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**(2004) 10 P&H CK 0095**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 1134 of 2004 WITH C.W.P. No. 1850 of 2004

Court on its own motion

APPELLANT

Vs

State of Punjab & Ors.

RESPONDENT

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**Date of Decision:** Oct. 12, 2004

**Citation:** (2005) 2 ICC 16 : (2004) 4 RCR(Civil) 619

**Hon'ble Judges:** Binod Kumar Roy, C.J. and Surya Kant, J

**Advocate:** For the Petitioner (in CWP No. 1134 of 2004), Shri Anupam Gupta, Advocate as Amicus Curiae. For the Petitioner (in CWP No. 1850 of 2004), Shri M.P. Goswami, Advocate. For the Union of India, Shri R.S. Rai, Senior Standing Counsel with Shri Gurpreet Singh, Addl. Central Government Standing Counsel. For the Respondent Nos. 2, 4 & 5, Mrs. Charu Tuli, Senior Deputy Advocate General, Punjab. For the Respondent No. 3-CBI, Shri Rajan Gupta, Advocate, Shri Naresh Prabhakar, Advocate. For the Respondent No. 7 to 10 (in CWP No. 1850 of 2004) and Respondents No. 1, 10 and 11 (in CWP No. 1134 of 2004), Shri Rajiv Atma Ram, Senior Advocate with Shri Hem Raj Mittal, Advocate., Advocates for appearing Parties

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### **Judgement**

Surya Kant, J.

Forests have been an integral part of human existence since ages and have been both revered and feared. They were regarded as Gods' abode and a strict prohibition was placed on cutting living trees. In the old text books, we find reference to Forests existing across the length and breadth of our country. The banyan tree which is still worshipped as a holy and sacred tree, occupies a special position in the holy Bhagwat Gita itself. Gautam Budha achieved salvation under a Banyan tree and preached the doctrine of 'compassion towards all creatures on earth'. He said, "Forest is a peculiar organism of unlimited kindness and benevolence, that makes no demands for its sustenance and extends generosity through its products of life activity. It affords protection to all beings offering shade even to the axe man, who destroys it". The great epic Ramayana too describes the existence of forests where Lord Rama spent his exile period. So much was the concern for the forest and trees that a tree has been compared with a human being and it is said :

(1) As is a mighty tree so, indeed, is a man; his hair are leaves and his skin is its outer bark.

(2) From his skin blood flows forth and sap from the skin (of the tree). Therefore, when a man is wounded blood flows as sap from a tree that is struck.

(3) His flesh is its inner bark, his nerves are like inner fibres. His bones are the wood within and the marrow is made resembling the pith.

(4) A tree when it is felled springs up from its root in a newer form; from what root does man spring forth when he is cut off by death ?

(5) If a tree is pulled up with the root, it will not spring again. From what root does a mortal spring forth when he is cut off by death ?

It is believed that during Mauryan period about 85% of the land of the then India was covered by forests as compared to the present forest cover which is only 19.39%.

Depletion of forests is a stark truth despite efforts to expand the reserve forests. Forests are being denuded daybyday, causing serious challenge to the ecological balance. The preservation of natural resources like forests, suffers within its fold the competing claims of humans on these very resources for their sustenance and livelihood. How to maintain sustainable development and reconcile the "ecological imperatives" with the "economic necessities" is one of the greatest challenges before us. Efforts have been made to look for the solution through environmental laws which are based on two broad legal principles of "eminent domain" and "criminal laws". In view of the perceived shortcomings of the criminal law in dealing with environment related crimes, there is a desperate need for an effective and deterrent law which apart from being free from technicalities, should burden the violators with severe penal consequences with a selfcontained speedy mechanism.

The legal principle of "eminent domain", particularly in relation to the natural resources like forests and mines, is not a new phenomenon and appears to have been coined long back in the Maurayan era by none else than the Kautiliya in his Arthshastra. While explaining duties of a King (Chapter II) regarding "disposal of nonagricultural land", Kautiliya says "And he should establish forests, one each for the products indicated as forest produce, as well as factories for goods made from forest produce, and (settle) foresters, attached to the produceforests." In Chapter XVII, Kautiliya explains the requirement of appointment of "The Director of Forest Products" to perform the prescribed duties. In Chapter VII, Kautiliya mentioned the resources of "State economy", including the "land" which cannot be used for agriculture because it is unsuited being of inferior quality but to be used either for pastures or forests. He further says, "quite a substantial income may be supposed to go to the State from its forest wealth....."

The concept of "eminent domain" was based upon the premise that the State being sovereign has a supremacy over all natural resources, which has been preserved through Article 300A read with Article 298 of our Constitution also. The power to make laws for

regulation of the forests is expressly provided in Entry No. 17A in the Concurrent List of the Seventh Schedule. The power has actually been invoked also. The Forest (Conservation) Act, 1980, incorporation of Section 85A in the Indian Forest Act, 1927 and the Environment Protection Act, 1986 are some of the Central Legislations which restate the "eminent domain" of the State in relation to forests. Yet "the forests" are continuously disappearing.

"Forests preceded man, deserts follow him" is a striking but shocking reminder as Hegel had thoughtfully said, "we learn from history that we do not learn from history."

The situation is very grim, the causes are multifaceted. We are also confronted with one such facet.

(Most of the above quoted references have been taken from (i) The Kautiliya Arthshastra, (Part II & III) by Shri R.P. Kangle, and (ii) Forest Laws, Wildlife Laws and the Environment, by Sarvshri Sanjay Upadhyay and Videh Upadhyay).

2. On January 22, 2004, there appeared a new item on the front page of The Hindustan Times "HT Chandigarh Live" titled as "Forest Hill Club under Central Govt. Scanner", asserting that although the Ministry of Environment and Forest, Union of India, have found that the Forest Hill Golf and Country Club in village Karoran, District Ropar, near Chandigarh, was being developed in blatant violation of the environmental and forest laws as well as by committing contempt of the orders passed by the Hon'ble Supreme Court in December, 1996, yet pressure was mounted on the Punjab Govt. to permit change of land use in favour of the aforementioned Club and as a "quid pro quo", a large number of top IAS and IPS officers and other decision makers have either been given "honorary membership" of this club or allowed to use the premises and its facilities for private functions. According to the news item, the Forest Department of the Government of Punjab had informed the Union Ministry of Environment and Forest, through Conservator of Forest (Central) that "the entire area, on which the golf course had been setup, fell under the Punjab Land Preservation Act, 1900 and was a "forest area", which attracted provisions of the Forest (Conservation) Act, 1980" and that "the Dashmesh Education Society" of which Col. Sandhu is the President, had in 1998 applied for diversion of 4.94 hectares of "forest land" in village Karoran to set up a farm housecumresort. However, on inspecting the area, the officials of the Ministry of Environment and Forest found gross violations of "forest laws" committed by the user agency even prior to the submission of the above application". The news item also asserted that "the local forest authorities tried to stop these violations, but failed in their efforts" and that "six cases were filed against Col. B.S. Sandhu and others in a Ropar Court, which were later dismissed". The State Forest Department has now instituted four fresh cases against Col. B.S. Sandhu and the Management of the Club in the Court of Chief Judicial Magistrate, Ropar alleging violation of the aforesaid Acts and the Supreme Court directions. "Though the cases are pending in Court, these have not deterred the offenders from continuing with serious violations", said the communication of the Forest

Department.

3. The news item was quite disturbing and shocked our conscience. If the allegations were true, then, not only they established multiple assault and repeated brazen violations of "environmental" and "forest laws" by a highly wealthy and influential person, but also raised eyebrows against the independent and impartiality of the judiciary when it attempted to attribute remiss to the subordinate judiciary while referring to the "dismissal" of certain complaints filed against Col. Sandhu, the proprietor cum Managing Director of the Society/companies. We were also perturbed by the allegation of violation of the directions issued by the Highest Court of the land. That apart, the news item led one to believe, at least prima facie, as if the owner of the club and resort had not only obliged and neutralised "the decision making process", he had also tilted the weight in his favour by "mounting pressure" upon the government to permit the change of land use so that the Forest Hill Resort (FHR) could be clothed in a legal cover.

4. We, therefore, considered it expedient, in the interest of justice, to resort to our suo moto powers and directed that the news item be treated as a Writ Petition in public interest under Article 226 of the Constitution of India. While issuing notice to (i) Col. B.S. Sandhu (retd.) owner of the Dashmesh Education Society, who was also stated to be the owner of the most of the lands on which the FHR exists, he was also directed to disclose the names of those highups who had either been given "honorary" and "ex officio" memberships of the club and/or were allowed to use its premises and facilities for private functions. Notices were also issued to the (ii) Government of India through Secretary, Ministry of Environment and Forest, (iii) Government of Punjab through its Forest Department, (iv) Chief Secretary to the Govt. of Punjab, (v) Principal Chief Conservator of Forests, Punjab, as also the Secretary to the Govt. of Punjab, Department of Housing and Urban Development who were required to apprise the Court of correct facts. As an interim measure, we also restrained the concerned department of the Govt. of Punjab from granting any permission of change of the land use in favour of the FHR. In addition, we also issued a notice to the Reporter of the news item as also Editor/Resident Editor of the Hindustan Times requiring them to prove the facts reported in their newspaper. We also requested Shri Anupam Gupta, Advocate to assist us in the matter as an Amicus Curiae.

5. On January 27, 2004, the Reporter, Editor and Resident Editor of the newspaper The Hindustan Times, appeared through their counsel and produced photostat copies of the correspondence between various departments of the State Govt. and the Ministry of Environment and Forests, Government of India, regarding alleged but repeated violations of the environmental and forest laws by Col. B.S. Sandhu (Respondent No. 1) despite the refusal of permission by the Central Govt. in October, 1998 for using the land in question for "non forestry purposes". Shockingly, one of the documents produced by them is a Xerox copy of letter dated October 21, 2003 written by Shri R.P. Mittal, IPS, Secretary of the "IPS Officers Association of Punjab", to all the members of the IPS Association for information and necessary action with reference to the letter dated September 12, 2003 of Shri Vijay Kapoor, Vice President, Forest Hill and Golf and Country Club (FHR) for

contacting the aforementioned Club directly, if they wanted to avail honorary/concessional membership of the Club.

6. The learned Senior Deputy Advocate General, Punjab also appeared on behalf of the State of Punjab and also filed written statement of Respondent No. 3 and an affidavit of Respondent No. 4 and further informed that in the year 1996 Col. Sandhu had filed an application for grant of permission to set up a school named Spring Dale Academy at village Karoran, which the Govt. of Punjab refused. Then, in 1997 he filed an application for setting up a country club resort and amusement park which was also declined; then he filed a civil suit, which, despite contest by the Govt. of Punjab, was decreed and first appeals having been dismissed, the Respondent Nos. 4 and 5 have filed Regular Second Appeal Nos. 4328 and 4345 of 2002 which were admitted and pending in this Court and in which adinterim injunction, commanding Col. B.S. Sandhu (retd.) to maintain status quo in relation to the construction of the FHR were issued; that criminal prosecution was launched against Col. B.S. Sandhu (Respondent No. 1) in the year 1997, however, it resulted in his acquittal vide judgment and order dated December 22, 2001 though in the same year four more prosecutors were launched in which charges are yet to be framed; that attempts were made for having a local inspection, which was not allowed by Col. B.S. Sandhu (Respondent No. 1), but ultimately the inspection was held.

7. In terms of our directions issued on January 22, 2004, Shri Rajiv Atma Ram, learned Senior Counsel for Respondent No. 1, namely, Col. B.S. Sandhu (retd.) produced three lists of members, i.e., (i) honorary members (total 32); (ii) exofficio members (total 32); and (iii) paid members (total 399). He further informed that "honorary members" were those from whom nothing was charged and they would enjoy the membership throughout their life and the "exofficio members" were the members by virtue of their official and/or nonofficial position and that nothing had been charged from them as well. In regard to those members whose names figure in the list of "paid members", he took up a stand that in the 'best category of membership', a govt. officer/official was required to pay Rs. 1,26,000/ as against the requirement of Rs. 2,26,000/ to be paid by an ordinary person. On our asking as to who were/are the bureaucrats and/or anyone else at any point of time involved with decision making process pertaining to Respondent No. 1 amongst 399 paid members and to furnish details of such members, if any, and, of course, apart from the bureaucrats or police officers, were there members from the subordinate judiciary or not ? We laid emphasis on the subordinate judiciary for the obvious reason that with them the responsibility of administering pure justice is fastened and they are required to maintain absolute integrity. We also brought it on the record that the services of the judicial officer, who had decided the First Appeal in the civil suit filed by Col. Sandhu (retd.), were dispensed with by retiring him compulsorily by the Full Court.

8. Before we could proceed further in this suomoto PIL, there came to be filed Civil Writ Petition No. 1850 of 2004 (Ranjit Singh v. Union of India and others), interalia with a prayer to stop Respondent Nos. 7 to 9, namely, Dashmesh Education Society, World Wide Immigration Consultancy Service and Country Club Golf Course from undertaking

further construction activity in violation of the Forest (Conservation) Act, 1980 and/or any activity detrimental to biotic environment of this region and for demolishing all illegally constructed buildings and to restore the area of its original ecological environment; to entrust the case to the Central Bureau of Investigation for inquiring in detail and fixing the responsibility for violations; to constitute a joint team of State Forest Department, Union Environment and Forest Ministry, Collector Ropar district and Revenue Officer to ascertain the extent of damage and to report the same to the Central Empowered Committee constituted by the Apex Court. Needless to say that Col. B.S. Sandhu (retd.) was also impleaded, in his individual capacity, as Respondent No. 10 apart from all the concerned government authorities of Union of India and the State Govt. including the Director of the Central Bureau of Investigation. The aforesaid Writ Petition is based upon the following factual matrix :

"Village Karoran is located in Kharar Tehsil of District Ropar. It is about 8 kilometres to the NorthWest of Chandigarh. The entire area measuring 3700 Acres of the village is closed under Punjab Land Preservation Act, 1900. It is under the management of State Forest Department. Notification dated 9.11.1987 of the Forest Department of the Punjab Government, published in the Punjab Government Gazette dated 20.11.1987, (appended as Annexure P/1) under Section 4 of the Punjab Land Preservation Act, 1900 prohibited the acts mentioned therein for a period of 15 years (i.e. to say up to 9.11.2002).

Total area of Village Karoran (its map appended as Annexure P/4) is included as a "forest area" in Annual Administration Report (Annexure P/2) and Form No. 1 (Register of Forest Area) (copy appended as Annexure P/3).

Pursuant to the order dated 12.12.1996 of the Hon"ble Supreme Court in CWP 1202 of 1995, T.N. Godaverman Thirumalak Paddy v. Union of India and others, an Expert Committee was set up by the Government of Punjab to identify the forest area of the State of Punjab. The said Expert Committee in its report (Annexure P/5) included the entire area of Karoran Village as forest area. An affidavit was also filed by the State Government in March, 1997 in the Supreme Court appending the forest area identified by the Expert Committee as Annexure "G". This included the entire area of Karoran Village.

Pursuant to the directions of the Hon"ble Supreme Court (supra), Management Plan (appended as Annexure P/6) of all private forests of the State was prepared by the State Forest Department. The entire area of Karoran Village was included in the Management Plan approved by the Ministry of Environment and Forest vide letter dated 14.12.1998 of the Conservator of Forest (Central).

Thus, it is evident that the entire area of Karoran village is a forest area, which attracts the provisions of the Forest (Conservation) Act, 1980.

In 1998, the Dashmesh Education Society applied under the Forest (Conservation) Act, 1980 for diversion of 4.94 Hectares of Forest Land for setting up a Farm House/Resort in

Karoran village. On 11.6.1998 the Conservator of Forest (Central), Ministry of Environment and Forest conducted site visit and found gross violations of the Forest (Conservation) Act even prior to the submission of the application. Accordingly, he rejected the proposal vide letter dated 30.10.1998 (Annexure P.7) and advised the Punjab Government to fix responsibility and take action against the defaulting officials for violating the provisions of the Forest (Conservation) Act.

Due to enormous political pressure and connivance of certain bureaucrats and influential persons, Mr. Sandhu continued with violations. Large parts of ecological fragile Shivalik Hills were bulldozed and Forest Land levelled for making a Golf Course; Extensive network of roads created; Boundary walls; Palatial Restaurant; Water Features and numerous Buildings were constructed by ruthlessly destroying the biotech environment and the flora and fauna.

Four cases filed by the Forest Department are pending in the court of CJM, Ropar for violating the provisions of the (i) Punjab Land Preservation Act, 1900 (ii) Forest (Conservation) Act, 1980 and (iii) directions of the Hon"ble Supreme Court in respect of 53 acres of land in Karoran village. The acts of omission and violation are likely to be much more which can be ascertained after inspection of the site by a High Powered Committee under the directions of this Court.

Mr. Sandhu who is the (i) Managing Director of the Forest Hill Golf and Country Club, (ii) WWIC Resort Pvt. Ltd. and (iii) Dashmesh Education Society, and who owns the main forest area in Karoran village, has the following background :

(i) He was declared bankrupt in Canada in 1996/97. Annexure P/8 is his insolvency certificate dated 2.5.2000 from the Toronto Authorities. How a bankrupt person can purchase vast tract of land in village Karoran and construct elegant Resort and Golf Course within few years, is unbelievable ? Shri Sandhu is learnt to have been earlier involved in land grabbing activities and illegal embossment/forging general power of attorney of one Vinod Kumar, as per the record of the Estate Officer, UT, Chandigarh and news item (copy of Memo Notice and newspaper cuttings appended as Annexures P/9 and P/10); FIR No. 211 dated 24.9.2001, under Sections 380 and 427 IPC, Police Station 3, Chandigarh was also registered against him (copy of FIR Annexure P/11); There is immediate need of swift and deterrent action to prevent ecological degradation of the sensitive Shivalik tract from its absolute disaster by taking serious cognizance of the brazen violations failing which the entire ecology of the area is likely to be damaged irreversibly; Top brass including IAS and IPS and other officers and even some of the members of the Judiciary are learnt to have been given Honorary Memberships of the Club and Golf Range or allowed to use these illegally created facilities; Ironically all these Bureaucrats and Decision makers must be aware by now that the facility has been created in violation of the Rules and environmental norms; Some Officers of (i) the Union Ministry of Environment and Forest, (ii) Ministry of Forest and Wild Life, Punjab and (iii) Punjab Revenue Officers including the Conservator of Forest (Central), Chief

Conservator of Forest, Government of Punjab are carrying out mere formalities and exchanging official communications on the subject; Ground reality speaks that practically nothing substantial has been done to curb the most serious problem of destruction of biotech environment in the region, which appears to be an organised environmental scam threatening the forest reserved area around Chandigarh resulting in ecological imbalance and disaster to biotech environment; Neither institution of cases in courts nor the executive measures have deterred the violators from spoiling the biotech environment violating the Punjab Land Preservation Act and Forest (Conservation) Act and thus, it has become necessary to file this writ petition to ascertain the exact extent and the nature of violations, the damage done to the reserved forest, to check further damage."

9. This Writ Petition was taken up for preliminary hearing on February 4, 2004 and while issuing notice to all concerned, we, having regard to the peculiar facts and circumstances in which bureaucrats of Punjab State were found to be involved, issued notice to the Central Bureau of Investigation as well to show cause as to why it be not directed to take over investigation under the appropriate law to do complete justice and to save ecological imbalance which was apparently caused by breaching the Central as well as State laws. The Writ Petition was tagged and ordered to be heard along with C.W.P. No. 1134 (PIL) of 2004.

10. The stand taken by the Union of India as a party Respondent in the suo moto proceedings by way of affidavit of Shri S.K. Aggarwal, Deputy Conservator of Forests (Central), Northern Regional Officer, may be summarised as follows :

"A proposal for diversion of 4.94 Hectares of forest land in favour of Dashmesh Education Society was submitted by the State of Punjab; After due consideration the proposal was rejected by the Central Government asking the State Government to fix responsibility against the defaulters for violating Forest (Conservation) Act, 1980 after noticing that the Society has already defaulted by starting construction work on the forest land; Another proposal for diversion of 0.92 Hectares of forest land in favour of the same Society, this time for constructing a school, made on 15.1.1998 was also rejected by the Central Government vide its order dated 30.10.1998 (Annexure R12/2); the Conservator of Forest (C) nominated DFO, Forest Department, Ropar to further investigate the matter and initiate necessary action to prosecute the persons/officers/officials for committing violation of Forest (Conservation) Act, 1980; A news item titled "Golf Resort v. Forest Acts riding rough shed (roughshod ?) over surplus land" was published in the Hindustan Times dated 10.6.2002; After having learnt about the same, the Central Government vide letter dated 25.6.2002 addressed to the Principal Chief Conservator of Forests, Government of Punjab, directed to get the matter inquired from a team of senior Forest Officers and the directions be issued to stop the activity and fix responsibility of local officials; The Hon'ble Supreme Court of India in T.N. Godavarman Thirumalak Paddy v. Union of India is reviewing periodically the matter qua violation of Forest (Conservation) Act, 1980; A Central Empowered Committee has been constituted for the purpose of monitoring and ensuring compliance of the orders passed by the Supreme Court in the aforesaid writ

petition and CWP No. 171 of 1996; Various reminders were issued by the Central Government since the State of Punjab failed to submit any action taken report. A meeting is proposed and thereafter a detailed report will be submitted to the Ministry for taking further necessary action."

11. In the written statement filed by the Principal Chief Conservator of Forests, Punjab (Respondent No. 3), following stand has been taken :

"The PLPA was enacted to provide for the better preservation and protection of certain portions of the territories of the State; The Lands situated in sub mountaneous areas in the Shivalik tract of Punjab State are notified under this Act; Regulations and restrictions imposed under this Act are implemented by the Punjab Forest Department; The entire area of village Karoran, in which "Forest Hills and Golf and Country Club" is located, is closed under the PLPA since 1973 and extended from time to time; The latest extension has been issued vide Punjab Govt. Notification dated 3.2.2003 and 20.1.2004 (Copies enclosed at Annexure I and II); The total area of village has been included as "Forest Area" in the Annual Administration Reports of the Department since many decades, (Relevant extract of the latest Annual Administrative Report is attached as Annexure III.).

The Hon"ble Supreme Court in Writ Petition (Civil) No. 202 of 1995, vide its order dated 12.12.1996, strictly prohibited the diversion of any "forest land" to nonforestry purposes save with the prior approval of the Government of India under the provisions of the Forest (Conservation) Act, 1980 and by defining the term "Forest" for the purpose of Forest (Conservation) Act; The order of the Hon"ble Supreme Court further required all the State Governments to identify the Forest areas of their respective States by constituting Expert Committees for the purposes.

The Expert Committee constituted by the Punjab State included the entire area of Karoran village as "Forest area" in its report (Annexure IV); Subsequently, the State Government filed an affidavit in the Hon"ble Supreme Court in March, 1997 in which the list of Forest areas, identified by the Expert Committee was appended as Annexure G to its affidavit (Annexure V) which included the area of 3700 acres of Karoran village; Pursuant to the orders dated 12.12.1996 of the Hon"ble Supreme Court Management Plan of all the private lands of the State closed under Sections 4 and 5 of the PLPA, 1900 were prepared by the State Forest Department and the entire area of Karoran village was also included in it which was also approved by the Ministry of Environment & Forests (MOEF) vide letter dated 14.12.1998 (Annexure VI and VII) of the Conservator of Forests (Central); It is, therefore, evident that the entire area of Karoran village, in which the "Forest Hills Golf and Country Club" is situated, is closed under the PLPA, 1900 and is a "Forest area", regulated by the provisions of the Forest (Conservation) Act, 1980 as also the direction passed by the Hon"ble Supreme Court; The State Government had requested the Ministry of Environment and Forests, Government of India and the Hon"ble Supreme Court that areas closed under the PLPA, 1900 which were under habitation or cultivation prior to the orders of the Apex Court of December 12, 1996, may be allowed to

be deleted from the list of forest areas by filing an affidavit (Annexure VIII) due to hardship being faced by the landowners since they cannot change the land use even for their bona fide domestic purpose without prior permission from Government of India; Farmers Welfare Association filed Interlocutory Application No. 727 in Writ Petition (Civil) No. 202 of 1995 praying same relief, which, however, was referred by the Supreme Court to the Central Empowerment Committee; The Central Empowerment Committee recommended that the permission of the Ministry of Environment Forests should be obtained before deleting the cultivated/habitation area from the list of forest areas; However, till a final decision is taken by the MOEF, the entire area of Karoran village has to be treated as a forest area; Even if the Government of India decides to permit these cultivated areas to be deleted from the list of forest areas, the decision will be applicable prospectively and not retrospectively; Respondent No. 1 has committed violation of Forest (Conservation) Act, 1980 by diverting the forest area for nonforestry purpose for which damage reports dated 15.11.1996, 27.9.1996, 16.1.1997, 12.6.1997, 24.6.1997, and 27.9.96 were issued and the offenders were prosecuted for violations of the aforementioned Act and other forest laws; These cases, however, were dismissed by the Chief Judicial Magistrate by an order dated 22.12.2001; Respondent No. 1 submitted a case seeking approval of the Government of India for the diversion of 0.92 Hectare of forest land for non forestry purposes for the construction of a school which was sent to the Ministry of Environment and Forests, Government of India, which, however, was finally rejected on 22.1.1999; Dashmesh Educational Society applied for diversion of 4.94 hectares of Forest land for setting up a Farm House/Resort in Karoran village, the President of which Col. B.S. Sandhu (Retd.) had purchased most of the land probably in or after 1996; The Conservator of Forests (Central), Ministry of Environment and Forests conducted site visit of the area on 11.6.1998 and found violations of the aforementioned Act and accordingly, vide letter dated 30.10.1998 (Annexure X) rejected that proposal; The local Forest Authorities tried to stop these violations at their own level and also by approaching the civil and Police Authorities; The matter was also reported to the Conservator of Forests (Central), Ministry of Environment and Forests being the competent authority on which D.F.O., Ropar was authorised to prosecute the violators; Four cases have been registered against Col. B.S. Sandhu (Retd.) in 2001 in the Court of Chief Judicial Magistrate, Ropar in respect of about 54 acres of lands in Karoran village but the charges due to nonappearance of Col. B.S. Sandhu (Retd.) could not be framed; the matter was again reported to the Government of India, Ministry of Environment and Forests and the State Government vide letters dated 13.11.2003 Annexures XIV, XV and XVI, sought concurrence of the Government to file a case in this Court after ascertaining the violations by a Committee proposed by the answering Respondent; the State Government vide its order dated 8.12.2003 (Annexure XVII) has since constituted a Committee which includes a representative of Ministry of Environment and Forests, Government of India."

12. State of Punjab filed yet another written statement on behalf of Respondent No. 4 by way of affidavit of its Secretary to the Department of Housing and Urban Development, 4,

interalia, averring that the Punjab Legislature passed the Punjab New Capital (Periphery) Control Act, 1952 to control and regulate the periphery of the New Capital of Punjab as it existed immediately before the passing of the Act; Under Section 3, the State Govt. by issuing a notification, declared an area upto 10 miles from the outer boundary of Chandigarh as the "controlled area"; Under Section 5, restrictions on erection or reerection of any building etc. were imposed and no such activity could be carried out without the previous permission of the Deputy Commissioner in writing; Section 6 prescribed the procedure for grant of such permission whereas Section 11 prohibits the use of land falling within the controlled area for purposes other than those for which it was used on the date of notification; the entire land of village Karoran, being located within 10 miles from the outer boundary of Chandigarh, falls within the Periphery Control Act, 1952; Col. B.S. Sandhu (Respondent No. 1) had applied on 11.5.1996 to set up Spring Dale Academy in village Karoran but no permission for change of land use was obtained from the State Govt., the permission to establish the Academy was declined vide letter dated September 10, 1996 (Annexure A2) as the area on which Academy was proposed to be established fell within the controlled area; Col. B.S. Sandhu (Respondent No. 1) then submitted an application on 22.1.1997 (Annexure A3) to the then Minister, Housing and Urban Development for establishing country club resorts and amusement park at village Karoran which was duly dealt with and filed; Col. B.S. Sandhu (Respondent No. 1) submitted yet another application on 3.4.1997 (Annexure A4) which though was addressed to the Minister, Housing and Urban Development, was actually submitted to the then Finance Minister, Punjab; this application too was filed after due consideration; Col. Sandhu (Respondent No. 1) then submitted another application on 21.8.1998 (Annexure A5) addressed to the Chief Administrator, PUDA for permission to set up Forest Hill Country Club Resort and after sending certain reminders, wrote a letter dated 2.9.2000 (Annexure A6) to the then Finance Minister by name followed by yet another letter dated 16.3.2000 (Annexure A7) addressed to the State Minister, Housing and Urban Development, Punjab; this application was also duly considered and rejected by the then Principal Secretary, Housing and Urban Development, Punjab by passing a well reasoned order dated 17.7.2000.

However, in violation of statutory provisions of the 1952 Act, Punjab Land Preservation Act, 1900, Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980, Respondent No. 1 started construction activities on the land in question; when the construction activities were noticed by the field staff of PUDA during routine survey and Respondent No. 1, having apprehended that PUDA was likely to restrain him from carrying out the illegal construction, filed a civil suit for declaration and permanent injunction before the Civil Judge (Senior Division), Ropar along with an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure for temporary injunction; the civil court at Ropar allowed the application for temporary injunction vide its order dated April 22, 2001 (Annexure A8) and the appeal was also dismissed against it by the District Judge, Ropar vide his order dated July 27, 2001 (Annexure A9), so was the fate of the Civil Revision which was dismissed by the High Court on 24.9.2001 (Annexure A10); the above mentioned suit was

decreed by the civil Court vide judgment and decree dated 30.4.2002 (Annexure A11) and the two Appeals separately filed against the aforementioned judgment were also dismissed by the District Judge, Ropar vide his judgment dated July 26, 2002 (Annexure A12); that PUDA filed Regular Second Appeal No. 4328 of 2002 in this Court which was dismissed in limine vide order dated November 1, 2002 (Annexure A13), however, Regular Second Appeal No. 4345 of 2002 filed by the State of Punjab was admitted by this Court on May 1, 2002 (Annexure A14) and thereafter an order dated November 1, 2002 whereby RSA No. 4328 of 2002 filed by PUDA was dismissed in limine, was also recalled by this Court suomoto and the Appeal filed by PUDA was also admitted and ordered to be heard along with RSA No. 4345 of 2002; the High Court also stayed further construction by Respondent No. 1; that on October 22, 2003, Respondent No. 1 Col. B.S. Sandhu (retd.) addressed an application (Annexure A16) to the Chief Minister, Punjab for issuance of direction to the Advocate General, Punjab for the withdrawal of both the Appeals urging therein that crores of rupees for development of the resorts were invested and further development of the project was stopped due to pendency of these Appeals; that comments from PUDA have been sought on the aforementioned application wherein PUDA took a stand that since its appeal is pending in High Court on suomoto action, it (PUDA) will not be in a position to withdraw the appeal; that Col. Sandhu Respondent No. 1 has also addressed a letter dated December 3, 2003 to the secretary Govt. of Punjab, Housing and Urban Development, requesting for change of and use urging there in that the land under occupation of the Forest Hill Resorts does not fall under the purview of forest Act and the Govt. Notifications of 1973 and 1993 did not cover the said land; that a report has been sought upon the aforesaid letter from the Principal Secretary to Govt. of Punjab, Department of Forest and wildlife, however, in view of the interim order dated January 22, 2004 passed by this Court, no Change in land use under the 1952 Act shall be granted.

13. We may add here that in the connected writ petition, namely, CWP No. 1850 of 2004 also, the reply on behalf of Union of India and its authorities, i.e. Respondent Nos. 1 to 5, has been filed by way of affidavit of Shri S.K. Aggarwal, Deputy Conservator of Forest (Central), Northern Regional Office, which, in sum and substance is reiteration of the stand taken by the Union of India in the first writ Petition i.e. CWP No. 1135 (PIL) of 2004, a detailed reference to which has already been made. Similarly, written statement has also been filed by the Additional Chief Administrator (PUDA) Respondent No. 6, which is also the repetition of the stand taken by the Principal Secretary, Department of Housing and Urban Development in CWP No. 1134 of 2004, hence no detailed reference to the same is being made.

14. The stage is now set for referring to the defence and the stand taken by Col. B.S. Sandhu (retd.), (Respondent No. 1), in his private capacity and also as President and the Managing Director of (i) Dashmesh Education Society; (ii) World Wide Immigration Consultancy Services; (iii) World Wide Immigration Consultancy Resorts Pvt. Ltd.; and (iv) Country Club Golf Course, etc.

15. In the suomoto proceedings, namely, CWP No. 1134 (PIL) of 2004 suomoto, Col. Sandhu (Respondent No. 1) has come up with the stand that though it is the case of the State Govt. and the Union of India that the entire land of village Karoran measuring 3700 acres, is a "forest land", however, the fact of the matter is that about 300 acres land is "Gair Mumkin" while 700 acres is "agricultural land"; out of these 700 acres of agricultural land, about 500 acres have been colonised and about 25,000 houses have come up on this purported "forest land"; these houses are located in Hadbast No. 352 comprising revenue estate of village Karoran and are located in areas popularly called Basti Naya Gaon, Dashmesh Nagar, Adarsh Nagar Officers Colony and Janta Colony, etc; that these are pucca houses of A class construction with modern amenities including electricity connection given by the State Govt., telephone connections given by the Department of Telecommunication, metalled roads, streetlights and the sewerage system that flows into the 'Patiala ki Rao' rivulet; that these houses have come up with the active connivance and consent of the State Govt. as is apparent from the fact that a notification inviting objections for formation of Notified Area Committee, Naya Gaon was issued by the State Govt. on 1.10.2000; (Annexure R2), though operation thereof has been stayed by this court in CWP No. 18497 of 2001 which has been admitted; that a perusal of this notification reveals that the State Govt. has itself admitted that the area has been colonised and over 50,000 people are dwelling therein; if the file pertaining to this notification is summoned and perused, it will reveal that the State Govt. took notice of the fact that there are "well established bazars" and "habitation is homogeneous and contiguous"; that the complexion of the population is not agricultural in character and there are many shopcumflats; that a committee was formed by the State Govt. which submitted its report to the Deputy Commissioner, Ropar on September 19, 2002, according to which the area is required for formation of municipal committee; that the forest officials of the State Govt. were actively associated with the formation of the Notified Area Committee, Naya Gaon as the issue of Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980 cropped up but no objection was raised by them; that the issue of Punjab Land Preservation Act, 1900 was also raised and discussed and the Forest Department had no objection to the conversion of the area of village Karoran into an urban estate;

that in fact village Karoran was to form a part of the Notified Area Committee, Naya Gaon by including nearly 25000 houses, 580 shops, two factories, 8 small scale industries and 6 water tanks; the fact is that the area is not a "forest land"; that in CWP No. 18497 of 2001, the State Govt. filed its written statement (Annexure R2/C) defending the change of land use and stating that there was no violation of the Indian Forest Act, Forest (Conservation) Act and the Punjab Land Preservation Act, 1900; that in the affidavit of Shri J.S. Kesar, IAS, which the State Govt. has placed on record as Annexure R8, it has been clearly stated that the land of Karoran village has been wrongly shown as "forest area" by an inadvertent mistake as the provisions of PLPA were being administered by the Forest Department and that the land is not subject to soil erosion; that the State Govt. has already issued notifications for regularisation of constructions; that if the land of

Karoran village is "forest land" then how come the State permitted over 25000 houses to come up, how has it given electricity connections in the "forest land" or installed telephone connections and how roads have been laid and/or electricity/telephone poles have been erected and how sewerage pipes have been laid and that too without prior permission from the Ministry of Environment and Forest; that the further question which arises is why the State Govt. has not divulged these details in its affidavit filed in reply to this Writ Petition and why these facts have been deliberately concealed by it; that the State Govt. has taken active steps to provide these facilities to the entire 3700 acres of land comprised in Hadbast No. 352, namely, the revenue estate of Karoran village; the State Govt. has created numerous lakes and built numerous dams in the Shivalik foothills including five dams within the revenue estate of Karoran village without taking any permission from the Ministry of Environment and Forests; still further the State Govt. has laid down a network of underground pipes for supply of water for irrigation purposes for land holdings in the revenue estate of Karoran village which is sold @ Rs. 45/ per hour; that the land of Karoran village is not a forest land as no notifications under Sections 4, 35, 36, 37 and 38 of the Act have been issued or produced by the State Govt. or the Union of India in relation to the lands of village Karoran and in absence of such notifications, the land of Respondent No. 1 cannot be treated s forest land; that the Forest (Conservation) Act, 1980 was promulgated to prevent dereservation of reserved forests and to prevent the use of "forest land" for "nonforestry purposes" and that there is no provision under the 1980 Act for declaring/notifying any land to be a forest land; that the State of Punjab had filed six complaints against Respondent No. 1 alleging violation of the Indian Forest Act and the Forest (Conservation) Act, 1980 in the court of Chief Judicial Magistrate, Ropar but it failed to produce any notification under provisions of these Acts declaring land of Respondent No. 1 as forest land; that regarding violation of the revenue laws of the State Govt., it is clarified that the lands are owned by Respondent No. 1 as well as by various other companies floated by him; that the Punjab Land Reforms Act, 1972 is the statute governing permissible holdings in State of Punjab although according to Section 3(5) any "land" which is not occupied as the site of any building in a town or village and is occupied or has been left for agricultural purposes or for purposes sub servient to agriculture including "banjar land", falls within the definition of "land" for the purposes of this Act and that the "gair mumkin land" which is unagricultural waste, is out of the purview of the aforementioned Act and is not subject to the permissible area provided therein; that the State Govt. had conducted an inquiry with regard to the area of the land held by Dashmesh Education Society, WWICS Ltd. and WWICS Resort Pvt. Ltd. and it was found that no surplus area is held by the company; that so far as the Punjab New Capital (Periphery Control) Act, 1952 is concerned, the issue regarding alleged violation thereof is subjudice in the Court in RSA No. 4328 and 4345 of 2002, though Section 2(1) of this Act defines "agriculture" as something which includes horticulture and the planting and upkeep of the orchard, therefore, a golf course squarely falls within the definition of "horticulture"; that the State Govt. has granted permissions for construction of colonies etc. under 1952 Act to numerous persons/societies such as Silver City and Silver City Extension (Zirakpur), Janata Estate,

Bagolia Estate, Zirakpur and other villages surrounding Chandigarh; apart from creating Notified Area Committee, Zirakpur and has, thus, regularised all the illegal constructions on the agricultural land in the periphery near Chandigarh; that the submission of the State Govt. that the land having been notified under PLPA 1900 has become "forest land", is misconceived; the object of the PLPA is to conserve the subsoil water and to prevent the soil erosion; as per Sections 4, 5 and 5A of the Act, the activities can be prohibited for a temporary period and not permanently;

that the area of Karoran village which is shown as barani land in the revenue records is no longer susceptible to soil erosion as various check dams have been erected; that after amendment of Sections 4 and 5 in the year 1926 when words "or permanently" were deleted, the State Govt. has no power to regulate the land in question for an indefinite period; if the record of the State Govt. is called and perused, it would be seen that no notification under Sections 4, 5 and 5A has been issued after taking any decision regarding "satisfaction" of the State Govt.; that stand of the State Govt. that the entire area of Karoran village is closed under the PLPA since 1973, is also false as vide notification dated September 17, 1973 (Annexure R5) issued under Section 5 of the Act, the area is "closed" only with regard to cutting of trees, timber and lopping etc. was prohibited; that this notification applied to 1593 acres of land of Karoran village and not the entire land and that none of the land owned by Dashmesh Education Society, WWICS Ltd. and WWICS Resorts Pvt. Ltd. is governed by this notification as the khasra numbers of their lands are not mentioned in this notification; that another notification was issued under Section 5 of the Act on April 6, 1979 (Annexure R6) which prohibits the cutting of trees, timber etc. for a period of 25 years and it applies to 1281 acres of land which includes only 5 acres 3 kanals 11 marlas of "barani" and 115 acres of "gair mumkin" land belonging to Respondent No. 1 and his organisations; that the State Govt. issued another notification (Annexure R7) under Section 4 of the Act, which, however, does not bear any date and pertains to the land which is not under cultivation; that thereafter another notification dated September 22, 1993 (Annexure R8) was issued under Section 5 of the Act on account of expiry of the period of 20 years of the notification dated September 17, 1973 (Annexure R5) and the lands owned by Respondent No. 1 are not covered by this notification as well; that yet another notification under Section 4 of the Act was issued on 3.2.2003 (Annexure R9) covering entire land of Karoran village followed by notification dated January 20, 2004 (Annexure R10) issued under Section 5 of the Act covering 1281 acres of land of village Karoran; that from the details of the above mentioned notifications, it can be seen that only a part of the land of Respondent No. 1 is covered under the 1979 notification which, however, does not apply to "barani land" owned by Respondent No. 1 and that no violation of this notification has been done because no trees were planted on the land in question as per the record of the Forest Department, therefore, no cutting of trees, timber or brushwood and/or lopping of trees was done by Respondent No. 1; that the Forest Hill Resort (FHR) is situated on 62 acres and 7 marlas of land out of which 4 acres and 7 marlas are "gair mumkin" land and that rest of 58 acres of land are agricultural land (barani) and that "without prejudice to his rights", Respondent No. 1 intends to apply for

compounding of the alleged offences, if any, under Section 68 of the Indian Forest Act as only fairways and greens have been raised on this "gair mumkin" land and no construction has been carried out. Respondent No. 1 has also highlighted his multiple personal achievements in life including setting up a company called WWICS Pvt. Ltd. for developing the FHR;

that the club was conceptualised by US Architectural firm WAT&G who also designed the famous Sun City in South Africa; that a golf course is eco friendly destination retaining the original beauty of the terrains while enhancing it with freshly planted trees; that rich hybrid Bermuda grass, fairways and tiff grass greens have been planted whereas natural hurdles have been retained; a golf academy has been set up to teach the game of golf and that the resort started functioning in October 2002 after which various persons were inducted as members; that Respondent No. 1 has also set up the Canadian Institute of international status in tie up with the Indian and International Universities and the Institute has been declared an extension campus of Georgian College, Canada in which 500 full time students with state of the art facilities with most modern teaching methods are studying; that the students of the institute have a unique option of getting dual degree from Punjab Technical University as well as the Georgian Diploma in Computer Science Programme; that the total land of the companies/societies set up by him is about 370 acres which has been purchased over a period of 8 years beginning from 1994; that on June 17, 1995, an application was moved for getting no objection certificate by Dashmesh Education Society for setting up a school which was issued by the Deputy Commissioner, Ropar on August 25, 1995; thereafter an application dated 11.5.1996 was moved to PUDA for setting up the school which was, however, rejected by the PUDA authorities on 10.9.1996; Respondent No. 1 thereafter represented to the Secretary, Housing and Urban Development, Punjab upon which comments from PUDA as well as the Chief Town Planner were sought and that both of them gave positive comments but Respondent No. 1 decided not to open a school and as such the matter was not pursued further; thereafter Respondent No. 1 decided to set up FHR at village Karoran and had meetings with various persons from different departments including the Forest Department; that as per the original plan, an area of 4.94 hectares (12.34 acres) including the "gair mumkin" land was included in FHR as Respondent No. 1 was wrongly informed by the Forest Department that the area was "forest land" and he would have to get permission to use the area for nonforestry purposes; that in fact "gair mumkin" land is not "forest land" as no notification in this regard was issued; however, acting bona fide and accepting the correctness of the stand of the Forest Department, he submitted an application for diversion of 4.94 hectares of agricultural land to nonforest use by FHR; that this application was forwarded by the Govt. of Punjab to the Ministry of Environment and Forest, Govt. of India but was rejected by the latter on October 30, 1998; that six challans were filed by Divisional Forest Officer in the court of Chief Judicial Magistrate, Ropar alleging "nonforest use" of the "forest land" but the same were dismissed on December 22, 2001; that on 20.1.1997, Respondent No. 1 filed a composite application to PUDA for setting up the FHR followed by the application dated 4.3.1977 under the

Periphery Control Act, and subsequently by yet another application dated August 21, 1998; since nothing was done in the matter, Respondent No. 1 wrote letters to the then Minister of Finance and Minister of Housing and Urban Development; however, no reply was received, therefore, a civil suit was filed in the court of Civil Judge (Senior Division), Ropar by the Dashmesh Educational Society which has culminated into RSAs No. 4328 of 4345 of 2002 pending in this Court; that on June 11, 1998, site inspection was done by the Conservator of Forests; that application before the revenue authorities was moved for demarcation of land which was done for the first time on June 4, 2001 (Annexure R11) and that fencing was also done on the basis of the report in which it was mentioned that the land was not a "forest land";

that second demarcation was done by the revenue authorities along with forest staff as is evident from the report dated November 28, 2003 (Annexure R12); that a complaint was made to the Chief Minister, Punjab regarding construction over "forest land" upon which an inquiry was held by the Tehsildarcum Executive Magistrate, Karoran who inspected the site along with two Naib Tehsildars, five Field Kanungos, one office Kanungo and 18 Patwaris, who identified the entire land which actually measured to 371 acres only i.e. less than the land owned by Respondent No. 1; that the Executive Magistrate mentioned that there is no sign of "forest land" and on physical verification no encroachment of "forest land" was found; that another inquiry was conducted by the Deputy Conservator of Forests who submitted a report in three parts which negates the stand taken by the State Govt.; that in CWP No. 202 of 1995 pending in the Supreme Court of India (Environment Awareness Forum v. State of J&K and others), the issue of identification and conservation of "forest areas" was also raised and an affidavit was filed by the State of Punjab showing its "forest areas"; that the State Govt. wrongly identified about 69,000 hectares of cultivated/residential land regarding which notifications under PLPA had been issued; the mistake was committed as PLPA was being administered by the Forest Department, hence the area notified under the said Act was also included in the "forest land"; that land owners of different villages raised the issue that even cultivated/residential areas were shown to be "forest land"; and thereupon the matter was reconsidered by the State of Punjab and it discovered that more than 69,000 hectares of land were wrongly shown as "forest land" which included 3700 acres of land of village Karoran; that for correcting the aforementioned mistake an affidavit was filed by Shri J.S. Kesar, IAS, the then Principal Secretary, Forest Department, copy of which has been placed on record by the State Govt. as Annexure R8; the State of Punjab also approached the Govt. of India in the Ministry of Environment and Forest for seeking permission to declare the 69,000 hectares of land not to be the forest land, to which permission was granted by the Govt. of India through the Ministry of Environment and Forest vide letter dated November 10, 2002 (Annexure R13); that on an application having been made, the Hon"ble Supreme Court referred the matter to the Empowered Committee constituted by it and the later also "agreed" with the State of Punjab; recommendations of the Central Empowered Committee, which were subject to the approval of the Supreme Court, are also on record as Annexure R9 and the matter in this

regard is awaiting final orders of the Supreme Court; that 62 hectares of land on which FHR is located comprises a beautiful landscape, the area is totally green and the constructed portion constitute a very small municipal area of about 3%, the remaining area is lush green and over 100 lacs trees and shrubs/plants have been planted as can be seen from the photographs (Annexure R14) as compared to the alleged forest area photographed as Annexure R15; that no favour has ever been granted by the State authorities to Respondent No. 1 and that various high dignitaries, politicians, bureaucrats and other government officers including members of judiciary are honorary and exofficio tenure members of other clubs also like Chandigarh Golf Club as reflected in the list (Annexure R17) and that most of the other clubs too have honorary and tenure membership which are granted to the above mentioned categories of persons; even member fee/tariff of most of the clubs is different for government employees and nongovernment employees. With these averments, a prayer has been made to dismiss the Writ Petition.

16. In the connected CWP No. 1850 of 2004 in which Col. B.S. Sandhu and the society/companies formed by him are impleaded as Respondent Nos. 7 to 10, a preliminary objection regarding maintainability of the Writ Petition has been taken by doubting the bona fides of the Petitioner, who, according to these Respondents wants to settle some personal score. While most of the averments made by Col. B.S. Sandhu in his reply to CWP No. 1134 of 2004 have been reiterated, we deem it appropriate to refer certain factual allegations made by the Petitioner in Para 11 of the Writ Petition and reply thereto by Respondent Nos. 7 to 10, which reads as under :

#### Writ Petition

"Sh. B.S. Sandhu had been declared bankrupt in Canada in the year 1996/97. The insolvency certificate dated 2.5.2000 from Toronto Authorities is annexed herewith as Annexure P/8. How a person declared bankrupt, can purchase that vast tract of land in Karoran and construct elegant resort and Golf course on that within few years appears unbelievable."

#### Reply

"Contents of para 11(a) as stated are wrong and incorrect, hence denied. The answering Respondents had come back to India in the year 1993 and set up Immigration Company in the name of M/s WWICS Ltd. It would be relevant to point out here that the land on which the FHR has been developed, has been purchased out of the funds generated by M/s WWICS Pvt. Ltd. The answering Respondent is not the owner of the land as the said land has been purchased by different companies during the last about 10 years. Moreover as per the inquiry got conducted by the State of Punjab, there is no surplus land."

17. State of Punjab through its Principal Chief Conservator of Forests, namely, Respondent No. 3, has come up with a rejoinder to the written statement filed on behalf of Respondent No. 1 (Col. Sandhu) also. In their rejoinder, Forest Department has mainly countered the stand taken by Respondent No. 1 that the land in question is not a "forest land" as according to the Forest Department, the nature and status of the land in question has to be seen in the light of the definition of the word "forest" as given by their Lordships of the Supreme Court in the order dated December 12, 1996 passed in Writ Petition (Civil) No. 202 of 1995. The lands notified under PLPA, 1900 are "forest areas" and the same have been included in the "Administrative Report" of the Forest Department since several decades as well as in the "list of Forest Areas" prepared by the expert committee set up under the directions of the Hon"ble Supreme Court; that notification under Section 35 of the 1927 Act is not a mandatory requirement or precondition for privately owned areas to be treated as "forest areas" particularly in view of its expanded definition given by the Hon"ble Supreme Court; that the areas notified under the PLPA, 1900 have been continuously under the effective control and management of the State Forest Department for years together and the aforementioned department regulates the "felling of trees", grazing of cattle besides implementing afforestation and soil conservation works and also controlling the illicit felling of trees in such areas; that the assertion of Col. Sandhu (Respondent No. 1) that the areas which are under cultivation/habitation are not "forest areas" or reliance placed by him upon an affidavit of Shri J.S. Kesar, IAS, the then Principal Secretary, Department of Forests filed by him in October, 1999 relating to request of Punjab Govt. for releasing land measuring more than 69,000 hectares notified under the PLPA, 1900 from the list of forest areas, is misconceived inasmuch as even if the averments made in the afore mentioned affidavit are taken to be correct, the area lying in village Karoran, namely, the disputed land in question to the extent of 244 acres 7 kanals 15 marlas under cultivation and 112 acres 0 kanal 13 marlas under habitation prior to 1996, is only liable to be released and not the entire area of 3700 acres of the village as wrongly asserted by Respondent No. 1 and thus only 9.6% of the total area of village Karoran can, at the best, be released; the assertion of Respondent No. 1 that the Central Govt. has agreed in principle with the proposal of the State Govt. for releasing the land under cultivation/habitation from the list of "forest areas", is also incorrect as the Central Empowered Committee had merely recommended that the I.A. No. 727 pending in the Hon"ble Supreme Court could be disposed of with the direction that the State of Punjab was at liberty to seek approval of the Central Govt. under Section 2 of the Forest (Conservation) Act and if such an application was moved, the Central Govt. may decide the same on merit; that even if recommendations of the Central Empowered Committee were accepted by the Hon"ble Supreme Court, the area closed under PLPA, 1900, which was under cultivation/habitation prior to October 25, 1980 alone can be released from the list of "forest areas"; that the stand taken in the affidavit filed by Shri J.S. Kesar, IAS was with respect to the genuine cultivators facing hardships on account of the application of provisions of 1980 Act on their cultivated fields and not for those who acquired huge chunk of land purely for commercial purposes; the contention that the land upon which FHR has been developed, was entirely agricultural land is also against the record; various

photographs as also the reports sufficiently prove that large tracks of mountainous area covered with trees were bulldozed to make the resort, the jamabandis (revenue record) placed on record by the SubDivisional Officer (Civil), Kharar along with his affidavit (Annexure R3/4) revealed that "Gair Mumkin Pahar" has been converted into golf course, buildings, roads, golf academy and tubewell house etc; that the exact extent of the nonagricultural mountainous area which has been bulldozed and levelled, can be determined only after proper demarcation and survey; Khasra No. 229 comprising 151 kanals 3 marlas was "Gair Mumkin Pahar" to the extent of 133 kanals 3 marlas and it is in this khasra number that the main gate, boundary wall and reception etc. of the FHR has been built; the total area of khasra No. 139 and 147/26 is 200 kanals and 150 kanals 19 marlas respectively which too were "Gair Mumkin Pahars" in the jamabandi of 1991/92 but as per the latest khasra girdawri, Dashmesh Education Society has converted substantial areas of these khasra numbers into golf course and its related features; that Respondent No. 1 himself applied for permission for diversion of 4.94 hectares i.e. about 12.5 acres of the "forest land" in the year 1998 in the prescribed proforma (Annexure R3/5) in which khasra numbers, including khasra No. 140/28 and 141/38 which were "Gair Mumkin Pahar", were mentioned; the aforementioned application was accompanied with a Marking List of 306 trees standing in the area which works out to approximately 60 trees per hectare which represents the normal stocking all over the Shivalik forest ranges; that the contention of Respondent No. 1 that only 120 acres 3 kanals and 11 marlas out of his total land holding of more than 376 acres have been notified under the PLPA, 1900 is also incorrect; in fact, the entire land of village Karoran shall remain included within the prohibitory orders issued under Sections 4 and 5 of the PLPA upto 2nd February, 2018 and 19th January, 2024 respectively; that the entire land belonging to Respondent No. 1 is covered under the PLPA inasmuch as 2874 acres of land of village Karoran is notified under Section 5 whereas, the remaining 826 acres is notified under Section 4 of the PLPA, out of which the land measuring 310 acres 1 kanal 4 marlas belonging to Respondent No. 1 or his companies, must of which is "Gair Mumkin Pahar", has been notified under Section 5 as per the details given in Annexure R3/14A. While contesting the allegation of discrimination made by Respondent No. 1 in relation to the development of "Naya Gaon Abadi" in the "forest land", it has been averred that the same is totally baseless since the entire upper catchment area with hilly terrain is susceptible to severe erosion and is the most critically affected area, therefore, it has been notified under the more stringent provision, namely, Section 5 of the PLPA whereas the lower catchment areas which form undulating slopes/nearly levelled areas are notified under Section 4 of the PLPA; that Naya Gaon township is located at the southernmost tip of Karoran village and has a topography which is identical to that of Chandigarh, and is without any significant problem of accelerated soil erosion and was never under actual forest cover; however, this is in total contrast to the situation relating to FHR as 83% of the total area of Respondent No. 1 is "Gair Mumkin Pahar" which is a "forest area" with an actual forest cover as is reflected from the photographs Annexure R3/15 depicting the upper water shed areas in village Karoran; that otherwise also the Naya Gaon abadi is quite old and finds mention in the survey of India map published in the year 1968 (Annexure R3/11)

and was thus in existence at the time of promulgation of the Forest (Conservation) Act, 1980; that the Forest Department had opposed the move of Punjab Housing Development Board in the year 1995 to establish a "New Chandigarh Township" and it was on account of stiff objection from the Forest Department only that another new township of Anandgarh, near Chandigarh, could not be set up in the year 2000. While highlighting the fact that crores of rupees have been spent by the Forest Department on various projects in this area, it has been pointed out whereas the State Govt. is spending huge chunks of money by taking loans from international bankers to protect and rehabilitate the degrading Shivalik hills without even recovering the expenditure so incurred from the private individuals/panchayats, Respondent No. 1 is bulldozing the very mountains and tearing down trees purely for commercial purposes; that the "silt detention dams" or "water harvesting structures" have been constructed in the area by the Forest Department with a primary purpose to trap water and silt in the hills itself and not to allow it to run into the fertile plains below and thus the small dams have been basically built to achieve the objective of Forest growth and not to damage them, apart from the fact that water harvesting structures have been constructed after taking requisite permission from the Central Govt. Regarding the stand taken by Respondent No. 1 that in the year 1996 he had applied for diversion of 4.94 hectares of forest land for non forest use under a misconception allegedly on account of wrong facts provided by the Forest Department, it has been pointed out that Respondent No. 1 once again applied for diversion of 2.25 hectares forest land for additional construction in the year 2002 vide application (Annexure R3/28) and thus the plea taken by Respondent No. 1 to this effect is totally false. Similarly, about the alleged demarcation carried out on June 4, 2001 by the revenue authorities, in conjunction with the Forest Department authorities as claimed by Respondent No. 1, it has been clarified that the application for Nishandehi was in respect of certain khasra numbers and not for the entire land owned by Respondent No. 1 and that in the so-called enquiry conducted by the Tehsildar, Kharar wherein he reported that there was no sign of forest land of any kind in the revenue record or on physical verification of the site, the Forest Department was never associated with and the enquiry seems to have been conducted by completely overlooking the revenue record itself which reveals that most of the land are "Gair Mumkin Pahar". Regarding the reliance placed upon by Respondent No. 1 on a report dated April 16, 2003 (Annexure R3/22) submitted by one Deputy Conservator of Forests suomoto, it has been explained that on receipt of various complaints against Respondent No. 1, the State Govt. appointed an officer in the rank of Deputy Conservator of Forests to enquire into these complaints despite opposition from the Principal Chief Conservator of Forest who wanted the appointment of a reasonably senior officer to conduct the enquiry; that the State Govt., however, did not withdraw the enquiry from the aforementioned officer who submitted his report directly to the Govt. on February 21, 2003 (Annexure R3/31) but later on suomoto reversed his own findings thereby practically exonerating Respondent No. 1 which appears to have been prepared at the behest of Respondent No. 1 only.

18. Another replication to the written statement of Respondent No. 1 has been filed by Respondent No. 4, namely, the Housing and Urban Development Department, Govt. of Punjab. It has been explained that certain basic amenities were provided in the residential areas which came to be developed in the periphery and vicinity of Chandigarh by different departments of the State Govt. purely on humanitarian considerations and that no statutory notification was ever issued regarding any decision to regularise the existing constructions in the periphery of Chandigarh. Regarding the alleged discrimination complained of by Respondent No. 1 in the matter of grant of licences/permission for change of land use, it has been averred that licences to certain applicants have been granted by the competent authority only in the areas which fall within the notified municipal limits in the periphery of Chandigarh and none of the two licences has been issued for an area notified under PLPA and/or the "forest land". Regarding the applications moved by Respondent No. 1 from 1996 onwards seeking requisite permission for setting up of the FHR, it has been pointed out that even the application dated August 21, 1998 moved by Respondent No. 1 was rejected by the then Principal Secretary of Housing and Urban Development on July 17, 2000.

19. The core question which requires to be adjudicated by us is as to whether or not the lands owned by Col. B.S. Sandhu (Respondent No. 1), his associates and the companies/societies set up by him, which are located in the revenue estate of village Karoran, are "forest land" ?

20. With a view to appreciate the aforementioned issue, it is necessary to understand the biological features and characteristics of the area popularly known as "Shivalik Hill area" in the State of Punjab. This area stretches out to about 250 kms. and lies in the north/northwest of the Chandigarh Ropar Garhshankar Hoshiarpur and Dasuya Road. The Shivalik hills are located parallel to the northeastern boundary of Punjab State bordering Himachal Pradesh. These hills have highly erodable soils and have been classified as one of the most fragile ecosystems in the country. Slopes in the Shivaliks are steep too rugged and the soils are unstable being composed of geologically young and unconsolidated boulders, conglomerates and sandstone. Heavy rains have eroded the weakly cemented soils of the upper catchment in the Shivalik hills and have formed steep knifeedge ridges drubbing sharply into ever deepening gullies. Rain water percolation and infiltration is low, as a result of which during the monsoons, seasonal torrents (locally called as choes) carry heavy sand and silt loads and gush downwards causing flood in the fertile plains below. The torrential waters, on leaving the hills, spread out in a fanlike fashion depositing their astoundingly heavy silt load of over 150 tons per hectare on the hill catchment. This deposition causes the stream beds to rise thereby forcing the torrents to seek a new course and subjecting further areas to flooding and sediment damage. Immediately below the upper catchment hill areas are undulating slopes which further southwards, merge with the lower areas. While the upper catchment areas comprise about one lac hectares (1000 square kilometres), the undulating slopes below the upper catchment areas comprise about 89,000 hectares.

21. The erosion of soil has been a subject matter of concern from last more than 100 years. The first effective step to tackle this problem was taken by promulgating the Punjab Land Preservation Act, 1900 (popularly known as PLPA, 1900). Section 2(a) of the Act defines "land" while clause (c) defines the expressions "tree", "timber", "forest products" and "cattle" having the same meaning as assigned in Section 2 of the Indian Forest Act, 1927. Subclause (g) defines the expression "erosion". Section 3 empowers the State Govt. to issue directions whenever it appears to it that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area. Section 4 empowers the State Govt. to regulate, restrict or prohibit, by general or special order, the activities like clearing, breaking up or cultivating of land but ordinarily under cultivation, quarrying of stones or burning of lime etc., the cutting of trees or timber or the collection or removal thereof, save for bona fide domestic or agricultural purpose, and the setting on fire of trees, timber or forest products. Similarly, Section 5 of the Act empowers the State Govt. to impose such like restrictions or prohibitions, even qua the land which is under cultivation at the time of publication of the notification under Section 3 of the Act. Section 5A further empowers the State Govt. to issue a general or special order regarding levelling, terracing, drainage and embanking of fields, construction of earthworks, drains for storm water and the training of streams etc. Under Section 8 of the Act, the State Govt. is competent to take measures to regulate the flow of water and/or the bed of choes, whereas Section 9 of the Act empowers to suspend or extinguish the private rights in an area which has been notified under Section 8 of the Act and that too without payment of any compensation, as provided in Section 11 of the Act. Section 19 of the Act further provides penalty for offences in the event of violation or non compliance of the directions issued under Sections 4, 5, 5A or 7A of the Act whereas Section 20 of the Act says that certain provisions of the Indian Forest Act, 1927 be read as part of this Act.

22. Mr. Harold Glower was a distinguished forest expert and environmentalist and headed the Forest Department, of Punjab as its Chief Conservator of Forests in preindependence era. In his book "EROSION IN THE PUNJAB, ITS CAUSES AND CURE", he successfully identified the causes of soil erosion particularly in Shivalik foothills. Appreciating the work of Mr. Harold Glower, the then Financial Commissioner, Development, Punjab in his "forward" to the book remarked :

"The protection of the soil has long been recognised as an object if not the main object of forest policy, but in this Province the rapid denudation of the Shivaliks and the disastrous effect on the plains below led to the enactment of the Choes Act some forty years ago to deal with the special conditions of that area. Progress, however, was slow until the fourth decade of the century when the subject began to receive increased attention, and the technical assistance of Forest Officers, among whom Messrs Hamilton and Gorrie deserve special mention was enclised not only in the Shivaliks but in other submontane areas also. Finally in 1939 a special soil conservation circle in the Forest Department was formed with the object of extending and intensifying protective measures. It is now time to take stock of the position. Sir Harold Glower who for four years has held the post of Chief

Conservator of Forests has spent the first few months of his retirement compiling this record of the work done, the methods employed and the results achieved. He has brought to his task an enthusiasm for the subject, a wealth of experience and a breadth of view which make his book more than an official textbook. He has studied the causes of erosion and emphasised its relation to social and economic developments, and he has shown how in different districts variations in human as well as physical factors demand variations in the treatment of the problem."

23. Mr. Harold Glower after an indepth study found that for many years de forestation was caused by several factors like an ever expanding population which endeavours to make a living by clearing the forest for cultivation; grazing hordes of animals in the forest and by lopping trees for fodder until all vegetation is so reduced that it no longer affords protection to the soil. While highlighting the effects or soil erosion, Harold Glower pointed out that it completely damages the fertility of arable fields, which is the cause of floods in Shivalik hills, reservoirs are silting up, canals are affected by the silt, acute shortage of water is caused, land slips and avalanches take place, forests are badly damaged, trees are uprooted causing rains in short, crops fell and crisis for fodder arises. While recommending cures for soil erosion, he laid great emphasis on "forest" including compulsory closures under the Indian Forest Act as can be noticed from the following passage of his book :

THE FOREST As we have seen the natural forest affords the best possible protection to the soil, but most of the forests are hopelessly overgrazed and mutilated by the villagers, with the result that they no longer protect the soil. The remedy is closure to grazing and all harmful practices. Where complete closure is not practical each part of the forest is closed in turn in order that it may be regenerated.

COMPULSORY CLOSURES Protected forests can be closed compulsorily under the Indian Forest Act, provided that a sufficient area is left for the satisfaction of the villagers rights. As much of the land in some districts is village waste, not notified as forest under the Indian Forest Act, special legislation was required. This led to the passing of the Land Preservation (Choes) Act of 1902, which was confined to the Shivalik hills and the land adjacent to them in the Hoshiarpur and Ambala districts. Under this Act compensation is given for the eviction of goats and other animals from the closed areas. The Choes Act was extended to Kangra in 1942, in order to permit of the eviction of goats and sheep from the catchment area from which the Punjab Hydroelectric scheme derived its water. In 1944 the Choes Act was amended, improved, and extended to the whole Punjab. The powers under the Act to close forests compulsorily have as yet only occasionally been used as the villagers, fearing compulsion, apply voluntarily for their forests to be closed. The Act is very necessary, as without it, Government would have no power to insist on necessary closures."

24. In the postindependence era also, the subject of soil erosion and de forestation was of great concern to the National Planning Committee, headed by the then Prime Minister

with several distinguished and eminent forest experts, environmentalists and/or agriculture scientists etc. as its members. Its sub committee headed by Shri K.T. Shah submitted a report expressing its concern towards the gravity of the problem that confronts not only the present generations but shall affect the posterity as well. We may profitably quote a part of the report of the subcommittee :

"12. The forest area is not sufficient in many provinces excepting Central Provinces, Madras, Sind. Forests should cover 20 per cent of the land area. They should be more uniformly distributed over the entire land. Village or minor roests (forests ?) should be established to secure this uniform distribution, trees of economic importance should be similarly planted wherever possible. These are necessary to conserve soil moisture, regulate run off, prevent erosion and rejuvenate soils. In drier or arid regions denuded areas and near inhabited localities, grass lands acquire great importance for purposes of soil conservation and regeneration as also of utilisation.

13. Uncontrolled grazing and shifting cultivation constitute by common consent the greatest menace to forests and soils in forest areas. Free grazing, abolition of grazing fees for cattle belonging to the province and other forms of uncontrolled grazing are the factors which have materially helped to increase the number seeking grazing in forests. The quality of the cattle, the quality and quantity of grazing, all have become miserable. Inadequate cover of forests and forest litter and of grass have led to the deterioration of the soil and to erosion on a vast scale. Forests in British India under state management are better looked after than private forests. Much valuable information is available for the former. Government forests have been in many provinces classified according to their suitability for timber, for fuel production or for pasture and maximum grazing incidence has been prescribed for each class. Conditions, however, are different in different provinces.

14. Private forests and forests in States (excepting perhaps some of the bigger States) are not so well managed. The area under private forests is not inconsiderable. In Bihar which may be an exceptional case, private forests are said to comprise about 6,00,000 sq. miles (the exact area is not known) compared to 1,700 sq. miles managed by government. Private forests offer great scope for improvement and should be placed under effective control and management. This is an urgent necessity, They should be looked upon as an important factor in relieving present maladjustments. Even in Government forests there are considerable possibilities of greater exploitation; but measures of conservation must have the first consideration.

15. Political divisions and want of coordination between the activities of the forest departments with those of other departments in matters of common interest stand in the way of effective protection and development of forests and control of floods and erosion. For example, in the Punjab, Government forests form only 5 per cent of the land area, and are mostly, in inaccessible hills. Rest of the hill lands are held either by the Indian States or are common lands subject to every abuse. Only 12 per cent of the major hill

catchments are under any control." (emphasis ours)

25. The subcommittee also examined the problem of soil erosion and reclamation in relation to individual States and in the context of Punjab, it observed :

PUNJAB : Attention to the appalling condition of the Shivalik foothills was called by forest officers as early as 1870, but it was not until 1902 that a Land Preservation Act was passed. This an excellent income from cut grass, and runoff conditions have been greatly improved in certain torrents. From 1934 onwards voluntary closures under this Act and also under Section 38 of the Indian Forest Act have been encouraged by village to village propaganda, and in 1939 cooperative staff were also employed to form reclamation societies, some of which have already done excellent work in making closures, encouraging watt bandi or contour ridging of fields, and reclaiming torrent ruined land.

An AntiErosion Circle formed in April, 1939 now has ten units under it doing some form of erosion control in Ambala, Gurgaon, Hoshiarpur, Kangra, Gurdaspur, Shahpur, Gujarat, Jhelum, Rawalpindi and Attock. This circle forms part of the Forest Department but actually a good half of the work in progress is in cultivated land. Good cooperation is being obtained from the Co operative Branch and that Agriculture Department and to a lesser extent from the revenue staff and the Veterinary Department.

Projects now in progress include :

(a) closure of grazing areas by bringing them voluntarily under closure by means of the Choes Act or Section 38 of the Indian Forest Act. About 80,000 acres of badly gullied Shivalik foothills have been closed in this way since 1934.

(b) village management of waste by means of "Choe" Reclamation Cooperative Societies which accept technical guidance of the forest staff. A special staff of cooperative Inspectors and SubInspectors is employed in Hoshiarpur and Ambala for this.

(c) consolidation of holdings and for partition of common land where this is advantageous.

(d) control of pine tapping for resin extraction by Forest Department in village lands to ensure that trees are not killed and ground is not exposed by heavy felling.

(e) active erosion control by means of contour trenching, gully plugging, terracing and watt bandi of fields, silt catching dams, tree plantations, etc.

(f) tree nurseries for growing and distributing suitable trees to villagers for plantation projects, hedgerow planting, fodder trees.

(g) education and propaganda, from village to village, and also amongst local officials. This includes attending local cattle fairs where erosion models are placed on view and leaflets distributed...."

26. The scope and import of provisions of the PLPA, 1900, a reference to which has already been made, is one of the seriously debated bone of contentions between the parties, therefore, Sections 2(a), (b), (c), (g), 3, 4, 5, 5A, 19 and 20, of the same are reproduced below :

Section 2(a) the expression "land" means land within any area preserved and protected or otherwise dealt with in this Act provided, and includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(b) the expression "choe" means a stream or torrent flowing through or from the Shivalik mountain range within Punjab;

(c) the expression "trees", "timber", "forestproduce" and "cattle" respectively shall have the meanings severally assigned thereto in Section 2 of the Indian Forest Act, 1927;

(g) the expression "erosion" includes the removal or displacement of earth, soil, stones or other materials by the action of wind or water.

3. Notification of areas Whenever it appears to the State Government that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly.

4. Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters In respect of areas notified under Section 3 generally or the whole or any part of any such area, the State Government may by general or special order temporarily regulate, restrict or prohibit

(a) the clearing or breaking up or cultivating of land nonarly (normally ?) under cultivation prior to the publication of the notification under Section 3;

(b) the quarrying of stones or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under Section 3;

(c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this subsection of any forestproduce other than grass, save for bona fide domestic or agricultural purposes of rightholder in such area;

(d) the setting on fire of trees, timber or forest produce;

(e) the admission, herding, pasturing or retention of sheep, goats or camels;

(f) the examination of forestproduce passing out of any such area; and

(g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom or to pasture sheep, goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons.

5. Power in certain cases, to regulate, restrict or prohibit, by special order, within notified areas, certain further matters In respect of any specified village or villages, or part or parts thereof comprised within the limits of any area notified under Section 3, the State Government may, by special order, temporarily regulate, restrict or prohibit

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

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

(c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this subsection, of any forest produce for any purposes; and

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

5A Power to require execution of works and taking of measurements. In respect of areas notified under Section 3 generally or the whole or any part of any such area, the State Government may, by general or special order direct

(a) the levelling, terracing, drainage and embanking of fields;

(b) the construction of earthworks in fields and ravines;

(c) the provision of drains for storm water;

(d) the protection of land against the action of wind or water;

(e) the training of streams; and

(f) the execution of such other works and the carrying out of such other measures as may, in the opinion of the State Government, be necessary for carrying out the purposes of this Act.

19. Penalty for offences. Any person who, within the limits of any area notified under Section 3, commits any breach of any regulation made, restriction or prohibition imposed, order passed or requisition made under Sections 4, 5, 5A or 7 or obstructs or resists in any way whatever the execution of acts or things done under Section 13, shall be

punished with imprisonment for a term which may extend to one month, or with a fine which may extend to one hundred rupees, or with both.

20. Application of provisions of the Indian Forest Act, 1927 The provisions of Sections 52, 54, 55, 56, 57, 58, 59, 60, 61 62, 64 (excluding the last sentence), 66, 67, 68 and 73 of the Indian Forest Act, 1927 shall, so far as applicable, be read as part of this Act, and for the purposes of those provisions, every offence punishable under Section 19 shall be deemed to be a "forest offence" and every officer employed in the management of any area notified under Section 3 or Section 8, as caretaker or otherwise, shall be deemed to be a Forest Officer."

27. Since provisions of the Indian Forest Act, 1927 have also been referred to and relied upon by the parties, certain provisions thereof, namely, Section 2(4), (6), (7), 3, 26, 29, 35 and 85A are also reproduced below :

2(4) "forestproduce" includes (a) the following whether found in, or brought from a forest or not, that is to say : timber, charcoal, caoutchouc, catechu, wood oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrobalans; and

(b) the following when found in, or brought from, a forest, that is to say : (i) trees and leaves, flowers and fruits, and all other parts of produce, not hereinbefore mentioned, of trees, (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants, (iii) wild animals and skins, tusks, horns, bones, silk cocoons, honey, and wax, and all other parts of produce of animals, and (iv) peat, surface oil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);

2(6) "timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;

2(7) "tree" includes palms, bomboos, stumps, brushwood canes.

3. Power to reserve forests. The State Government may constitute any forestland or wasteland which is the property of Government or over which the Government has proprietary rights, or to the whole or any part of the forestproduce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

26. Acts prohibits in such forests. Any person who

(a) makes any fresh clearing prohibited by Section 5 or

(b) sets fire to a reserved forest, or, in contravention of any rules made by the State Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest; or who, in a reserved forest

(c) kindles, keeps or carries any fire except at such seasons as the Forest Officer may notify in this behalf;

(d) trespasses or pastures cattles, or permits cattle to trespass;

(e) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(f) feels (fells ?), girdles, lops, taps, or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;

(g) quarries stone, burns lime or charcoal, or collects, subject to any manufacturing process, or removes, any forestproduce;

(h) clears or breaks up any land for cultivation or any other purpose;

(i) in contravention of any rules made in this behalf by the State Government, hunts, shoots, fishes, poisons water or sets traps or snares; or

(j) in any area in which the Elephants Preservation Act, 1879, is not in force, kills or catches elephants in contravention of any rules so made; shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damages done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit

(a) any act done by permission in writing of the Forest officer, or under any rule made by the State Government; or

(b) the exercise of any right continued under clause (c) of subsection (2) of Section 15, or created by grant or contract in writing made by or on behalf of the Government under Section 23.

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the State Government may notwithstanding that any penalty has been inflicted under this section direct that in such forest or any portion thereof the exercise of all rights of pasture or to forestproduce shall be suspended for such period as it thinks fit.

26. Protected forests. (1) The State Government may by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forestland or wasteland which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forestproduce of which the Government is entitled.

(2) The forestland and wastelands comprised in any such notification shall be called as "protected forest".

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forestland or wasteland comprised therein have been inquired into and recorded at a survey settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be correct until the contrary is proved :

Provided that, if, in the case of any forestland or wasteland, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

35. Protection of forests for special purposes. (1) The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or wasteland

(a) the breaking up or clearing of land for cultivation;

(b) the pasturing of cattle; or

(c) the firing or clearing of the vegetation; when such regulation or prohibition appears necessary for any of the following purposes :

(i) for protection against storms, winds, rolling stones, floods and avalanches;

(ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereof of sand, stones or gravel;

(iii) for the maintenance of a watersupply in springs, rivers and tanks;

(iv) for the protection of roads, bridges, railways and other lines of communication;

(v) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense, in or upon any forest or wasteland, such work as it thinks fit.

(3) No notification shall be made under subsection (1) nor shall any work be begun under subsection (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.

85A. Saving for rights of Central Government. Nothing in this Act shall authorize a Government of any State to make any order or do anything in relation to any property not

vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned.

28. We may also refer and produce Section 2 of the Forest (Conservation) Act, 1980 which has a direct bearing on the merits of this case and the same reads as follows :

"2. Restriction on the dereservation of forests or use of forest land for nonforest purpose. Notwithstanding any thing 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 for trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation. For the purposes of this section "nonforest 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, horticulture 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 checkposts, firelines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

29. We may also refer to the judgment of the Apex Court in T.N. Godavarman Thirumulkpad v. Union of India and others, (1997) 2 SCC 267 and since paragraphs 4 and 5 thereof have been relied upon by the learned Amicus Curiae and the State of Punjab as supplemental to the vacuum, if any, left in the Central Legislation, reproduced above, these two paragraphs are also reproduced hereinafter :

"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, 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 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." (emphasis applied)

26. While it is urged by the learned Amicus Curiae, Union of India as well as the State of Punjab that the lands comprising "Shivalik foothills" which have been notified under Section 3 and are "closed" through various notifications, namely, Annexures R3/6 to R3/14 issued under Sections 4 and 5 of the PLPA, the entire land consisting of 3700 acres of village Karoran, forming part of these Notification, is a "forest land" and has been so depicted in the Govt. records consistently maintained by the State Forest Department as well as in the revenue records wherein it is shown as "Gair Mumkin Pahar" till the year 1991/92, therefore, notwithstanding the absence of a notification under Section 35 of the 1927 Act, this entire land be held as "forest land" in view of the expanded definition of word "forest" and "forest land" given by their Lordships in *T.N. Godavarman* case (supra).

27. On the other hand, it has been contended by Shri Rajiv Atma Ram, learned Senior Counsel for Col. Sandhu (Respondent No. 1) and his societies/companies that merely because the lands were closed under the PLPA, 1900 does not render these lands to be "forest land" unless, the same being private lands, a formal notification under Section 35 of the 1927 Act was issued and concededly, no such notification has ever been issued, therefore, the lands in question of village Karoran cannot be treated to be "forest land". He has also disputed the contents of the Govt. record pertaining to the State Forest

Department on the plea that most of the land of village Karoran is now shown as "agricultural land" and not as "Gair Mumkin Pahar" in the revenue records.

28. The nature of land of village Karoran, as to whether it is a "forest land" or not, has to be examined in the context of statutory prohibition imposed under Section 2 of the Forest (Conservation) Act, 1980 against the use of a "forest land" for any "nonforest purpose". Explanation to Section 2 of 1980 Act defines the expression "nonforest purpose" which means the "breaking" up or "clearing" of any "forest land" or portion thereof for the purposes enumerated in the explanation itself. Importantly, Section 2(i) refers to the expression "reserved forest" a conotation which has been duly defined under the 1927 Act. Clause (II) of Section 2, however, refers to "forest land" which has not been defined either under the 1980 Act or in the 1927 Act. In our view, the word "any" prefixed before the word "forest land" is of widest amplitude and deserves liberal meaning, particularly in the light of the expanded meaning given to it by the Apex Court in T.N. Godavarman Thirumulkpad's case (supra), which in turn is a compilation of the views expressed by their Lordships in several judicial pronouncements starting from Ambika Query Works v. State of Gujarat, 1987(1) SCC 213. Following this dictum, we hold that any land which, in the past, has been utilized and/or earmarked for forestary purposes for a reasonable period of time, namely, for plantation, and/or natural and wild growth of trees, shrubs, afforestation, it constitutes "forest land" no matter whether or not the revenue record depicts the same.

33. In our quest to find out the nature of the land of village Karoran, the implications of Sections 4 and 5 of the PLPA are also required to be noticed. Under Section 4, the State Govt. is competent to impose restrictions mentioned in Clause A to G in relation to a "land not ordinarily under cultivation" prior to the publication of notification under Section 3. These restrictions include the "cutting of trees or timber", the "collection" or "removal" or subjection to any manufacturing process, the "setting on fire of trees", "timber" or "forest products", ....., the grant of permits to and/or the "clearing", "breaking" or "cultivation of such land". Similar "restrictions" or "prohibitory directions" can be issued by the State Govt. under Section 5 of the Act even in relation to any land not ordinarily under cultivation prior to the publication of the notification under Section 3. The legislative intentions are thus explicit and writ large. The aim and object of the PLPA 1900 is to "preserve the land" which is sought to be achieved by imposing all or any of the restrictions prescribed in Sections 4 and 5 thereof. Can there be any doubt that once the "cutting of trees" or "timber" from an uncultivated land has been prohibited, the tree, timber or forest products cannot be set on fire, domestic animals cannot enter upon it for herding and/or grazing and the private owners of such lands cannot cultivate or erect buildings therein, coupled with the fact that crores of rupees, either taken as "grants" from international agencies or taken from the consolidated fund of the State, are shown to have been spent on afforestation i.e., for plantation of lacs and lacs of trees by the State Forest Department, such land definitely fulfils all the ingredients of a "forest land". Significantly, Section 5 of the Act empowers the State Govt. to impose these restrictions

even upon the land which was "under cultivation" at the time of publication of the notification under Section 3 of the Act.

34. To find out as to whether powers under Sections 4 and 5 of the Act were actually invoked by the State Govt. or not, and if so invoked, qua which land ? we have perused all the notifications starting from dated 23.9.1914 (Annexure R3/6) to 20.1.2004 (Annexure R3/14). Each one of them prohibits the "cutting of trees" or "timber" and/or "collection" or "removal" thereof, "set on fire tree, timber or forest products", as also taking away of any tree, timber or forest products by inhabitants of towns/villages without permission, or grazing of domestic animals and "clearing" of "breaking" up for cultivation of the notified lands. We also find that the major chunk of the land of village Karoran is included in one or the other of these Notifications. Further, out of the total area of 3700 acres of village Karoran, 2874 acres was originally notified under Section 3 and restrictions were imposed under Section 4 of the Act on 23.9.1914, whose (which ?) period was extended from time to time including vide notification dated 11.10.1983. (Annexure R3/10) for a period of 10 years i.e. upto 10.10.1993. However, before the expiry of the period of 10 years of restrictions imposed under Section 4 qua 2874 acres of land of village Karoran vide notification dated 11.10.1983 (Annexure R3/10), there came the notification dated 10.9.1993 (Annexure R3/12) whereby restrictions under Section 5 were imposed qua the land measuring 1593 acres of village Karoran. Restrictions under Section 4 were imposed upon the remaining area of village Karoran vide notification bearing No. 39(13).FT.III86/23339 dated November, 1987 for a period of 15 years, namely, upto November, 2002, followed by notification dated 3.11.2003 (Annexure R3/13) whereby restrictions under Section 4 of the Act were further allowed to operate for a period of 15 years qua the remaining land of 826 acres of village Karoran. There is yet another notification dated 20.1.2004 (Annexure R3/14) imposing statutory restrictions under Section 5 of the Act qua various villages including upon the land measuring 1287 acres of village Karoran.

35. The State Forest Department has also produced details of the notifications issued under Section 5 in a tabulated form (Annexure R3/14A) viz the land of Col. Sandhu (Respondent No. 1) and his societies/companies/family members according to which his land measuring 310 acres 1 kanal and 4 marlas out of his total land of more than 378 acres is covered by the restrictions imposed under Section 5 of the Act. We, thus, find that the assertion made by the State Forest Department that out of total 3700 acres of land of village Karoran, 2874 acres is notified under Section 5 whereas balance 826 acres has been notified under Section 4 of the Act, is factually correct. It further leads to an irresistible conclusion that the entire land measuring more than 378 acres owned by Col. B.S. Sandhu (Respondent No. 1) and his family, companies/societies being a part and parcel of the total area of 3700 acres of village Karoran, is also notified under Sections 4 and 5 of the Act.

36. Having come to the aforementioned conclusion, we cannot help holding that in the eyes of law : (i) the land in question was no longer under cultivation after issuance of the

notification(s) under Section 5, even if it was under cultivation at the time when the same was notified under Section 3 of the Act; (ii) the land controlled by regulatory and prohibitory measures taken under Section 4 of the Act was in fact never under cultivation; (iii) "clearing", "breaking" up or "cultivation" of the land remained prohibited in terms of the notifications Annexures R3/6 to R3/14; (iv) No tree, or timber could be collected or removed or subjected to any manufacturing process nor the trees, timber or forest products could ever be set on fire; (v) the land in question has never been used for herding and/or grazing of domestic animals; and (vi) no tree, timber or forest products has been taken out of the land by the inhabitants of village Karoran or of the nearby vicinity without the grant of permission by the Forest Department of the Govt. of Punjab.

37. We fail to understand that if the aforementioned were the prohibitory and regulatory conditions imposed upon the land of village Karoran by the State Forest Department in exercise of its statutory powers under Sections 4 and 5 of PLPA, the violation of which amounts to an offence under Section 19 and is punishable in accordance with the provisions of the Indian Forest Act, 1927, as envisaged by Section 20 of the PLPA, how could Respondent No. 1 assert that the land was actually an "agricultural land" and/or was used for agricultural purposes ?

38. We, however, intend to deal with the contention of Respondent No. 1 regarding the nature of the land in question, namely, that it was an "agricultural land". Respondent No. 1 asserts that in the revenue records, most of the land has been shown as "agricultural land" whereas only a small part has been shown as "Gair Mumkin Pahar". It appears to us that the foundation of this bald assertion by Col. B.S. Sandhu (Respondent No. 1) lies in his successful attempt of making the authorities in the Revenue Department of the State of Punjab to dance to his tune. Surprisingly, in the revenue record of village Karoran, most of the land now owned by Col. B.S. Sandhu (Respondent No. 1) and his associates upto the jamabandi of the year 1991/92 are not only shown as the "Gair Mumkin Pahar", the same are also "owned" by "shamilat deh" (namely, for common purposes). While the lands owned by "shamilat deh" throughout the State of Punjab have been vested in the "gram panchayats" under the provisions of the Punjab Village Common Lands Act, 1961, the entries in relation to "ownership" of this land of village Karoran was suddenly changed on 28.6.1995 from "gram panchayat" to "shamilat deh" and on that very day, from "shamilat deh" to "Mushtarka Malkan" (jointly owned by the proprietors of the village). On 28.6.1995 itself, this huge chunk of land was proportionately "distributed" amongst land owners of the village and soon thereafter started the execution of the sale deeds of this land, one after the other, in favour of Col. B.S. Sandhu (Respondent No. 1) and his associated by the village proprietors. Not only this, the nature of the land (apart from ownership) was also changed in the year 1996 when entries in relation to most of the land were changed from "Gair Mumkin Pahar", to "agricultural land". This is how Col. B.S. Sandhu (Respondent No. 1) claims that most of the lands upon which FHR has been built and developed, was "agricultural land" except for a small portion of less than 13 acres which, according to him, was "Gair Mumkin

Pahar". On the other hand, the State Forest Department asserts that the lands were "Gair Mumkin Pahar" as per the jamabandi for the year 1991/92 and the sudden change in relation to the nature of land in the year 1996 is nothing but a small favour secured by Col. B.S. Sandhu (Respondent No. 1) by exerting pressure upon the officers of the Revenue Department of the State of Punjab.

39. How the land owned by the gram panchayat of village Karoran went into the hands of the proprietors for its onward transmission to Col. B.S. Sandhu (Respondent No. 1), is not an issue before us. However, the manner and the circumstances in which nature of this land was changed from "nonagricultural" to "agricultural land", is not only incontrovertible and ex facie glaring, it also appears that the officers of the Revenue Department of State of Punjab did not act bona fide and changed the entries at the behest of Col. B.S. Sandhu (Respondent No. 1) for the obvious reason that he was eyeing this big chunk of land for his personal gains. During the course of hearing, a feeble attempt was made by Mrs. Charu Tuli, learned Senior Deputy Advocate General, Punjab to persuade us to believe that now having come to know the manner in which entries in the revenue record regarding nature of the land were changed, disciplinary action will be taken against the concerned revenue officials. This is, however, not the isolated preemptory step taken by authorities in the Govt. of Punjab for extending their helping hand to Col. B.S. Sandhu (Respondent No. 1) as explained in the later part of this judgment.

40. Having discarded the latest entries in the revenue record, which appear to have been changed to help out Col. B.S. Sandhu (Respondent No. 1), we concentrate upon the other "government records" to find out as to whether or not the area in question has been recorded as "forest" in such records. While explaining and expanding the scope of words "forest" and "forest land" vide judgment dated December 12, 1996 passed in T.N. Godavarman's case, their Lordships also issued certain general directions to all the States including direction Nos. 5, 8 and 9, which read as follows :

"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.

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."

In compliance of these directions, the State of Punjab constituted an Expert Committee to identify the "forest areas". The Expert Committee in its report dated February 19, 1997 (Annexure IV) identified all the "forest areas" including those owned by private land owners. As per this report, the entire 3700 acres land of village Karoran was identified and included in the "forest area". The report of the Expert Committee was placed on record of the Hon'ble Supreme Court by the Govt. of Punjab along with an affidavit dated 21.2.1997 (Annexure V) of Ms. Ravneet Kaur, IAS, the then Financial Commissioner and Secretary of Forest Department. In the "Management Plan of Private Forest Areas" of District Ropar for the period from 1997 to June, 2007 prepared by the Forest Department, the land of village Karoran is included for taking steps like plantation of different variety of trees, bamboo harvesting etc. This management plan of private forest areas was sent to the Ministry of Environment and Forest, Govt. of India for its approval and the same was accorded vide a communication dated December 14, 1998 (Annexure VII) by imposing, inter alia, the condition that "no deviation from the prescription of the management plan shall be allowed without prior approval of the Central Govt."

41. There exists thus overwhelming material comprising of govt. records of the State Forest Department which conclusively establish that the entire land of village Karoran forms part of the "forest area" of the State of Punjab. It may be mentioned here that the "management" and "control" of the lands upon which prohibitory and restrictive regulatory measures in terms of notifications issued under Section 4 and 5 of PLPA have been imposed, is also vested in the State Forest Department, therefore, for the purpose of identifying as to whether there exist a "forest" or not and whether a particular area is a "forest land" or not, it is the records of the State Forest Department alone which are most reliable for having been prepared by the subject experts and not by the Revenue Department, which is known as the "record of rights" under the Punjab Land Revenue Act, 1887 and primarily contain the description of the ownership of a land and the person in possession along with his status and/or the nature of crops sown on the land.

42. It has been strenuously argued by the learned Amicus Curiae as also on behalf of the State of Punjab that Col. B.S. Sandhu (Respondent No. 1), in fact, is estopped by his own act and conduct from making a submission that the land in question is not a "forest land". In this regard, reliance has been placed upon the application (Annexure R3/5) made by Col. B.S. Sandhu (Respondent No. 1) on 8.12.1997, on behalf of Dashmesh Education Society, whereby permission was sought from the Ministry of Environment and Forests, Govt. of India, in exercise of its powers under Section 2 of the Forest (Conservation) Act, 1980, for diversion of 4.94 hectares of "forest land" for nonforest purposes. Along with this application, Col. B.S. Sandhu (Respondent No. 1) also attached the "Marking List" prepared by the State Forest (Department) which was also signed by him depicting that 306 trees were standing live upon this land measuring 4.94 hectares and thus admitted the land in question to be a "forest land". The aforesaid application was forwarded by the Govt. of Punjab along with its recommendations. However, the Ministry of Environment

and Forests, Govt. of India, vide its communication dated October 30, 1998 (Annexure R3/10) not only rejected the proposal of the State Govt. but also issued directions to the State Govt. to fix responsibility and take necessary action against the defaulting officials for violating provisions of the Forest (Conservation) Act, 1980.

It is, however, a different matter altogether that Col. B.S. Sandhu (Respondent No. 1), despite the aforesaid rejection of his request, started constructing the mansion named as FHR in brazen violation of the Forest Laws. He, however, made yet another unsuccessful attempt to seek approval of the Ministry of Environment and Forests, Union of India for diversion of the "forest land" for nonforest purposes when in April/May, 2003, an application (Annexure R3/28) was moved, this time by WWICS Resorts Pvt. Ltd., namely Respondent No. 11 for diversion of 2.25 hectares of land for nonforest purposes.

43. In order to wriggle out of his own admission to the extent that some of the land owned by him or his companies is a "forest land", Col. B.S. Sandhu (Respondent No. 1) asserts that he was misled by the officials of the State Forest Department to believe that the land in question was "forest land", therefore, had applied to the Ministry of Environment and Forests, Govt. of India in the year 1998. He is, however, tight lipped about his application moved in the year 2003, though by that time he had faced the prosecution launched by the Forest Department. In yet another defence, Col. Sandhu pleads that only a part of the land, namely the one recorded as "Gair Mumkin Pahar" was taken by him as the "forest land" for seeking diversion thereof for non forest purposes and the remaining major chunk of his land is agricultural land only.

44. For the plea taken by Col. Sandhu referred to above, it has become imperative for us to briefly deal with the issue of alleged violation of the Punjab Land Reforms Act, 1972 by him and his associates by keeping more lands than the prescribed permissible area. Upon a notice issued to Col. B.S. Sandhu (Respondent No. 1) and his associates by the SDMCumCollector (Agrarian), Kharar, as to why their permissible area be not determined and rest of the lands, if any, owned by them be declared surplus to be vested with the State Govt., Col. B.S. Sandhu (Respondent No. 1) in his two replies dated February 13, 2004 and February 16, 2004, which he filed before the SDMCumCollector (Agrarian), Kharar, asserted that out of the total land measuring 378 acres 12 marlas owned in village Karoran by his societies/companies, 309 acres 2 kanals and 14 marlas land was "Gair Mumkin Mountains (Pahar)" whereas rest of the 68 acres 5 kanals 18 marla was "barani". According to the learned Amicus Curiae, a totally reverse stand, in relation to the nature of the land, was taken by Col. B.S. Sandhu (Respondent No. 1) before the Collector (Agrarian) only because of the fact that land described as "Gair Mumkin Mountains" does not fall within the definition of "land" under the Land Reforms Act, 1972 and thus he wanted to save this land from the rigorous of the provisions of the said Act. This was, however, a correct statement, asserts the learned Amicus Curiae, regarding the nature of lands in question as most of the lands owned by him and his associates are actually "Gair Mumkin Mountains". On a perusal of the order dated February 17, 2004 (Annexure RIII) attached with the affidavit of SDMcumCollector (Agrarian), Kharar, we

find that the contention of the learned Amicus Curiae is absolutely correct and thus Col. B.S. Sandhu (Respondent No. 1) has been taking totally selfcontradictory, inconsistent and mutually opposite stands before one or the other Forum in relation to the nature of lands owned by him and/or his associates. Having admitted that about 310 acres of land owned by them in village Karoran is a "Gair Mumkin Pahar (Mountain)", it is too late for Col. B.S. Sandhu (Respondent No. 1) to contend that most of the lands owned by him/his associates are actually "agricultural land".

44. In all fairness to Shri Rajiv Atma Ram, learned Senior Counsel representing Col. B.S. Sandhu (Respondent No. 1) and his associates, he vehemently contends that the lands owned by Respondent No. 1 and his associates are not forest land and are unculturable and/or agricultural lands. In support of his contention, he has placed reliance upon (i) Annexure VIII attached to the written statement of the State Forest Department which is the copy of an affidavit of Shri Kesar, IAS, the then Financial Commissioner and Secretary, Department of Forests and Wildlife Preservation, Govt. of Punjab which he had filed before the Apex Court in October, 1999 in Writ Petition (Civil) No. 202 of 1995 (Environment Awareness Forum v. State of J&K and others); (ii) a report dated February 21, 2003 (Annexure R3/31) of the Deputy Conservator of Forests (Planning and Investigation, Hoshiarpur)cumInquiry Officer; (iii) another report dated April 16, 2003 (Annexure R3/32) of the same officer sent to the State Govt.; (iv) D.O. No. 1073 dated July 4, 2000 of the then Financial Commissioner and Secretary, Forest and Wildlife Preservation, Punjab, addressed to Shri C.P. Oberio, Inspector General of Forests and Special Secretary, Ministry of Environment and Forests, Union of India; and (v) memo No. 7316 dated 12.11.2003 (Annexure R3/33) addressed by the Chief Conservator of Forests (Hills), Punjab to the Principal Chief Conservator of Forests, Punjab. According to Shri Rajiv Atma Ram, the above mentioned official documents of the State of Punjab completely demolish the stand now sought to be taken by the authorities of the State Forest Department as these documents proved beyond any manner of doubt that the land in question or other similarly situated lands have not been treated as "forest lands" by the State of Punjab itself.

40. To appreciate the submission of Shri Rajiv Atma Ram, we deem it appropriate to make a brief reference to these documents. In the affidavit (Annexure VIII) of Shri J.S. Kesar, referred to above, he has stated that the "list of forest areas" which was sent by the State of Punjab along with its previous affidavits dated 30.10.1996, 21.10.1997 and 21.9.1998 in compliance with the directions issued by the Hon"ble Supreme Court in T.V. Govardhan"s case (supra), also included the "areas closed under the PLPA, 1900" though these areas are owned by individuals or communities but the Forest Department had "regulatory control" over the same as per rules and regulations notified under Section 4 and 5 of PLPA, 1900; that the areas closed under Sections 4 and 5 of PLPA are broadly of two categories, namely, (a) areas having some shrub or forest cover; (b) areas under cultivation/habitation; that all the areas closed under the PLPA were included as "forest areas" in the previous affidavits "regardless of the fact whether they actually bore any

forest cover or were under cultivation/habitation"; that the expert committee in its report (AnnexureG) attached with the affidavit dated 21.10.1997 filed before the apex Court, also included those areas as "forest areas" which were cultivated fields and habitations and due to inclusion of these areas into "forest areas", the owners have started experiencing severe hardships as they cannot construct "small residential buildings, cattle sheds, tubewell houses", even in their cultivated fields without obtaining prior approval from the Govt. of India; that "numerous representations" are being received by Govt. from land owners facing the above hardships and the State Govt. having examined the issue afresh, felt that these areas were under cultivation/habitation and were included as "forest areas" only upon "the technicality that they were shown in the annual administrative reports of the Forest Department", therefore, the State Govt. had decided in principal to exclude these areas from the "list of forest areas".

41. From the aforementioned affidavit, it is clearly discernible that out of the two types of lands notified under Section 4 or 5 of the PLPA, even as per the changed stand of the State Govt., the lands which were under cultivation and/or habitation owned by "small land owners" were decided to be excluded from the "list of forest areas." As per this affidavit, a little more than 69,000 hectares area was actually under cultivation or habitation but was included in the "list of forest areas". A positive stand has been taken by the State Forest Department that even if the contents of this affidavit are taken to be true, yet a small patch of land measuring 244 acres 7 kanals and 5 marlas under cultivation and 112 acres 0 kanal and 13 marlas under habitation of village Karoran is liable to be deleted/released from the "list of forest areas". It has been emphasised that only 9.6% of the total area of village Karoran gets released from the "list of forest areas". Needless to say that Col. B.S. Sandhu (Respondent No. 1) and his associates are hardly the beneficiaries of this changed stand. Thus, no advantage could have been taken by Col. B.S. Sandhu (Respondent No. 1) and/or his associates of the affidavit of Shri J.S. Kesar. Significantly, despite our repeated asking, the State of Punjab could not produce even a single representation/application of a land owner complaining hardship after the submission of the "list of forest areas" by it before the Hon"ble Supreme Court in February, 1997 as claimed in the affidavit in question. Who was instrumental behind this affidavit ? is still a mystery.

42. Coming to the two inquiry reports dated 12.12.2003 and April 16, 2003 (Annexures R3/31 and R3/32 respectively) submitted by the same officer, we are surprised and shocked to find that an officer who submitted a report in the end of February, 2003 by concluding that Col. B.S. Sandhu (Respondent No. 1) has indulged in "breaking up of lands", "loping" and "cutting of trees" and "breaking up of mountainous tops" on mass scale, which might have included roughly 300 trees/shrubs per acre, suddenly changed his views and suomoto submitted another report on April 16, 2003 (Annexure R3/32) in which he almost exonerated Col. B.S. Sandhu (Respondent No. 1) of the allegations which he had held to be proved true in his previous report. Hardly any reliance can be placed upon such reports. The sudden change in the stand of the inquiry officer lends

support to the prima facie inference that the entire State apparatus, as and when the occasion arose, danced to the tune of Col. B.S. Sandhu (Respondent No. 1).

49. So far as the D.O. letter dated July 4, 2000 of the then Financial Commissioner and Secretary, Department of Forests and Wildlife Preservation, Govt. of Punjab addressed to the then Inspector General of Forests and Special Secretary, Ministry of Environment and Forests. Union of India is concerned, it is a mere repetition of the contents of affidavit of Shri J.S. Kesar, IAS which has already been dealt with in detail.

The memo dated November 12, 2003 (Annexure R3/33) addressed by the Chief Conservator of Forests (Hills), Punjab to the Principal Chief Conservator of Forests, Punjab, in our view, is an eye opener as to how the govt. authorities succumb and appear to have surrendered under the pressure exerted by Col. B.S. Sandhu (Respondent No. 1). There is no exaggeration in saying that with the aid and active connivance of the police authorities of the State, Col. B.S. Sandhu (Respondent No. 1) appears to have established his own kingdom where his dictatorial whims are the laws which are abhorrent to a civilized society, vividly reminding us the horrifying ordeals experienced by several freedom fighters who fought for the nation in preindependence era. If contents of this letter are true, then Col. B.S. Sandhu (Respondent No. 1) refused to permit the Revenue, Civil and Forest authorities of the State Government even to enter the premises for carrying out an inspection in relation to the violations allegedly committed by him against provisions of the Forest Laws. The hapless officer recommended to the Principal Chief Conservator of Forests, inter alia, that the permission of the State Govt. may be sought for filing of a Writ Petition in this High Court for taking punitive action/exemplary costs on account of damages caused by Col. B.S. Sandhu (Respondent No. 1).

None of the aforementioned documents, thus, supports the cause of Col. B.S. Sandhu (Respondent No. 1).

50. Shri Rajiv Atma Ram, learned Senior Counsel representing Col. B.S. Sandhu (Respondent No. 1) and his associates has then placed reliance upon the "Recommendations of the Central Empowered Committee" constituted by the Apex Court in I.A. No. 227 in Writ Petition (Civil) No. 202 of 1995 (Annexure IX) as according to him, the affidavit of Shri J.S. Kesar (Annexure VIII) followed by D.O. letter dated 4.7.2000, reference to which has already been made, and in view of the changed stand taken by the State of Punjab for exclusion of over 69,000 hectares of land from the "list of forest areas", the matter was referred to the Central Empowered Committee for making appropriate recommendations, which in turn "agreed" with the same leaving it open for the State of Punjab to seek approval of the Central Govt. under Section 2 of the Conservation Act, 1980. To appreciate this submission, we may profitably reproduce the relevant part of the opinion given by the Central Empowered Committee, which reads as under :

"8. After examining the submission made by the applicant, affidavit filed by the State Government of Punjab and the No Objection given by MOEF, the CEC is of the view that deletion of areas, which were under cultivation/habitation prior to 25.10.1980 i.e. enactment of the FC Act, would not be against the spirit of the FC Act, and this Hon"ble Court"s order dated 12.12.1996, if such areas were included in the "list of forest areas" on technical reasons alone. However, the areas closed under Section 4 of the PLPA are recorded as "forest" in the Forest Department"s records for the last 4050 years. This Hon"ble Court by order dated 12.12.1996 has held that areas recorded as "forest" in Government records are forest for the purpose of the Section 2 of the FC Act. It would, therefore, be necessary to obtain prior approval of the Central Government under Section 2 of the FC Act, for deleting such areas from the "list of the forest areas" after following the procedure as laid down in the Forest (Conservation) Rules, 1981 and the guidelines issued by the Central Government for implementation of the said Act. Irrespective of the merits of the case it would not be appropriate to allow deletion of such area from the "list of forest area" without following the prescribed procedure and provisions of the Forest (Conservation) Act.

9. The CEC, therefore, recommends that the IA No. 727 may be disposed of with the clarification that the applicants/State of Punjab are at liberty to seek approval of the Central Government under Section 2 of the Forest (Conservation) Act for deletion of their land from the "list of the forest area". The Central Government may decide the application on merit after following prescribed procedure in accordance with the Forest (Conservation) Act, Forest (Conservation) Rules, 1981 and the relevant guidelines."

51. We have been informed that the matter in relation to several issues of great significance is still pending before the Hon"ble Supreme Court and the Central Govt. has also not taken any decision on the request made by the State of Punjab and/or the above quoted opinion of the Central Empowered Committee. We are, however, not impressed by the aforesaid stand taken by Shri Rajiv Atma Ram. The Central Empowered Committee has consciously and expressly examined the issue regarding deletion of areas "which were under cultivation/habitation prior to 25.10.1980, namely, before the enactment of the Conservation Act, 1980". It has, therefore, made innocuous recommendations that it is for the Central Govt. to take an appropriate decision under Section 2 of 1980 Act as to whether the land under cultivation/habitation can be deleted from the "list of forest areas". In our view, the cut off date in relation to the lands which were under cultivation/habitation prior to 25.10.1980 goes to the root of the matter. It has already been pointed out that in the jamabandi upto the year 1991/92, the lands have been shown as "Gair Mumkin Pahar", namely, uncultivable lands, therefore, even if the recommendations of the Central Empowered Committee are accepted in toto by the Central Govt. in exercise of its powers under Section 2 of the Act, Col. B.S. Sandhu (Respondent No. 1) and his associates, can have no advantage of exclusion of any piece of land of village Karoran from the "list of forest areas".

52. In our considered view, irrespective of the nonadjudication of legal effect of notifications issued under Section 4 and/or 5 of the PLPA, the controversy with which we are confronted with, stands directly answered by the Hon"ble Apex Court in a recent judgment delivered in I.A. No. 1785 of 2001 in I.A. No. 22 and Writ Petition (Civil) No. 4677 of 1985 M.C. Mehta v. Union of India, 2004(2) RCR(Civil) 760 (SC) : JT 2004 SC 214. One of the issues raised therein was as to whether the areas in Aravali hills of Haryana State, notified under Sections 3, 4 and 5 of the PLPA which were being treated and shown as "forest areas" by the State Forest Department and were also included in the "list of forest areas" filed in T.V. Govardhan"s case (supra), were to be treated as "forest" or not for the purposes of Conservation Act, 1980 ? Their Lordships, after explaining the effect and implications of Sections 3, 4 and 5 of the PLPA and after taking notice of the fact that the State of Haryana had actually issued the Notifications under these provisions of the PLPA, have held as follows :

"80. It cannot be disputed that the State Forest Department has been treating and showing the aforesaid areas as `forest". The contention urged on behalf of the State government is that it was on account of erroneous view point of Forest Department. In fact and law, such area is not `forest" and mining is not prohibited and, therefore, the question of seeking permission under Section 2 of the FC Act does not arise.

81. In the instant case, it is not necessary to decide the legal effect of issue of the notification under Section 4 and/or 5 of the Act. Not only in their record the area has been shown as forest but the affidavits have been filed in this Court stating the area to be `forest". In T.N. Godavarman Thirumulkpad v. Union of India and others, (1997) 2 SCC 267, this Court held that the term `forest" is to be understood in the dictionary sense and also that any area regarded as a forest in government record irrespective of ownership would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval for the Central Government for diversion of such land for nonforestry purpose....."

"In the present case, for the purposes of the FC Act, these areas shall be treated as forest and for use of it for nonforestry purpose, it would be necessary to comply with the provisions of the FC Act." (emphasis applied)

53. For the reasons aforementioned and relying upon the expression "forest" and "forest lands" as defined by their Lordships in T.N. Godavarman"s case (supra) and the principles laid down in M.C. Mehta"s case (supra), we hold that the entire land of village Karoran which has been notified under Section 3 of the PLPA, 1900 and is regulated by the prohibitory directions notified under Sections 4 and 5 thereof, is a "forest land" and attract the provisions of Section 2 of the Conservation Act, 1980, if sought to be used for "non forest purposes".

54. Then comes yet another alternative submission on behalf of Col. B.S. Sandhu that there is no violation of the provisions of Section 2 of the Conservation Act. It has been argued that development of a "golf course" with minimal constructions over a huge chunk of land is an ecofriendly project and it supplements and legislative object behind 1980 Act, namely, to prevent deforestation which may cause ecological imbalance and/or lead to environmental disasters. Great emphasis has been laid on behalf of Col. B.S. Sandhu (Respondent No. 1) that in the golf course developed by him, lacs of trees and shrubs have been planted, green grass of highly superior quality has been grown and if one takes a look over the photographs relied upon by them, one cannot resist the temptation of enjoying this luxury spot which is full of lush green grounds. It is, thus, contended that the development of golf course is not for a nonforest purpose in terms of Section 2 of the 1980 Act. Reliance has also been placed upon an order dated March 4, 1997 passed by their Lordships of the Supreme Court in I.A. No. 614 of 1996 in C.As. No. 35775 of 1977 (Manjushri Plantations Ltd. and others v. State of Tamil Nadu and others), 1997(3) SCC 316. We may mention here that the aforesaid order was passed by their Lordships while issuing certain further directions in T.N. Godavarman's case (supra) whereby unlicensed saw mills and plywood industries etc. were ordered to be closed forthwith in some States apart from other directions to stop deforestation. We may, however, reproduce the directions relied upon by Shri Rajiv Atma Ram, which are to the following effect :

"3. The Golf Course at Kodaikanal and Udagamandalam are permitted to function subject to the condition that the District Collector and the District Forests Officer of the area concerned are associated with the functioning of the same till approval of the Government of India is received."

In relation to the order passed by their Lordships and reproduced above, we are informed by the learned Amicus Curiae (a fact which has not been controverted by anyone) that the golf course at Kodaikanal and Udgamangalam were developed much prior to the date when Conservation Act, 1980 came into force. The directions issued by their Lordships "permitting them to function", of course, subject to certain conditions, are to be appreciated in this backdrop.

55. As far as the contention of Shri Rajiv Atma Ram, learned Senior Counsel, that golf course is an ecofriendly project, we are of the view that the expression "nonforest purpose" mentioned in Section 2 of the 1980 Act has already been the subject matter of interpretation in various judgments. The "forest land", with the simplest connotation, has to be understood to be a land covered with natural or planted wild trees and/or a direct and ancillary object thereto. Going by the ordinarily accepted meaning of the word "forest", it is a composition of variety of trees with highest longevity.

On the other hand, in the very creation of a golf course, there lies a commercial venture. The ornamental trees are planted in a Golf Course on the boundaries of different holes and/or the surrounding areas merely for an aesthetic look. The shrubs are also planted as a hightech of the game and not for maintaining the natural character of the land. Even the

grass, its colours and size is devoted to the game. "Cutting of grass", "lopping of trees" and "sizing of shrubs" are the regular features of a Golf Course to maintain its scenic beauty. Huge quantities of water are consumed for maintaining the greenery over the course. Reverting to the facts of the present case it cannot be overlooked that the project has come up at the cost of a natural and/or wild forest. Not only this, Col. B.S. Sandhu (Respondent No. 1) has constructed a mansion, which, as per the site plan attached, consists of palatial buildings, more than one restaurant, bar, sitting areas, offices, residential quarters, huge entrance gate apart from a fourwall covering the entire area. It has also come on the record that Respondent No. 1 has in fact advertised on his website the residential houses exclusively meant for non resident Indians who are allegedly lured to pay in US/Canadian Dollars and other foreign currencies to enjoy the luxury of "American style houses" which would be offered within a timebound manner. The material on record indicates that amongst the regular features of activities include organising hundreds of lavish private parties, scores of vehicles are parked inside the complex every day, the restaurant, and bar caters to hundreds of customers who are regular visitors of the club and the Resort is nothing less than a township of elites. The massive constructions are visible in the photographs on record. Not only this, the FHR has issued repeated advertisements proclaiming that "Forest Hills Resort is a much bigger plan to making it more than a multifacility destination. Things coming up would be a multifacility destination. Things coming up would be a Resort Hotel, Ridgeline Bungalows, Valley Bungalows and Cultural Village host of other activities", we are afraid how on earth can the Resort in question, as a composite unit, be held to be an ecofriendly project. Needless to say that the grassy area of a golf course cannot be separated and/or utilized without the aid and support of the massive buildings which have been built unauthorisedly and in violation of the Forest Laws as well as Periphery Act. We, therefore, reject the submission of Shri Rajiv Atma Ram that the "golf course in question" is an ecofriendly project.

56. It has been then contended that it is not Col. B.S. Sandhu (Respondent No. 1) alone who has developed the FHR and raised constructions in alleged violation of the provisions of the Forest Laws. Reliance has been placed upon the averments made in the written statement in relation to the haphazard and unregulated constructions of thousands of residential houses which have come up in the area of several villages including Village Karoran, now popularly known as Naya Gaon. According to him, the Govt. of Punjab itself had issued notifications to regularise these constructions. Reference has also been made to the licence granted by the Govt. of Punjab to certain private projects falling within the purview of the Periphery Control Act. With regard to the violation of the Forest Laws also, an argument has been raised that not only several Sectors in Chandigarh, even the official buildings including the High Court, particularly the ongoing construction in the High Court complex are also in violation of the notification dated February 3, 1961 whereby the area which covers "northern Sectors" of Chandigarh including Sector 1 where the Secretariat, Vidhan Sabha and High Court buildings have been erected, was declared to be reserved forest", of the Forest Laws. We are, however, not impressed by this

submission for more than one reason. Respondent No. 1 or his associates cannot be heard complaining discrimination for not permitting the violation of laws. Shelter behind Article 14 of the Constitution of India can be taken for the enforcement and/or protection of a fundamental and/or legal right. There exists no right to act illegally or unlawfully. So far as grant of licence/permission to certain other private projects is concerned, we have already held that the permission was granted in those cases by the competent authority in exercise of its powers under the Periphery Act and no violation of the "Forest Laws" was involved in those cases. Reference to the notification dated February 3, 1961, upon which reliance has been placed by Col. B.S. Sandhu (Respondent No. 1), appears to have been made only to embarrass the Court. Respondent No. 1 has compelled us to deal with, of course briefly, that no violation of "environmental and Forest Laws" has been committed in erecting the High Court building or by the ongoing constructions. Much before the aforesaid notification was issued, the Central Govt. had acquired the land for establishing the new township of Chandigarh. The land acquired was for Sectors No. 1 to 27. The development project also stood finalised and large scale constructions including the main part of the High Court building had been built and inaugurated on March 19, 1955, i.e., much before 3rd February, 1961. Where does the question of raising these constructions in a "reserved forest" arise ? Col. B.S. Sandhu (Respondent No. 1) himself has placed on record a map of the Survey of India. We find from the same that the area where Chandigarh township has been developed, did not have a "forest cover" and it was much after the township had taken its shape that the left out areas adjoining the northern Sectors owned by the Govt. were declared to be "forest areas". Each and every construction of the public buildings has been carried out by the Central Govt. and/or with its approval much prior to the enactment of Conservation Act, 1980. We, thus, find no merit in the "suggestio falsi" by Col. B.S. Sandhu (Respondent No. 1) in relation to the violation of the environmental and Forest Laws by constructing the public buildings, referred to in his affidavit.

57. "Rome was not built in a day" so was the FHR. It appears from the record that notwithstanding the rejection of his request by Govt. of India for using the land in question for "nonforest purposes" on October 30, 1999 (Annexure R3/10), Col. B.S. Sandhu in a totally belligerent and hostile manner, started the construction work in the year 19992000 itself and continued to bulldoze both "mountains" and "laws" till a restraint order against further constructions was passed by a learned Judge of this Court on February 14, 2003 in Regular Second Appeal No. 4345 of 2002 (State of Punjab v. Dashmesh Education Society). Not only this, "levelling" of the area, cutting of trees and uprooting of shrubs etc. was started way back in the year 199697 for which some criminal complaints were lodged against him by the State Forest Department. However, the fact remains that mountainous tops were bulldozed, artificial dams were created, trees were uprooted, roads and underground pipes were laid and massive constructions continued day and night. What vanished from the scene were the "Forest" and "forest lands", and what surfaced was the FHR. Who were the persons at the helm of affairs, who facilitated Col. Sandhu to act like a bull in a China shop and/or chose to see the other way when he was violating

provisions of the laws one after the other right under their nose ? The Central Govt. also asked the State Govt. to take disciplinary action against those erring officials who were guilty of being negligent in permitting Col. B.S. Sandhu (Respondent No. 1) to continue "large scale violations of the environmental and Forest Laws". Admittedly, no such action has been taken by the State Govt. till date. The fact, however, remains that nothing could deter Col. B.S. Sandhu (Respondent No. 1) who was presumably so confident of his mighty powers that he started raising several constructions including : (i) fencing of the entire land; (ii) boring of three deep tube wells; (iii) carrying out necessary earthwork; (iv) installation of telephone and electricity connections; (v) boundary walls; (vi) tourist huts; (vii) offices for the staff; (viii) restaurants along with kitchens; (ix) road network; (x) electrical and telecommunication layouts; (xi) water tanks and water supply lines; and (xii) gazebo and lawns for parties. It is important to mention here that he filed a Civil Suit No. 65 of 2001 only on behalf of Dashmesh Education Society (Regd.) as the sole plaintiff for declaration with a consequential relief of injunction against the Departments of Housing, Punjab Urban Planning and Development Authority and the Collector, Ropar only and neither the State Forest, Union of India were impleaded as party defendants. It is equally important to mention that the reliefs were sought qua the "agricultural land detailed in AnnexureA" owned by "Dashmesh Education Society" only. As per the details of the land supplied by Col. B.S. Sandhu (Respondent No. 1) land measuring 1138 kanals in village Karoran is owned by "Dashmesh Education Society" whereas and the land owned by "WWICS Resorts Pvt. Ltd." is 291 kanals 8 marlas whereas a little more than 70 kanal is owned by Col. B.S. Sandhu (Respondent No. 1) and his two sons. Thus, the civil suit was confined to the land measuring about 142 acres out of more than 378 acres of land owned by Col. B.S. Sandhu (Respondent No. 1), his associates, their companies and societies. It has, however, not been disputed on behalf of Col. B.S. Sandhu (Respondent No. 1) that the FHR is developed not only upon the land owned by "Dashmesh Education Society" but also the lands owned by WWICS Ltd. and WWICS Resorts Pvt. Ltd., who were never the plaintiffs in the civil suit. It is, however, clearly established on record that never ever any injunction was granted in favour of "WWICS Ltd.", "WWICS Resort Pvt. Ltd." and "Col. B.S. Sandhu (Respondent No. 1) and his sons". It is also not disputed that the lands owned by the above mentioned different persons are adjacent to each other and form one composite big chunk of land. We have no doubt in our mind that it was not only Col. B.S. Sandhu (Respondent No. 1) who took full advantage of the injunction order passed in favour of Dashmesh Education Society, but different authorities of the State Govt. also went in slumber deliberately and/or on the pretext as if there was an injunction order by the civil Court in favour of all the land owners concerned. The repeated efforts made by some officers of the State Forest Department for demarcation and identification of the lands so that it could be identified as to qua which piece of land the injunction order was operative, also went in futility as Col. B.S. Sandhu (Respondent No. 1), who seemingly grew taller than his size, refused these officers to enter the fourwalls of his kingdom and thus no demarcation could take place. The fact that a separate powerline with an independent transformer was provided to the resort by the Punjab State Electricity Board, metalled roads were laid upto the gate of the FHR by the PWD (B&R) department,

not only the "building plans" submitted by Col. B.S. Sandhu were accepted but the "buildings" were "inspected" by the Excise and Taxation Department so as to give licence for selling hard liquor and to run a restaurant, overlooking the provisions of Forest Laws and Periphery Act are only tip of the iceberg if one starts counting the favours enjoyed by him from different departments of the State Govt. The manner in which ownership of these lands was transferred from gram panchayat to "shamilat deh" and then to "village proprietors" in one single day, followed by a continuous flow of the sale deeds in favour of Col. B.S. Sandhu (Respondent No. 1), shows the magnanimity showered by the revenue authorities of the State Govt. Was it a project to serve the cause of larger public interest ? is yet another issue which crops up to examine the bona fides of the authorities of the State Govt. It could not be disputed that the project is purely a commercial venture to serve the cause of a single individual and his family. The theory of "bona fide silence" by the State authorities, sought to be projected by Mrs. Charu Tuli, therefore, has to be simply noticed and rejected at this stage.

58. This leads us towards the element of quid pro quo, behind the illegitimate birth of the FHR. At the very initial stage of these suomoto proceedings, we had directed Col. B.S. Sandhu (Respondent No. 1) to place on record the details in relation to "honorary" and "exofficio" memberships given by the FHR to the allegedly highly placed functionaries. Before advertng to the list, we may mention that on January 27, 2004, a statement was made on behalf of the club that fee for "the best membership" of club (which includes country club, golf course and golf academy) as prescribed by the management was Rs. 2,26,000/-. However, for the government officers/officials, membership fee was "reduced" to Rs. 1,26,000/-. Similarly, the fee, for members of the "country club" was Rs. 1,23,000/ but it was "reduced" to Rs. 73,000/ for government officers/officials.

59. It appears that there are three types of memberships offered by the club, namely, (i) honorary members (32 in total); (ii) exofficio members (32 in total); and (iii) paid members (399 in total). A government official who has paid fully or partly a sum of Rs. 1,26,000/ as membership fee for the club and/or Rs. 73,000/ fully or partly for the membership of the country club only, are included amongst the "paid members" who are 399 in total. At present, we are not referring to those government officials who have paid or agreed to pay the concessional rate of membership prescribed by the management of the club. We are, however, dismayed to see that amongst the "honorary members", most of the highest level executive functionaries of the State, including the Chief Minister of Punjab, a few Ministers of the Govt. of Punjab and top bureaucrats, including a former Chief Secretary, have been mentioned. In the list of "exofficio members", unfortunately, there are series of bureaucrats including a former Chief Secretary, Director General of Police, Punjab, Home SecretarycumPrincipal Secretary to the Chief Minister, senior most IAS/IPS officers of Punjab cadre including a few from the neighbouring State of Haryana as well. In addition, there are officers of All India Services, like IRS, serving under the Central Govt. who too have been bestowed with exofficio membership. We are consciously not mentioning names of the dignitaries mentioned above, as for want of any

conclusive material on record to establish their tacit support behind establishment of the FHR, even a remote aspersion on them need not be cast.

60. Shri Anupam Gupta, learned Amicus Curiae has argued that the "honorary" or "exofficio" memberships have been granted to the top most highups of the State Government to help Col. B.S. Sandhu in getting his empire clothed in a cover of legitimacy which is nothing less than indirect laundering of money, of course, with a definite consideration to silent the entire State apparatus. In support of these allegations, it has been pinpointed that in the civil suit, Col. B.S. Sandhu (Respondent No. 1) had taken a stand that "no relief qua the land was sought" by him, obviously, the decree for declaration and injunction pertained to the constructed area only, which was less than 3% of the total area as according to Col. B.S. Sandhu (Respondent No. 1) himself, constructions have been carried out only upon 3% of the total land. Thus, qua the remaining land, there was no injunction order in the eyes of law and the "control" and "management" thereof could be taken over by the State Forest Department in view of the fact that the said land was notified under Section 3 of the PLPA and prohibitory restrictions were imposed thereupon under Section 4 and 5 of the Act. No steps, however, in this regard were taken. The then Chief Secretary of the State himself appears to have been enjoying the perks and facilities provided by the FHR. It might not be a mere coincidence that power supply was provided to the FHR along with the installation of a "separate transformer" during his tenure as Chairman of the Punjab State Electricity Board. We fail to understand as to how a State authority could grant such privilege to a commercial venture which established itself in the teeth of the State and/or Central Laws.

61. That apart, the authorities of the Excise and Taxation Department claim to have inspected the "building" of the club and granted L2 licence to it to run a liquor bar. The Department of PWD (B&R) has laid the roads and the Police provided protection. When the Director General of Police, Punjab himself is claimed to have been enjoying the privileges of the club, the fate of several complaints made by some subordinate officers of the State Forest Department against Col. B.S. Sandhu (Respondent No. 1) can be well appreciated. No person of ordinary prudence, howsoever rich he might be, can afford to obstruct the State apparatus from entering the club premises even for an official inspection, but for the backing of the top police functionaries of the State.

62. The order dated February 17, 2004 (Annexure RIII) passed by the Collector (Agrarian) during the pendency of these proceedings vide which permissible area of Col. B.S. Sandhu (Respondent No. 1) has been determined and most of his lands have been declared surplus as per the provisions of the Punjab Land Reforms Act, 1972, shockingly reveals that the Assistant Collector Gradell (an officer of the Revenue Department of the Govt. of Punjab) entertained an application moved by Col. B.S. Sandhu (Respondent No. 1) on 13.12.1998 regarding "correction of khasra girdawris" and vide his order dated 10.2.1999 directed the "correction of khasra girdawaris" retrospectively in relation to 1060 kanals of land owned by Dashmesh Education Society and hence in the revenue record the same was shown as "agricultural land" instead of "Gair Mumkin Pahar". This order

was passed on the basis of a statement made before the aforesaid authority by Col. B.S. Sandhu (Respondent No. 1). One more order was passed by the same officer which is entered in Rapat Roznamacha No. 582 dated 24.7.1999 whereby "corrections of khasra girdawris" were directed to be carried out retrospectively in relation to the land measuring 1280 kanals owned by WWICS Ltd.

63. On top of all this, Col. B.S. Sandhu (Respondent No. 1) made another unsuccessful effort vide his representation dated October 22, 2003 (Annexure A16), in order to persuade and/or pressurise the Chief Minister, Punjab, to issue "appropriate directions to the Advocate General, Punjab" for withdrawal of Regular Second Appeals No. 4328 of 2002 (PUDA v. Dashmesh Education Society) and 4345 of 2002 (State of Punjab v. Dashmesh Education Society) which were pending adjudication before this Court. We, however, place it on record that the Chief Minister, Punjab refused to entertain this request and no such direction, as sought by Col. B.S. Sandhu, was issued. It appears that the authorities in the State of Punjab did a somersault and changed their stand before the Hon"ble Apex Court in relation to the identification of "forest areas" even when there was no representation by any farmer upon which the matter could be reconsidered and a contrary stand was then taken by way of an affidavit of Shri J.S. Kesar, IAS, only to bail out Col. B.S. Sandhu (Respondent No. 1). The unusual events speak for themselves. Col. Sandhu apparently is in a position not only to dictate his terms to the bureaucrats and police officers, but enjoys a well-established clout in the corridors of political powers also.

64. We are equally bewildered by an information which the learned Amicus Curiae has brought to our notice that on the website of the FHR, Col. B.S. Sandhu (Respondent No. 1) has asserted that the FHR "is a perfect blend of 500 Acres of verdant beauty and finesse...." Despite our specific query to find out as to how much land is exactly owned by Col. Sandhu and his associates, the State Govt. has not given any satisfactory reply. It appears to us, *prima facie*, that Col. Sandhu and his associates own lands in more than one village and apparently some "benami" lands are also owned by them. May be, on account of this factor the authorities in the State Govt. have not been able to identify and disclose the exact area of the lands owned by Col. Sandhu and his associates. If, what we have *prima facie* observed above is found to be correct, then the consequential violations of provisions of the Benami Transactions (Prohibition) Act, 1988 which includes committal of an offence under Section 3 thereof, have also taken place.

65. To add to this sad saga is a crude attempt made by Col. B.S. Sandhu (Respondent No. 1) to break into the fortress of the subordinate judiciary by persuading certain officers to accept the concessional memberships. One of the beneficiary, namely, Shri Maghar Khan is none else than the then District Judge, Ropar who dismissed the Civil Appeals of the State of Punjab and PUDA filed against the judgment and decree of the Civil Court passed in favour of Dashmesh Education Society of Col. B.S. Sandhu. To keep the records straight, we may, however, mention that the Full House of the High Court, on its own, has already retired compulsorily Shri Maghar Khan from service because of his

chequered service record. There are one or two minor abrasions as well. The fact, however, remains that Col. B.S. Sandhu (Respondent No. 1) did attempt to tinker with the impartiality and independence of the subordinate judiciary as well, apparently, for extraneous considerations prompting these officers to forget that in the perception of general public they should live like Ceaser"s wife, namely, always above suspicion and to lead a Hermit"s life, of course, unless they are determined to exhibit scant respect for the values upon which the very system has a stake of its survival.

66. Shri M.P. Goswami, learned counsel for the Petitioner in C.W.P. No. 1850 of 2004, has laid much stress, and in our view rightly so, upon the averments made in paragraph 11 of the aforesaid Writ Petition wherein it is averred that Col. B.S. Sandhu was declared bankrupt in Canada in the year 1996<sup>97</sup> and continued to be an insolvent in their records till 2nd May, 2000 (Annexure P 8). These factual allegations have not been controverted by Col. B.S. Sandhu (Respondent No. 1) in his reply. It is no one"s case that Col. B.S. Sandhu is a born millionaire and has thus established the FHR through legitimate means. No source of income of Dashmesh Education Society, which owns a huge chunk of land, has been disclosed nor any attempt was made to justify the sources of income, if any, of different companies set up by Col. B.S. Sandhu that own more than 400 acres of land (including the land in villages other than Karoran) and claim to have spent a few crores of rupees in developing the FHR. There is nothing on record to suggest the scrutiny and/or inspection, if any, by Directorate of Enforcement and the Incometax authorities in relation to this apparent case of siphoning of money from one juristic person to another. The conferment of exofficio and concessional memberships to certain members of the IRS, therefore, requires a cautious and suspicious look to rule out any nexus for seeking official favours. It has come on record that immediately on completion of the project of FHR, Col. B.S. Sandhu (Respondent No. 1) had advertised on "internet" as well as on the "website" of the FHR that certain "villas" designed as per the "American architecture" and located in the premises of the FHR were ready for sale on advance booking, only to the NRIs paying in foreign currency. It immediately raises a question as to whether or not the requisite permission from the Reserve Bank of India and/or Finance Ministry or any other competent authority for directly entering into such transactions outside the country was obtained.

66. The maxim "resipsaloquitur" fully applies to the facts and circumstances of this case. It has, however, been argued on behalf of some of the Respondents that granting of "honorary" membership of "concessional" membership to government officers/officials is neither an unusual practice adopted by the FHR nor should be taken seriously by the Court. Pointed reference was made to one or the other clubs of Chandigarh and/or located outside Chandigarh to impress upon that such memberships are being offered by those clubs as well. We are not impressed by this submission. When the foundation of the FHR itself lies on brutal violations of the Forest, environmental and periphery laws, how can it compare itself with other clubs located in and around Chandigarh or their memberships when nothing has been placed on record to suggest that any one of these

clubs is also suffering with the same legal disability. In our view, this distinction ought to have been kept in view by those distinguished and highly placed public functionaries who readily accepted the honorary, exofficio and/or concessional memberships of the FHR.

67. Faced with these haunting questions, which prima facie, led to an inference of accepting indirect gratification by the public servants and/or acting in violation of their Conduct Rules, we called upon Shri Rajan Gupta, learned Standing counsel for the Central Bureau of Investigation to examine the documents and thereafter, to come up with the stand which the premier investigating agency of the country would like to take up. Shri Gupta took up a stand in writing that the CBI will have to investigate the matter if a cognizable offence was made out but it required a mandamus to be issued by this Court for taking up such investigation.

68. While recognising the powers of the High Court to direct CBI to investigate an offence, their Lordships of the Supreme Court in *Common Cause, A Registered Society v. Union of India*, (1999)6 SCC 667, also explained the existence of certain circumstances warranting exercise of such powers by the High Court, as can be seen from the following paragraph :

"174. The other direction, namely, the direction to CBI to investigate any other offence is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of LIFE and LIBERTY guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of LIFE has been explained in a manner which has infused LIFE into the letters of Article 21." (emphasis applied)

69. These parameters were reiterated by the Apex Court in the case of *Secretary, Minor Irrigation and Rural Engineering Services, U.P. and others v. Sahngoo Ram Arya and another*, 2002(3) R.C.R.(Criminal) 413 : 2002(2) S.C.T. 1090 : (2002)5 SCC 521, when their Lordships observed :

"While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry....."

70. Whether there exists a nexus between Col. B.S. Sandhu (Respondent No. 1) and certain top Punjab, warranting investigation by the C.B.I., Mrs. Charu Tuli, learned Senior Deputy Advocate General, Punjab, has feverishly argued that the State machinery is capable of investigating this aspect and she has been instructed by the State Government to submit that the whole issue can be investigated by the Vigilance Bureau of the State of Punjab. Learned Amicus Curiae as well as Shri M.P. Goswami, learned

counsel for the petitioner in the connected case, however, have strongly opposed the suggestion of Smt. Tuli. According to then, amongst the "beneficiaries" of honorary, exofficio or concessional memberships of the FHR are none else but the topmost functionaries of the State of Punjab including some of the Ministers, the Home Secretary cum Principal Secretary to the Chief Minister, Director General of Police, former Chief Secretary who is still holding an important assignment and hundreds of other top bureaucrats belonging to IAS/IPS and other services of the States, therefore, any inquiry by the agency of the State of Punjab would be total farce, a mere eyewash and an empty formality, therefore, the matter required thorough probe by an outside agency.

71. Under our constitutional scheme, every institution works within its well defined parameters. The trustees of public offices owe their existence to the people of the nation who gave the Constitution unto themselves. They hold their offices by virtue of a synallagmatic contract. The trustees of these powers, therefore, are always required to act in a manner which subserves the cause of the people and not of an individual. Kautiliya, in his Artha Shastra had said, "King, who administers justice in accordance with dharma, evidence, custom and written law, will be able to conquer the whole world". The "public interest" is the sole panacea which forgives all sins. The use and abuse of power, so long as traceable to achieve the object of "public interest" is seldom condemned. However, the use of power smeared with subjectivity and couched in a way that serves only the self, invites judicial disapproval.

72. While exercising the powers of a constitutional Court under Article 226 of the Constitution, we are aware of our limitations that a firm finding of fact can be returned only in exceptional cases. The observations, though founded upon the material on record, remain tentative only for want of conclusive proof and, at the best, can be termed as *prima facie* views only. In the case in hand also, the allegations are serious, the circumstances support them, even consequences are apparent, yet the material on record is not within the degree of the conclusive proof on the basis of which a firm finding of fact can be returned. There are strong suspicions but nothing conclusive. The unvarnished truth, however, must surface in the interest of those who are accusing and/or are being accused, therefore, to reach to a logical conclusion, the investigation is inevitable.

73. We, however, cannot bring ourselves to agree with Smt. Tuli, learned Senior Deputy Advocate General, Punjab that a fact finding probe can be held by the State Vigilance Bureau in this matter. The celebrated maxim "*aliquis non debet esse iudex in propria causa quia non potest esse iudex et pars*" (No man should be a judge in his own cause, since he cannot act at the same time as judge and party) is a well accepted and recognised principle of natural justice. While we do not even remotely suggest that there is none in the Punjab State who can independently investigate the issues arising in this case, however, to ensure that the public confidence is not shaken, a transparent probe which is away from local pulls and pressures, is highly desirable. Having regard to the facts and circumstances of this case and the fact that from the executive head of the

State to the tailend in the administrative hierarchy, many of them find mention in the list of honorary, exofficio or paid members, it is in the interest of State authorities themselves that the whole gamut of issues is probed by an outside agency. There is yet another reason for us to form this view. A pointed reference has been made to some officers of the Indian Revenue Services who are also amongst the beneficiaries. There are other Central Govt. functionaries as well. The State Vigilance Bureau of the Punjab Govt. has no authority or competence to make any probe in relation to these officers. We are, therefore, of the view that a thorough probe is promptly required into the official conduct of all those top functionaries of the State of Punjab and/or the Central Govt. who have been directly or indirectly extending favours to Col. B.S. Sandhu (Respondent No. 1) and/or deliberately remained silent and wilfully shut their eyes or failed to take timely action or tortuous the facts and accepted honorary, exofficio or concessional memberships of the FHR.

74. In view of the fact that we have held the entire land of village Karoran to be "forest land" which has been presently utilized by Col. B.S. Sandhu (Respondent No. 1) for "nonforest purposes", including establishment and development of the FHR and since no permission of the competent authority, namely, the Central Govt. in terms of Section 2 of the Forest (Conservation) Act, 1980 has been taken by him for using the "forest land" for "nonforest purposes", and rather his request to this effect has been turned down by the Central Govt. twice, we allow both these Writ Petitions with the following directions :

(i) we direct Col. B.S. Sandhu and the companies and/or the societies floated by him to immediately close down its entire enterprises known as "Forest Hill Country Club Resort and Golf Course" and to demolish all the illegally erected buildings within a period of three months from today and to hand over the "management" and "control" of the land in question of the State Forest Department;

(ii) if Col. B.S. Sandhu and the companies/societies floated by him fail to comply with direction No. (i) above, a direction is issued to the authorities in the State of Punjab in the Departments of Forest, Police, Revenue and Home to close down the entire enterprises of Col. B.S. Sandhu, his family members, the companies and/or societies floated by him known as the "Forest Hill Country Club and Resort" located in the revenue estate of village Karoran, District Ropar and to demolish all the illegal constructions and to restore the land to its original and natural condition and the State Forest "Department of Govt. of Punjab shall take over the "management" and "control" of these lands till the time these lands are covered by one or the other Notification issued under Sections 4 and 5 of the PLPA, 1900;

(iii) the Forest Department, Govt. of Punjab in terms of the "Management Plan of Private Forest Areas pertaining to District Ropar" as approved by the Central Govt. will take necessary steps regarding plantation of trees, maintenance of wild and natural growth of trees and shrubs and to take all other remedial measures to successfully achieve the object and purpose of PLPA as well as the Forest Laws. The Forest Department, Govt. of

Punjab shall place on record of this Court half yearly reports in relation to the steps taken by it and/or before the Hon"ble Supreme Court in the pending cases;

(iv) There being prima facie violations of provisions of the Punjab Land Reforms Act, 1972, which prohibits owning of lands more than the prescribed "permissible area", the authorities in the Revenue Department of the Govt. of Punjab are directed to decide this issue including the pending appeal filed by Col. B.S. Sandhu and his associates against and order dated 17.2.2004 of the Collector (Agrarian) without any delay and not later than two months from today.

(v) a direction is issued to the authorities in the Revenue Department, Govt. of Punjab to carry out necessary corrections in the "records of rights" regarding the "forest land" falling within the revenue estate of village Karoran, Tehsil Kharar, District Ropar;

(vi) the Punjab State Electricity Board, through its Chairman is directed to discontinue the power supply forthwith to the FHR and to recover the cost of expenditure incurred by it in making this provision from the authorities of the FHR;

(vii) a direction is issued to the Commissioner of Excise and Taxation Department, Govt. of Punjab to cancel L2 licence issued in favour of the FHR and to seize the Indian and/or foreign made liquor found in the premises of the FHR;

(viii) the Central Bureau of Investigation through its Director is directed to constitute a Special Investigation Team (SIT) to be headed by an officer not below the rank of Deputy Inspector General, which shall hold a thorough probe into the question of accountability of top executive and administrative functionaries of the departments concerned of the Govt. of Punjab, some officers of the Central Govt. in relation to establishment and development of the Forest Hill Resorts at village Karoran, Tehsil Kharar, District Ropar and to report as to whether any one of them indulged in taking direct or indirect gratification and/or acted in violation of the Conduct Rules, and if it finds the commission of a cognizable offence, to register a case under the appropriate provisions of the Penal Laws, and hold investigation, positively within a period of six months from today.

(ix) the Special Investigation Team of the CBI shall also inquire into and report as to how much lands are actually owned by Col. B.S. Sandhu, his family members and/or the societies/companies floated by them, whether "benami" or in their own names and as to whether or not violation of provisions of the Benami Transactions (Prohibition) Act, 1988 has taken place and to further proceed in the matter in accordance with law;

(x) we make it clear that the direction, as contained in (viii) above, to hold a thorough probe by the SIT of the CBI shall not take within its ambit the members of the Judiciary. However, if during the course of investigation the CBI finds any incriminating material against any such member, it shall bring the same to the notice of the Competent Authority so that appropriate action in the matter can be taken;

75. Col. Sandhu is also liable to pay costs of this litigation, amounting to Rs. 25,000/ to be deposited in the Lawyers Welfare Fund of Punjab and Haryana High Court Bar Association within a period of one month from today.

76. Let a copy of this order be handed over to (i) Mrs. Charu Tuli, learned Senior Deputy Advocate General, Punjab, (ii) Shri Rajan Gupta, learned Special Public Prosecutor of the CBI, and (iii) Shri Gurpreet Singh, learned Central Government Standing Counsel for the Union of India today, for its intimation to the appropriate authorities concerned and for follow up action of the directions, as above.

77. Before parting for the day, we express thanks to the learned Amicus Curiae, Shri Anupam Gupta, Advocate for objectively assisting the Court to whom also the Office will hand over a copy of this order today.