

PRADEEP KRISHEN  
v.  
UNION OF INDIA AND ORS.

MAY 10, 1996

[A.M. AHMADI, C.J., B.L. HANSARIA AND S.C. SEN, JJ.]

*Wild Life (Protection) Act, 1972 : Sections 26A and 35.*

*Sanctuaries and National Parks—Collection of tendu leaves from such sanctuaries/parks—State Government permitted villagers living in and around to Collect—Held : such order not invalid since final notification declaring area as sanctuaries/parks not issued—State Government directed to issue final notification expeditiously.*

The petitioner, an environmentalist actuated by public interest, had filed the present writ petition under Article 32 of the Constitution of India challenging the legality and constitutional validity of an order issued by the State Forest Department, permitting collection of tendu leaves from Sanctuaries and National Parks by villagers living around the boundaries thereof with the avowed object of maintenance of their traditional rights. The petitioner contended that this act of the State Government was *ultra-vires* the provisions of the Wild Life (Protection) Act, 1972, as well as the petitioner's fundamental rights guaranteed by Articles 14 and 21 of the Constitution and was even otherwise inconsistent with the Directive Principle contained in Article 48A and the Fundamental Duty cast on every citizen under Article 51A(g) of the Constitution of India. The petitioner further contended that the said order was *mala fide* and against public interest.

Disposing of the petition, this Court

**HELD :** 1.1. The procedure in regard to acquisition of rights in and over the land to be included in a Sanctuary or National Park has to be followed before a final notification under Section 26A or Section 35(1) of the wild Life (Protection) Act, 1972 is issued by the State Government. In the instant case, it is not the contention of the petitioner that the procedure for the acquisition of rights in or over the land of those living in the vicinity of the areas proposed to be declared as Sanctuaries and National Parks

A under Sections 26A and 35 of the Act has been undertaken. It was for this  
 reason that since no final notification was issued under the said  
 provisions, the State Government was not in a position to bar the entry of  
 villagers living in and around the Sanctuaries and the National Parks so  
 long as their rights were not acquired and final notifications under the  
 B aforesaid provisions were issued. The order of the State Government  
 permitting the villagers living in or around the proposed  
 sanctuaries/parks to enter the sanctuary/park and collect tendu leaves  
 could not, therefore, be said to violate any provision of the Act. [711-E-H]

C 1.2. In our country, the total forest cover is far less than the ideal  
 minimum of one-third of the total land. This Court, therefore, afford any  
 further shrinkage in the forest cover in our country. If one of the reasons  
 for this shrinkage is the entry of villagers and tribals living in and around  
 the Sanctuaries and the National Parks, there can be no doubt that urgent  
 steps must be taken to prevent any destruction or damage to the environ-  
 D ment, the flora and fauna and wildlife in those areas. If the only reason  
 which compels the State Government to permit entry and collection of  
 tendu leaves is it not having acquired the rights of villagers/tribals and  
 having failed to locate any area for their rehabilitation, the inertia in this  
 behalf cannot be tolerated. The State Government is directed to decide on  
 the question of completing the process for issuing final notifications and  
 E then take urgent steps to complete the procedure for declaring/notifying  
 the areas as Sanctuaries and National Parks under Sections 26A and 35  
 of the Act. The State Government is further directed to initiate action in  
 this behalf within a period of 6 months and expeditiously conclude the  
 same showing that sense of urgency as is expected of a State Government  
 in such matters as enjoined by Article 48A of the Constitution and at the  
 F same time keeping in view the duty enshrined in Article 51A(g) of the  
 Constitution. [712-B-F]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 262 of  
 1995.

G (Under Article 32 of the Constitution of India.)

Rajeev Dhawan and P.K. Manohar for the Petitioner.

H Ms. Anil Katiyar, M.P. Shorawala and S.K. Agnihotri for the Union  
 of India.

Sakesh Kumar for Hathi & Co. for Intervenors.

A

The Judgment of the Court was delivered by

AHMADI, C.J. The petitioner, an environmentalist actuated by public interest, has filed this petition under Article 32 of the Constitution of India challenging the legality and constitutional validity of an order issued by the State of Madhya Pradesh, Department of Forest, No. F. 14/154/91/10/2 dated March 28, 1995, permitting collection of tendu leaves from Sanctuaries and National Parks by villagers living around the boundaries thereof with the avowed object of maintenance of their traditional rights. The petitioner contends that this act of the State Government is *ultra-vires* the provisions of the Wild Life (Protection) Act, 1972, as well as the petitioner's fundamental rights guaranteed by Articles 14 and 21 of the Constitution and is even otherwise inconsistent with the Directive Principle contained in Article 48A and the Fundamental Duty cast on every citizen under clause (g) of Article 51A of the Constitution of India. The petitioner further contends that the said order is *mala fide* and against public interest. The order complained of reads as under :

B

C

D

"Government of Madhya Pradesh  
Department of Forest  
Mantralaya,  
Vallabh Bhawan, Bhopal

E

Immediate

S. No. F-14/154/91/10/2

Bhopal, Dated 28th March' 95

F

To

The Chief Conservator of Forests (W.L.), Madhya Pradesh, Bhopal.

G

Sub : Extraction of Forest produce from National Parks and sanctuaries consequent to the amendment of the Wild-Life (Protection) Act.

Ref. : This departments notification of even No. dated 13th Dec. 1994.

H

A The following order is being circulated by the State Government partly modifying its earlier order on the above subject :

1. Keeping in view the traditional rights of the villagers living around the boundaries of those National Parks and sanctuaries in respect of which the final notification U/s 26-A and 35 have not been issued, the blocks/areas earmarked for collection of tendu leaves would be reopened as done in the past.

B

2. In order to provide sufficient wages to the villagers living in these areas, labour intensive works should be provided to them to the maximum extent possible.

C

In the name of the Governor  
and in accordance with the order

D

sd/-

(S.K. PANWAR)

Deputy Secretary, Forest Department,  
Govt. of Madhya Pradesh"

E

According to the petitioner, in the State of Madhya Pradesh, 11 areas have been declared as National Parks and 33 areas as Sanctuaries covering a total area of nearly 16, 790 sq. Kms. i.e. 12.4% of the total forest area of the State admeasuring 1, 35, 396 sq. Kms. He refers to a news item published in 'The Sunday Times' dated April 16, 1995, headlined "Forest cover shrinking in MP" and further refers to the report of the Comptroller

F

and Auditor General of India stating that excessive grazing, reckless felling of trees and forest fires are responsible for the depletion of the forest area by 145 sq. Kms. between 1991 and 1993. He further contends that indiscriminate felling of trees has resulted in a depletion of the forest area in the entire country including Madhya Pradesh, causing concern to not only environmentalists, but also to every right thinking citizen. He has also

G

referred to the criticism appearing in the media in regard to the issuance of the order dated March 28, 1995. He says that in the year 1982, the State Government had taken a decision to ban commercial exploitation of minor forest produce from the National Parks and Sanctuaries, but the said ban was lifted by the Department in 1992 when it allowed commercial exploita-

H

tion of minor forest produce, in particular, tendu leaves from National

Parks and sanctuaries. A copy of the order lifting the ban dated April 16, 1992, has been produced on record. He further points out that thereafter, at a meeting held on August 18, 1994 by the State Wild Life Advisory Board, a unanimous decision was taken whereby the State Government was requested to withdraw the order of April 16, 1992, thereby continuing the ban on commercial exploitation of minor forest produce from National Parks and Sanctuaries. Thereafter, by an order dated December 13, 1994, the earlier order of April 16, 1992 was cancelled. Yet again, contends the petitioner, the State of Madhya Pradesh succumbed to pressure from the business lobby and passed the impugned order of March 28, 1995, permitting collection of tendu leaves from the National Parks and Sanctuaries in respect whereof no notification under Sections 26A and 35 of the Act has been issued.

The petitioner contends that while the impugned order dated March 28, 1995 permitting collection of tendu leaves has been issued ostensibly with a view to providing employment and reasonable livelihood to people living in the vicinity of the National Parks and Sanctuaries, it has ignored the need to protect the flora and the fauna as well as wild life which are, so to say, nature's laboratory were evolutionary process of life in all forms takes place and which ought not to be interfered with. The presence of human beings, albeit in earmarked Parks, will not only adversely affect the flora and the fauna but will also scare away wild life. That is because, contends the petitioner, the collection of tendu leaves is a destructive process and can cause extensive damage to ecology and regeneration of trees etc. Besides, the destruction of organic matter is bound to affect the structure of the soil and there is the real apprehension of forest fires. The petitioner has, therefore, filed this petition with a view to preserving the ecology, environment and wild life in the National Parks and Sanctuaries which are likely to be adversely affected by the implementation of the impugned order. On the above pleadings and contentions, the petitioner has raised two contentions which have been formulated as under :

- (i) Whether an area declared as a Sanctuary and National Park under Section 18 and Section 35; respectively, of the Wild Life (Protection) Act, 1972 can be exploited for the collection of minor forest produce in violation of the restrictions contained in the said Act ?

A And

- (ii) Whether the State Government has the right to exploit minor forest produce from the Sanctuaries and National Parks which have been so declared for the protection and preservation of ecology, flora, fauna, geomorphological, natural or zoological significance ?

B

This Court issued notice on April 20, 1995 to the respondents. On half of the respondent Nos. 2 to 4, one Muhammad Hashim, Chief Conservator of Forests (Production), Government of Madhya Pradesh, has filed a counter affidavit contending that since no fundamental right of the petitioner has been violated, the petition is not maintainable under Article 32 of the Constitution. So also, the petitioner has no *locus standi* to challenge the impugned order on the strength of Article 14, 21, 48A and/or 51A (g) of the Constitution of India. The deponent further contends that the traditional rights of the villagers living in and around the boundaries of the National Parks and Sanctuaries in respect of which the final notification under Sections 26A and 35 of the Wild Life Protection Act, 1972 has not been issued, cannot be questioned till the same has been acquired; due compensation has been paid and the villagers have been rehabilitated. He has further contended that the State Government has the right to exploit minor forest produce under the Act. While conceding that the State Government had, by its order dated September 16, 1982, forbidden collection of minor forest produce from the Sanctuaries in the year 1982-83, it did permit collection of certain minor forest produce like Honey, Tamarind, Mango, Mahul leaves, Mahul flowers etc., by the tribals for their *bona fide* use. By order dated September 1, 1983, and by a subsequent order dated May 7, 1990, it also permitted collection of tendu leaves, etc., from the Sanctuaries. The collection was then done departmentally. Again, by the order dated April 16, 1992, the State Government permitted collection of forest produce from Sanctuary areas and proposed National Parks departmentally, or through agents, and the local people were permitted to collect non-nationalised forest produce for their *bona fide* use and for sale in the local market. The above orders were partly modified by the order of December 13, 1994, whereby the collection of tendu leaves was permitted for villagers living in the around the areas not notified as Sanctuaries and National Parks under Sections 26A and 35 of the Act. Dealing with the petitioner's contention regarding the depletion of the forest area,

C

D

E

F

G

H

figures have been quoted from the Forest Survey of India showing a gradual improvement in the forest cover from 1987 to 1991 with a marginal decrease between 1991 and 1993. However, the petitioner's broad contention in regard to the depletion of the forest cover in the State of Madhya Pradesh remains unassailed. A

The deponent further states that there are 11 National Parks and 33 Sanctuaries in the State of Madhya Pradesh, out of which 3 National Parks are finally notified under the National Park Act, 1955 and one Sanctuary is notified under the Act as amended in 1991, but the final notification is yet to be issued. The remaining 8 National Parks and 32 Sanctuaries were notified from time to time under the Act prior to its amendment in 1991. In these National Parks and Sanctuaries, proceedings under Sections 19 to 25 of the Act were not taken to acquire the rights of the people. That is why they were not finally notified. The State Government could not have taken away the rights of the tribals and villagers dependent on minor forest produce without acquisition of those rights after payment of compensation. It is for this reason that the final notification under Section 26A could not be issued unless provision for payment of compensation and rehabilitation were simultaneously made. So also, in regard to National Parks, the final declaration could not be issued under section 35 of the Act for the same reason. B C D E

Dealing with the apprehension of the petitioner that setting fire to tendu bushes may set the forests on fire, the dependent states that the practice of setting fire to tendu bushes has been completely stopped only pruning operations are permitted under strict supervision and no pruning is done by setting fire to bushes or trees in the forest. Since pruning operations are expensive, the same is done by the state Government. Briefly put, the deponent contends that the State Government is equally concerned about protecting the forest from fire as well as ensuring that the ecology of the place and its bio-diversity are not adversely affected. With a view to protecting the wild life and curbing poaching activities in the forest area, a special cell comprising police and forest officials under the control of the Inspector General of Police has been set up to supervise the forest area. There is, therefore, no real danger to the flora, fauna, trees and wild life in the National Parks and Sanctuaries. It is, therefore, contended that the entire petition is based on suspicion and misconceived apprehension. F G H

A In his rejoinder to the said counter affidavit, the petitioner has raised the very same contentions, thought in a somewhat elaborate manner. It is, however, clarified that the petitioner does not challenged the right of the tribals living in and around the National Parks and the Sanctuaries to collect minor produce for their personal *bona fide* use, but only challenges the commercial exploitation thereof, in particular, the tendu leaves through contractors, since it is inconsistent with the object and spirit of the Act. It is said that under the impugned order, only non-nationalised minor forest produce is covered and not nationalised produce and since tendu leave are nationalised products, they cannot be exploited. It is, therefore contended that the petitioner's grievance has not been correctly appreciated and the counter-affidavit is wholly misconceived and has failed to meet the challenge. According to the petitioner, Sanctuaries which were declared as such under Section 18 of the Act prior to its amendment would continue as such even after the amendment and their status does not get affected by the amendment and therefore, in respect thereof, a second notification under Section 26A is unnecessary and the non-issuance of the fresh notification cannot take away the protection extended by Sections 27 to 34 of the Act. This, in brief, is the stand taken in the rejoinder.

E In the present proceedings, three persons (i) Bali Ram (ii) Shyam Lal (ii) Munshi Lal, have filed I.A. No. 3 of 1995 seeking permission to intervene. These three persons, who claim to be tribals, contend that they are vitally interested in the present proceedings as they largely depend on minor forest produce for their survival. They contend that they collect tendu leaves during the forty-day season on a token payment to the State Government and if the prayer sought in the writ petition is granted, their interest will be greatly prejudiced. They deny the allegation that during the process of collection of tendu leaves, they disturb the floras and fauna or in any manner disturb the eco-system of the sanctuaries. They also deny that their presence is the prime cause for fires in the forest area. This, they say, is the handidwork of racketeers and contractors. According to them, what they from the tendu leaves is barely enough for their sustenance and is not a big commercial venture as is sought to be made out the petitioner. They lastly contend that they have been enjoying this privilege for generations and the denial of this privilege to the small tribal population located around the sanctuaries would result in ruination of the entire tribal population since their survival is on minor forest produce only. Brielly, they contend, that while the petitioner is projecting himself to be eco-friendly,

he has totally overlooked the rights and privileges of the indigenous tribals living around the sanctuaries and surviving on minor forest produce like tendu leaves, mahul flowers, tamarind and other wild berries, etc., which are nature's bounty to human-beings. They, therefore, contend that no fundamental right of the petitioner, for that matter of environmentalists, is violated and the Court should refuse to entertain the petition.

The historical background provided by the petitioner, which has not been assailed, shows that the State Government had, in 1982, prohibited the collection of minor forest produce from National parks and Sanctuaries but, by its subsequent order dated 1.9.1983, permitted collection of minor forest produce, such as, tamarind, mahul leaves and flowers, wild fruits including mangoes, honey, etc., to the tribals for their *bona fide* personal consumption and not for commercial exploitation. Thereafter, by an order dated 7.5.1990, the collection of tendu leaves was done departmentally. By the order of 16.4.1992, the State Government permitted collection of tendu leaves, etc., from National Parks and Sanctuaries by the local people for selling in local markets and for their *bona fide* use. Thereafter, by a notification dated 13.12.1994, the notification dated 16.4.1992 was cancelled and the collection of all types of forest produce was totally banned with immediate effect. Soon thereafter, by the impugned notification dated 28.3.1995, the earlier notification of 13.12.1994 was modified, in that, keeping in view the traditional rights of the villagers living around the National Parks and Sanctuaries in respect whereof no final notification was issued under Section 26A and Section 35 of the Act, the blocks/areas earmarked for collection of tendu leaves were reopened. This briefly shows the vagaries of Government orders issued from time to time.

We may now notice the relevant provisions of the Act. Enacted in 1972, it was a major step in the direction of protecting wildlife and birds. Hunting of various animals specified in the First Schedule to the Act is totally prohibited while hunting of certain other animals specified in Schedules II, III and IV is permitted only on licence. Under the Act, the Central Government is empowered to declare any area of adequate ecological, geomorphological, natural or geological significance, a Sanctuary. In such Sanctuaries, public entry is barred and hunting without a licence is prohibited. The Act contemplates that a specified area can be declared a National Park. National Parks so constituted are meant for protecting, propagating and developing wildlife. Trade and commerce in

- A wild animals, articles and products of such animals, except is specified conditions, is forbidden. Any violation of the provisions of the Act may be visited with penalties of imprisonment and fine. Several authorities have been created under the Act to give effect to the provisions intended to protect wildlife and birds. By a subsequent amendment made in 1991, specified plants have also been brought under the protective umbrella of the Act. This, broadly speaking, is the purport of the enactment.

We may now be more specific. The Act was enacted by Parliament in pursuance of the resolution passed by the requisite number of States under Article 252(1) of the Constitution. It was initially brought into force in those States, which included the State of Madhya Pradesh. Provision was made for extending it to other States. Section 2 contains the dictionary of the Act. Several expressions used in the Act, to wit, animal, animal article, bit game, captive animal, cattle, etc., have been duly defined. We may, however, notice the definitions of the terms, National Park and Sanctuary.

"2(21) "National Park" means an area declared, whether under Section 35 or Section 38, or deemed, under Sub-section (3) of Section 66, to be declared, as a National Park;

2(26) "Sanctuary" means an area declared, whether under Section 26A or Section 38, or deemed, under sub-section (3) of Section 66, to be declared, as a wildlife sanctuary."

Section 3 and 4 contemplate the appointment of certain officers for carrying out the purposes of the Act. Section 6 provides for the constitution of the Wildlife Advisory Board. Sections 7 and 8 set out the functions and duties of the Board. By the 1991 Amendment, Section 8 was amended and clause (cc) was inserted which added to the list of duties, the duty to advise the State Government in relation to the measures to be taken for harmonising the needs of tribals and other dwellers of the forest with the protection and conservation of wildlife. Chapter III deals with Hunting of Wild Animals. Chapter IV, *inter alia*, deals with National Parks and Sanctuaries. Section 18 empowers the State Government to declare by notification any area to be a sanctuary if the area is considered to be of adequate ecological, faunal, floral, geomorphological, natural or zoological significance. Once a notification is issued under Section 18, Section 20 bars the accrual of new rights. Section 24 provides for the acquisition of extant rights. We may now notice the relevant part of Section 26A introduced by way of an

amendment which reads as under :

A

"26A. (1) When -

(a) a notification has been issued under Section 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government; or

B

(b) any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, is to be included in a sanctuary.

C

the State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be a sanctuary on and from such date as may be specified in the notification :

D

xxx

xxx

xxx

(3) No alteration of the boundaries of a sanctuary shall be made except on a resolution passed by the Legislature of the State."

E

We may next notice the relevant part of Section 35(1) which reads thus :

"35(1) Whenever it appears to the State Government that an area, whether within a sanctuary or not, is by reason of its ecological, faunal, floral, geomorphological, or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating, or developing wildlife therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park."

F

G

Two reliefs are claimed in this writ petition, namely, (i) to quash the notification dated 28.3.1995 issued by the Government of Madhya Pradesh; and (ii) to direct the State Government to strictly enforce the provisions of Sections 27 to 33 of the Act in relation to National Parks and Sanctuaries

H

A notified under Sections 18 and 35 of the Act. As pointed out earlier, in the rejoinder affidavit filed by the petitioner, he stated in no uncertain terms that he was not questioning the right of the villagers (tribals) living in and around the National Parks and Sanctuaries to collect minor forest produce therefrom for their personal *bona fide* use but questions the Government's right to permit commercial exploitation of such produce. That would mean  
B the petitioner does not object to the entry of villagers in the National Parks and Sanctuaries for the limited purpose of collecting the minor forest produce including tendu leave. If that be so, the apprehension that their entry into those areas would be cause for fire must recede in the background. Instances of forest fires in panna National Park and Udayanti  
C Sanctuary were relied on, but there is no material on record to show that these fires were caused by the villagers/tribals who entered the forest to collect minor produce. It is further stated that since 1989, the practice of setting fire to tendu bushes has been completely and totally stopped. Therefore, in the absence of any reliable evidence in that behalf, the apprehension must be stated to be rejected. Even otherwise, in the counter  
D affidavit filed by the State Government, it has been clarified that every precaution has been taken to ensure that no such tragedy take place and proper arrangements have been made so that there is no danger to the flora and fauna and wildlife in those areas. Therefore, we must allow the matter to rest at the.

E

We may now mention that according to the petitioner, the State of Madhya Pradesh has the largest forest area, almost 30.5% of its total geographical area, vide State Forest Report, 1993, out of which eleven areas have been declared National Parks and thirty-three areas as  
F Sanctuaries, covering approximately an area of 16,790 sq. Kms. of these, only Orcha Sanctuary was declared a Sanctuary after the 1991 Amendment, whereas the rest were declared prior to the the amendment of Section 18 of the Act. According to the State Government, except the Kanha, Bandhavgarh and Madhav National Parks, all other National Parks and  
G Sanctuaries are outside the scope of Sections 27 to 33 of the Act. It is the State's contention that tendu leaves collected by the tribals are sold to a co-operative which in turn sells them to the 'Beedi' manufacturers so that the tribals can survive from the small income made thereby. However, the petitioner laments the gradual erosion or destruction of the forest area because of the damage caused by tribals. Besides, their presence disturbs  
H animal life, marine life, birds and reptiles, in addition to the damage caused

to the fauna and flora. These allegations have been specifically denied in the State's counter affidavit. Referring to the Forest Survey of India for 1987 to 1993, it is shown that the actual forest cover has increased and not decreased; the small reduction from 1991 to 1993 is due to interpretational correction and the actual depletion can be said to be only 145 sq. kms. According to the State Government, the aforementioned 3 National Parks were notified under the National Park Act, 1955, and therefore they are finally notified Parks. The remaining 8 National Parks and 32 Sanctuaries out of the existing 33, were notified from time to time under the Act prior to the 1991 Amendment, while the remaining single Sanctuary was notified after the 1991 Amendment. However, according to the State Government, in these 8 National Parks and 33 Sanctuaries, proceedings under Sections 19 to 25 of the Act were not conducted to acquire the rights of those living in and around them and therefore, they are not finally notified. In other words, unless the traditional rights are acquired, the final declaration cannot be issued under Section 26A of the Act.

It is evident from the above pleadings that since neither the traditional rights of those living in the vicinity of these parks and sanctuaries have been acquired, nor have provisions been made to either compensate or rehabilitate them, the final declaration under Section 26A and 35 has not been possible. That is the reason why the State Government had to permit collection of tendu leaves by the impugned notification dated 28.3.1995.

Now as pointed out earlier, since Parliament had no power to make laws for the States except as provided by Articles 249 and 250 of the Constitution, the States were required to pass resolutions under Article 252(1) to enable Parliament to enact the law. After as many as 11 States passed resolutions to that effect, the Act came to be enacted to provide for the protection of wild animals and birds and for matters connected therewith or ancillary or incidental thereto. Even Articles 48A and 51A(g) inserted in the Constitution by the 42nd Amendment oblige the State and the citizen, respectively, to protect and improve the natural environment and to safeguard the forest and wildlife of the country. The statutory as well as the constitutional message is therefore loud and clear and it is this message which we must constantly keep in focus while dealing with issues and matters concerning the environment and the forest area as well as wildlife within those forests. This objective must guide us in interpreting the laws dealing with these matters and our interpretation must, unless the

A expression or the context conveys otherwise, subserve and advance the aforementioned constitutional objectives. With this approach in mind we may now proceed to deal with the contentions urged by parties.

Chapter IV, *inter alia*, deals with Sanctuaries and National Parks. Section 18 before its amendment by Act 44 of 1991 provided that the State Government, may, by notification, declare any area to be a Sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating wildlife or its environment. After its amendment, it provides that the Government may, by notification declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wildlife or its environment. In substance, the thrust of the Section is the same except that earlier that State Government could straightaway declare any area to be a Sanctuary by issuing a notification but under the amended Section, it has to declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary. When a notification is issued under section 18, the Collector is required to enquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the Sanctuary. After such a notification is issued, no right can be acquired in or over the land comprised within the said limits except by succession, testamentary or otherwise. Section 21 requires the Collector to publish the notification in the regional language in every town and village in or in the neighbourhood of the area comprised therein specifying the situation and the limits of the Sanctuary and calling upon persons claiming any right to prefer the claim before the Collector specifying the nature and extent of such right and the amount and particulars of the compensation, if any, and the claim in respect thereof. The Collector is then expected to inquire into the claim preferred by any person and pass an order admitting or rejecting the same in whole or in part. If such a claim is admitted in whole or in part, the Collector may either exclude such land from the limits of the proposed Sanctuary or proceed to acquire such rights unless the right-holder agrees to surrender his rights on payment of agreed compensation, worked out in accordance with the provisions of the Land Acquisition Act, 1894 or allow the continuance of any right of any person in or over any

land within the limits of the Sanctuary. If he decides to proceed to acquire such land or right in or over such land, he shall proceed in accordance with the provisions of the Land Acquisition Act. Section 27 bars the entry of any person other than those specified in clauses (a) to (e) thereof from entering or residing in the area of the Sanctuary except in accordance with the conditions of permit granted under Section 28. Section 26A, which was introduced in the Act by the amending Act 44 of 1991, has already been extracted earlier. Sections 29 and 30 prohibit the destruction and setting of fire within the Sanctuary and Section 31 prohibits entry into the Sanctuary with any weapon unless specifically permitted. Section 32 bans the use of injurious substances; Section 33 provides for control of Sanctuaries; Section 34 requires registration of certain persons in possession of arms. These are the provisions which relate to Sanctuaries. Section 35, which we have extracted earlier deals with National Parks and sub-section (3) thereof provides that where any area is intended to be declared as a National Park, the provisions of Sections 19 to 26A (both inclusive) except clause (c) of section 24(2) shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of right, in relation to any land in such area as they apply in the said matters in relation to any land in a Sanctuary. It will be seen from this provision that the provisions which apply in relation to investigation and determination of claims, and extinguishment of rights in the case of Sanctuaries also apply, as far as may be, in the case of National Parks.

On a plain reading of these provisions, it is, therefore, obvious that the procedure in regard to acquisition of rights in and over the land to be included in a Sanctuary of National Park has to be followed before a final notification under Section 26A or Section 35(1) is issued by the State Government. In the instant case, it is not the contention of the petitioner that the procedure for the acquisition of rights in or over the land of those living in the vicinity of the areas proposed to be declared as Sanctuaries and National Parks under Sections 26A and 35 of the Act has been undertaken. It was for this reason that the order of 28.3.1995 in terms stated that since no final notification was issued under the said provisions, the State Government was not in a position to bar the entry or villagers living in and around the Sanctuaries and the National Parks so long as their rights were not acquired and final notifications under the aforesaid provisions were issued. It is, therefore, not possible to conclude that the State Government had violated any provision of law in issuing the notifica-

A tion dated 28.3.1995 in question.

B The matter, however, does not rest there. The petitioner contends that the forest cover in the State of Madhya Pradesh is gradually shrinking. As pointed out earlier, there is a shrinkage to the extend of 145 sq. kms. between 1991 and 1993. In our country, the total forest cover is far less than the ideal minimum of one-third of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the Sanctuaries and the National Parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas.

C If the only reason which compels the State Government to permit entry and collection of tendu leaves is it not having acquired the rights of villagers/tribals and having failed to locate any area for their rehabilitation, we think that inertia in this behalf cannot be tolerated. We are, therefore, of the opinion that while we do not quash the order of 28.3.1995, we think

D that the State Government must be directed to decide on the question of completing the process for issuing final notifications and then take urgent steps to complete the procedure for declaring/notifying the areas as Sanctuaries and National Parks under Sections 26A and 35 of the Act. We, therefore, direct that the State Government shall take immediate action under Chapter IV of the Act and institute an inquiry, acquire the rights of

E those who claim any right in or over any land proposed to be included in the Sanctuary/National Park and thereafter proceed to issue a final notification under Sections 26A and 35 of the Act declaring such areas as Sanctuaries/National Parks. We direct the State Government to initiate action in this behalf within a period of 6 months from today and expeditiously conclude the same showing that sense of urgency as is expected

F of a State Government in such matters as enjoined by Article 48A of the Constitution and at the same time keeping in view the duty enshrined in Article 51A(g) of the Constitution. We are sure, and we have no reason to doubt, that the State Government would show the required zeal to expeditiously declare and notify the areas as Sanctuaries/National Parks.

G

We dispose of the writ petition with these directions. We make the rule absolute as per the directions given above with no order as to costs.

V.S.S.

Petition disposed of.