

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No. 6 of 2013 (SZ)

In the matter of:

Leo F. Saldhana
S/o S. J. Saldhana
1, Pearl Gardens
Vajarahalli
Kanakapura Road
Bangalore 560062

Applicant

and

- 1) The Union of India
Rep. by its Secretary to Government
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex
Lodhi Road, New Delhi
- 2) Principal Secretary
Dept. of Forests, Ecology and Environment
Government of Karnataka
Multi-storeyed Building
Dr. Ambedkar Veedhi
Bangalore- 560001
- 3) Chief Conservator of Forests
Regional Office (South)
Ministry of Environment and Forests
Kendriya Sadan
Koramangala
Bangalore -560034

- 4) Chairman
Karnataka State Pollution Control Board
Parisara Bhavan
Church Street
Bangalore- 560001
- 5) Principal Chief Conservator of Forests
Karnataka State Forest Department
Aranya Bhavan
Malleswaram
Bangalore -560003
- 6) The Chairman
Karnataka State Environment Impact Assessment Authority
7th Floor, M.S. Building, 4th Phase,
Bangalore- 560001
- 7) Member Secretary
Karnataka State Biodiversity Board
Vanavikas
Malleswaram
Bangalore- 560003
- 8) The Deputy Commissioner
Chitradurga District
Karnataka
- 9) The Principal Secretary
Animal Husbandry and Fisheries Department
Government of Karnataka
Room No. 404, 4th Floor, Vikasa Soudha
Bangalore – 560 001
- 10) The Project Director
Bhabha Atomic Research centre
Post Box No. 1, Yelwal
Mysore – 571130

- 11) The Group Head, Construction and Maintenance
ISRO Satellite Centre
Department of Space
Government of India
PO Box No. 1795, Airport Road, Vimanapura Post
Bangalore – 560 017
- 12) The Director
Aeronautical Development Establishment
Research Development Organization
Ministry of Defence
C.V.Raman Nagar
Vimanapura Post
Bangalore – 560 017
- 13) The Director
Indian Institute of Science
Talent Development Centre
Khudapura Village
Nayakanhaatti Hogli
Chelakere taluk
Chitradurga District
- 14) The Managing Director
M/s Sagitaur Ventures India Pvt Ltd.
Velankani campus
Building 1, South Wing
Ground Floor, 43, Electronic City
Phase II, Hosur Road- 560 100

15) The Managing Director
Karnataka Udyog Mitra
49, 3rd Floor East Block
Khanija Bhavan
Rance Course Road
Bangalore- 560 001

16) The Chairman
Karnataka Small Scale Industries Development Corporation Ltd.
Industrial Estate, Rajaji Nagar
West off Chord Road
Bangalore – 560 010

... Respondents

Counsel appearing:

Applicant: Shri Leo F. Saldhana, Party in person

Respondents: Shrimathi C. Sangamithirai, Advocate for respondent Nos.1 and 3; Prof. Raviverma Kumar, Advocate General, State of Karnataka assisted by M/s. Devaraj Ashok and M.R. Gokul Krishnan, Advocates for respondent Nos. 2,5,7 to 9, and 16; Shri T.K. Bhaskar, Advocate for respondent No. 4; Shri V.C. Ramachandramoorthy, Advocate led by Shri Uday Holla, Senior Advocate for respondent Nos. 10,11 and 12; M/s. Siva Sangarane and R. Kanchana, Advocates for respondent No. 14.

Application No. 12 of 2013 (SZ)

In the matter of:

Environment Support Group
1572, 36th Cross, Intermediate Ring Road
Banashankari II Stage
Bangalore- 560070

Represented by its Trustee Mr. Arthur Pereira ..

Applicant

and

- 1) The Union of India
Rep. by its Secretary to Government
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex
Lodhi Road, New Delhi.
- 2) State of Karnataka
Rep. By its Chief Secretary
Vidhana Soudha
Bangalore- 560001
- 3) Principal Secretary
Dept. of Forests, Ecology and Environment
Government of Karnataka
Multistoreyed Building
Dr. Ambedkar Veedhi
Bangalore- 560001
- 4) Chief Conservator of Forests
Regional Office (South)
Ministry of Environment and Forests
Kendriya Sadan
Koramangala
Bangalore -560034
- 5) Chairman
Karnataka State Pollution Control Board
Parisara Bhavan
Church Street
Bangalore -560001

- 6) Principal Chief Conservator of Forests
Karnataka State Forest Department
Aranya Bhavan
Malleswaram
Bangalore- 560003
- 7) Chairman
Karnataka State Environment Impact Assessment Authority
7th Floor, M.S. Building, 4th Phase
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- 8) Member Secretary
Karnataka State Biodiversity Board
Vanavikas
Malleswaram
Bangalore -560003
- 9) The Deputy Commissioner
Chitradurga District
Karnataka
- 10) The Principal Secretary
Animal Husbandry and Fisheries Department
Government of Karnataka
Room No. 404, 4th Floor, Vikasa Soudha
Bangalore – 560 001
- 11) The Project Director
Bhabha Atomic Research centre
Post Box No. 1, Yelwal
Mysore – 571130

- 12) Group Head, Construction and Maintenance
ISRO Satellite Centre
Department of Space
Government of India
PO Box No. 1795, Airport road, Vimanapura Post
Bangalore – 560 017
- 13) The Director
Aeronautical Development Establishment
Defence Research Development Organization
Ministry of Defence
C.V. Raman Nagar
Vimanapura Post
Bangalore – 560 017
- 14) The Director
Indian Institute of Science
Talent Development Centre
Khudapura Village
Nayakanhaatti Hogli
Chelakere taluk
Chitradurga District
- 15) The Managing Director
M/s Sagitaur Ventures India Pvt Ltd.
Velankani campus
Building 1, South Wing
Ground Floor, 43, Electronic City
Phase II, Hosur Road
Bangalore -560 100
- 16) The Managing Director
Karnataka Udyog Mitra
49, 3rd Floor East Block
Khanija Bhavan
Rance Course Road
Bangalore -560 001

17) The Chairman
Karnataka Small Scale Industries Development Corporation Ltd.
Industrial Estate, Rajaji Nagar
West off Chord Road
Bangalore – 560 010

18) The Assistant Executive Engineer
Karnataka Housing Board
District Unit
Chitradurga

... Respondents

Counsel appearing:

Applicants: M/s. T. Mohan, S. Devika and A. Yogeshwaran, Advocates

Respondents: Shrimathi C. Sangamithirai, Advocate for respondent No. 1; Shri Raviverma Kumar, Advocate General, State of Karnataka for respondent Nos. 2,3,6 to 10 and 17 assisted by M/s. M.R. Gokul Krishnan and Devaraj Ashok, Advocates; Shri T.K. Bhaskar, Advocate for respondent No. 5; Shri Uday Holla, Senior Advocate assisted by Shri C.V. Ramachandramoorthy, Advocate for respondent Nos. 11 to 13; Shri Uttam Cheriyan, Advocate for respondent No. 15 and Shri S.N. Aswatha Narayan, Advocate for respondent No. 18.

ORDER/JUDGMENT

Present:

- 1. Hon'ble Shri Justice M. Chockalingam, Judicial Member**
- 2. Hon'ble Prof. Dr. R. Nagendran, Expert Member**

Dated, 27th August, 2014

(Hon'ble Shri Justice M. Chockalingam, Judicial Member)

Application No. 6 of 2013 (SZ)

The facts of the case from the application filed herein can be stated as follows:

Chitradurga is a hilly district dotted with age-old forts and villages. The district is bounded by Tumkur District to the southeast and south, Chikmagalur District to the southwest, Davanagere District to the west, Bellary District to the north, and Anantapur District of Andhra Pradesh to the east. Davanagere District was formerly part of Chitradurga. The district is divided into several taluks, namely Chitradurga, Hiriyur, Hosadurga, Holalkere, Challakere and Molakalmuru. It is rich in mineral deposits, including gold at Halekal, Kotemardi or Bedimaradi, etc., and copper from open cast copper mines at Ingaldhal. It is a well known historical centre famous for its impressive Chitradurga fort.

2. According to Indian Council for Agricultural Research, this district is in the agro-ecological sub region of the Eastern Ghats and the Tamil Nadu Uplands and Deccan Plateau. It is a hot semi-arid eco-region. Most of the rains received in the district are during the south-west monsoon. The geographical area of the district is 770,000 hectares of which forests constitute 73,000 hectares. Soil in the district is predominantly composed of black soil (62%), and the rest is red soil (38%). According to the Agriculture Contingency Plan for the district, the net sown area is 429,000 hectares, of which only 51,000 hectares are sown more than once. Agriculture is essentially rain-fed with net irrigated area amounting to 88,000 hectares and

rain-fed agricultural region constituting 341,000 hectares. The total irrigated area of the district is 5.6%. Groundnut, maize, ragi, sunflower, jowar and pulses constitute the major crops grown in the area. Horticultural and plantation crops are limited to only a small irrigated zone. There are 166 irrigation tanks in the district and 9030 bore-wells.

3. According to the Ground Water Information Booklet for Chitradurga district prepared by the Central Ground Water Board, the district “receives low to moderate rainfall and is one of the drought prone districts in the state. Normal annual rainfall varies between 668 mm in Holalkere in western part and 457mm in Chellakere, in the northeastern part. With regard to the extent of ground water use in Challakere taluk, the report states that “the stage of groundwater development in the district is quite high. In Chellakere taluk 52% of the area falls under semi critical and 47% under over exploited category.” In the same report it is also reported that:

“a total of 101 farmers have committed suicide in the district between 2003-07 of which 45 suicides are reported to be due to crop failure. The highest number of suicides due to crop failure is reported during 2006-07 & 2003 – 04 respectively, which incidentally happens to be the lowest rainfall year in the last

decade.”

The report concludes by stating that:

“As per the resource assessment data, major part of the district is falling under over-exploited and critical category. The stage of groundwater development in the district is more than 100%, which requires immediate intervention by way of conservation and artificial recharge to ground water in order to arrest the declining trend in water level.”

Clearly, therefore, farming distress associated with water insecurity is a matter of serious concern in the district.

4. The district is known for a very high density of pastoral communities and there is very high dependence on livelihoods connected with livestock maintenance. As per the Agriculture Contingency Plan, the district accounts for 316,000 non-descriptive cattle, 24,000 cross-bred cattle, 193,000 non-descriptive buffaloes, 368,000 goats and 931,000 sheep. It is clearly evident from these facts that common grazing pastures and grasslands form a critical support system and habitat to the sustenance of livelihoods of lakhs of people, and also as a major site of biodiversity.

5. A major component of these common grazing pastures and grasslands is constituted by *Amrit Mahal Kavals*, lands that were protected originally for the grazing of the special breed of *Amrit Mahal* cattle, a mainstay support system of armies that roamed these landscapes over the centuries and also in support of agriculture due to their high degree of drought tolerance and hardiness. These *Kaval* lands were extraordinarily well protected grassland ecosystems in this region and this was achieved through the appointment of a local villager as a *Kavalgara* (*Kaval* protector) whose job it was to ensure that the *Amrit Mahal* breeds got the first right of grazing in the post-monsoon period, and only then was the area allowed for grazing by other cattle breeds, goat and sheep owned by local communities. This tradition continued in the post-independence period also.

6. Karnataka state was home to nearly 400,000 acres of *Amrit Mahal Kaval*, but today is left with only about 60,000 acres, much of which is encroached or in various states of degradation. At various points of time, the State Government has released these *kavals*, which included grasslands and wooded forests, for agriculture and for rehabilitating landless labourers.

7. In recognition of the rich biodiversity and distinctive ecological attributes, all *Amrit Mahal Kavals* are declared as District Forests as per Rule 33 of the Karnataka Forest Rules, 1969. With particular reference to the

Kavals in the Challakere taluk of Chitradurga district, about 12,000 acres were transferred in 1971 to the custody of the Karnataka Sheep and Wool Development Corporation of the Department of Animal Husbandry Department for the advancement of sheep rearing.

8. Shepherd communities such as the *Kurubas* and *Gollas* from about 50 villages around these grasslands in Challakere taluk are dependent on these pastures for grazing their cattle, sheep and goats. The native breeds of cattle that communities graze in these *Kavals* are drought resistant and help the communities tide over the vagaries of monsoon. The local communities also rear native varieties such as *Hallikar* and cross breeds of *Amrit Mahal* with the Red *Sindhi* and other varieties. There are also traditional communities that rear pure breeds of *Amrit Mahal* cattle and other native breeds which are known as “*Devara Dhana*” or “God’s cattle”. The male calves are often gifted to the temples and these communities are custodians of genetic diversity of some of the last remaining pure breeds.

9. These *Kavals* have since time immemorial supported the local communities for multifarious purposes, such as collection of firewood, green leafy vegetables, and fruits and a variety of minor-forest produce. The *Kuruba* community rears their livestock in these *Kavals* and also weaves the wool from sheep into blankets which are nationally famed as the “*Challakere*

Kamblis". The local villagers also collect certain grasses and reeds to weave a variety of tools that help farms, and earn an additional income. The *Kavals* have been a part and parcel of life and culture of the communities residing here. Festivals are celebrated and folk songs are sung to express gratitude to the resources that the *Kavals* have given the people.

10. The traditionally nomadic *Lambani* Communities also depend on the *Kavals* for a wide range of raw materials to support their craft (weaving baskets from palm fronds) and for a range of medicinal purposes. Their extensive knowledge of medicinal plants for ethno veterinary use has recently been documented and analysed by researchers in a paper entitled "Ethnoveterinary uses of medicinal plants among the *Lambani* community in Chitradurga district, Karnataka, India" published in the Asian Pacific Journal of Tropical Medicine (published on 28 August 2012. According to this study, "*Lambani* tribe, who are generally poor and live in remote areas, use ethno veterinary medicine for the primary healthcare of their animals. The use of plants reveals their interest in ethnomedicine and further research on these species could lead to the discovery of novel bioactive molecules for efficient management of diseases." The study discovered that 39 plants from 24 families having 26 different ethno-veterinary uses were practiced by the tribe and that "these records indicate the ethno-veterinary wealth of *Lambani*

community in Karnataka”.

11. In June 2011, the Centre for Ecological Sciences, Indian Institute of Science conducted a “Rapid Biodiversity Survey of the Kudapura Campus”, findings of which was published as a report titled ‘A Precious Heritage’. This concise report gives detailed descriptions of some of the flora and fauna found in the campus. The report states that:

“Even a short, preliminary, incomplete biodiversity survey of the new campus revealed it to be extraordinarily rich in vertebrate and plant species. From the spectacular and highly endangered blackbuck to small mammals such as foxes and hares, from the rich diversity of raptors to the tiny minivets and sunbirds and the large number of native plant species, all these point to a rich, relatively undisturbed natural ecosystem.”

The report emphasizes the uniqueness of the arid ecosystems which are adapted to water scarcity but are now vanishing due to various threats. A critical indicator of the uniqueness and ecological importance of these grasslands can be gathered from the fact that they form a critical habitat for the near threatened *Antilope cervicapra* (Black Buck). These grasslands are

potential habitats for the critically endangered birds *Ardeotis nigriceps* (Indian Bustard) and *Sypheotides indicus* (Lesser Florican).

12. The Great Indian Bustard (*Ardeotis nigriceps*) or Indian Bustard is a bustard found in India and the adjoining regions of Pakistan. A large bird with a horizontal body and long bare legs giving it an ostrich-like appearance, this bird is among the heaviest of the flying birds. Once common on the dry plains of the Indian subcontinent, today perhaps as few as 250 individuals survive and the species is on the brink of extinction, being critically endangered by hunting and loss of its habitat, which consists of large expanses of dry grassland and scrub. These birds are often found associated in the same habitat as black buck. The Lesser Florican (*Sypheotides indicus*), also known as the Likh, is a large bird in the bustard family and the only member of the genus *Sypheotides*. It is endemic to the Indian Subcontinent where it is found in tall grasslands and is best known for the leaping breeding displays made by the males during the Monsoon season. The male has a contrasting black and white breeding plumage and distinctive elongated head feathers that extend behind the neck. These bustards are found mainly in northwestern and central India during the summer but are found more widely distributed across India in winter. The species is highly endangered and has been extirpated in some parts of its range such as Pakistan. It is threatened both

by hunting and habitat degradation. The only similar species is the Bengal Florican (*Houbaropsis bengalensis*) which is larger and lacks the white throat, collar and elongated plumes.

13. It is evident from these facts stated above that the *Amrit Mahal Kavals* of Challakere taluk of Chitradurga district constitute a critical component of the last few remaining flagship faunal species of grasslands ecosystems in India. There is very little understanding of the floral diversity of such ecosystems.

14. Diversion of Amrit Mahal Kaval:

During the period 2008-2010, the Government of Karnataka through the office of the Deputy Commissioner of the Chitradurga District began to divert almost all the *Amrit Mahal Kavals* in Challakere Taluk to a variety of urban, industrial, infrastructure development, research and defence related projects. The applicant contends that absolutely no consultation with constitutionally empowered local bodies such as panchayats and *nagarपालikas* preceded this decision, nor was any consultation undertaken with Biodiversity Management Committees constituted per the Biological Diversity Act, 2002. Clearly, therefore, there was absolute violation of the Principle of Prior and Informed Consent. The following is the factual matrix of the lands that have thus far been diverted for various purposes.

- a) By a Karnataka Government order dated 21st May, 2009 (Order No. RD/14/LGC/2008) 4000 acres of *Amrit Mahal Kaval* in Sy. No. 343 of Varavu Kaval village and 290 acres of land in Sy. No. 47 in Khudapura village (total 4290 acres) has been transferred to Defence Research and Development Organization, Union Ministry of Defence, the 12th respondent herein.
- b) By a Karnataka Government order dated 28th May, 2009 (Order No. RD/15/LGC/2008) 1500 acres of *Amrit Mahal Kaval* in Sy. NO. 47 of Khudapura village has been transferred to Indian Institute of Science, Bangalore, the 13th respondent herein.
- c) By a Karnataka Government order dated 10th December 2010 (Order No. RD/32/LGC/2010) 473 acres of *Amrit Mahal Kaval* in Sy. NO. 1 of Ullarti Kaval village and 100 acres in Sy. No. 47 of Khudapura village (total 573 acres) has been transferred to Indian Space Research Organization, Bangalore, the 11th respondent herein.
- d) By a Karnataka Government order dated 10th December, 2010 (Order No. RD/31/LGC/2010), 1410 acres of *Amrit Mahal Kaval* in Sy. NO. 1 of Ullarti Kaval village and 400 acres in Sy. No. 47 of Khudapura village

(total 1810 acres) has been transferred to Bhabha Atomic Research Centre, Mumbai, the 10th respondent herein.

- e) By a Karnataka Government order dated 10th December, 2010 (Order No. RD/46/LGC/2010), 250 acres of *Amrit Mahal Kaval* in Sy. NO. 1 of Ullarti Kaval Village and 50 acres in Sy. NO. 47 of Khudapura village (total 300 acres) has been transferred to Karnataka Small Scale Industries Development Corporation, Bangalore, the 16th respondent herein.
- f) Further, 1250 acres of land in Kudapura Varavu Kaval, Ramdurga, Nelagettanahatty Village, Nayakanahatti Hoblie, Challakere-Nayakanahalli Road, Challakere is sought for establishing an “Integrated Solar Park Development along with Grid Connected 25 MW Solar PV Power Project” as proposed by M/s Sagitaur Ventures India Pvt. Ltd., the 14th respondent herein, as per the SHLCC clearance letter of Karnataka Udyog Mitra (Global Investors Meet), the 15th respondent herein, addressed to Member Secretary, Karnataka State Pollution Control Board, dated 7th July 2012 (No. KUM/SHLCC/293/AD-3/2012-13).
- g) An overall view of the allocation of lands and the purpose for which the said *Amrit Mahal Kaval* lands are designated to be put to is described below:

Sl. No.	Organisation	Village Name	Sy. No.	Extent of land in acres	Purpose
A	B	C	D	E	F
1	Defence Research Development Organisation	Varavu Kaval and Khudapura	343, 47	4000 and 290, respectively (total 4290)	Advanced R&D complex, a 3.5 km runway and test centre for long-endurance (48-72 hours) UAVs and UCAVs
2	Indian Institute of Science	Khudapura	47	1500	Synchrotron, Energy Research Centre and Advanced Aerospace Research Centre
3	Bhabha Atomic Research Centre	Ullarti Kaval and Khudapura	1 47	1410 and 400, respectively (total 1810)	Special Material Enrichment Facility (Uranium)
4	Indian Space Research Organisation	Ullarti Kaval and Khudapura	1 47	473 and 100, respectively (total 573)	Spacecraft Technologies
5	Karnataka Small Scale Industries Development Corporation	Ullarti Kaval and Khudapura	1 47	250 and 50, respectively (total 300)	Various industrial ancillary units
6	Sagitaur Ventures India Pvt. Ltd.	Khudapura	N.A.	1250	Integrated Solar Park Development along with Grid Connected 25 MW Solar PV Power

					Project
7	Indian Army*	N.A.	N.A.	10,000 (as per press reports)	Station a Brigade
8	Total			9273 confirmed + 10000 to be confirmed*	

15. From the above facts, it is evident that a total of 9723 acres of Amrit Mahal Kaval lands in Challakere Taluk of Chitradurga District of Karnataka, all forest land, have been diverted to non-forest purposes involving industrial, infrastructure development, defence and area development projects. It is possible that more land, including the reported 10,000 acres for the Indian Army, may be diverted from the said forest and other lands.

16. It may be seen that the notice was issued by the Karnataka State Pollution Control Board (KSPCB) to the respondent/allottee project proponents as follows:

(i) A Notice No. PCB/CTA/11/01 dated 12th April, 2011 was issued by KSPCB to Director, P&PR Unit, Indian Space Research Organization (ISRO), stating that its activity in the aforesaid lands attracts EIA Notification, 2006 and 2009 and prior Environmental Clearance (EC) from Ministry of Environment & Forests (MoEF), Govt. of Karnataka/Govt of India and

consent for establishment (CFE) from KSPCB under the provisions Water Act and Air Act are essential and must be applied for immediately. Further, it was stated that if the project has started construction/activity without prior CFE from the Board, it is in violation of the provisions of the above said Acts. ISRO responded by letter dated 5th May, 2011, No. ISAC:C&MG:C:Chitradurga:10-11, stating that preliminary works such as marking boundary stones and carrying out topographical survey are being taken up. Later on, the boundary walls are to be constructed. The facilities to be constructed are yet to be finalized by ISRO. It requires time to plan facilities and establish the same at Chitradurga and informed that as and when the planning is taken up necessary EC as a part of statutory clearance will be obtained from KSPCB.

(ii) A Notice No. PCB/CTA/11/03 dated 12th April, 2011 was issued by KSPCB to Occupier, Indian Institute of Science (IISc), Chitradurga, stating that “at present you are having guest house, canteen & training centre facility in the existing sheep and wool development centre along with quarters building and office building.” It was also stated that this activity in the aforesaid lands attracts EIA Notification, 2006 and 2009 and prior EC from MoEF, Govt.of Karnataka/Govt.of India and CFE from KSPCB under the provisions Water Act and Air Act are essential and must be applied for

immediately. Further, it was stated that if the project has started construction/activity without prior CFE from the Board, it is in violation of the provisions of the above said Acts. No response appears to have been forthcoming to this notice.

(iii) A Notice No. PCB/CTA/11/02 dated 12th April, 2011 was issued by KSPCB to Occupier, Bhabha Atomic Research Centre (BARC), stating that its activity in the aforesaid lands attracts EIA Notification, 2006 and 2009 and prior EC from Ministry of Environment and Forests, Govt. of Karnataka/Govt. of India and CFE from KSPCB under the provisions Water Act and Air Act are essential and must be applied for immediately. Further, it was stated that if the project has started construction/activity without prior CFE from the Board, it is in violation of the provisions of the above said Acts. In response, BARC by letter dated 3rd May 2011, No. BARC/PD/T-1(C6)/2011 has stated that the BARC proposed to take up its project towards construction of a Special Material Facility under XII Plan during 2012-2017. At present, the same was in the process of initial survey for topography and fixing of boundary pillars. It is also initiating geo-technical and geo-hydrological studies as a pre-cursor to prepare Environmental Impact Assessment (EIA)/ Environmental Management Plan (EMP) reports and also initiated action to engage a suitable consultant for EIA/EMP reports preparation for submission to MoEF

for obtaining Environmental Clearance.

(iv) A Notice No. PCB/CTA/11/04 dated 12th April 2011 was issued by KSPCB to Director, Aeronautical Development Establishment (ADE), Ministry of Defence, Defence Research and Development Organization (DRDO), Bangalore stating that its activity in the aforesaid lands attracts EIA Notifications, 2006 and 2009 and prior EC from Ministry of Environment and Forests, Govt. of Karnataka/Govt. of India and CFE from KSPCB under the provisions Water Act and Air Act are essential and must be applied for immediately. Further, it was stated that if the project construction/activity are started without prior CFE from the Board, it is in violation of the provisions of the above said Acts. No response appears to have been forthcoming to this notice.

(v) A Notice No. KSPCB/RO/CTA/2012-13/552 dated 17th August, 2012 was issued by KSPCB to M/s Sagitaur Ventures India Pvt. Ltd., Bangalore, stating that its office received letter with direction to furnish specific opinion regarding Environmental siting guidelines to establish integrated solar park at the above said location. Neither the letters forwarded by *Udyoga Mitra* nor the Head office of KSPCB have information regarding contact person or contact number. The officials of District industry and Commerce (DIC), Chitradurga was also contacted to obtain information about contact person

and contact number to enable us to visit proposed location, the DIC, Chitradurga has no information regarding the same. No response appears to have been forthcoming to this notice.

17. A true and certified copy of the reply dated 31st January, 2013 received from respondent No. 4 in response to an application under Right to Information Act, 2005, (Annexure 1) is annexed with the application which provides all the notices issued by the 4th respondent to respondent Nos. 10 to 16 along with such replies as were received till date from the concerned Respondents.

18. Section 2 of the Forest (Conservation) Act, 1980 provides that no State Government or other authority shall make any order directing that any forest land or any portion thereof may be used for any non-forest purpose without the prior approval of the Central Government. The Explanation to Section 2 clarifies that “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for cultivation (of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants) or any purpose other than re-forestation. Section 2 further provides that no State Government or other authority shall make any order directing that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or

any other organization not owned, managed or controlled by Government. It is submitted that the diversion of about 9273 acres of Amrit Mahal *Kavals* in Challakere taluk without the permission of the Central Government results in a violation of Section 2 of the Forest (Conservation) Act, 1980 in light of the afore-mentioned facts and the following reasons.

19. In the case of *T.N. Godavarman Thirumalpad v. Union of India*, AIR 1997 S.C. 1228, the Court reiterated that the Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance and therefore, the provision made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land" occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership." The Hon'ble Supreme Court also directed that "*all on-going activity within any forest in any State throughout the country, without the approval of the Central Government, must cease forthwith.*" It is submitted

that the diverted lands in question constitute “statutorily recognized forests” and also fall within the ambit of the dictionary meaning of the word “forest”.

20. *Amrit Mahal Kavals* are statutorily recognized forests as per the applicable and relevant forest laws of Karnataka. The Karnataka Forest Act, 1963 does not include a clear definition of the word “forest” and an interpretation of the general word “forest” finds mention only once in Chapter V relating to control of forests and lands not being the property of the Government. Section 36 provides that for the purposes of Chapter V of the Act, “forest” includes any land containing trees and shrubs, pasture lands and any land whatsoever which the State Government may, by notification under this section, declare to be a forest”. Rule 2 (2) of the Karnataka Forest Rules, 1969 provides that “Forest area” includes all lands notified as forest under any law or administered as Forest, whether State-owned or private, and whether wooded or maintained as potential forest land. Section 2(2) of the Karnataka Forest Act, 1963 provides that “District Forests” includes all lands at the disposal of Government not included within the limits of any reserved or village forest nor assigned at the survey settlement as free grazing ground or for any public or communal purposes. Section 33 of this Act titled ‘Power to make rules for district forests’ provides the State Government with the power to make rules to regulate the use of the forest produce or of the

pasturage of and land at the disposal of Government and not included in a reserved or village forest. Accordingly, Chapter IV of the Karnataka Forest Rules, 1969 provides for the rules relating to District Forests. Rule 33 clearly enshrines the statutory recognition of *Amrit Mahal Kavals* as forests by providing that “*the rules for the management of district forests shall, mutatis mutandis, apply to Amrit Mahal Kavals which mean and include the land assigned by the Government for the pasturage of Amrit Mahal cattle owned by the Government.*” The fact that *Amrit Mahal Kavals* are statutorily recognized as forests as per the applicable Karnataka forest laws is confirmed by the explicit mention of *Amrit Mahal Kavals* in Paragraph 41 (relating to minimum extent of village forests) and paragraph 142(9) (relating to general privileges applicable to the entire State) of the Karnataka Forest Manual (1976).

21. The specific historical, characteristics of flora and fauna of the *Amrit Mahal Kavals* imply that the diverted lands in question do fall within the dictionary meaning and purposive interpretation of the word “forests”. The Supreme Court of India considered several such dictionary definitions of the word “forest” in *Samatha v. State of A.P.*, AIR 1997 SC 3297, before observing that it would thus be seen that 'forest' bears extended meaning of a tract of land covered with trees, shrubs, vegetation and undergrowth

intermingled with trees with pastures, be it of natural growth or man-made forestation. The numerous dictionary definitions of “forest” (many of which are referred to in paragraph 121 of the afore-mentioned judgment) convey three distinctive aspects through which the word forest may be understood: 1) the existence of a tract of land with vegetation (this could be trees, herbs, shrubs, litter of leaves and branches, etc.); 2) the existence of wild beasts and birds distinctive to the tract of land in question; 3) the existence of royal or governmental authority that privileges the particular land in question and regulates the use of the plants and/or animals found there. Further, the recently released ‘Report of the Committee to Formulate Objective Parameters for Identification of Inviolable Forest Areas’, Ministry of Environment and Forests, Government of India, July 2012, points out that due to the vast diversity of the flora and fauna in India, more than 178 forest types of natural origin have been identified in the country’s forests as per the ‘Champion and Seth’ (1968) classification. This includes many distinct types of tropical dry deciduous forests (including dry grass lands, scrub and savannah forests). The 2012 report also assigns a parameter of “wildlife value” for identifying and deciding on inviolable forest areas and states that exclusive breeding sites/habitats of rare/endangered species even if they are not notified as Wildlife Sanctuary/National Parks would receive the highest importance (the other five parameters being forest type, biological richness,

forest cover, landscape integrity and hydrological value). The distinctive flora, fauna (including more than one endangered species), and historical origins of the *Amrit Mahal Kavals* constitute them as forest in accordance with a linguistic and common-sense interpretation of the word “forest” in the Indian context.

22. The Hon’ble Supreme Court of India in *Lafarge Uranium Mining Pvt. Ltd. v. Union of India*, (2011) 7 SCC 338 has issued guidelines to be followed by the Central Government, State Government and the various authorities under the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. The Court while explicitly clarifying that these guidelines are to be implemented in all future cases, has directed that the principles/ guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980. The Court has further held that if the project proponent makes a claim regarding status of the land being non-forest and if there is any doubt the site shall be inspected by the State Forest Department along with the Regional Office of MoEF to ascertain the status of forests, based on which the certificate in this regard be issued. In this decision, the Court also highlighted the need for appropriate safeguards in the EC process to eliminate chance of the grant of EC to projects involving diversion of forest

land by considering such forest land as non-forest. The MoEF, Government of India, has issued a number of guidelines and clarifications relating to the diversion of forest land for non-forest uses.

23. Given that the Supreme Court of India has clarified that the National Forest Policy, 1988 should be read as part of the Forest (Conservation) Act, 1980, some policy prescriptions of direct bearing to the *Amrit Mahal Kavals* are included below. Paragraph 2.1 of the National Forest Policy, 1988 states that the basic objectives that should govern the National Forest Policy include: maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country, conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country, checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs, and meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal population. Paragraph 4.4.1 provides that forest land or

land with tree cover should not be -treated merely as a resource readily available to be utilized for various projects and program, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests. Paragraph 4.5 states that forest management should take special care of the needs of wildlife conservation, and forest management plans should include prescriptions for this purpose. A consideration of the status of the *Amrit Mahal Kavals* in the context of the Forest (Conservation) Act, 1980 should also take due note of these policy prescriptions. In the instant case, all the lands diverted constitute forest land as per Rule 33 of the Karnataka Forest Rules, 1969, which reads as follows:

“Amrit Mahal Kavals – The rules for the management of district forests shall, mutatis mutandis, apply to Amrit Mahal Kavals which mean and include the land assigned by the Government for the pasturage of Amrit Mahal Cattle owned by the Government.”

From the above, it is evident that there has been gross violation of the statutory compliance norms per the Environment Protection Act, 1986, the Environment Impact Assessment Notification, 2006 and 2009, Water Act, 1974, Air Act, 1981 and various other applicable laws including the Forest Conservation Act, 1980 and Biological Diversity Act, 2002.

24. The Planning Commission (Environment and Forests Division) constituted a Task Force on Grasslands and Deserts for the Environment and Forests Sector for the Eleventh Five-Year Plan (2007-2012). This Task Force, in its report, affirms that deserts are the most neglected ecosystems by the MoEF which looks after biodiversity conservation in India. The widespread neglect is expressed by this Task Force as “the grasslands are the ‘common’ lands of the community and are the responsibility of none. They are the most productive ecosystems in the subcontinent, but they belong to all, are controlled by none, and they have no godfathers.” The report argues that these grassland landscapes are critical for the sustenance of rural economy and livestock. With more than 500 million livestock and more than 50 percent of the fodder for this livestock coming from grasslands, protection, development and sustainable use of grasslands is critical. Many natural grasslands have been converted to plantations, sometimes even in Protected Areas. Some of the most threatened species of wildlife are found in the

grasslands and deserts (e.g. Great Indian Bustard, Lesser Florican etc.) The report notes with concern that in spite of the importance of grasslands as repositories of rare and endangered flora and fauna, they are the “most neglected, abused and least protected ecosystems in India. They remain unprotected unless they are notified as Protected Areas under the Wild Life (Protection) Act, 1972 or notified as Protected or Reserve Forest under the Indian Forest Act, 1927. Most of the States have excluded the grasslands and have not identified them as “deemed forest” by the State Expert Committees, pursuant to the landmark order dated 12.12.1996 in the forest matter in *T. N. Godavarman Thriumalpad V. Union of India and others in W.P. (C) No. 202/95*). As per the said order of 12.12.1996, word ‘forest’ should be given a wide and liberal interpretation. Excluding grasslands and including lands only with tree cover as ‘forest’ is against the letter and spirit of the said order thereby denying the protection under the Forest (Conservation) Act, 1980. In view of the fact that the grasslands have spontaneous natural vegetative growth, these should also be treated as ‘forest land’ for the purposes of the Forest Conservation Act and restrictions on diversion of such lands for non-forest use should be applicable to these critical ecosystems as well.

25. Some of the recommendations of the Task Force that are relevant

for the preservation of *Amrit Mahal Kaval* are:

1. Modify the new EIA guidelines by including ecologically fragile and environmentally sensitive areas where prior EIAs will have to be made mandatory.
2. To increase grasslands and desert ecosystems in Protected Area (PA) system.
3. Protection and enhancement of PAs in arid and semi-arid regions and also protection of wildlife outside PA system should be given high priority and should be integrated in the over-all land-use policy of the country.

26. It is clear from the aforesaid facts that the State of Karnataka has diverted almost all of the *Amrit Mahal Kavals* of Challakere Taluk, Chitradurga District in Karnataka to non-forest and non-pastoral purposes without application of mind. The proposed investments will directly and irreversibly affect the impacted communities and biodiversity of the area, especially the pastoral communities, whose livelihoods are intricately linked to the existence of these grasslands. The projects have commenced in blatant violation of all the applicable rules, norms, standards and statutes as evident from the fact that the *Amrit Mahal Kavals* have been blocked off to pastoral communities by building 28 km long wall that fundamentally attacks their very Right to Live. So serious has been the impact on pastoral communities from this one act, that already several families have run into huge debts trying to find fodder for

their cattle, several more are forced to sell their livestock to survive and there is widespread pain and agony suffered as a consequence of these illegal activities by the impacted communities.

27. Notwithstanding the aforesaid serious violations of environmental, forest and biodiversity protection laws, Defense Research Development Organization has already constructed at least 28 km high stone-masonry and concrete walls around lands allocated to it. Indian Institute of Science has also commenced its project activities without at all conforming to any norms. No applications whatsoever have been made by any of the agencies to comply with the applicable laws and norms.

28. The Applicant has submitted representations to various authorities, bringing to their notice the violations committed and the damage caused to the environment, however no action has been taken till date. Therefore, the applicant has no other remedy but to approach this Hon'ble Tribunal for redressal of his grievances on the following grounds:

- A. The diversion of *Amrit Mahal Kaval* land in Challakere taluk is in violation of the Forest (Conservation) Act, 1980.
- B. The diversion of land is in violation of the Public Trust Doctrine, the Principle of Sustainable Development, Principle of

Intergenerational Equity, Principle of Prior and Informed Consent, etc.

- C. The respondents have not considered the fact that the *Amrit Mahal Kavals* are statutorily recognized forests as per The Karnataka Forest Act, 1963. The diversion of about 9273 acres of *Amrit Mahal Kavals* in Challakere taluk without the permission of the Central Government is, in violation of section 2 of the Forest (Conservation) Act, 1980.
- D. The present clearances granted to Respondents 10-16 herein are also in comprehensive violation of *T.N. Godavarman Thirumalpad v. Union of India, AIR 1997 S.C. 1228*.
- E. The respondents have not seen that the diversion of the *Amrit Mahal Kavals* will cause serious prejudice to the environment, ecology and to the local pastoral and agrarian communities who have no other source of livelihood.
- F. The respondents have violated the Biological Diversity Act, 2002 in granting the impugned clearances.

G. The respondents have not considered the fact that the impugned clearances have been granted in violation of the National Forest Policy.

H. The respondents have not considered the fact that the *Amrit Mahal Kavals* are the main source of fodder for the cattle reared by the local population and the impugned diversion will result in loss of their source of livelihood and is violation of rights guaranteed under Article 21 of the Constitution of India.

I. The statutory authorities have not seen the fact that respondent Nos. 10 to 16 have commenced construction/ developmental activities without obtaining any clearance from the competent authorities.

29. Hence, the applicant herein has sought for the intervention of the Tribunal for granting the following reliefs:

- (i) To maintain *Amrit Mahal Kaval* free from any diversion/encroachments.
- (ii) To remove any civil construction illegally erected on the *Amrit Mahal Kavals* and restore the *Amrit Mahal Kaval* to its earlier state

- (iii) To direct respondent Nos. 1 to 9 to commission a regional Environment Impact Assessment with carrying capacity studies to comprehend the impacts of all projects proposed in the region on biodiversity, environment, human settlements etc., prior to any decision being taken towards approval of any or all projects.
- (iv) To direct respondent Nos. 1 to 9 to commission a comprehensive study of the socio-economic impacts of the projects proposed on agrarian and pastoral communities of the region and also to conduct a comprehensive analysis and audit of the land use and water use of the projects from the point of view of appropriateness, demands for lands and such other considerations prior to according EC and CFE for establishment being granted.
- (v) To direct respondent Nos. 1 to 9 to forbear respondent Nos. 10 to 16 from putting up any civil construction on the *Amrit Mahal Kavals*.
- (vi) To direct respondent No. 12 herein to provide access to the *Amrit Mahal Kavals* to the local population by removing any and all obstructions to facilitate free movement of the pastoral communities, and cattle in *Amrit Mahal Kavals*.

Application No. 12 of 2013 (SZ)”

30. The Applicant Trust is registered under the Indian Trusts Act, 1882 vide Reg. No.: Book IV 8/98-99. The Applicant Trust is represented by its Trustee who is also specifically authorized to represent the Trust in the above said litigation. The Applicant Trust has been involved in a wide variety of environmental issues and campaigns. The organization has assisted the State in a variety of public interest initiatives relating to environmental management, and is an active collaborator with a wide range of national and international research, academic and campaign organizations. Inherent to the organization is a wide range of expertise from the areas of biodiversity conservation, forest management, ecology, public health, environmental law and policy, etc. The Applicant Trust has been actively involved in and initiated several campaigns for conservation of biodiversity in the State of Karnataka and also across India. In particular, it has raised a variety of public interest campaigns against indiscriminate deforestation, bio-piracy, tree felling, encroachment of parks and public spaces, privatization and commercialization of commons, etc. In recognition of its contribution to the protection of lakes as commons, the Applicant Trust was awarded the United Nations “Water for Life Award 2012”. The Trustee representing the first applicant is a leading social activist in Mangalore, and has worked to uphold the fundamental rights of the poor and displaced communities for decades.

31. By way of this application, the applicant seeks the indulgence of this Tribunal in attending to an egregious violation of applicable statutes, norms, standards and Treaties by the State of Karnataka, various regulatory authorities, several agencies of the State and Union Governments and also private sector entities who have individually and collectively diverted approximately 10,000 acres of *Amrit Mahal Kaval* in Challakere Taluk of Chitradurga district of Karnataka, designated as 'district forest' per the Karnataka Forest Act and Rules, for the purpose of locating and advancing a variety of infrastructural and industrial investments. All these facilities have a significant and irreversible impact on the environment and bio-diversity. These decisions have been taken in gross violation of the Public Trust Doctrine, Principle of Inter-generational Equity, Principle of Prior and Informed Consent, Common Heritage of Humankind Principle, the Polluter Pays Principle, the Precautionary Principle, etc. By so acting, the respondents have infringed upon and violated various international covenants and Treaties to which India is a signatory, including Rio Declaration 1992, Convention on Biological Diversity (signed by India on 5th June, 1992 and ratified on 18th February 1994), Convention on Conservation of Migratory Species of Wild Animals, 1979 (signed by India on 23rd June 1979 and ratified on 4th May, 1982), Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (signed by India on 16th November 1972),

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001 (signed and ratified by India on 10th June 2002), etc.

32. These actions on the part of the respondents has allowed arbitrariness in procedure, thereby hitting at the core of Article 14 and is in blatant disregard and violation of Articles 19, 39 (a), 39 (b) and 39 (c) and not in keeping with the letter and spirit of Article 48, 48 (A) and Article 51 A (g) of the Constitution of India. In particular, these actions constitute a blatant violation of the Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1980, Environment Impact Assessment Notification, 2006, Biological Diversity Act, 2002, *Panchayat Raj* Act, 1992, *Nagarpalika* Act, 1992, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and various other laws relating to land use planning, planned and democratic development for securing the equitable rights of all. As a consequence of the actions of the respondents, livelihoods of pastoral and agrarian communities in at least 60 villages directly dependent on these *Kavals* for their day to day existence has already been seriously compromised and threatened and thus constitutes violation of various Fundamental Rights such as the Right to a Wholesome Environment as contained in the Right to Life, the Right to Livelihood, the

Right to Equality, the Right to Dignity and such other basic human rights. About 12,000 acres of this unique grasslands ecosystem in Challakere Taluk were handed over to the custody of the Department of Animal Husbandry and Veterinary Services, and a Sheep Board was established here in 1971 without any change in the nature of the lands as *Amrit Mahal Kaval*, i.e. District Forest. During the years 2008-2010, the Government of Karnataka transferred at least 9,273 acres of the said *Amrit Mahal Kaval* in Challakere Taluk of Chitradurga district to a variety of industrial and infrastructure developments. It is the contention of this applicant that such transfer of land was done for a monetary consideration, and these decisions were fraught with a variety of illegalities, most especially the fundamental violation of laws governing the protection and conservation of environment and forests and also those protecting, regulating and governing the wise use of biodiversity and associated traditional knowledge and livelihoods. These actions also constitute gross violation of various laws and international treaties protecting wildlife, particularly those which are critically endangered and inhabit the aforesaid *Amrit Mahal Kaval*. The transfer of the aforesaid land was made by the Government of Karnataka to the organizations as indicated in paragraph 14 supra (Annexure 1 to 6 of the type set papers filed by the applicant).

33. All *Amrit Mahal Kaval* lands in the State of Karnataka have been

designated per Rule 33 of the Karnataka State Forest Rules, 1969 as follows:

“Amrit Mahal Kavals – The rules for the management of district forests shall, mutatis mutandis, apply to Amrit Mahal Kavals which mean and include the land assigned by the Government for the pasturage of Amrit Mahal Cattle owned by the Government.”

34. Flouting from this fact in law, the *Amrit Mahal Kaval* of Challakere Taluk of Chitradurga District of Karnataka, designated as district forests, has been diverted to non-forest purposes involving industrial, infrastructure development, defence and area development projects, in absolute contravention of Forest (Conservation) Act, 1980, Forest Rights Act, 2006 and other applicable laws, rules, orders and circulars, and the decisions of the Hon'ble Supreme Court in the *T. N. Godavarma Thirumulkpad v. Union of India*, AIR 1997 S.C. 1228 case. Unconfirmed reports suggest that more such land and abutting areas are likely to be diverted for subsequent urbanization and infrastructure development. The environmental and social consequences of such massive transfer and diversion of grasslands have not in the least been surveyed, appreciated and understood as is mandated by the Environment Protection Act 1986, the Wildlife Protection Act, 1972, Biological Diversity Act, 2002, Forest (Conservation) Act 1980, etc.

35. The agencies that have benefited from the aforesaid diversion of

the *Amrit Mahal Kaval* have begun a variety of project activities in gross violation of applicable environmental laws. This includes the construction by the 13th Respondent Defense Research Development Organization of a 10 feet tall wall running now to a length of 28 km and work on extending the length of which is still ongoing. The 14th respondent, Indian Institute of Science has set up a wide range of infrastructure and commenced research and extension operations. The 17th respondent, Karnataka Small Scale Industries Association has commenced project activities by modifying the land forms into industrial plots, and the 18th respondent, Karnataka Housing Board has begun forming residential layouts as well. The pictorial representation illustrating the nature of the landscape of the aforesaid *Amrit Mahal Kaval*, its use as pastoral lands, and also some of the livelihoods that are intricately linked to the continued existence of said lands are self explanatory.

36. Taking note of these illegal activities, the 5th respondent KSPCB has issued various notices to the beneficiary agencies as indicated in paragraph 16 supra (Annexure 8, 10, 11,13 and 14 of types set papers filed by the applicant herein).

37. A Notice was issued on 17.08.2012 in KSPCB/CTA/2012-13 to M/s. Sagitaur Ventures India Pvt. Ltd., Bangalore with directions to furnish specific

opinion regarding environmental citing guidelines to establish a solar park at the above said location. Neither the letters forwarded by *Udyoga Mitra* nor the Head office of KSPCB have information regarding contact person or contact number. The officials of District Industry and Commerce (DIC), Chitradurga was also contacted to obtain information about contact person and contact number to enable us to visit proposed location, the DIC, Chitradurga has no information regarding the same. No response appears to have been forthcoming to this notice.

38. Despite such gross violation of the Environment (Protection) Act, 1986, the Environment Impact Assessment Notification, 2006, Water Act, 1974, Air Act, 1981 and various other laws including the Forest Conservation Act, 1980, no regulatory action has been initiated to penalize the offenders. As a matter of fact, both the 1st respondent MoEF and the 6th Respondent Karnataka State Forest Department have not initiated action till the filing of the application for illegal diversion of forest land, and the former has also not initiated any action for the contravention of the Environment Protection Act, 1986 and the Environment Impact Assessment Notification, 2006.

39. The State of Karnataka and its agencies were doing a very poor job of maintaining the *Amrit Mahal Kaval* lands of Chitradurga district as is evident from the recorded pleadings of some local public spirited farmers

who as Petitioners in the Writ Petition 17954/1997 (PIL) before the Hon'ble High Court of Karnataka contended that the respondent authorities are flouting statutory provisions, have been squandering Government land by granting in favour of private individuals to the detriment of the interest of the village community and that “due to the indifference and inaction on the part of the revenue authorities, many persons have encroached upon the reserved land and have resorted to illegal cultivation and in spite of the petitioners bringing to the notice of the revenue authorities, such encroachments and such illegal cultivation, the authorities have failed to take any action in accordance with law and have not prevented the encroachers”.

40. The applicants prayed before the Hon'ble High Court of Karnataka that the *Amrit Mahal Kaval* lands in Chitradurga district “are retained for grazing of the cattle and to further direct the authorities to take action to evict all encroachers and illegal occupants on this land and to restore the land for the reserved purpose of grazing of cattle”. The Hon'ble Court was pleased to observe that “it is very obvious that the respondents have been evasive in their reply and are most inconsistent in their reply statement. While in one breath they say that they have nothing to do with the land and have no authority to even entertain any application seeking for regularization of unauthorized occupation/cultivation, in the very next breath they say such

application in Form No. 50 will be put up before the Committee meant for Regularisation of unauthorized occupation/cultivation after following the requisite procedure of surveying the land and extent of authorized occupation, which are clearly contradictory in nature.

41. Disposing the petition in favour of the petitioners, the Hon'ble Court observed that the entire land in S. No. 1 of Ramagiri *Amrit Mahal Kaval* of Gagasamudra village, Holalkere Taluk is a Government land reserved for the purpose of pasturage. Whether it is called as *Amrit Mahal Kaval* land or *gomal* land, it is a reserved land within the meaning of section 71 of the Act read with Rule 97 of the Karnataka Land Revenue Rules. If this is the position, then this land is meant to be preserved for this purpose and not to be diverted for any other purpose. The Hon'ble Court further held that respondents are duty bound to act under the Act and Rules and are duty bound to comply with the requirements of the statutory provisions. The respondents are also duty bound to ensure that the lands reserved for such purpose is preserved and protected for the use for which it is reserved and no portion of that land is in any way diverted or illegally encroached upon. On such basis, the Hon'ble Court directed the State to preserve and protect the land in S. No. 1 of Ramagiri *Amrit Mahal Kaval*, Gagasamudra village, Holalkere Taluk, Chitradurga District, measuring an extent of 3040 acres

which is admittedly *Amrit Mahal Kaval* land as *gomal* land and to take immediate and appropriate steps under the provisions of the Act and Rule for removal of encroachment on this land. In order that the import of this unprecedented direction was known to the public at large, the Hon'ble Court directed the respondents to report the action taken as per the directions in this writ petition after a period of three months from the date of a receipt of a copy of this order by publishing the same at village *Chavadi* and *Tahsildar's* Office and also publish the same in a prominent vernacular news daily of the area and to submit a report in this regard to the High Court.

42. This order has reached finality as it was not appealed. Subsequent to this order, the Karnataka Law Department issued an opinion dated 14th October 2003, No. AHF 07 A MA BHU 2001 (NO. LAW 818 OPINION-III 2003) wherein it is stated as follows:

“Though the Judgment came to be delivered in the case of Sy. No.1 of Ramagiri Amrut Mahal Kaval (which is a Government land), it is generally applicable to all other similar case. Whether or not the Department of Animal Husbandry is a party in the aforesaid proceedings, the State is bound by the said Judgment, The Respondent-State has been directed to preserve the land, which is admittedly Amruth Mahal Kaval land, as a gomal land, while interpreting Section 71 of the Karnataka Land

Revenue Act, 1964, and the Karnataka Land Revenue Rules, 1966. The above Judgment has general applicability involving similar questions of land and it cannot be confined to the lands involved in the said Writ Petition. The above Judgment was rendered in Public Interest Litigation”.

43. Thereafter, the Department of Animal Husbandry and Fisheries of the Government of Karnataka issued a circular dated 28 February 2004 (No. Pasam Mee 7 AaMaBhu: 2001) on the basis of the aforesaid order of the Karnataka High Court stating as follows:

“ A question has arisen whether the decision of the Karnataka High Court would be applicable to lands in all Amrit Mahal Kavals. This has been considered in consultation with the Law Department. The Law Department has given its opinion to state that upon analysing the provisions of the Karnataka Land Revenue Rules and Section 71 of the Karnataka Land Revenue Act, the Government is required to protect Amrit Mahal Kavals as Gomala lands. The Karnataka High Court has given its judgment and the Court has specifically directed that Amrit Mahal Kavals must be protected as Gomala lands. This decision is applicable to all Amrit Mahal Kaval lands and not limited to the lands in question in the Writ Petition.

44. The Court has given the historic decision to decide the dispute in

public interest. In this background, in order to protect *Amrit Mahal Kavals* as *Gomala* lands from any appropriation and occupation, necessary action must be taken with the cooperation of Revenue and Police Departments and the appropriation or occupation vacated. All agencies of the State are hereby requested to cooperate with the Government to protect *Amrit Mahal Kaval* lands as *Gomala* lands.

45. Chitradurga district falls in the semi-arid region of central Karnataka and is known to be a district that is constantly affected by long periods of drought and minimal water security. The region impacted by the projects proposed by the Respondents receives very low rainfall, which averages to 45 cm annually. Communities who have survived extreme weather and climatic conditions have done so by wise and intelligent use of soil, water, forests, grasslands and such other natural resources. With no perennial river flowing through this district, water is an extremely critical determinant and environmental limit for human activity. Pastoral and agrarian communities that have thrived in such conditions have done so over generations by building a variety of traditional and cultural norms in the use and access of natural resources that have promoted harmonious co-existence with a variety of wild fauna and flora. Wild species such as the Black Buck (*Antelope cervicapra*), Great Indian Bustard (*Ardeotis nigriceps*), the Lesser Florican

(*Syephotides indicus*) and Indian Wild Dog or Dhole (*Cuon alpinus*), which are protected under Schedule I of the Wildlife Protection Act, 1972 as they are highly threatened or critically endangered, are known to exist in this region even as they have become locally extinct in other parts of India. Access to the commons has been a fundamental prerequisite and determinant to the survival of these communities and the continued evolution of wild flora and fauna. The Applicant submits a comprehensive study of the *Amrit Mahal Kaval* and its socio-cultural and ecological importance conducted by the Maithreya Institute of Environment and Rural Studies, Tiptur, entitled “Amruth Mahal Breed of Cattle, *Kavals* (Grasslands) and its Bio-Diversity – A Study Report 2011”, which was submitted to the Western Ghats Task Force of the Government of Karnataka.

46. The aforesaid report states that the *Amrit Mahal Kaval* are exclusive grazing pastures reserved for the *Amrit Mahal* cattle. Historically, these cattle were grazed in different *Kavals* based on the availability of pasture in different seasons. *Amrit Mahal* cattle were patronized by the royalty, most notably by Vijayanagar emperors, the *Wodeyars* and later by Tipu Sultan. This breed was prized for its speed, endurance, strength and unfailing loyalty. The bulls were used in warfare as a frontline of defence and to transport heavy army equipment on rough roads and difficult terrain. Their strength and

ability to withstand drought make them equally well suited to dry land agriculture. To this day there is a great demand for the *Amrit Mahal* cattle and they are highly prized: auctions of 20 pairs of this cattle breed by Animal Husbandry Department has fetched about Rs. 15 lakhs.

47. During the Vijayanagar Empire these grasslands spread over 4.15 lakh acres across Karnataka. The management of pasture lands was assigned to *servegaras* and *kavalgaras* who held administrative and judicial powers over the lands they managed. They could prosecute the trespassers and lawbreakers of the *Kaval*. They were also responsible for making logistic arrangements for the nomadic cattle and the grazers. They ensured the well-being of the animals by preventing fire, encroachment and felling of trees in the *Kaval*. Even collection of dung from the pasturelands was not allowed as they believed that the dung improves the quality of pasture. After the management of the *Kavals* was taken over by the State government in 1954, the post of *Kavalgaras* has mostly become ceremonial. They are not paid any salary for their services. As compensation, they are allotted five acres of agricultural land, which they can use only to cultivate food and fodder crops. Expenses they incur while on work for registering cases or seeking medical treatment are not compensated. Even so, several of them passionately continue to protect the *Kavals* claiming that the honour of being *Kavalgara* is

what keeps them going. Such traditional methods of management have led to conservation of biodiversity in these *Kavals*, which are predominantly grasslands in the Chitradurga district. While preservation of the grasslands is critical for providing pasture and suitable conditions for breeding the cattle, what with the *servegars* and *kavalgaras* serendipitously working with communities in retaining its biodiversity value, these commons are also critical wildlife habitats for a variety of wild animals such as black buck, wolf, hyena, jackal, porcupine, etc, and a wide range of flora endemic to grasslands. The specific intent of conserving these habitats for the sustenance of *Amrit Mahal* cattle over generations has directly resulted in conservation of grassland ecosystems. This intricate sustainable system is today falling apart due to various factors and a mere 27,468 ha of the *Kaval* land remains in 62 villages of six districts – this is almost entirely in the custody of the Government of Karnataka. The breeding of cattle has also been taken over exclusively by the Department of Animal Husbandry and Veterinary Services, with minimal participation of local communities, who have for generations worked to preserve this rare cattle breed.

48. Another critical aspect of the grasslands ecosystems that this applicant submits is that it is an extraordinary watershed. This is evident in the fact that the Challakere *Amrit Mahal Kavals* are replete with a variety of

water bodies, including lakes and ponds, and seasonal streams. Such wetlands provide a variety of ecological niche spaces for various wildlife, especially migratory waterfowl, and are critical drinking water sources for local communities and their livestock. Moreover, the very high water absorption capacity of these grasslands assist in capturing the scant rainfall that the region receives in recharging surface and ground water aquifers, which constitute a major support system for the high agrarian and pastoral dependencies in the region.

49. A “Rapid Biodiversity Survey of the Kudapura Campus, Indian Institute of Science, 25-28 June 2011” published by the Centre for Ecological Sciences, Indian Institute of Science, Bangalore draws the following conclusion about the extraordinary biodiversity of the *Amrit Mahal Kaval* in Challakere Taluk of Chitradurga District, which is produced without prejudice to the grounds and prayers of this application:

“Even a short, preliminary, incomplete biodiversity survey of the newcampus revealed it to be extraordinarily rich in vertebrate and plant species. From the spectacular and highly endangered blackbuck to small mammals such as foxes and hares, from the rich diversity of raptors (birds of prey) to the tiny minivets and sunbirds and the large number of native plant species, all these point to a rich, relatively undisturbed natural ecosystem. There is much

that can be learned from studying species of plants and animals that have evolved to thrive in arid landscapes and, in a world where fresh water is becoming an increasingly rare resource, preserving these species and studying their special adaptations to arid environments should surely be a high priority”.

“Many of the plant and animal species found here are specialists of arid scrub and grassland – ecosystems that have essentially vanished from the Indian subcontinent, or if present, are mostly highly degraded and taken over by exotic, invasive species. The rich diversity of native scrub specialists revealed by this survey, together with the highly endangered status of blackbuck, found in large numbers on our campus, places upon us a special responsibility to ensure the continued survival of these original inhabitants of our campus.

.....

The land for these campuses has recently been taken over from the local people, for whom this was a grazing commons, and the healthy state of the ecosystem shows us that the local grazers and farmers have been wise custodians of this landscape”.

We should ensure that we do not play the role of thoughtless destroyers of so precious a heritage”.
(Emphasis in original.)

50. What is reported by the ecologists of the rich biodiversity in Kudhapura area is reflective of the ecological richness of the entire *Amrit Mahal Kaval* of Challakere Taluk. The diversion of the *Amrit Mahal Kaval* is in contradiction to a variety of policy initiatives of the Government of India and also the State of Karnataka. The National Policy for Farmers, 2007, for instance, has recognized the critical importance of protecting pastoral lands as a part of a wider strategy of securing livelihoods of pastoral communities, and commits to the following action:

“6.2 Pastoralists:

The following steps would be initiated to ensure better livelihood opportunities for pastoralists:

- (i) Restoration of traditional grazing rights and camping rights in respect of forest areas and in those areas earmarked for grazing purpose in village common lands.*
- (ii) Formalizing entitlements (including issue of permanent grazing cards) for traditional pastoralists/herders maintaining native animal breeds to enable free access to notified or demarcated grazing sites and migration routes.*
- (iii) Grazing land and drinking water sources for livestock will be conserved and expanded to the extent feasible.*

7 Special Categories of farming

(iv). In-depth documentation and characterization of indigenous livestock breeds and preservation thereof would be carried out to recognise and protect the intellectual property rights of the local communities/ individuals conserving these livestock breeds.

(v) Pastoralists would be involved in all local natural resource management programme, including village forest committees and joint forest management”.

51. According to the Report of the Sub Group on Fodder and Pasture Management Constituted under the Working Group on Forestry and Sustainable Natural Resource Management Planning Commission Version: 1.5 (21 September, 2011) by the Planning Commission of India, the lack of conservation of pastoral lands and disinterest in the needs of pastoral communities is creating a range of serious and irreversible repercussions to the advancement of social justice and ecological harmony. The following are relevant extracts from this report:

“2.2.1. Diversion of grazing lands for non-pasture uses: Most of the pastures are neither defined nor marked on ground, and thus the total extent of such areas is a matter of guesstimate. Even as only 12.15 million ha of land in the country is classified as permanent pastures/ grazing lands, grazing is estimated to occur on about 40% of the land area in the country, most of these lands being not

designated as grazing lands. In the absence of such designation and accompanying land records and maps, these non-designated grazing lands are gradually being put to other land uses, causing reduction in extent of already fragmented grazing lands. As per estimates, the country's pastures have reduced from about 70 million ha in 1947 to just about 38 million ha in 1997. Major proportion of this loss of pasture lands is from the village common lands. There is an immediate need to map the grazing lands in the country, demarcate these on the ground and initiate policy steps to maintain their land use.

3. Gap Analysis

The various issues that impact the strengthening of fodder and pasture resources in the country are due to various gaps that exist in the policy administrative and research frameworks. Some of the major gaps are:

3.1 Policy Level: The absence of pasture management and grazing policy at national/ state level have rendered the pasture lands, including village commons and uncultivable wastes open to developmental, societal and grazing pressures. Large chunks of such lands have experienced change in land use due to transfer for developmental projects, land grants to landless, plantations on degraded pastures and bringing of such lands under irrigated cultivation at the expense of traditional agro-forestry practices. It is estimated that

the area under permanent pastures and other grazing lands has shrunk from 70 million ha in 1947 to just about 38 million ha by 1997.

The major policy related issues for the shrinkage and degradation of common grazing lands are

- (i) transfer of land for developmental purposes,*
- (ii) allocation of land to landless,*
- (iii) bringing of more and more land under irrigation and shift in crop preference,*
- (iv) closing of land for raising plantations/ watershed management projects, non-inclusion of local bodies in management of such areas,*
- (vi) non-sustainable use/ overgrazing, and*
- (vii) non-finalization of National Grazing Policy.*

It is estimated that the total recorded pasture land in the country has shrunk by more than 30% since independence. It is also estimated that about 78% of the forest area has degraded due to heavy grazing and other unregulated uses, adversely affecting their productivity. Similarly, the absence of such a policy has encouraged unilateral implementation of animal husbandry policy that seeks to increase the number of livestock without corresponding focus on

developing fodder resources. It has resulted in further degradation of the pastures and fodder resources. A comprehensive pasture management and grazing policy would have taken care of such issues. There is, therefore, an urgent need to enunciate pasture management and grazing policy at national level over the 12th Plan period”.

52. Similar concerns have been raised by the Planning Commission (Environment and Forest Division) on the gross neglect of grassland ecosystems as is evident from the findings and recommendations of its Task Force on Grasslands and Deserts for the Environment and Forest Sector for the Eleventh Five Year Plan (2007-2012) where it is observed with deep concern that:

“Grasslands are not managed as an eco-system in their own right by the Forest Department whose interest lies mainly in trees, not by Agriculture Department who are interested in agriculture crops, nor the Veterinary Department who are concerned with livestock, but not the grass on which the livestock depends. Grasslands are the 'common' lands of the community and while there have been robust traditional institutions ensuring their sustainable management in the past, today due to take-over by government or breakdown of traditional institutions

they are the responsibility of none. They are the most productive ecosystems in the subcontinent, but they belong to all, are controlled by none, and they have no godfathers. Indeed they are often looked at as 'wastelands' on which tree plantations have to be done, or which can be easily diverted for other uses. Such diversions often put even more pressure on adjoining ecosystems for grazing and fodder removal, resulting in a cascading chain of degradation. The lack of clear tenure to local communities, confused land records between the Revenue and Forest Departments, and other such issues of land rights and responsibilities also compound the problem”.

53. Some of the recommendations of the Task Force that are relevant for the preservation of *Amrit Mahal Kaval* are:

“Modify the new EIA guidelines by including ecologically fragile and environmentally sensitive areas where prior EIAs will have to be made mandatory.

To increase grasslands and desert ecosystems in Protected Area (PA) system

Protection and enhancement of PAs in arid and semi-arid regions and also protection of wildlife outside PA system should be given high priority and should be integrated in the over-all land-use policy of the country.”

54. This analysis by the Planning Commission is absolutely applicable

in the current context where the Respondent State of Karnataka has illegally diverted the *Amrit Mahal Kavals* of Challakere Taluk which are predominantly grassland ecosystems. While on the one hand the Government of India is making earnest efforts to conserve such grasslands eco-systems for the benefit of pastoral communities and wild life, the respondent State of Karnataka is diverting such lands to industrial and infrastructural development purposes in gross variance to stated policy. This has come up for serious criticism from noted human ecologist Dr. Madhav Gadgil who in the ENVIS Technical Report No. 16 (December 2004) which is a part of the Karnataka State of Environment Report and Action Plan on Biodiversity sector, has recorded his concern in the following manner:

“5.2 Habitat destruction and fragmentation

Fragmentation of forest habitats has exacerbated people- wild life conflicts, as when elephants attempt to move along their traditional migratory routes, and with traditionally protected species like peafowl and monkeys, as well as with others like wild pig and jackal. The loss of most of the grazing lands and other uncultivated lands that used to be a vital ingredient of Karnataka’s agro-ecosystems has resulted in scarcities of biomass resources such as fuelwood, fodder, bamboo, fencing and thatching material for the rural population, most notably for rural artisans”.

55. The Department of Animal Husbandry and Dairying of the Ministry of Agriculture, Government of India has produced a comprehensive “Country Report on Animal Genetic Resources Of India” (AnGR) where it is observed that:

“Many local livestock breeds and minor species continue to represent the lifeline of rural populations. They fulfill a much wider range of functions and provide a large number of products. Their maintenance is ecologically more sustainable, especially in marginal environments. They often have scope for specialty products. Indigenous animals are being maintained by farmers in small herd/flock size. The number of holding for all the breeds is very large. They are well adapted to the local conditions under low input system and are providing employment and livelihood to a large section of the society under the rural conditions. The diversity of AnGR helps them to produce under diverse environment. Commercialization of animal husbandry practices is still slow in most parts of India.”

56. It is clearly evident from these various policies that the Government is keen to ensure that grassland ecosystems form a critical support system for biodiversity conservation, protection of wildlife, as grazing pastures support agrarian and pastoral communities, are a critical watershed in semi-arid regions and provide a variety of options to rural communities

extending supplementary income in developing their quality of life and in improving socio-economic status while living a life of dignity and rich cultural tradition. In this context, it is evident that the current action of the State of Karnataka in diverting the *Amrit Mahal Kaval* of Challakere Taluk is opposed to public policy.

57. The *Lok Sabha* Standing Committee on Defence (2005-06) undertook “A Critical Review of Rehabilitation of Displaced Persons” in its Thirteenth Report. The Committee discovered that the Ministry of Defence has the propensity to acquire lands far in excess of actual requirements, and that this has caused needless displacement of local communities, directly and indirectly. The following are relevant extracts from the Introduction Chapter of this report:

“Government acquire private lands for undertaking welfare measures. The Ministry of Defence also acquires lands for operational use of Defence Forces and other Defence purposes. This compulsory acquisition of private lands displaces people, from their ancestral land forcing them to give up their home, assets and means of livelihood. Therefore, displacement uproots people not just from their homes but also from their traditional occupations and livelihoods that they are familiar with. Hence, displacement results into traumatic, psychological,

socio-cultural and economic insecurity.

1.2 In most cases, the displaced have not been compensated and resettled. The few who have been resettled have been sent to areas that are not suited for agriculture or do not support the kind of occupations that the oustees are used to. Besides, many rehabilitation places lack basic amenities like health, education, sanitation etc.

1.4 The system of extending cash compensation under the LAA and such other Acts in most cases do not enable the affected families to obtain cultivable agricultural land homestead and other resources which they have to surrender to the State. The difficulties are more acute for persons who are critically dependent on the acquired assets for their subsistence/livelihoods, such as landless agricultural workers, forest dwellers, tenants and artisans, as their distress and destitution is more severe, and yet they are not eligible for cash compensation.

1.5 Further, due to disputes on ownerships of land in the absence of valid papers of their lands, the affected persons do not get due compensation. Further, the State Government in most of the cases do not adhere to prescribed time limit for awarding compensation and do not pay compensation as per the actual market value as a result people go to courts for justice and

subsequently final settlements get delayed and large number of cases are still pending in various courts and people are still facing manifold problems.

1.7 The Committee noted that the Ministry of Defence has been acquiring vast tracts of land before Independence and till date for operational use of defence forces and other defence purposes. The land is being acquired under age old Land Acquisition Act (LAA), 1894 and Defence of India Act, 1939 framed during the British time and are colonial in nature. Though these Acts have been amended from time to time, they are totally inadequate to meet the present day needs and aspirations of the people. This was amply brought out during oral evidences, tendered before the Committee by representatives of Ministry of Law, Rural Development and State Government officials. The Committee are constrained to note that there was no policy for rehabilitation of displaced persons as such and only in 2004, guidelines have been issued in the form of National Policy on Resettlement and Rehabilitation (NPRR), 2003. In the absence of a policy for rehabilitation, the displaced persons were being given meager compensation for the land acquired for defence projects and no effort was being made to resettle and rehabilitate them properly. In view of foregoing, the Committee strongly feels that there is an urgent need to have a

comprehensive and more democratic legislation to deal with the matter relating to Land Acquisition, Compensation, Resettlement and Rehabilitation. The Ministry of Defence being the largest user of land should take appropriate initiatives with the concerned Ministries in this regard. The Committee further desire that the Ministry of Defence should have their own practical and better package for resettlement and rehabilitation till the commencement of this comprehensive legislation.

i.8 The Committee noted that large number of people sacrifice their ancestral land, traditional occupations and livelihoods due to acquisition of land for various Defence purposes. Therefore, it becomes the responsibility of the Ministry of Defence to ensure that the affected people get fair amount of compensation and timely rehabilitation in order to create a sense of pride and patriotic feeling in their mind that they have sacrificed their valuable property for the cause of the nation.

1.10 On examining various representations and oral evidences of the displaced families who have lost their lands due to defence acquisition over the years, the Committee note that most of them have not been properly resettled and rehabilitated and are still

suffering. The Committee desire that Government should consider their cases sympathetically and extend all possible assistance wherever feasible.

2.25. It has been learnt from one of the representations received by the Committee that for defence projects, unnecessarily vast tracts of land are taken from civilians irrespective of actual requirement of the project e.g. for National Defence Academy (NDA), 8,000 acres of land was acquired, out of which not more than 25% is utilized, rest has remained unutilized even after 60 years. When asked to state the justification for acquiring more land and whether the Ministry is thinking of returning the land to the displaced persons by preserving the ownership rights of defence authorities, the Ministry of Defence in their supplementary replies stated.

“Acquisition of land for defence related activities is being done keeping in view the present and future requirements. Requirement of land is established by a Board of Officers as per given scale of land authorization and acquisition is done based on laid down rules and procedures. Excessive land is not acquired. Since funds for executing various planned projects are not available in bulk, some of the areas which are otherwise zoned for various units/installations remain vacant, possible giving an erroneous impression that the land is in excess to the

requirement and is remaining unutilized. It is reiterated that no land is acquired more than authorized requirement. There is no proposal for return of land to the displaced persons.” (Emphasis in original)

58. It is clearly evident from the above that acquisition of lands or diversion of commons and forest lands purportedly in the national interest has often been undertaken without due diligence and with scant regard to the adverse impacts on fragile ecosystems and local communities. It is also evident that this is an irreversible process and must therefore be undertaken with a most meticulous examination of the siting criteria, critical review of land use demanded, and transparent and public accountability of the rationale for diversion of lands to industrial, defence and infrastructure needs. The relevant criteria have not guided the decisions of the State of Karnataka in so diverting about 10,000 acres of *Amrit Mahal Kaval* of Chitradurga district to non-forest purposes, and this is an egregious abuse of executive power given the fact that all the investments proposed constitute very high and potentially irreversible impacts on the environment, forests, biodiversity and associated livelihoods of thousands of agrarian and pastoral communities.

59. The applicant has, therefore, prayed for the indulgence of this Tribunal for the grant of following reliefs:

A. To maintain the *Amrit Mahal Kavals* free from any diversion/

encroachments.

- B. To remove any civil construction illegally erected on the *Amrit Mahal Kavals* and restore the *Amrit Mahal Kavals* to its earlier state.
- C. For directing the respondent Nos. 1 to 10 to commission a Regional Environmental Impact Assessment along with Ecological Survey and Carrying Capacity studies to comprehend the impacts of all projects proposed in this region on biodiversity, environment, human settlements, agrarian and pastoral livelihoods, traditional knowledge and associated livelihoods, etc., prior to any decision being taken towards approval of any or all projects, current and proposed, in Challakere Taluk in particular, and Chitradurga district in general.
- D. For directing the respondent Nos. 1 to 10 to commission a comprehensive study of the socio-economic impacts of the projects proposed on agrarian and pastoral communities of the region and also to conduct a comprehensive analysis and audit of the land-use and water use of each of the projects from the point of view of siting appropriateness, demands for lands, and such other considerations, prior to according Environmental Clearance and Consent for Establishment being granted.

- E. For directing the respondents 1 and 2 to develop and implement comprehensive policies for the protection of grasslands ecosystems as biodiversity hot spots and pastoral lands, with particular regard to the wise use of these natural resources, and associated traditional knowledge and livelihoods.
- F. For directing the respondent No. 1 to initiate effective action to comprehensively study the status of grassland ecosystems across India with the view of ensuring their conservation and wise use for posterity as wildlife habitats and as public commons.
- G. For directing the respondent No. 2 to immediately take requisite steps to enable recognition of rights of local tribal, other forest dwelling and forest dependent communities as required per the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
- H. For directing the respondent Nos. 2 and 8 to undertake a comprehensive study of the biodiversity of the *Amrit Mahal Kaval* of Challakere Taluk, Chitradurga District, and if found necessary take steps to declare the same as a Biodiversity Heritage Site as per the provisions of the Biological Diversity Act, 2002.

I. For directing the respondent No. 6 to take steps against encroachment and diversion of *Amrit Mahal Kaval* areas across the State of Karnataka in accordance with applicable provision of law, in particular the Karnataka Forest Act, 1963, the Forest (Conservation) Act, 1980 and the directions of the Hon'ble Supreme Court in *T. N. Godavarman Thirumulkpad v. Union of India (AIR 1997 S.C. 1228)* case

60. *Per contra*, the 1st and 3rd respondent in Application No. 6 of 2013 (SZ) and 1st and 4th respondents in the Application No. 12 of 2013 (SZ), namely the MoEF filed their common reply.

61. They would state that as per rule 33 of the Karnataka Forest Rules, 1969, the rules for the management of the district forests *mutatis mutandis* apply to *Amrit Mahal Kaval* which mean and include the land assigned by the Government for the pasturage of *Amrit Mahal cattle* owned by the Government and it is denied that the *Amrit Mahal Kavals* have been declared as district forests in the said rules. The Great Indian Bustard is a critically endangered species and this area is a potential habitat for Great Indian Bustard. Part of the area allotted to various organizations has been included in the list of deemed forests prepared in compliance of the order dated 12.12.1996 passed by the Hon'ble Supreme Court in W.P.(Civil) No. 202 of 1995. The areas which are having the characteristics of forests and identified

as deemed forests irrespective of the ownership also require permission under Forest (Conservation) Act, 1980 for using them for non-forestry purposes. There are many areas within the reserved forests which are grasslands and similar to *Amrit Mahal Kaval*. During the site inspection by the Regional Officer of the MoEF, Southern Region, Bangalore on 6th August, 2013, it was gathered that the area used to support and is even now also supporting wildlife such as Black Buck, Hares, Sloth Bear etc. 1200 ha out of the *Amrit Mahal Kaval* area allotted to various organizations has been included in the list of deemed forest prepared in compliance of the order dated 12.12.1996 passed by the Hon'ble Supreme Court in W.P.(Civil) No. 202 of 1995. Hence, this 1200 ha requires forest clearance before it is put to non-forestry use and there is a case for examining the inclusion of remaining area also in the deemed forest as per the order of the Hon'ble Supreme Court, since both the areas are similar. The State forest department in its counter affidavit maintained that 1200 ha of land in Sy.No. 343 of *Varavukaval* is included in the category of deemed forest C & D land without any plantation but with Karnataka Forest Department) and stated that C & D class lands cannot be classified as forests as per the conditions laid down by the Hon'ble Supreme Court in W.P. (Civil) No.202 of 1995.

62. The Hon'ble Supreme Court in their order dated 12.12.1996 in the

W.P.(Civil) No. 202 of 1995 in the matter of *T.N. Godavarman Thirumulpad V Union of India and others inter alia* directed as follows:

“The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance and therefore, the provisions made therein for conservation of forests and for matters connected therewith must apply to all forests irrespective of the nature of ownership or classification thereof. The word ‘forest’ must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of section 2 (i) of the Forest (Conservation) Act. The term ‘forest’ as understood in dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.”

63. The Supreme Court of India in their said order dated 12.12.1996 further directed as follows:

“Each State Government should constitute within

one month an expert committee to (i) identify the areas which are 'forests' irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such forest (ii) identify area which were earlier forests, but stand degraded, denuded and cleared and (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons."

64. The Supreme Court of India while passing orders in the cases related to environment has directed that the areas which were earlier 'forests' but stand degraded, denuded and cleared shall be culminated in preparation of geo-referenced district forest maps containing the details of the location and boundary of each plot of land that may be defined as 'forest' for the purpose of the Forest (Conservation) Act, 1980.

65. The Supreme Court in the order dated 06.07.2011 further directed that if the project proponent makes claim regarding the status of the land being non-forest, if there is any doubt, the site shall be inspected by the State Forest Department along with the Regional Office of the MoEF and ascertain the status of forest based on which the certificate in this regard be issued.

Therefore, the status of 9,473 acres of land as 'forest' or 'non-forest' is to be decided through joint inspection by the State Forest Department and the Regional Office of the MoEF as per the guidelines issued by the Supreme Court in Lafarge Judgment and interpretation of the Karnataka Forest Act and Rules framed thereunder. But, there is a violation of Environment (Protection) Act, 1986 in as much as some of the project authorities have started the work without clearance under Environment (Protection) Act, 1986.

66. On the above submissions, the 1st and 4th respondent in Application No. 6 of 2013 (SZ) and 1st and 4th respondents in the Application No. 12 of 2013 (SZ) MoEF and the Chief Conservator of Forests of the MoEF, Regional Office, Southern Zone, Bangalore request the Tribunal to pass suitable orders.

67. The 2nd respondent in Application No. 6 of 2013 (SZ) and 3rd respondent in Application No. 12 of 2013 (SZ), namely the Principal Secretary to Government, Department of Forest, Ecology and Environment, State of Karnataka would state in reply as follows:

The Government of Karnataka has allotted land to the organizations of National repute for development and advancement of Science and Technology such as BARC, DRDO, IISc, ISRO, Karnataka State Small Industries Development Corporation (KSSIDC) and M/s. Sagitaur Ventures

India Pvt. Ltd. The present applications have been filed much after the period of limitation of 6 months, in fact, after 2 to 3 years from the date of allotment of the lands and thus the applications are barred by limitation and not maintainable on this count. By a definition 2(2) of the Karnataka Forest Rules, 1969 under Karnataka Forest Act, 1963 'District Forest' includes all land at the disposal of Government not included within the limits of any reserved or village forest nor assigned at the survey settlement as free grazing ground or for any other public or public purposes. *Amrit Mahal Kavals* are the grasslands that have been put to use historically for the development of *Amrit Mahal* breed of cattle during the regime of Wodeyars of Mysore, Hyder Ali, Tipu Sultan and the British who ruled the Mysore state. Even subsequent to the survey and the settlement of Khudapura, Varavu *Kaval* and *Ullarathi Kaval* villages of Chitradurga district, the survey numbers under consideration, have been continued as grazing lands for *Amrit Mahal* breed of cattle. These lands were initially under *Amrit Mahal Kaval* Department (Civil Veterinary Department). After independence, it became Department of Animal Husbandry. Since these grass lands for breeding *Amrit Mahal* cattle were assigned for a public purpose, by definition these lands do not fall under the category of forest land or in any category of statutorily constituted forests under the Karnataka Forest Act, 1963.

68. In the general rules for the management of district forests which were notified in 1901, the *Amrit Mahal Kaval* lands were specifically excluded as the *Amrit Mahal Kaval* lands were not considered part of the district forest clearly on the ground that the said lands, though at the disposal of the Government and though not included within the limits of any state of village forests, have been assigned and the survey and settlement as land set apart for specific purpose viz., the grazing of the *Amirt Mahal* breed of cattle. The rules for the management of the district forests *mutatis mutandis* apply to *Amrit Mahal Kaval* which mean and include the land assigned by the Government for the pasturage of *Amrit Mahal cattle* owned by the Government. Since *Amrit Mahal Kaval* is not district forest, a special provision through rule 33 is provided for managing these grazing lands. Hence, rule 33 will not make *Amrit Mahal Kavals* as district forest. It is only an enabling provision under the Karnataka Forest Rules to the Animal Husbandry Department for managing these grasslands. All through the *Amirt Mahal Kaval* lands have been under the management and control of the Animal Husbandry Department.

69. If the orders of the Hon'ble Supreme Court of India in W.P. (Civil) No.202 of 1995 is applied with regard to the definition of the 'forest' and should be understood according to its dictionary meaning, the 'forest' is to be

understood as (i) a large area; and (ii) there should be a dense or thick cover of trees. The areas of *Amrit Mahal Kaval* which were granted to various organizations do not have dense growth of trees to consider them as forest by dictionary definition. In fact, they are dry and open grazing tract with scanty scrub vegetation. *Amrit Mahal Kavals* are not reserved forest/village forest/district forest and they are not mentioned as forest in any Government records and they cannot be construed as forest by dictionary definition. There is no diversion of any forest area for non-forestry purpose as alleged by the applicants.

70. The *Amrit Mahal* cattle breed was initially used as draught animals for the army. With the progressive mechanization of the artillery units of the armies, the economics of the breed underwent drastic change and the *Amrit Mahal* breed had to be adopted to meet the needs of the villagers to provide quality breeding. As a result of this policy, the cattle breeding station at Ajjampura was started in the year 1929 and the *Amrit Mahal* herd system was largely disbanded. With the reduction in the number of *Amrit Mahal* cattle, there was releasing of *Kaval* lands from time to time. In the year 1956, the department of Animal Husbandry had in its control about 1,65,000 acres of *Kaval* land as against the cattle strength of 5000. Of this extent, an area of 81,040 acres of *Amrit Mahal Kaval* lands in various districts was released

from Animal Husbandry Department to Revenue Department in the year 1956.

71. As regards the applicants' averments in paragraph 38 of the applications that there was explicit mention of *Amrit Mahal Kavals* in paragraph 41 and paragraph 142(9) of the Karnataka Forest Manual, 1976, (for short 'KFM, 1976') the contentions of the applicants are misleading interpretation of what is stated in the Manual which reads as follows:

“Minimum extent of a village forest: A village forest will consist of such gomal lands, portions of district and reserve forests, plantations, Amrit Mahal Kavals as may be assigned by the Government and ordinarily be compact block of net less than 100 acres (40 ha) in extent.”

72. Hence, paragraph 41 clearly refers to the fact of *Amrit Mahal Kavals* are not district forests, if such assignment is done by Government. The *Amrit Mahal Kavals* granted to various agencies have never been assigned to a village forest. Hence, the claim of the applicants is a distortive interpretation of the provisions of the KFM, 1976. Paragraph 142 (9) of the KFM, 1976 reads as follows:

“Removal of thorns and shrubs from district forest

and Amrit Mahal Kavals may be granted to the cultivating ryots on mafi licences.

73. The above proviso of the KFM, 1976 states that the *Amrit Mahal Kavals* are not district forests. The rules for managing district forests are made applicable to *Amrit Mahal Kavals* to enable the Animal Husbandry Department to manage *the Amrit Mahal Kavals*, though they are not statutory areas. The Government of Karnataka has constituted an Expert Committee to identify the areas that could be categorized as forests in Karnataka State as per the directions of the Hon'ble Supreme Court in W.P.(Civil).No. 202 of 1995. The Expert Committee has included 12,272.04 ha of *Amrit Mahal Kavals* under the category of deemed forests in Chitradurga District. But, none of the lands granted are included in the 12,272.04 ha of *Amrit Mahal Kavals* categorized as forests in Chitradurga District by the Expert Committee. In addition, the Expert Committee has indicated 32,449.08 ha in Chitradurga District, under the category deemed forest (C & D) land without any plantation, but with Karnataka Forest Department. Of the survey numbers under consideration in paragraph 2, 1200 ha of land in Sy.No. 343 of *Varavu Kaval* is included in this 32,449.08 ha of deemed forest listed by the Empowered Committee. However, the entire 32,449.08 ha of C & D class shown as deemed forest by the Committee was transferred from Revenue to the Forest

Department in the year 1995 to constitute a land bank from which area required for compensatory afforestation *in lieu* of forest areas diverted can be identified with a clear stipulation that the Revenue Department can take back the land from the land bank, if it is required for public purpose. From the description of the purpose of land bank, it is clear that these C & D class lands cannot be classified as forests, as per the conditions laid down by the Hon'ble Supreme Court in W.P.(Civil).No. 202 of 1995. However, the areas where plantations are raised by the Forest Department cannot be granted or leased out. The Revenue Department is yet to physically handover the possession of 1000 acres of land leased in Sy.No.343 of *Varavu Kaval* to M/s. Sagitaur Ventures India (Pvt) Ltd. The Revenue Department is being moved to exclude the forest plantations while handing over the area leased to M/s. Sagitaur Ventures (Pvt) Ltd.

74. On the above submissions, the respondent No.2 in Application No. 6 of 2013 (SZ) and respondent No. 3 in Application No. 12 of 2013 (SZ), namely the Karnataka State Forest Department states finally that while allotting the lands to various organizations, the Government has not violated any of the provisions of the Karnataka Forest Act, 1963, Karnataka Forest Rules, 1969 and the Forest (Conservation) Act, 1980 and the applications are liable to be dismissed summarily.

75. The 4th respondent in Application No. 6 of 2013 (SZ) and 5th respondent in Application No. 12 of 2013 (SZ), namely the Karnataka State Pollution Control Board (for short 'KSPCB') would state in reply as follows:

The KSPCB issued notices to the respondent Nos. 10 to 13 in Application No. 6 of 2013 (SZ) and 11 to 14 in Application No. 12 of 2013 (SZ), namely the BARC, ISRO Satellite Centre, ADE of DRDO and IISc calling upon them to apply and obtain EC as per EIA Notification, 2006 and CFE under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as these respondents are required to obtain prior EC under Schedule 8 of EIA Notification, 2006 from the Karnataka State Environmental Impact Assessment Authority (for short 'SEIAA'). In the reply dated 03.05.2011, the BARC stated that it proposed to take up construction of a special material facility and it is in the process of initial survey for topography. The BARC is initiating geo-technical and geo-hydrological studies and it has initiated action to engage a consultant for preparing EIA report for submission. The officers of the Regional Office of the KSPCB inspected the site on 14.02.2013 and found that the BARC has constructed barbed wire fencing for 300 acres at Kudapura village.

76. The ISRO by the letter dated 05.05.2011 stated in reply that only

preliminary work such as boundary walls were to be constructed now and the other facilities to be constructed were yet to be finalized.

77. The ADE of the DRDO have applied for CFE of an aeronautical test range at 343 on 02.04.2013 under Water Act and Air Act. It is found during the inspection made on 14.02.2013, that the authorities have constructed compound wall and peripheral roads.

78. The IISc has not replied to the notice sent on 14.02.2013. However, the authorities have constructed a compound wall and peripheral roads of 5 km length as noticed during the inspection by the KSPCB.

79. The KSPCB issued notice dated 17.08.2012 to M/s. Sagitiur Ventures Pvt. Ltd., the 14th respondent in Application No. 6 of 2013 (SZ) and 15th respondent in Application No. 12 of 2013 (SZ) calling for the name and contact number of the representative of this respondent to enable the KSPCB officials to inspect the site and forward letter to *Udyog Mitra* regarding environmental siting guidelines to establish an integrated solar park at Nelagattanahalli, Chellakere Taluk of Chitradurga District. It was noticed during the site inspection on 14.02.2013 by the regional office of the KSPCB that no developmental or construction work was made. M/s. Sagituar Ventures Pvt. Ltd., has applied for CFE vide letter dated 16.03.2013 for their solar part development under Water Act and Air Act.

80. The applications made on 18.03.2013 by ADE of DRDO and M/s. Sagituar Ventures Pvt. Ltd., on 02.04.2013 for CFE are under consideration by the KSPCB. But, the said applications were initiated after the present proceedings were initiated and the matter is *sub judice* before the Tribunal and further the Tribunal appointed an Expert Committee on 21.03.2013 to inspect the land involved which is the subject matter of the present applications pending adjudication before the Tribunal and to file the report. If the KSPCB does not either give or refuse to give consent within a period of 4 months from the date of application, then the applications would have to be treated as deemed consent. In this factual matrix, the KSPCB will process the applications made by the above respondents and would either give or refuse to give consent subject to the outcome of the proceedings.

81. The authorities of the DRDO have constructed peripheral road and compound wall all around the 4290 acres of land and also constructed 3 km asphaltic road for approach. The IISc with 1500 acres of land is engaged in construction of compound wall and peripheral road. BARC with 1810 acres of land has provided barbed wire fencing. KSSIDC, Sagituar Venture India Pvt. Ltd., and Indian Army with 300, 1250, and 10,000 acres respectively have not taken any developmental work.

82. On the above submissions made, the 4th respondent in Application

No. 6 of 2013 (SZ) and 5th respondent in Application No. 12 of 2013 (SZ), namely the KSPCB states that it will abide by any directions of this Tribunal while considering and disposing of any applications received seeking CFE under Water Act and Air Act.

83. The 6th respondent in Application No. 6 of 2013 (SZ) and 7th respondent in Application No. 12 of 2013 (SZ), namely the SEIAA would state in reply that in so far as the SEIAA is concerned, the applications filed before the Tribunal is not maintainable either in law or on facts. The MoEF, in exercise of the powers conferred by sub-section (1) and Clause V of sub-section (2) of the Environmental (Protection) Act, 1986, read with Clause (d) of sub-rule (3) of Rule 5 *ibid* issued a notification called EIA Notification, 2006 wherein the Central Government directed that on and from the date of publication of the said notification the construction of new projects or activities or expansion or modernization of existing projects or activities listed in the Schedule to the said notification shall be undertaken in any part of India only after the prior EC from Central Government or as the case may be by the SEIAA duly constituted by the Central Government.

84. Paragraph 3 of EIA Notification, 2006 provides for constitution of SEIAA and pursuant to which, on 01.10.2010, MoEF issued a notification constituting SEIAA for Karnataka State. Sub paragraph (3) of paragraph 3 of

EIA Notification, 2006 provides the eligibility criteria and qualifications of two members which is given in Annexure -VI to the EIA Notification, 2006 and sub-paragraph (3) who is an expert in the environmental impact assessment process. Thus, the experts and professionals who fulfill the eligibility criteria as per the EIA Notification, 2006 would be appointed as Chairman and Members of the SEIAA.

85. Paragraph 7 of the EIA Notification, 2006 provides that the process of granting EC would comprise four stages and they are:-

Stage-1: Screening (only for Category-B projects and activities)

Stage-2: Scoping

Stage-3: Public Consultation

Stage-4: Appraisal

The entire scheme of the EIA Notification, 2006 and four stages of process provided thereunder for granting EC, if appreciated, the main function of the SEIAA is to act as an expert body while granting prior EC to any project or activities listed in the Schedule to the EIA Notification, 2006 and while considering the said aspect, it has to determine the terms of reference comprehensively addressing all relevant environmental concerns for the preparation of EIA report in respect of the project or activities. As such, the

respondent (SEIAA) has no *suo motu* powers to take any action or to take cognizance of any violation of the provisions of the Environmental (Protection) Act, 1986 and or any notification issued thereunder. The respondent, SEIAA is only an expert body consisting of experts having qualification provided in Appendix VI of the notification. If at all any action is to be initiated for the violators of the provisions as aforesaid, it is for the MoEF to take such action as has been provided under the provisions of the Environment (Protection) Act, 1986. In so far as this respondent (SEIAA) is concerned the applications are liable to dismissed.

86. The 8th respondent in Application No. 6 of 2013 (SZ) and 9th respondent in Application No.12 of 2013 (SZ) namely, the District Commissioner, Chitradurga District would state in reply as follows:

As per the records maintained, the lands in question do not come under the Forest Department and they are basically Government *Kharab* lands as per the survey and settlement records. However, these lands were reserved for breeding the special breed of *Amrit Mahal* cattle by veterinary department. But, the said lands were not used for several years. Therefore, the State Government, considering the request made by the institutions of the Central Government and State Government has passed the impugned orders granting the lands to various institutions in accordance with law. The village

cattle were not allowed for grazing in the above lands as the lands in question were exclusively reserved for breeding the *Amrit Mahal* cattle and at the time of grant the lands in question were not used as *Amrit Mahal Kavals*.

87. The contention of the applicants that an approximately 10,000 acres of *Amrit Mahal Kaval* in Challakere taluk of Chitradurga district of Karnataka designated as 'designated forest' is not true. As per page 496 of the Mysore Gazetteer compiled for the Government of Karnataka and published in 1897 the total extent of reserve forest in the district are: reserved state forest or *jogimatti* - seven and half square miles, *neerthadigudda* – five and half square miles, three forest plantations - 92 acres, 9 revenue plantations - 251 acres, groves or *topes* - 920 acres. In addition, 798 villages are planted with 25,097 avenue trees on both sides of 417 miles of the road.

88. On the basis of the orders dated 20.03.2001 in W.P.No. 17954 of 1997 of the Hon'ble High Court of Karnataka, the Government of Karnataka issued a circular dated 28.02.2004 directing to treat the *Amrit Mahal Kaval* as *gomala* land. The land in question belongs to three villages namely, Kudhapura village, Ularthi Kaval and Varavu Kaval. Out of these villages, Varavu Kaval and Ularthi Kaval are *becharak* villages (un-inhabited). The Kudhapura village and Varavu Kaval are adjacent villages. An extent of 1900

acres of land is still available for free pasturage in Khudapura village which is habitated. The reservation of 901 acres towards afforestation as compensatory land for Upper Bhadra project also supplements green belt in the surrounding area and still 1000 acres of land is available for grazing purposes. No further allotment or diversion of lands will be made henceforth. The *Doddaullarthy* sheep breeding farm has already been shifted to Anagavadi sheep breeding farm of Bagalkot District.

89. Despite the grant of aforesaid lands, an extent of 400 acres in Sy.No.47 of Khudapura village is still being utilized for the purpose of sheep breeding activity and admittedly, as on today, about 500 sheep and 172 goats are being reared in Khudapura sheep breeding farm. Therefore, there would not be any problem for sheep development centres established by the Animal Husbandry and Veterinary Department in Khudapura village as alleged.

90. All the procedures as contemplated under the provisions of the Karnataka Land Revenue Act and the rules - especially rule 28 of the Land Grant Rules, 1969 were followed and there is no secrecy in the procedure followed by the Government as alleged by the applicants. At the time of grant, local *mahazars* have been drawn as per the above said act and rules.

91. The District Commissioner, Chitradurga District (R-8 in Application No. 6 of 2013 and R-9 in Application No. 12 of 2013 (SZ), further states that

as per the records maintained, the lands in question do not come under Forest Department and they are purely Government *kharab* lands as per the survey and settlement records. However, these lands were reserved for breeding the special breed of *Amrit Mahal* cattle by veterinary department. But, the said lands were not used for several years and left uncared of the purpose for which they were reserved. Therefore, the State Government, considering the request made by the institutions, passed the impugned orders granting the lands to various institutions in accordance with law. The village cattle were not allowed for grazing in the aforesaid lands since the lands in question were exclusively reserved for breeding *Amrit Mahal* cattle. At the time of grant, the lands were not used for *Amrit Mahal* cattle. The contention of the applicant that an approximately 10,000 acres of *Amrit Mahal kaval* in Challakere taluk of Chitradurga district of Karnataka as 'district forest' is not true. As per page 496 of the Mysore Gazetteer compiled for the Government of Karnataka and published in 1897 the total extent of reserve forest in the district are: reserved state forest or *jogimatti* - seven and half square miles, *neerthadigudda* – five and half square miles, three forest plantations - 92 acres, 9 revenue plantations - 251 acres, groves or *topes* - 920 acres. In addition, 798 villages are planted with 25,097 avenue trees on both sides of 417 miles of the road. Apart from that, as per the survey records as on today, the lands in question are designated as 'Government *kharab*

lands.’ On the basis of the writ petition filed before the Hon’ble High Court of Karnataka in W.P.No. 17954/1997 and orders dated 20.03.2011, the Government of Karnataka has issued a Circular No. Pa.Sa. Mee 7/Aa bhu: 2001 dated 28.02.2004 directing to treat the *Amrit Mahal Kaval* as *gomala* land. The lands in question belong to three villages, namely, Khudapura, Ullarthikaval and Varavukaval. Out of these villages Varavukaval and Ullarthikaval are *becharak* (uninhabited) villages which are adjacent villages. The total extent of 1,900 acres of land is still available for the pasturage for Khudapura village which is not inhabited. The reservation of 901 acres towards afforestation as compensatory land for Upper Bhadra Project also supplement green belt in the surrounding area. No further allotments or diversion of the lands will be made henceforth. Despite the grant of aforesaid lands, an extent of about 400 acres in Sy.No. 47 of Kudhapura village is still being utilized for the purpose of sheep breeding farm. Therefore, there is no problem for sheep development centres established by the Animal Husbandry and Veterinary Department in Kudhapura village as alleged. All the procedures as contemplated under the provisions of Karnataka Land Revenue Act and rules especiall rule 27 of the Land Grant Rues, 1969 and also drawing of *mahazars* as per the rules at the time of grant were followed and there is no secrecy as alleged by the applicants.

92. On the above contentions, 8th respondent in Application No. 6 of 2013 (SZ) and 9th respondent in Application No.12 of 2013 (SZ), namely, the District Commissioner, Chitradurga District seeks to dismiss the applications.

93. The 10th and 12th respondents in Application No. 6 of 2013 (SZ) and 11th and 13th respondent in Application No. 12 of 2013 (SZ), namely, the Project Director, BARC and DRDO would state in the common reply that the allotment of lands was made on 21.05.2009 and 10.12.2010 to DRDO and BARC, respectively and the present applications by the applicants concerned were filed in the year 2013 after a lapse of over 3 years after the allotment of land and after the allottees have carried out various improvements and activities thereon, including construction of buildings. Section 14 of the NGT Act, 2010 specifies that no application for adjudication of disputes shall be entertained by the Tribunal unless it is made within 6 months from the date on which the cause of action arose. Having regard to the fact that the cause of action for the present applications arose during the year 2009 and 2010, the applications are barred by limitation.

94. The BARC, which is a constituent unit of the Department of Atomic Energy is engaged in the research and development activities related to nuclear science and technology towards achieving the objectives for providing energy security to the country as well as meeting the social needs

of the country in the area of healthcare, food and agriculture, drinking water etc., The BARC is conducting research in multi-disciplinary areas of atomic energy such as front end and back end fuel cycle, nuclear fusion, fission, radiological applications, nuclear medicine, desalinization, industrial applications etc., The BARC is also playing a vital role in the strategic field for providing security to the nation. In the year 1982, the Department of Atomic Energy decided to construct a classified Technology Demonstration Project called Rare Materials Project for development of strategic technologies for upgradation of nuclear fuel which comes under the Technology Denial Regime. The project at Mysore over the last three decades has nurtured this technology for various applications of the department. Having proved successful in the upgradation technology at demonstration scale, a need has been felt to set up a large scale facility viz., Special Material Facility to meet the future requirement of upgraded fuel for use in power sector as well as other strategic purposes.

95. A Committee consisting of senior officers of BARC, Mysore visited Chellekere village of Chitradurga District to ascertain the availability and suitability of land for setting up the proposed Special Material Facility, where other scientific organizations like IISc, DRDO, ISRO were also allotted land for setting up of their campus. After discussion with the District

Commissioner, Chitradurga District and confirming the availability of land, the Government of Karnataka was approached in the year 2009 to allot suitable land at Challakere Taluk of Chitradurga District and the Government of Karnataka allotted 1410 acres of Government land at Sy.No.01 of Ullarthikaval village for setting up of the large scale Special Material Facility and 400 acres of land at Sy.No. 47 of Kudapura village for construction of guest house, housing colonies, school, project office, and research and development facilities at Challakere Taluk of Chitradurga District *vide* Government order dated 10.12.2010 and the land was taken possession by the order dated 24.01.2011.

96. The setting up of the Special Material Facility would boost the three-stage nuclear power programme envisaged by the department for increasing the power production substantially over the coming years. In view of the depleted fossil fuel resources viz., coal and oil and the related environmental issues, it is imperative to boost power production through nuclear route which is environmentally benign. The Special Material Facility would give the nation a strong technological foundation and would put India on a strong footing in the League of Nations who have mastered this technology. It will also ease the sanction imposed by the international community on such strategic technologies. The dependence on imported

upgraded fuel with conditions would be removed or reduced. Any interference or delay in the execution of such strategically important Project would adversely affect the progress of the country in the field of Science and Technology.

97. The pre-project activities for the Special Material Facility have already been undertaken at an approximate cost of Rs. 73 crores during the 11th Plan period and the scope of such pre-project activities has been raised and approved by the Government to Rs. 270 crores. The project construction of the 1st phase of the facility is proposed to be sanctioned by the Government of India during 12th Plan period. The entire facility is planned to be carried out in a phased manner.

98. The setting up of this Special Materials facility would lead to the establishment of an advanced technological facility in an underdeveloped area and would result in the following advantages to the surrounding community at large:

- (i) The establishment of the facility would lead to overall ancillary industrial growth in the surrounding area generating employment opportunities for the rural youth both directly and indirectly.
- (ii) Community welfare activities proposed to be taken up for the

development of better infrastructure in the surrounding areas such as road connectivity, educational facilities etc.

- (iii) There will be a training centre to impart technical skill to the unemployed youths of the surrounding areas for betterment of their employment opportunities.
- (iv) There will be a boost in the generation of indirect employment opportunities to the local population due to the establishment of this centre and housing facilities for its employees.
- (v) The initiatives taken by the centre will lead to technological advancement of the country as a whole and would result in socio-economic benefit to the community at large.

99. The respondent has engaged reputed agencies for Environmental Impact Assessment (EIA) /Environment Management Plan (EMP) studies including demographic and socio-economic studies, flora and fauna studies, and radiological studies around the project site at Ullarthikaval . Action is also taken to obtain terms of reference for EIA studies from the MoEF towards EC for the project and major construction activities would be carried out only after getting clearance from the MoEF and the KSPCB.

100. Aeronautical Development Establishment (ADE): The DRDO is a dedicated National Organization which over a period time has expanded to a number of laboratories all over India. The ADE functions under DRDO in the Ministry of Defence and is assigned to carry out research and development

activities in the area of aeronautics. The ADE is the only agency in India which specializes in and has the requisite experience in research related to Unmanned Aerial Vehicles (UAV) which has assumed tremendous importance in defence as also other allied areas. These UAVs also act as force multipliers and are essential for the defense of the country. Thus, the UAVs have great strategic importance. The use of UAVs would result in the effective monitoring and lessening the human pilot casualties.

101. The ADE was earlier allocated a dedicated airspace VOD 179 in Kolar for its research requirements. However, on the commencement of Bangalore International Airport at Devanahalli, the said reserved airspace of the ADE fell within the landing and takeoff funnel of the Bangalore International Airport. As a result, the Ministry of Civil Aviation and the Ministry of Defence decided to shift the restricted airspace from Kolar to a new location, primarily for flight testing of UAVs, manned aircrafts and for other projects. As the large stretch of land in Chitradurga District was found ideal and also considering the proximity of the land to the aero cluster laboratories, the ADE narrowed down the choice of land to the present lands in question which were vacant and remained unutilized for decades. The said lands consist of rocky patches with gravelly soil which were never used for any purpose. The Airports Authority of India (AAI) has designated the area as

restricted *vide* Notam.G085-08 and pursuant to the same, the ADE desired to establish the facility which has been designated as restricted airspace. This would serve as a dedicated airspace for flying and testing of UAVs and the same is only one of its kind in India. The proposed project would also be the first Aeronautical Testing Range (ATR) in India for testing the developmental UAV/manned air crafts in future.

102. The DRDO was allotted 4,290 acres of land located at Varavina kaval for building ATR. The test range would have the technical features like runway to a length of 3 km with an additional length for stop way, navigational aids, VOD etc., in addition to various technical and support facilities like radar infrastructure, hangars, mobile instrumentation etc. These lands also cater to the needs of expansion phase of ATR project that envisages developmental activities of various DRDO air cluster laboratories. The ADE has paid the cost of lands to the Deputy Commissioner and has commenced certain preliminary works in respect of the project and a compound wall has been constructed. An internal road along with peripherals has also been constructed and has started certain preliminary works in respect of some of the structures that are to come up on the said land. The ADE has also commenced the process for acquiring various equipment in relation to the said project and paid deposits to the Karnataka Urban Water Supply and

Drainage Board towards infrastructure for supply of water and to the Karnataka State Power Transmission Corporation towards shifting of power transmission lines from the said lands to alternative sites. The MoEF in their letter dated 26.04.2011 addressed to the Ministry of Civil Aviation have stated that the MoEF issues EC to commercial airstrips or airstrips having bunkering facilities or ATC. Since the ADE does not have bunkering/re-fueling facility, there is no necessity for No Objection Certificate (NOC) from the MoEF. In response to the letter from the KSPCB, it was replied by ADE that no activity which would pollute the air and water resources is involved in the facility proposed by ADE by a letter dated 29.04.2011. The ADE has also engaged a consultant for getting CFE from KSPCB and all necessary clearances.

103. In the lands allotted to the ADE, already 3000 trees have been planted which are about 6 to 8 ft tall and more than one year old. The trees are regularly watered and planting of many more trees are also proposed in the said land for creating a green and serene environment. With the construction of compound wall, the illegal cutting of trees and quarrying prevalent before have been checked. Till date, the ADE has spent over Rs. 37 crores in connection with the project and orders have been placed and contracts have been concluded to the tune of Rs. 160 crores with third party vendors/entities for execution of civil works on the land. Tenders have been

invited for supply of equipment like radar, telemetry stations, communication equipment etc., which are at the stage of finalization and the project is at the advanced stage and is to be completed by February 2014. It is vital for the security of the nation for completing the project in time. Any delay would be detrimental to the interests of the nation. The Government of India has sanctioned Rs. 1450.74 crores for indigenous development of the medium altitude long endurance UAV and development of aeronautical test range at Chitradurga and if the project is not completed by 2014 it would have serious setback which will be harm the interest of the nation.

104. In the above backdrop of the projects by the BARC and ADE, these respondents would state that the *Amrit Mahal Kaval* lands are not forest lands as per the Karnataka Forest Rules, 1969 and classified as *Gomal* lands. The allegation that the *Kurubas* and *Gollas* from about 50 villages around the grasslands in Challekere taluk are dependent on the pastures for grazing their cattle are not true and correct. The lands in question which have been allotted to these respondents are barren and have not been utilized for several decades.

105. These respondents deny that the *Amrit Mahal Kavals* are district forests as per rule 33 of the Karnataka Forest Rules, 1969 and there are no notifications issued by the State Government constituting such lands as

forest lands and the *Amrit Mahal Kaval* lands are classified as 'gomal' lands. Referring to the notice issued by the KSPCB dated 12th April 2011 to the respondent No.10 and 12 to the effect that the activity in the aforesaid lands attracts EIA Notification, 2006 and 2009 and prior EC of the Environment and Forest Department of Government of Karnataka/Government of India and CFE from the KSPCB under the provisions of the Air Act and Water Act is essential, the respondent No. 10 (BARC) has replied to the same on 03.05.2011 while the respondent No. 12 (DRDO) responded to the same on 29.04.2011 stating that the project of the respondent No. 12 (DRDO) is exempt from the requirements of EIA Notification, 2006 and DRDO is in the process of applying for CFE. Both these respondents would state that the permission from the Central Government for diversion of the land in terms of section 2 of the Forest (Conservation) Act, 1980 is required as contended by the applicants is false as the *Amrit Mahal Kaval* lands have never been declared as forest land and hence the provisions of the Forest (Conservation) Act, 1980 would not be applicable. The respondents BARC and DRDO deny the averments of the applicants that there has been gross violation of statutory compliance norms as per the Environment (Protection) Act, 1986, the EIA Notification, 2006 and 2009, Water Act 1974 and Air Act, 1981 and various other applicable laws including the Forest (Conservation) Act, 1980 and Biological Diversity Act, 2002. The DRDO denies the allegation in the

avermment of the applicants that it has constructed stone masonry and concrete compound wall to a length of 28 km around the lands. The stone wall which is constructed by DRDO is only to safeguard the lands and is exempt from EIA Notification, 2006. The respondents BARC and DRDO deny the allegations in the averments contained in the application *memoranda* that the *Amirt Mahal Kaval* lands in Chellekere Taluk of Chitradurga District in Karnataka are diverted to non-forest and non-pastoral purposes without application of mind, that the proposed investment will directly and irreversibly affect the impacted communities and biodiversity of the area whose livelihood is intricately linked to the existence of the grasslands, that the projects have commenced in blatant violation of all applicable rules, norms, standards and statutes, that the *Amir Mahal Kavals* have blocked the pastoral communities by building 28 km long wall fundamentally attacks the very right to live and that already several families have run into huge debts trying to find fodder for their cattle, several more are forced to sell their livestock to survive and that there is widespread pain and agony suffered as a consequence to the illegal activities by the impacted communities. These respondents also deny that the diversion of land is in violation of Public Trust Doctrine, the Principle of Sustainable Development, Principle of Intergenerational Equity, Principles of Prior and Informed Consent etc., and the same is not violative of the rulings of the Apex Court in *T.N. Godavarman Thirumalpad vs. Union of India*,

reported in AIR 1997 SC 1228. These respondents also deny that the diversion of Amrit Mahal Kaval lands will cause serious prejudice to the environment and ecology and to the local pastoral agrarian communities and they have violated the Biological Diversity Act, 2002 in granting the impugned clearances in violation of National Forest Policy. These respondents also contend that the applications have been filed much after the period of limitation of six months from the date of allotment of the said lands.

106. The respondents BARC/DRDO deny that the lands allotted in Amrit Mahal Kaval in Challakere taluk of Chitradurga district are forest lands or designated as district forest as per the Karnataka Forest Act and Rules and the facilities now proposed have an irreversible impact on environment, biodiversity and on local community. The allegations that the lands have been secretly allotted with no consultation whatsoever with the local community or even local elected bodies and such actions are in gross violation of the Public Trust Doctrine, Principle of Intergenerational Equity, Principle of Prior and Informed Consent, Common heritage and Humankind Principle, Polluter Pay Principle, the Precautionary Principles are denied. In any event, the lands allotted to these respondents are Government lands which have not been used for several decades and the utilization of the same by these respondents would not have any adverse impact whatsoever to the

local community and in contrast, they would benefit the local communities. The allegations that by their activities, the respondents have infringed and violated the various International Covenants and Treaties to which India is a signatory including Rio Declaration 1992, Convention on Biological Diversity 1992, Conservation of Migratory Species of Wild Animals, 1979, Convention concerning the Protection of the World Cultural and Natural Heritage, 1972, and International Treaty on Plant Genetic Resources for Food and Agriculture, 2001, are false. These respondents also vehemently deny that these respondents have allowed arbitrariness in procedure, thereby hitting at core of Article 14 and is blatant disregard and violation of Articles, 19, 39 (a), 39 (b) and 39 (c) and not in keeping with the letter and spirit of Article 48, 48 (A), and Article 51 (A) (g) of the Constitution of India. These respondents also deny that their activities constitute a blatant violation of Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Environment Impact Assessment Notification, 2006, Biological Diversity Act, 2002, *Panchayatraj* Act, 1992, *Nagarpalika* Act, 1992, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and various other laws relating to the land use planning and democratic development for securing the equitable rights. These respondents have averred in the reply affidavit that while denying the

allegation that they have already begun a variety of project activities in gross violation of applicable environmental laws, as responsible Government organizations, they have complied with and will always comply with the laws of the land including environmental regulations. The allegations referred to in paras 16 to 20 have no applicability in the present case as the judgment of the Hon'ble High Court of Karnataka relate to illegal encroachment of *Amrit Mahal Kaval* lands and did not touch upon the said lands by the State Government in accordance with the law. These respondents also deny that the wild species such as Black Buck (*Antelope cervicapra*), Great Indian Bustard (*Ardeotis nigiceps*), the Lesser Florican (*Syphehotides indicus*) and Indian Wild Dog or Dhole (*Cuon alpinus*) which are protected under Schedule I of the Wildlife Protection Act, 1972 are known to exist in this region as they have become locally extinct in other parts of India. The allegation that the specific floral and faunal characteristics of *Amrit Mahal Kaval* imply that the diverted lands in question do not fall within the dictionary meaning and purposive interpretation of the word 'forest'. The lands are arid, rocky and barren. The said lands were handed over to the Sheep Development Corporation to breed sheep in 1971. But, for the last several decades no grazing activities are taking place in the said lands. The judgment of the Hon'ble Supreme Court of India in *Samatha vs. State of Andhra Pradesh*, AIR 1997 SC 3297 is not applicable to the present lands as they are not forest

lands. The respondents also deny that the diversion of *Amrit Mahal Kaval* and the unregulated trajectory of the proposed projects represent a serious threat to an area rich in biological diversity, the habitat of a number of floral and faunal species, and to the valuable traditional knowledge of the local people relating to such biodiversity. They also deny the allegation that the collective result of actions and omissions of several of the respondents have exposed natural resource dependent communities to a variety of risks, as the bio-resources that they depend on for their livelihoods, which they have protected for *millennia* are being diverted without the prior and informed consent of the communities. Hence, the BARC, the respondent No. 10 in Application No. 6 of 2013 and respondent No. 11 in Application No. 12 of 2013 and the DRDO, the respondent No. 12 in Application No.6 of 2013 and respondent No. 13 in Application No. 12 of 2013 seek to dismiss the applications.

107. The 11th respondent in Application No. 6 of 2013 (SZ) and the 12th respondent in Application No. 12 of 2013 (SZ), namely the Group Head (Construction and Maintenance), ISRO-Satellite Centre (ISRO), Department of Space would state in reply that the allotment of 573.5 acres of land was made to ISRO on 10.12.2010. The present applications have been filed in the year 2013 after a lapse of three years after the allotment of land. In so far as

this respondent (ISRO) is concerned, based on the order of the Department of Space, a contractor was entrusted with the job of construction of compound wall around the land allotted spending over one a half crore of rupees and the wall is likely to be completed before February 2014. Similar petitions have been filed before the Hon'ble High Court of Karnataka in W.P.Nos. 26144-26147 of 2012 and it has been held in Application No. 12 of 2011 by the Hon'ble Principal Bench of NGT, when a similar matter is pending before the High Court, the NGT must stay its proceedings. The reliefs prayed for by the applicants before the Tribunal are beyond the powers, competence and jurisdiction of the Tribunal. Even if the applications are not barred by limitation, having regard to the fact that the applicants have kept quiet for over three years and during which period the respondent has chalked out plans to spend crores of rupees for setting up facilities and development of the project on the lands in question and creation of third party interest by way of contract pertaining to civil works, supply of machinery, equipment etc., the applications are liable to be dismissed on grounds of delay and laches and also on grounds of estoppel and waiver. Several photographs produced in Annexure -7 to the Application No. 12 of 2013 (SZ) do not relate to the lands in question. No grazing cattle was permitted in the lands in question since the year 1971 when the lands in question were handed over to the Karnataka Sheep Board and even the sheep farming and

rearing activities of the Board was also tardy and the lands fell into disuse.

108. The ISRO is a prestigious institution of the nation owned by the Central Government and a premier organization in the area of space research and space development programme with its headquarters at Bangalore and has its various field activities in various places spread all over India. The major centre at Bangalore which is ISRO Satellite Centre (ISAC) is at present the custodian of the lands in question. The ISAC is responsible for design, fabrication and manufacture of various types of satellites viz., communication satellites, remote sensing satellites and also satellites for special applications for the use of the country. During the past 4 decades, the Indian Space Programme has been used in communication, remote sensing applications for mapping natural resources and navigation programme for space navigation in the country. The communication satellite made by ISRO have tremendously improved the communication systems like, mobile communication, telecommunication, satellite T.V, internet communication, telemedicine and is also used for distance education programme covering nook and corner of the country. The entire country, especially rural India has been benefited by the communication remote sensing satellites made by ISRO. These satellites also meet the defence needs of the country for better security.

109. The Government of Karnataka has allotted 473.5 acres of land in Ullarthikaval in Sy.No. 1 and 100 acres of land in Kudapura in Sy.No. 47 vide Government order dated 10.12.2010. The said lands would be utilized by ISRO for establishing advanced research and development facilities to meet the needs of the future space programme. These lands as of now do not have any trees naturally or by human efforts. The lands are nothing but rocky surface and some hill rocks with red gravel soil which is not at all suitable for carrying out any agricultural activity or for grazing. Patches of grass are seen here and there besides thorny bushes which are distinct of deserts and at best they can be used as firewood. These types of bushes are called as *Bellary jali* in local colloquial language and almost poisonous in nature.

110. As a precursor to the detailed planning of the campus, ISRO had conducted detailed study of the area using Cartosat and LISS IV satellite imageries. The satellite data have been used in generating different thematic information for a buffer of 5 km and 8 km area around the proposed two campuses coming up at Kudapura and Ullathikaval villages, respectively. The satellite imagery data will be used for water shed management including planning of rain water harvesting structures for recharge of the groundwater aquifer in the area. The satellite data shows that the area is typically a semi-arid zone dominated by dry land agriculture and large tracks of scrub and

marginal lands. Further, the satellite imageries provide the following information:

111. Ullarthikaval study area: Nearly 16% of the geographical area is covered by shrubs and grasslands which are classified as land with open and dense scrubs. Major part of the integrated campus is covered with land open or dense scrub. The shrubs are with stunted growth due to arid conditions in the region. The other land use/land cover is settlement, tanks, streams, rocky areas etc., and the major valleys are covered with *Prosopis juliflora*. Tanks are mapped as surface water bodies and further delineated as water spread area, moist bed areas with vegetation and dry bed area. A few plantation patches of eucalyptus, neem etc., taken up under social forestry scheme are mapped within the campus area. A new peripheral road has been laid on the eastern side recently to divert the flow of traffic from the existing road connecting Chellekere to Ullarthi passing through the middle of the integrated campus.

112. Kudapura area: Nearly 20% of the area is waste lands having open and dense scrubs (shrubs and grasslands). The entire integrated campus area is covered with shrubs and grasses with stunted growth due to arid conditions. The other land use/land cover is settlement, tanks, streams, rocky areas etc. The major valleys are covered with *Prosopis juliflora*. Tanks

have been classified as surface water bodies with water spread area, moist bed areas with vegetation and dry bed areas. A few plantation patches of eucalyptus, neem etc., taken up under social forestry scheme are mapped within the campus area. Rocky outcrops and dolerite dykes area criss crossing the terrain at many places which act as barriers for the movement of groundwater.

113. Hence, the lands allotted to ISRO are full of shrubs with no grass which are hardly found in the campus. The lands are not suitable for agriculture and over the years, the lands have been transformed from possible earlier cattle grazing to the present thorny bushes which are harmful for movement of both men and animals. The *Amrit Mahal Kaval* which is otherwise called as *Gomala* land has retained historically its distinct classification completely de-linking from the word 'Forest' by whichever manner the interpretation is sought to be made. To the best of the knowledge of ISRO, there is no order, decision, judgment etc., by any authority including Government of Karnataka declaring this piece of land for *Amrit Mahal Kaval* as 'District Forest' at any point of time. The District Collector, Chitradurga has addressed the Principle Secretary to Government of Karnataka in Revenue Department by the letter dated 23.09.2010 stating that with the proposals for sanction of lands to ISRO, BARC, DRDO and IISc, the area is going to be

developed at a rapid rate and within a few years may become the 'heart of science and technology' in Karnataka and find a place in the world map. The activities will be beneficial financially, educationally and socially to the backward and poor. The surrounding backward areas will be developed rapidly and will have advanced rail, road, power and water connections. The District Collector further gives the statistics of cattle strength as 3981 and 8034 at Kudapura and Ullarthikaval villages, respectively. It is limited to 2 pieces of land belonging to sheep production centre with 22 cows and 250 sheep. The land sanctioned for the proposed plan has the acceptance of local villagers. While objections were called for in cancelling the existing road from Chellakere to Kalyanadurga passing through Ullarthikaval through a Gazette Notification dated 18.05.2010 as per the Karnataka Land Reforms Act, 1964, Since objections were not raised the existing road was declared cancelled. The Karnataka State Public Works Department has formed the diversion road of 40 m width inside the ISRO land and the road is open to public traffic. The lands allotted to the various departments are only in excess of the requirement of the village cattle and the local population and cattle will not be put into any hardships. The lands are also dry and not utilized for cattle grazing. Based on the approval accorded by the Department of Space, the work of construction of compound wall with security buildings in both the 473.5 acres and 100 acres of land was commenced at a cost of Rs. 783.40

lakhs. The physical construction of the compound was commenced in the month of August 2012 and at that time there was no objection from Government or a private body or private individuals. As on date the construction of compound wall with 3 m height for 300 m length is completed in the 473 acres land at Ullarthikaval and 600 m earth work out of 4 km perimeter in the 100 acres of land at Kudhapura is completed. The construction of compound wall is very essential to protect the land from encroachment and also for demarcating the boundaries. As the land belongs to ISRO, which is a Government organization, the boundary wall is required to meet the requirements of Intelligence Bureau of Government of India. The common boundary wall between BARC and ISRO of 2.5 km length in 473 acres of land will have only a fence. Similarly, in the 100 acres of land about 2 km of common boundary between BARC and ISRO will have a fence. The amount spent by the department in procuring the land and for carrying out preliminary works is Rs. 3 crore till date. The scheduled date of completion of the compound wall stipulated is February 2014. The construction of compound wall if stopped at this stage will have serious implication on the contract and the contractor may claim damage from the ISRO for reimbursing the expenditure which he had already incurred in developing the required infrastructure for construction and the cost of construction which he has already completed.

114. As per the Environmental (Protection) Act, 1986, notifications issued by the MoEF and by the State of Karnataka dated 4th August 2010, building and construction projects of built up area greater than 20,000 and less than 1,50,000 sq. m and township and area development project covering an area of 50 ha require prior EC and are brought under EIA process. ISRO is yet to finalize the master plan of the campus, i.e., the facilities to be located in the proposed campus. ISRO will take necessary clearances from the MoEF and consent from KSPCB for establishment before commencement of construction activity as already informed to the KSPCB *vide* letter dated 5th May 2011 of the ISRO.

115. The ISRO has always respected the environmental laws in the country. It has followed the Principle of Sustainable Development. At present the ISRO's Satellite Centre is located in the thickly populated area surrounded by residential localities. It has adopted all pollution control measures like wastewater treatment and reclamation plant and reuse practices and noise pollution control practices. In fact, in 1985, ISAC was a pioneer in Bangalore to construct 900 KLD wastewater reclamation plant and the tertiary treated wastewater even today is being used for flushing over 125 toilets, and in horticulture. In addition to wastewater reclamation and reuse,

rain water harvesting is being adopted in the campus. Hence, all environmental protection measures including water conservation practices will be adopted at Chellekere land also when the planning of the campus is finalized. Environmental protection will be an integrated part of the planning of the campus that is being followed in ISRO in development of the campuses. Further, as afforestation measure about 10,000 palmyra saplings have been planted on both outside and inside the boundary in 473 acres of land. Similarly, it is proposed to plant another 10,000 palmyra saplings in the coming monsoon season in 473.5 and 100 acres of land. A greening programme in the district in consultation with the local forest department will be undertaken by developing sufficiently large nurseries in ISRO land at Kudapura, where water facilities are available. Locally relevant and useful varieties like *subabul*, tamarind, neem, *hebbevu*, *agase*, *pongemia* etc., will be grown in the nurseries and distributed free of cost to the villagers through the *panchayat* offices for use as fodder for their sheep and cattle.

116. The ISRO denies that the *Amrit Mahal Kaval* lands are designated forest as per the Karnataka Forest Act and Rules for the purpose of locating and advancing a variety of infrastructural and industrial investments and all the facilities have a significant and irreversible impact on the environment and biodiversity and on local project impacted communities as they have

been classified as high impact 'red category' projects by environment regulatory authorities. The allegation that the decisions to site these projects have been taken rather secretly with no consultation whatsoever with local impacted communities or even local elected bodies and such actions on the part of the State of Karnataka is in gross violation of the Public Trust Doctrine, Principle of Inter-generational Equity, Principle of Prior and Informed Consent, Common Heritage of Humankind Principle, the Polluter Pay Principle, the Precautionary Principle etc., is not true and what has been allotted to the ISRO is the Government land which has not been used for several decades and the utilization of the same by the respondents would not have adverse impact whatsoever on the said communities and in fact, would benefit local communities.

117. The allegations that these actions on the part of the respondents has allowed arbitrariness in procedure, thereby hitting at the core of Article 14 and are blatant disregard and violation of Articles 19, 39 (a), 39 (b), and 39 (c) and not keeping with letter and spirit of Articles 48, 48 (A), and Article 51 A (g) of the Constitution of India, Environmental (Protection) Act, 1986, Forest Conservation Act, 1980, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, E.I.A. Notification, 2006, Biological Diversity Act, 2002 *Panchayat Raj* Act, 1992, *Nagarpalika*

Act, 1992, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and various other laws relating to land use planning, planned and democratic development for securing the equitable rights of all are all false. The said lands which are sought to be allotted to these respondents are barren lands and have not been under cultivation or grazing for several decades. Therefore, the utilization of the said lands would have no impact on the said villagers and none of the villagers are before the Tribunal. If there are no *Amrit Mahal* cattle being grazed on these lands, it is illogical to contend that the said lands retain their character as *Amrit Mahal Kaval*. It is false to say that the transfer of land was done for monetary consideration and the decisions were fraught with a variety of illegalities and fundamental violation of laws governing the protection and conservation of environment and forests. It is also false to state that these actions constitute a gross violation of various laws and international treaties protecting wildlife, particularly those which are critically endangered and inhabit the aforesaid *Amirt Mahal Kaval*.

118. The allegation that the *Amrit Mahal Kaval* of Chellekere Taluk of Chitradurga District of Karnataka State designated as district forests has been diverted to non-forest purposes involving industrial, infrastructural development, defence and area development projects in contravention of

Forest Conservation Act, 1980, Forest Rights Act, 2006 and other applicable laws, rules, and circulars and also against the decision of Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad vs. Union of India*, AIR, 1997 SC 1228 is denied by the respondent/ISRO. As a responsible Government organization, the ISRO has always complied with and will also comply with the laws of land including environmental regulations. The allegations of the applicants in paragraph Nos. 16 to 20 of the averments contained in the memorandum of applications are not applicable to these respondents in the present case as the judgment of the Hon'ble High Court of Karnataka relates to the illegal encroachments in Amrit Mahal Kaval lands and did not touch upon the allotment of the said lands by the State Government in accordance with the law. It is also not true and correct to say that the wild species such as Black Buck (*Antelope cervicapra*), Great Indian Bustard (*Ardeotisnigriceps*), Lesser Florican (*Sypheotidesindicus*) and Indian Wild Dog or Dhole which are protected under Schedule I of the Wildlife Protection Act, 1972 as they are highly threatened or critically endangered exist in the region even as they have become locally extinct in other parts of India. It is also not true that the diversion of the *Amrit Mahal Kaval* is in contradiction of a variety of policy initiatives of the Government of India and also the State of Karnataka. The allegations that the respondent State of Karnataka has illegally diverted the *Amrit Mahal Kavals* of Chellekere Taluk which are predominantly grassland

ecosystems and while on one hand the Government of India is making earnest efforts to conserve such grassland ecosystems for the benefit of the pastoral communities and wildlife, the respondent State of Karnataka is diverting such lands to industrial and infrastructural development purposes in gross variance to state policy are not true and correct as there is no violation or variance to any policy or law. It is also not correct to say that the State of Karnataka in diverting *Amir Mahal Kaval* lands in Chellekere Taluk is opposed to public policy and the lands have been acquired far in excess of the actual requirements for allotment of the present lands. Also, the allegation that the acquisition of lands or diversion of commons and forest land purportedly in the national interest has often been undertaken without due diligence and with scant regard to the adverse impacts on the fragile ecosystems and local communities is not correct and the allegation that relevant criteria have not guided the decisions of the State of Karnataka in diverting about 10,000 acres of *Amrit Mahal Kaval* of Chitradurga District to non-forest purposes and this is an egregious abuse of executive power, given the fact that all the investments proposed would cause very high and potentially irreversible impacts on the environment, forests, biodiversity and associated livelihoods of thousands of agrarian and pastoral communities is false.

119. With the advent of science city in Chellekere Taluk, the arid

conditions prevailing in the area would be transformed into greenery in the coming days due to large scale afforestation measures undertaken by these organizations in this area. This place will have a variety of trees with large canopies thereby not only protecting whatever little flora and fauna presently surviving in arid conditions but also will become a safe habitat for many more species of flora and fauna. The science city in Chellekere will generate employment directly and indirectly in and around villages, which will certainly improve the living standards of the poor people depending on the present barren lands for their livelihood. It will improve basic infrastructure like water supply, sanitation, power supply, roads, healthcare, schools and colleges and communication systems in the region which are lacking at present in that area due to poverty and arid conditions prevailing throughout the year in the region. In the result, the arid eco-system will transform into a near forest like area with all the developments undertaken by the institutions by planting enormous number of trees and plants. It will improve the groundwater aquifer due to rainwater harvesting and scientific watershed management to be implemented in the area. Due to the plantations, the rainfall in the region will also improve.

120. The State Government has transferred 343 acres 18 *guntas* of land in Nelagethanihatti village and 656 acres and 27 *guntas* in Ramadurga

village totalling about 1000 acres of land for shifting the sheep breeding centres located in Ullarthikaval and Kudapura to the Department of Animal Husbandry in G.O.No. RD.LGC.2010 dated 10.12.2010.

121. Hence, on the above submissions, the 11th respondent in Application No. 6 of 2013 (SZ) and the 12th respondent in Application No. 12 of 2013 (SZ), namely the Group Head (Construction and Maintenance), ISRO-Satellite Centre (ISRO), Department of Space seeks to dismiss the applications.

122. The 13th respondent in Application No. 6 of 2013 (SZ) and 14th respondent in Application No. 12 of 2013 (SZ), namely, the Indian Institute of Science would state in reply that the IISc established in the year 1909, is one of the premiere research institutes and highest ranking amongst scientific institutions in the country. It is renowned nationally and internationally for its academic excellence and research. It has more than 3,400 students, half of whom are working for doctoral degree and has a faculty strength of more than 500, most of whom are reputed scientists of the country known nationally as well as internationally. The present campus has become insufficient to house its large body of students and research scholars as well as faculties. Further, no new research activities were possible having regard to the constraints of space. In view of the same, the IISc thought of setting up

a second campus. The Union budget of 2005 had allocated Rs. 100 crores to IISc for furthering research activities undertaken by it. The IISc completed 100 years and celebrated its centenary year in 2009 which was attended by many dignitaries. On this occasion, the Chief Minister of Karnataka offered to provide land to the IISc to setup its second campus. Thereafter, the State Government offered the present lands at Challakere. The officers of IISc, after inspection agreed to accept the land in the year 2009 on payment of cost of the land. The IISc was allotted 1,300 acres of land for its second campus and 200 acres for building quarters for its staff etc., by the Government of Karnataka as per the order dated 13.06.2009.

123. The IISc has already setup a Climate Research Laboratory in the second campus at Challakere and intends to expand for which foreign funding has already been approved for Rs. 60 to 70 crores, out of which a sum of Rs. 5 crores has already been received. All these activities are absolutely vital for the nation building and in fact towards maintaining and enhancing ecological development. A GPS station is also being setup. There are proposals for seismic studies of the region and it has also planned to establish semi arid areas research centre for conducting research for the study of semi arid areas like the one at Challakere belt. The Government of Karnataka is sponsoring the IISc to develop technology for rural development

and aiming at addressing the problems of rural masses.

124. The IISc has already setup a Talent Development Centre on the leased land from the Government of Karnataka for improving the skills of sciences and mathematics teachers in high school and pre-university colleges. The IISc is setting up a skill development centre which is an extension of talent development centre which is presently training the high school teachers and lecturers of the colleges in teaching and experimental skills. The IISc has also decided to establish the skill development centre with an objective to train the faculty from the engineering colleges and universities. It is also intended to train the local people with SSLC or PUC qualification in engineering/technical skills so that they can establish workshops/small industries which will help the growth of the local technical ecosystems. This is expected to become a national centre in future.

125. In order to ensure that green power is available, great deal of research is carried on by IISc on solar photo Voltaic and solar thermal power generation. IISc intends to have solar energy-both photovoltaic and solar thermal, large scale water harvesting and conservation studies, afforestation, atmospheric and climate research, earth sciences laboratory and so on. Each one of these addressed environmental and long term climate issues.

126. The 14th respondent in Application No. 6 of 2013 (SZ) and 15th

respondent in Application No. 12 of 2013 (SZ), namely the Sagitaur Ventures Pvt. Ltd., would state in reply that the State Government and its delegated authorities have followed all necessary procedures and statutory regulations in de-reserving the reserved land and allocating the same as required under the relevant statutes, acts, rules and regulations. The State Government has allotted under the powers vested under rule 27 of Karnataka Land Grant Rules, 1969, an area of 1,000 acres in Challakere taluk of Chitradurga district for the purpose of development of a solar park as per the provisions of the rule 97 (4) of Karnataka Land Revenue Rules. The applicant in Application No. 12 of 2013 (SZ) is grossly misrepresenting rule 33 of the Karnataka Forest Rules, 1969 stating that *Amrit Mahal Kaval* which are reserved lands for pasturage under the management of the district forest are designated as district forests. The Applicant is trying to persuade the Tribunal into believing that this is the forest land and the forest land is unauthorisedly allocated for non-forest purposes. There has been no explicit letter stating that the activities on the land attracts EIA Notification, 2006 and 2009 and prior EC from the MoEF and CFE from the KSPCB under Water Act, 1974 and Air Act, 1981. A clarification from the MoEF was sought with respect to the applicability of EC for solar power projects and it was clarified by the MoEF that 'solar power projects' are not covered within the ambit of EIA Notification, 2006 and no EC clearance is required for such projects under the provisions

thereof. Necessary applications have been made before the KSPCB for the CFE under the provisions of the Water Act, 1974 and Air Act, 1981 and would comply with as required. The lands which were allotted to this respondent were in accordance with the rules and the same was done only after it was ascertained as a matter of fact that any extent of land of reserved *gomal* land is in excess of the requirements of the village cattle. The Government order dated 14.02.2013 allotting the lands was not violation of the directions of the Hon'ble High Court of Karnataka in W.P.No. 17954 of 1997 dated 20.03.2001. The *Amrit Mahal Kaval* land has lost its character many years ago. However, due to passage of time and increase in expenditure in maintaining cattle, the numbers of cattle have reduced drastically many years ago. However, the land reserved is much larger. The Deputy Commissioners have been given the power under the Karnataka Land Revenue Act and Rules to de-reserve the land for other purposes. As the land de-reserved and allotted to this respondent is barren and not used for grazing, the Government decided to de-reserve the same and allocate for solar energy as it is a renewable source of energy which will be of great use to the public at large and promotes the principle of sustainable development. On the above averments in the reply affidavit, the 14th respondent in Application No. 6 of 2013 (SZ) and 15th respondent in Application No. 12 of 2013 (SZ), namely the Sagitaur Ventures Pvt. Ltd., seeks to dismiss the application.

127. The 15th respondent in Application No. 6 of 2013 (SZ) and 16th respondent in Application No. 12 of 2013 (SZ), namely the Managing Director, Karnataka Udyog Mitra, Bangalore has not filed any reply, called absent and set *ex parte*.

128. The 16th respondent in Application No. 6 of 2013 (SZ) and 17th respondent in Application No. 12 of 2013 (SZ), namely the Karnataka State Small Industries Development Corporation (KSSIDC) would state in reply that it was established for assisting entrepreneurs to set up micro and small scale industries (SSI) in the State. In order to help the SSI units, the KSSIDC acquires land through Karnataka Industrial Areas Development Board (KIADB) and gets sanction of Government and develops the land so as to allot the plots to needy Micro and SSI. In the instant case, the KSSIDC submitted proposal for sanction of Government lands, one at Sy. No. 1 of Ullarthikaval village in Challakere taluk and another at Sy. No.47 of Khudapur village of Challakere taluk to the Deputy Commissioner, Chitradurga district. The Government of Karnataka has sanctioned 250 acres at Ullarthikaval village and 50 acres at Khudapura village to KSSIDC by reducing the *Amrit Mahal Kaval land* from *gomal* land under section 97 (4) of the Karnataka Land Revenue Act, 1966 *vide* proceedings dated 10.12.2010 on payment of cost towards the allotted lands. The allocation of 300 acres of land to

KSSIDC as stated above was notified in Karnataka Gazette Notification dated 24.02.2011 and necessary mutation was made in the name of KSSIDC on 28.04.2011 and 03.06.2011, respectively. Both the lands were sanctioned to KSSIDC in order to develop the land and allot to needy SSI units for establishing their small scale industries, thereby developing backward area in line with the policy of KSSIDC for assisting and developing industrial estates for the service of micro and SSI in the State of Karnataka. Hence, the 16th respondent in Application No. 6 of 2013 (SZ) and 17th respondent in Application No. 12 of 2013 (SZ), namely the Karnataka State Small Industries Development Corporation (KSSIDC) prays that the applications be dismissed on the above mentioned facts.

129. The 18th respondent in Application No. 12 of 2013 (SZ), namely the Assistant Executive Engineer, Karnataka State Housing Board, District Unit, Chitradurga District, in his reply would submit that the Karnataka Housing Board (KSHB) is functioning as per the Karnataka Housing Board Act, 1962 (KHB Act) with the objective of providing housing for the public through its schemes approved by the Government. The main objective of the KSHB is to provide house sites and houses to weaker sections of the society, i.e., economically weaker sections, low income and middle income group on

no loss and no profit basis. The KSHB is empowered to acquire, purchase, exchange or otherwise any property for execution of the schemes as per section 18 of the KSHB Act. Chitrdurga district in the State of Karnataka is one of the backward districts in the State having no perennial irrigation facilities and consisting of dry lands of large pasturage. In order to help the weaker section of the society, the KSHB thought of implementing its housing scheme, sought for 400 acres of land at Sy. No. 47 of Khudapura village which is categorized to be *gomal* lands called *Amirt Mahal Kaval*. But, the Government of Karnataka by its order dated 10.12.2010 granted only 50 acres in Sy. No. 47 of Khudapura village under section 97 (4) of Karnataka Land Revenue Rules, 1966 at a rate of Rs. 35,000 per acre in consultation with the Animal Husbandry and Fisheries department on condition that the land should be utilized within one year from the date of grant and the land should be used only for housing purposes, otherwise the grant would stand lapsed. The KSHB did not get any EC as the land is less than 50 ha. After taking over the possession of the land, the layout was formed, construction of buildings, drains, electricity, water lines, and metal roads were carried out. Work orders were given to the contractor for completing the works to the tune of Rs. 11,23,10,891/- . The land thus allotted by the State of Karnataka to KSHB is situate abutting the State Highway No. 45 in the outskirts of Khudapura and Gowripura villages and the layout formed by KSHB has

connected both the villages with proper roads. The land allotted to KSHB in *Amrit Mahal Kaval* is not a district forest and has been treated as *gomal* land. The provisions of Forest Conservation Act, 1980 will not apply to the land allotted to KSHB and are not in contravention of Environment Protection Act, 1986, Forest Conservation Act, 1980, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Biological Diversity Act, 2002 or any other statutes. The housing project undertaken by the KSHB is not in contravention of any of the above acts. The grant of land in favour of the KSHB in no way infringes any of the fundamental rights as contended by the applicant. The contention of the applicant that the transfer of land was made for monetary considerations and these decisions were fraught with a variety of illegalities is denied as false and incorrect. The KSHB, while implementing the housing scheme and forming the layout has taken precautionary measures for harvest of rainwater by constructing the structures for storage of water to enable percolation. The area has been earmarked for establishment of parks and other civic amenities to protect ecology and environment. The contention of the applicant that the grant of land to KSHB is coming in the way of pasturage and sheep development is not correct. The grant of land and developmental activities done by the KSHB is not opposed to ecological, cultural or economic significance and in contrast is serving the public purpose in

providing shelter for economically weaker sections of the society. On the above averments made in the reply, the 18th respondent in Application No. 12 of 2013 (SZ), namely the Assistant Executive Engineer, Karnataka State Housing Board, District Unit, Chitradurga District seeks to dismiss the Application No. 12 of 2013 (SZ).

130. On the basis of the above averments made in the applications filed by the applicants and replies filed by the respondents thereon, the following points emerge for determination by the Tribunal:

- (1) Whether the applications are liable to be dismissed since they are barred by limitation.**
- (2) Whether the Amirt Mahal Kaval lands allotted to the respondents/allottee Project proponents are forest lands:**
- (3) Whether the respondents/allottee Project proponents are to be restrained from carrying on their proposed activities in view of the environmental degradation and ecological imbalance, as alleged by the applicants.**
- (4) What is the effect of the application of Doctrine of Sustainable Development on the factual matrix of the instant case?**

(5) Whether the respondents/allottee project proponents have obtained necessary clearances and approvals from the authorities for establishing the projects as contended by the applicants.

(6) To what relief the applicants are entitled to?

131. As seen above, the Application No. 6 of 2013 (SZ) filed by an individual social activist, and Application No. 12 of 2013 (SZ) filed by a Trust both involved in environmental issues and campaigns are concentrating on preservation and maintenance of *Amrit Mahal Kavals* from any diversion or encroachment and for further other consequential reliefs on the grounds averred in the applications.

132. Elaborate deliberations made by the applicant in Application No. 6 of 2013 (SZ) and the learned counsel for the applicant-Trust in Application No. 12 of 2013 (SZ) and also the learned counsel for all the respondents for hours together were heard. The Tribunal paid its anxious considerations on the submissions made and a thorough scrutiny was also made on all the materials placed by the parties and also the report of the Fact Finding Committee on *Amrit Mahal Kaval* appointed by the Tribunal pending the proceedings.

133. Before adverting to the issues that arise for consideration, it is

necessary to look into the history of the *Amir Mahal Kaval* and also the *Amrit Mahal* breed of cattle in order to have an idea about the subject matter involved in these applications.

134. The erstwhile rulers of the Mysore State Sri Jayachamaraja Wadiyer VI (1617-1637 AD), Shri Raja Wadiyer (1637-1638 AD), Sri Narasaraja Wadiyer (1638-1653 AD) and Dodda Devaraja Wadiyer (1654-1672 AD) reserved the vast extent of grasslands in different part of the State for grazing by herds of cattle comprising of local varieties and those brought from Vijayanagara Empire. Those lands were called *Amrit Mahal Kaval*- 'kaval' means pasture lands. The *Amrit Mahal Kavals* were located in places like hillocks, slopes of hills and catchment areas of various tanks in the local rainfall area so that the ecology and bio-diversity were maintained. Though, those reserved grasslands were 240 in number having a total area of 4,13,529 acres, as per the joint survey made in 1915-1916, the covered area of *Amrit Mahal Kaval* was found as 3,95,062 acres out of which 69,007 acres were given to farmers. The Government ordered the transfer of 1,24,903.35 acres of *kaval* lands to Revenue Department which were transferred to the Director of Agriculture in the year 1923. While the Department of Agriculture was functioning independently, from the year 1945, the *Amrit Mahal Kaval* wing was separated from the Department of Agriculture and entrusted with

the Department of Animal Husbandry and Veterinary Science in Mysore State. These *kaval* lands were exclusively used for grazing the cattle maintained by the Department of Animal Husbandry and Veterinary Science. During the year 1956, out of 1,24,903.35 acres of *Kaval* lands which were available, 92,801 acres *kaval* lands were taken back for distributing to the landless agriculturists and for other developmental works. According to the report of the Animal Husbandry and Veterinary Science, it was in possession of 69,925 acres (27.468.9 ha) of *Amrit Mahal Kaval* lands in 62 locations in 6 districts, namely, Chigmagalur, Chitradurga, Hassan, Tumkur, Mandya and Devanegere . In the year 1982, the *Kaval* lands were reduced to 54,000 acres and in 1996 it further came down to 30,000 acres. The practice of grazing by *Amrit Mahal* breed of cattle owned by the erstwhile Kingdom was continued by Government. *Kavalagaras* were appointed in 37 out of 59 villages for watch and ward of the *Kaval* lands. In so far as remaining 22 villages covering an area of 24,919.50 acres, no *Kavalagaras* were appointed. Even in villages where *Kavalagaras* were appointed encroachments took place indicating the ineffective watch and ward arrangement and monitoring. The history of *Amrit Mahal* cattle was parallel to the history of *Amirt Mahal Kaval*. In order to maintain *Amrit Mahal* breed, a separate Department called *Amrit Mahal* Department was established by the Kingdom of Mysore and to look after the administration, it was transferred to the Commissioner of

Mysore. Thereafter, in the year 1920, the Department was transferred to the Director of Agriculture. With the establishment of the Department of Animal Husbandry and Veterinary Science in the year 1945, *Amrit Mahal Kaval* Department was separated from the Agriculture Department and attached with Animal Husbandry and Veterinary Science. The decline in the *Amrit Mahal* breed of cattle started from the year 1945 which could be attributed to the improper management and non-availability of enough fodder. As a result, the quality of the *Amrit Mahal* breed started deteriorating. The *Kavalagaras* who were expected to take care of the *Kavals* and prevent other cattle entering into the area did not exercise proper care and by the entry of other cattle to graze in the land, the purity of the *Amrit Mahal* breed became mixed as found during the survey conducted. During pre-independence period, the number of *Amrit Mahal* breed was 12,300 in the year 1982 and it came down to 1700 in the year 1996. It was further reduced to 1200 only and at present it is around 1343 which are being maintained in the three districts of State of Karnataka.

135. Admittedly, the Government of Karnataka, by its order has allotted 9,273 acres of *Amrit Mahal Kaval* lands to different respondents as stated in the Table below:

Sl. No.	Organization	Village Name	Sy. No.	Extent of land in acres	Purpose
A	B	C	D	E	F
1	Defence Research Development Organisation	Varavu Kaval and Khudapura	343, 47	4,000 290	Advanced R&D complex, a 3.5 km runway and test centre for long-endurance (48-72 hours) UAVs and UCAV
2	Indian Institute of Science	Khudapura	47	1,500	Synchrotron, Energy Research Centre and Advanced Aerospace Research Centre
3	Bhabha Atomic Research Centre	Ullarti Kaval Khudapura	1 47	1,410 400	Special Material Enrichment Facility (Uranium)
4	Indian Space Research Organisation	Ullarti Kaval Khudapura	1 47	473 100	Spacecraft Technologies
5	Karnataka Small Scale Industries Development	Ullarti Kaval Khudapura	1 47	250 50	Various industrial ancillary units

	Corporation				
6	Sagitaur Ventures India Pvt. Ltd.	Khudapura	N.A.	1,250	Integrated Solar Park Development along with Grid Connected 25 MW Solar PV Power Project
7	Karnataka Housing Board	Khudapura	47	50	Housing scheme
Total				9523	

136. Point No. 1: Whether the applications are liable to be dismissed since they are barred by limitation.

The learned counsel for the contesting respondents, at the outset, raised their preliminary objection that both the applications are barred by time. The applicants have challenged the allotment of lands to various respondents as found in the application which was said to be allotted to the allottee/respondents way back in the years 2009 and 2010. The allotment of land was made to DRDO on 21.05.2009 while the land was allotted to BARC on 10.10.2010. The allotment was made in favour of IISc on 13.02.2009. The applications were filed in the month of February, 2013 after a lapse of three

years since the allotment of lands and after the allottees have carried out various improvements and activities thereon including construction of buildings.

137. Section 14 (3) of the NGT Act, 2010 specifies that no action for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within 6 months from the date on which the cause of action arose. Provided also that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period of not exceeding sixty days. When the both applications were filed before the Tribunal, four years have elapsed and thus they are hopelessly barred by limitation. The applicants have contended that they were not aware of the allotment of the lands in favour of the respondents until the filing of the applications. Such a contention is completely false as wide publicity was made both by the Government as also in the print media about the allotment of land during the years 2008, 2009 and 2010. The newspaper articles produced by the respondents would clearly prove the same. The IISc inaugurated the Talent Development Centre in the month of February, 2011 which was inaugurated by the Hon'ble Chief Minister of Karnataka and attended by all Members of Parliament and Members of Legislative Assembly of the region. More than a

1000 local villagers attended the same. Hence, no one can contend that they were unaware of the projects of the respondents. No grievances were raised by the villagers on this occasion. Contrarily, the applicants who have no *locus standi* have filed the applications. Writ petitions were filed before the Hon'ble High Court of Karnataka in *W.P.Nos. 26144-47 of 2012 by All India Kissan Sabha and other vs. Government of Karnataka and others* in which some of the interveners who were petitioners in the writ petitions made application before the Tribunal after one year and have become party respondents. The judgment of the Karnataka High Court dismissing those writ petitions would squarely apply to the present applications. Apart from that, the applications are liable to be dismissed on the ground of delay. The Tribunal has already held in *A.S. Mani vs. State Level Environment Impact Assessment Authority, Tamil Nadu and others in M.A.No.12 of 2012 in Appeal No. 5 of 2012* that section 5 of the Limitation Act, 1963 does not apply to the Tribunal and there cannot be any extension for the period provided under the Act.

138. The Hon'ble Apex Court in *Lacchman Das vs. Ganeshi Lal reported in (1999) 8 SCC 532* has held that the law of limitation has to be applied in all its vigour when the statute so prescribes and cannot be extended on equitable grounds. The Apex Court in a catena of decisions held

that the courts have no powers to extend the limitation on equitable grounds. In the instant case, the allotments were made in the years 2009 and 2010 and subsequent thereto, the respondents have invested aggregately all put together Rs. 200 crore. All these are public money spent by the Central Government and more of which is from Consolidated Fund of India. The applicants who are fully aware of the allotments have kept quiet for nearly four years and filed the present applications. Hence, the applications are liable to be dismissed on the ground of delay also.

139. In answer to the above, it is submitted by the applicants' side that both the applications were filed within the time as per the NGT Act, 2010. The proceedings that was initiated by *All India Kissan Sabha and other vs, Government of Karnataka and others* in *W.P.Nos. 26144-47 of 2012* before the Hon'ble High Court would not bind them since they are not parties to those proceedings and thus, the contention of the respondents that the applications are liable to be dismissed on the ground of limitation has got to be rejected.

140. Application No. 6 of 2013 (SZ) was filed on 06.02.2013 while the Application No. 12 of 2013 (SZ) was filed on 15.02.2013. In the both the applications, the relief clauses in A, B, C and D are replica of each other. A reading of the averments would clearly indicate that except adding a few

respondents more, they are similar. Application No. 6 of 2013 (SZ) is filed by one Leo F. Saldhana, a social activist, while Application No. 12 of 2013 (SZ) was filed by the Environment Support Group, a Trust involved in varieties of environmental issues and campaign. Regarding the limitation, what is stated in both the applications is *“the applicant declares that as per the NGT Act, 2010 the application is well within the prescribed time.”* Nowhere have they stated as to how the applications came to be filed in February, 2013 while they have specifically pleaded that the allotment of lands made to the respondents/allottee project proponents have taken place way back in the years 2009 and 2010. It is not their case that they had no knowledge about the allotments earlier and they came to know later in point of time from which dates the limitation has to be reckoned.

141. Application No. 6 of 2013 (SZ) reads:

“ .. During the period 2008-2010, the Government of Karnataka through the office of the Deputy Commissioner of the Chitradurga District began to divert almost all the Amrit Mahal Kavals in Challakere Taluk to a variety of urban, industrial, infrastructure development, research and defence related projects. The Petitioner contends that absolutely no consultation with Constitutionally

empowered local bodies such as Panchayats and Nagarpalikas preceded this decision, nor was any consultation undertaken with Biodiversity Management Committees constituted per the Biological Diversity Act, 2002. Clearly, therefore, there was absolute violation of the Principle of Prior and Informed Consent.

142. Application No. 12 of 2013 (SZ) reads:

“... About 12000 acres of this unique grasslands ecosystem in Challakere Taluk were handed over to the custody of the Department of Animal Husbandry and Veterinary Services, and a Sheep Board was established here in 1971 without any change in the nature of the lands as Amrit Mahal Kaval, i.e. District Forest. During the years 2008-2010, the Government of Karnataka transferred at least 9273 acres of the said Amrit Mahal Kaval in Challakere Taluk of Chitradurga district to a variety of industrial and infrastructure developments. It is the contention of this applicant that such transfer of land was done for a monetary consideration, and these decisions were fraught with a variety of illegalities, most especially the fundamental

violation of laws governing the protection and conservation of environment and forests and also those protecting, regulating and governing the wise use of biodiversity and associated traditional knowledge and livelihoods. These actions also constitute gross violation of various laws and international treaties protecting wildlife, particularly those which are critically endangered and inhabit the aforesaid Amrit Mahal Kaval.”

143. They have sought for in the relief clause A in both the applications to maintain the *Amrit Mahal Kavals* free from any diversion/encroachments.

144. The very reading of the averments and the said relief clauses would indicate that the very object of the applicants is ‘to set aside’ the allotments made though they have not employed those words in the relief clause. It is not only their intention to preserve the *Amrit Mahal Kaval* in its original nature but also to set aside the allotments. Prescribing the period of limitation for the applications to be filed before the Tribunal section 14 (3) of the NGT Act, 2010 reads as follows:

“14. Tribunal to settle disputes:- The Tribunal shall have jurisdiction over all civil cases where a substantial question

relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) ***

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.

145. As seen above, no application for adjudication of disputes can be entertained by the Tribunal if not made within six months from the date on which the cause of action first arose. If the Tribunal is satisfied that there existed sufficient cause which prevented the applicant from filing the application within a period of six months, the Tribunal can condone the delay if the application is filed within a further period of not exceeding sixty days.

146. It is well settled proposition of law that when the period of limitation is prescribed by any special enactment, the section 5 of the Limitation Act, 1963 does not apply. The Tribunal had an occasion to consider

the same question in *A.S. Mani vs. State Level Environment Impact Assessment Authority, Tamil Nadu and others in M.A.No.12 of 2012 in Application No. 5 of 2012*. Equally, it is also well settled in law that when a statute prescribes the period of limitation it has to be applied with all its vigour and the courts have no powers to extend the period of limitation either on the ground of equity or otherwise.

147. The applicants in Application Nos. 6 and 12 of 2013 (SZ) made averments not only in respect of allotment made in favour of the respondents/allottee project proponents, but they have also focused on the activities of the respondents/allottee project proponents which according to them is in violation of law. They putforth *inter alia* submissions assailing the allotment. Being conscious of the fact that if the applications were filed seeking to scrap the allotment so made in favour of the respondents/allottee project proponents in the years 2009 and 2010, the applications would be barred by time. The applicants have not sought for the relief directly to set aside the allotment. But, they have employed the word 'diversion' to obviate the law of limitation. Having sought for such a relief after a long lapse of three years, it would be futile on the part of the applicants to agitate the allotments either on the ground of non-application of mind on the part of the authorities or otherwise. At this juncture, it is apt and appropriate to cite the following

decisions of the Hon'ble High Court of Karnataka which are considered relevant to the subject matter namely the *Amrit Mahal Kaval*.

W.P.No. 26144-146 of 2012 and 26147 of 2012 in the matter of All India Kissan Sabha and other vs. Government of Karnataka and others:

"1. The petitioners are aggrieved by the orders of respondent Nos.1 to 4 granting a total of 8,932 acres and 20 guntas of land to respondent Nos. 5,6,7,8, 9 and 10. The respondents to whom large tracts of lands are allotted are:

(i) Defence Research and Development Organization (DRDO) 4,290 acres, (2) Indian Institute of Science, Bangalore-1500 acres, (3) Indian Space Research Organization (ISRO)-573 acres and 20 guntas, (4) Bhabha Atomic Research Centre, Mysore-1810 acres, (5) Karnataka State Industrial Development Corporation, Harihara Region-300 acres, (6) Karnataka Housing Board, Chitradurga-50 acres and (7) Deputy Commissioner, Chitradurga-47 acres.

Petitioner No. 1 is stated to be an organization at the national level and claims to be representing the

interest of small farmers through its State Committee whereas, the petitioner Nos. 2 to 4 are stated to be villagers from Dodda Ullarti Kaval, Varavu Kaval and Khudapura village of Challakere taluk, Chitradurga district.

4. Having regard to the facts and contentions summarized hereinabove, it is fairly clear that the petitioners have neither established their locus standi nor satisfactorily explained the delay for raising the issues, which are sought to be raised in the petition. Even the basic facts pleaded in the petition about prior issue of the lands is seriously disputed by respondent Nos. 1 and 4. However, admittedly the petitioners are not in a position to establish any statutory right in their favour or in favour of the villagers to make any claim on the lands in question. Under the circumstances, the only legal issue which could be argued was as to whether the allocation of lands was in violation of the provisions of rule 97(4) of the Karnataka State Land Revenue

Rules, 1966. Assuming for the sake of argument that the petitioners had any locus standi to raise the legal issue, the only argument in that regard on behalf of the petitioners was that the only authority to determine the extent of land necessary to be set apart for free pasturing or to reduce such area was the Deputy Commissioner and when such powers were conferred only the Deputy Commissioner, the Government even at the higher level could not have determined the extent of land to be earmarked or reduced for pasturing. Learned counsel for the original petitioner Mr. Muralidhara relied in that regard upon the decision of this Court in Gram Panchayat, Ugargol village vs. State of Karnataka and others (2000(1) Kar,L.J. 120).

5. Learned AGA Mr. B. Veerappa appearing for respondent Nos. 1 to 4 pointed out in that regard that in the facts of the present case, necessary decision was taken at the level of Deputy Commissioner and the State Government had only approved the proposal made by the Deputy Commissioner. He relied upon the impugned orders at Annexures-A, B, C and D to

substantiate the contention that the orders were made after due application of mind by the Deputy Commissioner concerned and the State Government had approved the proposals submitted by the Deputy Commissioner by issuing the impugned orders. Thus, in short, the necessary orders under rule 97(4) were in fact made by the Deputy Commissioner and hence, even the sole legal contention of the petitioners could not survive.

148. In the aforesaid writ petition, the very same allotment made in favour of BARC, DRDO, ISRO, IISc, KSSIDC and KSHB were challenged. As seen above, the Hon'ble High Court of Karnataka has not only taken into consideration the question on delay, but also on merits and found that the writ petitioners therein had no case. It is true that the aggrieved writ petitioners took the matter in Special Leave Petition before the Hon'ble Apex Court in S.L.P.(Civil). Nos. 38163-38166/2013 wherein the Apex Court was not inclined to interfere with the order of the Hon'ble High Court. Thus, it would be quite clear that the question in respect of allotment of lands in favour of the very same respondents except M/s. Sagituar Ventures Pvt. Ltd., was confirmed.

149. Equally, the Karnataka High Court had an occasion in the matter of the *State of Karnataka by its Secretary, Revenue Department and others vs. Holeyappa and others* reported in ILR 2007 KAR 259 to consider the nature of *Amrit Mahal Kaval* lands requirement of lands for pasturage and the necessity for diversion of *Gomal* lands for other purposes held as follows:

“13. Keeping in view of the aforementioned provisions of the KLR Act and Rules, we now proceed to deal with the merits of these cases. The land involved in this case is admittedly Gomal land. The extent required for pasturage of cattle depends upon the population of the cattle in that locality. It is no doubt true that the land in question was reserved for pasturage long back. Due to passage of time and the use of tractors and tillers on account of application of latest technology and mechanism in the agricultural sector, farmers gave up using oxen, buffaloes, goat and sheep rearing to considerable extent. Peasant experienced the brunt of high expenditure feeding and maintaining cattle. What was the cattle population when the land in question was reserved for Gomal, is not the same as of now. In

place of cattle population, human population occupied to a large extent as its growth has been steadily increased from the time and requirement of land for the purpose of grazing the land is considerably reduced.

14. The best person to arrive at a conclusion as to the actual requirement of Gomal land depending upon the statistics of present cattle population is the Deputy Commissioner of each district. He has to take a decision whether to retain the entire extent of the land as Gomal or to reduce its extent or even to divert it in case there is requirement for pasturage. In our view, the learned single Judge has failed to consider these aspects of the matter while passing the order under appeals.

16. There is nothing wrong in diverting either a Gomal land or any other reserve land for other purposes when there is no sufficient cattle population in that area where there is no requirement of land for free pasturage and the purpose for which the reservation

does not exist. As in the past, farmers are not depending upon Government land for feeding their cattle. They are using their own lands or making their own arrangements to feed their cattle. On account of the Government policy in enacting the provisions of sections 94-A, 94-B and 94-C of the Karnataka Land Revenue Act, increase of population in the State lack of even distribution of land and other avocation for the residents of villages, people out of dire need and necessity for their survival have occupied the reserved lands and have been cultivating to eke out livelihood for them and their family members. The occupation of lands by unauthorized occupants has become inevitable which reality and factual situation has been taken note by the Government, therefore, the statutory rights given to the unauthorized occupants cannot be deprived of. They have acquired fundamental right guaranteed under Article 19(1) (e) and (g) of the Constitution. The regularization of unauthorized occupation of Government lands relates to their livelihood which is again guaranteed under Article 21 of

the Constitution of India.”

150. A perusal of the order of the Hon'ble Apex Court in S.L.P.No.38163-166 of 2013 would make it clear that the Apex Court was not inclined to interfere with the order of the Hon'ble High Court of Karnataka in the dismissal of the writ petitions, but only deleted the cost imposed by the Hon'ble High Court, Karnataka. This it would be quite clear that allotments made to the respondents/allottees projects proponents which were confirmed by the Hon'ble High Court, Karnataka was upheld by the Apex Court. It remains to be stated that both the applicants have made their attempt to re-agitate the matter on the question of the allotments that too after a lapse of three years and hence without any hesitation, it has got to be held that the relief sought for by the applicants in clause A is barred by time.

151. The relief sought for by the applicants in respect of the allotment has to be rejected as barred by time on the following grounds:-

1. When a particular period of limitation is prescribed under NGT Act, 2010, the applicants have not pleaded how the applications were made after the lapse of three years.
2. Both the applicants who claim to be social activists involved in environmental issues cannot say that they had no knowledge about the

said allotments, since about 10, 000 acres of lands were allotted to the respondent/allottees project proponents who have commenced their respective activities in the lands allotted to them.

3. Writ petitions were filed before the Hon'ble High Court of Karnataka in *W.P.Nos. 26144-47 of 2012* challenging the allotment of lands made to the very same respondents/allottee Project Proponents and the same were dismissed on the ground of delay and laches on the part of the writ petitioners. The reasons adduced by the Hon'ble High Court of Karnataka are equally applicable to the applicants herein also.

152. In view of all the above, it has to be held that the reliefs sought for by the applicants seeking to set aside the allotment calling it as diversion is barred by limitation.

153. Pursuant to the allotment made by the Government of Karnataka, the respondents/allottee Project proponents have taken possession of the allotted land and thus, the act of respondents/allottee/Project proponents cannot be stated as unlawful gaining of possession or occupation. Hence, it cannot be stated that there was any encroachment in the lands in question.

154. In the instant case, the applicants as seen above have attempted to set aside the allotments made in favour of the respondents/allottee project

proponents calling them as 'diversion' and the Tribunal has held supra that the applicants are not entitled for the said relief since it is barred by time. Apart from the said relief, the applicants have also complained of environmental degradation and ecological imbalance are being caused by the scientific, industrial, and research activities of the respondents/allottee project proponents by making necessary averments and also sought for reliefs thereon. There cannot be any impediment in law to enquire on those issues and consider merits or otherwise of rival contentions thereon by the Tribunal.

155. Point No. 2: Whether the *Amirt Mahal Kaval* lands allotted to the respondents/allottee Project proponents are forest lands:

Point Nos. 3: Whether the respondents/allottee Project proponents are to be restrained from carrying on their proposed activities in view of the environmental degradation and ecological imbalance as alleged by the applicants .

Point No. 4: What is the effect of the application of Doctrine of Sustainable Development on the factual matrix of the instant case?

Point No. 5: Whether the respondents/allottee project proponents have obtained necessary clearances and approvals from the authorities for

establishing the projects as contended by the applicants.

156. In order to ascertain the ground reality, the Tribunal thought it fit to constitute a Fact Finding Committee (FFC) with eminent persons to assist the Tribunal and appraise the Tribunal with a report since the parties were in controversy regarding the factual position and ground reality in respect of *Amrit Mahal Kaval*. Accordingly, Tribunal appointed (1) Dr.S. Ravichandra Reddy, Retired Professor of Ecology, Bangalore University, Bangalore as the Chairman and (2) Dr. K.V. Anantharaman, Deputy Director, Sci."C" (Retd.), Central Silk Board, Bangalore as the Member of the FFC to study as per the Terms of Reference given below and submit a report:

157. Terms of Reference:

The Terms of Reference (ToR) given by the Tribunal to the FFC are reproduced below:

The Committee may go through the averments and the grounds put forth in the respective Applications, make a field study, comprehend and submit a report focusing on the issues listed below. The Committee may take the liberty of adding any other relevant issue, if felt appropriate.

1. Historical information in respect of the *Amritmahal kavals* and cattle
2. Ecological nature of the landscape

3. Demographic features of the landscape
4. Characteristics of the biodiversity of the region
5. Dependence of the local communities on the grasslands ecosystem sought to be diverted to non-forest purposes?
6. Likely impacts of the proposed projects on human settlements in terms of loss/gain of the following:

- displacement
- livelihood
- socio-cultural landscape
- economic opportunities
- fragmentation of communities

7. Environmental limiting factors to the activities proposed, in respect of:

- geology
- land availability
- landscape/range
- hydrology
- surface and ground water assessment
- water availability
- nature of human habitat/settlement

8. Are there environmental studies undertaken for siting of the proposed activities in the land in question?

9. Have the project proponents complied with the statutory requirements of the Environment Protection Act,1986, Water (Prevention and Control of Pollution) Act,1974, Air (Prevention and control of Pollution) Act,1981, Forest Conservation Act,1980, Forest Rights Act, 2006 read with Scheduled Caste Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, and Biological Diversity Act, 2002, in particular the mandatory provisions of the following:

- Environment Impact Assessment Notification, 2006 and 2009
- Hazardous Waste (Management and Handling and Trans Boundary Movement) Rules,2008 as amended by (Amendment) Rules, 2010
- Consent from Forest Rights Committees
- Consent from Biodiversity Management Committee

Specific Issues for Consideration

I. Socio-Economic Aspects

Primary/secondary data collected from reliable Government agencies/organizations with special reference to the area under question

may be provided. Additionally, where found appropriate the study boundary may be extended up to the zone of environmental/ecological impact boundary.

1. Number of Taluks
2. Total Population:
3. Literacy levels: Male: Female
4. Number of villages
5. Main Occupation in the above villages
6. Number of Families involved in Sheep and cattle rearing
7. Number of sheep, goats and cattle in the study area: list of Sheep and Goat varieties reared in the region
8. Number of *Amritmahal* Cattle
9. Number of other Indigenous cattle, characteristic features of each
10. Number of families dependent on Forest products for livelihood
11. Government sponsored schemes, if any, for Cattle and sheep rearing
12. Beneficiaries of the proposed/ongoing developmental activities
13. Proposals announced by the Government for enhancing cattle and sheep rearing in recent times
14. Number of *goshalas* in the region

16. Have there been any efforts to preserve, protect and increase the number of pure *Amritmahal /Hallikar* or other indigenous breeds in the region

II. Ecological survey

1. Topography of the region
2. Total Area of in the land under question
3. Number of water bodies in the land under question
4. Average precipitation received in the region
5. Nature of Soil
6. Soil Strata
7. Absorption/percolation capacity
8. Any other?

III. Biodiversity in and around the land under question

1. List of Flora, especially the list of specific grass that indigeneous/*Amrit Mahal cattle* feed on in the lands under question.
2. List of indigenous grass Flora
3. List of Wild/domesticated food crops
4. List of Economically useful flora
5. List of medicinal plants
6. List of fauna

7. List of Indigenous fauna

8. List of Migratory fauna

IV. Socio Cultural scenario in and around the land under question

The committee may interact with the local population/stakeholders and summarize their views along with its own observations.

V. Environmental suitability of the area for the proposed activities

VI. Report Submission

1. Proposed work plan - One week from the date of receipt of ToR

2. Mid-term Report - Three weeks from the date of receipt of ToR

3. Final Report - Six weeks from the date of receipt of ToR

158. The following parts of the report are relevant for the purpose of present proceedings:

“At present, the Department of Animal Husbandry and Veterinary Services claims possession of 65,925.36 acres (27,468.9 ha) of Amirit Mahal Kaval lands in 62 locations in 6 Districts - Chikkamagaluru, Chitradurga, Hassan, Tumkur, Mandya and Davangere and the land area varies from Kaval to Kaval. The cattle were divided into 30 herds each containing from 200 to 700 head of cattle, which were allowed to graze in every Kaval. In 1982, the Kaval area was reduced to 54,000 acres and in 1996 it further came down to

30,000 acres. Nearly 45.58% of the landmass has disappeared due to different pressures. With the help of Department of Forest, around 15.60% of the land is protected through afforestation, leaving only 23.92 % of land for grazing and fodder development.

According to the seasons of the year, Kavals are divided into hot weather, wet weather and cold weather Kavals. Hot weather Kavals are generally the beds of tanks in which grass springs up during hot months and in which there are trees for affording shade to the cattle during heat waves. These are valuable Kavals and are reserved solely for Government cattle. Cold and wet weather Kavals are those which during those seasons have plenty of grass and water, but during hot weather dry up and are of little use for the department.

Each Kaval land was divided into tax levied Kaval and Juli Kaval. In tax levied Kavals farmers were permitted to allow their cattle to graze for a fixed time on payment of a specified tax amount. Juli Kavals are exclusively meant for grazing Amrit Mahal cattle maintained by the Government. Tax levied Kavals was generally around the Juli Kaval.

Kavals, for centuries have kept the natural vegetation without disturbance. Existence of grassland fauna like wolf, black bucks, fox etc., in these Kavals have been observed from time to time. Till date, as per records and practice,

the Kavals have come under the jurisdiction of Animal Husbandry and Veterinary Services for their maintenance and protection. Thus, they have never been under the jurisdiction of the Department of Forest either for maintenance of the Kaval or for the protection of wildlife as per the Wildlife Act, 1972.

Maintenance of Kaval land:

Kaval lands were basically meant for grazing by Amrit Mahal breed of cattle owned by the Maharajas of Mysore. This practice was continued by the Government. Kavalagaras were appointed for watch and ward of these Kaval lands. While 113 of them were working in 37 out of 59 villages, there was not watch and ward for 24,919.50 acres (45 per cent) of Kaval lands in the remaining 22 villages.....”

The land which was not utilized by Government Amrit Mahal cattle were used for grazing by the local cattle after paying a nominal fee. This amount was used as salary for kavalagaras. Over the years, the strength of Amrit Mahal breed of cattle decreased and as conditions in the Kaval areas of Challakere became non-productive due to repeated failure of monsoon and subsequent drought, the strength of Amrit Mahal breed of cattle further decreased. The Department of Animal Husbandry and Veterinary Services shifted these cattle to Ajjampura (Tarikere Taluk, Chikkamagaluru District),

where original breed of Amrit Mahal are maintained. Since Challakere area is basically a sheep rearing place, the Department of Animal Husbandry and Veterinary Services established a large scale sheep breeding farm at Amrit Mahal Kaval lands (Khudapura, Varvau, Ullarti) in 1970 to meet the demands of the farmers for supply of Rams (male sheep). Under the Australian aid, 8000 sheep were maintained. Later on, after the establishment of Karnataka Sheep Development Board, these farms along with the sheep breeding activities were temporarily handed over to Karnataka Sheep Development Board for sheep and goat development and were later converted into Karnataka Sheep and Wool Development Corporation which is presently functioning under the said name. Over the years due to repeated failure of monsoon and depletion of underground water, the herd strength got reduced and also there was lack of sufficient funds for expansion of activity of the farms.

During the pre-independence, the Amrit Mahal Kaval breed number was 12,300. By 1982, the number came down drastically to 1,700 and in 1996, it was reduced to 1,200 only.

As per census records of 2012, Amrit Mahal cattle is not found in the villages located around Kaval area.

Table 1: Number of Amirt Mahal cattle maintained in various sub-centres of Animal Husbandry and Veterinary Services Department in Karnataka

Sl.No.	Village name	Number of Amrit Mahal cattle
1	Ajjampura	322
2	Birur	51
3	Baasur	179
4	Lingadahalli	215
5	Habbanaghatta	254
6	Chikkaeemmiganur	157
7	Ramagiri	165
	Total	1343

Table 2: Status of Amirt Mahal cattle present in the villages around Amirt Mahal Kaval, Challakere

Sl.No.	Village Name	Number of Amrit Mahal Cattle	
		2007 census	2012 census
1	Sheep Breeding Farm, Khdudapura	0	0

2	<i>Gowripura</i>	0	0
3	<i>Khudapura</i>	0	0
4	<i>Manumainahalli</i>	14	0
5	<i>Ramadurg</i>	0	0
6	<i>Sarjavvanahalli</i>	47	0
7	<i>Nayakanahatti</i>	87	0
8	<i>Nelagetalahatti</i>	2	0
9	<i>Varavookaval</i>	0	0
10	<i>Neralagunte</i>	0	0
11	<i>Katappanahatti</i>	0	0
12	<i>Katrikenahalli</i>	0	0
13	<i>Varavoo</i>	0	0
14	<i>Nannivala</i>	0	0
15	<i>Gorlakatte</i>	0	0
16	<i>Veeradimmanahalli</i>	0	0
	<i>Total</i>	150	0

2. Ecological nature of landscape:

The Amrit Mahal Kaval land allotted to Central/ State Government/ Private Organizations is basically undulating plain covered with open scrub, thorny bushes with isolated pockets of exposed sheet rocks and boulders. The land

is interspersed with sporadic ranges and isolated low ranges of rocky hills.

4. Characteristics of the Biodiversity:

This area includes plants and animal species which are adapted to arid scrub conditions. Only one study pertaining to the characteristics of biodiversity of the land allotted to IISc, Khudapura has been carried out by the Centre of Ecological Sciences, IISc, Bangalore during June, 2011. Till date, no other studies on the characteristics of biodiversity have been carried out either in Varavu Kaval or in Ullarti Kaval. As per the studies carried out by the IISc, it appears that, the Amrit Mahal Kaval in Khudapura has rich vertebrate and plant species. Among the vertebrates 6 species of amphibians, 14 species of lizards, 5 species of snakes have been listed. Further, IISc research team has listed about 80 species of birds besides the occurrence of Black Bucks, Foxes and Hares (Annexure 1). The FFC team observed the presence of peacock, few species of birds and a small herd (4 numbers) of Black Buck. The occurrence of fecal matter of Black Bucks near the sheep farm suggests the presence of Black Buck.

5. Dependence of the local communities on the grassland ecosystem sought to be diverted to non-forest purpose:

From the time of existence of villages close to and around the Kaval lands, the villagers (Below Poverty Line) were collecting firewood, wood for agricultural tools, sand and mud for construction work, fruits and other edible greens as food, medicinal plants, palm leaves (Eechalu: Phoenix sylvestris) for preparing baskets, mats and brooms and limestone from these Kaval lands. Since Challakere is a predominant area for sheep rearing, the shepherds and the villagers who maintain sheep were using these Kaval lands for grazing the sheep. The cattle/buffalo/goat owners of the villages were also using these Kaval lands for grazing their animals. During drought season, sheep/goats from villages located far away were also brought to this place for grazing. Shepherds maintained sheep/goats in the Kaval land till such time the conditions improved in their place. Shepherds of the villages were observed to collect the wool from the sheep, reel and weave them into blankets. These blankets were sold in the market at Challakare, thus making their livelihood. Other than grazing by sheep/cattle, making blankets and collection of some of the above said products, the communities were not dependent on these lands either for agriculture or for settlement.

Socio-cultural landscape:

Non accessibility of grazing land in Kavals may lead to the loss of age old practice of sheep rearing, wool production, reeling, weaving and blanket

marketing by the local populace may likely to reduce. However, establishment of residential quarters for the personnel of all these organizations and the establishment of housing by Karnataka Housing Board would certainly lead to the establishment of good schools and colleges for the children of employees. As a result, children of the villages may also get the opportunity of exposure to better education facilities. Human settlement would also lead to the establishment of medical facilities by the recipients of the land. This would provide access for local villagers for timely assistance and help in medical services.

Due to the acquirement of land by these organizations, celebrations of festivals like Hiriya Habba, Ajjayangudi Jatre etc., once in a year in the Kaval land may be curtailed. However, the organizations in whose land these festivals are celebrated have decided to provide access to the villagers to such places on the days of the festival. Thus, the proposed project may not limit the socio-cultural activities of the villagers.

Consent from the Forests' Rights Committees:

In Karnataka, Forest Rights Committee has been constituted in various districts. However, the Amrit Mahal Kaval at Challakere has been under the

jurisdiction of Animal Husbandry and Veterinary Services. Prior to this the land was owned by Agriculture Department. Even at the time of allotment of lands to various government/private organizations, the Karnataka Government has sought information on the land from the Department of Animal Husbandry and Veterinary Services. Therefore, as the land in question does not come under the jurisdiction of Department of Forests, Ecology and Environment seeking clearance from the Forest Rights Committee does not arise. Further, in the land in question, there are no forest dwellers and only the people from the surrounding villages (including SC and ST) have been procuring the forest resources from time to time. Hence, the Forest Rights Act, 2006 read with Scheduled Caste, Tribes and other forest dwellers does not arise.

II. Ecological Survey

1. Topography of the region:

The land has been classified as arid. The land terrain allotted to the DRDO, BARC, ISRO, IISc and KSSIDC is undulating, rocky surface, covered with open scrub, thorny bushes with isolated pockets of exposed sheets of rocks and boulders. Natural slope in the site range from 1:40 to 1:80 with few

small channels (nalas) present within the site. The area is uncultivable, some hillocks with kind of soil loaded with red gravel. There are no habitation, plantations and cultivation within the allotted land. Surface soil is black and red in colour with sheets of rock and boulders. Northwest and Southwest parts of the site is bound by low hillocks.

DRDO: The land is undulating, rocky surface, covered with open scrub, thorny bushes with isolated pockets of exposed sheets of rocks and boulders. A few small nalas present within the site. The area is undeveloped and barren. There are no habitation, plantations and cultivation within the allotted land. Surface soil is black and red in colour with sheet of rock and boulders. Northwest and southwest part of the site is bound by low hillocks.

ISRO: The land is nothing but rocky surface and some hillocks with the kind of soil loaded with red gravel.

Ilsc: Carried out

Sagitaur Ventures India Pvt. Ltd.: Sloping towards north and northwest.

BARC: Undulating plains, interspersed with sporadic ranges and isolated low ranges of rocky hills.

FFC having gathered information for each of the Terms of Reference of the National Green Tribunal – South Zone, Chennai, observing the facts during

the site visit at Amrit Mahal Kaval, interacting with villagers/stakeholders and on examination of documents has made the following observations:

1. Amrit Mahal Kaval land:

Amrit Mahal Kaval grassland at Challakere, Chitradurga district, Karnataka State, is an undulating land covered with scrub and thorny bushes as also with isolated packets of sheet rocks and boulders. Vast stretches of the land is covered by varieties of grass and shrubs. Soil of the land is basically gravelly red to black with loam to sandy type. From 1617, the land has been used for grazing and maintenance of Amrit Mahal breed of Cattle. The land which was under the custody of Kings, changed hands from one ruler to another and then came under the rule of British. During their rule, the land was transferred to the Department of Agriculture in 1923. Subsequently in 1945, it was transferred to Department of Animal Husbandry and Veterinary Sciences, a unit of Department of Agriculture, Mysore. After the formation of Karnataka State in 1956, Department of Animal Husbandry and Veterinary Services was created, Amrit Mahal Kaval land was transferred to this department and utilized for grazing by Amrit Mahal breed of Cattle owned exclusively by the Government. Further, the breeding centre of this breed was also established. Sheep and cattle of villagers were allowed to graze in the land with payment of nominal fee to the department. Since, Challakere is

a belt for sheep rearing, Government of Karnataka in 1970 established a sheep farm in the Kaval land at Khudapura. After the establishment of sheep farm, the local sheep and cattle were prevented to graze in the land. However, over the years, the success of breeding program of Amrit Mahal breed and sheep rearing deteriorated due to various reasons. All through this period, the land continued to be under the custody of Animal Husbandry and Veterinary Services. Due to the failure in the breeding program, Amrit Mahal breed was shifted to Ajjampura. From the above facts and records it is clear that, the land has been under the custody of Department of Animal Husbandry and Veterinary Services, Government of Karnataka. The records available in the Department of Forest (Annexure 18 – Page 7) also indicate that they never had the custody of Amrit Mahal Kaval lands.

2. Amrit Mahal Cattle:

Amrit Mahal breed of Cattle, a progeny of Hallikar breed thrived in Kaval lands in large numbers and were maintained by the rulers of Mysore. After independence, their population decreased considerably due to Eco climatic conditions. Though the Animal Husbandry and Veterinary Services made efforts to maintain and breed them in Kaval lands at Challakere, they could not achieve success. Hence, the left over population were shifted to Ajjampura and today the breed is maintained and developed in 6 sub-centres

of Karnataka excluding Amrit Mahal Kaval. The villagers around the Kaval initially did possess the original breed of Amrit Mahal cattle. Over the years, the pure breed lost its ground and today in most of these villages breeds related to Hallikar is available.

As per the Livestock Census of 2007, only 150 numbers of Amrit Mahal cattle were found in the villages around kaval area. However, Livestock Census of 2012 confirms the total absence of Amrit Mahal breed cattle in the villages around kaval area. However, there are 13,348 indigenous cattle maintained by the villagers.

3. Sheep and Goat

The Challakere taluk has been the seat of rearing sheep and goats. As per the 18th Livestock Census (2007), 66,176 sheep and 16,468 goats were found in the villages around the kaval land. Livestock Census of 2012 indicates a considerable reduction in the population of sheep (54,975) and goats (13,976). Gomala lands were utilised for grazing by sheep and cattle. Grazing by livestock in the kaval land was also carried out on payment of small fee. During non-agricultural season, these livestock were found to graze in agricultural lands.

4. Bio Diversity:

The only information on Bio-diversity of Amrit Mahal Kaval pertains to Khudapura as published in Rapid Bio-diversity Survey conducted by Centre for Ecological Studies, IISc, Bangalore. Study reveals Khudapura to be rich in flora and birds and a few species of their fauna. Since, information on bio-diversity in Ullarti and Varavu Kavals are not available, mere extrapolation of information of Khudapura to other kavals may not provide the true picture of the land. Further, the rapid bio-diversity survey has not quantified the population of each of the species. Hence, in the absence of information on density of each of the species, it may be premature to conclude the richness of the bio-diversity of the kaval area. It is appropriate that the beneficiaries of the land as also the Bio-diversity Management Committee of the region including other R&D institutions should establish the diversity and density of species of flora and fauna and then implement appropriate steps to conserve the same.

5. Kaval land:

Prior to handing over of the lands to different organizations, the Revenue Department, Challakere has conducted mahajar (Annexure 19). Records of revenue department provided to the Fact Finding Committee (Annexure 20) indicate total Kaval area in Khudapura is 2,819.23 acres, in Varavu Kaval 6,973.19 acres and in Ullarti Kaval 2,143.36 acres. This includes 'Kharab

land'. Besides, 1,138.38 acres of gomala land is also available. Government has allotted a total of 9,523 acres to the Central/State/Private organizations. This indicates that Kaval/gomala lands are still available.

6. Issues of Concern raised by the villagers:

Non availability of kaval land for grazing by livestock: The recipients of the land have been constructing boundary wall (Figure 22). The villagers claim that this has prevented their livestock to graze in the kaval lands. As per records, until the presence of sheep farm, kaval lands were allowed for grazing by villagers with nominal fee. The construction of wall would prevent unauthorised entry of the livestock. The beneficiaries of the land have stated through letters that they would continue to allow grazing by livestock until complete establishment and also supply fodder to the villagers. (See original letters enclosed; Annexure 21). Further, in the meeting with the Chief Secretary, Government of Karnataka held on 29th June 2013, Chief Secretary assured the committee members that the remaining Kaval land at Challakere will not be diverted and will be maintained in its natural condition for the benefit of the villagers. Subsequently, Assistant Deputy Commissioner of Chitradurga has sent a written confirmation of the same (Annexure 22). Hence, though the construction of compound wall would limit the entry of livestock into the kaval land, available kaval lands and the assurances given

by the beneficiaries of the land would certainly facilitate grazing by the livestock and availability of fodder.

Medicinal plants and other products of Kaval land:

The villagers' contention is that the Kaval lands provided variety of medicinal plants and products for livelihood. Although the entry of villagers to allotted kaval land would reduce in the days to come, the availability of remaining Kaval land in the same region (over 1900 acres) will have accessibility for such activities.

Bore well:

The bore wells located in the land allotted to ISRO have been supplying water to Ullarti village. The fear of the villagers is that these bore wells may not be available to them in future. ISRO have clearly stated that they will continue to provide water through these bore wells (Annexure 21).

Ullarti Kaval Tank:

The villagers have opined that considerable portion of the tank land is now under the custody of ISRO. This would reduce the water holding capacity and ruin the tank/catchment area. ISRO in their letter have stated that 70% of the tank is outside ISRO and only when the water level reaches the maximum overflow level of 544.5 m, the water spread enters the ISRO

land which is a rare phenomenon. There is no hindrance caused to the free flow of water to the tank from the nallas in the catchment areas (Annexure 21).

Conduct of rituals in the place of worship/temples in kaval lands:

The main contention of the villagers is that after the construction of boundary wall, worship places/temples like Boredevaragudi (in KSSIDC land), Hiriya Habba spot and Ajjayanagudi (in IISc land) will not be accessible for conducting the rituals every year. The respective organizations have indicated that they will not prevent the villagers in celebrations of pooja/festivals/rituals on the concerned days at these places and entry will be provided to the villagers on these days (Annexure 21).

Road Accessibility:

The contention of the villagers is that the original road passing through the land allotted to BARC/ISRO is closed and people have to travel longer distance to reach Ullarti village. For security reasons, BARC and ISRO have closed this road. However, they have spared a portion of their allotted land for the construction of a new road all along their boundary wall. This road is better laid (wide and asphalted). Although the distance to Ullarti village has increased by a margin of 2/3 km. the road enables the vehicles to travel

smoothly.

Another issue is that, the mud road leading to Kaluvehalli located inside BARC land is closed and people are unable to reach their agricultural land or Kaluvehalli. BARC in their letter have stated that the temporary fence abutting the mud road near the south western corner of the land will be shifted suitably so as to open up a passage to let the villagers have an easier approach to their cultivated land and Kaluvehalli (Annexure 21). Further, they have also stated that in collaboration with IISc they would allow the villagers to move from the earlier sheep farm area to their land to the south of the allotted land at Khudapura (Annexure 21).”

159. Pursuant to the orders, the FFC made a thorough study by visiting Amrit Mahal Kaval land in question in Chitradurga District in State of Karnataka and made inspection of the lands allotted to BARC, DRDO, ISRO, IISc, M/s. Sagituar Ventures Pvt. Ltd., KSSIDC and KSHB. From the report it could be seen that the FFC had an interactive meeting with the officials of Animal Husbandry and Veterinary Sciences Department, Forest, Environment, Ecology Department , KSPCB, KSBD, KRSAC, DRDO, BARC, ISRO, IISc, KSSIDC and Sagitaur Ventures Pvt. Ltd., for procuring information with reference to the ToR of NGT. It had also visited the District Commissioner and had interaction with the heads of various departments pertaining to *Amrit*

Mahal Kaval lands. After having the interactive meeting with the applicants, on their request, the FFC made a spot visit to *Amrit Mahal Kaval* to examine the issue raised by the applicants. Interactive meetings with the people of 36 villages around the *Amrit Mahal Kaval* were held at 4 Gram Panchayats. The FFC had interactive meeting with all the contesting respondents/ allottee project proponents to obtain their remarks on the issues raised by the villagers. Finally, the Committee had a meeting with the Chief Secretary, State of Karnataka and had discussions about the future plans of the Government in regard to the *Amrit Mahal Kaval* lands at Challakere.

160. After receiving the report of the FFC, the parties were given an opportunity to file remarks/objections on the report of the FFC which they have filed. The Tribunal made a thorough scrutiny of the FFC report and also comments made by the parties thereon. After doing so, the Tribunal is of the considered opinion that the report of FFC was thoroughly satisfactory, can be safely relied upon and is of good assistance to decide on the environmental issues that arise in this case.

161. Advancing the arguments, both the applicant in Application No. 6 of 2013 (SZ) and also for the learned counsel for the applicant in Application No. 12 of 2013 (SZ) would submit that the *Amrit Mahal Kaval* lands are District Forest and in fact, they have been included in the list of deemed forests as

submitted by the Government of Karnataka to the Hon'ble Supreme Court of India in W.P.(Civil). 202/1995. Since the *Amrit Mahal Kaval* lands were district forest no diversion or use of those lands can be permitted without prior approval of the Central Government under section 2 of the Forest Conservation Act, 1980. Under the said provision of the Forest Conservation Act, 1980 prior permission is mandatory for diversion of forest lands for any non-forestry purposes. The present activities carried out by the respondents do not fall under exception provided in the Act. Thus, the allotment and use of the land by the respondent authorities to other respondents/allottee project proponents without clearance was illegal. Pointing to Mysore Gazetteer dated 18.02.1926, it is contended that it is made clear that the *Amrit Mahal Kaval* lands are forest land under the law. They are classified as district forest which is evident from the said Mysore Gazette. An order No. I.C. 5432-42-Ft.5S-24-2 dated 1st February, 1926 reads that there were no rules at present for the management of *Amrit Mahal Kaval* under the forest regulation. The existing rules relate to the management of district forests not having been made applicable to them, though as a matter of fact, *Amrit Mahal Kavals* are district forests under section 2(13) of the Forest Regulation. The said order also empowers the officer in-charge of the *kaval* under Forest Regulation. Thus, it would be clear that the law recognized the *Amrit Mahal Kaval* as district forest and this position did not change with the passing of any new legislation.

The enactment of the Karnataka Forest Act, 1963 did not repeal the present 1926 gazette notification and in fact, served the operation of Forest Regulation, 1900 in section 117 of the new Act. The Karnataka Forest Act, 1963 and the Karnataka Forest Rules, 1969 do not state that the Amrit Mahal Kaval lands are not district forests. On the contrary, rules acknowledged the fact that the Amrit Mahal Kaval are district forests under rule 33. The rule 33 found in Chapter IV dealing with district forests states that the rules for the management of district forests shall, *mutatis mutandis* apply to Amrit Mahal Kavals which mean and include the land assigned by Government for the pasturage of Amrit Mahal Cattle owned by the Government.”

Thus, there has been no departure in the law and the *Amrit Mahal Kaval* lands continue to be district forests irrespective of ownership or classification, Even under section 117 of the Karnataka Forest Act, 1963 dealing with repeals and savings, does not repeal the notification and orders issued under the previous legislations and in fact, provides that anything done under any such law shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act. The mandate of rule 33 makes it abundantly clear that the present rules which apply for the management of district forest apply also

to *Amrit Mahal Kaval*. According to the definition of district forests under the Karnataka Forest Act, 1963 *Amrit Mahal Kavals* are also district forests. The 3rd respondent, under the head “Details of Notified Forests and Deemed Forests of Karnataka” has included the *Amrit Mahal Kavals* as district forest, which vital information has been suppressed by the 3rd respondent contrary to its pleadings. According to the report of the reconstituted Expert Committee as found in Annexure-29 in page No.208 of impleaded respondent’s (Respondent Nos. 17-25 in Application No. 6 of 2013 (SZ) and Respondent Nos. 19-27 in Application No. 12 of 2013 (SZ) type set, the *Amrit Mahal Kaval* is a district forest. The word ‘forest’ should be given a wide and liberal interpretation and excluding grasslands and including lands only with tree cover as ‘forest’ is against the letter and spirit of the said order thereby denying the protection under the Forest (Conservation) Act, 1980. In view of the fact that the grasslands have spontaneous natural vegetative growth, they should also be treated as ‘forest land’ for the purposes of the Forest (Conservation) Act, 1980 and restriction on diversion of such lands for non-forest use should be applicable to these critical ecosystems as well.

162. Pointing to the report of Western Ghats Task Force dated 25.08.2011, it is contended by the applicants’ side that a recommendation has been made to State Government to announce that all *Amrit Mahal Kaval*

lands as important and sensitive biodiversity spots. The 1st and 3rd respondents have filed counter affidavits before the Tribunal clearly stating that 1200 ha of lands allotted in *Varavu Kaval* have been included in the list of deemed forest submitted by the State to the Supreme Court of India. Contrary to the admission made in their pleadings of both the 1st and 3rd respondents, their contention that the subject lands are not forest lands is thoroughly unsustainable. The contention put forth by the respondents that their actions were saved by section 2(iii) of the Forest (Conservation) Act, 1980 is bereft of any merit since it is admitted by the respondents that for the use of forest land prior clearance was required and it is an admitted position that all the project proponents began *inter alia* construction of compound walls, buildings and roads which is prohibitive under the Forest (Conservation) Act, 1980 and there is no doubt that the action of the respondents is violative of Forest (Conservation) Act, 1980. The affidavit of the Assistant Commissioner filed on behalf of the 9th respondent (in Application No. 12 of 2013 (SZ) cannot be relied on since the revenue records and survey settlement records produced by the respondents do not cover the entire extent of lands diverted and awarded to the respondents. Apart from that, the lands which are forest lands could not have been entered in any revenue record as *gomal* lands or any other lands in survey registers unless it is de-reserved first under the under the Forest (Conservation) Act, 1980. Thus, the

records produced and relied on by the respondents cannot be taken as a proof of the fact that the subject lands are not forest lands. Hence, according to the contention of the applicants the subject lands are forest lands. In order to substantiate their contention, the applicants' relied on the following rulings:

(i) *Hon'ble Supreme Court of India in T.N.Godavarman Thirumulkpad vs. Union of India and others reported in AIR 1997 SC 1228.*

(ii) *Hon'ble High Court of Bombay in Goa Foundation vs. State of Goa and others reported in AIR 2001 Bom 318.*

163. Countering the above contention, the learned counsel appearing for the respondents/allottee project proponents would submit that the lands allotted to the respondents/allottee project proponents are neither forest lands nor notified as forest. These lands are not forest as per the dictionary meaning of the 'forest' since there is no wooded growth. The State Forest Department has categorically stated in its objection that the lands allotted to the respondents/allottee project proponents are not forest lands. The Hon'ble Apex Court has indicated in *T.N.Godavarman Thirumulkpad vs. Union of India and others reported in AIR 1997 SC 1228* that dictionary meaning of 'forest' is to be taken for the purpose of Forest (Conservation) Act, 1980 in *Noida Memorial Complex near Okhla Bird Sanctuary case reported in (2011) 1 SCC 744* that a three Judge Bench held that judgment in Godavarman case has

given a very wide definition for 'forest' and if the criteria is applied mechanically and with no regard to any other factors, a greater part of Lutyens Delhi would perhaps qualify as forest and that this was obviously not the intent of the order of the Supreme Court in Godavarman's case. Further, a five member Bench of the National Green Tribunal in *Gaur Green City Residents' Welfare Association vs. State of U.P* reported in 2013 SCC Online NGT 79 has held that for a forest land it has to be notified, deemed or declared as such. It is observed that any land where trees were grown could not be termed as 'forest'. It has further been held that the prior Environmental Clearance for such projects is not required under the Environment (Protection) Act, 1986. A perusal of the definition given in the different dictionaries would indicate that the land in question cannot come within the definition of 'forest.' The lands allotted to the respondents/allottee project proponents have been defined as '*Amrit Mahal Kaval kharab*' as seen from the revenue records filed as Annexure-36 by the respondents/State of Karnataka. The glossary and judicial and revenue terms define '*kharab*'- means 'bad -as land unfit for cultivation'. It is pertinent to note that the applicants have not produced any document to show that the lands allotted to the respondents/allottee project proponents are forest lands. A mere claim that the land may be a forest land is not the proof that it is a forest land. In the instant case, the applicants have not proved that the lands in question are forest lands. On the contrary, their

pleadings as well as documents filed would clearly indicate that the lands were pasturage lands meant for grazing by the *Amrit Mahal* Cattle belonging to the State and not even belonging to private persons or villagers. If that be so, the applicants cannot contend that the lands in question are not forest lands.

164. The Fact Finding Committee appointed by the Tribunal after detailed examination has reported that the land is arid, undulating, rocky surface covered with open scrub, thorny bushes with isolated pockets of exposed sheets of rocks and boulders. The area is uncultivable and there are no habitations, plantations or cultivations. Prior approval under the Forest (Conservation) Act, 1980 is not required for using the land not classified as forest land. *Amrit Mahal Kavals* have at no point of time been notified as Forest under the Karnataka Forest Act, 1963 or even under earlier enactments. The applicants are contending that *Amrit Mahal Kaval* lands are forest lands because rule 33 of the Karnataka Forest Rules, 1969 stipulates that in so far as *Amrit Mahal Kavals* are concerned, the same rule governing the management of district forests would apply to such *Amrit Mahal Kavals* also. The implication of the very rule is that the *Amrit Mahal Kavals* are not forest lands. If they are district forests, it would have been stated in the Act itself. Moreover, the definition of 'district forest' in section 2(2) of the

Karnataka Forest Act, 1963 specifically excludes district forests which are assigned as free grazing ground or for any other public or communal purpose. Neither Karnataka Forest Act, 1963 nor the Karnataka Forest Rules state that *Amrit Mahal Kaval* would be forest land or district forest. *Amrit Mahal Kaval* is not defined in the Karnataka Forest Act, 1963, but it is defined in Karnataka Forest Rules, 1969. Rule 33 defines *Amrit Mahal Kaval* to mean and include lands assigned by Government for pasturage of Government owned *Amrit Mahal Cattle*. The very definition of '*Amrit Mahal Kaval*' clearly indicates to exclude the said lands being termed or treated as forests. The 2nd respondent in Application No. 6 of 2013 (SZ) 3rd respondent, namely, Karnataka State Forest Department in Application No. 12 of 2013 (SZ) has not only filed his objections stating that the *Amrit Mahal Kavals* are not forest lands, but also filed Annexures R1 and R2 to the said counter which would clearly show that the *Amrit Mahal Kavals* are not forest lands.

165. The 4th respondent/MoEF has filed a reply affidavit denying that *Amrit Mahal Kavals* have been declared as district forests as per rule 33 of the Karnataka Forest Rules, 1969. The Deputy Commissioner, the 9th respondent in Application No. 12 of 2013 (SZ) has stated in his objections that as per the records maintained, the lands in question do not come under Forest Department and they are purely Government *kharab* lands as per the survey

and settlement records which documents have also been produced. These lands were reserved for breeding of the special breed of *Amrit Mahal* cattle by the Veterinary Department. But, the said lands were left unused for the purpose for which they were reserved. No *Amrit Mahal* cattle have been reared on the said land for several decades. In the year 1970, the lands were transferred to Sheep Development Corporation for rearing sheep. From the report of FFC, it is clear that the strength of *Amrit Mahal* cattle have decreased. Even the sheep rearing was given up several decades back as a result of repeated failure of monsoon and lack of funds. Thus, if no Government owned *Amrit Mahal* cattle have been pastured on the said lands, then the said lands lose their character as *Amrit Mahal Kavals*. In fact, *Amrit Mahal Kaval* lands are *gomal* lands i.e., lands for grazing by cattle. The Hon'ble High Court of Karnataka in *Kariappa and others vs. Tahsildar and others, W.P.No. 17954/1997* has held that the *Amrit Mahal Kaval* lands are *gomal* lands, i.e., the lands meant for pasturage and hence reserved land under section 71 of the Karnataka Land Revenue Act read with rule 97 of Karnataka Land Revenue Rules. Even the revenue records show that the lands have been recorded therein as *gomal* lands and not forest lands.

166. Admittedly, the extent of 9523 acres allotted to the respondents/allottee project proponents as shown above are *Amrit Mahal*

Kaval lands. As noticed above, the case of the applicants is that the lands in question allotted to the respondents/allottee project proponents are forest lands and hence it is mandate of law that they should get clearance under the provisions of the Forest (Conservation) Act, 1980 before commencing their activities. On the contrary, the respondents/allottee project proponents would contend that the allotted lands are not forest land and hence no such clearance is necessary. As noted above, the undisputed historical information is that the *Amrit Mahal Kaval* lands were large grassland reserved and available in different parts of the erstwhile Mysore State for grazing by the herds and cattle. The word '*kaval*' means pasture lands. Much reliance was placed by the applicants on the order dated 01.02.1926 in Mysore Gazette issued on 18.02.1926 stating that the *Amrit Mahal Kavals* were district forests under section 2 (13) of the Mysore Forest Regulation, 1900 and the same was never repealed and hence, in view of the same, it has to be held that the allotted lands are district forest.

167. The Karnataka Forest Act came into force in the year 1963 and the Karnataka Forest Rules were framed in the year 1969. The Karnataka Forest Act, 1963 nowhere defines what is *Amrit Mahal Kavals* land. But, rule 33 of the Karnataka Forest Rules defines the *Amrit Mahal Kaval* lands as follows:

“33. Amrit Mahal Kavals:- The rules for the management of

district forests shall, mutatis mutandis apply to Amrit Mahal Kavals which mean and include the land assigned by the Government for the pasturage of Amrit Mahal Cattle owned by the Government.”

168. It is pertinent to point out that the rule indicates *Amrit Mahal Kavals* is pasturage grazing land for only to the *Amrit Mahal Kaval* cattle owned by Government. Had it been forest as contended by the applicants, there is no need for employing the word ‘pasturage for cattle grazing’ and it cannot have any other meaning. Thus, the definition only indicates that the *Amrit Mahal Kaval* lands are pasture lands and excludes the said lands being termed or treated as forest. *Amrit Mahal Kaval* lands were never notified as forest lands under the Karnataka Forest Act, 1963. The contention put forth by the applicants that rule 33 of the Karnataka Forest Rules, 1969 stipulates that in so far as the *Amrit Mahal Kavals* are concerned, the said rules governing the management of district forests would apply to *Amrit Mahal Kavals* and hence the they are district forest cannot be countenanced since the very implication of the rule is that *Amrit Mahal Kavals* are not district forests. Hence, it is stated that the rule governing the management of district forest would apply to *Amrit Mahal Kavals*. The Karnataka Forest Act, 1963 defines ‘district forests’ in section 2 (2) which reads as follows:

“(2) “district forest” includes all land at the disposal of Government not included within the limits of any reserved or village forest nor assigned at the survey settlement as free grazing ground or for any other public or communal purposes.

Provided that it shall be competent for the State Government to modify or set aside such assignment and constitute any such land as reserved, village or district forest, or devote the same to any other purpose it may deem fit.”

169. Thus, the Karnataka Forest Act, 1963 has specifically excluded the lands which are assigned as free grazing ground or for any other purpose or communal purpose from district forest lands. In order to substantiate their contention both sides were relying the decision of the Hon’ble Apex Court in *T.N.Godavarman Thirumulpad vs. Union of India and others reported in AIR1997 SC 1228* referred to above. The applicants relied on paragraph 4 of the judgment wherein it has been held as follows:

“The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the

provisions made therein for the conservation of forest and for matters connected therewith must apply to all forests irrespective of the nature of ownership or classification thereof.”

170. The respondents/allottee project proponents relied on the following part of the very same judgment:

“The word ‘forest’ must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of section 2(i) of the Forest (Conservation) Act, 1980. The term ‘forest land’ occurring in section 2 will not only include ‘forest as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or

classification thereof.”

171. There cannot be any quarrel that the Forest (Conservation) Act, 1980 came to be enacted only to stop further deforestation and if allowed, it would result in ecological imbalance and hence the provisions of the Act for the conservation of forests and the Act has to be applied irrespective of the classification or ownership of the land. But, the Hon'ble Apex Court in the very same judgment has clearly indicated the word 'forest' must be understood according to the dictionary meaning. The description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of section 2(i) of the Forest (Conservation) Act, 1980. The term 'forest land' occurring in section 2 will not only include 'forest as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.

172. The major Law Lexicon- IV Edition edited by R. Ramanatha Ayyar defines 'forest' as under:

“A forest is a large tract covered with trees and undergrowth.”

173. Black's Law Dictionary-V Edition defines the term 'forest' as under:

“A tract of land covered with trees and one usually of considerable extent.”

174. In view of the above definitions, the lands allotted to respondents/allottee project proponents cannot be defined as forest lands. As stated above, the *Amrit Mahal Kaval* land are set apart and reserved for grazing by the cattle. As rightly pointed out by the learned counsel for the respondents/allottee project proponents, no documentary evidence is adduced that the *Amrit Mahal Kaval* lands allotted to the respondents/allottee project proponents are forest lands. Thus, it could be seen that the said claim made by the applicants is without any proof whatsoever. The Department of Forest, Ecology and Environment of the State of Karnataka has categorically stated that the *Amrit Mahal Kavals* are not reserved forest or village forest or district forest and they are not mentioned as forest in any Government record. Equally, the Chief Conservator of Forest of the State of Karnataka has denied the claim of the applicants that *Amrit Mahal Kavals* are district forest. The Deputy Commissioner, Chitradurga District has stated that as per the records maintained the *Amrit Mahal Kaval* lands allotted to the respondents/allottee project proponents were Government *kharab* lands as per the survey and settlement records. The survey and settlement records and also revenue records have been filed. The lands which were set part for grazing *Amrit*

Mahal cattle which were reared on the lands for several decades cannot be termed as forest land. The Hon'ble High Court of Karnataka in *Kariyappa and others vs. Tahsildar and others in W.P.No. 17954/1997* has held that the *Amrit Mahal Kaval* lands are *gomal* lands, i.e., lands meant for pasturage and hence it is a reserved land within the meaning of section 71 of the Karnataka Land Revenue Act read with rule 97 of Karnataka Land Revenue Rules. The revenue records would show that the lands in question are recorded as *gomal* lands and not as forest land. As per the revenue records the lands in *Amrit Mahal Kaval* are classified as *Amrit Mahal Kharab*, which would mean bare lands unfit for cultivation. If a land has to be treated as forest land, it has to be notified, deemed or declared as such. In the absence of the same, it cannot be called as forest land. In the instant case, no material is available to indicate that the *Amrit Mahal Kaval* lands allotted to the respondents/allottee respondents were either notified or deemed or declared as forest. On the contrary, they were grazing lands originally set apart for the grazing by the *Amrit Mahal* cattle and subsequently classified in revenue records as *kharab* and in survey and settlement records as pasture lands. Hence, the contention putforth by the applicants that the allotted *Amrit Mahal Kaval* lands are forest lands and in view of the same, respondents/allottee Project proponents should obtain necessary clearance under the Forest (Conservation) Act, 1980 for their activities has to be rejected as devoid of

merits.

175. From the report of the FFC, it is evident that the Chitradurga district is consisting of 6 *taluks* and the total population in 62 villages is 1,32,874. The lands in question have been classified as arid land and the lands allotted to the respondents/allottees project proponents are undulating, rocky surface, covered with open scrub, thorny bushes with isolated pockets of exposed sheet of rocks and boulders.

176. Advancing the arguments, the applicant in Application No. 6 of 2013 (SZ) would contend that the diversion has been undertaken illegally for the purpose of locating a variety of defence, nuclear, infrastructural, industrial, research and real estate investments several of which constitute highly hazardous operations and polluting units as per the relevant provisions of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (Air Act), Aircraft Act, 1934 and Atomic Energy Act, 1962. Those high risk and high hazard facilities have been grouped together within ecologically sensitive grassland ecosystems in a region densely populated, which is a habitat for several rare and critical endangered flora and fauna. It is a natural resource that is intensely depended upon for rearing livestock and is a critical watershed of semi arid area where prolonged droughts are the determinant climatic feature of the

region. The consequences of an adverse fallout of locating such highly hazardous projects in such a manner in violation of applicable norms and standards could result in impacts which would be irreversible, irredeemable and catastrophic, thus offsetting all the benefits claimed to be accrued from the development of such facilities. Such high risk and hazardous facilities as are proposed in the instant case have never been grouped together anywhere in the world in the manner that is sought to be done now at Challakere *Amrit Mahal Kavals*. Only when all the risks are rationally, thoroughly, meticulously and transparently assessed, such as by way of a risk assessment, cumulative environmental and social assessment, it would be possible to come to a reasonable understanding on the viability of promoting such projects and in such a manner as are now proposed by the respondents/allottees project proponents. All these facilities singularly and collectively constitute mega projects and have significant and irreversible impact on the environment and biodiversity and on local impacted communities as they are classified as high impact 'red category' projects by environmental regulatory authorities. The decisions to allot lands to these projects and to site them in the manner now proposed at Challakere in the ecologically sensitive and biodiversity rich *Amrit Mahal Kaval* grassland ecosystem were taken with no consultation with the local impacted communities or even with local Government elected bodies. Such an action

is unconstitutional, gross violation of the Public Trust Doctrine, Principle of Intergenerational Equity, Principle of Prior and Informed Consent, Common Heritage of Humankind Principle, the Polluter Pay Principle, the Precautionary Principle etc. By doing so, the respondents have infringed and violated various international Covenants and Treaties. As a consequence of the actions of the respondents, the livelihoods of pastoral and agrarian communities in at least 60 villages directly dependent on these *Kavals* for their day to day existence have been compromised and affected. Thus, such actions constitute violation of various Fundamental Rights of the impacted communities. Hence, necessary action needs to be initiated against the illegal actions of the respondents/allottee project proponents by the respondents/regulatory agencies when such violations were brought to their notice, but no action was initiated. A report was submitted before the FFC appointed by the Tribunal that the DRDO has bombed the Challakere *Amrit Mahal Kavals* in testing various explosives and weapons without following any statutory provisions.

177. According to *Amrit Mahal* Management and Development, Comprehensive Plan Report -2014, a study was commissioned by the Government of Karnataka under the Chairmanship of the Director of Animal Husbandry and Veterinary Service Department. Pointing to Chapter I of the

report entitled 'History of *Amrit Mahal*', the learned applicant would submit that 240 of such lands were maintained covering a total area of 4,13,539 acres. The said *Kavals* were protected for several centuries as per historical records. The diverse flora and fauna contain rare and critically endangered species and make them strong candidate for conservation. The natural grassland ecosystems/*Kavals* are highly productive was evident from the high density of usage of pastoral communities over the centuries. High regard for protecting the grasslands was given all along in the past. The trend of degradation, degeneration and diversion of the *Amrit Mahal Kaval* grasslands ecosystems continued in the post-independence period with greater rapidity. Out of the remaining 1,12,956 acres, the Government issued more land for various other activities reducing the *Kaval* lands to 68,440.06 acres in 63 *Kavals* in six districts. After 1970, the Government has given 17,370.14 acres to various departments and organizations and 8,477.03 acres were illegally encroached upon. The FFC appointed by the Tribunal has also corroborated the fact that the *Amrit Mahal Kavals* are highly threatened ecological landscapes. What is left of these *Amrit Mahal Kavals* at present is in a state of serious degeneration and the only large and contiguous extents of healthy *Kavals* remain in Challakere Taluk and hence conservation of these *Kavals* should be protected not merely to revive the *Amrit Mahal* breed but also the biodiversity are rich grassland ecosystems

which support livelihoods based on pastoralism and other traditional occupations, including collection of minor forest produce. The Challakere *Amrit Mahal Kavals* form the last remaining contiguous stretch of grassland to the east of Karnataka State. In fact, to the south of Karnataka there is no presence of similar ecosystems for over 100 km. The report of the 'Taskforce on Grasslands Deserts for the Environment and Forest Sector for the XI Five Year Plan' constituted by the Planning Commission (Environment and Forest Division) would clearly indicate the aspect of vulnerability of grassland ecosystems. The Committee has recommended the critical need for modifying Environment Impact Assessment guidelines by making prior environmental clearances mandatory to the diversion of such ecosystems and to increase the grasslands and desert ecosystems in protected area system.

178. In this background, the vulnerability of critically endangered species such as Great Indian Bustard becoming extinct would increase unless immediate ameliorative measures are taken. *Amrit Mahal Kavals* are intensely depended upon by the local villages for rearing a large livestock including *Amrit Mahal* cattle. While on one hand, the State has recognized the importance of protecting the *Kavals* by constituting a Committee to recommend necessary steps to protect the *Kavals*, on the other hand

irrationally, illegally and illogically diverted 9,235 acres of the *Amrit Mahal Kavals* in Challakere taluk of Chitradurga district to the contesting respondents/allottee project proponents which is grossly illegal. The FFC appointed by the Tribunal has recorded that the total population around the *Kaval* area in 62 villages is 1,32,874 and as per records of the Tahsildar's office the number of villages is 26 and whereas according to Karnataka State Remote Sensing and Application Centre, there are 62 villages in and around 5 km radius. The Committee has categorically recorded the main occupation in the above villages is agriculture, sheep, goat and cattle rearing. The total livestock population owned by 7,466 families in 41 villages is 88,667. The FFC has categorically established that Challakere *Amrit Mahal Kavals* are critical to the pastoral activities of the villages abutting the *Kavals*. The averments made by the FFC on the basis of Annexure -8 that the *Amrit Mahal Kavals* were not found in any of the villages located around the lands in question cannot be acted upon as the same is incoherent and illogical. The livestock census carried out by Doddauarti *Grama Panchayat* in the year 2013 would indicate that the total number of *Amrit Mahal Kaval* in that village is 554. The FFC has pointed out that the extent of *Amrit Mahal Kavals* across the State of Karnataka as of 1996 further came down to 30,000 acres. The decision of the Hon'ble High Court of Karnataka in *ILR 2007 KAR 259 (DB)* (J.Gopala Gowda) relied on by the respondents/allottee project proponents is

not applicable to the factual position since it can be applied only when it has no dependence at all in *Gomal* lands which is not the case in the instant matter.

179. Advancing further his arguments, the applicant would submit that the Great Indian Bustard is most critically endangered faunal species on the planet considering the fact that only about 200 individuals are said to be found in all of South Asia where it is endemic. It is a large bird and thus unable to fly great distances or at greater heights and cannot build nest anywhere but on the ground. The bustard does not migrate great distances and said to be largely resident within the area where it is born, barring very local movements for foraging, making frequent trips from semi arid grassland ecosystems to which they are endemic to surrounding agricultural fields.

180. It is pertinent to point out that the Great Indian Bustard has been sighted in *Amrit Mahal Kavals* in Chitradurga district as evidenced by the report of Santosh Martin and Samad Kottor, both acclaimed wildlife researchers whose contribution to conservation has been recognised by the Karnataka Forest Department. Hence, the saving of Great Indian Bustard from extinction has to be taken on war footing manner. The protection of majestic bird species is very necessary on priority basis. And these facts should have a critical bearing on any decisions pertaining to how the *Amrit*

Mahal Kaval lands are to be used and hence the protection of *Kaval* as natural grassland becomes important. No environmental studies were taken before diverting the *Amrit Mahal Kaval* lands to the contesting respondents/allottee project proponents. This applicant sent a report to MoEF as shown in Annexure-2 speaking about the risks involved in locating the projects in an eco-sensitive *Amrit Mahal Kaval* in Chitradurga district. The 1st respondent asked the State of Karnataka to look into the matter and submit report for taking necessary action since the applicant has mentioned about specific case of violation. But, the Karnataka Government has not filed any report yet. The 2nd respondent is duty bound to take cognizance of the letter by the 1st respondent and inaction on the part of the 2nd respondent would express deliberate lapse on the part of both agencies lending support to the applicant's case. Before making the allotment the lands were identified for requisition under Land Bank Scheme to respondents/allottees project proponents. Instead of proceeding further in making allotment of those lands, the present lands which are *Amrit Mahal Kaval* have been allotted. A report of the High Power Committee for Redressal of Regional Imbalances constituted by the Government of Karnataka had made its recommendations not to divert pristine and precious grasslands away from grazing pastures and thus denying thousands of pastoral families the benefit of securing the benefit of access to such pastures to sustain their livelihoods. But, in breach of the

same the present *Amrit Mahal Kaval* lands and *Gomal* lands have been diverted. The applicant has also pointed out that there are gross violations in siting each project of the project proponent. The applicant has concluded by stating that there has been blatant violation of law in promoting a variety of high risk, hazardous and mega projects in the ecologically sensitive *Amrit Mahal Kaval* grasslands ecosystems of Challakere which are deemed forests. In doing so, they have individually and collectively acted without any application of mind in so grouping such projects together in one location which are expressly in contravention of applicable norms and standards. They have not undertaken any prior assessment including Social Impact Assessment, neither consulted or taken the consent of the local Governmental Organizations and Committees prior to siting the projects in Challakere and also causing diversion of *Amrit Mahal Kavals*. The respondents have not come with clean hands on crucial facts and hence the application has got to be allowed granting the reliefs as prayed for.

181. Advancing the arguments on behalf of the applicant in Application No. 12 of 2013 (SZ), the learned counsel would submit that the applicant has filed this application aggrieved by the illegal and unlawful activities for carrying out the projects related act and illegal diversion and converted *Amrit Mahal Kaval* lands which are forest lands to the respondents/allottee project

proponents who have altered the characteristic of the unique ecosystems by converting the lands by putting up construction and commenced activities in all in violation of law. The learned counsel would submit that the grasslands are the important source of survival for millions of livestock and rural people as protector of soil and water and also the rare wildlife species and biodiversity conservation in general. The grasslands at Challakere are unique semi arid ecosystems supporting a variety of floral and faunal species, many of which are endangered and are endemic to the region. The grasslands are not waste land nor they are barren. According to the Planning Commission's report on grasslands as found in Annexure-35 of typed set of documents filed by the impleading respondents, the grasslands are considered to be most evolved species of plants. They also support rich and diverse variety of fauna. They are efficient in absorbing rain water and play vital role in water retention and hydrology of the area. The contention of the respondents/allottee project proponents that the grasslands are waste and barren lands because they do not have trees would indicate that they have not taken into consideration the importance and uniqueness of these critical and sensitive ecosystems. The grasslands are common lands of the community and the responsibility of none. They are most productive ecosystems in the subcontinent. They belong to all and are controlled by none and they have no godfathers. The grasslands ecosystems of Challakere are home to numerous plants, avian

and animal species. The protection of habitats of these species is mandated by law. It is pertinent to point out that the species that thrive in the grasslands ecosystems cannot survive in a wooded area or in an artificial environment. In the instant case, the lands in question have been protected by State Government by legislation and 1200 ha of these allotted in Varavukaval have been included in the list of deemed forest submitted to the Hon'ble Supreme Court of India in *T.N.Godavarman Thirumalpad Vs. Union of India and others in W.P.(C) .No. 202/1995*. The ecological importance of the grassland ecosystems has not been disputed by the respondents. The report of the Planning Commission has made it clear that the grasslands have to be protected as a wildlife habitat to protect some of the key grassland species that depend upon careful planning and management of these grasslands. Apart from providing habitat, shelter, food both to livestock and wildlife, the grasslands also serve as important catchment for rivers, streams, reservoirs, dams, check dams and village ponds. Hence, it becomes imperative to recognize the ecological, hydrological, economic and sociological role of grasslands as source of survival for millions of livestock and rural people. The grassland and desert are the only breeding grounds of a number of avian species whose nesting time is the monsoon. It is submitted by the respondents that the *Amirt Mahal Kaval* lands are semi arid lands. It can be seen from the report of the Planning Commission that rainfall at 455 mm as

shown in the FFC is a characteristic of semi arid grassland. Bustard species can be considered as indicators of grassland ecosystems and by conserving the bustards and their habitats, a large number of species that are dependent on the healthy grasslands can be protected. Keeping in view that these magnificent birds are now on the verge of extinction, there is an urgent need to launch Project Bustards and immediately provide all the necessary steps to ensure their survival.

182. Speaking on the biodiversity of the *Amirt Mahal Kaval*, it was submitted by the learned counsel for the applicant that the biodiversity of lands diverted has been brought out by the report of the IISc, the report of the FFC and by studies of independent researchers submitted by the applicants before the Tribunal. Annexure-A 19, the report of the IISc would clearly show that the area is rich in biodiversity and the subject lands are to be protected and preserved without destroying their character. The recommendation of the Centre for Ecological Studies Team has published a report. The report under the heading 'Blackbuck' states that it is found nowhere outside India and the Blackbuck cling to small pockets grasslands and scrubs still available to them. The same report under the heading 'Indian Fox and black naped 'hares' states that they are another grassland specialist of open semi arid area. Both the species were seen on the IISc campus, Bangalore till recently. The report is concluded by stating that even a short, preliminary and incomplete

biodiversity survey of the new campus revealed its extraordinarily rich vertebrate and plant species. It also adds that from the spectacular and highly endangered blackbuck to small mammal foxes and hares, from the rich diversities of raptors to tiny minivets and sunbirds and the large number of native plants species all point to rich, relatively undisturbed natural ecosystems. Many of the plant and animal species found there are specialist of arid scrub and grassland ecosystems that have essentially vanished from the Indian subcontinent. The report also noticed the contribution of the inhabitant villagers in protecting the grasslands and states that the land for those campuses has recently been taken over from the local people. The FFC appointed by Tribunal at page No.54 to 59 of its report has enlisted various flora and fauna in the region apart from grasses. Dr. N.M. Ganesh Babu, Senior Research Officer, FRLHT made his submissions to the Expert Committee (FFC) constituted by NGT pursuant to a meeting held by the Committee on 18th May 2013. He gave a note on the floristic diversity and ethno-botany of Chitradurga district as shown in Annexure-G of the FFC. The report of the Maitreya Institute of Environment and Rural Studies is filed as Annexure 18 in paper book II filed by the applicant. It is clear from all the materials placed that the biodiversity of *Amirt Mahal Kaval* lands and the presence of endangered species is beyond doubt. These healthy grasslands and ecosystems are fast vanishing from our country and have to be protected.

The respondents have not produced any evidence to refute the biodiversity of *Amirt Mahal Kaval* lands and the nature of these lands also. The residents of the villages around the *Kavals* are solely depending upon these lands for their livelihood and sustenance and in fact, their entire lives are intrinsically connected with the *Kavals*. The gods of these villages, temples and water sources are all located within these *Kavals*. The FFC has recorded that from the time of existence of villages close to and around the *Kaval* lands, the villagers (Below Poverty Line) were collecting firewood, wood for agricultural tools, sand and mud for construction work, fruits and other edible greens as food, medicinal plants, palm leaves for preparing baskets, mats and brooms and lime stone from these *Kaval* lands. Since Challakere is a predominant area for sheep rearing, the shepherds and the villagers who maintain sheep were using these *Kaval* lands for grazing the sheep. The cattle/buffalo/goat owners of the villages were also using these *Kaval* lands for grazing. During drought season, sheep/goats from villages located far away were also brought to this place for grazing. Shepherds maintained the sheep/goats in the *Kaval* land till such time the conditions improved in their place. Shepherds of the villages were observed to collect the wool from the sheep, reel and weave them into blankets. These blankets were sold in the market at Challakere, thus making their livelihood. Other than grazing by sheep/cattle, making blankets and collection of some of the above said products, the

communities were not dependent on these lands either for agriculture or for settlement. The learned counsel took the Tribunal to Page Nos. 18, 43 and 49 of the report of the FFC to substantiate his above contentions. Thus, the learned counsel concluded the submissions by stating that a direction has to be issued to maintain *Amirt Mahal Kaval* from making any diversion or encroachments by contesting respondents/allottee project proponents.

183. Elaborate deliberations were made by the he learned Advocate General Shri Ravi Verma Kumar, appearing for the State of Karnataka, also the learned Senior Advocate Shri Holla and other learned counsel appearing for contesting respondents on the above issues. In effect, they would submit that the contentions of the applicants that *Amirt Mahal Kaval* are unique ecosystem which needs to be protected and preserved as such, there are endangered species like Blackbucks, Great Indian Bustard, and lesser *Florican* and hence the lands cannot be allotted to the project proponents are not correct. The State should have allotted to the project proponents alternative lands instead of *Amirt Mahal Kaval* lands is thoroughly unacceptable. The contention that the Deputy Commissioner has not applied his mind in diverting *Amirt Mahal Kaval* lands to the project proponent has to be rejected, that there was no violation of Scheduled Tribe and other Forest Dwellers (Recognition of Forest Rights) Act, 2006 and section 3 of the Act. Equally, the BARC and IISc have not followed the mandatory siting

procedures and regulations framed by AERB since the DRDO land adjoins the BARC land and hence establishing them would be highly dangerous are totally unfounded. It cannot be correct on the part of the applicants to state that there was no necessity for all the projects to be setup in close proximity of each other and hence the contention putforth by the applicants in the above regard has got to be rejected. As per the census recorded in the year 2012, *Amirt Mahal Kaval* is not found in the villages located in the Kaval area. In so far as the characteristic of biodiversity is concerned, as per the studies conducted by the IISc, *Amirt Mahal Kaval* in Khudapura has rich vertebrate and plant species. Among vertebrates 6 species of amphibians, 14 species of lizards and 5 species of snakes have been listed. The IISc has listed about 80 species besides the occurrence of Black Bucks, Foxes and Hares. The FFC team has observed the presence of peacock, few species of birds and small herd. The local communities are depending on the grasslands for collecting firewood, fruits etc., and villagers are maintaining sheep and using the grassland for grazing the sheep. The *Kaval* lands are not useful for agriculture and settlement. The *Kaval* lands of Challakere have not been inhabited by human beings and there is nothing to indicate the human settlement there at any point of time. The learned counsel for the respondents putforth the importance of their respective projects from the national, social and larger public interest point of view and added that, in view

of the same all the contentions putforth by the applicants are either forceless or meritless and hence they have to be rejected.

184. It is not in controversy that the *Amirt Mahal Kaval* lands allotted to the respondents/allottee project proponents were originally allowed for breeding of *Amirt Mahal* Cattle. It is also admitted that they are *Gomal* lands which is meant for pasturage. Neither there is habitation nor any cultivation carried out in the allotted lands. In so far as the allotted lands are concerned, FFC has categorically stated that they are arid, undulating, rocky surface, open scrub, thorny bushes and isolated pocket of exposed sheet rocks and boulders. All would be indicative of the fact that the lands are also not cultivable. As per the census of 2012, there are 62 villages around *Amirt Mahal Kaval* lands in Challakere taluk. *Amirt Mahal* cattle are not found in the villages located around the *Kaval* areas. Thus it would be quite clear that the *Amirt Mahal Kaval* lands allotted to the respondents/project proponents are not being used for the purpose for which they were reserved in the past. But, in view of the available materials, it could not be disputed that the villagers who are rearing sheep are using the lands for the purpose of pasturage and collecting firewood etc., therefrom. It remains to be stated that there is possibility for generation of direct and indirect employment opportunities, infrastructural development such as roads, drinking water, education, medical, improving the economic opportunities of the villagers surrounding the area

and so on with the establishment of the above facilities. In so far as the grievance ventilated by the applicants that after the establishment of the projects by the project proponents the worship places, temples, celebrations of festivals like *Hiriyara, Habba, Ajjayngudi Jatire* etc., would not be accessible to the villagers, the respondents/allottee project proponents replied that they have undertaken not to prevent the villagers to celebrate the festivals at those places and entry would be provided on those days.

185. While the applicants have come forward with a case that enormous environmental degradation and alteration of the characteristic of the unique ecosystems has been thoroughly altered and thereby unlimited ecological damage has been caused by the illegal and unlawful activities of the respondents/allottee project proponents, the contesting respondents/allottee, on the contrary have not only denied the said case of the applicants, but also put forth their defence that the lands in question have been allotted to set up projects of strategic and national importance concerning with security of the nation and also for national development. Hence, it becomes necessary for the Tribunal to strike a balance between the two to find out a solution. It is not in controversy that the allotment of *Amirt Mahal Kaval* lands as specified above were made in favour of BARC, DRDO, ISRO, IISc, Sagitaur Ventures Pvt. Ltd., KSSIDC, and KSHB. The

respondent/BARC, a constituent of Department of Atomic Energy of Government of India which is engaged in the developmental activities related to nuclear science and technology towards achieving the objective of development of atomic energy was allotted 1410 acres of Government land at Ullarthikaval village for setting up the special material project.

186. Atomic energy is required to be provided for energy security to the country apart from meeting the social needs in the area of healthcare, food, agriculture, drinking water etc. The materials are placed by the BARC to indicate that it is conducting research in multi-discipline areas of atomic energy both from at front end and at the back end, fuel cycles, nuclear fusion, fission, radiological application, radio isotopes, nuclear agriculture, laser application, nuclear medicines, desalination and industrial application. It is pertinent to note that it plays a vital role in the strategic fields for providing security to the nation which is mostly needed in the present hour. Pursuant to a decision taken in the year 1982 by the Department of Atomic Engery to construct a Technological Development Project called 'rare materials project' as a unit of BARC, the unit was setup at Mysore for strategic technological development for upgrading the nuclear field. Since the Mysore project was successfully carried on for 3 decades, there arose the necessity to setup a large scale facility to meet the future requirement of upgrading fuel for use in

various applications of national importance for self defence. The setting up of the said Special Material Facility would boost the three States' power programme for increasing the power production substantially in future, which is an imminent necessity in view of the depletion of fossil fuel resources. It is fervently hoped that the Special Material Facility at Challakere on the allotted land would give the nation a strong technological foundation and place India on a strong footing on par with a few nations who have mastered the technology. Apart from that, the dependence of India on other countries to import upgraded fuel with conditions attached with would be either removed or reduced. No doubt, the execution of such strategically important projects would make the nation see progress in the field of science and technology.

187. The Hon'ble Apex Court had an occasion to consider the importance of nuclear energy in the following cases:

i. Fertiliser and Chemicals Travancore Ltd. Employees Association and others vs. Law Society of India and others reported in (2004) 4 SCC 420.

"8..... We have to strike a balance between existing utilities which exist in public interest on the one hand and human safety conditions on the other hand. It is not in dispute that such plants are needed for the

welfare of the society. In modern times we have nuclear plants which generate electricity. Their structural integrity and their operations are vulnerable to certain risks. However, generation of electricity is equally important and within the prescribed limits the society will have to tolerate existence of such plants....”

(ii).G. Sundarrajan vs. Union of India and others reported in (2013) 6 SCC 620.

“204. Power generation through a nuclear plant setup after following all safety standards, rules and regulations, is for the welfare of the people and for the economic growth of the country, which is the object and purpose of the Atomic Energy Act. Nuclear energy assumes as an important element in India's energy mix for sustaining economic growth of natural and domestic use which in future has to replace a significant part of fossil fuel like coal, oil, gas etc. Electricity is the heart and soul of modern life, a life meant not for the rich and famous alone but also for the poor and down trodden. They should also have

an adequate means of livelihood, job opportunities for which we have to set up industries and commercial undertakings in the public as well as private sector and also have to invite foreign investment. Generation of electricity is of extreme importance for their establishment and functioning and also for domestic consumption. Power generation with the traditional means, through hydro, thermal electric project, coal etc are not effective substitution to the power generation through Nuclear Plant. India has a mammoth population unlike developed countries, and the consumption of electricity in domestic, industries, agricultural sector etc. is going up day by day. Most of the States are in the grip of power cut; day and night for a number of hours, which has adverse effect on their economic and industrial growth. To sustain rapid economic growth, it is necessary to double the supply of energy. Energy tariff is also increasing, nuclear power in the long run will be much cheaper than other forms of energy.”

188. The respondent/DRDO, a national organization under the Ministry of Defence in whose control ADE is functioning was given an extent of 4,000 acres of land at Varavukaval for building Aeronautical Test Range and 290 acres of land at Khudapura *Kaval* for residential and other facilities. Materials are placed to show that it is assigned by the Government for the development activities in the field of aeronautics. It is the only agency in India which specializes in research related to UAV with requisite experience. The UAVs are very essential for defence in the country in view of their strategic importance. The uses of UAVs result in effective monitoring and also in avoiding lesser human casualties. It is also brought to the notice that the earlier allocation was made in Kolar for the research requirement and after the commencement of the Bangalore International Airport at Davanahalli, the present site was allotted to the ADE since the site originally allotted was falling within the landing and takeoff funnel of the Bangalore International Airport. This project of DRDO is shown as absolutely vital for the security of India especially in the light of terrorists' attacks in different parts of the world.

189. The respondent/IISc is allotted 1,500 acres of land in Khudapura taluk for establishing its research institutes. Materials are placed to show that the said premier research institute in the country has proved its academic excellence in research internationally. The institute has 3,400 students, half

of whom are working for doctoral degree and has a faculty strength of more than 500 reputed scientists of the country. The institute has the present campus at Bangalore which is insufficient to accommodate large number of students and research scholars. No research activities were possible having regard to the constraints of space. In view of the same, this respondent thought of setting up a second campus. The Union of India, in its budget for the year 2005 allotted Rs. 100 crores to the respondent/IISc for furthering research activities. On the eve of the completion of 100 years, the centenary was celebrated. On that occasion, the Hon'ble Chief Minister of Karnataka State offered to provide land to IISc and on inspection the present site was fixed and the State Government allotted the land to IISc on payment basis. In the new establishment, IISc intends to expand the climate research laboratory for which foreign funding has been approved for Rs 60 to 70 crores. The activities, no doubt, are absolutely vital for the nation building and in fact towards maintaining and enhancing ecological development. The institute has planned to establish the Semi Arid Research Centre for conducting research for the study of semi arid areas like the one in Challakere belt. The State Government is sponsoring the respondent/IISc to develop technology for rural development and aiming at addressing the problems of rural masses.

190. The respondent/ISRO is a Central Government owned premier organization in the area of space research and space development programmes. Though it has units in different places all over India, it has its headquarters at Bangalore. The ISRO Satellite Centre is responsible for design, fabrication and manufacture of various types of satellites. i.e., communication satellite, remote sensing satellite, and also satellite for special applications. The communication satellites made by ISRO has tremendously improved communication systems like mobile, telecommunication, satellite television, internet communication, telemedicines and also used for satellite distance education programme covering the entire country. Not only the cities, but also rural population have been benefited by communication and remote sensing satellite made by the respondent/ISRO. The satellites also meet the defence needs of the country for better security.

191. The respondent/Sagittaur Ventures Pvt. Ltd., was allotted 1,000 acres of land for solar power project to cater to the needs from a nationwide prospective. Wind and solar energy are omnipresent, freely available and environment friendly. The wind energy system may not be technically viable at all sites because of low wind speeds and being more unpredictable than solar energy. The combined utilization of these renewable energy sources is

therefore, becoming increasingly attractive and is being widely used as an alternative for oil produced energy. When compared to other sources of energy, solar energy is one of the most environmental friendly sources of energy and it is a non-polluting technology, i.e., it does not release green house gases. It is a noiseless technology as there are no moving parts involved in energy generation. Solar energy is most viable and alternative for providing electricity. The solar power provides energy reliability, energy security and energy independence. Solar energy reduces global warming and reduces the emission of green house gases. Solar energy reduces dependence on fossil fuel thus curbing price volatility. Since, solar power generation does not rely on mining raw materials it does not result in the destruction of ecology and environment that occurs with many fossil fuel operations. It has minimal environmental impact in land use, human health and well being, wildlife and habitat and climate and green house gases. While the supply of energy is unable to keep pace with the steep demand, coal becoming more difficult to obtain, sources of domestic gas are shrinking, there is more focus on renewable energy which would help in adding up energy security.

192. Equally, the respondent/KSSIDC was allotted 250 acres in Ullarthikaval village and 50 acres in Khudapur village for the service of micro

and small scale industries in the State of Karnataka. These units to be established on the allotted sites would also cater to the needs of other projects to be established nearby.

193. The respondent/KSHB functioning under the Karnataka State Housing Board Act, 1962, a statutory body was allotted 50 acres of land in Challakere taluk of Chitradurga district for implementing housing scheme, though sought for allotment of 400 acres of land in Kudhapura village on cost basis. Pursuant to allotment order with a condition that the land should be utilized within one year therefrom and if not done it would lapse, took possession of the land, formed lay out, construction of building, drainage, electricity, water, metal roads etc. The respondent/KSHB issued work order to complete the works for a sum of Rs. 11.23 lakh. The learned counsel placed necessary materials, drawings etc., to show that the land is situate abutting State Highway 45 in Kudhapura village which is adjacent to the village on the outskirts of Kudhapura and Gowripura and connecting both the villages. Since the scheme is implemented in area of less than 50 acres, there was no need to obtain environmental clearance and hence it was not obtained. The KSHB has taken the land with a view to make allotments to help the weaker sections of society. It is brought to the notice of the Tribunal that after calling for tenders, the entire extent of allotted land plotted out has been given to the

respective allottees both Government staff and other and the work order has been given to the contractor to complete the work.

194. It would be apt and appropriate to cite the following decisions of the Hon'ble Supreme Court of India on the concept of 'sustainable development' which would equally apply in the present case.

G. Sundarrajan vs. Union of India and others reported in (2013) 6 SCC 620.

"238. defines "sustainable development" as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and tradeoffs." I have already discussed about the signification of the safety needed in respect of nuclear plants. Generation of nuclear energy is a necessity in a progressive modern State. As has been stated earlier, there is an enactment and notifications governing the field in various aspects. A policy decision has been taken to establish the nuclear plant

at Kudankulam. Promotion of development and protection of environment are to be harmonized at the same time.

238.1. In *Intellectuals Forum, Tirupathi v. State of A.P. and others*, it has been held that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What is required to be prescribed is the principle of sustainable development and find a balance between the developmental needs and the environmental degradation.

238.2. In *Bombay Dying & Mfg.Co. Ltd. (3) v. Bombay Environmental Action Group and others*, while dealing with the concept of sustainable development and planned development vis-à-vis Article 21 of the Constitution, a two-Judge Bench has opined thus: -

"251. It is often felt that in the process of encouraging development the environment gets sidelined.

However, with major threats to the environment, such

as climate change, depletion of natural resources, the eutrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put is a process in which development can be sustained over generations. Brundtland Report defines "sustainable development" as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and tradeoffs."

238.3. In M.C. Mehta v. Union of India and others, while stating about sustainable development and the

needs of the present without compromising the ability of the future generation to meet their own needs, this Court has expressed thus: -

"46. The definition of "sustainable development" which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In Narmada Bachao Andolan v. Union of India, this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. [See Chairman Barton: The Status of the Precautionary Principle in Australia (Vol. 22, 1998, Harv. Env'tt. Law Review, p. 509 at p. 549-A) as referred to in para 28 in A.P. Pollution Control Board v. Prof. M.V. Nayudu.]

238. 4. In Tirupur Dyeing Factory Owners Association v.

Noyyal River Ayacutdars Protection Association and others, while dealing with the concept of sustainable development, the Court has observed as under: -

"The concept of "sustainable development" has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore, cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the

economic interest. A similar view has been reiterated by this Court in T.N. Godavarman Thirumulpad (104) v. Union of India" and M.C. Mehta v. Union of India."

238.5. In *T.N. Godavarman Thirumalpad (through K.M. Chinnappa) v. Union of India and others*, this Court observed that it cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.

238.6. In *Narmada Bachao Andolan v. Union of India and others*, a three-Judge Bench, while dealing with the public projects and policies, has opined that the court

does not become the approving authority of such policies. Thereafter, the Bench observed thus: -

"Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government."

195. In the aforesaid background, the Tribunal has to apply the cardinal principle of sustainable development and find a balance between development needs and environmental degradation.

196. Needless to say that the principle ingrained in the Doctrine of Sustainable Development is that if a project is beneficial for the larger public, the inconvenience caused to a smaller number is to be accepted. It was to be accepted as a proposition of law that the individual interest for that matter for smaller public interest must yield to larger public interest. Inconvenience of the same should be by-passed for a larger interest or cause of the society. As noticed above, no doubt, the activities of the respondents in the sites allotted to them would certainly cause inconvenience or hardship to the villagers around those *Kaval* lands. At this juncture, it is pertinent to point out

that the lands are not being cultivated nor cultivable and there are no habitations also in the entire extent of 9,300 acres. The allotted land forms only a part of the total area of *Kaval* lands in Chitradurga district, while remaining parts are kept very well available. The applicants were able to show the existence of endangered species and habitats. As pointed above, the lands were originally reserved for *Amrit Mahal* breed for the purpose of grazing. It is also admitted by the applicants that the *Amrit Mahal* breeds are low in number in all the villages around the *Kaval* lands in question. They ventilated the grievance of villagers who were rearing sheep and collecting firewood etc., from the *Kaval* lands in question. It should not be forgotten that the no one of the villagers inhabits in the *Kaval* lands in question, but they are residing around the *Kaval* lands. Hence, there cannot be any impediment or hindrance for them to carry on the same activities in the remaining *Kaval* lands which are available. In so far as the religious and sentimental issues are concerned, the respondents/allottee project proponents have undertaken to permit them to carry on the festivals and ceremonies as per schedule every year.

197. Admittedly, the entire taluk of Chalakere where the total area of 9,000 acres of land is situate in a drought prone area and also the same has been declared as an arid zone. Scarcity of water exists at present. As pointed

out by the project proponents when the projects are set up in this area, necessary arrangements to make provisions for supply of water from Vani Vilas Sagar Dam would be made. As narrated above, when all the projects are established they would certainly provide employment opportunities which would in turn lead to increase in their economic opportunities and conditions and raise their standard of living. The FFC has categorically pointed out that the establishment of the education, research and commercial organizations is likely to increase the opportunities of the people below poverty line and others in the surrounding villages to improve their standard of living. The Experts have indicated that there are chances of opportunities for both unskilled and skilled labour and the same would lead to the improvements in the livelihood conditions of the local people. It has also been pointed out that with the increase in population, the demand for vegetables, groceries, milk, meat and other local resources would increase. This would directly lead to the better economic opportunities of a number of villagers around the *Kaval* lands. This would be in addition to the job opportunities provided by the organizations. When the projects are set up, it would minimize the migration of local population since it is likely to generate enough employment opportunities to all categories of people. As per the information of the KSSIDC, its projects are likely to generate considerable employment opportunities to the villagers. While applying the concept of the benefits of

the projects, all the above benefits that would be available to all village population including educated, uneducated, skilled and unskilled are to be borne in mind. Above all, the paramount importance is the strategic and national importance and also larger interests of public of the projects as narrated above. The following decision would apply to the present subject matter:

(i) *T.N.Godavarman Thirumapad vs. Union of India and others reported in (2002) 10 SCC 606:*

“25. Progress and pollution go together. As this Court observed in M.C. Mehta v. Union of India (1986) 2 SCC 176, when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk of danger to the

community and maximizing safety requirements. As observed in the United Nations Conference held at Stockholm in June 1972, economic and social development was essential for ensuring a favourable living and working environment for man and for creating conditions on earth that were necessary for the improvement of the quality of life.”

“35. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where commercial venture or enterprise would bring in results which are far more useful for the people, the difficulty of a smaller number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a

larger section of the people has to get primacy over comparatively lesser hardship.”

(ii) *N.D. Dayal v. Union of India (2004) 9 SCC 366:*

“25. Therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to ‘sustainable development’ cannot be singled out. Therefore, the concept of ‘sustainable development’ is to be treated as an integral part of ‘life’ under Article 21. Weighty concepts like intergenerational equity (State of H.P v. Ganesh Wood Products (1995) 6 SCC 363), Public Trust Doctrine (M.C, Mehta v. Kamal Nath (1997) 1 SCC 388) and precautionary principle (Vellore Citizens Welfare Forum v. Union of India (1996) 5 SCC 647) which are declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.”

(iii) Lafarge Umiam Mining Private Ltd., v. Union of India and others (2011) 7 SCC 338:

“75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of ‘sustainable development’. It is equally well settled by the decision of this Court in Narmada Bachao Andolan v. Union of India (2000) 10 SCC 664 that environment has different facets and care of environment is an ongoing process. These concepts rule out the formulation of an across the board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring ‘no go’ areas (whose identification would again depend on undertaking of a due diligence exercise). In such cases, the margin of

appreciation doctrine would apply.

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

119. The time has come for us to apply the constitutional ‘doctrine of proportionality’ to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment

and its natural resources has to be in a way that it is inconsistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of 'margin of appreciation' in favour of the decision-maker would come into play. Our

above is further strengthened by the decision of the Court of Appeal in R. v. Chester City Council reported in paras 14 to 16 (2011)1 All E 476).”

198. It cannot be disputed that the applicants as narrated above, have placed materials to show the necessity for preservation of *Amrit Mahal Kaval* lands and to maintain the grassland ecosystems. But the allotments were made to contesting respondents/allottees project proponents for the purposes of their respective projects which are of national importance are useful from the larger public interest point of view. Hence, applying the concept sustainable development as enunciated by the Hon'ble Apex Court, in the above decisions, the proposed activities of the project proponents in the lands allotted to them cannot be interfered with by the Tribunal and at the same time it becomes necessary to preserve and maintain the remaining lands of *Amrit Mahal Kaval* with requisite direction as given infra.

199. As stated above, it becomes necessary to issue directions to the Government of Karnataka to preserve and maintain the remaining area of *Amrit Mahal Kaval* lands in Chitradurga district without any diversion, thereby enabling the villagers around the *Kaval* lands to use the same as they have been used by them in the past.

200. Prof. Ben Boyer, Environmental Law, Faculty of Law, University of

Sydney, Australia in his article "Implementing Sustainability" observes as follows:

"Sustainability is defined in 'caring for earth' as a 'characteristic or state' that can be maintained indefinitely whilst development is defined as increasing the capacity to meet the human needs and improve the quality of human life. What this seems to mean is to increase the efficiency of the resource use in order to improve human living."

201. It is pertinent to note that the subject matter of the present applications is concerned with the existing grassland ecosystems and the proposal to establish a variety of industrial/research organizations in lands that form a part of the ecosystems. In this context the concept of 'anthropocentric and eco centric' developmental models as discussed in *Centre for Environmental Law, WWF-I vs. Union of India and Ors in Hon'ble Supreme Court of India reported in Manu/SC/0373/2013* is extracted below:

"38. We may point out that there have been wide ranging discussions and deliberations on the international platform and conferences for re-building of certain principles laid down in the earlier

conventions on the Principles of Sustainable Development. The United Nations Commission on Environment and Development defined the 'sustainable development' as follows:

“Sustainable Development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (World Commission on Economic Development (WCED), 1987:43”.

39. Sustainable Development, it has been argued by various eminent environmentalists, clearly postulates an anthropocentric bias, least concerned with the rights of other species which live on this earth. Anthropocentrism is always human interest focused thinking that non-human has only instrumental value of humans, in other words, humans take precedence and human responsibilities to non-human are based on benefits to humans. Eco-centrism is nature-centered, where humans are part of nature and non-humans have intrinsic value. In other words, human interest

does not take automatic precedence and humans have obligations to non-humans independently of human interest. Eco-centrism is, therefore, life-centred, nature-centred where nature includes both humans and non-humans.”

“63. We are also inclined to highlight the necessity of an exclusive parliamentary legislation for the preservation and protection of endangered species so as to carry out the recovery programmes before many of the species become extinct and to give the following directions:

(a) NWAP (2002-2016) has already identified species like the Great Indian Bustard, Bengal Florican, Dugong, the Manipur Brow Antlered Deer, over and above Asiatic Lion and Wild Buffalow as endangered species and hence we are, therefore, inclined to give a direction to the Government of India and the MoEF to take urgent steps for the preservation of those

endangered species as well as to initiate recovery programmes.

(b) The Government of India and the MoEF are directed to identify, as already highlighted by NWAP, all endangered species of flora and fauna, study their needs and survey their environs and habitats to establish the current level of security and the nature of threats. They should also conduct periodic reviews of flora and fauna species status, and correlate the same with IUCN Red Data List every three years.”

202. There is no controversy with regard to the fact that the *Amrit Mahal Kaval* lands in question are a part of fragile and eco-sensitive grassland ecosystems facing both ecological and anthropogenic pressures. Man, as a species, is undoubtedly a part of a wider canvass of nature's scheme of structures and functions and as such has the responsibility and duty of protecting and preserving all other ecological systems that provide resources for human welfare. *Amrit Mahal Kaval* lands are no exception to this for more reasons than one. Apart from being representative of fast vanishing terrestrial ecosystems, the *Kavals* are also known to be the abode of endangered fauna including Black Buck (*Antelope cervicapra*), Great

Indian Bustard (*Ardeotis nigiriceps*) and Lesser Florican (*Sypheotides indicus*). No doubt, the concerned agencies of the Government of Karnataka are initiating steps to preserve and conserve these endangered species of animals. However, the attempts and initiatives have been sketchy and patchy. In view of the fact that these *Kaval* lands are shrinking and only a small extent remains as *Amrit Mahal Kaval* after the allotment to the respondent/allottee Project proponents at this point in time, the Government of Karnataka is directed to firm up and finalize the action plan for the protection and conservation of the said endangered species and initiate time bound execution of the plan forthwith. In this exercise, the Government of Karnataka is also directed to ensure proper and timely coordination amongst the concerned departments and agencies to achieve the planned objectives.

203. Advancing the arguments on this issue, the applicants would submit that at the time of filing these applications, none of the respondents/allottee project proponents have obtained permission from any regulatory authority. The applicants have filed Annexure A-8 to A-14 to show that notices were issued by the KSPCB for carrying on the activities without EC or CFE from KSPCB under the relevant acts. Pointing to the provisions of the Water Act, 1974 and Air Act, 1981, the applicants would submit that it is mandatory on the part of the respondents/allottee project proponents to

obtain consent under these enactments from the KSPCB and without previous consent no person shall establish and operate any industrial plant, three of the respondents/allottee project proponents have applied and obtained consent for establishment during the pendency of the proceedings and such a conduct is violation of law.

204. In answer to this, it is replied by the learned counsel appearing for the respondents/allottee project proponents and also the KSPCB that applications for consent for establishment were made and the KSPCB after following procedural formalities has given consent for establishment. Despite the same, none of the respondents/allottees project proponents even applied for such clearance. Pending the proceedings, the DRDO, Sagitaur Ventures Pvt. Ltd., and KSHB have obtained consent for establishment from KSPCB. But, these consent orders were issued conditionally that necessary forest clearance should be obtained if the lands are in forest. The applicants also brought to the notice of the Tribunal about the constructional activities hitherto done by the respondents/allottee project proponents.

205. In answer to the above, it is contended by the learned counsel appearing for the respondents/BARC, DRDO and IISc that they are responsible organizations of the Government of India and they would not commence the projects without required approval. He would further add that

the respondents have already obtained the approval or in the process of obtaining them. The answer given by these respondents will not satisfy the law. The law mandates that without obtaining the prior environmental clearance and prior consent for establishment, the project proponents should not commence any activity connected to and concerned with the establishment of the project. The respondent/BARC has stated in its reply affidavit that the major constructional activities at the site would be carried out after obtaining necessary clearance from MoEF and KSPCB which would be indicative of the fact that necessary clearances have not yet been obtained. In so far as the respondent/ISRO is concerned, it has been categorically stated in the reply affidavit that ISRO is yet to finalize the master plan of the campus, i.e., the facilities to be located in the proposed campus. ISRO will take necessary clearances from MoEF and consent from KSPCB for the establishment before commencement of constructional activity as already informed to the KSPCB. This would indicate that the ISRO did not get any clearance from the above regulatory authorities. It is made clear that both BARC and ISRO shall proceed with the activities either constructional or otherwise on establishment of respective projects, only after obtaining environmental clearance from MoEF and consent for establishment from KSPCB.

206. In so far as the respondent/DRDO is concerned, since this respondent does not have bunkering and refuelling facilities, there is no necessity for clearance from MoEF. Hence, in view of the same, it would be clear that environmental clearance is not necessarily to be obtained from MoEF. However, the DRDO has admitted that it has not obtained consent for establishment from KSPCB without which it shall not do any of its activities either constructional or otherwise connected to and concerned with its project.

207. It is also well admitted by the respondent/IISc in its statement that it would obtain necessary approval and clearance as required by the concerned authorities before commencing the project. It is made clear that the IISc shall not do any of the activities either constructional or otherwise connected to and concerned with the project without obtaining necessary approval and clearance as required in law from the authorities.

208. In so far as respondent/Sagitar Ventures Pvt. Ltd., is concerned, it is submitted by the learned counsel that the solar power projects do not require environmental clearance from the MoEF since solar power projects are not covered by EIA Notification, 2006 and no necessity arises to obtain environmental clearance from MoEF. Pending proceedings, this respondent has obtained consent for establishment from KSPCB.

209. As regards the respondent/KSHB, it was allotted only 50 acres of

lands which is below 50 ha and there was no necessity to obtained environmental clearance. But, the KSHB has filed an affidavit stating that it has obtained consent for establishment from KSPCB.

210. In so far as the respondent/KSSIDC is concerned, the state has allotted 300 acres of land which was taken possession for the purpose of developing the land for establishing small scale industrial units. But, it has not stated whether it is going to allot only the plots to the small scale industrials or after raising necessary constructions. If it is necessary to obtain environmental clearance and obtain consent for establishment from KSPCB, the same should be obtained. It is also made clear that the KSSIDC shall not commence or carry out any constructional or other activities connected to and concerned with the project till then.

211. In so far as the other respondents/allottees are concerned, who require consent for establishment under the provisions of the above enactments are restrained from carrying out any activities either constructional or otherwise without obtaining previous consent for establishment from KSPCB.

212. On the side of the applicants and also the respondents supporting the case of the applicants it has been submitted that a Committee has been constituted by the Government of Karnataka for distributing Amrit Mahal

Kaval lands in future. At the time of arguments, a statement was made by the learned counsel for the State of Karnataka that the State Government has no such intention to do so. However, in appraisal of the facts and circumstances stated above, the Government of Karnataka is restrained from making any further allotment in *Amrit Mahal Kaval* lands in Chitradurga district to any one on any reason or for any purpose.

213. Thus, in view of the discussions made and by applying the Doctrine of Sustainable Development, it is held that the respondents/allottee Project proponents are not to be restrained from carrying on their proposed projects in view of the allegations made by the applicants that the proposed project, if allowed would cause environmental degradation and ecological imbalance. But, the respondents/allottee Project proponents shall carry on their further activities in respect of the proposed projects subject to the directions issued by the Tribunal and only after obtaining necessary Environmental Clearance and Consent for Establishment as the case may from the authorities as stated infra.

The point Nos. 2, 3, 4 and 5 are decided accordingly.

214. Point No. 6: To what relief the applicants are entitled to?

In so far as the other reliefs sought for by the applicants, it is held that they are premature and the applicants are given liberty to raise the

contentions both legal and factual at necessary stage at appropriate forum and when warranted. Both MoEF and KSPCB are directed to strictly comply with the observations and also the directions given to them at the time of grant of Environmental Clearance and or Consent for Establishment as the case may be.

215. In addition to directions given under different heads at appropriate sections of the judgment, we give the following “Specific” directions to the MoEF, KSPCB and the Allottee Project Proponents:

1. At the time of granting EC or CFE to the Project Proponents who have been allotted sites in the land in question, the MoEF and/or KSPCB as the case may be, are directed to take strict note of the observations and comments made in this judgment regarding several environmental issues and concerns raised by the applicants and include verifiable and measurable “conditions” regarding the same to be complied in full, at all stages, by the project proponents.

2. Citing an Office Memorandum issued by the MoEF, M/s. Sagitaur Ventures India Pvt. Limited, the 14th Respondent in Application no. 6 of 2013, claims that it need not obtain EC from the MoEF. We are of the considered view that the Solar thermal power technology is still at its infancy. Its impacts on environment are being investigated in many research institutes across the

globe and newer and newer information on this aspect in emerging. In fact, the applicant placed before the tribunal a few of the recent literature on this aspect and took us through the significant findings in this regard. Keeping these and the averments made by the applicant on the subject in mind and also guided by the “Precautionary Principle”- one of the legs of the concept of “Sustainable Development”, we direct the MoEF to revisit the exemption order with regard to EC given to M/s. Sagitaur Ventures India Pvt. Limited and pass suitable orders in the light of recent research findings and other relevant materials available.

3. We direct the KSPCB to issue the Consent to Establish to M/s. Sagitaur Ventures India Pvt. Limited only after satisfying itself with the compliance of all items listed in the Office Memorandum No. J-11013/41/2006-IA.II (1) dated 30th June, 2011 issued by the MoEF.

4. The KSSIDC and the IISc are directed to permit the villagers to offer pooja, celebrate festivals and conduct traditional rituals on concerned days at the temples located in the sites allotted to them in the land under question, during and even after their establishment and subsequent operation.

5. The BARC is directed to shift the temporary fence abutting the mud road near the south western corner of their land suitably and open up a passage to the villagers to enable them to reach their respective agricultural

lands and also Kaluvehalli village.

6. The BARC and IISc are directed to evolve and implement a joint action to plan to enable free movement of villagers from Khudapura to Old Sheep farm through their respective premises.

7. The ISRO is directed to provide water to the villagers of Ullarti village through the borewells located in the site allotted to them, on a continuous basis i.e., during the establishment and operating phases of the organization.

216. The applications are disposed of accordingly.

217. The Miscellaneous Applications, if any, pending are closed.

No cost.

(Justice M. Chockalingam)

Judicial Member

(Prof.Dr. R. Nagendran)

Exeprt Member

Chennai,

Dated, 27th August, 2014.