Andhra High Court
Madireddy Padma Rambabu And Ors. vs District Forest Officer, ... on 26 July, 2001
Equivalent citations: 2002 (1) ALD 728, 2002 (3) ALT 57
Author: S Sinha
Bench: S Sinha, V Rao
JUDGMENT S.B. Sinha, C.J.

1. How far and if any, shrimp culture, prawn culture and other types of aqua cultures raised both in brackish/ saline/fresh water causes any environmental pollution is the primary question involved in this batch of writ petitions.

2. This batch of writ petitions can be sub-divided into two groups:- The first group of the writ petitioners are those who have taken recourse to shrimp culture, prawn culture as also, aquaculture claiming themselves to be freehold owners of agricultural lands contending that as no law is operating in the field prohibiting or regulating their activities, the revenue or the forest officers have been acting illegally and without jurisdiction in interfering therewith by either demolishing the tanks erected for that purpose or refusing to renew and/or grant permission therefor.

The second group of the writ petitioners are small agriculturists who cannot carry on their agricultural activities having regard to the fact that as in the surrounding lands prawn and shrimp culture or aqua culture have been going on, their lands have been rendered unfit for agriculture.

Some public interest litigations have also been filed for a direction that such activities leading to pollution problems, should not be permitted.

3. It would not be out of place to notice herein that various agriculturists had sought permission to take recourse to such prawn culture activities on the ground that having regard to the activities being carried on by the neighbouring owners they have no other option but to take recourse thereto.

4. The learned Counsel leading the second group of writ petitioners (small farmers) who own fertile lands and get water from irrigational facilities as also the learned Government Pleader and Standing Counsel for the Central Government submitted that prawn, shrimp or aquaculture are of two types i.e., (i) which are done in the fresh water and/or brackish/saline water. Those who carry on prawn, shrimp or aquaculture for the said purpose have dug bore-wells, the extensive use whereof has led to the ground water becoming saline affecting potable water. It was submitted that chemicals are being used extensively, which affect to large extents the neighbouring lands. Lime and dolomite are said to be used as a result whereof the agricultural lands cannot be used for any other purpose and the fertility of the agricultural lands affected.

It was submitted:- (a) the owners of the lands being agriculturists they cannot use the same for purposes other than agriculture without obtaining permission from the competent authority in terms of the Board's Standing Order No. 7(1)(iii); (b) in any event, having regard to the decision of the Apex Court in S. Jagannadh v. Union of India, , a law has been laid down pursuant whereto aquaculture authority having been constituted and functioning, carrying on of prawn, shrimp or

aqua culture without obtaining its prior permission must be held to be illegal; and (c) in any event, as such activities cause pollution, the same should not be allowed to continue.

5. The learned Counsel appearing on behalf of the first group of the writ petitioners, however, submitted that their clients being owners of patta lands which are private properties they are entitled to carry on any, activity whatsoever --(i) including aquaculture which would come within the purview of the agricultural activity, (ii) no law is operative in the field as has been noticed by this Court in various judgments prohibiting use of such lands for rearing and catching fish of any kind and, thus, obstructions or interference caused by the forest and the revenue officials in this regard must be held to be illegal, (iii) the Boards Standing Order does not have a statutory force; (iv) the remedy of the neighbouring land owners, if any, would only to take recourse to the private law remedy and not by filing writ petitions.

6. The petitioners in the first group of writ petitions have merely described themselves as, pattadars. They have not disclosed any foundational fact as regards the source and nature of their title to the land. It is, however, not in dispute that the lands are agriculture in nature. A question has arisen as regards the scope and purport of the word 'agriculture' vis-a-vis 'aquaculture' and 'pisci culture'. Several statutes are operating in the State governing the field of agriculture. In A. P. (Andhra Area) Estates Land Act, 1908 (Act 1 of 1908) 'agriculture' had been defined in Section 3(1), which reads thus.

Agriculture with its grammatical variations and cognate expressions shall include horticulture.

7. It is not in dispute that within the Coastal Regulation Zone or within the area notified under the Wildlife Protection Act, 1972, Shrimp/prawn culture as also other types of aquaculture, are prohibited. As most of the lands of the writ petitioners herein are situated outside the coastal regulation zone and the area notified under the Wildlife Protection Act, 1972, this Court, in these writ applications shall proceed to deal with such cases only.

8. The questions, which arise for consideration having regard to the rival contentions of the parties, are:

(1) Whether there exists any law prohibiting conversion of the agricultural lands to pisci tanks requiring obtaining of permission from the competent authorities ?

(2) Whether the decision of the Apex Court in S. Jagannath v. Union of India (1 supra) would apply to the cases where agriculturists carry on prawn culture, shrimp culture or other types of aquaculture in their own agricultural lands?

(3) Whether, in any event, the laws controlling regulation of environmental pollution shall be applicable? And (4) Whether an adjacent owner of agricultural land can maintain a writ petition on the ground that his land had become saline and unfit for agriculture on account of extensive use of his neighbouring land for prawn culture?

9. Re Question No. 1: In the State of Andhra Pradesh, various statutes are governing the field of agriculture. In Telangana area, the A.P. (Talangana Area) Land Revenue Act, 1317-F is in operation whereas in Andhra Area, Andhra Pradesh (Andhra Area) Land Revenue Act (Regulation No. 1 of 1803) operates in the field. Regulation No. 1 of 1803 is a regulation defining the duties of the Board of Revenue and determining the extent of the powers vested in the Board of Revenue. Section 4 of the said Regulation reads thus:

Duties of Board of Revenue: The duties of the Board of Revenue have been, and hereby are declared to be the general superintendence of the revenues from whatever source they may arise, and the recommendation of such propositions to the State Government as in their Judgment may be calculated to augment to improve those revenues.

10. By reason of the provisions of the said Act, the Board has thus been conferred with power of general supervision in terms whereof the Board has a right to issue instructions. Furthermore, there are several statutes governing grant or extension of the irrigational facilities to the agricultural lands and for the purpose of effective control in relation thereto the Board of Revenue, in exercise of its general power of supervision, can also issue requisite instructions. Those instructions which had been issued by the Board, in exercise of its statutory power, will have the force of the statute; whereas those which have been adopted by way of resolutions for the purpose of providing guidelines to the Revenue Officers may not have the force of a statute.

The question came up for consideration before a learned single Judge of this Court in Katta Rattamma and Ors. v. Gannamaneni Kotaiah and Ors., 1975 (2)An.WR 122, where Sriramulu, J., upon noticing conflicting views of the Madras High Court held:

A careful perusal of this judgment shows that it is only when the Board's Orders are issued under the rule making power conferred on it, under an Act, that they would constitute a law or have the force of law and, in other matters, they will be mere resolutions passed by the Board for the conduct of its own business, as well as for regulating the procedure in the matter of collection of revenue by its subordinate revenue tribunals and executive functionaries'.

11. Board Standing Order No. 7 provides for restriction on use of water for irrigation in works not controlled by Government. Standing Order No. 7(1)(iii) reads thus:

When a private tank is constructed on private land, the ryot, provided he has obtained the formal approval of the Collector in advance, shall be entitled to the concession that on assessment shall be charged on the land within the water spread; but this concession will not be given for land cultivated within the ten years immediately preceding the construction of the tank. The Collector will not grant the concession if land belonging to other persons is submerged and the constructor has not first obtained their consent.

12. Clause (2) of the said Standing Order provides for permission to use water from Government sources. Standing Order 7(2)(iii) deals with sources other than natural pools and minor streams which reads thus:

Sources other than natural pools and minor streams:--(a) Any private individual wishing to draw water for irrigation from a Government source by a new private work must apply to the Collector for permission, stating distinctly the nature and dimensions of the proposed work and the precise locality selected for it.

(b) On receiving such an application the Collector will direct the Tahsildar of the taluk or other competent officer to make an inspection and ascertain by careful enquiry whether the proposed work will cut off or appreciably diminish the supply of any other public or private irrigation work, or interfere with the cultivation, irrigation or drainage of any lands so as to give a just cause for complaint. If a professional opinion is considered necessary, the Collector shall have an inspection made by an Engineer of the Panchayati Raj or Public Works Department. If the work is in the immediate neigobourhood of an existing of work of irrigation in the charge of the Public Works Department, the opinion of the Public Works Department should invariably be obtained.

(c) If the enquiry shows that no injury will be caused to existing interests, the plan shall be examined by an Engineer of the Minor Irrigation or Public Works Departments. If it is approved, the Collector may grant permission to execute the work.

(d) If any private individual has begun the construction of a work without the previous permission of the Collector, he should be informed that the work is liable to be demolished.

13. It appears that the said Board Standing order was issued pursuant to Government Orders in G.O.Ms. No. 1166, Rev. dated 3-5-1949 and B.P.Ms. No. 1334 dated 7-9-1945. By reason of G.O. Ms. No. 1166 dated 3-5-1949, the Governor of the then Madras State approved the draft Rules promulgated by the Board of Revenue, which is in the following terms:

No water cess will be levied on irrigation with the help of water from such pools provided the use of such water is not prejudicial to any public or communal interest and does not interfere with or tend to lessen the supply to any Government work, and provided further that the right of Government to execute at any time any works whatever for the improvement of such sources of supply and the extension of their benefits shall remain unaffected. The officer empowered to charge water-cess will have discretion to prohibit at any time the irrigation on the grounds mentioned above or whenever he considers it necessary to do so in public interest. Irrigation carried on in contravention of such prohibition will be treated as irregular, and appropriate charge or penalty levied.

14. It will be appropriate at this stage to notice the provisions of A.P. Estate Abolition Act. Section 3 of the Act reads as follows:

3. Consequences of notification of estate:-With effect on and from the notified date and save as otherwise expressly provided in this Act -

(a) the Madras Permanent Settlement Regulation, 1802, the Estates Land Act and all other enactments applicable to the estate as such except the Madras Estates Land (Reduction of Rent) Act, 1947, shall be deemed to have been repealed in their application to the estate;

(b) the entire estate (including [minor imams (post-settlement or pre-settlement) included in the assets of the zamindari estate at the permanent settlement of that estate; all communal lands and porambokes;] other non-ryoti lands; waste lands; pasture lands; Lanka lands; forests mines and minerals; quarries; rivers and streams; tanks and irrigation works: fisheries, and ferries], shall stand transferred to the Government and vest in them, free of all encumbrances; and the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate;

(c) all rights and interest created in or over the estate before the notified date by the principal or any other landholder, shall as against the Government cease and determine;

(d) the Government may, after removing any obstruction that may be offered, forthwith take possession of the estate, and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to that estate which the Government may require for the administration thereof.

Provided that the Government shall not dispossess any person of any land in the estate in respect of which they consider he is prima facie entitled to a ryatwari patta -

(i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta;

(ii) if such person is a landholder pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it as to whether he is actually entitled to such patta;

(e) the principal or any other landholder and any other person whose rights stand transferred under Clause (b) or cease and determine under Clause (c), shall be entitled only to compensation from the Government as provided in this Act;

(f) the relationship of landholder and ryot shall as between them, be extinguished;

(g) ryots in the estate and person holding under them shall, as against the Government, be entitled only to such rights and privileges as are recognised or conferred on them by or under this Act, and any other rights and privileges which may have accrued to them in the estate before the notified date against the principal or any other landholder thereof shall cease and determine and shall not be enforceable against the Government or such landholder.

15. A bare perusal of the aforementioned provision would clearly show that the rights other than the right of agriculture had vested in the State. Deep sub-soil water right is the property of the Government. The Government may in public interest restrict the use of sub-soil water for irrigational or other purposes. We may further notice that different rates of taxes are required to be paid for agricultural and non-agricultural lands. The Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 has been enacted for levy of assessment of lands used for non-agricultural purposes. In the said Act, the word 'agriculture' has been defined.

16. Section 2(a), 2(c) and 2(g) of the 1963 Act, which are relevant for the purpose of the present case read thus:

2(a) 'agriculture' means -

(i) the raising of any crop or garden produce;

(ii) the raising of orchards; or

(iii) the raising of pasture;

(b) 'commercial purpose' means a purpose connected with the undertaking of any trade, commerce or business but it does not include an industrial purpose;

(g) 'non-agricultural land' means land other than the land used exclusively for the purpose of agriculture, but does not include the land used exclusively for -

(i) cattle sheds;

(ii) hay-ricks;

Furthermore, if sub-soil water right is granted only for the purpose of rearing and catching fish, the same may be held to be an encumbrance. In that view of the matter, such tanks may be held to have vested in the State.

17. The State in exercise of its power under Article 162 of the Constitution of India can issue executive directions in relation whereto it has the legislative competence. Some of the entries of List-II of Seventh Schedule of the Constitution of India, which are relevant for the purpose of this case, are:

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

16. Ponds and the prevention of cattle, trespass.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments water storage and water power subject to the provisions of entry 56 of List 1.

18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement; and agricultural loans; colonisation.

18. It may be, as has been submitted by the learned counsel for the petitioner that the Board of Revenue stands abolished, but, however, the regulations operating in the field still survive and by

reason of the provisions of Sections 3, 4 and of 5 of the Andhra Pradesh Board of Revenue (Replacement by Commissioners) Act, 1977 which came into force with effect from 1-2-1977, such statutory duties and functions have been conferred upon various other statutory authorities viz., Commissioner of Land Revenue etc.

19. Board's Standing Order No. 7 having been issued in terms of Section 4 of Regulation of 1803, thus, will have statutory force.

20. Section 61 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F reads as follows:

61. Occupant to be entitled to construct godowns and wells, etc., or otherwise improve conditions of land:- (1) Every occupant shall be entitled to construct or repair godowns or wells on land occupied by him or otherwise improve its condition and shall not be entitled except with the written permission of the Collector to appropriate agricultural land to purposes other than agriculture. If no written reply for such permission is given by the Collector for three months from the date of presentation of the application, the application shall be deemed to have been granted. In every such case the Collector on receipt of the application, shall furnish a written acknowledgement thereof and without unnecessary delay communicate to him the sanction or refusal of the application, and the Collector at the time of granting such application, may, in addition to the new assessment payable under Section 50, if necessary, after recording reasons therefor introduce such conditions as he may have settled with the consent of the occupant, (2) No occupant of land shall be entitled to construct or repair any tank or kunta without the permission of the Government.

21. In this view of the matter, there cannot be any doubt whatsoever that the State has the requisite jurisdiction to issue executive instructions in relation to the matters covered under its legislative competence. If, therefore, for certain purposes, executive instructions and/or statutory orders have been issued prohibiting conversion of agricultural land for another purpose namely for irrigation or for some other purpose whatsoever by the State/Board of Revenue, the same cannot be said to be bad in law.

22. In Narendra Kumar Maheshwari v. Union of India and Ors., , it has been held:

We would also like to refer to one more aspect of the enforceability of the guidelines by persons in the position of the petitioners in these cases. Guidelines are issued by Governments and statutory authorities in various types of situations. Where such guidelines are intended to clarify or implement the condition and requirements precedent to the exercise of certain rights conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested the persons whose rights are affected have a clear right to approach the Court for relief. Sometimes guidelines control the choice of persons competing with one another for the grant of benefits largesses or favours and, if the guidelines are departed from without rhyme or reason, an arbitrary discrimination may result which may call for judicial review. In some other instances (as in the Ramanna Shetty case) , the guidelines may prescribe certain standards or norms for the grant of certain benefits and a relaxation of, or departure from, the norms may affect persons, not directly but indirectly, in the sense that though they did not seek the benefit or privilege as they were not

eligible for it on the basis of the announced norms, they might also have entered the fray had the relaxed guidelines been made known. In other words, they would have been potential competitors in case any relaxation or departure were to be made..... ..... A Court, however, would be reluctant to interfere simply because one or more of the guidelines have not been adhered to even where there are substantial deviations, unless such deviations are, by nature and extent such as to prejudice the interests of the public which it is their avowed object to protect, Per contra, the Court would be inclined to perhaps overlook or ignore such deviations, if the object of the statute or public interest warrant, justify or necessitate such deviations in a particular case. This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose, which the guidelines and the statute under which they are issued are intended to achieve.

23. Our attention, however, has been drawn to a decision of the Apex Court in G.J. Fernandes v. State of Mysore, , the Apex Court has held:

We are therefore of the opinion that Article 162 does not confer any power on the State Government to frame rules and it only indicate the scope of the executive power of the State. Of Course, under such executive instructions to its servants how to act in certain circumstances, but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor. It is not in dispute that there is no statute, which confers any authority on the State Government to issue rules in matters with which the Code is concerned nor has any provision of the Constitution been pointed out to us under which these instructions can be issued as statutory rules except Article 162. But as we have already indicated, Article 162 does not confer any authority on the State Government to issue statutory rules. It only provides for the extent and scope of the executive power of the State Government and that coincides with the legislative power of the State Legislature. Thus, under Article 162, the State Government can take executive action in all matters in which the Legislature of the State can pass laws. But, Article 162 by itself does not confer any rule making power on the State Government in that behalf. We are therefore of opinion that instructions contained in the Code are mere administrative instructions and are not statutory rules. Therefore, even if there has been any breach of such executive instructions that does not confer any right on the appellant to apply to the Court for quashing orders in breach of such instructions.

The said decision has no application in the facts and circumstances of the present cases.

24. The State thus itself have a right to make regulation as regards conversion of agricultural land for non-agricultural purpose.

25. Our attention, however, has been drawn to the definition of the word 'agriculture' from The Concise (New Edition for the 1990's) Oxford Dictionary at page 24 which is to the effect:

The science or practice of cultivating the soil and rearing animals.

In Bouvier's Law Dictionary, Volume 1, 3rd Edition at page 167, 'agriculture' has been defined to mean:

Agriculture :--The cultivation of soil for food products or any other useful or valuable growths of the field or garden; tillage, husbandry; also, by extension, farming, including any industry practiced by a cultivator of the soil in connection with such cultivation, as breeding and rearing of stock, dairying, etc. The science that treats of the cultivation of the soil. The term refers to the field or farm, with all its wants, appointments and products, as distinguished from horticulture, which refers to the garden with its less important though varied products.

In Balletin's Law Dictionary, 3rd Edition at page 54, it was defined to mean:

The science or art of cultivating the soil and its fruits, especially in large areas or fields, and the rearing, feeding and management of livestock thereon, including every process and step necessary and incident to the completion of products therefrom for consumption or market and the incidental turning of them to account.

It is broader in meaning than "farming" since it includes activities deemed extraneous to farming, such as viticulture, dairying, poultry, bee raising and ranching.

The word refers to the field, or farm, withal its wants appoinments; and products, as horticulture refers to the garden with its less important, though varied, products,. Slycord v. Horn, 179 lowa 936, 162 NW 249, 7 ALR 1285, 1290. For some purposes, however, the word "agriculture" includes horticulture, as well as forestry, and the use of land for any purpose of husbandry inclusive of the keeping and breeding of livestock, poultry or bees and the growing of fruit or vegetables.

In Webester's New Twentieth Century Dictionary unabridged 2nd Edition, at page 38, it was defined to mean.

A field and culture, cultivation, the science and art of farming, tillage; the cultivation of the ground, for the purpose of producing vegetables and fruits; the art of preparing the soil, sowing and planting seeds, caring for the plants and harvesting the crops. In a broad sense the word includes gardening or horticulture and also the rearing of livestock.

26. Different dictionaries, therefore, have defined the meaning of the word 'agriculture' in different manner. A marked distinction may also be found out from the dictionaries of the United Kingdom and the United States of America. The Court, therefore, in a situation of this nature although, may take recourse to the meaning of the words attributed in a dictionary but would prefer to adopt such meaning which is commensurate with commonsense of the term. In Union of India v. Harjeet Singh

Sandhu, 2001 (3) Scale 336, it was observed:

'Impracticable' is not defined either in the Act or in the Rules. In such a situation, to quote from "Principles of Statutory Interpretation" (Chief Justice G.P. Singh, Seventh Edition, 1999, pp 258-259), "when a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear, Therefore, when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of according to lexicographers. As stated by KRISHNA IYER, J., 'Dictionaries are not dictators of statutory construction) where the benignant mood of a law and more emphatically, the definition clause furnish a different denotation. In the words of Jeevan Reddy, J., 'A Statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context and to the legislative history. Judge Learned Hand cautioned 'not to make a fortress out of the dictionary' but to pay more attention to 'the sympathetic and imaginative discovery' of the purpose or object of the statute as a guide to its meaning"

27. The dictionary meaning of a word, it is well known, may be taken into consideration and may have legal application in a situation and in the circumstances where the word has not been defined in a statute. A word may mean one thing for one Act and some other meaning for another Act. A restrictive or liberal meaning can be attributed to a word under different Acts. Our attention has been drawn to the meaning of 'agriculture' under the Agricultural Income Tax Act as propounded by the Apex Court in CIT v. Benoy Kumar, . The Apex Court held:

In order that an income derived by the assessee should fall within the definition of agricultural income two conditions are necessary to be satisfied and they are:

(i) that the land from which it is derived should be used for agricultural purposes and either assessed for land revenue in the taxable territories or is subject to local rates assessed and collected by the officers of the Government as such; and

(ii) that the income should be derived from such land by agriculture or by one or the other of the operations described in Clauses (ii) and (iii) of Section 2(1) of the Indian income Tax Act.

A statutory definition for the purpose of the provisions of the said Act will be of not much relevance to the present case.

28. We may notice that in the context of Wealth Tax Act, the Apex Court in CWT. v. Officer-in-charge, , observed that agricultural land is a species of land and it must be land, which could be said to be either actually used or meant to be used for agricultural purposes.

29. Pisci culture or aquaculture per se cannot be said to be agricultural operation.

In the Book on 'Aquaculture and Water resource Management' edited by Donald, J., Baird, Malcolm M.C.M. Beveridge Liam A. Kelly the word 'aquaculture' has been defined to mean:

Before attempting to describe aquaculture from a systems perspective, it is useful to offer some primary definitions. Firstly, FAO (1995) defines aquaculture as:

'the farming of aquatic organisms including fish, mollusks, crustaceans and aquatic plants. Farming implies some form of intervention in the rearing process to enhance production, such as regular stocking, feeding, protection from predators, etc. Farming also implies individual or corporate ownership of the stock being cultivated. For statistical purposes, aquatic organisms that are harvested by an individual or corporate body that has owned them throughout their rearing period contribute to aquaculture, whilst aquatic organisms that are exploitable by the public as common property resources, with or without appropriate licences, are the harvest of fisheries.

In the Concise Oxford Dictionary (The New Edition for the 1990s) at page 53 'aquaculture' has been defined:

The cultivation or rearing of aquatic plants or animals.

Aquatic means, growing or living in or near water.

30. The submission to the effect that any restriction imposed in the user of such lands for any purpose whatsoever would amount to deprivation of property under Article 300-A of the Constitution of India is liable to be rejected. It is one thing to say that the State in exercise of its power of "eminent domain" acquires the land of others without payment of any compensation but it is another thing to say that the State has no power whatsoever to regulate the user of such property. Further, the submission of the learned Counsel to the effect that that by reason of such restriction a citizen's fundamental right under Article 21 of the Constitution of India is violated as thereby the means of livelihood is taken away is again misplaced. A person in terms of Article 21 of the Constitution of India cannot take recourse to or earn his livelihood by violating the provisions of any law. The said argument is ante-thesis to right to live as adumbrated under Article 21 of the Constitution of India.

31. The submission to the effect that by reason of an executive instruction under Article 162 of the Constitution of India the constitutional right to property as adumbrated under Article 300-A of the Constitution cannot be taken away has to be rejected. A right of a person to hold land is subject to the terms and conditions laid down in the deed of settlement and/or as may be permissible under a statutory or a statutory rule or instruments. The purposes for which a land can be used would depend upon the nature of settlement. If a settlement is given only for a particular purpose and/or if by reason of the provisions of the Estates Abolition Act only ryot interests have been saved, the lands cannot be used for any other purposes whatsoever unless an appropriate permission is obtained from the competent revenue authorities. As indicated hereinbefore, by reason of an executive instruction issued under Article 162 of the Constitution, the State is entitled, in absence of any legislation operating in the field, issue such directions which are permissible in terms of any one

or more entries in List II of the Seventh Schedule of the Constitution of India. In Bishamber Dayal Chandra Mohan v. State of U.P., AIR 1982 SC 32, it was held:

.... The executive power of a modem State is not capable of any precise definition. In Ram Jawaya Kapur v. State of Punjab, , Mukhejea, C.J., dealt with the scope of Articles 73 and 162 of the Constitution. The learned Chief Justice observed that neither of the two Articles contains any definition as to what the executive function is or given an exhaustive enumeration of the activities, which would legitimately come within its scope. It was observed: 'ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away." It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of both the formulation of the policy as well as its execution. In other word, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill.

32. The said decision, therefore, runs counter to the submission made by the learned Counsel.

33. Our attention has been drawn to some decisions of learned single Judge on the point wherein it has been held that in absence of any statutory compulsion, the agricultural lands may be used for purposes other than agriculture. Unfortunately the learned Counsel appearing for the parties therein were remiss in bringing to the Court's notice the statutory provisions as also the circular letters, etc., which were operating in the field. It is now a well-settled principle of law that a decision is an authority for what it decides and not what logically can be deduced therefrom.

34. In A-one Granites v. State of U.P., 2001 AIR SCW 848 at 851, 852, it has clearly been held:

35. The first question which falls for consideration of this Court is as to whether the question regarding applicability of Rule 72 of the Rules in relation to the present lease is concluded by the earlier decision of this Court rendered in Prem Nath Sharma v. State of U.P., . From a bare perusal of the said judgment of this Court it would be clear that the question as to whether Rule 72 was applicable or not was never canvassed before this Court and the only question which was considered was whether there was violation of the said rule.

This question was considered by the Court of Appeal in Lancaster Motor Company (London) Limited v. Bremith Limited (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment.

36. Furthermore, enjoyment of right by the owner, it is trite, cannot be in the manner, which would be injurious to health or otherwise hazardous.

In this connection, we may also refer to another aspect of matter. Deep underground water belongs to the State in the sense that doctrine of public trust extends thereto. Holder of a land may have only a right of user and cannot ask any action or do any deeds as a result whereof the right of others is affected. Even the right of user is confined to the purpose for which the land is held by him and not for any other purpose. Even in relation to such matters, no prescriptive right under Section 25 of the Limitation Act would be attracted. Further, even by reason of Section 25 of the Limitation Act, a person must exercise an easementary right without interruption for a period of 30 years in relation to air, way or watercourse or the use of any water or any other easement by enjoying it peaceably and openly as an easement and as of right. Then only such exercise of right to air, way, watercourse, use of water or other easement becomes absolute and indefeasible. It is not the case of the parties that they had acquired such absolute or indefeasible right under Section 25 of the Limitation Act.

A person who holds land for agricultural purpose may, therefore, subject to any reasonable restriction that may be made by the State may have the right to use water for irrigational purposes and for the said purpose he may also excavate a tank. But under no circumstances, he can be permitted to restrict flow of water to the neighbouring lands or discharge the effluents in such a manner so as to affect the right of his neighbour to use water for his own purposes. On the same analogy he does not have any right to contaminate the water to cause damages to the holders of the neighbouring agricultural fields. Large scale defoulment in the quality of water so as to make it unusable by others or as a result whereof the water is contaminated and becomes unpotable would be violative of Article 21 of the Constitution. In M.C. Mehta v. Kamal Nath, , the Apex Court has quoted with approval an article entitled 'Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention' of Joseph L. Sax, Professor of Law, University of Michigan which is in the following terms :

The source of modem public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property, which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties - such as the seashore, highways, and running water -

'perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.

37. It was held :

The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature,

they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

'Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.' The American law on the subject is primarily based on the decision of the United States Supreme Court in Illinois Central Railroad Company v. People of the State of Illinois, [146 US 387 = 36 L Ed 1018 (1892)]. In the year 1869 the Illinois Legislature made a substantial grant of submerged lands - a mile strip along the shores of Lake Michigan extending one mile out from the shoreline -to the Illinois Central Railroad. In 1873, the Legislature changed its mind and repealed the 1869 grant. The State of Illinois sued to quit title. The Court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to pre-emption and sale. It was a title held in trust - for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public. According to Professor Sax the Court in Illinois Central (supra) "articulated a principle that has become the central substantive thought in public trust litigation. When a state holds a resource which is available for the free use of the general public a court will look with considerable scepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties".

38. A nuisance is therefore usually created by acts done on land in the occupation of the defendant adjoining or in the neighbourhood of that of the plaintiff. Even when it is on the adjoining private land, the defendant need not necessarily be the owner or occupier of that land, he may for example be a contractor executing works there which make the property defective [Heaven v. Mortimer (1968) 20 EG 767] or otherwise cause nuisance to the adjoining property. Nuisance is commonly a continuing wrong - that is to say, it consists in the establishment or maintenance of some state of affairs which continuously or repeated causes the escapes of noxious things onto the plaintiff's land (e.g., a stream of foul water).

39. A distinction is traditionally drawn in the cases between two kinds of harm sufficient to found an action of nuisance. It may consist either in:

(1) Some interference with the beneficial use of the premises occupied by the plaintiff, or (2) Some physical injury to those premises, or to the property of the plaintiffs situated thereon.

Thus smells emanating from a pig farm, or noise causing deprivation of sleep might come within the former category. Damage to land by causing sewage [Jones v. Llanrwst Urban Council (1911) 1 Ch. 393] or floodwater to collect upon it, come within the latter category.

It is one thing to say that in a case of tort by way of trespass a private law remedy is available to a neighbour but it is another thing to say that the State as also the court in a public law remedy issue an appropriate direction upon the concerned authorities to see that the right of other person is not violated by reason of breach of statutory conditions. In any event, such a direction can always be issued to the authorities who are statutorily obligated to enforce the law. Point No. 1 is answered accordingly.

Re QUESTIONS (2) AND (3):

40. So far as the matter relating to prawn culture, shrimp culture or aquaculture is concerned, there cannot be any doubt that the matter had been gone into by the apex Court in S. Jagannath v. Union of India, . In the aforementioned judgment the apex court although was considering a complaint of inaction on the part of the State to enforce the prohibition as regards shrimp culture in Coastal Regulation Zone (CRZ), it had called for expert committee reports and went into the entire gamut and issued directions. As would be noticed hereinafter such directions are not confined only to matters relating to shrimp culture or prawn culture in brackish/ saline water within CRZ but also aquaculture and prawn culture in fresh water. In view of the directions issued by the apex Court, it must be held that having regard to the provisions contained in Articles 141, 142 and 144 of the Constitution all the concerned authorities being bound must abide by therewith and render all assistance to see that the judgment of the apex court is punctually observed and carried into execution by all concerned.

41. A law declared by the apex Court in view of Article 141 of the Constitution of India is binding upon all the concerned authorities.

In terms of Article 21 of the Constitution of India every citizen of India has a right to live a decent life, a good environment and maintenance of ecology. Such a right must be held to have primacy over a statutory right to hold and enjoy the property. Pollution is a consequence of abusing the environment and natural resources by the human being. Article 48-A of the Constitution which is by way of directive principle of State policy under Part IV directs the state to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51-A(g) imposes a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Though Part III of the Constitution does not contain any provision to provide right to pollution free environment as a fundamental right, but, in view of the liberal interpretation of Article 21 given by the Apex Court, the right to pollution free environment and protection of ecology came to acquire the status of a fundamental right under Article 21.

In S. Jagannath v. Union of India, dealing with a Public Interest Litigation filed by a voluntary organisation seeking to enforce the Coastal Zone Regulations Notification issued by the Central

Government in 1991 and to stop intensive and semi-intensive types of prawn farming in the ecologically fragile coastal areas and prohibition of using waste lands and wet lands for prawn farming, the Court directed the closure of all shrimp farming in the coastal regions. Thus, the Apex Court has recognised the impact of prawn farming on the environment and maintenance of ecology vis-a-vis the right of a citizen under Article 21 of the Constitution of India. In Virendar Gaur v. State of Harayana , the Supreme Court held that environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of Article 21. The noteworthy principle that emerged from the broad and positive interpretation of Articles 47 and 48-A in Part IV and Article 51-A(g) in Part IV-A of the Constitution is that the State is under a constitutional obligation to ensure the enforcement of the citizens right to pollution free environment under the existing legislations like the Environmental Protection Act and the Coastal Zone Regulations.

42. The apex court in S. Jagannadh's case (supra) directed:

5. The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased production, productivity and return with prior approval of the "authority" constituted by this order.

6. The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/ converted for construction of shrimp culture ponds.

9. Aquaculture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional may be set up/constructed outside the coastal regulation zone as defined by the CRZ notification and outside 1000 meter of Chilka and Pulicat lakes with the prior approval of the authority as constituted by this Court. Such industries which are already operating in the said areas shall detain authorisation from the "Authority" before April 30, 1997 failing which the industry concerned shall stop functioning with effect from the said date. We further direct that any aquaculture activity including intensive and semi-intensive which has the effect of causing salinity of soil, or the drinking water or wells and/or by the use of chemical reeds increases shrimp or prawn production with consequent increase in sedimentation which, on putrefaction is a potential health hazard, apart from causing siltation turbidity of water courses and estuaries with detrimental implication on local fauna and flora shall not be allowed by the aforesaid Authority.

43. Yet again in Gopi Aqua Farms v. Union of India, , the apex Court held;

On behalf of the writ petitioners, Mr. K.K. Venugopal has argued that the writ petitioners, were not parties to the proceedings before the Court in the case of Jagannath (1997 SCW 635) and the decision is not binding upon them. This argument is not acceptable for several reasons. The case of Jagannath had received widest publicity. Various investigations into facts relating to shrimp culture was made, reports were obtained from various sources like, NEERI, Central Board for Prevention and Control of Water Pollution and various other authorities. It is difficult to believe that the petitioners were unaware of all these events. A large number of shrimp farmers and organizations, representing them appeared in Court and placed their point of view about the dispute.

Secondly, in a case like this, there is no question of invoking the principle of Order 1, Rule 8 of the Code of Civil Procedure. It was a public interest litigation. There are Aquaculture farms all over India along the coast line. A large number of them appeared and the case was argued at great length for very many days and the decision was ultimately given. Now a few persons cannot come up and say that they were not made parties in that case or that they were unaware of that case altogether and, therefore, the judgment does not bind them and the case should be heard all over again. If this practice allowed, there will be no end to litigation. This practice was deprecated by this Court in the case of Makhanlal Waza v. State of Jammu and Kashmir .

(also see K. Rangaraju v. Government of A.P., and S. Jagannadh v. Union of India , 1996 (9) SCALE 167.

44. In Indian Council for Enviro-Legal Action v. Union of India, , the apex Court laid down:

With rapid industrialization taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the Courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizen's is now well settled by various decisions of this Court. The primary effort of the Court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The Courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the Courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.

There is 6000 kms. long coastline of India. It is the responsibility, of the coastal States and Union Territories in which these stretches exist to see that both the notifications are complied with and enforced. Management Plans have to be prepared by the States and approved by the Central Government. If the said plans have been approved, the development can take place only in accordance therewith. Till the preparation and approval of the said plans by virtue of the provisions of the main Notification, no development in the coastal areas within the NDZ can take place. Therefore, it is in the interest of all concerned that the Management Plans are submitted and approved at the earliest.

45. In A.P. Pollution Control Board v. M.V. Nayudu, , it has been held:

A basic shift in the approach to environmental protection occurred initially between 1972 and 1982. Earlier, the concept was based on the "assimilative capacity" rule as revealed from Principle 6 of the Stockholm Declaration of the U.N. Conference on Human Environment, 1972. The said principle assumed that science could provide policy-makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and it presumed that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to act in order to avoid such harm. But in the 11th Principle of the U.N. General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the "precautionary principle", and this was reiterated in the Rio Conference of 1992 in its Principle 15 which reads as follows:

Principle 15 :--In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing cost-effective measures to prevent environmental degradation.

The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (justified) concern or risk potential. The precautionary principle was recommended by the UNEP Governing Council (1989). The Bomako Convention also lowered the threshold at which scientific evidence might require action by not referring to "serious" or "irreversible" as adjectives qualifying harm. However, summing up the legal status of the precautionary principle, one commentator characterized the principle as still "evolving" for though it is accepted as part of the international customary law, "the consequence so of its application in any potential situation will be influenced by the circumstances of each case". (See First Report of Dr. Sreenivasa Rao Pemmaraju - Special Rapporteur, International Law Commission dated 3-4-1998, paras 61 to 72.) The principle of inter-generational equity is of recent origin. The 1972 Stokholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

Principle 1 :--Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations....

Principle 2 :--The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.

Several international conventions and treaties have recognized the above principles and, in fact, several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present (proposals of Sands and Brown Weiss

referred to by Dr. Sreenivasa Rao Pemmaraju, Special Rapporteur, paras 97, 98 of his Report) In A.P.Pollution Control Board-II v. M.V. Nayudu, (2001) 2 SCC 62, it has been held:

In our earlier judgment in A.P.Polititon Control Board (1) v. M.V. Nayudu , this Court had occasion to refer to the basis of the precautionary principle and to explain the basis and content of the very principle. This Court also explained the new principle of burden of proof.

Therefore, it was for the 7th respondent Industry to establish that there would be no danger of pollution to the two reservoirs even if the industry was established within 10 kms. radius of the said reservoirs. In the present proceedings, the 7th respondent has failed to discharge the said onus."

46. In M.C. Mehta v. Kamal Nath, AIR 2000 SC 1997, it has been held:

Apart from the above statutes and the rules made thereunder, Article 48-A of the Constitution provides that the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51-A(g) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two Articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution.

47. Insofar as non-availability of the source of potable water is concerned, the apex Court has noticed the gravity of the situation in U.P. Pollution Control Board v. Mohan Meakins Limited, , in the following terms.

Courts cannot afford to lightly deal with cases involving pollution of air and water. The message must go to all concerned. The Courts will share the parliamentary concern on the escalating pollution level of our environment. Those who discharge noxious polluting effluents into streams may be unconcerned about the enormity of the injury which it inflicts on the public health at large, the irreparable impairment it causes on the aquatic organisms, the deleteriousness it imposed on the life and health of animals. So the Courts should not deal with the prosecution for offences under the Act in a casual or routine manner. Parliamentary concern in the matter is adequately reflected in strengthening the measures prescribed by the statute. The Court has no justification for ignoring the seriousness of the subject.

48. We may notice that In K.R. Krisianaiah v. Mandal Executive Magistrate and MRO, Muthukur, , a learned single Judge of this Court had extensively referred to the report submitted by the A.P. Pollution Control Board in the district of Nellore:

The existence of the tank and ayakut thereunder is not in dispute. May be the aquaculturists are the owners of some extents of the lands situated in the tank bed. May be they were doing agriculture whenever the lands were available for such cultivation. May be the aquaculturist has right to use the

lands for agricultural purpose whenever such lands remain free from submergence. But the question that would arise for consideration is as to whether the aqua culturists can be allowed to indulge in any act, which may prove disastrous and detrimental to the legitimate interest of farmers whose lands ate included in the ayacut of Krishnapatnam tank. The agriculturists are asserting their right to receive unpolluted and sufficient quantity of water from Krishnapatnam tank for agricultural purposes. It is a case of aquaculture v. agriculture. In Jagannath's case (supra) the Supreme Court approved the positive findings of the NEERI that the damage caused to ecology and economics by the aquaculture farming is higher than the earnings from the sale of aquaculture produce. The Supreme Court also noticed the deterioration of ground water quality and the contamination of the soil itself in the villages over one km away from the pond site. Yet unmindful of consequence the mechanized and intensive aquaculture practice continues in some parts of the State. In the instant case, the tank bed land of a public irrigation source is sought to be converted into fish/shrimp ponds. The attempt of such conversion is resisted by the farmers and rightly so.

49. We respectfully agree with the said observations.

50. Furthermore, the Environment (Protection) Act, 1986 had been enacted for the protection and improvement of environment and for matters connected therewith. The said Act was enacted having regard to the declaration made in Stockholm Conference in the year 1972 as also having regard to the Directive Principles of State Policy contained in Article 48-A as also the fundamental duties of a citizen as contained in Article 51-A of the Constitution.

51. Section 2(a) of the 1986 Act defines 'environment' to mean :

'environment' includes water, air and land and the inter-relationship, which exists among and between water, air and land, and human beings, other living creatures, plants, microorganism and property;

52. Section 2(c) defines 'environment pollution' to mean:

The presence in the environment of any environmental pollutant.

53. 'environmental pollutant' has been defined by reason of Section 2(b) thereof to mean.

any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment.

54. By reason of Section 3 of the said Act, the Central Government is empowered to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

55. Section 5 of the Act empowers the authorities to issue directions.

56. A notification has been issued by the Central Government on 19-2-1991 declaring coastal stretches as coastal regulation zone (CRZ) and to regulate the activities in the CRZ.

57. It is not in dispute that pursuant to or in furtherance of the directions issued by the apex Court, authorities had been constituted. It is also not in dispute that in terms of the directions issued by the said authorities all persons who are carrying out activities in pisci culture, prawn culture or shrimp culture must take previous permissions in Form I or Form III appended to notification constituting control regulation authorities.

58. In the Guidelines issued by the Aquaculture Authority Government of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying, the background of constitution of the authority has been stated thus:

The Hon'ble Supreme Court in its orders on the Writ Petition (Civil) No. 561 of 1994 dated 11-12-1996 held that "The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in Para 2(1) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ Notification. This shall be applicable to all seas, bays, estuaries, creeks, rivers, and backwaters. This direction shall not apply to traditional improved traditional types of technologies as defined in Algarswami's Report which are practised in the coastal low lying areas.

The traditional and improved traditional systems as defined in Alagarswami's Reports are as follows:

TRADITIONAL : Fully tidal-fed; salinity variations according to monsoon regime; seed resources of mixed species from the adjoining creeks and canals by auto-stocking; dependent on natural food; water intake and drainage managed through sluice gates depending on local tidal effect; no feeding; periodic harvesting during full and new moon periods; collection at sluice gates by traps and bagnets; seasonal fields alternating paddy (monsoon) crop with shrimp/fish crop (inter-monsoon).

IMPROVED TRADITIONAL: System as above but with, stock entry control, supplementary stocking with desired species of shrimps seed (Penaeus monodon and Pindicus); practised in ponds of smaller area 2-5 ha.

The Court in its orders also permitted the farmers operating traditional and improved traditional systems of shrimp aquaculture to "adopt improved technology for increased production, productivity and return with prior approval of the Authority".

It had taken into consideration the existing practice, technology for improved production and productivity and the matters connected therewith as also secondary aquaculture. As regards the user of manure, it was observed:

While using inorganic fertilizers, care should be taken to avoid over-fertilization. The fertilization dosage given may not hold good for all the waters. The best way to regulate tare fertilization

schedule is through monitory the algal bloom conditions based on the colour or transparency of the water.

59. The authority has also issued various forms including for those who intend to adopt improved technology for increased production and application for authorization of approval of shrimp culture other than traditional and improved traditional which are already operating/proposed to be set up/ constructed which would include proposals where existing farms are also proposed to be expanded outside the coastal regulation zone and outside 1000 meter of Chilka and Pulicat lakes including bird sanctuaries therein. Such authorization in relation thereto as prescribed in Form IV, if any, granted, is subject to the following conditions:

(a) shrimp culture farm/shrimp culture ponds shall restart operation/be set up/constructed only after obtaining Authorisation/Approval from the Aquaculture Authority;

(b) The farm shall not deviate from the approved design and operation;

(c) The farm shall not cause salinisation of soil or drinking water or wells;

(d) The farm shall not cause increased sedimentation and health hazards;

(e) The farm shall not cause siltation, turbidity of water course and estuaries with detrimental implication on local fauna and flora;

(f) The arm shall establish and operate an Effluent Treatment Plant and shall ensure that the effluent quality at discharge point conforms to the specific standards prescribed by the Pollution Control Board of the concerned State/U.T;

(g) This Authorisation/Approval in Form IV be exhibited in the premises and produced for checking whenever demanded by an inspecting officer and

(h) The Authorisation/Approval is not transferable.

60. The said authority has to function under the control of the Government of India in the Ministry of Agriculture and has laid down the rules of procedure. As per Rule 12 of the said rules, the authority has the power of removal or demolition of any shrimp farm and/or any structure therein which is causing any adverse impact on ecology. Evidently, not only those farmers who are already operating other than traditional and improved traditional systems of shrimp culture or proposed to be set up/ constructed outside CRZ are required to obtain authorization but also those farmers who are already operating traditional and improved traditional systems of shrimp aquaculture and who intend to apply for adoption of improved technology for increased production and productivity are required to obtain prior permission. Such prior permissions are required to be granted in accordance with the procedure laid down therein.

61. It is not the case of the petitioners of the first group that they had applied for and obtained permission from the said authorities.

62. It is now well settled that the court with a view to stop or regulate pollution may take recourse to the precautionary principle or polluter pays principle. It is also now no longer res integra that the burden of proof is on the polluter to show that no pollution is being caused.

63. It has not been disputed that for the purpose of carrying out the said activities deep borewells had been dug, extensive use whereof had in various cases led to salination of the ground water. It has also not been disputed that by reason of such extensive prawn culture or aquaculture, the surrounding agricultural lands had become for all practical purposes useless for cultivation of paddy and other crops. The salinated fish tank water oozes through soil pores to the adjacent land where crops are raised and thereby the adjacent land gets damaged. The extensive use of the fish tank bed as aquaculture etc. will completely convert the adjacent land uncultivable after some years due to percolation of polluted water from the fish tank. There are also some cases in the area in or around Kolleru Lake. The directions contained herein as also the conclusions reached would govern such lands.

Questions 2 and 3 are answered accordingly.

Re-Question No. 4:

64. It may be true that in cases where there has been damage or loss to the property of an individual by the action of his neighbour, the party may take recourse to private law remedy. But, the concept of locus standi has undergone change. See Fertilizer Corporation, Kamagar v. Union of India, AIR 1981 SC 344 and S.P. Gupta v. President of India, in subsequently in several cases the said decisions have been followed or distinguished.

65. In the petitions filed by the second group of petitions, the petitioners in their writ applications did not seek any relief against the other set of the writ petitioners. They by reason of the said writ petitions had raised questions that had a direct impact on their fundamental right guaranteed under Article 21 of the Constitution of India. So far as the enforcement of a right under Article 21 of the Constitution is concerned, a writ petition may be maintainable even against a private person. See Rohtas Industries Limited v. Rohtas Industries Staff Union, . In Anadi Mukta Sadguru S.M.V.S.J.M.S.Trust v. V.R. Rudani, , the Apex Court clarified the jurisdiction of the High Court in issuing a mandamus under Article 226 of the Constitution of India vis-a-vis Article 12. It was observed that though mandamus cannot lie where the rights are purely of a private character and the person against whom mandamus is sought its purely a private body with no public duty, yet, mandamus couldn't be denied where the party has no other equally convenient remedy. The Apex Court further stated the law thus:

The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very Limited scope and suffered from many procedural disadvantages.

It was also held:

The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental right under Article 32. Article 226 confers power on the High Court to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

The said decisions have recently been followed by the Apex Court.

66. In any event, a public interest litigation has also been filed, this Court, having regard to the nature of the problem involved which has larger public interest, has jurisdiction to issue appropriate writ or direction or orders as may be found necessary in greater public interest. We, therefore, are of the opinion that these writ petitions at the instance of the second group of writ petitioners could be maintainable.

Question No. 4 is answered accordingly.

67. For the reasons aforementioned the first group of writ petitions are dismissed. The second group of writ petitions are allowed with a direction upon the respondents not to allow any person to carry on the activities of shrimp culture or prawn culture or any type of aquaculture without obtaining the prior permission from the competent authority as referred to hereinbefore and insofar as they are applicable in the case of particular persons upon strict compliance with the directions issued by the Apex Court in Jagannath case (supra). No costs.