

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/WRIT PETITION (PIL) NO. 179 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH Sd/-

and

HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI Sd/-

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

=====

HERITAGE TRUST
 Versus
 UNION OF INDIA

=====

Appearance:

MR SALIL M THAKORE assisted by MS KRISHNA SHAH ADVOCATE for the Applicant(s) No. 1,2,3,4,5,6,7,8.

MS SHRUTI PATHAK ASSISTANT GOVERNMENT PLEADER for the Opponent(s) No. 4

MR KAMAL TRIVEDI SR. ADVOCATE assisted by MR RAMNANDAN SINGH(1126) for the Opponent(s) Nos. 1 and 3 and MS ARCHANA U AMIN(2462) for the Opponent(s) No. 2

=====

CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 15/06/2021

CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)

1 The Heritage Trust, a public trust registered under the Gujarat Public Trusts Act, 1950 with its registered office at Vadodara, joining with 7 Executive Committee members has filed the present petition under Article 226 of the Constitution of India framed as a Public Interest Litigation.

1.1 It has been firstly prayed that the respondents i.e. the Union of India through Ministry of Railways, Rail Vikas Nigam Limited (RVNL), National Academy of Indian Railways (NAIR) and State of Gujarat, Ministry of Tourism, be restrained from constructing any building on the gardens or the area in front of the Pratap Vilas Palace, Vadodara or at any place that would obstruct the view and ambience of the palace or its gardens.

1.2 The second relief claimed is for appropriate directions commanding the respondents to take necessary steps to construct the proposed building at an alternative place which will not obstruct the view or ruin the ambience of the Pratap Vilas Palace, Vadodara or its

gardens.

1.3 It is next prayed that an appropriate direction be issued to the respondents to **take all steps that are necessary for protecting and preserving the Pratap Vilas Palace, Vadodara and its precincts.**

1.4 Lastly, it is prayed that pending the hearing and final disposal of the petition, the respondents be restrained from taking any further steps towards constructing a building on the gardens or in the area in front of the Pratap Vilas Palace, Vadodara, or at any place which may obstruct the view or ruin the ambience of the palace or its gardens.

2. In paragraphs 1 and 2 of the petition, the credentials of the petitioner trust and the members of its Executive Committee have been given in detail and further the activities of the trust have also been highlighted including the earlier Public Interest Litigations initiated by the petitioner trust. Paragraph 3 of the petition mentions the fact that the present petition is purely in public interest and there is no interest of any of the

present petitioners or the trust and that the Advocate is also appearing *pro bono* without charging any fees and there is no litigation cost incurred as such.

2.1 Paragraphs 4.1 to 4.14 set out in detail the brief history of the palace, detailed description of the palace building and the surrounding campus, details of the architect who designed the Pratap Vilas Palace and also about the post independence significance of the palace and recognition given by the Ministry of Railways and other authorities to the palace from time to time. We will refer to in brief about the details provided.

2.2 Pratap Vilas palace is a 106 year old historical and architectural icon of the city of Baroda and of Gujarat. The significance of this heritage property is from varied points of view: historical, cultural, architectural, artistic and ecological.

2.3 The palace was built by Maharaja Sayajirao III Gaekwad, the great reformist ruler who ruled from 1875 to 1939. Upon his passing away in 1939, Pratapsinhrao Gaekwad became the 14th and last Maharaja of the State

of Baroda. The palace is named after the last Maharaja of Baroda (whose family had lived in the palace for many years). He was crowned as king from the balcony of the Palace.

2.4 Pratap Vilas Palace is Vadodara's 2nd largest palace. It is designed in the Indo-Sarcenic style of architecture (a blend of Indian and European architectural styles) and is lined with Italian marble. The palace is built in the Renaissance and Baroque styles of architectural influences with columns and arches drawn from South, Central, North Indian and Islamic traditions. The facade flaunts a dome clad entirely with copper. The grandeur of the palace is further emphasized by the ornaments used to embellish the structure i.e. classical traits such as pediments, semi-circular arches, lantern-like elements, balustraded railings, ionic columns and domes. The palace was designed by a well known British architect, Mr. Charles F. Stevens whose two other buildings, along with the iconic buildings of the Hon'ble Bombay High Court, the University of Mumbai, Victoria Terminus and Crawford

Market form part of a UNESCO World Heritage Site 'Victorian and Art Deco Ensemble of Mumbai' (para 4.9 of the petition) Photographs of the palace are at A-39 to 42.

2.5 Maharaja Sayajirao Gaekwad's idea was to build a palace amidst 55 acres of greenery. In the front side of the palace, there are woods with different types of trees and a baug. The palace is enlivened by the culls of peacocks and a large variety of migratory birds. The woods and the baug have been in existence since decades. The woods also have a Certified Peacock Garden, which includes a 500 metre long serene forest trail surrounded by more trees with lots of birds. Peacocks and peahens in particular can be spotted throughout the year. The baug in front of the Palace is called Raja Baug and the one on its side is called Rani Baug.

2.6 Like any other heritage palace property, the Pratap Vilas Palace cannot be seen in isolation. The woods and the gardens enhance the beauty, the grandeur and the ambience of the palace. The heritage property is the

composite whole comprising of the palace and the surrounding greenery. The palace, the baugs and the woods are indivisible elements of one composite whole, inseparable limbs of one body. Each enhances the beauty of the other and the palace as a whole. This is clear from the images at pgs. 409-412.

2.7 In fact, the Union of India, the Government of Gujarat and other government bodies have themselves recognized the beauty of the palace and its precincts (surrounding woods and baugs) as a whole from time to time:

[a] NAIR has described the property thus on its website: "...is situated in a sprawling campus of 55 acres of the Pratap Vilas Palace at Lalbaug, Vadodara. present regal sylvan surroundings at Vadodara, in 1952. It is housed in the Pratap Vilas Palace (built in 1914 AD) surrounded by lush green lawns and designed by C.F. Stevens in the renaissance style. The property comprising of 55 acres of garden and wooded land, enlivened by the calls of peacocks and

migratory birds, was purchased from the Gaikwads (erstwhile rulers) of Vadodara.” (K-89).

[b] In letter dated 30.3.2007 sent by the Executive Director (Heritage) (N-105), the Railway Staff College, Vadodara is listed as a heritage property (pg. 108). The Railways have themselves acknowledged the importance of maintaining a heritage property with its surroundings / setting. This is evident from what is stated in point no.5 on pg. 108:

‘Improving the surroundings/environment’ and

Conservation with the natural/cultural perspective of the environment/setting is important to correlate its relationship to people, place and time’.

[c] In letter dated 13.4.1999 (L-91), the Ministry of Railways have recognized Pratap Vilas Palace and its precincts as something having great heritage value and being worthy of preservation. The

communication states: “Indian Railways have the proud privilege of possessing many architectural and aesthetically marvelous buildings/ precinct/ bridges which can rightly be termed as “Heritage structures” and are worth of preservation.....Based on the information collected from Zonal Railways, 32 buildings/ precincts and 11 bridges have been identified as heritage structures.” Item No.9 on pg.97 lists the Railway Staff College, Vadodara i.e. the Pratap Vilas Palace and its precincts (heading).

[d] On the website of Indian Railways, a list of “Heritage Inventory’ is uploaded. The Pratap Vilas Palace is mentioned at Sr. No.70 of the list (S-144@147) with the following description: ‘...The palace is designed in Renaissance style... The palace stands on a land of 55 acre, amidst huge gardens.’

[e] A photograph of the palace is shown in the opening page of the 2011 District Census Handbook for Vadodara as the motif (T-149@150). The

description emphasises the wooded green surroundings of the palace: “The palace complex has an area of around 55 acres with well laid out gardens and large number of trees” Pg.151 read with 152 lists the property as a ‘Places of Historical and Archaeological Importance..Places of Tourist Interest’, The Census Book is under the Census of India carried out by the Union.

[f] On its Youtube channel ‘Gujarat Tourism’, the State Government has uploaded a 1.13 minute video exclusively dedicated to this property. The palace is shown from different angles with the lawns and wooded areas surrounding the palace. The video ends with a beautiful aerial shot that emphasizes the grandeur of the palace when seen with the lawns and wooded gardens in front of it. (Compact Disc — 412A). ‘The State Government has put the Pratap Vilas Palace as a place of interest on its website. (U-153)

[g] The property is also mentioned in the list

(P-138@139 - Sr. No. 73) that was prepared pursuant to the letter dated 27.4.2016 (O-136) sent by the Ministry of Railways.

From the above, it is very obvious that even the government has recognised the heritage value of the property as a composite whole (monuments with the surrounding woods) and not of the monument in isolation.

2.8 In paragraph 4.15, it has been stated that the Indian Railways have issued from time to time communications and guidelines emphasizing the need to preserve the heritage property and their precincts. A reference had been made to several high level committee meetings held on 18.05.2017, 03.02.2018 as also the communications dated 06.12.2018 and 02.01.2019. Basically what has been highlighted is that the Ministry of Railways has taken decision at different levels to promote heritage preservation in the Railways including conservation of constructed heritage. The effect is that the

Indian Railways is committed to conserve, preserve and protect its heritage.

2.9 In further paragraphs of the petition, it has been stated that NAIR was established and housed in the palace. It is further mentioned that the National Railway and Transportation Institute (hereinafter referred to as "NRTI"), was established by the Railways in 2018 and is to be established in a new campus in District Vadodara in Waghodia Taluka. The Government of Gujarat has allotted 31 Acres of land in Waghodia Taluka to the Indian Railways for setting up the new campus of NRTI.

2.10 It is further stated that presently the NRTI is established in one of the buildings within the compound of the palace as a temporary measure. It is further mentioned that till NRTI is finally shifted to Waghodia Taluka, the respondents have planned to construct an additional four-storey building inside the palace campus. This four-storey building has been planned to be constructed right in front of the palace, very close to it,

and in the lawns of the historic Raja Baug which would completely obstruct the view of the palace.

2.11 The new construction proposed to be raised would be an eye sore and will destroy the beautiful facade, amazing landscape, scale, beauty and history of the 106 year old historic landmark of Vadodara. It will ruin the aesthetic of the palace which is not only an architectural beauty but also a heritage structure. Also that it would cause a visible pollution.

2.12 Further details mentioned are regarding royal family of the Vadodara and about the Pratap Vilas Palace being the pride of Vadodara, which we are not elaborating much. The petition further contains averments to the effect that not only the members of the royal family have addressed letters to the Ministry of Railways but also that the Gujarat Chapter of Indian National Trust for Art and Cultural Heritage (INTACH) has also made a representation to NAIR. Despite representations from all corners, the respondent authorities brushing aside every such genuine

request, are proceeding with the alleged construction of the four-storey building.

3. The petition further contains the averments regarding recognition of the heritage building by the Government of India, the commitment of the Government of India to preserve and conserve the heritage. It is also stated that the petitioner trust has also made representations to the Collector and the Municipal Commissioner of Vadodara with a request to intervene in the matter. However, all such efforts having failed, the present petition has been preferred for the reliefs claimed, which have already been recorded in the opening paragraph.

4. The petition has been filed on various grounds, which we shall deal with at a later stage. In support of the averments contained in the petition, a large number of documents have been annexed and as and when necessary, reference would be made to the same.

5. During the pendency of the petition, Civil Application No.1 of 2020 was filed for early listing of the matter as despite several listings, the matter could not be taken up. This Court by order dated 16.12.2020 issued notices making them returnable on 11.01.2021 and after recording the submissions of the learned counsel for the petitioners, this Court passed an interim order restraining the respondents from taking any further steps towards the construction of the proposed building at the site in question. The submissions as recorded in the order may have some relevance at the time of discussion at a later stage and as such the order dated 16.12.2020 is reproduced below :

“1. We have heard Mr. Salil M. Thakore, the learned counsel appearing for the writ applicants.

2. This writ application filed in public interest is to preserve and protect the 106 years old architectural and historical marvel now known and recognized as the 'Pratap Vilas Palace', Vadodara. This palace was built more than 100 years ago by Maharaja Sayajirao III Gaekwad. This historical monument has been recognized by the Ministry of Railways (Union of India) and the Government of Gujarat as a monument with architectural, historical and heritage value.

3. *By way of this writ application in public interest, it has been brought to the notice of this Court that the respondents intend to construct a four storied office building right in front of the palace. According to the writ applicants, if such building is permitted to be constructed, the same will destroy the ambience of the palace and its view from the Raja Baug Gardens as well as the view of the gardens from the palace. It appears from the materials on record that the palace is located in an area spread over 55 acres of land. The Central Government - Indian Railway - Government of Gujarat and others have recognized the architectural, historical, heritage and ecological value of the Pratap Vilas Palace and its precincts in several documents/communications/web pages. It is also brought to our notice that the Indian Railway has also issued the communications and the guidelines emphasizing the need to preserve the heritage property and their precincts. It is further brought to our notice that, the matter was taken up seriously by the Member of Parliament from Vadodara on the floor of the Loksabha.*

4. *It has been submitted before us by the learned counsel appearing for the writ applicants that, under Article 51A(f) of the Constitution, every citizen has a fundamental duty to preserve the heritage of our composite culture. The Government being the custodian of the heritage of the country is equally bound to protect and preserve the heritage of the country. It has been argued that the proposed construction would be against the spirit of Article 49 of the Constitution, which provides that the authorities must protect the heritage of the country.*

5. *In the last, it was pointed out that the proposed construction is contrary to the Notifications dated 26.08.1954 and 28.05.1981 respectively issued by the Government of India, which provide that there is special need to protect and preserve the monuments, which may not have been declared to be protected monuments under the Act. It appears from*

the pleadings in the writ application that the authorities have already marked out in 'white', the area on which the construction is to come up. The Railways has also made a statement in the press that the construction work would begin in near future.

6. We are of the view that the matter deserves consideration. Let Notice be issued to the respondents, returnable on 11.01.2021. Till the next date of hearing, the respondents are restrained from taking any further steps towards the construction of the proposed building at the site in question. Direct service is permitted over and above the regular service through the Court.

7. In view of the order passed in the main matter, the connected Civil Application would not survive and the same stands disposed of."

6. In response to the notice, two affidavits-in-reply were filed by the respondents. One affidavit is filed jointly by respondent Nos.1 and 3 duly sworn by the Deputy Director, Establishment (Training), Railway Board and the other affidavit is filed on behalf of respondent No.2 duly sworn by the Assistant General Manager in the Vadodara Division of the Western Railways. Both the affidavits contain similar averments in response to the petition.

6.1 At the outset, it is denied that the proposed construction of the new academic block will have neither

bearing nor impact on the existing Pratap Vilas Palace. The petition is thoroughly misconceived. The instant petition cannot be said to represent any public interest, rather it is a hindrance to a vital developmental project which has been conceptualized and carefully executed. The need for development of the project i.e. the new academic block as a part of the larger master plan undertaken by the Ministry of Railways is rooted in the creation of a larger working space for efficient functioning of the institutions as well as for an integrated administrative block for both the NAIR as also the NRTI. The existing structures fall short of the present need to accommodate the students, mess, trainees, staff and faculties of the two institutes.

6.2 The NRTI has enrolled approximately 500 students in the current academic year which are likely to increase in the coming years as also the number of trainee officers at NAIR are required to be accommodated. It is for this purpose that the new academic block has been planned and is to be constructed. NAIR being an apex training institute is engaged in sharpening the skill of all

levels of Class-I officers right from probationers to General Manager of the Indian Railways by providing various developmental training and is a premier institute.

6.3 The affidavits further mention that the Indian Railways is a vital segment of the country's transport infrastructure and being the 4th largest network in the world covers 67,500 route kilometers of tracks connecting to the remotest corner of the country with more than 22,000 trains running everyday carrying 1.2 billion tones freight and 8.4 billion passengers with its moving infrastructure of more than 12,000 locomotives, 74,000 coaches and approximately 2.9 Lakhs wagons. The Indian Railways is aptly referred to as 'the Lifeline of the Country' and 'the Engine of Economic Growth of India'. It is a crucial asset *inter alia* for social and economic development of the country and economical distribution of resources and produce.

6.4 It is further stated that NRTI was established as India's first university focused on transport related

education, multi-disciplinary research and training. It is specifically established to create a resource pool of best in class professionals for the railway and transportation sector. NRTI was conceptualized in the year 2017-18 and is to be given the status of a deemed university and the work for setting up the same was sanctioned by the Ministry of Railways in its budget of 2017-18.

6.5 NRTI was set up with a dual focus vision of providing higher education and develop in-service capability. Besides offering under-graduates and post-graduates courses, the NRTI will upskill current workforce at Indian Railways to drive transformation from within and significantly improve quality of incoming talent for the railways and transportation sector as also offer research and technology development.

6.6 Over a period of five years, over 5,000 students are expected to study and graduate from NRTI. That nearly 5,000 executives are expected to undergo developmental training programmes and over 50,000 employees are

expected to be trained in new age programmes and further 50,000 youth are to be skilled at various Indian Railways training centers.

6.7 It is next mentioned that NRTI is presently housed in NAIR campus and it has many other infrastructure facilities like hostels, guest house complex, residential quarters of faculty and staff, sports block, mess, water tank and NRTI academic block. These are housed in this 55.7 Acres of land of the Pratap Vilas Palace compound.

6.8 Pratap Vilas Palace was in absolute possession and ownership of the State of Gujarat. In 1952 the palace along with all buildings, structures and land were leased to the Union of India and at that time NAIR, which was formerly known as Railway Staff College, was set up at the location where the Pratap Vilas Palace is situated and is functioning in the said premises since 1952. The Union of India purchased the said palace for the sale consideration of Rs.24,38,271/- from the State Government by means of

a Sale Deed dated 06.01.1964. The entire area of 55.7 Acres is now owned by the Ministry of Railways.

6.9 NAIR functions as the apex training institute for the officers of all the departments of Indian Railways including *inter alia* personnel, stores and medical departments. NAIR provides training to all levels of Indian Railway Officers from probationers to General Managers of the Indian Railways. Classes of NAIR used to be always conducted inside the palace earlier and after commissioning of the academic block named Manthan, the classes were shifted there. Several constructions have been carried out within the said complex of 55.7 Acres from time to time as per functional requirement of NAIR. The NAIR campus which also serves as a campus for the NRTI at present has restricted access and is not open to public as the two institutes, namely, NAIR and NRTI are functioning from the said place. There is serious and acute shortage of space and in order to overcome the space constraints, the requirement for additional infrastructure to accommodate the students, faculty and all other

facilities, the decision was taken to construct a new academic block. The work for construction of the new academic block is now with the Rail Vikas Nigam Limited which was required to prepare a master plan.

6.10 In the original construction plan, the new academic block was to be constructed at a distance of 56 feet from the palace. An objection was raised by one of the members of parliament, however, the matter was discussed with the parliamentary committee and in the parliament session on 13.08.2020 and 22.09.2020 respectively, whereafter the matter was to be revisited by the RVNL to explore alternative site for the new academic block within the NAIR campus. After reconsideration, it has been decided by the Ministry of Railways that the construction site of new academic block would be pushed backwards to a site which would be at a distance of 321 feet from the palace. This would completely leave the gardens of the palace untouched.

6.11 It is further mentioned in the affidavits that the

new site and the design of the building would be consistent with the orientation of all existing building on campus and also leave the gardens untouched. The new site was found to be most suitable and in accordance with the objects of preserving the historic importance of the palace and its grounds and the design objectives would create a wonderful synergy between old and new with the garden in between.

6.12 It is also stated that the Ministry of Railways has allocated an additional budget of Rs.20 Crores towards refurbishment and the face-lift of the palace and its grounds which would include repairs, landscaping, lighting exterior facade as well as interior works of the palace. The new proposed site would in no way hamper the precincts, architectural beauty and the renovation and refurbishment of the palace.

6.13 Other details of the project have been mentioned with regard to the utilization and the construction to be made phase-wise for the use of NAIR

and NRTI.

6.14 It is further stated in the affidavits that the apprehension of the petitioners of the alleged blocking of the majestic view of the historic palace from the garden is thoroughly misconceived as the distance between the palace and the proposed structure of new academic block is huge being 321 feet. It is further stated that while designing the building special focus had been paid to the existing flora and fauna of the campus and in maintaining the aesthetics of the campus.

6.15 The affidavits-in-reply further proceed to give a para-wise reply to the contents of the petition. It is stated that the Pratap Vilas Palace is not a protected monument under the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1956. It is further mentioned that despite the same the master plan pursuant to which the new academic block is being constructed includes preservation and even refurbishment of the palace structure to ensure its longevity. The preservation of the

palace and its surrounding are not lost sight of while making the master plan.

6.16 It is stated that the 31.3875 hectares of land offered by the Collector, Vadodara at Waghodia Taluka, Vadodara has been rendered unusable in present stage owing to various factors which include *inter alia* narrow approach road and land locked by private lands making it inaccessible. In order to provide frontage to the campus, additional private land adjoining the main land is required to be acquired. For all the reasons, the land offered has proved to be unsuitable for the requirement of NRTI and the said proposal has been kept in abeyance.

6.17 The apprehension of the petitioners that the construction of the building would obstruct the view of the palace is misconceived and the same stands dispelled by the very fact that the new site of the construction of the new academic block had been shifted back to 265 feet.

6.18 Insofar as the allegation that the representations

made have gone unheeded, the same is denied and it is stated that they were considered by the Standing Committee and only thereafter the matter was referred to the RVNL for reconsideration and now that the building site has been shifted by 265 feet further away from the palace.

6.19 By shifting the construction of the building to a new site not only ensures non-obstructive view of the palace but also saves the garden referred to as Raj Baug in the petition.

6.20 Additionally, it has been stated that any delay in the construction of the concerned project will not only have adverse impact in the functioning of the two prime institutes of the Railways but would also have an adverse impact on the public exchequer as the construction cost would substantially go up.

7 The petitioners have filed 2 affidavits in rejoinder to affidavit in reply filed by respondent Nos.1 and

3 and respondent No.2, separately. In the affidavit in rejoinder to the affidavit in reply of respondent Nos.1 and 3, it has been stated by the petitioners that the Government of Gujarat, has been very aggressively promoting tourism in the State of Gujarat. To promote tourism, various initiatives have been taken including launching a Youtube channel under the name Gujarat Tourism. Apart from showcasing other tourist spots, insofar as the heritage properties are concerned, the Government of Gujarat has uploaded 1.13 minute video dedicated to the Pratap Vilas Palace, which has been showcased in a magnificent manner along with its lawns and wooded areas. It is further stated that on the one hand the Government of Gujarat is promoting tourism in the State in which one of the highlights is Pratap Vilas Palace and on the other hand the Railways are trying to destroy the beauty of Palace by constructing a building in the wooden gardens in front of the palace. The commitment of the government of Gujarat to promote tourism would fail if such constructions are allowed to take place.

7.1 It is also stated that the present petition is in public interest for protection of the heritage property and the ecology of the palace. The petitioners have tried to distinguish by stating that earlier constructions having not disturbed the lawns and wooded area in front of the palace, however, the present proposed building will result into loss of heritage cluster and would also disturb the heritage value of the Palace. The construction would not only damage the lawns of the Palace but also the heritage property. The respondents could always look for alternative sites for construction. It is also reiterated that there is an allotment of 31 acres of land for NRTI where the construction should be made and if the issue relating to approach road being narrow of the 31 acres land, the same could always be widened by undertaking appropriate acquisition proceedings. Once again it has been stated that if Waghodia Taluka land is not suitable, then alternative sites could be looked into because in any case the proposed building is only a stop gap arrangement and ultimately NRTI will be shifted to a new campus wherever it may come up.

7.2 In the other affidavit in rejoinder filed in response to the affidavit in reply of the respondent No.2, petitioners have focused more on environment and ecological balance. Reference is also made to Articles 51A(g) and 48A of the Constitution of India reminding the State and its citizens that it is a fundamental duty to protect natural environment, living creatures as also to protect and improve the environment and safeguard forests and wildlife. The authorities are completely oblivious of such fundamental duties. Further facts as stated in the petition are reiterated regarding frontage of the palace being destroyed and also the damage being caused to the beauty of the Raja Baug and lawns. It has also been highlighted by the petitioners that large number of trees would be cut down. It is further stated that the respondents have not disclosed anything about Phase - II of the master plan. Other averments contained in the affidavit in reply have been denied.

8. After receiving the rejoinder affidavit, the

respondent No.2 has filed additional affidavit on behalf of respondent No.2. This affidavit has apparently been filed after the rejoinder affidavits for the reason that the petitioners have raised the issue of environment, cutting down of trees and the maintenance of ecological balance. It is stated in para 2 of the additional affidavit of respondent No.2 that firstly there is no forest at all and merely because there are trees existing in the area of 55.7 acres of the Pratap Vilas Palace, the same cannot be branded as forest and being covered by Forest (Conservation) Act, 1980.

9. It has also been stated that while finalizing the new location for the New Academic Block, utmost consideration has been given for saving the maximum number of the existing trees and maximum possible trees would be transplanted. It is stated in para 3 thereof that it has been planned to transplant the trees likely to be affected and if transplantation is not possible, then additional trees would be planted three times in number. It is also stated that the issue relating to trees is part of the

tender already floated. At the cost of repetition, it has been stated that felling of the trees is to the bare minimum and only if absolutely unavoidable. It is also stated that appropriate permissions would be taken from the competent authorities.

10. It is further stated that over and above the existing trees, it has been decided to plant 800 trees additionally. It is specifically stated that ecological system would not be damaged or destroyed.

11. Next in para 4 of the affidavit it has been mentioned that Pratap Vilas Palace is not declared as protected monument under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or under the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965. While constructing the New Academic Block, utmost importance has been given for preserving the heritage value of the Palace as well as its ambience too. It has been reiterated that Rs.20 Crores have been allocated for refurbishment of the Palace which will

enhance the beauty of the Palace as well as its surroundings.

12. Para 5 of the affidavit refers to huge expenses already incurred and any further delay would substantially increase the cost of the project resulting into additional burden on the public exchequer.

13. The affidavit in reply given by the petitioners in response to the additional affidavit of respondent No.2 again reiterates earlier submissions made in the petition as also in the rejoinder affidavits. Additionally, it is stated that under the doctrine of public trust, the Government is constitutionally bound to protect the heritage property as a whole i.e. the palace with its surrounding greenery. Further under the same doctrine of public trust, the Government is also bound to protect tree clusters in the cities. Rest of the contents relates to the beauty of the Palace coupled with green cover and surroundings and any damage to the green cover and the surrounding would damage the beauty of the Palace. According to the

petitioners, the transplantation is not an answer. It is also stated that fake assurances have been made by the respondents in their affidavits and therefore, no reliance should be placed on the same. It is also submitted that merely because Pratap Vilas Palace is not declared as an ancient monument either under the Central Act or the State Act, the Government should not disown its responsibility of protecting and preserving the same. The expenditure part stated in the additional affidavit is also denied basically for want of knowledge. However, according to the petitioners' statement any decision which is violative of the doctrine of public trust and other constitutional obligations cannot be compared or substituted in terms of project cost or additional costs.

14. The petition, affidavits in reply, rejoinder affidavits, additional affidavits and the affidavits in reply to the additional affidavits are all accompanied by large number of documents, which include notifications, photographs, google images, building plans and other relevant material.

15. We have heard Mr. Salil Thakore, learned counsel for the petitioners and Mr. Kamal Trivedi, learned Senior Advocate assisted by Mr. Ramnandan Singh and Ms. Archana Amin, learned counsels representing respondent nos.1 to 3 as also Ms. Shruti Pathak, learned Assistant Government Pleader for the State respondent.

16. Mr. Salil Thakore, learned counsel for the petitioners has made the following submissions.

[A] Protecting the heritage property as a whole

16.1 It is submitted that since the woods and greenery enhance the beauty of the palace, the heritage property is required to be protected as a whole.

[a] The construction of a large modern building in the middle of the woods and the presence of an imposing concrete block in front of the palace will be an eyesore and will destroy the ambience, beauty and grandeur of the palace.

[b] The building will destroy the magnificent look of the palace and the lush woods/gardens. The proposed modern building will be totally incompatible with the architectural style of the palace and the ambience of the palace. From **pgs. 287, 288 and 300**, it appears that the building is visibly larger than the palace and will take the focus away from the palace and diminish its beauty.

[c] The new site will destroy the view of the palace from the green area and the view of the green area from the palace as much as the old site. It is important to recognize that the protection of the woods/tree cluster is important from the heritage point of view (and not merely from the environmental point of view).

16.2 Legal submissions from the heritage point of view:

[a] The palace cannot be seen as separate from the gardens and woods because each enhances the beauty of the other. Therefore, the protection and preservation of

the palace necessitate the protection and preservation of its green ambience i.e. the surrounding woods. Reliance is placed on the judgment of the Supreme Court in the case of **Rajeev Mankotia vs. Secretary to the President of India**, reported in **(1997) 10 SCC 441** where the Supreme Court protected "*the entire area of Viceregal Lodge as a protected ancient monument*", i.e. 90 acres though the government wanted to only protect about 24 acres (paras 16 to 18). The petitioners only seek protection of few acres of greenery on the front side of the palace because that portion is integral to preserving the ambience of the heritage property.

[b] The State is under a solemn constitutional obligation to protect and preserve the heritage of the country for the present as well as future generations. This obligation flows not only from various Articles but also from constitutional obligations:

[i] **Article 14:** The authorities are duty bound to preserve and protect the heritage of our country for the

present as well as the future generations. Any action of the authorities that results in denying the citizens of the country their heritage would be arbitrary and unreasonable and consequently violative of Article 14.

[ii] **Article 21:** The constitutional obligation to protect the heritage of the country also flows from Article 21 of the Constitution. In the case of **Ramsharan Autyanuprasi and another vs. Union of India and others**, reported in **1989 Supp (1) SCC 251**, the Supreme Court held that “... *life in its expanded horizons today includes all that give meaning to a man’s life including his tradition, culture and heritage and protection of that heritage in its full measure would certainly come within the compass of an expanded concept of Article 21 of the Constitution.*” (para 13)

[iii] **Fundamental Duties and Directive Principles of State Policy:** The Hon’ble Courts have time and again invoked Fundamental Duties and Directive Principles of State Policy for giving directions to the government.

Reliance is placed on paras 82 and 86 of the judgment in the case of **Intellectual Forum, Tirupathi vs. State of A.P.**, reported in **(2006) 3 SCC 549** where the Hon'ble Supreme Court after referring to Fundamental Duties and Directive Principles observed: *"These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two Articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures"*. Further, in para 60 of the judgment in the case of **Formento Resorts and Hotels Limited vs. Minguel Martins**, reported in **(2009) 3 SCC 571**, the Supreme Court once again invoked fundamental duties and directive principles. In the above judgments, they were invoked for protecting the environment. Article 51A(f) and Article 49 of the Constitution of India are for protecting the heritage.

[iv] **The doctrine of public trust:** Unlike a private owner, the government always holds the heritage of this country as a trustee or custodian for the people of this country. The constitutional obligation of the State to protect heritage properties also flows from this doctrine of public trust. This doctrine is applicable not only to natural resources but also to 'monuments' and 'objects' as held in para 54 of the judgment in the case of **Formento Resorts and Hotels Limited vs. Minguel Martins**, reported in **(2009) 3 SCC 571**. The doctrine requires preservation of heritage properties and stands violated whether the property is sold to a private party or is developed by the government itself. Therefore, the Hon'ble Supreme Court in paras 76 and 77 of the judgment in the case of **Intellectual Forum, Tirupathi vs. State of A.P**, reported in **(2006) 3 SCC 549** applied the doctrine of public trust even though the government itself wanted to construct on the land.

[v] **Directions given by the Hon'ble Supreme Court:**
The government is required to protect the property in

compliance with the general directions given by the Hon'ble Supreme Court in para 19 of the judgment in the case of **Rajeev Mankotia vs. Secretary to the President of India**, reported in **(1997) 10 SCC 441**.

[vi] **The palace is an 'ancient monument' under the Central Act and an 'ancient and historical monument' under the State Act:** Since the Pratap Vilas Palace has been in existence for more than 100 years, the palace along with its precincts is an 'ancient monument' under Section 2(a) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and is also an 'ancient and historical monument' under Section 2(1) of the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965. Despite the government having treated it as a heritage property worthy of being protected since at least 1999, the government has failed to formally declare it to be a protected monument. This is the government's own inaction/failure. As held by the Hon'ble Supreme Court in its judgment in the case of **Kusheshwar Prasad Singh vs State of Punjab**,

reported in **(2007) 11 SCC 447** (paras 11 to 14), *“the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law”*. Consequently, the government cannot be permitted to contend that it is not a protected monument. Moreover, as is clear from paras 2 and 3 of the judgment in the case of **Rajeev Mankotia vs. Secretary to the President of India**, reported in **(1997) 10 SCC 441**, even the Viceregal Lodge was not a protected monument when the lis came up before the Hon’ble Supreme Court and yet the Supreme Court protected it and its surrounding area by giving necessary directions in the petition. In paras 4 and 5, the Hon’ble Supreme Court examined the scheme of the Act and held in para 6: *“It would, therefore, be manifest that all ancient and historical monuments and all archaeological sites.....shall be deemed to be ancient and historical monument or archaeological sites and remains of national importance and shall be so declared for the purpose of Ancient Monuments if they have existed for a century and in the case of a State monument, of State importance covered by the appropriate State Act. The*

point of reference to these provisions is that an ancient monument is of historical, cultural or archaeological interest existing for a century and is of national importance or of State importance....In other words, either of them are required and shall be protected, preserved and maintained...for the basis which not only gives pride to the people but also gives us insight into the past glory Preservation and protection of ancient monuments, is thus the duty of the Union of India and the State Governments concerned in respect of ancient monuments of.....to protect, preserve and maintain them by preserving or restoring them to their original conditions.”.

[vii] By notification dated 26.8.1954 (**FF-205**) and notification dated 28.5.1981 (**GG-209**), the Government of India emphasised the special need to protect and preserve monuments which have not been declared to be protected monuments under the Act. The notifications provide that as a working policy old and historical structures should be preserved. The website of the Archaeological Survey of India (**HH-212 @ 213**) states “Unfortunately this

unprotected heritage is fast disappearing previously undreamt of a pace without any record because of lack of public awareness on heritage and sustainable development projects". So does the project document issued by ASI (**II-216 @ 231, Objectives Nos. 1, 5, 7, 14**). Reliance is also placed on the Press Release dated 2.1.2019 '*Heritage Preservation of Indian Railways*' (**Z-179**). The policy of the law to protect the country's heritage is also reflected in Section 40(3)(i) of the Gujarat Town Planning and Urban Development Act, 1976.

[viii] In its judgment in the case of **Secretary and Curator, Victoria Memorial Hall vs. Howrah Gantantrik Nagrik Samity**, reported in **(2010) 3 SCC 732**, the Hon'ble Supreme Court once again emphasized on the need to protect the ambience of the heritage property. In that case, the Supreme Court permitted construction observing that the proposed construction was much smaller than the heritage property (para 27) and that it was being built without destroying the existing landscape and greenery (paras 27 and 34). The Hon'ble

Supreme Court gave a direction that the proposed construction will have to be in consonance with the 'existence ambience' and compatible with the architecture of the monument (para 45). In the present case, none of these conditions are being satisfied.

Invoking the above constitutional principles and mandates, the Hon'ble Supreme Court has in many cases given directions even for demolition and restoration of status quo ante. The petitioners are only seeking protection of the ambience of the heritage property as a whole as it exists today. The petitioners humbly submit that if the same is not protected, the residents of Vadodara and the citizens of India will lose a part of their great heritage.

[B] The new site spells doom for the migratory birds

The NAIR website (**K-89**) itself acknowledges that the place is "*enlivened by the calls of peacocks and migratory birds*". The woods are frequented by a large variety of

migratory birds: Black Drongo, Ashy Prinia, Asian Koel, Barn Owl, Long-tailed Shrike, Black Headed Ibis, Black Winged Kite, Green Bee Eater, Rufous Treepie, White-throated Kingfisher, Red Naped Ibis, Dusky Craig Martin, Indian Golden Oriole, Siberian Stone Chat, Red Wattled Lapwing, Rosy Starlings and many more. The woods, a small ecosystem in itself is the home and habitat for these birds since decades. The construction activity in the woods will destroy their habitat and the ecosystem and will push them out. We are living in an era where even common species like sparrows, parrots, etc. are hardly seen nowadays as compared to few years ago. On the other hand, these woods are even today frequented by these special varieties of birds. Therefore, in order to protect these special birds, it is necessary to protect the lush woods. The actions are contrary to the spirit of Article 51A(g) (duty to protect the natural environment and living creatures which includes birds and trees) and Article 48A of the Constitution of India (protect and improve the environment and to safeguard forests and wild life).

[C] The new site damages the environment and destroys a vanishing tree cover in a city

The proposed construction, if permitted to go ahead, is going to result in hundreds of large trees including many very old trees being chopped off for the construction of the concrete building. As per the oral statement made by the Union, 400 trees are going to be cut (twice the number of trees to be cut for Central Vista). The presence of such a huge cluster of trees is greatly beneficial to the residents of Vadodara in many ways. The decision of the respondents to destroy this lush green tree cover (*the lungs of the city*) is an unreasonable and insensitive decision in violation of Articles 14, 21, 51A(g) and 48A of the Constitution of India. The same also violates the doctrine of public trust as well as the policy of law reflected in Section 66(8) of the Gujarat Provincial Municipal Corporations Act, 1949.

Recently, an issue came up before the Hon'ble Supreme Court with respect to cutting of some trees for

constructing railway over-bridges. In the case of railway lines, the cutting of trees is to a large extent inevitable because the railway line projects take a path. Despite this, the Hon'ble Supreme Court thereafter passed an order appointing an expert committee to look into the matter observing "*Whatever be the method adopted for the evaluation of the loss to the environment or to the economy in general, it is desirable if alternatives to the proposed felling of heritage trees is considered by a committee of experts.*" In the present case, the government has done no study, has produced no report before the court and has not made any disclosure with respect to its vague claims of transplantation. No details with respect to the trees or the area where trees would be transplanted have been provided. Secondly, transplantation of the said trees elsewhere will not undo the loss to the residents of Vadodara. Thirdly, transplantation is no answer to the petitioners' contention that the destruction of the trees will destroy the ambience of the heritage property and the contention that it will also destroy the habitat of the birds.

On 20.2.2021, a sheet was submitted by the government with some figures. The following emerges from the sheet:

[a] **In point no. I**, some figures of 'details of project area in question' are given. In point (a), total area of NAIR is stated to be 53 acres. In (b), total 'plinth area' of existing structures is stated to be 10.82 acres. In (c), total 'plinth area' is stated to be 3.35 acres. Thereafter, it is mentioned that the '*Remaining area (wooded) open to sky after the new construction*' will be 38.83 acres (arrived at by *simply* deducting from 53 acres, the figures of 10.82 acres and 3.35 acres). The government's claim that 38.83 acres of wooded area will remain is on the face of it false. While making the calculations, the government has conveniently ignored the fact that the area/margins surrounding the buildings, network of roads on the rear side of the palace and its two sides and the sports courts and the lawn areas are not wooded area and cannot be included in the wooded area. The fact that these roads,

courts, margin areas, etc. exist is evident from the large plan produced at **pg. 277**. Therefore, the government's claim that 38.83 acres of wooded area will remain after the construction is totally false and that too by a huge margin.

[b] **In point no. II**, some figures of 'green cover of city of Vadodara' are given. In point (f), total area of green cover is stated to be 3.75 sq. km. However, out of the total green cover of 3.75 sq. km. (f), 1.99 sq. km is shown to be of Laxmi Vilas Palace (b) which is a private property comprising of lots of non-green areas like cricket ground, golf course, car training, etc. The government cannot depend on private properties for discharging its statutory and constitutional obligation to maintain green covers in cities. That leaves 1.76 sq. km. of green cover comprising of 4 properties: Sayaji Baug (0.54 sq. km), ONGC (0.98 sq. km.), Lalbaug (0.03 sq. kms) and NAIR (0.21 sq. km.) under governmental control. Keeping the above in mind, even going by the figures submitted by the government in point no. II without admitting the same, the green cover of

the Pratap Vilas Palace comes to a significant **11.93%** (0.21 km of 1.76 km) of the green cover in the city. Unless the Hon'ble Court steps in at this stage, concrete blocks will come up one by one and this green cover will be vanished in no time.

17 Mr.Kamal Trivedi, learned Senior Advocate appearing for the respondent Nos.1 to 3 made the following submissions.

17.1 The Palace was constructed in the year 1914 i.e., approximately 106 years back. Admittedly **neither the said Palace nor the surrounding thereof, has been declared as 'protected monument'** either by the Central Government under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or by the State Government under the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1958. Thus, neither the Palace nor any area surrounding thereto comes within the ambit of the aforesaid Acts. Even otherwise, till date, neither the Central Government nor the State

Government has thought it fit not to declare the Palace as of 'national importance' and thus, both the aforesaid Acts are not applicable to the Palace and surroundings thereto.

17.2 In this regard, the submissions made by the petitioners with respect to the inaction of the Central Government / State Government in declaring the Palace as 'protected monument' under the aforesaid Acts, are totally baseless, inasmuch as, there is no question of any inaction of the part of the Central Government / State Government in this behalf. It is not obligatory and mandatory on the part of the Government to declare all monuments of more than 100 years old to be of 'national importance' and thereby declaring them as 'protected monument' under the aforesaid Acts.

17.3 It is also not the case of the petitioners that any part of the aforesaid area of 55.7 acres has been declared as 'forest' by any of the competent authority. Thus, the provisions of the Forest Conservation Act, 1980, would also not be applicable to the facts of the present case.

17.4 Now, as far as the proposed construction of the New Academy Building is concerned, setting up India's first University focused on Transport related education, multi-disciplinary research and training, National Rail and Transportation Institute (**NRTI**) was conceptualised during the period 2017-2018 in two phases. Phase-I is advised to be constructed in NAIR premises and Phase-II is planned to be set up in future at the allotted land, and the work for setting up the same was sanctioned by the Ministry of Railways in the Budget of 2017-2018 and the same was communicated vide Railway Board's letter dated 24.01.2018. This institute is poised to be the heartland of transportation education in India as it seeks to provide the additional qualified manpower to the India's growing transportation sector in addition to extending training and development of existing talent in the Transportation Sector. Presently, NRTI is also functioning in the aforesaid NAIR Campus.

17.5 Since both the Academies are functioning from

the same place, there is serious space constraints as students and faculties of both the Academies are being accommodated in the same Palace. Therefore, it is decided to construct a new academic block in the same area of 55.7 acres. Initially the work was given to the Construction Organisation of Western Railway, however, in the year 2019, the work was transferred by the Railway Board to RVNL. RVNL was advised to prepare a Master Plan which would create a better and organised plan to house the NAIR, its various academics as well as NRTI. Hence, RVNL appointed renowned Architect Hafeez Contractor to provide a comprehensive Architectural Engineering Design for the work involving preparation of Working Drawings, Architectural Drawing and Design, Structural Design, Consultancy Services etc.

17.6 Initially the location of the New Academic Building was selected at a distance of 56 feet away from the Palace. However, after considering the objections raised, Railway Board, requested RVNL to re-visit the proposal and look for alternate sites for the New Academic

building within the NAIR campus. The Master Plan as well as the construction site was re-looked and after a thorough consideration of the facts and options available, it has been decided by the Ministry of Railways vide letter dated 26/11/2020, **to shift the construction site, at a total distance of 321 feet away from the Palace.** In addition to the above work, the Railway Board additionally sanctioned a budget of Rs. 20 crores for refurbishment of the Palace.

17.7 It is submitted that the aforesaid construction of the New Academy Building would have been covered under the Environment Clearance Notification dated 14.09.2006 (*pgs. 1 to 42 of respondents' compilation of certain documents*), issued by the Central Government in exercise of powers conferred under Sections 3(1) and 3(2) (v) of the Environment (Protection) Act, 1986, under the category 8(a) of Schedule to the said Notification. However, the Central Government vide Notification dated 22.02.2014 (*pg.43 of respondents' compilation of certain documents*) has clarified that the aforesaid Notification

would not be applied to buildings for educational institution from obtaining Environment Clearance under the aforesaid Notification dated 14.09.2006.

But those buildings shall ensure sustainable environmental management, which were provided by the Central Government vide Clarification dated 09.06.2015. Thus, the aforesaid Notification dated 14.09.2006 is also not applicable, while ensuring to follow the sustainable environmental management.

17.8 With respect to the sustainable environmental management, as conveyed in the Additional Affidavit dated 05.02.2021, respondents have taken utmost consideration for saving the maximum number of the existing trees and those trees which are likely to get affected by the New Academy Building, have been planned to be transplanted in the nearby areas and as against those trees, which will not be possible to be transplanted or will not survive even after transplantation, three times more trees will be planted. It is also stated that felling of trees for the proposed project shall be

limited to the bare minimum number of trees, which will be unavoidable and for felling of trees, requisite permission of the Competent Authority will be taken. Over and above the existing trees, additionally more than 800 trees will also be planted. Thus, with the said transplantation of existing trees, planting three times more trees which are not possible for transplantation and plantation of additional 800 trees, will maintain the ecosystem.

17.9 With respect to the contention of the petitioners that the proposed construction of New Academy Building in front of the Palace would block the majestic view of the Palace and trees surrounding the Palace and the same will ruin the aesthetic of the Palace, which needs to be preserved / maintained, it is submitted that in view of the shifting of the proposed construction from 56 feet to 321 feet away from the Palace, the majestic view of the Palace would be preserved and that, the Palace would also be refurbished at the allocated cost of Rs.20 Crores. Apart from this, the surroundings thereof would also be

preserved, as aforesaid, by transplanting the trees, if possible and if not, then by ensuring to cut trees as less as possible and planting three times the said number of trees and further planting more than 800 additional trees in the area. Thus, the same would preserve the majestic beauty of the Palace along with its surroundings.

17.10 In fact, respondent Nos. 1-3 are planning to stop the present extensive use of the Palace with existence of several classrooms, many faculty rooms, Secretariat Office, office of the Director General of NAIR by shifting the same in a New Academic Block, so that the usage of the Palace is confined only to limited usage like (a) Museum, (b) Library and (c) Conference room and for other purposes related thereto with a further action of giving total face-lift to the entire palace by spending an allocated sum of Rs.20 crores, as aforesaid. So, the heritage property is not sought to be affected at all. On the contrary, the aesthetic image of the palace is going to be increased and therefore, the residents of Vadodara will not lose any heritage value.

17.11 With regard to the contention of the petitioners that the proposed construction of New Academy Building would spell doom for the migratory birds and would thereby, violate Article 51-A(g) of the Constitution of India, is also not well founded. This is because of the fact that, as aforesaid, the respondents will maintain the eco-system and in fact, with the additional plantation of 800 trees, the proposed construction would not affect the migratory birds.

17.12 With respect to the allocation of 31.38 hectares (77.54 acres) of land by the State Government in Waghodiya Taluka of Vadodara district to Indian Railways, it is submitted that the same would be utilized for the construction of NRTI Phase-II, if possible. As aforesaid, the Railway Board has advised construction of building for NRTI in **two phases**. Phase-I is advised to be constructed in NAIR premises and Phase-II was planned to be set up in the land allotted in Waghodiya Taluka, provided the said land becomes suitable for the Phase-II project. However,

the aforesaid parcel of land so decided to be allotted by the State Government as such is in land locked situation and there is no approach road to the said land. Thus, as the said parcel of land has proved to be unsuitable to the requirements of the NRTI, the proposal for Phase-II of the University, which is sought to be established as a global multi-disciplinary institution, has been kept in abeyance.

17.13 As far as the initiation of steps by the State Government to acquire 63.82 acres of adjoining private land is concerned, it is submitted that the said steps were initiated to provide approach road to the aforesaid piece of land. However, the same appears to be not practically possible in view of the objections raised by the local persons and hence, at this stage, Phase-I cannot be shifted at that place, which is pending for acquisition since 2018.

17.14 The reference made by the petitioners to the frequent conduct of heritage walks in the area in question, is also not correct, inasmuch as, pertinently, the number of heritage walks being organised has been very

limited and during the period 2018-2019, hardly around three or so such official heritage walks were organised, whereas around two or so such walks were organised during the period 2019-2020. Barring this, the entire premises are being used by the Western Railways only for imparting education in various courses to the students. Thus, the area in question as such is not open for the public at large.

17.15 The reliance placed by the petitioners on 8 judgments, during the course of hearing of the captioned petition, is totally misplaced and the said judgments are not applicable to the facts of the present case, in view of the following reasons:

[a] **Intellectual Forum, Tirupathi vs. State of A.P - (2006) 3 SCC 549.** In this case, the Apex Court was dealing with a question with respect to conversion of two water bodies in the Tirupathi Area supplying drinking water to the local residents, into residential housing colony and in that context, the Apex Court discussed the

applicability of Article 48-A and 51-A of the Constitution of India. In this regard, it is pertinent to note that the area where the said two tanks were situated is a world-renowned popular pilgrim centre having everyday inflow of tourist between one lakh to two lakhs. Whereas, in the present case, as aforesaid, the entire area of 55.7 acres is a gated and restricted property and aspect of conversion of any public property into private property is also absent.

[b] **M. C. Mehta vs. Kamal Nath - (1997) 1 SCC 388.**

In this case, the issue was relating to diverting the course of River Beas by using heavy earth movers and bulldozers and giving large area of the bank of River Beas, which is a protected forest, on lease for commercial purposes to a Motel called "Span Resort". In that context, after applying the 'Doctrine of Public Trust', which aims at stopping of air, rivers, forests, seashores, mountains, etc. in favour of private parties for commercial gain and thereby depriving the public at large the usage thereof, the Apex Court dealt with the said issue and finally cancelled the lease granted to the Motel. However, in the present case, the said

'Doctrine of Public Trust' cannot be made applicable as the construction of New Academy Building is not proposed in any of the public properties such as rivers, seas, mountains, forests, etc, but the same is proposed in a gated / restricted property of the Central Government. Secondly, in the present case, there is no element of alienation of public property to private parties for any commercial use and benefit.

[c] **Formento Resorts and Hotels Limited vs. Minguel Martins - (2009) 3 SCC 571.** In this case, the Apex Court was considering a construction of private hotel, which was restricting the public access to Vainguinim Beach from Point A to Point B and in that context, while once again applying the 'Doctrine of Public Trust', which is applicable to air, rivers, forests, seashores, mountains, etc., the Apex Court dealt with the said issue and finally upheld the demolition order passed by the High Court. Whereas, in the present case, as aforesaid, the said 'Doctrine of Public Trust' cannot be made applicable as the construction of New Academy Building is neither

going to result in alienation of the property for commercial gain nor is going to restrict any public access. On the contrary, as aforesaid, the property in question is a gated / restricted property and that, even otherwise, as there is no element of surrendering the public property in private hands for any commercial use, this judgment cannot be made applicable to the facts of the present case.

[d] **Rajeev Mankotia vs. Secretary to the President of India - (1997) 10 SCC 441**. In this case, the issue was relating to conversion of Viceregal Lodge in Shimla, also known as “Rashtrapati Niwas”, which has a great historic value, into a five-star tourist hotel and in that context, the Apex Court denied the said conversion. But at the same time, out of entire 90 acres, in para 16 thereof, the Apex Court declared that the appurtenant land would be 25 acres surrounding the Viceregal Lodge and further directed that the land beyond the said appurtenant land **can be used for any other purpose**, like establishment of tourist hotels or office buildings etc. Apropos this, the Pratapvillas Palace does not have similar historic value as

compared to that of the Viceregal Lodge and that, in the said case, the Apex Court only after tracing the entire history of the Viceregal Lodge, had denied the proposed conversion and directed the Government to declare the Viceregal Lodge and the appurtenant land as protected ancient monument. Even otherwise, as aforesaid, the Palace in question is not open for visitors, which was not the case before the Apex Court. Thus, this judgment is also not applicable to the facts of the present case.

In fact, this Hon'ble Court in the case of **Iqbal Masud Khan vs. Director General - 2014 SCC OnLine Guj 8960**, while dealing with construction of City Civil Court near a monument viz. Azam Sarai, which was of more than 300 years old, though not declared as 'protected monument' under the Act, in paras 44 and 45 thereof, has considered this Judgment of the Apex Court and thereafter, distinguished the same in light of the historical value attached to the said monument, which has been upheld by the Hon'ble Supreme Court also.

[e] **Secretary and Curator, Victoria Memorial Hall vs. Howrah Gantanrik Nagrik Samity - (2010) 3 SCC 732.** In this case, the question was related to the construction and renovation of the annexe buildings built in the large campus admeasuring around 57 acres, of Victoria Memorial Hall in Calcutta, which were used as non-family duty quarters, garage, for tractors / cars and such other purposes. Alleging the mismanagement and seeking demolition of all such annexe buildings, Public Interest Litigation was filed. However, after considering all the aspects, the High Court as well as Apex Court rejected the said petition and permitted the existing and proposed construction. Thus, this judgment is in fact in favour of the respondents and against the petitioners' contention.

[f] **Lal Bahadur vs. State of Uttar Pradesh - (2018) 15 SCC 407.** This was the case where the concerned authorities were changing the area in question from greenbelt / open access to residential area and in that context, the Apex Court denied the said conversion and thereby, preserved the greenbelt. In this regard, it is submitted that, as aforesaid, the facts of the present case

are entirely different, as the Palace in question is as such a gated / restricted property and even otherwise, there is no alienation thereof in favour of private party for any commercial / private purpose.

[g] **Arun Kumar vs. Nagar Mahapalika - 1987 SCC OnLine All 379**. In this case, Hon'ble High Court of Allahabad was considering the alleged illegal construction on Alfred Park, also known as Company Baug, and after considering various aspects, including the public access to such public parks and conversion of such parks into manmade structures, the Hon'ble Court allowed the petition and thereby directed various land holders to make alternate arrangements. However, said judgment is also of no help to the petitioners on various counts. Firstly, vide judgment dated 20.03.2007 passed in Civil Appeal No.6211 of 2000, eventually in second round of litigation, the Apex Court set aside the judgment passed by the High Court and thereby, permitted the construction of buildings in Alfred Park with the previous sanction of the competent authority. Secondly, even otherwise, the Alfred Park was

open to public access, however, the same cannot be compared with the Palace and surroundings thereof, as the same is not open for public access at all and the same is a restricted property.

[h] **Kusheshwar Prasad Singh vs State of Punjab - (2007) 11 SCC 447**. This has been relied upon by the petitioners to contend that nobody can take benefit of its own wrong and as, in the present case, the Central / State Government has not declared the Palace as a protected monument, the Government cannot take advantage of such inaction on their part. In this regard, it is submitted that, as aforesaid, as there is no inaction of the part of the Central Government / State Government in the present case, this judgment is also not applicable. This is more particularly in view of the fact that it is not at all obligatory and mandatory on the part of the Government to declare all monuments of more than 100 years old to be of 'national importance' and thereby declaring them as 'protected monument' under the aforesaid Acts. In absence of such mandatory obligation, there cannot be

any question of any inaction, as contented by the petitioners.

17.16 As against the above, respondents rely upon the below mentioned judgments:

[a] **Sachidanand Pandey vs. State of West Bengal - (1987) 2 SCC 295**. In this case, the Apex Court was dealing with an aspect of grant of lease of Begumbari land having a renowned Zoological Garden to Taj Group of Hotels for construction of a Five Star Hotel in the city of Calcutta and after considering all the aspects including Articles 48-A and 51-A(g) of the Constitution of India, the Apex Court held that the decision of granting lease is just and proper and does not require any interference. (Rel. Paras - 2, 4, 5, 18, 43 & 56).

[b] **Anand Arya Vs. Union of India - (2011) 1 SCC 744**. In this case, the issue was relating to construction of Recreational Park in Noida, due to which the competent authority had already cut down thousands of trees. The Apex Court, after considering the project in question on

one hand vis-à-vis the Environment Clearance Notification dated 14.09.2006 and Forest Conservation Act on the other hand, held that both the Acts are not applicable to the proposed construction and thereby, permitted to develop a recreational park, which would lead to the cutting of 6186 trees.

[c] **Rajeev Suri vs. Delhi Development Authority - 2021 SCC OnLine SC 7.** In this case, the Apex Court was dealing with construction of Central Vista Project and after considering mostly all its previous judgments, with respect of applicability of the Doctrine of Public Trust, it is held in para 556 (pg.238) of the judgment that the said doctrine can be invoked where there is conversion of properties of public ownership into private ownership for commercial use, and when there is no such incident of conversion, the said doctrine is not applicable. Similarly, considering the project details, in paras 471 and 477 (pgs.207 & 209), it is held that the Environment Clearance Notification is always site specific and if the project is not covered within the notification, the same would also not be applicable. In the said case, in para 482 (pg.210), it has been recorded that

due to the said development, it would lead to cutting down of around 526 trees (250 + 326), out of which, 194 trees would be transplanted. In this case also, the proposed development was on a government owned land belonging to the Government of India, as in the present case. Thus, in the humble submission, this judgment is squarely applicable to the facts of the present case.

[d] **M. C. Mehta vs. Union of India - Order dated 29.01.2021 passed in IA Nos.136682 & 136683 of 2018 in W.P. 13381/1994 (pg.333) and I.A. Nos.97021 and 97085 of 2018 (pg.335).** In these cases, the Apex Court granted the permission to cut 4102 trees for construction of 3rd Rail Line between Mathura Junction to Jhansi in one case and in all felling of 852 trees (726 + 126) for widening and strengthening of six-lane road from Avatibai crossing of 11 Km of Agra-Bah-Kachora Ghat Road, in another case.

[e] **Iqbal Masud Khan vs. Director General - 2014 SCC OnLine Guj 8960 (Pg.80 of 2nd Compilation).** In this case, this Hon'ble Court was dealing with construction

of City Civil Court near a monument viz. Azam Sarai, which was of more than 300 years old, but was not declared as 'protected monument' under the Central and State Acts. After considering the provisions of the Act and the judgments of the Hon'ble Supreme Court, this Hon'ble Court refrained to interfere and permitted the construction of the said building. In paras 44 and 45 thereof, the judgment of the Hon'ble Supreme Court rendered in the case of **Viceregal Lodge, Shimla**, was considered and distinguished in light of the historical value attached to the said monument.

[f] **Iqbal Masud Khan vs. Director General - Order dated 26.08.2014 passed in SLP No.22872 of 2014** (*Pg.113 of 2nd Compilation*). The aforesaid judgment of this Hon'ble Court was upheld by the Hon'ble Supreme Court and thus, the law declared by this Hon'ble Court in the aforesaid judgment has attained finality.

17.17 In view what is stated hereabove, the proposed construction of New Academy Building for NRTI and NAIR, at 321 feet away from the Palace, is just, proper

and in accordance with the law and does not require any indulgence from this Hon'ble Court and thus, the captioned petition deserves to be dismissed.

18. Considered the submissions advanced by learned counsels for the parties and perused the material on record.

Reliefs claimed :

19. The reliefs claimed by the petitioners is to the effect that the respondents be restrained from constructing any building on the garden area or in front of the Pratap Vilas Palace or at any place that would obstruct the view and ambience of the palace or its gardens. The purpose of the petition is that no construction be raised so as to obstruct the view or ruin the ambience of the Pratap Vilas Palace, Vadodara or its gardens. It is also prayed by the petitioners that the respondents be directed to take all steps that are necessary for protecting and preserving the Pratap Vilas Palace, Vadodara and its precincts. For the said relief, foundation has been laid by the petitioners by

making necessary averments as to how the building of the Pratap Vilas Palace and its view would be obstructed and that its gardens would be damaged and that the flora and fauna would be damaged.

20. In response, the respondents have categorically stated that the proposed construction is neither in any manner going to obstruct or damage either the building or the Pratap Vilas Palace or its gardens or its flora and fauna. It is also specifically stated that the ecological balance would also be maintained and the trees if are to be removed, they are mostly to be transplanted and if transplantation is not possible then three times additional trees would be planted within the campus of the Pratap Vilas Palace. It is also the case of the respondents that minimum number of trees would be affected as per the plan which has been so designed and planned. The new building which was originally proposed at a distance of 56 feet from the Pratap Vilas Palace, was shifted to a distance of 321 feet i.e. 265 feet further away. This would leave the front area also known as Raja Baug completely untouched and the distance of 321 feet would not in any manner

cause any obstruction to the view of the Pratap Vilas Palace.

21. The height of the building planned to be constructed is also only of four-storey and that in no manner would lower down the impact of the heritage building in Pratap Vilas Palace. The design of the building is such that it will not at all lower the majestic view of the Pratap Vilas Palace. Thus, what we find from the above is that the relief as claimed by the petitioners is more or less granted by shifting of the building of the new academic block by 265 feet from the original site.

22. The commitment of the respondents to disturb the trees to the minimum and whatever trees are to be shifted or removed, would be mostly transplanted and those which cannot be transplanted, three times their number would be freshly planted. There is also a commitment of the respondents that in addition to the above they would be additionally planting 800 trees within the campus to further enhance the ecology of the area.

23. Relating to the above, another argument raised

by Mr. Thakore regarding migratory birds being chased away on account of the construction of the building also cannot be accepted for the reason that the area of the entire campus is so huge that a new building for the new academic block would only be covering a very small portion. Rest of the trees already existing would continue and whatever is removed, either be replaced or substituted by many more numbers. Therefore, the migratory birds would still have enough greenery and trees in the same area to cohabit and continue to visit the area during the time of migration.

24. It is not disputed that the Pratap Vilas Palace along with its surrounding land within the campus is in the absolute ownership of the Railways. It is also not disputed that the entire campus is not open to public, rather it has restricted entry as it houses within its campus NRTI and NAIR. NRTI is running since 1952 within the same campus whereas NAIR has come up recently. It is also not disputed that right from 1952 onwards several buildings, residential and administrative both have come up within the campus. Details of the same have been provided in the affidavit

filed by the respondents. Despite the same, the green cover of the entire campus is maintained and care has been taken that the same continues to be maintained. Additional trees and plants have been planted from time to time. The gardens are also very well maintained which is nowhere denied by the petitioners.

25. The other relief claimed by the petitioners that the respondents should take all steps which are necessary for protecting and preserving the Pratap Vilas Palace, Vadodara and its precincts is also well taken care of in the master plan. There is an allocation of Rs.20 Crores for refurbishing and preserving the building of the Pratap Vilas Palace. This will not only enhance the existing structure but also strengthen it for a long life. Thus, this relief also is a commitment of the respondents not only generally but also specifically by allocating Rs.20 Crores for the purpose of maintenance and protection of the building of Pratap Vilas Palace. The respondents have also committed to maintain the gardens as they are rather improved to their present conditions in view of the allocation of funds.

DOCTRINE OF PUBLIC TRUST

26. Mr. Salil Thakore, learned counsel for the petitioners has laid much emphasis on the argument that doctrine of public trust has been violated and breached by the respondents in coming up with the new academic block within the precincts of the Pratap Vilas Palace, Vadodara. Number of judgments of the Supreme Court have also been relied upon by Shri Thakore.

27. The Supreme Court in the case of ***M.C.Mehta Vs. Kamal Nath and Others*** reported in **(1997)1 SCC page 388** has elaborately dealt with this doctrine of public trust, tracing its origin from the time of ancient Roman Empire till the modern times, in paragraphs 24, 25, 33, 34 and 35 which are reproduced hereunder:-

“24. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, sea-shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about 'the environment' bear

a very close conceptual relationship to this legal doctrine. Under the Roman Law these resources were either owned by no one (res Nullious) or by every one in common (Res Communious). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public Joseph L. Sax, Professor of Law, University of Michigan proponent of the Modern Public Trust Doctrine - in an erudite article "Public Trust Doctrine in natural resource law: effective judicial intervention", Michigan Law Review, Vol. 68 Part-I page 4/3 has given the historical background of the Public Trust Doctrine as under:

“The source of modern 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 the 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."

25. *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.”

XXX

XXX

XXX

“33. It is no doubt correct that the public trust doctrine under the English Common Law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands for example fresh water, wetlands or riparian forests. The observations of the Court in Mono Lake case to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment-protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new

types of lands and waters. In Phillips Petroleum co. vs. Mississippi, the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all eco-systems operating in our natural resources.

34. *Our legal system - based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.*

35. *We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would*

preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasing complex society, find it necessary to encroach to some extent open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the eco-systems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public goods and in public interest to encroach upon the said resources.”

28. The doctrine of public trust may not be applicable in the present case inasmuch as the property in question is owned by the Indian Railways and it is not a natural resource. The Railways through its various

commitments and declarations has assured to protect its heritage. Such declaration is again reiterated in the affidavits-in-reply to maintain and protect and preserve Pratap Vilas Palace. The construction of the new academic block building in no manner damages or affects the building of Pratap Vilas Palace. The case-laws on the above point shall be dealt with at a little later stage. In this time we cannot ignore financial burden on the State Exchequer or for that matter the Indian Railways. If the Railways has lands available with it and it may only require expenditure to be incurred for construction of the building, a huge amount of money could be saved. Further delay in any project enhances the estimated cost and therefore also would result into unnecessary additional burden on the State Exchequer or the Indian Railways which is an integral part of the State. These factors cannot be completely ignored while considering the present petition.

29. We now come to the case-laws relied upon by the petitioners. Shri Thakore has placed reliance upon the judgments in the case of **Intellectual Forum, Tirupathi**

(supra) and **Formento Resorts and Hotels Limited (supra)**. Referring to paragraphs 82, 86, 76 and 77 of the judgment in the case of **Intellectual Forum, Tirupathi (supra)**, where the Supreme Court issued directions to the Government invoking fundamental duties and directive principles of State policy and also for applying the doctrine of public trust, the aforesaid judgment may not be of any help to the petitioners for the reason that the respondents are in no manner proceeding to destroy or damage in any manner the heritage building of Pratap Vilas Palace or its surroundings nor are disturbing the ecology or the environmental balance or its flora and fauna. The respondents have also committed to rather maintain the heritage of the Pratap Vilas Palace and moreover have allocated a huge amount for its preservation and conservation by refurbishing it and also by making provisions for additional green cover being created. Further, the respondents are not at all converting any public land into private land nor are transferring any public property to a private trust or individual. The Railways which is the owner of the property is only

augmenting its infrastructure within the campus of the Pratap Vilas Palace without interfering with the heritage building and the flora and fauna and the green cover. In the case of **Intellectual Forum, Tirupathi (supra)**, two water bodies in the Tirupathi area supplying drinking water to the local residents were being converted into residential housing colony, whereas in **Formento Resorts and Hotels Limited (supra)**, it was a case of construction of a private hotel which would restrict the public access to Vainguinim Beach from Point A to Point B. In such situation, the Supreme Court had applied the doctrine of public trust. However, in the present case, there is neither any transfer of public property to private sector nor any commercial gain is being sought to be derived by construction of the new academic block building.

30. The judgment in the case of **Rajeev Mankotia (supra)**, would also have no relevance in the facts of the present case as in the said case it was a heritage building namely Viceregal Lodge being converted into a Five Star tourist hotel. In the present case, there is no such

conversion for commercial gain. It is a case where Railways over its own land is constructing a new academic block for the purpose of running its two premier institutes, namely, NAIR and NRTI. It would be worthwhile to mention that in the case of **Rajeev Mankotia (supra)**, the Supreme Court had carved out 25 Acres appurtenant land surrounding the Viceregal Lodge to be not touched and other than that the remaining 65 Acres could be used for any other purpose. In the present case, it is neither any tourist or commercial establishment which is coming up but is an academic block which is the need of the hour and due to space constraints, the Railways has planned the new academic building.

31. Shri Thakore has placed reliance upon the judgment of the Supreme Court in the case of **Kusheshwar Prasad Singh (supra)**, with the proposition that the State cannot take advantage of its own wrong. According to him, the State or the Center having not declared Pratap Vilas Palace as protecting monument under the State or the Central Act, cannot take advantage of that by saying that it is not a protected

monument. In the present case, it is not a question of taking any advantage of any wrong or inaction on the part of the State or the Center and the Pratap Vilas Palace is protected as also conserved and further it is being refurbished for its preserving, conserving and long life. Thus, we cannot say that the State or the Center is in any manner taking any advantage out of it. There is no proposal to demolish or even remove a brick from the Pratap Vilas Palace or any kind of alteration. Thus, this case also does not help the petitioners in any manner.

32. The judgment in the case of **Secretary and Curator, Victoria Memorial Hall (supra)**, was relied upon for the purpose that there was a need to protect the ambience of the heritage property. However, in the said case, the Supreme Court had permitted the construction as it was much smaller than the heritage property and it was being built without destroying the existing landscape and greenery. In the present case also, we find that the construction of the proposed new academic building is a very small portion of land without destroying the existing landscape and greenery as also the view of the Pratap

Vilas Palace. Thus, this judgment is also of no help to the petitioners, rather the Supreme Court permitted the proposed construction helps the respondents.

33. In the case of **M.C.Mehta (supra)**, there was a fight of diverting the course of River Beas by using heavy earth movers and bulldozers thereby carving out a huge area on the bank of river Beas (a protected forest), to be given on lease to a motel known as 'Span Resort' for commercial purpose. The doctrine of public trust was thus applied in the above context by the Supreme Court as it aimed at interfering with the course of the river and also affect the forest. In the present case, there is no interference with air, river, forest, sea-shore, mountain etc. for the benefit of any private party for commercial gain. Rather the Indian Railways is coming up with a new academic block for its two premier institutes viz. NRTI and NAIR on its own land.

34. The judgment in the case of **Lal Bahadur (supra)**, also has no application to the facts of the present case where the authorities were changing a

greenbelt area to residential area. The Supreme Court did not permit such conversion in order to preserve the greenbelt. In the present case, as already noted above, even at the cost of repetition it is to be noted that there is no conversion of any greenbelt into a residential area. There is minimum interference with the existing green area and whatever green area is being affected has not only been restored but also multiplied many times.

35. Reference of the case of **Arun Kumar (supra)**, also will not be of any benefit to the petitioners inasmuch as there it was a public park open to public which was being converted into man-made structure, although ultimately the Supreme Court set aside the judgment of the High Court and had permitted the construction of building with the previous sanction of the competent authority. In the present case, the Pratap Vilas Palace is not a public property open to public access but is a restricted property owned by the Railways.

36. For all the reasons recorded above, the Court finds that this petition must fail. It is accordingly

dismissed. Notices discharged. Interim relief, if any, stands vacated forthwith.

(VIKRAM NATH, CJ)

(ASHUTOSH J. SHASTRI, J)

FURTHER ORDER

Mr. Salil Thakore, learned counsel for the petitioners, after the judgment was delivered, made a request that the effect of the judgment may be stayed for six weeks to enable the petitioners to avail further remedy. However, for the reasons recorded in our order and the findings recorded by us, we are not inclined to accept the request of Mr. Thakore and accordingly it is declined.

Sd/-
(VIKRAM NATH, CJ)

Sd/-
(ASHUTOSH J. SHASTRI, J)