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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

L. NAGESWARA RAO; J., B.R. GAVAI; J., ANIRUDDHA BOSE; J.

3rd JUNE, 2022

In Re: T.N. Godavarman Thirumulpad *Versus* Union of India and Ors.

Environment (Protection) Act 1986; Section 3 - Guidelines issued by the Union Ministry on February 9 2011 for Ecologically Sensitive Zones near protected forests held to be reasonable - Further directions issued in relation to ESZ -No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ - Mining within the national parks and wildlife sanctuaries shall not be permitted. (Para 44)

Environmental Law - Public Trust Doctrine - Public Trust Doctrine is part of the law of land - The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large. [Referred to *M.C. Mehta v. Kamal Nath and Others* [(1997) 1 SCC 388]. (Para 28)

I.A. No.1000 of 2003 (Recommendation of CEC dated 20.11.2003) WITH I.A. Nos.982-984 of 2003 AND I.A. Nos.1026-1028 of 2004 AND I.A. Nos. 1123-1124 of 2004 AND I.A. Nos.1197-1199 of 2004 AND I.A. Nos. 1210-1211 of 2004 AND I.A. Nos.1250-1251 of 2004 AND I.A. No. 1412 of 2005 AND I.A. No.1512 of 2006 AND I.A. No. 1992 of 2007 AND I.A. No. 3880 of 2015 AND I.A. No. 96949 of 2019 AND I.A. No. 117831 of 2019 AND I.A. NO. 65571 of 2021 In the Matter of: WRIT PETITION (CIVIL) NO. 202 of 1995

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JUDGMENT

ANIRUDDHA BOSE, J.

These proceedings originate from the Writ Petition under Article 32 of the Constitution of India registered as W.P. (Civil) No. 202 of 1995 (T.N. Godavarman Thirumulpad v. Union of India and Ors.), which is in the nature of a public interest litigation. It was instituted for protection of forest lands in the Nilgiris district of the State of Tamil Nadu. Subsequently, the scope of that writ petition was enlarged so as to protect such natural resources throughout the country. The original writ petitioner has since passed away (on 1st June 2016) but in an order passed on 3rd February 2017, this Court opined that being a public interest litigation, there was no requirement for bringing on record the legal representatives of the deceased petitioner. The writ petition, in substance, continued with the cause title “in Re: T.N. Godavarman Thirumulpad v. Union of India & Ors”. Various Orders have been passed from time to time in this writ petition to ensure preservation of forest resources of this country in balance with economic

activities. By an Order of this Court dated 9th May 2002, a Central Empowered Committee (“CEC”) was directed to be formed primarily for monitoring implementation of this Court’s orders and to place the incidents of non-compliance before us. Subsequently, by a notification issued on 17th September 2002 by the Ministry of Environment and Forest in exercise of power under Section 3(3) of the Environment (Protection) Act, 1986, this committee was constituted under statutory provisions. CEC has been bringing to the notice of this Court the steps taken for removal of encroachment, implementation of working plans, compensatory afforestation, plantation and other conservation issues. In this order, we shall be mainly dealing with two sets of issues. The first set relates to mining activities in and around a wildlife sanctuary in the State of Rajasthan- known as “Jamua Ramgarh” (also spelt as Jamwa Ramgarh). The second set of issues is wider in scope, and involves prescribing eco-sensitive zones (ESZ) surrounding the wildlife sanctuaries and national parks. The subject of mining and other commercial activities within the wildlife sanctuaries and national parks (protected forests) shall also be dealt by us in this order. The applications before us require examination in the perspective of a set of recommendations made by the CEC and we have been urged by a set of applicants to make certain modifications of this Court’s earlier directions concerning steps to be taken for protection of forest resources. The applicants seeking modifications of our earlier orders include a set of miners, and, in some cases, the State Governments asking for opening up of the protected forest areas and their buffer zones, on which restrictions have been placed in by our earlier orders, for commercial exploitation. There is dispute as to what would constitute the buffer zones on ESZ in respect of national parks and wildlife sanctuaries, as there are divergence of views among the various stakeholders.

2. The present set of applications arise out of a report of the CEC dated 20th November 2003. This report specifically pertains to Jamua Ramgarh wildlife sanctuary. This sanctuary covers an area of about 300 square kilometres. The said report gives a horrific picture of ravaging of a protected forest mainly by private miners mostly with temporary working permits obtained from the Governmental agencies. Following recommendations were made in this report:-

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

(ii) presently a safety zone of twenty five meter has been fixed for Jamua Ramgarh Sanctuary and other sanctuaries in Rajasthan as against 500 meter for Ranthambhore National Park in Rajasthan itself. In Madhya Pradesh safety zone of 250 meter for all the 20 forest area has been fixed. The CEC is of the view that minimum 500 meter safety zone around National Parks and Sanctuaries is necessary where no mining, construction and other projects should be allowed. Without a reasonable safety zone the habitat and wild life in the National Parks and Sanctuaries are adversely affected. Although stringent conditions are imposed at the time of the sanction of the mining leases, none are practically complied with due to weak enforcement of the laws. The mining causes heavy disturbance in the area due to blasting, removal of over burden, chiseling, transportation, flying debris and movement of a large number of labourers and other persons. The safety zone of twenty five meter presently prescribed by the Rajasthan Forest Department is totally

in adequate as the rocks torn apart during blasting can travel much beyond the present safety zone. However, increasing the safety zone to the desired level of 500 meter will result in closure of large number of mines. Taking a holistic overall view of the situation, the CEC recommends that for the Jamua Ramgarh wild life sanctuary, for the "existing" mines the safety zone may be fixed as 100 meter wherein no mining should be permitted. "For new" mining leases the safety zone may be fixed as 500 meter.

(iii) reclamation and rehabilitation of the area mined inside the sanctuary should be carried out in a time bound manner at the cost of the user agency for which a detailed reclamation and rehabilitation plan along with various items of work, cost involved and time frame should be prepared and implemented on priority basis. The plan presently prepared by the State Government is totally in adequate. It does not provide for reclamation and rehabilitation of the mining pits at all. No provision for removal of stones and rocks scattered in the sanctuary has been made. Intensive plantations and protection has not been provided. The revised plan should incorporate the above and other necessary measures to provide a congenial habitat for wild life. In the event adequate funds for this purpose cannot be recovered from the erstwhile mine lease owners, the same should be made available by the State Government;

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

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

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

(vii) the left over mining equipments such as cranes etc. should be confiscated and removed outside the sanctuary at the cost of the erstwhile mine lease holders;

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

(ix) disciplinary action should be taken in a time bound manner against the erring officials in the Mines and the Forest Departments of the State of Rajasthan and the MoEF for allowing mining in violation of the F.C. Act, the W. P. Act and/or this Hon'ble Court's order;"

(quoted verbatim from paperbook)

3. This Court had converted this report with its set of recommendations into an Interlocutory Application and was allocated registration number I.A. 1000 of 2003.

4. On 20th September 2012, a second report was submitted by the CEC. The recommendations made in the second report went beyond the Jamua Ramgarh Sanctuary and dealt with creation of identification and declaration of safety zones around protected forests all across the country. The question of having ESZ around the protected forests was examined by this Court earlier in another Writ Petition [W.P. (Civil) No. 460 of 2004] in **Goa Foundation v. Union of India**. In the said writ petition, the following order was passed on 4th December 2006 [reported in (2011) 15 SCC 791]: -

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

5. Two writ petitions have been instituted titled as **Goa Foundation v. Union of India** [W.P. (Civil) No.460 of 2004] and **Goa Foundation v. Union of India and Others** [W.P. (Civil) No.435 of 2012], in relation enforcement of various circulars issued for enforcement of environmental laws and to prevent illegal mining in different States including the State of Goa. There are certain overlapping issues involved in the present writ petition and the cases of **Goa Foundation** (supra). The directions which we propose to issue in this judgment/order shall take into account the orders passed in the cases of **Goa Foundation** (supra) and such directions shall be supplemental to the orders passed in any of the aforesaid two writ petitions if our directions passed in this order relate to areas or subjects covered by any mandate passed in the said two writ petitions.

6. A set of Guidelines for Declaration of Eco-Sensitive Zones (ESZ) around National Park and Wildlife Sanctuaries had been formulated by the Ministry of Environment, Forest and Climate Change (MoEF&CC) of the Government of India on 9th February 2011 [F. No.1-9/2007 WL – I (pt)]. These Guidelines deal with the process and procedures to be adopted for declaring ESZ. In Clauses 3 and 4 of these Guidelines, it has been stipulated: -

“3. Purpose for declaring Eco-Sensitive Zones:

The purpose of declaring Eco-sensitive Zones around National Parks and Sanctuaries is to create some kind of "Shock Absorber" for the Protected Areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. As has been decided by the National Board for Wildlife, the activities in the Ecosensitive zones would be of a regulatory nature rather than prohibitive nature, unless and otherwise so required.

4. Extent of Eco-Sensitive Zones :

4.1 *Many of the existing Protected Areas have already undergone tremendous development in close vicinity to their boundaries. Some of the Protected Areas actually lying in the urban setup (Eg. Guindy National Park, Tamil Nadu, Sanjay Gandhi National Park, Maharashtra, etc). Therefore, defining the extent of eco-sensitive zones around Protected Areas will have to be kept flexible and Protected Area specific. The width of the Eco-sensitive Zone and type of regulations will differ from Protected Area to Protected Area. However, as a general principle the width of the Eco-sensitive Zone could go up to 10 Kms around a Protected Area as provided in the Wildlife Conservation Strategy-2002.*

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

4.3 Further, even in context of a particular Protected Area, the distribution of an area of Eco-sensitive Zone and the extent of regulation may not be uniform all around and it could be of variable width and extent.”

(quoted verbatim from paperbook)

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

“6. The procedure to be adopted:

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

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

- (i) Extent of eco-sensitive zones for the Protected Area being considered.*
- (ii) The requirement of such a zone to act as a shock absorber.*
- (iii) To suggest the best methods for management of the eco-sensitive zones, so suggested.*
- (iv) To suggest broad based thematic activities to be included in the Master Plan for the region.*

*6.3 Based on the above, the Chief Wildlife Warden could group the activities under the following categories (an indicative list of such activities is attached as **ANNEXURE1**):-*

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

*6.4 Once the proposal for Eco-sensitive zones has been finalized, the same may be forwarded to the Ministry of Environment and Forests for further processing and notification. Here, it may be noted that, the State/ Union Territory Forest Department could forward the proposals to the respective authority in the State Government with copy to the Ministry of Environment and Forests, as and when the proposals (even if it is for single Protected Area) are complete. An indicative list of details that need to be submitted along with the proposals is at **ANNEXURE-2**.*

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

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

7. These guidelines are indicative in nature and the State / Union Territory Governments may use these as basic framework to develop specific guidelines applicable in the context of their

National Parks, Wildlife Sanctuaries, important corridors, etc. with a view to minimizing and preferably eliminating any negative impact on protected areas.”

(quoted verbatim from paperback)

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

9. By an order passed on 4th August 2006, this Court had, inter-alia, restrained grant of temporary working permits for mining within safety zones around any national park/wildlife sanctuary declared under Sections 18, 26-A or 35 of the Wild Life (Protection) Act, 1972. As an interim measure, direction was issued to maintain one kilometre safety zone, which was subject to the orders that may be made in the present IA (I.A. No.1000 of 2003).

10. The second report of the CEC dated 20th September 2012 makes the following recommendations as regards identification and declaration of ESZ. This report entitled **“Note regarding safety zones (Eco-sensitive zones) around National Parks and Wildlife Sanctuaries”** makes the following recommendations:-

“10. After considering that during the last ten years no significant progress has been made regarding identification and declaration of Safety Zones around protected areas and considering the matter in its totality, an implementable scheme has been prepared by the CEC and which has been dealt with in subsequent paragraphs.

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

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

ii) **CATEGORY-B** - *the protected areas having an area between 200 sq. km. to 500 sq. km. The total number of such protected areas is 115 and their total area is about 38942 sq. km. (24.37 % of total area of protected areas);*

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

iv) **CATEGORY-D** - *the protected areas having an area up to 100 sq. km. The total number of such protected areas is 344 and their total area is about 7,422 sq. km (about 4.65 % of total area of all protected areas).*

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

- i) Corbett National Park (520 sq. km.) and Sonanadi Sanctuary (301 sq. km) - total area is 821 sq. km and therefore both will fall in Category-A;
- ii) Gir National Park (258 sq. km.) and Gir Sanctuary (1,153 sq. km.) - total area is 1,411 sq. km. and therefore both will fall in Category-A;
- iii) Periyar National Park (350 sq. km.) and Periyar Sanctuary (427 sq. km.) - total area is 777 sq. km. and therefore both will fall in Category-A;
- iv) Satpura National Park (585 sq. km.), Bori Sanctuary (485 sq. km.) and Pachmarhi Sanctuary (417 sq. km.) - total area is 1488 sq. km. and therefore all three will fall in Category-A;
- iv) Valmiki National Park (335 sq. km.) and Valmiki Sanctuary (545 sq. km.) - total area is 880 sq. km. and therefore both will fall in Category-A;
- vi) Tadoba National Park (116 sq. km.) and Andhari Wildlife Sanctuary (509 sq. km.) - total area is 625 sq. km. and therefore both will fall in Category-A; and
- vii) Sariska National Park (273 sq. km.) and Sariska Sanctuary (219 sq. km.) - total area is 492 sq. km. and therefore both will fall in Category-B;

13. The Safety Zone, in respect of protected areas falling in 'Category-A and Category-B, may comprise of all the areas including non-forest areas falling within a distance of two kilometers and one kilometer respectively from the boundaries of the protected area. Such distances, in respect of protected areas falling within Category-C and Category-D, may be kept at 500 meter and 100 meter respectively.

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

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

- i) presence of flagship species/endangered species such as Tiger, Lion, Elephant, Rhino, Snow Leopard, Red Panda, Hangul, Musk deer, Great Indian Bustard, Lion Tailed Macaque, floricans;
- ii) fragile eco-system such as Western Ghats, North Eastern States, areas having high altitude flora and fauna, rain forest, mangroves, marine eco-system; iii) World Heritage sites; and iv) Wetland eco-systems

16. The concerned State/UT Governments may after detailed examination of the status of habitation, existing industries and other activities and other relevant factors, and, if found desirable and in public interest forward the proposal(s) for shifting a protected area from a higher category to a lower category. They may also forward the proposal(s) for exclusion of the areas of cities falling within the Safety Zone. The MoEF thereafter will examine such proposals and place such proposals before the Standing Committee of the National Board for Wildlife for its consideration. The proposals

cleared by the Standing Committee of the NBWL will be placed before this Hon'ble Court for seeking its permission. It is only after obtaining the permission of this Hon'ble Court that a protected area may be shifted from a higher category to a lower category.

17. The Safety Zones (eco-sensitive zones) around National Parks and Wildlife Sanctuaries will be in addition to the following eco-sensitive zones notified by the MoEF (and by other notifications, if any):

- i) S.O. 20(E), (6/1/1989) - Prohibiting industries on MurudJanijira, District Raigadh, Maharashtra;*
- ii) S.O. 102(E), (1/2/1989) - Restricting location of industries, mining & other activities in Doon Valley (UP);*
- iii) S.O. 416(E), (20/6/1991) - Dahanu Taluka, District Thane (Maharashtra) to declare as Ecologically Fragile Area, amended 1999;*
- iv) S.O.319(E), (7/5/1992) - Restricting certain activities causing environmental degradation at Aravalli Range;*
- v) S.O. 481 (E), (5/7/1996) - No Development Zone at Numaligarh, East of Kaziranga;*
- vi) S.O. 884(E), (19/12/1996) - Dahanu Taluka Environment Protection Authority, 1996, amended 2001 ;*
- vii) S.O. 350(E), (13/5/1998) - Order constituting the Taj Trapezium Zone Pollution (Prevent and Control) Authority;*
- viii) S.O. 825(E), (17.9.1998) - Pachmarhi Region as an EcoSensitive Zone;*
- ix) S.O. 52(E), (17/1/2001) Mahabaleswar Panchgani Region as an Eco-Sensitive Zone;*
- x) S.O. 133 (E), (4/2/2003) - Matheran and surrounding region as an Eco-Sensitive Zone 1 . S.O. 83 (E), (16/01/2004) - Amendments to S.O. 133(E) dated 4/2/2003;*
- xi) S.O. 1545(E), (25/06/2009), Mount Abu as EcoSensitive Zone.*
- xii) S.O. 1260(E), (31/05/2012) - Girnar Reserve Forest as Eco-Sensitive Zone.*

18 . It is respectfully submitted that the above proposals are submitted in the back-drop of inordinate delay that has taken place in the identification and declaration of Safety Zones around National Parks/ Wildlife Sanctuaries and so as to ensure that the process of such declarations do not remain pending indefinitely.”

(quoted verbatim from paperbook)

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

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

(quoted verbatim from paperbook)

12. In connection with the I.A. No.1000 of 2003, several other applications have been filed, mainly by miners concerning the Jamua Ramgarh wildlife sanctuary. The order passed on 4th August 2006 by this Court [reported in (2010) 13 SCC 740] in relation to grant of temporary working permits was made subjecting them to compliance of certain pre conditions. These preconditions, inter-alia, were: -

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

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

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

(iv) The user agency who has broken up the area of the mine (in respect of which TWP is being sought) has or had the requisite environmental clearances and at no time prior to the grant of the TWP was any mining being carried on by the user agency in relation to the mine in question, in violation of the provisions of the Forest (Conservation) Act (for short “the FC Act”). In cases involving violation of the FC Act, a formal decision on merit should be taken under the FC Act after considering the gravity of the violation. However, the grant of a TWP may be considered where past violations have been regularised by the Ministry of Environment and Forests (for short “MoEF”) by the grant of an approval under the FC Act with retrospective effect; (v) The conditions attached to the approval under the FC Act for the grant of the mining lease (or the renewal of the mining lease) have been fulfilled, particularly those in respect of (but not limited to) compensatory afforestation, reclamation plan and overburden dumping on the specified site;

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

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

(viii) In no circumstances can the duration of a TWP extend beyond the period of one year. Where an application for the grant of permission under the FC Act is not disposed of during the currency of TWP, the applicant, on the strength of the same TWP, may continue to operate for a period not exceeding three months unless specific orders are obtained from this Court; and

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

13. We shall now briefly refer to the individual I.A.s filed in connection with I.A No. 1000 of 2003:-

(i) Applicants in I.A. Nos. 982-984 of 2003, 1026-1028 of 2004, 1123-1124 of 2004, 1197-1199 of 2004, 12101211 of 2004, 1250-1251 of 2004 and 1512 of 2006 are firms

who claim to be mining lease holders or their representative bodies seeking impleadment in I.A. No. 1000 of 2003 as also other reliefs. All these applicants (barring the applicant in I.A. No.1512, i.e. M/s. Andhi Marbles) seek impleadment in the present proceeding. All of them also seek certain direction that might allow them to carry on mining activities. Among them, M/s. Jaipur Mineral Development Syndical Private Limited (I.A. Nos.1123-1124 of 2004) has taken a plea that Section 66(4) of the Wild Life (Protection) Act, 1972 was not applicable to it and in that regard a pending Writ Petition instituted by them in the High Court of Rajasthan (Writ Petition No. 570 of 2002) has been cited. In the said application permission has been sought for restarting the mining activities in non-forest area. Directions have also been asked to prevent initiation of penal proceedings against the applicant under the Wild Life (Protection) Act, 1972.

(ii) The applicant in I.A. Nos.982-984 of 2003 is one Smt. Magan Devi Meena. Her case is that she was allotted mining area which is outside the reserve forest/sanctuary in Thali village and falls outside Pillar no. 407 (the demarcation point of forest/sanctuary area). She essentially questions legality of the letter dated 30th May 2003 issued by the Mining Engineer Jaipur, office of Mining Engineer & Geology Department, Jaipur, Rajasthan stopping mining operation in the disputed area of Jamua Ramgarh Wildlife Sanctuary and pending completion of demarcation.

(iii) In I.A. Nos. 1210-1211 of 2004, the applicant is Madhu Agarwal. Her prayer is for fresh demarcation of the Pillar no.1 to Pillar no.428 around the said sanctuary and she has also sought directions on the State Government to release the excess land from the reserve forest area after fresh demarcation. The applicant in this case has been involved in mining of dolomite in Jamua Ramgarh Tehsil in the area known as Rayanwala of Digota Forest Block 61.

(iv) I.A. Nos. 1250-1251 of 2004 has been taken out by Bhushan Sharma, successor in interest of one Sharda Devi, who was the original allottee of mining around the Jamua Ramgarh Wildlife Sanctuary. It is the case of the applicant that his operations have been stopped by letter dated 30th May 2003 issued by the Mining Engineer Jaipur, office of Mining Engineer & Geology Department, Jaipur, Rajasthan in the disputed area of Jamua Ramgarh Sanctuary. Survey had revealed that mining activities were being carried on inside the wildlife sanctuary. The report of CEC dated 27th May 2003 found number of mines operating around or in two villages, Sankotda and Thali, which were within the sanctuary and the CEC also found that the earlier finding of a Committee could not be taken as conclusive proof that the area involved was a non-forest land and fell outside the sanctuary. The State of Rajasthan, however, has taken a stand in their affidavit affirmed on 15th April 2004 that delineation and demarcation of the boundaries have already been done.

(v) In I.A. No. 1512 of 2006, M/s. Andhi Marbles Pvt. Ltd are the applicants. They have prayed for permission to resume mining operations excluding the land to the extent of 100 metres from the forest/sanctuary.

(vi) In I.A. No. 3880 of 2015, the applicant is the State of Rajasthan. Prayer has been made in this application for appropriate direction for issuing the ESZ of wildlife sanctuaries and national parks and to keep in abeyance a letter issued by CEC on 21st

October 2014 by which one kilometre distance has been required to be maintained in respect of mining activities from the boundaries of the National Parks and Wildlife Sanctuaries. Certain other clarifications have also been sought as regards the order of this Court passed on 4th August 2006 and we shall deal with the said issues later in this judgment. The State of Rajasthan has filed several other affidavits and the common theme of these affidavits is for lifting the restrictions and permit mining activities in and around the protected forests to energise the economy of the State. The State seeks permission for subsisting mining activities to operate outside the protected forests and ESZ. It is also their stand that most of the mining areas in Jamua Ramgarh Sanctuary were sanctioned prior to coming into operation of Forest (Conservation) Act, 1980 and declaration of the said sanctuary on 31st May 1982.

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

(i) In I.A. No.1412 of 2005, the applicants are Maharashtra Timber Laghu Udyog Mahasangha alongwith the Poona Timber Merchant (owners of saw mills in the State of Maharashtra). They want clarification of the order of this Court passed in I.A. No.887 of 2003 for consideration of the cases of 64 saw mill owners for grant for grant of license as per notification dated 16th July 1981 issued by the State of Maharashtra amending the Bombay Forest Rules, 1942. This Court had directed in the aforesaid order (of 14th July 2003) that the cases of the applicants may be examined by the State Government within a period of two months and if they are found eligible, their applications could be sent to the CEC who might submit a report to this Court. In the present application the applicants want grant of license considering condition no.3 of the Government's Notification dated 16th July 1981.

(ii) Applicants in I.A. No. 117831 of 2019 are Maharashtra Timber Laghu Udyog Mahasangha alongwith the Poona Timber Merchant (64 saw mills owners) in connection with grant of licenses for operating saw mills. In the present order, we are confining our examination of proceedings arising out of I.A. No.1000 of 2003. As such, the aforesaid applications ought to be listed independently before the appropriate Bench.

15. The applicant in I.A. No. 96949 of 2019 is the State of Maharashtra. On 11th December 2018, this Court had passed an order in respect of 21 National Parks and Wildlife Sanctuaries, which included Thane Creek Flamingo Sanctuary. This order, inter-alia, records and directs: -

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

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

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

List the matters at the end of February, 2019.

In the meanwhile, interim order to continue.”

(quoted verbatim from paperbook)

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

“A) This Hon’ble Court be pleased to modify its order dated 11.12.2018 directing that an area of 10 kilometers around Thane Creek Flamingo Sanctuary situated in the State of Maharashtra be declared as Eco Sensitive Zone by the Ministry of Environment and Forest; and

B) That this Hon’ble Court be pleased to direct that the area of 0-3.5 kilometers as proposed in the proposal submitted by the State Government on 22.05.2019 to the Ministry of Environment and Forest be declared as Eco Sensitive Zone in respect of the Thane Creek Flamingo Sanctuary; and

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

(quoted verbatim from paperbook)

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

“(a) Modify the order dated 11.12.2018 passed by this Hon’ble Court in I.A. No. 1000 in W.P. (C) No. 202 of 1995 inasmuch as it relates to the Thane Creek Flamingo Sanctuary and direct that the Eco Sensitive Zone around the said Sanctuary shall be in terms of the proposal dated 10.03.2021 submitted by the State Government and the Draft Notification dated 08.04.2021 published by the Ministry of Environment & Forests, Government of India; and / or

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

(quoted verbatim from paperbook)

17. The order on 11th December 2018 was passed by this Court as the proposals in respect of 21 National Parks and Wildlife Sanctuaries had not yet been received by the Ministry of Environment, Forest and Climate Change. Recommendations of CEC as regards maintaining ESZ were made in relation to wildlife sanctuaries and national parks on 20th September 2012. As per the order passed on 11th December 2018, the proposal of the State Government was to be made before the MoEF&CC and it appears that a draft notification dated 8th April 2021 concerning Thane Creek Flamingo Sanctuary has already been published by the MoEF&CC. Let the MoEF&CC take final decision in relation to such draft notification as per the provisions of law. Such decision, if already taken, may be placed before this Court one week after reopening of the Court on

conclusion of the summer vacation. If such decision is not taken, then the decision may be taken as per law within a period of six weeks and be placed before us within the same timeframe. This Court shall consider passing appropriate direction thereafter, upon going through such decision.

18. In I.A. No.1992 of 2007, the M.P. State Mining Corporation Limited has applied for the following reliefs:-

“i. grant permission to file present Application for Clarification;

ii. clarify that the directions as contained in interim Order dated 4.8.2006 of this Hon'ble Court in I.A. Nos.1413, 1414, 1454 in I.A. Nos. 1413, 1426, 1428, 1440, 1439, 1441 , 1444-1445, 1459 and 1460 in Writ Petition (C) No.202 of 1995 (T.N. Godavarman Thirumulpad Vs. UOI & Ors. Pertains only to mining activity in Temporary Working Permission (TWP) cases requiring approval under Forest Conservation Act, 1980 and that the said directions do not apply to the regular quarry lease on a revenue land particularly when such quarry lease is granted to the State owned Mining Corporation by the State Government itself.”

(quoted verbatim from paperbook)

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

20. There are two affidavits of M/s. Andhi Marbles Pvt. Ltd affirmed on 19th February 2004 and 29th July 2004 pertaining to Jamua Ramgarh Sanctuary. Complaint against said M/s. Andhi Marbles is in relation to mining leases granted and operated by them. In the CEC report which has been transformed into I.A. No.1000 of 2003, it has been recorded that they were granted mining leases in violation of the Forest (Conservation) Act, 1980 as well as the Wild Life (Protection) Act, 1972. They had continued working on the temporary permits after the order of this Court dated 12th December 1996. In the Order of this Court reported in [(1997) 2 SCC 267] it has been inter-alia observed:-

“4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213], Rural Litigation and Entitlement Kendra v. State of U.P. [1989 Supp (1) SCC 504] and recently in the order dated

29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority [WP (C) No 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi [(1985) 3 SCC 643] 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.”

21. The CEC's observation in I.A. No.1000 of 2003 is that no mining activity was permissible inside the sanctuary as per this Court's Order dated 14th February 2000 and the temporary working permits were granted in violation of the applicable statutory provisions and guidelines as the area involved fell inside the sanctuary. M/s. Andhi Marbles Pvt. Ltd. have taken a defence that their mining activities were in terms of the temporary working permit issued and in compliance with the specified conditions laid down by the MoEF&CC. A point has also been taken that the limits of the sanctuary was not notified and no notification under Section 26A of the Wild Life (Protection) Act, 1972 was issued to declare the said area as sanctuary. They have also taken a point that the mining lease covering forest has been deleted from the lease document and they seek to operate two quarries, on non-forest land beyond the safety zone of 25 metres, which has been specified as part of the Mineral Policy, 1994 of the State of Rajasthan. They also, in effect, seek resumption of mining activities in the area beyond 25 metres from the forest boundary.

22. As regards the Guidelines of 9th February 2011, which has been referred to in the affidavit of MoEF&CC affirmed/verified by Dr. Subrata Bose, Scientist 'F' Ministry of Environment, Forest and Climate Change, Government of India, stand of M/s. Andhi Marbles Pvt. Ltd. is that no consensus has been reached as regards notifying the areas within 10 kilometres of the boundaries of National Parks and Wildlife Sanctuaries as ESZ.

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

24. On the pleas of M/s. Andhi Marbles Pvt. Ltd. and another leaseholder, Munni Devi, in subsequent affidavit verified on 29th April 2004 the MoEF&CC had justified granting of working permit to the said firms.

25. The next affidavit of MoEF&CC was verified on 14th September 2005 and this affidavit deals with fixing of buffer zones for activities outside sanctuaries/forests. In this affidavit, it has been admitted that with respect to the details given in the earlier affidavit dated 29th April 2004 the decision taken by the Ministry at that point of time while granting

temporary working permission on already broken up area in Jamua Ramgarh could not incorporate all factual details and thus might not have been strictly compatible with the principles of the environmental conservation. It has further been stated in this affidavit that the Ministry directed the State Government to ensure phased closure of mines.

26. Altogether seven affidavits dated 15th April 2004, 17th September 2004, 9th December 2004, 13th October 2006, 10th May 2007, 12th August 2008 and 1st November 2012 filed by the State of Rajasthan are on record before us. The stand of the State of Rajasthan as reflected in these affidavits are primarily in relation to the creation of ESZ. It is their case that the decision of 25 metres safety zone in relation to Jamua Ramgarh sanctuary has been conceived by the State and the State Government has also taken a decision that in the vicinity of sanctuaries, national parks and reserve forests, mining activities should not be undertaken within 25 metres. As regards other forest areas, their position is that mining ought to be undertaken in the immediate vicinity of the forest areas. They have expressed difficulties over taking over or acquisition of land around any sanctuary or other protected forest and their ESZ without proper proceeding. As regards mining operations within sanctuary area of Jamua Ramgarh, it has been stated that all mining activities within the sanctuary have been stopped. In their affidavit dated 12th August 2008, it has been disclosed by the State that mining activities in non-forest areas within 100 metres of the Jamua Ramgarh sanctuary has been closed. Their plea is for allowing mining activity in non-forest areas within protected forests and beyond the ESZ of 100 metres for economic activities, in the interest of local population as also the State's economy.

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

28. The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large. This Court has highlighted the Public Trust Doctrine in the case of **M.C. Mehta v. Kamal Nath and Others** [(1997) 1 SCC 388] and opined that the Public Trust Doctrine is part of the law of land. In Paragraph 25 of the said judgment, as reported, this doctrine has been explained with reference to writings of Joseph L. Sax, Professor of Law, University of Michigan, the proponent of Modern Public Trust Doctrine:-

“25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine

enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

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

29. Reliance has been placed on the said doctrine in earlier orders of this Court in this very writ petition, passed on 30th October 2002, 26th September 2005 and 13th February 2012. So far as the views of the State of Rajasthan is concerned, as reflected in their affidavits and written notes, their consideration for justifying mining in Jamua Ramgarh and its periphery primarily stems from the prospect of immediate economic gains and their role as a trustee of natural resources of the land has been largely overlooked.

30. The Ministry of Environment, Forest and Climate Change (MoEF&CC) is against having a uniform ESZ for all national parks and reserved forests. Their view is that the ESZ area ought to be site-specific. Our attention has been drawn to the Comprehensive Guidelines formulated, to which we have referred earlier in this Order. In the case of **Goa Foundation v. Union of India and Others** [(2014) 6 SCC 590], the order passed in this proceeding [IA 1000 of 2003] on 4th August 2006 has also been referred to and relied upon. Affidavits have been filed by the State of Goa affirmed on 19th September 2012 and 31st October 2012. Main concern of the State of Goa is over creation of ESZ of 10 kilometres from the boundaries of protected forests as buffer zone and it is also contended on their behalf that such buffer zones should be site-specific. It is highlighted that in the State of Goa vegetative aerial cover of Goa is more than 59.99% (as per the Indian State Forest Report of 2011) and protected forest areas constitute over 20% of the total geographic area. On this basis, they seek appropriate directions. It has also been brought to our notice that notifications have been issued in respect of several sanctuaries stipulating the ESZ boundaries. Written submissions have also been filed by Goa Foundation [the petitioners in W.P. (C) 460/2004] and W.P. (C) 435/2012 in which it has been urged that minimum extent of ESZ ought to be as per the CEC recommendations incorporating therein the modifications/suggestions by the learned Amicus Curiae. So far as State of Goa is concerned, the scope of mining activities is being dealt with in the case of **Goa Foundation** (supra). In the present I.A., we would not address issues specific to the said case. But the directives we shall make, as we have already indicated, which are not covered by the issues involved in the case of **Goa Foundation** (supra) shall apply to the protected forest and adjacent areas.

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

“Lands falling within 10 kms of the boundaries of National Parks and Sanctuaries should be notified as Eco-fragile Zones under Section 3(v) of the Environment (Protection) Act and Rule 5, Sub-rule 5(viii) and (x) of the Environment (Protection) Rules.”

(quoted verbatim from paperback)

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

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

- (i) Felling of trees with permission from appropriate authority.
- (ii) Establishment of hotels and resort as per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals. (iii) Drastic change in agricultural systems.
- (iv) Commercial use of natural water resources including ground water harvesting as per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.
- (v) Erection of electrical cables with stress on promoting underground cabling.
- (vi) Fencing of premises of hotels and lodges.
- (vii) Use of polythene bags by shopkeepers.
- (viii) Widening of roads with proper environmental impact assessment.
- (ix) Movement of vehicular traffic at night for commercial purposes.
- (x) Introduction of exotic species.
- (xi) Protection of hill slopes and river banks.
- (xii) Regulation of any form of air and vehicular pollution.
- (xiii) Putting up of sign boards and hoardings.

Within permissible activities fall:-

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

33. In the affidavit of the Standing Committee of National Board of Wildlife, the views of the non-official members of the Standing Committee have been placed on record, which essentially contemplates continuation of the 10 kilometres buffer zone. Order passed by this Court on 4th December 2006 in the case of **Goa Foundation** (W.P. (C)

460/2004) proposes following such a course if there is delay in site-specific preparation of ESZ for individual States/Union Territories. On the aspect of having site-specific ESZ under the Environment (Protection) Act, 1986, the view of the National Board of Wildlife, appears to be unanimous. It is their opinion that some protected areas, because of their smaller size, may require larger safety zone around it.

34. We shall deal first with the question of impleadment of firms and individuals who had some kind of permission for carrying on mining activities in Jamua Ramgarh sanctuary. The Interlocutory Applications which we are dealing with arise out of a public interest litigation and there is no doubt that orders passed in litigation of this nature could affect a large body of persons who may not be included in the array of parties at the time of institution of the proceeding. To an extent, litigations of this nature assume an *In-rem* character. Ideally, for such a public interest litigation, the procedure contemplated in Rule VIII of Order 1 of the Code of Civil Procedure, 1908 could be followed to the extent of issue of public notice or general intimation to public in such mode as the Court may consider fit and proper, having regard to the nature and scope of the proceeding. But in cases where such a course has not been taken, persons affected or likely to be affected by any order passed in the litigation would be entitled to join or participate in the proceeding. Thus, the impleadment prayers in I.A. No. 984 of 2003, I.A. No. 1026 of 2004, I.A. No. 1123 of 2004, I.A. No. 1197 of 2004 and I.A. No. 1251 of 2004 are allowed.

35. The approach of the Court in dealing with complaints of environmental degradation has been laid down by this very Bench in this Writ Petition itself in an order passed on 9th May 2022 in connection with another set of applications. In this Order, it has been observed and held:-

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

16. In *Vellore Citizens' Welfare Forum v. Union of India*, this Court held that the 'Precautionary Principle' is an essential feature of the principle of 'Sustainable Development'. It went on to explain the precautionary principle in the following terms: -

- (i) *Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.*
- (ii) *Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*
- (iii) *The “onus of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign.*

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

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

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

36. We shall now examine the prayers of the applicants for continuing their mining activities within sanctuary. This relief has been asked for by Smt. Magan Devi Meena (IA Nos. 982-984 of 2003), M/s. Agarwal Marbles Centre Pvt. Ltd. & Ors. (IA Nos. 1026-1028 of 2004), M/s. Jaipur Mineral Development Syndicate Private Limited (IA Nos. 1123-1124 of 2004), Federation of Mining Associations of Rajasthan (IA Nos. 1197-1199 of 2004), Bhushan Sharma (IA Nos. 1250-1251 of 2004) and M/s. Andhi Marbles Pvt Ltd. (IA No. 1512 of 2006). We must point out here that in the affidavit of the State of Rajasthan, it has been stated that they had formulated a policy of maintaining a distance of 25 metre from the vicinity of important forest areas like game sanctuary, reserved forest, mining activities to be prohibited. In other forest areas, mining could be undertaken in the immediate vicinity of the forest area as per the policy. This has been stated in the affidavit of the State of Rajasthan filed on 9th December 2004 and such a stand appears to have had been taken from the Mineral Policy of 1994. It, however, appears that a new Mineral Policy had been adopted by the State of Rajasthan in 2015.

37. There are also pleas for permitting some of the miners to continue mining activities within 25 metre zone conceived by the State of Rajasthan as Buffer Zone. In three applications, I.A. Nos.1123-1124 of 2004, I.A.Nos.1197-1199 of 2004 and I.A.Nos.1210-1211 of 2004, M/s. Jaipur Mineral Development Syndicate Pvt. Ltd., Federation of Mining Association of Rajasthan and Smt. Madhu Agarwal have taken a point that there was improper declaration of Jamua Ramgarh as a sanctuary. The notification made under Section 18 of the Wild Life (Protection) Act, 1972 bearing No. F.11(19) Raj.-8/81 Jaipur dated 31st May 1982 has been annexed to the I.A. Nos. 982-984 of 2003 the applicant therein, being Magan Devi Meena. Initially, there was declaration of the said sanctuary as reserved forest under the Rajasthan Forest Act, 1953. Thereafter, the notification of 31st May 1982 came into operation under the Wild Life (Protection) Act, 1972.

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

2nd October 1991. That amendment came by way of Act 44 of 1991. After amendment, Section 18 of the Act stipulates:-

“18 . Declaration of sanctuary:—

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

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

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

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

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

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

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

39. The declaration was made by the State of Rajasthan in 1982 and we do not find any flaw in such declaration. The amended provisions, thus, could not apply to the Jamua Ramgarh Wildlife Sanctuary. The plea taken that it did not have the status of a sanctuary because no declaration was there under Section 26A of the Wild Life (Protection) Act, 1972 is without any basis. We shall proceed in this order on the basis that Jamua Ramgarh is a subsisting sanctuary.

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

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

Graveyard". A photographic report is appended hereto at ANNEXURE-A graphically showing the ground situation.

5. The forest of Jamua Ramgarh forms the critical catchment area of the lake which is the main source of water supply to the city of Jaipur. Notwithstanding this 69 mining leases were sanctioned from time to time in Jamua Ramgarh after enactment of the Forest (Conservation) Act 1980 i.e. 25.10.1980. Each and every mine was sanctioned in violation of the provisions of the F.C. Act as well as the Wild Life (Protection) Act. No perceptible attempt was made to regulate the mines as per the provisions of the F.C. Act and the W.P. Act. No valid and satisfactory explanation was given by the State Government for allowing the mining leases to operate for years together except that it was a common practice to allow mining leases in the forest area / sanctuary without obtaining specific approvals under the F.C. Act or the W.P. Act. The details of these mines are given in ANNEXURE-B."

(quoted verbatim from paperbook)

41. In their affidavits, the State of Rajasthan had referred to the Mining Policy of 1994 which stipulated 25 metres to be safety zone around the periphery of Jamua Ramgarh Wildlife Sanctuary but subsequent thereto the Mining Policy of 2015 for the State of Rajasthan has come and they do not seem to have any specified safety zone. Moreover, in view of the order of this Court passed on 4th August 2006, 1 kilometre safety zone has been directed to be maintained as regards Jamua Ramgarh Wildlife Sanctuary. Beyond Jamua Ramgarh Wildlife Sanctuary, CEC itself has given its view on eco sensitive zone in their report dated 20th September 2012. The recommendations have been quoted in the earlier part of this order. In the affidavit of Standing Committee of National Board of Wildlife filed on 26th November 2012, the views of said Committee was expressed and the Committee was of unanimous opinion that each State ought to delineate the outer limits of ESZ on a site-specific, case by case basis, keeping in view the ecological imperatives and the grounds realities of the protected area. It was also the view of the said Committee that expert opinion and scientific inputs ought to be obtained from individuals and institutions in that regard. In substance the view of the Committee is that there should not be uniform ESZ. We have also referred to the Guidelines dated 9th February 2011 which gives a detailed procedure for evolving ESZ and identification of activities that could be carried on in such zones. The order of this Court in the case of **Goa Foundation** [W.P. (C) No.460 of 2004] passed on 4th December 2006 also contemplated issue of direction for maintaining a 10 kilometre wide safety zone from the boundaries in respect of sanctuaries and national parks as there was lack of response from the States and Union territories in relation to queries on various aspects in respect of wildlife conservation. The proposal for having an ESZ of 10 kms from the boundaries of the national parks and wildlife sanctuaries was originally mooted on 21st January 2002 in the meeting of the Indian Board for Wildlife, as it appears from the order passed by this Court in the case of **Goa Foundation** [W.P. (C) No.460 of 2004] on 30th January 2006. We have to collate the views of these experts' bodies including the CEC, who have been assisting this Court through the different stages of this litigation.

42. In our opinion, the Guidelines framed on 9th February 2011 appears to be reasonable and we accept the view of the Standing Committee that uniform Guidelines may not be possible in respect of each sanctuary or national parks for maintaining ESZ. We are of the opinion, however, that a minimum width of 1 kilometre ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations

of the CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in special circumstances. We have considered CEC's recommendation that the ESZ should be relatable to the area covered by a protected forest but the Standing Committee's view that the area of a protected forest may not always be a reasonable criteria also merits consideration. It was argued before us that the 1 km wide "no-development-zone" may not be feasible in all cases and specific instances were given for Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity. These sanctuaries shall form special cases.

43. Turning specifically to Jamua Ramgarh Sanctuary, the first report of the CEC proposed 100 metres as ESZ. In the second report, however, one kilometre width has been recommended for all protected forests falling under category 'B'. Having regard to its area, the said sanctuary comes in that category. In the order of this Court passed on 4th August 2006, the same margin, i.e. one kilometre as buffer zone has been prescribed. In the given facts concerning the Jamua Ramgarh Sanctuary, in our opinion the margin of 25 metres as contemplated in the 1994 Mineral Policy of the State of Rajasthan is grossly inadequate. We, however, treat Jamua Ramgarh sanctuary as a special case for fixing the ESZ as in the past, the buffer zone varied from 25 metres to 100 metres. In our opinion, ESZ of 500 metres would be a reasonable buffer zone, within which subsisting activities which does not come within the prohibited list as per the Guidelines of 9th February 2011 could be carried on. But for commencing of any new activity which would be otherwise permissible, the ESZ norm of one kilometre shall be maintained for Jamua Ramgarh sanctuary.

44. We accordingly direct:-

(a) Each protected forest, that is national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9th February 2011 shall be strictly adhered to. For Jamua Ramgarh wildlife sanctuary, it shall be 500 metres so far as subsisting activities are concerned.

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

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

shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.

- (d) Mining within the national parks and wildlife sanctuaries shall not be permitted.
- (e) In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9th February 2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.
- (f) The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach the CEC and MoEF&CC and both these bodies shall give their respective opinions/recommendations before this Court. On that basis, this Court shall pass appropriate order.
- (g) In the event the CEC, MoEF&CC, the Standing Committee of National Board of Wildlife or any other body of persons or individual having special interest in environmental issues consider it necessary for maintaining a wider or larger ESZ in respect of any national park or wildlife sanctuary, such body or individual shall approach the CEC. In such a situation the CEC shall be at liberty to examine the need of a wider ESZ in respect of any national park or wildlife sanctuary in consultation with all the stakeholders including the State or Union Territory concerned, MoEF&CC as also the Standing Committee of National Board of Wildlife and then approach this Court with its recommendations.
- (h) In respect of sanctuaries or national parks for which the proposal of a State or Union Territory has not been given, the 10 kilometres buffer zone as ESZ, as indicated in the order passed by this Court on 4th December 2006 in the case of **Goa Foundation** (supra) and also contained in the Guidelines of 9th February 2011 shall be implemented. Within that area, the entire set of restrictions concerning an ESZ shall operate till a final decision in that regard is arrived at.
- (i) I.A. No. 1412 of 2005 and I.A.No.117831 of 2019 do not relate to the issues involved in I.A. No.1000 of 2003. These applications may be placed before the appropriate Bench to be heard independently.
- (j) For the same reason, I.A. No.1992 of 2007 shall also be dealt with independently by the appropriate Bench and no order is being passed concerning this application at this stage.
- (k) The application of the State of Rajasthan registered as I.A. No.3880 of 2015 relates to clarification of an order passed in the case of **Goa Foundation** (W.P.(C) No.460 of 2004) . Let this application be placed before the Bench taking up the case of **Goa Foundation**.

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

(m) Prayers for impleadment of the applicants in I.A. Nos. 984 of 2003, 1026 of 2004, 1123 of 2004, 1197 of 2004 and 1251 of 2004 are allowed. Necessary amendments may be carried out in these regards.

(n) For the reasons already given, however, prayers of the applicants in I.A. Nos.982 of 2003, 1027 of 2004, 1124 of 2004 , 1198 of 2004, 1210 of 2004, 1250 of 2004 and 1512 of 2006 are rejected.

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

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

(q) We have already observed that there are certain overlapping issues involved in this writ petition and the cases of **Goa Foundation** (Writ Petition (C) No.460 of 2004) and (Writ Petition (C) No.435 of 2012). We request the Hon'ble the Chief Justice of India to consider having the present writ petition i.e. **In Re: T.N. Godavarman Thirumulpad v. Union of India & Ors.**, W.P.(C) No.460 of 2004 (**Goa Foundation v. Union of India**) as also W.P. (C) No.435 of 2012 (**Goa Foundation v. Union of India & Ors.**) be heard together before the same Bench. The registry may place this order before the Hon'ble the Chief Justice of India.

45. This order disposes of I.A. No.1000 of 2003 in the above terms.

46. Pending application(s), if any, shall stand disposed of.