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T.N. GODAVARMAN THIRUMULPAD

v.

UNION OF INDIA AND ORS.

APRIL 10, 2006

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[Y.K. SABHARWAL, C.J., ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

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Public Interest Litigation (PIL)—Bonafide litigants—Locus standi—PIL filed by an applicant set up by others—Maintainability of—Held: Courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration—The filing of an entirely misconceived and mala fide application in the garb of public interest litigation by the applicant is strongly deprecated—In order to curb such PILs, exemplary cost imposed—Constitution of India, 1950, Art.

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Forest (Conservation) Act, 1980: Section 2(i).

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Public Interest Litigation (PIL)—Forest conservation—Ecological imbalance—Protection of—Certain land leased by State to a private company for establishment of a coal washery plant—An applicant filed PIL alleging adverse effect on environment of the area as a result of the grant of lease of forest land for non-forest activities in violation of law—The applicant claimed that undue favour and patronage had been extended to the private company for establishment of a coal washery plant in respect of land which was a forest land by wrongly showing in various revenue records that the land was

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a part of a certain village whereas actually the land formed a part of another village—To examine the question whether the land was a part of forest or not, this Court referred the application to the Central Empowered Committee (CEC) for its report—CEC, in its second report, concluded that the land allotted was not a forest land—The third report, which was based on the

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satellite imageries, supported the conclusions reached by the CEC in its second report—According to the applicant the CEC should have opted for the latest technology and should not have accepted the report of National Remote Sensing Agency (NRSA)—The applicant had relied upon photo printing analysis done by him with the help of Computer Aided Designing

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(CAD)—Validity of—Held: There is no merit in the argument that CEC should have opted for the latest technology—The later technology gives more spatial information but that does not mean that the information given by the earlier technology is inaccurate—NRSA's report is reliable and there is no reason to reject it—Hence, land allotted to the private company is not forest land.

Words & Phrases:

"Forest land"—Meaning of—In the context of S. 2(i) of the Forest (Conservation) Act, 1980.

Public interest litigation was filed alleging adverse effect on environment of the area as a result of the grant of lease of forest-land for non-forest activities in violation of law. The applicant claimed that undue favour and patronage had been extended to a private company for establishment of a coal washery plant in respect of land which was a forest land by wrongly showing in various revenue records that the land was a part of a certain village whereas actually the land formed a part of another village. To examine the question whether the land was a part of forest or not, this Court referred the application to the Central Empowered Committee (CEC) for its report. The CEC, in its second report, concluded that the land allotted to the said private company was not a forest land. The third report, which was based on the satellite imageries, supported the conclusions reached by the CEC in its second report. According to the applicant the CEC should have opted for the latest technology and should not have accepted the report of National Remote Sensing Agency. The applicant had relied upon photo printing analysis done by him with the help of Computer Aided Designing (CAD).

Dismissing the application, the Court

HELD: 1. It has been repeatedly held by this Court that none has a right to approach the Court as a public interest litigant and that the Court must be careful to see that a member of the public, who approaches the Court in public interest, is acting *bona fide* and not for any personal gain or private profit or political motivation or other oblique considerations. [1058-F]

S.P. Gupta v. Union of India, [1981] Supp. SCC 87, relied on.

2. For the last few years inflow of public interest litigation has increased manifold. A considerable judicial time is spent in dealing with such cases. A

A person acting *bona fide* can approach the court in public interest. Such a remedy is not open to an unscrupulous person who acts, in fact, for someone else. The liberal rule of *locus standi* exercised in favour of *bona fide* public interest litigants has immensely helped the cause of justice. Such litigants have been instrumental in drawing the attention of this Court and the High Courts in matters of utmost importance and in securing orders and directions for many under-privileged such as, pavement dwellers, bonded labour, prisoners' conditions, children, sexual harassment of girls and women, case of communal riots, innocent killings, torture, long custody in prison without trial or in the matters of environment, illegal stone quarries, illegal mining, pollution of air and water, clean fuel, hazardous and polluting industries or preservation of forest as in *Godavarman's* case. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.

[1058-D; 1059-A, B, C]

Janata Dal v. H.S. Chowdhary, [1992] 4 SCC 305 and *Dattaraj Nathuji Thaware v. State of Maharashtra*, [2005] 1 SCC 590, relied on.

E *T.N. Godavarman Thirumulkpad v. Union of India*, [1997] 2 SCC 267, *Ambica Quarry Works v. State of Gujarat*, [1987] 1 SCC 213 and *Rural Litigation and Entitlement Kendra v. State of U.P.* [1989] Supp. 1 SCC 504, referred to.

F 3. On perusal of the record there is no doubt that the application filed by the applicant is far from *bona fide*. He has been set up by others. The filing of an entirely misconceived and *mala fide* application in the garb of public interest litigation by the applicant is strongly deprecated. He is nothing but a name lender. [1062-G]

G 4. The third report is based on the satellite imageries and supports the conclusions reached by the Central Empowered Committee (CEC) in its second report. In respect of the third report, one of the submissions made on behalf of the applicant was that reliance by CEC on Linear Imaging Self Scanning (LISS) III (23.5 metre resolution) is not warranted because the satellite images provided by RRSSC has satellite data of LISS III with Panchromatic Data Technology and LISS IV (5.8 metre resolution). It was argued that State Forest

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Report, 2003 of Forest Survey of India noticed that 5.8 metre resolution recorded various images as small as 0.1 hectare (within given area, in this case, the area of interest of 18.12 hectares) whereas 23.5 meter resolution is not capable of recording anything less than 1 hectare forest cover within that area. In nutshell, the contention is that LISS III has limited technology and, therefore, the report based on LISS III is not reliable. The submission is that LISS IV should have been used for arriving at the correct position.

[1063-D, E, F]

5.1. There is no merit in the argument that CEC should have opted for the latest technology. The technology of 2001, 2002 and 2003 is not to be discarded. The later technology gives more spatial information but that does not mean that the information given by the earlier technology is inaccurate. The latest technology under Geographical Information System (GIS) can locate even a pin on the earth. However, this Court is not concerned with such a tiny object in this case. Be that as it may, it is pointed out that even in the State of Forest Report 2003, Forest Survey of India (FSI) has based its figures of forest cover by using Digital Image Processing (DIP) by using the scale of interpretation of 1 :50000. Further, in that report, FSI has relied upon the introduction of a new methodology based on remote sensing to estimate the trees covered below 1 hectare which cannot be discerned by using LISS III data. Under the new method, a canopy of all forests that can be delineated from satellite data (Sensor LISS III) was termed as forest cover. Even under this new technology adopted by FSI the spatial resolution of 23.5 mtr. of LISS III has been taken into account and by using DIP technique, forest cover was mapped even in 2003 at a scale of 1:50,000. Therefore, consistently, FSI has taken above parameters into account. Hence, there is no merit in the contentions raised by the applicant saying that CEC has been randomly selecting queries and data. [1065-G; 1066-A, B, C]

5.2. In short, the National Remote Sensing Agency's report submitted through FSI is reliable and there is no reason to reject it. On the basis of the said report, it can be said that AOI (area of interest) does not qualify so as to be included in the category of Deemed Forest i.e. a compact block of 10 hectares having 200 trees per hectare. [1066-C, D]

6. Except the applicant other parties before this Court have not questioned the conclusions in the second and the third reports of the CEC that the land in question is not a forest land. Besides, the allottee, the State, the Ministry of Environment and Forest, Forest Survey of India and even the South-East Coal Field Limited have not questioned the conclusion of the CEC

A that the land in question is not a forest land. [1066-D, E]

7. Even on facts there is no substance in the plea that the land allotted to the allottee is forest land. Accordingly, the recommendations of the CEC as contained in the second and third reports are accepted. [1066-E]

B 8. The applications filed by the applicant are dismissed with costs. The applicant has abused the process of law and deserves to be sternly dealt with. Enormous judicial time has been wasted which could have been used for deciding other cases. It has also resulted in the CEC and others incurring huge expenses and their wastage of time as well. The cost is quantified at Rs. 1,00,000/- payable by the applicant to the CEC. [1066-G]

C CIVIL ORIGINAL JURISDICTION : I.A. No. 989, 1221 & 1311 In IA Nos. 857-858

IN

D Writ Petition (C) No. 202 of 1995.

(Under Article 32 of the Constitution of India.)

WITH

E I.A. Nos. 997-998, 1128, 1187, 1282-1284, 1295, 1296, 1305, 1320-1321, 1335, 1376-1377, 1388 In WP (C) No. 202 of 1995 and SLP (C) No. 22531 of 2003.

F B. Datta, A.S.G., A. Sharan, A.S.G. Harish N. Salve, (A.C.) U.U. Lalit, (A.C.), Anoop G. Chaudhary, A.M. Singhvi, Mukul Rohtagi, M.L. Verma, Ravi Shankar Prashad, R.G. Padia, Arun Jaitley, A.K. Ganguli, Altaf Ahmad, Sidhartha Choudhary, (A.C.) P.K. Manohar, (NP) Ms. June Chaudhary, Jatendra Singh, Bharat Sangal, Dhruv Mehta, Aman Vachher, P.N. Puri, Gopal Jain, Mrs. Rakhi Ray, Ms. Bina Gupta, Ms. Inkle Barooah, Pradeep Misra, Vishwajit Singh, V. Krishna Murthy, Aniruddha P. Mayee, (NP) Prashant Kumar, Satya Mitra, Rudreshwar Singh, Tapash K. Singh, Alok Kumar, Ms. Suparna Srivastava, Ms. Deepti Singh, Rajesh Srivastava, Ms. A. Subhashini, Manoj Saxena, Amit Meharia, M.P. Meharia, Kuldip Singh, R.K. Pandey, A.K. Sinha, Ajay Siwach, Sandeep Sharma, T.V. George, S. Wasim A. Qadri, J.K. Bhatia, Gopal Singh, Rituraj Biswas, S.S. Shinde, V.N. Raghupathy, Bhavanishankar V. Gandis, Mrs. Sunita B. Rao, N.M. Popli, Mrs. R.N. Karanjawala, Ms. Nandini Gore, Ms. Pragya Singh Baghal, Manik Karanjawala, K.H. Nobin Singh, Mrs. **H** Rekha Pandey, B. K. Prasad, Brajkishore Mishra, M.D. Adhkar, Avishek Singh,

A of the ownership of the land of such forests; identify areas which were earlier forests but stand degraded, denuded or cleared; and identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

B The Government of Madhya Pradesh, of which Chhattisgarh was a part at the relevant time, issued a circular dated 13th January, 1997 in compliance with the directions issued in *T.N. Godavarman's* case for the purpose of identification of the forest. The circular stated that according to the dictionary meaning, the term 'forest' means such large areas where agriculture is not done and which is covered by trees and shrubs. It further stated that, taking C a practical approach, in view of the judgment as well as the dictionary meaning of the term 'forest', area measuring 10 hectares or more having an average number of 200 trees per hectare ought to be treated as forest.

D According to the applicant, on application of aforesaid circular, the land in question would be forest land and it is also so under the Government record and as per the dictionary meaning of the term 'forest' as well.

To examine the question whether land is part of forest or not, this Court by order dated 7th May, 2003 referred the application to Central Empowered Committee (CEC) for its report.

E The CEC submitted its report dated 6th October, 2003 (registered as IA 989 and hereinafter referred to as 'first report'). In this report, CEC concluded that the land allotted to Maruti is a forest land and, therefore, prior approval of the Central Government under the FC Act was necessary before allowing setting up of coal washery plant by Maruti. Admittedly, such approval had not been obtained.

F The State of Chhattisgarh and Maruti vehemently disputed that the land is part of forest. Their stand is that the land was allotted after it was clearly established that it was not a forest land.

G The first report shows that hearing before CEC took place on four different dates i.e. 3rd June, 2003, 9th July, 2003, 25th July, 2003 and 14th August, 2003. On first two dates, one K.K. Srivastava appeared for the applicant Deepak Agarwal. This fact has relevance on the issue of *bonafides* of Deepak Agarwal in approaching this court in public interest, an aspect to which we would advert to little later.

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Vijay Kumar, Ajit Kumar Sinha, A.D.N. Rao, Ciccu Mukhopadhaya, Ms. Lovelen Bhullar, Viprav Sharma for M/s. Suresh A. Shroff & Co., P.H. Parekh, Rohit Alex, Ms. Sushma Manchanda for M/s. P.H. Parekh & Co., Binu Tamta, Aarohi Bhalla, V.K. Verma, B.B. Singh, Himanshu Shekhar, Prakash Srivastava, S.N. Terdal, Musharraf Chaudhary and B.S. Banthia for the appearing parties. A

The Judgment of the Court was delivered by B

Y.K. SABHARWAL, C.J. The question for consideration in these matters is whether the land measuring about 15 hectares leased by State of Chhattisgarh to M/s. Maruti Clean Coal and Power Limited (for short 'Maruti') for setting up of coal washery is a part of forest land or not. This question has been raised by one Deepak Agarwal by filing I.A. 858 of 2003 claiming to be a public spirited person and journalist by profession and concerned about the adverse affect on environment of the area as a result of the grant of lease of forest land for non forest activities in violation of law. The applicant claims that undue favour and patronage has been extended to Maruti for establishment of coal washery plant in respect of land which is a forest land by wrongly showing in various revenue records that the land is part of the village Nawagaon Khurd whereas actually the land forms part of village Ratija. C D

The Parliament enacted Forest (Conservation) Act, 1980 (for short the 'FC Act') with a view to prevent large scale forest depletion and to protect the forest resources. The object was to check further deforestation which ultimately results in ecological imbalance. The Act has made provisions for the conservation of forests and for matters connected therewith. In *T.N. Godavarma Thirumulpad v. Union of India & Ors.*, [1997] 2 SCC 267, this Court held that the FC Act must apply to all forests irrespective of the nature of ownership or classification thereof. Noticing earlier decisions in cases of *Ambica Quarry Works v. State of Gujarat & Ors.*, [1987] 1 SCC 213 and *Rural Litigation and Entitlement Kendra v. State of U.P.*, [1989] Supp 1 SCC 504 and dispelling doubts, if any, it was held in *Godavarma* that the word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the FC Act. The term 'forest land' would also include any area recorded as forest in the Government record irrespective of the ownership. The court issued wide ranging directions. Each State Government was directed to constitute an Expert Committee to identify areas which are 'forests', irrespective of whether they are so notified, recognized or classified under any law and irrespective E F G H

Detailed objections were filed to the first report of CEC. On directions of this Court, an affidavit dated 13th August, 2004 was filed by T.S. Chatwal, Secretary (Forest) Government of Chhattisgarh, *inter alia*, stating that land is not recorded in the forest land records at Katghora Division either as protected or as reserved forest; has not been subject matter of any blanket notification covering 'protected forest' for the then Central Provinces and Barar issued under Section 29 of the Indian Forest Act, 1927; does not form part of the un-demarcated protected forest in village Ratija etc. It was further stated that as per available traversing records for the year 1893-1894, the land in question was traversed by the Survey of India and was named as Nawagaon Khurd surrounded by village Ratija, Chainpur and Sirkikhurd and its area was measured to be 50.25 acre. The settlement operation carried in 1929-1930 did not cover the land in question and as such no survey number was assigned to this piece of land, which remained unsurveyed till June 2002.

The State Government was directed to trace the relevant notifications and other notifications issued by the forest department in the month of October 1949 and place the same before the CEC. Maruti claimed that notification of October 1949 had considerable bearing on the question of the land being forest or not. Maruti was also permitted to place the same before CEC. Other parties were also permitted to file before CEC additional documents. CEC was directed to further examine the matter, hear the parties and file a report with its recommendations.

In compliance of the aforementioned directions, a report dated 4th November, 2004 (Registered as I.A. 1221 and hereinafter referred to as the 'second report') has been filed by CEC. The CEC, in the second report has noted detailed facts, submissions of SECL, State Government, meetings with the officers of State of Madhya Pradesh and Chhattisgarh. On detailed examination of voluminous record including notifications and maps, the old settlement records of the concerned villages, the CEC observed that there was no authentic record available to show that the area of Nawagaon Khurd merged with that of village Ratija during the settlement of 1928-1929. CEC further observed that no revenue records are reported to have been maintained/available or filed before it regarding the settlement of the area of Nawagaon Khurd or its merger with village Ratija. In the draft notification prepared by the Orange Unit, Bilaspur, this area has not been shown as part of Ratija village but as Nawapara (Masahati village) and that in the consolidated map the allocation of land allotted to Maruti falls within Nawagaon Khurd and outside the boundary of village Ratija. The CEC accordingly expressed the

A view that:

(a) the area of village Nawagaon Khurd was not merged and made a part of village Ratija or any other adjoining villages during the settlement of 1928-29;

B (b) no settlement records for the area of Nawagaon Khurd were prepared during 1928-29;

(c) since new settlement has not taken place after 1928-29, the settlement maps prepared during 1928-29 are the relevant and the correct maps which have to be relied upon; and

C (d) the location of the land allotted to M/s Maruti falls within the area of Nawagaon Khurd and not within the village Ratija.

In respect of Notifications of 1949, CEC said that:

D (a) none of the notifications particularly the notification dated 17.10.1949 pertain to Bilaspur district; and

(b) the notification No.3228-2845 dated 17.10.1949 or 3228-3283/2845 dated 17.10.1949 referred to in the draft orange area proposal of 2002 either do not exist or pertain to other districts.

E The CEC in the second report concluded that the land allotted to Maruti is not a forest land.

The second report has also noticed the submission of Maruti that application of Deepak Agarwal is not in public interest and that he has been set up to serve the business interest of M/s Aryan Coal Private Limited (for short, 'Aryan') who will be adversely affected financially after the establishment of coal washeries by Maruti due to increased competition and consequent reduction in prices. It was also pointed out that during hearing before CEC, Deepak Agarwal was represented by K.K. Srivastava who had represented Aryan in revenue proceedings before Tehsildar and also that he was a witness in a large number of sale deeds executed by shareholders of Aryan for purchase of land in Rajgarh.

The second report led to filing of various applications and also a letter dated 27th March, 2005 by Secretary, Bilaspur Environment Society filing therewith a report of Regional Remote Sensing Services Centre, Nagpur dated

H 28th February, 2005 with a view to challenge the conclusion contained in the

second report about land being not forest land and seeking to rely upon settlement record. A

By an order dated 1st April, 2005, CEC was directed to again examine the entire matter and report in the light of the documents brought to the notice of the Court and placed on record. The Forest Survey of India, Regional Remote Sensing Agency and the South-East Coal Field Limited were directed to render such assistance as may be required for the purpose of preparation of report by CEC. B

After further examination, report dated 14th April, 2005 has been filed by CEC (hereinafter referred to as 'third report').

The third report, *inter alia*, shows that a request was made by CEC to Forest Survey of India to carry out photo interpretation of the satellite imagery of the area by comparing imageries of different period and to give views about vegetation, forest cover, number of trees etc. Simultaneously, the National Remote Sensing Agency was also requested to give their comments on the satellite imagery of the area in and around the land area allotted to Maruti along with significant changes in the forest cover during different periods, reliability and accuracy of the interpretation and methodology for identifying the areas allotted etc. The site was also visited between 12-13th April, 2005 during which the coordinates of the area allotted to Maruti were verified by a technical expert of FSI using the Differential Global Positioning System (GPS) and the ground truth verification of the area was carried out along with Regional Director, Forest Survey of India, Nagpur. The report also notices that during the visit, inspection of other areas was also carried out and discussions were held with the Principal Chief, Conservator of Forests, Chhattisgarh Forest Department, Conservator of Forests, Bilaspur Circle, District Collector Korba, Divisional Forest Officer, Officers of SECL, members of the Bilaspur Environment Society, K.K. Srivastava, representative of the applicant, representatives of the forest trade unions of the area, public representatives, representatives of Maruti and other interested parties. Detailed reference has been made in the third report to the interpretations of experts including that of the Forest Survey of India. It also doubts the *bonafides* of the applicant. The report further notes number of cases that were filed in respect of allotment of land to Maruti as under: C
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- (i) Mr. B.L. Wadera - Hon'ble High Court of Chhattisgarh at Bilaspur;
 - (ii) Mr. Sanjay Srivastava (relation of Mr. K.K. Srivastava) - Hon'ble High Court of Chattisgarh at Bilaspur;
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- A (iii) Mr. Deepak Agarwal - present application before the Hon'ble Supreme Court;
- (iv) Mr. Surendra Sahu - petition before the Hon'ble High Court of Chhattisgarh at Bilaspur;
- B (v) SECL - present application for intervention before this Hon'ble Court;
- (vi) SECL - suit in Katghora Civil Court;
- (vii) SECL - Writ Petition against CEC's report before this Hon'ble Court (dismissed as withdrawn);
- C (viii) Samyuki Kendriya Shramik Sangathan - application for intervention before this Hon'ble Court;
- (ix) Koyla Mazdoor Sabha - application for intervention before this Hon'ble Court;
- (x) Rashtriya Colliery Mazdoor Congress - application for intervention before this Hon'ble Court;
- D (xi) Koyla Shramik Sangh - application for intervention before this Hon'ble Court;
- (xii) Bhartiya Koyla Khadan Mazdoor Sangh - application for intervention before this Hon'ble Court; and
- E (xiii) Mr. B.L. Wadera - SLP against the Hon'ble High Court's order.

Regarding nexus between K.K. Srivastava and Aryan and what type of society the Bilaspur Environmental Society is, the report states that:

- F "After considering the number of cases, filed on this issue, the documents filed by M/s Maruti regarding alleged nexus between Mr. K.K. Srivastava with M/s Aryan, reduction in the washed coal prices agreed to by M/s Aryan after an offer at a cheaper rate was made by M/s Maruti to Gujarat Electricity Board, annual account of Bilaspur Environment Society. SECL's own use of revenue forest land on a large scale, *prima-facie* there appears to be some merit in the contention
- G of M/s Maruti that the plethora of cases in various Courts have been filed on behalf of its competitor M/s Aryan with a view to prevent him from establishing the coal washery, and not in public interest.

- H The claim made by Mr. K.K. Srivastava that he is a public spirited person involved in protection of environment and forests and that he

is not getting financial support from anybody but is spending from his own resources and contribution from his friends and relations, is difficult to accept on its face value; A

The accounts of Bilaspur Environment Society show that it does not have a bank account and all receipts and expenditure are in cash.” B

The third report reiterates the conclusions and the recommendations made in the second report that the land allotment of Maruti is not of forest land. C

At this stage, we may note that some dispute as to the title of the land in question between State Government and Maruti on one hand and M/s South East Collieries Limited (SECL) on the other is pending in a civil court. In these proceedings, we are not concerned about the title of the land that may have to be examined and decided by the civil court. All pleas, factual and legal, as permissible in law, would be open to the parties to be agitated before the civil court. The only question for our consideration in these proceedings is as to the nature of the land, namely, it is forest land or not. D

However, before we consider the aforesaid question, first the *bonafides* of the applicant need to be determined. In opposition to the application filed by Deepak Agarwal, it has been urged that the label of public interest given by the applicant in the present litigation, is clearly and demonstrably a camouflage since the real person behind this application allegedly filed in public interest is a competitor of Maruti operating in the area and having a monopoly. E

Some unions have also tried to jump into the fray by filing applications seeking impleadment in these proceedings so as to contend that the allotment is of a forest land. We see no reason to allow the impleadment of parties in these proceedings. Be that as it may, we have to decide in the light of facts aforenoted, whether the land leased to Maruti is forest land or not. But before we examine the question of the nature of the land being forest or not, it is necessary to consider the *bonafides* of Deepak Agarwal who has approached this Court in public interest. Howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose *bonafides* and credentials are in doubt. In a given exceptional case where *bonafides* of a public interest litigant are in doubt, the court may still examine the issue having regard to the serious nature of the public cause and H

A likely public injury by appointing an *Amicus Curiae* to assist the court but under no circumstances with the assistance of a doubtful public interest litigant. No trust can be placed by court on a *mala fide* applicant in public interest litigation. These are basic issues which are required to be satisfied by every public interest litigation.

B It was sought to be contended on behalf of Deepak Agarwal that the CEC had no authority to examine his *bonafides* and, thus, exceeded its jurisdiction by stating in its report that his *bonafides* are in doubt. Some insinuations were sought to be made against CEC and learned *Amicus Curiae*. We strongly deprecate this approach of the applicant. The CEC has been appointed and so also learned *Amicus Curiae* to assist this Court in determining issues relating to depletion of forests and preservation and conservation of forests in the country. Many forest survey reports recognise that various orders by this Court have helped in arresting fast depletion of forests. Assuming in a given case an error is committed by the Committee in its report, while pointing it out, it is necessary for the applicant to use temperate language in the pleadings and not the one used by the applicant. Since, during hearing, neither the insinuations nor the language was supported and rather regret was expressed, we would say no more on this aspect. It, however, deserves to be clarified that it is incorrect to assume that CEC exceeded its jurisdiction in pointing out facts which are relevant to determine the *bonafides* of the applicant. In fact, having regard to nature of duties assigned and responsibility placed upon CEC, it is the duty of CEC to point out facts relevant to determine *bonafides* of any applicant. It is always necessary to determine real motive behind a public interest litigation.

F It has been repeatedly held by this Court that none has a right to approach the Court as a public interest litigant and that Court must be careful to see that member of the public, who approaches the Court in public interest, is acting *bona fide* and not for any personal gain or private profit or political motivation or other oblique considerations. {See *S.P. Gupta v. Union of India & Anr.* [1981] Supp. SCC 87}.

G For the last few years, inflow of public interest litigation has increased manifold. A considerable judicial time is spent in dealing with such cases. A person acting *bona fide* alone can approach the court in public interest. Such a remedy is not open to an unscrupulous person who acts, in fact, for someone else. The liberal rule of *locus standi* exercised in favour of *bona fide* public interest litigants has immensely helped the cause of justice. Such

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litigants have been instrumental in drawing attention of this Court and High Courts in matters of utmost importance and in securing orders and directions for many under-privileged such as, pavement dwellers, bonded labour, prisoners' conditions, children, sexual harassment of girls and women, cases of communal riots, innocent killings, torture, long custody in prison without trial or in the matters of environment, illegal stone quarries, illegal mining, pollution of air and water, clean fuel, hazardous and polluting industries or preservation of forest as in the *Godavarman's* case. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration {See *Janata Dal v. H.S. Chowdhary & Ors.*, [1992] 4 SCC 305}

It seems that this caution has not had the desired effect on the applicant like the present one.

In a recent decision in *Dattaraj Nathuji Thaware v. State of Maharashtra & Ors.*, [2005] 1 SCC 590 (Arijit Pasayat and S.H. Kapadia, JJ) taking note of earlier decisions, it was said that:

"It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the

A detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddling interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of
B publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates
C frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As
D indicated above, Court must be careful to see that a body of persons or member of the public, who approaches the court is acting *bona fide* and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who
E monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such
F busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.”
G

It was further said :

“Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by
H interfering where necessary for the sake of justice and refuse to

interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu* and *Andhra Pradesh State Financial Corporation v. GAR Re-Rolling Mills and Anr.* No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See *Dr. B.K. Subbarao v. Mr. K. Parasaran*) Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.”

Now, reverting to the present case, it seems that lakhs of rupees have been spent by the applicant and/or on his behalf to prosecute the present litigation. On our direction, the applicant filed his income tax return which shows that he has hardly any means to incur huge amounts which have been spent to pursue this litigation. Further, when the matter was referred by this court to CEC for a report on first date of hearing, K.K. Srivastava represented the applicant. Learned senior counsel for the applicant fairly and candidly admitted that sometimes along with the advocate-on-record, K.K. Srivastava has been coming to instruct him. There is ample material on record that on numerous occasions, K.K. Srivastava represented Aryan before number of authorities.

There is also ample material to show that K.K. Srivastava has been collecting material to prove that the land in question is forest land. He is a person in contact with Aryan. Regarding his financial status, Deepak Agarwal has filed an affidavit dated 24th August, 2005 along with which certain documents have also been filed. In the affidavit, it has been claimed by him that he is fighting the case with the help of like-minded people, well-wishers and friends. As to his own financial resources, it is stated that in the income tax return, financial help taken from friends, social workers and like-minded people has not been shown as it does not fall in the category of income. He has filed affidavits of some people from whom it is claimed that donation collectively of the sum of Rs. 86,500 was taken. As per the affidavit of Deepak Agarwal, a sum of Rs. 55,000 has been incurred by Bilaspur Environment Society for obtaining satellite imagery report. Further, a sum of Rs. 60,000 has been spent by him on traveling and lodging expenses in connection with litigation and Rs. 50,000 in connection with documentation and other court expenses. A revised income tax return filed on 31st March, 2005 has been placed on record. According to it, the total income from business is shown

A as Rs. 51,560 and from other sources at Rs. 1,02,947 total being Rs. 1,54,507. It has not been disclosed as to when the original Income Tax return was filed. The amount of tax shown to have been deducted at source is Rs. 5,147. The date of birth of Deepak Agarwal as per income tax return is 22nd February, 1973. However, in the affidavit dated 24th August, 2005, the age mentioned is 32 years whereas in the affidavit dated 19th July, 2005, it is stated as 35 years. Further, a perusal of the affidavits of the persons from whom donation is said to have been taken shows that alleged donors of cash amounts are mainly employees of SECL and contractors working for Aryan. It has not been explained as to what was the reason for filing a revised income tax return. A submission was sought to be made at hearing, without any plea having been raised in the application or the affidavit, that Deepak Agarwal came to this Court as a lone crusader *bona fide* but later on some help was rendered by others who donated the amount as claimed and also by Bilaspur Environment Society. It may be noted that Maruti has been pleading since beginning that Deepak Agarwal has been set up by their competitor and there was, in fact, a link between the competitors of Maruti and Deepak Agarwal in the form of K.K. Srivastava. Deepak Agarwal, in fact, denied that there was any link between him and K.K. Srivastava who appeared on his behalf before CEC and Aryan and took the stand that nothing has been submitted to prove that it was the same K.K. Srivastava who appeared on behalf of the Aryan. Regarding K.K. Srivastava being attesting witness to the sale deeds, it was pleaded that K.K. Srivastava was in a business of sale and purchase of land and in course of his business dealing, he might have come across such sale deeds. The same plea was taken in respect of proceedings before Tehsildar. Regarding the Bilaspur Environment Society, which purportedly assisted Deepak Agarwal, as admitted by him and allegedly paid Rs. 55,000 for obtaining satellite images, it may be noted that firstly, one fails to understand as to what prevented the said society from approaching this court. Secondly, a close perusal of the record throws open many questions about the credibility of the society which spent Rs. 55,000 in cash for obtaining satellite images and also obtained donations.

G On perusal of record, we have no doubt that the application filed by Deepak Agarwal is far from *bona fide*. He has been set up by others. We strongly deprecate the filing of an entirely misconceived and *mala fide* application in the garb of public interest litigation by Deepak Agarwal. He is nothing but a name lender.

H Despite our conclusion as aforesaid, we have in-depth examined the

three reports of CEC. The CEC in its second report has explained in detail the grounds and the reasons for reversal of its findings as contained in the first report. The first report had only considered the letter dated 17th October, 2002 of DFO, Khatghora including no objection from grampanchayat, orange area proposals of 1997-98, joint inspection report of 18th October, 2002 with enumeration lists, report of Deepak Srivastava & Mr. Negi of MoEF, Members and SECL maps. The second report, however, considers in detail several notifications of the order of October 1999, old settlement maps and the guidelines of State Government in respect of orange area proposals. It shows that non-forest land can also be included in the said proposals and various other documents and for reaching the conclusion that the land in question is not a forest land, in fact, the said land was of Nawagaon Khurd and not village Ratija and that this area was not formally merged and made part of village Ratija in the settlement (Bandobast) carried out during 1928-29. We have examined various old record from 1893-94 onwards including the old maps and find no reason to take a view different than the one taken by CEC in its second report. The conclusions reached and the recommendations made in the second report deserve to be accepted.

The third report is based on the satellite imageries and supports the conclusions reached by CEC in its second report. In respect of the third report, one of the submissions made on behalf of Deepak Agarwal was that reliance by CEC on LISS III (23.5 metre resolution) is not warranted because the satellite images provided by RRSSC has satellite data of LISS III with Panchromatic Data Technology and LISS IV (5.8 metre resolution). It was argued that State Forest Report, 2003 of Forest Survey of India noticed that 5.8 metre resolution recorded various images as small as 0.1 hectare (within given area, in this case, the area of interest of 18.12 hectares) whereas 23.5 meter resolution is not capable of recording anything less than 1 hectare forest cover within that area. In nutshell, the contention is that LISS III has limited technology and, therefore, the report based on LISS III is not reliable. The submission is that LISS IV should have been used for arriving at the correct position.

In short, Deepak Agarwal has submitted that the report of NRSA was not accurate because it has opted for a technology with 23.5 metre spatial resolution and output generation in the scale of 1:50000 considered to be inferior with respect to smaller portion of land. According to Deepak Agarwal, NRSA should have opted for a better technology available today under which the spatial resolution is available at 5.8 meter and also output generation in

A the scale of 1:15000. According to Deepak Agarwal, CEC should not have accepted the report of NRSA based on the above parameters of 23.5 metre (spatial resolution) and of output generation in the scale of 1: 50000.

In order to decide the above contentions, it is necessary to understand the following concepts:

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(i) GIS (GEOGRAPHICAL INFORMATION SYSTEM)

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GIS is an organized collection of computer hardware, software, geographic data designed to capture all forms of geographically referenced information (See Volusia.org). In short, it is a computer system capable of holding and using data describing places on the earth's surface. ERDAS IMAGINE 8.6 is a computer tool under GIS. It is referred to in the report of Forest Survey of India (FSI) dated 14.4.2005 annexed to the third report of CEC.

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ERDAS IMAGINE 8.6 is an advanced software product used for image processing, to uncover features like boundary and area of a given plot of land (face). Once uncovered, the geographical information is integrated with attributes (spatial and non-spatial) and stored in an information system to be used for analysis.

E

Images can be taken from satellites or from planes flying over an area of interest (AOI). Under ERDAS IMAGINE 8.6, the images are comprised of pixels (picture elements) which are contained in the image. These pixels are scanned by the computer which gives the boundary and the area. It also scans the colours. Different surfaces reflect light differently. Colour images are used to identify various ground objects like forests, man-made surfaces, roads etc. For example, healthy crops contain infra-red light whereas forests reflect different colours of the spectrum, making the spectrum information an important component of geographical information analysis. This advancement of technology is due to combination of telecommunication and computer engineering (See: *webopedia.com*).

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The above discussion is important because Deepak Agarwal has relied upon photo printing analysis done by him with the help of CAD (Computer Aided Designing).

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The issue which is required to be considered is whether ERDAS IMAGINE 8.6 used by NRSA is better than CAD which is a programme used

by Deepak Agarwal. We have indicated broadly the advanced features of the software, viz., ERDAS IMAGINE 8.6. On the other hand, CAD, is also a software used by engineers to view a design from an angle with the push of a button and to zoom in and zoom out for close-ups and long distance views. It helps the computer to tract designs. CAD software generally examines the boundaries and that too in a design. In the present case, we are concerned with the area covered by the forests. Therefore, the technology adopted by NRSA based on ERDAS IMAGINE 8.6 is more reliable than CAD.

Therefore, GIS links spatial data with geographical information about a particular feature on the map (See: *volusia.org*).

(ii) GPS (Global Positioning System)

GPS is a satellite based positioning system operated by USA. It consists of satellites. It is a data collection tool for GIS. Basically, the signals from the satellites in GPS are received by GPS receivers on the earth. Therefore, different stations are earmarked on the earth covering a particular area. It is the matching of the satellite with the receiver which plays an important role. Certain discrepancies in the matching are got over by differential GPS (See: *esri.com*).

(iii) IRS - LISS III

It stands for Linear Imaging Self Scanning Sensor which is a multi-spectral camera. LISS-III products comprise of path/row products, georeferenced products etc. (See: *earth.esa.int*). It helps to track areas and boundaries. Combination of LISS III with ERDAS-Imagine is more reliable than photo print analysis by CAD. It is better to depend on interpretation of IRS LISS III Digital Data by EDRAS Imagine than by CAD.

As stated above, the main challenge to the NRSA report is that proper parameters have not been taken into account and although better technology was available the same was not deliberately resorted to. The contention is that CEC should have opted for the latest technology.

We do not find merit in this argument. The technology of 2001, 2002 and 2003 is not to be discarded. The later technology gives more spatial information but that does not mean that the information given by the earlier technology is inaccurate. The latest technology under GIS can locate even a pin on the earth. However, we are not concerned with such a tiny object in this case.

- A Be that as it may, we may also point out that even in the State of Forest Report 2003, FSI has based its figures of forest cover by using Digital Image Processing (DIP) by using the scale of interpretation of 1:50000. Further, in that report, FSI has relied upon the introduction of a new methodology based on remote sensing to estimate the trees covered below 1 hectare which cannot be discerned by using LISS-III data. Under the new method, a canopy of all forests that can be delineated from satellite data (Sensor LISS-III) was termed as forest cover. Even under this new technology adopted by FSI the spatial resolution of 23.5 mtr. of LISS-III has been taken into account and by using DIP technique, forest cover was mapped even in 2003 at a scale of 1: 50000. Therefore, consistently, FSI has taken the above parameters into account.
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- C Hence, there is no merit in the contentions raised by Deepak Agarwal saying that CEC has been randomly selecting queries and data.

In short, NRSA's report submitted through FSI is reliable and we see no reason to reject it. On the basis of the said report, it can be said that AOI (area of interest) does not qualify so as to be included in the category of Deemed Forest i.e. a compact block of 10 hectares having 200 trees per hectare.

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- E Before concluding, it may also be noted that except Deepak Agarwal, other parties before us have not questioned the conclusions in the second and the third report of CEC that the land in question is not a forest land. Besides, Maruti being the allottee, the State of Chhattisgarh, the Ministry of Environment and Forest, Forest Survey of India and even SECL have not questioned the conclusion of CEC that the land in question is not a forest land.

- F In view of the aforesaid discussion, even on facts we find no substance in the plea that the land allotted to Maruti is forest land. Accordingly, we accept the recommendations of CEC as contained in the second and third report. As already noted, the dispute in respect of the title is not a matter in issue before us. Thus, we have not examined this issue.

- G In conclusion, we dismiss the applications filed by Deepak Agarwal with costs. The applicant has abused the process of law and deserves to be sternly dealt with. The enormous judicial time has been wasted which could have been used for deciding other cases. It has also resulted in CEC and others incurring huge expenses and their wastage of time as well. In this view, we quantify costs at Rs. 1,00,000 payable by the applicant Deepak Agarwal
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to CEC. The cost, if not deposited with CEC within four weeks, shall be A
executable as a decree. The amount of cost shall be utilized for preservation
of forests in State of Chhattisgarh. The Special Leave Petition and other
applications are also disposed of in terms of this judgment.

V.S.S.

Application dismissed.

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