

Item Nos. 03 & 04

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

**Original Application No. 34/2021 (CZ)
(I.A. No. 62/2022)**

Dr. P.G. Najpande & Anr. Applicant(s)

Versus

The Secretary, MoEF&CC & Ors. Respondent(s)

AND

**Original Application No. 40/2021 (CZ)
(I.A. No. 60/2022)**

Dr. Dharnendra Jain Applicant(s)

Versus

The Secretary, MoEF&CC & Ors. Respondent(s)

Date of Completion of Hearing and Reserving of Order : 18.01.2023

Date of Uploading of Order on the Website : 24.01.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s): Mr. Yadvendra Yadav, Adv.
Mr. Prabhat Yadav, Adv.
Mr. Ujjwal Sharma
(Applicant in Person)

For Respondent(s): Ms. Sapna Aggarwal, Adv.
Ms. Vanita Bhargava, Adv.
Ms. Harshita Tejwani, Adv.
Ms. Parul Bhadoria, Adv.
Ms. Sweta Kabra, Adv.
Mr. Sachin K. Verma, Adv.
Ms. Shreya Shrivastava, Adv.
Ms. Prerna Singh, Adv.
Mr. Dharamvir Sharma, Adv.
Mr. Varun Thakur, Adv.

ORDER

1. Issues raised in both the applications are common and thus are being decided by a common order.

2. The Original Applications have been filed challenging the grant of mining lease over 364 ha. area in the Buxwaha Protected Forest to the Respondent No. 5 with the prayer for permanent prohibition from allowing any form of non-forest activity in the entire Buxwaha Forest Area, including but not limited to, the mining lease of 364 ha. purportedly granted to the Respondent No. 5.
3. The matter was taken up by this Tribunal on 02.07.2021 and the Counsel for the respondent put in appearance and sought time to file the replies. Replies by all the respondents have been filed, which are on record.
4. In another application (Original Application No. 34/2021), the grievance of the applicant is grant of mining lease over 364 ha. area in Buxawaha protected forest area, Sogoriya Village, Buxawaha Tahsil, Chhatrapur District in Madhya Pradesh, to Essels Mining Industries Limited, vide letter of intent issued by Government of Madhya Pradesh no. f.1-26/2019/12/1 dated 19.12.2019, resulting environmental damage in violation of environmental laws. According to applicant this mining project-
 - a) Will cause deforestation in 382 ha. of Protected Forest.
 - b) Will cause felling of approx. 4 lacs. of trees.
 - c) Will intersect ground water and this will lead to scarcity of water.
 - d) Deforestation will cause particularly to avifauna.
 - e) Ecosystem of this area will be disturbed.
 - f) Ecological balance will be lost.
5. Before granting permission to this project, the principle of sustainable development has been neglected. The Statutory Authorities have not taken the necessary precaution to protect forest and ecology before granting approval for following points –

- a. Expert committee as required under Forest (Conservation) Act, 1980, Section 2 was not constituted within a month, although permission was granted one and half early,
- b. Advisory committee as required under Section 3 of Forest (Conservation) Act, 1980 has not been constituted.
- c. This mining will intersect ground water and necessary permission has to be obtained from Central Ground Water Authority for working below ground water table. This has not been done till today.
- d. Court of Collector Chhatarpur has allotted 382 hac. Forestland being diverted. National Green Tribunal in O.A. No. 470/2015, order dated 08.08.2020 para (41-2) has accepted that compulsory afforestation be done in the land twice to extend to forest land being diverted.
- e. Working plea for survival of wild life particularly for Avifauna whose nesting trees are to be cleared has not been prepared.
- f. Comprehensive Impact Assessment of this project has not been done.

6. Above two matters were again taken up on 30.06.2021 and the Tribunal passed an order as follows:-

1. *Facts of both matters are similar in nature, thus are taken together.*
 - *Save the trees our ancestors planted and plant new ones as a gift to our new generations.*
 - *This is the best way to have a greener environment.*
 - *Deforestation is changing our climate and harming the people and the natural world.*
 - *We must, and can, reverse this trend. Earth provides us with everything that we need and therefore we must take care of it with all our efforts.*
 - *Lets us give our coming generation, a healthier and happier environment to have a beautiful life.*
 - *Ecology and Economy both can go together and can move forward.*

7. Learned Counsel appearing for the applicant argued that if the project in question of open mining of diamond by way of cutting the lakhs of trees and deforestation is continued, it may adversely affect and cause deforestation, elimination about 4 lakhs trees, thousands of tribal living in this forest will be pushed to poverty. Since their income on the forest produce will not be available to them, because of this deforestation, this deforestation will cause huge damage to wild life, ecosystem will be disturbed, thus loss to environment will take place.
8. The Learned Counsel for the applicant has taken reliance of the matter reported as T.N. Godavarman Thirumulpad Vs. Union of India, (1997) 2 SCC 267 at page 269, the Hon'ble Supreme Court has held that-

“The Forest Conservation Act, 1980 was enacted with a view to 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.”

9. The National Forest Policy, 1988 stood enunciated pursuant to Resolution No. 13/52-F, dated 12-05-1952 of Government of India to be followed in the management of State forests in India. The said Policy stood enunciated because over the years forests in India had suffered serious depletion due to relentless pressures arising from ever increasing demand for fuel wood, fodder and timber; inadequacy of protection measures; diversion of forest lands to non-forest uses without ensuring compensatory afforestation and essential environmental safeguards; and the tendency to look upon forests as revenue earning resource. Thus, there was a need to review the situation and to evolve, for the future, a strategy of forest conservation including preservation, maintenance, sustainable utilization, restoration and enhancement of the natural environment. It is this need which led to the enunciation of the National Forest Policy dated 07/12/1988.

10. The principal aim of the Policy was to ensure environmental stability and maintenance of ecological balance. The derivation of direct economic benefit was to be subordinate to the principal aim of the Policy. Under essentials of forest management it is stipulated that exiting forests and forest lands should be fully protected and their productivity improved. It is further stipulated that forest cover should be increased rapidly on hill slopes, in catchment areas and ocean shores. It is further stipulated that diversion of good and productive agricultural lands to forestry should be discouraged in view of the need for increased food Production.

11. Under the Policy a strategy was prescribed vide Para 4. The goal is to have a minimum of one-third of the total land area under forest or tree cover. In the hills and in mountains the aim is to maintain two-third of

the area under forest or tree cover in order to prevent erosion and land degradation and to ensure the stability of the fragile ecosystem. Under Para 4.2.3, village and community lands, which is the common feature in north-east regions, not required for other productive uses, should be taken up for development of tree crop and fodder resources and the revenue generated through such programmes should belong to the panchayats where lands are vested in them and in other cases such revenues should be shared with local communities to provide an incentive to them and accordingly land laws should be so modified wherever necessary so as to facilitate and motivate individuals and institutions to undertake tree farming.

12. Para 4.4 deals with diversion of forest lands for non-forest purposes. Under the said para it is stipulated that forest land or land with tree cover should not be treated merely as a resource readily available to be utilised for various projects, but as national asset which requires to be properly safeguarded for providing sustained benefits to the community. Diversion of forest land for non-forest purpose therefore should be subject to most careful examination by experts from the standpoint of social and environmental costs and benefits.
13. The applicant has further argued that, the NGT in the case of Court on its Own Motion Vs. State of Himachal Pradesh & Ors. (Original Application No. 488 of 2014) vide Judgment/order dated 20th January, 2015 enunciated the impact of tree felling on environment, which reads as under:

IMPACT OF TREE FELLING ON ENVIRONMENT

“Trees play a very important role in maintaining the ecological balance in the biosphere. Since the beginning, trees have furnished us with two of life's essentials, food and oxygen. On an average,

one tree produces nearly 260 pounds of oxygen and absorbs up to 48 lbs of carbon dioxide a year. With the evolution of human civilization contribution of trees in making our life comfortable increased several fold, i.e., they provide such us necessities such as clothing, shelter, medicine, and tools. Today, their value continues to increase and more benefits of trees are being discovered as their role expands to satisfy the needs created by our modern lifestyles.

Trees contribute to our environment by providing oxygen, improving air quality, climate amelioration, conserving water, preserving soil, and supporting wildlife. During the process of photosynthesis, trees take in carbon dioxide and produce oxygen we breathe. They provide us with fresh air to breathe, shade in summers, food, and other benefits without which we cannot even think of living. Trees control climate by moderating the effects of the sun, rain and wind. Leaves absorb and filter the sun's radiant energy, keeping things cool in summer. Trees also preserve warmth by providing a screen from harsh wind. In addition to influencing wind speed and direction, they shield us from the downfall of rain, sleet and hail.

Trees lower air temperature and reduce the heat intensity of the greenhouse effect by maintaining low levels of carbon dioxide. Both above and below ground, trees are essential to the eco- systems in which they occur. Far reaching roots hold soil in place and fight erosion. Trees absorb and store rain water which reduce runoff and sediment deposit after storms. This helps the ground water supply recharge, prevent the transport of chemicals into streams and prevents flooding. Fallen leaves make excellent compost that enriches soil. In the present day scenario trees in Urban Environment help in muffling the urban noise. In

Suburban Environment's they help in providing shade canopy and noise buffers and also congenial habitat for suburban wildlife, while in the rural environment they protect the crops from wind, control erosion and create diverse plant and animal habitats.

Despite knowing the importance of trees, human beings are still cutting down the trees and forests have started depleting from this beautiful earth."

14. 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 sounder stood irrespective of the ownership or classification thereof.

15. Section 2 of the Forest (Conservation) Act 1980 restricts de-reservation of forest or use of forest land for non-forest purposes as under :

"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 -

- a. 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;*
- b. that any forest land or any portion thereof may be used for any non-forest purpose;*
- c. 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 organization not owned, managed or controlled by Government;*
- d. 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.*

Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

- a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;*
- b) any purpose other than re-afforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams,*

waterholes, trench marks, boundary marks, pipelines or other like purposes.”

16. *The Rule 9 of the Forest (Conservation) Rules 2003 also provides for proceedings against persons guilty of offences under the act which are as under:*

“9. Proceedings against persons guilty of offences under the Act.- (1) The Central Government may, by notification, authorize any officer not below the rank of Conservator of Forests or the concerned forest officer having territorial jurisdiction over the forest land in respect of which the said offence is said to have been committed, to file complaints against the person (s) prima-facie found guilty of offence under the Act or the violation of the rules made there under, in the court having jurisdiction in the matter.

Provided that no complaint shall be filed in the court, without giving the person (s) or officer (s) or authority (s) against whom the allegations of offence exist, an opportunity to explain his or their conduct and to show cause, by issuing a notice in writing of not less than sixty days, as to why a complaint should not be filed in the court against him or them for alleged offences.

(2) The officer authorised by the Central Government in sub-rule

(1) may require any State Government or its officer or any person or any other authority to furnish to it within a specified period any reports, documents, statistics and any other information related to contravention of the Act or the rules made there under, considered necessary for making a complaint in any court of jurisdiction and every such State

Government or officer or person or authority shall be bound to do so.”

16. The Hon’ble Supreme Court of India in T.N. Godavarman Thirumulpad Vs. Union of India and others in W.P (c) No. 202 of 1995 with No. 171 of 1996 which was decided on 12.12.1996 had observed and directed as follows:

“1. In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice was issued to all of them. We have heard the learned Attorney General for the Union of India, the learned Counsel appearing for the States and the Parties/Applicants and, in addition, the learned Amicus Curiae, Shri H.N. Salve, assisted by Sarvashri U.U. Lalit, Mahender Das and P.K. Manohar. After hearing all the learned Counsel, who have rendered very able assistance to the Court, we have formed the opinion that the matters require a further in-depth hearing to examine all the aspects relating to the National Forest Policy. For this purpose, several points which emerged during the course of the hearing for some time to enable the learned counsel to further study these points.

2. However, we are of the opinion that certain interim directions are necessary at this stage in respect of some aspects. We have heard the learned Attorney General and the other learned Counsel on these aspects.

3. It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 (for Short “the Act”) and the meaning of the word

“forest” used therein. There is also a resulting misconception about the need of prior approval of the Central government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

4. *X.....XXX.....X. 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. Mussorie 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. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any state government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.*

5. *We further direct as under:*

I. General

1. In view of the meaning of the word “forest” in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any “forest”. In accordance

with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms from its border, in Assam, should also be closed immediately. The State governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. The felling of trees in all forest is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the

absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or waterways. The Indian Railways and the State Government are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defense or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

5. Each State Government should constitute within one month an Expert Committee to :

i. Identify areas which are "Forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

ii. identify areas which were earlier forests but stand degraded, denuded or cleared; and

iii. *Identify areas covered by plantation trees belonging to the Government and those belonging to private person.*

6. *Each State Government should within two months, file a report regarding:*

i. *the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership.*

ii. *the licensed and actual capacity of these mills for stock and sawing.*

iii. *their proximity to the nearest forest.*

iv. *their source of timber.*

7. *Each State Government should constitute within one month, an Expert Committee to assess:*

i. *the sustainable capacity of the forests of the State qua saw mills and timber-based industry.*

ii. *the number of existing saw mills which can safely be sustained in the State.*

iii. *the optimum distance from the forest, qua that State, at which the saw mill should be located.*

8. *The Expert Committee so constituted should be requested to give its report within one month of being constituted.*

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports."

8. In compliance of the order of the Hon'ble Supreme Court, the State Government of Madhya Pradesh has decided as follows:

"(i) Non-cultivable land which are bigger than 10 ha in area and containing more than 200 trees per ha is to be treated as forests.

The list of these types of patches is to be compiled in a prescribed format.

(ii) All patches of land which are recorded as chote-bade jhadka jungle etc in the revenue records shall be treated as forests. The list of these type of patches is to be compiled in a prescribed format."

17. Before considering the issues which arose in this application it is necessary to look into the scheme and the nature of the proceedings which are holding under the provisions of the Indian Forest Act. This Act was enacted to consolidate the law relating to forest land, the transit of forest produce and other connected matter. Chapter XI of the Act relates to reserved forest. Section 3 provides the power to reserve forest. This section provides that the State Government may constitute any forest-land or waste-land which is property of the Government or over which the Government has proprietary rights, a reserved forest. Section 3, 4, 5, 6, 7, 8 and 9 are quoted as under:

3. Power to reserve forests—The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

4. Notification by State Government—(1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette—

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land; and

(c) appointing an officer (hereinafter called “the Forest Settlement- officer”) to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation—For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of subsection (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer.

(3) Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest- office except as aforesaid, to perform the duties of a Forest

Settlement-officer under this Act.

5. Bar of accrual of forest-rights—*After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.*

6. Proclamation by Forest Settlement-officer—*When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation*

- a) specifying, as nearly as possible, the situation and limits of the proposed forest;*
- b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and*
- c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section, 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.*

7. Inquiry by Forest Settlement-officer—*The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed*

under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. Powers of Forest Settlement-officers-*For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:*

(a) power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

9. Extinction of rights-*Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section*

18. Section 11 provides that the Forest Settlement Officer shall pass an order admitting or rejecting the claim to right on or any land. Sub- Section (2) of Section 11 provides that if claim is admitted in whole or in part then he will either exclude such land from the limits of the proposed forest and come to an agreement with the owner thereof for the surrender of his rights, or proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894.
19. Section 17 provides for rights of appeal to a claimant against the order of Forest Settlement Officer to such officer of a Revenue Department of rank not lower than that of a Collector, as the State Government by notification in the Official Gazette appoint to hear appeals from such orders. The section also contemplates creation of a court named Forest

Court. Section 20 Provides for issue of notification declaring reserve forest. Section 17, 18 and 20 are extract as below:

“17. Appeal from order passed under section 11, section 12, section 15 or section 16—Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department of rank not lower than that of a Collector, as the State Government may, by notification in the Official Gazette, appoint to hear appeals from such orders:

Provided that the State Government may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the State Government, and when the Forest Court has been so established, all such appeals shall be presented to it.”

17. Appeal under Section 17—(1) *Every appeal under section 17 shall be made by petition in writing, and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the authority competent to hear the same.*

(2) If the appeal be to an officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or

Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the State Government, be final.

20. *Notification declaring forest reserved—(1) When the following events have occurred, namely:—*

- a) the period fixed under section 6 for preferring claims have elapsed and all claims (if any) made under that section or section 9 have been disposed of by the Forest Settlement-officer;*
- b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and*
- c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under section 16 of that Act, the State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.*

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

20. Further Section 23, 24 and 26 are extract as below:

23. No right acquired over reserved forest, except as here provided—*No right of any description shall be acquired in or over reserved forest except by succession or under a grant or contract in writing made by or on behalf of the*

Government or some person in whom such right was vested when the notification under section 20 was issued.

24. Rights not to be alienated without sanction–(1)

Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease mortgage or otherwise, without the sanction of the State Government:

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

26. Acts prohibited in such forests–(1) *Any person who–*

(a) makes any fresh clearing prohibited by section 5, or

(b) sets fire to a reserved forest, or, in contravention of any rules made by the State Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest; or who, in a reserved forest–

(c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf,

(d) trespasses or pastures cattle, or permits cattle to trespass;

(e) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(f) fells, girdles, lops, or bums any tree or strips

off the bark or leaves from, or otherwise damages, the same;

(g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;

(h) clears or breaks up any land for cultivation or any other purpose;

(i) in contravention of any rules made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares; or

(j) in any area in which the Elephants' Preservation Act, 1879 (6 of 1879), is not in force, kills or catches elephants in contravention of any rules so made, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit

(a) any act done by permission in writing of the Forest-officer, or under any rule made by the state Government; or

(b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under section 23.

(3) Whenever fire is caused willfully or by gross negligence in a reserved forest, the State Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended for such period as it thinks fit.

21. Further Section 27 (a) provides that act done, order made or certificate issued in exercise of any power conferred by or under this chapter shall, except as here in before provided be called for question in any court.

22. The scheme of the Forest Act, is evident from the various provisions as referred above, clearly provides that in the proceeding beginning by notification under Section 4 all claims regarding land included in the notification are adjudicated by an authorized officer all claims to the land can be made and adjudicated. Section 8 gives all powers of the Civil Courts to the Forest Settlement Officer available in trial of the suits. There is a appeal provided under Section 17 to the higher forum. The notification under Section 4 is to be published in Official Gazette appointing Forest Settlement Officer to enquire and determine any right in or any land. Forest Settlement Officer also issues a proclamation in every town and village in the neighborhood to make the proceedings known to all concerned. The enquiry regarding claims is for the purpose of finding out as to whether the land in question can be declared as reserved forest or it cannot declared reserved forest due to the rights or claims of claimants and the provision further contemplate that even if right or claim of claimants has been established that is procedure for coming to agreement with the owner for surrender of his right or acquire such land in the manner provided by the Land Acquisition Act. The provision of the Act contemplates extension of all rights regarding land included in the reserved forest. Section 27 (a) has been added giving finality to the orders passed in proceeding under the Indian Forest Act and section creates express bar of saying that the order made or certificate issued in exercise to power conferred in Chapter-II shall not be called in question.

23. Learned Counsel appearing for the applicant has further submitted that the Forest (Conservation) Act, 1980, requires that when a forest is to be cleared for the development of a project in an area, the same amount of land is to be diverted for the purpose of afforestation and this new land is to be handed over to the Forest Department for maintenance. However, in the instant case, the Collector, Chhatarpur, has arbitrarily by an order stated that the land available with the revenue department should be used for diverting for the forest use as per Forest (Conservation) Act, 1980 but the new land allotted is less than the land which is to be cleared for the purpose of this Project. It is argued that when the land is not available for compensatory afforestation, any step taken in pursuant to this Project would be derogatory to the Forest (Conservation) Act, 1980, and would be in violation to the Article 51 and 48A of the Constitution of India, which lay common but differential on both, the State, and the individual, to recognizes their responsibility towards the environment and protect the same.

24. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the project of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as necessity to maintain the environment. A balance has to be struck between the two interest where commercial venture or are enterprise would bring in results, which more useful for the people, the difficulty of small number of people has to be bypassed. The comparative hardship have to be balanced and the convenience and benefit to the larger section of the people has to get primacy over comparatively lesser hardship. This indicates that while applying the concept of development one has to keep in mind the principle of

proportionality, based on concept of balance. It is an exercise in which, we have to balance development on one hand and environmental protection on the other hand. Learned Counsel appearing and arguing the case has expressed their consensus on the point that a detailed reply / affidavit may be called from the Respondents with regard to the facts so that the matter can be heard.

25. We have heard Learned Counsel for the parties and perused the record.

26. Brief facts of both the applications are that:-

- a. *The diamond block at Buxwaha was initially explored by Mis Rio Tinto Exploration India Pvt. 'Ltd., one of the largest mining companies in the world. Rio Tinto had been earlier granted a mining lease over an area of 954 hectares. However, Rio Tinto decided to not go ahead with the operations and the project was handed over to the Madhya Pradesh State Government.*
- b. *On 5th July 2019, the Directorate of Geology and Mining, Government of Madhya Pradesh issued a Notice inviting Tender for auction for grant of Mining Lease over an area of 364 Ha in Sunder Diamond Block located near village Sagoria, Tehsil Buxwaha, District, Chhatarpur of Madhya Pradesh. The estimated resources in the block are around 53.70 Million tonnes of Kimberlite Ore containing about 34 Million Carats of rough diamonds with average grade of 0.63 Carat/tonne of Kimberlite as per information provided by the Directorate of Geology & Mining, Government of MP.*
- c. *The Answering Respondent participated in the e-auction process and pursuant to conclusion of competitive bidding, it was declared as the Preferred Bidder. Accordingly, the Answering Respondent paid the first instalment of the upfront payment of INR. 27.52 crores. It is pertinent to note that the auction process was*

conducted in accordance with the Mineral (Auction) Rules, 2015 as amended from time to time and the Mines and Minerals (Regulation & Development) Act, 1957.

- d. Subsequently, Lot for grant of Mining Lease was issued in favour of the Answering Respondent on 19 December 2019. As per conditions of the Lot, the Answering Respondent is required to obtain all statutory clearances required for grant of Mining lease within three years from grant of Lot .which can be extended by two years. The Answering Respondent is currently in the process of obtaining such statutory clearances. It is pertinent to note that the area for which the letter of intent has been issued is only 364 hectares and is only part of the area of 954 ha as earlier proposed by Rio Tinto. It is much smaller in extent and constitutes about one third of the total area requested by Rio Tinto.*
- e. The approval for mining plan was- granted by the Office of Regional Controller, Indian Bureau of Mines, Jabalpur on 4 September 2020. As per the mining plan, the mining operation will be carried out in phases.*
- f. In the meantime, the Answering Respondent also applied for grant of forest clearance for the project to the Nodal Officer, Forest Department, Government of MP over an area -of 382.131 Ha on 22 April 2020 in Form A (Part I) as per Section 2 of Forest (Conservation) Act 1980 including the mining lease area, the approach roads and the nalla diversion.*
- g. Vide order dated 15 December 2020 issued by the Collector Chhatarpur, an area of 382.131 ha was reserved at village Kasera, Tehsil Buxwaha, Chhatarpur in Khasara 13/1 (84 Ha), Khasara 26/1 (150 Ha) and Khasara 364/1 (148.131 Ha) in favour of Bunder Diamond Block for Compensatory Afforestation Purpose. It is pertinent to mention that the purpose of compensatory afforestation is to compensate the loss of "Land by Land" and loss of "Trees by Trees.*

- h. A comprehensive Compensatory Afforestation Scheme was prepared by the DFO Chhatarpur and was approved by Chief Conservator of Forest (CCF) Chhatarpur on 31 December 2020. The plantation scheme warrants planting 383,000 trees, thereby compensating about 1.8 times of the forest diverted. It is significant to note that the Answering Respondent will spend about 1NR 15.81 crores for the plantation in addition to forest NPV, compensatory afforestation land cost and other levies as decided by the Forest department under applicable rules.*
- i. It is pertinent that the State Government has only forwarded the proposal to the MoEF & CC. The proposal is yet to be scrutinized by the MoEF & CC and the Stage-1 forest clearance is awaited. It is only after the conditions stipulated in Stage-1 clearance are fulfilled that Stage-11 clearance will be granted.”*

27. Learned Counsel for the Respondent No. 1 in Original Application No. 40/2021 Union of India i.e. MoEF&CC has submitted that application is premature as no approval has been granted by the MoEF&CC under the Forest (Conservation) Act, 1980.

28. The Govt. of Madhya Pradesh has submitted a proposal for diversion of forest land under the provisions of the Forest (Conservation) Act, 1980 and the said proposal is still under consideration. The contention of the Learned Counsel for the Forest Department is that the matter is still under consideration before the Competent Authority and formal approval will be considered the by MoEF&CC under the Forest (Conservation) Act, 1980.

29. The State of Madhya Pradesh and Mining Department have submitted that the Respondent No. 4 Director of Geology and Mining (DGM), Government of Madhya Pradesh pursuant to the Mines and Minerals (Development and Regulation) Act 1957 (the "Act") and the Mineral

(Auction) Rules, 2015 as amended from time to time (the "Auction Rules") issued the notice inviting tender dated July 05, 2019 to commence the auction process for grant of mining lease for diamond located in Chhatarpur District of Madhya Pradesh. The e-auction process was conducted in accordance with the tender document for the said mineral block and Respondent No. 5 Essel Mining & Industries Ltd. was declared as the preferred Bidder under Rule 9 (4) (b) (iii) of the auction rules. The LOI issued in favour of respondent no. 5 dated 19/12/2019 is marked and filed. As required under Rule 10(1) of the Auction Rules and the Tender Document for the said mineral block, Respondent No. 5 Essel Mining & Industries Ltd. has made a payment of the first installment, being 10% (ten percent) of the upfront payment of Rs 27, 52, 48,440. Accordingly pursuant to Rules 10(2) of the Auction Rules, the Government of Madhya Pradesh has issued letter of intent for grant of Mining lease for Bunder Diamond Block for Diamond in Sangoria Village, Buxwaha Tehsil, Chhatarpur District on 364.00 Hectare Area of survey of India top sheet no. 54P/7 to Respondent No. 5 Essel Mining & Industries Ltd. for a period of 50 years and that the MoEF & CC has neither issued any forest clearance nor any environmental clearance in favour of the project proponent for the subjective land and for both these clearances there is a provision of statutory appeal before this Tribunal therefore the Original Application is premature and therefore deserves to be dismissed.

30. The Learned Counsel for the Project Proponent has submitted that the mining lease has not yet been executed in favor of the respondent and only the letter of intent was issued in his favor. No tree can be cut prior to grant of Forest Clearance and Environmental Clearance. The process of grant of Statutory Clearance is pending with the MoEF&CC and it is only after the constitution of the Expert Committee and their

detailed scrutiny, the same would be considered. It is further argued that :-

1. *The entire Buxwaha Protected Forest is more than 3000 ha and the Applicant's mining lease only spans over 364 ha of the said forest. The Applicant has urged baseless concerns about affecting the livelihood of the local population when the project will in fact lead to massive economic development in the area and will generate large-scale direct and indirect employment. It may be noted that the project has been recommended by the gram sabha of all the villages in the area and has completed the process of settlement of rights, thus ensuring compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The final FRA certificate has also been issued by Collector Chhatarpur. It is submitted that the forest dwellers will be compensated for the Non-Timber Forest produce payments as per assessment undertaken by the government pursuant to the applicable guidelines.*
2. *The said block was auctioned based on G2 Level of exploration and Geological Report was prepared by the GoMP based on the Minerals (Evidence of Mineral Contents) Rules, 2015 and thereafter the said block was auctioned for grant of mining lease. The Answering Respondent participated in the e-auction process undertaken by Mineral Resource Department, GoMP, in accordance with the Mineral (Auction) Rules, 2015 and was declared as the Preferred Bidder pursuant thereto.*
3. *The mining plan for the project has been prepared by the Answering Respondent and approved by Regional Office, Indian Bureau of Mines, Jabalpur on 4 September 2020 as per in accordance with Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016. Opencast mining by employing drilling and blasting and shovel and dumper combination is an established mining technique and used globally and in India for excavation of ore and waste in mines. The top soil excavated during mining shall be stored in separate storage yard and shall be used in plantation within the mining lease area as per the approved*

mining plan. Further, the Answering Respondent shall obtain the permission of drilling and blasting from the Directorate of Mine Safety under the Metal Mines Regulations 1961 after execution of mining lease. There have been significant improvements in technologies in excavation and mining on date. The advancement of technology ensures that mining does not create any seismic interference on the current morphology or any other impact. A classic example is construction of Delhi and Mumbai metro rail in densely populated areas. In any event, the said concerns will be taken care of in the detailed statutory procedure for grant of Environment and Forest Clearance.

31. Since, the Forest Clearance and Environment Clearance are pending thus, the Original Application is premature. Mining is a site-specific activity due to availability of ore at a specific location and needs to be carried out where the ore occurs. The screening determines whether the project requires an Environment Impact Assessment ('EIA'). Scoping identifies the key issues and impacts that must be further investigated. If eventually after screening and scoping it is found that the mining lease area falls in a eco-sensitive area or a restricted area, at that stage, in any event necessary statutory clearances would not be granted.

On the basis of information furnished in Form 1/Form 1A alongwith application for grant of environmental clearance the expert appraisal committee determines detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. A detailed EIA study is conducted by an independent and empanelled environmental consultant which identifies and predicts the likely environmental and social impact of a project and recommends measures for mitigation of adverse consequences, if any.

Thereafter, public consultation is held. "Public Consultation" refers to the mandatory process by which the concerns of local affected persons and

others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate.

32. It is further argued that vide order dated 04.06.2021, the Madhya Pradesh High Court in *Rumit Basu & Ors. v. Union of India & Ors., W.P. (C) 9742/2021* issued notice and granted two weeks to the parties including the Answering Respondent to file a response. The matter was listed on 22.06.2021 when further time was granted to complete pleadings and serve unserved respondents. The order of the Hon'ble High Court of Madhya Pradesh is quoted below:-

(Rumit Basu & Ors. v. Union of India & Ors., W.P. (C) 9742/2021)

Jabalpur, Dated : 04-06-2021

Heard through Video Conferencing.

Shri Anshuman Singh, learned counsel for the petitioners.

Shri J.K. Jain, learned Assistant Solicitor General for the respondent no . 1/Union of India.

Shri Purushendra Kaurav, learned Advocate General for the respondents no.2,3, 4 and 6/State.

Shri Ravindra Shrivastava, learned Senior Advocate assisted by Shri Akshay Sapre, learned counsel for the respondent no.7.

Let a copy of this petition along with Annexures and IAs be supplied to Shri J.K. Jain, learned Assistant Solicitor General appearing on behalf of Union of India and its functionaries and also to Senior Advocate Shri Ravindra Shrivastava appearing on advance notice on behalf of respondent no. 7.

Shri Purushendra Kaurav, learned Advocate General for the State is also directed to seek instructions in the matter specially in regard to the anxiety expressed by the learned counsel for the petitioner that the National Tiger Conservation Authority has not been taken into

confidence and the provisions of Wildlife (Protection) Act, 1972, in particular Sections 38 O (1) (g) and 38 B have been given a go by.

*Let response, if so advised, be filed by the parties within two weeks. List the matter in the week commencing **21st June, 2021.***

33. Further in another petition titled *Sudeep Singh Saine Vs. MoEF&CC & Ors.* W.P. No 9874/2021 filed before the Madhya Pradesh High Court at Jabalpur the very same issue, was raised and has been dismissed with liberty to file intervention application in the aforesaid *Writ Petition No. 9742/2021*. The order is quoted below :-

(Sudeep Singh Saine Vs. MoEF&CC & Ors. W.P. No 9874/2021)

Jabalpur, Dated : 22-06-2021

Heard through Video Conferencing.

Shri Sudeep Singh Saini, learned counsel for the petitioner.

One Public Interest Litigation has already been filed on the subject matter involved in the present case being WP.No.9742/2021 Ramit Basu and others Vs. Union of India and others and therefore another Public Interest Litigation on the same subject matter need not be entertained.

It would however be open for the petitioner to apply for the intervention in the main Public Interest Litigation.

With the aforesaid observation, the petition is disposed of.”

(Rumit Basu & Ors. v. Union of India & Ors., W.P. (C) 9742/2021)

Jabalpur, Dated : 22-06-2021

Heard through Video Conferencing.

Shri Anshuman Singh, learned counsel for the petitioner.

Shir J.K.Jain, learned Assistant Solicitor General with Shri Vikram Singh, learned cotinsel for the respondent no.1/Union of India.

Shri Purushendra Kaurav, learned Advocate General with Shri Swapnil Ganguly, learned Deputy Advocate General for the respondent nos.2, 3, 4 and 6.

Shri Akshay Sapre, learned counsel for the respondent no.7.

Respondent no.5 has been wrongly mentioned as The National Tiger Conservator Authority instead of National Tiger Conservation Authority.

Learned counsel for the petitioner submits that he shall correct the cause title. He may also imp lead the National Board for Wild Life as party/ respondent no.8.

Issue notice to the respondent no.5 and newly impleaded respondent no.8.

Shri Vikram Singh, learned counsel accepts notice on behalf of respondent no.5- the National Tiger Conservation Authority and National Board for Wild Life, returnable by four weeks.

Learned counsel for the petitioner may provide copies of the writ petition to Shri Vikram Singh, Advocate who may seek instructions on their behalf and file reply to the writ petition.”

34. Another Writ Petition titled *Manish Dubey Vs. The State of Madhya Pradesh & Ors. W.P. No. 10193/2021* was listed on 23.06.2021, and was dismissed by Hon'ble Court vide an order as follows:-

(Manish Dubey Vs. The State of M.P. & Ors. W.P. No.10193/2021)

Jabalpur, Dated : 23-06-2021

Heard through Video Conferencing.

S.K. Dubey, Advocate for the petitioner.

Shri Swapnil Ganguli, Dy. Advocate General for the respondents/State. Shri Akshay Sapre, Ms. Vinita Bhargava and Shri A.G. Desai, Advocates for the respective respondents.

One Public Interest Litigation has already been filed on the subject matter involved in the present case being W.P.No.9742/2021 Ramit Basu and others Vs. Union of India and others and therefore another Public Interest Litigation on the same subject matter need not be entertained.

It would however be open for the petitioner to apply for the intervention in the main Public Interest Litigation.

With the aforesaid observation, the petition is disposed of.”

35. In another Writ Petition titled *Dr. Jaya Thakur vs. The State of M.P. & Ors. in W.P. NO. 11040/2021*, the Hon'ble High Court of Madhya Pradesh disposed of the matter with liberty to the petitioner to file an intervention to the present matter in the following manner :-

***(Dr. Jaya Thakur vs. The State of M.P. & Ors.
in W.P. No. 11040/2021)***

Jabalpur, Dated : 01-07-2021

Heard through Video Conferencing.

Mrs. June Choudhary, learned Senior Advocate with Shri Varun Thakur, Advocate for the petitioner.

Shri Swapnil Ganguly, learned Dy. Advocate General for the respondents/ State.

*One Public Interest Litigation has already been filed on the subject matter involved in the present case being W.P.No.9742/2021 -Ramit Basu and others Vs. Union of India and others and therefore another Public Interest Litigation on the same subject matter **need** not be entertained.*

It would however be open for the petitioner to apply for the intervention in the main Public Interest Litigation.

*With the aforesaid observation, the petition is **disposed of.”***

36. Another (5th petition was filed by Nagrik Upbhokta Margdarshak Manch through president present applicant in W.P. No. 12124/2021 and the orders was passed as follows:-

**(Nagrik Upbhokta Margdarshak Manch Vs. Union of India & Ors.
in W.P. No. 12124/2021)**

Jabalpur, Dated : 16-07-2021

Heard through Video Conferencing.

Shri Surendra Verma, learned counsel for the petitioner.

Shri J. K. Jain, learned Assistant Solicitor General appears for respondents No.1 and 4.

Shri Swapnil Ganguly, learned Dy. Advocate General appears for respondent No.2 and 3.

Learned counsel for the respondents prays for time to seek instructions and file their counter.

*List the matter **after four weeks.***

Jabalpur, Dated : 27.09.2021

Heard through Video Conferencing.

Shri Surendra Velma, learned counsel for the petitioner.

Shri J.K. Jain, learned Assistant Solicitor General for the respondent Nos.1 and 4/Union of India.

Shri Ashish Anand Bernard, learned Deputy Advocate General for the respondent Nos .2 and 3/State.

Shri Akshay Sapra, Ms.Vanita Bhargawa and Ms. Shewata Kabra, Advocates for the applicant/intervener.

An intervention application (I.A.No.9823/2021), has been filed by the applicant/intervener.

Counsel for the applicant/intervener is directed to provide a copy of I.A. No.9823/2021 to learned

counsel for the petitioner and also to counsel for respondents within three days.

Learned counsel for the respondents pray for and are granted two weeks' time to file the reply to the intervention application.

In the meantime, the Archeological Survey of India shall submit the report of inspection about the Old Palaeolithic age (Old Stone age) rock paintings in the area in question.

List along with W.P. No. 9742/2021.”

37. I.A. No. 9823/2021, Original Application No. 27/2021, Original Application No. 34/2021, Original Application No. 35/2021 are the matters which pertains to the same issues.

38. Learned Counsel for the Project Proponent has argued that there is no cause of action which is said to arise on the basis of newspaper report. It is submitted that the date of the cause of action cannot depend upon when the Applicant herein read the newspaper. This is against the settled principles of arising of cause of action as per the judgments of the Hon'ble Apex Court and this Tribunal. Although the Applicants have not challenged any specific order, a reading of the OA makes it apparent that they are aggrieved by the LOI dated 19.12.2019 issued in favor of the answering Respondent. It is submitted that the LOI for grant of the subject mining lease was issued on 19.12.2019 i.e., almost 18 months ago and the OA does not explain the reason for such delay in filing of the present OA. Without prejudice, it is submitted that the OA has been filed after an unreasonable long delay even though the Applicant was aware of the letter of intent being granted in favor of the Answering Respondent in December 2019. Various newspaper reports to this effect were also

published. Further, there is no change in the circumstances from when LOI has been granted till the filing of the petition. Learned Counsel for the Project proponent has submitted that there is no violation of the Forest (Conservation) Act, 1980 and no violation of Environmental Laws as alleged.

39. Section 2 of the FC Act, 1980 inter-alia provides for certain restrictions on use of forest land for non-forest purpose and is extracted herein below:

"2. Restriction on the de-reservation 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 purposes;*
- 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 afforestation.*

Section 3 of the FC Act provides for constitution of an Advisory Committee to advise with regard to inter-alia the grant of approval under Section 2 of the FC Act, 1980.

40. The FC Rules, 2003 provides the procedure to obtain prior approval of Central Government under Section 2 of the FC Act, 1980. A brief overview of the process is herein below:

- a) Every user agency, who wants to use forest land for non-forest purpose, after examining all feasible alternatives, prepares the proposal in the format prescribed in the FC Rules and submits it to the concerned nodal officer authorized by the State Government, along with requisite information and documents complete in all respects well in advance of taking any non-forest activity on the forest land. **[Rule 6(1)].**
- b) Proposals received from the user agencies are examined in the state Government at various levels, including the Divisional Forest Officer and the District Collector. The Nodal officer sends the proposal to the DFO **[Rule 6(3)(a)].**
- c) The Divisional Forest Officer shall examine the factual details and feasibility of the proposal, certify the maps, carry out site-inspection and enumeration of the trees and forward his findings in the Format specified in this regard to the Conservator of Forests. **[Rule 6(3)(e)].**
- d) Thereafter, the District Collector shall complete the process of recognition and vesting of forest rights in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, obtain consent of each Gram Sabha, and forward his findings to the Conservator of Forests. **[Rule 6(3)(e)]**
- e) The Conservator of Forests shall then examine the factual details and feasibility of the proposal, carry out site-inspection in case the area of forest land proposed to be diverted is more than forty hectares, and forward the proposal along with his recommendations to the Nodal Officer. **[Rule 6(3)(g)]**
- f) The Nodal Officer, through the Principal Chief Conservator of Forests, shall forward the proposal to the State Government or the Union territory Administration, as the case may be,

along with his recommendations. **[Rule 6(3)(i)]** and when the State Government agrees in-principle to divert for non-forest purpose or assign on lease the forest land, the State Government shall forward the proposal to the Central Government along with its recommendations. **[Rule 6(3)(I)]**

- g) In case the MoEF & CC finds that the proposal involves forest land more than 100 ha, the MoEF & CC will request the Regional Office to visit the forest land proposed to be diverted and submit a Report. **[Rule 7(4)(c)]**
- h) The Central Government shall refer every proposal to the Forest Advisory Committee for its advice. **[Rule 7(4)(d)]**
- i) It is pertinent to note that the Committee gives due regard to inter-alia the following matters, which are extracted herein below: **[Rule 4(e)]**

- i. “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;*
- ii.*
- iii. whether the State Government or the Union territory Administration, as the case may be, 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;*
- iv. whether the State Government or the Union territory Administration, as the case may be, undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof;*
- v. whether the per unit requirement of forest land is significantly higher than the national average for similar projects; and*
- vi. whether the State Government or the Union territory Administration, as the case may be, before making*

their recommendation has considered all issues having direct and indirect impact of the diversion of forest land on forest, wildlife and environment.

- j. While tendering advice, the Committee may also suggest any condition or restriction on the use of any forest land for any non-forest purpose, which in its opinion would minimize adverse environmental impact. **[Rule 7(4)(f)]**.
- k. The Central Government shall, after considering the advice of the Committee and after such further enquiry as it may consider necessary, grant in-principle approval subject to fulfillment of stipulated conditions or reject the same. **[Rule 7(4)(g)]** This is Stage-1 of the Forest Clearance.
- l. On receipt of the in-principle approval, the Nodal Officer send a copy of the same to the DFO and the CF. **[Rule 8(1)(a)]**
- m. The DFO prepares a demand note containing amounts of compensatory levies such as cost of creation and maintenance of compensatory afforestation, Net Present Value (NPV), wildlife conservation plan etc. to be paid by the User Agency and communicate the same, along with a list of documents, certificates and undertakings required to be submitted by the User Agency in compliance with the conditions stipulated in the in-principle approval. **[Rule 8(1)(b)]**.
- n. The User Agency shall make payment of compensatory levies and submit a compliance report containing a copy of documentary evidence and documents, certificates and undertakings as required to the DFO **[Rule 8(1)(c)]**. The said compliance Report is forwarded by the DFO to the CF if it is complete, who then forwards it to the Nodal Officer who in turn forwards it to the State Government. The State Government forwards it to the MoEF & CC.
- o. The MoEF & CC may then accord final approval under the FC Act. **[Rule 8(1)(m)]** This is the stage-II forest clearance.”

41. It is further contented that after necessary approval and permissions are granted by the Competent Authority, compensatory afforestation of trees will be undertaken in compliance of the guidelines and permission for extraction of groundwater will be taken in accordance with existing rules. In view of the above discussions, the applications are premature and not maintainable at present in the manner, as filed.
42. The applications are pending before the Hon'ble High Court with the same prayer and relief. There should not be any multiplicity of judicial proceedings. After the necessary approval by the Competent Authority, if grievances survive, the applicant will have opportunity to challenge the order according to the procedure before appropriate forum. Both applications i.e. **Original Application Nos. 34/2021 & 40/2021 alongwith I.As. No. 60/2022 & 62/2022** as filed are premature and not maintainable. Thus, **dismissed**.

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

24th January, 2023
OA No. 34/2021(CZ)
OA No. 40/2021(CZ)
PN