

Case Note: Case concerning the gifting of 'common land' (*shamlat deh*) by the Gram Panchayat to a trust for the construction of a college and a polytechnic being challenged on various grounds.

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AIR2002SC1913, JT2002(4)SC271, (2002)3PLR248, 2002(3)SCALE714,
(2002)9SCC108, [2002]3SCR226

IN THE SUPREME COURT OF INDIA

Decided On: 19.04.2002

B.L. Wadhwa

v.

Union of India (UOI) and Ors.

Hon'ble Judges:

R.P. Sethi and K.G. Balakrishnan, JJ.

JUDGMENT

Sethi, J.

1. The respondent No.7, who is admittedly a leader of national stature, a reputed Member of Parliament for years and a former Prime Minister of the country is accused of usurping about 600 acres of land in Village Bhondsi of the State of Haryana by manipulation and resort to exercise of his political influence. Moved by an article "Lord of the Land" published in India Today of 18th January, 1999, the petitioner approached this Court by filing a writ petition in public interest, praying this Court to take cognizance of the matter and issue appropriate directions against the aforesaid respondent commanding him to vacate the land allegedly grabbed by him by handing over its possession to the Gram Panchayat of Bhondsi. It has been further prayed that as the respondent has committed cognizable offences, a direction be issued for commencement of the proceedings against the Trust of which he is the Chairman. It is submitted that the conferment of largesse upon the aforesaid respondent is against the provisions of the Punjab Village Common Lands (Regulations) Act, 1961, the Rules made thereunder, Indian Forest Act and the Forest conservation Act, 1980.

2. In the article "Lord of the Land" published in India Today, it was stated that after the respondent No.7 completed his so-called Bharat Yatra in 1983, he formed the Trust known as "Bharat Yatra Kendra" (hereinafter referred to as "BYK") of which he himself is the Chairman and manipulated the passing of Resolutions by the Gram Panchayat of Bhondsi resolving to gift him State forest land measuring about 600 acres. The land was donated for purposes not contemplated under the statute. It was further alleged that the respondent No.7 had encroached upon 10 acres of land belonging to the Border Security

Force. Instead of constructing the Hospital and the Polytechnic for women, for which the land was apparently donated, the respondent No.7 built a sprawling farm-house where he used to retire for weekends even when he was the Prime Minister. When 10 acres of land bordering one end of the Firing Range of the BSF was occupied by the respondent No.7, complaints are alleged to have been despatched vide letter dated 9.4.1990 and matter brought to the notice of the Gurgaon District Commissioner on 20.11.1990. No action was taken. 500 acres of land which was apparently given to BYK for greening of Aravallis was fenced by the respondent No.7 as if it was a private property. The conditions incorporated in the Resolution of the Gram Panchaya, the order of approval by the Government and the terms of the Gift Deeds were alleged to have been violated. The article concluded with the observations, "It seems that Bhondsi will never get back its 600 acres. The Haryana Government doesn't seem perturbed. The Union Government too hasn't responded despite repeated letters from the BSF. Perhaps that's why Chandra Shekhar too is not bothered. He wasn't then and he isn't now".

3. Based upon information, as disclosed in the article published in India Today, the petitioner moved this Court alleging that Bhondsi Gram Panchayat, by a Resolution, gifted 33 acres of Gram Panchayat land to respondent No.7 for construction of a Hospital which was endorsed by the Haryana Government on 22nd March, 1984. At that time Shri Chandar Shekhar was a Member of Parliament. Another 19 acres of land was donated by the said Gram Panchayat to the respondent No.7 in the year 1990 by its Resolution No. 55 which was endorsed by Haryana Government on 28th June, 1990. After Shri Chander Shekhar became the Prime Minister of India on 10th November, 1990, the Gram Panchayat passed another Resolution within 24 hours of his becoming the Prime Minister gifting another 16 acres of Gram Panchayat land to respondent No.7. The stated purpose of for which the land stood donated was for building Hospital and a Polytechnic for women. Instead of Hospital and Polytechnic, the respondent No.7 is alleged to have constructed a sprawling farm-house where 35 cows yielding 83 litres of milk everyday are kept. A multi-storeyed Conference Complex, a guest house and a temple are stated to have been built on the said land. Allegations regarding encroachment of the BSF land, as mentioned in the article published in India Today, were repeated. As neither the Central Government, nor the State Government had taken any action, the petitioner moved this Court. It is alleged that the value of the land, under the occupation of the respondent No.7, is about 12 crores. 500 acres of land, which was given to the Trust for greening of Aravalli Hills, is stated to have been occupied by respondent No.7 by fencing it from all sides.

4. In the counter affidavit filed on behalf of respondents 1 and 2, it is submitted that land measuring 40.6 acres was acquired by BSF at Bhondsi, District Gurgaon, Haryana during 1969 and years thereafter. Subsequently 25th Batallion was assigned the responsibility of imparting basic training to 500 recruits per year. To ensure proper training to the recruits it was felt necessary to have proper training area and also a full-fledged classification firing range as per laid down specifications. BSF established training centre and users trial centre at Bhondsi, where new instruments/ weapons/electronic gadgetry are tested before introducing in various forces. By virtue of these assignments, the BSF centre at Bhondsi is treated a very sensitive establishment. In view of the importance of the BSF

centre, the land measuring 158 acres 2 kanals and 8 marlas was acquired in November, 1990, in addition to 40.6 acres of land from the State of Haryana. BYK, Bhondsi, respondent No.7 was stated to have made encroachments in BSF Land measuring western side in the month of March/April, 1991. Matter was reported to the Deputy Commissioner, Gurgaon time and again but no action was taken till 15.2.2000. 25th Battalion of BSF again approached Deputy Commissioner, Gurgaon on 15.2.2000 who directed the revenue authorities to demarcate the encroached land. Revenue authorities measured the encroached land and identified the same. The BSF officials took over the possession of that land on the said date. It may be noticed that the land of the BSF which was encroached upon by the respondent No.7 was vacated only after the filing of this writ petition and the issuance of notice by this Court on 13.8.1999.

5. In their counter affidavits respondents 3 and 4, filed on 5.4.2000, the State of Haryana and Deputy Commissioner, Gurgaon, Haryana, have stated that vide Resolution No. 55 dated 23.10.1983 land measuring 33 acres 7 kanals and 6 marles was proposed to be gifted by the Gram Panchayat, Bhondsi to respondent No.7 whereupon the State Government accorded its approval vide its order dated 3.3.1984. As per Condition No.1 laid down by State Government in its order, the respondent No.7 was to construct a civil dispensary building consisting of 3 rooms with verandah. Vide another Resolution No.55 dated 8.12.1989 the Gram Panchayat proposed to gift 18 acres 7 kanals and 9 marles of its land to respondent No.7 which was also approved by the State Government vide its order dated 26th June, 1990. This land was gifted by the Gram Panchayat for the construction/ establishing Polytechnic for women. Thereafter the Gram Panchayat vide its Resolution No.53 dated 8.11.1990, allowed respondent No. 7 to plant trees on its land measuring 500 acres on certain terms and conditions without conferring any right upon the Trust. Vide Resolution No. 57 dated 11.12.1990, the Gram Panchayat again proposed to give 16 acres 7 kanas and 9 marlas of its land to respondent No.7 for extension of Polytechnic but the State Government not agreeing, did not approve the above mentioned Resolution. According to respondent Nos. 3 and 4 land measuring 52 acres 6 kanals and 15 marlas of the Gram Panchayat has been gifted to respondent No.7. It is submitted that upon demarcation of Border Security Force land, the respondent No.7 was found to be in possession of the BSF land measuring 8 acres 3 kannals and 7 marlas, the possession of which was delivered to BSF on 16.2.2000. It is claimed that condition for construction of building consisting of three rooms has been fulfilled by respondent No.1 as it has constructed a dispensary in village Bhondsi though not in the land gifted to it for the aforesaid purposes. The Gram Panchayat Resolution No.57 dated 11.12.1999 resolving to gift 16 acres 7 kanals and 8 marlas of land to respondent No.7 was never approved. So far as condition of establishing/constructing a Polytechnic for women in lieu of land proposed to be gifted by the Gram Panchayat vide its Resolution No.55 dated 8.12.1989 is concerned, the respondent No.7 is stated to have informed the respondents 3 and 4 that a women Polytechnic under the name and style of "Stree Niketan" has already been established in the year 1992 and the same in providing employment oriented training to women from rural areas as well as the weaker sections of the society in the field of weaving, pottery, embroidery, food processing, etc. It is admitted that the current rate of the land gifted to respondent No.7 was about Rs.2 lakhs per acre but, it is submitted that the value of the land is not 12 crores as alleged by the petitioner.

6. In the amended counter affidavit filed on 1st May, 2000 on behalf of respondents 3 and 4, it is submitted that the "Stree Niketan", established by the respondent No.7 has not been approved from the Government or affiliated with any recognised University.

7. In the affidavit filed on behalf of the Gram Panchayat, respondent No.6, it is submitted that vide various resolutions total land measuring 52 acres 6 kanals and 15 marlas has been gifted by the Gram Panchayat to respondent No.7. The condition of construction of dispensary building consisting of three rooms with verandah is stated to have been complied with by the respondent No.1 by construction of building for civil dispensary in the area of Village Bhondsi though not in the land gifted. Resolution No.57 dated 11.12.1980 resolving to gift 16 acres 7 kanalas and 8 marals was never acted upon and the said land continues to be in the ownership of Gram Panchayat. The respondent No.7 is stated to have informed the Gram Panchayat that a women Polytechnic under the name and style of "Stree Niketan" was established in the year 1992 which is providing employment oriented training to women of rural areas as well as from the weaker sections of the society in the field of weaving, pottery, embroidery, food processing, etc. The said "Stree Niketan" has not been approved by the Government or affiliated with any recognised University. The respondent No.7 is claimed to have done an outstanding work on 500 acres of land of the Gram Panchayat by planting trees and making the Aravalli Hills green. The action of the Gram Panchayat is stated to be in accordance with law.

8. In the affidavit filed on behalf of respondent No.7, Shri Chander Shekhar, the President of Trust, it is submitted that the writ petition is based entirely on the write-up which was published in the Weekly India Today on January 18, 1999. The petitioner is stated to have no other source of information and has approached the Court without verifying and ascertaining the correctness of the write-up. The allegations made in the petition are stated to be incorrect. The writ petition has been termed to be a "classic illustration of abuse of process in the name of Public Interest Litigation." The petition is stated to have been filed by the petitioner to gain cheap publicity and to settle old scores which ought not to be countenanced. The petition is stated to have been filed out of vengeance and personal vendetta inasmuch as during the enquiry into the conspiracy angle relating to the assassination of late Rajiv Gandhi, the former Prime Minister of India by commonly known as the Jain Commission, the petitioner while recording of evidence had himself cross-examined the deponent and was agitated due to the replies. He personally preferred an application before the Jain Commission for certain reliefs. The petitioner is accused of not prosecuting bonafide litigation but in the name of public interest litigation was persecuting the deponent to settle his old scores. It is submitted that the petitioner be dealt with severely for having misused and abused the process of law by instituting the present writ petition. The writ petition is also not maintainable as alternative and efficacious remedy is allegedly available to the petitioner under the Gram Panchayat Rules, particularly Rule 34 which empowers the Deputy Commissioner or Sub- Divisional Officer to suspend the action of the Gram Panchayat. None of the villagers who are stated to be the beneficiaries of the programmes undertaken by the Trust have any grievance with regard to donation of the land by the Gram Panchayat in favour of respondent No.7. The Government was satisfied before according the approval for making the gift of the land by the Gram Panchayat. The Trust is stated to have been established on 23rd

September, 1983 with the Register of Delhi as a Public Charitable Trust vide Registration No.3428, Block No.4, Volume No.1101, The Trust is claimed to have been formed by respectable persons of the society solely with a view of interact with the masses for ameliorating the living conditions of the down trodden persons and to profess that every man has a right to grow in the society free from hunger, want of shelter, medicine, education and other basic needs of life irrespective of caste, creed, sex and religion. The Trust was established after the conclusion of the Pad Yatra undertaken by the deponent to cover a distance of 4260 kilometers on foot from Kanyakumari to Rajghat. Inspired by the programmes and objectives of the Trust, the members of the Gram Panchayat of Village Bhondsi met the deponent and urged him to undertaken to development programmes in their area. The Gram Panchayat undertook to extend all possible help to the Trust in achieving its aims and objectives. Consequent to the discussions, the Gram Panchayat vide Resolution No.55 dated 22.10.1983, pursuant to an application by the Trust, resolved to gift 33 acres, 7 kanals and 6 marlas of land to the Trust free of cost under Section 13 of the Punjab Common Lands Act, 1964. It was resolved that the sanction be obtained from the Panchayat Department through Block Development and Panchayat Officer and Dy. Commissioner, Gurgaon. The resolution was forwarded to the Government of Haryana for its rectification and approval. It was approved by an order of the Government dated 3rd March, 1984 according the approval for the gift of the land to the Trust subject to the conditions incorporated in the order. One of the conditions was that "the land will be got released from the Forest Department through proper channel". Pursuant to the order of the Government of Haryana, Gram Panchayat executed the gift deed on 30th March, 1984 which was duly registered. Since, the land gifted to the Trust was far away from the village, the Sarpanch of the Gram Panchayat, Bhondsi held discussions with the Trust and urged to construct the civil dispensary building in the village so that the same would be convenient to the residents of the village, as aforesaid, the gift deed expressly provided that the dispensary should be constructed in the village itself. The value of the land at that time was Rs.5807/- per acre which means that the total value of the land, gifted to the Trust, was only Rs.1,92,300/-. After taking over possession of the land, the Trust started working to fulfill the conditions, mentioned in the order, which approved the gift of the land as well as to achieve the other aims and objectives mentioned in the Trust Deed. The foundation stone of dispensary was laid down on 10.6.1985 and the dispensary was constructed as per specifications contained in the order of the Government. After completion of the building for dispensary, it was inaugurated by Shri Devi Lal, and then Chief Minister of Haryana on 6.8.1989. Thereafter the dispensary was handed over to the Government and the same is now managed by the Haryana Government. The Haryana Government is stated to have issued a cheque in favour of respondent No.7 for a sum of Rs.50,000/- from the Chief Minister's Relief Fund towards maintenance of the dispensary constructed by the Trust which was returned as respondent No.7 was of the view that since the dispensary was to be managed by the Government they were not entitled to retain the amount received from the Government towards the management of the dispensary. The area, at that time, was a revine land embedded with sand dunes. The rain water was being wasted and used constructed the earthen dam to collect the rain water, which was not only being wasted but also used to cause floods and play havoc in the village and surrounding areas. The construction of such a dam prevented the floods which earlier used to be the order of the

day. The Trust claims to have dug the tubewells in that area and laid a water supply pipeline to supply the drinking water to the nearby village Aklimpur. The Trust also constructed the tank for water in the said village. The Trust undertook afforestation programmes and planted the trees, nearby villages were also supplied with saplings free of cost and were taught about the inherent dangers of destruction of forests. The Trust started daily breeding centre, which helped the villagers in betterment of breeds of cow which resulted in higher production of milk. Women Polytechnic under the name and style of "Stree Niketan" was started in the year 1992 which provided the employment oriented training to women from rural areas and from the weaker sections of the society in the field of weaving, pottery, embroidery, food processing, etc. The Trust claims to have complied with all the conditions stipulated in the order dated 23.3.1984 approving the gift of land measuring 271 kanals 6 marlas.

9. Regarding land measuring 19 acres donated to the Trust in the year 1990 it is submitted that the Gram Panchayat, after being satisfied with the past performance of the Trust and observing that the Trust fulfilled all conditions earlier imposed, resolved to gift the 19 acres of land vide its Resolution dated 8.12.1989. The Government of Haryana accorded its approval on 6th June, 1990 as already noticed. The Trust set up Polytechnic under the name and style of "Stree Niketan" for the purposes stated in the affidavit. The Trust is claimed to have spent Rs. 42.96 lakhs on the building and machinery of "Stree Niketan Polytechnic". The Trust claims to have paid a stipend salary and wages amounting to Rs. 2,92,826/-, Rs. 4,50,011/- Rs. 4,77,182/-, Rs. 2,07,329/- and Rs. 2,12,986/- for the year ending 1993 to 1997 respectively. The Trust received the grant of Rs. 20,38,500/- from NABARD during the year ending 31.3.1993, Rs. 5,37,750/- during the year ending 31.3.1994 and Rs. 3,44,750/- during the year ending 31.3.1995. The Trust also received the donation amounting to Rs. 40,100/-, Rs. 10,68,266/-, Rs. 14,06,648/-, Rs. 5,62,868/- during the year ending 31.3.92 to 31.3.95. The 16 acres of land alleged to have been encroached upon by the Trust is stated to have been transferred by its owners in favour of the Trust. The deponent says "I say that Gram Panchayat has no concern with the said 16 acres of land referred to in the writ petition." Regarding the encroachment upon the BSF land it is stated that since some dispute had been raised, the Trust took up the matter with the Deputy Commissioner, Gurgaon for demarcation of the land so that the dispute could be resolved for which an application was made in the year 1994. Even though Deputy Commissioner, Gurgaon vide his order dated 29.7.1994 directed the Nalib Tehsilder, Sohna to demarcate the land yet no action was taken by the Revenue authorities.

10. So far as 500 acres of land is concerned, it is submitted that the same belongs to the Gram Panchayat with which the Trust has no concern, except the fact that the said land was given to it for afforestation and for greening the Aravallies. No such land was ever gifted to the Trust by the Gram Panchayat. The Trust has, at no point of time, asserted any title to the said land. The fencing of the said land was done by the Trust only with a view to prevent the animals from destroying the plantation undertaken by it. The Trust has got a grant of Rs. 13,47,340/- from the national Waste Land Board, Ministry of Rural Development, Government of India and this grant has been used for raising nursery, planting of trees, etc. The said patch of land was rocky and hilly and there was no

provision for water. The Trust made efforts in arranging to lift the water from the plain areas, stored it in the tanks to provide for irrigation facilities. The Trust claims to have made the entire area as an exemplary model by its serious efforts, hard work and changed the barren, dry land embedded with sand dunes, where not even a blade of grass appeared, into a green and environment friendly land. It is denied that the land measuring 52 acres was donated by the Gram Panchayat to the Trust for building hospital and polytechnic for women.

11. The only condition in the two orders which were approved by the Government on 3rd March, 1984 and 6th June, 1990, was to construct the civil dispensary building consisting of three rooms with verandah and polytechnic which has been complied with. The deponent has denied of encroachment on any piece of land which did not lawfully belong to the Trust. It is submitted that it was wrong to contend that the deponent has built a farm-house, multi- storeyed conference complex, guest house and a temple on the land gifted by the Gram Panchayat. According to him the true position is that the Trust has constructed building for Stree Niketan by spending Rs. 33.76 lakhs. The 52 acres of land, gifted to the respondent, was never intended to be utilised only for civil dispensary as being sought to be made out in the writ petition. Apart from creating the infrastructure on the land gifted to it, the Respondent Trust is perennially engaged in organising programmes with a view to achieve its objectives mentioned in the Deed of Declaration. The temple, existing on the land, is stated to be an accident temple not constructed by the Trust. The land gifted to the Trust is being used only for the objectives and activities of the Trust and as per conditions mentioned in the Government order. The Trust is stated to be an income-tax assessee. The sources of funds of the Trust are reflected in its books of accounts which are duly audited. It is claimed that besides the two lands being 33 acres and 19 acres no other land was gifted by the Gram Panchayat to the respondent Trust. The respondent Trust has not misused the land as alleged. The deponent states that he has never used any influence with any authorities for getting any favour for himself but it is the villagers who had strongly felt that by establishing the respondent Trust they would be beneficiaries of the development activities undertaken by it. All actions preceding the transfer of the land by way of gift are claimed to be legal and valid requiring no interference by this Court.

12. In his rejoinder affidavit the petitioner besides reiterating the allegations made in the petition has stated that he has no personal ill-will against any of the respondents, particularly respondent No. 7. He has claimed to be an activist of public interest litigation having filed large number of petitions in public interest, many of which were considered and decided by this Court and the High Court of Delhi. He claims to have nothing else in the mind except the interest of the public while filing the petition. He admits that the petition in fact was filed on the story published in India Today but contends that as per direction of this Court he collected further information and documents in support of the averments made in the petition which he filed in the court. He has denied the allegation that the present petition has been filed by him for getting cheap publicity or to settle personal scores with respondent No. 7.

13. The petitioner has referred to various provisions of the Punjab Common Land (Regulations) Act, 1961 and the Rules made thereunder, as applicable to the State of Haryana and also the provisions of Forest Conservation Act to point out that the conferment of largesse by way of grant of land was illegal, being against the emendatory provisions of the statute applicable in the case. The fighting of land in controversy is alleged to be violative of the provisions of Section 5A of the Punjab Common Land (Regulations) Act, 1961 (hereinafter referred to as "the Act"), the transfer has been termed to be illegal and void-ab-initio. The respondent-State and the Gram Panchayat are also alleged to have violated Rule 13 of the Punjab Village Common (Regulations) Rules, 1964 (hereinafter referred to as "the Rules"). The pieces of land gifted consequent upon Resolution No. 55 dated 23rd October, 1983 and Resolution No. 55 dated 8.12.1989 are stated to be the forest lands which could not be transferred without compliance of Condition No. 6 attached to the sanction granted by the State Government. As the gift deeds were executed without obtaining sanction from the Forest Department, the same being contrary to the approval granted by the State of Haryana have been termed to be non-existent. The land having been described as forest land is claimed to be under the protective umbrella of Forest Conversation Act which could not be transferred by any means to any person. Section 2 of the Forest Conservation Act, 1980 is stated to have been violated. Under the said section no State Government can pass any order with respect to any forest land or portion thereof to any other person or authority. No prior approval of the Central Government is stated to have been taken before execution of gift deeds as was statutorily required. Despite the specific condition in the order of approval which the State Government had granted, neither the Gram Panchayat nor the State Government could have transferred the land to respondent No. 7 without its prior compliance. The forest Department who was admittedly in possession of the land is not shown to have released the same either in favour of the Gram Panchayat or the State Government or respondent No. 7. The transfer of the land, the resolutions passed in relation thereto and orders passed by the State Government sanctioning transfers being against the provisions of law deserve to be quashed. The gifts of the land is also stated to be in violation of the provisions of Section 122 and 123 of the Transfer of Property Act as the respondents have not placed on record any registered instrument showing the execution of a formal, valid and legal gift deed. It is conceded that after the filing of the writ petition in this court, a piece of land measuring 8 acres 3 kanals and 7 marlas belonging to the BSF which was allegedly unauthorisedly and illegally taken over by respondent No. 7 has been returned to the BSF on 16.2.2000. It is however, contended that the reliance of the respondent-State on Rule 3 of the Rules is misconceived. The provisions of the aforesaid rule were never complied with as the Bhondsi Gram Panchayat did not prepare the requisite plan.

14. After the filing of the rejoinder by the petitioner, respondent No. 7 and the State of Haryana sought opportunity to file additional affidavits in view of the averments made in the said rejoinder. This Court vide its order dated 4.9.2000 allowed the prayer and permitted the State of Haryana and respondent No. 7 to file the additional affidavits, if they so desire.

15. In the additional affidavit filed on behalf of the respondent No. 3 it is submitted that pursuant to resolutions passed by the Gram Panchayat, the State Government accorded its approval for making the gift of the land to respondent No. 7 subject to certain conditions. During the pendency of the writ petition, the Special Secretary, Development and Panchayat Development vide his DO letter NO. PA-2000/3272 dated 18.7.2000 requested the Deputy Commissioner, Gurgaon to intimate as to whether conditions on which the land was allotted to respondent No. 7 were complied with or not. The Deputy Commissioner, vide his Memo No. 4472 dated 20th July, 2000 informed that respondent No. 7 has "till date not duly complied with the conditions". On the basis of the said information, received from the Deputy Commissioner, Gurgaon, the State Government has issued a show cause notice on 26.7.2000 to respondent No. 7 as to why the sanction issued by the Government vide Order No. S.2/90/37308-11 dated 28.6.1990 be withdrawn and possession of the land in question be restored to the Gram Panchayat.

16. In his additional affidavit Shri Chander Shekhar has reiterated what he had submitted in his counter affidavit filed earlier. He has, however, admitted that the State of Haryana has issued a show cause notice which has been appropriately replied. It is contended that the Trust has been set up for the purpose of creating awareness and undertaking programmes for rural development and amongst others establishing centres for making provision for drinking water, nutrition and health facilities for women and children education, and to deal with the problems of Adivasis and Harijans. It is claimed that between 1983 to 1990, the Trust has undertaken the task defined by it in lands made available to it in various parts of India. The Trust has undertaken activities on the land which has resulted in arresting the soil erosion raising of after levels, construction of water reservoirs and roads in terms of the conditions of the gift, the Trust claimed to have built a village dispensary which has enabled the residents of the area to regularly obtain medical facilities. It is however, mentioned that the dispensary is being run by the State Government. The Trust is also providing advance knowledge of breeding a better breed of cattle. The Trust has been imparting education to the women in the codal named "Stree Niketan". The land gifted to the Trust house buildings which in due course of time are to be sued by scholars and persons interested in creating a sense of mutual understanding, communal harmony and national integration without any charges being made. The forest land measuring 500 acres is claimed to have been developed by the Trust where thousands of peacocks, pigeons, birds, jackals, foxes and blue bull can be seen in the area on regular basis.

17. Narration of facts would be incomplete without reference to the report of the Committee appointed in terms of this order Courts' dated 13th March, 2001. In pursuance to our orders, the Home Secretary of the Central Government had nominated Dr. Rakesh Hooja, Joint Secretary (K.I), Ministry of Home Affairs and Mr. V.N. Rai, Inspector General(G) BSF directing them to visit the spot and submit a report. The officers visited the spot on 29th March, 2001 and 6th April, 2001 and submitted two reports. In the first report regarding visit of the Committee on 29th March, 2001 it is stated:

"As regards site visits we initially visited the land which figured in the resolution No. 55 of Gram Panchayat Bhondsi dated 8.12.1989 subsequently approved by State

Government vide its order dated 6.6.1990 (endorsed on 28.6.90 to all those concerned) which relates to 18 acres 7 Kanals and 9 marlas. The land had been gifted to Bharat Yatra Kendra Trust (hereinafter referred to as BYK Trust) for construction of College and Polytechnic. With regard to this land the State Govt. has issued a show cause notice on 26.7.2000 to the BYK Trust as to why, since all conditions have not been fulfilled, the State Govt. sanction of 28.6.1990 should not be withdrawn and possession of land in question not be restored to the Gram Panchayat. Both MR. Sood of BYK Trust and district officers of Gurgaon indicated that the matter is still pending with State Govt. who have reportedly fixed a date in April for personal hearing of representative of BYK Trust.

The site is depicted as "Polytechnic Land" in the legend of the enclosed visual sketch map. The land contains an amphitheatre. It also has the structures which BYK Trust refer to as "Stree Niketan". These structures contain a couple of rooms of "officers", a hall where a potter was at work who claimed he occasionally also "taught" some children pottery, some rooms containing some wooden looms and spinning/weaving equipment which had not been used for a very long time, bathrooms, a couple of side rooms where some women were being taught tailoring, a room containing old unused tailoring machines etc. The structures did not appear to have been designed for a polytechnic and/or college. The women's training which appears something like a crafts training centre is not recognised from any competent body. Some people who indicated that they were employed by Swatch were present who indicated Swatch had a centre in the structures. Mr. Sood BYK Trust representative indicated that they had obtained support from NABARD for the training and equipment. He said that paid instructors were used to train locals but that they were not paid by cheque.

As is evident from the sketch map a major part of the land is vacated -the exact dimensions of which shall become known only after the demarcation/kayami ordered by the Deputy Commissioner on 29.3.2001 (copy of order enclosed as Annexure B) gets completed (this is likely by 4.4.2001 as per the order of Deputy Commissioner, Gurgaon).

The State Government's order of 6.6.1990 endorsed on 28.6.1990 clearly states that land will be used for the purpose it has been gifted otherwise Panchayat will take back possession. The land is not being used for either a college or a polytechnic let alone a college and polytechnic, Thus prima facie it appears that condition has been breached by BYK Trust. Another condition which has reportedly not been met is that in addition to Village Sarpanch one more member elected by the Panchayat and a third member nominated by the Deputy Commissioner be made members of Managing Committee of the Trust.

The State Government could be advised to expedite its decision in the show cause notice already issued to it BYK Trust.

It became obvious while we were inspecting the above mentioned site that some parts of the land about which Gram Panchayat Bhondsi had passed resolution No. 57 dated 11.12.1990 but which was never referred to State Government and whose ownership is

still of the Gram Panchayat are in possession of the BYK Trust and inside its boundary walls. A perusal of the enclosed visual sketch map where the legend calls this land as "Land of Panchayat in possession of BYK" gives an indication of how this land intermingles with the land mentioned in the previous paragraph. The exact amount of panchayat land under possession of BYK Trust would become known only after completion of the demarcation/kayami exercise initiated by Deputy Commissioner Gurgaon on 29.3.2001, but the local staff and Deputy Commissioner who were present agree based on visual inspection and perusal of the land records available that a significant part of this land of 16 acres 7 canals and 9 marlas whose ownership was never transferred to BYK Trust is in possession of the Trust.

The State Government could be advised to ensure that once demarcation is done the possession land of panchayat presently in possession of the Trust be got delivered to the Gram Panchayat.

We then proceeded to the land regarding which Gram Panchayat had resolved vide Resolution No. 55 dated 23.10.1983 on which State Government had given its approval vide its order dated 3.3.1984 endorsed to concerned persons on 22.3.1984 whereby 33 acres 7 canals and 6 marlas of Gram Panchayat land were gifted to BYK Trust as per certain conditions. This land is indicated as "Bharat Yatra Kendra Land", "Lake and "Dam" in the legend of the visual sketch map. Deputy Commissioner Gurgaon accompanied us to the beginning of this land near a large formal gate constructed by BYK Trust and then begged leave to attend to other urgent work in Gurgaon. However, all other Government functionaries mentioned as Annexure-A accompanied us throughout our visit on this land and on the visit subsequently to the forested land as described later.

One of the conditions in the Government order dated 3.3.1984 states that Bharat Yatra Kendra Trust will construct a Civil Dispensary Building consisting of 3 rooms with verandah. No such dispensary has been constructed on this land. Mr. Sood of BYK Trust indicated verbally that, on the request of the Panchayat, the Trust had instead constructed a civil dispensary and verandah in the main abadi of village of Bhondsi on land of the Panchayat Ghar and separately subsequently showed us a dispensary and verandah in Bhondsi village next to the Panchayat Ghar. This dispensary is being run by Haryana Government. Sh. Sood of BYK said that BYK Trust had handed it over after construction to Haryana Government and returned Rs. 0.50 lacs meant for running the dispensary to the Government. The District Development and Panchayat Officer Gurgaon mentioned that BYT had received Rs. 5 lacs plus Rs. 1 lacs plus Rs. 0.50 lacs from CM Relief Fund for the dispensary and that he believed Rs. 0.50 laca had been returned by the Trust.

It is State Government to determine whether the Trust actually constructed the dispensary on the land of panchayat Bhawan in the main abadi of Bhondsi village and also that if, even though no dispensary at all has been constructed on the entire piece of land gifted to the Trust as per the order of 3.3.1984, it can be construed that the condition of the order of 3.3.1984 has been met.

During the site visit it could be ascertained that the structures constructed include a large cattle shed (total animals reported 35 or 36 whose milk was consumed internally with BYK Trust or supplied to nearby persons), building reportedly for storing fodder and containing some living space for the helpers, a building referred to as staff canteen or workers mess, a building being used as office cum residence by Mr. Sood which also contains a small conference room, the Asoka Mehta Building which is a largish complex apparently meant for conference and library etc., along with air conditioned rooms meant for visitors, a building reportedly being used by Sh. Chandrashekhar ex-Prime Minister, nearby smaller living building (reportedly for SPG staff etc. a "guest house where trustees of BYK Trust stay, some smaller structures including near the gate and a couple of building containing more than one stores referred to as staff residences/ quarters. A number of tubewells have been constructed along with an electricity room. Landscaping has ben done and there are green lawns over the undulating land with flowers/trees etc. A dam and a lake exist which apparently have been constructed or reinforced by the Trust. The rough sketch map sent through BDO Sohna by Deputy Commissioner Gurgaon indicates some of the main structures only. It also appears to indicate that one corner of this land marked in red over the blue markings as Panchayat land in possession of the Trust. However the exact position in this regard would only be come clear once the demarcation and Kayami ordered by Deputy Commissioner Gurgaon on 29th March, 2001 is completed.

A significant position of this land pertaining to the government order of 22.3.1984 is vacant and the exact area may be determined only once the demarcation/kayami is completed.

One of the conditions in order of State Government dated 22.3.1984 is that the land will be used for the purposes mentioned in the constitution otherwise it would taken possession back.

Thus the State Government could be advised that in addition to determining whether any condition had been breached by the fact that no civil dispensary of 3 rooms with verandah has be constructed on the land gifted by the Gram panchayat, they could also review whether the structures presently constructed by BYK Trust are for the purposes mentioned in the constitution or not.

In fact though the show cause notice issued by State Governed on 26.7.2000 and cited earlier by us only refers to the land as per Government Order dated 28.6.1990, the Deputy Commissioner Gurgaon had on 210.7.2000 written Special Secretary to eh Government of Haryana Development and Panchayat Department that for both the lands vide Government Order of 22.3.1984 and vide Government Order dated 28.6.1990 and conditions in the Government orders had not been fully complied with.

The Gram Panchayat had also passed a resolution No. 53 dated 8-11.2.1990 allowing BYK to plant trees on land measuring 500 acres as per certain terms and conditions. Apparently this resolution was never referred to the State Government and ownership of the land was not transferred to BYK Trust. It is not our job to examine whether or not the

Gram Panchayat resolution required approval at either Panchayat Samiti, or Zila Parishad, or Government level. Both Sarpanch and Sh. Sood on behalf of BYK Trust as well as the Government functionaries all indicated that on this land which was already afforested the BYK Trust has undertaken some plantation work. The understanding seems to be that BYK Trust would plant and maintain afforestation on behalf of the Gram Panchayat. We visited a part of this land which is primarily on hillside and hilltop. BYK Trust has built a road on to the site which presently passes through land earlier possession of BYK Trust but now restored to the Border Security Force. The BSF has constructed a boundary wall on the land restored to it but presently there are no gates at the portion where the road passes through its land. BYK Trust claimed that they would be building an alternate road outside the BSF land. BSF could be advised to either completely close the wall or to install gates so that entry on the BSF land could be regulated by BSF.

The afforested land of the Gram Panchayat land has reportedly been enclosed by a wall by BYK Trust. We visited parts of the land and could see the boundary wall at many places. Along the road some plantation has been done and some pipes for watering of plants have been installed.

It appears that the land was already afforested and some supplementation has been done by BYK Trust along with the Trust having enclosed the land with a stone wall. The land also has a temple with a large statue. We could not visit the statue during our visit. Reportedly near the temple there is a structure referred to as "Dharamshala". This also could not be visited by the team. It is not clear as to whether the Dharamshala and temple were constructed by BYK Trust or by some one else and when-and if the Trust got the construction done then whether it was breach of any condition or rule."

18. In the report regarding the visit of the Committee on 6th April, 2001, the Committee physically verified the land with the Revenue record. The Committee found the existence of temple, dharamshala, staff quarters and bakery also on the spot. The Committee further found that land measuring 6 acres 3 kanals and 10 marlas which was in possession of the respondent Trust had never been transferred to it. The Committee further found:

"In the forest area which has been enclosed by the trust 3 rooms have been constructed at different places which are reportedly used by the watch and ward staff of Bharat Yatra Kendra. Details of the 388 acres 3 canals and 12 marlas are at page 65 to 69 of Annexure E only.

Land for Forest Area enclosed with the compound of land for dispensary

From the Sajra and record made available to us it is apparent that at two different places a total of land slightly more than 3 acres which is part of the forest land measuring 500 acres as per the resolution of 1990 has been enclosed within the Trust compound alongwith the land given for the construction of dispensary. Some of this land is under buildings some under roads, some had been made part of the lake and some has been used a spark land. Details of this area are at page 77 of report Field Kanoongo, Sohna (Annexure E) read with pages 55 to 59 pertaining to Khasra Numbers 130 and 130.

Gair Mumkin Nallah land

There is also a nallah on the Khasra No. 279. Out of area of 9 acres 3 kanals 7 marlas of this khasra which is entered as Gairmumkin Nallah in the record and therefore which is panchayat land, 8 acres 2 marlas of his nallah is under possession of Bharat Yatra Kendra. Based on the demarcation executed by the Revenue authority they reported that 4 Kanal 5 marlas of this land was being used by the Trust for construction for building next to the land gifted for polytechnic and college to Bharat Yatra Kendra (See page of Kanoongo's report). The representative of the trust had verbally claimed that his construction is being carried on private land which was purchased by Bharat Yatra Kendra and not on the nallah land.

While Kila-wise details of land occupied for various purposes and of vacant lands have been spelt out in details at pages 19 to 69 in report of the Kanoonga received by us through Deputy Commissioner, Gurgaon, the report also contains land use area summaries for each of the above mention lands (Page 71 to 79 of Kanoong's report). Copy of AK Sajra received from Deputy Commissioner is also enclosed along with the Kanoongo's report which is at Annexure E."

19. We have heard learned counsel appearing for the parties at length and minutely examined the record produced in the case.

20. Mr. U.U. Lalit, Advocate, learned amicus curiae submitted that the transactions involving girding of the land were against the provisions of the Act and the Rules. He specifically drew our attention to Sections 2(g), 3, 4, 5, 5A and 5B of the Act and Rules 3(2) 6, 10 and 13 of the Rules besides the provisions of Forest Conservation Act, 1980. He has contended that the land having been recorded as forest land could not be transferred to a private party by the Gram Panchayat or the Government. The purpose for which the land was gifted is stated to be inconsistent with the provisions of law and thus not legally permissible. No prior approval of the State or the Central Government was obtained with respect to the forest land. The gift deeds are alleged to have been executed even in violation of the approval of the State Government. It is contended that after incorporation of Sections 5A and 5B gift of the common land, vesting in the Gram Panchayat could be made only in favour of the specified categories and for the benefit of the inhabitants. The proclaimed propose of the Trust has nothing to do with the transactions by which it has acquired the lands. Neither the inhabitants nor the Gram Panchayat has been benefited by the impugned transactions.

21. Mr. Neeraj Jain, the learned counsel appearing for the State of Haryana, tried to justify the action of the State Government. He argued that the land in controversy had been declared as forest for a limited period and in the absence of extension of period it ceased to be the forest land.

22. Mr. Mahabir Singh, learned counsel who appeared for the Gram Panchayat submitted that 500 acres of land, after afforestation, has been returned to the State Government as per direction of the court. He has submitted that the aforesaid land be handed over to

Gram Panchayat. The learned counsel has also justified the action of the Gram Panchayat in making the gifts of the lands to the respondent No. 7

23. Mr. Kapil Sibal, learned Senior Advocate, who appeared on behalf of the respondent No. 7 has submitted that mere violation of the terms of the approval would not render the transaction as illegal or void unless the initial transfer itself is proved to be against the provisions of law. It is contended that if there is any violation of the terms of the grant, the appropriate authorities are at liberty to initiate action against his client. Taking us through various documents, the learned senior advocate has pointed out that all the conditions of the resolutions of the Gram Panchayat, the approval of the Government and the terms of the gift deeds have been complied with by respondent No. 7. It is submitted that land measuring 500 acres has been returned back after afforestation and according to him no dispensary was required to be built in the land gifted to respondent No. 7. The only condition precedent was for the construction of a dispensary in the village which stands fully complied with. The condition for establishment of the polytechnic college is also stated to have been fulfilled. The land gifted is claimed to be used only for the objectives of the Trust. No authority has found any illegality in action as is claimed to be evident from the grant-in-aid, sanction and utilisation certificate issued in favour of respondent No. 7. It is contended that the action of the Gram Panchayat and the State Government is legal, valid and according to law regarding which no objection can be raised. The writ petition is stated to be misconceived which is liable to be dismissed.

24. Even though the respondent No. 7 in his counter affidavit had challenged the locus standi of the petitioner to file the writ petition and its non-maintainability in public interest, yet during the arguments heard for two days no objection has been raised either regarding the locus of the petitioner or the maintainability of the writ petition filed in this Court under Article 32 of the Constitution.

25. In this petition the controversy relates to the following pieces of lands:

i) Land measuring 271 kanals 6 marlas = acres 7 kanals 6 marlas decided to be gifted to respondent No. 7 by the Gram Panchayat of Village Bhondsi vide Resolution No. 55 dated 22nd October, 1983 regarding which the State Government had accorded its approval vide its order dated 3.3.1984 subject to the conditions specified therein.

ii) Land measuring 151 kanals and 19 marlas = 18 acres 7 kanals 19 marlas decided to be gifted to respondent No. 7 by the Gram Panchayat vide its Resolution No. 55 dated 18.12.1989 for which the approval of the State Government was granted on 6th June, 1990 subject to the conditions specified therein.

iii) Land measuring 500 acres which was transferred by the Gram Panchayat vide its Resolutions dated 8.11.1990 and 26.7.1994 to the Trust for the purpose of plantation of trees. This transfer was never approved by the State Government.

iv) Land measuring about 17 acres resolved to be transferred to the Trust vide Gram Panchayat Resolution dated 11.12.1990. The aforesaid resolution never reached the State Government and thus no approval was granted.

v) Land measuring 8 acres 3 Kanals and 7 marlas belonging to the Border Security Force allegedly unauthorisedly encroached upon by the Trust.

26. When this petition came up for hearing on 24th July, 2001, the learned counsel appearing for the respondent No. 7 stated that with regard to the land measuring 500 acres given to the Trust for plantation of trees the Trust does not claim any interest or possession over it. He further stated that respondent No. 7 was not in possession of the land and the land belonged to the Gram Panchayat. Considering the aforesaid statement, learned counsel appearing for the State of Haryana was directed to take possession of the land immediately and put proper guards and security so that the trees which were stated to have been planted over the said land are not damaged or destroyed. Pending further orders, the State Government was ordered not to allot the aforesaid land to anyone except with the prior permission of the Central Government and of this Court, till the pendency of the proceedings. A team of officers of the Central and the State Governments was authorised to take possession of the land at the earliest. They were ordered to prepare panchanama of the land while taking possession and submit the compliance reporting the court before 31st July, 2001. The Deputy Commissioner, Gurgaon, vide his letter No. PA/2001/267 dated 30.7.2001 submitted the compliance report intimating that the Committee approved by the Court comprising of Central/State Government officers have taken over the possession and hence complied with the orders. The possession of the pucca structure was handed over to the Tehsildar, Sohna and the trees/plantation to the DFO(T), Gurgaon.

27. So far as land mentioned in Item No. (V) is concerned, it has come on record that after proper identification, the land has been returned to the BSF. Regarding land measuring about 17 acres mentioned in Item N. (IV), the respondent No. 7 initially took a plea that he said land was owned and possessed by private persons and they transferred the same in favour of the respondent-Trust allegedly having regard to the activities taken by it for the development of the area and for the well being of the villagers. It was contended that the Gram Panchayat had no concern with the said 16 acres of land. However, in the written submissions of respondent No. 7 it was stated that:

"Further apart from the land which has been given by the panchayat some other lands mentioned in the petition may have been inadvertently included in the Trust's land. This land can be taken back by panchayat whenever it wants."

28. Again in the additional affidavit filed on behalf of respondent No. 7 it is submitted:

"That the deponent also wants to point out that it has been wrongly alleged in the reports of the Two Member Committee that land measuring 17 acres was found under illegal occupation of the Trust. It is submitted that the said lands were also proposed to be gifted by the Village Panchayat, Bhondsi, vide Resolution No. 57 dated 11.10.1990 and the same

was sent to the Government of Haryana for approval. However, the said approval has not given by the State Government so far. Thus, it is wrong to suggest that the Trust is in illegal occupatio of the said land. However, out of the said about 17 acres of land, 10 acres are a part of the 500 acres of land on the Aravali Hills, which can be confirmed form the revenue documents placed on record itself. The other 7 acres are still with eh Trust as it falls under small pockets within the other lands gifted to the Trust. In case the approval is not given by the State Government, the Village Panchayat can take back the possession of the said land."

29. From the inconsistent pleas raised and in the light of the latest affidavit filed on behalf of the respondent No. 7, it is held that the Trust had no right or interest in the said land measuring about 17 acres and is liable to return it to the Gram Panchayat in presence of the Deputy Commissioner of the area. In this view of the matter, no further directions are required to be issued so far as land mentioned at Item No. (iv) is concerned.

The limited controversy now relates to the land mentioned at Item Nos. (1) & (ii).

30. As the relevant facts are not seriously disputed, it is necessary to have a glimpse of the provisions of law applicable in the case. The Act was enacted to consolidate and amend the law regulating the rights in shamlat deh and abadi deh in the then State of Punjab which, after the formation of new State of Haryana, was also made applicable to it. Shamlat deh, as defined under Section 2(g) of the Act includes:

"1. Lands described in the revenue records as Shamilat Deh or (Charand-in Hr) excluding abadi deh.

2. Shamilat tikkas;

2A. Was shamlat deh, but has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985.

3. land described in the revenue records as shamilat tarafs, patties, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

4. Lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds, within abadi deh or gorah deh, and;

4a. Vacant land situate in abadi deh or gora deh not owned by any person-in Har. only):

5. Lands in any village described as banjar qadim and used for common purposes of the village according to revenue records;

Provided that Shamilat deh at least to the extent of twenty-five per centum of the total area of the village does not exist in the village; in Haryana only):

31. Section 3 provides that the Act apply and before the commencement of the Act the shamlat law shall be deemed always to have been applied to all lands which are shamlat deh as defined in Clause (g) of Section 2. Sub-section (2) of Section 3, as amended in 1995, provides that notwithstanding anything contained in Sub-section (1) of Section 4 where any land has vested in a Panchayat under the shamlat law but such land has been excluded from shamlat deh under Clause (g) of Section 2, other than the land so excluded under Sub-section (ia) of that clause all rights, title and interest of the Panchayat in such land, as from the commencement of the Amendment Act, shall cease and all such rights, title and interest vest in the person or persons in whom they were vested immediately before the commencement of shamlat law. Where any land has vested in the Panchayat under the Act, but has been excluded from shamlat deh, all rights, title and interest of the Panchayat in such land as from the commencement of the Act shall cease and all such right, title and interest shall, on or before the 9th day of July, 1985 revert in the person or persons to whom the land so excluded has been allotted or otherwise transferred by sale or by any other manner whatsoever subject to various conditions mentioned in the amended section. For the purposes of present controversy the amended provisions are, however, not relevant.

32. Section 4 of the Act deals with the vesting of rights in Panchayat and non-proprietors. Under Section 5 all lands vested or deemed to have been vested in a Panchayat under the Act shall be utilised or disposed of by the Panchayat for the benefit of the inhabitant of the village concerned in the manner prescribed. Where two or more villages have a common Panchyata, the shamlat deh of each village shall be utilised and disposed of by the Panchayat for the benefit of the inhabitants of that village. Provided further that where the area of the land in shamlat deh in any village was vested or deemed to have been vested in a Panchayat is in excess of twenty five percent of the total area of that village (excluding abadi deh) then twenty five percent of such total area shall be left to the Panchayat and out of the remaining area of shamlat deh, an area upto the extent of twenty five percent of such total area shall be utilised for the settlement of landless tenants and other tenants ejected or to be ejected of that village and the remaining area of shamlat deh, if any, shall be utilised for distribution of the small land-owners of that village, subject to the provisions relating to (permissible area under the Haryana Ceiling on Land Holdings Act, 1972, by the Assistant Collector of the first grade) in consultation with the Panchayat (in such manner and on payment of such amount) as may be prescribed. If, in the opinion of the State Government it is necessary to take over to secure proper management for better utilisation for the benefit of the inhabitants of the village concerned any shamlat deh the Government may by notification take over the management of such shamlat deh for a period not exceeding twenty years. Under Section 5A of the Act, a Panchayat may gift the land in shamlat deh, vested in it under the Act, to members of the scheduled castes and backward classes of the village in which such land is situated on such terms and conditions as may be prescribed. The gift of land in shamlat deh, already made, shall be deemed to have been made under Sub-section (1) of Section 5A. Section 5B of the Act prescribes that any transfer of land gifted in pursuance of the

provisions of Section 5A, made in contravention of the prescribed terms and conditions, shall be void and the gifted land so transferred shall revert to and re-vest in Panchayat free from all encumbrances. Sections 5A and 5B of the Act were inserted vide Haryana Amendment Act No. 25 of 1976 with retrospective effect.

33. Section 15 of the Act authorises the State Government to make rules for carrying out the purposes of the Act. Under Clause (ff) of Sub-section (2) of Section 15 of the Act, the rules made can provide for the terms and conditions on which the land in shamlat deh may be gifted to the members of the scheduled caste and backward classes in Haryana.

34. The Rules were framed in the year 1964. Rule 3 provides that the Panchayat shall prepare a land utilisation plan of the land in shamlat deh vested in it under the Act and it shall be the duty of the Block Development and Panchayat Officer to assist the Gram Panchayat concerned in the preparation of the said plan which shall be subject to the approval of Panchayat Samiti where the area exceeds 100 acres but does not exceed 1000 acres. Under Sub-rule (2) of Rule 3, the Panchayat may make use of the land in shamlat deh vested in it under the Act either itself or through another, for any one or more of the purposes specified therein including the purposes of school buildings, school library or any other structure for educational purposes, maternity or first aid centres and hospital and dispensary. Rule 6, at the relevant time, provided that all leases of lands in shamlat deh shall be auctioned after making publicity in the manner laid down in Sub-rule (10). A detailed procedure regarding auction, admittedly not followed in the present case, has been specified in the said Rule. Rule 10 provides that the Panchayat may allow the use of land in shamlat deh, vested in it free of charge to the inhabitants of the village for the purposes of steeping of hemp or any other plant in ponds, residential purposes of members of the Scheduled Castes or Backward Classes or dependents of the defence personnel killed in any war after the independence of India or landless labourers or tenants in genuine cases on ground of poverty and any other suitable common purpose. Rule 13 provides that the Panchayat may, with the previous approval of the Government, gift the land in shamlat deh, vested in it under the Act, for the purposes of hospital, dispensary, or educational or charitable institutions or for such other purposes as may be approved by the Government to be for the benefits of inhabitants of the village concerned. The Panchayat, with the previous approval of the Government, may gift the land in shamlat deh vested in it under the Act, for the purposes of construction of houses, laying out common places and providing other amenities under Model Village Scheme approved by the government for the benefit of the inhabitants of the village. Rule 13A provides that the terms and conditions on which the land under Section 5A may be gifted shall be as under:

"(a) The donee shall not sell, mortgage or dispose of the land in any other manner, whatsoever before the expiry of a period of twenty year from the date of the gift;

Provided that doner may mortgage the land with any scheduled bank or Housing Board or the government for the purpose of raising loan for the construction of the house;

(b) the donee shall construct a house on the land within a period of two years from the date of the gift;

(c) the donee shall use the land for residential purposes and for no other purposes, and

(d) In case of death of donee, his legal heirs shall be bound by the condition therein contained."

35. It is true that under Sub-rule (2) of Rule 3 the Panchayat can use the land in shamlat deh, vested in it under the Act, either itself or through another, for any or more of the purposes specified therein, but it is equally true that the authority under the aforesaid rule can be exercised only after the utilisation plan of the land in shamlat deh has been prepared under Sub-rule (1) of Rule 3. There is nothing on the record to show that any such utilisation plan was prepared warranting the action under Sub-rule (2). If the recourse was to be held to the aforesaid provisions, the utilisation of the land through an agency other than the Panchayat could be had by leasing out the site and compliance of the conditions specified in Rule 6. No such action appears to have been taken in the instant case.

36. Rule 13 authorises the Panchayat to make a gift for the purposes of hospital, dispensary or education or charitable institutions or for such other purposes as may be approved by the government to the benefits of the inhabitants of the village concerned. Such a gift can be made only with the previous approval of the Government. Rule 13 apparently appears to be beyond the scope of Rule making powers of the State Government inasmuch as the right of the Panchayat to gift the land is circumscribed by the provisions of Sections 5A and 5B of the Act. Clause (ff) of Sub-section (2) of Section 15 authorises the State Government to frame Rules regarding the terms and conditions on which the land shamlat deh may be gifted to the members of the Scheduled Caste and Backward Classes. Section 15 does not authorise the State Government to make Rules with respect to the gift of the land to persons other than those contemplated under Section 5A and 5B of the Act. Any rule which is contrary to the provisions of the Act cannot be given effect to or made the basis of gifting the property, vesting in the Gram Panchayat. It cannot be disputed that the gifts proposed by the Panchayat, approved by the State Government and ultimately made by the Gram Panchayat are in violation of provisions of Section 5A and 5B of the Act read with Rule 13A of the Rules. As the gifts have been made in favour of persons other than those specified in the mandatory provisions of Sections 5A and 5B, the same are void-ab-initio. Making of the gift apparently appears to be abuse of the powers vesting in the Panchayat. The State Government appears to have taken a very casual approach in the matter and granted the approval for reasons best known only to it. Non application of the mind of the State government is writ large in the case. The manner in which the Gram Panchayat and the State Government have dealt with the matter shows that they were overshadowed by the towering political personality of Sh. Chander Shekhar, Chairman of Respondent No. 7. His giant stature, hovering over the office bearers of the Gram Panchayat and officials of the State Government appears to have factually immobilised them in the discharge of their duties which resulted in their scumming to heavy weight of the influential respondent.

37. There is no denial of the fact that the Rules under the Act were framed in the year 1964 and Sections 5A and 5B were inserted vide Punjab Act No. 25 of 1976. Prior to the incorporation of the aforesaid sections, the respondent-State had a right to gift land out of the shamlat deh for purposes as specified in Rule 13 but after the amendment of the Act, Rule 13 became redundant and could not be invoked as its exercise would be against the provisions of the Act, authorising the making of gifts only in favour of the persons specified in the aforesaid two sections.

38. Assuming that the Government had the right to grant the approval for making the gift under Rule 13, the same was required to be strictly followed and adhered to for the purposes as specified under the said Rule. It appears that the State Government, while exercising the power under Rule 13, had in mind the purposes specified in Sub-rule (2) of Rule 13 of the Rules which provided for user of the land by the Panchayat or through another for the purposes of school building, school library or any other structure for educational purpose, maternity or first-aid-centres, hospital or dispensary. The Government Order dated 22.3.1984 accorded the approval for the gift of shamlat land by Gram Panchayat, Bhondsi measuring 270 kanals 6 marlas out of Khasra numbers of the land specified in the order for setting up a welfare institution as resolved by the Gram Panchayat Bhondsi. The approval to gift the shamlat land was, however, subject to the following conditions:

- "1. Bharat Yatra Trust will construct a Civil Dispensary Building consisting of 3 rooms with verandah.
2. Non technical from the village will be the village residents.
3. One representative from the village will be taken on Trust Body.
4. The land to be donated will not be sold or transferred any other body.
5. The land will be used for the purpose mentioned in the construction otherwise the Panchayat will take possession back.
6. The land will be got released from the Forest Deptt., through proper channel."

39. Similarly, the approval for gift of shamlat land measuring 150 kanals 19 marlas out of khasra numbers specified in the order was accorded for the setting up of a college and polytechnic as resolved by the Gram Panchayat subject to the same conditions. The making of the gift depended upon the compliance of the conditions, specified in the aforesaid two Government orders. Concededly the condition No. 6 for getting the land released from the Forest Department through proper channel was never complied with before the execution and registration of Gift Deeds. It is conceded before us that the land, the subject matter of the gift has not, however been got released from the forest Department as per conditions of the order approving the gifting of the shamlat land in favour of respondent No. 7. Without release of the land from the Forest Department, the Gram Panchayat had no authority, power or jurisdiction to execute the gift deeds in

favour of any person including respondent No. 7. Any gift made in violation of the mandate of law and the conditions of approval has to be deemed to be non-existent in the eye of law not affecting the rights of the original owners of the land, i.e., Gram Panchayat and its inhabitants. Learned counsel, appearing for the respondents, could not satisfy us regarding the legality and validity of the gift deeds without compliance of Condition No. 6 of the order of the Government granting approval for making the gift. The Gram Panchayat has dealt with property of its inhabitants in a reckless manner with the object of depriving the people of the area, the user of the land under the Act and the Rules made thereunder. The land which was intended to be used for scheduled castes and backward classes, admittedly, the oppressed section of the society apparently appears to have been usurped by respondent No. 7 under the shadow of the politically influential personality and stature of its Chairman.

40. Mr. Kapil Sibal, learned Senior Counsel, appearing for respondent No. 7, has vehemently argued that under the resolutions passed and the gift deeds executed, no obligation was cast upon the respondent No. 7 to construct a civil dispensary building or the college and polytechnic on the land gifted by the Gram Panchayat, Bhondsi. Such a submission has to be noticed only for being rejected inasmuch as the order of the State Government specifically provided that the shamlat land of the Gram Panchayat was approved to be gifted for setting up of a welfare institution in the form of a civil dispensary as also college and polytechnic on the land gifted. The gifting of the land even under Rule 13 of the Rules is, admittedly, subject to the approval of the State Government. When the State Government specifically provided in its order of approval that the lands shall be utilised for the purposes mentioned therein, the Gram Panchayat had no right to make the gift of the land to respondent No. 7 for any other purpose. Prescribing conditions in the gift deed, contrary to the order of approval, renders the gift deed void not affecting the rights of the inhabitants of the Gram Panchayat. Rule 13 itself mandated that the Government may grant approval for gifting the shamlat land vesting in the Panchayat for the purpose of "hospital, dispensary or educational or charitable institutions or for such purpose as may be approved by the Government to be for the benefit of the inhabitants of village concerned". Despite adopting a casual approach, the State Government had specified one of the purposes mentioned in Sub-Rule (1) of Rule 13 for making the gift of the Gram Panchayat which was violated by the Gram Panchayat while executing the deed of gift in favour of respondent No. 7.

41. It has been pointed out on behalf of respondent No. 7 that as a dispensary has been constructed in the village though not in the land, the condition of the Government order stood complied with. We do not agree with such a submission. If the construction of the dispensary in the land gifted to the respondent No. 7 was felt to be inconvenient for the inhabitants of the village, as argued before us, the Gram Panchayat and the respondent-Trust were under a legal obligation to approach the State Government afresh for modification of its order. Construction of three rooms dispensary by the Trust which is admittedly now managed and manned by the Government cannot be termed to be the compliance of condition No. 1 of the Government order. The Gram Panchayat had no power, right or jurisdiction to transfer land measuring 271 kanals 6 marlas by way of gift in lieu of getting constructed three room dispensary in the village. The Gram Panchayat is

not a commercial institution and has no right to deal with the property of the people in the manner they have done, apparently for appeasing respondent No. 7.

42. Regarding compliance of condition No. 1 with respect to land measuring 151 kanals 19 marlas it has been contended that by establishing "Stree Niketan" the respondent No. 7 has complied with the aforesaid condition. We again do not accept such a plea. College and polytechnic cannot be equated with the Stree Niketan allegedly established by respondent No. 7 which is admittedly not recognised by any Government or affiliated to any University. The Committee appointed in terms of this Court's order, in its report, has found, on facts, that the land is not being used for either a college or polytechnic. It is true that for violation of the aforesaid condition no action be taken for declaring the gift deed void but the non user of the land either for a college or for a polytechnic and insistence of the Stree Niketan being the substitute of it clearly and unambiguously shows that respondent No. 7 had never intended to use the said land for the purpose for which it was granted. Such a resolve of respondent No. 7 makes the transfer of land by way of gift in its favour highly suspicious and in the context of circumstances illegal and void.

43. In the revenue records, i.e. Jamabandi of 1990-91, the land, the subject matter of the gift deed is shown to be under the occupation of Forest Department. Learned counsel for the respondent No. 7 has produced before us Jamabandi pertaining to the aforesaid land of the year 1980- 81, which shows that the aforesaid land was in occupation of the Gram Panchayat itself. Admittedly, the Gram Panchayat passed its first resolution on 22.10.1983 and second resolution on 8.12.1989. No revenue records have been produced before us to show that the Gram Panchayat was in possession of the land at the time when action for making the gift of the land in favour of the respondent No. 7 was initiated and completed. We have reasons to believe that the land was under the occupation of the Forest Department because while granting its approval, the State Government has specifically mentioned in Condition No. 6 of its order that the land shall be got released from the Forest Department through proper channel. If the land was not in occupation of the Forest Department, there was no occasion for the State Government to mention the aforesaid condition in its order.

44. Once the land was found to have been used for the purposes of forest, the provisions of the Indian Forest Act and the Forest Conservation Act would be attracted, putting restrictions on de-reservation of the forest or use of the land for non forest purposes. The Forest Conservation Act, 1980 has been enacted with the object of preventing deforestation. The provisions of the aforesaid Act are applicable to all forests. It is true that "forest" has not been defined under the Act but this Court in T.N. Godavarman Thirumulkpad v. Union of India and Ors., has held that the word "forest" must be understood according to its dictionary meaning. It would cover all statutorily recognised forest whether designated as reserved, protected or otherwise for the purposes of Section 2(i) of the Forest Conservation Act. The term "forest land" occurring in Section 2 will include not only the forest as understood in the dictionary sense but also any area regarded as forest in the government record irrespective of the ownership. The provisions of the Forest Conservation Act are applicable to all forests so understood irrespective of the ownership or classification thereof. This Court has issued certain directions and

guidelines for the preservation of forest and its produce in T.N. Godavaraman's case which are not shown to have been implemented by the respondent-State.

45. Section 2 of the Forest Conservation Act mandates that no State Government or authority shall make an order directing that any forest land or any portion thereof shall cease to be reserved or any forest land or any portion thereof may be used for non forest purposes or forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to an authority, corporation, agency or any other organisation owned and controlled by the Government or any such land or portion thereof be cleared of trees which have grown therein - without the prior approval of the Central Government. The gifting of land, in the instant case, cannot, in any way, be termed to be for a forest purpose. Learned counsel appearing for the State of Haryana showed us a Government order which had declared the area, covered by gift deeds, as forest prohibiting the cutting of the trees, declared as forest though for a limited period of 25 years. It is submitted that as the period of 25 years was not extended, the land, earlier declared as forest, had ceased to be a forest land. Such a plea is contradictory in terms. The State of Haryana is proved to be conscious of the fact that the land, intended to be gifted, was either the forest land or property of the Forest Department regarding which the Condition No. 6 was imposed in its order granting the approval for gifting the land by the Gram Panchayat to the Trust. It is too late now in the day for the respondent-State to urge that as notification declaring the land as forest was not extended after initial period of 25 years, the same be deemed to not to be a forest land or land used for the purpose of the forest. In the affidavit filed on behalf of the respondents it is specifically stated:

"It is submitted that the State Government had only given approval to the Gram Panchayat for gifting the land. However, while permitting the Gram Panchayat to gift the land by way of abundant precaution, the State Government had imposed the condition to the effect that the land in question be got released from the Forests Department in accordance with law. The permission given by State Government did not mean at all that the donee or the doner was authorised in any way to divert the user of land in question."

46. The contradictory pleas taken and stands adopted by the respondent-State strengthens the argument of the petitioner that the transaction of making the gifts in favour of the respondent No. 7 is actuated by considerations other than those specified under the Act and the Rules made thereunder.

47. Learned counsel, appearing for the respondent No. 7, has submitted that as the land is being utilised for the purposes of the Trust and Shri Chander Shekhar is not taking any advantage from the said land, the action initiated by way of public interest litigation is not sustainable. There is no doubt that the land has not been utilised by the respondent No. 7 for any commercial purpose but it is equally true that the land is being utilised for purposes other than those contemplated under the Act and the Rules made thereunder for which the gift was approved to be made by the Gram Panchayat in favour of respondent No. 7. We are not impressed with the argument of the respondent No. 7 that the gifted land was acquired for the purposes of welfare of the people and the upliftment of the inhabitants of the Gram Panchayat. The land appears to be utilised for the personal

leisure and pleasure of some individuals including the Chairman of respondent No. 7 which cannot be termed to be used for the upliftment of the poor and the (sic) as claimed. It cannot be disputed that in this country the position of rural poor is worst. According to an assessment about 2/3rd of the rural population which consists of farm workers, small and marginal farmers, poor artisans and the unemployed agricultural labourer are possessed of 15 to 20% of the total available land. The number of owners of land with less than 0.2 hectares is about 29 million. When millions of landless agriculturists are struggling to get some land for feeding their families and protecting their lives, the respondent No. 7 has maneuvered to usurp about 600 acres of land, apparently for not any public purpose. It is unimaginable that for the construction of three rooms dispensary, the respondent No. 7 would require and the Gram Panchayat as also the State of Haryana would oblige by conferring State largesse of about 271 kanals of land. The shocking facts of the case further disclose that even this three room dispensary has not been built on the land in controversy. For a reasonable person, as the respondent No. 7 is presumed to be, the aforesaid land should have been returned to the Gram Panchayat after public controversy had risen culminating in the filing of the present writ petition in public interest. This Court cannot remain a silent spectator where people's property is being usurped for the personal leisure and pleasure of some individuals under the self-created legal, protective umbrella and the name of a Trust. A politician of the stature of Shri Chander Shekhar cannot claim to minimise the sufferings of the people by constituting the Trust and utilising the lands taken by it allegedly for the upliftment of the poor and the oppressed. The purpose of the respondent-Trust may be laudable but under the cloak of those purposes the property of the people cannot be permitted to be utilised for the aforesaid objectives, particularly when the law mandates the utilisation of the transferred property in a specified manner and for the benefit of the inhabitants of the area, the poor and oppressed and the scheduled castes and backward classes. We are not impressed with any of the pleas raised on behalf of the respondent No. 7 that the land was acquired bonafide for the proclaimed object of upliftment of the people of this country in general and of the area in particular. We fail to understand as to how the country can be uplifted by personal adventures of constituting trusts and acquiring hundreds of acres of lands for the purposes of that Trust. It is nothing except seeking personal glorification of the persons concerned.

48. It may not be termed as co-incident that the respondent No. 7 is shown to be in possession of 500 acres of land without any approval, order or deed or found in possession of land belonging to BSF for a number of years. Failure on the part of the respondents to deliver the possession of about 17 acres of land, admittedly, not transferred to it or possessed by it under a valid order or authority had added weight to the allegations of the petitioner that the action of the respondent No. 7 was illegal and not bonafide. We are fully satisfied that the resolutions of the Gram Panchayat resolving to transfer the land measuring 271 kanals 6 marlas and 151 kanals 19 marlas, the approval granted by the respondent-State for making the gift by the Gram Panchayat in favour of the respondent No. 7 and the ultimate gift deeds executed in favour of the respondent No. 7 are not referable to any authority of law and apparently being contrary to the mandatory provisions of the Act and the Rules and void-ab-initio, not affecting the rights of the inhabitants of Gram Panchayat, Bhondsi. The respondent No. 7 has no justification to

retain any piece of the controversial land in its possession and is liable to deliver its possession to the Gram Panchayat. In view of our findings, we set aside and quash the Resolution dated 22.10.1983 and 18.12.1989 of the Gram Panchayat, orders dated 3.3.1984 and 6.6.1990 of the State Government and the gift deeds executed by Gram Panchayat in favour of respondent-Trust and direct the delivery of possession of the land to the Gram Panchayat in the manner specified in this judgment.

49. It has been stated at the Bar after the execution of the gift deeds the respondent No. 7 has raised construction and spent huge sums of money which may be taken into account for not divesting him for the possession of the land in dispute in general and the land where those structures have been raised in particular. We are not impressed by this argument also. We feel that the interests of justice would be met by directing the payment of the amounts spent by respondent No. 7 in the construction of the structures, though the respondent No. 7 cannot claim any advantage for usurping the said land. The appropriate authorities would taken into account the cost of construction as reflected in the account books of the respondent No. 7 and pay the same to it. The construction raised and the land around it can be utilised for the benefit of Gram Panchayat. The respondent No. 7 is, however, at liberty to remove the movable properties including the cattle from the area within a period of two months from the date of this order.

50. Under the circumstances this writ petition is allowed by making the Rule absolute with the issuance of following directions:

i) Consequent upon quashing of Gram Panchayat Resolutions dated 22.10.1983 and 18.10.1997, the Government Orders dated 3.3.84 and 6.6.90 and the gift deeds executed by Gram Panchayat in favour of the respondent-Trust, the possession of the land, the subject matter of this litigation shall be handed over by the respondent No. 7, its Chairman, Directors, employees, representatives and agents, initially to the State Government who shall thereafter deliver it to the Gram Panchayat with specific directions for utilisation of the land in the manner prescribed.

ii) The respondent-State shall constitute a committee within 15 days comprising of the Chief Secretary, The Deputy Commissioner, Gurgaon, the concerned Block Development and Panchayat Officer, the representative of the Ministry of Environment, Government of India, a representative of the Ministry of Home Affairs (Central Government) and the President of the District Bar Association, Gurgaon and the Sarpanch of Panchayat, Bhondsi, to take possession of the land within two months from the date of its constitution and submit its compliance report in this Court by 30th July, 2002.

iii) The Committee appointed in terms of direction No. (ii) shall formulate a scheme for the utilisation of the aforesaid land when its possession is taken from the respondent No. 7. Such scheme shall initially be implemented by the State Government and when its possession is delivered to the Gram Panchayat the aforesaid scheme shall be placed before the Gram panchayat for its approval. The Gram Panchayat at that time may taken appropriate actions for giving effect to the scheme in the manner proposed by the

committee or with such modifications as may be deemed proper in the interest of the Panchayat and for the purposes enumerated under the Act and the Rules.

iv) The respondent-State shall appoint another committee comprising of its Finance Secretary, Chief Engineer of the PWD, a representative of the Accountant General and the Sarpanch of the Gram Panchayat to assess the costs of construction of the buildings constructed on the land. The cost shall be assessed on the basis of the account books of the respondent-trust within a period of two months from the date of the constitution of that Committee.

v) That the State Government shall make the payment to the respondent No. 7 of the amount assessed as the value of the constructions raised within a further period of two months. After compliance of the formalities regarding taking possession and making the payment, the symbolic possession of the land shall be transferred to the Gram Panchayat for the purposes of its income and the land along with structures raised thereon shall be utilised for the purposes and in the manner specified in the policy to be formulated by the Committee appointed in terms of Direction No. (ii) hereinabove.

vi) The amount of the cost of construction, paid by the State Government to the respondent No. 7, shall be recovered from the Gram Panchayat in the manner and during the time as may be prescribed by the State Government in consultation with the committee appointed in terms of direction No. (iv).

vii) That the area of 500 acres of land, taken possession of by the State Government in terms of this Court's order dated 24.7.2001 shall be delivered to the Gram Panchayat and utilised in such a manner which does not contravene the provisions of the Forest Conversation Act.

viii) No part of the land, the subject matter of the controversy shall be utilised or transferred to any person or authority other than specified in Sections 5A and 5B of the Act, without prior sanction of the Central Government.

ix) Under the circumstances of the case we do not issue any direction for the registration of any criminal case against the respondent No. 7 or its office bearers.

x) The respondent No. 7 is held liable to pay costs of Rs. 25,000/-. Such costs shall, initially, be paid by the State Government and later recovered from the amount found payable as compensation to the respondent No. 7. Out of the costs recovered, a sum of Rs. 20,000/- shall be paid to Mr. U.U. Lalit, the learned amicus curiae who has very ably assisted the Court in the disposal of this petition. The balance Rs. 5,000/- shall be payable to the petitioner.