CWP No.7649/2003 vide order dated 24.09.2004, a joint meeting was held on 28.07.2004 in which apart from the concerned authorities of the three Governments and their respective counsels, experts from various departments and agencies including the National Ship Design and Research Centre, Vishakhapatnam, an organization of the Ministry of Shipping and Transport had participated. The Minutes of the Meeting reveal that several issues regarding

identification of catchment area of Sukhna Lake and preparation of its map were extensively discussed and ultimately it was concluded to constitute a Committee under the Chairmanship of Chief Engineer, U.T. Chandigarh along with officers of Forest Departments of Punjab, Haryana, HUDA and Survey of India to take up the matter and decide the issue of catchment area and the mosaic plans.

- (iii) In the next meeting held on 18.08.2004, the issue was again considered at length and it was resolved:

"Sh.Iqbal Singh, Superintending Surveyor, Survey of India informed that no plan named as Mosaic Plan is available with their organization. Survey of India has the plan of Chandigarh and its Environs (Special Map Series) showing the contour at 20 meters interval and physical features of the area of the map on scale of 14000. The catchment area has been marked on the map, duly signed by the department.

Dr.G.S.Dhillon felt that it is very difficult to identify the catchment area on the small scale map with contour interval of 20 meters and it will be worthwhile to demarcate the ridge line at site and the experts can visit the area thereafter.

All the members of the committee disagreed with the view of point of Dr.G.S. Dhillon. **The members were unanimous in their opinion that it is well established practice to identify the catchment area on the basis of topographical/contour plans issued by the Survey of India. The catchment area marked on map by Survey of India is correct/authentic and as such site visit is not required."** (emphasis supplied)

- (iv) The said Committee met again on 13.09.2004 in which the queries with regard to the "mosaic plan" were clarified by the Director of Survey, Punjab and Chandigarh. The minutes of the said meeting reveal that the catchment area of Sukhna Lake has been marked as interpreted from the digital map of the survey conducted during 1995-96. It was also recorded in the said minutes that the said digital map is the largest scale map of the area ever surveyed.
- (v) Neither the State of Punjab nor any other party who participated in the said meeting raised any objection regarding the correctness of the digital map. There was also consensus among all the parties that the demarcation of catchment area by Survey of India was tallying with the digital map. Though Dr.G.S.Dhillon vide his letters dated 16.09.2004 and 20.09.2004 suggested certain corrections, the same were only for the purpose of extension of catchment area upto Mansa Devi temple for preserving the ecological balance of the lake.
- (vi) The improved map of the catchment area was filed in the Court by the Union of India requesting to take it on record in CWP No.7649/2003. The application of the Union of India (CM No. 17226/2004) was allowed by order dated 24.09.2004 and the Survey of India map was thus taken on record in CWP No.7649/2003.

- (vii) The State of Punjab neither expressed any reservations nor raised any objections with regard to the correctness of the said map in CWP No.7649/2003.
- (viii) The State of Punjab has not initiated any other proceedings till date challenging the said map prepared by the Survey of India.
- (ix) The fact that the State of Punjab along with State of Haryana and U.T. Chandigarh had participated in all the proceedings of Expert Committee before finalization of Survey of India Map dated 21.09.2004 and that the same was made part of record in W.P.(C)No.7649/2003 at the instance of Union of India makes it clear that the demarcation of catchment area in the said map was unanimously accepted by all the parties.
- (x) It is also relevant to note that though the order dated 24.09.2004 shows that the said map was taken on record subject to objections which may be raised by the parties/persons, neither the State of Punjab nor anybody else filed any objection.
- (xi) It may be true that all the orders resulting in preparation of the said map by Survey of India came to be passed after dismissal of CWP No.7649/2003 on 11.09.2003 and the map was taken on record by order dated 24.09.2004 without passing any specific order for revival of the writ petition. However, in our considered opinion, the Survey of India map cannot be held to be invalidated for the said reason.

- (xii) Even assuming that all the orders that were passed between 11.09.2003 and 08.04.2005 were invalid since nothing was stated about the Court while finally closing the proceedings in CWP No.7649/2003 on 08.04.2005, we are of the view that the map prepared by Survey of India cannot be held to be nullified or invalidated since the same was prepared in the presence and with the consent of State of Punjab, State of Haryana and UT Chandigarh after carrying out a survey by technical experts.
- (xiii) It is also relevant to note that Survey of India map dated 21.09.2004 was again considered and accepted by the High Court of Punjab and Haryana in CWP No.18253/2009 (Court on its Own Motion vs. U.T. Chandigarh) vide order dated 14.05.2012 observing:

"However, in view of the fact that map of the Survey of India has already been prepared and validated by the participating parties, we do not feel the necessity that the sub-committee of the technical experts, as suggested in the minutes dated 07.05.2012, would need to prepare a fresh map. Accordingly, we shall proceed in accordance with the map of the Survey of India, which was taken on record by this Court vide order dated 24.9.2004 passed in CWP No.7649 of 2003. The U.T. Administration shall give wide publicity to the catchment area as depicted in the map prepared by the Survey of India, which was taken on record by this Court in its order dated 24.9.2004 and adopted by Chandigarh Administration thereafter officially as map of catchment area of Sukhna Lake (P-14), so that general public is made aware that no construction is permitted in that area. Let the order of this Court, passed today and on 14.3.2011 be also given wide publicity so that anyone indulging in violation of this

order become aware. The publicity be carried in the print media as well as in the electronic media."

(xiv) In the said order dated 14.05.2012 in CWP No.18253/2009 of the High Court of Punjab and Haryana, it was also specifically held that the State of Punjab cannot be permitted to challenge the Survey of India map dated 21.09.2004. The relevant portion of the said order may be reproduced hereunder:

"The minutes of the meeting dated 7.5.2012 have been placed on record. The minutes reveal that the map prepared by Survey of India has been accepted in principle although there are minor objections regarding the scale. The State of Punjab has adopted an unacceptable attitude and still the submissions are being made that the map of the Survey of India is not acceptable despite the fact that in the proceedings concerning CWP No.7649/2003 the State of Punjab has endorsed the map then prepared by Survey of India as authentic one in respect of catchment area of lake. The minutes of various meetings have been placed on record. Reference may be made to Annexure P-25 (colly). Perusal of the same shows that the State of Punjab attended the meetings dated 28.7.2004, 12.8.2004, 13.9.2004 during which the map prepared by Survey of India was accepted as the correct map of catchment area of Sukhna Lake. Vide an order dated 24.9.2004, the improved version of map of catchment area of Sukhna Lake dated 21.9.2004 prepared by Survey of India was taken on record. The State of Punjab had participated in the aforesaid proceedings and never objected to the map. Now, they cannot go back from the aforesaid stand taken."

- (xv) Admittedly, the State of Punjab allowed the said order dated 14.05.2012 in CWP No.18253/2009 to become final. Though Tata HDCL preferred a Special Leave Petition against the said order, the SLP was withdrawn by order dated 17.08.2012 with leave to seek clarification before the High Court of Punjab and Haryana. Accordingly, Tata HDCL got itself impleaded to CWP No.18253/2009 and filed CM No.20506/2012 seeking modification of the order dated 14.05.2012, which was allowed by the High Court by order dated 21.08.2013. However, the said order dated 21.08.2013 was set aside by the Supreme Court vide order dated 22.04.2014 and CM No.20506/2012 has been restored to file. Since the said application is still pending, it is not open to Tata HDCL to contend that it is not bound by the order dated 14.05.2012.
- (xvi) Pursuant to the order dated 14.05.2012 in CWP No.18253/2009, the Survey of India map dated 21.09.2004 has been published and is available in public domain. It has also been published as part of the report of the final Master Plan of Chandigarh, 2031 notified on 23.04.2015, which shows that the same has been accepted and acted upon by all the concerned and continues to operate in rem.
- (xvii) It may also be added that Survey of India is the organization of Government of India which functions under the Department of Science and Technology. It is not in dispute that the map dated 21.09.2004 was prepared by competent persons and with notice to

all the persons interested. It may be true that it is not conclusive, however, in the absence of acceptable evidence to the contrary, we see no reason to disbelieve the correctness of the map dated 21.09.2004.

(xviii) In this context, we may also refer to Section 36 of the Evidence Act, 1872 read with Section 83 which entitles the Court to presume the maps or plans prepared by the authority of the Central Government or any State Government to be accurate. In our considered opinion, the map dated 21.09.2004 having been prepared by the Survey of India, an instrumentality of the Union of India, deserves to be presumed accurate more particularly in view of the conduct of the State of Punjab, which is a party to the proceedings all through. Hence, the survey of India map dated 21.09.2004 is binding on the State of Punjab. Consequently, it is not open to Tata HDCL also to raise any objection as to its authenticity in the present proceedings.

61. In these circumstances, we have no manner of doubt to conclude that Survey of India map dated 21.09.2004 is binding on the State of Punjab. In turn, Tata HDCL is also bound by the same.

62. The next question that needs consideration is as to whether the area over which the project in question proposed to be constructed by Tata HDCL forms part of the catchment area of Sukhna Lake as demarcated in the Survey of India Map dated 21.09.2004.

63. The specific case of the petitioners is that the site in question clearly falls in the catchment area as per the Survey of India Map dated 21.09.2004. However, it is vehemently contended by Shri Gopal Subramaniam, the learned Senior Counsel appearing for Tata HDCL that the project site is not a part of catchment area. It is sought to be contended by him that the natural topography of the region excludes Village-Kansal from the catchment area. Elaborating the said plea, it is submitted that Kansal Nadi, one of the tributaries for Sukhna Lake, was diverted in the year 1973 by construction of a pucca bandh between the hilly area and the plain areas by the State of Punjab, U.T. Chandigarh and State of Haryana together and as a result of the same, Kansal Nadi joins Sukhna Nadi. It is thus explained that no water from hilly areas passes through the plain areas of Kansal village towards Sukhna Lake as of today.

64. It is also submitted that while the proposed project site is at 360 meters above Mean Sea Level (MSL), a natural barrier exists at 367 meters above MSL in the form of village Kaimbwala between the proposed project site and Sukhna Lake and on account of the said natural topography of the region, the proposed project site in no way obstructs the water flow to Sukhna Lake. It is stated that even the surface run off from village Kansal is carried through the drain that has been constructed along the border of village Kansal and U.T. Chandigarh towards Sukhna Lake through the forest area around Rock Garden and Lake Club. Thus, according to the learned Senior Counsel, the proposed project site neither falls in the catchment area of Sukhna Lake nor in any way obstructs the flow of rain water from the hilly area or surface run off towards Sukhna Lake.

65. We are unable to accept the above contentions in the light of the joint inspection report dated 10.01.2011 of the project site which was conducted in terms of the directions of the Ministry of Environment and Forests dated 14.10.2010 wherein it was clearly found that the proposed project falls within the catchment area of Sukhna Lake as per the Survey of India map. The relevant portion of the site inspection report dated 10.01.2011 reads as under:

"M/s Tata Housing Development Company has planned to develop a Housing cum Retail Project named as "CAMELOT" comprising multi-storied buildings in approximately 52 acre area at Kansal, Tehsil Kharar, in the jurisdiction of Naya Gaon Panchayat, Distt. Mohali. The land in question falls in the jurisdiction of Nagar Panchayat, Naya Gaon, Distt. Mohali, State of Punjab which is adjacent to Sukhna Wildlife Sanctuary located at the border of Chandigarh.

In order to verify the distance of Housing cum Retail Project named as "CAMELOT" from Sukhna Wildlife Sanctuary and the status of construction at site, a team of officers from different Departments / organizations alongwith the representative of M/s Tata Housing Development Company visited the project site at 12.00 noon on 10th January, 2011. The observations of the team are given below:-

1. The nearest distance from the boundary of the project site was measured by the staff members of Forest Department of U.T. Administration Chandigarh using measuring tape at two points:

i. The nearest distance of Sukhna Wildlife Sanctuary from the project boundary on northern side is 123 meters.

ii. The distance of Sukhna Wildlife Sanctuary from the boundary of project area on Eastern side is 185 meters.

It is clarified that a part of catchment area of Sukhna Lake has been declared as Sukhna Wildlife Sanctuary under Section 26-A of the Wildlife (Protection) Act, 1972 by Chandigarh Administration vide Notification No.694-HII(4)98/ 4519 dated 6th March, 1998 (copy enclosed).

The Tata Housing Project falls in the jurisdiction of Nagar Panchayat, Naya Gaon, District Mohali, State of Punjab which is approximately 1500 metres away from Sukhna Lake (aerial distance). Further, it also falls under the catchment area of Sukhna Lake as per the Survey of India map.

2. It has been observed by the team that no construction activities have been started by the Project authorities at site. Only wire fencing has been done to demarcate the boundary of the acquired land area. In addition to it, solar light posts have been raised at different spots of the boundary and a site office comprising three rooms has been constructed. It is stated by the Project Proponent that these offices were constructed by the Defence Services Cooperative Housing Building Society Ltd. and the Tata Housing Development Company has only renovated them for using as site office. The photographs of different locations of the sites are attached to show that there is no construction activity at the site so far.

It is also mentioned here that there are existing houses and other constructed buildings in Kansal area which are a part of Kansal village in Punjab and other spontaneous construction.

During the inspection, it has been informed that any notification declaring eco sensitive zones has not been issued by U.T. Chandigarh Administration and State Government of Punjab, till date.

The report is submitted to the Ministry of Environment and Forests for kind information and further necessary action."

66. It may also be mentioned that neither the State of Punjab nor Tata HDCL raised any objection to the authenticity of the Survey of India map or to the finding that the project site falls within the catchment area as per the said map. Though Tata HDCL addressed the letter dated 12.01.2011, it was only claimed that the project site does not physically obstruct the natural flow of water towards Sukhna Lake. The letter dated 12.01.2011 of Tata HDCL may be reproduced hereunder for ready reference:

"This is with reference to your Letter no F.No.3-277/2010-RO(NZ) dated 07.01.2011 from MOEF Northern Regional office Chandigarh. A Team of officers from the Department of Forest and the Wildlife U.T. Administration, Chandigarh, Ministry of Environment and Forest, Chandigarh, Wildlife - MOEF New Delhi, Member Secretary, Chandigarh Pollution Control Committee, Asst Environmental Engineer, Punjab Pollution Control Board inspected the above mentioned Project site on 10th January, 2011 and prepared the site inspection report. The key observations as per point no. 1 of the Inspection are reproduced is as follows:

"The Tata Housing project falls in the jurisdiction of Nagar Panchayat Naya Gaon, Distt. Mohali, State of Punjab which is approximately 1500 meters away from Sukhna Lake (aerial distance). Further, it also falls under

the catchment area of Sukhna Lake as per the Survey of India map."

This observation was further evaluated by us and here we would like to clarify this observation with reference to the facts stated as under:

1. In the Northern and the Eastern sides of the Project site there is existing habitation and an existing road from village Kaimbwala of U.T. to village Khuda-Ali-Sher UT between the Project site and the Forest Area which is part of the Nayagaon Nagar Panchayat Boundary as Notified and Approved by the Department of Punjab Local Government. This boundary is clearly indicated in the approved Final Master Plan-2021 Drawing no. CTP (LG)2008/03 dated 24.12.2008 of Nagar Panchayat Naya Gaon indicating the land uses. A copy of the approved Master Plan showing the Project site, the habitation, the village road and the Forest Zone within the Nagar Panchayat boundary is enclosed for kind perusal as Annexure "A".

2. In the Eastern side the Panchayat of village Kansal has allotted the land to the homeless people i.e. between the project site and village road from Kaimbwala UT to village Khuda-Ali-Sher UT indicated in the Zonal Plan of Zone A of the Master Plan of Naya Gaon. A copy showing the habitation is enclosed as Annexure "B".

3. Along the Eastern boundary of the said village road the Kansal Nadi has been diverted and channelized to join the Sukhna nadi in village Saketri of Haryana from there they form one stream to fall in Sukhna lake "Annexure C".

4. The Survey of India Map as referred to in the Inspection report is having the data of year 1995-96 (14-

15 years old). We have procured the latest survey maps Edition 2009 and 2010, updated in 2005-2006 from Survey of India and are enclosing the copies of there maps bearing No. H43K13 and H43K14 (1:50,000). A perusal reveals the existence of habitation, the road from village Kaimbwal UT to village Khuda-Ali-Sher UT and the channelized course of the Kansal nadi and its meeting point with the Sukhna Nadi near Saketri village of Haryana (refer to "Annexure D").

5. We have also superimposed the project site on the Google image showing the site and the habitation area around it. "Annexure E".

6. Project site is surrounded by habitation which has also been mentioned in point no. 2 of the inspection report.

It is pertinent to mention that in view of the above points, surrounding habitation and also diverted course of Kansal Nadi the project site does not contribute to the catchment of Sukhna Lake.

Physically the project area does not obstruct the natural flow of water towards Sukhna Lake and hence shall not form the part of actual catchment area of Sukhna Lake.

We would like to highlight here that our Project is primarily a Housing Project, designed on the basis of Green Building and as environmentally sustainable project.

You are requested to kindly consider the above facts and suitably incorporate in the inspection report."

67. It is also relevant to note that Mr.Sanjeev Suri, the Associate Vice President of Tata HDCL in the 59th Meeting of SEAC held on 20.05.2012 accepted that the site in question is located in the catchment area of Sukhna Lake. This fact has been recorded in the Minutes of the meeting as under:

"As per topographical sheets of the Survey of India, the site of the project is located in the catchment area of Sukhna Lake, but actually the site is located at a higher elevation, which will not obstruct the natural flow of surface run off."

68. Therefore, the contention of Tata HDCL that the project site does not form part of catchment area of Sukhna Lake is liable to be rejected.

69. Yet another question that needs consideration by us is the impact of Section 48(5) of the Punjab Reorganization Act, 1966 read with the 13th Schedule appended thereto and the Notification dated 15.03.1963.

Section 48(5) of the Punjab Reorganisation Act, 1966

70. The Punjab Reorganization Act, 1966 provides for reorganization of the existing State of Punjab and for matters connected therewith. By virtue of the said Act, the existing State of Punjab has been re-organized so as to constitute two separate States of Punjab and Haryana and a new Union Territory by name Chandigarh and to transfer certain areas of the existing States to the Union Territory of Himachal Pradesh. Under Section 3 of the said Act, State of Haryana has been formed comprising the territories of the existing State of Punjab specified therein and from 1st November, 1966, the said territories ceased to form part of the existing State of Punjab. Section 6 provided that on and from

by the Government of the existing State of Punjab for soil conservation measures in the catchment area of Sukhna Lake shall vest in the Union of India. The Thirteenth Schedule to the Act so far as it relates to the lands acquired for soil conservation measures in the catchment area of Sukhna Lake may also be reproduced hereunder:-

"THE THIRTEENTH SCHEDULE

[See Section 48]

(1) Lands Acquired for the sewerage scheme of Chandigarh:-

xxx xxx xxx

(2) Lands acquired for soil conservation measures in the catchment area of Sukhna Lake:-

S.No.	Name of Village	Hadbast No.	Area in Acres	Punjab Government Notification under which acquired.
1.	Suketri	376	2452.07	517-Ft.-IV(63)/474, dated 13 th February, 1963
2.	Manakpur (Khol Ganna)	104	346.45	
3.	Kuranwala	105	461.00	1789-Ft.-IV/63/989 dated 15 th March, 1963.
4.	Dhamala	122	198.94	
5.	Dara Khurani	390	557.82	
6.	Kansil	354	2155.81	
7.	Total		6172.09	

73. As could be seen, Item (2) of the Thirteenth Schedule refers to two Notifications dated 13th February, 1963 and 15th March, 1963 under which the lands were acquired for soil conservation measures in the catchment area of Sukhna Lake. For the purpose of the present petitions, the Notification dated 15.03.1963 under which 2099 acres of land of Village-Kansal in H.B. No.354 was acquired is relevant and the same is reproduced hereunder:-

"AGRICULTURE DEPARTMENT
(FORESTS)
NOTIFICATION
The 15th March, 1963

No.1789-Ft-IV/63/898. - Whereas the Governor of Punjab is satisfied that land is required to be taken by Government, at the public expense, **for the public purpose, namely, for carrying out soil conservation measures in Sukhna Lake Catchment Area in Kharar Tehsil, District Ambala,** it is hereby declared that the land described in the specification below is required for the above purpose.

This declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Land Acquisition Collector, Chandigarh, District Ambala, is hereby directed to take order for the acquisition of the said land.

The plan of the land may be inspected in the office of the Land Acquisition Officer (Estate Office Building, Chandigarh) and in the office of the Divisional Forest Officer, Chandigarh Forest Division, Chandigarh.

In view of the urgency of the acquisition, the Governor of Punjab, in exercise of the powers under section 17(1) of the said Act, is further pleased to direct that the aforesaid Land

Acquisition Collector, Chandigarh, shall proceed to take possession of the waste and arable land, houses and other structures on the land herein specified.

SPECIFICATION

District	Tehsil	Village with H.B. No.	Area in acres	Directions /Boundaries
1	2	3	4	5
xxx	xxx	xxx	xxx	xxx
Ambala	Kharar	Khudalisher H.B.No.353	108	xxx
Ambala	Kharar	Kansal H.B.No.354	2099	977,978, 979, 980,981,.....

(emphasis supplied)

74. The contention of the petitioners is that not only the land admeasuring 2155.81 acres situated in Hadbast No.354 of Kansal Village acquired for soil conservation measures, but the entire catchment area of Sukhna Lake shall vest in the Union of India in view of the object and purport of Section 48(5) of the Punjab Reorganization Act, 1966. It is also contended by the petitioners that it was nowhere mentioned that the land acquired for the purposes of soil conservation measures alone comprises the catchment area of Sukhna Lake. It is further contended that the purpose of land acquisition was not to declare the catchment area of Sukhna Lake but to carry out soil conservation measures. Therefore, according to the petitioners, the entire catchment area of Sukhna

Lake falling within the territories of the States of Punjab and Haryana and UT Chandigarh vests in the Union of India in terms of Section 48(5) of the Punjab Reorganization Act, 1966 and it is not correct to confine it only to the area acquired under the two notifications mentioned in the Thirteenth Schedule.

75. It is contended by Sh.P.S. Patwalia, the learned Senior Counsel appearing for the petitioners that the object of vesting the land acquired for soil conservation measures of Sukhna Lake in the Union is to exclude the control of both the State of Punjab and the State of Haryana over the said land and to ensure preservation and protection of the entire catchment areas which is highly eco fragile.

76. On the other hand, it is contended by Shri Gopal Subramaniam, the learned Senior Counsel appearing for Tata HDCL that the project site cannot be treated as a part of catchment area since it was not acquired for the soil conservation measures vide Notification dated 15.03.1963. It is sought to be explained by the learned Senior counsel that Village Kansal initially comprised of 2989 acres of land out of which 199.78 acres were acquired vide Notification dated 01.02.1952 for the purpose of Chandigarh Capitol Complex and under the Notification dated 15.03.1963, an extent of 2498 acres comprising of hilly areas of Village-Kansal was acquired for the purpose of soil conservation measures in Sukhna Lake catchment area and that the balance lands of 491 acres of Village-Kansal vested with the State of Punjab after coming into force of the Punjab Reorganization Act, 1966. It is contended that the project site of Tata HDCL forms part of the said balance land of 491 acres of Village-Kansal and therefore, there cannot be any objection for carrying out constructions in the said land,

which remained with the respective land owners provided the same is earmarked for residential purposes in the local Master Plan.

77. The Punjab Reorganization Act, 1966 has been enacted to reorganize the existing State of Punjab. Under the said Act, two separate states, i.e., State of Punjab and State of Haryana and U.T. Chandigarh have been constituted. Part-VI (Section 47 to Section 66) of the Act contained various provisions with regard to apportionment of assets and liabilities of the existing State of Punjab immediately before the appointed day. Section 48 expressly provided for apportionment of land and goods and sub-Section (5) thereof provided that the lands specified in the 13th Schedule to the Act which were acquired by the Government of the existing State of Punjab for the purposes stated therein shall vest in the Union. It would be appropriate to reproduce Section 48 in its entirety for proper appreciation of its purport:-

"48. Land and goods. - (1) Subject to the other provisions of this Part, all land and all stores, articles and other goods belonging to the existing State of Punjab shall,--

(a) if within that State, pass to the successor State in whose territories they are situated; or

(b) if outside that State, pass to the State of Punjab:

Provided that where the Central Government is of the opinion that any goods or class of goods should be distributed among the successor States otherwise than according to the situation of the goods, the Central Government may issue such directions as it thinks fit for a just and equitable distribution of the goods and the goods shall pass to the successor States accordingly.

(2) Stores held for specific purposes, such as use or utilisation in particular institutions, workshops or undertakings or on particular works under construction, shall pass to the successor State in whose territories such institutions, workshops, undertakings or works are located.

(3) Stores relating to the Secretariat and offices of Heads of Departments having jurisdiction over the whole of the existing State of Punjab shall be divided between the successor States in accordance with such directions as the Central Government may think fit to issue for a just and equitable distribution of such stores.

(4) Any other unissued stores of any class in the existing State of Punjab shall be divided between the successor States in proportion to the total stores of that class purchased in the period of three years ending with the 31st day of March, 1966 , for the territories of the existing State of Punjab included respectively in each of the successor States:

Provided that where such proportion cannot be ascertained in respect of any class of stores or where the value of any class of such stores does not exceed rupees ten thousand, that class of stores shall be divided between the successor States according to the population ratio.

(5) Notwithstanding anything contained in this Act, the lands specified in the Thirteenth Schedule which were acquired by the Government of the existing State of Punjab--

- (i) for the sewerage scheme of Chandigarh,
- (ii) for soil conservation measures in the catchment area of Sukhna lake, and

(iii) for the setting up of brick kilns of the Chandigarh Capital Project, together with all connected works in or over such land (including any plant, machinery or implements) shall vest in the Union.

(6) In this section, the expression "land" includes immovable property of every kind and any rights in or over such property, and the expression "goods" does not include coins, bank notes and currency notes."

78. On a careful reading of the above provisions, we are of the view that the contention of the petitioners and UT Chandigarh that not only the land acquired for soil conservation measures in the catchment area of Sukhna Lake but the entire catchment area of Sukhna Lake shall vest in the Union of India runs beyond the scope and purport of Section 48(5). Part-VI of the Punjab Reorganization Act, 1966, according to us, is applicable in relation to the assets and liabilities of State of Punjab as it was existing before the appointed day, i.e., 01.11.1966. This is clear from Section 47 of the Act which reads as under:-

"47. Application of Part. - The provisions of this Part shall apply in relation to the apportionment of the assets and liabilities of the existing State of Punjab immediately before the appointed day."

79. No other provision could be brought to our notice which either expressly or by necessary implication provides that Section 48(5) can be made applicable to the entire catchment area of Sukhna Lake. There is also no basis for the contention that Section 48(5) is aimed at vesting the entire catchment area in the Union so as to exclude the control of both the State of Punjab and State of

Haryana over the said land and to ensure preservation and protection of the catchment area which is highly eco fragile.

80. We are, therefore, of the view that contention of the petitioners that Section 48(5) of the Punjab Reorganization Act, 1966 cannot be confined only to the area acquired under the two Notifications mentioned in the Thirteenth Schedule but it shall be applicable to the entire catchment area of Sukhna Lake is untenable. The said contention is accordingly rejected.

Whether the permission dated 05.07.2013 granted by Nagar Panchayat Naya Gaon is in violation of the Punjab New Capital (Periphery) Control Act, 1952 and the Edict of the city of Chandigarh?

81. The Periphery Control Act, 1952 was enacted by the erstwhile State of Punjab to control and regulate the periphery of the New Capital of the State of Punjab. The Statement of Objects and Reasons of the said Act as published in the Punjab Government Gazette dated 24.10.1952 reads as under:

"The Punjab Government are constructing a New Capital named Chandigarh. The Master Plan providing for the future extension of Capital will extend over a much greater area than the area acquired so far the construction of the first phase of the Capital. To ensure healthy and planned development of the new city, it is necessary to prevent growth of slums and ramshackle construction on the land lying on the periphery of the new city. To achieve this object, it is necessary to have legal authority to regulate the use of the said land for purposes other than the purposes for which it is used at present."

82. Section 5 of the Periphery Control Act, 1952 provides that no person shall erect or re-erect any building or make or extend any excavation in the "controlled area" except in accordance with the plans and restrictions and with

the previous permission of the Deputy Commissioner in writing. Section 3 empowers the State Government to declare the whole or any part of the area to which the Act extends to be a "controlled area" by notification in the official gazette. It may be noted that as per Section 1(2), as it stood by the date of enactment of the said Act, it extended to the area adjacent to and within a distance of five miles on all sides from the outer boundary of Chandigarh. However, Section 1(2) has been substituted by Punjab Adaptation of Laws (State and Concurrence Subjects) Order, 1968 and as per the said amendment the Periphery Control Act, 1952 applies to that area of the State of Punjab which is adjacent to and is within a distance of 10 miles on all sides from the outer boundary of the land acquired for the capital of the State at Chandigarh as that capital and State existed immediately before the 1st November, 1966.

83. The expression "Deputy Commissioner" has been defined under Section 2(3) as the Deputy Commissioner of the District and includes any person for the time being appointed by the State Government to perform all or any of the functions of the Deputy Commissioner under the Act. As per Section 6 of the Periphery Control Act, every person desiring to obtain the permission referred to in Section 5 shall make an application in writing to the Deputy Commissioner in such form and containing such information as may be prescribed, whereupon the Deputy Commissioner after making such enquiry as he considers necessary shall pass appropriate orders either granting the permission subject to conditions or refuse to grant such a permission. Section 6 also provides that permission will be deemed to have been granted if after expiry of three months of the application being made, no order is passed. Section 11 further provides that no land falling

within a "controlled area" is to be used for purpose other than those it was used on the date of notification under Section 3(1) except with the permission of the State Government and on payment of such conversion charges as may be prescribed from time to time.

84. In the year 1966, the Parliament enacted Punjab Reorganization Act, 1966 to provide for the existing State of Punjab and for matters connected therewith. By virtue of the said Act, two separate States i.e. State of Punjab and State of Haryana and a new Union Territory by name Chandigarh have been constituted and certain areas of the existing State of Punjab have been transferred to the Union Territory of Himachal Pradesh on and from the appointed day i.e., 01.11.1966.

85. In terms of Section 89 of the Punjab Reorganization Act, 1966, the Punjab Adaptation of Laws (State and Concurrent Subjects) Order, 1968 was made thereby amending certain provisions of the Periphery Control Act, 1952. The relevant provisions of the Periphery Act, 1952 as amended by Punjab Adaptation of Laws (State and Concurrent Subjects) Order, 1968 are as under:

"1. Short Title, extent and commencement.-(1) This Act may be called the Punjab New Capital (Periphery) Control Act, 1952.

(2) It extends to that area in the State of Punjab which is adjacent to and is within a distance of ten miles on all sides from the outer boundary of the land acquired for the Capital of the State at Chandigarh as that Capital and State existed immediately before the 1st November, 1966.

(3) It shall come into force at once.

2. Definitions.

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(3) Deputy Commissioner means the Deputy Commissioner of the District and includes any person for the time being appointed by the State Government, by a Notification in the Official Gazette, to perform all or any of the functions of Deputy Commissioner under this Act.

(4) Commissioner means the Commissioner of Patiala Division and includes any person for the time being appointed by the State Government, by Notification in the Official Gazette, to perform all or any of the functions of the Commissioner under this Act.

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3. Declaration of controlled area.- (1) The State Government may by notification in the Official Gazette declare the whole or any part of the area to which this Act extends to be a controlled area for the purposes of this Act.

(2) Not less than three months before making a declaration under sub-section (1) the State Government shall cause to be published in the Official Gazette, and in at least two newspapers printed in a language other than English, a notification stating that it proposes to make such a declaration, and copies of the notification or of the substance thereof shall be published by the Deputy Commissioner in such manner as may be prescribed at his office and in the area desired to be controlled.

4. Publication of plans of controlled area.-

(1) The Deputy Commissioner shall within three months of the declaration under sub-section (1) of section 3 deposit at his office and at such other places as he considers necessary, plans showing the area declared to be a “controlled area” for the

purposes of this Act, signifying therein the nature of the restrictions applicable to the controlled.

(2) The plans so deposited shall be in the form prescribed and shall be available for inspection by the public free of charge at all reasonable times.

5. Restrictions in a controlled area. - Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation, or lay-out any means of access to a road, in the controlled area save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing.

6. Applications for permission and the grant or refusal of such permission. - (1) Every person desiring to obtain the permission referred to in section 5 shall make an application in writing to the Deputy Commissioner in such form and containing such information in respect of the building, excavation or means of access to which the application relates as may be prescribed.

(2) On receipt of such application the Deputy Commissioner, after making such enquiry as he considers necessary, shall, by order in writing, either-

- (a) grant the permission, subject to such conditions, if any, as may be specified in the order; or
- (b) refuse to grant such permission.

(3) When the Deputy Commissioner grants permission subject to conditions, or refuses to grant permission under sub-section(2), the conditions imposed or the grounds of refusal shall be such as are reasonable having regard to the circumstances of each case and the interest of general public.

(4) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building, if such building is required

for purposes subservient to agriculture, nor shall the permission to erect or re-erect any such building be made subject to any conditions other than those which may be necessary to ensure that the building will be used solely for agricultural purposes.

(5) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building which was in existence on the date on which the notification under sub-section (2) of section 3 was made, nor shall he impose any conditions in respect of such erection or re-erection unless he is satisfied that there is a probability that the building will be used for a purpose or is designed in a manner other than then for which it was used or designed on the date on which the said declaration was made.

(6) If at the expiration of a period of three months after an application under sub-section (1) has been made to the Deputy Commissioner, no order in writing has been passed by the Deputy Commissioner, permission shall, without prejudice to the restriction signified in the plans under section 4 be deemed to have been given without the imposition of any conditions.

(7) The Deputy Commissioner shall maintain a register as may be prescribed with sufficient particulars of all cases in which permission is given or deemed to have been given or refused by him under this section, and the said register shall be available for inspection without charge by all persons interested and such persons shall be entitled to take extracts therefrom.

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11. Prohibition on use of land.- (1) No land within a controlled area shall except with the permission of the State Government, be used for purposes other than those for which it was used on the date of notification under sub-section (2) of

section 3; and no land shall be used for the purposes of a charcoal-kiln, pottery-kiln, lime-kiln or brick-field or brick-kiln or manufacturing surkhi, or crushing stone except under, and in accordance with, the conditions of a licence from the Deputy Commissioner on payment of such fees and under such conditions as may be prescribed.

(2) The renewal of such licence may be made annually on payment of such fees as may be prescribed.

(3) No person shall be entitled to claim compensation for any injury, damage or loss caused or alleged to have been caused by the refusal to issue or renew a licence, except in cases where such kiln [or work of manufacturing surkhi or crushing-stone as the case may be] was in existence at the time of the notification under sub-section (2) of section 3 and in which case an application shall lie to the arbitrator within three months of the order of refusal in the manner provided in section 9.

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14-A. Delegation.- The Deputy Commissioner may, by an order published in the Official Gazette, delegate any of his powers and functions under this Act or the rules made thereunder to such officer not below the rank of an Extra Assistant Commissioner subordinate to him as may be specified in such order."

86. The Chandigarh Administration placed before this Court the Notification dated 05.09.1953 under which the State of Punjab in exercise of its powers under Section 3(1) of the Periphery Control Act, 1952 declared the areas comprised in the revenue estate of the villages specified therein as 'controlled area' for the purpose of the said Act. The said notification included village "Nada" (Hadbast No.350), village "Karoran" (Hadbast No.352) and village

"Kansal" (Hadbast No.354) at Item Nos.99, 101 and 103 respectively. The "plan of controlled area" dated 21.02.1963 prepared by the State of Punjab in terms of Section 4 of the Periphery Control Act, 1952 has also been placed on record and it is pleaded by UT Chandigarh that as per the said plan, the permissible use of the areas of village Kansal, Karoran and Nada is only agriculture and allied purposes. It is also pleaded by UT Chandigarh that the said plan was reproduced on 21.02.1974 and again on 25.08.1987.

87. It is also the specific case of UT Chandigarh that upon reorganization of State of Punjab, on 01.11.1966, the 'controlled area' declared vide Notification dated 05.09.1953 admeasuring 1,360 kms., was divided in three parts comprising 1021 sq. kms., 295 sq. kms. and 44 sq. kms. among the State of Punjab, State of Haryana and UT Chandigarh respectively and that the Periphery Control Act, 1952 has also been adopted by the State of Punjab, State of Haryana and UT Chandigarh with the same objects and reasons in respect of the 'controlled area' falling in their respective jurisdiction.

88. It is, therefore, contended by Sh.P.S.Patwalia, the learned Senior Counsel appearing for the petitioners that since the land over which the project in question is proposed to be developed by Tata HDCL in village-Kansal forms part of the area and has been declared as a 'controlled area', the development, if any, shall be in conformity with the provisions of the Periphery Control Act, 1952.

89. It is also contended that as per the provisions of Periphery Control Act as amended by Punjab Adaptation of Laws (State and Concurrent Subjects) Order, 1968, the Deputy Commissioner *vis a vis* the Union Territory of Chandigarh

would be the Deputy Commissioner of Chandigarh and therefore any person who desires to make construction in the controlled area by altering its use necessarily has to obtain permission from the Union Territory of Chandigarh. It is further contended that the object of the Periphery Control Act 1952, being protection of the periphery of Chandigarh, unless UT Chandigarh considers it permissible, no construction can be allowed and that any construction in the periphery post reorganization of Punjab can be only with the permission from the Union Territory of Chandigarh.

90. It is also argued by Sh.P.S.Patwalia that the city of Chandigarh being one of the first planned cities in the country and is the only completed project of Le Corbusier, the famous French architect, it has been decided by all stakeholders and the special committees such as Co-ordination Committee and Expert Heritage Committee, constituted by the Union of India that the development must be in terms of the Edict of the city of Chandigarh. It is submitted that the 'Capitol Complex', which as per the Master Plan drafted by the founder architect, Le Corbusier has been placed at the top of the town, symbolizes the 'Head' of 'human body' and it was conceptualized by the founder architect that there should be nothing above the 'Head'. The contention is that the Edict of Chandigarh sets out the basic ideas underlining the planning of the city and the object of the Edict is to enlighten the present and future citizens of Chandigarh about the basic concepts of planning of the city so as to save the city from the whims of the individuals. The further contention is that any development in State of Punjab or State of Haryana shall be planned and co-ordinated

development so as to ensure that the same would not adversely impact the city of Chandigarh and its original concepts.

91. It is also urged by the learned Senior Counsel Sh. P.S Patwalia that it is essential to ensure that all development in the periphery forms part of a single integrated plan for sustainable regional development, particularly for protection of the eco-fragile catchment area of Sukhna Lake. It is also contended that protection of the catchment area of Sukhna Lake is crucial not only for the existence and sustenance of the lake but also for the healthy groundwater level to be maintained in the city of Chandigarh. While stating that UT Chandigarh has already proposed the entire catchment area of Sukhna Lake as a protected forest area and no construction zone in the Chandigarh Urban Complex Plan, it is submitted by the learned Senior Counsel that similar efforts are required to be made by the State of Punjab also for protection of the catchment area of Sukhna Lake and, therefore, the Environmental Clearance should not have been granted for the project proposed by Tata HDCL. Similarly, Nagar Panchayat Naya Gaon should not have granted the permission dated 05.07.2013 since the same would cause irreversible damage to the eco-fragile nature of the catchment area of Sukhna Lake.

92. To substantiate his submissions, Sh. P.S Patwalia, the learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the recommendations dated 05.07.1997 of the Co-ordination Committee constituted by the Government of India. The said recommendations to the extent they are relevant are as under:-

"ii) The Periphery Control Act, 1952 clearly envisages that the developments around Chandigarh need to be controlled in the interest of preserving the character and environment of the city. While the division of Punjab into the UT of Chandigarh and the State of Haryana and Punjab has exerted pressure on developments in the periphery area, it is also important that all developments in the periphery form part of a single integrated plan for sustainable regional development coordination was most particularly needed in the development of infrastructure, protection of the eco-fragile North and Sukhna Lake and ensuring that the planned developments by the three jurisdictions complement and supplement the City Beautiful. All developments in the Chandigarh region should aim at creating a liveable environment which should surpass even that of the city of Chandigarh. Sustainable development should remain as the central concern of all planning and developmental efforts.

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iv) Sukhna Lake and its catchment areas need to be protected at any cost. The lake is a precious regional asset with a great capacity to facilitate recharging of the groundwater in and around Chandigarh. Accordingly, no developments in the peripheral area should be taken up if they affect the environs and the quality of the Lake."

93. It is also submitted by Sh.P.S. Patwalia that the Government of India constituted the Expert Heritage Committee under the Chairmanship of the Administrator, UT Chandigarh with nominees of the Ministry of Culture, Ministry of Home Affairs, Ministry of Urban Development, apart from renowned architects, planners, art historians, educationist and environmentalists for preservation of architectural heritage of Chandigarh. The Expert Heritage Committee was directed to look into the original concept of the city as well as maintenance of the important buildings in Chandigarh and the report given by

the Committee has been approved by the Government of India vide letter dated 23.12.2011. Specific recommendations made by the said Committee with respect to developments in the peripheral areas around the Capitol Complex included:

"As per the Edict, there should be 'No Construction' in the North of Capitol Complex. However, due to large scale urbanization by the neighboring states, there is potential danger that the backdrop of Capitol Complex will soon have multi storied and high rise buildings since there is no height restriction on the constructions in the neighboring states. The recommendation is: **'it is proposed that the issue of high rise development by the neighboring states in contravention to the edict of Chandigarh needs to be urgently taken up with the neighboring states otherwise the entire concept of the plan will be jeopardized. The area North of the Capitol Complex falls within the notified catchment area of Sukhna Lake and also is in close vicinity to the Sukhna Wildlife Sanctuary. It is important that development in and around these important eco sensitive areas is regulated keeping with the Government of India Acts and guidelines. Coordinated efforts with the neighboring states are required for notifying the Eco Sensitive Zones around the Wildlife Sanctuary'.**"

(Emphasis Supplied)

94. The sum and substance of the contentions on behalf of the petitioners appears to be that the development of the project in question is impermissible under law since the same falls within the 'controlled area' declared under the Periphery Control Act, 1952. Even otherwise in terms of the provisions of the Periphery Control Act, 1952 as amended by Punjab Adaptation of Laws (State and Concurrent Subjects) Order, 1968, the Respondent No.8/Tata HDCL is

bound to seek permission from the UT Chandigarh in addition to the permission from the State of Punjab.

95. Reiterating the submissions made by Sh.P.S Patwalia, it is contended by Sh. A.S Chandhiok, the learned senior counsel appearing for the Chandigarh Administration that since UT Chandigarh is vehemently resisting the development of the project in question, the impugned permission dated 05.07.2013 granted unilaterally by Nagar Panchayat Naya Gaon purportedly in exercise of the powers conferred under the Periphery Control Act, 1952 is illegal.

96. It is further contended by Sh. A.S. Chandhiok that:

- (i) the Periphery Act, 1952 creates a trust of the land falling in periphery area of the State of Punjab for the city of Chandigarh for future expansion of the city of Chandigarh and that the said object continues to remain even after reorganization of the State on 01.11.1966 as reiterated in the Periphery Policy, 2006. Therefore, unplanned development in the periphery area should not have been permitted.
- (ii) as per the provisions of the Periphery Act, the land in the periphery area could only be used in terms of the plans published under Section 4 of the said Act. Since the development in the periphery area has to be for the benefit of city of Chandigarh and for its expansion, the development of the project in question by Tata HDCL ought not to have been permitted without taking the consent of UT Chandigarh.

- (iii) the constitution of Nagar Panchayat Naya Gaon vide Notification dated 18.10.2006 itself is in violation of Periphery Act, 1952 as well as Periphery Policy, 2006.
- (iv) the Master Plan drawn for Nagar Panchayat Naya Gaon is in violation of Section 70(d) of the PRTP&D Act, 1995 as no zoning regulations were notified with the Master Plan.

97. Per contra, it is contended by Sh.Gopal Subramaniam, the learned senior counsel appearing for Tata HDCL and M/s Hash Developers that the Periphery Control Act, 1952 does not provide for permissions to be taken from both the UT Chandigarh and the State of Punjab for any construction in the controlled area of the periphery of Chandigarh. It is further contended that the respondent No.8/Tata HDCL had validly sought permission under Section 6(2) of the Periphery Control Act, 1952 and the same was rightly granted by Nagar Panchayat Naya Gaon by order dated 05.07.2013.

98. While drawing the attention of this Court to the draft Notification dated 15.11.2001 issued by the Governor of Punjab in exercise of the powers conferred under Section 4(1) of the Punjab Municipal Act, 1911 proposing to declare the local area comprising of villages Karoran, Nada and Kansal of Tehsil Kharar (District-Roop Nagar) to be transitional area for the purpose of constituting Nagar Panchayat Naya Gaon as well as the Notification dated 02.01.2009 under which the Master Plan-2021 of local planning area of Naya Gaon was notified, it is sought to be explained by the learned senior counsel that the permission granted by Nagar Panchayat Naya Gaon dated 05.07.2013 is in

conformity with the provisions of the Periphery Control Act, 1952 read with Punjab Regional and Town Planning and Development Act, 1995.

99. It is also submitted by Sh. Gopal Subramaniam, the learned Senior Counsel that by virtue of Notification dated 01.07.1995 issued by the Governor of Punjab appointing the Chief Administrator of Punjab, Urban Planning and Development and the Secretary, Government of Punjab, Department of Housing and Urban Development, to perform the functions of "Deputy Commissioner" and "Commissioner" respectively under the Periphery Control Act, 1952, the Nagar Panchayat Naya Gaon is the competent authority to exercise the powers under Section 5 of the Periphery Control Act, 1952 and the Executive Officer is the person designated to grant such permission on behalf of the Nagar Panchayat.

100. It is further submitted by the learned Senior Counsel that the order dated 05.07.2013 has also satisfied the requirement of the permission of the State Government under Section 11 of the Periphery Control Act, 1952. Regarding the contention of the petitioners and UT Chandigarh that the project in question would violate the Edict of Chandigarh envisaged by Le Corbusier, it is submitted by Sh.Gopal Subramaniam, the learned Senior Counsel, that the Edict has no recognition of law and, therefore, cannot be enforced. At any rate, according to the learned Senior Counsel, the Edict of Chandigarh shall apply within the boundaries of Chandigarh and not beyond that.

101. Sh.Puneet Bali, the learned Senior Counsel appearing for the State of Punjab, while supporting the submissions of Sh.Gopal Subramaniam in all respects, contended that Nagar Panchayat Naya Gaon alone is the competent

authority and that the permission dated 05.07.2013 warrants no interference on any ground whatsoever.

102. We have considered the rival submissions made on behalf of the parties and perused the documents placed on record.

103. The Punjab Regional and Town Planning and Development Act, 1995 (for short 'PRTP&D Act, 1995') enacted by the State of Punjab came into force on 26.05.1995 to make provisions *inter alia* for better planning and regulating the development and use of land in 'planning areas' delineated for that purpose and for preparation of regional plans and master plans and implementation thereof. The said Act extends to the whole of the State of Punjab. Section 2(zb) of PRTP&D Act, 1995 defines 'planning area' as regional planning area, a local planning area or a site for a new town declared as such under Section 56. Section 56, as substituted by the Amendment Act 30 of 2006, empowers the State Government to declare by notification in the official gazette any area in the State to be a regional planning area, a local planning area or the site for a new town. Section 61 of the PRTP&D Act, 1995 empowers the State Government to get the surveys carried out, get the maps prepared and take the other necessary steps for securing planned development and use of land in a regional planning area. Under Section 70 of the PRTP&D Act, 1995, the designated planning agency, within one year after the declaration of a planning area or within such time as the State Government may from time to time extend, prepare and submit to the State Government for its approval the master plan for the planning area or any of its parts indicating *inter alia* the manner in which the land in the area should be used.

104. Section 2(za) of PRTP&D Act, 1995 defines 'Planning Agency' as the Punjab Urban Planning and Development Authority (PUDA), a Special Urban Plan and Development Authority, a New Town Planning and Development Authority, a local authority or the Town and Country Planning Wing of the Department of Housing and Urban Development, designated as such by the State Government under Section 57 of the PRTP&D Act, 1995 for a planning area.

105. A perusal of the Compilation of Documents filed on behalf of State of Punjab with regard to the constitution of Nagar Panchayat Naya Gaon reveals that in the meeting held on 07.12.1998 under the chairmanship of the Chief Minister, Punjab, it was decided *inter alia* to prepare a development plan for Naya Gaon - Karoran cluster. Pursuant thereto, on the basis of the resolutions passed by the concerned Gram Panchayats, a request was made by the Gram Panchayat, Karoran vide letter dated 01.07.1999 for formation of a Nagar Panchayat by including village Naya Gaon and other adjoining villages named therein stating that the said area basically forms part of Karoran village with revenue Hadbast No.352 which is in close proximity to UT Chandigarh. It was also stated that since the people working in various public/private sector organizations have been residing in the said area, it is essential to provide better facilities and therefore, Nagar Panchayat may be established at village Naya Gaon.

106. The record further shows that after conducting detailed surveys, the issue of setting up of Nagar Panchayat Naya Gaon was considered in the various meetings held under the chairmanship of the then Chief Minister of Punjab and

having found that the villages of Nada, Karoran and Kansal fulfill the required criteria, it was decided to recommend to the Government for formation of Nagar Panchayat Naya Gaon to enable planned and systematic development of the area and simultaneously to keep a check on unregulated and unplanned construction around the area.

107. In pursuance thereof, Notification dated 15.11.2001 was issued under Section 4(1) of the Punjab Municipal Act, 1911 declaring the areas of villages Nada, Karoran and Kansal to be 'transitional areas' for the purpose of constituting Nagar Panchayat Naya Gaon and inviting objections from public. It is relevant to note that Section 4 of the Punjab Municipal Act, 1911 which provides for specification of local areas to be smaller urban areas or transitional areas and constitution of Municipal Councils and Nagar Panchayats. The State Government is empowered to make such specifications having regard to the population of the area, the revenue generated for local administration, the economic importance and such other factors. Section 50A of the Punjab Municipal Act, 1911, as inserted by Act 11 of 1994, provides that the municipal administration of a smaller urban area and the transitional area shall vest in the Municipal Council and Nagar Panchayat respectively.

108. The Notification dated 15.11.2001 issued under Section 4(1) of the Punjab Municipal Act, 1911 was challenged before the Punjab & Haryana High Court in **CWP No.18597/2001** titled ***Dr. B. Singh v. Union of India*** and the Notification was stayed by order dated 28.11.2001. The said order of stay was vacated on 13.07.2005 and thereafter a fresh Notification dated 12.09.2005 was issued inviting objections for constitution of Nagar Panchayat at Karoran, so

called Naya Gaon. After considering the objections received, the final Notification in terms of Sections 4 and 5 of the Punjab Municipal Act, 1911, as amended by Amendment Act 11 of 1994, was issued on 18.10.2006 declaring the local area mentioned in the Schedule thereto comprising of villages Karoran, Nada and Kansal to be 'transitional area' for the purpose of constituting Nagar Panchayat, Naya Gaon subject to the following conditions:

- "(i) the forest and land preservation area under the Nagar Panchayat shall continue to be so unless it is duly approved/cleared for other uses by the authority competent to do so; and
- (ii) the constitution of Nagar Panchayat shall not impinge upon any orders of the courts of competent jurisdiction particularly with regard to illegal construction if any."

109. A perusal of the said Notification makes it clear that the declaration of the local areas of villages Karoran, Nada and Kansal as transitional areas was based on the factors such as (a) population of the areas; (b) density of the population therein; (c) revenue generation for the local administration; (d) percentage of employment in non-agricultural activities and (e) economic affairs.

110. In the interregnum, the Punjab Periphery Policy, 2006 was formulated on the basis of the recommendations of the State Level Committee and the same was approved by the Governor of Punjab vide Notification dated 20.01.2006. The said State Level Committee was formed pursuant to an order of Punjab and Haryana High Court in CWP No.14357/2002 dated 10.09.2003 directing:

- "(i) that the Committee should critically examine the problems and bottlenecks in the proper development of Periphery and to

suggest a policy framework which would ensure planned development of the area;

- (ii) that the issue of regularization of unauthorized constructions which have already come up in Periphery should also be examined by this Committee;
- (iii) that on the basis of the recommendations made by the Committee the State Government shall take a decision whether or not to regularize such constructions;
- (iv) that the State Government shall also examine the reasons for the coming up of unauthorized constructions, rationale for their regularizing and steps to stop such construction in future including imposition of exemplary fine and setting up of Special Courts to deal with such illegal constructions."

111. The said Committee headed by the Chief Secretary submitted a detailed report recommending *inter alia* preparation of a comprehensive Land Use Plan for the entire Periphery Control Area in order to meet the emerging needs of population growth, promote planned and systematic development of the entire area and to check haphazard, unregulated and un-planned development. The said report of the Committee was approved by the Governor of Punjab in exercise of the powers vested in him under the Periphery Control Act, 1952 and accordingly, the 'Punjab Periphery Policy, 2006' was published vide Notification dated 20.01.2006. The Preamble to the said Policy which reflects the object of making the said Policy may be reproduced hereunder for ready reference:

"In pursuance to the decision of the State Council of Ministers in its meeting of 17th November, 2005 on the subject "Approval of Periphery Policy Report and other Allied Matters" and in exercise of the powers vested in him under the Punjab New Capital (Periphery) Control Act, 1952 (Punjab Act No.1 of 1952), the Governor of

Punjab is pleased to accord an in-principle approval to the Report submitted by the Committee headed by the Chief Secretary, Punjab.

The Governor of Punjab is further pleased to declare that the Chief Minister has been authorized to effect amendments in the said Policy in accordance with any felt need and to accord the final approval to the Periphery Policy.

The Governor of Punjab is further pleased to direct the publication of this Report for the information of the general public in Punjab Government Official Gazette (Extraordinary) as well as on Punjab Government/PUDA's Website.

1.1 The Chandigarh Periphery Controlled area was created with the twin objectives of ensuring a planned future expansion of the New Capital City and to prevent mushrooming of unplanned construction around it. The Punjab New Capital (Periphery) Control Act, 1952 accordingly aimed at regulating the use of land and preventing unauthorized and unplanned urbanization in a 16 kilometre periphery.

1.2 Since then, the planned satellite townships of S.A.S. Nagar (Mohali), and Panchkula have come up in the Periphery in addition to a large containment. Further in 1990, the State Government declared an area of 10,000 acres near Dera Bassi, falling within 23 villages of Patiala District, to be a Free Enterprise Zone (FEZ), where the setting up of industries was to be permitted.

1.3 Notwithstanding the regulatory framework, enforcement has been patchy. Appreciating the emerging ground realities, the Punjab Government had in 1998 decided to permit an across-the-board regularization of all unauthorized constructions, which had already come up within the Periphery up to and including 7th December, 1998. Simultaneously, it was also decided to evolve a policy framework which would permit the setting up of institutions related to education, health etc., with low density of built-up-area, within the Periphery, apart from permitting activities related to leisure and tourism.

2.1 Accordingly, a Committee headed by the Chief Secretary was constituted by the State Government in its order of 10th September, 2003 to suggest an appropriate and transparent policy framework of the Periphery."

112. A perusal of the policy shows that the State Level Committee having held numerous meetings and obtained the comments of relevant departments of the Government as well as the views of the public, enumerated the broad policy framework within which the Committee approached the entire issue of controlling the periphery of Chandigarh as under:

- "(a) Housing for the increasing population of the city is perhaps the most urgent requirement that has to be provided for. In that context, a realistic view has to be taken of existing unauthorized structures. Policy also needs to cater for the normal growth of village populations as well as migration from outside specially of persons from economically weaker sections.
- (b) It is necessary also to take into account the increased attraction of the city and its environment as an investment destination.
- (c) Catering for further growth would involve heavy investment in road connectivity, provision of civic amenities, electricity, water supply and sewerage. Accordingly, it was considered desirable that the overall policy framework should also generate adequate resources for the provision of such facilities. A multidisciplinary sub-group was asked to advise on the imposition of such charges after studying the existing pattern in neighbouring State of Haryana.
- (d) The Committee noted the wide disparity between the level of civic and urban infrastructure in the city and its surrounding towns and villages. Accordingly, the available resources needed to be suitably deployed to ensure balanced growth. Such resources, it was felt could also be raised and credited towards a dedicated fund which could be used for developing and upgrading basic infrastructure in the periphery area and specially for the settlements therein. "

113. After addressing various issues such as periphery controlled area plan, housing schemes in the periphery, unauthorized constructions, municipal towns in periphery and existing rural settlements, the Committee opined that it would be inadvisable to repeal the Punjab New Capital (Periphery) Control Act, 1952.

It was concluded by the Committee:

"Conclusions:

The Committee had to balance and optimize between divergent and often conflicting demands and requirements. For instance, the purist view of freezing the Periphery as agricultural was contradictory to the very reasonable demand to allow for the expansion of the 'abadi dehs' or for permitting housing in a planned manner. Similarly, although institutions and leisure facilities have been recommended, the norms of FAR and built-up area, have been pegged on the lower side.

Conversion charges were also deemed necessary to raise resources for the overall development of the Periphery, although the Committee was acutely conscious that it may add to overall project cost. While the Committee recommends strict compliance with the up-to-date Outline Master Plan of S.A.S. Nagar, it also suggests the speedy formulation of an over-arching Periphery Development Plan for the entire region. Nevertheless, pending finalization of the latter, the Committee recommends that limited change of land use may be permitted as per the recommendations contained in this Report.

Even though existing constructions have been proposed to be regularized on purely humanitarian grounds, the Committee has strongly recommended a zero tolerance enforcement and regulatory regime, in the Post-Policy Phase. However, enforcement of the regulatory regime would only be sustainable in the long run if total Area Planning of the Periphery is taken up in right earnest and brought to its logical conclusion at the earliest.

The prescription proposed by the Committee is to be viewed as a comprehensive package, which needs to be comprehensively implemented. The Committee sincerely hopes that it would have addressed the concerns of all the stakeholders in a judicious, balanced and practical manner. It is

now for the State Government to consider, approve and implement both the regulatory and development aspects of this policy in prescribed time frames."

114. Annexure 'A' to the said policy contained guidelines for permitting planned and organized residential development in the periphery; Annexure 'B' contained guidelines for permitting institutions, recreational activities (including sports) and farm houses; Annexure 'C' contained guidelines for permitting constructions around *abadi* area of villages. The proposed charges for development of different areas have also been specified vide Annexures 'D-I to D-III'.

115. Having regard to the fact that the Master Plan for the Nagar Panchayat Naya Gaon was not finalized, it was decided in the meeting held on 03.11.2006 by the Principal Secretary, Local Government, Punjab that until the Master Plan is finalized, the building plans in the area falling under Nagar Panchayat Naya Gaon should not be sanctioned. Subsequently, by order dated 20.12.2007, the Government of Punjab in exercise of the powers conferred under Section 11 of the Periphery Control Act, 1952 granted exemption for the use of land falling within the limits of Nagar Panchayat Naya Gaon for residential, commercial, institutional and other purposes as per Municipal Building Bye-Laws and authorization of executive officer of Nagar Panchayat Naya Gaon under Section 5 the Periphery Control Act, 1952 for regularization of constructions, which have already come up within the limits of Nagar Panchayat Naya Gaon.

116. The record further shows that the Government of Punjab, Department of Housing and Urban Development vide Notification dated 29.01.2008 issued under Section 56(1) of PRTP&D Act, 1995, as amended by the Amendment

Act, 30 of 2006 declared the Greater Mohali Development Area as the 'Regional Planning Area' comprising of seven towns including 'Naya Gaon'. The schedule of boundary of Regional Planning Area of Greater Mohali and the list of towns/villages falling in Greater Mohali Area annexed to the said Notification included all the villages merged in Naya Gaon Municipal Council. Pursuant thereto, the Greater Mohali Area Development Authority (GMADA) got prepared a Regional Plan exclusively for Naya Gaon area located just at the foothill of the Shivalik so as to enable GMADA to attain a sustainable but robust economic development while at the same time, recognizing the need to conserve and preserve the ecologically sensitive and forest areas for the enjoyment of the future generations for many years to come. As per the said Regional Plan which included a land use plan dated 25.02.2008, the existing land use in villages Nada, Karoran and Kansal falling in Nagar Panchayat Naya Gaon is shown predominantly residential. The relevant portion may be reproduced hereunder for ready reference:-

"The existing land use in village Kansal is pre-dominantly residential. The development therein are organic in nature, primarily constituted of rural settlements and unauthorized residential developments. This forms about 60% (87 ha) of the total area of village Kansal within the Naya Gaon Nagar Panchayat, leaving about 40% (58 ha) of the area to be planned for development. These existing settlements lack appropriate services, community facilities and parks & open spaces.

The southern and western boundary of village Kansal borders the U.T. of Chandigarh where most of the major institutional buildings such as Punjab Engineering College, Punjab Legislative Assembly, Civil Secretariat and the Punjab & Haryana High Court.

The eastern periphery of village abuts village settlements within the U.T. of Chandigarh whilst the northern boundary is a continuum of the reserved forests located in the foothills of Shivalik range."

117. The said Regional Plan along with land use drawing was published under Section 63(1) of PRTP&D Act, 1995 inviting objections/suggestions from the general public. After taking into consideration the objections/suggestions, the Government of Punjab had withdrawn the Regional Plan dated 28.02.2008 vide Public Notice dated 28.03.2008. On 28.03.2008 itself, modified sanction was granted by the Government of Punjab, Housing & Urban Development Department indicating the use of land in Nagar Panchayat Naya Gaon as per the statutory provisions and the periphery policy. Thereafter, by Notification dated 30.05.2008, the State Government delegated its powers under Section 10 of the Periphery Control Act, 1952 to the Principal Secretary to Government of Punjab, Department of Local Government to impose restrictions upon the use and development of land and to prepare, approve and publish the master plans of the area falling in Nagar Panchayat Naya Gaon. Subsequently, vide Notification dated 24.07.2008, the Governor of Punjab declared the local planning area of Nagar Panchayat Naya Gaon. Similarly, vide Notification dated 13.08.2008, the Chief Town Planner was appointed as the Planning Agency for the preparation of the existing land use plan and the draft master plan.

118. In our considered opinion, the constitution of Nagar Panchayat Naya Gaon as well as the preparation of the Master Plan of Nagar Panchayat Naya Gaon are in conformity with the provisions of PRTP&D Act, 1995 read with the Periphery Control Act, 1952. We have already referred to the object of the

Periphery Control Act, 1952 and the intent of its provisions. In our view, the provisions of the said Act in no way prohibited raising of constructions in the periphery. However, the construction shall be subject to certain checks and balances, which have been amply taken care of by the subsequently enacted PRTP&D Act, 1995. This view of ours is fortified by the Periphery Policy which contemplates planned growth, particularly housing schemes in the peripheral areas in accordance with the Master Plan which has a statutory force. We are, therefore, unable to accept the contention of the petitioner that there cannot be any constructions in the peripheral areas. The Periphery Policy published vide Notification dated 20.01.2006 highlighted the need for promoting planned development of the peripheral areas. So far as housing schemes in the periphery are concerned, it was recommended by the Expert Committee:

"Housing Schemes in the Periphery. - With only limited planned urban areas available in the cities of Chandigarh, S.A.S. Nagar and Panchkula and the growing demand for housing, it was noted that those who could not afford shelter in these urban areas, found place on the fringes of the city, usually in the adjoin settlements/villages, inside or outside the Abadi areas in an unauthorized manner. Considering the above situation, it is proposed that suitable pockets for Housing/Residential use in the Periphery area be earmarked which can be developed by the Private Parties of Government/Semi-Government Agencies. While permitting such development, it must be ensured that adequate provisions are made for public utilities/facilities and services. Special care must be taken to ensure that housing needs of the economically weaker sections are catered fore in adequate measure. Detailed policy prescriptions in this respect are at Annexure 'A'."

119. Annexure 'A' to the policy which contained the guidelines for permitting planned and organized residential development in the periphery may also be reproduced hereunder:

- "(a) The area delineated as "residential" in the Outline Master Plan/Draft Comprehensive Master Plan/Comprehensive Master Plan, prepared under the Punjab Regional Town Planning and Development Act, 1995, subject to a minimum area of 100 acres;
- (b) The area beyond 10 kilometers of the Chandigarh boundary, as a completely self contained and integrated residential townships, subject to a minimum area of 500 acres. Such townships shall provide independent access from the highways, make sufficient provision for water supply and sewage disposal, provide adequate housing for weaker sections and will have adequate social infrastructure in terms of educational, medical and recreational facilities;
- (c) The Municipal and Nagar Panchayat towns, as a "Mega Project" or otherwise, subject to compliance with the Master Plan, or any draft Master Plan, of the town."

120. It is vehemently contended by Sh.P.S.Patwalia, the learned Senior Counsel appearing for the petitioners that the proposed project, if allowed will destroy the pristine ecology and environment of the area inasmuch as the said project is in close proximity of Sukhna Wildlife Sanctuary and also within the catchment area of Sukhna Lake. To substantiate his contention, the learned Senior Counsel placed reliance on *M.C. Mehta vs. Kamal Nath*; (1997) 1 SCC 388, *Intellectuals Forum vs. State of A.P.*; (2006) 3 SCC 549, *M.C. Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India*; (1997) 3 SCC 715

and *Indian Council For Enviro-Legal Action vs. Union of India*; (1996) 5 SCC 281.

121. On the other hand, Sh.Gopal Subramaniam, the learned Senior Counsel appearing for Tata HDCL has drawn the attention of this Court to *Lafrage Umiam Mining (P) Ltd. vs. Union of India*; (2011) 7 SCC 338 and *Research Foundation for Science Technology and Natural Resource Policy vs. Union of India*; (2007) 15 SCC 193 wherein the Supreme Court recognized the concept of 'sustainable development' and held that the concept of 'balance' needs to be considered for the use of environmental resources.

122. We have carefully gone through the decisions cited by the learned counsels for both the parties.

123. In *M.C. Mehta v. Kamal Nath* (supra), the Supreme Court while observing that 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, explained the scope of the doctrine of public trust as under:

"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 nullious*) or by every one in common (*res communious*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited

in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public.

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xxx xxx xxxx

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.”

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xxx xxx xxxx

33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case* [33 Cal 3d 419] clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in *Mono Lake case* [33 Cal 3d 419] to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In *Phillips Petroleum Co. v. Mississippi* [108 SCt 791 (1988)] the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case* [108 SCt 791 (1988)] assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources."

124. In *Intellectuals Forum v. State of A.P.* (supra), the Supreme Court reiterated the doctrine of Public Trust as part of Indian law. While laying down the law regarding the use of public lands or natural resources, which have a direct link to the environment of a particular area, the Supreme Court explained

the principle of 'sustainable development' and the need to find a balance between the developmental needs and the use of ecological resources as under:

“84. The world has reached a level of growth in the 21st century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us to the conception of growth and development which sustains from one generation to the next in order to secure “our common future”. In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, “conservation, however, always takes a back seat in times of economic stress”. It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally.

85. Parliament has considerably responded to the call of the nations for conservation of environment and natural resources and enacted suitable laws.

86. The judicial wing of the country, more particularly this Court, has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution. This apart, the directive principles of

State policy as also the fundamental duties enshrined in Part IV and Part IV-A of the Constitution respectively also stress the need to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures.”

125. Applying the concept of sustainable development and precautionary principle to the facts of the case on hand, it was held in ***M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India*** (supra):

“6. Mr Shanti Bhushan, learned Senior Advocate, appearing for some of the builders had vehemently contended that banning construction within one km radius from Badkhal and Surajkund is arbitrary. According to him it is not based on technical reasons. He has referred to the directions issued by the Government of India under the Environment Protection Act and has contended that the construction can at the most be banned within 200 to 500 metres as was done by the Government of India in the coastal areas. He has also contended that restriction on construction only in the areas surrounding Surajkund and Badkhal lakes is hit by Article 14 of the Constitution of India as it is not being extended to other lakes in the country. We do not agree with Mr Shanti Bhushan. The functioning of ecosystems and the status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi. We have on record the Inspection Report in respect of these lakes by the National Environmental Engineering Research Institute (NEERI) dated 20-4-1996 indicating the surroundings, geological features, land use and soil types and archaeological significance of the areas surrounding the lakes. According to the report Surajkund lake impounds water from rain and natural springs. Badkhal Lake is an impoundment formed due to the construction of an earthen dam. The catchment areas of these

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

126. *Indian Council For Enviro-Legal Action v. Union of India* (supra) was a public interest litigation filed under Article 32 of the Constitution of India in the Supreme Court raising concern for the protection of ecology and for preventing irreversible ecological damage to the coastal areas of the country. Being conscious of its Constitutional obligation to protect the fundamental rights of the people, directions were issued by the Supreme Court to the concerned authorities for the protection of environment and preventing pollution. The observations made by the Supreme Court in para 41 which are relevant for the purpose of present case may be reproduced hereunder:

"41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for

preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.

127. In *Lafarge Umiam Mining (P) Ltd. v. Union of India* (supra), a three Judge Bench of the Supreme Court while recognizing the concept of “sustainable development” and considering the universal human dependence on the use of environmental resources for the most basic needs rendering it impossible to refrain from altering the environment, observed:

“75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the concept of “sustainable development”. It is equally well settled by the decision of this Court in *Narmada Bachao Andolan v. Union of India* [(2000) 10 SCC 664] that environment has different facets and care of the environment is an ongoing process. These concepts rule out the

formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring “no go” areas (whose identification would again depend on undertaking of a due diligence exercise). In such cases, the margin of appreciation doctrine would apply.

76. Making these choices necessitates decisions, not only about how risks should be regulated, how much protection is enough, and whether ends served by environmental protection could be pursued more effectively by diverting resources to other uses. Since the nature and degree of environmental risk posed by different activities varies, the implementation of environmental rights and duties requires proper decision-making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life."

128. The concept of “balance” under the principle of proportionality applicable in the case of sustainable development was explained by the Supreme Court in ***Research Foundation for Science Technology & Natural Resource Policy v. Union of India*** (supra) as under:

“10. The concept of “balance” under the principle of proportionality applicable in the case of sustainable development is lucidly explained by Pasayat, J. in the judgment of this Court in T.N. Godavarman Thirumalpad v. Union of India [(2002) 10 SCC 606] vide para 35 which reads as under: (SCC p. 628)

“35. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two

interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.”

The above paragraphs indicate that while applying the concept of “sustainable development” one has to keep in mind the “principle of proportionality” based on the concept of balance. It is an exercise in which we have to balance the priorities of development on one hand and environmental protection on the other hand.”

129. In the light of the legal position noticed above, it is apparent that 'sustainable development' is a balancing concept between the ecology and development and it has successfully replaced the traditional idea that development and ecology are opposed to each other. The objective of the existing law governing the environment is to create harmony between the development and environment since neither can be sacrificed at the altar of the other. As held by the Supreme Court in ***Karnataka Industrial Areas Development Board vs. C. Kenchappa; (2006) 6 SCC 371***, we have now reached at a point where it is necessary to strike a golden balance between development and ecology. As could be seen from the various decisions cited before us by the learned Senior Counsels, the environmental jurisprudence in India is evolving and expanding in the light of the facts of each case. The consideration of the ecological aspects can never be one-sided since the concept of 'sustainable development' depends on the facts and circumstances in each case

keeping in view the nature of the development sought to be made *vis-a-vis* the nature of the changes sought to be brought to the environment.

130. We have also observed that in the light of the jurisprudence developed by the Supreme Court, environment is not merely a statutory issue but it is one of the facets of the right to life guaranteed under Article 21 of the Constitution of India. Environment is, therefore, a matter directly under the Constitution and if the Court perceives any project or activity as harmful or injurious to the environment, it would feel obliged to step in. [*Vide In Re: Construction of Park at Noida Near Okhla Bird Sanctuary*; (2011) 1 SCC 744, *T.N. Godavarman Thirumulpad vs. Union of India*; (1997) 2 SCC 267, *A.P. Pollution Control Board vs. Prof.M.V. Nayudu*; (1999) 2 SCC 718, *Narmada Bachao Andolan vs. Union of India*; (2000) 10 SCC 664 and *Vellore Citizens' Welfare Forum vs. Union of India*; (1996) 5 SCC 647.]

131. In the case on hand, it is no doubt true that the issue as to whether the proposed construction of the residential complex by Tata HDCL can be permitted in the catchment area of Sukhna Lake in close proximity to Sukhna Wildlife Sanctuary is an essential and contentious issue which needs consideration in accordance with the provisions of the Environment (Protection) Act, 1986 keeping in view the principle of sustainable development and the principle of proportionality. However, what falls for consideration under this head is the validity of the permission dated 05.07.2013 granted by Nagar Panchayat Naya Gaon.

132. It is relevant to note that the Environment (Protection) Act, 1986 has been enacted to take all such measures that are necessary or expedient for the purpose

of protecting the environment and preventing and controlling environmental pollution. The Notification dated 14.09.2006 issued by the Government of India, MoEF under Section 3(2) of the Environment (Protection) Act, 1986 expressly provides that the projects or activities specified therein shall require prior environmental clearance from the concerned regulatory authority. Admittedly, the building and construction projects, townships and area development projects are also covered by the said Notification thereby making it mandatory to obtain prior environmental clearance as provided therein.

133. The challenge in these petitions included the validity of such environmental clearance granted to Tata HDCL for the project in question. We will be adverting to the said issue a little later taking into consideration the elaborate submissions made by both the parties.

134. So far as the validity of the permission dated 05.07.2013 granted by Nagar Panchayat Naya Gaon is concerned, though the procedure prescribed in PRTP&D Act, 1995 appears to have been followed, we are of the view that the PRTP&D Act, 1995 has to be construed harmoniously with Periphery Control Act, 1952 and the Punjab Reorganization Act, 1966.

135. The Periphery Control Act, 1952 as aforesaid was enacted to control and regulate the periphery of the new Capital of the State of Punjab and extends to that area in the State of Punjab which is adjacent to and within a distance of ten miles on all sides from the outer boundary of the land acquired for the Capital of the State at Chandigarh. Section 5 of the Act prohibits erection or re-erection of any building or any excavation or laying out of any means of access to a road in

the said area. Section 11 of the Act also prohibits the said land from being used for purposes other than those for which it is was used on the date of notification.

136. The PRTP&D Act, 1995 *per contra* was enacted to make provision for better planning and regulating development and use of land in planning areas designated for that purpose for preparation of regional plans and master plans in the State of Punjab. Though undoubtedly the said Act extends to the whole of the State of Punjab including the area aforesaid under the Periphery Control Act, 1952 but in our considered opinion the procedure prescribed therein for preparation of regional and master plans and implementation thereof cannot be read as permitting what has been prohibited by the earlier Legislation, namely, the Periphery Control Act, 1952 and the Punjab Re-organization Act, 1966. Thus, the preparation of regional and master plans and implementation thereof under the PRTP&D Act, 1995 has to be mindful of the prohibitions contained in the earlier two legislations and the provisions thereof.

137. As per Section 48(5) of the Punjab Reorganization Act, 1966, the lands mentioned therein, notwithstanding falling in the State of Punjab, were to vest in the Union and one such land mentioned is the land for soil conservation measures in the catchment area of Sukhna Lake. Though we have hereinabove held that only the land for soil conservation is vested in the Union of India and not the entire catchment area of Sukhna Lake but certainly preparation of regional and master plans and implementation thereof under the PRTP&D Act, 1995 in the catchment area of Sukhna Lake mentioned in Section 48(5)(ii) of the Punjab Reorganization Act, 1966 and which is also within the Periphery Control Act, 1952 cannot be in violation of the latter two enactments.

138. Though Section 11 of the Periphery Control Act, 1952 empowers use of any land covered thereby for purposes other than that for which it was being used on the date of the coming into force of the Periphery Control Act, 1952 with the permission of the State Government and though the Punjab Periphery Policy, 2006 approved by the Governor of Punjab in exercise of powers vested under the Periphery Control Act, 1952 and the order dated 20.12.2007 of the Government of Punjab issued in exercise of the powers conferred under Section 11 of the Periphery Control Act, 1952 granted exemptions as aforesaid, but on a reading of the conclusions of the State Level Committee which recommended preparation of land use plan for the periphery control area, we do not find any consideration therein on the aspect of the subject land being in the catchment area.

139. Though Tata HDCL was disputing that the project land is in the catchment area but now we have held it to be so.

140. We are, therefore, of the opinion that the Government of State of Punjab needs to re-consider the matter in the light of the subject land being in the catchment area.

141. With regard to the contentions raised on behalf of the petitioners with reference to the Edict of Chandigarh, recommendations of Heritage Committee and Co-ordination Committee, we are of the view that the same are intended in planned/regulated development of Chandigarh and its periphery without causing an imbalance in the pristine ecology and the environment of the area, but not to create a complete embargo on development of the area to meet the growing needs of the citizens in the light of the changing social and economic scenario.

142. Since we are of the view that the Government of Punjab ought to reconsider the matter, the permission dated 05.07.2013 granted by Nagar Panchayat Naya Gaon cannot be held to be valid and is accordingly set aside.

Whether the Environmental Clearance dated 17.09.2013 granted by SEIAA, Punjab for development of the project in question is in conformity with the Notification dated 14.09.2006

143. The validity of the Environmental Clearance (for short 'EC') in favour of Tata HDCL is sought to be questioned in W.P.(C)No.2924/2014 (Sarin Memorial Legal Aid Foundation vs. State of Punjab & Ors.) on various grounds.

144. The Environment (Protection) Act, 1986 has been enacted to provide for the protection and improvement of environment and for matters connected therewith. Section 3 of the said Act which empowers the Central Government to take measures to protect and improve environment reads as under:

"3. Power of Central Government to take measures to protect and improve environment.- (1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:-

- (i) xxx xxx xxx
- (ii) xxx xxx xxx
- (iii) xxx xxx xxx
- (iv) xxx xxx xxx

- (v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.

(vi) to (xiv) xxx xxx xxx

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."

145. In exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Government of India, Ministry of Environment and Forests issued Notification No.S.O.1533(E) dated 14.09.2006, which reads as under:

MINISTRY OF ENVIRONMENT AND FORESTS

14th September, 2006

Notification S.O. 1533.

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XXX

XXX

XXX

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.

2. Requirements of prior Environmental Clearance (EC):-

The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector,

absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project;

5. Screening, Scoping and Appraisal Committees:-

The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union Territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. EAC and SEACs shall meet at least once every month.

(a) The composition of the EAC shall be as given in Appendix VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition;

(b) to (e) xxx xxx xxx

6. Application for Prior Environmental Clearance (EC):-

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:-

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not

apply to particular cases as set forth below in this notification. These four stages in sequential order are:-

- Stage (1) Screening (Only for Category 'B' projects and activities)
- Stage (2) Scoping
- Stage (3) Public Consultation
- Stage (4) Appraisal

I. Stage (1) - Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project . The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

II. Stage (2) - Scoping

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental

clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form 1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/ Commercial Complexes/Housing) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan.

XXX XXX XXX

III. Stage (3) - Public Consultation:

XXX XXX XXX

IV. Stage (4) - Appraisal:

XXX XXX XXX

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

XXX XXX XXX

8 to 12. XXX XXX XXX

SCHEDULE
(See paragraph 2 and 7)
**LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR
ENVIRONMENTAL CLEARANCE**

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
1.		Mining, extraction of natural resources and power generation (for specified production capacity).		
2.		Primary Processing.		
3.		Materials Production.		
4.		Materials Processing.		
5.		Manufacturing/Fabrication.		
6.		Service Sectors.		
7.		Physical Infrastructure including Environmental Services.		
8.		Building/Construction projects/Area Development Projects and Townships		
8(a)	Building and Construction Projects		≥ 20000 sq.mtrs. and <1,50,000 sq.mtrs. of built-up area #	#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development Projects		Covering an area ≥ 50 ha and or built up area ≥1,50,000/- sq. mtrs. ++	++ All projects under Item 8(b) shall be appraised as Category B1.

Note:-

General Condition (GC):

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries.

Special Condition (SC):

xxx

xxx

xxx"

146. A reading of the Notification dated 14.09.2006 shows that the requirement of prior environmental clearance for new projects or activities or modernization of existing projects or activities based on their potential environmental impacts is one of the measures provided for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution in terms of Section 3 of the Environment (Protection) Act, 1986.

147. As per the said Notification dated 14.09.2006:

- i) All new projects or activities listed in the Schedule to the Notification and expansion and modernisation of existing projects or activities listed in the Schedule shall require prior EC from the concerned regulator authority.
- ii) For matters falling under Category A in the Schedule to the Notification the MoEF, Central Government shall be the regulatory authority for grant of EC and for matters falling under

Category B in the Schedule, State Environment Impact Assessment Authority (SEIAA) at State Level shall be the regulatory authority. However, para 4 (iii) made it clear that all projects or activities which fulfilled the General Conditions stipulated in the Schedule are excluded from the purview of SEIAA.

- iii) Category A and Category B projects and activities are categorised based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources.
- iv) Prior EC from Central Government in MoEF for Category A projects or activities will be considered on the recommendations of the expert appraisal committee (EAC) to be constituted by the Central Government.
- v) Prior EC for Category B projects or activities from SEIAA at State Level will be based on the recommendations of a State or UT Level Expert Appraisal Committee (SEAC) constituted by the Central Government.
- vi) EAC and SEAC shall meet at least once every month for the purpose of screening, scoping and appraisal of the projects or activities in category A and category B respectively.
- vii) The applications seeking prior EC in all cases shall be made in Form I annexed to the Notification and supplementary Form IA, if applicable, after identification of prospective site for the project or activities to which the application relates. Appendix II to the

Notification shows that application in supplementary Form IA is required only for construction projects listed under Item 8 of the Schedule.

- viii) So far as new projects are concerned the process of EC will comprise of four stages namely; Screening (which shall be applicable only for Category B projects and activities), Scooping, Public Consultation and Appraisal.
- ix) At the stage of Screening (Stage 1), which is applicable for Category-B projects and activities, the scrutiny of Form I application shall be made by the concerned SEAC for determining whether or not the project or activity requires further environmental studies for preparation of an environmental impact assessment (EIA) prior to grant of EC.
- x) In case of the project/projects which require EIA shall be termed as Category B1 projects and the remaining projects shall be termed as Category B2.
- xi) For categorisation of projects into B1 or B2 appropriate guidelines shall be issued from time to time by MoEF, except for projects listed under Item 8(b) of the Schedule.
- xii) Stage 2-Scoping includes determination of Terms of Reference by EAC or SEAC as the case may be.
- xiii) In case of Category-A projects or activities, EAC shall determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation

of an EIA report in respect of the project or activity for which prior EC is sought.

- xiv) In case of Category B1 projects such TOR shall be determined by SEAC.
- xv) TOR shall be determined by EAC or SEAC as the case may be on the basis of the information furnished in the prescribed application FORM I/Form IA and site visit will be made only if considered necessary.
- xvi) All projects and activities listed as Category B in Item 8 of the Schedule shall not require Scoping and will be appraised on the basis of Form I/Form IA and the conceptual plan.
- xvii) The terms of reference, TOR determined in Stage 2 i.e., Scoping shall be conveyed to the applicant by EAC or SEAC within 60 days of the receipt of Form I failing which the Terms of Reference suggested by the applicant shall be deemed as the final TOR approved for EIA studies.
- xviii) Application for prior EC may be rejected by the Regulatory Authority on the recommendation of EAC or SEAC concerned at the Stage 2-Scoping itself, in which event the rejection together with reasons shall be communicated to the applicant in writing within 60 days of the receipt of the application.
- xix) General Condition stipulated in the Schedule to the Notification provides that any project or activity specified in Category 'B' will

be treated as Category 'A' if located in whole or in part within 10 km. from the boundary of:

- (a) Protected Areas notified under the Wild Life (Protection) Act, 1972,
- (b) Critically Polluted areas as notified by the Central Pollution Control Board from time to time,
- (c) Notified Eco-sensitive areas,
- (d) Inter-State boundaries and international boundaries.

148. Notification dated 14.09.2006 has been amended on 04.04.2011 substituting certain provisions of paras 6, 7 as well as the Schedule. For the purpose of the present case, we are concerned with the following amendment to Para 7:

"(II) In para 7, in sub-para 7 in clause (i), sub para II, stage (2) - scoping, sub para (i), in the last sentence, for the words "activities listed as Category 'B' in item 8 of the schedule (Construction / Township / Commercial Complexes / Housing)", the following words shall be substituted, namely:-

"Activities listed as Category 'B' in item 8(a) of the schedule (building and construction projects)".

149. By virtue of the abovesaid amendment dated 04.04.2011, Stage 2 for the process of prior environmental clearance as provided under para 7 (i) of the Notification dated 14.09.2006 reads as under:

"II. Stage (2) - Scoping:

- (i) "Scoping" refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the

case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form 1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. **All projects and activities listed as Category 'B' in Item 8(a) of the Schedule (building & construction projects) shall not require scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan.** *(emphasis supplied)*

150. Thus, it is clear that after the amendment dated 04.04.2011 of the Notification dated 14.09.2006, 'Scoping' i.e. the process by which EAC/SEAC determines Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an EIA Report in respect of the project or activity for which prior environmental clearance is sought is not required for the projects and activities listed as Category 'B' in Item 8(a) of the Schedule and such projects and activities will be appraised on the basis of Form 1/Form 1A and the conceptual plan submitted by the project proponent.

Application of Tata HDCL under the Notification dated 14.09.2006 for prior Environmental Clearance:

151. As could be seen from the material available on record, Tata HDCL submitted the application dated 25.03.2009 in Form 1 and supplementary Form 1A specified in the Notification dated 14.09.2006. In the said application, the proposed project is shown as a project listed under Item 8(a) of the Schedule and it was described as "Category 'B' Project". The area of the proposed project was shown as 53.39 acres and built up area was shown as 7,01,370 m². It was also mentioned that the project site is to be developed as per Naya Gaon Master Plan 2021. In the column "environmental sensitivity", it was mentioned that the proposed project is situated within 10 km. from Sukhna Lake.

152. The said application was admittedly made to SEAC, Punjab which considered the same in its 23rd Meeting held on 06.06.2009. After detailed deliberations on the project and the documents submitted along with the application, SEAC Punjab awarded Gold Grading to the project and resolved to recommend to SEIAA for grant of EC subject to the conditions specified therein and after the receipt of the Building plan approved by the competent authority. The said fact was informed to Tata HDCL by letter dated 17.06.2009 and they were called upon to submit the building plan so as to take the necessary further action followed by reminder dated 05.04.2010 requiring Tata HDCL to submit the approved building plan within 45 days.

153. On 30.10.2010, Tata HDCL submitted the building plan duly approved by Nagar Panchayat Naya Gaon. However, by that time both SEAC and SEIAA of Punjab were non-functional. Therefore, the matter was sent to MoEF for further

consideration. EAC of MoEF had considered the matter in its meeting held on 9th and 10th November, 2010 and recommended the proposal for grant of Environmental Clearance. However, by letter dated 14.10.2010, MoEF called for a report from its Northern Regional Office, Chandigarh regarding the proposed project of Tata HDCL in the light of a news item published about the project. Pursuant thereto, a team of officers inspected the project site and submitted a report dated 10.01.2011 stating that the project is situated within 123 meters from Sukhna Wildlife Sanctuary and that it was within the catchment area of Sukhna Lake as per the Survey of India Map.

154. After SEIAA, Punjab had become functional, the matter was returned to SEIAA, Punjab and was considered in its meeting held on 07.07.2011. The matter was kept pending for sometime in view of the interim order passed by the High Court of Punjab and Haryana in CWP No.20425/2010 (AAalok Jagga vs. UOI) prohibiting any construction in the catchment area. Tata HDCL by letter dated 29.10.2011 requested to process its application for grant of EC stating that the Interim Order passed in CWP No.20425/2010 was only with regard to construction activity. It was also brought to the notice of SEIAA, Punjab that EAC of MoEF had already recommended the proposal for grant of EC in its meeting dated 9th-10th November, 2010.

155. However, SEIAA, Punjab in its meeting dated 15.12.2011 decided to get a clarification from MoEF as to whether SEIAA, Punjab is competent to consider the application since Sukhna Wildlife Sanctuary is located at a distance of 123 meters from the proposed project. Tata HDCL was also asked to obtain necessary permission from the Department of Wildlife UT, Chandigarh.

Though there was no response from MoEF to the clarification sought, Tata HDCL by letter dated 09.04.2012 had brought to the notice of SEIAA Punjab, the final order passed by the High Court of Punjab & Haryana dated 26.03.2012 in CWP No. 20425/2010 (AAalok Jagga v. UOI) holding that the provisions of the Periphery Control Act and PRTD&P Act, 1995 are complimentary to each other and that the provisions of the two statutes would apply to the project in question.

156. In the light of the said judgment, SEIAA, Punjab in its 37th Meeting dated 26.04.2012 had remanded the case to SEAC, Punjab with a request to examine Rapid EIA Study and other related issues under the Environment (Protection) Act, 1986. It was also decided by SEIAA:

"1. There is no need to obtain any legal opinion from the Advocate General, Punjab, and Sh.H.S. Brar, Advocate in connection with interim Order passed by the Hon'ble Punjab & Haryana High Court on 20.01.2011 since the Hon'ble Court has passed its final Orders on 26.03.2012.

2. As per EIA notification dated 14.09.2006 and Circulars/ Office Memorandums issued by the Ministry of Environment & Forests, New Delhi thereon, the case falls within the competency of SEIAA, Punjab since 'General Condition' is not applicable for 8(a) and 8(b) projects of the Schedule appended to the said notification. Therefore, there is no need to make any communication in this regard with the Ministry of Environment & Forests, New Delhi."

157. In pursuance thereof, SEAC, Punjab considered the matter in its 69th meeting held on 18.04.2013 and decided:

"After detailed deliberations, the Committee observed that the previous SEAC and EAC of Ministry of Environment & Forests,

Govt. of India had accepted EIA report prepared by the project proponent on the basis of model TORs prepared by the MoEF and approved the project accordingly. Therefore, at this stage, there was no need to issue fresh TORs to the project proponent and project proposal be considered on the basis of EIA report already submitted by the project proponent. However, project proponent is required to submit following additional information/data for re-appraisal of the project proposal and include it in the EIA report:

(i) to (xiv) xxx xxx xxx"

158. Pursuant thereto, Tata HDCL filed a revised application on 08.05.2013 in Form I and Form IA. In Form I, the project was described as "Group Housing (CAMELOT) Project" and it falls under Item 8(b) of the Schedule. The plot area was shown as 52.66 acres and net plot area (after surrender of area for services) was shown as 46.10 acres. The built up area was shown as 4,63,144.54 sq.m. With regard to the information as to whether the proposal involves approval/clearance under the Wildlife Protection Act, 1972, it was stated:

"Clearance required from Standing Committee of National Wildlife Board, New Delhi being project within 10 Kms. from the boundaries of Sukhna Wildlife Sanctuary, as on date Eco Sensitive Zone has not been declared around Sukhna Wildlife Sanctuary."

159. Similarly, under the column "Environmental Sensitivity" in which the particulars of the areas which are important or sensitive for ecological reasons - wetlands, water resources or other water bodies, are required to be furnished, the name of "Sukhna Lake" was shown and the aerial distance from the proposed

project was shown as 123 meters (N) and 185 meters (E). In the application in Form IA while specifying the key surrounding features of the project, Sukhna Wildlife Sanctuary was shown on the East.

160. The matter was then considered by SEAC Punjab in its 70th Meeting held on 08.05.2013 and certain further clarifications were sought from the project proponent/Tata HDCL. The reply of the project proponent and the information furnished by the other departments including the Department of Local Bodies, Punjab were again considered by SEAC in its 72nd Meeting held on 22.06.2013 and the matter was deferred to enable the project proponent to submit its concrete proposals regarding approach road, alternate proposal for discharge of treated waste water into sewer/drain and to produce the approval from the Standing Committee on National Board for Wildlife. After considering the reply of the project proponent that the necessary permission from the Central Ground Water Authority has been granted for abstraction of 1834 kld. ground water, the SEAC in its 74th Meeting held on 14.08.2013 decided to award 'Silver Grading' to the proposed project and to forward the matter to SEIAA with recommendation to grant EC subject to conditions/measures mentioned therein.

161. The matter was then considered by SEIAA Punjab in its 51st Meeting held on 06.09.2013 and having been satisfied with all aspects of the proposed project, it was decided to grant EC for construction of Group Housing with built up area of 4,63,144.54 sq. mtrs. in the total plot area of 52.66 acres subject to certain conditions in addition to the conditions imposed by SEAC. In terms of the said decision dated 06.09.2013, SEIAA Punjab issued the EC to Tata HDCL vide letter dated 17.09.2013.

Grounds of Challenge:

162. The said Environmental Clearance dated 17.09.2013 has been assailed by the petitioner in W.P.(C) No.2924/2014. The grounds of challenge in the writ petition may be summed up as under:

- i) The project site having been located within 10 kms. from the Sukhna Wildlife Sanctuary and also the inter-State boundary, it has to be treated as category 'A' project as per the General Conditions prescribed in the Note to the Notification dated 14.09.2006 issued by MoEF under Section 3 of the Environment (Protection) Act, 1986. Hence, the Central Government, MoEF alone is the competent authority to grant the environmental clearance and the impugned EC dated 17.09.2013 granted by SEIAA, Punjab is without jurisdiction.
- ii) Though territorially the project site is situated in the State of Punjab, its entire environmental impact is on the territory of Chandigarh and more particularly the project site falls within the catchment area of Sukhna Lake. However, SEIAA, Punjab failed to appreciate the adverse impact of the project on the environment while granting the EC dated 17.09.2013.
- iii) SEIAA, Punjab also failed to notice that as per the orders passed by the High Court of Punjab and Haryana from time to time, complete ban has been in operation on any construction in the catchment area of Sukhna Lake.

- iv) The impugned environmental clearance dated 17.09.2013 has also suffered from legal mala fides and it amounts to colourable exercise of power since about 95 MLAs of the State of Punjab are the beneficiaries of the proposed project.

163. However, during the course of the hearing, various other issues have been raised by the petitioner as well as U.T. Chandigarh with regard to the validity of EC dated 17.09.2013. It is contended that the impugned EC is liable to be set aside for the following grounds:-

- i) No fresh Terms of Reference which forms the basis of Environment Impact Assessment Studies, were made or approved by SEAC, after submission of fresh Form-I and Form-IA dated 08.05.2013 by Tata HDCL for EC.
- ii) Both SEAC and SEIAA had erroneously placed reliance on the application initially submitted by Tata HDCL on 25.03.2009.
- iii) Since the application of Tata HDCL for Wildlife Clearance from the Competent Authority is still pending, SEIAA should not have granted the EC.
- iv) Since the project in question lies within the catchment area of Sukhna Lake as demarcated in the Survey of India Map dated 21.09.2004, SEIAA ought to have rejected the clearance since construction of a project of such magnitude in the catchment area would invariably result in damaging the ecosystem of Sukhna Lake.

- v) Further, in the absence of planning for proper sewage disposal and approach road and connectivity to the proposed project, SEIAA should not have granted EC.
- vi) EC dated 17.09.2013 is also bad for the reason that there was no consideration at all with regard to the impact of the proposed project on Sukhna Wildlife Sanctuary.

164. It is contended by Shri P.S. Patwalia, the learned Senior Counsel appearing for the writ petitioner and Shri A.S. Chandhiok, the learned Senior Counsel appearing for U.T. Chandigarh that there was complete non-application of mind by the MoEF while recommending the project proposal for Environmental Clearance in its 93rd Meeting held on 9th and 10th of November, 2010.

165. It is contended by them that the proposal should have been considered under 'Category B1' of the Schedule to the Notification dated 14.09.2006. Pointing out that the last column against Item 8(b) of the Schedule shows that "all projects under Item 8(b) shall be appraised as Category B1", it is vehemently contended that the proposed project of Tata HDCL is clearly a 'Category B1' project which mandatorily requires an Environmental Impact Assessment Report in terms of Para 7(i) of the Notification dated 14.09.2006. Further, it requires assessment as per the guidelines issued by the Ministry of Environment and Forests.

166. Drawing the attention of this Court to the Notification dated 04.04.2011 amending the Notification dated 14.09.2006, it is also contended that the amendment to Para 7 vide Notification dated 04.04.2011 has further made it

clear that the project in question, which falls under Item 8(b) of the Schedule, has to be assessed as a 'Category B1' project and thus mandatorily requires an EIA report.

167. The learned Senior Counsels have also placed much reliance upon the reply filed by the Union of India (MoEF) before the High Court of Punjab and Haryana in *AAalok Jagga v. Union of India* in which it was categorically stated that the project in question is to be assessed and appraised as 'Category B1' project. The relevant portion from the reply of MoEF reads as under:

"It is pertinent to mention here that while examining the project for processing and putting up the case for approval, it was noticed by the Ministry of Environment and Forests, that the total built up area of the project is 7,01,370 sq. meter which is more than 1,50,000/- square meter and the proposal should have been appraised as category B1 under Schedule 8(b) of the EIA Notification 2006.

The Master Plan of Nagar Panchayat Naya Gaon-2012 has been finalized by State Government of Punjab. It is not clear whether State Government of Punjab has taken into account the existence of Sukhna Wildlife Sanctuary near the project while finalizing the Master plan."

168. The further contention is that SEAC, Punjab had erroneously got conducted Rapid EIA which was the procedure prescribed under the Notification dated 27.01.1994. Since the said Notification has been superseded by the current Notification dated 14.09.2006 which does not talk of a Rapid EIA, there was no need to get Rapid EIA done. It is contended that apparently the entire exercise made by SEAC/SEIAA, Punjab was to favour Tata HDCL.

169. Placing reliance on the amendments made by the Notification dated 04.04.2011 to Para 7 of the Notification dated 14.09.2006, it is also contended by the learned Senior Counsels that the requirement of a detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for preparation of EIA Report being mandatory for 'Category B1' project, the failure on the part of SEAC/SEIAA to comply with the said requirement has vitiated the impugned EC dated 17.09.2013.

170. It is also contended that SEAC, Punjab failed to take any independent decision while awarding silver grading to the project proposal. The Minutes of the Meeting shows that except reproducing the earlier proceedings in verbatim, there was no independent consideration at all as to the compliance of the statutory requirements. There was also no consideration as to what would be the impact of drawl of ground water and the huge amount of sewerage that is going to be generated by the proposed project. There was absolutely no consideration of the issue of disposal of the sewerage in an eco-sensitive area. Extremely crucial issues relating to ground water, sewerage, roads, heritage, density of population, eco-sensitive zone, etc. had also not been considered properly either by SEAC or SEIAA.

171. Placing reliance upon a decision of the Division Bench of the High Court of Bombay in ***Gram Panchayat Navlakh Umbre v. Union of India & Ors.;*** **(2012) SCC Online Bom 851**, it is contended that since it is evident from the minutes of the meeting that SEAC had acted in a casual manner without understanding the vital implications of the functions assigned to it under the Notification dated 14.09.2006, the impugned EC is liable to be set aside on that

ground alone. It is also brought to our notice that though the matter was carried to the Supreme Court, by order dated 10.12.2012 , the Supreme Court declined to interfere but had only modified the directions of the High Court for reconsideration by SEAC.

172. It is further contended by the learned Senior Counsels that as is evident from the inspection report of the Committee appointed by the MoEF, the project in question being a huge project, the Northern tip of which is 123 mts. from Sukhna Wildlife Sanctuary and the Southern tip is 185 mts., the same would completely ruin the sanctuary where there are as many as nine species of animals, some of which are threatened/vulnerable and endangered.

173. Having regard to the fact that the proposed project is located in the catchment area of Sukhna Lake and abetting the National Wildlife Sanctuary and keeping in view the eco-sensitive nature of the area, SEAC/SEIAA of Punjab ought to have conducted an EIA before granting clearance to such a huge project running into about 2000 apartments which is going to draw 2316 ML of water during construction phase through bore wells and thereafter 2150 KL per day.

174. On the other hand, it is contended by Shri Gopal Subramaniam, the learned Senior Counsel for Tata HDCL that as per the Notification dated 14.09.2006, the proposed project of Tata HDCL is not required to be appraised on the basis of EIA Report since it is a Category B1 project. According to the learned Senior Counsel, Category B1 project has to be appraised on the basis of Form I/Form IA and the conceptual plan submitted by the project proponent. It

is also contended that the amendment vide Notification dated 04.04.2011 has no application to the case on hand.

175. Elaborating the said submissions, it is sought to be contended by Shri Gopal Subramaniam that as per its application dated 08.05.2013, no doubt the proposed project falls under Item 8(b) of the Schedule, but as per Para 7 of the Notification dated 14.09.2006, the project proponent is bound to submit an EIA Report only if the same is required by the SEAC after scrutiny of the application. It is submitted that so far as the application of Tata HDCL is concerned, no such EIA report was required to be submitted by SEAC, Punjab and the appraisal was made in terms of Form I/Form IA and conceptual plan submitted by Tata HDCL.

176. Drawing the attention of this Court to Stage 2 of Para 7(i) of the Notification dated 14.09.2006, the learned Senior Counsel further submitted that the proposed project being a Category 'B' project as per the Schedule does not require to undergo the second stage of Scoping and needs to be appraised only on the basis of Form I/Form IA and conceptual plan.

177. With regard to the alleged variation in the particulars set out in the applications dated 25.03.2009 and 08.05.2013, it is explained by the learned Senior Counsel that the first application dated 25.03.2009 was submitted on the basis of the proposed built up area of 7,01,370 m² whereas the revised applications dated 08.05.2013 were submitted with respect to 4,63,144.54 sq.mtrs. of the built up area. It is submitted that the second application was needed owing to reduction in the proposed built up area and the same was considered afresh by SEAC, Punjab.

178. It is also contended that in the light of the revised application dated 08.05.2013, the first application dated 25.03.2009 was of no relevance and it is not open to the petitioners to challenge the EC dated 17.09.2013 with reference to the data furnished in the application dated 25.03.2009.

Consideration:

179. Admittedly, the project proposed by Tata HDCL is covered by the projects or activities listed in the Schedule to the Notification dated 14.09.2006 and, therefore, in terms of Para 2 of the said Notification, it requires prior Environmental Clearance. It is also not in dispute that the proposed project falls under item 8 of the Schedule, i.e. "building/construction projects/area development projects and townships". Though in the application dated 25.03.2009, the project was shown as covered by item 8(a), as per the revised application dated 08.05.2013, the project in question is covered by item 8(b) of the Schedule. The last column against item 8(b) which provides for 'conditions, if any, makes it clear that all projects under item 8(b) shall be appraised as category B1. As per Para 7(i) of the Notification dated 14.09.2006, the projects requiring an Environmental Impact Assessment (EIA) Report shall be termed as Category B1 projects and the remaining projects shall be termed as Category B2 and will not require EIA Report. For categorization of projects into B1 or B2, the MoEF issued guidelines, however, Para 7(i) itself made clear that the same shall not be applicable to item 8(b). Consequently, all projects covered by item 8(b) of the Schedule shall automatically be termed as Category B1 projects and the same would require EIA Report.

180. The specific case of the petitioner is that the EC dated 17.09.2013 granted in favour of Tata HDCL was not based on EIA Report as required under Para 7(i) of the Notification dated 14.09.2006.

181. SEIAA, Punjab which has been arrayed as Respondent No.3 to W.P.(C) No.2924/2014, filed its response stating that before granting Environmental Clearance to Tata HDCL, SEIAA had deliberated upon all the issues and concerns raised by various departments and had satisfied itself on each and every aspect of the project. It is also pleaded that the project proponent has proposed adequate measures by carrying out EIA study, preparing Environment Management Plan so as to ensure that there is no adverse effect on the surrounding environment. As such, SEIAA/SEAC observed that the project is not going to have any significant adverse effect on the environment of the surroundings and accordingly EC was granted to the project with various conditions as safeguard measures.

182. Much reliance has also been placed on the Minutes of SEAC dated 18.04.2013 wherein it was recorded that SEAC had taken note of the fact that the EIA Report prepared by the project proponent was considered and accepted by EAC of MoEF, Government of India and therefore there is no need to issue fresh Terms of Reference to the project proponent and the proposal can be considered on the basis of EIA Report already submitted by the project proponent.

183. It is relevant to note that the consideration by EAC of MoEF, Government of India was on the basis of the Tata HDCL's first application dated 25.03.2009. In the light of the stand taken by SEIAA Punjab in its counter affidavit, it is

clear that no EIA Report was prepared after the submission of the revised application dated 08.05.2013 by Tata HDCL. In the revised application dated 08.05.2013, it was for the first time admitted by Tata HDCL that its proposed project is situated within the prohibited distance of 10 kms. from Sukhna Wildlife Sanctuary. It was also admitted that the ariel distance from the proposed project and Sukhna Lake is 123 meters (N) and 185 meters (E).

184. That being the case, we are of the view that the petitioner is justified in contending that SEIAA, Punjab ought to have insisted on a fresh EIA Report. In the absence of such EIA Report which is a mandatory requirement for a Category B1 project, we have no hesitation to hold that the EC dated 17.09.2013 is vitiated.

185. Significantly, this is a case where the project in question is situated within 123 meters from Sukhna Wildlife Sanctuary as recorded in the Site Inspection Report dated 10.01.2011 on the basis of the inspection of the project site conducted by a team of officers in the presence of the representatives of Tata HDCL in compliance with the direction of MoEF vide letter dated 14.10.2010. Though Tata HDCL addressed a letter dated 12.01.2011 to MoEF explaining that the project area does not obstruct the natural flow of water towards Sukhna Lake, the factum of location of Sukhna Wildlife Sanctuary within 123 meters on Northern side and 183 meters on the Eastern side of the project was not disputed. In the light of the said admitted fact, SEIAA, Punjab in its meeting dated 15.12.2011 decided to get a clarification from MoEF as to whether SEIAA, Punjab is competent to consider the application and accordingly addressed a letter to MoEF.

186. It may be added that as per the General Condition to the Notification dated 14.09.2006, any project or activity specified in category 'B' will be treated as Category 'A' if located within 10 kms. from the boundary of protected areas notified under the Wildlife (Protection) Act, 1972. In terms of the said condition, it is apparent that the project of Tata HDCL needs to be treated as category 'A' irrespective of the fact that it is covered by item 8(b) of the Schedule and thus falls under Category 'B1'. Not only so, the project of Tata HDCL being within 10 kms. from the boundary of Punjab and Chandigarh has even otherwise to be treated as Category 'A'.

187. Having sought a clarification from MoEF as to its competence, SEIAA, Punjab did not wait for such clarification from MoEF. Instead, in its meeting dated 26.04.2012, it was decided:

"As per EIA notification dated 14.09.2006 and Circulars/ Office Memorandums issued by the Ministry of Environment & Forests, New Delhi thereon, the case falls within the competency of SEIAA, Punjab since 'General Condition' is not applicable for 8(a) and 8(b) projects of the Schedule appended to the said notification. Therefore, there is no need to make any communication in this regard with the Ministry of Environment & Forests, New Delhi."

188. Shri Puneet Bali, the learned Senior Counsel appearing for the State of Punjab and Shri Gopal Subramaniam, the learned senior counsel appearing for Tata HDCL sought to justify the action of SEIAA contending that the fact that the applicability of General Condition has not been mentioned in the Schedule against item 8 whereas for all other items of the said Schedule it was expressly

mentioned that "General Condition shall apply" makes it clear that the General Condition is not applicable for projects covered by item 8(a) and 8(b).

189. We are unable to agree with the said contention. As mentioned above, General Condition to the Notification dated 14.09.2006 expressly provides that any project or activity specified in Category-B will be treated as Category-A if located within 10 kms. from the boundary of areas mentioned therein which included protected areas notified under the Wildlife (Protection) Act, 1972. The applicability of such condition, in our view, cannot be decided merely on the ground that it was not so expressly mentioned in the Schedule against item 8(a) and 8(b). As the said Notification was issued by MoEF, it appears to us that the doubt, if any, as to the applicability of the General Condition to a particular activity covered by the Schedule has to be answered/clarified by MoEF of Government of India alone. Having sought such a clarification from MoEF and in the absence of any reply from MoEF, we are of the view that SEIAA, Punjab was not justified in deciding on its own about its competence.

190. On a reading of the "General Condition", it appears to us that the same is intended to ensure that the issue of prior Environmental Clearance of the projects which are likely to have serious adverse effect on environment is not left to the decision of the regulatory authority at State level. Para 4 of the Notification dated 14.09.2006 which provides that the categorization of the projects and activities into Category 'A' and Category 'B' is based on the spatial extent of potential impacts and potential impact on human health and natural and man-made resources indicates that Category 'A' projects are likely to have serious potential impacts on the environment. Therefore, by way of "General

Condition" to the Notification dated 14.09.2006 certain projects though are placed in 'B' Category under the schedule, have been expressly brought under the control of MoEF, Government of India having regard to the potential environmental impacts likely to result from the said projects.

191. Be it noted that so far as Item 8 of the Schedule is concerned, all the projects/activities mentioned therein are shown as 'Category B' and the said Item does not contain 'Category A' project at all.

192. However, it is contended by Sh.Gopal Subramaniam that Sukhna Wildlife Sanctuary has not yet been notified as a protected area under the Wildlife (Protection) Act, 1972. It is also submitted by him that there is no provision under the said Act, which requires a State Government or a Union Territory to get approval from the Central Government for declaring an area as a 'sanctuary'.

193. Regarding the representation of UT Chandigarh dated 09.05.2013 under Section 3 of the Environment (Protection) Act, requesting to declare a Buffer Zone upto 2 - 2.75 kms. around all sanctuaries including Sukhna Wildlife Sanctuary, it is submitted by the learned Senior Counsel that the State of Punjab by its proposal dated 18.09.2013 thought it fit to confine the Buffer Zone to 100 mtrs only. It is also pointed out by the learned Senior Counsel that so far no notification has been issued by the Central Government under Section 3 of the Environment Protection Act. Thus, it is sought to be contended that there is no area earmarked as eco sensitive zone around the Sukhna Wildlife Sanctuary nor a Buffer Zone has been declared as of today.

194. It is also contended by Shri Gopal Subramaniam that in terms of Section 38 of the Wildlife (Protection) Act, 1972, it is for the Central Government to

declare an area to be a sanctuary and that there is no provision in the said Act which requires a State Government or a Union Territory to get approval from the Central Government for the proposed area.

195. It is also pointed out by Sh.Gopal Subramaniam that in fact State of Punjab had sent a proposal dated 18.09.2013 requesting the Union of India/MoEF to confine the buffer zone to 100 mtrs. only in the context of Section 3 of Environment (Protection) Act, 1986.

196. Since both the above-noted proposals are yet to be considered and decided by the Central Government, the learned Senior Counsel would contend that the plea of the petitioner that the General Condition to the Notification 14.09.2006 is applicable, is untenable. To substantiate his submission that no notification has been issued sofar by the Central Government under Section 3 of the Environment Protection Act, 1986, the learned Senior Counsel has placed reliance upon the recent decision of the Supreme Court in ***Goa Foundation Vs. Union of India; (2014) 6 SCC 590*** in which there was a specific direction for issuance of notification of Eco Sensitive Areas around National Parks in the State of Goa within six months. It is submitted that the said judgment of the Supreme Court was in respect of the State of Goa only and that apart, it was with regard to mining activities.

197. There can be no dispute about the legal position that notification under Section 3 of the Environment (Protection) Act, 1986 by the Central Government is mandatory to declare an area as Eco Sensitive Area. Though no such notification was issued by the date of the hearing of these petitions, it was brought to our notice that the proposal of U.T. Chandigarh for notifying the

protected area of Sukhna Wildlife Sanctuary as Eco-sensitive Zone was under consideration by Ministry of Environment, Forests and Climate Change. However, after reserving the judgment in the petitions, a short affidavit dated 09.03.2017 came to be filed on behalf of U.T. Chandigarh in W.P.(C) No.2924/2014 stating that the Central Government, Ministry of Environment, Forests and Climate Change, in exercise of the powers conferred by Section 3(2) and (3) of the Environment (Protection) Act, 1986 read with Rule 5(3) of the Environment (Protection) Rules, 1986 notified an area of 1050 hectares, to an extent varying from 2.0 kilometers to 2.75 kilometers from the boundary of Sukhna Wildlife Sanctuary in the Union Territory of Chandigarh on the side of Chandigarh as the Sukhna Wildlife Sanctuary, Eco-Sensitive Zone vide Notification dated 18.01.2017. A copy of the said Notification has also been produced and Para 4 thereof contains the list of activities prohibited or to be regulated within Eco-sensitive Zone. "Construction Activities" have been included in the said list under Part B-"Regulated Activities". Rule 4 to the extent, it is relevant for the present case may be extracted hereunder:

"4. List of activities prohibited or to be regulated within Eco-Sensitive Zone. - All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment (Protection) Act, 1986 (29 of 1986) and the rules made thereunder and shall be regulated in the manner specified in the Table below, namely:-

TABLE

A. Prohibited Activities

XXXX XXXXX XXXX

XXXX XXXXX XXXX

B. Regulated Activities

12. Construction activities:

No new commercial construction of any kind shall be permitted within 0.5 kilometre (Zone-I) from the boundary of protected area or up to the boundary of the Eco-sensitive Zone whichever is nearer:

Provided that, local people shall be permitted to undertake construction in their land for their residential use including the activities listed in sub-paragraph (1) of paragraph 3.

(a) Construction of all types of new buildings and houses up to a distance of 0.5 kilometre i.e. in the zone-I shall be prohibited; from 0.5 kilometre to 1.25 kilometre from the boundary of Sukhna Wildlife Sanctuary, construction of low density (ground coverage less than half of the plot size) and low rise building (height upto 15 feet) can be allowed if permissible under the prescribed land use plan of the area; any construction will have to adhere to the Development Regulation applicable to the area and shall be regulated as per the Eco-sensitive Zone management plan; beyond 1.25 kilometre construction of new buildings and houses shall be regulated as per existing Chandigarh Administration Building Bylaws and Architectural Control/Zoning regulation of Union territory Administration. Construction of basement in Zone-I of Eco-sensitive Zone shall not be allowed, however, reconstruction/repair of building in Zone-I shall be allowed subject to the restriction as above i.e. construction of low density (ground coverage less than half of the plot size) and low rise building (height upto 15 feet).

(b) The construction activity related to small scale industries not causing pollution shall be regulated and kept at the minimum, with the prior permission from the competent authority as per the applicable rules and regulations, if any.

(c) The further, construction and augmentation of civic amenities shall be regulated as per the Zonal Master Plan."

198. As could be seen from Para 4 of the above Notification, the construction activities in the Eco-sensitive Zone apart from being governed by the provisions of the Environment (Protection) Act, 1986 and the Rules made thereunder shall be regulated in the manner specified therein. Admittedly, the project in question is located at a distance of 123 meters from Sukhna Wildlife Sanctuary. Therefore, the construction of the proposed project not only requires the environmental clearance as provided under the Notification dated 14.09.2006 but it is also subject to the regulations provided under Para 4 of the Notification dated 18.01.2017 issued by the Ministry of Environment, Forests and Climate Change.

199. It may also be added that in view our finding that the project in question falls within the catchment area of Sukhna Lake as demarcated in the Survey of India map dated 21.09.2004, we are of the view that the question as to whether the 'General Condition' to the Notification dated 14.09.2006 has application to the case on hand and whether the project in question is to be treated as 'Category A' needs reconsideration by MoEF, Government of India.

200. As observed above, SEIAA Punjab having entertained a doubt as to its competence to consider the application of Tata HDCL for EC for its proposed project and having sought a clarification from MOEF, Government of India should not have decided by itself that the 'General Condition' is not applicable and therefore, the application for EC can be processed by it.

201. Even assuming that SEIAA Punjab was right in processing the application treating the project in question as a 'Category B' project, it is relevant to note that as per the revised application of Tata HDCL, its project is covered by Item

8(b) of the Schedule and shall be termed as 'Category B1' project which mandatorily requires EIA report. Admittedly, no such EIA report was prepared pursuant to the revised application dated 08.05.2013. Despite the same, SEIAA Punjab proceeded further observing that there is no need for preparation for fresh EIA report since the EIA report of the project proponent was earlier accepted by SEAC and EAC of MOEF, Government of India. We are unable to appreciate the stand taken by SEIAA Punjab since the earlier EIA report was admittedly on the basis of the first application of the project which was submitted in the year 2009.

202. In the facts and circumstances noticed above, we have no manner of doubt to conclude that the Environmental Clearance dated 17.09.2013 granted by SEIAA, Punjab is not in conformity with the mandatory requirements of the MoEF Notification dated 14.09.2006. Hence, the same cannot be sustained and is hereby set aside.

203. Before parting, we may also record that it is also the contention of Sh.P.S.Patwalia (i) that the Collaboration Agreement and Power of Attorney in favour of Tata HDCL has since been terminated; and (ii) that the lands are *shamlat* lands and the judgment of the Supreme Court in ***Jagpal Singh Vs. State of Punjab***; (2011) 11 SCC 396 applies. However, we did not enter into the said issues since the title to the land and the contractual rights of Tata HDCL are not for adjudication in these writ petitions and all the relevant parties are also not before us. Similarly, though arguments were also addressed under the Wetlands Rules and on the Chos Act but since we have set aside the Environmental Clearance, we do not consider it necessary to go into the said questions and the

same are left open to be considered by the State Government and the Central Government in terms of the directions issued hereunder.

204. We may also record that though during the hearing, a query came from the Bench as to whether the disputes raised by way of these petitions would fall within the definition of 'water dispute', it was the contention of the learned counsels for all the parties that the Supreme Court having directed the matters to be decided by this Court, we should proceed with the decision without entering into the said aspect as well.

205. It may also be recorded that though considerable time was spent by the learned counsels in making submissions on the territorial nexus theory of legislations, we refrain ourselves from expressing any opinion on the said issue in view of our findings recorded above.

206. For the aforesaid reasons, we hold:

- (i) The Survey of India map dated 21.09.2004 demarcating the boundaries of catchment area of Sukhna Lake is binding on the State of Punjab. In turn, Tata HDCL is also bound by the same.
- (ii) The area over which the project in question is proposed to be constructed by Tata HDCL forms part of the catchment area of Sukhna Lake as demarcated in the Survey of India map dated 21.09.2004.
- (iii) The contention of the petitioners that Section 48(5) of the Punjab Reorganization Act, 1966 shall be applicable to the entire catchment area of Sukhna Lake is untenable and accordingly rejected.

- (iv) The permission dated 05.07.2013 granted by Nagar Panchayat Naya Gaon to Tata HDCL is invalid and is hereby set aside. We, therefore, direct the State of Punjab to reconsider the matter in the light of this judgment.
- (v) The Environmental Clearance dated 17.09.2013 granted by SEIAA Punjab for development of the project proposed by Tata HDCL is not in conformity with the Notification dated 14.09.2006 of MoEF and therefore, the same shall stand set aside.
- (vi) If re-consideration by the State of Punjab as directed above is in favour of Tata HDCL, Tata HDCL if so desires may apply to the Central Government for Environmental Clearance treating the project as a category 'A' project.

207. Both the writ petitions are accordingly disposed of.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

APRIL 12, 2017

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