

1285

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 227 OF 2025**

IN THE MATTER OF:

Naveen Solanki & Anr. ...Applicants

Versus

Rail Land Development Authority & Ors. ...Respondents

N.D.O.H. 19.01.2026

**COMPOSITE REJOINDER ON BEHALF OF THE APPLICANTS TO
THE REPLIES FILED BY RESPONDENT NOS. 1, 3, 4 AND 5**

(PAGES 1 TO 141)

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1. All Parties have been Served by Email



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Place: New Delhi
Dated: 16.01.2026

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I. PRELIMINARY SUBMISSIONS

1. The Applicants deny each and every statement, allegation, contention, inference, submission and averment contained in the Replies filed by Respondent Nos. 1, 3, 4 and 5, save and except those expressly admitted herein. Nothing stated in the Replies shall be deemed to be admitted merely for want of specific traverse.
2. The Replies filed by Respondent Nos. 1 and 4 are evasive, misleading and deliberately avoid addressing the core statutory violations pleaded in the Original Application. The Replies rely heavily on historical land status, executive communications and assertions of public interest, none of which can override mandatory environmental and forest law.
3. The Reply filed by Respondent No. 3 (Forest Department), however, contains material admissions and statutory determinations which fully support the Applicants' case and conclusively establish violations of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 ("**VSESA 1980**").

Para No.	Admission
7	Identifies 50.79 Ha (125.5 Acres) as “Deemed Forest”
9	Identifies 6.21 Ha (15.34 Acres) out of 13.48 Ha (33.3 Acres) as “Deemed Forest”
10&11	User Agency has been advised to apply for permission under VSESA Rules for diversion of forest land

4. The present rejoinder is confined to rebutting the defences raised in the Replies and to highlighting admissions, statutory breaches and legal consequences arising therefrom.

II. PRELIMINARY OBJECTION REGARDING PRAYERS – REJOINDER

5. At the outset, the Applicants reiterate that the objection raised by Respondent No. 1 regarding the nature of prayers in the Original Application is wholly misconceived.
6. The Hon’ble Supreme Court in *Municipal Corporation of Greater Mumbai v. Ankita Sinha*, (2022) 13 SCC 401, has categorically held that the National Green Tribunal is not constrained by the precise form of prayers and exercises wide sui generis jurisdiction coupled with a statutory duty to protect the environment. A copy of the Order in *Municipal Corporation of Greater Mumbai v. Ankita Sinha*, (2022) 13 SCC 401 is annexed herewith and marked as **ANNEXURE R-1**.
7. Once environmental degradation or statutory violations are established, this Hon’ble Tribunal is empowered—and duty-bound—to issue appropriate directions irrespective of the

phrasing of the prayers. The objection is therefore rejected at the threshold.

III. STATUTORY DETERMINATION OF DEEMED FOREST BY RESPONDENT NO. 3

8. Respondent No. 3, the Deputy Conservator of Forests (West), has filed a detailed Status Report pursuant to directions of this Hon'ble Tribunal.
9. The Status Report is based on:
 - a. Ground surveys conducted in January 2025;
 - b. Joint inspections involving Respondent No. 1;
 - c. Tree enumeration;
 - d. Spatial mapping and DGPS-based boundary demarcation.
10. Applying the criteria evolved under the *Godavarman* framework, Respondent No. 3 has officially identified three contiguous deemed forest patches aggregating 50.79 hectares (125.5 acres) comprising 19,387 trees. This determination has not been challenged by the Respondents at any stage.
11. The recorded tree density far exceeds the threshold prescribed by the Expert Committee framework and leaves no scope for any contention that the land is sparsely vegetated or incapable of being treated as forest land in law.
12. Without prejudice to the foregoing, it is submitted at the outset that the patches of land excluded from the ambit of "deemed forest" under the impugned survey predominantly consist of the following categories:

- a. areas comprising water bodies;
- b. areas where trees have been illegally felled or the forest cover has been degraded; and
- c. areas upon which unauthorised constructions or encroachments have been raised.

13. The exclusion of the aforesaid areas is manifestly erroneous and arbitrary, as is evident from the artificial zig-zag and curved demarcation of boundaries, as well as the creation of isolated enclaves within what is otherwise a continuous and ecologically homogeneous forest stretch.

14. Such exclusions are *ex facie* illegal, as they ignore the settled principle that forest status is to be assessed holistically on the basis of ecological contiguity and ground characteristics, and not by fragmented cartographic segregation. Mere presence of water bodies, or the fact that trees have been illegally felled or degraded, cannot divest the land of its character as forest, particularly when the area forms part of a single, contiguous ecological unit. Any contrary approach would permit post-facto dilution of forest protection through encroachment or degradation, which is impermissible in law.

IV. REJOINDER TO CONTENTION THAT LAND IS “BARREN” /HISTORICAL STATUS

15. Respondent No. 1 repeatedly asserts that the subject land was “barren” at the time of acquisition or transfer. The said contention is wholly irrelevant to the inquiry before this Hon’ble Tribunal.

16. The test under the forest jurisprudence is present ecological character, not historical land condition. Forest protection attaches to land that has acquired forest characteristics through natural regeneration, irrespective of past use or classification. The doctrine of “deemed forest” evolved precisely to prevent circumvention of forest law by reliance on historical records, acquisition documents or planning classifications. In this regard, reference may be made to the following judgments:

**T.N. Godavarman Thirumulkpad vs Union Of India
(AIR 1997 SC 1228)**

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and fore matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest: must be understood according to its dictionary meaning. This description cover all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.

**T.N. Godavarman Thirumulpad v. Union of India
2024 INSC 997**

10. For considering the rival submissions, it will be appropriate to refer to the meaning of Zudpi Jungle, its history and usage.

11. As can be seen from the Report of the Committee for suggesting changes required in simplified procedure for diversion of Zudpi Jungle Land under Forest Conservation Act, 1980 titled as "Resolving Zudpi Jungle Land Issue : **A Development Perspective**" chaired by the Divisional Commissioner, Nagpur, "Zudpi" is a Marathi word which literally means Bushes/Shrubs. Zudpi lands means inferior type of unoccupied lands with bushy growth. The term Zudpi Jungle has been in vogue over several decades and was used for all such wastelands which were not occupied by individual farmers for cultivation and other purposes. These lands consist of very low Murmadi soil (arid soil with gravel and soft stones) where tree growth was not possible. These lands had very poor potential of vegetative growth since the soil strata did not support root systems of trees. Such Murmadi soil supported mostly bushes and shrubs only. **According to the said Report, in a nutshell, Zudpi was what forest was not. These lands were traditionally grazing lands and called as Gairan/Gurcharan/E-Class land as per Maharashtra Land Revenue Code 1966 (hereinafter referred to as "MLR Code, 1966") in other parts of Maharashtra.**

12. As has been stated in the said Report, the Zudpi Jungle land issue is an issue very peculiar to the six districts of Eastern Vidarbha viz., the Nagpur Division which were erstwhile part of Central Provinces i.e., Nagpur, Wardha, Bhandara, Gondia, Chandrapur and Gadchiroli. The Central Provinces was a province of British India which covered present day Madhya

Pradesh, Chhattisgarh and Vidarbha Region of Maharashtra with Nagpur as its capital.

13. It will further be relevant to note that the word Zudpi Jungle was first used under the Central Province Settlement Code, 1889 (hereinafter referred to as "1889 Code"). The said term was used in the revenue records (Settlement Khasra) during the last round of the revision settlements which took place in the Ex Central Province Districts during 1912-1917. The said term of Settlement was for a period of 30 years. As such, the next round of Settlement was to be undertaken between 1942-1947. However, the said round of Settlement could not take place due to the Second World War and was also not undertaken post 1947 when India became independent.

31. The Expert Committee submitted its report and on the basis of the said report, an affidavit came to be filed by the State of Maharashtra before this Court on 20th August 1997. In the said affidavit, three categories were made i.e., (i) forest; (ii) areas which were earlier forest which degraded, denuded or cleared; (iii) areas covered by plantation of trees belonging to government and those belonging to private persons. Further, the details of the areas identified in all the three categories including areas which could be construed as forests were stated. It will be apposite to refer to the relevant part of the said affidavit which reads thus:

Even as we are seeking to include areas covered by the dictionary meaning of the word 'forest', in the areas already notified as forests 2680 sq.km of Zudpi lands are also included. In these, there are vast stretches which have no attributes of forest. The Government of Maharashtra has been persistently requesting the Union Government to exclude such areas from the application of the Forest (Conservation) Act 1980. It is prayed that this Hon'ble Court may issue suitable directions to

the Union Government for exclusion of such Zudpi areas from the purview of the Forest (Conservation) Act 1980. 32.

32. It can thus be seen that the said affidavit shows that in the areas already notified as forests, 2680 sq. km of Zudpi lands were also included. The affidavit stated that there were vast stretches which had no attributes of forest. Further, the Government of Maharashtra had been persistently requesting the Union Government to exclude such areas from the application of the FC Act, 1980. The Government of Maharashtra thus prayed that this Court issues suitable directions to the Union of India for exclusion of such Zudpi areas from the purview of the FC Act, 1980

42. This Court, vide order dated 8th March 2019, sought the opinion of the CEC. Pursuant to the order dated 8th March 2019, the CEC filed its Report being 2019 CEC Report. The conclusions recorded by CEC in the said Report are as under: i. Zudpi Jungle lands are recorded forests and not notified forests; ii. Out of 9,23,913 ha. of originally recorded Zudpi Jungle lands, 6,55,619 ha. of land with tall tree growth has already been notified as Reserved Forest/Protected Forest between 1955 and 1959; iii. Another 93,293.18 ha. of land has been notified Under Section 4 of the Indian Forest Act, 1927 and it is proposed to declare the same as Reserve Forest; iv. Change in land use in respect of 45056.14 ha. (33,739.40 ha. before 25.10.1980 and 11,316.74 ha. between 25.10.1980 and 12.12.1996) out of 170212.37 ha. has taken place prior to the order dated 12.12.1996 of this Hon'ble Court but corresponding changes in land records are yet to be made; v. Secretary, MoEFF&CC in its meeting dated 18.04.2013 has requested the State of Maharashtra to submit separate proposals under FC Act 1980 for

pre 12.12.1996 and post 12.12.1996 non-forestry use;

vi. The FAC in its meeting held on 26.10.2017 recommended that since the concept of NPV was introduced by this Hon'ble Court in its judgment dated 29.10.2002 NPV shall not be collected from the State Government for diversion of Zudpi Jungle lands which have been put to non-forestry use before 12.12.1996;

vii. Revenue Department does not have any other land at its disposal to meet the residential needs of the poor Sections of the society in Nagpur Revenue Division;

138. In the result, the present IAs are disposed of in the following terms: (i) It is directed that the Zudpi Jungle lands shall be considered as Forest lands in line with the order of this Court dated 12th December 1996 in the present proceedings;

17. Accordingly, acquisition awards, Jamabandis, possession letters or executive handover documents relied upon by Respondent No. 1 cannot displace a present statutory determination by the Forest Department that forest characteristics exist on the ground. A compilation of satellite images of the subject land from 2018 to 2025 is annexed herewith.

V. REVENUE RECORDS AND ABSENCE OF FORMAL NOTIFICATION

18. The contention that the land is not recorded as forest in revenue or government records is legally misconceived.

19. It is settled law that forest protection under Section 2 of the VSESA 1980 operates independently of notification under the Indian Forest Act, 1927 and irrespective of ownership or revenue classification.

20. The Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad v. Union of India* (AIR 1997 SC 1228) has held that all lands satisfying forest characteristics are protected, regardless of nomenclature or classification in government records.
21. Respondent No. 1 cannot selectively rely on revenue entries while simultaneously disregarding binding ecological determinations made by the competent Forest Authority pursuant to Supreme Court directions.
22. Respondent No. 1 has sought to contend that the subject land cannot be treated as forest or deemed forest on the ground that the same is not shown as forest in the Master Plan / planning documents. The said contention is directly contrary to binding precedent and is no longer res integra.
23. This Hon'ble Tribunal, in ***Lt. Col. (Retd.) Sarvadaman Singh Oberoi v. State of Haryana & Ors., 2019 SCC OnLine NGT 1327***, was seized of an identical issue, namely whether land could be treated as forest / deemed forest notwithstanding the fact that it was not recorded as forest in revenue records and was included in a planning sector under the Master Plan. This Hon'ble Tribunal rejected the very defence now sought to be raised by Respondent No. 1 and held as under:

“14. ... Moreover, as clarified in M.C. Mehta v. Union of India: In re: Kant Enclave (Supra), status of the land is to be seen not only on the date of enactment of Forest (Conservation) Act, 1980 but also with reference to subsequent status.

...

“16. ...Once it is so, mere fact that the area is included in part of a Sector in the Master Plan is not conclusive to hold the same to be not covered by the definition of ‘forest’ in terms of law laid down by the Hon’ble Supreme Court in *Godavarman and Lafarge*.”

24. The aforesaid findings are binding, squarely applicable, and leave no manner of doubt that Master Plan zoning, planning sector classification or land-use designation cannot defeat forest protection once forest characteristics are found to exist on the ground.

25. In the present case, Respondent No. 3 (Forest Department) has, after field inspections, tree enumeration and spatial analysis, applied the deemed forest criteria and officially identified the subject land as deemed forest. Once such a determination exists, the defence sought to be raised by Respondent No. 1 on the basis of planning documents is *ex facie contrary* to law and binding precedent. A true copy of the judgment dated 05.03.2019 passed by the Hon’ble National Green Tribunal in *Lt. Col. (Retd.) Sarvadaman Singh Oberoi v. State of Haryana & Ors.*, reported as 2019 SCC OnLine NGT 1327, is annexed herewith as **ANNEXURE R-2**.

26. Further, the Hon’ble Supreme Court, in ***In Re: T.N. Godavarman Thirumulpad v. Union of India (2022) 4 SCC 289***, has unequivocally reaffirmed that forest protection under the Forest (Conservation) Act, 1980 operates independently of ownership, revenue entry, planning classification or Master Plan designation. The Supreme Court

has authoritatively held that the provisions of the Forest (Conservation) Act, 1980 “must apply to all forests irrespective of the nature of ownership or classification thereof” and that the term “forest” is to be understood by dictionary meaning and ecological characteristics, not by planning documents. The Supreme Court further reiterated that even essential public infrastructure projects cannot bypass the statutory mandate of the Forest (Conservation) Act, 1980, and that any diversion of forest or deemed forest land requires prior approval under Section 2, irrespective of planning classification or asserted public interest.

27. Thus, the defence raised by Respondent No. 1 that the subject land is shown as non-forest / developable / designated otherwise in the Master Plan is legally untenable. Once the competent Forest Authority has identified the subject land as deemed forest, Master Plan zoning becomes irrelevant in law, and any non-forest use without statutory clearance would amount to a direct violation of Section 2 of the Forest (Conservation) Act, 1980. A true copy of the order *In Re: T.N. Godavarman Thirumulpad v. Union of India (2022) 4 SCC 289* is annexed herewith as **ANNEXURE R-3**.

VI. REFINEMENT OF BOUNDARIES – NO DILUTION OF FOREST STATUS

28. The Status Report further records that upon representations made by Respondent No. 1, a subsequent DGPS-based precision mapping exercise was undertaken to refine forest boundaries in March 2025.

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29. Following this exercise, 3.58 hectares within the revised project footprint has been finally identified as total 6.21 hectares of deemed forest land for purposes of diversion under the VSESA 1980.
30. This refinement does not dilute forest status. On the contrary, it constitutes a precise statutory determination of forest land directly impacted by the project.
31. Consequently, the mandatory prior-approval regime under Section 2 of the VSESA 1980 is squarely attracted.
32. It is submitted that the March 2025 Survey covers only approximately 33 acres of the subject land and, therefore, does not even purport to examine the entirety of the forested area. Such a limited and partial survey cannot override, dilute, or revise the earlier conclusive determination of approximately 125.5 acres as deemed forest, which was based on comprehensive inspection and application of the settled legal criteria. Any attempt to rely upon a fragmentary survey to negate a prior holistic finding is unsustainable. A pictorial depiction demonstrating the limited inspection footprint superimposed on the full forest area is annexed hereto as **ANNEXURE R-4.**
33. The Status Report records that officials of Respondent No. 1 actively participated in joint inspections, submitted representations and sought refinement of forest boundaries. However, the Applicants could not participate in any inspection/survey nor were they given notice of any such exercise carried out by the Respondents. Having voluntarily

participated in the statutory process, Respondent No. 1 is estopped from challenging:

- a. The competence of the Forest Department;
- b. The methodology adopted; or
- c. The outcome of the forest determination.

34. It is further submitted that the Respondents' description of the January 2025 survey as a "preliminary" or "initial enquiry" is clearly an afterthought. When the said survey was placed on record by the Respondents in their counter affidavit before the Hon'ble Supreme Court, no such qualification, disclaimer, or caveat was ever attributed to it. The survey was relied upon simpliciter, without suggesting that it was tentative, provisional, or subject to further verification.

35. The belated attempt to downgrade the evidentiary status of the January 2025 survey only before this Hon'ble Tribunal, while having relied upon it without qualification before the Hon'ble Supreme Court, reflects inconsistency in pleadings across forums and cannot be countenanced in law. A party cannot be permitted to alter the character of its own document to suit the forum, and such post-facto characterisation deserves to be rejected as an afterthought lacking credibility.

VII. "INVASIVE SPECIES" ARGUMENT - WILDLIFE

36. It is submitted that the subject forest is no longer a mere aggregation of trees but has developed into a self-sustaining ecosystem, supporting resident and visiting avifauna and terrestrial wildlife, thereby satisfying the ecological test of a forest under the settled jurisprudence. The presence of wildlife dependent on the habitat is a critical indicator of

forest character and cannot be ignored while determining deemed forest status.

37. Photographs depict nesting and roosting of bird species on *Prosopis juliflora* trees across the subject land. These photographs clearly demonstrate regular avian use of the habitat for shelter and breeding, evidencing the existence of a stable ecological niche. The photographs of nesting and roosting of bird species on *Prosopis juliflora* trees are annexed hereto as **ANNEXURE R-5**.
38. A compilation of satellite images of the subject land from 2018 to 2025 is annexed herewith and marked as **ANNEXURE R-6**.
39. The ecological significance of the subject land is further evidenced by the presence of Nilgai (*Boselaphus tragocamelus*)—the largest Asian antelope and a species listed under Schedule II of the Wildlife (Protection) Act, 1972—within the forest area. The presence of a Schedule II species necessarily attracts heightened protection obligations and reinforces the forest character of the land.
40. On 02.05.2025, the issue of entrapment and obstruction of movement of Nilgais within the subject forest was specifically brought to the notice of the Hon'ble Delhi High Court by Mr. Gautam Narayan, learned Senior Advocate and Amicus Curiae, in ***Bhavreen Kandhari v. Shri C.D. Singh, CONT.CAS(C)-1149/2022***, on the basis of a contemporaneous news report highlighting restricted access of Nilgais to water bodies due to construction and fencing activities.

41. Taking cognizance of the aforesaid ecological concern, the Hon'ble Delhi High Court, by order dated 02.05.2025, directed the Forest Department to ensure that fencing and construction activities do not impede access of Nilgais to water bodies, thereby expressly recognising the presence and habitat requirements of wildlife within the subject forest.
42. Subsequently, upon a video surfacing which showed Nilgais trapped within fenced portions of the forest, the Ld. Amici Curiae placed the said material before the Hon'ble High Court on 05.05.2025, seeking urgent inspection and remedial action by the Forest Department.
43. By a further order dated 06.05.2025, the Hon'ble Delhi High Court directed the Forest Department to conduct an investigation and file a status report with photographs, specifically to ensure free movement of animals and adequate entry and exit points within the forest area.
44. In compliance thereof, the Forest Department filed a Status Report dated 08.05.2025, confirming upon inspection that Nilgais were indeed present within the fenced area and that the total continuous area measures approximately 120 acres, of which 30 acres had been fenced and leased to the private developer. The Status Report further records issuance of advisories to protect wildlife, creation of water holes, placement of water containers, and identification of broken fencing points permitting animal movement.

45. The contention that the forest consists predominantly of *Prosopis juliflora* and therefore lacks ecological value is misconceived. Authoritative literature recognises that native species such as Babool (*Vachellia nilotica* / *Acacia nilotica*) form part of Delhi's naturalised vegetation, distinct from *Prosopis juliflora*.
46. Further, contemporary ecological research conducted in the South Delhi Ridge area demonstrates that invasive species do not necessarily eliminate native species, but often result in novel plant assemblages that continue to support functional ecosystems, including fauna. Such research establishes that ecological value is not extinguished merely because an area contains invasive species.
47. In the book titled "An Introduction to the Delhi Ridge" published by the Department of Forests & Wildlife, GNCTD, it has been observed that *Prosopis* trees and shrubs have become naturalised constituents of many natural and 6 cultivated ecosystems, and their total eradication is not only ecologically risky but, in many areas, technically and economically impossible. This acknowledgement by the Department itself reflects a balanced understanding of the complexities involved in managing invasive tree species, highlighting that complete removal is neither always desirable nor feasible, and any action must be context sensitive and scientifically informed.
48. The subject land supports avian nesting, Schedule II wildlife, water-dependent fauna, and continuous animal movement, all of which are incompatible with the Respondents' attempt to portray the area as fragmented or ecologically insignificant.

49. Once the land is shown to function as a living ecosystem, any artificial exclusion of patches on the basis of fencing, degradation, or partial surveys is legally impermissible. The forest must be assessed as a whole, and its ecological integrity preserved in accordance with the precautionary principle and the settled law governing deemed forests.

VIII. MISPLACED RELIANCE ON FOREST (CONSERVATION) AMENDMENT ACT, 2023

50. Respondent No. 1's reliance on the Forest (Conservation) Amendment Act, 2023 is wholly misplaced.

51. The Hon'ble Supreme Court in *Ashok Kumar Sharma v. Union of India* (Writ Petition (Civil) No 1164 of 2023, Order dt. 19.02.2024) has expressly directed that pending completion of the Rule 16 exercise, the position of law shall continue to be governed by the Godavarman regime.

52. Respondent No. 3 has admitted that the Rule 16 exercise remains incomplete. Until its completion, existing forest protections operate with full force.

IX. ADMITTED ABSENCE OF PRIOR APPROVAL AND STATUTORY VIOLATIONS

53. Respondent No. 3 has categorically stated that Respondent No. 1 has applied for diversion of 3.58 hectares of deemed forest land, and that the proposal remains pending approval.

54. Respondent No. 4 (MoEF&CC) has admitted that:

- a. Prior approval under Section 2 of the VSESA 1980 is mandatory;

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- b. Diversion proposals are pending;
- c. Construction activity has already been undertaken on forest land; and
- d. Trees have been damaged without prior approval.

55. Respondent No. 4 has expressly characterised the said activity as a violation of Section 2 of the forest statute and has directed initiation of enforcement action.

56. Independent of the forest diversion regime, the felling, damaging or uprooting of more than 49 trees requires prior approval of the Central Empowered Committee in terms of the Hon'ble Supreme Court's order dated 19.12.2024 in *M.C. Mehta v. Union of India*.

57. Admittedly, no such approval has been obtained, rendering the Respondents' actions illegal on this additional and independent ground.

58. Respondent No. 5 has not disputed forest status or statutory non-compliance and has merely stated that it shall abide by orders of this Hon'ble Tribunal.

59. The Reply of Respondent No. 5 does not assist Respondent No. 1 in any manner.

X. PRAYER

60. In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to take the present rejoinder and annexures on record.

a. Pass any other order(s) as deemed fit and proper in the interests of justice.

Naren Solanki

APPLICANT NO. 1

Through:

Ankur Sood

Ankur Sood
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Place: New Delhi
Dated: 16.01.2026

1308

**BEFORE THE NATIONAL GREEN TRIBUNAL AT NEW
DELHI
MEMORANDUM OF APPLICATION
(Under Section 18(1) read with Section 14 and 15 of the
National Green Tribunal Act, 2010)
Original Application No. 227 of 2025**

In the Matter of:

Naveen Solanki and Anr.

...Applicants

Versus

Rail Land Development Authority and Ors. ...Respondents

VERIFYING AFFIDAVIT

I, Naveen Soloanki, S/o Sh. Jaivir Singh aged about 23 years R/o, Shahbad Mohammadpur, Delhi - 117001 , do hereby solemnly affirm and state as under-



That I am Applicant No. 1. I am fully conversant with the facts and circumstances of the case am, therefore competent to affirm this Affidavit.

That I have read the accompanying Rejoinder and have understood the contents thereof and I say that the same has been drafted under my instructions.

- 3. That the contents of the accompanying Rejoinder are within my personal knowledge and are based on information received by me which I believe to be true.
- 4. That the Annexures are either originals or true copies thereof.

Nansen Solanki

DEPONENT

15 JAN 2026

VERIFICATION

Verified at *DDP* on this _____ day of _____, 2026 that the contents of my above affidavit are true and correct to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

In presence of deponent etc
I identified the deponent etc
has signed in my presence
Nansen Solanki



Nansen Solanki

DEPONENT

CERTIFIED THAT THE DEPONENT
Shri/Smt/Km *M. Jayan Kumar Solanki*
S/o, W/o *Jaivir Singh Solanki*
R/o *Shankar Mohan N.P. Heast*
Identified by *Sh/Smt. [Signature]*
has solemnly affirmed before me at
New Delhi on *15/1/2026* at No. *31*
that the contents of the affidavit which
have been read & explained to him are
true and correct to his knowledge.

Notary Public, Delhi
KANTA RANA

KANTA RANA
E. No. D/393/68 Notary/Advocate
Ch. No. 408A, Lawyers Chamber
Dwarka Court, New Delhi-110075

Entry No. *31* Notary Public

15 JAN 2026

ID Adhaar 918045903552

(2022) 13 Supreme Court Cases 401 : 2021 SCC OnLine SC 897

In the Supreme Court of India

(BEFORE A.M. KHANWILKAR, HRISHIKESH ROY AND C.T. RAVIKUMAR, JJ.)


MUNICIPAL CORPORATION OF GREATER MUMBAI . .

Appellant;

Versus

ANKITA SINHA AND OTHERS . . Respondents.

Civil Appeals Nos. 12122-123 of 2018⁺ with Nos. 86 of 2019[±], 5902 of 2019⁺⁺, 6273, 6274, 6275, 6276, 6279 of 2021^{±±}, 6277-78, 6280-81 of 2021^{±±}, 2897 of 2021^{±±}, 6282, 6283, 6284, 6285, 6286 of 2021⁺⁺⁺ and 6262 of 2021⁺⁺⁺, decided on October 7, 2021

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A. Environment Law — National Green Tribunal — Forum complementary to constitutional courts to provide an alternative efficacious remedy for redressal of environmental exigencies in public interest concerning environmental justice, environmental equity and for protection of rights under Art. 21 of the Constitution

— NGT whether can suo motu initiate action for discharging functions under National Green Tribunal Act, 2010 (NGT Act) — Nature and scope of such suo motu power, procedural safeguards and rationale for — Law clarified — Held, NGT is vested with suo motu power to discharge its functions under the NGT Act — Such suo motu action can be initiated on basis of a letter or communication or even on basis of matters published in media (as in present case)

— Suo motu powers of NGT are somewhat distinct from those exercised by constitutional courts — Constitutional courts can foray into any issues under their constitutional mandate but NGT cannot naturally travel beyond its environmental domain in reference to the Scheduled enactments

— Exercise of suo motu jurisdiction does not mean eschewing the principles of natural justice and fair play — When such suo motu action is initiated, Registry of NGT should make an office report and send a notice to sender of such communication or author of news item to assist NGT in the course of hearing and to substantiate the factual matters — Party likely to

be affected should be afforded due opportunity to present their side, before suffering adverse orders


— **The rationale behind such an interpretation is in public interest to protect rights under Art. 21 of the Constitution and is evident from the legislative intent and provisions of NGT Act, the role and functions NGT, its sui generis characteristics and the visible impacts of climate change resulting in climatic emergencies**

— **(a) An affirmative role for NGT, beyond mere adjudication is certainly required for *servng the ends of environmental justice* — When adverse impact on environment is shocking, but community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord — Potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access**

— **(b) *Applying purposive interpretation*, NGT Act should be construed as giving authority to NGT to take suo motu cognizance of matters, for effective discharge of its mandate — S. 14(1) of the NGT Act conspicuously omits to specify that an application is necessary to trigger NGT into action — Provisions of NGT Act relating to jurisdiction, interim orders and payment of compensation and review do not require any application or appeal, for NGT to pass necessary orders**

— **(c) If NGT Act is not interpreted as giving NGT suo motu powers to initiate action, its functions might be hindered by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens — Another deterrence is the likelihood of polluters/violators being powerful entities**

— **(d) Court cannot validate an argument, which furthers uncertainty and would most assuredly result in injustice — While interpreting the NGT Act, the Court should not endorse an approach which would render NGT procedurally**

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shackled or incapacitated — Court must adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective — As NGT Act addresses wide ranging societal concerns, a holistic and purposive interpretation must be applied to declare that NGT has suo motu powers — NGT Act must be read in its entirety giving due meaning to each provision by comprehending the mischief it intends to remedy — Interpretation should eschew procedural impediment and accentuate the provisions dealing with rights under Art. 21 and regulations under environmental policy

— (e) **The role of an institution like NGT cannot be mechanical or ornamental — Environmental justice and environmental equity are the pivotal threads of NGT's fabric — Hands-off mode for NGT, when faced with exigencies requiring an immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice**

— (f) **Jurisdictional jurisprudence should be moulded in favour of larger societal interest, whether that be in the form of "public interest litigation" or widening the scope of locus standi — When substantive justice is elusive, for a perceived procedural lacuna, it furthers inequality, both economic and social**

— (g) **As many of the cases transferred to NGT emanated in the superior courts it would be appropriate to assume that similar power to initiate suo motu proceedings should also be available with NGT — NGT is the institutionalisation of the developments made by the Court in the field of Environment Law — When many of the sensitive environmental matters were transferred to NGT, it was expected to be as proactive as superior courts in dealing with such matters**

— (h) **There is a need for collective stratagem for addressing environmental concerns — Such a society-centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court**

— **Relief and directions — Having answered the common legal questions, cases directed to be delinked to be heard separately — However, if the case(s) emanate from same/common order of NGT, such case(s) should be heard together**

— National Green Tribunal Act, 2010, Ss. 14 to 21

(Paras 22 to 101)

B. Environment Law — Sustainable development — "Seventh Generation" sustainability principle, or the "Great Law of the Iroquois" — What is — Applicability of — Explained — Approach to be followed by courts and NGT — Clarifications issued by taking judicial notice of climate change, ecological imbalance and climate emergencies

— **Judicial notice taken of visible impacts such as uncertain rains, species extinction, loss of natural habitat, flooding and erosion and so on — Climate change also has the propensity to diminish freshwater resources, reduce agricultural yields and impact public health — Governmental assessment of India's increased vulnerability to such changes in the near future**

— **Present standards may not be able to handle unforeseen injustice of the future and long term irreparable environmental damage which are expected to be arrested by NGT — Thus there is a need to advert to "Seventh Generation"**

sustainability principle, or the "Great Law of the Iroquois", which requires all decision-making to withstand for the benefit of seven generations down the line

— National Green Tribunal Act, 2010, Ss. 14 to 21

(Paras 90 to 101)

C. Environment Law — National Green Tribunal — Alternative efficacious remedy through NGT — Backdrop of NGT and rationale behind its formation, stated

— NGT was necessary as there was a growing tide of environmental cases and it was inconvenient for High Courts and Supreme Court to make local inquiries or receive evidence and take assistance of expert environmental scientists on permanent basis — NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts, etc. — However, observance of natural justice was mandated

— NGT was conceived as a complimentary specialised forum to deal with all environmental multi-disciplinary issues both as original and appellate authority — High Court's midway scrutiny by way of judicial review was omitted — NGT's orders can be directly challenged in the Supreme Court

(Paras 22 to 24)

— Preamble & Statement of Objects and Reasons of NGT Act makes it clear that limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of NGT

— NGT is a sui generis forum with jurisdiction of widest amplitude — Preamble of NGT Act construes the right to healthy environment as a part of the right to life under Art. 21 — Constitution of India — Arts. 21, 47, 48-A, 51-A(g), 323-A and 232-B — Environment Law — Regulatory Framework, Bodies and Judicial Intervention — National Green Tribunal — Statement of Objects and Reasons Paras 2, 3, 4, 5 and 6 and Preamble — International Conferences, Conventions, Summits, Etc. — Convention on Human Environment, 1972 — Required to provide protective, preventive and remedial laws for protection of environment — International Conferences, Conventions, Summits, Etc. — Rio Declaration of the UN Conference on Environment and Development, 1992 — Required effective laws regarding liability and compensation for the victims of pollution and other environmental damage

(Paras 22 to 30)

— National Green Tribunal Act, 2010, Ss. 14 to 21

D. Environment Law — National Green Tribunal Act, 2010 — Ss. 2(1)(c), (m), 14 to 20, 25, 29 and 33 and Ch. III — Jurisdiction, powers, functions of NGT, its non-adjudicatory role, its *sui generis* role, its uniqueness vis-à-vis other tribunals and its self-activating capability — Explicated — Wide discretion and locus standi to preserve and protect the environment, clarified

(Paras 22 to 101)

— Unlike civil courts, NGT is conferred with wide powers to mould any appropriate relief that may be justified on facts, though not specifically prayed for by the parties

— Locus standi to approach NGT is very wide like that of High Courts and Supreme Court — Any interested person or organisation can approach it

— NGT is not just an adjudicatory body — Functions of NGT are in the nature of prevention, remedy and amelioration — NGT is required to perform restitutive and compensatory functions related to distributive and corrective justice — Many of the functions of NGT do not require an active “dispute”, but the formulation of decisions

— With its *sui generis* role, NGT acts as both an adjudicatory body as well as a supervisory body — Its powers are both reflexive and preventive — NGT is recognised as one of the most progressive tribunals in the world — This jurisprudential leap places our country in an exclusive group of nations — Courts, Tribunals and Judiciary — Courts, Tribunals and Special Courts — Tribunals — National Green Tribunal (NGT) distinguished from other Tribunals — Environment Law — Regulatory Framework, Bodies and Judicial Intervention — Regulatory Statutes, Rules, Regulations and Norms — National Green Tribunal (Practice and Procedure) Rules, 2011 — R. 24 — Words “secure the ends of justice” — Interpretation — Kinds of relief envisioned under

(Paras 37 to 69)

E. Environment Law — National Green Tribunal Act, 2010 — Ss. 2(1)(c), (m), 14 to 20, 25, 29 and 33 and Ch. III — Interpretation of term “decision”, in addition to “order” and “award” in S. 20 of the NGT Act makes it clear that NGT has to apply the “precautionary principle” along with the principles of sustainable development and the polluter pays principle — Onus is cast upon the Tribunal to act with promptitude to deal with environmental exigencies — Pre-emptive functions of NGT as a *sui generis* body may be noted

(Paras 71 to 74)

F. Environment Law — General Principles of Environmental Law — Environmental justice and equity, explained — Approach required by court, stated

(Paras 75 to 80)

G. Environment Law — General Principles of Environmental Law —

Environmental jurisprudence in India — Effect on the manner of interpretation of functions of NGT

— National Green Tribunal Act, 2010, Ss. 14 to 21

(Paras 81 to 90)

— Environmental jurisprudence in India has been intrinsic to advancing a democratic, welfare-oriented legal regime — Issues affecting the ecology and the environment must have a broad perspective and should have a society-centric approach — Functions of NGT, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence (Paras 81 to 89)

(Paras 75 to 89)

Declaring that NGT is vested with suo motu power in discharge of its functions under the NGT Act, the Supreme Court

Held :

I. The backdrop of the National Green Tribunal

The Law Commission of India in its 186th Report dated 23-9-2003 was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on a permanent basis to assist them. Therefore, NGT was conceived as a complementary specialised forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court under their writ jurisdiction.

(Paras 22 and 43)

Law Commission of India, 186th Report on Proposal to Constitute Environment Courts, *referred to*

It was explicitly noted that the creation of NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialised forum.

(Para 23)

Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before the High Courts and the Supreme Court and shift such issues to the domain of NGT. This is how the proposed forum was made free from the

rules of evidence and NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts, etc. The observance of the principles of natural justice was however mandated.

(Para 24)

L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577, cited

Chapter IX, 186th Law Commission Report, referred to

II. The Preamble & Statement of Objects and Reasons

The National Environment Tribunal Act, 1995 ("NET") provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. The NET had a very limited and narrow mandate and jurisdiction. The Supreme Court had requested the Law Commission of India to consider the need for the constitution of specialised environmental courts.

(Para 26)

The right to a healthy environment is a part of the right to life under Article 21 of the Constitution. NGT was expected to achieve the objectives of Articles 21, 47, 48-A, 51-A(g) of the Constitution by means of a fair, fast and satisfactory judicial procedure. An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

(Para 27)

The mandate and jurisdiction of NGT is, therefore, conceived to be of the widest amplitude and it is in the nature of a sui generis forum.

(Para 28)

The Preamble to the Act significantly emphasised on construing the right to healthy environment as a part of the right to life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India.

(Para 29)

The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of NGT.

(Para 30)

III. The need for purposive interpretation

Adequate clarity is discernible in the phraseology and provisions of the NGT Act. NGT is intended to address wide-ranging societal concerns and these have prompted the Court to opt for purposive interpretation. The statute will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy.

(Para 31)


The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional courts flagging

their environmental concerns.

(Para 32)

Courts should interpret the NGT Act in such a way as to achieve the legislative purpose and intention. The interpretation should be forward looking and eschew procedural impediment. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

(Para 36)

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Bengal Immunity Co. Ltd. v. State of Bihar, 1955 SCC OnLine SC 2; *Heydon Case*, (1584) 3 Co Rep 7a : 76 ER 637; *Panama Refining Co. v. Ryan*, 1935 SCC OnLine US SC 3 (dissenting view of Justice Benjamin Cardozo, J.), *followed*

Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721; *New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850, *referred to*

Justice G.P. Singh : *Interpretation of Statutes*; Francis Bennion : *Statutory Interpretation*; Justice Frankfurter of the US Supreme Court: "Some Reflections on the Reading of Statutes", (1947) 47 Columbia Law Review 527, *referred to*

IV. Salient statutory features of the NGT Act

Applying the purposive interpretation to the statutory layout of the NGT Act, Sections 2(1)(c), (m), 14 to 20, 25, 29 and 33 and Chapter III will require the Court's attention.

(Para 37)

Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 makes it clear that NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

(Para 38)

By choosing to employ a phrase of wide import i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses, inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

(Para 39)

Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, NGT is conferred with the power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

(Para 40)

Another distinguishing feature of the environmental forum is on the aspect of locus standi which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organisation who may be interested in the subject-matter is permitted to approach NGT.


(Paras 41 and 43)

The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by NGT, as was encapsulated in the 186th Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio de Janeiro Conventions towards the protection of the environmental rights under Article 21 of the Constitution.

(Paras 42, 28 and 29)

V. Non-adjudicatory roles of NGT

Schedule I to the NGT Act is concerned with the implementation of few environmental related enactments such as the Water (Prevention and Control of Pollution) Act, 1974 ("the Water Act"), the Air (Prevention and Control of Pollution) Act, 1981 ("the Air Act"), the Environment (Protection) Act, 1986 ("the Environment Act"), the Forest (Conservation) Act, 1980 etc. As one looks at these enactments, an expanded role for NGT is clearly discernible. The activities of NGT are not only geared towards the protection of the environment but also to ensure

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that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

(Paras 44 and 43)

Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647; *M.C. Mehta (Taj Trapezium Matter) v. Union of India*, (1997) 2 SCC 353, referred to

For the environmental forum, tasked with the implementation of the statutes mentioned in Schedule I to the NGT Act, the concept of lis, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or Government) disturbing the environment and the other one (could be an individual, a body or the Government itself), who has concern for the protection of

the environment. Therefore, NGT is primarily concerned with the protection of the environment and also the preservation of natural resources. As the specialised forum, NGT would be expected to take preventive action, besides settling and adjudicating disputes and passing orders on all environment related questions.

(Para 45)

NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report.

(Para 46)

NGT is empowered to carry out restitutive exercises for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "dispute", but the formulation of *decisions*.

(Para 47)

With the constitution of NGT, many cases pending before the High Courts were transferred to NGT. Apprehending the possibility of conflict between the High Courts and NGT (in matters concerning the environment and the statutes mentioned in Schedule I to the NGT Act), the Court highlighted NGT's role in said context. The Court mandated the transfer of all cases concerning the statutes mentioned in Schedule I to the NGT Act to the specialised forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered suo motu by the courts.

(Para 48)

Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India, (2012) 8 SCC 326, relied on

VI. Exercise of suo motu power by NGT

The suo motu powers of NGT is somewhat distinct from those exercised by the constitutional courts. The constitutional courts can foray into any issues under their constitutional mandate but NGT cannot naturally travel beyond its environmental domain in reference to the Scheduled enactments. However, as long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude. The interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

(Paras 49 to 52)

Mantri Techzone (P) Ltd. v. Forward Foundation, (2019) 18 SCC 494, followed

Rajeev Suri v. DDA, (2022) 11 SCC 1, clarified and distinguished

There is a need for an expert body with extensive functions and the sources of

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inspiration behind it. From the very inception, the role of NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are

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preventative, ameliorative or remedial in nature. The functional capacity of NGT was intended to leverage wide powers to do full justice in its environmental mandate.

(Para 53)

A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718, referred to

VII. Uniqueness of NGT vis-à-vis other tribunals

While many tribunals are functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory tribunals were categorised to fall under four sub-heads : Administrative Tribunals under Article 323-A of the Constitution; Tribunals under Article 323-B; specialised sector tribunals and most prominently; tribunals to safeguard rights under Article 21. The duties of NGT bring it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

(Para 54)

The idea was to create a fairly proactive and responsive institution which could step into varying roles, as the situation demanded.

(Para 55)

NGT, unlike other tribunals, has a duty to do justice while exercising a "wide range of jurisdiction" and the "wide range of powers", given to it by the statute.

(Para 56)

NGT has been recognised as one of the most progressive tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers.

(Para 57)

State of Meghalaya v. All Dimasa Students Union, (2019) 8 SCC 177, affirmed

L. Hirday Narain v. ITO, (1970) 2 SCC 355, cited

Gill, G.: "Mapping the Power Struggles of the National Green Tribunal of India : The Rise and Fall?", *Asian Journal of Law and Society*, 7(1), 85-126 (2020), referred to

VIII. The sui generis role of NGT

The powers conferred on NGT are both reflexive and preventive. It is an expert regulatory body which can also issue general directions within the statutory framework.

(Para 59)

As many of the cases transferred to NGT emanated in the superior courts it

would be appropriate to assume that similar power to initiate suo motu proceedings should also be available with NGT.

(Para 60)

NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge the role of the supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialised body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.


(Paras 58 to 61)

NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566, followed

Paramjit Kaur v. State of Punjab, (1999) 2 SCC 131 : 1999 SCC (Cri) 109, affirmed

IX. Authority with self-activating capability

Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its

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domain and this should necessarily clothe it with the authority to take suo motu cognizance of matters, for effective discharge of its mandate.

(Para 62)

Section 14 of the NGT Act is of great relevance.

(Para 63)

The exercise of power by NGT is not circumscribed by receipt of the application by an aggrieved or interested party alone. Section 14(1) of the NGT Act, which deals with jurisdiction conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e. civil cases; involvement of substantial question of the environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. Thus, even in the absence of an application, NGT can self-ignite action either towards amelioration or towards prevention of harm.

(Para 64)

Section 14(1) exists as a stand-alone feature, not constricted by the operational mechanism of the subsequent sub-sections. Section 14(2) functions as a corollary

and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise, Section 14(3) of the NGT Act refers to the period of limitation concerning applications, when they are addressed to NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention or maybe a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in a similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

(Para 65)

Provisions of the NGT Act relating to jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

(Para 66)

While dealing with contested cases, NGT is required to pass "award" and "order" and the statute repeatedly uses the word "decision". Therefore, it is appropriate to correlate the word "decision" to NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognised in *Aam Aadmi Lokmanch*, (2021) 11 SCC 566.

(Para 67)

The duty to safeguard rights under Article 21 cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in the larger public interest. The specialised forum is bestowed with the responsibility to ensure the protection of the environment. To be effective in its domain, the Court needs to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application.

(Para 68)

State of Punjab v. Shamlal Murari, (1976) 1 SCC 719 : 1976 SCC (L&S) 118, affirmed

While discussing NGT's power and responsibility, it is essential to keep in mind Principle 10 of the Rio Declaration which speaks of three fundamental rights i.e. access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being

powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

(Para 69)

X. The Precautionary Principle

The origin of the *precautionary principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

(Para 71)

Section 20 of the NGT Act which includes the term "*decision*", in addition to "*order*" and "*award*", also require the Tribunal to apply the "*precautionary principle*" along with the principles of sustainable development and the polluter pays principle.

(Para 72)

The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other "*decisions*" or "*orders*" to governmental authorities or polluters when they fail to "*anticipate, prevent and attack the causes of environmental degradation*". Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for a full flow of the forum's power within the environmental domain.

(Para 73)

It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. The pre-emptive functions of NGT as a sui generis body can be noted.

(Para 74)

Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647, followed

S. Jagannath v. Union of India, (1997) 2 SCC 87; *Karnataka Industrial Areas Development Board v. C. Kenchappa*, (2006) 6 SCC 371, affirmed


Scott LaFranchi: "Surveying the Precautionary Principle's Ongoing Global Development : The Evolution of an Emergent Environmental Management Tool", 32 BC Env'tl Aff L Rev 679 (2005); Ronnie Harding & Elizabeth Fisher: "Introducing the Precautionary Principle" in *Perspectives on the Precautionary Principle* (1999) at p. 4; Benjamin Cardozo : *The Nature of the Judicial Process*, referred to

XI. Environmental Justice and Environmental Equity

The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis NGT's domain and how its functioning and decisions can

have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition. Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalised groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including the application of sustainable development principles.

(Para 75)

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There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

(Para 77)

When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "equal footing" conception may not, therefore, be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalised classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

(Para 78)

The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which the Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach the heart of environmental concerns. Jurisdictional jurisprudence should be moulded in favour of larger societal interest, whether that be in the form of "public interest litigation" or widening the scope of locus standi.

(Para 79)

In the backdrop of the above weighty concerns, the Court should advert to *the ideal of administering equal justice to everyone who comes to the courts, regardless of race, creed, or economic class*. The relevance of this concept is particularly apposite in the context of the inability of marginalised communities to access the legal machinery.

(Para 80)

Schlosberg D. : *Defining Environmental Justice : Theories, Movements, and Nature* (Oxford University Press 2009); Jeff Todd: "A 'Sense of Equity' in Environmental Justice Litigation", 44 Harv Env'tl L Rev 169, 193 (2020); Schiffer, L.J. & Dowling, T.J. (1997): "Reflections on the Role of the Courts in Environmental Law", 27(2) Environmental Law 327-42, referred to

XII. Environmental Jurisprudence in India


NGT can be comfortably placed within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of the Court in establishing the legal connection between matters of environmental concern and fundamental rights of citizens has produced much academic literature. The field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by the Court; moving the concept of Environment Law from the realm of torts to interlink it with fundamental rights, liberalising the concept of locus standi in environmental matters, exercising suo motu powers to reign in polluters, using expert committees to monitor implementation of court orders, etc.

(Para 81)

By expanding the scope of Articles 21, 32, 48-A, 51-A(g) of the Constitution, the Court has guaranteed the right to a pollution-free environment for a holistic existence. Most crucially, the expansion of the right to life under Article 21 by the Court has become a touchstone to determine many environmental concerns.

(Para 82)

Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited

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by those who may not have much concern for environmental degradation. The creation of the "*Absolute Liability Principle*" by the Court is a well-recognised testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of the Court's initiative.

(Para 83)

It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly in developing a sui generis environmental discourse. There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the "at risk" nature of some populations. The creation of NGT itself was due in large part to the need expressed by the Supreme Court for such a forum.

(Para 84)

The Court deliberated upon the larger societal concerns when dealing with environmental matters.

(Para 85)

Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare-oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society-centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters stood transferred to NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior court was surely expected to be seen in the Tribunal's approach.

(Para 86)

It is this environmental rule of law that has been encapsulated with NGT's creation at the Supreme Court's behest.

(Para 88)

NGT is the institutionalisation of the developments made by the Court in the field of Environment Law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

(Para 89)

H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee, (2021) 4 SCC 309, followed

M.C. Mehta v. Union of India, (1987) 1 SCC 395, relied on

Subhash Kumar v. State of Bihar, (1991) 1 SCC 598, affirmed

M.C. Mehta v. Union of India, (1986) 2 SCC 176 : 1986 SCC (Cri) 122; *Indian Council For Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212; *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718; *A.P. Pollution Control Board (2) v. M.V. Nayudu*, (2001) 2 SCC 62; *Rural Litigation & Entitlement Kendra v. State of U.P.*, (1985) 2 SCC 431; *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613; *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577, referred to

Armin Rosencranz & Shyam Divan : *Environmental Law and Policy in India*; M.A.A. Baig : *Environmental Law and Justice* (1996); Domenico Amirante: "Environmental Courts in Comparative Perspective : Preliminary Reflections on the National Green Tribunal of India", 29 : 2 Pace Envtl L Rev 440 at p. 447 (2012); M.K. Ramesh: "Environmental Justice : Courts and Beyond", *Indian Journal of Envtl Law* 20 (2002); Maheshwara Swamy, N. : *Law Relating to Environmental Pollution and Protection*, India; *Thompson Reuters*, Vol. 1, Edn. 5; Justice T.S. Doabia : *Environmental & Pollution Laws in India*, 3rd Edn., Vol. 2 (2017); Domenico Amirante: "Environmental Courts in Comparative Perspective : Preliminary Reflections on the National Green Tribunal of India", 29 Pace Envtl L

Rev 441 (2012); Rajamani, Lavanya: "Public Interest Environmental Litigation in India :

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Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability", Journal of Environmental Law (2007), referred to

XIII. Conclusion

The NGT Act, when read as a whole, gives much leeway to NGT to go beyond a mere adjudicatory role. Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of NGT's fabric. NGT must be seen as a *sui generis* institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of the Court.

(Para 91)

The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish freshwater resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in the riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists with many countries declaring climate emergencies and many others being urged to follow suit.

(Para 92)

Indian Network for Climate Change Assessment, Climate Change and India : A 4×4 Assessment — A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16-11-2010; Secretary General's remarks at the Climate Ambition Summit, United Nations. United Nations, 12-12-2020, referred to

Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long-term and very often irreparable environmental damage which are expected to be arrested by NGT, urge the Court to advert to what is termed as the "*Seventh Generation*" sustainability principle, or the "*Great Law of the Iroquois*" (as it originates from the Iroquois Tribe) which requires all decision-making to withstand for the benefit of seven generations down the line.


(Para 93)

It is vital for the well-being of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

(Para 94)

In circumstances where the adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*". Thus, an affirmative role, beyond mere adjudication at the instance of the applicant, is certainly required for *servicing the ends of environmental justice*, as the statute itself requires of NGT. The Court cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

(Para 95)

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NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no one knocks on its door. The forum itself has correctly identified the need for a collective stratagem for addressing environmental concerns. Such a society-centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for NGT, when faced with exigencies requiring an immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

(Para 96)

It would be procedural hair-splitting to argue (as it has been) that NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

(Para 97)

When the Registry of NGT does indeed receive communication or letter, including matters published in media, it may cause to initiate suo motu action by inviting the attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item. as the case may be. to assist NGT in the course of the

hearing and to substantiate the factual matters. It must also be said that the exercise of suo motu jurisdiction does not mean eschewing the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

(Para 98)

One could admit to the argument of the danger of suo motu jurisdiction if NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedural safeguards clarified herein, the nature of the trigger itself viz. a letter or a "suo motu" initiation, cannot be the basis to curtail the role and responsibility of the specialised forum.

(Para 99)


Institutions which are often addressing urgent concerns gain little from procedural nit-picking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. The Court must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

(Para 100)

The National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. Thus it is declared that NGT is vested with suo motu power in the discharge of its functions under the NGT Act.

(Para 101)

Having answered the common legal issue involved in all these cases regarding the suo motu jurisdiction of NGT, the Court directs delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from the same/common order of NGT, such case(s) be heard together. The Registry may do the needful and post the matters on 25-10-2021 for direction and fixing date of hearing, before the Bench presided over by one of us (A.M. Khanwilkar, J.). For the purpose

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of further hearing, the respective cases shall not be treated as part-heard before this Bench.

(Para 102)

Standard Chartered Bank v. Dharminder Bhohi, (2013) 15 SCC 341 : (2014) 5 SCC (Civ) 243; *Transcore v. Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116; *Rajeev Hitendra Pathak v. Achyut Kashinath Karekar*, (2011) 9 SCC 541 : (2011) 4 SCC (Civ) 781, *impliedly distinguished*

T.N. Pollution Control Board v. Sterlite Industries (I) Ltd., (2019) 19 SCC 479;
BSNL v. TRAI, (2014) 3 SCC 222, held, impliedly distinguished

Techi Tagi Tara v. Rajendra Singh Bhandari, (2018) 11 SCC 734, impliedly overruled

Ankita Sinha v. State of Maharashtra, 2018 SCC OnLine NGT 2937; *Ankita Sinha v. State of Maharashtra*, 2018 SCC OnLine NGT 2936; *Municipal Corpn. of Greater Mumbai v. Ankita Sinha*, 2019 SCC OnLine SC 2093; *Municipal Corpn. of Greater Mumbai v. Ankita Sinha*, 2019 SCC OnLine SC 2094, referred to

Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149; *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, 1964 SCC OnLine SC 21; *Wilfred J. v. Ministry of Environment & Forests*, 2014 SCC OnLine NGT 6860, cited

Samuel Beckett : Waiting for Godot : A Tragicomedy in Two Acts (Grove Press Inc., New York 1954); *Halsbury's Law of England*, 3rd Edn., Vol. 9 at p. 349; *Black's Law Dictionary*, 5th Edn., p. 424, referred to


SS-D/68416/S

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Chronological list of cases cited


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1. (2022) 11 SCC 1, *Rajeev Suri v. DDA* 432e-f, 433a
2. (2021) 11 SCC 566, *NHAI v. Aam Aadmi Lokmanch* 435b, 437e-f
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8. 2019 SCC OnLine SC 2093, *Municipal Corpn. of*

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14. (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721, <i>Sarah Mathew v. Institute of Cardio Vascular Diseases</i>	427f-g
15. 2014 SCC OnLine NGT 6860, <i>Wilfred J. v. Ministry of Environment & Forests</i>	422b
16. (2013) 15 SCC 341 : (2014) 5 SCC (Civ) 243, <i>Standard Chartered Bank v. Dharminder Bhohi</i>	419d
17. (2012) 8 SCC 326, <i>Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India</i>	431a
18. (2011) 9 SCC 541 : (2011) 4 SCC (Civ) 781, <i>Rajeev Hitendra Pathak v. Achyut Kashinath Karekar</i>	419g
19. (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850, <i>New India Assurance Co. Ltd. v. Nusli Neville Wadia</i>	427f-g
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-
21. (2006) 6 SCC 371, *Karnataka Industrial Areas Development Board v. C. Kenchappa* 439a-b
22. (2001) 2 SCC 62, *A.P. Pollution Control Board (2) v. M.V. Nayudu* 442d
23. (1999) 2 SCC 718, *A.P. Pollution Control Board v. M.V. Nayudu* 433b, 442d
24. (1999) 2 SCC 131 : 1999 SCC (Cri) 109, *Paramjit Kaur v. State of Punjab* 434g
25. (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *L. Chandra Kumar v. Union of India* 423g
26. (1997) 2 SCC 353, *M.C. Mehta (Taj Trapezium Matter) v. Union of India* 429g
27. (1997) 2 SCC 87, *S. Jagannath v. Union of India* 439a-b
28. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum v. Union of India* 429f-g, 439a-b
29. (1996) 3 SCC 212, *Indian Council For Enviro-Legal Action v. Union of India* 442d
30. (1995) 2 SCC 577, *Virender Gaur v. State of Haryana* 441d
31. (1991) 1 SCC 598, *Subhash Kumar v. State of Bihar* 441e-f
32. (1990) 1 SCC 613, *Charan Lal Sahu v. Union of India* 441d
33. (1987) 1 SCC 395, *M.C. Mehta v. Union of India* 442a

34. (1986) 2 SCC 176 : 1986 SCC (Cri) 122, *M.C. Mehta v. Union of India* 442d

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35. (1985) 2 SCC 431, *Rural Litigation & Entitlement Kendra v. State of U.P.* 441d

36. (1976) 1 SCC 719 : 1976 SCC (L&S) 118, *State of Punjab v. Shamlal Murari* 437g-h

37. (1970) 2 SCC 355, *L. Hirday Narain v. ITO* 434a

38. 1964 SCC OnLine SC 21, *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964* 421e-f

39. 1955 SCC OnLine SC 2, *Bengal Immunity Co. Ltd. v. State of Bihar* 426g-h

40. 1935 SCC OnLine US SC 3 (dissenting), *Panama Refining Co. v. Ryan* 427e

41. (1584) 3 Co Rep 7a : 76 ER 637, *Heydon Case* 426g, 427a-b

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.—

“Estragon : Let's go.

Vladimir : We can't.

Estragon : Why not?


Vladimir : We're waiting for Godot.”¹

2. Leave granted in the special leave petitions. The consideration to be made in these matters is whether the National Green Tribunal (for short “NGT”) has the power to exercise suo motu jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010

(for short "the NGT Act, 2010").

3. In the lead case in this group i.e. Civil Appeal No. 86 of 2019, NGT noticed an article titled "Garbage Gangs of Deonar : The Kingpins and Their Multi-Crore Trade" in the online news portal, *The Quint*. The article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai City.

4. NGT took suo motu cognizance of the above article vide order dated 7-8-2018² and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at NGT's instance. Thereafter, steps were taken for inspection of the Deonar dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, NGT vide order dated 30-10-2018³ noted that "*damage to the environment and public health is self-evident*" and ordered MCGM to pay compensation to the tune of Rs 5 crores.

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5. This Court while entertaining Civil Appeal No. 86 of 2019 of MCGM, ordered⁴ stay on the operation of the order³ passed by NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether NGT has the power to exercise suo motu jurisdiction.

6. Mr Mukul Rohatgi, Mr Dushyant Dave, Mr Jaideep Gupta, Mr Dhruv Mehta, Mr Atmaram Nadkarni, Mr Krishnan Venugopal, Mr V. Giri, Mr Sajan Poovayya and Mr Sidhartha Dave, the learned Senior Counsel together with Mr E.M.S Anam, Ms Amrita Sharma, Mr S. Thananjayan have taken a common stand. They have argued that NGT is a tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act suo motu, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed.

7. The learned counsel also argue that NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more

contesting parties. Therefore, NGT by acting suo motu cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with NGT (which is available with superior courts) is highlighted to keep away suo motu power from NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in the latter part of this order.

8. Projecting the contrary view, Mr Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved party in SLP (C) No. 6732 of 2021, Mr Sanjay Parikh, learned Senior Counsel for the intervener in CA No. 86 of 2019 and Mr Gopal Sankaranarayanan, learned Senior Counsel appearing for the impleader in IA No. 71482 of 2021 in SLP (C) No. 6732 of 2021, by referring to the special role envisaged for NGT and the history of its incorporation, make equally powerful submission in support of exercise of suo motu jurisdiction, by NGT.

9. Mr Anand Grover, the learned Senior Counsel was appointed⁵ as the Amicus Curiae to assist the Court and he was heard at length. The counsel acknowledges NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr Grover is of the view that NGT is incapable of triggering action on its own. In other words, NGT cannot act suo motu without someone moving the forum as otherwise the forum then would be perceived to be judging its own cause. Since suo motu power is not conferred under the NGT Act, the specialised tribunal has to be moved by an outside party. But the format of the application is not important and even a letter addressed by an interested party, will clothe NGT with power to take action is the concessional submission of Mr Grover.

10. Representing the Central Government, Ms Aishwarya Bhati, the learned Additional Solicitor General of India submitted that suo motu power is not exercisable by NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as "the NET Act").

11. The counsel refers to the provisions of the NGT Act and submits that the concept of locus standi was expanded for NGT's intervention under Section 18(2)(e) but the tribunal is not vested with suo motu power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, NGT can commence action on environmental

matters. Thus, on exercise of epistolary jurisdiction by NGT, the ASG is on the same page as the Amicus Curiae but as earlier noted both the counsel argue for keeping away the suo motu power from NGT.

12. Having summarised the positions taken by the respective counsel, we may now refer to the specific grounds of challenge to keep away suo motu power from NGT. The counsel concerned project that NGT is a creature of the statute and just like other such statutory tribunals, NGT is also bound within statutory confines. They have relied upon *Standard Chartered Bank v. Dharminder Bhoji*⁶ wherein, the provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debts Recovery Tribunal and Appellate Tribunal. From the analysis of Dipak Misra, J. (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

13. Similarly, S.H. Kapadia, J. (as his Lordship then was) in *Transcore v. Union of India*⁷, opined on behalf of a Division Bench that : (SCC p. 163, para 67)

“67. ... The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts.”

14. The counsel also projects that in the context of Consumer Forums, Dalveer Bhandari, J. (as his Lordship then was) speaking for a three-Judge Bench in *Rajeev Hitendra Pathak v. Achyut Kashinath Karekar*⁸, observed as under : (SCC p. 550, para 34)

“34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State

Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised.”

15. The second limb of contention is that the Act is applicable to “disputes” as, necessarily referring to a lis between two parties. The

counsel has relied upon *Techi Tagi Tara v. Rajendra Singh Bhandari*⁹ wherein the term “*substantial question relating to environment*” was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by NGT.

16. In the cited case the proposition is articulated in the following fashion : (*Rajendra Singh Bhandari case*⁹, SCC pp. 749-50, paras 19-20)

“19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.

20. ... In *Prabhakar v. Sericulture Deptt.*¹⁰ the following definition of “dispute” was noted in paras 34 and 35 of the Report : (SCC p. 21)

‘34. To understand the meaning of the word “dispute”, it would be appropriate to start with the grammatical or dictionary meaning of the term:

““*Dispute*”.—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;”

35. *Black's Law Dictionary*, 5th Edn., p. 424 defines “dispute” as under:

“*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.” ‘ ‘ ‘

17. The Amicus Curiae has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

18. Thirdly, the lack of general power of judicial review has been argued to show legislative intent to curb suo motu powers. The counsel have stated that NGT, as a tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of writ courts as under Article 226 and Article 32 of the Constitution of India.

19. In the relied upon judgment *T.N. Pollution Control Board v. Sterlite Industries (I) Ltd.*¹¹ R.F. Nariman, J. speaking about NGT for a Division Bench of this Court has observed the following : (SCC pp. 520 & 523-24, paras 41 & 43)

"41. ... Suffice it to say that NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act. ...

* * *

43. ... In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*¹², made in the following words : (SCR p. 499 : AIR p. 789, para 138)

`138. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.

"Prima facie", says Halsbury, "no matter is deemed to be

beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court¹³”.

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For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be “judicially reviewed” by NGT. Following the judgment in *BSNL*¹⁴, we are of the view that NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on NGT judgment dated 17-7-2014 in *Wilfred J. v. Ministry of Environment & Forests*¹⁵ must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected.”

The argument has been that the superior courts exercising discretionary powers under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on NGT would suggest the limited nature of the forum's powers, which would exclude any suo motu exercise.

I. The backdrop of the National Green Tribunal

20. In order to understand the contours of jurisdiction of NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which shaped the creation of NGT and the broad issues that they sought to address through the specialised institution should now be brought to the fore.

21. The precursor to the NGT Act was the 186th Report^{*} of the Law Commission of India dated 23-9-2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialised court to deal with environmental issues:

“It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply

principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Article 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene

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on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Article 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert Commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the Constitution, power and jurisdiction of these Courts.”


22. The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialised forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

23. NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed

under the writ jurisdiction of the courts. It was explicitly noted that the creation of NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialised forum. The 186th Law Commission Report provided the following reasoning:

“Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Article 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a civil court, in the Environmental Courts. If we vest powers of judicial review as under Article 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar v. Union of India*¹⁶.

No doubt, the Environment Court exercising powers of a civil court or as an appellate court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on

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the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter.”¹⁷

24. Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of NGT. This is how the proposed forum was made free from the rules of evidence and NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts, etc. The observance of the principles of natural justice was however mandated.

II. The Preamble & Statement of Objects and Reasons

25. The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2, 3, 4, 5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow:

“**2.** India is a party to the decisions taken at the United Nations

Conference on the Human Environment held at Stockholm in June 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under Article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account the large number of environmental cases pending in higher courts and the involvement of multi-disciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the

need for constitution of specialised environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to Environment Law.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialised tribunal to handle the multi-disciplinary

issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."


26. A reading of the Statement of Objects and Reasons shows that Para 4 thereof refers to the *National Environment Tribunal Act, 1995* ("*NET*") which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher courts which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialised environmental courts.

27. Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to "*achieve the objectives of Articles 21, 47, 48-A, 51-A(g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure*". An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

28. Para 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon the Governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

29. The United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble to the Act significantly emphasised on construing the right to healthy

environment as a part of the right to life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National

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Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

30. The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of NGT.

III. The need for purposive interpretation

31. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in the latter parts of the judgment, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of NGT it is seen that NGT is intended to address wide-ranging societal concerns and these have prompted us to opt for purposive interpretation. The statute will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes*, authored by Justice G.P. Singh who explained thus:


“When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.

It is a rule now firmly established that the intention of the legislature must be found by reading the statute as a whole. The rule is referred to as an “elementary rule” by Viscount Simonds : a “compelling rule” by Lord Somervell of Harrow; and a “settled rule” by B.K. Mukherjea, J. “I agree” said Lord Halsbury, “that you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it.”

32. The mischief that the NGT Act attempted to remedy were

underscored in the legislative history, and the pronouncements of the constitutional courts flagging their environmental concerns.

33. The application of *Heydon*¹⁸ rule could adequately aid us here as the rule directs adoption of that construction which “*shall suppress the mischief and advance the remedy*” as was pertinently observed by S.R. Das, J. for a seven-Judge Bench in *Bengal Immunity Co. Ltd. v. State of Bihar*¹⁹,

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“22. ... '4th. ... the office of all the Judges is to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*.”*

34. Francis Bennion in his book *Statutory Interpretation* described “purposive interpretation” as under:

“A purposive construction of an enactment is one which gives effect to the legislative purpose by—

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.”

35. Justice Frankfurter of the US Supreme Court in “Some Reflections on the Reading of Statutes”²⁰, has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner:

“The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.

* * *


Judge Learned Hand speaks of the art of interpretation as ‘the proliferation of purpose’.”

Eventually, Justice Frankfurter relied upon Benjamin Cardozo, J.’s phraseology in *Panama Refining Co. v. Ryan*²¹, and the same is taken as a lodestar in our quest : (SCC OnLine US SC para 50)

“50. ... the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to

the end in view”.

36. The laudatory objectives for creation of NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfils the object of the Act.²² The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

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IV. Salient statutory features of the NGT Act

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention:

37.1. Section 2(1)(c) of the NGT Act defines the term “environment”; Section 2(1)(m) defines “substantial question relating to environment”.

37.2. Chapter III relates to jurisdiction, power and proceedings of the Tribunal. Section 14 gives original jurisdiction to NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, NGT can direct restitution of property damage and restitution of environment for such area(s) “*as the Tribunal may think fit*”. Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments.

37.3. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, by Section 18(2)(e) “*any person aggrieved including any representative body/organisation*” and the locus standi is not limited only to the aggrieved party.

37.4. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in CPC and shall be bound by the principles of natural justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While

discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders.

37.5. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the civil court and for that purpose shall have all the powers of a civil court. Section 29 bars the jurisdiction of the civil court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

38. While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice and Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

"24. Order and directions in certain cases.—The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

The said Rules make it clear that NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

39. By choosing to employ a phrase of wide import i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

40. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, NGT is conferred with power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and

circumstances of the case, even though such relief may not be specifically prayed for by the parties.


41. Another distinguishing feature of the environmental forum is on the aspect of locus standi which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organisation who may be interested in the subject-matter is permitted to approach NGT.

42. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio de Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. Non-adjudicatory roles of NGT

43. As can be seen, Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum v. Union of India*²³; *M.C. Mehta (Taj Trapezium Matter) v. Union of India*²⁴, etc.]

44. Schedule I to the NGT Act is concerned with implementation of few environment related enactments such as the Water Act, the Air Act, the Environment Act, the Forest (Conservation) Act, etc. As one looks at these enactments, an expanded role for NGT is clearly discernible. The activities of NGT are not only geared towards the protection of the environment but also to

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ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

45. For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I to the NGT Act, the concept of lis, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or Government) disturbing the

environment and the other one (could be an individual, a body or the Government itself), who has concern for the protection of environment. Therefore, NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialised forum, NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

46. NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report:

“The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. ... The Environment Court must be able to provide an “environmental solution” to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time.”

47. We have earlier discussed that NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active “dispute”, but the formulation of *decisions*.

48. With the constitution of NGT, many cases pending before the High Courts were transferred to NGT. Apprehending the possibility of conflict between the High Courts and NGT (in matters concerning environment and the statutes mentioned in Schedule I to “the NGT Act”), Swatanter Kumar, J. speaking for the three-Judge Bench in *Bhopal Gas Peedith Mahila Udyog*

*Sangathan v. Union of India*²⁵, highlighted NGT's role in the context, in the following words : (SCC p. 347, paras 40-41)

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of Environment Law and/or relating to any of the seven statutes specified in Schedule I to the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."


In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I to the NGT Act to the specialised forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered suo motu by the courts.

VI. Exercise of suo motu power by NGT

49. Let us now explore whether NGT in discharge of its functions, should also have suo motu power. The specialised tribunal's exercise of suo motu powers is somewhat distinct from those exercised by the constitutional courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but NGT cannot naturally travel beyond its environmental domain in reference to the Scheduled enactments. However, as long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude.

50. Explaining the purpose for constituting the Special Court to deal with environmental issues, in *Mantri Techzone (P) Ltd. v. Forward Foundation*²⁶, S. Abdul Nazeer, J. writing for the three-Judge Bench,

made the following pertinent observations on the status of NGT : (SCC p. 517, para 40)

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"40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights."


As can be seen from the quoted passage, this Court recognised that NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

51. Elaborating further, in paras 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that : (*Mantri Techzone case*²⁶, SCC p. 518, para 46)

"46. ... As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, leave no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction."

52. Such being the wide contour of NGT's powers, the exposition in *Rajeev Suri v. DDA*²⁷ was not to constrict the suo motu powers of NGT. To appreciate the implication of the ratio in *Rajeev Suri*²⁷, it must be noticed that it was in the specific context of "Merits Review" and NGT transgressing beyond its environmental mandate. This is why, one of us, A.M. Khanwilkar, J. observed that : (SCC p. 276, para 516)

“516. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject-matter traverse the scope of appeal from a grant of EC, the merits review by the Tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute.”

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Thus, the ratio in *Rajeev Suri*²⁷ to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for NGT. In its own domain, as crystallised by the statute, the role of NGT is clearly discernible.

53. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *A.P. Pollution Control Board v. M.V. Nayudu*²⁸ where M. Jagannadha Rao, J. speaking for a Division Bench referred to a comparable court in Australia and noted the following : (SCC p. 736, para 44)

“44. The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters.”

The above would show that from the very inception, the role of NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of NGT was intended to leverage wide powers to do full justice in its environmental mandate.


VII. Uniqueness of NGT vis-à-vis other tribunals

54. While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory tribunals were categorised to fall under four sub-heads; Administrative Tribunals under Article 323-A; Tribunals under Article 323-B; specialised sector tribunals and most prominently; tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as

delineated by the statute.

55. The ideal was to create a fairly proactive and responsive institution which could step into varying roles, as the situation demanded. Commenting on the specialised and unique role of NGT, Ashok Bhushan, J. in *State of Meghalaya v. All Dimasa Students Union*²⁹, fittingly observed thus : (SCC p. 262, para 163)

"163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish

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before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain v. ITO*³⁰, wherein this Court was examining provision empowering authority to do something. This Court laid down in para 13 : (SCC p. 359)

'13. ... The High Court observed that under Section 35 of the Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen.' "


56. Reflecting on the expanded role of NGT unlike other tribunals, this Court so appositely observed in *All Dimasa Students Union case*²⁹ that the forum has a duty to do justice while exercising "wide range of jurisdiction" and the "wide range of powers", given to it by the statute.

57. During the course of its functioning, NGT has been recognised as one of the most progressive tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia:

"NGT is an example of a specialised court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."³¹

VIII. The sui generis role of NGT

58. NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution. The structure of sui generis institutions was explained in *Paramjit Kaur v. State of Punjab*³², wherein S. Saghir Ahmad, J. spoke thus for a Division Bench : (SCC p. 137, para 14)

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"14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbitrate is entrusted acts sui generis, that is, on its own and not under any law."

59. In *NHAI v. Aam Aadmi Lokmanch*³³, S. Ravindra Bhat, J. commenting on the sui generis role of NGT, so appropriately stated as follows : (SCC pp. 605 & 629, paras 37 & 73-74)

"37. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the First Schedule. Yet, that interpretation, in the opinion of this court, is not warranted.

* * *

73. The power and jurisdiction of NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or


before the incident occurred. NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the *nature of the abusive practice*, its powers can also be preventive.

74. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued."

(emphasis in original)

In that case, this Court repelled the argument for a restricted jurisdiction for NGT, and fittingly observed in para 73 that the powers conferred on NGT are both reflexive and preventive and the role of NGT was recognised in para 74 as "*an expert regulatory body*", which can issue general directions also *albeit* within the statutory framework.

60. The above discussion would advise us to say that NGT was conceived as a specialised forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts

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and the Supreme Court. Many of those cases transferred to NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate suo motu proceedings should also be available with NGT.

61. NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialised body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. Authority with self-activating capability

62. Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo motu cognizance of matters, for effective discharge of its mandate.

63. The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder:

"14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

64. Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e. civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by NGT is not circumscribed by receipt of application. When substantial

questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I to the Act,

NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

65. In the same spirit, we find merit in the arguments that Section 14(1) exists as a stand-alone feature, not constricted by the operational mechanism of the subsequent sub-sections. Sub-section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

66. The other pertinent provisions relating to, inter alia, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

67. It may also be relevant to bear in mind that while dealing with contested cases, NGT is required to pass "award" and "order" and the statute repeatedly uses the word "decision". Therefore, it is appropriate to correlate the word "decision" to NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognised in *NHAI*³³.

68. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialised forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, V.R. Krishna Iyer, J. speaking for a Division Bench in *State of Punjab v. Shamlal Murari*³⁴ has so correctly prioritised the substantive rights and observed succinctly : (SCC p. 722, para 8)

"8. ... We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

69. While discussing NGT's power and responsibility, it is essential to keep in mind the *Principle 10 of the Rio Declaration* which speaks of three fundamental rights i.e. access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. The Precautionary Principle

70. Tracing the origin of the *precautionary principle*, Scott Lafranchi in his treatise³⁵ has expounded on the proactive role of the authorities in the following passage:

"Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long-term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."³⁶ The precautionary foundation of *Vorsorgeprinzip* has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies"."

71. The origin of the *precautionary principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

72. As earlier seen, Section 20 of the NGT Act which includes the term "*decision*", in addition to "*order*" and "*award*", also require the

Tribunal to apply the “*precautionary principle*” and the statutory mandate being relevant is extracted:

“20. Tribunal to apply certain principles.—The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.”

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73. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other “*decisions*” or “*orders*” to governmental authorities or polluters, when they fail to “*to anticipate, prevent and attack the causes of environmental degradation*”³⁷. Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

74. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, *The Nature of the Judicial Process*, stated thus:

“It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided.”

The above could be a pointer towards the pre-emptive functions of NGT as a *sui generis* body.

XI. Environmental Justice and Environmental Equity

75. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as

recognition.³⁸ Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalised groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

76. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer [then Assistant Attorney General, Environment and Natural Resources Division (“ENRD”), US Department of Justice] and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role*

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of the Courts in *Environmental Law*, wrote the following evocative passage on the concept of environmental justice:

“Environmental justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving “environmental justice” or “environmental equity”, which is understood to mean the fair distribution of environmental risks and protection from environmental harms.”³⁹


77. There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people:

“Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people “live, work, play, and go to school”, whereas the people who reside there do little or nothing to harm their community.”⁴⁰

78. When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An “*equal footing*” conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalised classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

79. The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of “public interest litigation” or widening the scope of locus standi:

“The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in

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minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities.”³⁹

80. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the “*Blindfold of Lady Justice*”, which symbolises “*the ideal of administering equal justice to everyone who comes to our courts, regardless of race, creed, or economic class*”.³⁹ The relevance of this concept is particularly apposite when we consider the inability of most marginalised communities, to access the legal machinery.

IX. Environmental Jurisprudence in India


81. Proceeding with the above understating, we can comfortably place NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing—*Environmental Law and Policy in India*, have noted that the field of laws pertaining to environmental concerns has

been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environment Law from the realm of torts to interlink it with fundamental rights⁴¹, liberalising the concept of locus standi in environmental matters, exercising suo motu powers to rein in polluters, using expert committees to monitor implementation of court orders, etc.⁴²

82. By expanding the scope of Articles 21, 32, 48-A, 51-A(g), this Court has guaranteed the right to a pollution-free environment for a holistic existence.⁴³ Most crucially, the expansion of right to life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar v. State of Bihar*⁴⁴, this Court explicitly held the following : (SCC p. 604, para 7)

"7. ... Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life."

83. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be

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exploited by those who may not have much concern for environmental degradation. Creation of the "*Absolute Liability Principle*"⁴⁵ by this Court is a well-recognised testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative:

"The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment....The right was recognised as part of the right to life in 1991....The Court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."⁴⁶


84. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a sui generis environmental discourse.³¹ There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies,

including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the "at risk" nature of some populations. The creation of NGT itself was due in large part to the need expressed by this Court for such a forum.⁴⁷

85. T.S. Doabia, J. in *Environmental & Pollution Laws in India*, has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters:

"The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.

... The courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."⁴⁸

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86. Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare-oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society-centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior court was surely expected to be seen in the Tribunal's approach.


87. Analysing the concept of the functioning of NGT and its role within the broader concept of the environmental rule of law, D.Y. Chandrachud, J. speaking for a three-Judge Bench in *H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee*⁴⁹ so succinctly said that : (SCC pp. 335-36, para 49)

"49. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui

generis. The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges — of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the "law" element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and Judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

88. It is this environmental rule of law that has been encapsulated with NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that:

"With reference to the judicial enforcement of environmental law — which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order — the National Green Tribunal of India

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seems to be the most comprehensive and promising among the specialised environmental courts created in Asia over the last decade."⁵⁰

89. NGT, therefore, is the institutionalisation of the developments made by this Court in the field of Environment Law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. Conclusion

90. Before we set out our conclusion, we acknowledge the able

contribution of Mr Anand Grover as Amicus Curiae, assisted by Ms Astha Sharma, AoR who were requested to assist the Court on the central issue of suo motu jurisdiction of NGT.

91. The NGT Act, when read as a whole, gives much leeway to NGT to go beyond a mere adjudicatory role. Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of NGT's fabric. NGT must be seen as a sui generis institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

92. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists⁵¹ with many countries declaring climate emergencies and many others being urged to follow suit⁵².

93. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long-term and very often irreparable environmental damage which are expected to be arrested by NGT, urge this Court to advert to what is termed as the "*Seventh Generation*" sustainability principle, or the "*Great Law of the Iroquois*" (as it originates from the Iroquois Tribe) which requires all decision-making to withstand for the benefit of seven generations down the line.

94. It is vital for the well-being of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

95. In circumstances where adverse environmental impact may be

egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*".³⁵ Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *servicing the ends of environmental justice*, as the statute itself requires of NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

96. NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society-centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

97. It would be procedural hair-splitting to argue (as it has been) that NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

98. When the Registry of NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate suo motu action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of suo motu jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

99. One could admit to the argument of danger of suo motu jurisdiction, if NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedural safeguards

clarified above in play, the nature of the trigger itself viz. a letter or a "suo motu" initiation, cannot be the basis to curtail the role and responsibility of the specialised forum.

100. Institutions which are often addressing urgent concerns gain little from procedural nit-picking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

101. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that NGT is vested with suo motu power in discharge of its functions under the NGT Act.

102. Having answered the common legal issue involved in all these cases regarding the suo motu jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the case(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25-10-2021 for direction and fixing date of hearing, before the Bench presided over by one of us (A.M. Khanwilkar, J.). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

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[†] Arising from the Judgment and Order in *Ankita Sinha v. State of Maharashtra*, 2018 SCC OnLine NGT 2936 (National Green Tribunal, Original Application No. 510 of 2018, dt. 30-10-2018) and *Municipal Corpn. of Greater Mumbai v. Ankita Sinha*, 2018 SCC OnLine NGT 2923 (National Green Tribunal, Review Application No. 49 of 2018, dt. 5-12-2018)

[‡] Arising from the Final Judgment and Order in *Ankita Sinha v. State of Maharashtra*, 2018 SCC OnLine NGT 2698 (National Green Tribunal, Original Application No. 510 of 2018, dt. 21-12-2018)

^{††} Arising from the Final Judgment and Order in *News Item Published in The Times of India Titled "Hanging Live Wire Kills 7 Jumbos in Odisha", In re*, 2019 SCC OnLine NGT 2917 (National Green Tribunal, Original Application No. 844 of 2018, dt. 16-5-2019)

^{††} Arising out of SLP (C) No. 6732, 5930, 6733, 16448 of 2021 (Diary No. 11655 of 2021) and 16451 of 2021 (Diary No. 13811 of 2021). Arising from the Final Judgment and Order in *Thomsun Aggregates v. State of Kerala* [Kerala High Court, WP (C) No. 19770 of 2020, dt. 21-12-2020] sub nom *V.K. Rocks (P) Ltd. v. State of Kerala* [Kerala High Court, WP (C) No. 15962 of 2020, dt. 21-12-2020], 2020 SCC OnLine Ker 25872

^{††} Arising out of SLPs (C) Nos. 16449-450 of 2021 (Diary No. 13789 of 2021) and 16452-453 of 2021 (Diary No. 13890 of 2021). Arising from the Final Judgment and Order in *Thomsun Aggregates v. State of Kerala* [Kerala High Court, WP (C) No. 19770 of 2020, dt. 21-12-2020] sub nom and *Sachu Rajan Eapen v. State of Kerala*, 2021 SCC OnLine Ker 5036 [Kerala High Court, RP No. 1 of 2021 in WP (C) No. 17391 of 2020, dt. 28-1-2021]

^{††} Arising from the Final Judgment and Order in *News Item Published in Times Now Titled "Karnataka : Six killed in Quarry Blast in Hirenagavalli, Chikkaballapur", In re*, 2021 SCC OnLine NGT 332 (National Green Tribunal, Original Application No. 59 of 2021, dt. 11-6-2021)

^{†††} Arising out of SLPs (C) Nos. 11426, 11427, 11798, 12669 and 16454 of 2021 (Diary No. 19534 of 2021). Arising from the Final Judgment and Order in *P.K. Biju v. State of Kerala* [Kerala High Court, WA No. 250 of 2021, dt. 16-3-2021] sub nom *Sachu Rajan Eapen v. State of Kerala* (Kerala High Court, WA No. 255 of 2021, dt. 16-3-2021), 2021 SCC OnLine Ker 2641

^{†††} Arising out of Diary No. 16948 of 2021. Arising from the Final Judgment and Order in *News Item Published in The Dinamalar Titled "If The Encroachments Are Removed Totally, Narayanapuram Lake Will Become Source of Drinking Water", In re*, 2021 SCC OnLine NGT 333 (National Green Tribunal, Original Application No. 98 of 2020, dt. 4-6-2021)

¹ Samuel Beckett, *Waiting for Godot : A Tragicomedy in Two Acts* (Grove Press Inc., New York 1954).

² *Ankita Sinha v. State of Maharashtra*, 2018 SCC OnLine NGT 2937

³ *Ankita Sinha v. State of Maharashtra*, 2018 SCC OnLine NGT 2936

⁴ *Municipal Corpn. of Greater Mumbai v. Ankita Sinha*, 2019 SCC OnLine SC 2093

⁵ *Municipal Corpn. of Greater Mumbai v. Ankita Sinha*, 2019 SCC OnLine SC 2094

⁶ *Standard Chartered Bank v. Dharminder Bhohi*, (2013) 15 SCC 341 : (2014) 5 SCC (Civ) 243

⁷ *Transcore v. Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116

⁸ *Rajeev Hitendra Pathak v. Achyut Kashinath Karekar*, (2011) 9 SCC 541 : (2011) 4 SCC

(Civ) 781

⁹ *Techi Tagi Tara v. Rajendra Singh Bhandari*, (2018) 11 SCC 734

¹⁰ *Prabhakar v. Sericulture Deptt.*, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149

¹¹ *T.N. Pollution Control Board v. Sterlite Industries (I) Ltd.*, (2019) 19 SCC 479

¹² *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, 1964 SCC OnLine SC 21 : (1965) 1 SCR 413 : AIR 1965 SC 745

¹³ *Halsbury's Law of England*, 3rd Edn., Vol. 9, p. 349.

¹⁴ *BSNL v. TRAI*, (2014) 3 SCC 222

¹⁵ *Wilfred J. v. Ministry of Environment & Forests*, 2014 SCC OnLine NGT 6860

* **Ed.** : Law Commission of India, 186th Report on Proposal to Constitute Environment Courts (September 2003)

¹⁶ *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577

¹⁷ Chapter IX, 186th Law Commission Report.

¹⁸ *Heydon Case*, (1584) 3 Co Rep 7a : 76 ER 637

¹⁹ *Bengal Immunity Co. Ltd. v. State of Bihar*, 1955 SCC OnLine SC 2 : (1955) 2 SCR 603 : AIR 1955 SC 661

* **Ed.** : As observed in *Heydon case*, (1584) 3 Co Rep 7a (V).

²⁰ (1947) 47 Columbia Law Review 527

²¹ *Panama Refining Co. v. Ryan*, 1935 SCC OnLine US SC 3 : 79 L Ed 446 : 293 US 388 (1935) (dissenting)

²² *Sarah Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721, *New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850

²³ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647

²⁴ *M.C. Mehta (Taj Trapezium Matter) v. Union of India*, (1997) 2 SCC 353

²⁵ *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*, (2012) 8 SCC 326

²⁶ *Mantri Techzone (P) Ltd. v. Forward Foundation*, (2019) 18 SCC 494

²⁷ *Rajeev Suri v. DDA*, (2022) 11 SCC 1

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- ²⁸ *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718
- ²⁹ *State of Meghalaya v. All Dimasa Students Union*, (2019) 8 SCC 177
- ³⁰ *L. Hirday Narain v. ITO*, (1970) 2 SCC 355
- ³¹ Gill, G., "Mapping the Power Struggles of the National Green Tribunal of India : The Rise and Fall?", *Asian Journal of Law and Society*, 7(1), 85-126 (2020).
- ³² *Paramjit Kaur v. State of Punjab*, (1999) 2 SCC 131 : 1999 SCC (Cri) 109
- ³³ *NHAI v. Aam Aadmi Lokmanch*, (2021) 11 SCC 566
- ³⁴ *State of Punjab v. Shamlal Murari*, (1976) 1 SCC 719 : 1976 SCC (L&S) 118
- ³⁵ Scott LaFranchi, "Surveying the Precautionary Principle's Ongoing Global Development : The Evolution of an Emergent Environmental Management Tool", 32 *BC Env'tl Aff L Rev* 679 (2005).
- ³⁶ See, Ronnie Harding & Elizabeth Fisher, "Introducing the Precautionary Principle" in *Perspectives on the Precautionary Principle* (1999) at p. 4.
- ³⁷ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, *S. Jagannath v. Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board v. C. Kenchappa*, (2006) 6 SCC 371.
- ³⁸ Schlosberg D., *Defining Environmental Justice : Theories, Movements, and Nature* (Oxford University Press 2009).
- ³⁹ Schiffer, L.J. & Dowling, T.J. (1997), "Reflections on the Role of the Courts in Environmental Law", 27(2) *Environmental Law* 327-342.
- ⁴⁰ Jeff Todd, "A 'Sense of Equity' in Environmental Justice Litigation", 44 *Harv Env'tl L Rev* 169, 193 (2020).
- ⁴¹ *Rural Litigation & Entitlement Kendra v. State of U.P.*, (1985) 2 SCC 431 : AIR 1985 SC 652, *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613, *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577
- ⁴² See M.A.A. Baig, *Environmental Law and Justice* (1996). Domenico Amirante, "Environmental Courts in Comparative Perspective : Preliminary Reflections on the National Green Tribunal of India" 29 : 2 *Pace Env'tl L Rev* 440 at p. 447 (2012). M.K. Ramesh, "Environmental Justice : Courts and Beyond", *Indian Journal of Env'tl Law* 20 (2002).
- ⁴³ Maheshwara Swamy, N., *Law Relating to Environmental Pollution and Protection*. India, Thompson Reuters, Vol. I, Edn. 5.

44 *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598

45 *M.C. Mehta v. Union of India*, (1987) 1 SCC 395

46 Rajamani, Lavanya, "Public Interest Environmental Litigation in India : Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability", *Journal of Environmental Law* (2007).

47 *M.C. Mehta v. Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122, *Indian Council For Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board (2) v. M.V. Nayudu*, (2001) 2 SCC 62

48 Justice T.S. Doabia, *Environmental & Pollution Laws in India*, 3rd Edn., Vol. 2 (2017).

49 *H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee*, (2021) 4 SCC 309

50 Domenico Amirante, "Environmental Courts in Comparative Perspective : Preliminary Reflections on the National Green Tribunal of India", 29 *Pace Envtl L Rev* 441 (2012).

51 Indian Network for Climate Change Assessment, *Climate Change and India : A 4x4 Assessment — A sectoral and regional analysis for 2030s*, Ministry of Environment and Forests, Government of India, 16-11-2010.

52 Secretary General's remarks at the Climate Ambition Summit, United Nations. United Nations, 12-12-2020.

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2019 SCC OnLine NGT 1327

In the National Green Tribunal⁺

(BEFORE ADARSH KUMAR GOEL, CHAIRPERSON AND RAGHUVENDRA S. RATHORE,
 JUDICIAL (MEMBER), S.P. WANGDI, JUDICIAL (MEMBER), K. RAMAKRISHNAN,
 JUDICIAL (MEMBER) AND SATYAWAN SINGH GARBYAL, EXPERT (MEMBER) AND
 NAGIN NANDA, EXPERT (MEMBER))

Lt. Col. (Retd.) Sarvadaman Singh Oberoi ...
 Applicant(s);

Versus

State of Haryana & Ors. ... Respondent(s).

Original Application No. 407/2017 (M.A. No. 779/2017 & M.A. No.
 795/2017)

Decided on March 5, 2019

ORDER

1. The issue for consideration is whether the land, measuring 52.2991 acres, in Village Sarai Khawaja, Faridabad, Haryana, bearing Khasra Nos. (73/15, 16, 24, 25), (74/11, 12, 19, 20, 21, 22), (81/4, 5, 6/1, 7, 8, 11, 12, 13, 14/1, 14/2, 15 to 25), (82/1, 4, 5 to 25), (83/5, 6, 15, 16, 25) is a forest, as per stand of the officials of Forest Department of State of Haryana and whether the contrary view taken in letters dated 24.4.2017 and 1.5.2017 by the Additional Chief Secretary (Forests) of the State is illegal, being in violation of the judgements of the Hon'ble Supreme Court in *T.N. Godavarman Thirumalpad v. Union of India*, (1997) 2 SCC 267 and *Lafarge Umiam Mining (P.) Ltd. v. Union of India*, (2011) 7 SCC 338.

2. According to the applicant, Respondent Nos. 7 and 8, Ajay Enterprises Pvt. Ltd. and Bharti Land Limited, propose to develop residential complex in the area in question is in violation of Forest (Conservation) Act, 1980. The Forest Department of State of Haryana, in several communications, acknowledged the area to be forest. Reference has been made to letter dated 13.4.2015 and 17.4.2015 from the Principal Secretary to Government of Haryana, Forest Department to the effect that status of area marked as parameters/criteria are yet to be finalized and approved by the Hon'ble Supreme Court. The status of areas marked as "Non Forest" ('N') may undergo further change when the criteria is finalized by the Ministry of Environment and Forests and adopted by the States. Letter dated 30.9.2015 from Deputy Conservator of Forests, Faridabad to Conservator of Forest, Gurgaon is to the effect that the area in question

is only category of 'yet to be decided'. Letter dated 27.11.2015 from DCF, Faridabad to Conservator of Forest Gurgaon is that the area is 'deemed forest'. In the report dated 17.8.2017 given by the Conservator of Forest (Central), Northern Region, Ministry of Environment, Forest and Climate Change (MoEF & CC), it was held that the area in question was deemed forest. In spite of the said stand of the Forest Department, a contrary view has been taken in the impugned letters issued by the Additional Chief Secretary (Forests), Government of Haryana which is based on erroneous understanding of law. It is wrongly assumed that in absence of the area being 'recorded as forest' in the revenue record, the same cannot be taken as 'forest'.

3. In its written statement, the State of Haryana has taken the stand that the land is not a recorded forest, nor notified under Section 4/5 of the Punjab Preservation Land Act (PLPA), 1900 nor there was any plantation under the Aravali project. It is further stated that judgement of the Hon'ble Supreme Court in *M.C. Mehta*, (2004) 12 SCC 118 stands distinguished in *B.S. Sandhu v. Government of India*, (2014) 12 SCC 172. The area is recorded as 'Gair Mumkin pahad' (non-cultivable hill) which does not mean 'forest'. Notification No. S.O. 319 (F) dated 7.5.1992 (commonly referred to as Aravalli Notification) is not applicable herein as the area is not in Gurgaon or Alwar Districts. In Survey of India Map, 1976, only two trees are shown on the land. An Expert Committee was constituted by the State of Haryana, in pursuance of directions in *T.N. Godavarman (Supra)*, which identified reserve forest, protected forest, un-classed forest areas notified under section 4 and/or 5 of the Punjab Land Preservation Act, 1900 and the present land was not covered in the report of the Expert Committee which was filed by the State of Haryana vide affidavit dated 25.2.1997. In view of the mandate of judgement in *Lafarge*, (Supra), requirement to include representative of the State Forest Department in the Expert Appraisal Committee arises only if there is a doubt that the status of land is 'non-forest'. In the present case, there is no such doubt. Therefore, it became necessary to issue directions to the Divisional Forest Officer to permit felling of trees in favour of the project proponent. The status of the land is to be seen as on 25.10.1980, the date of enactment of Forest (Conservation) Act, 1980. Criteria for deemed forest is pending finalization. NCZ does not fall within domain of Forest Department and forest laws are inapplicable to regulate the provisions of NCZ.

4. The stand of the project proponent is also on the same lines as that of the State Government.

5. Vide order dated 18.9.2018, after referring to the meeting of the National Capital Region Planning Board dated 20.12.2016, requiring the State to identify 'forest' and prepare geo-reference maps in terms of

directions in *Lafarge* (Supra), the Tribunal directed MoEF & CC to finalize the pending matter and also the State of Haryana to furnish its inputs.

6. An additional affidavit has been filed by MoEF & CC on 15.2.2019 which, *inter-alia*, annexes the Enquiry Report of their own Conservator of Forest (Central), Northern Regional office dated 17.8.2017 and letters of Government of Haryana dated 20.8.2018 and 16.1.2019 which are contrary to the report dated 17.8.2017.

7. We have heard learned counsel for the parties and have given our thoughtful consideration to the matter.

8. Contention on behalf of the applicant is that the stand of the State of Haryana, with which the MoEF & CC has agreed, that the land in question is 'non-forest land' for purposes of Forest (Conservation Act), 1980 is untenable in law. Letters of the Forest Department dated 8.11.2006 and 10.1.2014 are also based on erroneous understanding of law as shown by the Enquiry Report dated 17.8.2017. The test to be applied is not whether the area is recorded as forest in the revenue record but whether the area is to be so treated by the Forest Department in terms of the dictionary meaning. Applying this test, the Forest Department has always treated the land as 'deemed forest'. Moreover, status of the land is to be seen not only on the date of enactment of Forest (Conservation) Act, 1980 but also with reference to the subsequent period, as held in *M.C. Mehta v. Union of India: In re: Kant Enclave matters*, 2018 SCC online SC 1426. Area is to be treated as Aravalli for purpose of NCZ. Therefore, Regional Plan, 2021 of NCRPB would be applicable where only 0.5% construction is permitted restricted to regional recreational activities. The project is also in contravention of Regional Plan, 2021.

9. To determine the question, it will be appropriate to refer to the factual aspects, as recorded in the Enquiry Report dated 17.8.2017 submitted by Conservator of Forests (Central), Northern Regional office to the DIG in the MoEF & CC (Annexure R-II on record). Relevant paras of the report are as follows:

"6. Findings: After hearing all the stakeholders, perusing the documents so collected including court orders and working plan prescriptions, the facts in the matter are narrated as under:

i. The whole issue is found to be revolving around defining 'forest' by dictionary meaning. In compliance to Hon'ble Supreme Court order dated 12.12.1996 in the Writ Petition (civil) No. 202/1995 in the matter of T.N. Godavarman v. Union of India and order dated 06.07.2011 in Lafarge case, the Ministry of Environment, Forests & Climate Change, New Delhi initiated a consultation process in the PCCF's meeting, held in New Delhi

on 25th August, 2014, in which it was reiterated that the state of Haryana has not formulated parameters to classify an area as "forest" by dictionary meaning so far. The process of defining 'forest' by dictionary meaning is still inconclusive in the state of Haryana.

- ii. During the enquiry, the State Govt. Haryana could not produce any record showing conclusive action on defining the 'forest' by dictionary meaning in the State till date.
- iii. During the course of enquiry, it was gathered that the process of delineation of various components of NCZ in Haryana to identify forest areas of about 50,000 acres in Haryana Sub Division is still inconclusive.
- iv. The decision taken in the meeting dated 03.03.2017, held at Chandigarh under the chairmanship of Chief Secretary, Haryana, "it was recommended to include any area in old Gurgaon District as per Notification dated 07.05.1992 as 'Aravali Range' and so part of confirmed NCZ. The justification given for this is that in some cases the use of land covered in the Aravali notification in Gurugram district has undergone change subsequently and as per ground report such land is being used for agricultural purposes and under roads and even some cases, the construction is existing on such lands."
- v. The decision dated 03.03.2017 is in contradiction of the NCR Planning Board meeting (35th) dated 09.06.2015 and 20.12.2016 vide which the Chief Secretary, while referring to the statement given by the Chief Minister, Haryana relating to maintaining status quo on the identified 'forest' of about 50,000 acres in Haryana Sub-region, stated that Govt. of Haryana is committed to maintain these areas as they are at present till the definition of forest' is finalized and noted that the Notification dated 7th May, 1992 issued by the MoEF&CC defines "specified areas" of the Aravali Range in Gurgaon district of the State of Haryana and Alwar District of the State of Rajasthan (as on the date of notification). These 'specified areas' are to be included while identifying/delineating 'Aravali in entire NCR."
- vi. Hon'ble Supreme Court judgement dated 6th July, 2011 in *Lafarge Umiam Mining Private Ltd. and T.N. Godavarman v. Union of India* in IAs No. 1868, 2091, 2225-2027, 2380, 2568 and 2937 in WP (C) No. 202 of 1995 with Transfer Petition (C) No. 277 of 2010 (iii) if the project proponent makes a claim regarding status of the land being non-forest and if there is any doubt, the site shall be inspected by the State Forest

Department along with the regional office of MoEF to ascertain the status of forests, based on which the certificate in this regard be issued. In all such cases, it would be desirable for the representative of the State Forest Department to assess the expert Appraisal Committee.

- vii. *The PCCF, Haryana vide office order dated 20.06.2017 (Annexure-XXVII), constituted a committee in compliance to the Addy. Chief Secretary (Forests) letter dated 24.04.2017 to sort out the difference in opinion regarding presence of vegetation cover in the land belonging to Bharti Land Ltd. However, there is no mention of any representation of MoEF&CC in the committee as mandated by the Lafarge judgement. The State Forest Department could not produce any record of visit of this committee to the disputed area.*
- viii. *The explanatory note of Prl. Secy. (Forests) letter dated 17.04.2015 addressed to PCCF, Haryana, mentions that "Ministry of Environment, Forests and Climate Change. Govt. of India is in the process of formulating parameters/criteria for identification of area as forest by dictionary meaning in pursuance of the directions of the Hon'ble Supreme Court dated 12.12.1996 in T.N. Godavarman v. Union of India in WP (Civil) No. 202 of 1995. The parameters/criteria are yet to be finalized and approved by the Hon'ble Supreme Court. The status of areas marked as "Status yet to be decided" will be determined when the criteria/parameters for identification of an area on forest by dictionary meaning are finalized by MoEF&CC.*
- ix. *In OA No. 269/2013 Haryali Welfare Society v. Union of India, Hon'ble NGT vide order dated 20.07.2015 (Annexure-XXVIII) directed that respondent no. 2 (the State), respondent No. 3 (the Directorate of Town and Country Planning) and respondent No. 4 (Department of Forest) shall ascertain and verify whether the land in respect of which they propose to pass any order or direction has been identified as forest or not as aforesaid and shall not pass any order or direction in contravention of Forest (Conservation) Act, 1980.*
- x. *In spite of directions contained in the order dated 20.07.2015 in Haryali Welfare Society case in OA No. 269/2013, and directions contained in the explanatory note dated 17.04.2015 of Prl. Secy. (Forests), Govt. of Haryana, the clear felling of trees has been accorded, which should not have been avoided.*
- xi. *As per felling permission dated 23.06.2017, about 38941 no. of plants and trees existed on spot, indicating that 1846 no, of trees-existed per ha (as against 1000 trees per ha are planted on a blank area). The density has been very high. If only root*

stock is counted, about 7843 root stocks were enumerated, being 372 per hectare. This depicts that the land in question had moderate to dense vegetation. As per vegetation status, the stand of Haryana Forest Department to treat this land as deemed forest seems to be justified.

- xii. There is violation of EC Part 'A' Specific Condition No. 26 by the Project Proponent, which, inter-alia, states that "The project Proponent shall not cut any existing tree and project landscaping plan should be modified to include those trees in green area. The project proponent, while applying/requesting felling of about 1000 mesquite bushes, has deliberately mislead the State Govt. by ignoring the above referred condition. The project proponent has also violated Part - "B" General Condition (xiv) which stipulates "The project proponent is responsible for compliance of all conditions in Environmental Clearance letter and project proponent cannot absolve himself/herself of the responsible by shifting it to any contractor engaged by project proponent".*
- xiii. The letter dated 24.4.2017 of Addl. Chief Secretary (Forests) directed the PCCF that "Since this area does not constitute forest component of NCZ as per the decision taken by NCR Planning on 20.12.2016, you are directed to accord necessary approval for felling of mesquite trees to the applicant as per the provisions of the PLPA 1900." The PCCF was further directed vide letter dated 01.05.2017 of Addl. Chief Secretary (Forests) that "there will no NCZ forest category of 'status yet to be decided'."*

However, no such decision is recorded in the said minutes dated 20.12.2016 of the NCRPB. On the contrary, it records "it was concluded that these specified areas are to be included while identifying/delineating Aravallis in entire NCR". The term specified areas refers to the Aravalli Notification dated 7th May, 1992 and they include:—

- i. Gair Mumkin Pahar.*
- ii. Gair Mumkin Rada.*
- iii. Gair Mumkin Behed.*
- iv. Banjad Beed.*
- v. Rundh.*

The land in question is recorded in the Jamabandi as 'Gair Mumkin Pahar' and thus clearly a part of the Aravali and thus would automatically be part of NCZ. This has been the view of the MoF&CC before the NCRPB. In fact, the district level committee duly constituted by Govt. of Haryana itself correctly delineated the said

land under forest 'yet to be decided' category of NCZ. Thus, the letter granting felling permission on the above reasoning is legally incorrect.

xiv. The MoEF&CC, GoI letter F. No. 1-48/2012-FC (pt) dated 23.09.2014 clearly directs as under:

".....while delineating the various components of NCZ, it may kindly be ensured that subject to final acceptance of the Hon'ble Supreme court, areas as per decision taken in a meeting of the PCCFs held under the chairmanship of DGF&SS in this Ministry on 25th August 2014 shall mandatorily be treated as forest.....".

As forests are listed under 17A of the distribution of in the concurrent list of the Constitution of India, the directions of the Central Government will prevail.

Moreover, the maps prepared by the FSI, clearly list the said land under 'open' and 'scrub' forests. These would constitute legally valid government records and therefore the said land would therefore be a forest as per dictionary meaning in line with the directions of the Apex Court in the Godavarman case as directed below:

"...The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership."

The said land is thus a forest as per dictionary meaning.

xv. The Apex Court in the Lafarge Case clearly directed that in the event of a dispute regarding the status of a piece of land as forest/non-forest, a committee constituted by the PCCF with representation from the Regional Office of the MoEF& CC would examine and determine the same. In the words of the Court, this was necessary to prevent new cases or diversion of forest lands as a fait accompli'.

In the present case, the State Forest Department is categorical in classifying the said land as a deemed forest. It cannot be denied that a dispute exists as to the status of the area. In such a case, the directions of the Apex Court in the Lafarge judgement should have been followed to prevent fait accompli'."

10. Contrary to the above, the stand taken in the impugned letters and letters of the Government of Haryana dated 20.8.2018 and 16.1.2019 is as follows;

"3. In this matter, the Haryana Forest Department has clarified the following and this Government endorses the same:

i. That the area it question measuring 66.49 acres falling it the revenue estate of village Sarai Khwaja is not recorded either as Protected or Reserved or any such other definition that makes

it a forest or forest land otherwise:

ii. That the area to question happens not to be closed under special order notified under section 4 and 5 of the Punjab Land Preservation Act, 1900 (PLPA) making it to be regulated as per the existing dispensation of the prevailing law, as forest land (for this purpose the clarificatory order passed by the Hon'ble High Court of Punjab & Haryana dated 4th September, 2009 in CM 12170 of 2009 in CWP No. 20134 of 2004 is appended to this letter as Annexure-A which in the para of relevance read as and clarify that only those lands/areas forming part of notification issued under Section 3 of the PLPA 1900 in respect of which restrictions against breaking up or cultivation have been imposed under Sections 4 [a] or 5 [a] of the said Act, are declared as 'forest lands' for the purposes of Indian Forest Act and Forest (Conservation) Act, 1980, and the said area shall not be used for non-forest purposes....' '(emphasis added)'. It is relevant to emphasize it is only by way of notifying through special order under section 4 and 5 of the PLPA that the restrictions under 4[a] or 5 [a] is invoked to be imposed. Further, under notified area through such special order only about 30.490 Hectares i.e. about 305 sq. km. of land (forming a part of about 0.7% of the geographical area of Haryana) happen to be included as on this date.

iii. That the area in question is included under the notification made under general order under section 4 of the PLPA (the relevant notification is appended as appended as Annexure B to this letter). The only restriction under the dispensation of these orders happens to be as summarized below:

'.....Governor of Haryana hereby prohibits the following act....'

The cutting of trees of timber except eucalyptus and popular or collection '—provided that the owner of the land may sell the trees and timber after obtaining a permit to do so from the Divisional Forest Officer of the concerned Division.....'

iv. It is pertinent to mention that in Haryana there is no "Tree Act and, further, these restrictions facilitate the mechanism to regulate the felling of trees.

v. It is also, further pertinent to mention that in the absence of Tree Act, the General Order restriction (under PLPA) on felling of Trees without obtaining the prior permission extends over an area of about 10.89,800 Hectares which accounts for about 24% of the geographical area of Haryana (about 8 out of 22 districts). Such an extended expanse of area, that includes a vast proportion of privately owned area, can never be brought

indirectly under the purview of the rigors of the Forest and related laws.

vi. That the areas regulated under the General Order under section 4 of the PLPA under these circumstances, were never a part or any land regulated or considered as 'Forest Land'.

4. Further to it, the land in question is neither a part of Aravali Plantation Project nor of Aravali Notification.

5. Under these circumstances, it is reiterated that, beyond the scope of any doubt, the land in question is not a 'Forest Land' for the purposes of any Forest related law, including the Forest (Conservation) Act, 1980."

11. Thus, it is obvious that while the area is not covered under Section 4 and 5 of the PLPA Act, nor recorded as forest nor may be forest on the date of enactment of Forest (Conservation) Act, 1980. It is also undisputed that in maps prepared by the FSI lists, the area is shown as 'open' and 'scrub' forests, as noted in para xi and xiv of the Enquiry Report of the Northern Regional office of MoEF & CC dated 17.8.2017 submitted to DIG of MoEF & CC. Thus, the stand of the Forest Department is consistent with the judgements of the Hon'ble Supreme Court and contrary stand is not valid.

12. As already noted, the test to be applied to determine whether the area is forest area or not has been laid down in *T.N. Godavarman* (Supra) as follows:

"4. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof."

13. The above view has been reiterated in *Lafarge* (Supra) as follows:

"89. By an order dated 12-12-1996 by a Division Bench of this Court in Writ Petition (C) No. 202 of 1995 with another in T.N. Godavarman Thirumulpad v. Union of India, this Court directed each State Government to constitute within a specific period an Expert Committee to identify areas which are forests irrespective of whether they are so notified, recognised or classified under any law and also

identify areas which were earlier forests but stand degraded, denuded or cleared. The Committee was to be headed by the Principal Chief Conservator of Forests. This order dated 12-12-1996, thus, clarified that every State Government seeking prior approval under Section 2 of the 1980 Act shall first examine the question relating to existence of forests before sending its proposal to the Central Government in terms of the form prescribed under the Forest (Conservation) Rules, 1981 (see Rule 4). Thus, the requirement of submitting the proposal for forest diversion under the 1980 Act is exclusively the obligation of the State Government."

14. In view of above, the stand of the State of Haryana that land was not recorded as forest land and has to be taken as non-forest on that ground is erroneous in law. Moreover, as clarified in *M.C. Mehta v. Union of India: In re: Kant Enclave* (Supra), status of the land is to be seen not only on the date of enactment of Forest (Conservation) Act, 1980 but also with reference to subsequent status.

15. We may also observe that MoEF & CC has mechanically upheld the stand of Haryana ignoring the Enquiry Report of the Northern Regional office of MoEF & CC dated 17.8.2017 itself. If such an Enquiry Report was to be disagreed, it was necessary for MoEF & CC to have given its reasons. The Enquiry Report was based on valid factual and legal basis which have been brushed aside in agreeing with the erroneous view of the State of Haryana.

16. It is difficult to uphold the stand of the State of Haryana with which MoEF & CC has agreed that the area in question is not a forest area. Once it is so, mere fact that the area is included in part of Sector 47 in the Master Plan is not conclusive to hold the same to be not covered by the definition of 'forest' in terms of law laid down by the Hon'ble Supreme Court in *Godavarman and Lafarge* (Supra).

17. The land in question is, thus, held to be 'deemed forest'.

The Original Application stands disposed of accordingly.

† Principal Bench, New Delhi

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(2022) 4 Supreme Court Cases 289 : 2021 SCC OnLine SC 1147

In the Supreme Court of India

(BEFORE L. NAGESWARA RAO, B.R. GAVAI AND B.V. NAGARATHNA, JJ.)

T.N. GODAVARMAN THIRUMULPAD, IN RE . .

Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

IAs Nos. 169030 of 2019 and 105674 of 2020 in WP (C) No. 202 of 1995[†] with IAs Nos. 142873, 142876 and 144462 of 2021 in IA No. 105674 of 2020 in WP (C) No. 202 of 1995, decided on November 29, 2021

A. Environment Law — Precautionary Principle/Sustainable Development/Inter-Generational Equity Principle — Delhi Metro — Providing effective transportation vis-à-vis ecology — Phase IV of MRTS Project — Earlier phases of project had already resulted in loss of vegetation as well as flora and fauna in certain areas — Phase IV of MRTS Project may be a further threat to the ecology of NCT of Delhi/NCR


— Precautionary principle as well as principle of sustainable development — Effectuation of, by ensuring citizens' participation in the preservation of the environment and ecology — Reafforestation — Plan of action — Role, involvement and collective responsibility of civil society without ignoring importance of governmental responsibility — Directions issued

— Irrespective of and de hors the decision to be taken by the departments concerned, GNCTD as well as DMRC directed to conceive a plan of action for the purpose of planting trees in the NCT of Delhi — For that purpose, GNCTD may involve school and college students, educational institutions, non-governmental organisations, Citizen Welfare Associations, public servants and every citizen or person who is interested in the ecology of NCT of Delhi to plant trees/saplings and ensure that they are nurtured and protected so that the NCT of Delhi would in passage of time have more greenery leading to afforestation

— Such a plan of action should be in consultation with the Public Works Department, Education Department and such other departments which will involve themselves in ensuring the planting of saplings and trees in NCT of Delhi — Such a plan of action be conceived and the same be placed on record before the Court expeditiously

— Civil society must be placed with the responsibility to carry out reafforestation activities — Engagement, inclusion and participation of citizens and community-level actors will contribute in a significant manner to

achieving the economic, social and environmental pillars of the sustainable development agenda — Citizens, as the ultimate beneficiaries of development, have a critical role to play, not just in terms of effort and action towards the achievement of the environmental goals but also in terms of the associated monitoring of the progress towards these goals

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— The main consideration is making available a transport facility to the public at large in NCR of Delhi in the form of metro rail while at the same time, preserving the ecology and environment of the areas surrounding the alignment of the metro railway

— However, there is a grave and pressing problem of India and world about degradation of environment and ecology — Concern expressed over global environmental degradation resulting in extinction of certain flora and fauna and its cascading effect on planet Earth owing to man's growing need for development particularly economic development — Environment Law — Convention on Human Environment, 1972 — Rio Declaration of the UN Conference on Environment and Development, 1992 — Earth Summit, 1997
(Paras 21 to 33, 43 to 47 and 48.9)

B. Environment Law — Forest (Conservation) Act, 1980 — S. 2 — “Forest land” — Meaning and scope of — Mandatory prior approval of Central Government for any non-forest activity in “forest land” — Felling of trees in forest land and outside forest land — Statutes that require compliance

— Clarified, “forest land”, occurring in S. 2 of the FC Act, 1980 not only includes “forest” as understood in the dictionary sense but also any area recorded as forest in government records irrespective of the ownership or classification thereof — Prior approval of the Central Government under FC Act, 1980 is mandatorily required for any non-forest activity within the area of any “forest” or “forest land”


— However, in the present case concerning Phase IV of Mass Rapid Transportation Systems (MRTS) Project in Delhi Ridge Area, if there is a need for felling of trees outside any forest area then the provisions of the Delhi Preservation of Trees Act, 1994 (the 1994 DPT Act) have to be complied with — 1994 DPT Act regulates felling of trees falling outside the notified forests and deemed forests — Under this Act, the user agency has to bear the cost of raising and maintenance of ten times the number of trees to be felled

— 77,777 ha of project land is notified forests, serves as green lungs for Delhi and acts as a buffer against rising pollution level — Hence, as per report of Central Empowered Committee (CEC) these areas have to be

conserved with utmost care and should be afforested with indigenous species with minimum of artificial landscape – See also Shortnote B on involvement of civil society in afforestation programmes – Delhi Preservation of Trees Act, 1994 (11 of 1994) – Words and Phrases – “Forest”, “forest land”

(Paras 34 to 48)

C. Environment Law – Environmental Clearance/NOC/Environment Impact Assessment – Development Projects – Delhi Metro – Phase IV of Mass Rapid Transportation Systems (MRTS) Project in Delhi Ridge Area – Involvement of both forest and non-forest land of Delhi Ridge Area (the green belt of Delhi) – Statutory clearances and compliance with project conditions – Directions and clarifications issued

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– For any non-forest activity in “forest land” prior approval of Central Government is necessary – Hence, Delhi Metro Rail Corporation (DMRC) directed to file applications seeking permission under S. 2 of the FC Act, 1980 for diversion of any “forest land” (see also Shortnote B) – Authorities and Government directed to process the applications expeditiously

– If there is a need for felling of trees outside any forest area, then the provisions of the Delhi Preservation of Trees Act, 1994 have to be complied with – For felling trees in Delhi Ridge Areas, DMRC directed to file an application before the Ridge Management Board (RMB) so as to seek necessary permission for diversion of such Ridge Areas concerned for the purpose of Phase IV of the MRTS Project passing through the said areas – Authorities and Government directed to process the applications expeditiously

– DMRC further directed to comply with all other conditions imposed by the RMB – Authorities directed to keep in mind statutory scheme and guidelines and parameters prescribed by MoEFCC and Central Government – National Green Tribunal Act, 2010 – S. 16(e) – Forest Act, 1927 – S. 4 – Tenancy and Land Laws – Delhi Land Reforms Act, 1954 (8 of 1954), S. 154

(Paras 34 to 48)

Held :

To meaningfully arrest the problem of declining tree cover, civil society must also be placed with the responsibility to carry out reforestation activities. While the Court cannot ignore the importance of governmental responsibility in materialising the goals of sustainable development through reforestation, the Court strongly

endorse the idea of collective responsibility towards ensuring a sustainable future. The engagement, inclusion and participation of citizens and perhaps more significantly, the ownership of the sustainable development agenda by empowered citizens and community-level actors will contribute in a significant manner to achieving the economic, social and environmental pillars of the sustainable development agenda.

(Para 32)

Citizens, as the ultimate beneficiaries of development, have a critical role to play, not just in terms of effort and action towards the achievement of the environmental goals but also in terms of the associated monitoring of the progress towards these goals.

(Para 33)

The term "forest land", occurring in Section 2 of the FC Act, 1980, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the FC Act, 1980. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. In view of the meaning of the word "forest" in the FC Act, 1980, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest".

(Paras 34 to 38)

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Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority, (1997) 11 SCC 605, *relied on*

T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267; *Ambica Quarry Works v. State of Gujarat*, (1987) 1 SCC 213; *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504, *affirmed*

State of Bihar v. Banshi Ram Modi, (1985) 3 SCC 643, *clarified*

T.N. Godavarman Thirumulpad v. Union of Union, (2013) 8 SCC 200, *referred to*

On the other hand, the Delhi Preservation of Trees Act, 1994 regulates the felling of trees falling outside the notified forests and deemed forests. Under this Act, the user agency has to bear the cost of raising and maintenance of ten times the number of trees to be felled.

(Para 39)

Ashok Kumar Tanwar v. Union of India, 2011 SCC OnLine Del 5733, *approved*

Irrespective of and de hors the decision to be taken by the departments

concerned with regard to the recommendations made by CEC in the aforesaid Report Nos. 8 and 10, since the citizens of NCT of Delhi have had and would continue to have the facility of the metro rail, the GNCTD as well as DMRC are directed to conceive a plan of action for the purpose of planting trees in the NCT of Delhi. For that purpose, GNCTD may involve school and college students, educational institutions, non-governmental organisations, Citizen Welfare Associations, public servants and every citizen or person who is interested in the ecology of NCT of Delhi to plant trees/saplings and ensure that they are nurtured and protected so that the NCT of Delhi would in passage of time have more greenery leading to afforestation.

(Para 48)

The aforesaid direction is issued having regard to the precautionary principle as well as principle of sustainable development by ensuring citizens' participation in the preservation of the environment and ecology. It is needless to observe that such a plan of action would be conceived by the Department of Forests and Environment of NCT of Delhi in consultation with the Public Works Department, Education Department and such other departments who will involve themselves in ensuring the planting of saplings and trees in NCT of Delhi. Such a plan of action be conceived and the same be placed on record before the Supreme Court within a period of twelve weeks for consideration of the Supreme Court.

(Para 48.9)

T.N. Godavarman Thirumulpad, In re v. Union of India, 2021 SCC OnLine SC 1304; *M.C. Mehta v. Union of India*, (2022) 4 SCC 317; *M.C. Mehta v. Union of India*, IA Nos. 18 and 22 in WP No. 4677 of 1985, order dated 25-1-1996 (SC); *M.C. Mehta v. Union of India*, IA Nos. 18 and 22 in WP No. 4677 of 1985, order dated 13-3-1996 (SC); *M.C. Mehta v. Union of India*, IA No. 2030 in WP (C) No. 4677 of 1985, order dated 23-3-2007 (SC); *T.N. Godavarman Thirumulpad v. Union of India*, (2012) 13 SCC 438; *T.N. Godavarman Thirumulpad v. Union of India*, (2013) 8 SCC 228, referred to

Lafarge Umiyam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338; *Milind Pariwakam v. Union of India*, 2015 SCC OnLine NGT 845; *Vimal Bhai v. Union of India*, 2012 SCC OnLine NGT 77, cited

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By Court's Motion;

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1. (2022) 4 SCC 317, *M.C. Mehta v. Union of India* 300c, 305f-g
 2. 2021 SCC OnLine SC 1304, *T.N. Godavarman Thirumulpad, In re v. Union of India* 295f-g, 297d-e, 299d-e, 302g
 3. 2015 SCC OnLine NGT 845, *Milind Pariwakam v. Union of India* 298e-f
 4. (2013) 8 SCC 228, *T.N. Godavarman Thirumulpad v. Union of India* 305f-g
 5. (2013) 8 SCC 200, *T.N. Godavarman Thirumulpad v. Union of Union* 309g
 6. (2012) 13 SCC 438, *T.N. Godavarman Thirumulpad v. Union of India* 305d-e
 7. 2012 SCC OnLine NGT 77, *Vimal Bhai v. Union of India* 298f
 8. (2011) 7 SCC 338, *Lafarge Umiam Mining (P) Ltd. v. Union of India* 297f-g
 9. 2011 SCC OnLine Del 5733, *Ashok Kumar Tanwar v. Union of India* 305e, 315b
 10. IA No. 2030 in WP (C) No. 4677 of 1985, order dated 23-3-2007 (SC), *M.C. Mehta v. Union of India* 305c-d
 11. (1997) 11 SCC 605, *Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority* 312c
 12. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad v. Union of India* 311f, 313d-e, 314e
 13. IA Nos. 18 and 22 in WP No. 4677 of 1985, order

dated 13-3-1996 (SC), <i>M.C. Mehta v. Union of India</i>	304e-f
14. IA Nos. 18 and 22 in WP No. 4677 of 1985, order dated 25-1-1996 (SC), <i>M.C. Mehta v. Union of India</i>	304e-f
15. 1989 Supp (1) SCC 504, <i>Rural Litigation and Entitlement Kendra v. State of U.P.</i>	312c
16. (1987) 1 SCC 213, <i>Ambica Quarry Works v. State of Gujarat</i>	312b-c
17. (1985) 3 SCC 643, <i>State of Bihar v. Banshi Ram Modi</i>	312c-d

The Order of the Court was delivered by

B.V. NAGARATHNA, J.—

*IA*s Nos. 169030 of 2019 & 105674 of 2020 in Writ Petition (C) No. 202 of 1995 with *IA*s Nos. 142873, 142876 & 144462 of 2021 in *IA* No. 105674 of 2020 in Writ Petition (C) No. 202 of 1995

1. Heard Shri Tushar Mehta, learned Solicitor General appearing for the Union of India and Delhi Metro Rail Corporation Ltd.; Shri Chirag M. Shroff, learned counsel appearing for the Government of National Capital Territory of Delhi (for short "the GNCTD"), and Shri Rajiv Dutta, learned Senior Counsel appearing for the applicants and perused the material on record.

2. *IA*s Nos. 169029 and 169030 of 2019 have been filed by the applicant viz. Delhi Metro Rail Corporation Ltd. (for short "the DMRC").

3. By order dated 2-2-2021¹, *IA* No. 169029 of 2019 for impleadment was allowed and the applicant DMRC was impleaded as party-respondent in the matter for the purpose of passing orders on *IA* No. 169030 of 2019.

4. The following prayers are sought in *IA* No. 169030 of 2019:

4.1. (a) Refer the matter to the Central Empowered Committee appointed by this Hon'ble Court for detailed consideration and examination of the proposal of the applicant for construction of metro alignment, tunnels and

metro station forming part of 22.34 km Aerocity — Tughlakabad Metro Corridor, being proposed for construction for Phase IV of the MRTS Project on South Central/Morphological Ridge as enclosed in Annexure P -1.

4.2. (b) Allow the applicant for carrying out the aforesaid alignment, tunnelling/station/shaft construction activity, in the South Central/Morphological Ridge for construction of the tunnels and Metro Corridor forming part of 22.34 km Aerocity — Tughlakabad Metro Corridor being proposed for construction for Phase IV of the MRTS Project, under the supervision of the Ridge Management Board.

4.3. (c) Pass such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

5. IA No. 105674 of 2020 has been filed by the applicant DMRC seeking the following prayers:

5.1. (i) Allow the instant application, by declaring : (1) the 5.34 km stretch on Road No. 26 between Vikaspuri to Peeragarhi; (2) 1288.973 sq m land at Najafgarh drain, (3) area admeasuring 16097.75 sq m land located at Mangolpuri, and (4) area admeasuring 55.78 sq m at Krishna Park are non-forest areas and there is no requirement for the applicant to obtain permission for diversion of these lands as forest land under the Forest (Conservation) Act, 1980.

5.2. (ii) Permit the applicant to carry out the construction activities of Phase IV of Delhi Mass Rapid Transit System Project on the locations referred to in Prayer 5.1(i) above, without any restrictions in the larger interest of the Project.

5.3. (iii) Pass such other order as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the case.

6. IA No. 144462 of 2021 has been filed by the GNCTD seeking permission to file the additional documents in IA No. 105674 of 2020. The said application contains:

6.1. Report of Deputy Conservator of Forests, West Forest Division, GNCTD, on DMRC proposal for construction of corridor from Janakpuri to Derawal Nagar, Delhi (Annexure A-1).

6.2. Copy of submissions of GNCTD dated 24-2-2021 in the matter of *DMRC and P.C. Prasad v. Union of India* (Annexure A-2).

6.3. Minutes of Meeting of the Ridge Management Board (for short "the RMB") dated 5-3-2021 (Annexure A-3) in which Agenda Item No. 8 is relevant which is concerning the construction of metro line (Aerocity—Tughlakabad Corridor) of Delhi Mass Rapid Transit System (for short "the MRTS") Project Phase IV.

6.4. The RMB has noted that the DMRC has submitted the proposal

for use of forest land for construction of metro line, stations and other operational requirement of Delhi MRTS Project Phase IV. The length of alignment falling under Southern Ridge, South Central Ridge and Morphological Ridge is 2.844



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km, 1.491 km and 3.774 km respectively, giving further details of the exact location of the railway alignment in the forest land of the Ridges referred to above.

6.5. It is also noted that 1109 trees are proposed to be felled in certain parts of the Southern Ridge, South Central Ridge and Morphological Ridge. Since the Central Empowered Committee (for the sake of convenience hereinafter referred to as "CEC") is visiting the entire railway alignment, the consideration of the matter was deferred.

6.6. Submissions of GNCTD dated 29-5-2021 through the Department of Forests & Wildlife, GNCTD and in the matter of DMRC is at Annexure A-4.

6.7. The reply of GNCTD dated 29-5-2021 to CEC is at Annexure A-5 in IA No. 144462 of 2021.

6.8. The affidavit of the Conservator of Forests, GNCTD, dated 15-9-1997 filed before this Court is at Annexure A-6. The said affidavit is accompanied by nine annexures giving the details of protected forest, forest land and plantation areas under the management of Department of Forests, GNCTD.

7. IAs Nos. 142873 and 142876 of 2021 have been filed by the applicants in IA No. 105674 of 2020 who have prayed for intervention/impleadment as party-respondents and have also sought appropriate directions for accepting and allowing the bona fide objections filed by the applicants and for rejecting Report No. 8 of 2021 dated 13-5-2021 filed by CEC in terms of the order dated 2-2-2021¹ passed by this Court in IA No. 105674 of 2020 along with other directions sought in the prayer of the instant IA No. 142876 of 2021.

8. In IA No. 142876 of 2021, the applicants viz. Dr P.C. Prasad and Aditya N. Prasad have filed their objections to Report No. 8 of 2021 dated 13-5-2021 in IA No. 105674 of 2020 and contended that the aforesaid application(s) filed by the DMRC is not maintainable as this Court cannot grant a declaration that certain areas are non-forest areas in the National Capital Territory of Delhi (for short "the NCT of Delhi").

9. It is averred that DMRC ought to have approached the Regional Office of the Ministry of Environment, Forest & Climate Change (for

short "the MoEF&CC"), Government of India (for short "the GoI"), as per the Guidelines laid down by this Court in *Lafarge Umiam Mining (P) Ltd. v. Union of India*²; that DMRC has directly approached this Court seeking a declaration without first approaching the MoEF&CC, GoI; that in fact, DMRC has already addressed letter dated 25-8-2020 to the Deputy Conservator of Forests (West Forest Division), GNCTD, informing that it is in the process of applying for permission to use various land for the purpose of project as per the FC Act, 1980; that DMRC has undertaken that in case diversion of forest land is denied it would realign through the alternative route. A copy of the said letter is produced as Annexure 17 in IA No. 105674 of 2020.



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10. Objections have also been raised to CEC Report No. 8/2021 filed in IA No. 105674 of 2020 by the aforesaid applicants in IA No. 142876 of 2021 which are summarised as under:

10.1. That none of their submissions raised before CEC has been recorded nor referred to in the said Report.

10.2. The Chief Wildlife Warden and the Tree Officer(s) concerned were not invited for the hearing nor have comments been sought from the said officers by CEC.

10.3. It is stated that majority of the areas where DMRC is proposing to construct have been identified as "deemed forest" areas in the affidavit dated 15-9-1997 submitted by the Conservator of Forests, GNCTD, before this Court in this very matter.

10.4. The metro line cannot be allowed to be constructed bypassing the requirement of obtaining forest clearance under the Forest (Conservation) Act, 1980 (for short "the FC Act, 1980").

10.5. DMRC has to follow the statutory scheme of the FC Act, 1980 before any forest land is diverted for non-forest use. The statutory scheme under the said Act has been highlighted as under:

10.5.1. The officers of the Forest Department have to fill out the form under Section 2 of the FC Act, 1980 providing details of the project sought to be constructed on forest land, a cost-benefit analysis as well as alternatives examined with detailed recommendations accepting or rejecting the proposal.

10.5.2. Then the proposal has to be placed before the Regional Empowered Committee which looks at all linear projects including the metro in the present case.

10.5.3. The Regional Empowered Committee has to recommend the project and grant Stage I approval (in-principle approval).

10.5.4. Thereafter, as per the decision of the National Green Tribunal in *Milind Pariwakam v. Union of India*³, an order of the State Government under Section 2 of the FC Act, 1980 has to be passed after the Stage I clearance, before any non-forest activity can be carried out on forest land.

10.5.5. The National Green Tribunal in *Vimal Bhai v. Union of India*⁴ has held that the order under Section 2 is appealable under Section 16 (e) of the National Green Tribunal Act, 2010 and no party can be left remediless which is why the State Government order under Section 2 is a pre-requisite before any action is taken.

10.5.6. Para 1.14 of the Guidelines issued under the Forest (Conservation) Rules, 2003 (for short "the FC Rules, 2003") states that where projects involve both forest and non-forest lands, works should not be started on non-forest land till approval of the Central Government for release of forest land under the Act has been obtained unless and to the extent permitted by the Rules or guidelines issued thereunder.



10.6. It is also stated that the construction of Phase IV of MRTS Project cannot be permitted unless a critical study is carried out under the Delhi Preservation of Trees Act, 1994 (for short "the 1994 DPT Act") before felling of trees.

10.7. CEC has ignored in its report that "Najafgarh drain basin" in New Delhi has been identified as a critically polluted area by the Central Pollution Control Board ("CPCB") in the Comprehensive Environment Pollution Index (CEPI) Report, 2009.

10.8. It is also stated that ambient air quality in respect of noise has also to be taken into consideration.

10.9. The objections in the aforesaid interlocutory application also state that the provisions of the Wildlife (Protection) Act, 1972 to be considered if trees are proposed to be felled and the threat to the ecosystem in the context of the wildlife prevalent in the particular ecosystem.

10.10. It is also stated that the Deputy Conservator of Forests (West Forest Division), GNCTD, by its Order dated 28-2-2020 and Letter dated 11-8-2020, has restrained DMRC from carrying out any construction

activity on 5.34 km on Road No. 26 between Vikaspuri to Peeragarhi and Najafgarh drain as the DMRC illegally felled trees and barricaded the area for construction activity relating to Janakpuri West to R.K. Ashram corridor.

10.11. The objections have also averred about the economic value of the trees.

11. By order dated 2-2-2021¹, this Court had directed copies of the instant applications including the amended application to be served upon CEC and directed CEC to file its reports in the matter.

12. CEC has submitted Report No. 8 of 2021 in IA No. 105674 of 2020 and Report No. 10 with Corrigendum dated 9-9-2021 in IA No. 169030 of 2019 in WP (C) No. 202 of 1995. The said reports have been taken on record.

13. According to DMRC, which is a government company incorporated under the Companies Act, 1956 and which is engaged in Delhi MRTS Project to provide a pollution free transport system to the people of the NCT of Delhi/National Capital Region (for short "the NCR"), it has sought the aforesaid prayers with regard to a declaration that:

(i) 5.34 km stretch on Road No. 26 between Vikaspuri to Peeragarhi;

(ii) 1288.973 sq m land at Najafgarh drain;

(iii) area admeasuring 16097.75 sq m land located at Mangolpuri;

and

(iv) area admeasuring 55.78 sq m at Krishna Park

are non-forest areas and hence, the requirement to obtain permission for diversion of these lands as forest land under the FC Act, 1980 would not arise.

14. As a sequel, permission has been sought by the applicant DMRC to carry out the construction activities of Phase IV of MRTS Project on the aforesaid locations without any restrictions as such.

15. In IA No. 105674 of 2020, according to the applicant DMRC, 61.679 km of Phase IV of MRTS Project has been proposed, which, inter alia, includes the following construction proposed to be undertaken:

(i) 20.201 km Metro Corridor from Aerocity to Tughlakabad,

(ii) 28.920 km corridor from Janakpuri West to R.K. Ashram, and

(iii) 12.558 km Metro Corridor from Mukundpur to Maujpur.

The total cost of Phase IV of MRTS Project is estimated to the tune of Rs 24,948.65 crores.

16. This Court vide its order dated 6-9-2019 in *M.C. Mehta v. Union of India*⁵, observed that the parties have to ensure that there would be no delay caused in Phase IV of the Project and that the requisite amount has to be released in a timely manner to the acquiring authority. The commencement of Phase IV of MRTS Project by construction of civil works was made in November 2019 and the said project is to be completed and commissioned by June 2024.

17. The application being IA No. 105674 of 2020 contains the following steps that have been taken so far which are encapsulated as under:

17.1. The Detailed Project Report ("DPR") of 103.93 km long Phase IV MRTS Project was submitted to the Union Government and the GNCTD. The project report was reviewed in terms of the New Metro Policy, 2017 and the alignment was thereafter finalised in April 2018.

17.2. It appears that in the period from 2018 to 2020, the DMRC carried out tree survey and applied for permission for cutting trees before the department concerned of Forest and Wildlife, GNCTD.

17.3. The Public Works Department ("PWD") concerned has granted a no objection certificate ("NOC") for carrying out the construction activity on the right of way ("ROW") in the year 2019.

17.4. Similarly, permission has been obtained from the Police Department for diversion of traffic between Janakpuri and Mukarba Chowk and NOC from Irrigation and Flood Control Department have also been taken.

17.5. A contract has also been awarded for construction of elevated viaduct at the pertinent places and for 10 elevated stations on Janakpuri West-R.K. Ashram corridor.

17.6. From December 2019 to August 2020, the officials of the Forest Department and DMRC have conducted various joint site visits regarding permission for felling of trees falling within the area of metro alignment. But no exact demarcation of forest areas has been made.

17.7. The Deputy Chief Conservator, Forest & Wildlife Department, GNCTD vide his Letter dated 28-2-2020, restrained the DMRC from carrying

out any construction activity at Najafgarh drain till necessary approval was issued by the authorities concerned.

17.8. By another Letter dated 2-7-2020 issued by the Forest Department, the site near the railway line adjacent to Mangolpuri Industrial Area was stated to fall under the category of "Deemed Forest" as per the affidavit dated 15-9-1997 filed in this case before this Court by GNCTD. Therefore, the DMRC was requested to approach the Central Government for grant of permission for diversion of forest land under the FC Act, 1980.

17.9. The Forest & Wildlife Department, GNCTD in its Letter dated 7-7-2020, stated that one patch of Line 8 from Janakpuri (West) to Mukarba Chowk falls within the category of "Deemed Forest" and therefore, approval had to be taken from the Central Government for diversion of forest land.

17.10. On 5-8-2020, the Forest & Wildlife Department, GNCTD, directed the DMRC and PWD officials to attend a joint site visit on 10-8-2020 for ascertaining the exact location of 5.34 km area on Road No. 26 between Keshorpur to Mukarba Chowk, as Road No. 26 was mentioned as forest/plantation area in the affidavit dated 15-9-1997 filed before this Court in the main writ petition.

17.11. As the exact location of the forest area could not be ascertained in the joint site visit, the Forest & Wildlife Department, GNCTD, requested the applicant DMRC to approach the PWD to mark the area as forest area in terms of the affidavit dated 15-9-1997 filed before this Court.

17.12. The Forest & Wildlife Department, GNCTD, also stated that the Najafgarh drain is marked as a plantation area as per Geospatial Delhi Ltd. ("GSDL") Map and hence, no construction activity has been carried out on the said area.

17.13. Thereafter, on 14-9-2020, the Forest & Wildlife Department, GNCTD, permitted construction activity in the non-forest area subject to seeking approval of the competent authority vis-à-vis the trees in the said non-forest area.

18. In the above circumstances, the present application has been filed by the DMRC before this Court seeking permission to carry out construction activities of Metro Rail on the following stretches/locations:

18.1. A stretch of 2.99 km, falling on Road No. 26 between Keshopur to Mukarba Chowk being part of 28.920 km extension of Line 8 of MRTS Project; from Janakpuri West to R.K. Ashram of Phase IV Metro Project being constructed by the applicant, which area forms part of Road No. 26 (5.34 km) classified as forest area/plantation area by the Forest & Wildlife Department, GNCTD, in the above-noted affidavit dated 15-9-1997.

18.2. An area admeasuring 1288.973 sq m at Najafgarh drain, classified as forest area/plantation area, by the Forest & Wildlife

Department, GNCTD, under Irrigation & Flood Control Department.

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18.3. An area admeasuring 16097.75 sq m at Mangolpuri for construction of Mangolpuri Metro Station, classified as forest area by the Forest & Wildlife Department, GNCTD, on the basis of availability of 100 trees per acre in an area above 2.5 acres.

18.4. An area admeasuring 55.78 sq m; 36.475 m of which forms part of Road No. 26 (5.34 km) at Krishna Park for construction of entry/exit of underground station at Krishna Park of the Metro Corridor/Project.

19. Several averments have been made in the aforesaid application to contend that the aforesaid areas in respect of which the permission is sought, for carrying out the construction activity of Phase IV Metro Rail, are not forest areas and permissions/approvals are not required. They are summarised as under:

19.1. The project involves a huge capital expenditure and stoppage of construction activities and consequent delay in completion of the project would involve heavy financial implications owing to cost escalation, which would have a cascading effect on public exchequer.

19.2. The DMRC has undertaken the proposed project with a view to providing the citizen of NCT of Delhi/NCR a viable public transport option so as to reduce vehicular congestion on the road and consequently, reduce pollution in the NCT of Delhi/NCR.

19.3. The operation of Metro Project has resulted in several advantages to the public at large.

19.4. There would be a greater advantage to the public at large and essentially in the form of saving travel time and reducing the degree of pollution in the NCT of Delhi/NCR.

19.5. Any delay in the commissioning of the project, on the other hand, would jeopardise the object and purpose of DMRC to provide efficient transport facility to the citizens.

19.6. Hence, in IA No. 105674 of 2020, the DMRC has sought a declaration that—

- (a) the 5.34 km stretch on Road No. 26 between Vikaspuri to Peeragarhi;
 - (b) 1288.973 sq m land at Najafgarh drain;
 - (c) area admeasuring 16097.75 sq m land located at Mangolpuri;
- and

(d) area admeasuring 55.78 sq m at Krishna Park are non-forest areas and there is no requirement for the applicant to obtain permission for diversion of these lands as forest land under the FC Act, 1980.

20. Pursuant to the order of this Court dated 2-2-2021¹, CEC has submitted its *Report No. 8 of 2021* dated 13-5-2021 in IA No. 105674 of 2020. The relevant portions of the said report read as under:

"17. Since this IA No. 105674 of 2020 filed by DMRC Ltd. mainly relates to the question of applicability of the Forest (Conservation) Act, 1980 to roadside planted trees specific to the Metro Corridor between Janakpuri West to R.K. Ashram and the issue raised in WP (C) No. 1774



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of 2021 before the High Court of Delhi and before CEC by the same petitioners mainly relates to proposed felling of 11,545 trees for implementation of the entire Phase IV of the Metro Project, CEC will submit a detailed report in the matter separately and along with the report in IA No. 91869 of 2020 filed by the DMRC Ltd. relating to the Metro Corridor between Aerocity and Tughlakabad.

18. The felling of planted trees outside the forest are regulated under the provision of the Delhi Preservation of Trees Act, 1994 ("the 1994 DPT Act"). The definition of a "tree" under the 1994 DPT Act is as follows:

'2. (i) **tree** means any woody plant whose branches spring from and are supported upon a trunk or body is not less than five centimetres at a height of thirty centimetres from the ground level and is not less than one meter in height from the ground level;'

Thus all plants of and above one metre in height are treated as trees under this Act.

The 1994 DPT Act also prescribes planting of a minimum of 10 times the number of trees for every tree felled. The applicant is therefore required to obtain the requisite permission under the 1994 DPT Act.

19. Keeping in view the above discussions CEC is of the considered view that the PWD land along Road No. 26 on which the planted trees are seen are neither notified as "forest" nor recorded in any government records as "forest". These trees not being of natural origin cannot be branded as "forest" for the purpose of the Forest (Conservation) Act, 1980. It is therefore recommended for

consideration of this Hon'ble Court that the prayer of the applicant to declare that 5.34 km stretch of Road No. 26 between Vikaspuri to Peeragarhi, 1288.973 sq m land at Najafgarh drain, 16097.75 sq m land located at Mangolpuri and 55.78 sq m of Krishna Park are non-forest areas is allowed, subject to the condition that the Delhi Metro Rail Corporation Ltd. will fell the trees only after obtaining permission under the Delhi Preservation of Trees Act, 1994 from the authorities concerned and after complying with the conditions associated with such approvals including compensatory planting of 10 times the number of trees close to the site from where the trees are being felled."

21. *Report No. 10 of 2021 in IA No. 169030 of 2019* wherein the aforesaid prayers have been extracted, pertains to the construction of metro alignment, tunnels and metro stations located on Southern Ridge, South-Central Ridge and Morphological Ridge falling along the 23.62 km long Metro Corridor between Aerocity and Tughlakabad Station in Delhi. With regard to the extent and importance of Delhi Ridge Area/Morphological Ridge Area and order of this Court in this regard, the following has been observed in the said report:

"19. (i) The Master Plan for Delhi Perspective, 2001, notified by the Delhi Development Authority ("DDA") on 1-8-1990, states that the ridge in Delhi is defined as rocky out-crop of Aravalli Ranges stretching from the University in the North of Union Territory boundary to the South and beyond. *The Delhi Ridge Area extends over 7777 ha out of which 87 ha*

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falls in Northern Ridge, 864 ha falls in Central Ridge, and 6200 ha falls in South Central Ridge and 6200 ha falls in Southern Ridge. The ridge area has been classified and included in the Master Plan (Land Use Plan) as Regional Park.

(ii) The Government of National Capital Territory of Delhi by Notification dated 24-5-1994 under Section 4 of the Forest Act, 1927 notified 7777 ha of Delhi Ridge Area as Reserved Forests commonly referred to as Notified Ridge Area. The Delhi Ridge serves as the green lungs for Delhi and acts as a buffer against rising pollution levels. The pressures of rapid urbanisation in Delhi have, over the years, threatened and adversely affected the forests in Delhi Ridge Area. The ridge area thus identified needs to be conserved with utmost care and should be afforested with the indigenous species with minimum of artificial landscape.

(iii) This Hon'ble Court has passed a series of directions in Writ Petition (Civil) No. 4677 of 1985 for conservation and protection of Delhi Ridge. Pursuant to this Hon'ble Court order dated 29-9-1995 the Government of NCT of Delhi by order dated 5-10-1995 constituted the Ridge Management Board ("RMB") under the Chairmanship of Chief Secretary, Delhi. The Board has been assigned various functions, relating to conservation and protection of Ridge. These include execution of the management scheme for the Ridge Forests, protection of boundaries, of the ridge and preparation and execution of detailed plans for upgradation of the ridge.

(iv) *This Hon'ble Court by order dated 10-10-1995 directed that the Ridge Management Board shall ensure that the ridge is not occupied or encroached by any person for any unauthorised purpose.* This Hon'ble Court further directed the Chairman, RMB to file an affidavit by a responsible officer after every eight weeks, indicating the progress made in preserving the status of the ridge as a forest and also keeping it free from encroachers.

(v) This Hon'ble Court, by order dated 25-1-1996⁶ and 13-3-1996⁷ in IA No. 18 and IA No. 22 in Writ Petition (C) No. 4677 of 1985 directed that the uncultivated surplus land of Gaon Sabha falling in the ridge area may be excluded from vesting in Gaon Sabha under Section 154 of the Delhi Land Reforms Act, 1954 and made available for the purpose of Reserved Forest.

(vi) The Government of NCT of Delhi in compliance of the abovesaid orders of this Hon'ble Court issued Notification dated 2-4-1996 under Section 154 of the Delhi Land Reforms Act, 1954 declaring 10,517 acres (about 4206.68 ha) of uncultivated land of Gaon Sabha situated in Southern Ridge as surplus land and excluded the same for vesting in Gaon Sabha. Further by Notification dated 2-4-1996 placed the said 4206.68 ha land at the disposal of the Forest Department of Delhi Government and this 4206.68 ha of land stands included in the 7777 ha of notified Ridge Area.



(vii) *This Hon'ble Court by order dated 9-5-1996 directed that the Ridge is to be kept free from encroachers and its pristine glory must be maintained for all times.*

(viii) The Geological Survey of India ("GSI") in the year 2001-02 carried out geological and geomorphological mapping of about 1482

sq km area of NCT of Delhi on 1 : 10,000 scale with a view to provide the base map for seismic microzonation of Delhi and which map was published in the year 2006. *In the geological and geomorphological map prepared by the GSI the land forms found to be under rocky surface have been included and shown under the geomorphic unit "residual hills I Ridges".* It is relevant to mention that all the areas identified as Residual Hills I Ridges in the geological and geomorphological mapping done by the GSI are not included and shown as Ridge Areas in the MPD 2001 and MPD 2021. For example, the areas between Tughlakabad to Okhla via Greater Kailash and Nehru Place have been identified as Ridge Areas in the said Report of GSI but are not included as Ridge Areas in the MPD 2001 and MPD 2021.

(ix) Initially, the clearance from the Ridge Management Board and the permission of this Hon'ble Court was being insisted upon only in respect of the notified Ridge Areas. This Hon'ble Court by order dated 23-3-2007⁸ has granted permission to the Delhi Metro Rail Corporation Ltd. for use of forest land and non-forest land falling in the Delhi Ridge Area for the construction of the Central Secretariat-Qutab Minar-Gurgaon corridor of the metro line and by order dated 7-12-2007⁹ has granted permission for use of forest land and non-forest land for construction of Express Metro Link to the Airport through the Central Ridge.

(x) Subsequently by order dated 3-11-2011 (*sic* 30-11-2011¹⁰) the Hon'ble High Court of Delhi in Writ Petition (Civil) No. 3339 of 2011, filed by Shri Ashok Kumar Tanwar, held that lands situated outside the notified Ridge Areas but which have morphological features conforming to the ridge should be given the same protection as is given to the notified areas. Consequently, all the agencies concerned were restrained from carrying out construction works on such lands (morphological ridge) also referred to as "extended Ridge Area" till necessary clearance from the Ridge Management Board and through CEC the permission of this Hon'ble Court is first obtained.

20. *This Hon'ble Court by orders issued from time to time, since 2-11-2012¹¹ and till 6-9-2019⁵, has given permission to various agencies of Central Government and Delhi Government for carrying out construction activities in notified Ridge Area on forest land and non-forest land situated outside the notified Ridge Area in extended Ridge Area, morphological*

Ridge Area. These include the Border Roads Organisation, the Delhi Metro Rail Corporation Ltd., Jawaharlal Nehru University, Central Bureau of Investigation, Ministry of Defence, Ministry of External Affairs, Ministry of Textiles, South Delhi Municipal Corporation, Delhi Development Authority, Central Public Works Department, National Highways Authority of India ("NHAI") and the Delhi Police."

(emphasis supplied)

22. The observations and recommendations are given in Para 21 of Report No. 10 of 2021 in IA No. 169030 of 2019 which read as under:

"OBSERVATIONS AND RECOMMENDATIONS

21. After considering that

(i) the project is in public interest;

(ii) it is proposed to construct the 23.62 km long Aerocity to Tughlakabad Corridor Mass Rapid Transport System forming part of Phase IV Project in Delhi at an estimated cost of Rs 8230 crores and scheduled to be commissioned by year 2024;

(iii) the Metro Corridor will serve the densely populated areas and is integrated with

(a) Airport Express Line which provides metro connectivity of South Delhi to Indira Gandhi International Airport;

(b) Samaypur Badli to HUDA City Centre (Yellow Line) at existing Chhatarpur Metro Station which integrates the metro connectivity of South Delhi to Gurgaon and Faridabad;

(iv) the vehicular traffic of IG Airport from Delhi will be drastically reduced with consequent reduction in traffic on NH-8, Mahipalpur—Mehrauli Road, Mehrauli—Badarpur Road apart from the Metro Project providing the connectivity to Line 6 at Tughlakabad for commuters of Faridabad;

(v) the total Ridge Area involved including morphological ridge is 12.97 ha extending over a length of 5.29 km. Out of this 12.97 ha an area of 4.5 ha will be for tunnels 20 m below the ground while the remaining 8.4 ha is required for constructing metro stations;

(vi) since tunnel boring machines will be used surface breaking is limited to 8.4 ha required for constructing metro stations and therefore there will be minimal impact to the ecology or structure on Ridge I Morphological Ridge;

(vii) the land required on permanent and temporary basis has been restricted to 14,865 sq m and 69,793 sq m respectively with minimal impact. The 69,793 sq m land, held on temporary basis, shall be restored back after the completion of the Project;

(viii) it is not possible to align the corridor outside the ridge area;

(ix) the total number of trees involved is 6961 trees break up being 1072 trees located in 12.97 ha over a length of 5.29 km in Ridge Area including Morphological Ridge, 2536 trees located in 3.79 has identified as deemed forest over a length of 0.97 km and 3353 trees



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located on 27.06 ha non-forest land over a length of 17.35 km. A total of 2195 trees out of 6961 trees are to be transplanted while the remaining 4766 trees are to be felled;

(x) the compensatory planting will involve about 34,000 saplings (ten times 3353 trees to be felled/transplanted) and will be located on land made available by DDA while transplantation of 2195 trees will be undertaken on open lands of DDA, Ministry of Defence and multiple land owing agencies in the vicinity of the Project;

(xi) the corridor proposed has been found to be the most feasible route economically, environmentally and technically for the purpose of daily ridership and will be covering a sizeable population;

(xii) the Ridge Management Board has recommended the proposal;

(xiii) no viable alternative is feasible and the use of the ridge area has been restricted to the minimum; and

(xiv) this Hon'ble Court by orders issued from time to time has for site specific projects given permission to various Central Government agencies and Delhi Government for carrying out construction activities on forest land, deemed forests and non-forest land situated

(a) in the Notified Ridge Area

(b) outside the Notified Ridge Area but located in extended Ridge Area/Morphological Ridge Area which have morphological features.

It is recommended that this Hon'ble Court may consider permitting use of 7.42 ha. Ridge Area including Morphological Ridge and 3.79 ha of deemed forest land involving 6961 trees (break up being felling of 4766 trees and transplantation of about 2195 trees) for construction of metro alignment tunnels and metro stations in

the Southern Ridge, South Central Ridge and Morphological Ridge along the 23.62 km Aerocity—Tughlakabad Metro Corridor forming part of Phase IV of the Mass Rapid Transport System (“MRTS”) Project subject to the following conditions:

(a) The Applicant Delhi Metro Rail Corporation Ltd. will deposit 5% of the Project cost proportionate to the area falling within the Southern Ridge, South Central Ridge and Morphological Ridge, with the Ridge Management Board Fund and which amount, under the close supervision of the Ridge Management Board, will be used by the Forest Department of Delhi Government for conservation and protection of the Delhi Ridge.

(b) The Applicant will obtain the statutory forest clearance for diversion of 7.42 ha forest land falling in Southern Ridge, South Central Ridge and 3.79 ha of deemed forest for non-forest use in accordance with the provisions of the Forest (Conservation) Act, 1980 from the competent authority and shall comply with all the conditions that are laid down in the order to be passed for diversion of forest land.



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(c) The 25 ha of land allotted by DDA for compensatory afforestation in Dhusiras Village, Dwarka shall be notified as protected forests under the provisions of the Forest Act, 1927 and shall be managed by the Forest Department of Delhi Government.

(d) The area falling within the Delhi Ridge Area I Morphological Ridge Area will not be used for commercial purposes by the Applicant or any other party.

(e) The Applicant shall pay net present value as assessed by the Forest Department, Delhi Government.

(f) The applicant shall obtain necessary approvals under the Delhi Preservation of Trees Act, 1994 from the competent authority before felling of trees standing on non-forest land.

(g) Compensatory plantation of 34,000 saplings of indigenous species, being ten times in lieu of 3353 trees standing on non-forest land and proposed to be felled/transplanted, will be undertaken by the Forest Department of Delhi Government on the lands provided by ODA for the said purpose.

(h) The cost of raising 34,000 saplings and raising compensatory afforestation in lieu of the diversion for forest land for non-forest use will be deposited in advance by the Applicant

with the Forest Department of Delhi Government who will undertake the planting and maintenance of the above trees for seven years.

(i) Transplantation of 2195 trees will be undertaken by DMRC on open identified lands made available by DOA, Ministry of Defence and other multi land owing agencies including private trusts.

(j) The transplantation of trees will be undertaken near the impact area itself.

(k) The felling of tress proposed is limited to the bare minimum required for execution of the project.

Note : By Corrigendum dated 9-9-2021 to Report No. 10 of 2021 in IA No. 169030 of 2019, the figure 12.98 ha forest land to be read as 7.42 ha of forest land."

23. The justification for Aerocity—Tughlakabad Corridor Project is stated in Para 17 of the aforesaid Report i.e. Report No. 10 of 2021 as under:

“JUSTIFICATION FOR AEROCITY—TUGHLAKABAD CORRIDOR PROJECT

17. (i) According to DMRC the proposed Metro Corridor is to serve the densely populated areas of Mahipalpur, Vasant Kunj, Chhatarpur, IGNOU, Maidangarhi, Neb Sarai, Saket, Khanpur, Sangam Vihar and Tughlakabad. The alignment is based on the proximity to the populated areas to be served and which areas are mostly along the Mahipalpur—Mehrauli Road and Mehrauli—Badarpur Road. There have been and there still are many constraints while finalising the alignment such as minimum distance from the Protected Monuments avoiding built-up areas and at the same time also minimising the Ridge Area as there are large extent of Ridge Areas along the corridor. The present alignment is the best fit alignment meeting the



above constraints and also simultaneously meets the technical requirements of metro alignments/stations and proximity to the target population to be served. There is a vast extent of Ridge on either side of the alignment because of which it has not been possible to shift the alignment out of Ridge Area but efforts have been made to minimise the Ridge Area involved. The daily ridership has been estimated at 1.66 lakhs trips per day by 2024.

(ii) The proposed Aerocity—Tughlakabad Corridor is to be integrated with Airport Express Line which provides metro

connectivity of South Delhi to Indira Gandhi International Airport. It is also to be integrated with Samaypur Badli to HUDA City Centre Line (Yellow Line) at existing Chhatarpur Metro Station which integrates the metro connectivity of South Delhi to Gurgaon and Faridabad.

(iii) This corridor provides connectivity to Chhatarpur Mandir, IGNOU University, Karni Singh Shooting Range and ASI Monuments including Tughlakabad Fort, Adilabad Fort and Ghyasuddin Tughlakabad Tomb.

(iv) The vehicular traffic of IGI Airport from Delhi will get drastically reduced with consequent reduction in traffic on NH-8, Mahipalpur—Mehrauli Road, Mehrauli Badarpur Road apart from the Metro Project providing the connectivity to Line 6 at Tughlakabad for commuters of Faridabad.

(v) The reduction in vehicular traffic will also bring down the number of road accidents and pollution levels.

(vi) Public interest is involved in the completion of Aerocity to Tughlakabad Corridor as this corridor is the most feasible route economically, environmentally and technically for the purpose of the daily ridership and also will be covering a sizeable population."

24. It is noted in the aforesaid Report that the RMB in its meeting held on 14-7-2021 is said to have stated that the original alignment proposed by DMRC involving minimum use of forest area (12.97 ha) and minimum felling of trees (1072 trees) has recommended the proposal subject to the following conditions:

24.1. The User Agency shall obtain necessary permission for diversion of forest area for non-forestry purposes as per provisions under the FC Act, 1980.

24.2. The User Agency shall deposit 5% of the project cost proportionate to the area falling within Morphological Ridge Area to RMB fund on the lines of conditions imposed by the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 202 of 1995 titled "*T.N. Godavarman Thirumulpad v. Union of India*"¹² for management of the Ridge.

25. As already noted, we have heard the learned Senior Counsel and counsel appearing for the respective parties at length and perused the earlier orders of this Court and the aforesaid reports submitted by CEC, the relevant portions of which are extracted above.

26. We have given our anxious consideration to the prayers sought by the applicant DMRC in these applications.

27. At the outset, we may preface our discussion by observing that the learned counsel appearing for the respective parties submitted at the Bar that in principle, their parties are not opposed to Phase IV of MRTS Project. The main consideration is making available transport facility to the public at large in NCR of Delhi in the form of metro rail while at the same time, preserving the ecology and environment of the areas surrounding the alignment of the metro railway.

28. To put it in a nutshell, the issue herein concerns sustainable development and preservation of the environment and ecology of NCT of Delhi/NCR.

29. An introspection on the issue raised before this Court would draw our attention to the grave and pressing problem the world over including India, namely, degradation of environment and ecology resulting in what is simplistically called "Climate Change" and the problem of "greenhouse gas emissions".

30. The United Nations Conference on the Human Environment at Stockholm in 1972, United Nations Conference on Environment and Development ("UNCED") known as the Rio de Janeiro Earth Summit in 1992; World Summit on Sustainable Development in Johannesburg in 2002 and Glasgow Climate Change Conference currently held in October-November, 2021, have all voiced grave concerns about the global environmental degradation resulting in extinction of certain flora and fauna and its cascading effect on planet Earth owing to man's growing need for development particularly economic development.

31. Projects such as the metro railway in question have already been implemented in parts of NCT of Delhi/NCR. One cannot lose sight of the fact that it has resulted in loss of vegetation as well as flora and fauna in certain areas. The implementation of Phase IV of MRTS Project may be a further threat to the ecology of NCT of Delhi/NCR.

32. To meaningfully arrest the problem of declining tree cover, the civil society must also be placed with the responsibility to carry out reforestation activities. While we cannot ignore the importance of governmental responsibility in materialising the goals of sustainable development through reforestation, we strongly endorse the idea of collective responsibility towards ensuring a sustainable future. The engagement, inclusion and participation of citizens and perhaps more significantly, the ownership of the sustainable development agenda by empowered citizens and community-level actors will contribute in a significant manner to achieving the economic, social and environmental pillars of the sustainable development agenda.

33. Citizens, as the ultimate beneficiaries of development, have a critical role to play, not just in terms of effort and action towards the

achievement of the environmental goals but also in terms of the associated monitoring of the progress towards these goals.

34. One of the important steps that Parliament has taken is to have enacted the Environment (Protection) Act, 1986 and the FC Act, 1980. The FC Act, 1980 is a short but effective enactment comprising only of five sections.

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35. Section 2 of the FC Act, 1980 reads as under:

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.—Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation.—For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for—

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

36. While interpreting the word "Forest", this Court in this very

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matter, speaking through J.S. Verma and B.N. Kirpal, JJ. as their Lordships then were, on 12-12-1996¹³, have observed, inter alia, as under : (*T.N. Godavarman Thirumulpad case*¹³, SCC pp. 269-71, paras 3-5)

"3. It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest (Conservation) Act, 1980 (for short "the Act") and the meaning of the word "forest" used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

4. The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation



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of forests and for matters connected herewith must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*¹⁴. *Rural Litigation and Entitlement Kendra v. State of U.P.*¹⁵, and recently in the order dated 29-11-1996 in *Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*¹⁶. The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi*¹⁷ has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State

Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

5. We further direct as under—

I. GENERAL

1. In view of the meaning of the word “forest” in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any “forest”. In accordance with Section 2 of the Act, all ongoing activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of sawmills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and, are therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest (Conservation) Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

* * *

3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

* * *

5. Each State Government should constitute within one month an Expert Committee to:

(i) identify areas which are “forests” irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) identify areas which were earlier forests but stand

degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.”

37. We have considered the applications made by the applicants in the light of the aforesaid orders passed by this Court, the additional documents filed by GNCTD, *Report Nos. 8 and 10* submitted by CEC and the recommendations made therein and the objections filed by the applicants vide IA No. 142876 of 2021.

38. Pursuant to the order of this Court dated 12-12-1996¹³, an affidavit dated 15-9-1997 was filed by the Conservator of Forests, GNCTD. In the said affidavit under the head “Forest Areas and Plantation Areas along the Roads managed by PWD”, the State Government has included the trees planted along the roadside including Road No. 26 in respect of which the application is filed as part of Annexure IX of the said affidavit.

39. On the other hand, the 1994 DPT Act regulates felling of trees falling outside the notified forests and deemed forests. Under this Act, the user agency has to bear the cost of raising and maintenance of ten times the number of trees to be felled.

40. Therefore, the crucial issue whether the areas through which the metro railway lines are to be constructed and pass through as noted hereinabove are forest areas or non-forest areas has to be determined by GNCTD. In this context, we note that the applications have already been filed by DMRC under the FC Act, 1980 on 2-11-2020 before the Chief Conservator (Forest) and Nodal Officer (FCA), GNCTD, seeking sanction under the FC Act, 1980, for conversion of 50,421 ha of forest land for construction of underground stations at Krishna Park and elevated corridor to Keshopur to Mukarba Chowk from Janakpuri Corridor in Phase 4 of MRTS Project with a request to forward documents to the MoEF&CC, GoI for its consideration. Therefore, there has already been an application made seeking permission for diversion of forest



land or non-forest activity, namely, the construction of the metro railway line in respect of the aforesaid areas.

41. Further, the MoEF&CC (Forest Conservation Division), GoI, has also communicated by its Letter dated 14-11-2019 to the Principal Secretary, Forest of State and Union Territories as under:

“2. Based on the recommendation of the FAC with regard to the

definition of forests, the Ministry has decided as follows:

(i) India is a vast country with varied geophysical units and soil-climatic conditions that has given rise to a number of forest types. There are variations even within the forest types.

(ii) As far as developing criteria for "deemed forests" is concerned, there cannot be any uniform criteria applicable to all forest types or all States. There has to be different criteria for different forest types or States.

(iii) It is only that Hon'ble Supreme Court had directed^{*} States to identify their own forests, in fact the States, having well established forest departments, are in a better position, rather than MoEF&CC, to understand their own forests and needs, and should frame criteria for their forests.

(iv) While framing criteria, due diligence should be exercised taking into account spirit of order of Supreme Court, National Forest Policy, the rationale of having adequate forests, site quality of naturally occurring forest species, etc. for supporting a healthy environment.

(v) The criteria so finalised by a State, need not be subject to approval of MoEF&CC. This issues with the approval of competent authority."

42. On perusal of Report No. 8 of 2021 in IA No. 105674 of 2020 submitted by CEC, it is observed that where any area is declared to be forest area (within the meaning of the definition given by this Court in the aforesaid order dated 12-12-1996¹³), for diversion of the said area for a non-forest purpose would require approval under the provisions of the FC Act, 1980. However, if there is need for felling of trees outside any forest area then the provision of the 1994 DPT Act has to be complied with.

43. As far as, 23.62 km long Metro Corridor between Aerocity and Tughlakabad Stations in Delhi passing through Southern Ridge, South-Central Ridge, Report No. 10 of 2020 in IA No. 169030 of 2019 states that an extent of 7777 ha of land of Delhi Ridge Area falls in the Northern Ridge, Central Ridge and South-Central Ridge as well as the Southern Ridge. The Ridge Area has been described in the Master Plan (Land Use Plan) as Regional Park.

44. By Notification dated 24-5-1994 under Section 4 of the Forest Act, 1927, 7777 ha of Delhi Ridge Area has been notified as Reserved Forest. It serves as the green lung for Delhi and acts as a buffer against rising pollution level and hence the Ridge Area has to be conserved with utmost care and should be afforested with the indigenous species with minimum of artificial landscape is the recommendation of CEC.

45. Pursuant to the directions issued by this Court, the RMB under the Chairmanship of Chief Secretary, Delhi, has been constituted for the conservation and protection of Ridge. This is to ensure that the Ridge is not occupied or encroached upon by any person for any unauthorised purpose so as to preserve its status as “forest”.

46. Further, notifications have been issued to exclude areas comprising in the Ridge from the provisions of the Delhi Land Reforms Act and not vesting the same in the Gram Sabha.

47. This Court by order dated 30-11-2011¹⁰ passed in WP (C) No. 3339 of 2011, held that the land situated outside the notified Ridge Areas but which have morphological features conforming to the Ridge should be given the same protection as is given to the notified areas. Therefore, any construction work to be carried out on such lands also referred to as “Extended Ridge Areas”, must have clearance from the RMB. Accordingly, recommendations have been made by CEC in the aforesaid Report No. 10 while also noting the recommendations of the RMB.

48. In view of the above discussion, having regard to the specific recommendations of CEC, the present interlocutory applications are disposed of in the following terms:

48.1. DMRC to file applications under the FC Act, 1980 to the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, seeking permission for diversion of the following extents of land for the construction of Metro, Phase IV of MRTS Project with a request to forward the said documents to the MoEF&CC, GoI, for its consideration under Section 2 of the FC Act, 1980:

(a) 5.34 km stretch on Road No. 26 between Vikaspuri to Peeragarhi;

(b) 1288.973 sq m land at Najafgarh drain;

(c) area admeasuring 16097.75 sq m land located at Mangolpuri; and

(d) area admeasuring 55.78 sq m at Krishna Park.

48.2. It is needless to observe that the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, shall consider the said application(s) and forward the same to MoEF&CC, GoI, with his recommendations within a period of one month from the date of receipt of the said application(s).

48.3. MoEF&CC, GoI, on receipt of the application(s), shall consider

the same expeditiously and within a period of three months from the date of its receipt, communicate its decision to the applicant DMRC as well as to the Chief Conservator (Forest) and Nodal Officer (FCA), GNCTD.

48.4. Insofar as the prayer sought by the applicant DMRC vis-à-vis South Central/morphological Ridge forming part of Aerocity-Tughlakabad Metro Corridor is concerned, having regard to the recommendations made by the RMB, the DMRC is directed to file an application before the RMB so as to seek necessary permission for diversion of the aforesaid Ridge Areas for the purpose of Phase IV of the MRTS Project passing through the said areas.



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48.5. On such application being made, the RMB shall make its recommendations on the same and forward a copy of the said recommendations to the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, as well as to the MoEF&CC, GoI, for its consideration under Section 2 of the FC Act, 1980 within a period of one month from the date of receipt of the said application.

48.6. MoEF&CC, GoI, shall on receipt of the said application along with the recommendations of RMB and the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, if any, shall consider the said application within a period of three months from the date of its receipt.

48.7. DMRC shall also comply with all other conditions imposed by the RMB and also the orders passed by this Court in this very matter concerning the management of the Ridge.

48.8. It is needless to observe that while considering the said applications, the directions and orders passed by this Court referred to above as well as the statutory scheme and guidelines and parameters prescribed by MoEF&CC, GoI, shall be borne in mind by the authorities concerned. The Reports referred to above may also be taken into consideration.

48.9. Irrespective of and de hors the decision to be taken by the departments concerned with regard to the recommendations made by CEC in the aforesaid Report Nos. 8 and 10, since the citizens of NCT of Delhi have had and would continue to have the facility of the metro rail, the GNCTD as well as DMRC are directed to conceive a plan of action for the purpose of planting trees in the NCT of Delhi. For that purpose, GNCTD may involve school and college students, educational institutions, non-governmental organisations, Citizen Welfare

Associations, public servants and every citizen or person who is interested in the ecology of NCT of Delhi to plant trees/saplings and ensure that they are nurtured and protected so that the NCT of Delhi would in passage of time have more greenery leading to afforestation. The aforesaid direction is issued having regard to the precautionary principle as well as principle of sustainable development by ensuring citizens' participation in the preservation of the environment and ecology. It is needless to observe that such a plan of action would be conceived by the Department of Forests and Environment of NCT of Delhi in consultation with the Public Works Department, Education Department and such other departments who will involve themselves in ensuring the planting of saplings and trees in NCT of Delhi. Such a plan of action be conceived and the same be placed on record before this Court within a period of twelve weeks for consideration of this Court.

[†] Under Article 32 of the Constitution of India

¹ *T.N. Godavarman Thirumulpad, In re v. Union of India*, 2021 SCC OnLine SC 1304

² *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338

³ *Milind Pariwakam v. Union of India*, 2015 SCC OnLine NGT 845

⁴ *Vimal Bhai v. Union of India*, 2012 SCC OnLine NGT 77

⁵ *M.C. Mehta v. Union of India*, (2022) 4 SCC 317

⁶ *M.C. Mehta v. Union of India*, IA Nos. 18 and 22 in WP No. 4677 of 1985, order dated 25-1-1996 (SC)

⁷ *M.C. Mehta v. Union of India*, IA Nos. 18 and 22 in WP No. 4677 of 1985, order dated 13-3-1996 (SC)

⁸ *M.C. Mehta v. Union of India*, IA No. 2030 in WP (C) No. 4677 of 1985, order dated 23-3-2007 (SC)

⁹ *T.N. Godavarman Thirumulpad v. Union of India*, (2012) 13 SCC 438

¹⁰ *Ashok Kumar Tanwar v. Union of India*, 2011 SCC OnLine Del 5733

¹¹ *T.N. Godavarman Thirumulpad v. Union of India*, (2013) 8 SCC 228

¹² *T.N. Godavarman Thirumulpad v. Union of Union*, (2013) 8 SCC 200

¹³ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

¹⁴ *Ambica Quarry Works v. State of Gujarat*, (1987) 1 SCC 213

¹⁵ *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504

¹⁶ *Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*, (1997) 11 SCC 605

¹⁷ *State of Bihar v. Banshi Ram Modi*, (1985) 3 SCC 643

* **Ed.** : The reference appears to be to *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

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Figure 1: Black headed ibis roosting on a Prosopis juliflora trees.

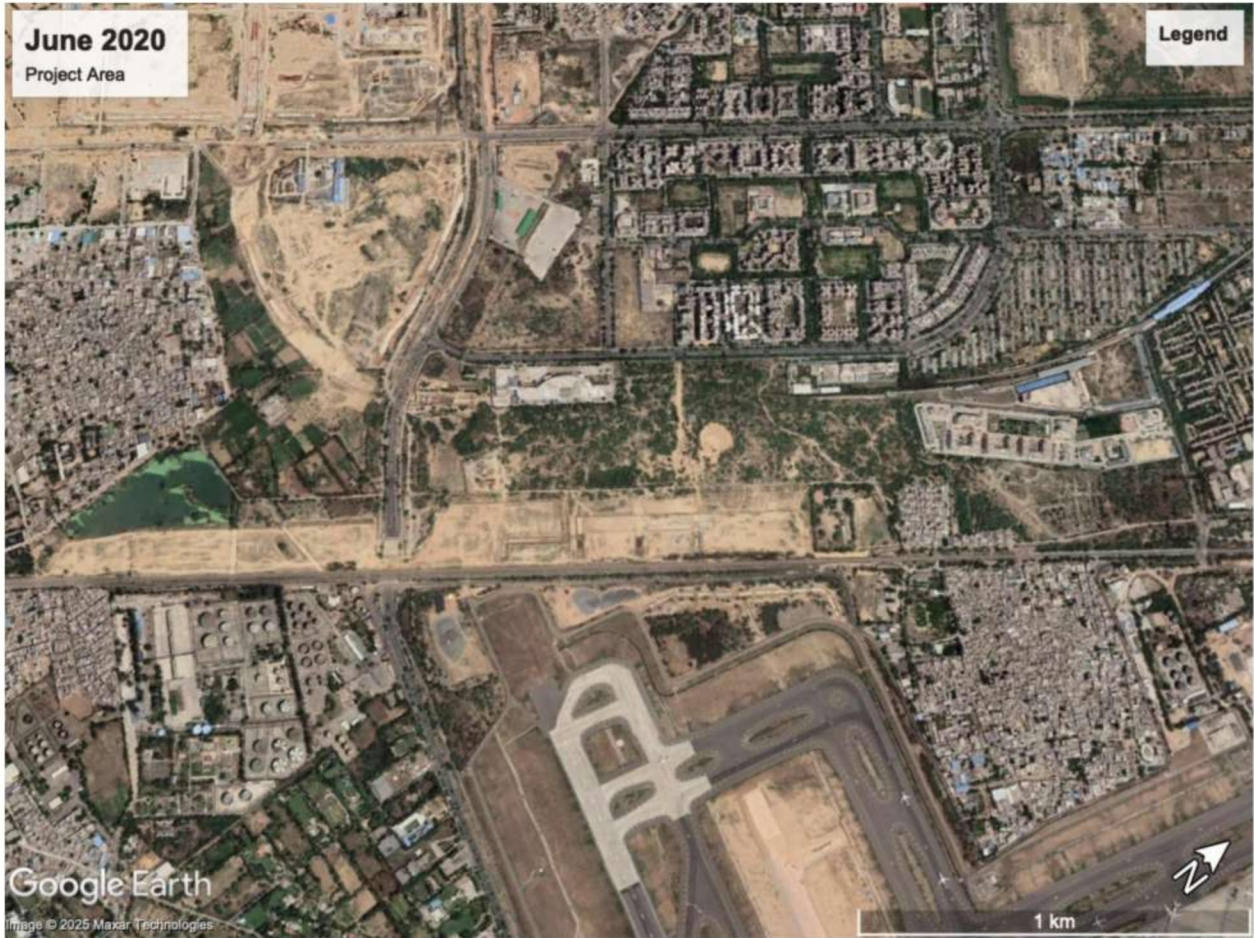


Figure 2: A painted stork feeding its young. The nest is made on *Prosopis juliflora* trees.

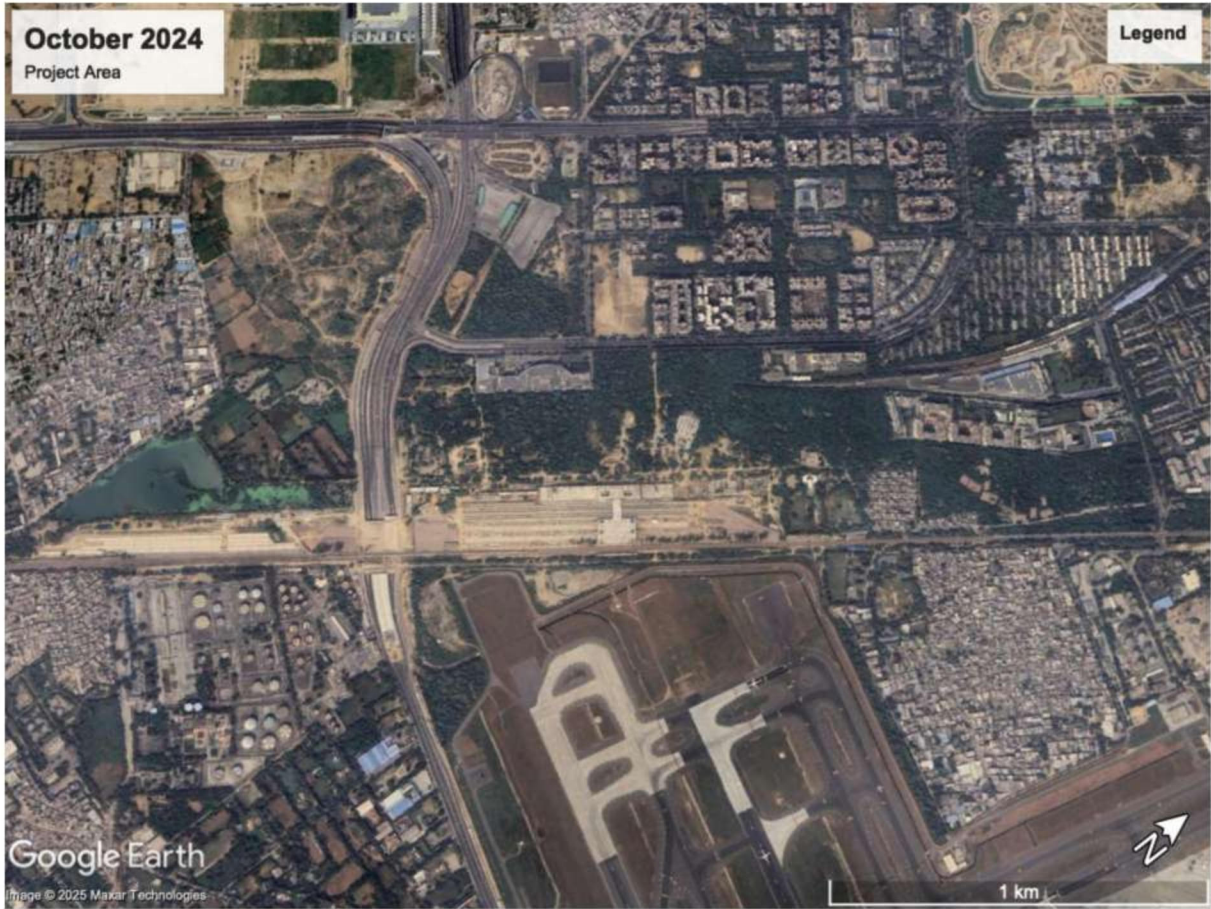
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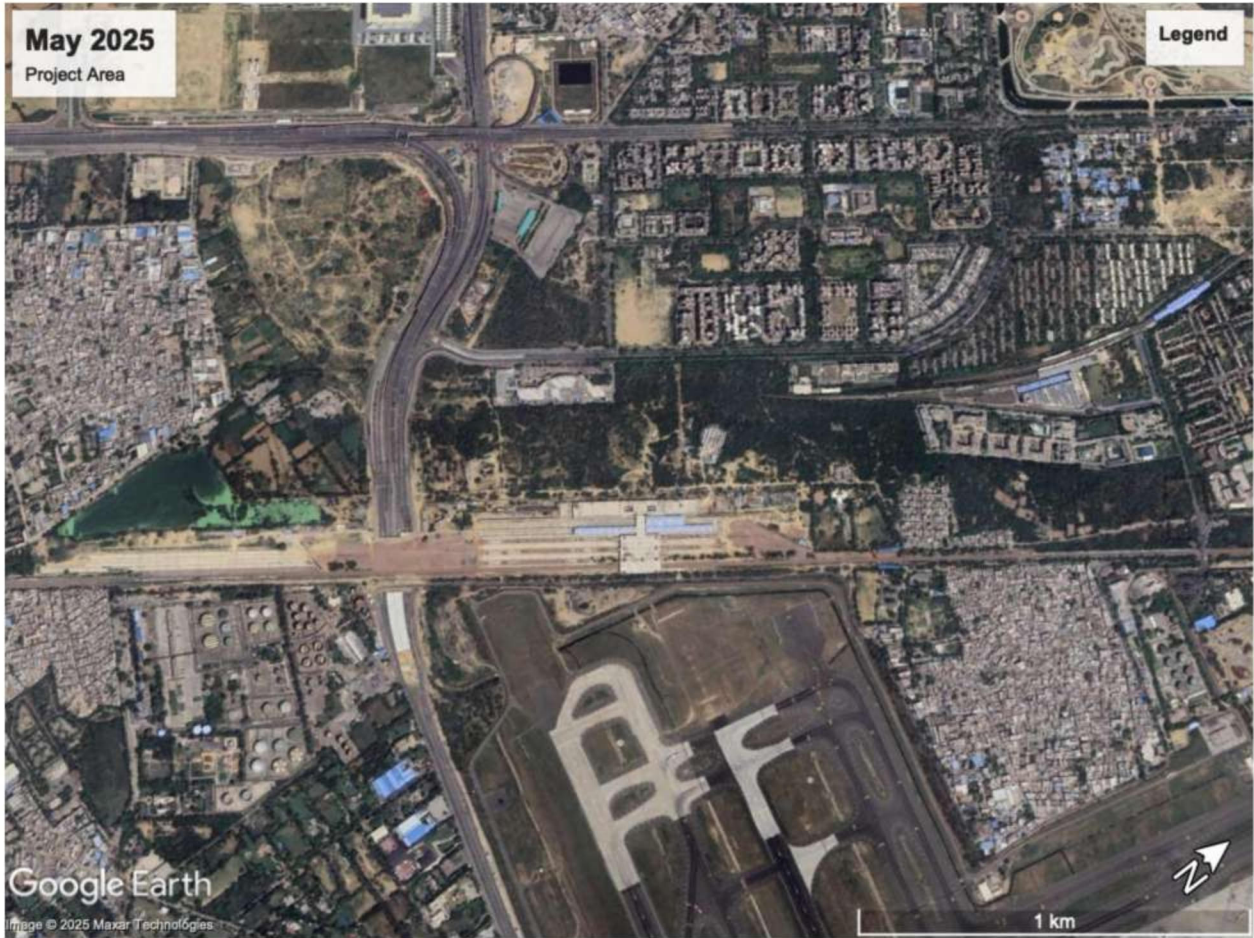
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Ankur Sood <ankursoodoffice@gmail.com>

Advance Service of Rejoinder in O.A. 227/2025 (NGT)

1 message

Ankur Sood <ankursoodoffice@gmail.com>

16 January 2026 at 19:05

To: juvas.rawal@zeus.firm.in, jmalawoffices@gmail.com, Anuj Bhandari <anujbhandari123@gmail.com>, crb@rb.railnet.gov.in, secy-moef@nic.in



Final Rejoinder.pdf

Dear All,

PFA the Rejoinder in the captioned matter. The NDOH is 19.01.2026.

Regards,
Ankur Sood
Counsel for the Applicant

--

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