Before The Hon`ble National Green Tribunal, Western Zone Bench, Pune At Pune

Original Application No. 84 of 2019 (WZ)

(Arising out of Writ Petition No. 11120/2019)

Between

Dr.VinaykumarVitthalrao Jathar ..... Applicant

Versus

State of Maharshtra

and others ..... Respondents

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Pune

Date- 11/12/2020

Advocate For Applicant
(Rahul A. Tambe)

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE BENCH), PUNE, AT: PUNE

Original Application No. 84 of 2019

(Arising out of Writ Petition No. 11120 of 2019)

Between

Mr VinaykumarVitthalrao Jathar. ... Applicant

VERSUS

State of Maharashtra and others. ... Respondents

RESPONSE ON BEHALF OF APPLICANT TO THE REPORTFILED BY THE JOINT INSPECTION COMMITTEE.

NOTARY B.S.BHOS Advocate & Notary Public Shrigonda Taluka R.N.4667 GOVT OF INDIA

MOST RESPECTFULLY SHOWETH:

1.That the above-mentioned Original Application was initially filed by the applicant as a Writ Petition before the Hon`ble High Court at Bombay at Aurangabad bench Under Article 226 read with other articles of the Constitution of India. The Hon`ble High Court vide its order dated

09/09/2019 was pleased to transfer the same to this on Hon`ble Tribunal.

2.That the above-mentioned Original Application was listed for admission before Hon'ble Tribunal on 05/12/2019 and the Hon'ble Tribunal after hearing the applicant and Respondent No.11 was pleased to constitute a Committee comprising of (i) The Chief Conservator of Forests (wildlife), Pune, Maharashtra, (ii) The Collector, Ahmednagar, (iii) The Conservator of Forest of the concerned circle/area and iv) The senior representative of the State Pollution Control Board. The Chief Conservator of Forest, (wildlife), Pune, Maharashtra is the nodal agency. The Committee was directed to visit the area in question, verify on the factual aspects set out in the Original Application and at the site in the light of the records available in respect of the area and submit report. That the Committee was also directed to take appropriate action in accordance with the law against respondent, in the event the allegations are found to be correct and action taken report was directed to be submitted on the next date.

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3.That thereafter time to time, the Original Application was listed before the Hon`ble Tribunal but the report was not

filed. That then the matter was listed on 02/09/2020 and on that day, it is reflected in the order of the Hon'ble Tribunal that, the report as directed is submitted on 01/09/2020, but neither the copy of the same was served on applicant nor is uploaded on official website. Hence, on 30/11/2020, Applicant wrote a letter to the members of committee and sent it through an Email for providing the copy of the report. That on 03/12/2020, Applicant received a copy of the report dated 28/08/2020 via email, from the Dy. Conservator of Forest (Wildlife), Pune. That at the outset, Applicant denies the contents of first part of the report and accepts the later part. It is further brought to the notice of this Hon`ble Tribunal, that the Applicant had never received any notice regarding the inspection of Joint Committee that allegedly took place on 29/02/2020. The entire report is already placed by respondent authorities on record so applicant is placing on record relevant part of report.*Hereto annexed and marked as* ***Exh. P-1*** *is the copy of the relevant part said report dated 28/08/2020.*

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5. That the applicant is seeking three-fold reliefs against the Respondent No.11 and the same is demonstrated again as follows:

(i) That the applicant is seeking revocation of consent dated 18/05/2018 granted to respondent no.11 for establishing the 26 Mega Watt co-generation electricity project on the ground that it is situated within the Eco sensitive zone of the Great Indian Bustard Sanctuary and particularly at Gat no. 52/2 of the village Limpingaon, Taluka-Shrigonda, Dist-Ahmednagar, Maharashtra without obtaining prior permission from National Board for wildlife which is mandatory requirement and further without obtaining environment clearance.

(ii) Applicant is seeking direction of immediate stoppage of work and to and closure of the said project in addition to the cancellation of consent to establishment dated 18.05.2018.

(iii) That the respondent no. 11 has acquired 36 hectors of forest land at Gat no.52/1 of village Limpangaon, Taluka- Shrigonda, Dist- Ahmednagar illegally by exchanging the same with private lands in contravention of the provisions of the Forest (Conservation) Act, 1980 and hence, applicant is seeking the direction of transmission of the said 36 hectares land for forest department.

6. That the Committee submitted its report dated 28/08/2020 to which Applicant responds as follows:-

FIRST PART OF REPORT

WHETHER THE CO-GENRATION PLANT OF THE RESPONDENT NO. 11 IS SITUATED WITHIN AN ECO-SENSITIVE ZONE OF THE GREAT INDIAN BUSTARD BIRD SANTUARY?

NOTARY B.S.BHOS Advocate & Notary Public Shrigonda Taluka R.N.4662 GOVT OF INDIA

7. That at para (i) of the report, it is mentioned that that "*videNotification dated 11/02/2020 of the Ministry of Environment, Forest and Climate Change, the Eco-Sensitive Zone for Great Indian Bustard Wildlife Sanctuary has been notified and the existing Eco-Sensitive Zone raising from 0 to 400 from the Sanctuary boundary. In this view of the matter*

the land and the project in question does not fall within the Eco-Sensitive Zone" That in this context, before proceeding to deal with the said findings, some dates and events are important with the issue in hand and said dates and events are as follows:

Sr. No.	Date	Event
1	18/05/2018	The respondent no. 3 and 4, MPCB accorded "consent to establish" the Co-generation power project of the respondent no. 11 at Gut number 52/2 of the village-Limpangaon, Tal-Shrigonda, District-Ahmednagar, Maharashtra.
2	01/11/2018	Notice in respect of public hearing regarding the objections of establishment of the said Co-generation project of the respondent no. 11 was published in daily newspaper. This was first time when applicant gained knowledge about order dated 18.05.2018 *(said public notice is annexed with the Original Application at exhibit "Q" page number 179A)*
3	28/11/2018	Applicant filed detail representation with respondent authorities regarding the objections for establishment of the said Co-generation project and also in respect of illegal exchange of the forest lands with private lands *(said representation is annexed with Original Application at exhibit "Q" page number 183A)*
4	01/12/2018	Public hearing was conducted by the Committee and in the said public hearing also objections regarding establishment of the Co-generation project was raised by the applicant. Public hearing concluded without taking any decision. *(Minutes of the said public hearing are annexed to the*

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		Original Application at exhibit "T" page 187)
5	19/01/2019	The respondent nos. 3 and 4 MPCB issued directions for stoppage of the work of said Co-generation project of the respondent no. 11 observing that respondent number 11 has completed more than 50% of the work of installation of co-generation plant without obtaining prior environmental clearance and violated the consent of establish granted by the board. The said directions were given by board after applicant had raised the said objections in public hearing conducted on 11/12/2018. *(said directions/notice dated 19/01/2019 are annexed with Original Application at exhibit "V" page 197*
6	13/08/2019	Since, applicant found that in spite of the "stop work" directions, the respondent no. 11 has carried on the work of establishment of the project, he filed an application under Right to Information Act with MPCB enquiring and for providing the visit reports of MPCB to the project from the date 20/01/2019 to 13/08/2019 *(said application filed under Right to Information Act is annexed with Original Application at exhibit "W" page 199)*
7	23/08/2019	Applicant received the information under Right to Information Act and received copies of visit reports dated 28/05/2019 and 31/07/2019 by the MPCB to the project and after receipt of the said information, applicant found that on 28/05/2019, 60-65% of the co-generation project work was completed. Visit report dated 28.05.2019 mentions that E.C. is not granted. Even on visit 31/07/2019 the work of the project was going on and representative of Resp. No. 11 informed that work would be completed in 6 weeks. *(said visit reports are annexed with*

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		original application at exhibit "W" page 199.)
8	03/09/2019	After collecting the documents under R.T.I. act the applicant approached the Hon'ble High Court, Bombay, bench at Aurangabad by filing Writ Petition U/A. 226 of the Constitution of India on legal advice since applicant was informed that the NGT, Pune bench was not functional.
9	28/02/2020	The MPCB has served the show cause notice dated on Respondent No. 11, directing them to pay Rs. 69,90,000/- (Rs. Sixty Nine Lakhs Ninety Thousand only) for continuing with the installation of 26 MW Co-generation plant without obtaining prior environmental clearances.
10	11/02/2020	Notificationissued by the Ministry of Environment, Forest and Climate Change, Government of India in respect of the Eco-Sensitive Zone of the Great Indian Bustard Bird Sanctuary.

8. In this context, it is submitted that, from the dates and events mentioned above, it is clear that,the 26 MW Co-generation project of the Respondent No. 11 was granted "consent to establish" on 18/05/2018. It is admitted in the reply by the Respondent No. 11 that, the said project is at a distance of 8.52 kilometres from the Great Indian Bustard Bird Sanctuary. So, on the date i.e. 18/05/2018, the 26 MW Co-generation project was within the Eco-Sensitive Zone of the Great Indian Bustard Bird Sanctuary and therefore, was governed by the guidelines dated 09/02/2011 issued by the

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Ministry of Environment and Forest (Wildlife division), Government of India and the order dated 04/12/2006 of the Hon`ble Supreme Court passed in the matter of Goa Foundation vs Union of India, WP No.460/2004 which mandates the project proponent to seek prior environmental clearance from Standing Committee of National Board for Wildlife before seeking environmental clearance as per EIA Notification,2006.

9. Even otherwise, as per the EIA notification of 2006, Rule 2, the power plant of more than 25 MW needs prior environmental clearance from the Central Government if, project falls whole or in part within the 10 kilometres from the boundary of the protected area.That, since the Respondent No. 11, on the date of establishment of project, i.e. on 18/05/2018 failed to comply with both the above requirements,the Notification dated 11/02/2020 issued by the Ministry of Environment, Forest and Climate Change, Government of India should not have been relied upon by the Joint Committee to held that the Project does not fall within Eco-sensitive Zone. It is further submitted that, admittedly the 26 MW Co-generation plant of the Respondent No. 11 is established without complying with the laws in force at

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relevant time, particularly the environmental legislations, cannot be benefited by retrospectively applying the Notification dated 11/02/2020. It is further submitted that, the Notification dated 11/02/2020 cannot be given "retrospective operation" and the activities which had been categorised as prohibited activities in the EIA notification of 2006 could not be permitted, legalised and regularised under a subsequent notification.

10. The Respondent No. 11 cannot be allowed to proceed with the project which was established in violation of the laws in force at the relevant time. Therefore, it is respectfully submitted that, the report does not spell anything in respect of whether the project, when established, was within the Eco-Sensitive zone or not. The report only deals with the Notification dated 11/02/2020 and states the present situation. The project was started 18/05/2018 i.e. almost two years before the issuance said Notification, so it is expected from the Committee to put forth all the information in respect of the project as per the directions of the Hon`ble Tribunal.

NOTARY B.S.BHOS Advocate & Notary Public Shrigonda Taluka R.N.4567 GOVT OF INDIA

SECOND PART OF REPORT

EXCHANGE OF FOREST LAND OF THE GREAT INDIAN BUSTARD BIRD SANTUARY TO RESPONDENT NO.11 IN CONTRAVENTION PROVISIONS OF THE FOREST CONSERVATION ACT,1980.

11. That at para (iii) of the report, it is mentioned that,"*that the land bearing gat no. 52/2 was de-notified by order passed by Revenue and Forest Department, Mumbai which was later published in Government Gazette dated 31/12/1970. Accordingly, said land thereafter was transferred for setting up project by the then Collector, Ahmednagar vide order dated 02/04/1971.* ***However, after verification of documents and map prepared by Dy. Supt. Land Record, Shrigonda, it appears that, total 35 hectors land out of gat no. 52/1 situated at village Limpangaon, Tal- Shrigonda, Dist-Ahmednagar is in control and possession of the sugar factory i.e. M/s. Sahakar Maharshi ShivajiraoNarayanraoNagawade S. S. K. Ltd. Even though the same is forest land."*** Further,in the report it is mentioned that"*and all the mutation entry done pertaining to gat no. 52/2 of sugar factory are of deforested land.* ***However as per report submitted by Tahasildar, Shrigonda total 35.90 HR land from gat no.52/1 is under possession of sugar factory which is forest land and not deforested. This land was***

NOTARY B.S.BHOS Advocate & Notary Public Shrigonda Taluka GOVT OF INDIA

granted by the then tahsildars and then it is exchanged by the then SDOs to sugar factory. However, this land is not deforested as per the available record to our office. So, it appears that, the said grant of land and exchange of land are in contravention of the provisions of Forest Conservation Act, 1980. So, all these mutations where forest land is granted and exchanged will be taken in revision by taking prior sanction from the state Government." That said findings are not clear as to what steps would be taken up by respondent authorities.

12. That the from above findings of the Joint Committee, there is absolutely no manner of doubt that, in the present case, 55.90 Hectare (88.71 Acre) "Reserved Forest" land is acquired by the Respondent No.11 in contravention of the Forest Conservation Act and Rules. That the Hon`ble Supreme Court in matter of A. Chowgule and Co. Ltd. Vs. Goa Foundation and Ors, reported in 2008 (12) SCC 646 has held as follows:

"For the diversion of any forest land and its use for some other purpose, prior approval from Central Government is required and a lease obtained otherwise will be null and void."

NOTARY S.S.SHOS Advocate & Notary Public Sindagi INDIA R.N.4567 GOVT OF INDIA

Hereto annexed and marked as ***Exh. P-2*** *is the copy of said Judgement.*

13. Under these circumstances, the said land forthwith be directed to be transmitted or handed over in possession of the Forest Department as per law and procedure.

14. That it is therefore submitted that the findings of the Joint Committee of para (i) be rejected and of para (iii) be accepted and therefore prayers made in the Original Application at prayer clause A, B and E may kindly be allowed with costs.

PLACE: PUNE

DATE- 11/12/2020

RAHUL A. TAMBE

[Advocate for the Applicant]

:: VERIFICATION ::

I, Vinaykumar Vitthalrao Jathar, Age: 43 years, Occu: Doctor, Agriculturist & Social activist, R/0: Bankar Nagar, Shrigonda, T- Shrigonda, Dist- Ahmednagar, Maharashtra, do hereby solemnly affirm and state on oath that the contents of this response to report are read over and explained to me in Marathi by my Advocate, which I believe to be true and correct to the best of my own knowledge and record available with me

NOTARY B.S.SHOS Advocate & Notary Public Shrigonda Taluka R.N.4667 GOVT OF INDIA

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Hence verified at Shrigonda on this 11th day of December, 2020.

Explained & identified by:

DEPONENT

Advocate.

VJather

(VinaykumarVitthalrao Jathar)

Adv.Rahul A. Tambe

BEFORE ME

Solemnly affirmed before me by Dr. Vinaykumar Vitthalrao Jathar, R/o Banker mala, Shrigonda Dist. Ahmednagar. who is identified before me by Adv. Rahul A. Tambe R/o Aurangabad, Dist. Aurangabad whom I personally know.

B. S. BHOS
Advocate & Notary Public
(Govt.of India)
Plot No.9/909, Pant Nagar
Shrigonda,Dist.Ahmednagar
M- 9423756229

NOTARY
B. S. BHOS
ADVOCATE &
NOTARY PUBLIC
SHRIGONDA TALUKA
R.NO 4667
Expiry Date
01/10/2022
GOVT. OF INDIA

11 DEC 2020

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Annexure - "P-1"

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BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

ORIGINAL APPLICATION NO.84/2019(WZ)

Arising out of W.P.No. 11120/2019

Vinaykumar Vitthalrao Jathar — Applicant

V/s

State of Maharashtra and others. — Respondents

REPORT

ON BEHALF OF THE COMMITTEE COMPRISED IN VIEW OF THE ORDER DATED 05/12/2019 PASSED BY THIS HON'BLE TRIBUNAL

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1) In view of the order dated 05/12/2019 passed by this Hon'ble Tribunal, a Preliminary meeting was held on 26/12/2019 with the representative of the committee members. Accordingly, course of action was decided subsequently meeting has been held on 25/02/2020, in which the available record has been scrutinized and it has been decided to conduct joint visit on 29/02/2020. The representative of committee accordingly visited the site on 29/02/2020. **Here to marked and annexed at Exh. R 1 is the copy of joint inspection report.** However, the representatives of MPCB were not present for the site inspection because of administrative exigencies. After site inspection the committee members have verified the available documents and came to the following conclusions.

i) Vide notification dated 11/02/2020 .issued by Ministry of Environment Forest and Climate Change the Eco-Sensitive Zone for Great Indian Bustard Wildlife Sanctuary has been notified and the existing Eco-Sensitive Zone rasing from 0 to 400 from the sanctuary boundary. In this view of the matter the land and the project in question does not fall within the Eco-Sensitive Zone.

ii) Vide notification No.FLD1870/67084-W dated 25/11/1970 issued by Revenue and Forest Department total 82 Acre of land of gut number 52/2 situated at Limpangoan Tal Shrigonda Dist Ahmednagar came to be de-notified and ceased to be a forest land.

iii) The land bearing gut no. 52/2 was de-notified by order passed by Revenue and Forest Department, Mumbai which was later published in Government Gazette dated 31/12/1970. Accordingly, said land thereafter was transferred for setting up the project by the then Collector, Ahmednagar vide order dated 02/04/1971. However, after verification of the documents and map prepared by Dy. Supt. Land Record, Shrigonda it appears that, total 35 hectars land out of gut no. 52/1 situated at Limpangoan Tal Shrigonda Dist Ahmednagar is in control and possession of the sugar factory i.e. M/s Sahakar Maharshi Narayanrao Nagawade SSK Ltd. even though the same land is forest land. **(Here to marked and annexed Exh. R 2 are the copies of Notification dated 11/02/2020 issued by Ministry of Environment Forest and Climate Change, Delhi, the notification dated 25/11/1970 issued by Revenue and Forest Department, Mumbai and order passed by then Collector,**

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Ahmednagar dated 02/04/1971, & the map prepared by the Dy. Supt. Land Record, Shrigonda in respect of gut no. 52 situated at Limpangoan Tal Shrigonda Dist Ahmednagar Collectively.)

2) It is respectfully submitted that, the Collector, Ahmednagar vide letter dated 03/03/2020 has called for report from the Sub Divisional Officer, Shrigonda-Parner in consistence with the order dated 05/12/2019 passed by this Hon'ble Tribunal. Accordingly, Sub Divisional Officer, Shrigonda has submitted a report on 04/03/2020 and set out the facts as under,

The land bearing survey no. 99 situated at village Limpangaon Tal Shrigonda is divided in sub survey no 99A & 99B in 1935. In 1970 gut scheme was implemented and the land bearing survey 99A has given new gut no. 234 (area 155.65 H.R.) in gut scheme. The land bearing survey no 99B has given new gut no 237 (area 40 acre) in gut scheme. Then village Jangalewadi has become separate revenue village and gut no 237 has given new gut no 51. As per the Maharashtra Government gazette notification published on 26 Sept 1935 the land bearing survey no 99B (old gut no 237 and new gut no 51) area 40 acre

situated at village Limpangaon Tal Shrigonda has ceased to be a reserved forest.

It is also found that the then collector vide order LMD/V 641/71, Ahmednagar dated 02/04/1971 granted land bearing gut no 234 area 82 acre (33.18.41 H R) out of total area 155.65 H R to the Shrigonda Co-operative Sugar Factory Ltd, Limpangaon to erect sugar factory. The name of the Shrigonda Co-operative Sugar Factory has been mutated by mutation entry no 42 dated 22/03/1971, and also land bearing gut no 234 has divided in sub gut no 234/1 area 122.46.59 H R and gut no 234/2 area 33.18.41 H R (82 acre). Subsequently land bearing gut no 234/2 has been given new gut no 52/2. As per the Maharashtra Government gazette notification published on 31 Dec 1970 the land bearing survey no 99A (old gut no 234/2 and new gut no 52/2) area 82 acre (33.18.41 H R) situated at village Limpangaon Tal Shrigonda has ceased to be a reserved forest.

As per the records, it is found that Sahakar Maharshi Shivajirao Narayanrao Nagawade Co-operative Sugar Factory has been erected on deforested land bearing gut no bearing 52/2 area 82 acre (33.18.41 H

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R) and all the mutation entry done pertaining to gut no 52/2 of sugar factory are of deforested land.

However, as per report submitted by Tahsildar Shrigonda total 35.90 H R of land from gut no 52/1 is under possession of sugar factory which is a forest land and not disforested. This land was granted by the then tahsildars and then it is exchanged by the then SDOs to sugar factory. However this land is not disforested as per the available record to our office. So it appears that, the said grant of land and exchange of the land are in contravention of the provision of Forest Conservation Act, 1980. So all these mutations where forest land is granted and exchanged will be taken in revision by taking prior sanction from State Government.

The exchanged land details of land bearing gut no 52/1 (survey no 99A) area 35.90 H R are shown below.

Sr No.	Gut No / Survey No	Area H R	Mutation entry No
2	52/1/4	1.20	3640 Dt- 06/02/2004
3	52/1/51	3.00	3641 Dt- 06/02/2004
4	52/1/8	2.42	3642 Dt- 06/02/2004
5	52/1/5	4.04	3643 Dt- 06/02/2004

6	52/1/40	2.42	3645 Dt- 06/02/2004
7	52/1/6	1.71	3648 Dt- 11/02/2004
8	52/1/49	3.90	3650 Dt- 23/02/2004
9	52/1/25	3.20	3667 Dt- 01/05/2004
11	52/1/39	2.42	3688 Dt- 11/01/2005
12	52/1/7	2.02	3689 Dt- 11/01/2005
13	52/1/22	1.52	4081 Dt- 08/06/2007
14	52/1/42	1.20	4789 Dt- 02/11/2012
15	52/1/10	4.03	1984 Dt- 28/11/1986 1854 Dt-30/11/1985
16	52/1/24	2.82	4905 Dt- 21/07/2013

Accordingly, all concerned mutation entries in respect of grant and exchange of such lands will be dealt in revision after obtaining prior permission of the State Government. **Here to marked and annexed at Exh. R-3 is the copy of report dated 04/03/2020 submitted Sub Divisional Officer, Shrigonda-Parner to Collector, Ahmednagar and the copies of mutation entries, collectively.**

3) It is respectfully submitted that, the Sub Regional Officer, MPCB, Ahmednagar has also submitted the factual report vide letter dated 04/03/2020 and stated the details of action taken by Maharashtra Pollution Control Board (MPCB) in respect of M/s Sahakar Maharshi Narayanrao

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Nagwade SSK Ltd., A/P- Shrigonda Factory, Tal- Shrigonda, Dist- Ahmednagar due to violations of various Environmental enactments as under,

The Board has granted conditional consent to establish to the said industry for installation of 26 MW Co-generation plant at Gut No.51/1, Shrigonda, Tal- Shrigonda, Dist- Ahmednagar vide No. CAC/1805000822 dtd-18.05.2018 with condition not to take effective step for implementation of the project before obtaining Environmental Clearance (EC) as EIA Notification 2006 & amendments there to & for that the industry shall furnish Bank Guarantee of Rs. 10.0 Lakh having validity upto obtaining EC & first consent to operate of the Board. The Board has issued Directions for Stoppage of work of 26 MW Co-generation plant vide letter No.279/188 dtd-19.01.2019 as the industry has completed more than 50% work of installation of 26 MW Co-gen plant without obtaining prior Environmental Clearance (EC).

The Board has also forfeited Bank Guarantee of Rs.10.0 Lakh vide letter No.185/2019 dtd-19.01.2019 for violations of conditions of consent to establish granted by the Board for establishment of 26 MW Co-gen plant i.e. implementation of the project before obtaining Environmental Clearance from the competent authority. The State level Environment Impact Assessment Authority has issued Environmental Clearance for 26 MW

Baggase based Co-generation unit vide letter dtd-11.09.2019. The Board has issued Show Cause notice for refusal of 1st Consent to operate for 26 MW Co-generation plant vide letter Dtd-24.10.2019 due to violations of conditions of consent to establish & failure to comply with Directions for stoppage of work of 26 MW Co-generation plant. The Board has issued Directions for deposition of Environmental Compensation of Rs.69,90000/- for violation of the Directions of the Board vide letter dtd-28.02.2020 **Here to marked and Annexed Exh. R-4 is the copy of report dated 04/03/2020 submitted by Sub Regional Officer, MPCB, Ahmednagar to Dy. Conservator Forest, (Wildlife), Pune and the annexure thereto.**

Hence this report.

Dy. Conservator of Forest (Wildlife), Pune

Dy. Conservator of Forest, Ahmednagar

Sub Regional Officer,MPCB, Ahmednagar

Collector, Ahmednagar

VJ

TC

Annexure - P-2

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MANU/SC/3578/2008

Equivalent Citation: 2008(6)ALLMR(SC)483, 2008 (73) ALR 169, 2010(1)ALT7(SC), 2008 (4) AWC 3638 (SC), JT2008(9)SC175, 2008(4)RCR(Civil)586, 2008 105 RD577, 2008(11)SCALE482, (2008)12SCC646

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 5180 of 2001

Decided On: 18.08.2008

Appellants: **A. Chowgule and Co. Ltd.**
Vs.
Respondent: **Goa Foundation and Ors.**

Hon'ble Judges/Coram:
Tarun Chatterjee and H.S. Bedi, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Ravindra Shrivastava, Sr. Adv., S. Anand Ramakrishnan, Somanadri Goud, Kunal Verma, Rahul Srivastava, Supriya Jain and Anup Jain, Advs. for Parekh and Co

For Respondents/Defendant: R.G. Padia, Sr. Adv., Sanjay Parikh, A.N. Singh, Jatin Sahni, Mamta Saxena, A. Subhashini, Savitri Pandey, D.S. Mahra, Harshvardhan Jha and Gulshan Sharma, Advs for K.L. Mehta & Co.

Case Note:
Forest (Conservation) Act, 1980 - Section 2--Forest (Conservation) Rules, 1981--Rules 4, 5 and 6--Forest land--Execution of lease deed--Prior permission under Section 2 of Central Government--Sine qua non for execution of lease deed--Approval for 4.4 hectares out of 12 hectares--Obtained long after lease deed had been executed--It would not amount to prior approval--No doubt that land leased out to appellant--Was indeed forest--Lease rightly quashed by High Court--No merit in appeal.

Ratio Decidendi:
"For the diversion of any forest land and its use for some other purpose, prior approval from Central Government is required and a lease obtained otherwise will be null and void."

Case Category:
MINES, MINERALS AND MINING LEASES

JUDGMENT

H.S. Bedi, J.

1. The facts leading to the filing of this appeal are as under:

2 . The appellant, a company incorporated under the Companies Act, has its registered office at Chowgule House, Mormugao Harbour, Goa and is a recognized star trading house engaged in the mining, processing and export of iron ore. In the year 1979, the appellant took a decision to establish a 100 per cent export oriented unit in Sanguem Taluka situated at a short distance from its existing mines. The

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process of locating suitable land for the unit took about 10 years and the process for the unit was finally set in motion by a letter dated 21st December 1988 from the Collectorate of South Goa, Revenue Department to the Inspector of Survey, Land Records, Mangao-Goa informing the said officer that the Government of Goa had decided to lease an area of 15 hectare out of 26.4675 hectares to the appellant under Survey No. 12 of Potrem Village in Sanguem Taluka and directions were issued that the area be demarcated and the other formalities complied with. On 17th August 1989, the appellant addressed a letter to the Secretary for Industrial Approvals, Ministry of Industries of the Central Government about the proposal to set up an integrated unit including a beneficiation plant at Tuduo Mines for the production of saleable iron ore at a cost of Rs. 25 crores and to operate it as a 100 per cent export oriented unit. A formal letter of intent was also issued to the appellant on 25th January 1991. Pursuant to the decisions taken, a Memorandum of Lease dated 1st November 1989 was executed between the Governor of Goa and the appellant whereby an area of 12 hectares was leased out for the purpose of ancillary work connected to mining and for that purpose the appellant was authorized to construct the necessary civil structures. The appellant also, on 7th of February 1990, entered into a contract with a Japanese Corporation for the export of processed iron ore. A No Objection Certificate from the Goa State Pollution Control Board was obtained on 15th April 1991 and a Sanad dated 10th July 1991 was also issued by the Deputy Collector of Goa permitting the use of the land for non-agricultural purposes upon payment of Rs. 6 lakhs by way of conversion fees. It is the case of the appellant that pursuant to the aforesaid administrative sanctions and decisions, machinery worth Rs. 12 crores was imported for the operation of the project. At this juncture Respondent Nos.1, 2 and 3 filed Writ Petition No. 113 of 1992 in public interest before the Goa Bench of the Bombay High Court praying for a writ of certiorari for quashing the Memorandum of Lease dated 1st November 1989 and for several other reliefs. Respondent No. 5 herein, the Conservator of Forests, Goa filed an affidavit before the High Court pointing out that the 12 hectares of land which had been leased to the appellant had already been classified as Revenue Land meant for "Dry Crops" and was not a forest area, as had been contended by the writ petitioners/respondents 1,2 and 3. On 26th March 1992, the High Court adjourned the matter for 8 weeks in view of the statement made by the Advocate General that the State Government proposed to take up the matter with the Central Government so as to secure the necessary approvals postulated under Section 2 of the Forest Conservation Act, 1980 (hereinafter called the "Act") and as such it was unnecessary to proceed with the writ petition. The High Court, accordingly, adjourned the matter for 8 weeks without any discussion on merits with liberty to all parties to press their submissions in case the need arose. Pursuant to the assurance given by the Advocate General to the High Court, the State Government wrote to the Ministry of Environment and Forest, New Delhi on 7th May 1992 pointing out that out of the 12 hectares leased to the appellant a small area of about 5000 square meters would be used for the erection of the beneficiation plant and that appellant had also taken to raise compensatory afforestation in one hectare in non-forest area in Survey No. 42 Santanu Village of Sangueme Taluka and as the unit was likely to earn foreign exchange and the broad sanctions had already been given by the concerned quarters, clearance under Section 2 of the Act be accorded. The writ petition aforesaid once again came up for consideration on 17th November 1992 and while granting some interim relief to the writ petitioners-respondents, it was directed that the petition be listed for final disposal in January 1993. The Ministry of Environment and Forest, in the meanwhile, vide its letter dated 25th May

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1993 conveyed its approval in principle for diversion of 4.44 hectares of forest land from Potrem village subject to several conditions which were statedly complied with by the appellant and a final decision allowing the diversion was also conveyed to the appellant on 7th November 1997. Writ Petition No. 113 of 1992 came up for final disposal before the Goa Bench on 21st July 2000 and was duly allowed and writ of certiorari was issued quashing the lease agreement dated 1st November 1989. It was, inter-alia, held that the various approvals/sanctions granted to the appellant by the Industries Department or by the Collector could not, by any stretch of imagination, be construed as permission for deforestation of the forest area, as envisaged by Section 2 of the Act as the said Act required prior approval of the Central Government after the procedure given in Rules 4, 5 and 6 of The Forest (Conservation) Rules 1981 (hereinafter called the "Rules") had been followed. The plea of the appellant that the area concerned was not a forest was also repelled with the observations that an average of 250 trees per hectare were growing on the land, as was clear from the affidavit filed by the Deputy Conservator of Forest, R. Nagbhushan Rao and that the entire area was heavily forested with 3000 trees and was in addition contiguous to the Government forests. The Bench also observed that merely because the land had been described as "Dry Crops Land" would not change the nature of the land as it was apparently a wrong description more particularly as Section 2 ibid referred not only to forests but to forest land as well. For arriving at its decision, the Division Bench relied upon the decision of this Court in **T.N. Godavarman Thirumulkpad v. Union of India and Ors. MANU/SC/0278/1997 :**AIR1997SC1228 in which it was held that the term 'forest' was to be given an extended meaning so as to cover all statutorily recognized forests whether designated as reserved, protected or otherwise for the purpose of Section 2 of the Act. Having held as above, the Division Bench observed that the 12 hectares being forest land, prior permission under Section 2 of the Act was the sine qua non for the execution of the lease deed dated 1st of November 1989 and finally concluded as under:

> Does the subsequent act of granting permission communicated by letter of 18th May 1993 enable respondent No. 4 to carry on with those development activities on the 4.44 hectares? The letter of 8th July 1997 seeks prior approval of Central Government. In the instant case as we have been there is no prior approval for entering into a lease deed any of the term of lease can be set out. Condition No. 1 shows that the legal status of the forest land shall remain unchanged. The permission is co-terminus with lease granted by the State Government with effect from 1st November 1989. Therefore, it proceeded on the footing that prior approval is being sought. In the instant case the records show that prior approval was not taken. In that context mere permission granted for development will be of no consequence. It is true that the petitioner has not challenged the subsequent permission granted. However, what is material to notice is that the area was a forest. In spite of that, without prior permission, the respondent No. 1 granted the lease in favour of the respondent No. 4. The lease was contrary to law. Once the lease was contrary to law, the question of the State Government applying at the behest of respondent No. 4 for permission would not arise.
>
> Even otherwise the land is situated to an adjacent Government forest and the land is sought to be used for setting up of a beneficiation plant which involves dust and water pollution and consequent destruction of the adjoining forest. It will substantially affect the environment and ecology of

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the area. This, in fact, would affect the right to life. The petitioners in the petition have averred that the cutting of trees without obtaining permission was resorted to. In matters of ecology and environment and considering the principle of sustainable development, no person or organization, however, high and mighty they may be, can be permitted to flout the law of the land.

Considering that, in our opinion, the lease granted in favour of respondent No. 4 is still born, null and void. Respondent No. 1 is directed to restore the land to its original use.

Rule made absolute in the aforesaid terms. In the circumstances, there shall be no order as to costs.

It is these circumstances that the appeal is before us.

3. Mr. Shrivastava, the learned senior counsel for the appellant has raised several arguments during the course of hearing. He has first and foremost pointed out that there had been no violation of the provisions of Section 2 of the Act in the background that the Government of India had given its post-facto approval to the project and that the State Government had accorded its approval on 21st December 1988 and that the Government of India had also conveyed its approval in principle for the diversion of 4.44 hectares of the land subject to several conditions which had been complied with and in this view of the matter, any flaw, which may have been present at the initial stage, had been rectified. It has been submitted that the aforesaid arguments were further fortified from the letters of the Ministry of Environment and Forest, Government of India dated 18th May 1993 and 7th November 1997 for the use of 4.44 hectares of forest land in Porterm village in favour of the appellant subject to the condition, inter-alia, that compensatory afforestation would be carried out over non-forest land at the cost of the project. It has, accordingly, been submitted as the lease deed has been executed for an area of about 15 hectares and was as per record not a forest area, the entire area ought to be left for the use of the appellant-company and that the 4.44 hectares which had been cleared not only by the State Government but by the Ministry of Environment and Forest, Government of India should in any case be left out for the benefit of the appellant. The learned Counsel has relied upon MANU/SC/0012/1985 : AIR1985SC814 (**State of Bihar v. Banshi Ram Modi and Ors. MANU/AP/0043/1990 :**) and AIR1990AP257 (**Hyderabad Abrasives & Minerals, Hyderabad v. The Govt. of A.P. Forest Department, Hyderabad and Anr.**) in support of his case.

4. Mr. Sanjay Parekh, the learned Counsel for the respondents has, however, submitted that as a matter of fact, the beneficiation plant had already been shifted from the proposed site and that this fact had been withheld from the High Court as well as from this Court during the course of the protracted hearings. It has also been strongly urged that Section 2 of the Act and the Rules pre-supposed a prior approval of the Central Government as per the prescribed procedure before the dereservation of forest land and formal approvals granted by any other agency or by the Central Government ex-post facto, would not cure any defect in the dereservation. It has been submitted that even as per the appellant's case, the lease deed for 12 hectares had been executed on 1st November 1989, but the approval for the diversion of 4.44 hectares of land had been accorded in the year 1997 and would, therefore not operate retrospectively even for this limited area. It has also been argued that the appellant's undertaking to cause afforestation in an area equivalent to the one leased

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out as per the stipulation of the Central Government in the afore referred documents, was also not acceptable in the light of the fact that the lease deed itself was contrary to law. It has also been pointed out that the finding of fact recorded by the High Court was that the area in question was indeed a forest and that the judgments cited by the appellant's counsel had been clarified by the Supreme Court in a series of subsequent judgments reported in MANU/SC/0049/1986 : AIR1986SC1620 **Ambica Quarry Works v. State of Gujarat and Ors.**) 1989 Suppl. (1) SCC 504 (**Rural Litigation & Entitlement Kendra v. State of U.P. MANU/SC/0278/1997 :** AIR1997SC1228 (**T.N. Godavarman Thirumulkpad v. Union of India and Ors. MANU/SC/0247/2004 :**) and AIR2004SC4016 (**M.C. Mehta v. Union of India and Ors.**).

5 . We have considered the arguments advanced by the learned Counsel for the parties. It is evident from the record and what has been recorded earlier that the primary issue is with regard to the permission granted by the Central Government for the diversion of the forest area. Section 2 of the Act and the relevant Rules are reproduced below:

> Section 2. Restriction on the dereservation of forests or use of forest land for non-forest purpose - Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government any order directing -
>
> > (i) that any reserved forest (within the meaning of the expression 'reserved forest' in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
> >
> > (ii) that any forest land or any portion thereof may be used for any non-forest purpose;
> >
> > (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, Corporation, agency or any other organisation not owned, managed or controlled by Government;
> >
> > (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation.
>
> Rules.
>
> Rule 2(b). "Committee" means the Committee constituted under Section 3.
>
> **2A.(1) Composition of the Committee:-** The Committee shall be composed of the following Members:
>
> > i. Inspector General of Forests, Ministry of Environment & Forests - Chairman.
> >
> > ii. Additional Inspector General of Forests, Ministry of Environment and Forests - Member.
> >
> > iii. Joint Commissioner (Soil Conservation), Ministry of Agriculture - Member.

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iv. Three eminent environmentalists (non- officials) - Member.

v. Deputy Inspector General of Forests, (Forest Conservation), Ministry of Environment and Forests - Member- Secretary.

4. Procedure to make proposal by a State Government or other authority:

(1) Every State Government or other authority seeking the prior approval under Section 2 shall send its proposal to the Central Government in the form appended to these rules:

Provided that all proposals involving clearing naturally grown trees in forest land Or portion thereof for the purpose of using it for reafforestation shall be sent in the form of Working Plan/Management Plan.

(2) Every proposal referred to in Sub-rule (1) shall be sent to the following address, namely:

Secretary to the Government of India Ministry of Environment & Forests Paryavaran Bhavan, CGO Complex Lodi Road, New Delhi - 110003

Provided that all proposals involving forest land up to twenty hectares and proposals involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation shall be sent to the Chief Conservator of Forests/Conservator of Forests of the concerned Regional Office of the Ministry of Environment and Forests.

5. Committee to advise on proposals received by the Central Government:

1. The Central Government shall refer every proposal received by it under Sub-rule (1) of Rule 4 to the committee for its advice thereon if the area of forest land involved is more than twenty hectares. Provided that proposals involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation shall not be referred to the Committee for its advice.

2. The Committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under Sub- rule (1), namely:

a. Whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, national park wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;

b. Whether the use of any forest land is for agricultural purpose or for the rehabilitation or persons displaced from their residences by reason of any river valley or hydro-electric project;

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c. Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

d. Whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof.

3. While tendering the advice, the Committee may also suggest any conditions or restrictions on the use of any forest land for any non-forest purpose which, in its opinion, would minimize adverse environmental impact.

6. Action of the Central Government on the advice of the Committee - The Central Government shall, after considering the advice of the committee tendered under Rule 5 and after such further enquiry as it may consider necessary, grant approval to the proposal with or without conditions or reject the same.

6. A bare perusal of the aforesaid provisions would show that prior approval is required for the diversion of any forest land and its use for some other purpose. This is further fortified by a look at Rule 4 which provides that every State Government or other authority seeking prior approval under Section 2 of the Act shall submit a proposal to the Central Government in the prescribed form and Rule 6 stipulates that the proposals would be examined by a committee appointed under Rule 2-A within the parameters and guidelines postulated in Rule 5. There is nothing on record to suggest that this procedure had been adopted. Admittedly also the approval for 4.4 hectares had been obtained long after the lease deed had been executed on 1st November 1989 and there is no suggestion that even for this limited area the procedure envisaged under Rules 4, 5 and 6 had been followed. We are, therefore, of the opinion even assuming that some approval was granted with respect to 4.44 hectares of land in the year 1997, it would not amount to prior approval in terms of the Act and the Rules afore quoted. Mr. Shrivastava has, however, pointed out that in the light of the judgment in Banshi Ram Modi's case (supra), as the 4.44 hectares of land were to be utilized for the purpose of an existing and adjoining mining activity, the prior approval envisaged under Section 2 was not required. We find, however, that the aforesaid judgments do not apply to the facts of the present matter as it is nobody's case that any mining activity was going on near the land which is now sought to be leased out. In the above cited cases, the primary question was as to whether in the case of a lease granted prior to the coming into force of the Act, the provisions of Section 2 would apply at the time of the renewal of the lease after the Act had become operative. Concededly this is not the case before us and on the contrary in Hyderabad Abrasives case (supra) it has been specifically observed that the material date "for the purpose of the Act is not the date of the lease is granted, but the date on which the State Government or other authority permits the breaking up, or clearing of the forest land or any portion thereof", the implication being that the initial lease deed could be granted earlier to the promulgation of the Act, but for renewal, the provisions of the Act would be operable. We also find that the observations in Ambica Quarry Works, Rural Litigation & Entitlement Kendra, T.N. Godavarman Thirumulkpad and M.C. Mehta cases (supra), would indicate that after the coming into force of the Act, the renewal of a pre-existing mining lease in a

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forest area can be granted only if the requirements of Section 2 are satisfied. It is therefore obvious that the claim of the appellant confined only to 4.44 hectares is also untenable for the reasons given above and that in any case, the beneficiation plant to which this area was to be attached had been shifted from its earlier proposed location.

7. It has finally been submitted by Mr. Shrivastava that the land in question was not a forest and was, therefore, not subject to the provisions of the Act and that in any case, the appellant was willing to reforest an identical area if the lease was permitted to operate. We find from a perusal of the High Court judgment that this question of fact had been adequately dealt with based on the affidavits filed in Court and also on a perusal of the Revenue record. Some argument has been made by Mr. Shrivastava on the discordance between the affidavits filed by the two Forest Officers, T.Ramaswamy and R. Nagbhushan Rao. We however discern no difference with regard to the basic factum as to the nature of the land in question and the only difference, if at all, is with regard to the number of trees per hectare said to be growing on the land. We, thus, have no hesitation in confirming this finding of fact. In T.N. Godavarman Thirumulkpad case (supra), this Court expressed its dissatisfaction with some of the State Governments in the implementation of the provisions of the Act and observed thus:

> 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 recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2 will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. 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, Rural Litigation and Entitlement Kendra v. State of U.P. and recently in the order dated 29.11.1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority.

8. We are, therefore, of the opinion that in the light of the aforesaid emphatic and clear cut observations, and findings of fact, there can be no doubt that the land leased out to the appellant was indeed a forest.

9. Some arguments have flown during the course of the hearing that the appellants were willing to reforest an identical area in case the lease was allowed to be effectuated. In this connection, some observations need to be made. The basic

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question is as to what is implied by the terms afforestation or re-forestation. Is it merely the replacement of one tree with another or does it imply some thing a little more complex? "Reforestation is the restocking of existing forests and woodlands which have been depleted, with native tree stock, whereas afforestation is the process of restoring and recreating areas of woodlands or forest that once existed but were deforested or otherwise removed or destroyed at some point in the past". In the present case, we are concerned with afforestation and the promise of the appellant to plant trees in an equivalent area. We, however, find from experience and observation that the re-forestation or afforestation that is being carried out in India does not meet the fundamentals and the planting of new trees to match the numbers removed is too simplistic and archaic a solution, as in the guise of compensatory replantation, local varieties of trees are being replaced by alien and non-indigenous but fast growing varieties such as poplar and eucalyptus which make up the numbers but cannot satisfy the needs of our environmental system. It must be borne in mind that both re-forestation and afforestation envisage a resurrection and re-plantation of trees and other flora similar to those which have been removed and which are suitable to the area in question. There is yet another circumstance which is even more disturbing inasmuch as the removal of existing forest or trees suited to the local environment have destroyed the ecosystem dependent on them. This is evident from the huge depletion of wild life on account of the disturbance of the habitat arising out of the destruction of the existing forest cover. A small but significant example is the destruction of plantations alongside the arterial roads in India. 30 years ago all arterial roads had huge peripheral forest cover which not only provided shade and shelter to the traveller but were a haven to a large variety and number of birds and other wild life peculiar to that area. With the removal of these plantations to widen the roads to meet the ever growing needs of the traffic, and their replacement by trees of non-indigenous varieties, (which are often not eco or bird friendly) in the restricted and remaining areas bordering the widened roads, the shelter for birds has been destroyed and where thousands of birds once nested and bred, there has been a virtual annihilation of the bird life as well. Those who live in North India would do well to remember that a drive along the Grand Trunk Road, National Highway No. 1, northwards of Delhi, particularly during the hours of dawn or dusk, was as if through an aviary with thousands of birds representing a myriad of species with their distinctive calls reaching a crescendo during early evening and gradually fading into silence as darkness set in. Sadly, all that can now be seen are crows feeding on the decaying and mutilated carcasses of dogs and other animals killed by speeding vehicles. Equally disturbing is the decrease in the reptilian population as the undergrowth in which it lived and prospered has been destroyed, and with the concomitant increase in the rodent population, colossal losses and damage to the farmer and in the storage of food grains.

10. We are, therefore, of the opinion that there is no merit in the appeal. It is accordingly dismissed. No order as to costs.

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