(2006) 02 SC CK 0014

Supreme Court of India

Case No: Civil Appeal No. 1251 of 2006 (Arising out of S.L.P. (Civil) No"s. 7196-7197 of 2001)

Intellectuals Forum, Tirupathi		APPELLANT
	Vs	
State of A.P. and Others		RESPONDENT

Date of Decision: Feb. 23, 2006

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 21, 48A, 51A

Citation: AIR 2006 SC 1350 : (2006) AIRSCW 1309 : (2006) 2 ALT 67 : (2006) 4 CompLJ 513 : (2006) 2 CTC 71 : (2006) 2 JT 568 : (2006) 3 MLJ 201 : (2006) 2 SCALE 494 : (2006) 3 SCC 549 : (2006) 2 Supreme 292

Hon'ble Judges: Ruma Pal, J; AR. Lakshmanan, J

Bench: Division Bench

Advocate: G. Ramakrishna Prasad, Mohd. W. Khan, K.P. Kylashanatha Pillai, S. Byrapanchi, for the Appellant; V.R. Reddy, Public Prosecutor Rao, Jaideep Gupta, Anoop G. Chaudhary, I. Madhavi, B. Sridhar, Anjani Aiyagari, K. Ram Kumar, Suman Jyoti Khaitan, P.S. Sudhir, A. Mathew, D. Vijan, N.K. Verma, D. Rama Krishna Reddy, D. Bharathi Reddy, Ch. L. Sarveswar, Sudha Gupta, V. Sridhar Reddy, R. Nedumaran, P.S. Narasimha, A.K. Lala for P.S.N. and Co., June Chaudhary, Manoj Saxena, A. Meharia, Mohan Prasad Meharia, S. Muralidhar, S. Potaraju, N. Rohit and John Mathew, for the Respondent

Final Decision: Disposed Of

Judgement

AR. Lakshmanan, J.
Leave granted.

2. The present matter raises two kinds of questions. Firstly, at a jurisprudential level, it falls on this Court to lay down the law regarding the use of public lands or natural resources, which have a direct link to the environment of a particular area, by the Government. Secondly, this Court should decide, on the facts of the present case, the

order to be passed with respect to two tanks in the Tirupathi area - Peruru, and Avilala.

3. The above two appeals were filed by a registered society called, the Intellectuals Forum, against the respondents herein. The contesting parties are the State of Andhra Pradesh represented by its Chief Secretary, Tirupathi Urban Development Authority represented by its Vice-Chairman and the A.P. Housing Board represented by its Vice-Chairman and Housing Commissioner.

4. The present case relates to the preservation of and restoration of status quo ante of two tanks, historical in nature being in existence since the time of Srikrishnadevaraya, 1500 A.D. The tanks are called Avilla Tank'' and `Peruru Tank'' which are situated in suburbs of Tirupathi Town which is a world renowned popular pilgrim center having every day in-flow of tourists between one lakh to two lakhs.

GRIEVANCE:

5. Systematic destruction of percolation, irrigation and drinking water tanks in Tirupathi Town, namely, Avilala and Peruru Tank and alienation of the Avilala Tank bed land to Tirupathi Urban Development Authority (In short, TUDA) and A.P. Housing Board under G.O. Ms. No. 84 Rev. dated 28.1.1994 and Peruru Tank bed land to Tirumala Tirupathi Devasthanam (In short, TTD) for housing purposes under G.O. Ms. No. 181 Rev. dated 15.3.1991, which are impugned in Writ Petition Nos. 8650 of 1994 and 7955 of 1994 respectively.

6. According to the appellant, the cry of socially spirited citizens calling for judicial remedy was not considered in the right perspective by the Division Bench of the High Court of Andhra Pradesh despite there being over-whelming evidence of the tanks being in existence and were being put to use not only for irrigation purpose but also as lakes which were furthering percolation to improve the ground water table, thus serving the needs of the people in and around these tanks. It was submitted that the High Court has given precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources. The Government without considering the well planned development of Tirupathi town alienated the Tank bed lands in favour of some governmental agencies for valuable consideration. It was further submitted that since Tirupathi is in the draught prone region called Rayala Seema, there is always shortage of water and the District machinery is constantly put on alert for devising schemes for the purpose of improving the existing water resources. An Engineering Team which is assigned such a task had visited in and around the foot- hills of Tirupathi and Tirumala for the purpose of identifying sources of fresh water and suggestions to be given for their improvement. Apart from suggestions, the team of Engineers, in the minutes of the meeting held on 26.5.1990, suggested that improvement of feeder channels (Vagus) for Peruru tank and Avilala tank would improve the percolation of all the surrounding areas and that there is enough potential for the tanks to get enough water if the feeder channels

are improved. It was also submitted by representation that the Commissioner of Land Revenue to retain Peruru tank and Avilala tank, since retention of water in the said tanks would improve the water table which is already very low in the surrounding wells and also to the east of the tanks before of gradients. In the meantime, the Government passed G.O. Ms. No. 181 - Revenue dated 15.3.1991 alienating an extent of 150 acres of land which belongs to the tank bed area of Peruru tank to Tirumala Tirupathi Devasthanam (In short, TTD). The members of the appellant''s forum as also the various other socially spirited citizens have written letters to various authorities of the Government requesting the said authorities including the Chief Minister not to alienate the tank bed areas of both the tanks for housing or for any other activity except for the purpose for which it is meant. However, the Government issued G.O. Ms. No. 84 - Revenue dated 28.1.1994 authorizing the District Collector, Chittoor to alienate 90 acres of land belonging to Avilala tank bed area to A.P. Housing Board. This Government order further directed that the TUDA should provide a Master plan for the entire area of 170 acres so as to ensure integrated development of Avilala tank area.

7. Since, there was no response to the representations made, the appellant filed two writ petitions in the High Court challenging the Government Orders passed by the Government of Andhra Pradesh by which the District Collector, Chittoor was directed to hand over the tank bed areas of Avilala tank and Peruru tank to TTD and to A.P. Housing Board.

8. Writ Petition No. 7955 of 1994 was filed assailing G.O. Ms. No. 181 dated 15.3.1991, in respect of alienation of Peruru tank bed land to TTD and Writ Petition No. 8650 of 1994 was filed assailing G.O. Ms. No. 84 dated 28.1.1994 alienating Avilala tank bed area land to A.P. Housing Board. The respondents filed their counter affidavits opposing the writ petitions. The Indian Medical Association also made a similar plea that the Government should immediately withdraw its G.Os. alienating Avilala tank and Peruru tank and restore them urgently as percolation tanks, to improve the ground water table. This prayer was made by the Indian Medical Association due to alarming increase of the toxic contents like Fluorides and other salts in the underground water due to steep fall in the underground water table level. A feasibility report on Peruru tank was prepared by Sri Venkateswara University College of Engineering, Department of Civil Engineering, Tirupathi. Several other individuals filed affidavits supporting the cause of the appellant.

9. A counter affidavit was filed by the Government, Revenue Department, in Writ Petition No. 8650 of 1994 whereby the said respondent justified the issuance of G.O. Ms. No. 84-Revenue Dept. dated 28.1.1994 stating that the same was in public interest. A counter affidavit was also filed by respondent No. 3, the Law Officer of the Housing Board stating that the Housing Board has invested Rs. 88.43 lakhs towards development of land and thus the Board has invested in all a sum of Rs. 1,78,43,000/- and prayed for dismissal of the writ petition. An additional counter affidavit was also filed by respondent No. 3 stating that the area is fully developed. Likewise, Shri P. Krishnaiah, the Executive Officer of the TTD filed affidavit stating that a number of dwelling have come up in the entire area and

the prayer in the writ petition could not be granted and prayed for dismissal of the writ petition.

10. By the impugned and common judgment dated 28.9.2000, the Division Bench of the High Court finding no illegality or irregularity in the action of the respondents dismissed both the writ petitions. Aggrieved by the dismissal of the writ petitions, the appellant has filed these appeals by way of special leave petitions.

11. We heard Mr. G. Ramakrishna Prasad, learned Counsel appearing for the appellant-Forum, Mr. V.R. Reddy, learned senior counsel appearing for the TTD, Mr. P.P. Rao, learned senior counsel Mr. Jaideep Gupta, Mr. D. Ramakrishna Reddy, Mr. P. S. Narasimha, learned Counsel and Mr. Anoop G. Chaudhary, learned senior counsel for the respective parties. Elaborate arguments were advanced by the respective counsel appearing for the parties to this action. We have been taken through the entire pleadings, documents and annexures filed along with the appeals and also the report submitted by the Expert Committee and the objections filed by the parties to the said report.

12. Mr. G. Ramakrishna Prasad, learned Counsel appearing for the appellant made the following submissions:

1. The High Court has failed to appreciate that in the light of over-whelming evidence with regard to the Tank beds being put in use for irrigation, drinking purpose, and being used as percolation tanks to improve the groundwater table and quality of underground water in the neighbouring areas and many villages including Tirupathi town, the High Court committed error in holding that the water tanks in issue are now non- existent.

2. The High Court committed an error in coming to the conclusion that the urban development could be given primacy over and above the need to protect the environment and valuable fresh water resources.

3. The High Court is not correct in holding that if the Government is not permitted to use the lands in question properly it will ultimately go into the hands of land grabbers and anti-social elements and they will be converted into slums and that such lands will be used as dumping grounds.

4. The High Court has failed to notice the fact that the need for sustainable development cannot be ignored, could not do away with and could not cause harm to the environment in the name of urban development and that certain acts of omissions and commissions on the part of the respondents in not taking proper measures for the preservation of the Peruru tank, the flow of water into the tank is reduced every year as most of its feeder channels are either spoiled or closed by unauthorised encroachers.

5. The respondents have failed to take necessary measures to remove the encroachments and repair the feeder channels and as a result, the natural flow of water into the tank during the rainy season is reduced. On account of reduction in the water

catchment area due to encroachments, the quantity of water collected in the tank is getting drastically depleted year by year and that the water table in the neighbouring area of the tank including a colony is going down and even the ground water available is becoming more and more saline with high fluoride content every year and becoming unfit for drinking purposes.

6. It was submitted that the respondents are under constitutional obligation to protect the environment. The tanks in question is a public property in which each and every ayacutdars has got a property right and this right cannot be taken away by the Government to their detriment and that the communal property cannot be diverted for the purpose of construction of houses to section of people.

13. Mr. V.R. Reddy, learned senior counsel, appearing for TTD submitted that TTD gave its own land to Sri Padmavathi Mahila Viswavidyalayam and in lieu of the land so given by it, the State Government under G.O. Ms. No. 181 - Revenue dated 15.3.1991 has given Ac.150 m Perur tank to TTD. TTD took possession of the said land on 19.3.1993. In 1984 itself, the tank bed became barren and there is no water supply to the tank. The agricultural lands which were dependent on the tank water which was used only for agricultural purposes, therefore, became housing colonies. There is no source of water now to the tank and it is not possible to store water in the tank. Tirupathi is a growing town whose population is going up constantly demanding more and more house sites and housing accommodation for the growing town population. The pilgrim inflow is also steadily growing requiring more facilities. An agricultural tank which has become dry by 1984 itself and which is no longer capable of being used for agricultural irrigation purposes as it gets no water any more being surrounded by the expanding town, roads and built up areas cannot anymore be maintained as a tank in its original form. There are other tanks and dams and water supply schemes being undertaken in Tirupathi having regard to their feasibility. The High Court has considered these aspects also, he submitted.

14. TTD is one of the well known Devasthanams in the country which is undertaking projects of general public welfare consistent with its policy. It is doing everything possible in Tirupathi and in Tirumala where the World famous Sri Venkateswara Swami Temple is situated, to preserve and improve the natural environment. The tank in question i.e. Peruru tank cannot be maintained as a tank in the present situation and it has ceased to be a tank long ago except in name. It has been obtained by it in lieu of its own land it has given for a public purpose of a women''s university and requires it for its own optimum use. The objection sought to be taken by the appellant as a public interest objection is without any merit or substance as far as Peruru tank is concerned on the facts and circumstances of the case.

15. Mr. P.S. Narasimha, learned Counsel appearing for A.P. Housing Board, submitted that S. No. 18/1 of Avilala village is on the outskirts of Tirupathi town measuring about 187 acres was classified as Avilala tank Poramboke. The said tank was abandoned as far

back as in the year 1992. The Tank area was bulldozed and the entire land was levelled. The cultivation particulars of the Ayacut in this tank reveals that no lands were being irrigated from the water derived from this tank right from the year 1395 F i.e. the year 1984 A.D. The feeder source for Avilala tank namely (i) Ramayapalli Kasarkaluwa (ii) Kasarkaluwa of Vedantpuram Agraharam and (iii) drainage water of Timlagunta wet fields (iv) Nadinvaka - all these sources got defaced and there has been no scope for accumulation of water in the tank. It was also observed that even after sinking that well to a depth of about 60 feet, the land was not receiving any water from any ground resources after construction of Kalyani Reservoir. Therefore, proposal for abandonment of tank was submitted by the Revenue Divisional Officer, Tirupathi to the District Collector in the years 1988 and 1992. Thereafter, public notices were issued inviting objections but no objections were filed by anyone. Thereafter a technical opinion was given by the Executive Engineer of the Irrigation Department in favour of the alienation of the said land to an extent of 98 acres. Even the Gram Panchayat had passed resolution on 14.8.1988 proposing to alienate 98 acres in S. No. 18/3 carved out S. No. 18/1 of Avilala Village in favour of A.P. Housing Board. The Government have issued orders in G.O. Ms. No. 691 dated 18.7.1989 alienating 98 acres of land for the purpose of constructions of house under the rental housing scheme for the Government employees. The said land has been levelled in the year 1992 after taking possession. The Housing Board has undertaken infrastructural facilities by laying of B.T. Roads, electrical lines, digging borewells apart from levelling and plotting the land and a sub-station 33 K.V. capacity has been established by the A.P. Electricity Board.

16. It was submitted that the A.P. Housing Board paid Rs. 90 lakhs towards the cost of the land @ Rs. 1 lakh for each acre to the Government and also spent a sum of Rs. 88.43 lakhs towards development of the land so far. Thus, in all A.P. Housing Board has invested a sum of Rs. 1,78,43,000/- and the further development was stopped in view of the pendency of the writ petition.

17. The A.P. Dairy Development Corporation has established Balaji Dairy in a portion of the land under reference by spending over Rs. 8 crores. All these amounts were spent by the Government from its own expenditure from out of public funds. Apart from the above, the Land Acquisition proceedings were initiated for laying of approach road and compensation thereafter has been paid by the Revenue Department.

18. Mr. P.S. Narasimha further submitted that the laudable objective of maintenance of ecology, environment and preservation of water resources are subject to the vagaries of nature and in the realm of technical matter, there cannot be judicially manageable standard for granting any relief.

19. Arguing further, he submitted that there are many factors and reasons attributing to depletion of ground water table due to the expanding urbanization and increasing the non-agricultural activities. All such activities have not the sanction of the law supported by legislative mandate under the A.P. Urban Areas Development Act. The administration has

been entrusted with the responsibility of ensuring equitable urban growth by balancing ecological and environmental interest and in the instant case, the administration has taken all the proceedings and attending precautions to act in larger public interest in general for which the appellant cannot have any grievance.

20. Mr. Jaideep Gupta, learned senior counsel, appearing for TUDA filed a detailed reply to the appeal. He invited our attention to the elaborate and detailed reply affidavit filed by them. It is seen from the affidavit that the proposals for abandonment of the erstwhile tank were submitted by the Revenue Divisional Officer, Tirupathi with reference to the Collector''s letter No. B-1/7089/88 dated 17.9.1988. A notice for public response to the said proposal was published in the village but no objections were received. As the land was in the past classified as a tank poramboke, technical opinion had already been obtained and the Irrigation Department opined that there was no objection for alienation of the said land. As per the report of the Revenue Divisional Officer, Tirupathi submitted in his letter No. Roc. No. G/2016/88, dated 6.9.1988 that the Avilala Gram Panchayat in its resolution dated 14.8.1988 had resolved to alienate an extent of 90.00 acres in Sy. No. 18/3 (carved out from 18/1) of Avilala village in favour of A.P. Housing Board.

21. In the above circumstances, the Government have alienated 90 acres of land in Sy. No. 18/3 carved out from Sy. No. 18/1 in favour of A.P. Housing Board for construction of houses under rental housing scheme for Government employees vide G.O. Ms. No. 691 dated 10.7.1989 of the Revenue (Assn. IV) Department. The District Collector, Chittoor in his letter No. B1/15246/90 dated 14.7.1992 addressed to the Secretary to the Government, Revenue Department has informed that the Ayacutdars have also given their consent for abandonment of the erstwhile tank and to treat the Ayacut as dry land since the tank does not have any water source.

22. After the Government have alienated an extent of 90 acres of land to A.P. Housing Board and 1.12 acres to A.P.S.E.B. and 5 acres towards compensation for private lands acquired for approach road, there remains a balance of 96 acres of land. Accordingly the Revenue Divisional Officer, Tirupathi in his letter G/5234/92 dated 16.9.1992 addressed the District Collector that the balance land available can be better utilized by handing it over to various agencies for developmental purposes, because of its proximity to Tirupathi town and adjoining residential colonies like Vaikuntapuram, Bairagipatteda etc. There has been a substantial growth in population of Tirupathi town coupled with physical expansion of the town and consequent conversion of agricultural lands into pucca residential area and layouts. The population of Tirupathi is growing day by day and to cater to the growing demand for housing this authority had requested the Government for alienation of 90 acres of land for sites and services programmes. Accordingly, the Government in G.O. Ms. No. 84 - Revenue (Assn.IV) Department, dated 28.1.1994 alienated 90 acres of land in Sy. No. 17/1 of Avilala in favour of this authority. Based on the Government Orders and proceedings of the District Collector, Chittoor in D.O. Toc. No. B/1/15246/92 dated 3.3.1994, the Mandal Revenue Officer, Tirupathi Rural Mandal has handed over the possession of 65.19 acres of land on 18.4.1994 to this authority.

23. Mr. Gupta further submitted that the Urban Development Authorities are bound to regulate the massive urban growth and migration of people with appropriate development plans to prevent formation of slums and consequent urban decay. Accordingly, the TUDA has taken up development of new Satellite townships around Tirupathi to relieve congestion of the existing township and one such satellite town is Rajiv Nagar being developed in the land many years back was under the then existing Avilala tank in Sy. No. 18/1.

24. As it is evident from the joint inspection of the Joint Collector, Chittoor, Superintending Engineer, Irrigation, Chittoor, etc. on dated 4.4.1992, there has been no source of the supply channel for maintenance of the Avilala tank and it has not been practicable either to restore it as irrigation tank or even as a percolation tank any longer. However, as a part of the development of a satellite township, it is proposed to provide lung spaces, water harvesting structures in an extent of 18 acres of land benefiting the people in Sy. No. 18/1 of Avilala village and Rajiv Nagar area by TUDA and A.P. Housing Board.

25. After obtaining approval from the State Government, TUDA announced the scheme to the public on 18.3.2001, 26.3.2001 and 30.3.2001 by giving wide publicity in the newspaper and inviting applications for participating in the auction. The plots were allotted to the public in a public auction as per the orders of the Government vide G.O. Ms. No. 84 Revenue (Assn.IV) Deptt. Dated 28.1.1994. The auction was conducted on 13th, 14th and 15th April, 2001 and plots were allotted to the successful bidders immediately i.e. before the issue of status quo order of this Court. TUDA has already taken up plans of action to provide in the new township partly with the amounts received from open auction.

26. It is also seen from the reply affidavit filed by TUDA that a comprehensive scheme name "HARITA" has been jointly promoted by Forest Department, TTD and TUDA at a cost of Rs. 24.83 crores to be implemented in five years from 2000 to 2005. The scheme had already commenced and massive plantation programme was taken up by planting 16 lakhs trees during the year 2000-2001 apart from other schemes that have been envisaged in the plan.

27. The National Remote Sensing Agency, Department of Space, Government of India in their report titled "Land use Land cover monitoring in TUDA area with special reference to Avilala tank and environs Tirupathi, Andhra Pradesh" has conducted detailed study with the help of satellite imageries on Avilala tank over a period of time. In its report, it is stated that the tank in earlier days i.e. earlier to 1970 was drained mostly by natural springs located in the head of the region of the catchment. Over a period of time, the spring got dried up due to various geological factors with no source of surface flow. Also the small streams which were draining to the tank were disturbed and occupied, with the result the tank remained dry with part of it covered with scrub since 1976 onwards.

28. It is also stated in the report that as per the satellite image of February, 2001 there are about 232 tanks identified in TUDA area. Most of the tanks are located along the foot hills of Tirumala hills and plains of Swarnamukhi river. Kalyani reservoir is the major one in the area. Considering the location as well as distribution about 20 tanks are identified for conservation and future development to meet the urban water requirement. However, other existing tanks may also be fenced and preserved to meet the future requirement.

29. The TUDA along with the support of other Government Departments have been making conscious efforts for conserving and preserving potential tanks in TUDA region as per the recommendations of National Remote Sensing Agency and other experts in the field. In this direction, the TUDA has already initiated action in developing Tiruchanoor tank in Sy. No. 253 of Tiruchanoor at a cost of Rs. 30 lakhs under Phase I Scheme which includes desalting, strengthening of bunds, landscaping of bunds and tree plantation. However, there is no possibility at all of restoring the abandoned Avilala tank as per the scientific data available with TUDA which can be at best developed as a satellite township with all facilities thus contributing to the planned urban growth of Tirupathi and decongesting the main township.

30. Mr. Anoop G. Chaudhary, learned senior counsel appearing for the State of Andhra Pradesh drew our attention to the detailed counter affidavit filed by the State of A.P. through its Joint Secretary to the Government Revenue Department wherein the Government has explained to this Court as to how the impugned G.O.''s alienating the lands in favour of TTD, TUDA and Andhra Pradesh Housing Board for public purposes were issued. According to Mr. Anoop Chaudhary, there is nothing illegal in issuing in G.Os. It is not violating anybody''s fundamental rights. An extent of 180 acres of land was tank bed land of Avilala tank. This tank was an abandoned tank ever since 1984 as the channel source of this tank was closed due to construction of Kalyani dam and because of lack of water this tank was no longer used for storage of water. As it was an abandoned tank and was no longer in existence and the land became plain and considering the matter and report of the District Collector, the Government issued orders in G.O. Ms. No. 691 - Revenue Department dated 10.7.1989 for alienating an extent of 90 acres of land to A.P. Housing Board for the purpose of rental Housing scheme for Government employees on payment of Rs. 1 lakh per acre by the Housing Board and before this land was alienated a notice was published in the village calling for objections by the Revenue authorities and no objections were received in pursuance of the said notice. The Ayacutdars have also consented for the alienation of the land. Thereafter, after obtaining the opinion of the concerned Executive Engineer of the Irrigation Department and the report of the District Collector, the above Government Order was issued.

31. Concluding his arguments, he submitted that there is ample material on record showing that these tanks were abandoned long back and they were no longer serving as water storage tanks more particularly, as their supply channels have been dried up. On 5.12.2003, this Court passed the following order:

The Secretary, Ministry of Water Resources, Government of India is directed to constitute a committee of experts for the purpose of submitting a report on the question whether the two tanks, namely, the Peruru and Avilala or either of them can be utilized for water harvesting. The report shall be submitted to this Court within a period of six weeks from the date of the communication of this order. The Registry is directed to forward a set of the documents, which have been filed before this Court to the Secretary for being placed before and considered by such Committee. The committee will hold local inspection. Before it does so it shall give notice to the concerned advocate-on-record. The State - respondent will provide such documents as may be required by the Committee for the purpose of submitting the report.

List the matter thereafter.

32. The Government of India constituted a Committee for the purpose of submitting its report to this Court:

The term of reference of the Committee was to submit a report on the question whether the two tanks namely, the Peruru and Avilala or either of them can be utilized for water harvesting. Pursuant to this, the Committee visited Tirupathi on 19th and 20th January, 2004 for local inspection and necessary investigations. During the visit, a detailed discussion was held with the representatives of TUDA, TTD and members of the Intellectual Forum. The Committee submitted its detailed inspection report on 21.1.2004. The appellants submitted its objections to the report of the Committee and the respondents supported the inspection report.

33. In the above background, the following questions of law arise for consideration by this Court:

1. Whether the Urban Development could be given primacy over and above the need to protect the environment and valuable fresh water resources?

2. Whether the action of the A.P. state in issuing the impugned G.Os could be permitted in derogation of Articles 14 and 21 of the Constitution of India as also the Directive Principles of State Policy and fundamental duties enshrined in the Constitution of India?

3. Whether the need for sustainable development can be ignored, do away with and cause harm to the environment in the name of urban development? 4. Whether there are any competing public interests and if so how the conflict is to be adjudicated/reconciled?

34. We have already referred to the directions issued to the Government of India to constitute a Committee of Experts for the purpose of submitting a report on the question whether the two tanks namely, the Peruru and Avilala or either of them can be utilised for water harvesting. The Expert Committee took into account the factors that had led to the depletion of influx of water to Peruru Tank in the report and observed in paragraphs 3 & 4 of the Report.

35. According to the learned Counsel appearing for the TTD, Peruru tank as a water body had three main sources of influx of water which were as follows:

1. Overflow of water through feeder channel from the combined Kalyani River - Swarnamukhi river - The Kalyani river joins Swarnmukhi river near Agasteeswara Temple. At that point, the overflow of water in the combined rivers as going to peruru tank through a feeder channel of about 1.6 Km. Length. After the construction of the Kalyani Dam on Kalyani River in the year 1974, the flow of water from Kalyani river into Swarnamukhi river considerably reduced. As a result, there was no overflow of water going to the feeder channel, which over the years has become defunct due to its bed level being at a higher level than the riverbed. Since the feeder channel has become defunct and abandoned, a road has been constructed for the temple by filling up the channel. The Expert Committee, after observing the above, in paragraph 3 of its report under Peruru tank has opined as follows:

The revival of old feeder channel which involves deepening of the existing channel and restoring the channel in the initial reaches is not considered cost effective in view of the meagre quantity of river water availability for a very short period.

2. Catchment area of 42.9 sq.Kms. TTD under "Neeru Meeru" programme, constructed 22 check dams, 9 percolation tanks, 437 rock fill dams and contour trench on a length of 1.22 km for improving the water table and water conservation and efficient use of rain water without wastage in the catchment area falling under S.V. Zoological Park.

The Expert Committee, after observing the above in para 4 of its report has stated that the inflow of water into Peruru tank has been reduced considerably due to the construction of check dams etc. While it is so, it is also to be noted in this context, that on account of Kalyani Dam a water body has come into existence in the form of Reservoir is spread over an area of 31065 acres and holds 910 mc. Ft. Water when filled to capacity. Similarly, Dalavai Tank, which is created in the Catchment area, is also a water body occupying 66.70 acres and holds 15.79 mc. Ft. of water when full.

It is pertinent to submit in this context that under the "Neeru Meeru" programme vigorously pursued by the Government in the entire State, construction of such check dams, percolation tanks etc. was conceived and executed for improving the water table and water conservation and efficient use of rain water without wastage at considerable cost.

3. Nakkala vanka and Bnodeddula Vanka : prior to the construction of Dalavai tank in the catchment area, water used to flow downstream to peruru tank through Nakkalavanka and Bnodeddula Vanka. After the construction of Dalavai Tank, the flow of water through Nakkalavanka and Bnodeddula Vanka has considerably reduced.

36. The Expert Committee after observing the above facts in paragraphs 4 & 5 of its report opined that the flow of water through Bnodeddula Vanka to the Peruru tank can be

restored by removing a small check dam at Malapalli which it is submitted might be considered a retrograde step affecting other projects for water conservation. Learned Counsel further submitted that in view of the aforesaid recommendation of the Expert Committee that instead of 20 acres as presently assigned a minimum of 50 acres may be utilised for a water body in the tank area may not be a practicable proposal. However, the TTD would willingly and earnestly endeavour to implement the proposal if this Court accepts and approves the Report of the Expert Committee. In our opinion, the Expert Committee"s report should be accepted by TTD. Learned Counsel appearing for the TTD at the time of argument, has also brought to our notice some of the programmes launched by TTD for sustainable improvement of the living environment.

37. Mr. P.S. Narasimha, learned Counsel, submitted that no competing or conflicting public interests arise in this case inasmuch as the very subject of the environment issue has ceased to be a resource as it were. The enquiry is, therefore, upon the very basic question i.e. whether there exist at all a natural resource. The research is empirical and not adjudication or prioritization of conflicting public interest. A further question can also be raised i.e. even if the said resource has deteriorated, is it possible to revive its resource. The adjudication in both the appeals is confined to an empirical enquiry based on scientific data. The enquiry as indicated above has already been done in this case. It is in two stages.

STAGE ONE - Till the judgment of the High Court of Andhra Pradesh, which dismissed the writ petitions.

STAGE TWO - Enquiry at the instance of this Court pending disposal of the special leave petitions.

STAGE ONE -

Our attention was drawn to the counter affidavit dated 7.9.1994 of TUDA in W.P. No. 8650 of 1994 which reads as under:

The tank in question as could be seen from the permanent `A" Register (Re-settlement Registrar) was to be fed by (1) Ramayapalli Kasam Kalva (2) Kasam Kalva of Vedantpuram Agraharam (3) Drainage water of Thummalapetta wet fields and (4) by Nadim Kalva which are almost defaced and as such there is no scope for accumulation of water in the tank. It is also observed from a well about 60 feet depth located on South-West corner of the land that no water exists in the well. The foreshore of the tank is almost plain. It is an abandoned tank and the tank is also not receiving any supply of water due to closure of supply channels after the construction of Kalyani Dam Reservoir.

STAGE TWO

The Inspection report of the Committee constituted under the directions of this Court considered various issues. It is stated in the report as follows:

1. There is no tank existing in the area at present. Remains of the original demolished bund were seen. The area upstream was plain with no indications of any water storage.

2. reported feeder channels to the tank are in fact localized drainage lines which do not have any direct source of surface water from the nearby Tirumala hills. The tank might have receive water as over flow from Peruru tank located on west of Avilala tank.

38. As per the Respondents contention, the Tank in dispute has been shown in Resettlement Register `A''. For the purpose of change of classification from tank poramboke to ayan, `A'' notice was published in the Avilala Village displaying the said notices at the conspicuous places which is statutory and no objections were received and as stated already, consent letters were given by the individual ayacutdars for the abandonment of the tank.

39. Proposals for abandonment of the erstwhile tank were submitted by the Revenue Divisional Officer, Tirupathi with reference to the Collector''s letter No. B- 1/7089/88 dated 17.9.1988. A notice for public response to the said proposal was published in the village but no objections were received. As the land was in the past classified as a tank poramboke, technical opinion had already been obtained and the Irrigation Department opined that there was no objection for alienation of the said land. The opinion is in Collectorate reference No. B-1/14157/85. As per the report of the Revenue Divisional Officer, Tirupathi submitted in his letter No. Roc. No. G/2016/88 dated 6.9.1988 that the Avilala Gram Panchayat in its Resolution dated 14.8.1988 had resolved to alienate an extent of 90 acres in Sy. No. 18/3 of Avilala village in favour of Andhra Pradesh Housing Board. The materials placed before us and the report of the Expert Committee and the stand taken by the public bodies and the rapid change in the demographic feature of the Tirupathi town and its surrounding suburbs have necessitated the process of urbanization.

40. The TUDA in its additional counter affidavit filed on 21.2.2002 stated that the Tirupathi urban agglomeration as notified consists of 849 sq. Kms. with one Municipality and 89 villages. The total population of TUDA area is 4,88,248 according to 2001 census and the projected population by 2021 is 9,60,000. 49% of the urban agglomeration is covered by Tirumala hills and forest area and the remaining area is going to be developed into a Metropolis over the next 20 years, according to the present decadal population growth of 32% for TUDA region, compared to 13% of A.P. population growth rate as per 2001 census. The growth of population of Tirupathi Municipal area was highest during the decades of 1971 (83.68%) and in 1981 (75.10%) but now stabilized at nearly 30% (2001). But in respect of the suburbs surroundings Tirupathi, which are fast growing recording very high population growth rates, are an indication that TUDA area is one of the very fast developing urban agglomerations in the country. Akkarampale (v) one of the suburbs with a population of 20,325 recorded 250% of decadal growth between 1991-2001. Similarly Avilala (v) another suburb of Tirupathi, where "Rajivnagar", the land in question in the present appeals, is situated, the decadal growth rate between 1991 and 2001 was above

150%. The population of Avilala (v) which was 1141 in 1971, has grown to 12,058 by the year 2001, while converting most of the agricultural lands into residential plots. According to the report of NRSA, Hyderabad in July 2001 on "Land Use-Land Cover Monitoring in TUDA area with special reference to Avilala Tank and Environs, Tirupathi, A.P." the Avilala (v) along with the tank area which has a total extent of 942.47 hectares of which residential area was 32.91 hectares in 1976-77 has now increased to 349.28 hectares in the year 2001, which also includes institutional and industrial areas. In respect of agricultural lands, which was 677.78 hectares in 1976-77 has been diminished into 204.22 hectares in 2001. The high population growth rates of Avilala (v) combined with increase in the residential area (961%) is a clear indication that the original purpose of Avilala tank as irrigation tank, is no more relevant in the present scenario of fast urban development in this area.

41. It has been further stated in the additional affidavit filed by TUDA on 21.2.2002 that the TUDA has taken up revision of its master plan with digitization of land use along with a comprehensive development plan of the urban agglomeration up to 2021, with public participation. According to the said Master plan prepared by TUDA in 1981, the said lands of Avilala (v) are earmarked under residential zone and development of satellite township to ease the congestion on the main city and the purpose of retaining irrigation tank in an extent of 150 acres at Avilala near Tirupathi is no longer useful to the public under the circumstances explained.

42. In the counter affidavit filed by A.P. Housing Board on 26.6.2000, it is submitted that the A.P. Housing Board paid Rs. 90 lakhs towards the cost of the land @ Rs. 1 lakh for each acre to the Government and also spent a sum of Rs. 88.43 lakhs towards development of the land so far. Thus, in all APHB has invested a sum of Rs. 1,78,43,000/- and the further development was stopped in view of the pendency of the writ petition.

43. The area around the property in question is fully developed. There is a weaver''s colony, PR Engineers Colony, Judicial Employees Plots and Colony and Balai Dairy (in 10 acres of land - APDDCF). Thus, the area around the land in question is already developed and several colonies have come up and in any event the land cannot be used as reservoir.

44. As per the notification, APHB has proposed about 342 HIG design, 497 MIG-2 design and 283 MIG-1 design houses with the details mentioned therein totalling about 1126 houses in the said proposed colony. The details of number of houses to be allotted under different categories and modes like outright sale, allotment on payment of 50%, 30% amount etc., are also mentioned in the said notification. It also provided reservation for various categories like 5% of houses to Legislators, 5% to defence people, 14% for SC, 4% for ST, 9% for OBC, 10% for retired Government employees, 1% for physically handicapped, 1% for freedom fighters and 51% for other categories.

45. The applicants under the above-referred notifications are the persons having no plot or no house for their residence in Tirupathi or nearby places and as such they are in dire need of a place of residence which is sought to be fulfilled under the above scheme by the APHB. It is also seen from the additional counter affidavit dated 21.2.2002 filed by TUDA that they have taken up revision of its Master plan with digitization of land use along with a comprehensive development plan of the urban agglomeration up to 2021, with public participation. According to the Master plan prepared by TUDA in 1981, the said lands of Avilala (v) are earmarked under residential zone and development of satellite township to ease the congestion on the main city.

46. It was also submitted that subsequent to the filing of the present appeals, substantial developments have taken place which can be summed up here. As stated in the counter affidavit filed by TUDA on dt. 29.11.2001, after the dismissal of Writ Petition No.8650 of 1994 by the High Court on dated 28.9.2000, TUDA submitted the entire scheme of sites and services to be taken up at Rajiv Nagar at a cost of Rs. 600 lakhs to the State Government for approval vide its letter No. 2148/G1/99 dated 3.12.1999. The State Government vide G. Rt. No. 124 M.A. dated 15.2.2001 had approved the proposal of TUDA.

47. Mr. Jaideep Gupta, learned senior counsel appearing for the TUDA, has placed before us a report on Land Use Land Cover Monitoring in TUDA area with special reference to Avilala Tank and Environs Tirupathi. The main objective of this study was:

1. To map and estimate the water bodies and drainage pattern within the TUDA limits and to suggest the water conservation plan, on a scale of 1:50,000 using satellite and other collateral data.

2. To monitor the changes in and around the Avilala Tank over a period from 1976- 2001 and carry out the change analysis.

The report contains all meticulous details about the study area, data base, advantages and limitations of satellite data, methodology, analysis and observations, water resources analysis of TUDA area, land use/land cover analysis of Avilala tank and its environs. The report has been prepared in a meticulous manner with reference to various plans. Another report was also submitted with regard to the Revitalization of Lakes in TUDA Region which also contains many details about the land use of TUDA Region and the conservation and preservation of water bodies and the identification of potential tanks for conservation and the salient proposals for Revitalization of identified tanks. The Salient proposals for Revitalization of tanks are as under:

On realizing the importance of restoration of tank basins towards conservation of water and recharging of ground water, increase the storage capacity of tanks, renovating the tank bunds as well as feeder channels, TUDA has taken over 30 tanks in its operational area for taking up the improvements. Proposals include removal or eviction of

encroachments, desalting of tank basins, clearing of jungle, strengthening of tank bunds, excavation of boundary trenches, widening and excavation of feeder channels, construction of boundary pillars and compound walls along the tank boundary. Block plantation, programmes for development as landscaped parks and water based entertainment units for the benefit of the public in off shore areas of the tanks have been proposed wherever feasible and viable. Towards protection of environment, provision for treatment system is also made in the project to take care of entry of drainage/silage into the tank storages. Block plantation on all on-shore areas of tank have been taken up as a part of Neeru Meeru programme to prevent erosion of soils and entry of encroachments which will have long term positive environment results.

48. As per the estimates prepared, the total cost of the scheme works out to Rs. 993.64 lakhs for taking up the above programmes in 32 tanks spread over 32 settlements around Tirupathi town and in TUDA region. The abstract statement showing the details of tanks proposed for revitalization and the cost of development is given below:

S.No.	Mandal	No. of tanks	Cost of development	Cost of greening/landscapingProgramme	Total
1.	Tirupati(U) Mandal	10	387.84	82.50	470.34
2.	Tirupati(R)Mandal	10	203.10	64.90	268.00
3.	Reningunta Mandal	9	129.50	47.60	177.10
4.	Chandragir Mandal	3	71.70	6.50	78.20
Total		32	792.14	201.50	993.64

49. As already noticed, the Expert Committee in its Inspection Report, has gone into various technical details about the cause for gradual reduction of inflow of water to the Peruru tank, which is a rain-fed tank, over the last 50 years. The Committee has observed in its report that the reduction in the inflow of water to the tank was due to the construction of 22 check dams, 8 percolation tanks, 437 rock fill dams and contour trench on a length of 1.22 km for water conservation and efficient use of rain water without wastage. The Committee has also observed in its Report that the main supply channel to the Peruru tank was affected due to the revival of Dalavai Tank situated at a distance of about 2 Kms upstream in the catchment area.

50. The Expert Committee in its report has suggested some additional measures for rain water harvesting by providing for a percolation tank in an area of 50 acres instead of 20 acres already earmarked for the said purpose by the Revenue authorities with roof top rain water harvesting and artificial recharge

51. The Expert Committee has gone into various technical and cost aspects about the feasibility of reviving the Peruru tank. Only after the Committee found that the tank could not be revived in its original form, it suggested in its report for construction of percolation tank and roof top rain water harvesting and artificial recharge for increasing the ground water level.

52. A careful perusal of the report would clearly reveal that the Committee has given its suggestions only after taking into account various possibilities in recharging the ground water level. It is not proper in doubting the correctness of the Committee''s report as contended by the appellants. The Committee, in our view, has gone into the details about the revival of the feeder channel to the Peruru tank from Swarnamukhi river and having regard to the impracticability of restoring the same as feeder channel had suggested an alternative which in their view, is feasible and beneficial.

53. It is evident from the report of the Expert Committee that the Members of the Expert Committee have taken technical aspects as contained therein and the objections of the appellant in this regard are untenable. The Government of Andhra Pradesh has also taken various steps pursuant to the directions given by this Court which could be seen from the additional affidavit dated 25.3.2005 filed by the State of Andhra Pradesh.

54. We have given our thoughtful and careful consideration to the sensitive issues raised in the appeals by the appellants and countered by the respective respondents with reference to the pleadings, the documents, annexures filed and judgment of the High Court. We have also carefully perused the report submitted by the Expert Committee and also considered the rival submissions made by the respective counsel. In our opinion, the nature of the question in this case is twofold. Firstly, the jurisprudential issues. In the event of conflict between the competing interests of protecting the environment and social development, this Court in the case of M.C. Mehta v. Kamal Nath, 1997(1) SCC 388, in paragraph 35 held as under:

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

55. The responsibility of the state to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of "state responsibility" for pollution emanating within one"s own territories [Corfu Channel Case, ICJ Reports (1949) 4]. This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant Clause of this Declaration in the present context is Paragraph 2, which states:

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area.

Sustainable Development

56. The respondents, however, have taken the plea that the actions taken by the Government were in pursuance of urgent needs of development. The debate between the developmental and economic needs and that of the environment is an enduring one, since if environment is destroyed for any purpose without a compelling developmental cause, it will most probably run foul of the executive and judicial safeguards. However, this Court has often faced situations where the needs of environmental protection have been pitched against the demands of economic development. In response to this difficulty, policy makers and judicial bodies across the world have produced the concept of "sustainable development". This concept, as defined in the 1987 report of the World Commission on Environment and Development (Brundtland Report) defines it as "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". Returning to the Stockholm Convention, a support of such a notion can be found in Paragraph 13, which states:

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

Subsequently the Rio Declaration on Environment and Development, passed during the Earth Summit at 1992, to which also India is a party, adopts the notion of sustainable development. Principle 4 of the declaration states:

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

57. This Court in the case of Essar Oil v. Halar Utkarsh Samiti, [2004 (2) SCC 392, Para 27] was pleased to expound on this. Their Lordships held:

This, therefore, is the sole aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in population together with the consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, filling up of lakes and the pollution of water resources and the very air that we breathe. However there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other.

A similar view was taken by this Court in Indian Council for Enviro-Legal Action v. Union of India, [1996 (5) SCC 281, Para 31] where their Lordships said:

While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment should go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment.

The concept of sustainable development also finds support in the decisions of this Court in the cases M.C. Mehta v. Union of India (Taj Trapezium Case) (1997) 2 SCC 653 , State of Himachal Pradesh v. Ganesh Wood Products,(1995) 3 SCC 363 and Narmada Bachao Andolan v. Union of India, (2002) 10 SCC 664 .

58. In light of the above discussions, it seems fit to hold that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellants allege.

Public Trust Doctrine

59. Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust. This doctrine, though in existence from Roman times, was enunciated in its modern form by the US Supreme Court in Illinois Central Railroad Company v. People of the State of Illinois (1892) 146 US 537 where the Court held:

The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted.

[...] the state holds the title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State, which does not recognize and is not in execution of this trust is permissible.

What this doctrine says therefore is that natural resources, which includes lakes, are held by the State as a "trustee" of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English Law, it related to specific types of resources. The US Courts have expanded and given the doctrine its contemporary shape whereby it encompasses the entire spectrum of the environment.

60. The doctrine, in its present form, was incorporated as a part of Indian law by this Court in the case of M.C. Mehta v. Kamal Nath (supra) and also in M.I. Builders v. Radhey Shyam Sahu, (1999) 6 SCC 464 . In M.C. Mehta, Kuldip Singh J., writing for the majority held:

[our legal system] includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. [...] The state as a trustee is under the legal duty to protect the natural resources. [Para 22]

The Supreme Court of California, in the case of National Audubon Society v. Superior Court of Alpine Country 33 Cal.419 also known as the Mono Lake case summed up the substance of the doctrine. The Court said:

Thus the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people''s common heritage of streams, lakes, marshlands and tidelands., surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust.

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny upon any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government''s general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources, [Joseph L. Sax "The public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law Review, Vol.68 No.3 (Jan.1970) PP 471- 566)]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to imposed by the public trust

doctrine [ibid]:

1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;

2. the property may not be sold, even for fair cash equivalent

3. the property must be maintained for particular types of use. (i) either traditional uses, or (ii) some uses particular to that form of resources.

In the instant case, it seems, that the Government Orders, as they stand now, are violative of principles 1 and 3, even if we overlook principle 2 on the basis of the fact that the Government is itself developing it rather than transferring it to a third party for value.

Therefore, our order should try to rectify these defects along with following the principle of sustainable development as discussed above.

61. Further the principle of "Inter-Generational Equity" has also been adopted while determining cases involving environmental issues. This Court in the case of A.P. Pollution Control Board vs Prof. M.V. Nayudu & Ors. (1999) 2 SCC 718 held as under:

The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

Principle 1 - Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations....

Principle 2 - The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.

62. Several international conventions and treaties have recognized the above principles and, in fact, several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present (proposals of Sands and Brown Weiss referred to by Dr. Sreenivas Rao Permmaraju, Special Rapporteur, paras 97 and 98 of his report).

63. The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country. Article 48A of the Constitution of India

mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Article 51A of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wild life and to have compassion for living creatures. These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature.

64. On the other hand, we cannot also shut our eyes that shelter is one of the basic human needs just next to food and clothing. Need for a National Housing and Habitat Policy emerges from the growing requirements of shelter and related infrastructure. These requirements are growing in the context of rapid pace of urbanization, increasing migration from rural to urban centers in search of livelihood, mis-match between demand and supply of sites and services at affordable cost and inability of most new and poorer urban settlers to access formal land markets in urban areas due to high costs and their own lower incomes, leading to a non-sustainable situation. This policy intends to promote sustainable development of habitat in the country, with a view to ensure equitable supply of land, shelter and services at affordable prices.

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

66. The Judicial Wing of the country, more particularly, this Court has laid down a plethora of decisions asserting the need for environmental protection and conservation of

natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution of India. This apart, the Directive Principles of State Policy as also the fundamental duties enshrined in Part IV and Part IVA of the Constitution of India respectively also stresses the need to protect and improve the natural environment including the forests, lakes, rivers and wild-life and to have compassion for living creatures.

67. This Court in Dahanu Taluka Environmental Protection Group and Ors. Vs. Bombay Suburban Electricity Supply Co. Ltd. & Ors. (1991) 2 SCC 539 held that the concerned Government should "consider the importance of public projects for the betterment of the conditions of living people on one hand and the necessity for preservation of social and ecological balance and avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a balance between the two conflicting objectives."

68. However, some of the environmental activists, as noted in the "The Environmental Activities Hand Book" authored by Gayatri Singh, Kerban Ankleswaria and Colins Gonsalves, that the Judges are carried away by the money spent on projects and that mega projects, that harm the environment are not condemned. However, this criticism seems to be baseless since in Virender Gaur & Ors. Vs. State of Haryana & Ors., (1995) 2 SCC 577 , this Court insisted on the demolition of structure which have been constructed on the lands reserved for common purposes and that this Court did not allow its decision to be frustrated by the actions of a party. This Court followed the said decision in several cases issuing directions and ensuring its enforcement by nothing short of demolition or restoration of status quo ante. The fact that crores of rupees was spent already on development projects did not convince this Court while being in a zeal to jealously safeguarding the environment and in preventing the abuse of the environment by a group of humans or the authorities under the State for that matter.

69. The set of facts in the present case relates to the preservation of and restoration of status quo ante of two tanks, historical in nature being in existence since the time of Srikrishnadevaraya, The Great, 1500 A.D., where the cry of socially spirited citizens calling for judicial remedy was not considered in the right perspective by the Division bench of the High Court of Andhra Pradesh despite there being overwhelming evidence of the tanks being in existence and were being put to use not only for irrigation purpose but also as lakes which were furthering percolation to improve the ground water table, thus serving the needs of the people in and around these tanks. The Division Bench of the High Court, in the impugned order, has given precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources.

70. No doubt, the wishful thinking and the desire of the appellant- forum , that the Tanks should be there, and the old glory of the tanks should be continued, is laudable. But the ground realities are otherwise. We have already noticed the ground realities as pointed out by the Government of Andhra Pradesh, TUDA and TTD in their reply to the Civil appeals by furnishing details, datas and particulars. Now a days because of the poverty and lack of employment avenues, migration of people from rural areas to urban areas is a common phenomenon. Because of the limited infrastructure of the towns, the towns are becoming slums. We, therefore, cannot countenance the submissions made by the appellant in regard to the complete restoration and revival of two tanks in the peculiar facts and circumstances of this case. We cannot, at the same time, prevent the Government from proceeding with the proper development of Tirupathi town. The two Government Orders which are impugned have been issued long before and pursuant to the issuance of the Government Orders, several other developments have taken place. Constructions and improvements have been made in a vast measure. Because of spending crores and crores of rupees by various authorities, the only option now left to the appellant and the respondents is to see that the report submitted by the Expert Committee is implemented in its letter and spirit and all the respondents shall cooperate in giving effect to the Committee''s report.

71. It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body. Taking into account all these principles of law, and after considering the competing claims of environment and the need for housing, this Court holds the following as per the facts of this case.

72. The Respondents have claimed that the valuable right to shelter will be violated if the impugned Government Orders are revoked. On the facts of the present case, it seems that the respondents intend to build residential blocks of flat for High and Middle income families, institutions as well as infrastructure for the TTDS. If the proposed constructions are not carried on, it seems unlikely that anyone will be left homeless or without their basic need for shelter. Therefore, one feels that the right to shelter does not seem to be so pressing under the present circumstances so as to outweigh all environmental considerations.

73. Another plea repeatedly taken by the respondents correspond to the money already spent on developing the land. However, the decision of this case cannot be based solely upon the investments committed by any party. Since, otherwise, it would seem that once any party makes certain investment in a project, it would be a fait accompli and this Court will not have any option but to deem it legal.

74. Therefore, under the present circumstances, the Court should do the most it can to safeguard the two tanks in question. However, due to the persistent developmental activities over a long time, much of the natural resources of the lakes has been lost, and

considered irreparable. This, though regrettable, is beyond the power of this Court to rectify.

75. One particular feature of this case was the competing nature of claims by both the parties on the present state of the two tanks and the feasibility of their revival. We thought that it would be best, therefore, if we place reliance on the findings of the expert committee appointed by us which has considered the factual situation and the feasibility of revival of the two tanks. Thus in pursuance of a study of that committee, this Court passes the following orders.

76. The appeals are disposed of with the following directions:

With regard to Peruru tank:

(i) No further constructions to be made.

(ii) The supply channel of Bodeddula Vanka needs to be cleared and revitalized. A small check dam at Malapali to be removed to ensure the free flow and supply to the tank.

(iii) Percolation tank to be constructed and artificial recharge to be done to ensure the revival of the tank, keeping in mind its advantage at being situated at the foot hills.

(iv) The area allotted by Mandal Revenue Office for construction of the tank to be increased to a minimum of 50 acres. Percolation tank with sufficient number of recharge shafts to be developed to recharge the unsaturated horizons up to 20 m. The design of the shafts etc. to be prepared in consultation with the CGWB. The proposed percolation tank to be suitably located along the bund keeping in view the inlets, irrigation sluices and surplus water.

(v) Feasibility and cost estimation for the revival of the old feeder channel for Swarnamukhi River should be carried and a report to be submitted to the Court.

(vi) Each house already constructed by the TTD must provide for roof top rain water harvesting. Abstraction from ground water to be completely banned. No borewell tubewell for any purpose to be allowed in the area.

(vii) Pyrometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime.

With regard to Avilala tank:

(i) No further construction to be allowed in the area.

(ii) Each house already constructed by the APHB/ TUDA must provide structure for roof top rain water harvesting. All the storm water in the already built colonies to be recharged to ground water. Structures for such purposes to be designed in consultation with the

CGWB.

(iii) No borewell tubewell for any purpose to be allowed in the area.

(iv) An area of 40 acres presently reserved for the Government should not be developed in any way that may lead to concretization of the ground surface. Recharge structures to be constructed for rainwater harvesting.

(v) Pyrometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime.

77. We place on record our deep appreciation for the valuable assistance rendered by all the counsel appearing in this case which made our job easier.

78. The appeals are disposed of accordingly - no costs.