Item No. 02 & 03

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

Original Application No. 34/2021 (CZ)
With
Caveat No. 02/2021(CZ)
AND
Original Application No. 35/2021 (CZ)
With
I.A. No. 21/2021 & Caveat No. 03/2021 (CZ)

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

Versus

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

AND

Ujjwal Sharma Applicant (s)

Versus

State of Madhya Pradesh & Ors. Respondent(s)

Date of hearing: 30.06.2021

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

For Applicant(s): Mr. PrabhatYadav, Adv.
Mr. Ujjwal Sharma, Adv

For Respondent(s): Mr. Sachin K. Verma,Adv.
Mr. Varun Thakur, Adv.
Ms. Vanita Bhargava,Adv.
Ms. Parul Bhadoria, Adv.
Ms. Shweta Kabra,Adv.

ORDER

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.

2. The issue raised in this application is grant of mining lease over 364 hac. area in Buxawaha protected forest area, Sogoriya Village, Buxawaha Tahsil, Chhatrarpur 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 hac. 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 adverse impact particularly to avifauna.
    e. Ecosystem of this area will be disturbed.
    f. Ecological balance will be lost.

3. 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 plan 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.

4. 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.

5. 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."

6. 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.

7. 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.

8. 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 landdegradation 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.

9. 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.

10. 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 EIVRONMENT

> *"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."

11. 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.

12. 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-

i. *that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;*

ii. *that any forest land or any portion thereof may be used for any non-forest purpose;*

iii. *that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization 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 reafforestation.*

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 reafforestation;*

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."

13. 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 Amixus 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. Al 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."

14. 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 sub-section (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 prefer-ring such claim within the period fixed under section*

15. 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.

16. 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.

17. 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, bums 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.

18. 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, expect as here in before provided be called for question in any court.

19. 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 neighbourhood 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.

20. The Learned Counsel appearing for the applicant in item no. 3 had submitted that with regard to the wild life species, its Flora and Fauna survey of the area was conducted by Madhya Pradesh Pollution Control Board, team headed by Professor M.L. Naik, accredited FAE for Ecology and Bio-diversity by QCI-NABET was published by MPPCB which has been reported that species listed in scheduled-I of Wild Life (Protection) Act, 1972, such as sloth Bear, Leopard, Monitor Lizard and Peacock lives are in danger. Paragraph 1.2.11 (e) of the same as narrated in the report is reproduced below :

> *"However, the area has fairly good variety of fauna including seven species listed in Schedule I of Wild Life (Protection) Act, 1972. These are Indian Gazette, Chowsingha, sloth Bear, Leopard, Monitor Lizard, Indian rumped vulture and Peacock. A conservation plan for these species is included with this document"*

21. It is further argued that for the purpose of this project EMIL, will also be diverting a seasonal nallah, which is located on the mineralized area. This water will be sourced towards a water reservoir on the upstream, by the way of construction of a dam. It is alleged that the water requirement for the mine and ore processing plant is in the tune of 16,050 m^3 per day, which would resultantly be 5.9 million m^3 per year.

22. Learned Counsel appearing for the applicant has further submitted that the Forest (Conversation) 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.

23. Learned Counsel appearing for the respondent no. 4 has submitted that he has filed the affidavit, just yesterday evening but that is not available on record. Learned Counsel appearing for the applicant has submitted that the copy of the affidavit may kindly be provided to him, so that he may file the reply thereof.

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. The Learned Counsel appearing for the Respondent no. 4 has also submitted that before passing any order, the respondent may be provided the copy of the application and relevant document so that they may file their reply / counter affidavit.

26. Accordingly, we direct that :

i. The applicant is directed to provide the copy of the application and relevant document to the respondents. The respondents may file their reply/ affidavit within 4 weeks by email at ngtczbbho-mp@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

ii. The Respondents and Principal Chief Conservator of Forest, M.P. are directed to strictly follow the guidelines and provisions contained in Section (2) of the Forest (Conservation) Act, 1980 and also follow the guidelines issued in *T.N. Godavarman Thirumulpad Vs. Union of India, (1997) 2 SCC* 267, as quoted above and the provisions contained in the Indian Forest Act, 1927. Principal Chief Conservator of Forest, Madhya Pradesh shall ensure that there should not be any cutting of trees without Forest Clearance.

List it on **27th August, 2021**.

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

June 30th2021
O.A. 34-2021 & 35-2021(CZ)
PN