

AFR

Court No. - 40

Case :- WRIT - C No. - 15691 of 2020

Petitioner :- Ram Bhajan Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Prabhat Kumar Singh, Anil Kumar Tiwari

Counsel for Respondent :- C.S.C., Brijesh Kumar Mishra

Hon'ble Abhinava Upadhyaya, J.

Hon'ble Prakash Padia, J.

Per Hon'ble Prakash Padia, J.

1. Heard Sri Prabhat Kumar Singh, learned counsel for the petitioner and learned Standing Counsel for the State respondents.
2. The present writ petition has been filed challenging the action of the respondents for conversion of public park, situated in front of the house of the petitioner, i.e., House No. C-92, Sector 11, Vijay Nagar, Ghaziabad, into public parking area, which according to the petitioner is totally illegal and not permissible under law.
3. Learned Standing Counsel was earlier granted time to seek instructions by an order dated 07.10.2020 and upon written instructions, furnished by the District Magistrate, Ghaziabad, he submits that the status of the park in question has not been changed neither the public park is going to be converted into parking area.
4. In the Uttar Pradesh Parks, Play-grounds and Open Spaces (Preservation and Regulation) Act, 1975 (for short, 'U.P. Act 1975') the word 'Park' is defined as a piece of land on which there are no buildings or of which not more than 1 / 20th part is covered with buildings and the whole or the remainder of which is laid out as gardens with trees, plant or flower beds or as a lawn or as meadows and maintained as a place for the resort of the public for recreation, air or light. Though this definition in view of Section 2 of the 1975 Act, shall apply only to the areas included in every Nagar

Mahapalika, every Municipality or Notified Area and every Town Area and to such other areas to which it is extended by the State Government by notification in the Gazette, there will be no violation of law if we resort to this definition to the case in hand. No doubt, the definition given in a particular enactment cannot be read down into another enactment. But this rule is not invariable, since the word 'park' is used conceptually and contextually in the 1973 Act, namely, U.P. Urban Planning and Development Act, 1973, the same way as it is used in the 1975 Act, defining the term 'park, the same may be extended to 1973 Act, also. Parks owned and maintained by Nagar Mahapalika, Notified Area or Town Area are no more different from the parks belonging to the Development Authority which is nothing but a local authority constituted under the Act of 1973. A park must have considerable area covered by garden with trees, plants or flower beds or lawn, and should have been maintained as a place for the resort of the public for recreation, air or light. Wholly undeveloped open space can never be said to have the characteristic of a park. A park must have a beautiful garden with a lot of trees on its periphery to preserve and protect the environment and from aesthetic point of view, it must have beautiful plants or flower beds and well maintained lawns.

5. So far as preservation and maintenance of Park is concerned, there is no doubt that Authorities are bound to preserve and maintain Public Parks and to ensure that there should not be any encroachment, collection of garbage etc. There should be nothing that may hinder the use of place as Park by public at large. This is applicable not only for Public Parks but Playgrounds and Open Spaces also.

6. Uttar Pradesh legislature has taken care of these places vide the U.P. Act, 1975 which received assent of the President on

28.10.1975 and published in U.P. Gazette, (Extraordinary) on 28.10.1975.

7. "Public Parks", "Playgrounds" and "Open Spaces" are defined in U.P. Act, 1975 in Section 2 (a), (b) and (c) of U.P. Act, 1975, which read as under :-

"2(a) "open space" means any land (whether enclosed or not), belonging to the State Government or any local authority, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and whole or the remainder of which is used for purposes of recreation, air or light;

(b) "park" means a piece of land on which there are no buildings or of which not more than one-twentieth part is covered with or buildings, and the whole or the remainder of which is laid out as a garden with trees, plants or flower-beds or as a lawn or as a meadow and maintained as a place for the resort of the public for recreation, air or light;

(c) "playground" means a piece of land adapted for the purpose of play, game or sport and used by any educational institution or club or other association;"

8. Section 3 of U.P. Act, 1975 requires maintenance of list with plans and maps of all Parks, Playgrounds and Open Spaces in such areas, prepared and published by such Authorities within such time and in such a manner as may be prescribed and variation in the list is permitted by Sections 4 and 5 of U.P. Act, 1975 respectively. Then, nature of statutory obligation, with regard to preservation and regulation of Parks, Playgrounds and Open Space are provided.

9. Sections 5, 6, 7 and 8 of U.P. Act, 1975, read as under :-

"5. Variation or revocation of list - (1) *The State Government may at any time, either suo motu, or at the instance of a local authority, or of any person interested, add to, vary or revoke a list approved under*

Section 3 or revised under Section 4.

(2) Before making any such addition, variation or revocation, the State Government shall publish, in the prescribed manner, a draft of such addition, variation or revocation together with a notice specifying a date on or after which such draft will be taken into consideration and shall consider such objections and suggestions as may be received in respect of such draft before the date so specified.

6. Prohibition of the use of parks, play grounds and open spaces in certain cases.- *No park, playground or open space, specified in the list published under Section 3 or Section 4, as the case may be, shall except with the previous sanction of the prescribed authority, be used for any purpose other than the purpose for which it was used on the date immediately preceding, the date of commencement of this Act.*

7. Maintenance of parks, playground and open spaces.- *The local authority shall maintain in a clean and proper condition all parks, playgrounds and open spaces belonging to or vested in it and included in the list published under Section 3 or Section 4.*

8. Prohibition of construction of buildings, etc.- *No person shall, except with the previous sanction of the prescribed authority, construct any building or put up any structure likely to affect the utility of the park, playground or open space specified in the list published under Section 3 or Section 4."*

10. The owner of Parks, Playgrounds and Open Spaces etc., whether it is Local Authority or others but included in the list of Parks etc., has to perform such statutory duties which can be enforced by Prescribed Authority in the manner as provided in Section 9 of U.P. Act, 1975.

11. If there is any entry or stay of any unauthorized person in Park, Authority, as prescribed in Rules, it is obliged to remove such person from such Park, Playground and Open Space etc taking help of the Police Force or any other persons on behalf of State Government or Local Body, as the case may be.

12. Throwing of rubbish etc. in Parks, Playgrounds and Open Spaces is an offence, for which penalty is prescribed under Section 12 of U.P. Act, 1975, which is imprisonment for a term which may extend upto one month or with fine or with both.

13. Section 14 of U.P. Act, 1975 confers power upon State Government to frame Rules in pursuance where to "The Uttar Pradesh Parks, Playgrounds and Open Spaces (Regulation and Control) Rules, 2005 (hereinafter referred to as 'Rules, 2005') have been framed. "Prescribed Authority" has been defined in Rule 2 (c) of Rules, 2005, which reads as under :-

"prescribed authority' means an officer or a body corporate appointed by the State Government in this behalf by notification in the Gazette and if no such officer or body corporate is appointed, the Commissioner Division, in which the Corporation or the District Magistrate of the district in which the Municipal Board or the Nagar Panchayat is situated."

14. Rules, 2005 by virtue of Rules 1(2) are applicable to every Municipal Corporation, Municipal Board, Nagar Panchayat in State of U.P. and such other areas as State Government may, from time to time, by notification in Gazette specify. Rule 7 of Rules, 2005 describes various prohibitions in respect of Parks, Playgrounds and Open Spaces and it reads as under :-

*"7. **Prohibition** - (1) No person shall except with the written permission of Prescribed Authority or any officer authorised in this behalf setup any wall, fence, rail, post, step, booth or other structure whether fixed or movable and whether of a permanent or a temporary nature, or any fixture in or upon any park, playground and open spaces so as to form an obstruction to, or an encroachment upon or to occupy any portion of such park, playground and open space.*

(2) No person, owner, manager or agent shall except with the

permission of local body or any officer authorised in this behalf shall be allowed to enter any any class of animal to any park, playground or open space.

(3) No park, playground or open space specified in the list approved by Prescribed Authority under rule 5 shall except with the written permission of Prescribed Authority or any officer authorized by it in this behalf, be used for any purpose other than the purpose for which it has been made for.

(4) No person shall be allowed to affect the utility of the parks, playgrounds or open spaces specified in the approved list.

(5) No person shall throw rubbish, stack debris, get over railing or fence, steal or damage fruits, flowers, leaves, plants, grass, fixtures, tools or illegal and immoral conduct."

15. Rule 8 of Rules, 2005 lays down obligation upon Local Authority to maintain all Parks, Playgrounds or Open Spaces in a clean, proper and satisfactory condition. Clauses (a) and (b) of Rule 8 of Rules, 2005, describe various maintenance works to be observed in respect of Parks, Playgrounds and Open Spaces, and it reads as under :-

"8. Maintenance of Park, Playground of Open Spaces. - (1) The local body concerned shall maintain all parks, playgrounds or open spaces belonging to or vested in it and included in the list approved and published under rule 5 in a clean, proper and satisfactory condition.

(2) The parks, playgrounds or open spaces developed by Development authorities, housing boards, housing societies, builders and such other agencies, but not handed over to local body, shall be maintained by them in a clean, properly and to the satisfaction of the local body concerned.

(3) In case of parks, playgrounds or open spaces not vested in a local authority, but included in the list published under rule 5, the Prescribed Authority, may, by notice, require the owner or occupier

of such parks; playgrounds or open spaces -

(a) to maintain such parks, playgrounds or open spaces in a clean and proper condition; or

(b) to remove or alter any projection, encroachment or obstruction in or over in such park, playground or open space or to make within a period specified in the notice such repairs to any buildings in such park playground or open space as Prescribed Authority may consider necessary."

16. Rule 10 of Rules, 2005 talks of removal of encroachment, which reads as under :-

"(10) Removal of Encroachments.- The prescribed authority or any officer authorised by it in this behalf may without notice cause to be removed any wall, fence, railing, post, step, booth or other structures whether fixed or movable and whether of permanent or of temporary nature or any fixture which is erected or setup in or upon any park, playground or open space."

17. Thus, maintenance of Parks, Playgrounds and Open Spaces is a statutory obligation. The same have to be maintained without any encroachment and without the presence of any unauthorized persons therein and in clean and proper manner. Penal provisions are available in statute and also provisions for enforcement of various duties in respect of Parks, Playgrounds and Open Spaces etc.

18. Under Article 48-A of the Constitution, the State is obliged to endeavour, protect and improve the environment of the country. To effectuate the directive principles there has been a spate of legislation aiming at preservation and protection of the environment. The respondents having failed to develop the spaces earmarked for Parks for several years and have thus belied all the cherished hopes of the citizens. The underlying idea behind the constitution of the Development Authorities were to accelerate the

pace of development and make the town in the State as attractive as possible. It is unfortunate that the respondents sat tight over the development of the Parks and remained absolutely inactive for years.

19. Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.

20. Article 51-A clause (g) in Part IV-A introduced by the Constitution (42nd Amendment) Act, 1976, with effect from 3rd January, 1977, enshrined as a fundamental duty and mandates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The last clause (j) of Article 51-A of the Constitution further mandates that it shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. It is lamentable that the respondents being a State instrumentality have failed to discharge both the fundamental duties. Unless an open space is developed into a full-fledged park having gardens trees, flower beds, plants, lawn, promenade etc., the environment will not improve and therefore the functionaries of the Development Authorities have remained grossly negligent in discharging their fundamental duty enjoined upon them by clause (g) to Article 51-A of the Constitution. Equally they have failed to discharge their duties enshrined under Article 51A(j). If the functionaries of the State show their averseness to the developmental activities, which are assigned to them, then the nation can never grow to the cherished heights. An ornamental park with well manicured lawns is not only a source of comfort to the public, but adds to the beauty

of a town, as jewellery studded with pearls or diamonds add to the beauty of the person who wears it. The relevant portion of Article 51-A of the Constitution of India is quoted below:-

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

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

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.”

21. Public interest requires some areas to be preserved by means of open spaces of parks and play grounds, and that there cannot be any change or action contrary to legislative intent, as that would be an abuse of statutory powers vested in the authorities. Once the area had been reserved, authorities are bound to take steps to preserve it in that method and manner only. These spaces are meant for the common man, and there is a duty cast upon the authorities to preserve such spaces. Such matters are of great public concern and need to be taken care off in the development scheme. The public interest requires not only reservation but also preservation of such parks and open spaces. In our opinion, such spaces cannot be permitted, by an action or inaction or otherwise, to be converted for some other purpose, and no development contrary to plan can be permitted.

22. The importance of open spaces for parks and play grounds is of universal recognition, and reservation for such places in development scheme is a legitimate exercise of statutory power, with the rationale of protection of the environment and of reducing ill effects of urbanization. It is in the public interest to avoid

unnecessary conversion of 'open space land' to strictly urban uses, as gardens provide fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. Once such a scheme had been prepared in accordance with the provisions of the Act, by inaction, legislative intent could not be permitted to become a statutory mockery. Government authorities and officers are bound to preserve it and to take all steps envisaged for protection.

23. The Hon'ble Apex Court had considered the question as to the duty of the State Authorities to preserve the open spaces for public parks in the case of **Bangalore Medical Trust vs. B.S. Muddappa & Ors.** reported in (1991) 4 SCC 54. In the said case, the Court had considered the question as to whether area reserved for a public park can be permitted to be converted for other purposes. The State Government by an order had allotted the area reserved for public parks to a Medical Trust, for the purposes of constructing a hospital.

24. The Hon'ble Apex Court has pointed out the importance of open spaces for public parks in Bangalore Medical Trust's case(supra). Paragraph 23 to 25, 28 and 36 of the aforesaid judgment is reproduced below:-

“23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the City of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and play grounds with a view to protecting the residents from the ill-effects of urbanisation. It is meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, 'ventilation' and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting Sections 16(1)(d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the City

of Bangalore and the area adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.

24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill effects of urbanisation.

28. Any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be respected by the courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breath fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to

defeat that object is invalid. As stated by the U.S. Supreme Court in *Village of Belle Terre v. Bruce Boraas*: {L Ed p. 804: US P.9):

".... The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people".

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its morn but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air. In 1984 the BD Act itself provided for reservation of not less than fifteen per cent of the total area of the lay out in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may given rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, there- fore, that by conversion of a site reserved for low

lying into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."

25. It could be legitimately expected of the authority to take timely steps in which they have failed. Their inaction tantamounts to wrongful deprivation of open spaces/garden to public. The Hon'ble Apex Court in the case of **Animal and Environment Legal Defence Fund v. Union of India & Ors.** reported in (1997) 3 SCC 549 has laid down that there is duty cast to preserve the ecology of the forest area. The Hon'ble Apex Court has enunciated the doctrine of the public trust based on ancient theory of Roman Empire. Idea of this theory was that certain common property such as lands, waters and airs were held by the Government in trusteeship for smooth and unimpaired use of public. Air, sea, waters and the forests have such a great importance to the people that it would be wholly unjustified to make them a subject of private ownership. The American courts have also in various cases expanded the concept of this doctrine. The doctrine enjoins upon the Government to protect the natural resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

26. In the case of **Agins vs. City of Tiburon [447 us 255 (1980)]**, the Supreme Court of the United States upheld a zoning ordinance which provided `... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as pollution, destruction of scenic beauty. disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said:

".... The State of California has determined that the development

of local open-space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill- effects of urbanization. Such governmental purposes long have been recognized as legitimate.

....The zoning ordinances benefit the appellants as well public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas."

27. The Hon'ble Apex Court in the case of **M.I. Builders Pvt. Ltd vs. Radhey Shyam Sahu and Others** reported in **AIR 1999 Supreme Court page 2468** was pleased to hold that the construction of underground shopping complex and parking, the permission for which was granted by the Mahapalika was not correct. It was held by the Hon'ble Supreme Court that the aforesaid permission is in violation of obligatory duties cast by Section 114 on Mahapalika to maintain parks. It was held by the Hon'ble Supreme Court that the aforesaid permission is in violation of obligatory duties cast by Section 114 on Mahapalika to maintain parks. The relevant paragraphs namely paragraph nos. 59 to 61 are quoted herein-below:-

59. Jhandewala Park, the park in question, has been in existence for a great number of years. It is situated in the heart of Aminabad, a bustling commercial-cum- residential locality in the city of Lucknow. The park is of historical importance. Because of the construction of underground shopping complex and parking it may still have the appearance of a park with grass grown and path laid but it has lost the ingredients of a park inasmuch as no plantation now can be grown. Trees cannot be planted and rather while making underground construction many trees have been cut. Now it is more like a terrace park. Qualitatively it may still be a park but it is certainly a park of

different nature. By construction of underground shopping complex irreversible changes have been made. It was submitted that the park was acquired by the State Government in the year 1913 and was given to the Mahapalika for its management. This has not been controverted. Under Section 114 of the Act it is the obligatory duty of the Mahapalika to maintain public places, parks and plant trees. By allowing underground construction Mahapalika has deprived itself of its obligatory duties to maintain the park which cannot be permitted. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done. Mahapalika is the trustee for the proper management of the park. When true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by this Court in Span Resort Case (1997 (1) SCC 388). Public Trust doctrine is part of Indian law. In that case the respondent who had constructed a motel located at the bank of river Beas interfered with the natural flow of the river. This Court said that the issue presented in that case illustrated "the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change".

60. In the treatise "Environmental Law and Policy : Nature, Law, and Society" by Plater Abrams Goldfarb (American Casebook series - 1992) under the Chapter on Fundamental Environmental Rights, in Section 1 (The Modern Rediscovery of the Public Trust Doctrine) it has been noticed that "long ago there developed in the law of the Roman Empire a legal theory known as the Doctrine of the public trust." In America

Public Trust doctrine was applied to public properties, such as shore-lands and parks. As to how doctrine works it was stated: "The scattered evidence, taken together, suggests that the idea of a public trusteeship rests upon three related principles. First, that certain interests - like the air and the sea - have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to economic status. And, finally, that it is a principle purpose of government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit... With reference to a decision in Illinois Central Railroad Company v. Illinois (146 U.S. 387 [1892]), it was stated that the court articulated in that case the principle that has become the central substantive thought in public trust litigation. When a state holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon any governmental conduct which is calculated either to reallocate the resource to more restricted uses or to subject public uses to the self-interest of private parties. This public trust doctrine in our country, it would appear, has grown from Article 21 of the Constitution.

61. Thus by allowing construction of underground shopping complex in the park Mahapalika has violated not only Section 114 of the Act but also the public trust doctrine.

28. Andhra Pradesh High Court in case of **T. Damodhar Rao & Ors. v. The Special Officer, Municipal Corporation of Hyderabad & Ors.**, reported in **AIR 1987 AP 17** pleased to hold that where the land was reserved under the approved development plan for the purpose of recreational park, a portion of it cannot be used by the person for whom it was acquired for construction of residential houses. Relevant paragraphs 23 and 24 of the aforesaid judgment are quoted herein-below:-

23. The objective of the environmental law is to preserve and protect

the nature's gifts to man and woman such as air, earth and atmosphere from pollution. Environmental law is based on the realisation of mankind of the dire physical necessity to preserve these invaluable and none too easily replenishable gifts of mother nature to man and his progeny from the reckless wastage and rapacious appropriation that common law permits. It is accepted that pollution "is a slow agent of death and if it is continued the next 30 years as it has been for the last 30, it could become lethal". (See Krishna Iyer's Pollution and Law). Stockholm declaration of United Nations on Human Environment evidences this human anxiety :-

"The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystem, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate. Nature conservation including wildlife must therefore receive importance in planning for economic development."

Similarly, the African Charter on Human and People's rights declares that "all peoples shall have the right to a general satisfactory environment favourable to their development". Judicially responding to this situation, Justice Douglas has suggested that environmental issues might be litigated in the name of "the inanimate object about to be... deposited" with those who have an "intimate relation" with it recognised as its legitimate spokesmen. Common law being basically blind to the future and working primarily for the alienated good of the individual and operating on the cynical theory that because posterity has proved its utter inadequacy to achieve the urgent task of preservation and protection of our ecology and environment. Roscoe Pound blamed the common law for its serious social shortfalls. He wrote :-

"Men have changed their views as to the relative importance of the individual and of society; but the common law has not. Indeed, the common law knows individuals only..... It tries questions of the highest social import as mere private controversies between John Doe and

Richard Deo. And this compels a narrow and one sided view."

Rejecting these individualistic legal theories of common law that are found to be incompatible with the basic needs and requirements of the modern collective life environmental laws all over the world lay down rules for the preservation of environment and prevention of pollution of our atmosphere, air, earth and water. Our Parliament has recently enacted the Environment (Protection) Act (Act No. 29 of 1986) for the purpose of protecting and improving our environment. It widely distributed powers on all those who are traditionally classified as not aggrieved persons to take environmental disputes to Courts. This is clearly in harmony with our Constitutional goals which not only mandate the State to protect and improve the environment and to safeguard the forests and wildlife of the Country (Art. 48A); but which also hold it to be the duty of every one of our citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures (Art. 51-A(g)).

24. From the above it is clear that protection of the environment is not only the duty of the citizen but it is also the obligation of the State and all other State organs including Courts. In that extent, environmental law has succeeded in unshackling man's right to life and personal liberty from the clutches of common law theory of individual ownership. Examining the matter from the above constitutional point of view, it would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Art. 21 of the Constitution embraces the protection and preservation of nature's gifts without life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Art. 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Art. 21 of the Constitution. In R. L. & E. Kendra, Dehradun v. State of U. P., , the Supreme Court has entertained environmental complaints alleging that the operations of lime-stone quarries in the Himalayan range of Mussoorie resulted in depredation of the environment affecting

ecological balance. In R. L. & E. Kendra, Dehradun v. State of U. P., the Supreme Court in an application under Art. 32 has ordered the closure of some of these quarries on the ground that their operations were upsetting ecological balance. Although Art. 21 is not referred to in these judgments of the Supreme Court, those judgments can only be understood on the basis that the Supreme Court entertained those environmental complaints under Art. 32 of the Constitution as involving violation of Art. 21's right to life.

25. It, therefore, becomes the legitimate duty of the Courts as the enforcing organs of Constitutional objectives to forbid all action of the State and the citizen from upsetting the environmental balance. In this case the very purpose of preparing and publishing the developmental plan is to maintain such an environmental balance. The object of reserving certain area as a recreational zone would be utterly defeated if private owners of the land in that area are permitted to build residential houses. It must, therefore, be held that the attempt of the Life Insurance Corporation of India and the Income-tax Department to build houses in this area is contrary to law and also contrary to Art. 21 of the Constitution."

29. The concept laid down by the Hon'ble Apex Court in the case of **M.C. Mehta v. Kamal Nath & Ors.** reported in (1997) 1 SCC 388 wherein the Hon'ble Apex Court held that the State Government has committed patent breach of public trust by leasing the ecologically fragile land to the Motel management.

30. In the case of **Vellore Citizens Welfare Forum v. Union of India & Ors.** reported in AIR 1996 SC 2715 the Hon'ble Apex Court had laid down that protection of environment is one of the legal duties. While setting up of industries essential for economic development measures should be taken to reduce the risk of community by taking all necessary steps for protection of environment. In **M.C. Mehta v. Union of India (1987) Supp. SCC 131**, certain directions were issued by this Court regarding

hazardous chemicals. Relying partly on Article 21, it was observed that life, public health and ecology are priority and cannot be lost sight of over employment and loss of revenue.

31. Undeveloped space is often occupied unauthorizedly by the people who have little regard to law. All the parks and playgrounds in the State of U.P. are maintained under the Provisions of U.P. Act, 1975 and Rules framed there under in the year 2005. Therefore, we direct Competent Authority to ensure that there is no encroachment or keeping or throwing garbage etc. in Park. It should be maintained and cleaned in a proper manner so as to be utilized as a Park by people in general.

32. Further, in compliance and observance of this order in respect of similarly placed other public purpose, we direct that a copy of this judgment be forwarded to Chief Secretary, U.P. Lucknow so that he may issue necessary instructions in this regard across the State to all concerned authorities. A compliance report shall be submitted within three months, to this Court by way of filing an affidavit.

33. Subject to above directions and observations, writ petition is disposed of.

Order Date :- 14.10.2020

Swati