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

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Reserved on : 17th November, 2017
Date of decision : 24th January, 2018

+ FAO(OS) 200/2017 and CM Nos.24273-74/2017

PRABHAT KUMAR SHARMA & ANR Appellants
Through : *Mr. V.N. Koura with Ms.
Angeli Dayal and Mr. Nikhil
Mundeja and Mr. Anupam
Roy, Advs.*

versus

GOVT OF NCT OF DELHI & ANR ... Respondents
Through : *Mr. Gautam Narayan, ASC,
GNCTD with Mr. R.A. Iyer
and Ms. Mahamaya
Chatterjee, Advs.*

**+ W.P.(C) 365/2017, CM Nos.1652/2017, 22028-29/2017,
27106/2017, 29105/2017, 33993/2017, 35310/2017 &
Rev.P.No.269/2017**

DEEPAK BATRA AND ANR Petitioners
Through : *Mr. Rishabh Bansal, Mr.
Ajay Arjun Sharma, Advs.*

versus

GOVT OF NCT OF DELHI AND ANR ... Respondents
Through : *Mr. Gautam Narayan, ASC,
GNCTD with Mr. R.A. Iyer
and Ms. Mahamaya
Chatterjee, Advs.
Mr. Prashant Bhardwaj and
Mr. Amit Mehta, Advs. for
applicant in CM Nos.22028-
29/2017.
Mr. S.P. Kalra, Sr. Adv with*

*Mr. Anshuman Sood, Adv,
Mr. Amanpreet Singh Rahi
and Ms. Arpita, Adv for the
applicant - Ms. Shiya
Khanna.*

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE

*“What we are doing to the forests of the world is but a mirror
reflection of what we are doing to ourselves and to one another”*

- Mahatma Gandhi

1. Two litigations, in two separate jurisdictions of this court, one being FAO(OS) No.200/2017 having originated as a civil suit being CS(OS)No.493/2016 dated 3rd October, 2016 on the Original Side of this court, and the second being a writ petition W.P.(C)No.365/2016 dated 24th December, 2016, filed in January, 2017 in public interest, are both concerned with the same road referred to as ‘W-12D Link Road’.

2. This road is alleged, by the plaintiffs in the suit, to be about 30 feet wide, as also being the access road connecting Indira Enclave, Neb Sarai to the Mehrauli – Badarpur Road from the Western Avenue, Sainik Farms; Sangam Vihar and Saket, New Delhi.

3. Diametrically opposite prayers regarding the same road, have been made in these two cases. Inasmuch as identical questions of law and fact arise, in order to prevent conflict of judgment, with the consent and assistance of all parties to the two cases, we have taken up these two matters together for consideration and adjudication.

4. The plaintiffs in the suit (*who are the appellants in the appeal*) have claimed a right to continue to use the road and by way of their plaint have sought the following prayers :

*“(i) Pass a decree of **Declaration** that the said Indra Enclave connecting road is a public way/right of way/easement in favour of the plaintiffs and against the defendant ;*

*(ii) Pass a decree for **permanent injunction** in favour of the Plaintiffs and **against the Defendant restraining the Defendant from carrying out any demolition activities, closing the road, obstructing or blocking the road or causing any hindrance in the uninterrupted, continuous, peaceful use, enjoyment and free passage, of the plaintiffs, residents of Indra Enclave, persons, and cars, vehicles, emergency vehicles, two and three wheelers and domesticated animals customarily using this road at all times of day or night.***

(ii)a. To declare that the Demolition Order dated 19.09.2016 passed by Mr. S.K. Muan Guite DFO (South) is unlawful and without jurisdiction.

(ii)b. To set aside the said Demolition Order dated 19.09.2016

(iii)c. To direct the Defendants to restore the road to its original condition prior to demolition.

(iii) *Award costs of the suit in favour of plaintiffs ;”*

(Emphasis by us)

5. As against these prayers, in the writ petition, the two petitioners claim that, in public interest, this court may issue the following directions:

*“(a) Issue writ of mandamus or any other suitable writ, order, direction against the respondents thereby directing them to **remove the encroachments and demolish the unauthorized construction, including the concerned road (W12D Link Road), already raised and/or being raised in the land bearing Khasra Nos.487, 490 and 491 in Indira Enclave ;***

*(b) Issue appropriate writ or order or directions thereby **directing the respondent to issue necessary notifications, circulars, orders and office orders for removing the encroachments and unauthorized construction in and around Khasra Nos.487, 490 and 491 in Indira Enclave;**”*

(Emphasis supplied)

6. We set down hereunder the headings under which we have considered the matter :

I. Legal History (paras 7 to 14)

II. Applications filed in the writ petition (paras 15 to16)

III. Claim of Gokul Kumar and others by way of CM No.22628/2017 & proceedings in WP(C) 6324/2017 (paras 17 to 21)

- IV. *The declaration of the Ridge and notifications of land as forest land* (paras 22 to 37)
- V. *Binding orders of the Supreme Court of India in M.C. Mehta v. UOI (W.P.(C)No.4677/1985) and impact thereof* (paras 38 to 42)
- VI. *Notification dated 2nd April, 1996 - Challenge thereto by way of WP(C) No. 4687/2010 before this Court* (paras 43 to 46)
- VII. *When did the road in question come into existence?* (paras 47 to 70)
- VIII. *Availability of and prohibitions under the Forest (Conservation) Act, 1980* (paras 71 to 78)
- IX. *Fencing of the forest – requirement and permissibility – orders of the Supreme Court in M.C. Mehta v. Union of India; the National Green Tribunal in Pavit Singh v. The State of NCT of Delhi & Ors. and of this Court in Bhagat Singh & Ors. v. Union of India & Anr.* (paras 79 to 95)
- X. *Contours of the rights of the private parties* (paras 96 to 101)
- XI. *Objection of the plaintiffs premised on Section 25 of the Indian Forest Act, 1927* (paras 102 to 115)
- XII. *Whether the constructions in question are covered under the Regulations for Regularization of Unauthorized Colonies in Delhi notified by the Delhi Development Authority?* (paras 116 to 121)
- XIII. *Availability of alternate passages* (paras 122 to 128)
- XIV. *Whether the road in question is protected under the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (20 of 2011)* (paras 129 to 133)

- XV. **Claim of the appellants under the Indian Easements Act, 1882** (paras 134 to 143)
- XVI. **An imminent need to protect the environment** (paras 144 to 151)
- XVII. **Order dated 18th May, 2017 (Impugned in FAO(OS) 200/2017)** (paras 152 to 155)
- XVIII. **Conclusions** (paras 156 to 158)
- XIX. **Result** (paras 159 to 167)

We now propose to discuss the above issues in *seriatim*.

I. **Legal History**

7. Before we dwell on the specific contentions, it is necessary to note that the writ petition is concerned with the land which falls under Khasra Nos.487, 490 and 491 of Village Neb Sarai, New Delhi.

8. W.P.(C)No.365/2017 was filed by Deepak Batra and his wife Marina Batra, residents of Western Avenue, Sainik Farms. The writ petitioners have claimed that both of them are eminent environmentalists who have successfully run the Panchavati Green Movement since 1996, an organization which is recognized and stands chosen by the United Nations Environmental Program (UNEP) to chair the Indian Chapter of “Leave it to us” and “Eco Movement” campaigns.

9. Notice to show cause was issued by this court on the writ petition on the 19th January, 2017. It is to be noted that, on that

date, Mr. Gautam Narayan, Additional Standing Counsel for the respondents had disclosed to the court, that CS(OS)No.493/2016 relating to the very same issues raised by the petitioner, was pending before the court and an interim injunction dated 26th September, 2016 had been in operation.

10. So far as the suit being CS(OS)No.493/2016 is concerned, it was filed by the two plaintiffs, namely, Prabhat Kumar Sharma and S.L. Bhatt, who have claimed to have filed the suit on their own behalf, *“as residents of Indira Enclave, Neb Sarai, New Delhi-110068 and on behalf of other residents of Indira Enclave who are having the same interest as the plaintiffs”*. The plaint discloses that *“Indira Enclave is a colony carved out of the land falling under the Revenue Estate of Village Neb Sarai, South Delhi”*. It is further stated that *“Indira Enclave is one of the colonies of 895 colonies under the jurisdiction of NCT of Delhi which are on the list of unauthorized approved for regularization by the National Capital Territory of Delhi”* and its name falls at Sr.No.311 having registration No.380.

11. In this plaint, as a basis for the afore extracted prayers, these plaintiffs *inter alia* averred as follows :

“2. Indra Enclave has been established more than 30 years ago and it has a total of upto 5,000 dwellings. Since its inception, the primary access and connectivity lifeline to and from Indra Enclave has been through an access road connecting Indra Enclave, Neb Sarai to Mehrauli Badarpur Road through western Avenue, Sainik Farms,

Sangam Vihar and Saket (hereinafter referred to as the 'Connecting Road').

3. This Connecting Road upto 30 feet wide has been developed, maintained, improved, tarred, paved and lighted over the course of decades by the residents of the area through which the road passes, and the portion of it falling adjacent to Indra Enclave has been developed, maintained, improved, tarred, paved and lighted over the course of decades by and at the cost of the Plaintiffs and residents of Indra Enclave.

4. This connecting road has been used as primary ingress and egress for the passage of persons, cattle and animals, bicycles, cars, scooters, motorcycles, emergency vehicles, ambulances and police vehicles plying to inter alia Indra Enclave. The Plaintiffs and residents of Indra Enclave have openly and freely enjoyed using this Connecting Road as a free passage and right of way for many decades without interruption, hindrance, obstruction, objection or disturbance whatsoever from any person, government department, authority or body for more than last 30 years."

(Emphasis supplied)

12. The suit was filed on 23rd of September 2016 and adjourned to the 26th September, 2016. In the meantime, the respondents took steps to demolish the subject road. Along with the suit, the appellants had filed I.A.Nos.11892/2016 under Order 39 Rules 1 and 2 of the CPC seeking interim protection.

13. The appellants in FAO(OS)No.200/2017 (*plaintiffs in the suit*), had set up an objection that the action of obstructing the same was without any sanction of the State Government in terms of

Section 25 of the Indian Forest Act, 1927 and that, for over 30 years, the subject road was the primary access to the Indira Enclave. In view thereof, the ld. Single Judge passed an order dated 26th September, 2016 directing the respondents (*defendants in the suit*) to take necessary action to restore the subject road to the extent that emergency vehicles could reach Indira Enclave. Liberty was granted to the respondents to apply for modification of the order.

14. The respondent no.2 had thereafter filed an application being I.A.No.14511/2016 under Order 39 Rule 4 of the CPC seeking modification of the order dated 26th September, 2016. These two applications were taken up for consideration and decided by the impugned order dated 18th May, 2017 whereby I.A.Nos.11892/2016 (*under Order 39 Rules 1 & 2 of the CPC*) stood dismissed and I.A.No.14511/2016 (*under Order 39 Rule 4 of the CPC*) stood allowed and the interim order dated 26th September, 2016 was vacated.

Aggrieved thereby, the plaintiffs have filed FAO(OS) 200/2017.

II. Applications filed in the writ petition

15. It is to be noted that in the writ petition, applications bearing CM Nos.22028-30/2017 seeking impleadment have been filed by Gokul Kumar, Naveen Kumar and Amar Kumar claiming to be the owners of the houses bearing Nos.D-21, D-18 and D-23, Indira

Enclave, Neb Sarai, New Delhi respectively. It is submitted in the applications that D-Block, Indira Enclave consists of about 25 houses “*constructed in the private land and none of the portion falls in ridge area*”. It is further submitted that “*a joint survey was conducted by the revenue department on 28.1.2005 for Khasra No.484, 485*” in the presence of “*Patwari, Tehsildar, the Forest Department & Gram Sabha (BDO)*”. These applicants claim that so far as the writ petition is concerned, it deals with land forming part of Khasra Nos.487, 490 and 491, Village Neb Sarai. Their submission, therefore is that they being on Khasra nos. 484, 485 Village Neb Sarai, are not on the forest land. It is further claimed that the road in question is on “*private land*”.

16. We also find on the record of the writ petition that the following five applications have been filed by Ms. Shia Khanna, claiming to be a resident of property bearing Khasra No.512, Lane W-12D, Neb Sarai Extension, New Delhi-110062, who merely discloses that “*the applicants and other residents/property owners of the area have been using Lane 12D, Western Avenue, Neb Sarai Extension, New Delhi-110062 since the 1980s to ingress/egress the area to reach their houses and properties and access the world*” :

(i) **CM No.27106/2017** dated 29th July, 2017 has been filed by Ms. Shiya Khanna, seeking impleadment.

(ii) **CM No.27107/2017** dated 28th July, 2017 has been filed by Ms. Shiya Khanna, for interim orders seeking stay against construction of the wall for protection of the forest land contending

that there was no order directing walling up of land/khasras including Khasra Nos.634 or 651 or 649 etc. of Neb Sarai located adjacent to the subject road which have been demarcated as forest land, and that the orders passed by this court specifically referred to walling up of forest in Khasra Nos.487, 490 and 491.

(iii) **CM No.29105/2017** dated 11th August, 2017 has been filed by Ms. Shiya Khanna, with the prayer that the official respondents be directed to remove the barriers from the said road.

This application was mentioned before this court on the 11th of August 2017, when it was taken up. On that date, we were informed (*and we so recorded*) that as barricades have been put, Ms. Shia Khanna has no access to her house. Ms. Shia Khanna had further stated that in case this court concludes that the passage to her house is part of the forest area, she shall voluntarily facilitate blocking of the same. Observing that the interim order shall not create any equities in favour of the applicant or any other person, we had directed that the respondents shall permit access of passage of five feet in front of the residence of Ms. Shia Khanna till the next date of hearing. On 29th August, 2017, it was further directed that the space given for passage to Shia Khanna should not be used as a thoroughfare. On 18th August, 2017, the SHO of the Police Station Neb Sarai was directed to ensure strict compliance with all our orders.

(iv) **CM No.33993/2017** dated 14th September, 2017 has been filed by Ms. Shiya Khanna, seeking directions to the

respondents to remove the entire barricade at two points (*marked as 'A' and 'A1' in the enclosed plan*) so as to make the said patch of road available for vehicular use to the applicants.

(v) **CM No.35310/2017** dated 1st September, 2017 was filed by Ms. Shiya Khanna, seeking urgent hearing of CM No.33993/2017.

This application came to be listed on 26th September, 2017 when we were informed that passage access of 5 feet was grossly insufficient. In view thereof, we had modified our directions and directed that the respondents shall permit passage of 8 ½ feet in front of the residence of Ms. Shia Khanna.

These orders continue to operate even on date.

III. Claim of Gokul Kumar and others by way of CM No.22628/2017 & proceedings in WP(C) 6324/2017

17. An application being CM No.22628/2017 came to be filed on the 30th of May 2017 in the writ petition by Shri Gokul Kumar; Naveen Kumar Arora and Amar Kumar contending that a joint survey was conducted by the Revenue Department on the 28th of January 2005 for the demarcation of Khasra Nos.484 and 485 of Village Neb Sarai. It was contended that as per the Revenue record, Khasra No.485/2012 ad-measuring 2-08 bighas was in the name of Shri Ram Kumar and Khasra No.484 ad measuring 4-16 bighas was in the name of Shri Faquir Chand. A copy of demarcation report dated 28th January, 2005 has been placed

contending that as per the plan attached with the demarcation report, the portion shown in green is the forest area while the red portion of 33 feet formed part of Khasra No.484. It is further submitted that wire fencing is existing at Point A to A and Point B to B since 2005 and at Point C to C (*entrance to the Indira Enclave*). These applicants claim that the portion marked in red was not forest land; that the Gaon Sabha gave physical possession of Khasra Nos.486-87 to the Forest Department which further fenced the same thereby confirming that Khasra Nos.484 and 485 Village Neb Sarai was private land. The applicants contended that in view of the demarcation report, the gate erected at Point C to C is a gate to the private colony of D Block of Indira Enclave which the Forest Department was trying to close by a wall.

18. The respondents were relying on a demarcation report of 6th July, 2016. It was contended that this report had failed to demarcate Khasra Nos.484 and 485 of Neb Sarai. It was also contended that no notice was issued and the applicants and residents of D Block were never called to participate in the demarcation.

19. Placing reliance on the demarcation report, the respondents issued notices to show cause dated 13th July, 2017 and 17th July, 2017 contending that Gokul Kumar's house bearing H.No.D-21, Indira Enclave was located in Khasra no.487, Neb Sarai. This was challenged by Gokul Kumar by way of W.P.(C)No.6324/2017, wherein he placed reliance on the earlier demarcation report dated

28th January, 2005. This writ petition was disposed of on 25th July, 2017 by the Id. Single Judge wherein liberty was granted to the petitioner to challenge the demarcation report dated 6th July, 2016 before the Revenue Authority and maintenance of *status quo* was directed. In the order dated 25th July, 2017, the Id. Single Judge observed as follows :

“Be that as it may, noting the additional submission of the learned counsel for the respondents that the notices issued by respondent No.3 premised on a demarcation report dated 06.07.2016, it would be appropriate for the petitioner to challenge this report before the Revenue Authority as this Court being a writ court cannot go into factual averments and counter averments. This Court endorses this view of the learned counsel for the respondents. The petitioner is accordingly advised to challenge the demarcation report dated 06.07.2016 before the Revenue Authority. He may file an appeal against the demarcation report dated 06.07.2016 within a period of two weeks and the Competent Authority who will dispose of that appeal within a time span of not later than three months. Till that time, the petitioner shall remain protected. The DC shall note the averments of the petitioner (highlighted by the learned senior counsel for the petitioner) that the demarcation report dated 06.07.2016 cannot bind him as he was not a party to this demarcation.

Status quo of the property shall be maintained by the parties.

No further orders are called for in this petition. It is disposed of.”

20. In view of this order, CM Nos.22028-30/2017 which had been filed by Mr. Gokul Kumar and the others were rendered

infructuous and were disposed of. Gokul Kumar's concern lies with regard to the location of his house and not the road.

21. It is noteworthy that there is no challenge to the demarcation report dated 6th July, 2016 or the other reports, either by Mr. Shia Khanna, who has filed five applications in the writ petition before us, or by Prabhat Kumar and S.L. Bhat, who are the appellants in FAO(OS)No.200/2017.

IV. The declaration of the Ridge and notifications of land as forest land

22. The above narration would therefore, show that the writ petition is concerned with an alleged passage or a road on land which forms part of Khasra Nos.487, 490 and 491 of Village Neb Sarai. The suit is concerned with the portion of the road on land which falls in Khasra Nos.649, 650 and 651 Village Neb Sarai. The issue which falls for consideration is as to whether this road/passage is on forest land which is part of the notified ridge, the legality of its construction and rights, if any, of the private party over or in it.

23. The official respondents have emphatically contended that the matters are concerned with a road on a piece of land, which, is part of the protected Southern ridge, one of the two natural features of the Delhi. Before we consider the rival contentions and claims, it is most essential to understand as to what constitutes the “**Ridge**” in Delhi and what is its significance and importance?

24. Both sides have drawn our attention to several government notifications as well as the orders passed by the Supreme Court with regard to the Ridge. Given the importance which is attached to the preservation of forest, more so, if it is part of the fragile ridge ecosystem, ensuring its protection is imperative and cannot be compromised in any manner. We therefore, consider this issue first hereafter.

25. Mr. Gautam Narayan, Additional Standing Counsel for the Government of NCT of Delhi has placed before us an official publication of the Department of Forests & Wildlife of the Government of National Capital Territory of Delhi published in 2014 titled “**An Introduction to the Delhi Ridge**”. The Ridge is defined in Chapter-1 - “*The Delhi Ridge*” of the publication thus :

“A Ridge is a geological aspect that features a continuous elevational crest for some distance. The Delhi Ridge is a northern extension of the old and ancient hill ranges of India called the ‘Aravalli Hill Ranges’ which extend from Gujarat through Rajasthan to Haryana-Delhi. The Delhi Ridge stretches over a distance of 35 km, from Bhatti Mines to Southeast of the 700 year old Tughlaqabad, branching in different directions, and finally tapering towards the northern end near Wazirabad on the western banks of Yamuna river.”

26. The publication refers to pressures of increasing population. It also sets out shrinkage of the ridge and its fragmentation into five zones in the following terms :

“Over the years, the pressures of an increasing population, excessive resource extraction, construction of

*landscaped public parks, public housing, dumping of construction waste, etc. have posed a serious threat and caused shrinkage of the Ridge. Once contiguous, it is now divided into **five fragmented zones** namely, Northern Ridge, Central Ridge, South Central Ridge, Southern Ridge and Nanakpura South Central Ridge.*

- ◆ *The **Northern Ridge** (also called Old Delhi) comprises of the hilly area near Delhi University. It is approximately 87 Hectares.*
- ◆ *The **Central Ridge** (also called New Delhi) consists of around 864 Hectares of forested area, from south of Sadar Bazaar to Dhaula Kuan, but some bits of the Central Ridge have been nibbled away.*
- ◆ *The **South-Central Ridge** (also called Mehrauli) consists of 626 Hectares of forested land around the Sanjay Vana area, near Jawaharlal Nehru University (JNU).*
- ◆ *The **Southern Ridge** (also called Tughlaqabad) consisting of 6200 Hectares is the biggest area of the Delhi Ridge.*
- ◆ *The **Nanakpura South Central Ridge** has an area of 7 Hectares.*

All the 5 Zones make up for a total area of 7,784 Hectares spread over the entire city in different patches.”

27. A reference has been made in Chapter 1.2.2 to “*Ridge management after independence*”. So far as the current context with regard to the Southern ridge is concerned, we find details of the management set out therein in the following terms :

*“The Chief Commissioner of Delhi decided to hand over the **Southern Ridge, for its maintenance, to CPWD in the***

year 1962, and the Southern Ridge was transferred to CPWD on 01.04.63, for its beautification as parks and gardens. Further the Hon'ble Lt. Governor of Delhi ordered the transfer of the Northern Ridge to DDA in the year 1968, which was done on 30.11.1968, for maintenance and beautification. However, with the efforts of the then Development Commissioner, two nurseries namely Birla Temple and Kamla Nehru Ridge remained with the Forest Department, Delhi Administration.

However, some encroachments were still occurring, so to preserve the Ridge as forest land, some non-profit organizations and citizen's groups working on environmental issues started protesting in 1979 against encroachments and destruction of the Ridge. In response to these efforts, Lt. Governor of Delhi declared 25 sites in the Northern, Central and South-Central Ridge as Protected Forests under the Indian Forest Act, 1927 on 10th April, 1980."

(Emphasis by us)

28. In an order passed on 9th of May 1996, in *M.C. Mehta v. Union of India* W.P.(C) No. 4677/1985, also, so far as the Ridge is concerned, the Supreme Court of India had noted as follows :

*"...It would be useful to refer to the **statutory Master Plan for Delhi Perspective 2001** which provides as under : -*

"2. ECOLOGICAL BALANCE TO BE MAINTAINED. Delhi has two distinct natural features.

The Ridge is the rocky outcrop of Aravalli Hills and the river Yamuna. Some parts of the Ridge have been erased in the Central city area. No further infringement of the Ridge is to be permitted; it should be maintained in its pristine glory. River Yamuna is to be made pollution free through various measures. On the vast expanse of its banks, large recreational area to be developed and to be

integrated with other urban development's so that the river is an integral part of the city physically and visually."

(Emphasis supplied)

29. It is to be noted that while there is no legal definition of this expression, however, the Ridge has been extensively considered and elaborated in the Master Plan of Delhi – 2001 (‘MPD – 2001’) as well as Master Plan of Delhi – 2021 (‘MPD – 2021’).

30. It needs no elaboration that the statutory Master Plans have been framed and notified under Section 11 of the Delhi Development Act, 1957. We extract hereunder the references to the Ridge as contained in MPD – 2001 (*which was notified on the 1st of August 1990*), (as also noted in the aforementioned publication entitled “*An Introduction to the Delhi Ridge*”), the relevant portions whereof read as follows :

“a. The preamble of the MPD 2001 states:

*“Ecological balance to be maintained. **Delhi has two distinct natural features – The Ridge which is the rocky outcrop of Aravalli hills and the river Yamuna. Some parts of the Ridge have been erased in the Central City Area. No further infringement of the Ridge is to be permitted; it should be maintained in its pristine glory**”*

b. In the section pertaining to Environment, the provisions relating to the natural features prescribed as follows :

“ENVIRONMENT NATURAL FEATURES

Conservation of major natural features in a settlement is of utmost importance to sustain the natural eco-system. Two major natural features in Delhi are the Ridge and the Yamuna river. The Ridge in Delhi is defined as a

rocky outcrop of the Aravalli range stretching from the University in the North of the Union Territory boundary to the South and beyond.”

(Emphasis by us)

31. We may extract hereunder a notification dated 10th of April 1980 issued under Section 29 of the Indian Forest Act, 1927 by the Lt. Governor of Delhi declaring areas as protected forest. The notification and the relevant portion of the schedule are extracted hereunder :

“NOTIFICATION

Delhi, the 10th April, 1980.

No.F. SCO 32(c) Noti – 80-81.- In exercise of the powers conferred by Section 29 the Indian Forest Act, 1927, read with the Government of India, Ministry of Home, notification No. 104 J and No. 146-J dated 24.8.50 and 6.12.50, the Lt. Governor of Delhi is pleased to **declare as protected forest the areas** specified in the schedule hereto annexed.

*By order,
M.W.K. YUSUFZAI, Secretary.”*

“SCHEDULE

Protected Forest Area, 1980

<i>S. No</i>	<i>Name of work</i>	<i>Zone ownership</i>	<i>Distt.</i>	<i>Tehsil</i>	<i>Village</i>	<i>Area</i>
	xxx		xxx		xxx	
<i>6.</i>	<i>Southern Ridge Area</i>	<i>G-5. D-10 L & DO Land</i>	<i>Delhi</i>	<i>Mehrauli</i>	<i>Nazul Estate</i>	<i>2022 Acres”</i>

(Emphasis supplied)

32. Vide a notification issued in 1986, issued by the Lt. Governor of Delhi, 1880 hectares of land in the southern ridge was declared as a wildlife sanctuary (*Asola* wildlife sanctuary) which includes the Bhatti Mines.

33. Mr. Gautam Narayan, ASC for GNCTD has also placed a notification dated 15th April, 1991, again issued by the Lt. Governor of Delhi, this time under Section 18 of the Wildlife Protection Act, 1972 which reads as follows :

“No.F2(19)/DCF/90-91/1302-91

Dated : 15.04.91

NOTIFICATION

(To be published in Gazette of Delhi)

*In continuation of Notification No.3(116)/CWLW/84/89/906 dated 9.10.86. In exercise of the powers conferred by Section 18 of the Wildlife (Protection) Act, 1972. The Lt. Governor, (Administrator), Delhi is pleased to declare the areas in the schedule below as **Wildlife Sanctuary in Bhatti Village. Total Areas 2166.28 acres**; considering that the said area is of adequate ecological, geological, faunal, floral, geomorphological and natural significance for the purpose of propagating and or developing of Wildlife and / or its environment.*

SCHEDULE

<i>Village</i>	<i>(Khasra Nos.)</i>	<i>Area</i>
<i>Bhatti</i>	<i>708, 712, 713, 715 1895 to 1900, 1903 to 1938, 1940 to 1942</i>	<i>2166.28 Acres.</i>

By Order
DY. SECRETARY (FORESTS)

DELHI ADMINISTRATION: DELHI

(Emphasis by us)

34. The Lt. Governor of the NCT of Delhi issued a notification dated 24th May, 1994 under Section 4 of the Indian Forest Act, 1927 declaring the land mentioned in Schedule A thereto as “reserved forest”. The notification describes Schedule A as including all forest lands and waste lands which were the property of the government, or over which the government had proprietary rights *inter alia* in the South Central Ridge and the Southern Ridge in the NCT of Delhi.

35. By this notification, the Lt. Governor of Delhi appointed the ADM (Revenue) to be the Forest Settlement Officer to “*enquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, as stood notified vide Notification No.10(42)-IPA/DCF/93(1) dated 24th May, 1994 or in or over any forest produce and to deal with the same as provided in Chapter II of the Indian Forest Act, 1927*”.

36. Neither the private persons (*who have filed applications in the writ petition*), nor the appellants (*plaintiffs*) have placed any claims by any person made qua the subject land on which the road has come up.

37. The question pressed before us is as to whether the road in question, is part of the protected forest, and covered under the boundaries of Ridge noted above? We consider this issue hereafter.

V. **Binding orders of the Supreme Court of India in *M.C. Mehta v. UOI (W.P.(C)No.4677/1985)* and impact thereof**

38. In the year 1985, the well-known environmental activist Shri M.C. Mehta had initiated W.P.(C)No.4677/1985 entitled ***M.C. Mehta v. Union of India*** in the Supreme Court of India contending *inter alia* that the Ridge was notified as a reserved forest under the Indian Forest Act, 1927 and all encroachments on it, in violation of the provisions of that statute, would be illegal irrespective of the government's permission. Several orders came to be passed in this writ petition regarding protection of the Ridge; clearance of infringements thereon as well as the prohibition against further infringements.

39. Mr. Anupam Roy, ld. counsel appearing for the writ petitioners has pointed out that in I.A. Nos.18 and 22 of W.P.(C)No.4677/1985 entitled ***M.C. Mehta v. Union of India & Ors.***, I.A.No.18 was taken up for consideration and the Supreme Court had issued orders dated 25th January, 1996 and 13th March, 1996. On the 25th of January 1996, so far as the Gaon Sabha land was concerned, the Supreme Court had *inter alia* observed thus :

“GAON SABHA LAND

*We have heard learned counsel for NCT, Delhi Administration regarding the **Gaon Sabha area forming***

part of the Ridge. Learned Counsel states that various proposals regarding handing over the Gaon Sabha area (part of the Ridge) to the Forest Department have been examined by the Committee appointed by the Administration.

Finally, the Committee has taken a decision that a Notification under Section 35 of the Indian Forests Act 1927 be issued. We are of the view that the Notification under Section 35 will not solve the problem which we are facing. The learned counsel states that the Committee was of the view that the provisions of Section 154 of the Delhi Land Reforms Act, 1954 are not attracted because in view of the expression “on the commencement of the act” In Section 154, power under the proviso to Section 154 could only be exercised at the time of the commencement of the Act and not thereafter. That may be one way of the looking at the Section but since it is for the first time that a Committee has been appointed to examine this aspect and it was never examined earlier by the Delhi Administration at any point of time, we are prima facie of the view that the provisions of Section 154 can even now be invoked especially when it is crystal clear that this area is of no utility to the Gaon Sabha and in any purpose. This is Ridge area which has to be preserved.

No cultivation or any type of construction can be permitted on this area. In this view of the matter, we request the committee to reconsider the question of issuing a notification under the provision to Section 154 of the Act.”

(Emphasis by us)

40. The importance of the preservation of the ridge is clearly manifested from the above order. We find that the Supreme Court has therefore, clearly declared that in any case, the Gaon Sabha land could not be permitted to be used for any purpose; that it was

ridge area which had to be preserved and that the unutilized land falling in the ridge area shall be handed over to forest and wildlife department. The Supreme Court has unequivocally declared that even “*no cultivation or any type of construction can be permitted on this area*”.

Clearly, construction, development or maintenance of a road thereon would not be countenanced.

41. The above was followed by an order dated 13th March, 1996 by the Supreme Court of India wherein, after extracting the above, the court observed thus :

“Pursuant to the above quoted order Mr. GS Patnaik, Deputy Commissioner, Delhi has filed affidavit wherein it is stated that the incorporation of extensive stretches of Gaon Sabha land is a serious matter which necessitate careful deliberation at the level of Council of Ministers and Lt. Governor, Delhi. It is further stated in the affidavit that further four weeks’ time was required to consider the matter.

We do not agree with Mr. GS Patnaik. In view of the order quoted above, nothing more remains to be done by the NCR, Delhi Administration, except to issue the necessary notification. We direct that the necessary be issued within three weeks from today. We further request the Lt. Governor, to have the matter expedited. The land is part of the ridge area. Even though it is not reserved forest, it happens to be a forest. This area cannot be utilized in any manner in view of the prohibitions contained under the Forest Conservation Act, 1980. In this view of the matter issuing of notification is a simple formality to secure the area. We, therefore, reiterate and

request the Lt. Governor to have necessary notification issued within time specified by us.

Compliance report regarding disposal of the application of the plaintiff in the matter titled as “Gurmohan Singh Vs. Union of India.”

(Emphasis by us)

42. The Supreme Court thus clearly directed that even though the land was not a reserved forest, it happens to be a forest which was an integral part of the Ridge area. It was clearly directed that therefore, it could not be utilized in any manner in view of the prohibitions contained in the Forest (Conservation) Act, 1980. It was held by the court that in these circumstances, the issuance of the notification was merely a simple formality to secure the area. The Lt. Governor of Delhi was consequently requested to issue a notification within the timeline specified by the Supreme Court.

VI. Notification dated 2nd April, 1996 - Challenge thereto by way of WP(C) No. 4687/2010 before this Court

43. In compliance with the orders of the Supreme Court dated 25th January, 1996 and 13th March, 1996, the Revenue Department of the Government of NCT of Delhi issued a notification bearing No.F1(29)/PA/DC/95 dated 2nd April, 1996 in exercise of powers conferred under Section 154 of the Delhi Land Reforms Act, 1954 placing the uncultivated lands of Gaon Sabhas falling in the Ridge at the disposal of the Forest Department of the Government of NCT of Delhi. The relevant extract of the said notification deserves to be extracted *in extenso* and reads as follows :

"S. Name of Village Quantum of Gaon Sabha land covered in ridge as declared surplus and placed at the disposal of Forest Deptt. For afforestation (in Bighas & Biswas)

<i>I</i>	<i>II</i>	<i>III</i>
1.	Neb Sarai	466-10 (Details at Annexure – 'A').
xxx	xxx	xxx

ANNEXURE – 'A' (1 to 2 Pages)
Village NEB Sarai, Tehsil Mehrauli, Delhi,
Gram Sabha Land Under Notified Ridge

Khasra No.		Area
xxx	xxx	xxx
487		4-16
488		4-16
xxx	xxx	xxx
490		5-2
491		2-0
xxx	xxx	xxx
649		4-4
650		2-13
651		5-02
xxx	xxx	xxx"

Thus the land on which the road has been made were covered under the notification dated 2nd April, 1996 and notified as part of the Ridge.

44. The respondents have also placed as possession report dated 4th September, 2004 on record whereby possession of land in Khasra Nos.480 (4-16); 486 (3-19); 487 (4-16); 488 (4-16); 490 (5-2); 491 (2-0); 516 (12-9) was handed over to the Forest Department. This report notes that on account of construction of houses, possession of land of 15 biswas in Khasra No.486, 15 biswas in Khasra no.487 and 1 bigha 9 biswas in Khasra No.516

was left out. Possession of the rest of the land, with demarcation was given to the Forest Department.

45. For clarity, we may also extract the relevant portion of Section 154 of the Delhi Land Reforms Act, 1954 which read thus :

“154. Vesting of certain lands etc, in Gaon Sabha. –
(1) Renumbered by Act 38 of 1965)] On the commencement of this Act –

(i) All lands whether cultivable or otherwise, except land for the time being comprised in any holding or grove,

(ii) All trees (other than trees in a holding or on the boundary thereof or in a grove or abadi) [(Note: Ins. by s.16 of Delhi Act of 1956) or planted by a person other than a proprietor on land other than land comprised in his holding,

(iii) Public wells,

xxx

xxx

xxx

Situate in a Gaon Sabha Area, shall vest in the Gaon Sabha :

Provided that if the uncultivated area situate in any Gaon Sabha area is, in the opinion of the Chief Commissioner, more than the ordinary requirements of the Gaon Sabha, he may exclude any portion of the uncultivated area from vesting in the Gaon Sabha , he may exclude any portion of the uncultivated area from vesting in the Gaon Sabha under this section and may make such incidental and consequential order as may be necessary.”

46. At this stage, we may also notice the rejection of the legal challenge which was laid to the above notification dated 2nd April, 1996 whereby the land falling in the ridge area was excluded from

vesting in the Gaon Sabha and placed at the disposal of the Forest Department. Quashing of this notification was sought by way of W.P.(C)No.4687/2010, Bhagat Singh & Ors. v. Union of India etc. before this court. This challenge stands rejected by the Division Bench by way of the judgment dated 16th July, 2010 reported at **2010 SCC Online Del 2386, Bhagat Singh & Ors. v. Union of India & Anr.** We extract hereunder the observations of the court in paras 5 to 8 :

*“5. We asked the learned counsel for the **petitioners** to show us the documents by which his forefathers or they came into settled lawful possession of the land in question which belonged to the Gaon Sabha. There is no such document on record. This question was posed as Gaon Sabha land is for the collective enjoyment of the village and there is no right in any individual to occupy the land unless such an allotment is made by the Gaon Sabha. The Gaon Sabha land is thus not meant for individuals for their own enjoyment and the vesting of the land in Gaon Sabha is as per Section 7 of the said Act. The significance of the said Act coming into force was that all lands of common utilities which were owned by the proprietors of villages and which were commonly used by the villagers were vested in the Gaon Sabha and proprietors were divested of their ownership. As per Section 154(1) (vii) of the said Act, **all the forest land situated in a Gaon Sabha area shall vest in the Gaon Sabha.** The proviso to Section 154(1) of the said Act refers really to the uncultivated area situated in Gaon Sabha area and the same being more than the ordinary requirement of the Gaon Sabha may be excluded from vesting in the Gaon Sabha.*

6. We are of the considered view that no further exercise was necessary to be carried out by the R-1 and R-2 in

case of such Gaon Sabha land which was actually part of 'Ridge' area and it is with the objective of protecting the 'Ridge' area that the land in question which forms part of the 'Ridge' area was declared surplus and was placed at the disposal of the Forest Department of the Govt. of NCT of Delhi for creation of Reserved Forest.

7. In our considered view, the **petitioners are only encroachers on Government land** who are seeking to prevent vesting of the land in question with the appropriate Government authority and possibly physically preventing the Government from taking over possession of the same. The petition has been filed 14 years after the notification in question was issued and the only reason given in this regard is that the petitioners had no knowledge of the same.

8. **Learned counsel for R-1 and R-2 states that the forest area is being fenced and 80 per cent of the work is complete, but physical resistance is being faced from people of the villages - Bhatti, Dera and Maandi.** It is also stated that **a similar issue** was raised in WPC No. 4362/2007 Nav Yuwak Gram Vikas Samiti v. Govt. of NCT of Delhi and Ors. decided on 27.08.2009, in respect of three of the other villages. **The LPA No. 579/2009 filed against that order also really did not succeed, but the original petitioners were given liberty to approach the Supreme Court for any clarification, if they so desired.**
(Emphasis supplied)

This judgment has attained finality and would bind our consideration.

VII. When did the road in question come into existence?

47. The plaint in CS(OS)No.493/2016 and the grounds of appeal in FAO(OS)No.200/2017 make no disclosure as to the date on

which the road was constructed or the authority or person who constructed this road.

48. Ms. Shiya Khanna, the applicant in CM Nos.27106-07/2017, 29105/2017, 33993/2017 and 35310/2017 as well as Mr. Gokul Kumar, applicant in CM No.22628/2017 also do not disclose the date on which the road in question came into existence.

49. We therefore, have to fall back on the available documentation on record and make an effort to discern as to when this road came into existence.

50. It appears that the writ petitioners made an application seeking information in this regard from the Revenue authorities. The Office of the Sub-Divisional Magistrate, District South addressed a communication dated 3rd of August 2016 to the petitioner no.2 informing her that as per the shijra of the Village Neb Sarai, no such passage/raasta/road was passing through Khasra Nos.487 and 490 of the Village.

51. The petitioner no.1 had separately addressed a query under Section 6 of the Right to Information Act, 2005 to the Office of the Deputy Conservator of Forest (South) in connection with the existence of path/road/passage through Khasra Nos.487 to 490 in the Revenue Estate of Village Neb Sarai. We extract the queries and the response dated 14th October, 2016 of the Office of the Conservator of Forest which read as follows :

“Sl.No.	Queries	Reply
1.	Copies of all documents (including but not limited to correspondence, file noting, minutes of relevant meetings, land records, revenue records in your possession, maps etc) pertaining to existence and/or non-existence of path/road/passage through Khasra Nos.487-490 situated in Revenue estate of village – Neb Sarai.	This office has no records of the existence of path/road/passage through Khasra Nos.487-490 situated in Revenue estate of village – Neb Sarai. Query No.1 pertains to Revenue Department and the same has been transferred to SDM (Saket) for necessary action.
	Copies of all documents (including but not limited to correspondence, file noting, minutes of relevant meetings, land records, revenue records in your possession, maps etc) pertaining to original construction, creation and/or demolition, if any, of the path/road/passage through Khasra Nos.487-490 situated in Revenue estate of village – Neb Sarai.	This office has no information about the original construction/creation of the path/road/passage through Khasra Nos.487-490 situated in Revenue estate of village – Neb Sarai. Demolition of the road passing through Khasra Nos.487-490 was carried out on the 23.09.2016. The relevant documents about the demolition of this road are Annexed as Annexure-I.
	Copies of all documents (including but not limited to	The Khasra No.487, 490 and 491 of Neb

	correspondence, file noting, minutes of relevant meetings, land records, revenue records in your possession, maps etc) pertaining to land use and classification (any change thereto) of Khasra Nos.487-490 situated in Revenue estate of village – Neb Sarai.	<i>Sarai Village are a notified forest land under Section 4 of the Indian Forest Act, 1927.</i>
--	--	--

(Emphasis supplied)

Thus the official records establish that there was no road in Khasra Nos.487-490 of Village Neb Sarai; that a road through Khasra Nos.487-490 was demolished on 23rd September, 2016 and that Khasra Nos.487, 490 and 491 were notified forest land

52. We have on record also a communication dated 20th July, 2016 addressed by Mr. S.K. Muan Guite, Deputy Conservator of Forest (South) to the APCCF of the Department of Forest and Wildlife, Government of NCT of Delhi which refers to an inspection conducted upon the instructions of the Chief Conservator of Forest on the 15th of July 2016. The inspection was conducted by Mr. Guite together with “*Mr. D. Batra and Ms. Marina, both representatives from UNEP along with DRO and Forest Guard of Mehrauli-I Range*”. This letter relates to the construction of the boundary wall. The letter also refers to obstructions by nearby residents to the construction of the boundary wall and that the residents claimed that the road had been in existence for several years.

53. This communication refers to the demarcation carried out on 6th of July 2016 on forest land bearing Khasra Nos.487, 490 and 491 as well as the Gaon Sabha land bearing Khasra No.489. This report specifies that 98 feet inside the Khasra Nos.487 is encroached area as the same belongs to the Department of Forest and Wildlife. The Revenue Department confirmed in the inspection on 6th July, 2016 the fact that a road was passing through Khasra Nos.487, 490 and 491. Gram Sabha land on Khasra No.489 was highlighted. The respondents have also enclosed the *nishan dehi*, i.e. a plan, showing Khasra Nos.649, 650 and 651.

The demarcation report dated 6th of July 2016 prepared by the Halka Patwari in the presence of representatives from *inter alia* the Forest Department and Flood Control Department would have taken into consideration the records as well. The Revenue Department refers to a path under some of area in the middle of Khasra Nos.490 and 487 and some houses constructed. There is no reference to the road in the present form in the demarcation report. Mr. Gautam Narayan, Id. Additional Standing Counsel points out that this relates to the D-Block of the Indira Enclave.

54. It appears that the Conservator of Forests received information of encroachment and felling of trees in the Neb Sarai area from representatives of the United Nations Environment Program. As a result, the Conservator of Forests accompanied by the Deputy Conservator of Forest(s), his staff and the petitioners of

UNEP inspected the spot where the encroachment was taking place. In the report dated 25th February, 2016 submitted by the Conservator of Forests to the Additional PCCF, Department of Forest and Wildlife, Delhi, apart from referring to the land in Khasra Nos.521, 525 and 634, reference was made to the road in question in the present litigation. We extract hereunder the observations of the Conservator of Forest with regard to this road :

“The third location behind ‘D Block’ Indira Enclave was also inspected. It was seen that a katcha track through Forest Khasras leading to a colony at the back had been made pacca by putting up tiles. This appears to be a definite attempt to encroach over forest area by making this track for subsequently encroaching the adjoining forest Khasras. This pacca track appears to be quite recent construction.”

(Emphasis by us)

55. So far as the construction of the road is concerned, as per the letter dated 20th July, 2016, during the inspection conducted on 15th July, 2016, the Deputy Conservator of Forest (South) noted as follows :

“As per telephonic instruction of CCF on the 15.07.2016, the undersigned along with Dr. Batra and Ms. Marina, both representatives from UNEP along with DRO and Forest Guard of Mehrauli-I Range visited the site where boundary wall construction has to be done.

*It is to inform that **demarcation of Revenue Department in presence of Forest Department has been carried out on the 06.07.2016** which has been attended by Dr. Batra. The joint demarcation report dated 06.07.2016*

on the Forest Khasra No.487, 490, 491 and Gram Sabha Land bearing Khasra No.489 is enclosed.

As per the demarcation report, a Raasta passing through Forest Kh.No.487, 490 and 491 is clearly shown. The Gram Sabha Land bearing Kh.No.489 is also highlighted in the demarcation report. It is also pertinent to point out that request for including Kh.No.489 (Gram Sabha Land) has also been sent to SDM (Saket) and a consent has been received from SDM (Saket) for including Kh.No.489 inside boundary wall. Formal process of handing over of this Khasra is under process as intimated by SDM (Saket).

Work order for construction of boundary wall around the above mentioned Khasras has been given to IFCD. However, work could not be started till date due to the road passing through these Khasra and the effort to block this road has been resisted by nearby residents claiming that the road has been in existence for so many years.

In view of this confusion and position stated above the undersigned has personally visited the area on the 15.07.2016 to have a right information about the road passing through Forest Khasras cited above. The following points emerged during the inspection:

- 1. That the concrete slabs are placed upon the road and it has been enquired that by whose authority/permission the road has been constructed inside the Forest land.*
- 2. It has been enquired whether any application for the right of way has been received for this particular area and the same has been permitted or not.*
- 3. It has been enquired as to the time when this road has been constructed.*

Nobody from the field officials of Forest Department of that particular range was able to tell about these queries and claiming that these things happen prior to their posting in this range.

According to Dr. Batra, the small footpath was in existence for quite sometime but the widening and turning into a road having concrete slabs was quite recent.

In view of this, the undersigned has written to Forest Settlement officer South District, seeking clarification as to the existence of right of way as per Revenue record."

(Emphasis by us)

56. In the writ petition the respondent nos.1 and 2 have placed a status report dated 9th August, 2017 again placing the demarcation report dated 6th July, 2017 prepared by the *Halka Patwari* in the presence of the Forest Department and the Flood Control Department.

57. Mr. S.K. Muan Guite, Deputy Conservator of Forest (South), in the status report on behalf of the respondent nos.1 & 2 dated 9th August, 2017, has submitted that he has also got demarcated the forest khasras i.e. Khasra nos.649, 650 and 651 of Neb Sarai Village, lying on the other side of Indira Enclave going out from the Sainik Farms. The demarcation report dated 7th June, 2017 (Annexure R-11) with the *nishan dehi* (site plan) duly signed by Shri Om Prakash (*Patwari*); Shri Hari Dutt (*Kanungo*); Shri Surya Bhagwan (*Kanungo*, Forest Department); Shri S.K. Muan Guite, (Deputy Conservator of Forest (South)) and Shri Satyender

Prakash ((RO), Forest Department) has been placed on record. As per this demarcation report, it is reported that there is an illegal road passing through the notified forest in Khasra Nos.649, 650 and 651 of Neb Sarai Village and encroachment of 26 feet by two private walls on both sides of the roads. The Forest Department has taken steps for removal of these encroachments, which includes issuance of notices for removal of the unauthorized structures and an opportunity to remove the same.

58. We find that there is no dispute that the land forms part of Village Neb Sarai. If a road or a passage is actually available, the same would have been duly mentioned in the Revenue records relating to the Village Neb Sarai. The existence of the road is not supported by any revenue record.

59. It is important to note that no private person has claimed ownership over the land on which the road has been constructed. Rather, we note, that appearing for the appellants in FAO(OS)No.200/2017, Mr. V.N. Koura, ld. counsel, has submitted that the appellants admit that the road is on land which is part of the forest.

60. Neither the writ petitioners nor the plaintiffs (*appellants in FAO(OS)No.200/2017*) made any claim either regarding the land which they now claim to be occupying or with regard to subject road. There is not even an allegation, let alone any evidence to show existence of even a path, let alone a road in 1994.

61. We have no manner of doubt that there was no road in existence when the notification dated 2nd April, 1996 was issued. The road was also not in existence when the orders dated 3rd January, 1996; 25th January, 1996; 13th March, 1996 and 9th May, 1996 were passed by the Supreme Court of India. There is not even an averment that the road was in existence when the notification dated 2nd of April 1996 came to be issued placing the entire forest land at the disposal of the department of Forest and Wildlife. In fact, there are admissions on record in the letter dated March, 2016 of Air Vice Marshall Rakesh Yadav that the road was illegally and contumaciously constructed in the year 2016 i.e. long after the passing of the order dated 11th of November 2014 by even the National Green Tribunal and in clear violation thereof.

62. Some interesting facts have been revealed in yet another petition filed by Shri Prabhat Kumar Sharma claiming to be the resident of property bearing No.B-38, Indira Enclave, Neb Sarai, New Delhi and Shri S.L. Bhatt, occupant of property bearing No.B-45, Indira Enclave, Neb Sarai, New Delhi. These two persons have filed a review petition bearing Review Petition No.269/2017 in W.P.(C)No.365/2017 seeking review of the order dated 16th of May 2017 passed by us. It is stated in para 1 of this petition that they are residing in Indira Enclave for the “*past around 30 years*” and that it has been in existence from 1980s – 1990s. It is claimed that the Indira Enclave Residents’ Welfare Association was registered as a society on 22nd of April 1994 i.e. 23 years ago and

that this society applied for regularization of the colony on the 22nd of April 1994. The review petition claims that Indira Enclave is one of the 895 colonies which are on the list of unauthorized colonies approved for regularization by the Government of NCT of Delhi and is placed at Sr.No.311 having registration No.380.

63. In the review petition, it is claimed that W-12D connecting road has been *“developed, maintained, tiled, improved and lighted over the course of decades by the residents of the area through which the road passes* and the portion of it so far as falls outside the Sainik Farms has been maintained, improved, tarred, paved and lit over the course of decades by and at the cost of the residents of Indira Enclave.

64. The review petitioner has placed before this court a communication dated 27th December, 2004 addressed by the Residents' Welfare Association of Indira Enclave to the Additional Secretary (UC), Department of Urban Development, Government of NCT of Delhi enclosing the application form for regularization on the enclosures inclusive of the location/layout plan.

65. This communication encloses the list of the houses which had been constructed at the time of sending this communication for regularization. In the letter dated 27th December, 2004, only four blocks in which houses had been built stand mentioned i.e. Blocks A, B, C and D. It is noteworthy that Block K wherein the private parties before us are residing are not even mentioned in this list.

Clearly, Block K was not even in existence on 27th December, 2004 when the application for regularization was sent.

66. There is yet one more reason for disbelieving the case set up by the private parties. In exercise of the powers under Section 57 of the Delhi Development Act, 1957, the Delhi Development Authority with approval of the Central Government has notified “*Regulations for Regularization of Unauthorized Colonies in Delhi*” on the 27th of March 2008 for regularization of unauthorized colonies. In Clause 3, the ‘*Criteria for Regularization of Unauthorized Colonies and Habitations*’ has been provided. Clause 3.3 provides for the types of colonies or parts thereof, which would not be considered for regularization. The procedure for regularization is stipulated in Clause 4. So far as the information required to be furnished on Existing/Proposed Layout Plan is concerned, Clause 4.5.2 *inter alia* prescribes the following :

“(v) *The means of access/roads streets and their widths;*”

67. The road in question is not mentioned in the application submitted for regularization by the Indira Enclave nor on the enclosed layout plan.

68. The writ petitioners have filed as Annexure P-2 a letter received by Ms. Marina Batra (*writ petitioner no.2*) as the President of the K-Block RWA, Sainik Farms from Air Vice Marshal (Retd.) Rakesh Yadav, AVSM VSM dated March, 2016, claiming to be writing on behalf of ‘D’ Block, Indira Enclave and

as its resident. This is an important communication as some information regarding the construction of the road becomes available from it. We extract hereunder the disclosures made by the residents of Indira Enclave in this letter :

*“1. **Introducing ourselves, ‘D’ block Indira Enclave is located at the end of lane W12D. Surrounded by lush green ridge and dense forests, it is a cluster of approx 20 bungalows. On its North – West side are A. B and C blocks and it provides easy connectivity to IGNOU – Saket for day to day needs.***

2. We wish to submit that as responsible neighbors of Sainik Farms, Forest Lane and IGNOU, we have taken keen interest in developing and improving the area. The efforts put in by us for Indira Enclave (IE) – W12D link road, for example, are summarized as follows:-

(a) 1st patch of IE-W12 link up to Mr. Gaels house Was 100% funded by us in Jan 2013, cost Rs 2.86 Lakhs.

*(b) 2nd patch from Shri Goels house to W12D was **rebuilt** by us costing Rs 4.20 Lakhs in Jan 2016. Sh Goel could collect only Rs 2.10 Lakhs since W12 residents did not rise to occasion. Total cost Rs 6.30 Lakhs. **You could see beautiful road now which was only Eye sore in entire Sainik Farms for past 10 years.**”*

(Emphasis by us)

69. Two important disclosures are contained in the above letter. The first is that, the construction of the first patch of the road was effected only in January, 2013 while the larger second patch was constructed in January, 2016. The most important disclosure and admission is that the road was neither built by the official

authorities nor by the Forest Department. Furthermore, no sanction of any Government or authority was obtained with regard thereto. Clearly, this was in violation of the Forest (Conservation) Act.

70. Therefore, it clearly emerges from the above that the road was not constructed by any governmental authority; that it was of recent vintage and that alternative access remained available.

VIII. Availability of and prohibitions under the Forest (Conservation) Act, 1980

71. In the order dated 13th March, 1996, the Supreme Court has clearly declared that the area cannot be utilized in any manner in view of the prohibitions contained under the Forest (Conservation) Act, 1980. The court thus declared that this enactment applied to the forest in question. We therefore, consider the impact thereof.

72. Section 2 of this enactment provides the prohibition to the usage of forest land which reads as follows :

“2. Restriction on the dereservation of forests or use of forest land for non-forest purpose

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reafforestation;

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

(Emphasis by us)

73. The construction of buildings and roads is clearly a “*non-forest purpose*” within the meaning of expression in Section 2 of the Forest (Conservation) Act, 1980 and is completely prohibited. The statute contains a non-obstante clause prohibiting even the State Government and any other authority to permit such utilization “*except with the prior approval of the Central Government*”.

74. The question as to what land would constitute ‘forest’, the contours of the prohibitions under the Forest (Conservation) Act, 1980 and the shaping of the environmental jurisprudence of this country pertaining to forests, was the subject matter of the authoritative pronouncement of the Supreme Court, reported at **(1997) 2 SCC 267 T.N. Godavarman Thirumulpad v. Union of India** wherein it was held thus:

*“3. It has emerged at the hearing, that there is a **misconception** in certain quarters about the **true scope of the Forest Conservation Act, 1980** (for short “the Act”) and the meaning of the word “forest” used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is **necessary to clarify that position.***

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

*Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213], *Rural Litigation and Entitlement Kendra v. State of U.P.* [1989 Supp (1) SCC 504] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority* [WP (C) No 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi* [(1985) 3 SCC 643] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to **reiterate this settled position** emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that **any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.***

5. We further direct as under:

I. GENERAL

1. In view of the meaning of the word “forest” in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any “forest”. In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running

*of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. **Every State Government must promptly ensure total cessation of all such activities forthwith.***

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5. Each State Government should constitute within one month an Expert Committee to:

- (i) **Identify** areas which are “forests”, irrespective of whether they are so notified, recognised or classified under any law, and **irrespective of the ownership of the land of such forest;***
- (ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and*
- (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.*

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8. The Expert Committee so constituted should be requested to **give its report within one month of being constituted.**

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports.”

(Emphasis by us)

Therefore, in view thereof all forest lands, whether notified under Section 4 of the Indian Forest Act, 1927 or not would attract the prohibitions of the Forest (Conservation) Act, 1980. It is also well settled that in any forest prior approval of the Central

Government for non-forest activity is necessary. Even the State Government is not competent to give such approval.

75. Clearly the Ridge area forms part of the forest which enjoys the protection outlined in the Forest (Conservation) Act, 1980 as also the express restrictions and prohibitions placed by the Supreme Court with regard to the land which forms part of the Ridge in the order dated 13th March, 1996 on all activities including the specific embargo on construction and even cultivation. Furthermore, in terms of the directions of the Supreme Court in *T.N. Godavarman Thirumulpad*, there had to be total cessation of all non-forest activities in the forest. In fact the State Government was bound to ensure total cessation of all such activities.

76. As a result of the above notification dated 2nd April, 1996 and order dated 13th March, 1996 of the Supreme Court, the uncultivated land of the Gaon Sabha falling in the Ridge area (including the land over which the road in question was developed) was placed at the disposal of the forest department of the Government of NCT of Delhi.

77. The Khasra Nos.487, 490, 491, 649, 650 and 651 fall within the forest boundaries specified by the notifications of 1994 and 2nd April, 1996 and as observed by the Supreme Court was also within the boundary of the morphological ridge.

78. As per the provisions of the Forest (Conservation) Act even if a *kachcha* road existed before 1980, it cannot be made *pakka* without prior permission of the Central Government. As such action, if undertaken even in the anticipation of such approval, would be considered violative of the Forest (Conservation) Act. No person had any right to put a path over this land. The action in paving, tiling such path, maintaining and using it was and is completely illegal.

IX. Fencing of the forest – requirement and permissibility – orders of the Supreme Court in M.C. Mehta v. Union of India; the National Green Tribunal in Pavit Singh v. The State of NCT of Delhi & Ors. and of this Court in Bhagat Singh & Ors. v. Union of India & Anr.

79. Before us, it has been vehemently contended by Mr. S.P. Kalra, Senior Advocate for the applicants/interveners in the writ petition as well as Mr. V.N. Koura, ld. counsel for the appellants in FAO(OS)No.200/2017, that it is not open to the respondents to effect fencing or construction of the wall unless proceedings under Section 20 of the Indian Forest Act, 1927 and the notification thereunder are issued. This objection is required to be noted only for the sake of rejection.

80. In the order passed on 3rd January, 1996 in W.P.(C)No.4677/1985, the Supreme Court also considered the affidavit filed by Mr. D.C. Khanduri, Deputy Conservator of Forest-cum-Secretary, Ridge Management Board noting that an amount of Rs.30,00,000/- stood earmarked for fencing of the Ridge

area during the financial year 1995-96. The objection with regard to requirement of completion of proceedings under Section 20 of the Indian Forests Act, 1927 was considered by the Supreme Court and rejected in the order dated 3rd January, 1996 when it was held as follows :

“... We are of the view that the fencing of the Ridge area need not wait for completion of the proceedings under Section 20 of the Forests Act. We direct the Ridge Management Board through Mr. D.C. Khanduri to start the fencing of the Ridge area within 15 days from today. The fencing must be effective and enduring. Mr. Khanduri, in his capacity as Secretary to the Ridge Management Board shall file an affidavit within five weeks indicating the progress made in this respect.”

(Emphasis by us)

81. The above order has not been modified or varied till date. The failure to effectively fence the Ridge in compliance thereof is clearly violation of the directions of the Supreme Court.

82. At this stage, it is appropriate also to notice the litigation pending before the National Green Tribunal (‘NGT’ hereafter) in Original Application No.10/2014 entitled ***Pavit Singh v. The State of NCT of Delhi & Ors.*** wherein the NGT is considering the issue of restoration of the Ridge area. In these proceedings, an interim application being M.A.No.455/2014 was filed by a social activist praying for a direction against the respondents to demolish/remove encroachments from the Ridge land and the unauthorized construction on the land falling in Khasra Nos.687/570, Indira

Enclave adjacent to Harijan Basti, Neb Sarai, New Delhi-110068 and land adjacent to the forest area of Harijan Basti, Neb Sarai, New Delhi which “*belong to the Department of Forest and Wildlife, Govt. of NCT of Delhi*”. The applicant had pointed out that these were deep in the forest area and had been declared as forest as per the aforementioned notification No. F1(29)/PA/DC/95 dated 2nd April, 1996 of the Revenue Department indicating the forest area. So far as the Village Neb Sarai was concerned, the forest land was set out in Annexure ‘A’ to the notification which to the extent relevant for the present consideration has been extracted above.

83. The applicant, before the NGT, had complained regarding encroachments made by unscrupulous elements in the forest area and constructions which were dangerous to the preservation of environmental status of the forest. This application was considered and decided by an order dated 11th of November 2014 wherein the NGT considered the affidavit filed by the respondent no.5 therein i.e. the South Delhi Municipal Corporation and passed the following stringent directions :

***“... Respondent no.5 (Executive Engineer (Bldg)- II, South Zone, SDMC has filed a status report on behalf of the Deputy Commissioner, SDMC. Even though in the status report he has stated that he has no knowledge as to whether the area belongs to the Forest Department, the respondent no.2 in the report has in clear terms stated that the area has been declared to be a forest area vide notification stated above.*”**

Inasmuch as, the appropriate authority, namely, the Forest Department has come out clearly that the said khasra number and surrounding area are forming part of the forest and in the light of the Notification dated 02.04.1996 stated above, we have no difficulty to accept the case of respondent no.2 to the effect that the same is forest land. While so, it is not known as to how the Revenue Department, DDA and other authorities have allowed the outsiders to encroach upon the deep forest and put up construction which are still situated there. It is in violation of the Forest (Conservation) Act.

Learned Counsel appearing for respondent no.2 has stated that after the above application was filed and various orders passed by the Tribunal, they have sealed the buildings situated in the forest area. But the fact remains that they have not taken any steps to demolish the same.

We appreciate the stand taken by the respondents that they are going to put a barricade throughout the forest area so as to prevent fresh encroachments and thereafter take steps to remove all the encroachments in a phased manner.

Be that as it may, we hope that respondent no.2 will immediately put up barricades and complete the said process of barricading the entire area not only covering khasra no.687/570 which is stated in the application but also the surround areas which are declared as forest lands and remove the buildings constructed by the encroachers immediately without awaiting any orders from any authorities.

In view of the said clear Notification issued by the Government, it is the duty on the part of the respondents to remove all encroachments including the buildings in the interest of preserving nature.

Accordingly, we dispose of the application with the following directions :

1. The respondents shall complete the barricading of the entire forest area including encroached area wherein buildings have been put up within a period of 12 weeks from today.

2. After the said efforts are completed, the respondents shall pull down all the superstructure and remove all debris away from the forest area within a period of two months and restore the forest nature.

3. We may it clear that the **Revenue Department** as well as **Police Department** who are party respondents shall fully co-operate for the purpose of effective implementation of this order for restoration of the forest area within the time granted by the Tribunal.

4. During the completion of the work, we direct the respondents to file status report of the compliance done in the first stage after three months and in the last stage after five months in the Registry, after giving copy to the learned Counsel appearing for the applicant. ...”

(Emphasis by us)

We are informed that there is no challenge to this order which has attained finality.

84. The above order of the National Green Tribunal notes not only the notification of 2nd of April 1996 but also directed the respondents to complete the barricading of the entire forest area including encroached area wherein buildings have been put up. It was observed that the land in the khasras (which includes the subject matter of the present proceedings), forms part of the forest

and that it is duty on the part of the respondents to remove all encroachments including the buildings in the interest of preserving nature.

85. We find that even in the report dated 25th February, 2016 of the Conservator of Forests, when conducting the inspection upon a complaint of encroachment and felling of trees, the concerted efforts to encroach and construct passages through different parts of the forest were observed and steps towards construction of the boundary wall were noted and informed in the following terms :

“I, along with DCF(S) and his Staff visited the area in Neb Sarai with Dr. Batra and Ms. Marina of UNEP where alleged encroachment was taking place. It was seen that a Katcha road was being built adjacent to Kh.no.521 which had the remnants of boundary. It was explained by the staff of DCF (S) through Masavi that this road was not being built in Forest khasra but in Kh.No.525 which was private Khasra.

*None the less **Kh.No.525** is a big football field like surrounded on three sides by notified Forest Ridge Land. Therefore this Ridge Forest area on three sides is prone to encroachment if not bounded by a boundary wall. The DCF(S) has been asked to get a boundary wall constructed around these notified Forest Khasras on the three sides of the field so that no encroachment take place. No tree felling was, however, found.*

*On the right hand side of the private khasra/field is Forest Kh no.634 which is being **trespassed by residents of adjoining area as a shortcut route for motorcycles.** The staff of DCF (S) informed that this Khasra was under the possession of DPGS and has been handed over to Forest Department recently and they had cut trenches to*

stop trespassing. However these trenches have been filled by the nearby residents. So a boundary wall on all sides is required to stop trespassing. At the far end a wall of about 5-10 meters is also required to be built to cut off the access and stop the katcha path leading to residents/private khasra at the back.

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*Therefore DCF(S) has been instructed to immediately ask IFCD to **submit estimate and get a boundary wall constructed to curb any attempt towards encroachment in the area behind 'D Block' Indira Enclave. No tree felling was, however, found.***

(Emphasis by us)

86. Subsequently, in the hearing of the present cases, on the 16th of May 2017, before us, the above notifications as well as orders of the Supreme Court and the order dated 20th July, 2016 passed by the Office of the Deputy Conservator of Forest (South), Government of NCT of Delhi were brought to our notice.

87. In the order recorded by us, we had observed that the law laid down by the Supreme Court of India as well as statutory mandate brooked no breach and had to be strictly complied with in view of the imperative need for addressing environmental concerns on war footing. In view of the adverse impact of environmental degradation on global warming, we had observed that the land had to be maintained as forest land and that no encroachment or construction whatsoever including laying of a road therein was or is permissible. It was also noted that the same was in violation of the orders of the Supreme Court and the law and further that forest

land could not be converted into a thoroughfare which was clearly beyond the purview of planned development under the Master Plan. Accordingly, reiterating the compliance with the orders of the Supreme Court, we had directed as follows :

“6. We direct that steps are taken forthwith by the respondents to ensure that the boundary wall is constructed all around the forest area immediately and the forest land is strictly protected from any encroachment, illegal and unauthorised construction.

7. The boundary wall shall be completed within two months from today and an action taken report be placed before us on the next date. In case, construction of the boundary wall is time consuming, the respondents shall take urgent steps for putting up temporary fencing/barricades immediately, to be replaced by the permanent wall at the earliest. After fencing, videography of the area would be taken. A compliance report shall be filed before us.”

(Emphasis by us)

88. As extracted above, the challenge to the notification dated 2nd April, 1996 whereby the land falling in the Ridge Area was excluded from vesting in the Gaon Sabha and placed with the Forest Department stands rejected by the judgment reported at ***(2010) SCC Online Del 2386, Bhagat Singh & Ors. v. Union of India & Anr.***

89. It was noted in para 8 of the judgment dated 16th July, 2010 reported at ***2010 SCC Online Del 2386, Bhagat Singh*** also that 80% of the fencing on the land was completed but physical resistance was being faced from the people of some of the villages.

90. In this regard, also reference has to be made to the aforenoticed order dated 20th July, 2016 of Shri S.K. Muan Guite, Deputy Conservator of Forests which notes thus :

*“During inspection a round trip of adjacent areas were taken to ascertain the **existence of any alternative way if this particular Raasta is stopped/blocked.** It has been found that there are ample sites and options existed in the surrounding areas for the nearby residence without passing through the Forest land.*

Stopping of this road passing through Forest land will not render the nearby residents any problem in accessing there residence and commuting to nearby areas. It is clear that people are taking advantage of vacant land inside the forest area instead of sacrificing land in the residential areas. Completing boundary wall in this already demarcated Forest Khasra is required to protect the land from illegal encroachment.”

(Emphasis by us)

91. Thus the Deputy Conservator of Forest (South), noting the unauthorized construction of the *Raasta* (passage), directed completion of the boundary wall in the already demarcated forest area.

92. We are also informed by Mr. Gautam Narayan, Additional Standing Counsel for the respondents that in compliance with the orders passed, the boundary wall has been largely constructed except a small portion which has been claimed by the respondents to be falling in private khasras. The respondents have placed before us the photographs in this regard.

93. Before us, the respondents have filed a reply dated 9th August, 2017 *inter alia* stating thus :

- (i) Boundary wall of 246 meters around Khasra Nos.487, 490 and 491 stands completed and the illegal road passing thereon has been blocked.
- (ii) Points A to A and B to B as per the plan in the petition stands bounded. However, points C to C i.e. 98 ft. of Khasra No.487 stands encroached by inhabitants of properties D-18, D-21, D-22 and D-23.
- (iii) As per the demarcation report prepared by the Revenue Department in the presence of the forest officials of Forest Khasra Nos.649, 450 and 651 of Neb Sarai, an illegal road is passing thereon and there is encroachment of 26 ft. by two private walls. Necessary steps for removal of these encroachments stand taken.

94. Pursuant to the above court orders and official directions, it would appear that the boundary wall has been largely completed. We are further informed that in compliance with the order dated 16th May, 2017 passed by this court, jersey barriers were put in place to prevent the road which falls in the notified forest area being used as a thoroughfare.

95. Clearly the private parties are illegally obstructing the authorities from completing the barricading. The private parties as well as the respondents are bound to comply with the directions

made by the Supreme Court of India, the National Green Tribunal, this court as well as law to forthwith stop non-forest usage of the land and not to obstruct the barricading of the entire forest area. It is not open to any person to oppose the fencing and the protection of the forest by constructing the boundary wall. In fact, failure of the authorities to do so would be in the teeth of the orders of the Supreme Court and this court. The maintenance of the illegal encroachments, the constructions in the forest and non-forest usage is illegal and in violation of specific judicial orders in this regard. Given the huge pressure on the subject land and efforts of encroachment, it is essential that the barricading is completed at the earliest.

X. *Contours of the rights of the private parties*

96. It is to be noted that there is no disclosure of title or date of possession or occupancy in the Indira Enclave by any of the private parties (*applicants in W.P.(C)No.365/2017 and the appellants in FAO(OS)No.200/2017*). The private parties before us are pressing a unique proposition of law that without even claiming, let alone establishing a legal right over the property which they are occupying, they are asserting rights and entitlements of passage to such property over an admittedly illegally constructed road in the forest area. Despite our queries, none of the private parties (*the applicants in the writ petition and the appellants in the appeal*) could place any pleading or document regarding their title or possession.

97. In para 5 of ***Bhagat Singh*** (extracted heretofore), the court has concluded from the inability of the petitioners to show documents by which they came into lawful possession of the land was because they were laying claim over Gaon Sabha land which was intended for “*collective enjoyment of the portion, there was no right of any individual to occupy the land unless such allotment is made by the Gaon Sabha*”. The court termed such occupation as encroachments. The authorities were directed to demolish the encroachments.

98. A similar challenge was rejected by a ld. Single Judge when seven writ petitions challenging the steps taken by the Forest Department and the Flood Control Department of the Government of NCT of Delhi pursuant to the notification dated 2nd April, 1996. The decision of the ld. Single Judge dated 15th March, 2011 is reported at (2011) SCC Online Delhi 1318, ***Freedom Fighters Social Welfare Association v. Union of India & Ors.*** and connected writ petitions. We extract hereunder paras 2, 19 and 20 noting the factual matrix and the rejection of the petitioners’ contention that the land not shown in the notification was not part of the ridge/forest. It was observed by the ld. Single Judge that the notification dated 2nd April, 1996 was not a sole repository of the land constituting the Ridge/forest area and held thus :

“2. The **challenge** in each of the petitions **is to the steps taken by the respondents** (being the Revenue, Forest and Flood Control Departments of the Government of NCT of Delhi (GNCTD)) **pursuant to the Notification dated 2nd**

April, 1996 of the GNCTD. The said Notification was issued in pursuance to the directions given by the Supreme Court in orders dated 25th January, 1996 and 13th March, 1996 in I.A. Nos.18 & 22 in Writ Petition (Civil) No.4677/1985 titled M.C. Mehta Vs. Union of India & Ors. The Supreme Court directed that uncultivated surplus land of Gaon Sabha falling in "Ridge" be excluded from vesting in Gaon Sabha under Section 154 of the Delhi Land Reforms Act, 1954 and be made available for the purpose of creation of Reserved Forest. The Notification declared "the uncultivated land of Gaon Sabha" specified in the said Notification and situated in Southern Ridge as surplus land and excluded the same from vesting in the Gaon Sabha and placed the said land at the disposal of Forest Department of GNCTD.

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19. That leaves only the controversy in W.P.(C) No.19123-34/2006, the land subject matter whereof is claimed to be in Khasra Nos.223 & 224 in Chattarpur Village and which is stated to be not part of the Notification dated 2nd April, 1996. The said petition has been filed contending that nevertheless the said land is being treated as part of ridge/forest.

20. The said contention is misconceived. The Notification dated 2nd April, 1996 is not the sole repository of the land in the ridge / forest area. The said Notification had to be issued only for the reason that though the said land in the Master Plan was shown as part of the ridge area but under the Delhi Land Reforms Act, 1954 vested in the Gaon Sabha. The Notification was therefore directed to be issued for exempting the said land from the land vesting in Gaon Sabha and to place the same with the Forest Department. It thus cannot be urged that the land in Khasra Nos.223 & 224 in Chattarpur Enclave, village Chattarpur, Mehrauli, New Delhi is not part of the ridge / forest

merely for the reason of not finding mention in the said Notification.”

(Emphasis supplied)

99. In (2011) 11 SCC 396, *Jagpal Singh & Ors. v. State of Punjab & Ors.*, the Supreme Court has authoritatively laid down the description of Gram Sabha land; held that illegal encroachments of village/Gram Panchayat land was not to be regularized; long duration of occupation or huge expenditure in making constructions thereon or political connections were no justification for regularizing such illegal occupations. The observations of the court in paras 2, 13, 18, 21 and 23 are apposite on the issues under our consideration and read as follows :

*“2. Since time immemorial there have been **common lands** inhering in the village communities in India, variously called Gram Sabha land, Gram Panchayat land (in many North Indian States), shamlat deh (in Punjab, etc.), mandaveli and poramboke land (in South India), kalam, maidan, etc., depending on the nature of user. These **public utility lands in the villages** were for centuries used for the **common benefit of the villagers of the village** such as ponds for various purposes e.g. for their cattle to drink and bathe, for storing their harvested grain, as grazing ground for the cattle, threshing floor, maidan for playing by children, carnivals, circuses, ramlila, cart stands, water bodies, passages, cremation ground or graveyards, etc. These **lands stood vested through local laws in the State, which handed over their management to Gram Sabhas/Gram Panchayats**. They were generally treated as **inalienable** in order that their status as community land be preserved. There were no doubt some exceptions to this rule which permitted the Gram Sabha/Gram Panchayat to lease out some of this land to landless labourers and*

members of the Scheduled Castes/Tribes, but this was only to be done in exceptional cases.

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13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village.

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18. The present is a case of land recorded as a village pond. This Court in *Hinch Lal Tiwari v. Kamala Devi* [(2001) 6 SCC 496 : AIR 2001 SC 3215] (followed by the Madras High Court in *L. Krishnan v. State of T.N.* [(2005) 4 CTC 1 (Mad)]) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

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21. In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp the Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.

23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

(Emphasis by us)

100. The private parties before us are no poor villagers whose illegal unauthorized occupation of Gaon Sabha land (*which, more importantly, forms part of the Ridge*) could be regularized in terms of para 23 of **Jagpal Singh**. On the contrary, in the absence of any legal documents of allotment and title, these private parties are encroachers on forest land.

101. In view of the above enunciation of law, the notification dated 2nd April, 1996 would be sacrosanct. The mandate of the law and directions laid down by the Supreme Court in **Jagpal Singh** (paras 13 and 23); National Green Tribunal by the order dated 11th November, 2014 in **Pavit Singh**; this court in **Bhagat Singh** (paras 7 and 8) and **Freedom Fighters Social Welfare Association** (paras 19 and 20) have to be complied with. The boundary wall of the forest has to be completed forthwith and all encroachments, including buildings, no matter what be their vintage, have to be removed.

XI. Objection of the plaintiffs premised on Section 25 of the Indian Forest Act, 1927

102. It is necessary also to note the objection of the private parties that the respondents could block the subject road only after compliance with the procedure prescribed under Section 25 of the Indian Forest Act, 1927. For expediency, we extract hereunder the provisions of Section 25 of the Indian Forest Act, 1927 which read thus :

“25. Power to stop ways and water-courses in reserved forests.—The Forest-officer may, with the previous sanction of the State Government or of any officer duly authorised by it in this behalf, stop any public or private way or water-course in a reserved forest, provided that a substitute for the way or water-course so stopped, which the State Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.”

(Emphasis by us)

It is clear on a reading of the statutory provision that the procedure has to be followed only with regard to a public or a private way in a reserved forest.

103. The Delhi Municipal Corporation Act, 1957 (*‘DMC Act’* hereafter) describes “*private street*” in Section 2(39) and a “*public street*” in Section 2(44) of the enactment which read thus:

“2. Definitions.—*In this Act, unless the context otherwise requires :—*

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(39) “private street” means any street, which is not a public street and includes any passage securing access to two or more places belonging to the same or different owners;

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(44) “public street” means any street which vests in the Corporation as a public street or the soil below the surface of which vests in the Corporation or which under the provisions of this Act becomes, or is declared to be a public street.”

(Emphasis by us)

104. Vesting of a public street in the corporation has to be in accordance with the provisions of Section 298 while new public streets can be set up by the Commissioner of the Municipal Corporation only after previous sanction of the corporation in accordance with Section 301 thereof.

105. It is also to be noted that alteration or demolition of such streets can only be undertaken by the Commissioner of the

Municipal Corporation in conformity with the orders of the Standing Committee under Section 314 of the Delhi Municipal Corporation Act, 1957.

106. No private parties claim any ownership over the road. The road in question is not covered under the definition of either a “*private street*”. It has also not been vested in the municipal corporation. It is therefore, not a “*public street*” within the meaning of the expression under the Delhi Municipal Corporation Act, 1957.

107. The road has admittedly not been constructed by the Commissioner in accordance with Section 301 of the Delhi Municipal Corporation Act, 1957. The authorities do not claim any ownership over the road. It cannot be protected for this reason as well.

108. The Delhi Development Act, 1957 refers to “*means of access*” in Section 2(g) of the statute defining the same as including “*any means of access whether private or public, for vehicles or for foot passengers, and includes a road*”. The Master Plan for Delhi is prepared under Section 7 of the statute which defines various zones into which Delhi may be divided for the purposes of development. Section 8 of the Act mandates preparation of zonal development plans for each of the zones into which Delhi may be divided, simultaneously with the preparation of the Master Plan. Section 8(2)(d)(ii) makes a provision *inter alia* for the “*allotment or reservation of land for roads, ...*”. There is

no record at all of the existence of any such road as the road in question to support the claim of the appellants and the private applicants.

109. On the other hand, the official respondents contend it to be an act of trespass into the forest which forms part of the ridge, protected under orders of the Supreme Court. Section 25 of the Indian Forest Act, 1927 is, therefore, clearly not attracted or applicable in the instant case.

110. It is also to be noted that as per Section 25, the decision has to be of the forest officer who would decide on the existence of the road.

111. So far as the instant case is concerned, there was no public or private way on the land when it was declared as a forest which had to be protected. The mandate of Section 25 of the Indian Forest Act, 1927 therefore, would not be attracted.

112. In any event, this objection stands rejected by the Supreme Court by the order dated 25th January, 1996 in *M.C. Mehta* which has been extracted above.

113. We may also note the submissions of Mr. V.N. Koura, ld. counsel for the appellants in FAO(OS)No.200/2017 on this aspect. Extensive reliance has been placed by Mr. Koura on interim order dated 26th September, 2016, passed by the ld. Single Judge while considering I.A.No.11892/2016, filed by the plaintiff in CS(OS)No.493/2016. In para 6 of this order, the ld. Single Judge

has noted the submission of Mr. S.K. Muan Guite, Deputy Conservator Forest (South), Forest Officer to the effect that sanction of the State Government was not obtained in terms of Section 25 of the Indian Forest Act, 1927. No document in support of this statement has been placed before us. It is not the stand of the official respondents that any such permission was sought.

114. In any case, in the light of what has been discussed above as well as the orders of the Supreme Court, the Division Benches of this court and the National Green Tribunal, such sanction or permission is not necessary.

The objection of the applicants as well as the appellants pressing the applicability of the provisions of the Indian Forest Act and insisting upon a notification thereunder for vesting of the land with the Forest Department, are consequently misconceived and are really of no consequence. The land in question is undisputably forest land which forms part of the ridge. Issuance of the notification would thus only tantamount to recognition of an existing position. Furthermore, as a result of the clear prohibition under Section 2 of the Forest (Conservation) Act, 1980 also, the land cannot be used for any non-forest purpose.

115. Mr. Koura has also drawn our attention to Sections 11 to 14 of the Indian Forest Act, 1927. However, reference thereto is clearly misconceived and not called for. Section 11 of the statute is concerned with the power of the Forest Settlement Officer to make orders with regard to claims of right in or over land; Section 12

enables the Forest Settlement Officer to make orders on claim of rights of pasture or to forest produce while Section 13 is concerned with a record to be made by the Forest Settlement Officer. In the present case, given the clear directions of the Supreme Court of India and the National Green Tribunal, these statutory provisions are neither attracted nor applicable. It is also not the case of any of the parties that they lodged any claims with the Forest Settlement Officer.

XII. Whether the constructions in question are covered under the Regulations for Regularization of Unauthorized Colonies in Delhi notified by the Delhi Development Authority?

116. Mr. S.P. Kalra, Senior Advocate for the applicants/interveners as well as Mr. V.N. Koura, Id. counsel for the appellants in FAO(OS)No.200/2017 have vehemently contended that access to schools and other public facilities would become difficult if the access to the existing road was blocked. A submission is made by Mr. V.N. Koura, Advocate that in terms of Section 3(2) of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (20 of 2011), *status quo* on 1st January, 2006 regarding unauthorized construction has to be maintained and that the road in question is protected under this Act.

117. The private parties in the suit as well as Ms. Shiya Khanna have made extensive submissions that their constructions as well as the road are protected as the Indira Enclave is slated for

regularization under the policy of the Delhi Development Authority.

118. Mr. Gautam Narayan, Additional Standing Counsel for the Government of NCT of Delhi has placed the notification dated 24th March, 2008 issued by the Delhi Development Authority in exercise of powers under Section 57 of the Delhi Development Act, 1951. Our attention has been drawn to para 3 setting out the criteria for regularization of unauthorized colonies and habitations which provides as follows:

“3. Criteria for Regularization of Unauthorized Colonies and Habitations

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3.3 The following types of colonies or parts thereof would not be considered for regularization :

(a) Unauthorized colonies/part of colonies/habitations falling in notified or reserved forest areas.

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(Emphasis by us)

119. It is pointed out that this regularization policy was amended in 2015 but the above para 3.3 of the policy remains untouched.

120. The area in question was always a forest and stands so recognized by the orders dated 25th January, 1996 and 13th March, 1996 of the Supreme Court of India. The notification dated 2nd April, 1996 was only a recognition of the pre-existing position.

121. There is therefore, substance in the submission of Mr. Gautam Narayan, Additional Standing Counsel for GNCTD to the extent that the application for regularization includes areas which are covered as forests, would be excluded from regularization.

XIII. Availability of alternate passages

122. The dishonest effort to maintain this illegal encroachment is highlighted by yet another event. Notice on CM Nos. 27106-27107/2017 was issued by us on 31st July, 2017. It appears that subsequent thereto, a joint inspection by all concerned parties was carried out in Neb Sarai in the presence of Deputy Conservator Forest (South); the Sub-Divisional Magistrate (Mehrauli) and field staff of the Forest and Revenue Department. Notice of inspection was issued vide letter dated 1st of August 2017 to the parties before concerned.

123. This inspection report emphatically points out the existence of alternative road on the other side of the colony which connected Indira Enclave to W-12, Link Road which in turn connects with the Western Avenue, Forest Land Road, Mehrauli – Badarpur Road. The inspection report points out that one Mr. Chhabra, who was present there, claimed that this road was a private road and had been blocked by him on 29th May, 2017. This road consisted of tarred and muddy patches which cuts through two different plots from the IGNOU boundary wall site and ran through a large open patch on the Devli side. The inspection report states that this road clearly manifests that it was very much in use prior to its blockage

on 29th of May 2017 by erection of a make shift barrier of iron pipes placed across the road and erecting a sign board.

124. As per the inspection report, land in Khasra Nos.492, 508, 509, 510, 511, 666, 669, 670, 673, 674 and 675 stands recorded in the name of M/s Mahalaxmi.

125. A copy of the *khatauni* for the year 1998-99, placed on record, shows land in some of the khasra numbers standing in the name of Laxmi Chand Bagaji.

126. The photographs taken during the inspection would show sign boards of 'Rahul Sharma, Advocate' and one Sukh Shanti Estates Pvt. Ltd. claiming to be owners of the land have been put up. No documents of title have been placed on record but it is apparent that one of the alternative routes has been blocked only on the 29th of May 2017, during the pendency of the two cases, obviously with the *mala fide* intent of assisting these private parties in maintaining the encroachment and in support of their untenable claims.

127. We find that even in the letter dated 20th July, 2016, the Deputy Conservator of Forest (South) also made observations regarding the existence of alternative ways for the residents of Indira Enclave and observed as follows :

“During inspection a round trip of adjacent areas were taken to ascertain the existence of any alternative way if this particular Raasta is stopped/blocked. It has been found that there are ample

sites and options existed in the surrounding areas for the nearby residence without passing through the Forest land.

Stopping of this road passing through Forest land will not render the nearby residents any problem in accessing their residence and commuting to nearby areas. It is clear that people are taking advantage of vacant land inside the forest area instead of sacrificing land in the residential areas. Completing boundary wall in this already demarcated Forest Khasra is required to protect the land from illegal encroachment.”

(Emphasis supplied)

128. The above narration clearly establishes that alternate routes are available to the Indira Colony, that the road in question is being insisted upon only as it is a short cut for these private parties to reach major roads. The letter dated March, 2016 addressed by Air Vice Marshal (Retd.) Rakesh Yadav to the petitioner No.2 (extracted above) clearly states that the this road provides “easy connectivity to IGNOU – Saket”. This communication also establishes that this road was a recent construction. For all these reasons as well, it cannot be maintained.

XIV. Whether the road in question is protected under the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (20 of 2011)

129. Before us extensive reliance has also been placed on Section 3(1)(c) and Section 3(2) of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 by Mr. V.N. Koura, Id. counsel for the appellants in FAO(OS)No.200/2017 who

contends that as a result of these provisions, *status quo* as on 1st January, 2006 is to be preserved with regard to the unauthorized constructions.

130. In this regard, we may extract the provisions of Section 3 of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (20 of 2011), which read thus :

“3. Enforcement to be kept in abeyance.— (1) *Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall before the expiry of this Act, take all possible measures to finalise norms, policy guidelines, feasible strategies and make orderly arrangements to deal with the problem of encroachment or unauthorised development in the form of encroachment by slum dwellers and Jhuggi-Jhompri clusters, hawkers and urban street vendors, unauthorised colonies, village abadi area (including urban villages), and their extensions, existing farm houses involving construction beyond permissible building limits and schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land, as mentioned below:—*

(a) orderly arrangements for relocation and rehabilitation of slum dwellers and JhuggiJhompri clusters in Delhi in accordance with the provisions of the Delhi Urban Shelter Improvement Board Act, 2010 (Delhi Act 7 of 2010) and the Master Plan for Delhi, 2021 to ensure its development in a sustainable, planned and humane manner;

(b) scheme and orderly arrangements for regulation of urban street vendors in consonance with the national policy for urban street vendors and hawkers as provided in the Master Plan for Delhi, 2021;

(c) orderly arrangements pursuant to guidelines and regulations for regularisation of unauthorised colonies, village abadi area (including urban villages) and their extensions, as existed on the 31st day of March, 2002, and where construction took place even beyond that date and 1 [up to the 1st day of June, 2014];

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(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, status quo—

(i) as on the 1st day of January, 2006 in respect of encroachment or unauthorised development; and

(ii) in respect of unauthorised colonies, village abadi area (including urban villages) and its extension, which existed on the 31st day of March, 2002 and where construction took place even beyond that date and up to the 8th day of February, 2007, mentioned in sub-section (1),

shall be maintained.”

131. The submission made by Mr. Koura, however, fails to take into consideration the provisions of Section 4 of the statute which reads thus :

“4. Provisions of this Act not to apply in certain cases.—
During the period of operation of this Act, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely:— (a) encroachment on public land except in those cases which are covered under clauses (a), (b) and (c) of sub-section (1) of section 3; (b) removal of slums and Jhuggi-Jhompi dwellers, hawkers and urban street vendors, unauthorised colonies or part thereof, village

abadi area (including urban villages) and their extensions in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.”

132. In the present case, the encroachments in question are furthermore the subject matter of specific orders for removal by the Supreme Court of India; Division Bench of this Court as well as the National Green Tribunal. All these orders have attained finality and brook no violation. No exception thereto has been pointed out.

133. So far as the protection under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (20 of 2011) is concerned, the same would not protect the encroachments made admittedly on the forest lands falling in the Village Neb Sarai.

XV. Claim of the appellants under the Indian Easements Act, 1882

134. One more entitlement is asserted by Mr. V.N. Koura, Id. counsel for the appellants in FAO(OS)No.200/2017 premised on the provisions of Section 15 of the Indian Easements Act, 1882 which is concerned with acquisition of an easementary right by prescription. This provision states that where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement and as of right, without interruption, and for 20 years, the right to such access shall be absolute.

135. So far as such claim of an easement with regard to the government land is made, Explanation IV given under Section 15

of the enactment clarifies that when the property over such right is claimed, belongs to the government, the right of way should have been enjoyed for 30 years.

136. As noted above, it has been clearly submitted by Mr. V.N. Koura, ld. counsel for the appellants in FAO(OS)No.200/2017 that the appellants/plaintiffs do not claim ownership over the land on which the road has been constructed. The appellants do not even know who built the road as well as who owns the land on it. The appellants do not state even the date on which the road came into existence. It is clearly admitted that the appellants did not build it.

137. In support of these submissions, Mr. V.N. Koura, ld. counsel for the appellants in FAO(OS)No.200/2017 has placed reliance on several judicial precedents including *Secretary of State v. Nagorao Tanko Deshmukh*, AIR 1938 Nag 415; *Chapasibhai Dhanjibhai Danad v. Purushottam*, AIR 1971 SC 1878; *N. Vijendra Rao v. Vasudeva Pal & Ors.*, 2016 (3) AKR 86; *Bachhaj Nahar v. Nilima Mandal & Anr.*, (2008) 17 SCC 491 and *Laxman v. Tukia & Ors.*, AIR 1918 Nag 166. We have carefully examined these judgments.

138. In the judgment reported at AIR 1938 Nag 415, *Secretary of State v. Nagorao Tanko Deshmukh*, the court found on consideration of the evidence led by the parties, including the evidence of the Divisional Forest Officer, that there was a road in existence from before the reservation of the forest, in the year 1879. It is not so in the present case.

139. The Supreme Court reiterated the well settled law of Section 15 of the Easement Act in the pronouncement reported at ***AIR 1971 SC 1878, Chapasibhai Dhanjibhai Danad v. Purushottam*** to the effect that the enjoyment, access and use on the basis of which an easement is claimed must be as of right and not permissive either under a licence or an agreement as also that it must be without interruption for the statutory period prescribed. Again, the principles in terms of this judgment have no application to the present case inasmuch as the appellants have at no time exercised any claim or entitlement to the road in question.

140. Reliance has also been placed on a Single Bench pronouncement of the Karnataka High Court reported at ***2016 (4) KarLJ 626 : MANU/KA/0877/2016, N. Vijendra Rao v. Vasudeva Pal & Ors.*** In this pronouncement, reference has been made to the Supreme Court pronouncement reported at ***(2008) 17 SCC 491, Bachhaj Nahar v. Nilima Mandal & Anr.,*** holding that with regard to an easement of prescription, the plaintiff is required to plead and prove that he was in peaceful, open and uninterrupted enjoyment of the right for a period of 20 years (ending within two years next before the institution of the suit). He should also plead and prove that the right claimed was enjoyed independent of any agreement with the owner of the property over which the right is claimed, as any user with the express permission of the owner will be a licence and not an easement. In this regard, the observations of

the Supreme Court contained in para 20 of ***Bachhaj Nahar*** may be usefully reproduced as follows:

*“20. The pleadings necessary to establish an easement by prescription, are different from the pleadings and proof necessary for easement of necessity or easement by grant. In regard to an easement by prescription, the plaintiff is required to plead and prove that he was in peaceful, open and uninterrupted enjoyment of the right for a period of twenty years (ending within two years next before the institution of the suit). He should also plead and prove that the right claimed was enjoyed independent of any agreement with the owner of the property over which the right is claimed, as any user with the express permission of the owner will be a licence and not an easement. For claiming an easement of necessity, the plaintiff has to plead that his dominant tenement and the defendant's servient tenement originally constituted a single tenement and the ownership thereof vested in the same person and that there has been a severance of such ownership and that without the easementary right claimed, the dominant tenement cannot be used. We may also note that the pleadings necessary for establishing a right of passage is different from a right of drainage or right to support of a roof or right to watercourse. **We have referred to these aspects only to show that a court cannot assume or infer a case of easementary right, by referring to a stray sentence here and a stray sentence there in the pleading or evidence.**”*

(Emphasis by us)

No such pleas have been pressed in the present case.

141. No date on which the appellants came into possession of even the property which they claim to occupy, has been given. No

date on which the occupied property was constructed has been disclosed.

142. In this regard, we have elsewhere in this judgment referred to a letter received by Ms. Marina Batra (*writ petitioner no.2*) as the President of the K-Block RWA, Sainik Farms from Air Vice Marshall (Retd.) Rakesh Yadav dated March, 2016 in which it was stated that part of the road was built only in 2013.

143. Even if the appellants could have claimed a right of easement in respect of the subject road, they have thus not had access to the said road as a right of way for the requisite period of even 20 years, let alone 30 years, for the simple reason that the road itself has not existed for these many years. Clearly the reliance on Section 15 of the Indian Easements Act, 1882 is misconceived and has to be rejected.

XVI. *An imminent need to protect the environment*

144. The importance attached by the framers of the Constitution to concerns of environment is to be found in the incorporation of Articles 48A and 51A(g) of the Constitution of India by way of the Forty-Second Amendment in Part 4 providing for '*Directive Principles of State Policy*' and Part 4A providing for '*Fundamental Duties*', respectively. These Constitutional provisions read thus:

48-A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall

endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51-A. Fundamental duties.—*It shall be the duty of every citizen of India—*

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

145. Forests are indubitably a national asset. It is no secret that diminution thereof has adversely disbalanced ecology and induced a deleterious impact on the climate.

146. We are compelled to comment on the manner in which an attempt has been made by citizens to mindlessly transgress on the environment for private utility.

147. The citizenry has still not been alive to the fact that courts have, in a series of decisions deprecated the practice of annihilating the environment.

148. Reference in this respect is apposite to the seminal decision of the Supreme Court, rendered by *Kuldip Singh, J* speaking for the bench, in *suo-motu* exercise of its inherent powers, in the judgment reported at **(1997) 1 SCC 288 M.C. Mehta v. Kamal Nath**, while expressly recognizing the Public Trust Doctrine as law of the land in this country. Given the importance of the subject, we extract the observations in this judgment in some detail hereafter :

"23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land.

The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled An ecological perspective on property : A call for judicial protection of the public's interest in environmentally critical resources published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:

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

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

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

'We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".'

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

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

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

24. The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about “the environment” bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res 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. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article “Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention”, Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

“The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — ‘perpetual use was dedicated to the public’, it has never been clear

whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”

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

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

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34. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant

for public use cannot be converted into private ownership.

*35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. **The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.***

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39. We, therefore, order and direct as under:

*1. **The public trust doctrine, as discussed by us in this judgment is a part of the law of the land....***

(Emphasis by us)

149. The above decisive contribution made by the Supreme Court in *Kamal Nath's* case pertaining to the Public Trust Doctrine has been reiterated by it on several counts including *inter alia* in the decisions reported at **(2006) 1 SCC 1 T.N. Godavarman**

Thirumulpad v. Union of India (para 19), (2006) 6 SCC 371 Karnataka Industrial Areas Development Board v. C. Kenchappa & Ors. (para 85) and (2013) 7 SCC 226 Association for Environment Protection v. State of Kerala & Ors (para 4,5).

150. Yet another critical aspect of interfering with forests deserves to be noted. Forests provide the habitat for wildlife as well as plants and trees. Concerned with endangered species of wildlife because of the human – wildlife conflict becoming a critical threat to their survival, in the judgment reported at **(2012) 3 SCC 277, T.N. Godavarman Thirumulpad v. Union of India & Ors.**, the Supreme Court has commented about the impact of encroachment by mankind in the following terms :

“12. Man-animal conflict often results not because animals encroach human territories but vice versa. Often, man thinks otherwise, because man's thinking is rooted in anthropocentrism. Remember, we are talking about the conflict between man and endangered species, endangered not because of natural causes alone but because man failed to preserve and protect them, the attitude was destructive, for pleasure and gain. Often, it is said that such conflicts are due to human population growth, land use transformation, species' habitat loss, degradation and fragmentation, increase in eco-tourism, access to natural reserves, increase in livestock population, etc.

13. Proper management practices have to be accepted, like conservation education for local population, resettlement of villages, curbing grazing by livestock and domestic animals in forest, etc., including prey-preservation for the wild animals. Provision for availability of natural water, less or no disturbance from the tourists has to be assured. The State also has to take steps to remove encroachments and, if necessary, can also cancel the patta already

granted and initiate acquisition proceedings to preserve and protect wildlife and its corridors. Areas outside PAs is reported to have the maximum number of man-animal conflict, they fall prey to poachers easily, and often invite ire of the cultivators when they cause damage to their crops. These issues have to be scientifically managed so as to preserve and protect the endangered species, like wild buffalo and other species included in Schedule I Part I of the Wildlife (Protection) Act, as well as other species which face extinction.

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17. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, intergenerational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and that non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature-centred where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature includes both humans and non-humans. The National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 are centred on the principle of ecocentrism.”

(Emphasis by us)

151. In the present case as well, the writ petitioners have placed photographs on record which would show that the forest in question has wildlife habitation. The photographs of the forest and the road in question show the presence of deer. Looked at from

any angle, the convenience of the encroachers in the forest and enabling a shorter passage to their destinations cannot be permitted to override concerns of the environment or those of the wildlife for whom this forest is the natural and only habitat. The road in question cannot be protected for this reason as well.

XVII. Order dated 18th May, 2017 (Impugned in FAO(OS) 200/2017)

152. In the order dated 18th May, 2017, the Id. Single Judge has noted that the appellants do not dispute that the land on which the subject road falls is “a part of the Southern Ridge, notified as a proposed forest under Section 4 of the IFA by virtue of a notification dated 24.05.1994”. The Id. Single Judge has also observed that by the order dated 25th January, 1996, in ***M.C. Mehta v. Union of India (W.P.(C)No.4677/1985***), the Supreme Court had expressed the view that the ridge area must be preserved directing the Committee appointed by the Delhi Administration to consider the notification under Section 154 of the Delhi Land Reforms Act, 1954. The order dated 18th May, 2017 also notes that the road falls within the periphery of Khasra Nos.487 and 490 which khasras including Khasra No.491 were recorded as “Gair Mumkin Pahar” in the notification dated 2nd April, 1996 issued by the Lt. Governor of Delhi pursuant to the aforementioned directions of the Supreme Court in ***M.C. Mehta***.

153. These facts were not only undisputed before the Id. Single Judge but have also not been controverted before us. In this

background, the Id. Single Judge was required to consider the issue with regard to the applicability of Section 25 of the Indian Forest Act and also as to whether the road in the case was the only access available to the residents of Indira Enclave as was initially contended on behalf of the residents. The first and foremost of course was the right and entitlement of the plaintiffs to the claims made in the plaint.

154. In the impugned order dated 18th May, 2017, the Id. Single Judge has, as a matter of fact, *inter alia*, found as follows:

- (i) *that there are internal roads and other access points to Indira Enclave.*
- (ii) *that, as per the map, the subject road was not in existence at the time of submission of the application for regularization by the Residents Welfare Association of the Indra Enclave with the authorities.*
- (iii) *that the respondent no.2/defendant no.2 had produced a map from the Urban Development Department (UC Cell) which also indicated the above.*
- (iv) *that these maps clearly indicated that the subject road was not the only access for the residents of Indira Enclave.*
- (v) *that the residents of Indira Enclave who wish to go in a particular direction may have to travel a longer distance to reach their destination and so the other access points may be*

inconvenient. However, this could not be the ground for permitting the encroachment in the ridge area.

(vi) that if the ridge area is for all intents and purposes treated as a reserved forest, prima facie, the provisions of the Indian Forest Act must be followed.

(vii) that in view of the documents produced on record, it was difficult to accept that the subject road existed prior to the issuance of the notification dated 2nd April, 1996 (wrongly noted as 4th April, 1996).

(viii) that the notification under Section 154 of the Delhi Land Reforms Act dated 2nd April, 1996 for vesting the land and placing the same under the protection of the Forest Department for preservation of the ridge area and the letters, including the letter dated 1st March, 2016 by one of the respondents, placed on record prima facie indicated that the subject road was tiled very recently by the residents of Indira Enclave.

(ix) that the letter dated 24th February, 2016 of the Forest Department shows that the Conservator of Forest had on inspection found that the pakka track i.e. the subject road, appeared to be a recent construction.

(x) that there was little doubt that the subject road in its current form was a recent construction.

(xi) that even if Section 25 of the Indian Forest Act, 1927 was applicable to the land of Khasra nos.487, 490 and 491, the same

would not be applicable to the subject road which was built after the land was acquired, that is to say, after the issuance of the notification under Section 154 of the Delhi Land Reforms Act, 1954.

(xii) In addition to the above, the ld. Single Judge has also relied on an order dated 16th of May 2017 passed by us in the writ petition.

155. In view of the above discussion, the above findings of the ld. Single Judge are unassailable.

XVIII. Conclusions

156. The land in Khasra Nos.487, 490, 491, 649, 650 and 651 of Village Neb Sarai, New Delhi is forest land and non-forest usage thereof is in violation of specific orders of the Supreme Court, the National Green Tribunal, this court as well the provisions of law.

157. The subject road was not in existence prior to the issuance of the notification dated 2nd April, 1996 and in all probabilities, was developed only as a path in 2013 which has been tiled and paved only in the year 2016.

158. There are means of access, other than the road in question, available for the residents of Indira Enclave and the subject road has been developed through the forest only to avoid travelling a longer distance to reach the destination.

XIX. Result

159. In view of the above discussion, FAO(OS) 200/2017 is dismissed and WP(C) No. 365/2017 is allowed.

160. The respondents in the writ petition shall forthwith ensure removal of all encroachments and unauthorized constructions including the road being Lane W-12D, Neb Sarai Extension, New Delhi-110062 and complete the boundary wall/fencing in compliance with the judicial pronouncements and the statutory provisions.

161. So far as the applicants in CM No.35310/2017 in W.P.(C)No.365/2017 are concerned, the operation of the order dated 26th September, 2017, whereby the respondents were directed to permit a passage of 8½ feet in front of their residences, shall continue for a period of six weeks from today.

162. The DCP, South District, Delhi shall ensure strict compliance of the above.

163. The official respondents shall place the scheme in the writ petition in terms of para 23 of the judgment reported at **(2011) 11 SCC 396, Jagpal Singh & Ors. v. State of Punjab & Ors.** within four weeks from today.

164. The respondents shall place the compliance report in the writ petition in terms of the directions made in **(1997) 2 SCC 267 T.N. Godavarman Thirumulpad v. Union of India** within eight weeks from today.

165. Let a copy of the judgment be sent to the Secretary, Department of Environment and Forests, Government of NCT of

Delhi as well as the Additional Principal Chief Conservator of Forest, Delhi.

166. In view of the above discussion, the pending applications do not survive for adjudication and are hereby dismissed.

167. List W.P.(C)No.365/2017 on 20th March, 2018 for reporting compliance of the above.

168. No order as to costs.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 24, 2018

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