

1. WP (C) No. 7506/ 2007

Rajendra Singh & Ors.

.....Petitioners

through: Mr. Sanjay Parikh with Mr. Jitin Sahni, Ms. Mamta Saxena
Mr. Ritwick Dutta and Rahul Chaudhary, Advocates

VERSUS

Government of NCT of Delhi & Ors.

.....Respondents

through: Dr. A.M. Singhvi, Sr. Adv. With Mr. Sumit Pushkarna, Advocate for the
respondent No. 1/GNCTD
Mr.G.E. Vahanvati, Solicitor General with Mr. Suresh Kait for the
respondent No. 2/UOI.
Mr. Rajiv Bansal, Advocate for the respondent No.5/DDA
Mr. V.K. Shali, Advocate for the respondent No. 6/DMRC
Mr. S.M. Aggarwal, Convenor, Yamuna Monitoring Committee

2. WP (C) No. 6729/2007

Vinod Kumar Jain

.....Petitioner

through: Mr. Arvind Sah, Advocate

VERSUS

Union of India & Ors.

through: Mr. G.E. Vahanvati, Solicitor General with Mr., Suresh Kait for the
respondent No. 1/UOI.
Mr. Rajiv Bansal for Respondent No. 3/DDA
Mr. S.M. Aggarwal, Convenor, Yamuna Monitoring Committee

A.K. SIKRI, J.

1. “ Delhi as an idea as well as a space, has not stood still in the decades since Independence. From its stolid imperial beginnings to the extravagant multiple universes that make up the city today, Delhi has experienced rapidly of change unmatched by any other Indian metropolis. If New Delhi was the capital Britain’s Indian Empire, post independence India created newer Delhi, a new capital, but one perched securely on the foundations of the older one. A well-established belief of that time, and one advocated by Jawaharlal Nehru, India’s first prime minister, was that creating an egalitarian, progressive environment would lead to an egalitarian and progressive society” – Ranjana Sengputa “Delhi Metropolitan *The making of an unlikely city*” Penguin Brothers (2007), p.44.
2. Keeping the above conviction in mind, the respondents feel that the capital city is all set to transform itself for the upcoming XIX Commonwealth Games, 2010 (hereinafter referred to ‘CWG-2010). It is going to be the first mega-event hosted by the city since the 1982 Asian Games, a gap of nearly 30 years. Much has changed, and yet much has remained unchanged in this time. Commonwealth Games, originated as the British Empire Games in 1930, are held every four years in a commonwealth country. Like the Olympics, these games are terms as a hallmark event as the infrastructure and facilities built for the event are geared to serve the host city – long after the event.
3. On 13.9. 2003, the Games were allotted to Delhi by the Commonwealth Games Federation and are now scheduled to be held on 3rd to 14th October 2010. Thus, the CWG-2010 are being hosted in Delhi pursuant to a commitment made by Indian Olympic Association (hereinafter referred to as the “IOA”) in the form of an agreement, in which the IOA has undertaken to host the games in India

with the requisite standards and requirements of the Commonwealth Games Federation. Thus, the city is planning a major overhaul of its urban infrastructure as well as its sporting facilities to meet the said standards and requirements. The city infrastructure being developed includes construction of games village, new sporting facilities, modernization of existing sporting facilities and stadia; new flyovers, bridges and stadia; transport connectivity including parking facilities; improvement and widening of roads; augmentation of power and water supply, among other services.

4. While governmental agencies, including the Delhi Development Authority (DDA), are boasting about the developmental projects undertaken in this behalf, some environmentalists are terribly upset. Reason – Much of the construction activity is coming up on the periphery of Yamuna river. According to them, it is on the riverbed itself which is not only going to destroy the river but would pose severe threat to the city as well.

Thus, being aggrieved by the infrastructure planned on the Yamuna riverbed, the petitioners herein, who are environmentalists, have approached this Court with a view to halt this part of the construction. The said construction includes the Delhi Metro Depot called Yamuna Depot, the Metro Mall and the Games Village for the proposed CGW-2010. The basic contention of the petitioners is to the effect that the said construction will threaten the ecological integrity of the River besides causing irreversible damage to the floodplain. The petitioners have made prayer for a writ of mandamus and order/directed/declaration whereby:-

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- (a) Declaring the respondent to remove any construction, fill up, digging etc. made so far and restore the ecology of Yamuna river bed.
 - (b) Directing the Yamuna river bed in Delhi is an ecologically sensitive area and hence to be protected and preserved.
 - (c) Directing that any construction in the Yamuna river bed will permanently destroy the ecology of river Yamuna, its ground water recharge ability and will be violative of public trust doctrine, precautionary principle which are part of Article 21 of the Constitution.
 - (d) Directing that the respondents should locate an alternative site for the project/s pointed out in the EAC recommendations dated 3.11.06.
 - (e) Directing setting aside of EC dated 14.12.06 as being violative of Article 21 of the Constitution.
 - (f) Directing setting aside of EC dated 22.1.07; 29.3.07; and 2.4.07 as being arbitrary, whimsical, mala fide and violative of Article 14 and 21 of the Constitution.
 - (g) Directing the respondent to restore the ecology of river Yamuna in accordance with the ‘Polluters Pay Principle.’
 - (h) Pass any such other order as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

5. On the other hand, the Respondents herein (Government of Delhi, Ministry of Environment and Forest, Ministry of Youth Affairs & Sports, Ministry of Urban Development and Poverty, Delhi Development Authority, and Delhi Metro Rail Corporation Ltd.) submit that the said construction is being done after extensive deliberations for the purpose of development of the river Yamuna and after obtaining required clearances from the authorities concerned. They are emphatic that events like CWG-2010 happen once in decades and will surely have the ability to transform the capital city.
6. Thus, the entire matter revolves around the two distinguishing but contrasting interests: Development of the city coupled with National prestige on the one hand and Ecology of the River Yamuna on the other. The respondents contend that the Commonwealth Games are a matter of national pride and any order prohibiting the construction would have an impact on the reputation of the country so far as international community is concerned. For the petitioners, that is secondary, and the prime consideration should be ‘Save the Environment’. They argue that the impact of the construction would have irreversible impact and cause permanent damage to the ecologically fragile environment of the river Yamuna, its bed, banks, basin and flood plain. As per them, the concerns of reputation cannot be permitted to impact the constitutional rights of the citizens or to override the health of the citizens, the river and the environment.

7. PRELIMINARY OBJECTION

Before we delve on the core issue, we would like to address the preliminary submission raised by the respondents to the maintainability of this writ petition.

8. The preliminary objection raised is to the effect that the petition is grossly barred by delay and laches. The Respondent DDA submits that the change of the land use for the site falling in Zone O was done on 21.9.1999 from “agricultural and water body” to “public and semi-public” purpose. The site in question was finalized way back in 2003 and DDA has also put up a notice board at the site indicating that the site was meant for Commonwealth Games Village Complex. A period of five years has elapsed since then. Further, the global tender process for Public Private Partnership (“PPP”) participation, in the residential portion of the Commonwealth Games project was floated in December 2006 and was completed in June 2007, thereby creating 3rd party rights. Therefore, the writ petition deserved to be dismissed on the sole ground of delay. The respondent DMRC has also raised an objection on the similar lines and submits that the proposal to construct the depot and the Yamuna Bank Station was taken up in 2002 while the challenge to the said action is raised by the petitioners in the year 2007. Therefore, the action of the petitioners after a lapse of 5 years is fatal as no reasonable explanation is given for the same. In support, reliance was placed on the following judgements:

- (i) Rabindranath Bose v. Union of India
(1970) 1 SCC 84

No relief should be given to the petitioner who without reasonable explanation approaches the Court under Article 32 after inordinate delay.

- (ii) Pt. Girdharan Prasad v. State of Bihar
(1980) 2 SCC 83

Delay of more than 17 months not explained – Writ petition ought to be dismissed.

- (iii) S.S. Moghe v. Union of India
(1981) 3 SCC 271

Writ challenge liable to be rejected on the preliminary ground of delay.

- (iv) State of M.P v. Nand Lal Jaiswal
(1986) 4 SCC 566

Inordinate delay and non-satisfactory explanation – High Court must decline to intervene. Unexplained delay coupled with creation of third party rights is an important fact.

- (v) State of Maharashtra v. Digambar
(1995) 4 SCC 685

Even though legal right might have otherwise been infringed, the delay in filing petition will render the petitioner not entitled to any relief.

- (vi) Municipal Corporation of Greater Bombay v. I.B.I.
(1996) 11 SCC 500

When there's inordinate delay in filing writ petition and acquisition proceedings have become final, court should not interfere to quash notifications.

- (vii) Larsen & Turbo v. State
(1998) 4 SCC 387

Writ petition if entertained belatedly would be putting a premium on dilatory tactics.

(viii) Narmada Bachao Andolan v. Union of India
(2000) 10 SCC 664

PIL should be thrown out at the threshold if it is challenged after the commencement of execution of the project.

(ix) Kailash Chand Sharma v. State of Rajasthan
(2002) 6 SCC 562

Writ petition filed after one year and no explanation tendered, ought to be dismissed.

(x) Chairman Md, BPL v. S. Gururaja
(2003) 8 SCC 567

Writ petition after one year and no explanation tendered, ought to be dismissed.

9. There may be some merit in the aforesaid submission. The Games were allotted to Delhi by the Commonwealth Games Federation (CGF) on 13.9.2003 and are scheduled to be held on 3rd to 14th October, 2010. This fact was widely publicized in the newspaper in 2003 itself along with the fact the present site is chosen for the construction of the Commonwealth Games Village. Though the petitioners have their own explanation for approaching the Court after 4 years, i.e. in September-October 2007, we feel that they could have approached this Court somewhat earlier. Howsoever, at the same time the issue in hand, viz. preservation and protection of ecology of river Yamuna, is extremely important. The issue raised requires due deliberation and adjudication. Therefore, we would not like to throw this petition on this ground without discussing the merits thereof. At the same time, the delayed action will naturally have some bearing on the nature of directions which we propose to issue at the end.

SUBMISSIONS OF THE PETITIONERS

10. Frontal attack to the proposed and ongoing construction was led by Mr. Sanjay Parikh, Advocate, ably supplemented by Mr. Arvind Sah, Advocate and Mr. S.M. Aggarwal, Convenor, Yamuna Monitoring Committee.

The foremost submission of the petitioners is that despite the recommendations of the NEERI that no residential or industrial facilities requiring permanent structures be provided on the river bed, the DDA as well as DMRC chose Yamuna riverbed for construction activities of permanent nature. The choice of riverbed by the DDA for construction of the Commonwealth Games Village and by the DMRC for the construction of metro lines, yard, depot and residential houses goes against the Constitutional obligation and is in breach of Doctrine of Public Trust. The Petitioners submit that the entire process of grant of the Environment Clearance by MoEF is faulty and vitiated.

11. The Environment Clearance dated 14.12. 2006 was based on the recommendations of the Expert Appraisal Committee had permitted raising of temporary, dismantable structures. It has said that 'unless detailed studies lead to the conclusion that the proposed structures can be left behind permanently, the proposal should proceed with the assumption that the riverbed may have to be restored to the river'. This conclusion of the Expert Appraisal Committee was on the basis of NEERI 1999 Report which affirms independently NEERI 2005 Report though the said 2005 Report was concealed by DDA from the Expert Appraisal Committee. The DDA was already in possession of NEERI 2005 as the same was done at the behest of DDA itself which had clearly stated that 'no permanent structure of residential or industrial nature be provided in the river bed'. It is further submitted that the modified clearance letter dated 22.1.2007 stipulated two conditions, i.e.: (i) The DDA could go ahead with only 'planning' of their construction work; and (ii) That the actual work

on construction will not start till such time the work on mitigation/abatement are identified; and none of these conditions are complied with by the Respondents.

12. It is further argued that the NEERI 2005 Report also reviewed past development plans for river Yamuna in Delhi and had rejected the recommendations of CWPRS Report of 1993 for channelisation of river as being unviable which may also pose considerable risk of flooding of the city area. The CWPRS Report of 2007 was on the basis of same data of earlier study conducted in May 1993. Out of the three studies which were recommended by the EAC of MoEF to the DDA, one on flooding risk, the other on river dredging and the third on extent of loss of recharge of ground water due to exclusion of the area under consideration, the second and third studies were not part of CWPRS study.
13. The petitioners submit that the report of CWPRS, Pune submitted by DDA to MoEF was found to be not in conformity with the conditions of Environmental Clearance issued by MoEF dated 22 January 2007. The said study was inadequate and there were certain contradictions and lacunae according to MoEF itself but no further study was carried out. Therefore, there was no proper study of the magnitude of additional afflux in the river during high flow and none at all as far as extent of loss of recharge of ground water is concerned. The MoEF found several shortcomings in the report of CWPRS, Pune as under:
 - (i) The study has not identified any particular area or part of the Yamuna catchment in Delhi which are prone to flooding during rainy season and how they should be protected.
 - (ii) Flooding of river Yamuna may result into blocking the drains and nallas discharging into river Yamuna which may lead to back flow from the drains and nallas causing flooding of low lying areas and water logging.
 - (iii) The study report is silent on this aspect.
 - (iv) The study report is based on earlier study conducted in May 1993. The study has not covered dredging aspect of river Yamuna in Delhi.
14. The MoEF still went ahead with the Environmental Clearance dated 14.12.2006 as modified by letters dated 22.1.2007 and 29.3.2007 under pressure from the DDA to allow construction of permanent structures in the riverbed. The DDA even before the clearance was granted informed EAC of MoEF via various letters dated 19.01.2007, 6.03.2007, 2.04.2007 that they are going ahead with the planning and the construction of the structures. Hence the MoEF modified the Environmental Clearances, illegally and under pressure from DDA to allow construction of permanent structures without being in full know of the dangers involved. The steps taken after the Environmental Clearance dated 14.12.2006 and the discussions between the DDA and MoEF officials show arbitrariness in their actions, against their statutory and constitutional obligations of protecting the river Yamuna and its riverbed, compromising the very purpose of the EIA.
15. It is further submitted that the DDA did not consider any other site for the Commonwealth Games Village and rejected the MoEF suggestion of Safdarjung Airport as alternate site on indefensible grounds. The EAC in its meeting held on 1st December 2006 noted that DDA did not consider any other site for the Commonwealth Games Village and this was the only site shown to the Commonwealth Games Federation.
16. Further, no approval/permission from the Central Ground Water Authority (CGWA) has been obtained by the Respondents with respect to the said construction activities. The CGWA, a statutory authority created under Section 15 of the Environment (Protection) Act, 1986 by the MoEF in pursuance of the orders of the Hon'ble Supreme Court, has notified on 2nd September 2000 the entire Yamuna Flood Plain in Delhi as protected for ground water management and development and construction, installation and drilling of any new structure for extraction of ground water resources for purposes other than drinking and domestic, has been prohibited. The relevant portion thereof reads as under:

“Now therefore the Authority in exercise of its powers and functions under section (v) of the sub section 2 of the Environment (Protection) Act, 1986 after considering the need for protecting the ground water resource and to ensure further development activities in consistence with protection and preservation of the ground water resource hereby declare the entire Yamuna Flood Plain area in the National Capital Territory of Delhi as “Notified Area” and prohibits the construction, installation and drilling of any new structure for extraction of ground water resources for purses other than drinking and domestic.

Further no person/Organisation/Agency (Govt. or Non-Govt.) shall under take any scheme/project of ground water development & management in the above said region without prior permission of the Authority.”

17. The next contention of the petitioners is to the effect that the creation of embankment cannot change the basic character and role of a riverbed. The construction of embankment does not mean that the present site is not part of a river bed. While an embankment may compromise the ability of the river bed and flood plain to play its rightful role of passage of flood waters and recharge of ground water its does not imply that the land ceases to remain a riverbed and flood plain by such an encroachment over it. The River Yamuna and its eco system consisting of 9700 Hectare (97 Sq. kms.) of active flood plain / river bed in Delhi have been accepted by the Master Plan – Perspective 2021, NEERI 2005 Report and also by this Court in Baldev Sing Dhillon (supra). The NEERI Report 2005 at Page 1.3 clearly lays down the same in the following words:

“The Active Flood Plain areas in NCT covers an area of 97 sq. km. The area lies between 23°28’20, and 77 °07’E and 77 °20’37”E and falls in the Survey of India Toposheets No. 53H.

18. The petitioners further submit that the river Yamuna has been damaged, polluted and silted up in such a manner that the NEERI Report of 2005 gave a finding to the effect that the stretch/river has lost its carrying capacity. This has happened because of various authorities not taking care of the nature’s bounty and not applying the precautionary principle. This riverbed and the entire ecosystem cannot be allowed to get further exhausted. At present what is required is not application of precautionary principle but in fact sincere efforts to rejuvenate the river as an obligation under the Constitution of India and the Doctrine of Public Trust.
19. The learned counsel highlighted the danger of developing the Yamuna riverbed. The proposed Commonwealth Games Village on the Yamuna riverbed will only expose the Capital to the risk of severe flooding and will cause irreversible ecological damage. The construction will not only lead to reduction of ground water reserves, but will also completely stop the ground water recharge occurring from the flood plains. In the light of acute scarcity of fresh water in Delhi, reduction of the ground water reserve will further aggravate the water problem. It would destroy the natural reservoir, which collects water during the monsoon and releases them gradually through the river. The other risk factor highlighted is that Yamuna floodplain lies on the seismic zone or the earthquake vulnerable zone. It is submitted that the dangers involved with developing a river bed and flood plains were brought home to the people in Mumbai and those in the country on 26th July, 2005 in a rather tragic manner where incessant rains in the city marooned larger parts of Mumbai city with consequent loss of life and property. It is widely believed that one of the main reasons for the devastation wrought by the deluge in Mumbai was the channelisation of river Mithi in Mumbai. The Counsel referred the Report by Concerned Citizen’s Conclusion (CCC) – An inquiry into the Mumbai Floods, 2005 wherein it was concluded that vast reclamation of land over the years for purposes such as BKC, the Bandra-Worli Sea Link, the unabated construction of unauthorized settlements along the banks and the “Channelisation” of the river are three main interventions that have interfered to varying degrees with the Mithi’s free flow causing the destruction witnesses on July 26. The Petitioner also referred various studies whereby highlighting the importance of flood plains, valuation of ecological functions and benefits, risks due to floods, and seismic hazard assessment for Delhi region. Hence there is an apprehension, which according to the petitioners is based on logic and substance that any construction on the flood plain will expose it to natural disaster and will only aggravate the bad shape of the river.

20. The petitioners argue that in a similar manner, illegal construction is being carried out by Respondent DMRC, in the riverbed between ITO project road to Nizammuddin project road. The construction of a massive metro yard hardly at a distance of 200-250 meters from the present edge of the riverbed, residential complex in about 1.85 acres river bad and a huge Games Village Metro Station, along with a mall is being built and planned by M/s. Parsvanath Developers requiring permanent structures which are in violation of the this Court's orders dated 3.3.2003 and 3.5.2005 as well as of the recommendation of the NEERI which was commissioned by the DDA itself.
21. It is argued that the orders passed by this Court on 3.3.2003, 3.5.2005, 26.10.2005, 16.11.2005 and 8.12.2005 are clear that the river bed is to be restored to its original position with a clear intention that "Yamuna has to be redeveloped in such a manner that it becomes a habitat for trees, forests and centre of recreation." Vide order dated 8.12.2005, it was also made clear by this Hon'ble Court, "we are making it clear that no structure whether it pertains to religious, residential, commercial or any other purpose shall be allowed to exist". These orders cannot be read as allowing huts to be removed and permitting concrete structures which permanently damage the river bed of the flood plain, to come up. The argument that the structures are permitted/ sanctioned cannot be a ground to justify violation of directions of this Court, not with standing the fact that the so called permissions are in violation of the law, the Constitution and suffers from vice of malafides and arbitrariness. The relevant portion of the said order dated 8.12.2005 reads as under:-

"It is the hope and expectation of the citizens of Delhi to see that river Yamuna is restored to its lost ambience and pristine glory which it once upon a time used to enjoy. River Yamuna is the lifeline for the citizens of Delhi. Right from its entry into Delhi till it leaves Delhi, the purity, sanctity and the cleanliness of its water has to be maintained. It is repeatedly claimed that the Government is doing its best and has already spent thousands of crores of rupees in the name of 'Cleanse Yamuna' Project. But the common man does not find any visible change. Encroachments on river beds and embankment have become order of the day. No effective steps have been taken to make Yamuna free from encroachments and pollution of all kinds. It is because of this realization that we have entrusted the task to the Committee headed by Justice Usha Mehra. (Retired). We direct the Committee to take up in right earnestness and on day-to-day basis the task of removing encroachments up to 300 meters from both sides of River Yamuna in the first instance. No encroachment either in the form of jhuggi jhopri clusters or in any other manner by any person or organization shall be permitted. Yamuna has to be redeveloped in such a manner that it becomes the habitat for trees, forests and center for recreation. We are making it clear that no structure whether it pertains to religions, religions, residential or commercial or any other purpose shall be allowed to exist. We are also making it clear that no sullage, no seers, no industry, no factory shall be permitted on both sides of the embankment of Yamuna so as to prevent pollution of the river and if any such structure is found steps will be taken by the Committee to get the same removed."

22. The petitioners point out that presently rivers as a key ecosystem and a wetland of great importance has no legal protection in the country. The 10th Five Year Plan document in Chapter 9 dealing with Forests and Environment had mandated that: "A legislation for a River Regulation Zone on the lines of Coastal Regulation Zone would be attempted." Realizing this fact a committee to formulate draft document for River Regulation Zone (on the lines of Coastal regulation Zone under the Environment Protection Act, 1986) was constituted by the MoEF in 2002. The first and second meeting of the said committee was held on 8.1.2002 and 26.9.2002 at which a draft proposal on River Regulation Zone (RRZ) was presented and discussed. According to the Draft Document on River Regulation Zone – 'The conservation river requires that they are treated as ecosystem and their ecological integrity (physical, hydrological, chemical and biological characteristics and natural functions) is maintained.' Rivers are not merely channels that transport water, they are dynamic ecosystems that change over time in response to hydrological and biological processes and human interventions. Therefore all those human/ anthropogenic activities that directly or indirectly damage the river and flood plain habitat or degrade the water quality also need to be prohibited or regulated by the Water (Prevention and Control of Pollution) Act, other activities include:-

- a. Flow regulation (divergence and extraction of water).
- b. Channelisation of rivers and streams by constructing embankments.
- c. Reclamation and encroachment of floodplains by landfills.
- d. Disposal of different kinds of solid wastes including religious offerings, and
- e. Intensive agricultures on the flood plain and river bed

23. Despite the initiative as above at the Ministry of Environment and Forests the said River Regulation Zone notification on the lines of Coastal Regulation Zone under the Environment (Protection) Act, 1986 is yet to be notified.

24. SUBMISSION OF THE RESPONDENTS

Mr. Vahanvati, learned Solicitor General of India submitted that the area where the Commonwealth Games village is located is in Pocket III and beyond the embankment. The site is surrounded by NH-24 on the southern side, embankment on the western side, railway line of the northern side and Marginal bund on the eastern side. He submits that post 2002, after the construction of bund the site, where the construction is being done cannot be considered to be a floodplain. The Solicitor General argued that the petitioners themselves stated via the Experts' Study annexed as Annexure P-1 and "Flood Plain are the areas between manmade embankments and level of the river channel (Fig. 1)". Therefore, the site which is beyond manmade fund cannot be said to be Flood Plain. In this respect the Solicitor General also read over the relevant portion with respect to the NEERI Report of 1999 and 2005 wherein it is clearly recommended that the area beyond bund is to be reclaimed for development and construction, *inter alia*, stating as under:-

NEERI Report of 2005 pg 27 point number (v)

"Proposed land use break-up

In is assumed that two bunds each of a suitable height will be constructed on either side of the water channel in a span between 550 m to 600 m depending upon the model studies. On this basis, an area of 2400 ha would be under the water channel including the two bunds, which will act as major circulation roads, and the balance of 7300 ha will be reclaimed."

NEERI Report of 1999 page 4.12

"As seen from the figure, the 30m ROW in Pocket III is retained as a road-cum-bund, constructed for a flood design of once in fifty years as per regulations, providing flood protection in order to developments in the land beyond this road in Pocket III. The landmass towards the left bank could be developed using suitable flood protection measures keeping in mind the once in 100 year flood scenario."

25. It is submitted by the learned Solicitor General the NEERI Report of 1999 as well as 2005 is silent about the Akshardham Construction, bund created in 2002 and the area earmarked in 2003 for games. Therefore, the general guidelines provided by NEERI 2005 are subject to what is specifically approved. It is stated in the General Guidelines for Development of Riverbed, NEERI Report of 2005 that no residential or industrial facilities requiring permanent structure should be provided on the riverbed. He further submits that the NEERI Report of 2008 clearly takes note of the fact that the final report submitted by it in October 2005 did not assess the embankment (Akshardham Bund) which had come into existence as it was not part of the original study carried out by NEERI in the year 1999. And taking note of the embankment clearly observed that the said area does not form part of the flood plain, and same is reproduced herein:-

"Given the definition of the project area, as considered by MoEF in its clearance letter dt 29 March, 2007, the boundaries of Yamuna River, which were considered in the earlier NEERI report, were demarcated by East and West bank bunds, whereas now the river, post-2002, has new boundaries in the project region, i.e. 45 m wide and about 1 km long (stretching between New Railway bridge and Nizamuddin road bridge) newly constructed bund in East and original bund in West. The reclaimed area, Pocket III, is deemed to be no more a part of the flood plain zone by the Akshardham Bund and MoEF has in principle approved the bund.

26. Further, the site is no more part of the flood plain since the site has been reclaimed as per the approval of the Yamuna Committee of Central Water Commission. In the instant case, the construction is being done on the CWG Village site near the Akshardham Temple which area is protected by the construction of bund. Hence, on water can flood into the said area and, therefore, the CWG Village site is not in the flood plain of the river Yamuna. The present site is more than 1.3 Kilometers from the river bed. In this respect the reliance was further placed upon the order dated 12.1.2005 of the Apex Court in UP Employees Federation case i.e., WP No. 353/3004 wherein the Apex Court approved the construction of a permanent structure, namely, the Akshardham temple in the Pocket III area, which is abutting the present site of construction. The Hon'ble Supreme Court recorded the fact that Akshardham construction was 1.7 Kms. Away from the riverbank.
27. The next submission of the Respondents is that the on-going projects of DDA on the site in question have got the necessary clearances from the concerned authorities, including environmental clearances. The project was started by DDA after carrying out detailed and necessary studies through competent bodies. The permission and necessary clearances were given to DDA after adopting the suggestion/ opinions given by research bodies. The MoEF vide its letter dated 29.3.2007, while granting permission to DDA to continue with the construction work, entailed specific conditions with respect to the development/ construction phase of the Environment Clearance dated 14.12.2006 and the same are being taken care of.
28. According to the respondents, there is no question of violation of NEERI recommendations as the respondents are making the constructions with due care and following the remedial measures. The construction activity would not impact any eco-system as all remedial measures are in place. Based on the recommendations of NEERI, change of land admeasuring 42.5 hectares in Pocket III was notified by Gazette Notification dated 21.9.1999. It is submitted the in its Report of 2005, NEERI has suggested the proposed use in accord with eco-friendly development. It is submitted the DDA has not changed any water body in the Zone 'O' and Part "P" to other uses. It is submitted that the groundwater recharge pond area, as suggested by NEERI, has not been disturbed and retained. It is submitted that rain water from the pocket shall be transferred to ground aquifers by means of recharge wells. Thus, there shall be no adverse impact on the ground water recharge system of the area. It is clear the despite the desirability and necessity of the permanent structures for the Commonwealth Games Village, the MoEF did not allow construction of the permanent structures to begin till such time the mitigation measures against upstream flooding were duly identified and a condition to implement the said mitigation measures were imposed on the project proponent.
29. The Counter Affidavit by Respondent No.3 states that hosting of the Commonwealth Games (CWG) in Delhi, which is not possible without the construction of the Commonwealth Games village required to house over 8000 visiting athletes and delegations from various athletes and delegations from various Commonwealth countries and also to provide for training facilities, recreation, dining space, transport centers etc. The Games Village, as the upcoming township is called, is a cornerstone of the Delhi Government's plan to transform the capital into a "Global City". 71 countries are making extensive preparations based on the above commitment for participation in the CWG, 2010. Should the hosting of the games be delayed or not take place, it would result in loss of national prestige. It is in national interest that the project is to be completed in time because a delay in the completion of the project would be fatal and would deprive the country of the various benefits which will accrue to India on account of the holding of the Games, which are being organized by the Technically qualified officials and sports administrators with rich experience. It is submitted that if the Games for any reason whatsoever are either delayed or do not take place, it would not only be a loss of prestige of the country but would result in a colossal waste of national resources and considerable time spent by various authorities in considering in detail the various aspects of the project.
30. The learned Solicitor General further submitted that the orders dated 3.3.2003, 3.5.2005, 26.10.2005, 16.11.2005 and 8.12.2005 of this Court are with respect to the encroachments and the same has nothing to do with the Planned Development. It was further submitted that all facts were not placed before the Court, especially with respect to the 2010 Commonwealth Games. It is

submitted that the order dated 8.12.2005 of this Court is to be read in the context and the subject matter with respect to removal of illegal construction/encroachments. It cannot be said that even the authorized construction is not permissible. So far as the order dated 3.5.2005 is concerned, this Court directed that the Yamuna bed and both sides of the river are to be clear from encroachments. Further, vide order dated 3.5.2005, the High Court directed that the authorities concerned, DDA, MCD etc. to forthwith remove “*all unauthorized structure, jhuggi, places of worship another structures in the riverbed and its embankment within two months of the said date.*” A perusal of the aforesaid two orders will clearly show that the intention of the High Court was loud and clear that the riverbed should be made free from encroachments and unauthorized structures. This Court never intended to stop the development of project of general public importance with regard to construction of mass rapid transport system.

31. The permanent structures such as those envisaged in the CWG Village Project, which faces the river Yamuna in Delhi, are still the norm of the day in sporting events. In the Olympic games to be hosted in London 2012, the Organizing Committee (LOCOG) has chosen Lower Lea Valley (i.e. valley of River Lea, which is within the wider Thames Gateway regeneration area) as the site for the Olympic Park containing huge stadia, Olympic Village, hockey centre, basketball arena, etc. besides the site for 9000 homes, along with office, commercial and retail space and community facilities.
32. We have given our thoughtful consideration to the respective submissions. As pointed out in the beginning, the issues touched the development of the city and it is to be examined whether the same is at the cost of environmental degradation. For giving answer to the arguments involving this dilemma, we need to take into consideration the law which has developed on the subject.

33. SETTLED PRINCIPLES OF ENVIRONMENTAL JURISPRUDENCE

In the beginning of civilization man was simply a part of natural system he inhabited, utilizing a small share of its energy and material requirements. As his numbers increased and his culture and technology changed, he found it difficult to cope up within the framework of existing natural system. So, he simplified the natural system into an artificial, young and highly productive system. Improved technology and new discoveries incited him to extract more and more from natural system. Any kind of advances/development no doubt plays a vital role in improving the standards of the society but the same entails associated costs, many of which are environmental costs. As Zygmunt J.B. Plater (Zygmunt J.B. Plater, et al., *Environmental Law and Policy: Nature, law and Society*, (1992) West Publishing Co. p.2):

Trade off between short-term material welfare and long-term ecological integrity do occur, although environmentalists often argue against false tradeoff decisions where rational alternatives are available. “You have to choose: either economic development, or environmental quality, you can’t have both.” – that cliché is the classic false tradeoff.

34. Each case of environmental issue involves a highly individualized set of scientific facts, economic and political issues, and social and natural consequences. There is, however, a special environmental perspective that provides a common ground for all environmental cases. The positions taken by environmentalists are typically based upon a broadened accounting of the considerations involved in decision-making. Almost every environmental case starts in response to someone’s decision to do something: new products or technologies; construction projects; the start, continuation or cessation of various programs that affect the physical world. The people who make these decisions are usually not environmentalists. Indeed, the environmental position often surfaces relatively late in the game, long after the planning stage and well into the implementation stage, when citizens finally see bulldozers rolling. A common complaint of the environmental camp is that these ongoing decisions are predicated on irrationally and unrealistically narrow grounds. The proposed actions, it is argued, unwisely ignore facts, costs and impacts on social and natural values that have real importance to the well-being of the community. By virtue of their broad view of problems and sometimes skeptical view of benefits, environmentalists often end up sounding negative (Zygmunt J.B. Plater, et. Al., *Environmental Law and Policy: Nature, Law and Society*,

(1992) West Publishing Co., p.3). The environmental perspective does not reflexively condemn economic activity; it insists only that decisions to pursue environmentally detrimental activities be made in a way that gives an adequate accounting of the full range of impacts. As President Barber Conable of the World Bank summarized it, "Good ecology is good economics" (Conable, Address to the World Resources Institute, May 5, 1987).

35. It is clear that development and environmental issue are inter-related to each other. In this context, the Chairman of World Commission on Environment and Development (1987) forwarded that 'environment' is where we all live; and 'development' is what we all do in attempting to improve our lot within that abode. The two are inseparable. It was further observed in the Report that there is need to re-examine the critical environment and development issues and to formulate realistic proposals dealing with them. Keeping this paradigm in mind, the term 'sustainable development' came in frequent use whereby development was supposed to be economically viable, socially just and ecologically sound. Thus, focusing on aspect of harmony between economics and ecology and providing a framework for the integration of environmental policies and development strategies.

36. This concept of sustainable development, i.e., balancing ecology and development was established in UN Conference on the Human Environment, Stockholm (1972) whereby it was noted that '*a point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences.*' The following principles laid down therein are relevant for our purpose:

Principle 6

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of ill countries against pollution should be supported.

Principle 11

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

Principle 13

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.

Principle 14

Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

Principle 21

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States of areas beyond the limits of national jurisdiction.

Principle 22

States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

37. Almost ten years after the Stockholm Declaration, the United Nations took another step towards the recognition and promotion of environmental procedural rights in the World Charter for Nature, 1982. The Charter emphasized the universal responsibility of all peoples to safeguard resources for future generations and to protect and restore the natural world. The relevant articles are noted herein:

4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain integrity of those other ecosystems or species with which they coexist.

8. In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to enquire the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology.

9. The allocation of areas of the earth to various uses shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular:

(a) Activities which are likely to cause irreversible damage to nature shall be avoided;

(b) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed;

(c) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects;

(d) Agriculture, grazing, forestry and fisheries practices shall be adapted to the natural characteristics and constraints of given areas;

(e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations.

38. The **1992 Rio Declaration on Environment and Development** defines the rights of the people to be involved in the development of their economies, and the responsibilities of human beings to safeguard the common environment. The declaration builds upon the basic ideas concerning the attitudes of individuals and nations towards the environment and development, first identified at the United Nations Conference on the Human Environment (1972). The Rio Declaration states that long term economic progress is only ensured if it is linked with the protection of the environment. If this is to be achieved, then nations must establish a new global partnership involving governments, their people and the key sectors of society. Together human society must assemble international agreements that protect the global environment with responsible development. There are a number of principles to the Rio Declaration and the prominent among them read as under:

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental need of present and future generations.

Principle 4

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.

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

Principle 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 17

Environmental impact assessment as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a component national authority.

39. One can also name it 'eco-development' whereby development is aimed for along with the adoption of mitigation measures so as to avoid devastation of natural resources/environment. The Constitution of India also entails the principles of environmental protection through Articles 48A and 51A(g) introduced by way of an amendment to the Constitution in 1976. Article 48A, part of the Directive Principles of State Policy, obligated the State to protect and improve the environment. On the other hand, Article 51A9g) obligated citizens to undertake the same responsibilities.

40. The Apex Court in various cases recognized some international accepted and important principles in matters pertaining to the environment, thus, resulting into development of environment jurisprudence in India whereby recognizing concept of sustainable development, doctrine of public trust, precautionary principle etc., combined with a liberal view towards ensuring social justice and the protection of human rights. There have also been occasions when the judiciary has prioritized the environment over development, and vice-versa. In *Hinch Lal Tiwari v. Kamala Devi, (2001) 6 SCC 496*, the court said: 'It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They need to be protected for a proper and healthy environment which enables people to enjoy a quality of life which is the essence of the guaranteed right under article 21 of the Constitution of India. Recently in *Karnataka Industrial Development Board v. C. Kenchappa, (2006) 6 SCC 371* land acquisition was challenged on the ground that it would have an adverse effect on the environment. The court undertook a 'judicial pilgrimage' through all the major developments in environmental law over the last few decades while determining the import of the concept of 'sustainable development', stating:

"12. Environment and Constitutional Provisions

Professor Michael von Hauff of the Institute for Economics and Economic Policy, University of Kaiserlantern, Germany, in his article "The Contribution of Environmental Management Systems to Sustainable Development: Relevance of the Environmental Management and Audit Scheme" aptly observed that, "it is remarkable that India was the first country in the world to enshrine environmental protection as a state goal in its Constitution".

In the impugned judgement serious concern regarding degradation of ecology and environment has been seriously articulated.

13. According to the impugned judgement, preservation and protection of environment are part of Article 21 of the Constitution. Article 21 reads as under:

21. Protection of life and personal liberty.- No person shall be deprived of his life or personal liberty except according to procedure established by law.

In the impugned judgment, the High Court also gave reference to the Directive Principles of the State Policy. In Articles 48A and 51A(g) of the Constitution, a strong foundation has been laid down pertaining to environment, preservation of forests, wild life, rivers and lakes.

14. The Constitutional philosophy enshrined in these Constitutional Provisions must be implemented. Article 48A reads as under :

48A. Protection and improvement of environment and safeguarding of forests and wild life. –

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

The framers of the Constitution expressed concern and importance of protection and improvement of forests, lakes, rivers and wild life for preserving the environment. According to the spirit of the Constitution, it is the bounden duty of all to protect our natural environment. Reference to Article 51A(g) is also very important.

Article 51A(g) reads as under:

51A(g)... to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

15. Environment degradation and its consequences;

Experience of the recent past has brought to us the realization of the deadly effects of development on ecosystem. The entire world is facing a serious problem of environmental degradation due to indiscriminate development. Industrialisation, burning of fossil fuels and massive deforestation are leading to degradation of environment. Today the atmospheric level of carbon dioxide, the principal source of global warming, is 26% higher than pre-industrial concentration.

The earth's surface reached its record level of warming in 1990. In fact, six of the seven warmest years on record have occurred since 1980, according to the World Watch Institute's 1992 report. The rise in global temperature has also been confirmed by the Inter-Governmental Panel on Climate Change set up by the United Nations in its final report published in August 1990. The Global warming has led to unprecedented rise in the sea level. Apart from melting of the polar ice, it has led to Inundation of low-lying coastal regions. Global warming is expected to profoundly affect species and ecosystem. Melting of polar ice and glaciers, thermal expansion of seas would cause worldwide flooding and unprecedented rise in the sea level if gas emissions continue at the present rate. Enormous amount of gases and chemicals emitted by the industrial plants and automobiles have led to depletion of ozone layers which serve as a shield to protect life on the earth from the ultra-violet rays of the sun.

16. The dumping of hazardous and toxic wastes, both solid and liquid, released by the industrial plants is also the result of environment degradation in our country. The problem of "acid rain" which is caused mainly by the emission of sulphur dioxide and nitrogen oxides from power stations and industrial installations is a graphic example of it. The ill – effects of acid rain can be found on vegetation, soil, marine resources, monuments as well as on humans. Air pollutants and acids generated by the industrial activities are now entering forests at an unprecedented scale.

19. In *Essar Oil Ltd. V. Halar Utkarsh Samiti and Org.*, (2004) 2 SCC 392, this Court aptly observed Stockholm Declaration as “Magan Carta of our environment”. First time at the international level importance of environment has been articulated.

(i) In the Stockholm Declaration principle number two provides that the natural resources of the earth including air, water, land, flora and fauna should be protected. The fourth principle of Stockholm Declaration reminds us about our responsibility to safeguard and wisely manage the heritage of wildlife and its habitat.

(ii) The Court in the said judgment also observed that “this, therefore, is the 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 the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution on water resources and the very air which 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.”

(iii) In the said judgment, the passage has been quoted from *Indian Council for Environment Legal Action v. Union of India* (1996) 5 SCC 281. We deem it appropriate to reproduce the same. Para 31 at Page 296 in the said judgment reads as under:-

“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment 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 must 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 environment

25. Some understanding of what ‘the environment’ may encompass can be discerned from other treaty provisions. Those agreements which define ‘environmental effects’, ‘environmental impacts’ or ‘environmental damage’ typically include harm to flora, fauna, soil, water, air landscape, cultural heritage, and any interaction between these factors.

26. The World Summit on Sustainable Development was held in Johannesburg in 2002. The purpose of the same was to evaluate the obstacles to progress and the results achieved since the 1992 World Summit at Rio de Janeiro. The same was expected to present “an opportunity to build on the knowledge gained over the past decade, and provides a new impetus for commitments of resources and specific action towards global sustainability.”

The priority of developing nations is urgent industrialization and development. We have reached at a point where it is necessary to strike a golden balance between the development and ecology. The development should be such as it can be sustained by ecology. All this has given rise to the concept of sustainable development.

27. The World Conservation Union’ and ‘the World Wide Fund for Nature’ prepared jointly by UNEP described that “sustainable development, therefore, depends upon accepting a duty to seek harmony with other people and with nature’ according to ‘*Caring for the Earth*’, *A strategy for Sustainable Living*. The guiding rules are:

- i) People must share with each other and care for the earth;
- ii) Humanity must take no more from nature than man can replenish; and,
- iii) People must adopt life styles and development paths the respect and work within nature’s limits.

The International community expressed its commitment to treat environment and development in an integrated manner and to cooperate “in the further development of international law in the field of

sustainable development. This was part of the Rio Declaration on Environment and Development. [Principle 27; Report of the UN Conference of Environment and Development]

28. **P. Sands** in his celebrated book “[**International Law in the field of Sustainable Development**]” mentioned that the sustainable development requires the States to ensure that they develop and use their natural resources in a manner which is sustainable. According to him, sustainable development has four objectives:-

First, it refers to a commitment to preserve natural resources for the benefit of present and future generations.

Second, sustainable development refers to appropriate standards for the exploitation of natural resources based upon harvests or use (examples include use which is “sustainable,” or “rational,” or “wise” or “appropriate”).

Third, yet other agreements require an “equitable” use of natural resources, suggesting that the use by any State must take account of the needs of other States and people.

And a fourth category of agreements require that, environmental considerations be integrated into economic and other development plans, programmes, and projects, and that the development needs are taken into account in applying environmental objectives.

29. Sustainable Development: Contribution of Judiciary and Others

This Court, in *Vellore Citizens Welfare Forum v. Union of India* (1996) 5 SCC 647, acknowledged that the traditional concept that development and ecology are opposed to each other, is no longer acceptable, Sustainable development is the answer. Some of the salient principles of “Sustainable Development” as culled out from Brundtland Report and other international documents, are Inter-Generational Equity. This Court observed that “the Precautionary Principle” and “the Polluter Pays Principle” are essential features of “Sustainable Development.”

30. Nation’s progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. No government can cope with the problem of environmental repair by itself alone; peoples’ voluntary participation in environmental management is a must for sustainable development. There is a need to create environmental awareness which may be propagated through formal and informal education. We must scientifically assess the ecological impact of various developmental schemes. To meet the challenge of current environmental issues, the entire globe should be considered the proper arena from environmental adjustment. Unity of mankind is not just a dream of the enlightenment but a biophysical fact.

31. In *Subhas Kumar v. State Of Bihar* (1991) 1 SSC 598, this Court has given directions that, under Article 21 of the Constitution, pollution free water and air are the fundamental rights of the people.

32. In the cash of *A.P. Pollution Control Board II v. M.V. Nayudu* (2001) 2 SSC 62, this Court observed that the right to have access to drinking water is fundamental to life and it is the duty of the State under Article 21 to provide clean drinking water to its citizens.

The United Nations Water Conference in 1977 observed as under:-

All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.

33. Similarly, this Court in *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664 observed as under:

Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India.....

The need of the hour is inculcating the sense of urgency in implementing the rules relating to environmental protection which are not strictly followed. Its result would be disastrous for the health and welfare of the people.

The concept of sustainable development whose importance was the resolution of environmental problems is profound and undisputed.

31. Professor Ben Boer, Environmental Law, Faculty of Law, University of Sydney, New South Wales, Australia, in his article "Implementing Sustainability" observed as under:

Strategies for sustainable development have been formulated in many countries in the past several years. Their implementation through legal and administrative mechanisms is underway on a national and regional basis. The impetus for these strategies has come from documents such as the Stockholm Declaration of 1972, the World Conservation Strategy, the World Charter for nature of 1982 and the report of the World Commission on Environment and Development, our Common Future. The initiatives are part of a world wide movement for the introduction of National Conservation Strategies based on the World Conservation Strategy. Over 50 National Conservation Strategies have been introduced over the past decade, all of which incorporate concepts of sustainable development. The document *Caring for the Earth* is the chief successor to the World Conservation Strategy.

In the same article, Professor Boer further observed in the said article as follows: 'Sustainability' is defined in '*Caring for the Earth*' as "a characteristic or state that can be maintained indefinitely", whilst "development" is defined as "increasing the capacity to meet human needs and improve the quality of human life. What this seems to mean is "to increase the efficiency of resource use in order to improve human living standards".

In '*Caring for the Earth*', the term "sustainable development" is derived from a rough combination of these two definitions:

Improving the quality of human life while living within the carrying capacity of supporting ecosystems."

41. To justify and perhaps extract state initiative to conserve natural resources, the Court enunciated Professor Joseph Sax's **Doctrine of Public Trust**, Obligating conservation by the state. In *M.C Mehta v. Kamal Nath* (1997) 1 SCC 388, the court took notice of an article in a leading daily alleging ecological damage in Kullu Valley due to illegal construction of a motel. In 1995, Span Motels built a resort on the bank of Beas river. Kamal Nath, former Minister of Environment and Forests had links with the hotelier, who had encroached a swath of forest land. The encroachment was validated in 1993-94 during Nath's tenure as Minister. During the 1995 monsoons, the river engulfed part of the land and threatened the resort. Span Motels carried out work of deflect the flow of the river, which was causing environmental damage. An article to this effect was published in one of the leading dailies of which the court took notice. The court held that the motel interfered with the natural flow of the river by trying to block the natural relief/ spill of the river and thus directed cancellation of the lease deed in favour of the motel. The motel was also asked to pay compensation by way of restitution of the environment and ecology of the areas. Besides, several other directions were issued to the motel and the government. The court held the doctrine of public trust to be a part of the law of the land and the state, as a trustee of all natural resources, was under a legal duty to protect them, and that the resources were meant for public use and could not be transferred to private ownership, stating:-

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

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

22. Professor Sax state the scope of the public trust doctrine in the following words:

If any of the analysis in this Article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffuse public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the delicate mixture or procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining or wetland filling on private lands in a state where governmental permits are required.

23. We may at this stage refer to the judgment of the Supreme Court of California in national Audubon Society v. Superior Court of Alpine County 33 CAL. 3d 419, the case is popularly known as “the Mono lake case, Mono lake is the second largest lake in California, the lake is saline. It contains no fish but Support a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gails, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tura on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the city of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the ecological values of the Mono Lake were imperiled. The plaintiffs environmentalist – using the public trust doctrine – field a law suit against Los Angeles Water Diversions. The case eventually came to the California Supreme Court, on a Federal Trial Judge’s request for clarification on the States public trust doctrine. The Court explained the concept of public trust doctrine in the following words:

By the law of nature these things are common to mankind – the air, running water, the sea the consequently the shores of the sea.” (Institutes of Justinian 2.1.1.) Form this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign own “all of its navigable waterways and the lands lying beneath them ‘as trustee of a public trust for the benefit of the people.

24. The Court explained the purpose of the public trust as under:

The objective of the public trust has evolved in tandem with the changbg public perception of the values and uses of waterways. As we observed in Marks v. Whitney, supra, 6 Cal. 3d 251, “(public trust easements [were] traditionally defined in terms of navigations commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the State, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses – navigation, commerce and fishing – did not limit the public interest in the trust res. In language of special importance to the present setting, we stated the “[T]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the state’s not burdened with an outmoded classification favoring one mode of utilization over another. There is a growing public ‘recognition that one of the most important public uses of the tidelands-a use encompassed within the tidelands trust-in the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.”

Mono Lake is a navigable waterway. It supports a small local industry which harvest brine shrimp for sale as fish as fish food, which endeavor probably qualifies the lake as “fishery” under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological the scenic views of the lake and its shore, the purity of the air and the use of the lake for nesting and feeding by birds. Under *Marks v. Whitney*, supra, 6 Cal. 3d 251, it is clear that protection of these values is among the purposes of the public trust.

The court summed up the powers of the state as trustee in the following words:

Thus, the public trust in 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 that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust....

The Supreme Court of California, inter alia, reached the reached the following conclusion:

The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this state shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriate water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests, (See Johnson, 14 U.C. Davis L. Rev. 233. 258-257; Robie, some Reflections of Environmental Considerations in Water Rights Administration, 2 Ecology L.Q. 695, 710-711 (19/2); Comment, 33 Hastings L.J. 653, 654.) As a matter of practical necessity the state may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see *United Plainsmen v. N.D. State Water Cons. Comm’n* 247 N.W 2d 457, 462 (N.D. 1976), and to preserve, so far as consistent with the public interest, the uses protected by the trust.

25. The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin.

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

27. Our legal system-based on English Common Law- includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

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

42. In *Intellectuals Forum, 'firupathi v. State of A.P.* (2006) 3 SCC 549 the Apex Court discussed the Doctrine of Public Trust. The Court approved of artificial methods of water recharging and protection of ground water. It was laid down that the disposal of assets which are subject matter of public trust can be disposed of in a manner consistent with the nature of the trust, inter alia, stating as under:

“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* 146 US 537 (1892) 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 natural 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 expended 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* AIR 1999 SC 2468. 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, lake, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the pu8rposes 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 nugatory 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 be 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 principles 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 v. Prof. M.V. Nayudu and Ors.* AIR 1999 SC 812 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 a 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 resource 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.

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 the development process are terms without any content, without an inkling as to be 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 Courts 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 to the Constitution of India. This apart, the Directive Principles of State Policy as also the fundamental duties enshrined in Part IV and Part IV A 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. v. Bombay Suburban Electricity Supply Co. Ltd. And Ors.* (1991) 2SCC 549 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 the mega projects, that harm the environment are not condemned. However, this criticism seems to be baseless since in *Virender Gaur and Ors. v. State of Haryana and 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.”

43. The Apex Court in *A.P. Pollution Control Board v. Prof. M.V. Nayadu (Retd.) & Others* (1999) 2 SCC 718 discussed the development of the precautionary principle in the following words:

32. A. basic shift in the approach to environmental protection occurred initially between 1972 and 1982 . Earlier the concept was based on the ‘assimilative capacity rule as revealed from Principle 6 to the Stockholm Declaration of the U.N. Conference on Human Environment, 1972. The said principle assumed that science could provide policy – makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and it presumed that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to act in order to avoid such harm. But in the 11th principle of the U.N. General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the ‘precautionary Principle’, and this was reiterated in Rio Conference of 1992 in its Principle 15 which reads as follows:

Principle 15: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage; lack of full scientific certainty shall not be used as a reason for proposing cost-effective measures to prevent environmental degradation.

33. In regard to the cause for the emergence of this principle, Chairman Barton, in the articles earlier referred to in Vol. 22, Harv. Envtt. L. Rev. (1998) P. 509 at (p. 547) says:

There is nothing to prevent decision makers from assessing the record and concluding there is inadequate information of which to reach a determination. If it is not possible to make a decision with “some” confidence, then it makes sense to err on the side of caution and prevent activities that may cause serious or irreversible harm. An informed decision can be made at a later stage when additional data is available or resources permit further research. To ensure that greater caution is taken in environmental management, implementation of the principle through Judicial and legislative means is necessary.

In other words, inadequacies of science is the real basis that has led to the precautionary principle of 1982. It is based on the theory that it is better to err on the side of caution and prevent environmental harm which may indeed become irreversible.

33. The principle of precaution involves the anticipation of environmental harm the taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (Justified) concern or risk potential. The precautionary principle was recommended by the UNEP Governing Council (1989). The Bomako Convention also lowered the threshold at which scientific evidence might require action by not referring to “serious” or “irreversible” as adjectives qualifying harm. However, summing up the legal status of the precautionary principle, one commentator characterized the principle as still “evolving” for though it is accepted as part of the international customary law, “the consequences of its application in any potential situation will be influenced by the circumstances of each case”. (See First Report of Dr. Sreenivasa Rao Pemmaraju, Special – Rapporteur, International Law Commission dated 3.4.1998 paras 61 or 72)
44. In *Indian Council for Environment-Legal Action v. Union of India* (1996) 5 SCC 281 the Apex Court concerned with the problems faced by people living next to chemical industrial plants in India, amongst other things, ordered the Government to strengthen environment protection measures and take remedial action to remove sludge. It also ordered that industrial units not complying with its orders should be closed. The Court observed that in matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing notifications like the present, the government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment 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 must 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.

45. UNDERLYING FACTS

We have noted above the respective cases of both the parties as well as principles governing environmental jurisprudence which have to be borne in mind while dealing with such issues. Before we analyse the arguments with reference to the law on the subject, it is necessary to take stock of some relevant and underlying facts concerning Yamuna. Therefore, at this juncture, let us take judicial notice of the critical condition of the river Yamuna and the steps that have been taken in the past few years by the judiciary and governmental organizations, hand in hand, to improve the same. Likewise, some other relevant facts having bearing on this issue also need a mention. This discussion is imperative as that may help us to understand the import of construction on the ecology and flood plains etc.:-

(a) DETERIORATING CONDITION OF THE RIVER YAMUNA

46. It is a known fact that the river Yamuna in Delhi has been in a bad shape for quite some time now and is referred to as a dead river. Once the lifeline of Delhi, Yamuna has now become the most polluted water resource of the country. It has been reduced to a pale, sickly drain and poses a threat to the human life. It overflows with filth, effluents, dirt and even dead bodies. It is said that there is a visible difference between the water quality at Palla (where the Yamuna enters Delhi) and at Okhla

(where it leaves Delhi). As the Yamuna traverses through the city, it is slowly converted from a river to a drain. It is estimated that the 22 km stretch of the Yamuna that runs along Delhi – from Wazirabad in the north to the Okhla Barrage in the South – contributes 80-90 percent of the total sewage discharge into the river, reducing it to a stinking drain. From big industries and factories to people living in big colonies, slums and rural areas, all pollute the river with impunity because of untreated water.

47. The change of status of Yamuna (from a river to a drain) is owing to several factors, First, the huge water demand of Delhi city makes sure that a lot of water is withdrawn the very moment Yamuna touches Delhi. This reduces the volume of total water in the river as it flows through the city, leading to a reduction in the self – cleaning capacity. This water is then released back into the river, when it leaves the city (as sewage) which is the second most serious problem. There is a paucity of Sewage Treatment Plants (STPs) in the capital. There is also an incorrect estimation of the total number of such plants needed as the volume of water that is diverted from the river for drinking purpose is less than that released as waste – back to the river. Increasing pollution of the Yamuna has now become an international issue and a cause of concern for environmentalists. No doubt there was a time when river Yamuna was a lifeline of Delhi providing precious potable water to its residents. At present, the quality of river Yamuna is categorized as ‘E’. This makes the water of river Yamuna unfit for even animal consumption.

(Source: <http://delhigreens.com/2007/06/03/cleaning-the-yamuna-drain-in-the-capital/>).

48. The Supreme Court under Article 32 and High Court under Article 226 are playing a great role for the protection of the river Yamuna. For more than a decade, it has been concerned with the quality of water in the river Yamuna. The Courts giving its *raison d’être* have adopted a proactive approach in matters pertaining to the protection and preservation of the river Yamuna. In ***Dr. B.L. Wadehra v. Union of India***, AIR 1996 SC 2969 it was taken on record by the Apex Court that the river Yamuna – the main source of drinking water supply – is the free dumping place for untreated sewage and industrial waste and whereby placing statutory obligation upon Municipal Corporation to scavenge and clean the city. In 2004, the matter of pollution of river Yamuna came up for consideration before the Supreme Court ***In Re: News Item Published in Hindustan Times title “And quite flows the Maily Yamuna***, (2004) 8 SCC 638 and it was noted that although the Court had directed its attention to cleaning up the river almost a decade ago, there has been no improvement. However, the water quality has in fact deteriorated during the last about five years on a comparison of reports which were filed by the CPCB. The Court further noticed that figures placed before it showed that the quality of the river water was better before it entered Delhi; and stressed upon the need and expectations from the Government and all the agencies to take curative as well as preventive measures. The Apex Court has been monitoring the work of cleaning the river for the past 12 years after taking a suo motu cognizance of a news report about the pollution caused to the river. (See: ***News Item ‘Hindustan Times’ A.Q.F.M. Yamuna v. Central Pollution Control Board***, (2000) 10 SCC 587).
49. A number of projects have been launched by various organizations to clean the Yamuna, but till date nothing encouraging has happened. The situation is worsening by the day. The Yamuna Action Plan (YAP) was launched in April 1993 but so far has been of no avail. More than a decade after its inception. YAP’s achievements have been woefully short of its stated goals. However, newspaper reports have since indicated that despite an expenditure of Rs.87 crores on what is called the Yamuna Action Plans I and II, the river continues to remain as dirty as it was about a decade ago (perhaps more) and most people believe it to be nothing more than a sewer.
50. The deteriorating condition of the river Yamuna was taken note of by this Court in ***Baldev Singh Dhillon v. Union of India & Ors***, (2005) 121 DLT 606 and read as under:-
“The river Yamuna is one of the most important natural features of Delhi and supposed to be a major source of water supply to the city. River Yamuna in NCT of Delhi cuts through the city from the North to south for a length of merely 50 kms. The total of about 9700 hectares of land is situated in the designated river bed defined by the existing marginal bund on the Eastern and Western side. In a telling account of the present state of affair of river Yamuna. Mahinder Narain. J. has rightly brought out the sordid state of affair, That part of the river Yamuna which flows in Delhi can hardly

be called a river. I is a big dirty drain today. Discharge of industrial effluents and other pollutants have caused havoc to this river. Delhi is practically without any natural source of water. With swelling population, which increases by at least half a million every year, there is serious water crisis. Need? Demand of water far exceeds the supply. For this limited supply also, Delhi has to depend on neighbouring Cities/ States. It is a matter of common knowledge that the much hyped 'Sonia Vihar Jal Yojana', the protect which started with fan – fare, is in a quandary only because we do not have water and neighbouring States have thus far expressed their inability to oblige Delhi in this regard. Therefore, it is high time that Yamuna is restored as a river with pure water – and "Krishan Teri Yamuna Mail" tag is removed. The suggestions which are made by Mahinder Narain, J. in his critique require serious consideration by the policy makers for cleansing Yamuna, though the said critique may be out of context in so far as legality of the issue at hand is concerned."

51. The Central Pollution Control Board's Report of 2007, " Water Quality Status of Yamuna River", covers the findings of monitoring studies undertaken between 1999 and 2005 and lists the Yamuna as the most polluted river stretch in the country and the 22 km long Delhi stretch is severely polluted. It is stated that Delhi contributes around 3,167 MLD (million litres per day) of sewage through 22 major drains joining the Yamuna. The Report further states that over Rs 2,000 crore (Rs 20 billion) has flown into the sewage canal (which the river Yamuna has become) since the government began its efforts to clean it up in 1985- [Delhi's allocation of the Yamuna Action Plan is around Rs 573 crore (Rs 5.73 billion) and the state spent another Rs 1,200-1,500 crore (Rs 12-15 billion) on its sewage treatment plants since 1993]. Yet, the Bio-Oxygen Demand, or BOD levels, in the river have gone up, not just steadily, but alarmingly. In 1993, these were measured at around 130 tonnes a day. This more than doubled to 276 tonnes a day in 2004 and, in February last year, the level was measured at 428 tonnes- this is nearly 50 times the safe standard for bathing.
52. This report clearly establishes that all the efforts undertaken by various authorities, organizations etc. have not been able to achieve much . There is in fact deterioration thereof. Recently, the Delhi Government placed a plan before the Apex Court to introduce a new technology for cleaning the river Yamuna where displeasure was expressed by the Court, on the same lines, that despite spending crores of rupees on the clean – up, the quality of river's water has deteriorated in the last 15 years.

(b) PLANS FOR DEVELOPMENT OF THE RIVER YAMUNA

53. It is essential to keep this sorry state of the river Yamuna in mind before undertaking any step. Discussion, debate, construction, whatsoever. At the same time, following discussion of plans for rejuvenation of the river also required to be noted :-
54. The Master Plan of Delhi – Perspective 2001 notified an August, 1990 recommended several measures for the stretch of the river Yamuna, thus:

"River Yamuna is to be made pollution free through various measures. One the big expanse of its banks large recreational areas are to be developed and to be integrated with other urban development so that the river is an integral part of the city physically and visually.

Rivers in the major metropolitan cities of the world like Thames in London and Seine in Paris have been channelized providing unlimited opportunities to develop the river fronts. After the results of the model studies for the channelization of the river Yamuna become available, development of the river front should be taken up considering all the ecological and scientific aspects as a project of special significance for the city."

55. The Master Plan of Delhi – Perspective 2021, notified on 7th February, 2007 further emphasized upon the conservation of the river Yamuna, in the following manner :-

"9.2.1 RIVER YAMUNA

Once the lifeline, which spawned the many civilizations and Cities that grew in the area of the present NCT of Delhi, the River Yamuna today suffers from inadequate flow and quantum of water and an extremely high degree of pollution, The length of the river in the NCT of Delhi is 48 kms from Palla in the North to Okhla in the South, with a total river bed/ flood plane area of around 97 sq. kms, which is about 7 percent of the total area of Delhi. A little over 50 percent of the river lies North of Wazirabad and the rest, around 22 kms., to its South, in the Urban area of Delhi, Apart from being the main sources of water supply for Delhi, it is one of the major sources of ground water recharge. However, over the years, rapid urbanization, encroachments on the river banks, over exploitation of natural resources / water, and serious deficiencies and backlog in sanitation and waste water management services, have resulted in the dwindling of water flow in the river and extremely high levels of pollution in the form of BOD and Coliforms, etc. As against the stipulated 3mg./ l, the designated water quality for bathing purposes, the water quality data for 2003-04 suggests that the BOD values range from 1-3 mg/ l at Palla, 5.56 mg/ l at Nizammuddin and nearly 7 mg/ l at Okhla. Similarly, at all locations, except Palla, the total coliform levels are many times higher than the minimum tolerable standards for drinking and bathing purposes.

The major source of pollution in the river to the extent of about 80%, is the discharge of treated and untreated waste water through the 22 major drains, which flow into the river (Annexure – 1). The CPCB data shows that six of these drains viz. the Najafgarh and the Supplementary Drain, the Shahdara Drain, the Drain near Sarita Vihar, the Maharani Bagh Drain, the Barapulla Drain and the Sen Nursing Home Drain contribute almost 90 percent of the flow and 80 percent BOD load levels respectively.

The concerned agencies must ensure that through public awareness campaigns, people are discouraged from throwing garbage into the river or the drains and measures are taken to prevent throwing of garbage by the habitations along side. Regular de-silting of the drains should also be undertaken.

Measures for rejuvenation of River Yamuna

(a) The issue of pollution in the river Yamuna has engaged the attention of the Supreme Court for the last several years, and it constituted a Committee with Secretary, Ministry of Urban Development as a Member, to draw up an Action plan for the cleaning/ rejuvenation of the Yamuna River. A summary of the recommendations of the Committee is given in Annexure II.

(b) Apart from the above measures, steps would also need to be taken to augment ground recharge from the river and decentralized wastewater treatment system. The creation of 'regulated flood plane reservoirs', for storing the excess monsoon overflow at suitable locations would augment the water retention capacity of the riverbed. The upstream of Wazirabad Barrage and some other areas offer such a potential. To facilitate ground water recharge it may also be ensured that minimum required flow in the river during lean season exists. The reservoirs may be created in low-lying areas.

(c) At another level, a strategy for the conservation/ development of the Yamuna River Bed area needs to be developed and implemented in a systematic manner. This issue is sensitive both in terms of the environment and public perceptions. Any such strategy will need to take into account the cycle of flood occurrences and flood zones, the ground water recharge potentials and requirements, potential for reclamation derived from the foregoing considerations, designation and delineation of appropriate land uses and aesthetic of the River Front which should be more fully integrated with the city and made more accessible – physically, functionally and visually.

(d) Environmental study of the existing major drains should be conducted before their covering."

(c) CONSTRUCTION OF AKSHARDHAM

56. Another factor which also has relevancy to the issue at hand is the Akshardham Temple, which was built few years ago, allegedly on the river bed of Yamuna. It is because of the reason that the Apex Court has put its seal of approval on this construction.

57. So far as the construction on the purported riverbed goes, the sprawling Swaminarayan Akshardham Cultural Complex has already come up on the eastern bank of the Yamuna, occupying over 24 hectares. The Akshardham complex was at the centre of controversy when in September 2004. DDA 'regularised' the complex after construction was completed. In August 2004, the Supreme Court admitted a PIL against the Akshardham complex, filed by UP Irrigation Department, the original owner of the riverbed and its floodplains. The Apex Court in *UP Employees Federation* case i.e., WP No. 353/ 2004 approved the construction of a permanent structure, namely, the Akshardham temple in the Pocket III area vide its order dated 12.1.2005, stating :-

“In this writ petition, the petitioners have challenged the allotment of certain land belonging to the State of U.P. situated allegedly on the riverbed of Yamuna. The petitioners also challenged the allotment of land abutting to the above land by the DDA to the third respondent on the ground that the same would adversely affect re-charging of underground water and the allotment is contrary to the land user as declared in the development plan.

Learned counsel appearing for the State of U.P. submitted that the land allotted to the third respondent which belongs to it was allotted on the condition that there shall be no construction on this land and in accordance with the said condition the first respondent has not put up any construction on this land but is developing the same as a green belt, therefore, there is no violation for the terms of the allotment.

Learned counsel appearing for the Delhi Development Authority contends that the construction that is being put up by the third respondent is in accordance with the sanctioned plan and the same is nearly 1700 meters away from the river bank. It is also submitted that the allotment and construction thereon was permitted after obtaining the opinion of the Central Water Commission and National Environmental Engineering Research Institute (NEERI) which is an autonomous body. Therefore, the allegation made in the petition is without any basis.

Since the petitioners are unable to rebut the above statements made by the learned counsel which is supported by affidavits filed in this Court, we are not inclined to entertain this petition and being satisfied in regard to the validity of the construction that is being made by the third respondent as lawful, we dismiss this petition.”

(d) AREA IN QUESTION

The area under River Zone was declared as 'Development Area' No. 173 under Section 12 (1) of the Delhi Development Act, 1957 vide Notification dated 29th March, 1989, stating:-

**(TO BE PUBLISHED IN PART IV OF DELHI GAZETTE
DELHI ADMINISTRATION: DELHI
LAND & BUILDING DEPARTMENT**

NOTIFICATION

Dated the 29th March, 1989

Dev. Area No.	Area in Hect.	Description
173	3500 hect.	Starting from a point of 1 km. upstream Wazirabad Barrage road along eastern Yamuna marginal bund till it meets the boundary of Union Territory upto point it meets newly constructed NOIDA bridge then along the northern boundary of the bridge upto Agra Canal then.
		Along to eastern boundary of Agra Canal upto Okhla head-works then towards <i>illegible</i> approach road to the head-works and along the eastern boundary of Women Polytechnic CRR & Kalindi Colony till it meets Ring Road then along

		the eastern boundary of Ring Road till it meets Indraprastha Power House then along the eastern boundary of power house then along bund upto the point it meets Old Rly. Bridge then along the road joining Ring Road Crossing upto near Honkey Bridge then along the Ring Road upto 4 k.m.upstream Wazirabad Water Works along the Bund upto 1 km. then along the imaginary line running parallel to Wazirabad Barrage on the northern side upto starting point excepting pockets of land already declared as 'Development Area'.
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BY ORDER

Sd/-

(Geeta Sagar)

Joint Secretary (Land & Bldg.)

Delhi Administration: Delhi

58. DDA prepared a conceptual scheme for land admeasuring 490 hectare falling in Pocket I, II and III in Phase I in 1995. The proposal covered by the conceptual scheme covering land admeasuring 490 hectares, i.e. (i) Pocket – I between ring Road and River Yamuna, south of Railway line and north of Nizammuddin Bridge (NH-24), measuring 50 hectares; (ii) Pocket – II between Ring Road and River Yamuna, south of NH-24 and north of pontoon bridge measuring 190 hectares, and (iii) pocket III between River Yamuna and Marginal bund road, south of Railway Line and north of NH-24, measuring 260 hectares was submitted to Yamuna Standing Committee in February, 1996 which was discussed in the 55th meeting of Yamuna Standing Committee of Central Water Commission on 15.7.1996 and subsequently, in the 56th meeting on 8th April, 1997 in which following was resolved:

“Channelisation of Yamuna in NCT of Delhi: Keeping in view of the various observations, it was decided to accord ‘No Objection’ of the Yamuna Committee to part channelisation of river Yamuna in the reach from IP Barrage to Nizammuddin Road Bridge with reclamation of Pocket III only. It was also agreed to process approval of the Yamuna Committee for development of pocket – I and II also at the earliest.

The Chief Engineer (I&F), NCT of Delhi may take note of the decision and plan accordingly their flood protection works as mentioned in their letter dated 3.9.97”

59. A public notice was issued by DDA on 23.6.1997 inviting objections/suggestions for the proposed change of land use for land admeasuring 35 hectares falling in Pocket III. In response to the aforesaid notice, three objections/suggestions were received which were discussed in the technical Committee Meeting held on 9.9.1997. Thereafter, the DDA resolved that a study should be got conducted from NEERI, INTACH or some other expert body about the possible environmental impact of the scheme on the entire area. In accordance with the resolution, the NEERI was entrusted with a study and thereby to formulate an “Environmental Management Plan” for the stretch of the River Yamuna in NCT, Delhi with an overall objective of rejuvenation of the river. NEERI submitted its report on “Initial Environmental Examination of Development Plan in Yamuna River Stretch between New Railway Bridge and ILFS Bridge” in January 1999 (hereinafter referred to as “NEERI Report of 1999”). The NEERI Report of January, 1999 on page 4.8 suggested two alternatives for the development of the Yamuna riverbed, and are quoted as under:

“Alterations in Project Setting

Due to flood protection measures undertaken in the upstream, after the severe floods of 1978, the peak flood discharge in NCT-Delhi has been steadily increasing. In the absence of adequate measures to improve the channel capacity, the flooding in flood plains and contiguous areas has increased. The increase besides effecting the human settlements, has altered the vegetation pattern too. The subsequent flood

protection measures exacerbated these impacts in many cases resulting in drying up of some pools, swamps and marshes.

It is important to consider the interventions to improve the carrying capacity of the channel with the following criteria for evaluation of alternatives:

- Impact on Reed-Swamp Association and herbaceous and wooded communities (the 25th percentile flood waters should reach these ecosystems)
- Impact on potential for ground water recharge (the water retention and detention systems such as pools should receive the 25th percentile flood waters)
- Impact on stream geometry, temperature and sedimentation (by ensuring that the meandering of the river and islands in the stream are preserved).

Two alternative modified project settings and other environmental viability are described below:

Alternative I

The following alterations in the land utilization plans ensure conformance to the suggested guidelines for development in the flood plain areas of 3 km stretch between New Railway bridge and proposed ILFS Bridge:

- The green belt along NH 24 bordering recreational and camping sites in Pocket III may be 600 m in width to account for water spread during the peak flood discharges (as in 1995).
- Topographical alternations in the green belts, recreational areas and camping sites may be dropped.
- The proposed road in Pocket III (30 MROW) may be dropped.
- A road, parallel to NH24 in Pocket III may be constructed.
- Allocation of 0.1 ha and 3.0 ha of land in Pockets I and II respectively for land based treatment of wastewater discharged through the Drain No. 14 and Barapulla drain.

Alternative I also considered the dredging scenario to improve the carrying capacity of the channel. The preferred dredging scenario is outlined in Fig. 4.1. The volume of dredged material is expected to be 433 ha-m. The water spread areas are predicted through HEC-2 simulation model for different discharges after dredging is outlined in Figs. 4.2 and 4.3. The model predictions for flood way analysis with dredging is in Table 4.5. In this scenario, the Reed-Swamp Associations and herbaceous communities still receive 25th percentile flow waters. But the wooded community and pond near New Railway Bridge in the Pocket III would receive water only during once in 50 years flood discharge. The stream geometry is not affected and meanders are maintained. It is estimated that sedimentation and thus maintenance dredging requirements would not be significant.

However, during the dredging operations care should be taken not to increase the turbidity of waters and to remove the bottom sediments. The dredged material can be used for reclamation of selected areas requiring elevation of ground level beyond 1 m, as outlines below:

In Pocket III – a region reserved for public/semi-public utilities.

In Pocket II – a region reserved for convention centre (public & semipublic)

The modified land use with reference to guidelines for development and elements of preferred scenario are given in Table 4.6 and Fig. 4.4

Alternative II

After close review of Alternative I, by a group of experts constituted by DDA in consultation with NEERI it was decided to revise the land utilization plans in the 3 km stretch and Alternative II is suggested. It is depicted pictorially in Fig. 4.5 and details are given in Table 4.7. Dredging in Alternative II is not considered as the localized dredging may not result in the desired carrying capacity of the channel and feasibility of dredging in longer stretch needs further examination.

As seen from the figure, the 30m ROW in pocket III is retained as a road-cum-bund, constructed for a flood design of once in 50 years as per regulations, providing flood protection in order to developments in the land beyond this road in Pocket III. The landmass towards the left bank could be developed using suitable flood protection measures keeping in mind the once in 100 year flood scenario.

The development plans for Pocket I & II have not been approved by Central Water Commission. The land utilization plans suggested for Pocket I consider the criteria of line of sight for historical places and archaeological structures on right bank of river. In pocket I, a fly-ash brick making plan be designed for utilization of existing fly ash.

Also, comprehensive planning of pocket I and II be done after taking due consideration of studies along the whole 55 km stretch of Yamuna in NCT-Delhi.

60. Further, the NEERI report of June 1999, laid down that the proposed Yamuna river rejuvenation plan in a limited stretch of 3 km. between New Railway Bridge and proposed ILFS Bridge in CNT Delhi is an environment improvement effort. The plan needs alteration as suggested in Alternative II and needs to conform to delineated guidelines also in detailed project design. Alternative I, which involves larger landmass utilization in the floodplain of this stretch, especially pockets I and II, has been dropped because of uncertainties in the assessment of impact of localized dredging and its institutional feasibility. Alternative II meticulously follows precautionary approach considering the sensitiveness of the task and fragility of the region. Conformance of land utilization and detailed project plan to the suggested development guidelines would ensure that this project would maximize environmental benefits to the region.
61. Based on the recommendations of the NEERI, change of land use admeasuring 42.5 Hectares in Pocket III was notified by Gazette Notification dated 21.9.99 from "agricultural and water body" to "public and semi-public facilities" and states as under:

"TO BE PUBLISHED IN THE GAZETTE OF INDIA PART III SECTION 3
SUB-SECTION (ii)

No. K-20013/21/93-DDIB
GOVERNMENT OF INDIA
MINISTRY OF URBAN AFFAIRS AND EMPLOYMENT
DEPARTMENT OF URBAN DEVELOPMENT
(DELHI DIVISION)

Nirman Bhawan, New Delhi
Dated 21.9.1999

NOTIFICATION

WHEREAS certain medications which the Central Government proposes to make in the Master Plan for Delhi regarding the areas mentioned hereunder were published with notice no. F.20(11) 94-MP dated 23.6.97 in accordance with the provisions of Section 44 of the Delhi Development Act, 1956 (61 of 1957) inviting objections/suggestions as required by sub-section (3) of Section 11 A of the said Act, within thirty days from the date of said notice;

2. WHEREAS objections/suggestion were received with regard to the said medication;

3. AND WHEREAS the Initial Environment Examination Study (Phase I) Report has been submitted by National Environmental Engineering Research Institute (NEERI), Nagpur and based on which the Central Government have decided to modify the Master Plan.
4. NOW, THEREFORE, in exercise of the powers conferred by sub-section (2) of Section 11 A of the said Act, the Central Government hereby makes the following modification in the said Master Plan for Delhi with effect from the date of publication of this Notification in the Gazette of India.

MODIFICATION

Land use of an area measuring 42.5 ha. (105.0 acres) bounded by green buffer/Railway line in the North, green buffer/marginal bund in the East, green buffer/NH-24 in the South and proposed parking/camping site in the West falling in Zone 'O' (River Yamuna), Phase I, Pocket III is changed from "agricultural and water body' (A-4) to 'Public and Semi-Public facilities'.

(R.S. Gusain)
Under Secretary to the Government of India"

62. Thereafter, the ministry of Urban Affairs vide notification dated 18.8.06 changed the land use of 16.5 hectares of land from 'Agriculture and Water Body' to 'residential' (11.0 ha.) and to Commercial/Hotel (5.5 ha). The said notification reads as under:

**MINISTRY OF URBAN DEVELOPMENT
(DELHI DIVISION)**

**NOTIFICATION
New Delhi, the 18th August 2006**

S.O. 1321 (E). – Where certain modifications which the Central Government proposed to make in the Master Plan for Delhi-2001 regarding the area mentioned hereunder where published in the Gazette of India, Extraordinary, as Public Notice Vide No. S.O. 273(E) dated 2nd March, 2006 by the Delhi Development Authority in accordance with the provisions of Section 44 of the Delhi Development Act, 1956 (61 of 1957) inviting objections/suggestions as required by sub-section (3) of section 11-A of the said Act, within thirty days from the date of the said notice.

2. Whereas a number of objections/suggestions were received in response to the above stated public notice dated 2nd March 2006 with regard to the proposed modifications and whereas the central Government have, after carefully considering all aspects of the matter, decided to modify the Master Plan

3. Now, therefore, in exercise of the powers conferred by Sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi - 2001 with effect from the date of publication of this Notification in the Gazette of India.

- (i) The land use of an area of 16.5 ha. In Pocket III, Phase I in Zone 'O' is changed as per the following description:

Location	Areas in Hectares	Land use (MPD-2001)	Land use changed	Boundaries
Pocket III, Phase I In Zone 'O'	11.0 ha.	'Agricultural and water body'	'Residential'	East-Parking / Akshardham Temple
	(ii) 5.5 ha.	'Agricultural and water body'	'Commercial/Hotel'	South – Green/National Highway 24 West – 45m wide

				embankment road North – Proposed 30m road
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S. MUKHERJEE, Under Secy”

63, In order to review these development plans proposed from time to time by various organisations and to evolve a comprehensive development plan considering environmental issues, DDA engaged NEERI to prepare the Environment Management Plan for Rejuvenation of Yamuna in NCT. NEERI submitted a Final Report on “Environment Management Plan for Rejuvenation of River Yamuna” in October 2005 (hereinafter referred to as “NEERI Report of 2005”) which also covers this area. This Report also proposed two alternatives and reaffirmed the adoption of Alternative II para 2.6. pg 2.8 of its Report, and the same is reproduced hereunder:

“Alternative land use model

The following two alternative land use models have been worked out and given under:

The entire area to be developed as green for recreational use.

The entire area to be developed largely (85%) for green area for recreational use, and the balance (15%) for gainful purposes.

Alternative (i)

(a) Merits of the Strategy:

- No large development activities except horticultural operations and provisions of green linkages with the adjoining and existing built-up areas to maintain ecological balance and relief to the public.
- Maintenance of the characteristics of the soil water table and existing vegetation.
- Generation of additional heavy traffic volumes on existing roads and bridges to be avoided.
- Heavy capital investments to be avoided.

(b) Demerits of the Strategy:

Being centrally situated and considering pressures on the land, the land in riverbed is precious. If not developed in a planned manner, it would be encroached upon and built upon as already going on. Prevention and removal of encroachments is always difficult; so such situation should be avoided.

It will result into less and under utilization of the precious land resource situated in the centre of the Delhi Metropolitan Area.

It will lead to urban sprawl since the housing and other activities for the growing population of Delhi is being spread out and located at the urban fringes.

The heavily built-up congested area (e.g. Old City) will not have any opportunity for relief and decentralization of economic activities.

A large amount of water in the river is evaporated because of its low depth and widespread, resulting in shortage of water, affecting ultimately the supply of potable water and irrigation.

Alternative (ii)

This includes 85% green for recreational purposes and partly (15%) for gainful purposes residential, commercial, public and semi-public uses. Overriding advantages of this strategy over the first one:

- It will release about 7300 ha of land for urban activities largely for recreational use and provide an opportunity to restructure the land use pattern, not only of Delhi but also of the Delhi Metropolitan Area.
- This would integrate the two parts of Delhi each of metropolitan character, with the river front on either side.
- Trans-Yamuna area which is extremely deficient in recreational facilities and open spaces could be compensated by this scheme of development of recreational use in the riverbed.
- The urban sprawl could be controlled without disturbing the green character of the area and need for recreational use.
- The controlled discharge of water will avoid evaporation to a great extent.
- Efficient links and transportation system by roads and urban rail can be provided to integrate the two parts of Delhi on either side of the river.

(e) THE EXTENT AND NATURE OF ENVIRONMENTAL CLEARANCES

64. The land of Commonwealth Games Village Complex is in Khasra No. 48, 49, 51, 52 min, 57 min, 58 min, 59 min, 61 min, 63 and 64 min of Mauza Chiraga Zanubi. The area where Commonwealth Games Village is located is in Pocket III and is surrounded by NH 24 on the southern side, embankment on the western side, railway line on the northern side and marginal bund road on the eastern side. Before moving on to the submission of the parties herein, one must take note of the relevant dates with respect to the grant of Environmental Clearance (EC) for the said construction, and is as follows:
65. The Environmental Clearance (EC) from the Ministry of Environment and Forests (MoEF) is mandated under the EIA Notification of 2006 for all such new constructions that are listed in the Schedule wherein 'Building and Construction Projects' also finds a mention. The MoEF has constituted independent Expert Committees called the Expert Appraisal Committee (EAC) to review all proposals for EC in accordance with para 5 of the EIA Notification of 2006. As per the provisions of the Environment Impact Assessment Notification of 1994 as well as the EIA Notification dated 14.9.2006 read with circular dated 13.10.2006, the proposal of the DDA i.e., Respondent No. 5 for seeking approval for the construction of the Commonwealth Games Village in the river bed was appraised by EAC of MoEF for New Construction Projects and New Industrial Estates, on 14.10.2006, and 3.11.2006 and 1.12.2006. A site visit was also made by the EAC on 2.11.2006. The Expert Appraisal Committee applied Precautionary Principle to emphasize that the proposal works should not be of a permanent nature and dismantable structures be adopted and the river bed may have to be restored to the river.
66. Based on the recommendation of the Expert Appraisal Committee (EAC) of Ministry of Environment and Forests, Environmental Clearance for the project was accorded on 14.12.2006. Among the various conditions imposed while according to the clearance, the following is relevant for the issue being raised by the Petitioners herein:
- “Since the design of the proposed structured is yet to be made, so far as possible the work should not be of a permanent nature. It should be possible to take this point into consideration and adopt dismantable structures. Unless detailed studies lead to the conclusion that the proposed structures. Unless detailed studies lead to the conclusion that the proposed structures can be left behind permanently, the proposals should proceed with the assumption that the riverbed may have to be restored to the river.”
67. That pursuant to this, the Ministry of Environment and Forests vide letter dated 21.1.2007, further modified the letter dated 14.12.2006 by stipulating that the 'DDA could go ahead with the planning of their construction works, permanent or temporary subject to the condition that the actual work on permanent structures will not start till such time that the mitigation/abatement measures against upstream flooding are identified after the studies and their implementation begun in such a way that the work is completed on or before the date when the building will be completed'. Thereafter, DDA commissioned a study to CWPRS, Pune to identify mitigative/abatement measures to prevent flooding of upstream areas of Yamuna river catchment in the city north of Nizammuddin Bridge due to the construction of the Akshardham Embankment in 2000. The report of this study was submitted by CWPRS, Pune to DDA on 6 March 2007.

68. Further modification to the Environmental Clearance order took place on 29.3.2007 wherein it was provided that the DDA could go ahead with 'planning' of their construction works subject to condition that work on permanent structures will not start till such time the mitigation/abatement measures against upstream flooding as identified by the Central Water and Power Research Station is completed. The final approval was granted by the Ministry of Environment and Forest, vide its letter dated 2.4.2007 stating as follows:
"DDA could go with their construction works, permanent or temporary, subject to the condition that the following mitigative measures against upstream flooding as identified in the study report by the Central Water and Power Research Station (CWPRS), Pune shall be completed on or before the date when the building for the 'Commonwealth games will be completed."

OUR ANSWER

69. We started our judgement by pointing out that this case involves balancing of two extreme and conflicting ideologies. On the one hand, the respondents are concerned with the development of the capital city and the opportunity which has come in the form of 19th CWG-2010 for which Delhi is the host is seen as an opportunity to plan the city by creating such infrastructure which would place the city on the world map by its inclusion in the list of world-class cities. The world over, cities vie with each other to host "hall mark" events such as the Olympics, World Cup's etc. It is seen by many as a sure way of shooting the host city into the limelight, resulting in an 'economic windfall' (Baade, R and Matheson, V. 2002, Bidding for the Olympics; Fool's Gold? Transatlantic Sport: The Comparative Economics of North American and European Sports, (London: Edward Elgar Publishing, 2002), 127-151), and the same time giving these host cities the impetus to improve domestic facilities and infrastructure. The impact of the nomination of a city as organiser, range from the physical (construction projects) to the intangible (local self-esteem or international impact). The impact that an event of this kind has on the urban landscape can largely be gauged by the size of the 'legacy' that it creates. It is important to note here that it is not only legacy creation that is important, but creating a legacy which is beneficial to the host community post games, and which justifies the costs involved.
70. In recent years, therefore, hosting sporting events has been viewed as a prestigious achievement resulting in opportunities for economic profit, urban regeneration and global media exposure. Increasingly such sporting events are being aimed at increasing the exposure and visibility of the host city, and many academicians believe that success cannot be simply decided by profit and loss, as there are many intangible and unaccounted for benefits (Brown, A and Massey, J. 2001. Literature Review: The Impact of Major Sporting Events. http://www.uk sport.gov.uk/impages/uploaded/M2002_Baseline_2001.pdf)
71. On same lines, India is preparing to break out on the world scene as an economic superpower and the games area a step in propelling India on to the world stage. In Delhi's bid for the games, it states that through the games, the city wishes to, among other things: 1. Stimulate economic growth and development; 2. Improve city infrastructure. (The Report of the Commonwealth Games Evaluation Commission for the 2010 Commonwealth Games). Thus two of the professed aims of the games are to improve the welfare of the citizens of the city through improving facilities and promoting investment in the city. This Court in **Shivaai Industries (P) Ltd. V. Rites Ltd. And Anr.** 2007 (2) ARBLR 256 (Delhi) took note of the importance of the CWG-2010 and the infrastructure that has been planned:

"The Commonwealth Games, as the very name indicates, which are going to be hosted by India and Delhi as the venue, are the games where all Commonwealth nations would be participating. These include countries from almost all continents. It also cannot be disputed that for holding these games etc. Of course, need to revamp existing stadia and construct more; provide facilities for player and sports persons, including 'Games Village' is manifest. Such facilities and infrastructure are not and cannot be confined to various stadia and venues alone where games are to be held. For watching these games, people from all the participating countries would be thronging the city. In fact, to make the event a success and generate revenue, it is necessary to attract the people from all over and to achieve that

proper infrastructure in all respects has to be in place. Such an event is always exploited as 'Sports and Tourism' combined. It is for this reason, these requirements include providing adequate hotel and other accommodation, necessary infrastructure outside venues, including transportation, etc. Above all, Delhi as a city and NCR region will have to show its best face. For this, all types of facilities like more luxury and budget hotels, making metro rail fully operational, modernisation of airports etc. is needed. Other facilities like proper and well constructed roads, flyovers, availability of all forms of transportation including private and public modes of transportation is required as well. This brings the necessity of state of art BQS and construction of toilets as well. Judicial notice can be taken of the fact that Organisers of the games have been visiting Delhi and inspecting the progress in so far as the preparation for these games are concerned and they have also expressed, in the past, their concern over the slow progress. To meet the deadlines, it is necessary to bring impetus to progress in this direction."

72. The CWG-2010 will not only benefit Delhi in terms of better infrastructure but the region's economy is also likely to rise by 49 per cent to touch Rs.1,75,000 crore, as per the ASSOCHAM study 'Forthcoming Commonwealth Games: Possible Revenue Generation Resources for Delhi'. The Games will generate so much of direct and indirect activities in almost every key segment that touches masses with large number of infrastructural projects getting commissioned. The Counter Affidavit of Respondent No.3 also enlists various advantages that the holding of the CWG-2010 would yield for Delhi:-

- * Promotion of tourism on a larger scale, resulting in inflow of foreign exchange and exposure of foreigners to Indian culture;
- * Educating the citizens of the country on the important role that sports can play for building a homogeneous society and to improve the general health of the citizens;
- * Upgradation of existing sports infrastructure and creation of new infrastructure of international standards in the city hosting the games;
- * Improvement of civic amenities in the host city;
- * Promotion of closer ties between the people of the Commonwealth countries and enhancing the prestige of the country before the international community; and
- * Giving a boost to the indigenous sports industry.

73. One may also refer herein to the working paper of Vinayak Uppal on "The Impact of the Commonwealth Games 2010 On Urban Development of Delhi" which raises some hard questions that need to be answered before one can conclude that such an event has a positive effect on the host community. Can the financial requirements for such an event be possible to generate? Some other questions that arise out of such events, with particular relevance in this paper, is its impact on the urban scenario. Will the event lead to rampant and unchecked development, possibly unplanned? Will the infrastructure created be beneficial post-event or will it remain under utilized? Will the city's infrastructure be able to bear the strain of additional visitors that flood the city during such an event? Will the event prove to be a hindrance to the city's residents during the event? The author concludes the said paper in the following words :-

"One can see that at least on paper; the city is all set to transform itself by the time it plays host to the Commonwealth Games. However, it is also necessary to keep one thing in mind, and that is that Delhi is otherwise too a rapidly growing city, a dynamic economy and an integral part of India's growth engine. Delhi is estimated to have a population of approx. 192 lakh people by 2010, compared to 140 lakh in 2001, a growth of nearly 40% (www.delhistat.com). This means that it would be wrong to place the causation of all infrastructure and urban development onto the Commonwealth Games. A large amount of it would probably have taken place anyway, the games just gives it a geographical bias and a deadline.

The world over there is a serious re-think taking place among city officials as well as academics about the way to go about these events. Do they do more harm than good is not a question that has been answered conclusively, as many of the benefits derived are intangible ones. However it has yet to be conclusively shown that these events are beneficial as well and it is crucial to examine each event independently, studying its unique characteristics, as well as examines previous events and try and learn from their mistakes.

Delhi's citizens have a right to know about the benefits that such events can have to the city, but need to be informed of the downsides as well. The present plan for the Commonwealth Games may be a recipe for an ecological and financial disaster, or they might finally put the city, and the country, in the world map. They may bring in a new era where electricity and water problems, perennial problems in the city, are no longer an issue or they might increase the burden on an already overloaded system. Popular perception tells us that the Asian Games was an unmitigated success. Closer analysis tells us that it was not so simple. The Commonwealth Games, with some smart marketing may just follow in those footsteps."

74. On the other hand, the environmentalists perceived some of the construction activities particularly on the periphery of Yamuna, as dangerous to the environment and particularly Yamuna river. It is, thus, again a matter of sustainable development where two apparent conflicting interests are to be balanced and it is the duty of the courts to ensure that the infrastructural development is not at the cost of environment. We have already outlined the principles of law which are to be kept in mind while dealing such an issue. To recapitulate in brief, the concept of Sustainable Development would mean balancing ecology and the development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of its people. In other words, eco-systems and organisms, including land, marine and atmospheric resources, are to be managed in such a manner to achieve and maintain optimum sustainable productivity, but not in a way which would endanger the integrity of those other eco-systems or species with which they co-exist. Activities which might have impact on nature are to be controlled and best available techniques that minimize significant risk to nature or other adverse affects are to be used. Infrastructure is to be created keeping in view 'eco-development' whereby development is aimed for along with adoption of mitigating measures to as to avoid devastation of natural resources/environment.

75. No doubt, economic development of the nation to raise living standards of the people of the country is also the need of the hour. It is necessary that the economic conditions of the people in this country improve and economic welfare grows; India becomes economic super-power and is brought at par with the developing nations, such economic grows for the welfare of common people is the need of the hour, which is also the mandate enshrined in the Constitution in the Chapter entitled '*Directive Principles of State Policy*'. To achieve this, if the State adopts certain measures and take policy decisions with that end in view, courts generally keep their hands off and do not interfere with such decision taken by the policy makers who are experts in their field. It also hardly needs to be emphasized that the development of basic infrastructure is *sine qua non* of the economic growth. Today, all the countries in the world, and particularly most of the developing countries in Asia, are striving hard to achieve this and we cannot leave ourselves left behind. It is for this reason that the growth is taking place in most of the countries in the 21st Century at a level never envisaged before.

76. At the same time, such economic growth inevitably affects the natural resources and environment. The challenge, therefore, is to ensure that the economic growth does not supersede the concern for environmental protection and the natural resources are conserved as far as possible. In order to achieve this Sustainable Development, the principles which have been developed are: (a) the Precautionary Principle; (b) the Polluter Pays principle; (c) the Public Trust doctrine; (d) Inter-generational Equity Principle, etc. The construction activities as formulated by the Respondents are to be implemented keeping in view the principles and doctrines discussed hereinabove. That is to say, there has to be simultaneous care of the river Yamuna and its flood plains to as much extent as possible. The fact that the river Yamuna has lost its carrying capacity, as argued by the petitioners herein on the basis of the NEERI Report of 2005 is to be kept in mind and effort need to be made in the direction of restoring and reinstating the river as a natural resource. It goes without saying that the same will be by the way of cooperation and participation of not only the respondents but also of the petitioners, and other people/organization associated with the drive of cleaning the river Yamuna.

77. The respondents claim that they have kept these environmental concerns in the fore-front while undertaking the project of construction activities at the periphery of Yamuna, be it CWG-2010 or the Metro project. As pointed out above, as per the respondents, the construction began only after the environmental clearances were obtained by the MoEF and these clearances ere granted after conducting expert studies, as recommended by it.

78. Insofar as construction relating to the CWG-2010 is concerned, as per the counter affidavit of MoEF, the constructions of buildings would be taken up in only 3 hectares of the site area of 11 hectares and DDA will construct, as temporary structures, the dining hall, polyclinic and some related temporary structures in consultation with the Organising Committee of the Commonwealth Games Federation in the remaining areas. Therefore, they maintain that the total area of 3 hectares where buildings are to be constructed under the CWG project is miniscule when compared to the total area near the river Yamuna and the same poses no ecological threat and feasibility of construction of permanent structures over a small area out of the total area which forms a part of the NEERI Report.

79. We may also note that as per the counter affidavit of the MoEF, it has prescribed detailed safeguards in its Environmental Clearance dated 14.12.2006 as modified by letters dated 22.1.2007 and 29.3.2007. The EC dated 14.12.2006 laid general conditions and specific conditions with respect to construction as well as operation of the project. Further on account of permanent structure being constructed, the MoEF vide its letter dated 29.3.2007, while granting permission to DDA to continue with the construction work, entailed various conditions with respect to mitigation/abatement measures against upstream flooding, and the same read as under:-

“DDA could go ahead with the planning of their construction works, permanent or temporary, subject to the condition that the actual work on permanent structure will not start till such time that the following mitigation/abatement measures against upstream flooding as identified in the Study report by the Central Water and Power Research Station (CWPRS), Pune, are completed:

(a) To raise and strengthen the embankment along the river in the UT of Delhi to cater safely for a discharge of 9,910 cu.m./s. and also checks that the embankment is not over topped in case the discharge increases to 12,750 cu.m./s.

(b) Strengthen the existing embankments and guide bund upto a minimum free board of 1.8 m. The guide bund should also be strengthened to check flood discharge of 12,750 cu.m./a.

© In order to protect the Akshardham bund, left upstream guide bund of Nizammuddin road bridge, left downstream of Nizammuddin railway bridge and right bank between Nizammuddin railway bridge, Nizammuddin road bridge, one layer of stones crates of 1.0 m x 1.0 m x 0.85 m on sloping portion as well as an apron over geofabric filter shall be laid. On the rear side of the bunds, the slop shall be protected by the turfing.

(d) Protection to the existing bridge piers and strengthening of guide bunds of the other structures existing in the reach between Indraprashta barrage and Nizammuddin road bridge shall be carried out.

(e) On the upstream side of Akshardham temple, on both sides of the river Yamuna, arrangements shall be made to protect flooding of area due to back flow of drains.”

80. The Respondent DDA has also filed a chart in this court thereby listing the compliance measures being adopted by it from time to time in compliance of the Environmental Clearance dated 14.12.2006 as modified by letters dated 22.1.2007 and 29.3.2007. The Respondent DDA in its counter affidavit clearly states that the remedial measures listed by MoEF are duly taken care of in the following manner :-

* **Groundwater Recharge:** So far as ground water recharge is concerned, the ground water recharge pond area, as suggested by NEERI, has not been disturbed and is retained. Rain water from the pocket shall be transferred to ground aquifers by means of recharge wells. Thus no adverse impact shall be created on the ground water recharge system of the area. Moreover, the scheme itself provides for a water body of 0.25 hectares (approx.). Further, compulsory rain water harvesting is also part of the project.

* **Seismic Consideration:** The buildings are being designed after taking into consideration provisions of IS Code 1893 (Part I) 2002. IIT Roorkee, one of the pioneer institutes in India in earthquake engineering, has been retained as design consultant to take care of all seismic factors of the site.

* **Green Development/Plantation:** DDA has retained the services of Council of Forestry Research and Education (formerly known as 'Forest Research Institute'), Dehradun for the Green Development of the site of Commonwealth Games Village. It is a well known institute in the Forestry Research.

* **Waste Management:** Land measuring 0.6 hectares has been handed over to Delhi Jal Board for construction of a 1 mgs Sewage Treatment Plant using membrane technology in which the effluent will be treated to the BOD level of 10. The treated water will be odourless and will be utilized for flushing and irrigation purpose for green. Regarding disposal of solid waste, the necessary measures stipulated by Ministry of Environment & Forest vide letter dated 14.12.2006 will be taken. There is obviously no question of dumping of any solid waste in the river.

* **Water Supply:** Land measuring 0.6 hectares has been handed over to Delhi Jal Board construction of 1 mgd Water Treatment Plant. The water from the existing bore wells will be utilized by the Treatment Plant.

81. Notwithstanding the aforesaid claims of the respondents, two aspects which are most relevant and extremely crucial, have to be kept in mind. These are:

- (i) whether the construction is on the 'riverbed'?
- (ii) whether there is a clear mandate in the clearances for construction of permanent structures, as is being undertaken?

82. There was a great debate as to whether the construction is on the riverbed or not. The term 'riverbed' and 'flood plain' are used interchangeable through the Report of Experts referred to. One may say, as submitted by the learned Counsel for the Respondent DMRC, that riverbed is only the bed on which the actual river flows while as the rest is the river floodplain. The authorities on this aspect hold distinguishing views and are to be taken note of. In the *Conservators of the River Thames v. Smeed, Dean & Co.* (1897) 2 QB 335 (at 337), it was held that the word riverbed denotes that portion of the river which in the ordinary or regular course of nature is covered by the waters of the river. However, in *Ashgar Ali & Ord v. Secy. Of State & Ors.* AIR 1930 Cal 764 the bed of the river was defined as the area covered by the river and is the space sub-adjacent to the river and is the space sub-adjacent to the river over which it flows between the banks. It is the space between the banks occupied by the river at its fullest flow. The *Black's Law Dictionary* (6th Edn. Pg. 154) describes a river bed as the hollow channel of a water course; the depression between the banks worn by the regular and usual flow of water; the land which is covered by the water in its ordinary low stage; the area extending between the opposing banks measured from the foot of the bank from the top of the water at its ordinary stage. In P. Ramanatha Aiyer's '*Advanced Law Lexicon* (Vol-IV, 2005 Edn. Pg. 4157-4158) has described the bed of a river as the space contained between the banks '*riverbank*' in turn has been defined in the same law lexicon as the boundaries of a river throughout its width when the water flows to its maximum quantity. *Wikipedia Encyclopadia* states that stream bed is the channel bottom of a stream or river or creek, the physical confine of the normal water flow. The lateral (channel margins) during all but flood stage are known as 'stream banks' or 'river banks'. In fact, a flood occurs when a stream overflows its banks and flows onto its flood plain.

82. It would be necessary, at this juncture, to point out the construction at Akshardham. If the stand of the petitioners on the interpretation of 'riverbed' is to be accepted, the petitioners conceded that even the construction at Akshardham was on the riverbed. However, it is difficult to gloss over the fact that this very construction of Akshardham was the subject matter of challenge before the Supreme Court in *U.P. Employees Federation's* case and the Apex Court dismissed the said writ petition vide orders dated 12.1.2005 recording that the said construction was in accordance with the sanctioned plan and with nearly 1700 mts. Away of the 'riverbank'. Therefore, whether the present construction is on the 'riverbed' or not itself would be a disputed question. We are, therefore, of the opinion that so far as the issue raised by the parties herein as to the present site not being part of flood plain/river bed after the creation of embankment in 2002, the same requires consideration of an expert committee.

84. In fact, the construction on flood plains is widely prevalent globally and most of the cities in the world have been constructed on erstwhile floodplains by taking adequate flood protection measures including creation of embankment. There are various cities located on river banks such as New York on

Hudson, Washington on Potomac, Montreal on Ottawa, Rio-de-janerio on Amazon, Cairo on Nile, London on Thames, Paris on Seine, Frankfurt on Rhine, Karachi on Indus etc. Whether such a project can be replicated for river Yamuna also is a matter which experts can decide. We may point out that as per the petitioners channelization of river Yamuna is neither feasible nor environment friendly.

85. Thus, what is the scenario which emerges and with which we are confronted with? On the one hand, we have the prestigious Commonwealth Games, almost at the anvil. The importance of the Commonwealth Games already been highlighted in sufficient measure hereinabove. We also note that certain environmental clearances are obtained by the MoEF which, at least, enable the respondents to carry out the construction and go ahead with it. The matter has received the attention at the hands of experts at various levels. In addition, the respondents have also pointed out that detailed institutional mechanism has been set up by Government of India with regard to all decisions regarding CSG including the Village Project. The Group of Ministers (GoM) was constituted with the approval of the Prime Minister for coordinating the work relating to CWG, 2010 in September 2004. It was in the 9th meeting of the GoM, on the basis of a presentation of the Organising Committee, the venues for the different events were approved. So far as an option of alternative site for the said construction is concerned, the same was discussed by DDA and GoM on 4.1.06. The various options submitted by DDA for development of the Games on a Public Private Participation (PPP) model, involving Government funding for development works and temporary overlays and private funding for development of residential accommodation.

86. Apart from GoM, various committees such as Organising committee, Committee of Secretaries, empowered Committee have been set up and the same are acting in terms of the declared policies of the Govt. of India and Govt. of NCT of Delhi. These are all policy decisions and to achieve public purpose of boosting the sports in the country and also fostering all round social and economic development through the means of an international sporting event. All decisions with reference to CWG-2010 are policy decisions taken in good faith. All round efforts on all fronts are being made for the preparation of the CWG-2010 action has to be taken in all directions simultaneously and that is proper management. It is the trite law that courts are not to interfere with the decisions of the expert bodies unless it is shown that such decisions are arbitrary, irrational or illegal and the court cannot substitute those decisions by providing its own wisdom and stating that there could be a better policy decision.

87. Above all, it is not even the province of this Court to suggest that there other alternatives which may be more suitable or better. It is trite law that the courts are not to interfere with the decisions of expert bodies unless it is shown that such decisions are arbitrary, irrational or illegal. The Court cannot substitute those decisions by providing its own wisdom and stating that there could be a better policy decision.

88. Reference can be made to the **Narmada Bachao Andolan v. Union of India and Others** (2000) 10 SCC 664 where it was held as follows:

“There are three stages with regard to the undertaking of an infrastructure project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project is to be regarded as a policy decision. While there is always a need for such projects not being unduly delayed, it is at the same time expected that a thorough study as is possible will be undertaken before a decision is taken to start a project. Once such a considered decision is taken, the proper execution of the same should be taken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a Court may have to play is to see that the system works in the manner it was envisaged.

Xxxxx

225. It is now well-settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructure project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the Courts are ill equipped to adjudicate on a policy decision so undertaken. The Court, no doubt has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means

over run in costs and the decision to undertake a project, if challenged after it's execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the Court at that time. Just because a petition is terms as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

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229. At the same time, in exercise of its enormous power the Court should not be called upon or undertake governmental duties or functions. The courts cannot run the Government nor the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the Court itself is not above the law.”

89. It is well established that the Court should be slow to interfere with the Expert Bodies. {See – **N.D. Jayal & Anr. V. Union of India &Ors.** (2004) 9 SCC 362.}

90. As approved by the Prime Minister, a High Powered Committee for Yamuna River Development has been constituted with Lt. Governor, Delhi as Chairperson and Chief Minister, Delhi as Vice-Chairperson vide Office Memorandum No.731/2/2007-Cab-III dated 24th August 2007. The setting up of the same assumes importance with the concern that the development of river front however is an exercise which needs to be approached with due care, after proper studies on different aspects. The terms of reference of the High Powered Committee stated in the said Office memorandum reads as under :-

- * Commission studies on different aspects of the development of the river viz. hydrology, ecology, environmental pollution, sustainable use of the river front, etc. to feed into the policy framework.
- * Develop a policy framework and prepare an integrated plan addressing issues of both quantity in terms of river flow and quality in the Yamuna River.
- * Develop an operational plan for implementation of the river action programme.
- * Effect intersectoral coordination for planning and implementation until such time as a statutory arrangement is in place.
- * Suggest the design for a statutory framework.

91. While the aforesaid features go in favour of the ongoing construction in the vicinity of river Yamuna, we also find on record the following features: Though, according to the MoEF, necessary environmental clearances have been obtained on the basis of the report of CWPRS, this Court may not move into the correctness of the Report of the CWPRS commissioned by the DDA for the purpose of the instant construction or for that matter the NEERI Reports of 1999 and 2005. So far as NEERI Report of 2005 is concerned, it is clear that the same is silent over the embankment created in 2002. It is clear that the said Report is with respect to the rejuvenation of the river Yamuna and made recommendation with respect to the whole riverbed. The same neither specifically covers the area where the construction is going on at present nor restricted to area earmarked in 2003 for the Games.

92. Furthermore, we also find that the Environmental Clearance dated 14.12.2006, as modified by letters dated 22.1.2007 and 29.3.2007 by MoEF was a conditional clearance. The above-listed conditions by MoEF over the construction only require strict monitoring. Moreover, during the course of arguments when the aforesaid aspects of NEERI Reports of 1999 and 2005 were pointed out by the counsel for the petitioners, NEERI submitted its affidavit dated 29.1.2008 clarifying that the site in question was not even a 'flood plain', much less a 'riverbed'. We are constrained to observe that this affidavit is the result of some of the loopholes in its earlier reports which were picked up by the petitioners and pointed out to the Court. From an institution of this repute, it was not expected that report of this kind would be submitted. The Court gathers an impression that it is a tailor-made report given to suit the requirement of the respondents. In the earlier report given by NEERI, as pointed out above, it had recommended only construction of temporary

structures. It is not at all explained as to what were the changed circumstances which weighed with NEERI to opine that structures can be of permanent nature. Even otherwise, when DDA is permitted to go ahead with permanent structures, the same is subject to so many conditions and it is necessary to ensure that these conditions are complied with.

93. In this backdrop, though we cannot accept the plea of the petitioners to stop the construction, which may have far more serious consequences, more particularly when at this juncture no alternative is available. As noted in the beginning, the petitioners did not approach the Court well in time to enable it to direct the respondents to undertake further studies or think of alternate site, if it was ultimately to be found that the site in question was not very appropriate. There is hardly any time for such an exercise if CWG-2010 are to take place as scheduled. Furthermore, the respondents have at least the necessary clearances to go ahead with the construction. While permitting this construction activity, we are also of the opinion that some further steps are needed to address some very important and significant aspects highlighted by the petitioners before us, insofar as impact of this construction on river Yamuna is concerned.

94. We therefore, issue the following direction :-

A Committee of Experts would be constituted with Dr. R.K. Pachauri, Nobel laureate and environmentalist as its Chairman. This Committee shall undertake specific study about the construction in question from the point of view of its impact on the ecology and protection of Yamuna river and submit its report to the Court to enable the Court to pass further orders thereupon.

95. **CONSTRUCTION BY DMRC**

In so far as construction by DMRC is concerned, its counsel Mr. V.K. Shali argued that the construction activities are fully authorized and directly related to the essential operational requirements of the Metro. The depot yard is essentially required in its present location to meet the operational requirements of the Noida and Anand Vihar branches of the Metro under construction.

96. It is submitted that the total dry land for utilization was 7300 hectares. The NEERI Report of 2005 clearly states that the area of riverbed under Delhi UT is about 9700 ha with a breakup of 2400 ha under water and the balance 7300 ha under dry land. DDA has proposed to reclaim and utilize these dry lands for more usual purpose like recreational and similar other uses. Further, the NEERI Report of 2005 approved total area of 219 for roads and metros out of which the DMRC was given 40 hectares. The relevant portion is at page 2.10 of the NEERI Report of 2005 and reads as under :-

“Circulation (Area – 219 ha.)

The future system of circulation pattern in the scheme is to be conceived to provide an efficient transport network system (via roads and urban rail) within the proposed development and integrate it with the existing corridors on their side of the river.”

97. The DMRC was allotted land measuring 31.9 hectares for alignment and yard at Yamuna Khadir on permanent basis by the DDA vide allotment letter dated 13.1.2006. According to the terms and conditions of the allotment, the land was to be used only for the purpose of alignment, station and the yard. Similarly, 36.67 acres of land belonging to the Irrigation Department, State of Uttar Pradesh, was allotted to the DMRC vide letter dated 21.2.2007.

98. It is also the argument that no environment clearance is required for Metro project as the same is apparent from the Notification dated 14.9.2006 of the Ministry of Environment & Forests. Environment clearance is exempted to MRTS works for being the ‘railway project’.

99. It is submitted that before carrying on with the construction, necessary permission was obtained from the Yamuna Standing Committee (for short, ‘YSC’), an expert body constituted by the Central Water Commission. The Committee is an expert body which evaluates the proposal, if at all permission is to be given, and the necessity thereof and after due consideration and deliberation only the permission is granted. In the 68th meeting of the YSC, a proposal was submitted by DMRC in the year 2002 was listed as Item 68.3.2 in the agenda of the YSC as a proposal, namely, for East & West, MRTS Corridors from Connaught

Place to Dilshad Garden for the consideration of the Standing Committee. The extract of the said item reads as under :-

“Item No.68.3.2 East West MRTS corridor from Connaught Place to Dilshad Garden

In the year 2002, MRTS had submitted a proposal namely “East-West corridor from Connaught Place to Dilshad Garden with a bridge on river Yamuna and a Depot” for consideration of Yamuna Standing Committee. The Committee had discussed the proposal and decided that the construction of the bridge as proposed by the DMRC was acceptable. However with regard to the construction of the depot, it was desired that DMRC may try to find an alternative site and in case it was not feasible, it should propose reclamation of the bare minimum area away from the active river edge. In the 63rd meeting of the YSC the representatives of the DMRC conveyed to the Committee that the proposal had been dropped by them.

Delhi Metro Rail Corporation Ltd., Delhi has forwarded the proposal for East-West corridor with some modifications vide letter dated 10.1.2005. It was mentioned therein that alternative piece of land along the approved corridors could not be located anywhere and that the bare minimum requirement for the depot in Yamuna Khadir has been worked out as 45 ha. Instead of 71.42 ha. Indicated earlier. It has also been mentioned therein that Delhi Government had approved six corridors as part of MRTS Phase-II. The Connaught Place to Dilshad Garden line has not been slightly modified and has been approved as Indraprastha-Yamuna Bank-Anand Vihar Line. A new connection from Yamuna Bank to New Ashok Nagar which will run along the Noida Link Road and would terminate at New Ashok Nagar has also been proposed. It is stated in the proposal that the alignment of this new line would be on viaduct and would comprise of stations at Yamuna Bank, Games Village, Mayur Vihar Phase-I and Mayur Vihar Phase-I Extn. Enroute in the Yamuna Khadir. A presentation on the new proposal was made by the DMRC before the Yamuna Standing Committee. It was mentioned by the DMRC that 45 ha. Of land is required for the Depot and 11.92 ha. For Yamuna Bank Station and the corridor. The Chairman of the Committee pointed out that for Depot at Shastri Park, DMRC required 34 ha. Of land whereas 45 ha. Of land was proposed for the Depot on this line. DMRC representative explained that there is only one line in Shastri Park corridor, whereas there would be two corridors starting from the Yamuna Bank Station. One would lead to Anand Vihar and other to New Ashok Nagar. The land in between the two corridors cannot be used for Depot purpose that is why the land requirement for this depot is more. Chairman stressed that DMRC may work out the barest minimum land required for this depot.

The Committee noted that the stations on the corridor from Yamuna Bank to Ashok Nagar may be constructed on the raised platform so that the minimum flood plain of the river Yamuna is encroached and these stations may not obstruct the flow of water during floods. On this DMRC representative told the Committee that the alignment of this new line was discussed by them with the CE(I&F) Delhi and he had agreed to allot the alternative land or this line on the bank of the drain after crossing the Noida link road. Therefore DMRC is now planning that this line after crossing Noida link road near the Noida morh will run parallel to the road on the left side at the bank of the Nallah. CE(I&F) Delhi agreed to allot the alternative land for this line just on the bank of the drain after crossing the Noida link road. This whole alignment then will be away from the Yamuna Flood plains. He sought that construction of Depot be approved in principle subject to the DMRC again reviewing the proposal and submit the revised proposal with barest minimum land requirement for the Depot. The Committee was of the view that DMRC should not construct any staff quarters in this area and approach DDA to allot alternative land for the same. The Chairman desired that the DMRC may prepare a revised proposal and submit to the Yamuna Standing Committee for consideration.

The Committee also decided that the guide bunds of the proposed bridge on river Yamuna for the DMRC line and Railway Bridge should not be joined and flood water should be allowed to spread in the area freely. The DMRC may explore the possibility for providing alternative access to the Depot in consultation with CWPRS.

100. As per the decision of the 68th meeting of the Standing Committee, DMRC submitted the revised proposal in which the land required for depot was reduced to 33.72 hectares from 45 hectares along with land for a station and viaduct alignment 11.08 hectares. The said proposal was circulated to the members of the Standing Committee vide letter dated 4.5.2005. The DMRC further revised the proposal vide its letter dated 12.7.2005 and reduced the land area requirement for depot to 27.92 hectares. The requirement of area

for alignment and station remains unchanged at 11.08 hectares. Thereafter, in the 69th meeting, the proposal of DMRC for the construction of Yamuna depot to the barest minimum land, i.e. 27.92 hectares, Yamuna Bank Station and alignment was approved. The relevant portion of the 69th meeting of YSC reads as under :-

“The DMRS revised the proposal further and sent the modified proposal to YSC vide letter dated 12th July 2005. In this new proposal, the DMRC had further reduced the land area requirement for Depot to 27.92 ha. The requirement of area for alignment and station remained unchanged at 11.08 ha. They had also mentioned that certain essential staff is to be housed close to the Depot to be available on call at a very short notice in emergencies. The provision for housing in the proposal had been reduced to 0.75 ha. From the original proposal of 2 ha. DMRC also mentioned that CWPRS, Pune had completed their studies for the left guide bund for the proposed rail bridge and the details are given, in technical report No.4246 of July 2005 received on 12.7.2005. 300m long guide bund with curved head of radius 180m and an angle of sweep of 120 degree on the left upstream side had been recommended. On the left downstream side a 120m long guide bund with curved tail of radius 120m and an angle of 60 degrees had been recommended. Downstream guide bund is to be aligned normal to the bridge axis but upstream guide bund is to be aligned at an angle of 100 degree with the bridge axis. A side slope of 1:2 and an approx width of 30m are proposed to be provided for the guide bund. For sloping portion on the river, stones in crates of size 0.5m x 0.5m x 0.5m in one layer and for apron, stones in crates of size 1.0m x 1.0m x 0.75m in two layers over geofabric filter had been recommended. Over the geofabric filter, a 15cm thick layer of coarse sand would also be provided before placing the stone crates to avoid rupture of geofabric material.

In this meeting the representatives of DMRC made a presentation on the features of revised proposal and requested to clear the proposal at the earliest. Representatives of Govt. of UP, Delhi and Haryana told in this meeting that they had no objection from their side. The Chairman, YSC enquired whether it was possible to increase the gap between guide bunds of proposed bridge for DMRC line and ITO bridge. Similarly there should be a gap in d/s guide bund of the DMRC bridge & the Nizammuddin Railway Bridge for allowing free passage of flood water keeping in view the requirement of training the flow to the bridge intact. The CWPRS representative informed that it would be possible to increase the gap 195m after reducing the length of guide bund from 375m to 300m.

YSC cleared the proposal of DMRC subject to the compliance of above and desired that a copy of the model study of the proposal be submitted for record.

(Action: DMRC)”

101. It is also tried to project that the DMRC, with respect to the construction of station and depot, has duly complied with the ‘precautionary principle’ of environmental protection and have been adopting all remedial/mitigating measures. The site where construction is being done is only to the extent of 18% where proper arrangements and measures are being adopted.

102. The Respondent DMRC has deposed that no residential colony is being constructed as alleged by the petitioners. Only 0.59 hectares of land near the eastern road of the Depot is being used for construction of residential quarters which are a part of operational structures to house engineers and other technical staff etc. for the maintenance of the Metro. This is very essential for providing the accident free and efficient service. When the city will go to sleep, the Engineers and Technicians of DMRC will have to do the job of maintenance of the tracks and coaches etc. between 11.00 p.m. to 6.00 a.m. With respect to the construction of station and depot, the DMRC has also been making proper arrangements for rain water harvesting and has even planned for sewage treatment plant and effluent treatment. The other measures obtained by DMRC are as follows :-

- * Design of depot was approved by the technical report of Central Works and Power Research Station dated May 1993.
- * Two bunds, i.e bund constructive by the DMRC and the one already constructed by Railways are not joined so that the flood water can spill over to the land in between the two lands.
- * Only 18% of the land allotted to the DMRC is covered while the rest is being kept open to sky so that ground water recharging is not substantially affected.

- * The provision for rain water harvesting has been made in the depot and the Yamuna station as a consequence of which ground water table will be recharged.
- * STP and ETP plans will be installed at the depot/Yamuna bank station and the water used shall be used for the purpose of watery plants and grass and no part will be discharged in the channel.
- * Use of fly ash is permitted by notification dated 3.4.2007 of the Central Government for filling up a low line area in a specified manner.
- * Report of the IIT has been obtained that no toxicity will be caused to the ground water on account of the use of the fly ask.
- * The earth dug out from the well where the piers were laid is being removed so as to provide the natural course to the channel of the river without any obstruction.

103. Keeping in view the aforesaid in mind, we are not interfering with the DMRC project in question. However, at the same time, we direct that the Committee under the Chairmanship of Dr. R.K. Pachauri, which is to be constituted by the Government shall examine and monitor the construction carried out by the DMRC on the site in the same manner as in the case of Commonwealth Games Village.

104. The writ petition is disposed of in the aforesaid terms with no order as to costs.

POSTSCRIPT

I have gone through the judgement of my sister Rekha Sharma, J. I entirely agree with all the directions given in the said judgment and, therefore, those directions would be deemed as directions of the Bench.