

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 248 OF 2022

IN THE MATTER OF:-

News Item published in The Hindu dated 27 March 2022
titled "Digging up the Chambal"

INDEX

Sr.No.	Particulars	Page No.
1.	REPLY ON BEHALF OF STATE OF MADHYA PRADESH IN COMPLIANCE OF THE ORDER DATED 20.03.2024 ALONG WITH AFFIDAVIT	2-7
2.	ANNEXURE A-1: COPY OF THE LETTER ISSUED BY THE OFFICE OF PCCF (WL) MP DATED 27.03.24	8-9
3.	ANNEXURE A-2: COPY OF E FILING RECEIPT OF I.A. BY GoMP BEFORE THE HON. APEX COURT	10
4.	ANNEXURE A-3: COPY OF THE INTERLOCUTORY APPLICATION FILED BY GoMP BEFORE THE HON. APEX COURT	11-85

Place: New Delhi

Date: - 8.04.2024

The State of Madhya Pradesh
Through its Counsel



Rukhmini Bobde,
Advocate,

D-366, Ground Floor, Defence Colony,
New Delhi-110024

Email: admin@rsbobde.com

Phone No. +91-8130015770

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 248 OF 2022**

IN THE MATTER OF:

**News Item published in The Hindu dated 27 March 2022
titled “Digging up the Chambal”**

**REPORT ON BEHALF OF STATE OF MADHYA
PRADESH IN COMPLIANCE OF THE ORDER DATED
20.03.2024 ALONGWITH AFFIDAVIT**

1. The present Original Application was taken up by Hon’ble National Green Tribunal on the basis of captioned media report to the effect that illegal mining was taking place in the periphery of Keoladeo National Park in Rajasthan near Dholpur, close to National Chambal Sanctuary which was the habitat of rare species of animals particularly Gharial, roofed turtles and also river dolphins.
2. That vide order dated 20.03.2024 in the present matter, the Hon’ble Tribunal had directed as follows:

“Learned Counsel appearing for State of Madhya Pradesh was questioned as to how by de-notifying certain revenue area, taking away from National Chambal Sanctuary Notification dated 24.12.1982, wildlife can be protected and that too by permitting sand mining whereupon Ms. Rukhmini Bobde, Learned Counsel appearing for State of Madhya Pradesh said that she may be granted two weeks time to file an affidavit to place on record stand of State of

Madhya Pradesh which according to instructions given to her is of the view that the said notification may be withdrawn.”

3. It is respectfully submitted that the State of MP has submitted its affidavit before the Hon’ble NGT towards the order passed on 03.11.23, which was taken on record by the Hon’ble NGT, having Paper Book page numbers from **1261 to 1499**. The issue of de-notifiacion of the revenue land of area 207.05 hectares from the National Chambal Sanctuary (NSC) area and the current sequence of the events and action taken by the State of MP has been explained in details in para 7 to 15 of the reply (***paper book page numbers 1270 to 1276***), duly supported with Annexure R-1 to R-8 (***paper book page numbers 1291 to 1372***)
4. It was submitted in that reply that the de-notification of the area has been done following the due process of law for which the prior permission was obtained from the National Board for Wildlife (NBWL). It was also submitted that the due the restrictions on mining in the ESZ area, no mining has been started in the area, and a request has been made before MoEF&CC for waiving this restriction. The MoEF&CC clarified that due to the directions passed by Hon’ble Apex Court vide order dated 26.04.23 in WP(C) No.202 of 1995: TN Godavarman vs. Union of India & Ors it would not be appropriate to give the relaxation in the matter and advised that that the State Government may submit a revised proposal for declaring

ESZ around National Chambal Wildlife Sanctuary, reducing the de-notified area for consideration.

5. In the para 15 of that reply it was also respectfully clarified on behalf of GoMP that :-

“It is submitted that even if MoEF&CC accords its sanction to modify the boundaries of the ESZ of NCS, mining of sand in the de-notified area may not be possible in light of the order of Hon’ble Supreme Court dated 26.04.23 in WP(C) No.202 of 1995: TN Godavarman vs. Union OF India & Ors. It is submitted that the answering respondent GoMP, has kept the option open to approach the Hon’ble Apex Court for modification of its orders and granting relaxation of the direction which prohibits mining in an area within 1 km of boundary of the National Park and Wildlife Sanctuary. It is submitted that, no mining leases have been so far sanctioned in the de-notified revenue area nor any mining of the sand has been permitted in the de-notified area.”

6. In light of the above, it is submitted that the de-notification of the revenue land of 207.05 hectares of NCS area vide gazette dated 31.01.23 was issued after obtaining due clearance from the NBWL and only for the purpose of permitting sand mining in a legalized way to fulfill the sand needs of the locals and to obtain their support in the protection of wildlife in the NCS, which otherwise promotes illegal sand mining in hap-hazard manner endangering the wildlife in the NCS. It is further submitted that the permission from the NBWL was never

objected to by the Central Empowered Committee and thus the decision of the Standing Committee of the NBWL holds good as the order of Hon'ble Supreme Court. It is further submitted that the office of the PCCF (WL) MP has clarified vide its letter dated 27.03.24 that in the area de-notified from the NCS for sand mining, the possibility of any negative impact on the aquatic wildlife and its habitat is minimal. The copy of the said letter dated 27.03.24 is marked and placed herewith as **Annexure A-1**.

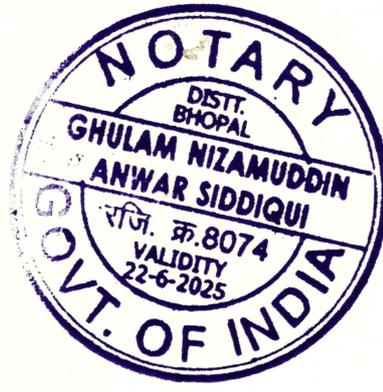
7. In light of the submissions made herein above, it is respectfully submitted that the gazette notification dated 31.01.23 de-notifying the revenue area of 207.05 hectares from the NCS, is presently an innocuous document which has not been implemented so far for the reasons aforementioned. Further it cannot be implemented till the modification of the orders dated 26.04.23 and 28.04.23 of the Hon'ble Apex Court in WP(C) 202 of 1995: TN Godavarman vs. Union OF India & Ors.
8. It is submitted that GoMP through its Deputy Director, Mineral Administration, Directorate of Geology and Mining has moved the Hon'ble Supreme Court by filing and Interlocutory Application for the modification of its orders dated 26.04.23 and 28.04.23. The IA has been e-filed in the registry of Hon'ble Apex Court on 02.03.24, the e-filing receipt is marked and placed herewith as **Annexure A-2**, and the copy of the IA filed on behalf of GoMP is marked and placed herewith as **Annexure A-3**.

9. That in view of the abovementioned, it is respectfully submitted that presently the matter is pending before the Hon'ble Apex Court. Hon'ble Tribunal may be pleased to pass such order(s) as this Hon'ble Tribunal thinks fit in the facts and circumstances of the case and in the interests of justice.



**The State of Madhya Pradesh
Through its Counsel**

**Rukhmini Bobde,
Advocate**



**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 248 OF 2022**

IN THE MATTER OF

**News Item published in The Hindu dated 27 March 2022
titled "Digging up the Chambal"**

AFFIDAVIT

I, **Hemant Kumar Sharma** s/o **Shri M.H.Sharma**, aged about 61 years, r/o H.No. 18, Phase-1, DK Devstahli, Bawadia Kalan, Bhopal (MP) and presently working as Director Environment, in M.P. Pollution Control Board, Bhopal, do hereby solemnly affirm & declare as under:-



1. That I am the Officer –in-Charge on behalf of the State of Madhya Pradesh and have been duly authorized to swear and depose in this affidavit on behalf of the State of Madhya Pradesh. I am competent to swear this affidavit in support of the present reply.
2. That the accompanying reply has been drafted by the Counsel under my instructions. I have read and understood the same and the contents of the same are true and correct to the best of my knowledge and belief.

Sharma
DEPONENT

VERIFICATION

Verified on this day of 05-April 2024 at Bhopal, that the contents of the above affidavit are true and correct to the best of my knowledge and nothing has been concealed therein.

Sharma
DEPONENT

IDENTIFIED BY ME:
Name...Kailash Dehariya
Address...Steno Gs I
M.P. Pollution Control Board
Signature...[Signature]

SWORN BEFORE ME THIS
WITNESS NAMED
[Signature] 5/4/2024
**GHULAM NIZAMUDDIN
ANWAR SIDDIQUI**
NOTARY ADVOCATE, BHO PAL (M.P.)

कार्यालय प्रधान मुख्य वन संरक्षक (वन्यप्राणी), मध्य प्रदेश

भू-तल, सी-ब्लॉक, वन भवन, लिंक रोड़ नं.-2, तुलसी नगर, भोपाल-462003

दूरभाष : 0755-2674248, 2524275, फ़ैक्स : 0755-2674206

E-mail : pccfwl@mp.gov.in

क्रमांक/व.प्रा./न्याया./रा.च.अ./NGT-3/ 26 30

भोपाल, दिनांक 27/03/2024

प्रति,

डायरेक्टर पर्यावरण प्रभारी अधिकारी,
मध्यप्रदेश प्रदूषण नियंत्रण बोर्ड
पर्यावरण परिसर, ई-5, अरेरा कालोनी, भोपाल
(E-mail : directorenv-pcb@mp.gov.in)

विषय :- प्रकरण क्रमांक OA 248/2022 "News Item Published in The Hindu dated 27/03/2022 Titled "Digging up the Chambal" में माननीय राष्ट्रीय हरित अधिकरण द्वारा पारित आदेश दिनांक 20/03/2024 के पालनार्थ बाबत।

संदर्भ :- आपका पत्र क्रमांक/1463/तक./मप्रप्रनिबो/2024 दिनांक 26.03.2024

उपरोक्त विषयांतर्गत संदर्भित पत्र से आपके द्वारा माननीय राष्ट्रीय हरित अधिकरण (प्रिसिपल बेंच) नई दिल्ली में राष्ट्रीय चम्बल अभयारण्य के संबंध में प्रचलित प्रकरण ओए क्रमांक 248/2022 New Item published in The Hindu dated 27 March 2022 titled "Digging up the Chambal" में पारित आदेश दिनांक 20.03.2024 संलग्न प्रेषित करते हुए उक्त आदेश में उल्लेखित बिन्दुओं जानकारी चाही गई है। उक्त आदेश के अंतर्गत State of Madhya Pradesh was questioned as to how by de-notifying certain revenue area, taking away from National Chambal Sanctuary Notification dated 24.12.1982, wildlife can be protected and that too by permitting said mining को स्पष्ट करते हुए जानकारी चाही गई है। उक्त संबंध में वांछित जानकारी निम्नानुसार है:-

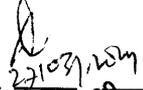
राष्ट्रीय चम्बल अभयारण्य का गठन वर्ष 1982 में घड़ियाल, मगर एवं अन्य जलीय-जीवों के संरक्षण के लिए किया गया है। अभयारण्य की अधिसूचित सीमा चम्बल नदी के मध्य/राज्य सीमा से मध्यप्रदेश की ओर 01 कि.मी. चौड़ाई में तथा 435 कि.मी. की सम्पूर्ण लम्बाई में है। अभयारण्य के भीतर नदी की सीमा होने से नदी से अथवा अधिसूचित अभयारण्य क्षेत्र से किसी भी प्रकार की सामग्री जैसे रेत, मिट्टी इत्यादि का उपयोग किया जाना प्रतिबंधित है। नियमानुसार किसी भी संरक्षित क्षेत्र की सीमा परिवर्तन अथवा संरक्षित क्षेत्र में गैरवानिकी कार्य हेतु या क्षेत्र को डिनोटिफाई किये जाने हेतु माननीय सर्वोच्च न्यायालय की अनुमति आवश्यक है।

उल्लेखनीय है कि मुरैना जिले में भवन निर्माण एवं अन्य आवश्यक कार्यों हेतु रेत का चम्बल नदी के अलावा अन्य कोई प्राकृतिक स्रोत उपलब्ध नहीं है। रेत निकासी पर प्रतिबंध होने के कारण राष्ट्रीय चम्बल अभयारण्य के जीवों के संरक्षण में स्थानीय जनता का सहयोग नहीं प्राप्त होता है। बल्कि वे रेत के अवैध करोबार में स्थानीय जनता लिप्त हो जाते हैं। इस कारण स्थानीय लोगों को वैध रेत आपूर्ति की समस्या के निराकरण एवं अवैध रेत उत्खनन की गतिविधियों पर नियंत्रण को दृष्टिगत रखते हुए राष्ट्रीय चम्बल अभयारण्य के वन्यप्राणियों के संरक्षण के साथ-साथ स्थानीय लोगों की आजीविका एवं स्थानीय निवासियों को रेत आपूर्ति की व्यवस्था हेतु अभयारण्य के आंशिक क्षेत्र 207.05 हेक्टेयर क्षेत्र डिनोटिफाई किये जाने का प्रस्ताव प्रस्तुत किया गया। राष्ट्रीय चम्बल अभयारण्य

से डिनोफाई किये गये क्षेत्र में जलीय जीवों एवं उनके रहवास पर विपरीत प्रभाव पड़ने की संभावना नगण्य है। इस प्रस्ताव की मध्यप्रदेश राज्य वन्यप्राणी बोर्ड की 21वीं बैठक दिनांक 27.08.2021 में सशर्त अनुशंसा की गई। इसके उपरांत उक्त प्रस्ताव की राष्ट्रीय वन्यप्राणी बोर्ड स्टैंडिंग कमेटी की 69वीं बैठक दिनांक 29.07.2022 में सशर्त अनुशंसा की गई।

माननीय सर्वोच्च न्यायालय के आदेश दिनांक 05.10.2015 के अनुसार संरक्षित क्षेत्रों के अंतर्गत गैरवानिकी कार्यों की अनुमति हेतु प्रेषित प्रस्तावों पर राष्ट्रीय वन्यप्राणी बोर्ड की स्टैंडिंग कमेटी के निर्णय 30 दिनांक के भीतर केन्द्रीय साधिकार समिति को प्रेषित जाना होता है। यदि केन्द्रीय साधिकार समिति द्वारा उक्त निर्णयों पर कोई आक्षेप नहीं लिया जाता है तो प्रकरण में राष्ट्रीय वन्यप्राणी बोर्ड की स्टैंडिंग कमेटी का निर्णय ही माननीय सर्वोच्च न्यायालय का निर्णय माना जावेगा।

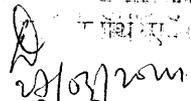
प्रकरण में राष्ट्रीय वन्यप्राणी बोर्ड की स्टैंडिंग कमेटी के उक्त निर्णय के संबंध में केन्द्रीय साधिकार समिति का आक्षेप प्राप्त नहीं हुआ है। अतः प्रकरण में माननीय सर्वोच्च न्यायालय की अनुमति मानी जा सकती है। जिसके आधार पर राज्य सरकार द्वारा दिनांक 31.01.2023 को राष्ट्रीय चम्बल अभयारण्य से 207.05 हेक्टेयर क्षेत्र को रेत उत्खनन हेतु डिनोटिफाई किया गया। अभयारण्य से डिनोटिफाई किये गये उक्त क्षेत्र से रेत उत्खनन किये जाने से स्थानीय लोगों को विधि पूर्वक रेत की आपूर्ति हो सकेगी तथा उन्हें रोजगार भी उपलब्ध हो सकेगा। इससे राष्ट्रीय चम्बल अभयारण्य के जलीय जीवों एवं अन्य वन्यजीवों के संरक्षण में स्थानीय जन सहयोग प्राप्त हो सकेगा। साथ ही अवैध रेत उत्खनन की घटनाओं पर अंकुश लगाया जा सकेगा। जिससे राष्ट्रीय चम्बल अभयारण्य के जीवों तथा उनके रहवास स्थलों का प्रभावी संरक्षण सुनिश्चित हो सकेगा।


 (डॉ. अतुल कुमार श्रीवास्तव)
 मुख्य वन्यप्राणी अभिरक्षक एवं
 प्रधान मुख्य वन संरक्षक (व.प्रा.), म.प्र.
 भोपाल, दिनांक 27/03/2024

क्रमांक/व.प्रा./न्याया./रा.च.अ./NGT-3/2631
 प्रतिलिपि :-

1. अपर मुख्य सचिव, मध्यप्रदेश शासन, वन विभाग मंत्रालय वल्लभ भवन, भोपाल।
2. प्रमुख सचिव, मध्यप्रदेश शासन, पर्यावरण विभाग, मंत्रालय भोपाल।
3. प्रमुख सचिव, मध्यप्रदेश शासन, खनिज विभाग, मंत्रालय भोपाल।
4. प्रधान मुख्य वन संरक्षक एवं वन बल प्रमुख, मध्यप्रदेश, वन भवन, भोपाल।
5. श्री प्रशांत हरणे, स्थाई अधिवक्ता, माननीय राष्ट्रीय अधिकरण, भोपाल। (E-mail:- harneprashant02@gmail.com)
6. श्री मेहुल भारद्वाज, शासकीय अधिवक्ता, माननीय राष्ट्रीय हरित अधिकरण, चेम्बर नं. 609, यू.सी.आई. लॉयर्स चैम्बर, अरेरा हिल्स भोपाल-462027। (E-mail:- advocatemehulbharadwaj@gmail.com)
7. मुख्य वन संरक्षक, ग्वालियर वृत्त ग्वालियर।
8. वनमण्डलाधिकारी, सामान्य वनमण्डल मुरैना।

की ओर सूचनाएँ एवं आवश्यक कार्यवाही हेतु प्रेषित।


 मुख्य वन्यप्राणी अभिरक्षक एवं
 प्रधान मुख्य वन संरक्षक (व.प्रा.), म.प्र.

**Supreme Court Of India
Acknowledgement**

e-Filing No. : ED-SCIN01-26808-2024 Re e-Filed Date/Time : 02-03-2024 11:19:44 AM
Efiled : Misc. Document Filed In : W.P.(C) NO. 202/1995
Petitioner : IN RE : T.N. GODAVARMAN
 THIRUMULPAD
Respondent : UNION OF INDIA AND ORS. AND ORS
Advocate : SUNNY CHOUDHARY (2071)
Payment Details : Court Fee: Rs. 0
 Printing Charges: Rs.0
 Total: Rs. 120 (Online (Receipts no. : EPSDL2833022121608194))

Generated Date: 02-03-2024 11:19:52 AM

1528

IN THE SUPREME COURT OF INDIA

CIVIL / CRIMINAL / APPELLATE / ORIGINAL JURISDICTION

P.A. No. ~~13177~~ of 2024
SLP / WP / TP / CA / (Civil/Criminal) No. ~~13177~~ of 2024

P.A. No. 3949 & 13177 / 2022
Criminal Appeal / Civil Appeal Nos. of 2020

W.P.C. No. ~~13177~~ 202/1995
Diary No. of 2024

In the matter of :

T. N. Godaraoman Thirumal pad Petitioner(s)/

versus

AND Union app Indira & ors Respondent
ENTRAB matter ors:

State app m.p. INDEX Applicant

Sl. No.	Particulars	Pages	Court fees
1.	Application for modification		
2.	of order dated 26.4.2023 and		
3.	28.4.2023 passed by this Honble		
4.	court		
5.			
6.	Vakalatname		
7.			
8.			
9.			
10.			

FILED ON: 28/2/2024

Sunny Choudhary
(SUNNY CHOUDHARY)

Advocate for the Petitioner/Appellant Respondent

I.C. NO. 4645,

Code No.2071

Mo. No. 8287109022

S-222, Greater Kailash Part-1, New Delhi-48

Vineet Singh

Tel. 011-41600022

IN SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

I.A. NO. OF 2024

IN

I.A. NO. 3949 & I.A. NO. 131377 OF 2022

IN

WRIT PETITION (C) NO. 202 OF 1995

IN THE MATTER OF:

IN RE: T.N. GODAVARMAN THIRUMULPAD

PETITIONER(S)

VERSUS

UNION OF INDIA AND ORS.RESPONDENT(S)

AND

IN THE MATTER OF:

THE STATE OF MADHYA PRADESHAPPLICANT

**APPLICATION FOR MODIFICATION OF ORDER DATED
26/04/2023 AND 28/04/2023 PASSED BY THIS HON'BLE
COURT AND PASS APPROPRIATE DIRECTIONS ON
BEHALF OF STATE OF MADHYA PRADESH.**

(PAPER BOOK)

(PLEASE SEE INDEX INSIDE)

ADVOCATE FOR THE RESPONDENTS: - SUNNY CHOUDHARY

INDEX

S.NO.	PARTICULARS	PAGE
1	Application for modification of order dated 26/04/2023 and 28/04/2023 passed by this Hon'ble court and pass appropriate directions on behalf of State of Madhya Pradesh.	1-9
2	ANNEXURE A-1: A true-copy of the order dated 26.04.2023 passed by this Hon'ble Court in I.A. No. 131377 of 2022 in W.P. (C) No. 202 of 1995	10-61
3	ANNEXURE A-2: A true-copy of the order dated 28.04.2023 passed by this Hon'ble Court in I.A. No. 3949 of 2016 in W.P. (C) No.2021995	62-72

4. Vakalatnama

73

IN SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

I.A. NO. OF 2024

IN

I.A. NO. 3949 & I.A. NO. 131377 OF 2022

IN

WRIT PETITION (C) NO. 202 OF 1995

IN THE MATTER OF:

IN RE: T.N. GODAVARMAN THIRUMULPAD

.....PETITIONER(S)

VERSUS

UNION OF INDIA AND ORS.RESPONDENT(S)

AND

IN THE MATTER OF:

THE STATE OF MADHYA PRADESHAPPLICANT

**APPLICATION FOR MODIFICATION/RELAXATION OF ORDER
DATED 26/04/2023 AND 28/04/2023 PASSED BY THIS
HON'BLE COURT AND PASS APPROPRIATE DIRECTIONS ON
BEHALF OF STATE OF MADHYA PRADESH.**

TO

HE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE HON'BLE SUPREME
COURT OF INDIA.

THE HUMBLE PETITION OF THE

APPLICANT/RESPONDENT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-.

1. That the present application is being filed by the State of Madhya Pradesh for the purpose of seeking modification of the order/judgement dated 26/04/2023 and 28/04/2023 passed by this Hon'ble Court, wherein, this Hon'ble Court issued certain directions. A true-copy of the order dated 26.04.2023 passed by this Hon'ble Court in I.A. No. 131377 of 2022 in W.P. (C) No. 202 of 1995 is being marked and annexed herewith as

ANNEXURE A-1. (10-61)

A true-copy of the order dated 28.04.2023 passed by this Hon'ble Court in I.A. No. 3949 of 2016 in W.P. (C) No.2021995 is being marked and annexed herewith as

ANNEXURE A-2. (62-72)

2. That it is submitted that in exercise of the powers conferred under section 3 of the Environment Protection Act, 1986, the central Government issued Notification dated 20/02/2020 and notified an area of 0 to 2 Km around the boundary of National Chambal Sanctuary in

State of Madhya Pradesh as National Chambal Sanctuary Eco-Sensitive Zone (ESZ). Under the said notification, an area of ESZ is around 870 sq. Km.

3. That it is relevant to submit that clause 4 of the Notification provides with the list of activities which are prohibited and regulated in the Eco- Sensitive Zone. Therefore, at serial No. 1 Commercial Mining, Stone Quarrying and crushing unit falls in the prohibited category.
4. That the State of Madhya Pradesh sought denotification/exclusion of the area of 207.05 hectare falling within the district Morena and Sheopur from the ESZ. It is due to shortage of sand and the local populous being deprived of source of livelihood.
5. That in exercise of the powers under section 18 of the Wildlife protection Act, 1972, the State of Madhya Pradesh issued notification excluding 207.05 hectare from National Chambal Sanctuary, with the intention to make provision for sand supply and provide means of livelihood for the local residents. Thereafter, the

notification was later approved by the National Wildlife Board in its meeting dated 29/07/2022. Thereafter, the State of Madhya Pradesh vide Notification dated 31/01/2023, excluded the partial revenue area of the sanctuary with the aim of protection of the National Chambal Sanctuary as well as for the provisions of sand supply to local residents for their livelihood with conditions imposed by the National Wildlife Board meeting dated 29/07/2022.

6. That it is relevant to submit that this Hon'ble Court vide para 9 of the order dated 28/04/2023 passed the following directions:

9. We find that the directions issued in paragraph 65 of the judgment of this Court delivered on 26th April 2023 are very much clear.

It reads thus:

"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 Wild Life Sanctuary shall not be permissible.”

Therefore, this Hon'ble Court after observing the order dated 26/04/2023 held that the mining is prohibited within an area of 1Km from the boundary of the national park and Wildlife Sanctuary. This in turn ultimately prohibits the mining activity for the survival of the local residents, even though the 207.05 hectare of the land has been de-notified from ESZ, by National Wildlife Board meeting dated 29/07/2022, but still remains to be within 1 Km of the National Sanctuary.

7. That the Central Government vide letter dated 28/06/2023 stated that in the light of the abovementioned judgement it would not be appropriate to give relaxation to the state government and the state

would have to propose modification in ESZ and to exclude area from ESZ.

8. That it is relevant to submit that after the National Wildlife Board had already approved mining in 207.05 Hectare of area from the ESZ, which allowed for mining activities in the areas of Dist. Morena and Sheopur, of National Chambal Sanctuary.
9. That it is submitted that even though the Central Government de-notifies the 207.05 hectare area from ESZ for mining, the restrictions on mining would still remain as per the directions of this Hon'ble Court vide order dated 26/04/2023 in the present case.

PRAYER

It is, therefore most respectfully prayed that this Hon'ble Court be pleased to:

1. In view of the aforementioned facts and circumstances, this Hon'ble court modify/relax the direction under para 65 of the order/judgement dated 26/04/2023. and;

2. That this Hon'ble Court permit the State of Madhya Pradesh to initiate mining activities in the 207.05 hectare are of the Morena and Sheopur district, for the livelihood of the local residents. and;
3. Pass any other order(s) as the Hon'ble Court may deem fit in the facts and circumstances of the case.

Filed by:



(SUNNY CHOUDHARY)

Advocate for the Applicant

Filed on: 28/2/24

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. NO. OF 2024

IN

I.A. NO. 3949 OF 2016 & I.A. NO. 131377 OF 2022

IN

WRIT PETITION (C) NO. 202 OF 1995

IN THE MATTER OF:

IN RE: T.N. GODAVARMAN THIRUMULPADPETITIONER(S)

Versus

UNION OF INDIA & ORS.RESPONDENT(S)

AND

IN THE MATTER OF:

THE STATE OF MADHYA PRADESHAPPLICANT

AFFIDAVIT

I, P.P. Rai, S/o Late Sh. P.N. Rai , aged about 47 years, Working as -
Dy. Director Mineral Administration, Directorate of Geology and
Mining, Bhopal, Madhya Pradesh presently at New Delhi do hereby
solemnly affirm and declare as under:

1. That I am the Officer-In-Charge appointed on behalf of the Applicant/State of M.P. in the above mentioned case and well conversant with the facts and circumstances of the case as such I am competent to swear this affidavit.



2. That, the averments made in the accompanying Application from pages 1 to 9 and the I.A.s from pages No(s) — to — are drafted on my instructions and the contents thereof are true and correct to the best of my knowledge and belief.
3. That, the contents of this affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.
4. That, the annexures / documents filed herewith are true copies of their respective originals.

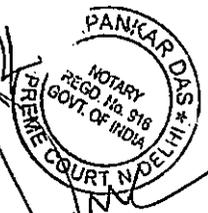
3/02/2024
 DEPONENT

VERIFICATION

Verified at New Delhi, on this 3rd day of Feb., 2024 that the contents in the aforesaid affidavit are true and correct to the best of my knowledge and belief.

3/02/2024
 DEPONENT

03.02.24


 ATTESTED
 DIPANKAR DAS
 ADVOCATE
 NOTARY PUBLIC
 REGD. NO. 916
 GOVT. OF INDIA
 LAWYERS ASSOCIATION
 SUPREME COURT
 NEW DELHI

3/02/2024

[Handwritten Signatures]

1540

ANNEXURE A-1

10

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. GAVAL, J.

I.A. NO. 131377 OF 2022:

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

Signature Not Verified
Digitally signed by
Narendra Prasad
Date: 2023.04.26
12:44:10 IST
Reason:

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

15
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

21

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,

3)

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

34
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 will 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

41

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

45

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,

- 4/b
- (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 Srisailem 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*

48

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 Srisailam 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.

50

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

52

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.

55
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

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

58
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

59

(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;

61

(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**

True Copy

ANNEXURE A-2REPORTABLEIN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTIONIA NO. 3949 OF 2016
IN
WRIT PETITION (C) NO. 202 OF 1995

IN RE :

T.N. GODAVARMAN THIRUMULPADPetitioner(s)

VERSUS

UNION OF INDIA & ORS.Respondent(s)

AND

IN THE MATTER OF:

M/S. PUNTAMBEKAR MINERALS
(THROUGH ITS PROPRIETOR
SHRI DILIP BHAUSAHEB MADAKE) ...Applicant(s)J U D G M E N TB.R. GAVAI, J.

1. When we pronounced our judgment in I.A. No. 131377 of 2022 along with connected applications in Writ Petition (Civil) No. 202 of 1995 on 26th April 2023, we did not anticipate that within a few days, we would be called upon to clarify the position as to whether mining activities would

be permissible beyond the distance of one kilometer from the boundary of the Protected Area, irrespective of the fact that such an area falls under the Eco-Sensitive Zone (in short "ESZ") notified by the Ministry of Environment, Forest and Climate Change ("MoEF" for short).

2. We are grateful to the applicant in the present application for giving us this opportunity to clarify this position so that further environmental damage is avoided.

3. The case of the applicant, in brief, is that the applicant was granted permission to execute a mining lease as early as in 2005, subject to clearance from MoEF as well as the National Board for Wild Life.

4. Shri Ranjit Kumar, learned senior counsel appearing for the applicant, submits that the area where the applicant proposes to carry out the activity is beyond 2.26 kilometer from the nearest boundary of the Radhanagari Wildlife Sanctuary. It is, therefore, submitted that it

falls beyond a distance of one kilometer from the boundary of the Protected Area.

5. Mr. Ranjit Kumar, learned senior counsel, therefore, relying on our judgment dated 26th April 2023 passed in in I.A. No. 131377 of 2022 along with connected applications in Writ Petition (Civil) No. 202 of 1995, the ink of which is yet to dry, submits that, since mining is proposed to be carried out beyond a distance of one kilometer from the boundary of Protected Area, it would very much be permitted.

6. Learned senior counsel submits that this Court has clearly held that mining within a distance of one kilometer from the boundary of the Protected Area is banned. He submits that, however, the judgment does not prohibit mining activities even in ESZ, which is a buffer area, if it extends beyond a distance of one kilometer from the boundary of the Protected Area.

7. He, however, submits that this would be subject to permission from the Standing

Committee of National Board for Wild Life (in short "SCNBWL"), which admittedly, has granted permission.

8. Mr. Balbir Singh, learned Additional Solicitor General appearing for the Union of India as well as Mr. A.D.N. Rao, learned Amicus Curiae have vehemently opposed this prayer and they submit that the contention of the applicant is based on a misreading of the directions issued by this Court.

9. We find that the directions issued in paragraph 65 of the judgment of this Court delivered on 26th April 2023 are very much clear.

It reads thus:

"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 Wild Life Sanctuary shall not be permissible."

10. The perusal of the above para would reveal that the directions, which were issued by this

Court earlier for prohibiting mining activities within a distance of one kilometer from the boundary of such National Parks and Wildlife Sanctuaries only insofar as the State of Goa was concerned, has been made applicable pan-India.

11. The aforesaid question arose since in case of some of the National Parks and Wildlife Sanctuaries, the ESZ areas are less than one kilometer. In some, it is as less as 500 meters and in some others, it is even less than 500 meters.

12. We, therefore, clarified that even in case where the ESZ boundaries are less than one kilometer from the Protected Area, the ban on mining shall extend upto a distance of one kilometer from the boundary of such areas.

13. It will further be relevant to refer to paragraph 66.1 of our judgment dated 26th April, 2023, which reads thus:

"66(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;"

14. It could thus clearly be seen that we have directed that MoEF as well as all the State Governments/Union Territories shall strictly follow the provisions in the Guidelines dated 9th February, 2011, as also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities.

15. As such, our directions are very much clear. Whatever is prohibited under the 2011 guidelines and whatever is additionally prohibited under the specific ESZ notifications of the particular Protected Areas have to be strictly followed.

16. The perusal of paragraph 40 of the judgment dated 26th April 2023 would reveal that the very first activity, which is contained in Annexure-

I of the Guidelines, is commercial mining and the same is prohibited.

17. Apart from that, it will also be relevant to refer to paragraph 4 of the Notification dated 15th October, 2020 vide which a final notification had been notified in so far as the ESZ for Radhanagari Sanctuary is concerned, which reads thus:

"4. List of activities prohibited or to be regulated within Eco-sensitive Zone.- All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment (Protection) Act, 1986 and the rules made there under including the Coastal Regulation Zone, 2011 and the Environmental Impact Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act 1972 (53 of 1972), and amendments made thereto and be regulated in the manner specified in the Table below, namely:-

S.No. (1)	Activity (2)	Description (3)
A. Prohibited Activities.		

1. Commercial mining, stone quarrying and crushing units

(a) All new and existing mining (minor and major minerals), stone quarrying and crushing units shall be prohibited with immediate effect except for meeting the domestic needs of bona fide local residents including digging of earth for construction or repair of houses within Eco Sensitive Zone;

(b) The mining operations shall be carried out in accordance with the order of the Hon'ble Supreme Court dated the 4th August, 2006 in the matter of T.N. Godaverman Thirumulpad Vs. UOI in W.P.(C) No. 202 of 1995 and dated the 21st April, 2014 in the matter of Goa Foundation Vs. UOI in W.P(C) No. 435

of 2012.

18. It could thus clearly be seen that Clause (a) of the Notification of the MoEF also clearly mentions that all the new and existing minor and major minerals, stone quarrying and crushing units shall be prohibited with immediate effect, except for meeting the domestic needs of bona fide local residents, including digging of earth for construction or repair of houses within ESZ.

19. No doubt that Clause (b) of the Notification of the MoEF mentions that the mining operation shall be carried out in accordance with the order of this Court dated 04th August 2006 in the matter of T.N. Godavarman Thirumulpad Vs. Union of India reported in (2010) 13 SCC 740 and order dated 21st April 2014 in the case of Goa Foundation v. Union of India and Others reported in (2014) 6 SCC 590.

20. However, the last word on the issue is the judgment dated 26th April 2023. The notification

is dated 15th October 2020, i.e. prior to the pronouncement of our judgment.

21. As such, the provisions made in clause 1(b) of paragraph 4 of the Notification dated 15th October 2020 would now become redundant in view of our judgment and order dated 26th April 2023.

22. As such, any activity, which is prohibited by both the guidelines as well as the ESZ notification shall strictly be prohibited. Since the mining activity in ESZ area is a prohibited activity, there is no question of such an activity being permitted in an ESZ area even if it falls beyond the distance of one kilometer from the boundary of the protected area.

23. We clarify that even if in a particular case, the ESZ is more than one kilometer, still, if the concerned area where mining is proposed falls within the ESZ, the mining activity will not be permitted, even if it falls in an area which is beyond one kilometer from the boundary

of the Protected Area.

72

24. The prohibition of one kilometer from the boundary of Protected Area is only with regard to the cases where the boundary of ESZ is less than one kilometer from the boundary of the sanctuary. Only in such cases, the ban on mining will travel beyond the ESZ area and cover an area upto a distance of one kilometer.

25. The aforesaid directions were issued in order to protect the National Parks and Wildlife Sanctuaries so that the mines would not become a death trap for the flora and fauna within them.

26. Apart from that, the judgment dated 26th April 2023 is delivered by a Bench of three Judges of this Court, which is binding on us.

27. As such the application is rejected.

.....J
(B.R. GAVAI)

.....J
(VIKRAM NATH)

New Delhi
April 28, 2023

U True copy