

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH NEW DELHI**

ORIGINAL APPLICATION NO. 252 OF 2023

In the matter of: -

Bhera Lal Goyal & Ors.

...Applicants

Versus

Ministry of Environment, Forest and Climate

Change & Ors.

...Respondents

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Place: - Delhi

COUNSEL

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**SHORT REPLY ON BEHALF OF RESPONDENT NOS. 8
AND 9.**

MOST RESPECTFULLY SHOWETH: -

1. The present Original Application No. 252 of 2022 has been filed by the Applicants for seeking directions to respondent authorities to permanently stop/restrain the commercial activities of hotel/resort being undertaken by Respondent No. 8 & 9 within the eco sensitive zone of Kumbhalgarh Wildlife Sanctuary District - Pali (Rajasthan) in defiance of judgment dated 3rd June 2022 passed by Hon'ble Supreme Court in re: *T.N. Godavarman Thirumulpad Versus Union of India* and without obtaining statutory clearances as per law and for directions to concerned authorities to take action against Respondent no.8 &

9 for illegal felling of trees and for unauthorised construction on the hill area and *Charagrah* land.

2. That the contents of the Original Application are denied, unless the same are a matter of record or are explicitly/categorically admitted hereinafter. The said application is not maintainable on accounts of several grounds taken hereinafter.

PRELIMINARY OBJECTIONS: -

1. At the outset it is most respectfully submitted that Application is barred by limitation as the Applicant is alleging about the "Construction started in January, 2022" and taken the said date as the date from which the cause of action has arose. However, the present Application was filed on 03.03.2023 (i.e. after more than one year). Hence the present application is filed with gross delay and that to without showing any reason for delay. Thus the present Application may be dismissed at this count alone. At this juncture, it would be relevant to mention the Section 14 of the NGT Act which states as under:

14 Tribunal to settle disputes. -

(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.

2. It is further submitted that the present Application is also barred by Jurisdiction as the land in question is situated in Rajasthan However, the Applicant herein has filed the present Application before this Hon'ble Tribunal instead of filing the same before the Central Zone bench of this Hon'ble Tribunal so as to harass the Answering Respondent.
3. It is further submitted that the Applicant has made several allegations particularly regarding the statutory permissions, eco sensitive zone and further regarding the felling of trees etc. however, the Applicant has never raised such allegations before any authorities/departments/CEC or made any objections against the draft notification before approaching this Hon'ble Tribunal which itself shows that the Applicant is not concerned with the Environmental damage but has *malafide* intention so to harass the answering Respondent.
4. That the Original Application filed under Section 14 & 15 of National Green Tribunal Act, 2010 (hereinafter

4
referred to as 'the Act'), is beyond the scheme and purpose of the act as no *substantial question relating to environment* is set out in the application filed by the applicant. The applicants have failed to specify any actual environment harm or damage in its application or through the evidence placed on record.

PRELIMINARY SUBMISSIONS

5. The present original Application has been filed particularly relying on the judgment dated 22.03.2022 passed by the Hon'ble Supreme Court in the matter of titled as "*T.N. Godavarman Thirumulpad Versus Union of India*" being Writ Petition Civil No. 202 of 1995. However, the said judgment of the Hon'ble Supreme Court has been modified vide judgment dated 26.04.2023 whereby, the restriction in 1Km area was made 'not applicable' in respect of which a draft and final notification issued by the MoEF & CC and in respect of the proposals received by the Ministry. Hence in view of the such modifications, the present application has become infructuous.
6. It is further submitted that the activity of development for "Tourism (resort)" comes under the 'regulated activity' as per the guidelines dated 09.02.2011 and even the draft notification dated

18.06.2020 does not prohibited tourism activity within the eco-sensitive zone. Hence the present application is mere in attempt to stop the answering respondent from getting the further permissions.

7. It is submitted that the Hon'ble Supreme Court while passing the Judgment in T. N. Godavarman(Supra) has categorically observed that the person can file objections to the draft notification so if there is any objection, the Original Application ought to have approach the government Authorities before filed the present Application and particularly knowing the fact that the draft notification has not been finalised.
8. It is submitted that the Answering Respondents has been allotted the land in question by the State Government in the year 2011 pursuant to 2007-Tourist Policy of the State Government for the purpose of Tourist Facility (i.e. Resort) in the land in question. Thereafter, several permissions were sought from different departments i.e. PWD, Water Department, Forest Department, Nagar Palika, RSPCB etc. Moreover, various discussion occurred with the State Authorities and concerned departments regarding the ESZ and after opinion from various State Departments and due deliberation, the no objection was granted only for a

smaller area out of the total area and that to with certain conditions being a regulated activity.

9. It is submitted that the land in question has been allotted and sanctioned for the purpose of tourism with several conditions and the State Government after following the due procedure of law has granted the same which is evident from the various permissions sought by the Answering Respondents till date.
10. It is humbly submitted that the Answering Respondents in order to comply is at the verge of taking all the requisite permissions and however, knowing the fact that the Resort is not functional, the Applicant has approached this Hon'ble Tribunal with unclean hands so as to portray that the Answering Respondents Resort is not in compliance with the judgment of Hon'ble Supreme Court in T.N.Godavarman case.
11. It is submitted that even for the draft notification, the answering Respondent has also filed its objections and that will be decided during the finalisation of the said draft notification and even the Hon'ble Supreme Court has left with the State Authorities and Central government qua the demarcation of the ESZ and regulated/permitted activities so which is pending at final stage for

approval at Government level. Hence, the present Application may not be entertained.

12. It is submitted that there is no felling of tress in the land in question as not even a single document has been placed on record which can show the felling of trees. In fact, the answering Respondent has planted hundreds of trees and further even the report submitted by the DFO itself goes on to show that there is no felling of trees in the land in question. Hence the said allegation is bald and frivolous.
13. It is most humbly submitted that the way the present Application is being drafted in a casual manner shows that the present Application is being used as a tool and an attempt has been made to even stop the answering Respondent from taking /sanctions permissions from different Department. Thus, it is premature at this stage.

Relevant Brief Facts

14. That in the year 2007, the State Government came with the Tourism Policy (Rajasthan Tourism Unit policy 2007) whereby, Lands were allotted and converted for the Hotels and other tourism purpose.
15. That in the year 2010, the Answering Respondents applied for the allotment of the land in the Tourism Department. Pursuant to the same, in the year 2011,

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the Answering Respondent were allotted a piece of land admeasuring 5.90 hectares out of which 1.30 Hec. was allotted for Tourism purpose by the Nagar Palika, Sadri (Pali) bearing Khasra No 4603, Village Sadri, Tehsil Desuri, District Pali, Rajasthan.

At this juncture, it is pertinent to mention that the land in question was with revenue Department and was within the periphery of the Municipal Corporation which was marked for tourism purpose.

16. That thereafter, the Answering respondents sought no objection from the Forest Department, Rajasthan for the purpose of 'Resort', which was granted on 21.01.2011, stating that the Khasra No. 4603 admeasuring 2.50 hec. out of 5.90 Hec. Does not come under the Forest Area and further mention that the land in question is around 150-300 meters away from the boundary of the Kumbhalgarh National Park. A copy of the No Objection issued by the Forest Department to the Answering Respondents dated 21.01.2011 is annexed herewith and marked **ANNEXURE R-1.**

17. That thereafter, the Answering Respondents further sought No Objection from the Public Works Department, Bali , Rajasthan and vide letter dated 01.02.2011, the Executive Engineer, Public Works Department granted the said No Objection Certificate to the Answering Respondents for the purpose of Tourism and Construction of Resort at Khasra No. 4603.

A copy of the No Objection Certificate from the Public Works Department dated 01.02.2011 is annexed herewith and marked as **ANNEXURE R-2.**

18. Further, on 01.02.2011 the Water Department also granted the No Objection Certificate with regard to the Tourism facility/Resort at Khasra No. 4603, Sadri, Rajasthan with few conditions. A copy of the No Objection Certificate by the Water Department dated 01.02.2011 is annexed herewith and marked as **ANNEXURE R-3.**

19. That on 09.02.2011, the guidelines for declaration of eco sensitive zones around national Park and Wildlife Sancantury was issued by the MOEf& CC wherein in the tourism was marked under the regulated category at Serial No. 5of Annexure-1.
20. That further the Answering Respondents applied No Objection to the office of Executive Engineer Public Development Section, District Pali which was granted vide the said Department on 31.07.2014 for the Tourism-Resort purpose. A copy of the Letter dated 31.07.2014 issued by the Executive Engineer Public Development Section, District Pali is annexed herewith and marked as **ANNEXURE R-4**.
21. That thereafter, on 24.04.2018, the Forest Department, Rajasthan granted No objection for the tourism-resort purpose after discussing the issue of land in question being within the 1 Km from the boundary of sanctuary and within the Eco Sensitive Zone. It was further observed that the land in

question has been "exempted" for the tourist-Resort facility vide Government order dated 13.05.2016. Moreover, the land in question is away from the boundary of Kumbhalgarh Wildlife Sanctuary and 1.30 hec. out of total area has been allotted for tourism-resort purpose only. A copy of the order dated 24.04.2018 issued by the Secretary ,Forest Department is annexed herewith and marked as **ANNEXURE R-5.**

22. That on 25.07.2018, the Senior Town Planner, Jodhpur Zone further issued letter to Nagar Palika Sadri regarding the inclusion of land in question in the Zonal Master Plan 2031. A copy of the Letter dated 25.07.2018 issued by the Senior Town Planner, Jodhpur Zone is annexed herewith and marked as **ANNEXURE R-6.**

23. That thereafter, on 04.01.2022, the Nagar Palika, Government of Rajasthan issued a letter thereby, granting/sanctioning converted land for the Tourism

facility-Resort in an area of 1.30 hec out of area 5.90 hec. only. A copy of the letter dated 04.1.2022 issued by the Nagar Palika, Head Office Jaipur, Rajasthan is annexed herewith and marked as **ANNEXURE R-7.**

24. That on 03.06.2022, the Hon'ble Supreme Court while considering the issue of eco sensitive zone at large passed several directions in the matter of titled as "*T.N. Godavarman Thirumulpad Versus Union of India*" being Writ Petition Civil No. 202 of 1995. The relevant extract of the judgment dated 03.06.2022 is quoted herein for ready reference:

"56.1. *Each protected forest, that is, national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9-2-2011 shall be strictly adhered to. For Jamua Ramgarh Wildlife Sanctuary, it shall be 500 m so far as subsisting activities are concerned."*

56.2. *In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such*

wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained.

56.3. *The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Union Territory. The Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting structures and other relevant details within the respective ESZs forthwith and a report shall be furnished before this Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.*

56.4. *Mining within the national parks and wildlife sanctuaries shall not be permitted.*

56.5. *In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State*

or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.

56.6. *The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach CEC and MoEF&CC and both these bodies shall give their respective opinions/recommendations before this Court. On that basis, this Court shall pass appropriate order."*

A copy of the Judgment dated 03.06.2022 passed by the Hon'ble Supreme Court in the matter titled as "T.N. Godavarman Thirumulpad Versus Union of India" being Writ Petition Civil No. 202 of 1995 is annexed herewith and marked as **ANNEXURE R-8**

25. That further on 26.04.2023, the Hon'ble Supreme Court was pleased to modify the above mentioned judgement dated 03.06.2022 whereby, *inter-alia*, the Hon'ble Supreme Court has clarified that the directions qua the restrictions in minimum 1 KM area would not be applicable to ESZs in respect of which a

draft and final Notification issued by the MOEF&CC and in respect of the proposals received by the Ministry. That vide the said order, the Hon'ble Supreme Court has further modified the other directions as well. The relevant paragraph of the judgment dated 26.04.2023 passed by the Hon'ble Supreme for is quoted herein below for ready reference.

"61. We are therefore inclined to allow the present I.A. The direction in paragraph 56.1 of the order dated 3rd June 2022 49 (supra) is modified and clarified that the directions contained therein would not be applicable to the ESZs in respect of which a draft and final notification has been issued by the MoEF & CC and in respect of the proposals which have been received by the Ministry."

We also modify the directions contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) and replace the same as under:

(i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities;

(ii) We further direct that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May 2022 issued by MoEF & CC."

A copy of the Judgment dated 26.04.2023 passed by the Hon'ble Supreme Court of India in *Writ Petition Civil no. 202 of 1995* titled as "*T.N. Godavarman Thirumulpad Versus Union of India*" is annexed herewith and marked as **ANNEXURE R-9.**

In view of the above, it is therefore most respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the present application of the Applicant with exemplary cost.

26. That the answering Respondent further reserve its right to file detailed/additional reply as and when required by this Hon'ble Tribunal.

27. That the affidavit in support of this Reply is being filed along with this Reply.

Date - 18/5/23 .

Place: - Delhi

Saurabh Rajpal

THROUGH COUNSEL
SAURABH RAJPAL, VINAY KUMAR SINGH

(ADVOCATES)

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DEPONENT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI.

ORIGINAL APPLICATION NO. 252 OF 2023

IN THE MATTER OF:

Bhera Lal Goyal

...Applicant

Versus

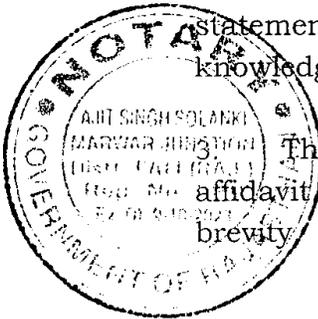
Ministry of Environment, Forest and Climate Change & Ors.

...Respondent

AFFIDAVIT

I, Mrs. Indu Kumari, W/o Shri Khushaveer Singh, aged about 53 years, Kadamb Van, Jojawar, Jojawar Pali, Rajasthan, 306022 do hereby solemnly affirm and declare as under:

1. That I am the Respondent No.8 in the instant matter and am well conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the accompanying reply has been drafted by my counsel under my instruction based on knowledge and I affirm that statement of facts made herein are true and correct to my knowledge.

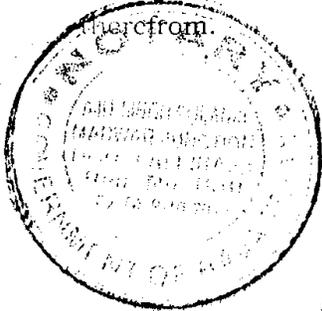


That the contents of the said reply be read as part of this affidavit and same are not repeated here for the sake of brevity

Indu Kumari
DEPONENT

VERIFICATION:
ATTESTED
[Signature]
NOTARY PUBLIC
MARWAR JUNCTION

Verified at _____ on this ____ day of April 2023 that the contents of my aforesaid affidavit are true and correct to my knowledge. No part of it is false nor anything material has been concealed therefrom.



Indurani
DEPONENT

ATTESTED
[Signature]
NOTARY PUBLIC
MARWAR JUNCTION

ANNEXURE-B/1

कार्यालय उप मुख्य वन्यजीव प्रतिपालक, उदयपुर (राज०)
 क्रमांक: एफ()सर्वे/उमुवजीप्र/उदय/10-11/ 543 दिनांक: 21/1-2011

निमित्त,

श्रीमति इन्दु कुमारी W/o
 श्री खुशवीर सिंह राजपूत
 मु.पो. जोजावर जिला पाली (राज०)

विषय: रिसोर्ट / होटल हेतु अनापत्ति प्रमाण पत्र (एनओसी)
 जारी करने के सम्बन्ध में।

संदर्भ: क्षेत्रीय वन अधिकारी वन्यजीव रेंज सादही के पत्रांक
 12 दिनांक 17.01.2011

महोदय,

उपरोक्त विषयान्तर्गत 'संदर्भित' पत्र के क्रम में लेख है कि राजस्व भूमि ग्राम सादही-1 तहसील देसूरी के खराया नम्बर 4603 रकबा 5.90 हेक्टेयर में से 2.50 हेक्टेयर भूमि क्षेत्रीय वन अधिकारी, वन्यजीव रेंज, सादही की रिपोर्ट अनुसार वन क्षेत्र में नहीं आता है। यह भूमि वन्यजीव अभयारण्य कुम्भलगढ़ की सीमा से 150-300 मीटर दूरी पर स्थित है। जो ईको सेन्सेटीव जोन के बाहर होने से रिसोर्ट / होटल निर्माण हेतु अनापत्ति प्रमाण पत्र जारी किया जाता है।

भवदीय

उप मुख्य वन्यजीव प्रतिपालक,
 उदयपुर (राज०)

क्रमांक: एफ()सर्वे/उमुवजीप्र/उदय/10-11/

दिनांक:

प्रतिलिपि निम्न को सूचनाार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है:-

1. जिला कलेक्टर, पाली।
2. उप वन संरक्षक, पाली।
3. जिला पर्यटन अधिकारी, जोगपुर
4. सहायक वन संरक्षक, वन्यजीव अभयारण्य, कुम्भलगढ़।
5. क्षेत्रीय वन अधिकारी, वन्यजीव रेंज सादही

उप मुख्य वन्यजीव प्रतिपालक,
 उदयपुर (राज०)

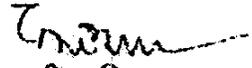
कार्यालय अधिशाषी अभियन्ता, सार्वजनिक निर्माण विभाग, खण्ड - बाली

क्रमांक: 5/51

दिनांक: 1.2.11

अनापत्ति प्रमाण पत्र

श्रीमति इन्दु कुमारी पत्नि श्री खुशवीर सिंह जोजावर, कदम्ब वन फार्म हाऊस, जोजावर, मारवाड़ जंक्शन, जिला - पाली द्वारा सादडी रणकपुर रोड पर खसरा नं. 4603 में पर्यटन इकाई / रिसोर्ट लगाने हेतु आवेदन किया गया है। इस सम्बन्ध में विभाग द्वारा अनापत्ति प्रमाण पत्र जारी किया जाता है।


अधिशाषी अभियन्ता
सा.नि.वि. खण्ड - बाली

ANNEXURE-R/3

कार्यक्रम अ०

नाम - जल संस्थापन बुरा पाली

क्रम सं 11150

दिनांक 1/2/11

अनापत्ति प्रमाण पत्र

श्रीमती रन्धु कुमारी पाटील श्री सुश्रीरामसिंह जोजावर, नयन बस फार्म हाउस, जोजावर, भारगाड जंक्शन, जि.रा. पाली द्वारा सापट्री रसादपुर रोड पर खसरा नं. 4603 भूमि में - पर्यटन इन्फॉर्मेशन/रिसॉर्ट परियोजना अनापत्ति प्रमाण पत्र निम्न-लिखित शर्तों के आधार पर प्रदान की जाती हैं:-

1. संरक्षण विभाग, नगरपालिका, नगरीय विकास आधिकारण से अनापत्ति प्रमाण पत्र प्राप्त करने के पश्चात् ही निर्माण कार्य करवाया जाये।
2. जोड़वाली मुख्यपाथ से 20 मीटर की दूरी छोड़कर निर्माण कार्य करवाया जाये।

1860
 श्री. वि. वि. वि.
 जल संस्थापन विभाग
 बुरा - पाली

ANNEXURE-R/4

कार्यालय अधिशाषी अभियन्ता सानि.वि. खण्ड बाली जिला माली
क्रमांक - 1544 दिनांक - 21-7-85

अनुपस्थिति प्रमाण पत्र

श्रीमति इन्दु कुमारी फौज श्री सुश्रीदीपसिंह जोजावर, कदम दन फम जोजावर, जोजावर, मारवाड़ जंक्शन जिला माली द्वारा सादली रणछपुर रोड पर खसरा नम्बर 4333 में पर्यटन इकाई/रिसोर्ट लगाने हेतु आवेदन किया गया है। इस सम्बन्ध में दिनांक द्वारा अनुपस्थिति प्रमाण पत्र जारी किया जाता है।

(जी.एस. चौहान)
31/7/85
(जी.एस. चौहान)
अधिशाषी अभियन्ता
सानि.वि. खण्ड - बाली

कार्यालय अधिशाषी अभियन्ता सा.नि.वि. खण्ड बाली जिला पाली

क्रमांक :- 1644

दिनांक :- 31/7/14

श्रीमान् अतिरिक्त जिला कलेक्टर
पाली

विषय :- पर्यटन इकाई की स्थापना हेतु भूमि आवंटन के लिये प्राजेक्ट
अनुमोदन बाबत।

प्रसंग :- आपका पत्र क्रमांक / राजस्व/14/1492-97 दिनांक 24.07.14
एवं श्रीमान् अधीक्षण अभियन्ता सा.नि.वि. वृत्त पाली के पत्रांक /1456
दिनांक 31.07.2014 के क्रम में।

महादेयजी,

उक्त सन्दर्भ में निवेदन है कि प्रस्तावित भूमि का उवलोकन आज दिनांक
31.07.2014 को किया गया। चूंकि खसरा नम्बर 4603 की भूमि वर्तमान में किसी प्रस्तावित सड़क
मार्ग के अन्तर्गत नहीं आती है। अतः विभाग का अनापत्ति प्रमाण पत्र संलग्न कर भिजवाया जा
रहा है।

संलग्न :- उपरोक्तानुसार।

भवदीय



(जी.एस.चौहान)
अधिशाषी अभियन्ता
सा.नि.वि. खण्ड - बाली
दिनांक

क्रमांक

प्रतिलिपि श्रीमान् अधीक्षण अभियन्ता सा.नि.वि. वृत्त पाली को वास्ते सूचनाार्थ एव
आवश्यक कार्यवाही हेतु प्रस्तुत है।

(जी.एस.चौहान)
अधिशाषी अभियन्ता
सा.नि.वि. खण्ड - बाली

राजस्थान सरकार
वन विभाग

क्रमांक प. 3(10) वन/2014

जयपुर, दिनांक 24.04.2018

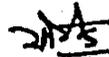
आदेश

राज्य सरकार के आदेश क्रमांक प.3(10)वन/2014 दिनांक 13.05.2016 द्वारा रणथम्भौर बाघ परियोजना के किट्टीकल टाईगर हैबीटाट, कुम्भलगढ वन्यजीव अभयारण्य एवं जवाई लेपर्ड कन्जर्वेशन रिजर्व की सीमा से एक किमी परिधि क्षेत्र में खनन कार्य, व्यावसायिक गतिविधियों एवं भूमि संपरिवर्तन को प्रतिबंधित किया गया है।

राजस्थान ट्यूरिज्म पॉलिसी, 2007 के अन्तर्गत राज्य में ट्यूरिज्म को बढ़ावा दिये जाने के उद्देश्य से जिला कलक्टर, पाली के पत्र क्रमांक रेवन्यू/2018/1212 दिनांक 09.03.2018 से श्रीमती इन्दु कुमारी पत्नी श्री खुशवीर सिंह, गांव जोजावर जिला पाली हेतु कुम्भलगढ वन्यजीव अभयारण्य की सीमा से बाहर स्थित राजस्व (ग्रुप-3) विभाग के आदेश क्रमांक 2(249)राजस्व/3/11 दिनांक 26.08.2011 से आवंटित 1.30 हैक्टेयर भूमि जिसका आवंटन दिनांक 12.10.2015 को निरस्त किया जाकर बहाली/पुर्नआवंटन हेतु विचाराधीन है एवं जिला कलक्टर, राजसमन्द के पत्र क्रमांक प.12/17() राजस्व/सूचना/17/ 5891 दिनांक 06.11.2017 से श्रीमती गायत्री सिंह पत्नी श्री वीर विजय सिंह, 2, राजेन्द्र मार्ग, पी.डब्ल्यू.डी. सर्किल, जोधपुर के पक्ष में ग्राम कमोडा तहसील कुम्भलगढ जिला राजसमन्द के खसरा नं० 265, 266, 267, 268, 269, 270, 271, 272, 280/1, 281/1, 282/1, 283/1, 1630/263 कुल 9.11.10 बीघा भूमि कुम्भलगढ वन्यजीव अभयारण्य की सीमा से एक किमी परिधि क्षेत्र में स्थित होने के कारण भूमि आवंटन/संपरिवर्तन हेतु आदेश दिनांक 13.05.2016 में शिथिलता चाही गयी है।

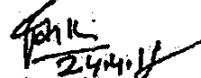
उक्त प्रस्तुत दोनों प्रकरणों में रिसोर्ट (न कि होटल) की स्थापना हेतु भूमि आवंटन/संपरिवर्तन के लिए राज्य सरकार के आदेश क्रमांक एफ. 3(10)वन/2014 दिनांक 13.05.2016 में शिथिलता (exemption) इस शर्त के साथ प्रदान की जाती है कि उनके द्वारा रिसोर्ट निर्माण से पूर्व राजस्थान प्रदूषण नियंत्रण मण्डल एवं अन्य विभागों से प्रचलित अधिनियमों/नियमों के अन्तर्गत यथासमय आवश्यक अनापत्ति/स्वीकृतियां पृथक से प्राप्त की जावेगी।

आज्ञा से,


24/4/18
(योगेन्द्र कुमार देक)
शासन सचिव, न

प्रतिलिपि:—निम्नांकित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है:—

1. प्रमुख विशेषाधिकारी, माननीय मुख्यमंत्री महोदया, राजस्थान, जयपुर
2. विशिष्ट सहायक, वनमंत्री, राजस्थान, जयपुर।
3. वरिष्ठ उप सचिव, मुख्य सचिव, राजस्थान, जयपुर।
4. निजी सचिव, अतिरिक्त मुख्य सचिव, वन विभाग, राजस्थान जयपुर।
5. निजी सचिव, अतिरिक्त मुख्य सचिव, पर्यटन विभाग, राजस्थान जयपुर।
6. प्रधान मुख्य वन संरक्षक (एच.ओ.एफ.एफ), राजस्थान, जयपुर।
7. अतिरिक्त प्रधान मुख्य वन संरक्षक एवं मुख्य वन्यजीव प्रतिपालक, राजस्थान, जयपुर।
8. निदेशक, पर्यटन विभाग, राजस्थान जयपुर।
9. मुख्य वन संरक्षक, वन्यजीव, उदयपुर/जोधपुर
10. जिला कलक्टर, पाली/राजसमन्द
11. उप वन संरक्षक, वन्यजीव, राजसमन्द।
12. उप वन संरक्षक, पाली
13. रक्षित पत्रावली।


(आर० के० खैरवा)
विशेषाधिकारी

25-7-18 27

राजस्थान सरकार

कार्यालय वरिष्ठ नगर नियोजक, नगर नियोजन विभाग, जोधपुर जोन, जोधपुर।
क्रमांक / जेडीजेड / 1120 / सादड़ी / 711

दिनांक :- 25.7.18

ANNEXURE-R/6

अधिकाारी,
नगर पालिका, सादड़ी।

विषय :- सादड़ी नगरीय क्षेत्र के राजस्व ग्राम सादड़ी खसरा नम्बर 4603 कुल रकबा 5.90 है० में से 1.30 हैक्टेयर में पर्यटन इकाई रिसोर्ट प्रयोजनार्थ ।

सन्दर्भ :- आपका पत्रांक :- नपासा / 2018 / 1837, दिनांक 24-07-18

महोदय,

उपरोक्त विषयान्तर्गत राजस्व ग्राम सादड़ी खसरा नम्बर 4603 कुल रकबा 5.90 है० में से 1.30 हैक्टेयर में पर्यटन इकाई रिसोर्ट प्रयोजनार्थ पुनः तकनीकी राय चाही गयी है। प्रकरण के साथ प्रेषित दस्तावेजों में इस कार्यालय की राय पूर्व में ही जिला कलक्टर महोदय, पाली को प्रेषित कर दी गयी है, अतः अब पुनः इस कार्यालय की तकनीकी राय की आवश्यकता नहीं है। इस कार्यालय द्वारा पूर्व पत्रांक 2296, दिनांक 28-11-2011 में प्रेषित राय के अनुसार ही प्रकरण में अग्रिम कार्यवाही कराने का श्रम करावें। (पत्र की प्रति पुनः तुरन्त सन्दर्भ के लिए संलग्न है।)

आपके सन्दर्भित पत्र में अंकित किया गया है कि आवेदित भूमि की स्थिति को नगरीय क्षेत्र मानचित्र 2031 में अंकित कराया जाना है, अतः प्रश्नगत भूमि की स्थिति को नगरीय क्षेत्र मानचित्र 2031 पर अंकित कर अग्रिम कार्यवाही हेतु प्रेषित है।

सन्दर्भित पत्र में चेकलिस्ट "ब" भरकर भिजवाने हेतु लिखा गया है, के सम्बन्ध में लेख है कि उक्त चेक लिस्ट की भू उपयोग परिवर्तन के प्रकरणों में आवश्यकता होती है, परन्तु प्रकरण भू उपयोग परिवर्तन का नहीं है, तथा पूर्व पत्र दिनांक 28-11-2018 में अंकित किया हुआ है कि परिधि नियन्त्रण पट्टी में रिसोर्ट अनुज्ञेय है। अतः चेक लिस्ट की आवश्यकता नहीं है।

भवदीय,

(पी आर बिनीवाल)

वरिष्ठ नगर नियोजक,
जोधपुर जोन, जोधपुर।

संलग्न :- उपरोक्तानुसार

कार्यालय पता : रेल्वे हास्पिटल के सामने, जोधपुर विकास प्राधिकरण के पास, रातानाड़ा, जोधपुर-342001

Fax No. 0291-2433353

Office e-mail : stpjodhpurzone@gmail.com

Phone No. 0291 2433353/2433241

File Path : C:\Users\PA\Dropbox\STPOFFICEPAL\cillu\CILLUSADARI\UDZ1120SADARI6610.doc

स्वायत्त शासन विभाग राजस्थान जयपुर
जी-3, राजमहल रेजीडेन्सी एरिया, सिविल लाईन्स फाटक, सी-स्कीम, जयपुर-302005
फोन नं. 0141-2229314 2226728 ईमेल : dibraj@raj.raj.raj.in वेबसाइट : www.dipraj.in www.cmarindia.org

क्रमांक भूमि/एफ.7(ड)(254)/डीएलबी/18/14

दिनांक :- 04/01/2022

अवेकासी अधिकारी,
नगर पालिका,
सादडी (माली)

विषय: सादडी नगरीय क्षेत्र के चक-प्रथम खसरा नम्बर 4603 कुल रकबा 5.90
हैक्टेयर भूमि किसम गै.मु.मगरा में से 1.30 हैक्टेयर भूमि, भू-आवंटन
नीति-2015 के तहत आवंटन वावत।

प्रसंग: आपका पत्र क्रमांक नपासा/2018/1875 दिनांक 25.07.2018 एवं पत्र
क्रमांक 4713 दिनांक 20.12.2021 के कम में।

उपर्युक्त विषयान्तर्गत प्रासंगिक पत्रों के संदर्भ में प्रश्नगत प्रकरण में मंत्रिमण्डल
सचिवालय के आदेश दिनांक 06.03.2020 द्वारा गठित मंत्रिमण्डलीय एम्पावर्ड समिति की
बैठक दिनांक 29.09.2021 का बैठक कार्यवाही विवरण क्रमांक भूमि/एफ.7(ड)(213)
डीएलबी/2019/25527 दिनांक 06.12.2021 जारी किया गया। जिसके विन्दु संख्या 02 में
उक्त नये निर्णय की पालना में श्रीमति इन्दुकुमारी पत्नी श्री खुशवीर सिंह निवासी जंजावर
के नाम सादडी तहसील देसूरी के खसरा नम्बर 4603 रकबा 5.90 हैक्टेयर भूमि किसम गै.
मु.मगरा में से 1.30 हैक्टेयर भूमि पर्यटन इकाई की स्थापना हेतु भूमि का आवंटन वर्तमान
में प्रचलित डीएलसी दर +20 प्रतिशत दर पर निम्नांकित औपचारिकताएं पूर्ण किये जाने के
बाद किये जाने का निर्णय लिया गया है :-

1. उक्त खसरा नम्बर 4603 कुल रकबा 5.90 हैक्टेयर भूमि जिसमें से आवेदिका द्वारा 1.30
हैक्टेयर भूमि का आवंटन चाहा गया है। नगर पालिका सादडी द्वारा उक्त आवंटन हेतु
1.30 हैक्टेयर भूमि चिन्हित की जावेगी तथा शेष भूमि का नगर पालिका हित में योजना
बनाया जाकर समुचित उपयोग किया जावे।
2. आवेदिका द्वारा नगर पालिका में पर्यटन इकाई का साईट-प्लान एवं ले-आउट प्लान
नगर पालिका में प्रस्तुत किया जावेगा। जिसके कम में नगर पालिका द्वारा एम्पावर्ड
समिति से अनुमोदित करवा कर एकल पट्टे हेतु प्रार्थना पत्र सलाह कर विभाग को
प्रस्तुत किया जावे। उक्त पूर्ति होने के पश्चात् ही राज्य सरकार से स्वीकृति जारी की
जावेगी। आवंटन की स्वीकृति जारी होने के पश्चात् एकल पट्टे की स्वीकृति पृथक से
नियमानुसार निर्धारित प्रक्रिया के तहत जारी की जावेगी।
3. आवेदक द्वारा भवनीय न्यायालय में दाखल चाल/याचिका को विह्वल करना होगा।
4. मंत्रिमण्डलीय एम्पावर्ड समिति द्वारा उपर्युक्तानुसार लिये गये निर्णय की पालना में
अवेकासी अधिकारी नगर पालिका सादडी (माली) ने पत्र क्रमांक 4713 दिनांक 20.12.2021
द्वारा ले-आउट प्लान, मुगल मेम पर प्रस्तावित प्लान एवं प्रकरण में भवनीय उच्च
न्यायालय के आदेश दिनांक 15.12.2021 को लागू कर सलाह प्रेषित कर एम्पावर्ड
समिति को उक्त खसरा स्वीकृति प्रदान करने का निर्देशन किया है।

अधिकांशी-अधिकारी नगर पालिका सावडी में समसुपनापुराण पालिका
 अधिकारियों के विन्दु संख्या 01 की भावना में सस्ता आवंटन हेतु 1.30 हेक्टर भूमि
 को किराई पर ले. विन्दु संख्या 02 की भावना में नगर पालिका सावडी में पठित
 को किराई की शिष्टक दिनांक 20.12.2021 के प्रसार संख्या 01 के तहत ले-आउट
 को अनुमोदन किया जाकर ले-आउट संलग्न कर विजावाया हेतु विन्दु संख्या
 03 भावना में प्रकरण में सावर रिट याचिका संख्या 14730/2018 में माननीय उच्च
 न्यायाधीश जोधपुर के आदेश दिनांक 16.12.2021 की प्रति संलग्न कर विजावाया है।
 यह सस्ता रिट याचिका को आगे देना श्रीमती इन्दु कुमारी द्वारा माननीय उच्च
 न्यायाधीश जोधपुर से वापस ले लिये जाने के फलस्वरूप माननीय न्यायालय द्वारा
 किराई करती है।

अतः प्रसंगगत प्रकरण में समसुपना पुराणों के दृष्टिगत श्रीमती इन्दु कुमारी
 को श्री सुश्रीर विहा निवासी जोधपुर को सावडी नगरीय क्षेत्र के सस्ता-प्रदान शरणा
 पर 4003 वर्ग मीटर क्षेत्र 5.90 हेक्टर भूमि विराम में, गुमारा में से 1.30 हेक्टर
 (1000 वर्गमीटर) भूमि, परीक्षण इकाई की स्थापना हेतु भूमि का आवंटन वर्तमान में
 कालित डीएलसी दर-20 प्रतिशत दर पर करते हुए एकल पट्टा जारी किया जाने
 में एकद्वारा स्वीकृति प्रदान की जाती है।

यह स्वीकृति सक्षम स्तर से अनुमति है।

निदेशक एवं विशिष्ट सचिव
 दिनांक - 04/01/2022

संख्या भूमि/एफ.7(डि)(254)/डीएलसी/18/15-20

संबंधित सूचनाएं एवं आवश्यक कार्यवाही हेतु भेजित है।

- 01 विशिष्ट सहायक, माननीय मंत्री महोदय, स्थायित्व शासन विभाग राजठ जोधपुर
- 02 निजी सचिव, शासन सचिव महोदय, स्थायित्व शासन विभाग राजठ जोधपुर
- 03 जिला कलक्टर महोदय, पाली
- 04 उप निदेशक(क्षेत्रीय), स्थानीय विकास विभाग, जोधपुर
- 05 अध्यक्ष, नगर पालिका मण्डल सावडी (पाली)
- 06 सुरक्षित पत्रावली।

निदेशक एवं विशिष्ट सचिव

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3J

(BEFORE L. NAGESWARA RAO, B.R. GAVAI AND ANIRUDDHA BOSE, JJ.)

(In the Matter of)

T.N. GODAVARMAN THIRUMULPAD, IN RE .. Petitioner;
Versus

UNION OF INDIA AND OTHERS .. Respondents.

IA No. 1000 of 2003[†] with IAs Nos. 982-84 of 2003, 1026-28, 1123-24, 1197-99, 1210-11, 1250-51 of 2004, 1412 of 2005, 1512 of 2006, 1992 of 2007, 3880 of 2015, 96949, 117831 of 2019, 65571 of 2021 and Writ Petition (C) No. 202 of 1995[‡], decided on June 3, 2022

A. Environment Law — Forests, Wildlife and Zoos — Wildlife Sanctuaries and National Parks

— (A) Prescription and Determination of eco-sensitive zones (ESZ) or extended buffer zones, surrounding wildlife sanctuaries and national parks, and the activities prohibited and permitted in such ESZ/buffer zone;

— (B) Prohibition of mining within national parks and wildlife sanctuaries; and

— (C) Compensation and other rehabilitatory measures for carrying on of prohibited mining activities in and around Jamua Ramgarh Wildlife Sanctuary in Rajasthan

— Detailed directions issued

— Eco-Sensitive Zones Declaration around National Parks and Wildlife Sanctuaries Guidelines, 2011 — Environment (Protection) Act, 1986 — S. 3(v) — Environment (Protection) Rules, 1986, Rr. 5(viii) and (x) (Paras 5 to 14 and 51 to 56)

B. Environment Law — Wildlife (Protection) Act, 1972 — Ss. 18 to 26 and 26-A (as ins. w.e.f. 2-10-1991 by Act 44 of 1991) — Declaration of wildlife sanctuary — Requirements of — Challenge made as to declaration of Jamua Ramgarh Wildlife Sanctuary in the State of Rajasthan on ground of violation of S. 26-A — Held, not tenable

— Settlement of rights found completed by the District Collector, Jaipur under Ss. 19 to 26 — S. 26-A dealing with declaration of area as sanctuary found incorporated in the statute with effect from 2-10-1991, but the declaration found to be made by State of Rajasthan in 1982 — Held, there was no flaw in such declaration and the subsequent amended provisions in this respect, held, not applicable to Jamua Ramgarh Wildlife Sanctuary — Hence, the plea taken that it did not have the status of a sanctuary because no declaration was there under S. 26-A, held, without any basis (Paras 46 to 50)

[†] Recommendation of CEC dated 20-11-2003

[‡] Under Article 32 of the Constitution of India [Allowed]

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Held :

- a Necessary directions are issued as under:
- (a) Each protected forest, that is, national park or wildlife sanctuary must have an eco-sensitive zone (“ESZ”) of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines for Declaration of Eco-Sensitive Zones Around National Parks and Wildlife Sanctuaries, dated 9-2-2011 issued by MoEF&CC shall be strictly adhered to. For Jamua Ramgarh Wildlife Sanctuary, it shall be 500 m so far as subsisting activities are concerned.
- b
- (b) In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained.
- c
- (c) The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Union Territory. The Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting structures and other relevant details within the respective ESZs forthwith and a report shall be furnished before the Supreme Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.
- d
- (d) Mining within the national parks and wildlife sanctuaries shall not be permitted.
- e
- (e) In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.
- f
- (f) The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach CEC and MoEF&CC and both these bodies shall give their respective opinions/recommendations before the Supreme Court. On that basis, the Supreme Court shall pass appropriate order.
- g
- (g) In the event CEC, MoEF&CC, the Standing Committee of National Board for Wildlife or any other body of persons or individual having special interest in environmental issues consider it necessary for maintaining a wider
- h

or larger ESZ in respect of any national park or wildlife sanctuary, such body or individual shall approach CEC. In such a situation CEC shall be at liberty to examine the need of a wider ESZ in respect of any national park or wildlife sanctuary in consultation with all the stakeholders including the State or Union Territory concerned, MoEF&CC as also the Standing Committee of National Board for Wildlife and then approach the Supreme Court with its recommendations.

(h) In respect of sanctuaries or national parks for which the proposal of a State or Union Territory has not been given, the 10 km buffer zone as ESZ, as indicated in the order passed by the Supreme Court on 4-12-2006 in *Goa Foundation*, (2011) 15 SCC 791 and also contained in the Guidelines of 9-2-2011 shall be implemented. Within that area, the entire set of restrictions concerning an ESZ shall operate till a final decision in that regard is arrived at.

(i) The application of the State of Rajasthan registered as IA No. 3880 of 2015 relates to clarification of an order passed in *Goa Foundation case* [WP (C) No. 460 of 2004]. Let this application be placed before the Bench taking up the case of *Goa Foundation*.

(j) IA No. 96949 of 2019 and IA No. 65571 of 2021 are disposed of with directions that the MoEF&CC as also CEC shall proceed to take a decision in regard to the draft proposal for ESZ made by the State of Maharashtra to the extent of 0-3.89 km and the MoEF&CC shall take final decision on that basis within a period of three months, if the said decision has not already been taken.

(k) CEC shall quantify the compensation to be recovered from each miner indulging in mining activities within Jamua Ramgarh Sanctuary in violation of any statutory provision or order of the Supreme Court. Specific recommendations for compensatory afforestation, reclamation, clearing overburden dumping as also compensation in monetary units for degradation of forest resources shall also be made. A further set of recommendations concerning confiscation of earth moving equipments and other machineries lying within or in the periphery of the said sanctuary shall be made by CEC. Recommendations shall be made within a period of four months before the Supreme Court in the form of an application. The Supreme Court shall consider passing appropriate order upon going through such application. The exercise concerning such reparation, including quantifying compensation shall be undertaken upon giving the mining operator, State and MoEF&CC opportunity of hearing.

(l) In the event there is any subsisting order of any High Court or any court subordinate to such High Court covering any of the issues dealt with by the Supreme Court in this order, this order shall prevail over any such order which may be contrary to these directions. (Para 56)

Goa Foundation v. Union of India, (2011) 15 SCC 791; *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 740; *Goa Foundation v. Union of India*, (2011) 15 SCC 793, referred to

C. Constitution of India — Arts. 32 and 226 — Public interest litigation (PIL) assuming in rem character — Desirability of procedure under Or. 8 R. 1 being followed by the Court — Emphasised — Impleadment of certain individuals/firms not arrayed as parties — When becomes necessary — Impact of the litigation on rights of such parties

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- a — Interlocutory applications arising out of the PIL, raised two issues i.e. first relating to mining activities in and around Jamua Ramgarh Wildlife Sanctuary in Rajasthan and, second involving prescribing eco-sensitive zones (ESZ) surrounding the wildlife sanctuaries and national parks — Subject of mining and other commercial activities within the wildlife sanctuaries and national parks (protected forests) also dealt with by Supreme Court — Impleadment sought by certain firms and individuals who were found having some kind of permission for carrying on mining activities in Jamua Ramgarh Sanctuary — Considering impact of orders passed in litigation of this nature, impleadment as claimed by the applicants, allowed

- b — Civil Procedure Code, 1908 — Or. 8 R. 1 — Public interest litigation assuming in rem character — Desirability of procedure under Or. 8 R. 1 being followed by the Court — Emphasised — Environment Law — Forests, Wildlife and Zoos — Wildlife Sanctuaries and National Parks — Wildlife (Protection) Act, 1972 — Ss. 18, 26-A and 35 — Environment (Protection) Act, 1986 — S. 3(v) — Environment (Protection) Rules, 1986, Rr. 5(viii) and (x)

Held :

- d The interlocutory applications which the Court is dealing with arise out of a public interest litigation and there is no doubt that orders passed in litigation of this nature could affect a large body of persons who may not be included in the array of parties at the time of institution of the proceeding. To an extent, litigations of this nature assume an in rem character. Ideally, for such a public interest litigation, the procedure contemplated in Rule 8 of Order 1 of the Civil Procedure Code, 1908 could be followed to the extent of issue of public notice or general intimation to public in such mode as the Court may consider fit and proper, having regard to the nature and scope of the proceeding. But in cases where such a course has not been taken, persons affected or likely to be affected by any order passed in the litigation would be entitled to join or participate in the proceeding. Thus, the impleadment prayers in IAs Nos. 984 of 2003, 1026, 1123, 1197 and 1251 of 2004 are allowed. (Para 42)

- e **D. Environment Law — General Principles of Environmental Law — Precautionary Principle/Sustainable Development/Inter-Generational Equity Principle — Balancing of economic activities with protection of natural resources — Duties of State Government and the Court that arise from doctrines of “public trust”, “sustainable development” and “precautionary principle” — Principles clarified**

- f — Held, a situation may arise where there may be irreparable damage to environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest — Thus, in case of a doubt, protection of environment would have precedence over economic interest

Held :

- g Public trust doctrine is part of the law of land and it primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status

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in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. (Para 34)

Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses. (Para 34)

It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. (Para 43)

The “precautionary principle” is an essential feature of the principle of “sustainable development”. The precautionary principle can be explained in the following terms:

(i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The “onus of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign. (Para 43)

The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential. (Para 43)

A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest. The Supreme Court has held that in case of a doubt, protection of environment would have precedence over the economic interest. It has further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion: it has been emphasised that it is not always necessary that there should be direct evidence of harm to the environment. (Para 43)

T.N. Godavarnan Thirumulpad v. Union of India, (2022) 9 SCC 306; *T.N. Godavarnan Thirumulpad (104) v. Union of India*, (2008) 2 SCC 222; *Indian Council For Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281; *Vellore Citizens’ Welfare Forum v. Union of India*, (1996) 5 SCC 647, followed

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M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388; *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718, *affirmed*

- a *Goa Foundation v. Union of India*, (2011) 15 SCC 791; *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 740; *T.N. Godavarman Thirumulpad v. Union of India*, (2002) 10 SCC 606; *T.N. Godavarman Thirumulpad (87) v. Union of India*, (2006) 1 SCC 1; *T.N. Godavarman Thirumulpad v. Union of India*, (2012) 3 SCC 277; *Goa Foundation v. Union of India*, (2014) 6 SCC 589, *referred to*
M.C. Mehta v. Union of India, (2004) 12 SCC 118, *cited*

- b **E. Constitution of India — Arts. 32 and 226 — Public interest litigation — Impleadment of legal representatives of petitioner after his death — When not necessary — Writ petition filed in nature of a public interest litigation for protection of forest lands of certain State and natural resources throughout the country — After death of original writ petitioner, petition being a public interest litigation, held, there was no requirement for bringing on record the legal representatives of the deceased petitioner (Para 2)**

- c *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267, *considered*
T.N. Godavarman Thirumulpad v. Union of India, (2022) 10 SCC 584; *T.N. Godavarman Thirumulpad (50) v. Union of India*, (2013) 8 SCC 198; *T.N. Godavarman Thirumulpad v. Union of India*, (2012) 13 SCC 449; *T.N. Godavarman Thirumulpad, In re v. Union of India*, (2022) 10 SCC 589; *T.N. Godavarman Thirumulpad v. Union of India*, (2002) 10 SCC 634, *referred to*
d *Ambica Quarry Works v. State of Gujarat*, (1987) 1 SCC 213; *Rural Litigation & Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504; *Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*, WP (C) No. 749 of 1996, order dated 29-11-1996 (SC); *State of Bihar v. Banshi Ram Modi*, (1985) 3 SCC 643, *cited*

SK-D/68989/C

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- e Balbir Singh, Additional Solicitor General, Saurabh Mishra and Nikhil Goel, Additional Advocates General (State of Madhya Pradesh), A.D.N. Rao (Amicus Curiae), Ms Aparajita Singh (Amicus Curiae), Nalin Kohli, Dr Manish Singhvi, Siddharth Bhatnagar and V.K. Shukla, Senior Advocates [Rahul Mishra, Amit P. Sahi, D. Shiva Shankar, Ms Ananya Khandhelwal, Agrimaa Singh, Siddhartha Chowdhury (Amicus Curiae), M.R. Chanchal Kr. Ganguli (Advocate-on-Record), Syed Mehdi Imam (Advocate-on-Record), T. Harish Kumar (Advocate-on-Record) (for M/s Mitter & Mitter Co.) (Advocate-on-Record), M/s Lawyer S. Knit & Co. (Advocate-on-Record), Ms Anil Katiyar (Advocate-on-Record), Shuvodeep Roy (Advocate-on-Record), Ankit Roy, Ishaan Borthakur, Ms Nimisha Menon, f Gaichangpou Gangmei (Advocate-on-Record), Raj Kishor Choudhary (Advocate-on-Record), Umesh Bhagwat (Advocate-on-Record), E.C. Agrawala (Advocate-on-Record), Ranjan Mukherjee (Advocate-on-Record), Gopal Singh (Advocate-on-Record), Jitendra Mohan Sharma (Advocate-on-Record), Ms C.K. Sucharita (Advocate-on-Record), Ms B. Sunita Rao (Advocate-on-Record), Ejaz Maqbool (Advocate-on-Record), M/s Corporate Law Group (Advocate-on-Record), Himanshu Shekhar (Advocate-on-Record), P.N. Gupta (Advocate-on-Record), Ms K. Enatoli Sema (Advocate-on-Record), Amit Kr. Singh, Ms Chubalemla Chong, Raghvendra Kumar, Anand Kr. Dubey, Ms Rajlakshmi Singh, Nishant Verma, Rajiv Kr. Sinha, Simanta Kumar, Sunil Saraogi, Narendra Kumar (Advocate-on-Record), Mahfooz A. Nazki (Advocate-on-Record), Polanki Gowtham, Shaik Mohamad Haneef, T. Vijaya Bhaskar Reddy, K.V. Girish Chowdary, Ms Rajeswari Mukherjee, Ms Aruna Gupta, Ms Sumita Hazarika (Advocate-on-Record), Abhimanyu Tewari (Advocate-on-Record), Ms Eliza Bar, Suhaan Mukerji, Nikhil Parikshith, Vishal Prasad, Abhishek Manchanda, Sayandeep Pahari, Tanmay Sinha, PLR Chambers & Co. (Advocate-on-Record), h Avijit Mani Tripathi (Advocate-on-Record), T.K. Nayak, Upendra Mishra, P.S. Negi, S.R. Kochhar, Ms Jyoti Mendiratta (Advocate-on-Record), Ms Madhu

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- a Tiwari, Prabil Sharma, Ms Manjula Chaurasia, Harender Singh, Mukesh Verma, Indira Bhakar, G.S. Makker (Advocate-on-Record), Sandeep Dubey, Ambuj Saraswat, James P. Thomas (Advocate-on-Record), Ms Vanshaja Shukla (Advocate-on-Record), Dr Joseph Aristotle S. (Advocate-on-Record), Sarojanand Jha, Karan Sharma, Ms Precheta Kar, Aditya Sidhra, Nadeem Afroz, M.R. Shamshad (Advocate-on-Record), Ms Shalini Kaul (Advocate-on-Record), Rajeev Kr. Dubey, Ashiwan Mishra, Kamendra Mishra (Advocate-on-Record), S. Gowthaman (Advocate-on-Record), Guntur Pramod Kumar (Advocate-on-Record), Shubhranshu Padhi (Advocate-on-Record), P.S. Sudheer (Advocate-on-Record), D.K. Garg (Advocate-on-Record), Dinesh K. Garg, Dhananjay Garg, Abhishek Garg, Abhinav Mukerji (Advocate-on-Record), Ms Pragma Baghel (Advocate-on-Record), Dr Monika Gusain (Advocate-on-Record), Harim Om Yaduvanshi, Nishe Rajen Shonker (Advocate-on-Record), Ms Anu K. Joy, Alim Anvar, Anando Mukherjee (Advocate-on-Record), Gopal Balwant Sathe (Advocate-on-Record), Naveen Kumar (Advocate-on-Record), Ms Deepanwita Priyanka (Advocate-on-Record), P. Venkat Reddy, Prashant Tyagi, P. Srinivas Reddy, M/s Venkat Palwai Law Associates (Advocate-on-Record), Kaushik Choudhury (Advocate-on-Record), Sachin Patil (Advocate-on-Record), Rahul Chitnis, Aaditya c A. Pande, Geo Joseph, Ms Shwetal Shepal, Ms Nupur Sharma, Shobhit Dwivedi, Sanjeev Kr. Mahara, B.K. Pal (Advocate-on-Record), Saket Singh, Ms Sangeeta Singh, Ms Somyashree, Ms Niranjana Singh (Advocate-on-Record), Chirag M. Shroff (Advocate-on-Record), Amandeep Mehta, Abhishek Atrey (Advocate-on-Record), Ajay Marwah (Advocate-on-Record), Sarvam Ritam Khare (Advocate-on-Record), Narendra Kumar (Advocate-on-Record), M/s Cyril Amarchand Mangaldas (Advocate-on-Record), Ms Mayuri Raghuvanshi (Advocate-on-Record), Aravindh S. (Advocate-on-Record) and Ms C. Rubavathi, Advocates], for the appearing parties.

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The Judgment of the Court was delivered by b

ANIRUDDHA BOSE, J.— These proceedings originate from the writ petition under Article 32 of the Constitution of India registered as WP (Civil) No. 202 of 1995 (*T.N. Godavarman Thirumulpad v. Union of India*), which is in the nature of a public interest litigation. It was instituted for protection of forest lands in the Nilgiris District of the State of Tamil Nadu. Subsequently, the scope of that writ petition was enlarged so as to protect such natural resources throughout the country. c

2. The original writ petitioner has since passed away (on 1-6-2016) but in an order passed on 3-2-2017¹, this Court opined that being a public interest litigation, there was no requirement for bringing on record the legal representatives of the deceased petitioner. The writ petition, in substance, continued with the cause-title *T.N. Godavarman Thirumulpad, In re v. Union of India*. Various orders have been passed from time to time in this writ petition to ensure preservation of forest resources of this country in balance with economic activities. By an order of this Court dated 9-5-2002², a Central Empowered Committee (“CEC”) was directed to be formed primarily for monitoring implementation of this Court’s orders and to place the incidents of non-compliance before us. Subsequently, by Notification issued on 17-9-2002 by the Ministry of Environment and Forests in exercise of power under Section 3(3) of the Environment (Protection) Act, 1986, this Committee was constituted under statutory provisions. CEC has been bringing to the notice of this Court the steps taken for removal of encroachment, implementation of working plans, compensatory afforestation, plantation and other conservation issues. d

3. In this order, we shall be mainly dealing with two sets of issues. The first set relates to mining activities in and around a wildlife sanctuary in the State of Rajasthan, known as “Jamua Ramgarh” (also spelt as Jamwa Ramgarh). The second set of issues is wider in scope, and involves prescribing eco-sensitive zones (“ESZ”) surrounding the wildlife sanctuaries and national parks. The subject of mining and other commercial activities within the wildlife sanctuaries and national parks (protected forests) shall also be dealt with by us in this order. e

4. The applications before us require examination in the perspective of a set of recommendations made by CEC and we have been urged by a set of applicants to make certain modifications of this Court’s earlier directions f

¹ *T.N. Godavarman Thirumulpad v. Union of India*, (2022) 10 SCC 584 g

² *T.N. Godavarman Thirumulpad (50) v. Union of India*, (2013) 8 SCC 198 h

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a concerning steps to be taken for protection of forest resources. The applicants seeking modifications of our earlier orders include a set of miners, and, in some cases, the State Governments asking for opening up of the protected forest areas and their buffer zones, on which restrictions have been placed in by our earlier orders, for commercial exploitation. There is dispute as to what would constitute the buffer zones on ESZ in respect of national parks and wildlife sanctuaries, as there are divergence of views among the various stakeholders.

b 5. The present set of applications arise out of a report of CEC dated 20-11-2003. This report specifically pertains to Jamua Ramgarh Wildlife Sanctuary. This Sanctuary covers an area of about 300 sq km. The said report gives a horrific picture of ravaging of a protected forest mainly by private miners mostly with temporary working permits obtained from the governmental agencies. The following recommendations were made in this report:

c “17 ... (i) all mining leases which wholly or partly fall within the forest area inside Jamua Ramgarh Sanctuary and also within the safety zone, should be immediately cancelled. The mining activity can be allowed to be resumed only after the new/amended mining leases, after excluding the forest area and the safety zone are sanctioned by the competent authority and the conditions mentioned herein under are fully complied with;

d (ii) presently a safety zone of 25 m has been fixed for Jamua Ramgarh Sanctuary and other sanctuaries in Rajasthan as against 500 m for Ranthambhore National Park in Rajasthan itself. In Madhya Pradesh safety zone of 250 m for all the 20 forest area has been fixed. CEC is of the view that minimum 500 m safety zone around national parks and sanctuaries is necessary where no mining, construction and other projects should be allowed. Without a reasonable safety zone the habitat and wildlife in the national parks and sanctuaries are adversely affected. Although stringent conditions are imposed at the time of the sanction of the mining leases, none are practically complied with due to weak enforcement of the laws. The mining causes heavy disturbance in the area due to blasting, removal of overburden, chiselling, transportation, flying debris and movement of a large number of labourers and other persons. The safety zone of 25 m presently prescribed by the Rajasthan Forest Department is totally inadequate as the rocks torn apart during blasting can travel much beyond the present safety zone. However, increasing the safety zone to the desired level of 500 m will result in closure of large number of mines. Taking a holistic overall view of the situation, CEC recommends that for the Jamua Ramgarh Wildlife Sanctuary, for the “existing” mines the safety zone may be fixed as 100 m wherein no mining should be permitted. “For new” mining leases the safety zone may be fixed as 500 m.

e (iii) reclamation and rehabilitation of the area mined inside the sanctuary should be carried out in a time-bound manner at the cost of the user agency for which a detailed reclamation and rehabilitation plan along with various items of work, cost involved and time-frame should be prepared and implemented on priority basis. The plan presently prepared

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by the State Government is totally inadequate. It does not provide for reclamation and rehabilitation of the mining pits at all. No provision for removal of stones and rocks scattered in the sanctuary has been made. Intensive plantations and protection has not been provided. The revised plan should incorporate the above and other necessary measures to provide a congenial habitat for wildlife. In the event adequate funds for this purpose cannot be recovered from the erstwhile mine lease owners, the same should be made available by the State Government;

(iv) mining around the sanctuary should be allowed to restart only after a foolproof mechanism is put in place to ensure recovery of funds for implementation of reclamation and rehabilitation plan by the State Government;

(v) exemplary compensation equivalent to the present market value of the entire mineral removed by the respective mine owners by mining inside the sanctuary in violation of the FC Act and/or the WP Act should be recovered from them on the basis of the recorded production or the estimated figures mentioned in the FC Act applications. The money so recovered should be used for protection and development of the sanctuary to its full potential;

(vi) the leftover minerals scattered inside the sanctuary should be directed to be removed immediately.

(vii) the leftover mining equipments such as cranes, etc. should be confiscated and removed outside the sanctuary at the cost of the erstwhile mine leaseholders;

(viii) no mining should be permitted adjoining the sanctuary till the boundary of the sanctuary is demarcated on the ground and the boundary pillars are verified with the fixed reference points;

(ix) disciplinary action should be taken in a time-bound manner against the erring officials in the Mines and the Forest Departments of the State of Rajasthan and the MoEF for allowing mining in violation of the Forest (Conservation) Act, the Wildlife (Protection) Act and/or this Hon'ble Court's order;" (quoted verbatim from paperbook)

6. This Court had converted this report with its set of recommendations into an interlocutory application and was allocated registration number IA No. 1000 of 2003.

7. On 20-9-2012, a second report was submitted by CEC. The recommendations made in the second report went beyond Jamua Ramgarh Sanctuary and dealt with creation of identification and declaration of safety zones around protected forests all across the country. The question of having ESZ around the protected forests was examined by this Court earlier in another writ petition [WP (Civil) No. 460 of 2004] in *Goa Foundation v. Union of India*. In the said writ petition, the following order was passed on 4-12-2006 [reported in *Goa Foundation v. Union of India*³]: (SCC pp. 792-93, para 4)

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- a “4. The Ministry is directed to give a final opportunity to all States/ Union Territories to respond to its letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21-1-2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.”
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- c 8. Two writ petitions have been instituted titled as *Goa Foundation v. Union of India* [WP (Civil) No. 460 of 2004] and *Goa Foundation v. Union of India* [WP (Civil) No. 435 of 2012], in relation to enforcement of various circulars issued for enforcement of environmental laws and to prevent illegal mining in different States including the State of Goa. There are certain overlapping issues involved in the present writ petition and the cases of *Goa Foundation*.
- d The directions which we propose to issue in this judgment/order shall take into account the orders passed in the cases of *Goa Foundation* and such directions shall be supplemental to the orders passed in any of the aforesaid two writ petitions if our directions passed in this order relate to areas or subjects covered by any mandate passed in the said two writ petitions.
- e 9. A set of Guidelines for Declaration of Eco-Sensitive Zones Around National Parks and Wildlife Sanctuaries had been formulated by the Ministry of Environment, Forests and Climate Change (“MoEF&CC”) of the Government of India on 9-2-2011 [F. No. 1-9/2007 WL — I (pt)]. These Guidelines deal with the process and procedures to be adopted for declaring eco-sensitive zones (“ESZ”). In Clauses 3 and 4 of these Guidelines, it has been stipulated:
- f “3. *Purpose for declaring eco-sensitive zones.*—
The purpose of declaring eco-sensitive zones around national parks and sanctuaries is to create some kind of “Shock Absorber” for the protected areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. As has been decided by the National Board for Wildlife, the activities in the eco-sensitive zones would be of a regulatory nature rather than prohibitive nature, unless and otherwise so required.
- g 4. *Extent of eco-sensitive zones.*—
4.1. Many of the existing protected areas have already undergone tremendous development in close vicinity to their boundaries. Some of the protected areas actually lying in the urban setup (e.g. Guindy National Park, Tamil Nadu; Sanjay Gandhi National Park, Maharashtra, etc). Therefore, defining the extent of eco-sensitive zones around protected areas will have to be kept flexible and protected area specific. The width of the eco-sensitive
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zone and type of regulations will differ from protected area to protected area. However, as a general principle the width of the eco-sensitive zone could go up to 10 km around a protected area as provided in the Wildlife Conservation Strategy-2002. a

4.2. In case where sensitive corridors, connectivity and ecologically important patches, crucial for landscape linkage, are even beyond 10 km width, these should be included in the eco-sensitive zone.

4.3. Further, even in context of a particular protected area, the distribution of an area of eco-sensitive zone and the extent of regulation may not be uniform all around and it could be of variable width and extent.” b

(quoted verbatim from paperback)

10. In Clauses 6 and 7 of the said Guidelines, it has been specified:

“6. *The procedure to be adopted.*—

6.1. As has been indicated in the foregoing paragraphs, the basic aim is to regulate certain activities around National Park and Wildlife Sanctuary so as to minimise the negative impacts of such activities on the fragile ecosystem encompassing the protected area. As a first step towards achieving this goal, it is a prerequisite that an inventory of the different land use patterns and the different types of activities, types and number of industries operating around each of the protected area (National Parks, Sanctuaries) as well as important corridors be made. The inventory could be done by the Range Officers concerned, who can take a stock of activities within 10 km of his range. c

6.2. For the above purpose, a small committee comprising the Wildlife Warden concerned, an ecologist, an official from the Local Self Government and an official of the Revenue Department of the area concerned, could be formed. The said committee could suggest the: d

(i) Extent of eco-sensitive zones for the protected area being considered. e

(ii) The requirement of such a zone to act as a shock absorber.

(iii) To suggest the best methods for management of the eco-sensitive zones, so suggested. f

(iv) To suggest broad based thematic activities to be included in the Master Plan for the region.

6.3. Based on the above, the Chief Wildlife Warden could group the activities under the following categories (an indicative list of such activities is attached as Annexure 1): g

(i) Prohibited.

(ii) Restricted with safeguards.

(iii) Permissible.

6.4. Once the proposal for Eco-sensitive zones has been finalised, the same may be forwarded to the Ministry of Environment and Forests for further processing and notification. Here, it may be noted that, the State/Union h

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a Territory Forest Department could forward the proposals to the respective authority in the State Government with copy to the Ministry of Environment and Forests, as and when the proposals (even if it is for single protected area) are complete. An indicative list of details that need to be submitted along with the proposals is at Annexure 2.

b 6.5. It is to mention here that in cases where the boundary of a protected area abuts the boundary of another State/Union Territory where it does not form part of any protected area, it shall be the endeavour of both the State/Union Territory Governments to have a mutual consultation and decide upon the width of the eco-sensitive zone around the protected area in question.

c 6.6. The State Government should endeavour to convey a very strong message to the public that ESZ are not meant to hamper their day-to-day activities, but instead, is meant to protect the precious forests/protected areas in their locality from any negative impact, and also to refine the environment around the protected areas. A copy of the notification of the Sultanpur Eco-sensitive Zone issued by the Ministry is attached herewith at Annexure 3 for reference and guidance.

d 7. These guidelines are indicative in nature and the State/Union Territory Governments may use these as basic framework to develop specific guidelines applicable in the context of their National Parks, Wildlife Sanctuaries, important corridors, etc. with a view to minimising and preferably eliminating any negative impact on protected areas.”

(quoted verbatim from paperback)

e 11. As per the said Guidelines, commercial mining, setting up of sawmills and industries causing pollution, commercial use of firewood, establishment of major hydroelectric projects, use of production of any hazardous substances, undertaking activities related to tourism like overflying the national park area by any aircraft, hot-air balloons, discharge of effluents and solid waste in natural water bodies or terrestrial areas have been proposed to be made prohibited activities. Certain other activities having lesser environment damaging potential have been proposed to be regulated.

f 12. By an order passed on 4-8-2006⁴, this Court had, inter alia, restrained grant of temporary working permits for mining within safety zones around any national park/wildlife sanctuary declared under Sections 18, 26-A or 35 of the Wild Life (Protection) Act, 1972. As an interim measure, direction was issued to maintain one kilometre safety zone, which was subject to the orders that may be made in the present IA (IA No. 1000 of 2003).

g 13. The second report of the CEC dated 20-9-2012 makes the following recommendations as regards identification and declaration of ESZ. This report entitled “Note regarding Safety Zones (Eco-Sensitive Zones) Around National Parks and Wildlife Sanctuaries” makes the following recommendations:

h “10. After considering that during the last ten years no significant progress has been made regarding identification and declaration of safety zones around

4 T.N. Godavarnan Thirumulpad v. Union of India, (2010) 13 SCC 740

protected areas and considering the matter in its totality, an implementable scheme has been prepared by CEC and which has been dealt with in subsequent paragraphs.

11. For the purpose of identification and declaration of the safety zones around National Parks/Wildlife Sanctuaries (hereinafter referred to as protected areas), the protected areas based on their areas, are classified into four categories:

(i) **CATEGORY A** — The protected areas having an area of 500 sq km or more. The total number of such protected areas is 73 and their total area is about 1,01,389 sq km (63.44 % of total area of protected areas);

(ii) **CATEGORY B** — The protected areas having an area between 200 sq km to 500 sq km. The total number of such protected areas is 115 and their total area is about 38,942 sq km (24.37 % of total area of protected areas);

(iii) **CATEGORY C** — The protected areas having an area between 100 sq km to 200 sq km. The total number of such protected areas is 85 and their total area is about 12,066 sq km (about 7.55 % of total area of protected areas); and

(iv) **CATEGORY D** — The protected areas having an area up to 100 sq km. The total number of such protected areas is 344 and their total area is about 7422 sq km (about 4.65 % of total area of all protected areas).

12. Wherever two or more protected areas are contiguous to each other, such protected areas will be placed in the appropriate category based on the sum total of their areas (and not on the basis of area of individual protected area). The details of some of the contiguous protected areas are given below:

(i) Corbett National Park (520 sq km) and Sonanadi Sanctuary (301 sq km)—total area is 821 sq km and therefore both will fall in Category A;

(ii) Gir National Park (258 sq km) and Gir Sanctuary (1153 sq km)—total area is 1411 sq km and therefore both will fall in Category A;

(iii) Periyar National Park (350 sq km) and Periyar Sanctuary (427 sq km)—total area is 777 sq km and therefore both will fall in Category A;

(iv) Satpura National Park (585 sq km), Bori Sanctuary (485 sq km) and Pachmarhi Sanctuary (417 sq km)—total area is 1488 sq km and therefore all three will fall in Category A;

(v) Valmiki National Park (335 sq km) and Valmiki Sanctuary (545 sq km)—total area is 880 sq km and therefore both will fall in Category A;

(vi) Tadoba National Park (116 sq km) and Andhari Wildlife Sanctuary (509 sq km)—total area is 625 sq km and therefore both will fall in Category A; and

(vii) Sariska National Park (273 sq km) and Sariska Sanctuary (219 sq km)—total area is 492 sq km and therefore both will fall in Category B;

13. The safety zone, in respect of protected areas falling in Category A and Category B, may comprise of all the areas including non-forest areas falling within a distance of two kilometres and one kilometre respectively from the boundaries of the protected area. Such distances, in respect of protected areas

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falling within Category C and Category D, may be kept at 500 m and 100 m respectively.

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14. The grant/renewal of mining leases (excluding for collection of boulders, gravel and sand from river beds), setting up of hazardous industries, brick kilns, wood-based industries (except MDF/Particle Boards Plants) will be treated as prohibited activities within the safety zone (eco-sensitive zones). The activities such as setting up of industries (other than those included in the list of prohibited activities), hotels and restaurants including resorts, commercial helicopter services, hydel projects, irrigation projects, canals, laying of transmission lines and distribution lines above 33 kV, roads of more than five metre width and collection of boulders, gravel and sand from the river beds will be treated as regulated activities and which will be permissible only after obtaining environment clearance and clearance of the Standing Committee, National Board for Wildlife. All other activities which are not prescribed as prohibited activities or regulated activities will be treated as permissible activities.

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15. The State/UT concerned will be at liberty to shift a protected area from a lower category to higher category (say from Category C to Category B) after considering the importance of the protected area on account of:

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(i) presence of flagship species/endangered species such as Tiger, Lion, Elephant, Rhino, Snow Leopard, Red Panda, Hangul, Musk deer, Great Indian Bustard, Lion Tailed Macaque, floricans;

(ii) fragile ecosystem such as Western Ghats, North Eastern States, areas having high altitude flora and fauna, rainforest, mangroves, marine ecosystem;

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(iii) World Heritage sites; and

(iv) Wetland ecosystems.

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16. The State/UT Governments concerned may after detailed examination of the status of habitation, existing industries and other activities and other relevant factors, and, if found desirable and in public interest forward the proposal(s) for shifting a protected area from a higher category to a lower category. They may also forward the proposal(s) for exclusion of the areas of cities falling within the safety zone. The MoEF thereafter will examine such proposals and place such proposals before the Standing Committee of the National Board for Wildlife for its consideration. The proposals cleared by the Standing Committee of the NBWL will be placed before this Hon'ble Court for seeking its permission. It is only after obtaining the permission of this Hon'ble Court that a protected area may be shifted from a higher category to a lower category.

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17. The safety zones (eco-sensitive zones) around national parks and wildlife sanctuaries will be in addition to the following eco-sensitive zones notified by the MoEF (and by other notifications, if any):

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(i) S.O. 20(E), (6-1-1989) — Prohibiting industries on Murud-Janjira, District Raigadh, Maharashtra;

(ii) S.O. 102(E), (1-2-1989) — Restricting location of industries, mining and other activities in Doon Valley (U.P.);

(iii) S.O. 416(E), (20-6-1991) — Dahanu Taluka, District Thane (Maharashtra) to declare as Ecologically Fragile Area, amended 1999;

(iv) S.O. 319(E), (7-5-1992) — Restricting certain activities causing environmental degradation at Aravalli Range;

(v) S.O. 481(E), (5-7-1996) — No Development Zone at Numaligarh, East of Kaziranga;

(vi) S.O. 884(E), (19-12-1996) — Dahanu Taluka Environment Protection Authority, 1996, amended 2001;

(vii) S.O. 350(E), (13-5-1998) — Order constituting the Taj Trapezium Zone Pollution (Prevent and Control) Authority;

(viii) S.O. 825(E), (17-9-1998) — Pachmarhi Region as an eco-sensitive zone;

(ix) S.O. 52(E), (17-1-2001) Mahabaleshwar Panchgani Region as an eco-sensitive zone;

(x) S.O. 133(E), (4-2-2003) — Matheran and surrounding region as an eco-sensitive zone

1. S.O. 83 (E), (16-1-2004) — Amendments to S.O. 133(E) dated 4-2-2003;

(xi) S.O. 1545(E), (25-6-2009), Mount Abu as eco-sensitive zone; and

(xii) S.O. 1260(E), (31-5-2012) — Girnar Reserve Forest as eco-sensitive zone.

18. It is respectfully submitted that the above proposals are submitted in the backdrop of inordinate delay that has taken place in the identification and declaration of safety zones around National Parks/Wildlife Sanctuaries and so as to ensure that the process of such declarations do not remain pending indefinitely.” (quoted verbatim from paperbook)

14. To the said report, another supplementary note dated 18-1-2013 has been submitted. This report is also in connection with notifying the ESZ around protected forests. The following passage from this report is relevant:

“4. After considering the inordinate delay which has already taken place in notifying the safety zone around National Parks/Wildlife Sanctuaries and considering the ground situation as it exists, CEC is of the considered view that it may be appropriate that an early decision is taken regarding the safety zones around National Park/Sanctuaries. The proposal submitted by CEC while ensuring that effective restrictions and regulations are put in place immediately and implemented in an objective manner also, after detailed examination, provides for adequate flexibility to modify the areas of the safety zones.” (quoted verbatim from paperbook)

15. In connection with IA No. 1000 of 2003, several other applications have been filed, mainly by miners concerning the Jamua Ramgarh Wildlife Sanctuary. The order passed on 4-8-2006 by this Court [reported in *T.N. Godavarman Thirumulpad v. Union of India*⁴] in relation to grant of

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a temporary working permits was made subjecting them to compliance of certain preconditions. These preconditions, inter alia, were: (SCC pp. 743-44, para 19)

“19. (i) TWPs can only be granted for the renewal of mining leases, and not where the lease is being granted for the first time to the applicant user agency;

(ii) The mine is not located inside any national park/sanctuary notified under Sections 18, 26-A or 35 of the Wild Life (Protection) Act, 1972;

b (iii) The grant of TWP would not result in any mining activity within the safety zone around such areas referred to in Precondition (ii) above (as an interim measure, one kilometre safety zone shall be maintained subject to the orders that may be made in IA No. 1000 regarding Jamua Ramgarh Sanctuary);

c (iv) The user agency who has broken up the area of the mine (in respect of which TWP is being sought) has or had the requisite environmental clearances and at no time prior to the grant of the TWP was any mining being carried on by the user agency in relation to the mine in question, in violation of the provisions of the Forest (Conservation) Act (for short “the FC Act”). In cases involving violation of the FC Act, a formal decision on merit should be taken under the FC Act after considering the gravity of the violation. However, the grant of a TWP may be considered where past violations have been regularised by the Ministry of Environment and Forests (for short “MoEF”) by the grant of an approval under the FC Act with retrospective effect;

d (v) The conditions attached to the approval under the FC Act for the grant of the mining lease (or the renewal of the mining lease) have been fulfilled, particularly those in respect of (but not limited to) compensatory afforestation, reclamation plan and overburden dumping on the specified site;

e (vi) The user agency has, within the stipulated time, already filed a proposal in conformity with the Forest (Conservation) Rules, 1980 for seeking an approval under the FC Act along with the complete details as are required to be furnished. An application for the grant of TWP in favour of the user agencies, who have either not filed a proper proposal and/or have not provided complete information, particularly in respect of (but not limited to) compensatory afforestation, phased reclamation plan, felling of trees, details of minerals extracted in the past, etc. should not be entertained;

f (vii) A TWP shall be granted only limited to working in the area broken up legally and during the validity of the lease. No TWP can be granted in respect of, or extending to either unbroken area or the areas which have been broken after the expiry of the mining lease or have been broken in violation of the FC Act or any other law for the time being in force;

g (viii) In no circumstances can the duration of a TWP extend beyond the period of one year. Where an application for the grant of permission under

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the FC Act is not disposed of during the currency of TWP, the applicant, on the strength of the same TWP, may continue to operate for a period not exceeding three months unless specific orders are obtained from this Court; and

(ix) A valid lease under the MMRD Act exists [including by way of a deemed extension in terms of Rule 24-A(6) of the Mineral Concession Rules] in respect of the area of the TWP.”

16. We shall now briefly refer to the individual IAs filed in connection with IA No. 1000 of 2003:

16.1. The applicants in IAs Nos. 982-84 of 2003, 1026-28 of 2004, 1123-24 of 2004, 1197-99 of 2004, 1210-11 of 2004, 1250-51 of 2004 and 1512 of 2006 are firms who claim to be mining leaseholders or their representative bodies seeking impleadment in IA No. 1000 of 2003 as also other reliefs. All these applicants (barring the applicant in IA No. 1512 i.e. Andhi Marbles) seek impleadment in the present proceeding. All of them also seek certain direction that might allow them to carry on mining activities. Among them, Jaipur Mineral Development Syndicate Pvt. Ltd. (IAs Nos. 1123-24 of 2004) has taken a plea that Section 66(4) of the Wild Life (Protection) Act, 1972 was not applicable to it and in that regard a pending writ petition instituted by them in the High Court of Rajasthan (Writ Petition No. 570 of 2002) has been cited. In the said application permission has been sought for restarting the mining activities in non-forest area. Directions have also been asked to prevent initiation of penal proceedings against the applicant under the Wild Life (Protection) Act, 1972.

16.2. The applicant in IAs Nos. 982-84 of 2003 is one Smt Magan Devi Meena. Her case is that she was allotted mining area which is outside the reserve forest/sanctuary in Thali Village and falls outside Pillar No. 407 (the demarcation point of forest/sanctuary area). She essentially questions legality of the letter dated 30-5-2003 issued by the Mining Engineer, Jaipur, Office of Mining Engineer & Geology Department, Jaipur, Rajasthan stopping mining operation in the disputed area of Jamua Ramgarh Wildlife Sanctuary and pending completion of demarcation.

16.3. In IAs Nos. 1210-11 of 2004, the applicant is Madhu Agarwal. Her prayer is for fresh demarcation of Pillar No. 1 to Pillar No. 428 around the said sanctuary and she has also sought directions on the State Government to release the excess land from the reserve forest area after fresh demarcation. The applicant in this case has been involved in mining of dolomite in Jamua Ramgarh Tehsil in the area known as Rayanwala of Digota Forest Block 61.

16.4. IAs Nos. 1250-51 of 2004 have been taken out by Bhushan Sharma, successor-in-interest of one Sharda Devi, who was the original allottee of mining around Jamua Ramgarh Wildlife Sanctuary. It is the case of the applicant that his operations have been stopped by letter dated 30-5-2003 issued by the Mining Engineer, Jaipur, office of Mining Engineer & Geology Department, Jaipur, Rajasthan in the disputed area of Jamua Ramgarh Sanctuary. Survey had revealed that mining activities were being carried on

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a inside the wildlife sanctuary. The report of CEC dated 27-5-2003 found number of mines operating around or in two villages, Sankotda and Thali, which were within the sanctuary and CEC also found that the earlier finding of a committee could not be taken as conclusive proof that the area involved was a non-forest land and fell outside the sanctuary. The State of Rajasthan, however, has taken a stand in their affidavit affirmed on 15-4-2004 that delineation and demarcation of the boundaries have already been done.

b 16.5. In IA No. 1512 of 2006, M/s Andhi Marbles Pvt. Ltd. are the applicants. They have prayed for permission to resume mining operations excluding the land to the extent of 100 m from the forest/sanctuary.

c 16.6. In IA No. 3880 of 2015, the applicant is the State of Rajasthan. Prayer has been made in this application for appropriate direction for issuing the ESZ of wildlife sanctuaries and national parks and to keep in abeyance a letter issued by CEC on 21-10-2014 by which one kilometre distance has been required to be maintained in respect of mining activities from the boundaries of the national parks and wildlife sanctuaries. Certain other clarifications have also been sought as regards the order of this Court passed on 4-8-2006⁴ and we shall deal with the said issues later in this judgment. The State of Rajasthan has filed several other affidavits and the common theme of these affidavits is for d lifting the restrictions and permit mining activities in and around the protected forests to energise the economy of the State. The State seeks permission for subsisting mining activities to operate outside the protected forests and ESZ. It is also their stand that most of the mining areas in Jamua Ramgarh Sanctuary were sanctioned prior to coming into operation of the Forest (Conservation) Act, 1980 and declaration of the said sanctuary on 31-5-1982.

e 17. Apart from mining activities in the Jamua Ramgarh Sanctuary, applications have also been taken out in relation to the CEC reports as the said reports deal with protected forests all across the country and contemplate uniform ESZ norms for their protection. On 14-7-2003, the recommendations of CEC dated 27-12-2002 were accepted⁵ by this Court in IA No. 887 of 2003. The said application related to wood-based industries in the State of f Maharashtra, and, inter alia, 64 sawmills concerned. That application was disposed of with a direction for consideration of their cases within a period of two months and if they were found eligible, their applications were directed to be sent to CEC. The latter was to submit a report and the State of Maharashtra was directed to abide by the aforesaid recommendations.

g 17.1. In IA No. 1412 of 2005, the applicants are Maharashtra Timber Laghu Udyog Mahasangha along with Poona Timber Merchant (owners of sawmills in the State of Maharashtra). They want clarification of the order of this Court passed in *T.N. Godavarman Thirumulpad v. Union of India*⁵ for consideration of the cases of 64 sawmill owners for grant of licence as per

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4 *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 740
5 *T.N. Godavarman Thirumulpad v. Union of India*, (2012) 13 SCC 449

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Notification dated 16-7-1981 issued by the State of Maharashtra amending the Bombay Forest Rules, 1942. This Court had directed in the aforesaid order (of 14-7-2003⁵) that the cases of the applicants may be examined by the State Government within a period of two months and if they are found eligible, their applications could be sent to CEC who might submit a report to this Court. In the present application the applicants want grant of licence considering Condition No. 3 of the Government's Notification dated 16-7-1981.

17.2. The applicants in IA No. 117831 of 2019 are Maharashtra Timber Laghu Udyog Mahasangha along with Poona Timber Merchant (64 sawmills owners) in connection with grant of licences for operating sawmills. In the present order, we are confining our examination of proceedings arising out of IA No. 1000 of 2003. As such, the aforesaid applications ought to be listed independently before the appropriate Bench.

18. The applicant in IA No. 96949 of 2019 is the State of Maharashtra. On 11-12-2018⁶, this Court had passed an order in respect of 21 national parks and wildlife sanctuaries, which included Thane Creek Flamingo Sanctuary. This order, inter alia, records and directs: (*T.N. Godavarman Thirumulpad case*⁶, SCC p. 594, paras 7-10)

"7. It is submitted by the learned Amicus that this issue has been pending since sometime in December 2006. 12 years have gone by but no effective steps have been taken by the State Governments in respect of the national parks and wildlife sanctuaries mentioned above.

8. Under the circumstances, we direct that an area of 10 km around these 21 national parks and wildlife sanctuaries be declared as eco-sensitive zone by the MoEF. The declaration be made by the MoEF at the earliest.

9. Liberty is granted to the State Governments to move an application for modification of this order along with proposal only two weeks after submission of the proposals to the MoEF.

10. List the matters at the end of February 2019. In the meanwhile, interim order to continue." (quoted verbatim from paperback)

19. The prayer of the State of Maharashtra in this application is to the following effect:

"(A) This Hon'ble Court be pleased to modify its order dated 11-12-2018⁶ directing that an area of 10 km around Thane Creek Flamingo Sanctuary situated in the State of Maharashtra be declared as eco-sensitive zone by the Ministry of Environment and Forests; and

(B) That this Hon'ble Court be pleased to direct that the area of 0-3.5 km as proposed in the proposal submitted by the State Government on 22-5-2019 to the Ministry of Environment and Forests be declared as eco-sensitive zone in respect of Thane Creek Flamingo Sanctuary; and

(C) Pass any other order and or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

(quoted verbatim from paperback)

⁵ *T.N. Godavarman Thirumulpad v. Union of India*, (2012) 13 SCC 449

⁶ *T.N. Godavarman Thirumulpad, In re v. Union of India*, (2022) 10 SCC 589

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a 20. The other applications in respect of the same sanctuary is by an association of real estate developers, CREDAI-MCHI registered as IA No. 65571 of 2021. The main prayer in IA No. 65571 of 2021 is:

b “(a) Modify the order dated 11-12-2018 passed by this Hon’ble Court in *T.N. Godavarman Thirumulpad, In re v. Union of India*⁶ inasmuch as it relates to Thane Creek Flamingo Sanctuary and direct that the eco-sensitive zone around the said Sanctuary shall be in terms of the proposal dated 10-3-2021 submitted by the State Government and the draft Notification dated 8-4-2021 published by the Ministry of Environment & Forests, Government of India; and/or

c (b) Pass such other order(s) as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

(quoted verbatim from paperback)

d 21. The order on 11-12-2018⁶ was passed by this Court as the proposals in respect of 21 national parks and wildlife sanctuaries had not yet been received by the Ministry of Environment, Forests and Climate Change. Recommendations of CEC as regards maintaining ESZ were made in relation to wildlife sanctuaries and national parks on 20-9-2012. As per the order passed on 11-12-2018⁶, the proposal of the State Government was to be made before the MoEF&CC and it appears that a draft Notification dated 8-4-2021 concerning Thane Creek Flamingo Sanctuary has already been published by the MoEF&CC. Let the MoEF&CC take final decision in relation to such draft notification as per the provisions of law. Such decision, if already taken, may be placed before this Court one week after reopening of the Court on conclusion of the summer vacation. If such decision is not taken, then the decision may be taken as per law within a period of six weeks and be placed before us within the same time-frame. This Court shall consider passing appropriate direction thereafter, upon going through such decision.

e 22. In IA No. 1992 of 2007, the M.P. State Mining Corporation Ltd. has applied for the following reliefs:

f “(i) grant permission to file present application for clarification;

g (ii) clarify that the directions as contained in interim order dated 4-8-2006 of this Hon’ble Court in *T.N. Godavarman Thirumulpad v. Union of India*⁴. Pertains only to mining activity in Temporary Working Permission (TWP) cases requiring approval under the Forest (Conservation) Act, 1980 and that the said directions do not apply to the regular quarry lease on a revenue land particularly when such quarry lease is granted to the State-owned Mining Corporation by the State Government itself.”

(quoted verbatim from paperback)

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6 (2022) 10 SCC 589
4 (2010) 13 SCC 740

23. So far as this application is concerned, we repeat that in this order, we are dealing with the issues arising out of IA No. 1000 of 2003. The scope of this application relates to mining and other activities within the national parks and wildlife sanctuaries and maintaining ESZ around individual protected forests. The reliefs asked for by the M.P. State Mining Corporation Ltd. in IA No. 1992 of 2007 do not come within the ambit of the subject we are addressing in this judgment/order. This application of the Mining Corporation/company is in connection with temporary working permits in non-forest areas. This application will also have to be addressed separately.

24. There are two affidavits of M/s Andhi Marbles Pvt. Ltd. affirmed on 19-2-2004 and 29-7-2004 pertaining to Jamua Ramgarh Sanctuary. Complaint against said M/s Andhi Marbles is in relation to mining leases granted and operated by them. In the CEC report which has been transformed into IA No. 1000 of 2003, it has been recorded that they were granted mining leases in violation of the Forest (Conservation) Act, 1980 as well as the Wild Life (Protection) Act, 1972. They had continued working on the temporary permits after the order of this Court dated 12-12-1996⁷.

25. In the order of this Court in *T.N. Godavarman Thirumulpad v. Union of India*⁷ it has been inter alia observed: (SCC pp. 269-70, para 4)

“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 of forests and for 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 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*⁸, *Rural Litigation & Entitlement Kendra v. State of U.P.*⁹ and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*¹⁰). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi*¹¹ has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate

⁷ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

⁸ (1987) 1 SCC 213

⁹ 1989 Supp (1) SCC 504

¹⁰ WP (C) No. 749 of 1996, order dated 29-11-1996 (SC)

¹¹ (1985) 3 SCC 643

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a 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.”

b 26. CEC’s observation in IA No. 1000 of 2003 is that no mining activity was permissible inside the sanctuary as per this Court’s order dated 14-2-2000¹² and the temporary working permits were granted in violation of the applicable statutory provisions and guidelines as the area involved fell inside the sanctuary. Andhi Marbles Pvt. Ltd. have taken a defence that their mining activities were c in terms of the temporary working permit issued and in compliance with the specified conditions laid down by the MoEF&CC. A point has also been taken that the limits of the sanctuary were not notified and no notification under d Section 26-A of the Wild Life (Protection) Act, 1972 was issued to declare the said area as sanctuary. They have also taken a point that the mining lease covering forest has been deleted from the lease document and they seek to operate two quarries, on non-forest land beyond the safety zone of 25 m, which has been specified as part of the Mineral Policy, 1994 of the State of Rajasthan. They also, in effect, seek resumption of mining activities in the area beyond 25 m from the forest boundary.

e 27. As regards the Guidelines of 9-2-2011, which have been referred to in the affidavit of MoEF&CC affirmed/verified by Dr Subrata Bose, Scientist ‘F’ Ministry of Environment, Forests and Climate Change, Government of India, stand of Andhi Marbles Pvt. Ltd. is that no consensus has been reached as regards notifying the areas within 10 km of the boundaries of national parks and wildlife sanctuaries as ESZ.

f 28. In the affidavit filed on behalf of MoEF&CC, which we have referred to in the preceding paragraph, it has been stated that the Guidelines for Declaration of ESZ have been notified by the Ministry of Environment, Forests and Climate Change, Government of India. For the purpose of formulation of ESZ in relation to individual protected forest area, Para 6 of the said Guidelines has been brought to our notice. A detailed hierarchy has been prescribed for declaration of ESZ. Referring to *Goa Foundation* [WP (C) No. 435 of 2012], it has been stated in this affidavit that mining activity is prohibited within a distance of 1 km or the specified ESZ, whichever is higher.

g 29. On the pleas of Andhi Marbles Pvt. Ltd. and another leaseholder, Munni Devi, in subsequent affidavit verified on 29-4-2004 the MoEF&CC had justified granting of working permit to the said firms.

h ¹² *T.N. Godavarman Thirumulpad v. Union of India*, (2002) 10 SCC 634. Ed.: See also *T.N. Godavarman Thirumulpad (61) v. Union of India*, (2008) 16 SCC 401, dated 16-12-2002 and *T.N. Godavarman Thirumulpad v. Union of India*, (2006) 5 SCC 25, dated 16-9-2005.

30. The next affidavit of MoEF&CC was verified on 14-9-2005 and this affidavit deals with fixing of buffer zones for activities outside sanctuaries/forests. In this affidavit, it has been admitted that with respect to the details given in the earlier affidavit dated 29-4-2004 the decision taken by the Ministry at that point of time while granting temporary working permission on already broken up area in Jamua Ramgarh could not incorporate all factual details and thus might not have been strictly compatible with the principles of environmental conservation. It has further been stated in this affidavit that the Ministry directed the State Government to ensure phased closure of mines.

31. Altogether seven affidavits dated 15-4-2004, 17-9-2004, 9-12-2004, 13-10-2006, 10-5-2007, 12-8-2008 and 1-11-2012 filed by the State of Rajasthan are on record before us. The stand of the State of Rajasthan as reflected in these affidavits is primarily in relation to the creation of ESZ.

31.1. It is their case that the decision of 25 m safety zone in relation to Jamua Ramgarh Sanctuary has been conceived by the State and the State Government has also taken a decision that in the vicinity of sanctuaries, national parks and reserve forests, mining activities should not be undertaken within 25 m.

31.2. As regards other forest areas, their position is that mining ought to be undertaken in the immediate vicinity of the forest areas. They have expressed difficulties over taking over or acquisition of land around any sanctuary or other protected forest and their ESZ without proper proceeding.

31.3. As regards mining operations within sanctuary area of Jamua Ramgarh, it has been stated that all mining activities within the sanctuary have been stopped. In their affidavit dated 12-8-2008, it has been disclosed by the State that mining activities in non-forest areas within 100 m of the Jamua Ramgarh Sanctuary has been closed. Their plea is for allowing mining activity in non-forest areas within protected forests and beyond the ESZ of 100 m for economic activities, in the interest of local population as also the State's economy.

32. It has also been highlighted by the State that 25 sanctuaries, 2 national parks have been declared by the State comprising of a total area of 9,07,070 hectares and an area of 23,29,659 hectares of area as forest area or deemed forest is already existing as eco-sensitive/eco-fragile/buffer/safety zones in that State within which no non-forest activities is allowed without proper permission under the Forest (Conservation) Act, 1980. The State of Rajasthan has opposed the proposal for declaring 10 km beyond the boundary of sanctuaries and national parks being declared as ESZ.

33. The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large.

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a 34. This Court has highlighted the public trust doctrine in *M.C. Mehta v. Kamal Nath*¹³ and opined that the public trust doctrine is part of the law of land. In para 25 of the said judgment, as reported, this doctrine has been explained with reference to writings of Joseph L. Sax, Professor of Law, University of Michigan, the proponent of Modern Public Trust Doctrine: (SCC pp. 407-408)

b “25. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to
c Professor Sax, the public trust doctrine imposes the following restrictions on governmental authority:

d “Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”

e 35. Reliance has been placed on the said doctrine in earlier orders of this Court in this very writ petition, passed on 30-10-2002¹⁴, 26-9-2005¹⁵ and 13-2-2012¹⁶. So far as the views of the State of Rajasthan are concerned, as reflected in their affidavits and written notes, their consideration for justifying mining in Jamua Ramgarh and its periphery primarily stems from the prospect of immediate economic gains and their role as a trustee of natural resources of the land has been largely overlooked.

f 36. The Ministry of Environment, Forests and Climate Change (“MoEF&CC”) is against having a uniform ESZ for all national parks and reserved forests. Their view is that the ESZ area ought to be site-specific. Our attention has been drawn to the comprehensive Guidelines formulated, to which we have referred earlier in this order. In *Goa Foundation v. Union of India*¹⁷, the order passed in this proceeding [IA No. 1000 of 2003] on 4-8-2006⁴ has also been referred to and relied upon. Affidavits have been filed by the State of Goa affirmed on 19-9-2012 and 31-10-2012. Main concern of
g the State of Goa is over creation of ESZ of 10 km from the boundaries of protected forests as buffer zone and it is also contended on their behalf that such buffer zones should be site-specific. It is highlighted that in the State of

13 (1997) 1 SCC 388

14 *T.N. Godavarma Thirumulpad v. Union of India*, (2002) 10 SCC 606

15 *T.N. Godavarma Thirumulpad (87) v. Union of India*, (2006) 1 SCC 1

h 16 *T.N. Godavarma Thirumulpad v. Union of India*, (2012) 3 SCC 277

17 (2014) 6 SCC 589

4 *T.N. Godavarma Thirumulpad v. Union of India*, (2010) 13 SCC 740

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Goa vegetative aerial cover of Goa is more than 59.99% (as per the Indian State Forest Report of 2011) and protected forest areas constitute over 20% of the total geographic area. On this basis, they seek appropriate directions. It has also been brought to our notice that notifications have been issued in respect of several sanctuaries stipulating the ESZ boundaries. Written submissions have also been filed by Goa Foundation [the petitioners in WP (C) No. 460 of 2004] and WP (C) No. 435 of 2012 in which it has been urged that minimum extent of ESZ ought to be as per CEC recommendations incorporating therein the modifications/suggestions by the learned Amicus Curiae. So far as the State of Goa is concerned, the scope of mining activities is being dealt with in *Goa Foundation*¹⁷. In the present IA, we would not address issues specific to the said case. But the directives we shall make, as we have already indicated, which are not covered by the issues involved in *Goa Foundation*¹⁷ shall apply to the protected forest and adjacent areas.

37. On the point of buffer zone for activities outside the sanctuaries/national parks, the National Board for Wildlife in its 21st meeting held on 21-1-2002 adopted National Wildlife Conservation Strategy. Para 9 of the Strategy document concerns the buffer areas around the national parks and sanctuaries. It has been recorded therein:

“Lands falling within 10 km of the boundaries of national parks and sanctuaries should be notified as eco-fragile zones under Section 3(v) of the Environment (Protection) Act and Rule 5, sub-rules 5(viii) and (x) of the Environment (Protection) Rules.” (quoted verbatim from paperbook)

But it does not appear from the said affidavit that the said proposal of notifying 10 km as boundaries of the national parks and sanctuaries as eco-fragile zone was finalised.

38. The MoEF&CC essentially has argued in favour of having ESZ to be site-specific and for that purpose they have invited proposals from individual State Government in the aforesaid Guidelines. In cases where such proposals have not come, they want 10 km periphery of protected forests to be preserved as ESZ. As regards activities permissible within the buffer zone, certain works have been proposed to be regulated and certain activities to be permitted within the ESZ. This has been stipulated in Annexure I to the Guidelines. We have already referred to the prohibited activities.

39. Among the regulated activities, as per these Guidelines are:

- (i) Felling of trees with permission from appropriate authority.
- (ii) Establishment of hotels and resort as per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.
- (iii) Drastic change in agricultural systems.
- (iv) Commercial use of natural water resources including ground water harvesting as per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.

¹⁷ *Goa Foundation v. Union of India*, (2014) 6 SCC 589

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- a (v) Erection of electrical cables with stress on promoting underground cabling.
- (vi) Fencing of premises of hotels and lodges.
- (vii) Use of polythene bags by shopkeepers.
- (viii) Widening of roads with proper environmental impact assessment.
- (ix) Movement of vehicular traffic at night for commercial purposes.
- b (x) Introduction of exotic species.
- (xi) Protection of hill slopes and river banks.
- (xii) Regulation of any form of air and vehicular pollution.
- (xiii) Putting up of sign boards and hoardings.

c 40. Within permissible activities fall:

- (i) Ongoing agricultural and horticulture practices by local communities.
- (ii) Rain water harvesting.
- (iii) Organic farming.
- d (iv) Use of renewable energy sources.
- (v) Adoption of green technology for all activities.

e 41. In the affidavit of the Standing Committee of the National Board for Wildlife, the views of the non-official members of the Standing Committee have been placed on record, which essentially contemplates continuation of the 10 km buffer zone. The order passed by this Court on 4-12-2006 in *Goa Foundation*³ [WP (C) No. 460 of 2004] proposes following such a course if there is delay in site-specific preparation of ESZ for individual States/Union Territories. On the aspect of having site-specific ESZ under the Environment (Protection) Act, 1986, the view of the National Board for Wildlife, appears to be unanimous. It is their opinion that some protected areas, because of their smaller size, may require larger safety zone around it.

f 42. We shall deal first with the question of impleadment of firms and individuals who had some kind of permission for carrying on mining activities in Jamua Ramgarh Sanctuary. The interlocutory applications which we are dealing with arise out of a public interest litigation and there is no doubt that orders passed in litigation of this nature could affect a large body of persons who may not be included in the array of parties at the time of institution of the proceeding. To an extent, litigations of this nature assume an in rem character. Ideally, for such a public interest litigation, the procedure contemplated in Rule 8 of Order I of the Civil Procedure Code, 1908 could be followed to the extent of issue of public notice or general intimation to public in such mode as the Court may consider fit and proper, having regard to the nature and scope of

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³ *Goa Foundation v. Union of India*, (2011) 15 SCC 791

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the proceeding. But in cases where such a course has not been taken, persons affected or likely to be affected by any order passed in the litigation would be entitled to join or participate in the proceeding. Thus, the impleadment prayers in IAs Nos. 984 of 2003, 1026, 1123, 1197 and 1251 of 2004 are allowed.

43. The approach of the Court in dealing with complaints of environmental degradation has been laid down by this very Bench in this writ petition itself in an order passed on 9-5-2022¹⁸ in connection with another set of applications. In this order, it has been observed and held: (*T.N. Godavarman Thirumulpad case*¹⁸, SCC pp. 315-16, paras 16-19)

“16. Adherence to the principle of sustainable development is a constitutional requirement. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs. Therefore, courts are required to balance development needs with the protection of the environment and ecology¹⁹. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity²⁰. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment²¹.”

17. In *Vellore Citizens' Welfare Forum v. Union of India*²², this Court held that the “precautionary principle” is an essential feature of the principle of “sustainable development”. It went on to explain the precautionary principle in the following terms: (SCC p. 658, para 11)

‘11. ... (i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The “onus of proof” is on the actor or the developer/ industrialist to show that his action is environmentally benign.’

18 *T.N. Godavarman Thirumulpad v. Union of India*, (2022) 9 SCC 306

19 *T.N. Godavarman Thirumulpad (104) v. Union of India*, (2008) 2 SCC 222

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

21 *Indian Council For Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281

22 (1996) 5 SCC 647

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a 18. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential²⁰.

b 19. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest²³. This Court held that in case of a doubt, protection of environment would have precedence over the economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises c in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment.”

While dealing with the applications in the present set of proceedings, we shall follow the same principles.

d 44. We shall now examine the prayers of the applicants for continuing their mining activities within the sanctuary. This relief has been asked for by Smt Magan Devi Meena (IAs Nos. 982-84 of 2003), Agarwal Marbles Centre Pvt. Ltd. and others (IAs Nos. 1026-28 of 2004), Jaipur Mineral Development Syndicate Pvt. Ltd. (IAs Nos. 1123-24 of 2004), Federation of Mining Associations of Rajasthan (IAs Nos. 1197-99 of 2004), Bhushan e Sharma (IAs Nos. 1250-51 of 2004) and Andhi Marbles Pvt. Ltd. (IA No. 1512 of 2006).

f 45. We must point out here that in the affidavit of the State of Rajasthan, it has been stated that they had formulated a policy of maintaining a distance of 25 m from the vicinity of important forest areas like game sanctuary, reserved forest, mining activities to be prohibited. In other forest areas, mining could be undertaken in the immediate vicinity of the forest area as per the policy. This has been stated in the affidavit of the State of Rajasthan filed on 9-12-2004 and such a stand appears to have had been taken from the Mineral Policy of 1994. It, however, appears that a new Mineral Policy had been adopted by the State of Rajasthan in 2015.

g 46. There are also pleas for permitting some of the miners to continue mining activities within 25 m zone conceived by the State of Rajasthan as buffer zone. In three applications, IAs Nos. 1123-24 of 2004, IAs Nos. 1197-99 of 2004 and IAs Nos. 1210-11 of 2004, Jaipur Mineral Development Syndicate Pvt. Ltd., Federation of Mining Association of Rajasthan and Smt Madhu Agarwal have taken a point that there was improper declaration of Jamua h

²⁰ *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718

²³ *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

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Ramgarh as a sanctuary. The Notification made under Section 18 of the Wild Life (Protection) Act, 1972 bearing No. F.11(19) Raj.-8/81 Jaipur dated 31-5-1982 has been annexed to IAs Nos. 982-84 of 2003 the applicant therein, being Magan Devi Meena. Initially, there was declaration of the said sanctuary as reserved forest under the Rajasthan Forest Act, 1953. Thereafter, the Notification of 31-5-1982 came into operation under the Wild Life (Protection) Act, 1972.

47. In IA No. 1000 of 2003, it has been disclosed that the settlement of rights were completed by the District Collector, Jaipur under Sections 19 to 26 of the Wild Life (Protection) Act, 1972. So far as Section 26-A is concerned, which deals with declaration of area as sanctuary the said provision was incorporated in the statute with effect from 2-10-1991. That amendment came by way of Act 44 of 1991.

48. After amendment, Section 18 of the Act stipulates:

“18. *Declaration of sanctuary.*—(1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment.

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.

Explanation.—For the purposes of this section, it shall be sufficient to describe the area by roads, rivers, ridges or other well-known or readily intelligible boundaries.”

49. Section 26-A of the Act, which, again, was introduced by Act 44 of 1991 contemplates further declaration after compliance of certain formalities. No other amendment has been brought to our notice. Section 18 of the Wild Life (Protection) Act, 1972 as it originally stood, reads:

“18. *Declaration of sanctuary.*—(1) The State Government may, by notification, declare any area to be a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment.

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.

Explanation.—For the purposes of this section, it shall be sufficient to describe the area by roads, rivers, ridges or other well-known or readily intelligible boundaries.”

50. The declaration was made by the State of Rajasthan in 1982 and we do not find any flaw in such declaration. The amended provisions, thus, could not apply to the Jamua Ramgarh Wildlife Sanctuary. The plea taken that it did not have the status of a sanctuary because no declaration was there under

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a Section 26-A of the Wild Life (Protection) Act, 1972 is without any basis. We shall proceed in this order on the basis that Jamua Ramgarh is a subsisting sanctuary.

b 51. We have already indicated that CEC in IA No. 1000 of 2003 has given a dreadful account of the condition of the sanctuary, ravaged by mining activities. CEC in the same document has also outlined the importance of the said sanctuary. These would appear from Paras 4 and 5 of the said IA which read:

c "4. In stark contrast to the above during the site visits to the Jamua Ramgarh Sanctuary CEC came across a horrible and unbelievable picture of devastated ecosystem due to indiscriminate mining activity in blatant violation of the Forest (Conservation) Act, the Wild Life (Protection) Act and even this Hon'ble Court's orders. The sanctuary is littered with hundreds of deep mining pits, randomly scattered "overburdens", scores of cranes and mined boulders and stones scattered all over the place. It is rare to see such a destruction even in a non-forest area, least of all inside a sanctuary. It is a horror story that has to be seen to be believed. This is a site where all the laws and conventions that govern the natural world have been violated for commercial gains. Instead of being managed as a wildlife sanctuary, it appears to have been managed as a mining sanctuary. In the present form it may be more appropriate to rename the area as "Jamua Ramgarh Wild Life Graveyard". A photographic report is appended hereto at Annexure A graphically showing the ground situation.

d 5. The forest of Jamua Ramgarh forms the critical catchment area of the lake which is the main source of water supply to the city of Jaipur. Notwithstanding this 69 mining leases were sanctioned from time to time in Jamua Ramgarh after enactment of the Forest (Conservation) Act, 1980 i.e. 25-10-1980. Each and every mine was sanctioned in violation of the provisions of the FC Act as well as the Wild Life (Protection) Act. No perceptible attempt was made to regulate the mines as per the provisions of the Forest (Conservation) Act and the Wild Life (Protection) Act. No valid and satisfactory explanation was given by the State Government for allowing the mining leases to operate for years together except that it was a common practice to allow mining leases in the forest area/sanctuary without obtaining specific approvals under the Forest (Conservation) Act or the Wild Life (Protection) Act. The details of these mines are given in Annexure B." (quoted verbatim from paperbook)

e f g h 52. In their affidavits, the State of Rajasthan had referred to the Mining Policy of 1994 which stipulated 25 m to be safety zone around the periphery of Jamua Ramgarh Wildlife Sanctuary but subsequent thereto the Mining Policy of 2015 for the State of Rajasthan has come and they do not seem to have any specified safety zone. Moreover, in view of the order of this Court passed on 4-8-2006⁴, 1 km safety zone has been directed to be maintained as regards Jamua Ramgarh Wildlife Sanctuary. Beyond Jamua Ramgarh Wildlife

4 T.N. Godavarnan Thirumulpad v. Union of India, (2010) 13 SCC 740

Sanctuary, CEC itself has given its view on eco-sensitive zone in their report dated 20-9-2012. The recommendations have been quoted in the earlier part of this order. In the affidavit of the Standing Committee of the National Board for Wildlife filed on 26-11-2012, the views of the said Committee were expressed and the Committee was of unanimous opinion that each State ought to delineate the outer limits of ESZ on a site-specific, case-by-case basis, keeping in view the ecological imperatives and the ground realities of the protected area. It was also the view of the said Committee that expert opinion and scientific inputs ought to be obtained from individuals and institutions in that regard. In substance the view of the Committee is that there should not be uniform ESZ.

53. We have also referred to the Guidelines dated 9-2-2011 which give a detailed procedure for evolving ESZ and identification of activities that could be carried on in such zones. The order of this Court in *Goa Foundation*³ [WP (C) No. 460 of 2004] passed on 4-12-2006 also contemplated issue of direction for maintaining a 10 km wide safety zone from the boundaries in respect of sanctuaries and national parks as there was lack of response from the States and Union Territories in relation to queries on various aspects in respect of wildlife conservation. The proposal for having an ESZ of 10 km from the boundaries of the national parks and wildlife sanctuaries was originally mooted on 21-1-2002 in the meeting of the Indian Board for Wildlife, as it appears from the order passed by this Court in *Goa Foundation*²⁴ [WP (C) No. 460 of 2004] on 30-1-2006. We have to collate the views of these experts' bodies including CEC, who have been assisting this Court through the different stages of this litigation.

54. In our opinion, the Guidelines framed on 9-2-2011 appear to be reasonable and we accept the view of the Standing Committee that uniform guidelines may not be possible in respect of each sanctuary or national park for maintaining ESZ. We are of the opinion, however, that a minimum width of 1 km ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in special circumstances. We have considered CEC's recommendation that the ESZ should be relatable to the area covered by a protected forest but the Standing Committee's view that the area of a protected forest may not always be a reasonable criteria also merits consideration. It was argued before us that the 1 km wide "no-development-zone" may not be feasible in all cases and specific instances were given for Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity. These sanctuaries shall form special cases.

55. Turning specifically to Jamua Ramgarh Sanctuary, the first report of the CEC proposed 100 m as ESZ. In the second report, however, one kilometre width has been recommended for all protected forests falling under Category

³ *Goa Foundation v. Union of India*, (2011) 15 SCC 791
²⁴ *Goa Foundation v. Union of India*, (2011) 15 SCC 793

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a 'B'. Having regard to its area, the said sanctuary comes in that category. In the order of this Court passed on 4-8-2006⁴, the same margin i.e. one kilometre as buffer zone has been prescribed. In the given facts concerning the Jamua Ramgarh Sanctuary, in our opinion the margin of 25 m as contemplated in the 1994 Mineral Policy of the State of Rajasthan is grossly inadequate. We, however, treat Jamua Ramgarh Sanctuary as a special case for fixing the ESZ as in the past, the buffer zone varied from 25 m to 100 m. In our opinion, ESZ of 500 m would be a reasonable buffer zone, within which subsisting activities which do not come within the prohibited list as per the Guidelines of 9-2-2011 could be carried on. But for commencing of any new activity which would be otherwise permissible, the ESZ norm of one kilometre shall be maintained for Jamua Ramgarh Sanctuary.

c 56. We accordingly direct:

d 56.1. Each protected forest, that is, national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9-2-2011 shall be strictly adhered to. For Jamua Ramgarh Wildlife Sanctuary, it shall be 500 m so far as subsisting activities are concerned.

e 56.2. In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained.

f 56.3. The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Union Territory. The Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting structures and other relevant details within the respective ESZs forthwith and a report shall be furnished before this Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.

g 56.4. Mining within the national parks and wildlife sanctuaries shall not be permitted.

h 56.5. In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each

⁴ T.N. Godavarman Thirumulpad v. Union of India, (2010) 13 SCC 740

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State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.

a

56.6. The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach CEC and MoEF&CC and both these bodies shall give their respective opinions/recommendations before this Court. On that basis, this Court shall pass appropriate order.

b

56.7. In the event CEC, MoEF&CC, the Standing Committee of National Board for Wildlife or any other body of persons or individual having special interest in environmental issues consider it necessary for maintaining a wider or larger ESZ in respect of any national park or wildlife sanctuary, such body or individual shall approach CEC. In such a situation CEC shall be at liberty to examine the need of a wider ESZ in respect of any national park or wildlife sanctuary in consultation with all the stakeholders including the State or Union Territory concerned, MoEF&CC as also the Standing Committee of the National Board for Wildlife and then approach this Court with its recommendations.

c

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56.8. In respect of sanctuaries or national parks for which the proposal of a State or Union Territory has not been given, the 10 km buffer zone as ESZ, as indicated in the order passed by this Court on 4-12-2006 in *Goa Foundation*³ and also contained in the Guidelines of 9-2-2011 shall be implemented. Within that area, the entire set of restrictions concerning an ESZ shall operate till a final decision in that regard is arrived at.

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56.9. IA No. 1412 of 2005 and IA No. 117831 of 2019 do not relate to the issues involved in IA No. 1000 of 2003. These applications may be placed before the appropriate Bench to be heard independently.

56.10. For the same reason, IA No. 1992 of 2007 shall also be dealt with independently by the appropriate Bench and no order is being passed concerning this application at this stage.

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56.11. The application of the State of Rajasthan registered as IA No. 3880 of 2015 relates to clarification of an order passed in *Goa Foundation*³ [WP (C) No. 460 of 2004]. Let this application be placed before the Bench taking up the case of *Goa Foundation*.

56.12. IA No. 96949 of 2019 and IA No. 65571 of 2021 are disposed of with directions that the MoEF&CC as also CEC shall proceed to take a decision in regard to the draft proposal for ESZ made by the State of Maharashtra to the extent of 0-3.89 km and the MoEF&CC shall take final decision on that basis within a period of three months, if the said decision has not already been taken.

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³ *Goa Foundation v. Union of India*, (2011) 15 SCC 791

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a **56.13.** Prayers for impleadment of the applicants in IAs Nos. 984 of 2003, 1026, 1123, 1197 and 1251 of 2004 are allowed. Necessary amendments may be carried out in these regards.

56.14. For the reasons already given, however, prayers of the applicants in IAs Nos. 982 of 2003, 1027, 1124, 1198, 1210, 1250 of 2004 and 1512 of 2006 are rejected.

b **56.15.** CEC shall quantify the compensation to be recovered from each miner indulging in mining activities within the Jamua Ramgarh Sanctuary in violation of any statutory provision or order of this Court. Specific recommendations for compensatory afforestation, reclamation, clearing overburden dumping as also compensation in monetary units for degradation of forest resources shall also be made. A further set of recommendations
c concerning confiscation of earth-moving equipments and other machineries lying within or in the periphery of the said sanctuary shall be made by CEC. Recommendations shall be made within a period of four months
d before this Court in the form of an application. This Court shall consider passing appropriate order upon going through such application. The exercise concerning such reparation, including quantifying compensation shall be undertaken upon giving the mining operator, State and MoEF&CC opportunity of hearing.

56.16. In the event there is any subsisting order of any High Court or any court subordinate to such High Court covering any of the issues dealt with by this Court in this order, this order shall prevail over any such order which may be contrary to these directions.

e **56.17.** We have already observed that there are certain overlapping issues involved in this writ petition and the cases of *Goa Foundation* [Writ Petition (C) No. 460 of 2004] and [Writ Petition (C) No. 435 of 2012]. We request the Hon'ble the Chief Justice of India to consider having the present writ petition i.e. *T.N. Godavarma Thirumulpad, In re v. Union of India*; WP (C) No. 460 of
f 2004 (*Goa Foundation v. Union of India*) as also WP (C) No. 435 of 2012 (*Goa Foundation v. Union of India*) be heard together before the same Bench. The Registry may place this order before the Hon'ble the Chief Justice of India.

57. This order disposes of IA No. 1000 of 2003 in the above terms. Pending application(s), if any, shall stand disposed of.

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Annexure: R/9

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

**I.A. NOS. 131377, 147102, 195467, 195468,
205092 OF 2022,**

I.A. NOS. 162283 AND 162284 OF 2022

IN

I.A. D. NO. 125746 OF 2022

WITH

**I.A. NOS. 118604, 118606, 119400, 119401, 119404,
137132, 137138, 137140 AND 137143 OF 2022**

I.A. NOS. 5764, 6804 AND 10911 OF 2023

IN THE MATTER OF:

WRIT PETITION (CIVIL) NO. 202 OF 1995

IN RE: T.N. GODAVARMAN THIRUMULPAD

...PETITIONER(S)

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

I.A. NO. 131377 OF 2022:

Signature Not Verified
Digitally signed by
Narendra Prasad
Date: 2022.04.26
12:44:10 IST
Reason:

1. The present I.A. is filed by the Union of India praying for modification/clarification of the order passed by this Court

dated 3rd June 2022¹ in I.A. No. 1000 of 2003 in WP(C) No. 202 of 1995.

2. The applicant specifically seeks modification of the directions contained in paragraphs 56.1 and 56.5 of the order dated 3rd June 2022 (supra). The said paragraphs are reproduced hereinbelow:

“56.1. Each protected forest, that is, national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9-2-2011 shall be strictly adhered to. For Jamua Ramgarh Wildlife Sanctuary, it shall be 500 m so far as subsisting activities are concerned.

.....

56.5. In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were

¹(2022) 10 SCC 544

continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ."

3. The clarification/modification of paragraph 56.1 of the order dated 3rd June 2022 (supra) is sought to the extent that the Eco-Sensitive Zones (for short, "ESZs") which have already been notified (final and draft) by the Ministry of Environment Forests and Climate Change (for short, "MoEF & CC") or the proposals for which have been received in the Ministry be exempted from the directions therein. The applicant also sought modification to the extent that paragraph 56.1 of the order dated 3rd June 2022 (supra) may not be made applicable where National Parks and Wildlife Sanctuaries are located along inter-State boundaries and/or common boundaries. Modification/clarification of the directions in paragraph 56.5 of the order dated 3rd June 2022 (supra) in its entirety is additionally sought.

4. We have heard Ms. Aishwarya Bhati, learned Additional Solicitor General (for short, "ASG") appearing on behalf of the applicant, Shri K. Parameshwar, learned *amicus curiae* as

well as Senior Counsel appearing on behalf of various State Governments.

5. It is submitted that the Government of India has already issued Guidelines on 9th February 2011 (hereinafter referred to as the "said Guidelines") for declaration of ESZs around National Parks and Wildlife Sanctuaries. The said Guidelines were framed after consulting the National Board for Wildlife (hereinafter referred to as "NBWL"), and all the State and Union Territory Governments. The said Guidelines provide a detailed procedure for submitting a proposal for declaration of the areas around National Parks and Wildlife Sanctuaries as ESZs. It is further submitted that the said Guidelines itself contain various activities which have been categorized as prohibited, regulated and permitted.

6. It is further submitted that the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) is likely to cause great hardship to the citizens residing in the ESZs. It is further submitted that the said directions provide that if any activity is already being undertaken within one kilometre or extended buffer zone (ESZ), and which does not

come within the ambit of prohibited activities as per the said Guidelines, such activities may continue with the permission of the Principal Chief Conservator of Forests (for short, "PCCF") of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. The said Guidelines further provide that such permission shall be given once the PCCF is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this Court's order dated 3rd June 2022 (supra) in a legitimate manner. It is further submitted that the direction that no new permanent structure shall be permitted to come up for whatsoever purpose within the ESZs would also cause great hardship.

7. It is further submitted that insofar as the direction in paragraph 56.1 of the order dated 3rd June 2022 (supra) is concerned, it mandates that each protected forest, that is, National Park or Wildlife Sanctuary, must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities

proscribed and prescribed in the said Guidelines shall be strictly adhered to. Insofar as Jamua Ramgarh Wildlife Sanctuary is concerned, it is directed that the ESZ shall be 500 meters so far as subsisting activities are concerned.

8. The learned ASG, *amicus curiae* and Senior Counsel appearing on behalf of various States submitted that in respect of various National Parks and Wildlife Sanctuaries, already final notifications had been issued, prescribing the boundaries for the ESZs. In some cases, the draft notifications are pending and in some other cases, the proposals for issuance of draft and final notifications are pending with the Government of India.

9. It is submitted that there cannot be a uniform boundary for all the National Parks and Wildlife Sanctuaries. It is further submitted that there cannot also be a uniform boundary for a particular National Park or Wildlife Sanctuary. At times, it may be longer on one side and shorter on the other side depending on various circumstances.

10. It is submitted that the rights of the citizens who are residing in the Protected Areas are settled under the

provisions of Sections 18 to 25A of the Wild Life (Protection) Act, 1972 (hereinafter referred to as "1972 Act") whereas there is no settlement of rights of citizens residing in ESZs. The citizens therein continue to reside and are also continuing with their daily avocation like farming etc. It is submitted that various developmental activities like construction of schools, dispensaries, anganwadis, public health centres etc. are required to be undertaken in such areas. Not only that, but if the direction not to make any construction is continued, the persons residing therein would not be in a position to construct or reconstruct houses on their own land. It is submitted that the procedure prescribed for obtaining the permission of the PCCF is very tedious. If such a direction is issued, the PCCF would be left with no other work but to consider the applications for continuation of such activities.

11. It is further submitted that though this Court has observed in paragraph 54 of the order dated 3rd June 2022 (supra) that the said Guidelines are reasonable, it has

nevertheless issued directions which are in conflict with the said Guidelines.

12. It is further contended that the issue in I.A. No. 1000 of 2003 was restricted to prohibition of mining activities in and around Jamua Ramgarh Wildlife Sanctuary and prescribing ESZs for the said Wildlife Sanctuary only. As such, various State Governments did not have an opportunity to address this Court.

13. Having considered the rival submissions, we find it appropriate to refer to various orders passed by this Court on the issue of ESZs/Buffer Zones.

14. The first of such orders was passed by this Court on 16th September 2005². It will be relevant to refer to paragraph 13 of the said order, which reads thus:

“13. We have perused the affidavit dated 14-9-2005 filed by Mr Anurag Bajpai on behalf of MoEF and the statement showing the grant of temporary working permit in the last two years i.e. from 1-1-2003 to 31-12-2004 in the national parks, sanctuaries and forest area. This is despite the order passed by this Court restraining the mining activities in these areas. Learned amicus curiae submits that the inspection of the government record shows a

² (2006) 5 SCC 25

dismal picture and he would shortly file an application for taking appropriate action against the persons concerned. Pending filing of the said application and further orders, we again reiterate that without compliance with the environmental laws, in particular the permission under the Forest (Conservation) Act, 1980, no temporary working permission or temporary permit or any other permission by whatever name called shall be granted for mining activities in the aforesaid areas. **We further direct that no mining activity would continue under any temporary working permit or permission which may have been granted. It appears from the chart filed with the affidavit of Mr Anurag Bajpai that no temporary working permission is in operation as of today. If it is otherwise, an affidavit to that effect shall be filed within two weeks giving the particulars of such permission.**

[emphasis supplied]

15. It can thus clearly be seen that this Court directed that no mining activity would be permitted to continue under any temporary working permit or permission which may have been granted.

16. It will further be relevant to refer paragraph 15 of the said order, which reads thus:

“15. MoEF is directed to place on record within three weeks its viewpoint on the question of area of buffer zone and other related matters such as should it be universal or place specific.

This should be done after also obtaining the viewpoint of the National Board of Wildlife.”

17. It can thus be seen from the said paragraph that this Court directed MoEF to place on record within three weeks its viewpoint on the question of area of buffer zone and other related matters such as should it be universal or place specific. The Court further directed that this should be done after obtaining the viewpoint of the NBWL.

18. The second of such orders is passed on 4th August 2006³. The said order basically pertains to banning the mining activities in the National Parks, Sanctuaries and forest areas. The Court laid down various pre-conditions wherein temporary working permits could be granted.

19. The next order is passed on 4th December 2006⁴. In the said order, the Court expressed its anguish towards the various State Governments for not responding to the letter issued by MoEF dated 27th May 2005 requiring them to initiate measures for identification of suitable areas and submit detailed proposals at the earliest. It will be relevant

³ (2010) 13 SCC 740

⁴ (2011) 15 SCC 791

to refer to paragraphs 3 and 4 of the said order, which read thus:

“3. The order earlier passed on 30-1-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 793] refers to the decision which was taken on 21-1-2002 to notify the areas within 10 km of the boundaries of national parks and sanctuaries as eco-sensitive areas. The Letter dated 27-5-2005 is a departure from the decision of 21-1-2002. For the present, in this case, we are not considering the correctness of this departure. That is being examined in another case separately. Be that as it may, it is evident that the States/Union Territories have not given the importance that is required to be given to most of the laws to protect environment made after Rio Declaration, 1992.

4. The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its Letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21-1-2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having

regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.”

20. It can be seen that this Court refers to its earlier order dated 30th January 2006 wherein a reference is made to the decision dated 21st January 2002 to notify the areas within 10 kilometres of the boundaries of National Parks and Sanctuaries as ESZs. Though the order records that the letter dated 27th May 2005 is a departure from the decision taken on 21st January 2002, the Court observes that, in the said case, the Court was not considering the correctness of the said departure. The Court therefore directed the Ministry to give a final opportunity to all States/Union Territories to respond to its Letter dated 27th May 2005. The said order states that the communication should mention that if the proposals were not sent within a period of four weeks from the receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21st January 2002, i.e., notification of the areas within 10

kilometres of the boundaries of the sanctuaries and National Parks as ESZs.

21. The next order of this Court is dated 21st April 2014 in the case of ***Goa Foundation v. Union of India and Others***⁵.

It will be relevant to refer to the following observations of this Court in the said order:

“49.The result is that the order passed by this Court saying that there will be no mining activity within one kilometre safety zone around national park or wildlife sanctuary has to be enforced and there can be no mining activities within this area of one kilometre from the boundaries of national parks and wildlife sanctuaries in the State of Goa.”

22. The Court has clarified that there shall be no mining activity within one kilometre of the safety zone around National Park or Wildlife Sanctuary and that this has to be enforced. It is also reiterated that there can be no mining activities within this area of one kilometre from the boundaries of National Parks and Wildlife Sanctuaries in the State of Goa.

23. The Court thereafter refers to the earlier order dated 4th December 2006 (supra) in the said case and observed thus:

⁵ (2014) 6 SCC 590

“50.It will be clear from the order dated 4-12-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 791] of this Court that this Court has not passed any orders for implementation of the decision taken on 21-1-2002 to notify areas within 10 km of the boundaries of national parks or wildlife sanctuaries as eco-sensitive areas with a view to conserve the forest, wildlife and environment. By the order dated 4-12-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 791] of this Court, however, the Ministry of Environment and Forests, Government of India, was directed to give a final opportunity to all States/Union Territories to respond to the proposal and also to refer to the Standing Committee of the National Board for Wildlife the cases in which environment clearance has already been granted in respect of activities within the 10 km zone from the boundaries of the wildlife sanctuaries and national parks. There is, therefore, no direction, interim or final, of this Court prohibiting mining activities within 10 km of the boundaries of national parks or wildlife sanctuaries.”

24. It could thus be seen that the Court has specifically observed that this Court had not passed any orders for implementation of the decision taken on 21st January 2002 to notify areas within 10 kilometres of the boundaries of National Parks or Wildlife Sanctuaries as ESZs with a view to conserve the forest, wildlife and environment. The Court therefore clarified that there is no direction, interim or final,

prohibiting mining activities within 10 kilometres of the boundaries of National Parks or Wildlife Sanctuaries.

25. It will be relevant to refer to paragraphs 87.3 and 88.1 of the said order, which read thus:

“87.3. Until the order dated 4-8-2006 [*T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 740] of this Court is modified by this Court in IA No. 1000 in *T.N. Godavarman Thirumulpad v. Union of India*, there can be no mining activities within one kilometre from the boundaries of national parks and sanctuaries in Goa.

88.1. MoEF will issue the notification of eco-sensitive zones around the national park and wildlife sanctuaries of Goa after following the procedure discussed in this judgment within a period of six months from today.”

26. It can thus be seen that this Court has held that until the order dated 4th August 2006 (*supra*) is modified by this Court in IA No. 1000 of 2003 in the case of ***T.N. Godavarman Thirumulpad v. Union of India***, there can be no mining activities within one kilometre from the boundaries of National Parks and Sanctuaries in Goa. The Court further directed MoEF to issue the notification of ESZs around the National Park and Wildlife Sanctuaries of Goa after following the procedure discussed in the said judgment.

The same was directed to be done within a period of six months from the date of the said order.

27. The next relevant order would be dated 11th December 2018. It will be relevant to refer to the following part of the said order:

“The learned ASG has informed us that there are 104 National Parks and 558 Wildlife Sanctuaries making a total of 662 National Parks and Wildlife Sanctuaries in the country.

The proposals for declaring areas around these National Parks and Wildlife Sanctuaries as Eco Sensitive Zone have been received from State Governments / UT Administrations for 641 National Parks and Wildlife Sanctuaries. No proposals have been received in respect of 21 National Parks and Wildlife Sanctuaries.

The proposals have been accepted and Notification has been issued in respect of 289 National Parks and Wildlife Sanctuaries as on 26.11.2018 and draft Notification has been prepared in respect of 206 National Parks and Wildlife Sanctuaries.

The declaration with regard to Eco Sensitive Zone is under process with the Ministry of Environment, Forests and Climate Change (MoEF) as well as with the State Governments in respect of 4 146 National Parks and Wildlife Sanctuaries.

We expect the Ministry of Environment, Forests and Climate Change to actively pursue the preparation of the draft Notification and to issue a final Notification at the earliest.

The proposals for 21 National Parks and Wildlife Sanctuaries in respect of which proposals have not yet been received by the MOEF are as follows:-

.....

It is submitted by the learned Amicus that this issue has been pending since sometime in December, 2006. 12 years have gone-by but no effective steps have been taken by the State Governments in respect of the National Parks and Wildlife Sanctuaries mentioned above.

Under the circumstances, we direct that an area of 10 Kms around these 21 National Parks and Wildlife Sanctuaries be declared as Eco Sensitive Zone by the MoEF. The declaration be made by the MoEF at the earliest.

Liberty is granted to the State Governments to move an application for modification of this order along with proposal only two weeks after submission of the proposals to the MoEF."

28. It can be seen that this Court has recorded the submissions of the learned ASG that there were 104 National Parks and 558 Wildlife Sanctuaries making a total of 662 National Parks and Wildlife Sanctuaries in the country. It was further recorded that the proposals for declaring areas around these National Parks and Wildlife Sanctuaries as ESZs had been received from the State Governments/Union

Territories. It can further be seen that no proposals have been received in respect of 21 National Parks and Wildlife Sanctuaries. It further recorded that the proposals had been accepted and notification had been issued in respect of 289 National Parks and Wildlife Sanctuaries as on 26th November 2018 and draft notification had been prepared in respect of 206 National Parks and Wildlife Sanctuaries. The Court therefore expected the MoEF & CC to actively pursue the preparation of the draft Notification and to issue a final Notification at the earliest. The Court then recorded 21 National Parks and Wildlife Sanctuaries in respect of which proposals have not yet been received by the MoEF & CC alongside its anguish that though 12 years had been passed, no effective steps have been taken by the State Governments in respect of the National Parks and Wildlife Sanctuaries named in the said order. Therefore, the Court directed that an area of 10 kilometres around these 21 National Parks and Wildlife Sanctuaries be declared as ESZs by the MoEF & CC. Liberty was granted to the State Governments to move an application for modification of the said order. However, it

further directed that the application should be along with the proposal for declaration of ESZs.

29. It is to be noted that the learned Judges of this Court, in the case of **Goa Foundation**⁶, had directed that the MoEF & CC shall follow the procedure and issue notification of ESZs under Rule 5 of the Environment (Protection) Rules, 1986 (hereinafter referred to as "1986 Rules"). The relevant provisions of the 1986 Rules are reproduced hereinbelow:

"5. Prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas.—(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

⁶ (2014) 6 SCC 590

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication in the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may [within [seven hundred and twenty-five days [, and in respect of the States of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland,

Tripura, Sikkim and Jammu and Kashmir in exceptional circumstance and for sufficient reasons within a further period of one hundred and eighty days,]) from such date of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area:

[Provided that on account of COVID-19 pandemic, for the purpose of this clause, the period of validity of the notification expiring in the financial year 2020-2021 and 2021-2022 shall be extended up to [30th June, 2022] or six months from the end of the month when the relevant notification would have expired without any extension, whichever is later.]

[(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3).]

30. It is to be noted that Rule 5 of the 1986 Rules prescribes a detailed procedure for issuing notification prohibiting or restricting various activities in the specified areas. The said power flows from Sections 3(v) of the Environment (Protection) Act, 1986 (hereinafter referred to as "1986 Act").

31. A perusal of clause (viii) of sub-rule (1) of Rule 5 of the 1986 Rules would reveal that one of the factors that has to be taken into consideration for declaring ESZ is the proximity to a sanctuary, National Park, game reserve or closed area notified, as such under the 1972 Act. Sub-rule 3(a) of Rule 5 of the 1986 Rules requires that whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions, it is required to give notice of its intention to do so by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time. As per sub-rule 3(b) of Rule 5, every such notification is required to give a brief description of the area, the industries, operations processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries on carrying out of the processes or operations in that area. Accordingly, as per sub-rule 3(c) of Rule 5, any person interested in filing an objection is entitled to file an objection to the Central Government within sixty days from the date of publication in the notification in the Official

Gazette. The Central Government thereafter within the prescribed period provided under clause (d) of sub-rule (3) of Rule 5 of the 1986 Rules is required to issue a notification in the Official Gazette imposing such prohibition or restrictions in an area. This is required to be done only after considering all the objections received under clause (c) of sub-rule (3) of Rule 5 of the 1986 Rules. It can thus be seen that a detailed procedure is prescribed under the 1986 Rules for notifying ESZs.

32. It is to be noted that MoEF & CC has issued the said Guidelines for declaration of ESZs around the National Parks and Wildlife Sanctuaries.

33. The said Guidelines refer to a meeting of the Indian Board for Wildlife held on 21st January 2002, in which "Wildlife Conservation Strategy-2002" was adopted. Point No. 9 of the said Strategy envisaged that lands falling within 10 kilometres of the boundaries of National Parks and Sanctuaries should be notified as eco-fragile zones under Section 3(v) of the 1972 Act and clause (viii) of sub-rule (1) of Rule 5 of the 1986 Rules. It further states that when the

views were obtained from all the State Governments, some of the State Governments had raised concern over applicability of 10 kilometres range from the Protected Area boundary and informed that most of the human habitation and other areas including important cities in these States would come under the purview of ESZs and will adversely affect the development. The said Guidelines also refer to the National Wildlife Action Plan (2002-2016). The NBWL, in its meeting held on 17th March 2005, decided that the delineation of ESZs would have to be site specific and relate to regulation rather than prohibition of specific activities. The said decision was communicated to all the State Governments for compliance vide letter dated 27th May 2005.

34. The said Guidelines thereafter refer to the directions of this Court dated 4th December 2006. It also refers to the statutory provisions as contained in Section 5C (1) of the 1972 Act, Section 3 of the 1986 Act and Rule 5 of the 1986 Rules. The said Guidelines state that the purpose of declaring ESZs around National Parks and Sanctuaries is to create some kind of Shock Absorber for the Protected Areas.

They would also act as a transition zone from areas of high protection to areas involving lesser protection. It also reiterates the decision of the NBWL that the activities in the ESZs would be of a regulatory nature rather than prohibitive nature unless and otherwise so required. Paragraph 4 of the said Guidelines notes that many of the existing Protected Areas have already undergone tremendous development in close vicinity to their boundaries. It refers to the Guindy National Park, Tamil Nadu, Sanjay Gandhi National Park, Maharashtra, etc. and notes that the Protected Areas are lying in the urban set up. It therefore observes that defining the extent of ESZs around Protected Areas will have to be kept flexible and Protected Area specific. It notes that the width of ESZs and type of regulations will differ from one Protected Area to another Protected Area. It however notes that, as a general principle, the width of the ESZs could go up to 10 kilometres around a Protected Area as provided in the Wildlife Conservation Strategy-2002. It further notes that in case where sensitive corridors, connectivity and ecologically important patches, crucial for landscape linkage, are even beyond 10 kilometres width, these should be

included in the ESZs. It further notes that even in context of a particular Protected Area, the distribution of an area of the ESZ and the extent of regulation may not be uniform all around and it could be of variable width and extent. The said Guidelines notes that though the directions were issued by this Court to all the States/Union Territories, except a few States, several other States/Union Territories have not come forward with the proposals for declaration of ESZs. It was observed that this could be perhaps for want of guidelines in this regard. It further notes that this Court in its judgment and order dated 3rd December 2010 in a case relating to construction of park at Noida near Okhla Bird Sanctuary, observed that the ESZs around the Protected Areas had not been notified as the Government of India had not issued any guidelines in this regard.

35. It thereafter refers to the Committee under the Chairmanship of Shri Pronab Sen for identifying parameters for designating Ecologically Sensitive Areas in India.

36. The said Guidelines thereafter state in paragraph 6 that the basic aim of notifying ESZs is to regulate certain

activities around National Park and Wildlife Sanctuary so as to minimize the negative impact of such activities on the fragile ecosystem encompassing the Protected Area. It states that the first step towards it is to prepare an inventory of the different land use patterns and the different types of activities, types and number of industries operating around each of the Protected Area as well as important Corridors. It states that the inventory could be done by the concerned Range Officers, who can take a stock of activities within 10 kilometres of the range. It further notes that a Committee comprising of the concerned Wildlife Warden, an Ecologist, an official from the Local Self Government and an official of the Revenue Department of the concerned area, could be formed to suggest the following:

- (i) Extent of eco-sensitive zones for the Protected Area being considered.
- (ii) The requirement of such a zone to act as a shock absorber
- (iii) To suggest the best methods for management of the eco-sensitive zones, so suggested.

- (iv) To suggest broad based thematic activities to be included in the Master Plan for the region.

37. It further notes that based on the above, the Chief Wildlife Warden could group the activities under the following categories:-

- (i) Prohibited
- (ii) Restricted with safeguards.
- (iii) Permissible

38. The said Guidelines thereafter note that once the proposal for ESZs has been finalized, the same should be forwarded to the MoEF & CC for further processing and notification. An indicative list of details that need to be submitted along with the proposals is also appended to the said Guidelines.

39. The said Guidelines further note that where the boundary of a Protected Area abuts the boundary of another State/Union Territory where it does not form part of any Protected Area, it should be the endeavour of both the State/Union Territory Governments to have a mutual

consultation and decide upon the width of the ESZs around the Protected Area in question. The said Guidelines emphasize that the State Government should endeavour to convey a very strong message to the public that ESZs are not meant to hamper their day to day activities, but instead, are meant to protect the precious forests/Protected Areas in their locality from any negative impact, and also to refine the environment around the Protected Areas. It further notes that these guidelines are indicative in nature and the State/Union Territory Governments may use these as basic framework to develop specific guidelines applicable in the context of their National Parks, Wildlife Sanctuaries, important corridors etc. with a view to minimizing and preferably eliminating any negative impact on Protected Areas.

40. A list of the activities which are prohibited, regulated and permitted is contained in Annexure-I of the said Guidelines, which reads thus:

Sl. No.	Activity	Prohibited	Regulated	Permitted	Remarks
1.	Commercial mining	Y			Regulation sill not

					prohibit the digging of earth for construction or repair of houses for manufacture of country tiles or bricks for housing for personal
2.	Felling of trees		Y		With permission from appropriate authority
3.	Setting of saw mills	Y			
4.	Setting of industries causing pollution (Water, Air, Soil., Noise, etc.)	Y			
5.	Establishment of hotels and resorts		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals
6.	Commercial use of firewood	Y			For hotels and other business related establishment

7.	Drastic change of agriculture systems		Y		
8.	Commercial use of natural water resources including ground water harvesting		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.
9.	Establishment of major hydroelectric projects	Y			
10.	Erection of electrical cable		Y		Promote underground cabling
11.	Ongoing agriculture and horticulture practices local communities			Y	However, excessive expansion of some of these activities should be regulated as per the master plan
12.	Rain Water harvesting			Y	Should be actively promoted
13.	Fencing of premises of hotels and lodges		Y		
14.	Organic farming			Y	Should be actively promoted

15.	Use of polythene bags by shopkeepers		Y		
16.	Use of renewable energy sources			Y	Should be actively promoted
17.	Widening of roads		Y		This should be done with proper EIA and mitigation measures
18.	Movement of vehicular traffic at night		Y		For commercial purpose
19.	Introduction of exotic species		Y		
20.	Use of production of any hazardous substances	Y			
21.	Undertaking activities related to tourism like over-flying the National Park are by any aircraft, hot-air balloons				
22.	Protection of hill slopes and river banks		Y		As per the master plan

23.	Discharge of effluents and solid waste in natural water bodies or terrestrial are	Y			
24.	Air and vehicular pollution		Y		
25.	Sign board & hoardings		Y		As per the master plan
26.	Adoption of green technology for all activities			Y	Should be actively promoted.

41. It is to be noted that this Court in paragraph 54 of the order dated 3rd June 2022 (supra) has, in fact, held the said Guidelines to be reasonable and also accepted the view of the Standing Committee of the NBWL that uniform guidelines may not be possible in respect of each sanctuary or National Park for maintaining the ESZs. It is also observed that the sanctuaries like Sanjay Gandhi National Park and Guindy National Park in Mumbai shall form special cases. The said paragraph 54 is reproduced hereinunder:

54. In our opinion, the Guidelines framed on 9-2-2011 appear to be reasonable and we accept the view of the Standing Committee that uniform guidelines may not be possible in respect of each sanctuary or national park for maintaining ESZ. We are of the opinion, however, that a minimum width of 1 km ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in special circumstances. We have considered CEC's recommendation that the ESZ should be relatable to the area covered by a protected forest but the Standing Committee's view that the area of a protected forest may not always be a reasonable criteria also merits consideration. It was argued before us that the 1 km wide "no-development-zone" may not be feasible in all cases and specific instances were given for Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity. These sanctuaries shall form special cases."

42. It is to be noted that an elaborate and exhaustive list has been prepared by MoEF & CC of the activities which shall be prohibited, the activities which shall be regulated and the activities which shall be permitted.

43. In the application, it is stated that after the proposals are received from the State Governments/Union Territory

Administrations, they are scrutinized in consultation with the Wildlife Institute of India, Dehradun, and in case of tiger reserves, with the National Tiger Conservation Authority. They are thereafter published in the Official Gazette of the Central Government in both Hindi and English. They are also placed in the public domain for 60 days for seeking comments of concerned stakeholders. The comments so received are compiled and scrutinized and observation of the concerned State Government/Union Territory Administration is sought on the same. The aforesaid requirements are in tune with the provisions of Rule 5 of 1986 Rules.

44. The application further states that the proposal is thereafter placed before an Expert Committee constituted for ESZ within the MoEF & CC. The said Committee comprises of the following:

- (i) Indian Institute of Remote Sensing/Indian Space Research Organization,
- (ii) Ministry of Jal Shakti,
- (iii) Ministry of Rural Development,

- (iv) Forest Survey of India,
- (v) Town & Country Planning Organization,
Government of India,
- (vi) National Tiger Conservation Authority,
- (vii) Wildlife Institute of India,
- (viii) GB Pant Institute of Himalayan
Environment & Development,
- (ix) Indian Council of Forestry Research and
Education,
- (x) World Wildlife Fund,
- (xi) Zoological Survey of India,
- (xii) Botanical Survey of India,
- (xiii) Salim Ali Centre for Ornithology and
Natural History (SACON).

45. It is further stated in the application that based on the recommendation of the Expert Committee (ESZ), the Ministry finalizes the notification of ESZs and after due legal vetting by the Ministry of Law & Justice, final notifications specifying the ESZs around the Protected Areas are notified. It could thus be seen that an elaborate procedure including

consideration by a Committee of Experts coming from 13 organizations having expertise in wildlife ecology, forest etc. is followed before a final notification prescribing ESZs is notified.

46. In the application filed by the Union of India, various illustrations have been given to point out as to how if the directions issued in paragraph 56.5 of the order dated 3rd June 2022 (supra) are not modified, a severe hardship would be caused to the millions of people. We refer to the same hereunder:

- (i) "The ESZ around Nagarjunasagar Srisaillam Tiger Reserve in Andhra Pradesh extends from 0 to 26 kilometres and 100 villages are situated within it (*Zero extent of ESZ is due to Krishna River and interstate boundary with Telangana*);
- (ii) The ESZ around Valmiki Wildlife Sanctuary, Valmiki National Park and Valmiki Tiger Reserve in Bihar extends from 0 to 9 kilometres and 323 villages are situated within it (*zero extent of ESZ is towards Western side sharing inter-state boundaries with Uttar Pradesh and*

towards Northern side sharing international boundary with Nepal);

- (iii) The ESZ around Betla National Park, Palamau Wildlife Sanctuary, and Mahuadanr Wolf Sanctuary in Jharkhand extends from 0 to 9 kilometres and 382 villages are situated within it (*Zero extent of ESZ is due to Inter-State boundary*);
- (iv) The ESZ around Cauvery Wildlife Sanctuary in Karnataka extends from 1 to 14.5 kilometres and 107 villages are situated within it;
- (v) The ESZ around Kanha National Park and Phen Wildlife Sanctuary in Madhya Pradesh extends from 0 to 30 kilometres and 168 villages are situated within it (*Zero extent of Eco-sensitive Zone is towards the eastern side having interstate boundary with Chhattisgarh*);
- (vi) The ESZ around Tadoba-Andhari Tiger Reserve in Maharashtra extends from 3 to 6 kilometres and 150 villages are situated within it;
- (vii) The ESZ around Jaisamand Wildlife Sanctuary in Rajasthan extends from 1.6

to 8.9 kilometres and 83 villages are situated in it;

- (viii) Even a small ESZ such as the one around Keoladeo National Park in Rajasthan which extends from 0.5 to 1.5 kilometres has 22 villages situated in it.”

47. It would thus reveal that in the ESZ around Nagarjunasagar Srisailem Tiger Reserve in Andhra Pradesh, 100 villages are situated within it. In the ESZ around Valmiki Wildlife Sanctuary, Valmiki National Park and Valmiki Tiger Reserve in Bihar, 323 villages are situated within it. In the ESZ around Betla National Park, Palamau Wildlife Sanctuary, and Mahuadanr Wolf Sanctuary in Jharkhand, 382 villages are situated within it. In the ESZ around Cauvery Wildlife Sanctuary in Karnataka, 107 villages are situated within it. In the ESZ around Kanha National Park and Phen Wildlife Sanctuary in Madhya Pradesh, 168 villages are situated within it. In the ESZ around Tadoba-Andhari Tiger Reserve in Maharashtra, 150 villages are situated within it. In the ESZ around Jaisamand Wildlife Sanctuary in Rajasthan, 83 villages are situated in it.

Even in a small ESZ around Keoladeo National Park in Rajasthan, 22 villages situated in it.

48. If the direction as issued by this Court in paragraph 56.5 of the order dated 3rd June 2022 (supra) is continued, then no permanent structure would be permitted to come up for whatsoever purpose in the aforesaid ESZs. As already pointed out from the aforesaid examples, hundreds of villages are situated within the ESZs in the country. If no permanent construction is to be permitted for any purpose, a villager who is desirous to reconstruct his house would not be permitted. Similarly, if there is an extension in their family and some additional construction is required for accommodating the enlarged family, the same would also not be permitted. Similarly, if the Government decides to construct schools, dispensaries, anganwadis, village stores, water tanks and other basic structures for improvement of the life of the villagers, the same would also not be permitted. The effect of the order will be to prevent the State or the Central Government from constructing roads and provide other facilities to the villagers.

49. If the order dated 3rd June 2022 (supra) is not modified, it will also be impossible for the Forest Departments to conduct eco-development activities around National Parks and Sanctuaries. The said activities are required with the dual objectives of protection of wildlife and provision of benefits for the local communities. MoEF & CC provides financial assistance to the States under the Centrally Sponsored Scheme-Integrated Development of Wildlife Habitats, which includes assistance for eco-development activities. These activities often involve construction of small structures which are permanent in nature in areas including ESZs. For example, the said activities which are likely to be prohibited are thus:

- (i) The construction of community halls, bridges, threshing floors, fish-drying platforms, drinking water storage, etc., for the benefit of local communities/villages;
- (ii) The construction of forest chowkies, watch towers, and other structures for protection of wildlife and forests;
- (iii) The construction of interpretation centres, toilets and other basic structures

for the environmental education of visitors to National Parks and sanctuaries.

50. It is further to be noted that there are various regulated and permissible activities. There are also certain projects of national and strategic importance such as construction of National Highways, Railways, Defence related infrastructure etc. The effect of the direction in 56.5 of the order dated 3rd June 2022 (supra) is that all such activities will be permanently prohibited. In this respect, it is to be noted that MoEF & CC has issued an Office Memorandum dated 17th May 2022 which required that any activity listed in Schedule of the EIA Notification 2006, when conducted in a notified ESZs, or in the case of National Parks and Sanctuaries for which no ESZ has been finally notified, when conducted within 10 kilometres of such National Park or Sanctuary, requires the consideration and recommendation of the NBWL or its Standing Committee in addition to the Environment Clearance under the 1986 Act. Additionally, activities which are regulated as per the specific ESZ notification, require

approval as per that notification. As such, we find that there are inbuilt safeguards for preventing rampant construction and abuse of process which may be detrimental to the development and maintenance of wildlife habitats. It is further to be noted that if the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) that even for continuation of existing activities, the permission of the PCCF of each State or Union Territory would be necessary, remains unmodified, taking into consideration that in each State or Union Territory there will be hundreds of villages wherein millions of people would be residing, the PCCF would be left with no other job except to consider such applications for permission to continue such activities. Even a farmer desirous to continue farming activities would be required to seek such permission. We find that such a direction is impossible to be implemented.

51. We are of the view that if such a direction is continued, rather than avoiding man-animal conflict, it will intensify the same. As observed in the said Guidelines, the requirement of declaring ESZs is not to hamper day to day activities of the

citizens but is meant to protect the precious forests/Protected Areas from any negative impact, and to refine the environment around the Protected Areas.

52. As already discussed hereinabove, the necessity to have ESZs is to provide a buffer zone around the Protected Areas. The rights of the villagers residing in the Protected Areas are required to be settled in accordance with the provisions contained in the 1972 Act and such villagers are rehabilitated outside the Protected Areas. However, no such settlement of rights is available to the villagers residing in the ESZs areas. As stated in the said Guidelines, the purpose of declaring ESZs is not to hamper the day to day activities of the citizens. If the direction as issued is continued, it would certainly hamper the day to day activities of the citizens residing in ESZs. As such, we find that the said direction needs to be modified.

53. It is further to be noted that the NBWL, in its meeting dated 17th March 2005, has also recommended that the delineation of ESZs should project as regulation rather than prohibition of activities.

54. As was pointed out by the counsel for one of the States, the entire municipal area of the Sulthan Bathery Block Panchayat is situated within the ESZ area.

55. Insofar as direction in paragraph 56.1 of the order dated 3rd June 2022 (supra) is concerned, a perusal of various orders would reveal that this Court has not directed any minimum area from the demarcated boundary of such Protected Areas. The area to be declared as ESZ cannot be uniform and will be Protected Area specific. In some cases, it may be 10 kilometres on one side and 500 meters on the other side. In certain cases, it may not be possible to have a uniform minimum area by virtue of inter-state boundaries or a sea or a river beyond one side of the Protected Area. In any case, a detailed procedure is required to be followed as prescribed under Rule 5 of the 1986 Rules which we have already referred hereinabove. We find that once such a notification is issued after following the procedure prescribed under the 1986 Rules, the ESZs will have to be as per the said notification.

56. It is further to be noted that, as required under sub-rule (3) of Rule 5 of the 1986 Rules, before any final notification is issued, a draft notification is required to be published in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time. Any person interested in filing any objection to such a draft notification is entitled to file objection within a period of 60 days from the date of publication of the draft notification in the Official Gazette. We find that the Central Government can be directed to give a wide publicity to the draft notification so that all persons interested have knowledge about issuance of such draft notification.

57. It is pertinent to note that after following the aforesaid procedure, the matter is placed before the Expert Committee consisting of 13 organizations having expertise in the relative field. As such, before an ESZ area is specified, various factors are taken into consideration. There are various factors which will determine the ESZs for a particular Protected Area. The circumstances may differ from one Protected Area to another Protected Area. As such, we find that the direction which

prescribes a uniform one kilometre ESZ requires to be modified.

58. It is further to be noted that on the date of filing of the present application, final notifications have been issued in respect of 474 Protected Areas whereas draft notifications have been issued in respect of 102 Protected Areas. 73 proposals are pending. As already discussed hereinabove, this Court has already found the said Guidelines to be reasonable and has accepted the same. The Court has also accepted the view of the Standing Committee of the NBWL that uniform guidelines may not be possible in respect of each Sanctuary or National Park for maintaining ESZs. Though the Court has observed that a minimum width of one kilometre in ESZ ought to be maintained, in paragraph 56.6 of the order dated 3rd June 2022 (supra) itself, it has observed that minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned is required to approach Central Empowered Committee (CEC) and MoEF & CC. It has further observed that both these bodies shall give their respective

recommendations before this Court and on that basis, the Court should pass appropriate order.

59. As already discussed hereinabove, the ESZs are required to be notified after following the procedure as prescribed under the 1986 Rules and the said Guidelines. Such notifications cannot be issued unless a close scrutiny at various levels including the scrutiny by Expert Committee consisting of experts from 13 organizations. As such, we find that the direction as contained in paragraph 56.6 of the order dated 3rd June 2022 (supra) also needs to be modified.

60. Insofar as the restriction on mining is concerned, we are of the considered view that it has been the consistent view of this Court that the mining activities within an area of one kilometre of the boundary of the Protected Areas will be hazardous for the wildlife. Though in the case of **Goa Foundation** (supra), the said directions were issued in respect of State of Goa, we find that such directions need to be issued on Pan-India basis.

61. We are therefore inclined to allow the present I.A. The direction in paragraph 56.1 of the order dated 3rd June 2022

(supra) is modified and clarified that the directions contained therein would not be applicable to the ESZs in respect of which a draft and final notification has been issued by the MoEF & CC and in respect of the proposals which have been received by the Ministry.

62. We, however, direct the Central Government that wide publicity should be given to the draft notification which is required to be published under the provisions of clause (a) of sub-rule (3) of Rule 5 of the 1986 Rules. We further direct that the final notification to be published under clause (d) of sub-rule (3) of Rule 5 of the 1986 Rules shall not be given effect for a period of 30 days from the date of issuance thereof.

63. It is further directed that any person who is aggrieved with such a final notification would be entitled to approach this Court directly by filing an application in the present proceedings.

64. We further clarify that the direction contained in paragraph 56.1 of the order dated 3rd June 2022 (supra) would not be applicable where the National Parks and

Sanctuaries are located on inter-State borders and/or share common boundaries.

65. We also modify the direction contained in paragraph 56.4 of the order dated 3rd June 2022 (supra) and direct that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wildlife Sanctuary shall not be permissible.

66. We also modify the directions contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) and replace the same as under:

- (i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities;

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(ii) We further direct that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May 2022 issued by MoEF & CC.

67. All the other present I.As shall stand disposed of in terms of the above. No costs.

.....J.
[B.R. GAVAI]

.....J.
[VIKRAM NATH]

.....J.
[SANJAY KAROL]

**NEW DELHI;
APRIL 26, 2023**

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH NEW DELHI
ORIGINAL APPLICATION NO. 252 OF 2023

IN THE MATTER OF:

Bhera Lal Goyal

___ Applicants

Versus

Ministry of Environment, Forest
And Climate Change

___ Respondents

VAKALATNAMA

KNOW ALL to whom these present shall come that I, Indu Kumari, W/o. Shri Kushhaveer Singh, Kadamb Van, Jojawar, Jojawar Pali, Rajasthan, 306022 authorized representative of Respondent's Company The above named Respondent, do hereby appoint (herein after called by advocate/s) to be my/our Advocate in the above-noted case authorize him:-

**SAURABH RAJPAL
ADVOCATE**

**OFF: D-291 2ND & 3RD FLOOR,
DEFENCE COLONY, NEW DELHI-110024
PH:9971792885**

Email:advocatesaurabhrajpal@gmail.com

9996660

To act, appear and plead in the above-noted case in this court or in any other Court in which the same may be tried or heard and also in the appellate court including High Court subject to payment of fees separately for each court by me/us.

To sign file, verify and present pleadings, appeals cross-objections or petitions for executions review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subjects to payment of fees for each stage.

To file and take back documents, to admit and /or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

The deposit, draw and receive money, cheques, case and grant receipts hereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.

And I/We the undersigned do hereby Agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purpose.

And I/We undersigned that I/We or my/our duly authorised agent would appear in court on all hearings and will inform the Advocate for appearance when the case is called.

And I/We undersigned do hereby agree not to hold the advocate of his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the court shall be of the Advocate which he shall receive and retain for himself.

And I/We undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHERE OF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this _____ day of _____ 2023
Accepted subject to the terms of the fees

Saurabh Rajpal
D/ 928/19

ADVOCATE

Indu Kumari

Indu Kumari

CLIENT

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Saurabh Rajpal <advocatesaurabhrajpal@gmail.com>

Service of Reply in Bhera Lal Matter pending before Hon'ble NGT

Saurabh Rajpal <advocatesaurabhrajpal@gmail.com>

Thu, 18 May at 12:11 PM

To: <rkjust25@gmail.com>

PFA

BHERA LAL FINAL REPLY.pdf