

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

APPEAL NO. 31 OF 2022

IN THE MATTER OF:

VIVEK KAMBOJ & ORS.

...APPELLANTS

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

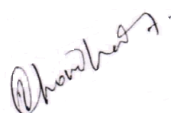
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DATE: 01.09.2022

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**RESPONSE TO SITE VISIT REPORT OF THE JOINT COMMITTEE
FORMED VIDE ORDER DATED 01.07.2022**

MOST RESPECTFULLY SHOWETH:-

1. The Appellants have filed the abovementioned Appeal under Section 16(e) of the National Green Tribunal Act, 2010 challenging the Stage – I Forest Clearance dated 27.10.2021 by the Ministry of Environment, Forest and Climate Change and the Interim Approval granted by the Principal Chief Conservator of Forests dated 17.12.2021 and Stage-II Clearance dated 28.01.2022 for Diversion of 47.0919 ha (36.1466 ha in Gurugram Division and 10.9453 ha in Rewari Division) of forest land in favour of Project Director, NHAI, PIU-Rewari for construction of 4/6 lane of Gurugram-Pataudi-Rewari Section of NH 352W (design length 43.110 km.) under forest division and District Gurugram and Rewari, Haryana (Online proposal FP/HR/Road/45506/2020). These permissions include felling of 8373 trees and 3948 plants under Gurugram Forest Division and 4049 trees and 4137 plants under Rewari Forest Division.
2. That vide Order dated 01.07.2022, the Hon'ble Tribunal directed for constitution of a Joint Committee comprising of the District Magistrates and DFOs, Gurgaon and Rewari, Regional officer, MoEF&CC and State Pollution Control Board to conduct a site visit and submit a factual report. The Hon'ble Tribunal directed:

"7. Having regard to above, we find it necessary to ascertain the factual position in respect of the project in question to determine whether intervention of this Tribunal is necessary in the matter.

8. Accordingly, a joint Committee of the District Magistrates and DFOs, Gurgaon and Rewari, Regional officer, MoEF&CC and State PCB may verify facts by undertaking visit to the site and interacting with the stakeholders, including the PP and submit a report within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The report may particularly mention whether compensatory plantation is being considered 300 km away instead of contiguous areas/locations. The nodal agency will be the State PCB for coordination and compliance. A copy of the report may also be furnished to the NHAI, to enable it to file its response, if any. The Committee may ensure, by coordinating with the NHAI, that no irreversible illegality is committed in the process till the matter is further considered."

(Emphasis supplied)

3. That thereafter, the Joint Committee submitted a Report in view of the directions of the Hon'ble Tribunal dated 01.07.2022.

Submissions/ Objections of the Appellants to the Joint Committee Report

4. That the Appellants have the following submissions/ objections with respect to the Joint Committee Report:

The Joint Committee has wrongly held that no degraded land is available in Gurugram Forest Division due to which the compensatory afforestation is being undertaken 280 kilometres away from the project location

5. That the Joint Committee Report in Para 4 also mentions that,

"Due to non-availability of such a large patch of degraded forest land in Gurugram Forest Division, CA site was proposed at C-108 of Chandi Beat and C100, 111, 112 of Mandhana Beat, Thapli Block, Pinjore Range in Morni-Pinjore Division of Haryana which is approximately 280 KM from the project location where forest land has been diverted. This was also necessitated in view of the fact that Morni-Pinjore division is only having larger area in a stretch for undertaking CA of such extent."

(Emphasis supplied)

6. That the Handbook of Forest (Conservation) Act, 1980 and Forest Conservation Rules, 2003 (Guidelines & Clarifications) issued by MoEF&CC in 2019 provides regulations on where the land for compensatory afforestation can be chosen. It provides:

"2.3 land for CA"

*(ii) As far as possible, **the non-forest land for CA is to be identified contiguous to or in the***

proximity of a Reserve/Protected Forest to enable the Forest Department to effectively manage the newly planted area.

...

(iv) In case, non-forest land for CA is not available in the same district, it should be identified anywhere else in the concerned/State/Union Territory near to the site of diversion as far as possible, so as to minimize adverse impact on the microecology of the area. (v) In exceptional cases where non-forest land for CA is not available in the same State/UT in which the diversion of forest land is proposed, land for CA can be identified in any other State/UTs, preferably in neighboring State/UTs. The corresponding amount for carrying out CA shall be deposited in the CAMPA account of the State/UT in which CA is proposed."

(Emphasis supplied)

7. That as per the information available on Visualization of Earth observation Data and Archival System (VEDAS), an online geo-processing platform of Indian Space Research Organisation, degraded land is available within a distance of 20-30 kilometres from the project land. The compensatory afforestation could have been undertaken in these degraded lands instead of being undertaken 280 kilometres from the project land. Therefore, it cannot be said that large patches of degraded forest land was not available is incorrect.

Copy of the map showing degraded land near the project land is annexed herewith as **ANNEXURE A-1.**

8. That the project proponent made no efforts to identify vacant degraded land within the Gurugram district for conducting compensatory afforestation. It is submitted that vacant degraded lands are available within the Gurugram district as well. This is clear from the fact that the district administration of Gurugram is in the process of creating a 'bank' of vacant plots for plantation activities under the Gurujal initiative. Under this initiative, vacant plots in panchayat areas will be identified and recorded so that no new plots will have to be identified every time a private or government agency plans to carry out plantation. This was also recorded in an article titled "*City on a green mission: Soon, a bank of govt plots for plantation*" published in Times of India dated 24.08.2022. This makes it clear that vacant lands are available at a much lesser distance than 280 kilometers and within the same district for conducting compensatory afforestation and therefore the finding of the Joint Committee in Para 7 that no land is available is incorrect.

Copy of the article titled "*City on a green mission: Soon, a bank of govt plots for plantation*" published in Times of India dated 24.08.2022 is annexed herewith as **ANNEXURE A-2**.

That the Joint Committee has not given any findings with regard to non-compliance with the Policy Guidelines of NHAI, incomplete and improper cost-benefit analysis, felling permission being contrary to the inspection report and violation of the Order in T.N. Godavarman Thirumalpad Vs. Union of India & Ors.

9. That the Appellants had raised the following grounds in the Appeal, other than the fact that compensatory afforestation is being undertaken 300 kilometres away from the project land:

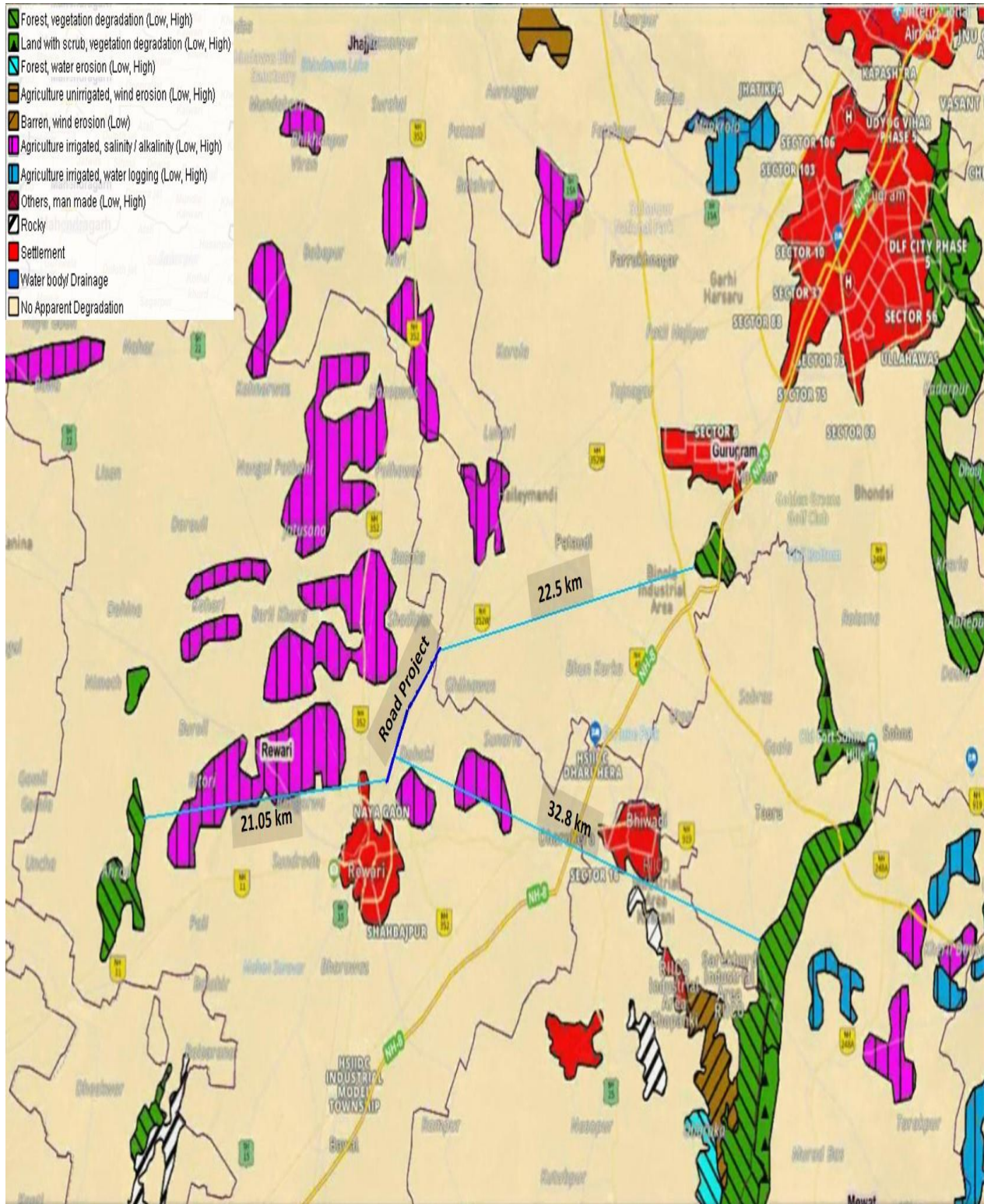
- a. That the design of the project itself and subsequent Forest Clearance granted is contrary to the '*Policy Guidelines for land acquisition, tree felling, utility shifting across the alignment therefor*' dated 10.05.2018 issued by the Ministry of Road Transport and Highways [MoRTH] which require felling of trees only one side of right of way (ROW).
 - b. That the cost-benefit analysis does not take into account the contribution of the project to climate change in light of India's commitment at the international level.
 - c. The felling permission is also contrary to the inspection report dated 30.07.2021 which suggested that land may be acquired only one side of the road so that fully grown trees on the other side are saved.
 - d. The felling permission is also contrary to order dated 14.03.2017 in ***T.N. Godavarman Thirumalpad Vs. Union of India & Ors.*** [Original Application No. 167 of 2016] of this Hon'ble Tribunal wherein it was directed that no tree can be felled until and unless ten trees is planted for each tree cut or felled or proposed to be felled.
10. That the Joint Committee Report only given finding on why the compensatory afforestation was being conducted 280 kilometres away from the project location and has failed to give findings on other important issues raised by the Appellants such as non-compliance with the '*Policy Guidelines for land acquisition, tree felling, utility shifting across the alignment therefor*', felling permission being contrary to

the inspection report, violation of ***T.N. Godavarman Thirumalpad Vs. Union of India & Ors.*** and incomplete and improper cost-benefit analysis which does not take into account the contribution of the project to climate change in light of India's commitment at the international level etc.

11. That the Joint Committee Report has stated in Concluding Remarks that "*most of the trees for which permission has been granted by the Forest Department and MoEF&CC have been felled*". It is submitted that only 50% of the trees would have been felled had there been compliance with the '*Policy Guidelines for land acquisition, tree felling, utility shifting across the alignment therefor*' dated 10.05.2018 issued by the Ministry of Road Transport and Highways [MoRTH] which require felling of trees only one side of right of way (ROW).
12. That the current report by the Joint Committee is incomplete and a status report needs to be filed providing information on other important grounds raised by the Appellants, as was directed by this Hon'ble Tribunal vide Order dated 01.07.2022.
13. That the Hon'ble Tribunal may direct that for future expansion of roads, only one side of trees of right-of-way for tree felling permission may be granted and also direct Respondent No. 4 and 5 to honour India's international commitment of creating a carbon sink of 2.5-3 billion tonnes by 2030 and therefore to conduct studies and submit a report which factors in the amount of carbon sink/sequestration capacity lost for each tree earmarked for felling as a component of the cost-benefit analysis.

It is stated that in the interest of Justice, necessary order be passed in favour of the Appellants. Any other of further order may be passed which the Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case.

Image taken from VEDAS, an online geo-processing platform of Indian Space Research Organization showing that degraded lands are available at a distance of 20-30 kilometers from the project land to undertake compensatory afforestation



"With the creation of a land bank, Gurugram will not have to identify a new plot of land every time a private or government agency plans to carry out a plantation drive. Also, the details of soil and preferred plants will be provided to the agency in order to make the drive more feasible. Soil quality and the knowledge about saplings are important while carrying out plantation. We will provide these technical details," said Subhi Kesarwani, a member of Gurujal.

This initiative has been taken as plantation drives in the city are often stuck because of unavailability of land. "We will put details on these sites on our website for the people to access," she added.

Gurugram lost 2.5sq km of forest cover between 2019 and 2020, according to a report by the Forest Survey of India.

The initiative will also help in improving the water table. The city has been perilously close to a water crisis since 2013, when it was categorised as "overexploited" by the Central Ground Water Authority. In the last 15 years, the average depth at which groundwater is available has almost doubled, underlining grave concerns on over extraction that have dogged the city for years without a solution being found to slow the trend, if not reverse it.

"An increase in green cover will help in recharging the groundwater. We want to make the system accountable for the maintenance of the site after plantation. After the drive, it will be the responsibility of the agency concerned to look after the saplings," she added.

Meanwhile, experts welcomed the move, saying it will help in gathering data on vacant plots which turn into illegal dump yards. "There are several areas which have turned into illegal garbage dumping spots in the city. This exercise will help them turn them into green spots," said Vaishali Chandra Rana, a city-based environmentalist.

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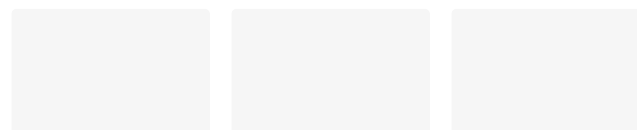
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