

BEFORE THE NATIONAL GREEN TRIBUNAL

AT WESTERN ZONE BENCH AT PUNE

ORIGINAL APPLICATION 46/2020

IN THE MATTER OF:

Dr Sushma Date and Ors.

..... Applicants

Versus

M/s Pune Municipal Corporation and Ors.

..... Respondents

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THROUGH



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Date: 27.10.2021

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**REJOINDER ON BEHALF OF APPLICANTS IN REPUDIATION TO THE
ADDITIONAL AFFIDAVIT FILED BY THE RESPONDENT NO.1 DATED
22.09.2021**

MOST RESPECTFULLY SHOWETH:

1. That the above titled Application has been filed under Section 14, 15 read with Section 20 of the National Green Tribunal Act, 2010 raising issue of non-forest activities including as cutting of hill, leveling of land, excavation of stones, and felling of trees undertaken within various Forest Lands situated on Sy. No. 38, Sy. No. 262 and Sy. Nos. 49-53 in Pune City for the purpose of construction of GSR and ESR Water Tanks, by the Respondent No.1 Pune Municipal Corporation (hereinafter referred to as 'impugned projects')
2. That the instant rejoinder is being filed in response to the Additional Affidavit dated 22.09.21 of the Respondent No.1, i.e., M/s Pune Municipal Corporation ('PMC'). That at the outset, the Applicant denies each and every statement made by the said Respondent unless specifically admitted or is part of the record. The Applicant reiterates all the facts and submissions made in the Original Application to be true and correct and the same may be read as part of the instant rejoinder and are not all being repeated for the sake of brevity.
3. The Applicant submits that the present Application pertains to three Forest Lands situated on Sy. No. 38 (Panchawati Hill), Sy. No. 262 (Fergusson College Hill) and Sy. Nos. 49-53 (Law College Hill) in Pune City. The Applicant had previously

submitted that various non-forest activities such as cutting of hill, leveling of land, excavation of stones, and felling of trees has taken place on these three Forest Lands above mentioned without obtaining prior Forest Clearance as per Section 2 of the Forest (Conservation) Act, 1980.

ILLEGAL DIVERSION OF FOREST LAND SITUATED ON SY. NOS. 49-53

4. The Applicant has previously submitted that no permission has been obtained prior to diverting forest lands situated on Sy. Nos. 49-53 for the impugned project. The Applicant has submitted that PMC had undertaken unauthorized excavation of stone, cutting and leveling of hill slope, and felling of trees within Forest Lands situated on Sy. Nos. 49-53.
5. In response, PMC vide Affidavit dated 22.09.21 has contended, on Para 5, **Pg 188-189**, that the Sy. Nos. 49-53 are not classified as 'Forest Land', and that accordingly, Forest (Conservation) Act, 1980 is not applicable thereto.
6. However, the Applicant vehemently denies such statements made by PMC. The Applicant submits that PMC has not made any statement to such effect in the Affidavit 23.03.21 previously filed, and it is patently evident that such statements of non-forest land status of Sy. Nos. 49-53 are being made as an afterthought.
7. That the Applicant has submitted on record 'Letter dated 31.03.2000 written by the Deputy Conservator of Forests, Pune to the District Collector, Pune' as well as 'Letter dated 16.07.2001 written by the Deputy Conservator of Forests, Pune, to the Commissioner, Pune Municipal Corporation', annexed as ANNEXURE A-1 and ANNEXURE A-2 respectively, which clearly state that the Sy. Nos. 49-53 are classified as 'Forest Lands'. The Applicant submits that PMC has miserably failed to respond to such evidentiary documents submitted on record by the Applicant, and have remained completely silent on this issue.
8. It is submitted that PMC has instead placed reliance on submissions made by the Respondent No. 3 vide Affidavit dated 22.02.21. Accordingly, PMC has submitted vide Additional Affidavit dated 23.09.21, Para 18, **Pgs 194-195** as follows:

"...PMC has always maintained that S. No. 49 to 53 are not forest lands. In the affidavit filed by the Respondent No. 3, Forest Department, Maharashtra, at para.3., it is clearly

stated that survey numbers 49 to 53 are not forest lands in the possession of the Forest Department. This is the clearest refutation of the applicant's claim at paras. 16 and 17 of the rejoinder filed by them..."

9. The Applicant submits that no such specific statements have been made by the PMC in Affidavit dated 23.03.21 previously filed. Furthermore, the Applicant submits that Respondent No.3 has stated the following with respect to the status of forest land situated on Sy. Nos. 49-53 in Affidavit dated 22.02.21:

"7. With reference to the contents of para no. 5,6 and 7, I say that survey no. 49 to 53 are not identified forests. Hereto annexed as Exhibit R-2 is a copy of list of identified forests in Pune District. I say that in Green Pune Scheme launched in the year 1998 the Forest Department as well as the Respondent no.1 had planted trees in those lands".

10. The Applicant submits that Respondent no.3 has relied on 'Exhibit R-2' annexed to Affidavit dated 22.02.21 in support of their claim that Sy. Nos. 49-53 are not classified as 'Forest lands'. However, the Applicant submits that upon inspection of document dated 3.5.2005 annexed as 'Exhibit R-2', it is evident that such document is a Letter written by the Deputy Conservator of Forests, Junnar, to District Collector, Pune, regarding 'resurvey of Forest Land' in Pune District. Accordingly, such document pertains to classification of areas as 'forest land' which were earlier not notified by the Forest Department.
11. The Applicant therefore submits that it *prima facie* appears that such 'Exhibit R-2' is not an exhaustive list of all forest lands falling within Pune District, and only includes lands previously not notified as 'forest'.
12. The Applicant submits that Respondent No. 3 has also failed to address the Letter dated 31.03.2000 written by the Deputy Conservator of Forests, Pune to the District Collector, Pune as well as Letter dated 16.07.2001 written by the Deputy Conservator of Forests, Pune, to the Commissioner, Pune Municipal Corporation, which state that the Sy. Nos. 49-53 are classified as 'Forest Lands'.
13. The Applicant therefore submits that PMC has relied on the statements on Respondent No.3 without any application of mind, and have miserably failed to produce any evidence on record in response to Applicant's specific submissions.

The Applicant reiterates that Sy. Nos. 49-53 are forest lands and therefore the provisions of Forest (Conservation) Act, 1980 are applicable thereto.

NO PERMISSION OBTAINED BY PMC PRIOR TO DIVERSION OF FOREST LAND ON SY. NO. 38 AND SY. NO. 262

14. The Applicant submits that it is an admitted fact that non-forest activities were initially undertaken by PMC on Forest Lands situated on Sy. No. 38 (Panchawati Hill) and Sy. No. 262 (Fergusson College Hill), for construction of the impugned water tanks in the time period of 2018-2019 without obtaining prior Forest Clearance as per Forest (Conservation) Act, 1980. That such fact has also been corroborated by Respondent No. 3 Forest Department as per Paras 6-13, **Pgs 166-168**, of Affidavit dated 22.02.21 filed by Respondent No.3.

15. That PMC have themselves submitted that in-principle approval has been granted on 25.08.21 for Sy. Nos. 38 and 262, vide Additional Affidavit dated 22.09.21, on Para 9, **Pg 190-191**. That PMC has accordingly submitted as follows:

"For the sites at S. No. 38(Panchawati Hill) and S. No. 262, requisite in-principle permissions have been obtained from the MOEF&CC vide F. No. FC-I/MH-175/2021-NGP/8543 dated 25/08/2021 and vide F. No. FC-I/MH-174/2021-NGP/8542 dated 25/08/21."

16. The Applicant submits that it is therefore evident that the PMC have first undertaken non-forest activities on Sy. No. 38 and Sy. No. 262 in the time period of 2018-2019 without prior permissions as per the Forest (Conservation) Act, 1980, and that PMC has submitted on record permissions dated 25.08.2021, which are evidently obtained several years after initial diversion of forest lands for non-forest purpose. That therefore, the Applicant submits that PMC has attempted to obtain an Ex-Post Facto Approval for the impugned project.

17. The Applicant submits that PMC is accordingly liable to be penalized for such illegal diversion of forest land as per the 'Handbook of Guidelines for Effective and Transparent Implementation of the Provisions of Forest (Conservation) Act, 1980' dated 28.03.2019, issued by the MoEF&CC. That the relevant extracts thereof are reproduced as follows:

"1.21. Ex-post Facto approval and Penal Provisions: *Proposals seeking ex-post-facto approval of the Central Government under the Forest (Conservation) Act, 1980 are normally not to be entertained. The Central Government will not accord approval under the Act unless under exceptional circumstances that may justify condonation. In such cases Central Government shall ensure penalty from user agencies/State as follows:*

(i) In cases where the proposal under FC Act has not been submitted and forest land is diverted without FC.

a. The diversion of forest land for non-forestry purposes without the prior approval of the competent authority in the State will be dealt under the provisions of Indian Forest Act 1927 and other State Acts dealing with the conservation of Forests by the State government concerned. The land in question will not be considered as diverted under FCA1980 and the status of the land shall continue to be forest.

b. If the permission for use of forest land for non-forestry purposes have been granted by the State authority without the prior approval of the central government under section 2 of the Forest Conservation Act 1980 then action under section 3A and /or 3B of FC Act, as may be applicable, shall be taken against the authority causing the diversion. A report with full details of violation shall be submitted by the State Government on the recommendation of the Forest Department of the State to the Ministry of Environment, Forests & Climate Change Government of India, New Delhi and formal enquiry shall be conducted by the Regional Office of the MoEF&CC.

(ii) In cases where the proposal under FC Act is under consideration and forest land is diverted before grant of FC:

*a. The penalty for violation shall be equal to NPV of forest land per hectare for **each year** of violation from the date of actual diversion as reported by the inspecting officer with maximum up to **five (5) times the NPV** plus 12 percent simple interest till the deposit is made.*

b. In case of public utility projects of the government the penalty shall be 20 % of the penalty proposed in para (a) above.

c. State government will initiate disciplinary action against the official concerned for not being able to prevent use of forest land for non-forestry purpose without prior approval of Government of India.

d. User agency responsible for violation shall be prosecuted under local Act of the State for unauthorized use of forest land without the permission of State authority."

A copy of the relevant extracts of 'Handbook of Guidelines for Effective and Transparent Implementation of the Provisions of Forest (Conservation) Act, 1980' dated 28.03.2019 are annexed and marked herewith as **ANNEXURE A-14.**

18. It is therefore submitted that this Hon'ble Tribunal may accordingly hold the Respondent Authorities liable for illegal diversion of Forest land situated on Sy. Nos. 49-53, Sy. No. 38, and Sy. No. 262, as per the above mentioned Guidelines issued by the MoEF&CC.

Pass any other order as deemed fit by this Hon'ble Tribunal based on the facts and circumstances of the present Application.



APPLICANT NO.1

THROUGH



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Email:-litigation.life@gmail.com

PLACE: Delhi/Pune

DATE: 27/10/2021

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..... Respondents

AFFIDAVIT

I, Sushma Jaydeep Date, R/o Lokmanya Hospital 13/4 off Karve Road, Pune – 411004, do hereby state and declare on affirmation as under:

1. That I am the Applicant No. 1 in the above titled Original Application, and hence, well conversant with the facts and circumstances described in the present case and as such, I am competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.



Date

DEPONENT

VERIFICATION

I, the above-named deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.



Verified at 27 on this Oct day of October, 2021.

NOTED & REGISTERED
AT.SR.NO. 113/2021
 27/10/21

Identified by
[Signature]
Advocate

BEFORE ME
[Signature]
RHUTA SHREESH PANDIT
ADVOCATE & NOTARY
GOVERNMENT OF INDIA
27 OCT 2021

Date

DEPONENT

\$ Q Q H [X U H \$

F. No. 5-2/2017- FC
Government of India
Ministry of Environment, forests and Climate Change
(FC Division)

Indira Paryavaran Bhawan,
Aliganj, Jor Bag Road,
New Delhi - 110003.

Dated: 28th March, 2019

To,
The Principal Secretary/Secretary (Forests),
All State/UT Governments.

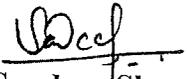
Sub: Handbook of guidelines for effective and transparent implementation of the provisions of Forest (Conservation) Act, 1980.

Sir,

In supersession of all guidelines issued in the past, a handbook of guidelines is issued for effective and transparent implementation of the provisions of Forest (Conservation) Act, 1980. All the provisions enshrined in these guidelines will be applicable from 8th March 2019 onwards. The copy of comprehensive guidelines is available on Ministry's website: www.parivesh.nic.in.

This issue with the approval of competent authority.

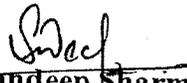
Yours faithfully,


(Sandeep Sharma)

Assistant Inspector General of Forest (FC)

Copy to:

1. Prime Minister's Office, New Delhi.
2. Secretary, Ministry of Mines/Coal/Steel/MoRTH/MoPNG/MHA/MoP/MoTA, Government of India, New Delhi.
3. Principal Chief Conservator of Forests, all State/UT Governments.
4. Nodal Officer (FCA), all State/ UT Governments.
5. All Regional Offices, Ministry of Environment, Forest and Climate Change (MoEF&CC), GoI, New Delhi.
6. Joint Secretary in-charge, Impact Assessment Division, MoEF&CC, GoI, New Delhi.
7. All IGF/ DIGF/AIGF in MoEF&CC, GoI, New Delhi.
8. Sr. Director (Technical), NIC, MoEF&CC **with a request to place a copy of the letter on website of this Ministry.**
9. PPS to Secretary (EF&CC)/DGF&SS/ADGF(FC)/ADGF(Wildlife), MoEF&CC, New Delhi.
10. Guard File.


(Sandeep Sharma)

Assistant Inspector General of Forest (FC)

o/c

17/4/19

Handbook of

Forest (Conservation) Act, 1980

and

Forest Conservation Rules, 2003

(Guidelines & Clarifications)



Ministry of Environment, Forest and Climate Change

Government of India

2019

डॉ. हर्ष वर्धन
Dr. Harsh Vardhan



भारत सरकार
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्री
GOVERNMENT OF INDIA
MINISTER OF ENVIRONMENT, FOREST &
CLIMATE CHANGE



FOREWORD

The Forest (Conservation) Act, 1980, is an important Central statute and a living example of the will of the nation to preserve its precious forest, wildlife and biodiversity wealth. It is one of the shortest Act with widest implications on development and biodiversity conservation in the country. It embodies our firm commitment to ensure integrated and sustainable development by striking a balance between the economic and ecological considerations. This Act is of regulatory and not prohibitory in nature. It permits only unavoidable use of forest land for various developmental purposes.

As the Forest (Conservation) Act, 1980 is an evolving statute of the Central Government, implementation of the provisions under the act has been guided by sets of relevant rules, guidelines and directives contained in various court orders. The guidelines in particular have certainly helped the Ministry to implement, clarify and streamline the process of forest clearance under the Forest (Conservation) Act, 1980.

The Ministry, in the past, with a view to align the procedures and provisions of the Act with various rulings of Hon'ble Supreme Court, policy decisions, has issued more than 250 guidelines under the FC Act. Some of these guidelines were contextual to specific cases and specific times. To have better clarity and transparency, the Ministry, in consultation with concerned stakeholders, Regional Offices, State/UT Governments, has consolidated all the information, scattered in guidelines, in the form a handbook and has come up with a set of comprehensive, exhaustive, transparent and easy to understand guidelines in one single document in supersession of all the guidelines issued by the Ministry in the Past.

This Handbook provides comprehensive and updated details of amendments made in the Forest (Conservation) Rules, and guidelines issued by the Ministry so far. The Revised Handbook of the Forest (Conservation) Act, 1980 will serve as a yardstick to help the forest officers, State Governments, user agencies and all practitioners to deal with the issues related to the Forest (Conservation) Act, 1980 more efficiently. It will help various users to readily access the requisite guidelines, procedure, documents issued under the Forest (Conservation) Act, 1980 was earlier scattered in various guidelines.

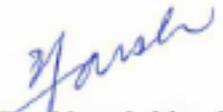

(Dr. Harsh Vardhan)

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Chapter I

Court Orders and General Clarifications

1.1. Meaning of ‘forest’ for the purpose of FCA-1980: As ordered by the Supreme Court of India in their order of 12th December 1996 in WP No. 202/1995 in the matter of T. N. Godavarman Thirumalpad Vs. Union of India *“The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognized 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.*

1.2. Salient features of Lafarge Judgement (2011) : Issuing specific guidelines so that *fait accompli* situations do not recur the Supreme Court in their order dated 6.7.2011 (in IA Nos. 1868, 2091, 2225-2227, 2380, 2568 and 2937 in WRIT PETITION (C) No. 202 of 1995 - Lafarge matter) directed for “completion of the exercise undertaken by each State/ UT Govt. in compliance of this Court’s order dated 12.12.1996 wherein *inter-alia* each State/UT Government was directed to constitute an Expert Committee to identify the areas which are “forests” irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such “forest” and the areas which were earlier “forests” but stand degraded, denuded and cleared, culminating in preparation of Geo-referenced district forest-maps containing the details of the location and boundary of each plot of land that may be defined as “forest” for the purpose of the Forest (Conservation) Act, 1980”.

The Supreme Court also directed “the MoEF&CC for preparation of comprehensive policy for inspection, verification and monitoring and the overall procedure relating to the grant of forest clearances and identification of forests in consultation with the States.”

1.3. Procedure for submission of proposals: All proposals for diversion of forest land for any non-forest purpose, irrespective of its ownership, requiring prior approval of the Central Government under FCA shall be submitted to the Nodal officer of the State/UT Government, online in the appropriate form and as per the procedures & requirements prescribed under the Forest (Conservation) Rules 2003, as amended from time to time.

1.4. Approval in two stages: MoEF&CC accords prior approval on proposals of the State/UT Government in two stages: first In-principle or Stage-I approval, and second on compliance to the conditions of the in-principle approval, final or Stage-II approval. Thereafter, as and when the State Government decides to permit the use of the forest land for non-forest purpose, it has to pass order to that effect along with the conditions and safeguards imposed by the Central Government while according Stage-I and Stage-II clearance (Ref: NGT principal bench order dated 7th November 2012 in appeal no. 7 of 2012).

1.5. No additional condition after Centre issues final approval: While issuing the diversion order, the State/UT government shall not impose any additional condition over and above the conditions stipulated by the Central government in their approval. However, subsequent to approval granted by the Central Government under FC Act, if the State/UT Government feels exceptional/unforeseen circumstances warrant imposition of additional

condition(s), prior approval of the Central Government must be sought by the concerned State/UT Government justifying imposition of such additional condition(s).

1.6. No work/activity can be taken up in the forest land before issue of order for its diversion for the non-forest purpose unless and to the extent permitted in the Forest Conservation (Rules) or guidelines issued there under.

1.7. The Supreme Court in its order dated 29th October 2002 directed that Net Present Value (NPV) of forest land diverted was also to be collected from the User Agency in addition to the monies collected for Compensatory Afforestation etc.

1.8. Monitoring of compliance of conditions: The State /UT Government, who being the custodian of the forests in their respective State/UT, should also monitor compliance of conditions of diversion, including those imposed by the MoEF&CC while giving prior approval under FCA.

1.9. Any diversion of forest land for non-forest purpose is only a “right to use” granted to the User Agency without any change in ownership and legal status of the forest land. As such, the diverted forest land cannot be mortgaged or reassigned or subleased by the User Agency.

1.10. In case the User Agency approached any legal fora against any condition(s) of approval for redressal, the approval shall stand revoked/be kept in abeyance unless the court cases are withdrawn with compliance of conditions or till the cases are decided by the Courts.

1.11. The term ‘Forest’ is not applicable to the plantations raised on private lands, except the notified private forests. However, felling of trees in these private plantations shall be governed by various State Acts, Rules, and Regulations. Felling of trees in private forests will be as per the working /management plan duly approved by the Government of India.

1.12. The term ‘tree’ for the purpose of FCA will have the same meaning as defined in Section 2 of the Indian Forest Act, 1927 or State/Other Forest Act that may be in force in the forest area under question.

1.13. De-reservation orders made before 25.10.1980: The cases in which specific order for de-reservation or diversion of forest lands for any project has been issued by the State Government prior to 25.10.1980, need not be referred to the Central Government. However, in the cases where only administrative approval for the project was issued without specific order regarding de-reservation and/or diversion of forest lands, prior approval of the Central Government under the Forest Conservation Act, 1980 would be necessary.

The Supreme Court ordered on 13.11.2000 in IA No. 2 in WP No.337/1995, re-iterated by the Supreme Court on 9.2.2004 in IA No.16, that “... Pending further orders, no de-reservation of Forests/Sanctuaries/National Parks shall be effected.”

1.14. Projects involving both forest and non-forest lands: Some projects involve use of forest land as well as non-forest land. State Governments/project authorities sometimes start work on non-forest lands in anticipation of the approval of the Central Government for release of the forest lands required for the project. Though the provisions of the FCA may not have technically been violated by starting of work on non-forest lands, expenditure incurred on works on non-forest lands may prove to be infructuous if diversion of forest lands involved is not approved. Therefore, if a project involves forest as well as non-forest land, work 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 FC Rules or guidelines issued thereunder.

1.15. Diversion of forest land for non-site-specific projects: A number of proposals for diversion of forest land for non-site-specific projects like industries, construction of residential colonies, institutes, disposal of fly ash, rehabilitation of displaced persons, etc. are received by the Central Government. Attention is drawn to items 1(iv) and 8 of the Form 'A' in which the proposal is to be submitted by the State Government. In these columns, justification for locating the project in the forest area giving details of the alternatives examined and reasons for their rejection has to be furnished. Normally, there should not be any justification for locating non-site-specific projects on forest land. Therefore, the State Government should scrutinize the alternatives in more details and must give complete justification establishing its inescapability for locating the project in forest area.

1.16. Diversion of forest land for rehabilitation: Diversion of forest land for rehabilitation of people is normally not allowed. However, such diversion may be considered as a special case, if diversion of forest land is essentially required for the rehabilitation of persons belonging to Scheduled Tribes, Scheduled Castes and other people who may have to be shifted from the core zone of a national park, sanctuary or reserve.

1.17. Nistar and other rights of local people: The provisions of the Forest (Conservation) Act, 1980, do not interfere in any manner or restrict the Nistar, recorded rights, concessions and privileges of the local people for *bonafide* domestic use as granted by the State Government under Indian Forest Act, 1927 or State Forest Acts/Regulations. However, it has to be ensured that while allowing such rights, concessions and privileges to be exercised, the right holders do not resort to felling of trees or break up the forest floor so as to procure stones, minerals, or take up constructions, etc.

Right holders are permitted to collect stones/slates/boulders for *bonafide* domestic use from the forest area within the Gram Panchayats of right holders and to the extent such right are permitted under the IFA 1927 or the State Forest Act.

The forest produce so obtained shall not be utilised for any commercial purposes.

The collection of such forest produce should be manual and should be transported through local modes or transport like bullock carts, camel carts, etc. and no mechanized vehicles shall be allowed to be used in transporting such forest produce and only in exceptional cases with the approval of concerned Divisional Forest Officer, tractors mounted with trolley may be used.

The Supreme Court has passed an order on 14.02.2000 restraining removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary.....". In view of this, rights and concessions cannot be enjoyed in the Protected Areas (PAs).

1.18. Explanation - Non-Forest Purpose

- (i) Cultivation of tea, coffee, spices, rubber and palms is a non-forestry activity, attracting the provisions of the Act.
- (ii) Cultivation of fruit bearing trees or oil-bearing plants including *Jatropha*, or medicinal plants would also require prior approval of the Central Government except when:

- (a) The species to be planted are indigenous to the area in question; or are host tree for rearing silk worm/tusser in already identified natural/forest areas for silk cultivation.
- (b) Such planting activity is part of an overall afforestation program for the forest area in question.
- (iii) Cultivation of tea/oil palm/horticultural spp. etc. for stabilization of shifting cultivation/Jhum lands requires prior approval of the Central Government under the provisions of Forest (Conservation) Act 1980.
- (iv) Ecotourism is a non-forest activity requiring prior approval under the FC Act.
- (v) The right holders in whose favour right over the forest land is accorded following the procedure prescribed under the provisions of Forest Rights Act, 2006 are free to raise any crop for their sustenance, agriculture or horticulture or commercial in nature including rubber/tea plantation on such land.

1.19. Clarifications on Sub-clause 2(iv) of the Act

- (i) Sub-clause 2(iv) of the Act prohibits clearing of naturally grown trees in forest land for the purpose of using it for reforestation. The provisions of this sub-clause will be attracted if the forest area in question bears naturally grown trees and are required to be clearfelled, irrespective of their size, for harnessing existing crop and/or raising plantation through artificial regeneration techniques, which may include coppicing, pollarding or any other mode of vegetative propagation.
 - (ii) All proposals involving clearing of naturally grown trees in any forest area, including for the purpose of reforestation, shall be sent by the concerned State/UT Government in the form of Management Plans/ Working Plans to the Additional Principal Chief Conservator of Forests (APCCF) of the concerned Regional Office of the Ministry of Environment and Forests.
 - (iii) The Hon'ble Supreme Court in their order dated 12.12.1996 have ordered that "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"
- All proposals in respect of sanction of Working Plans/Management Plans shall be finally disposed of by the concerned Regional Office of MoEF&CC, under Section 2 of the Act. While examining the proposal, the Regional Office would ensure that the final decision is in conformity with the National Forest Policy, Working Plan guidelines and other relevant rules and guidelines issued by the Central Government from time to time. In the cases where the proposal of the State Government is not accepted and are substantially modified, a reference would be made to MoEF&CC along with a copy of the Working Plan.
- (iv) Felling proposals as per the working plan/working scheme received from the State Governments/UT administrations shall be placed before the Regional Empowered Committee (REC) of the concerned Regional Office of this Ministry for examination and advise to the Regional Office on the issue. The APCCF (Central) of the Regional Office of this Ministry will be competent authority to approve the

proposals on the recommendations of the REC as per the existing rules/ acts keeping into account the directions of supreme Court dated 22.09.2000 in Writ petition No. 202/ 95. The APCCF (Central) of the Regional Office will ensure strict monitoring of felling and regeneration as per approved Working Plan/ Working Scheme.

- (v) National parks and Wildlife sanctuaries are to be managed according to approved management plan. The Supreme Court has passed an order on 14.02.2000 restraining removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary.....".

1.20. Reopening/reconsideration of Proposals

(i) In cases where the State Government is requested to furnish clarification or additional information relating to a proposal, all particulars should be made available to the Central Government within 90 days. If such particulars are not received within 90 days, the proposal may be rejected by the Central Government for non-furnishing of essential information. Such cases can be reopened provided the following conditions are satisfied:

- a. there is no change in the proposal in terms of scope, purpose and other important aspects.
- b. all the required information has been made available
- c. delay in providing the information is satisfactorily explained

(ii) Any request for reconsideration of any proposal that has been considered and rejected by the Central Government has to be made by concerned State/UT Government within three months from the date of communication of such rejection along with detailed justification for reconsideration and comments on each of the grounds on which proposal has been rejected.

1.21. Ex-post Facto approval and Penal Provisions: Proposals seeking ex-post-facto approval of the Central Government under the Forest (Conservation) Act, 1980 are normally not to be entertained. The Central Government will not accord approval under the Act unless under exceptional circumstances that may justify condonation. In such cases Central Government shall ensure penalty from user agencies/State as follows:

(i) In cases where the proposal under FC Act has not been submitted and forest land is diverted without FC.

- a. The diversion of forest land for non-forestry purposes without the prior approval of the competent authority in the State will be dealt under the provisions of Indian Forest Act 1927 and other State Acts dealing with the conservation of Forests by the State government concerned. The land in question will not be considered as diverted under FCA 1980 and the status of the land shall continue to be forest.
- b. If the permission for use of forest land for non-forestry purposes have been granted by the State authority without the prior approval of the central government under section 2 of the Forest Conservation Act 1980 then action under section 3A and /or 3B of FC Act, as may be applicable, shall be taken against the authority causing the diversion. A report with full details of

violation shall be submitted by the State Government on the recommendation of the Forest Department of the State to the Ministry of Environment, Forests & Climate Change Government of India, New Delhi and formal enquiry shall be conducted by the Regional Office of the MoEF&CC.

(ii) In cases where the proposal under FC Act is under consideration and forest land is diverted before grant of FC:

- a. The penalty for violation shall be equal to NPV of forest land per hectare for **each year** of violation from the date of actual diversion as reported by the inspecting officer with maximum up to **five (5) times the NPV** plus 12 percent simple interest till the deposit is made.
- b. In case of public utility projects of the government the penalty shall be 20 % of the penalty proposed in para (a) above.
- c. State government will initiate disciplinary action against the official concerned for not being able to prevent use of forest land for non-forestry purpose without prior approval of Government of India.
- d. User agency responsible for violation shall be prosecuted under local Act of the State for unauthorized use of forest land without the permission of State authority.

(iii) Violation /noncompliance of any conditions imposed while granting approval under FC Act.

In such cases the penalty will be imposed on the recommendation of the APCCF Regional office in whose jurisdiction the alleged violation has occurred. The violation will be reported to REC/FAC and the committee will give time to comply the conditions within stipulated time.

- a. In case the offence is proved then the penalty shall be imposed for violation committed over forest area without approval equal to twice the normal NPV.
- b. In case of public utility projects of the government the penalty shall be 20 % of the penalty proposed in para (a) above.

(iv) Violation on account of change of land use in the approved mining plan:

- a. No penalty is to be imposed for such violation if the change is as per change in mining plan duly approved by competent authority. User agency shall intimate all approvals related to change in mining plan to the regional office within one month of approval. In other cases, change in land use plan shall not be carried out without prior approval of MoEF&CC under the provisions of FCA 1980.
- b. Any violation of change in land use (other than mining operations), penalty of two times the NPV plus simple interest 12 per cent from the date of actual violation committed will be imposed.
- c. In case the approved change in mining plan is not intimated within one month of the approval the same fine shall be imposed as in para IV(b).

If the violation is not attributable to the user agency, no penalty shall be imposed on user agency.

1.22. Zoo, Rescue, Rehabilitation Center and captive breeding facility

Zoo, Rescue, Rehabilitation Center and Captive breeding facility for wild life management is treated as a forestry activity for the purpose of applicability of the provisions of FCA 1980. However construction of Zoo over forest land has both forestry and non-forestry components. After thorough deliberation and discussion, it has been decided that detail proposal for construction of Zoo, after approval of plan by CZA, shall be submitted to MoEF&CC as per the procedure prescribed for diversion of forest land. It has been decided that not more than 15 per cent of total forest area, requested for diversion under FCA 1980, may be used for non-forestry activities. Accordingly, 15 per cent of the total NPV calculated for the area sought for diversion will be charged against the proposal. For the purpose of Compensatory afforestation (CA), if the project is being submitted and constructed by central government agency, then it will be done over the degraded forest area equivalent to 30 per cent of the total forest area being diverted. In case if the project is being submitted and constructed by State Government agencies / private agencies then it will be done over non forest land equivalent to 15 per cent of total area being diverted. In such cases the non-forest land shall be transferred, mutated in the name of forest department and notified as Protected Forest prior to stage II approval.

T.C.

(Handwritten signature)