In Re : T.N. Godavarman Thirumulpad vs Union Of India on 6 March, 2024

Author: B.R. Gavai

Bench: Prashant Kumar Mishra, B.R. Gavai

2024 INSC 178

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. NO.20650 OF 2023
IN
WRIT PETITION (CIVIL) NO.202 OF 1995

IN RE:
T.N. GODAVARMAN THIRUMULPAD …PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. …RESPONDENT(S)

IN RE:
GAURAV KUMAR BANSAL …. APPLICANT(S)

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ABBREVIATIONS

CBD	:	Convention on Biological Diversity, 1992
CBI	:	Central Bureau of Investigation
CEC	:	Central Empowered Committee
CZA	:	Central Zoo Authority
DFO	:	Divisional Forest Officer
ERC	:	Elephant Rehabilitation/Rescue Centres
ESZ	:	Eco Sensitive Zone
FAC	:	Forest Advisory Committee
FC	:	Forest Clearance
FC Act	:	Forest (Conservation) Act,1980
FSI	:	Forest Survey of India
HoFF	:	Head of Forest Forces
IFS	:	Indian Forest Service
IFSR	:	India State of Forest Report
MDF	:	Moderate Dense Forest
MoEF&CC	:	Ministry of Environment, Forest and Climate Change
NPV	:	Net Present Value
NTCA	:	National Tiger Conservation Authority
OF	:	Open Forest
PCCF	:	Principal Chief Conservator of Forests
SC, NBWL	:	Standing Committee of National Board for Wild Life
SOP	:	Standard Operating Procedure
sq.km.	:	square kilometer
TCP	:	Tiger Conservation Plan (“TCP
VDF	:	Very Dense Forest
WII	:	Wildlife Institute of India
WLP Act	:	Wild Life (Protection) Act, 1972

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JUDGMENT

B.R. GAVAI, J.

“The tiger perishes without the forest and the forest perishes without its tigers. Therefore, the tiger should stand guard over the forest and the forest should protect all its tigers.” This is how the

importance of the tigers in the ecosystem has been succinctly described in 'Mahabharta'. The existence of the forest is necessary for the protection of tigers. In turn, if the tiger is protected, the ecosystem which revolves around him is also protected. The tiger represents the apex of the animal pyramid and the protection of their habitat must be a priority. "A healthy tiger population is an indicator of sustainable development in the 13 tiger range countries"1.

In spite of such an importance given to the tiger and many statutory provisions enacted for the conservation and protection of the tiger, the present case depicts a sorry state of affairs as to how Midori Paxton human greed has led to devastating one of the most celebrated abodes of tigers i.e. the Corbett Tiger Reserve.

When we consider this issue, it will also be apposite to refer to the restoration experiment at the Yellowstone National Park of the United States of America.

The impact of the absence of carnivores in a forest and the regenerative effect on their re-introduction was witnessed in the recent past in the famous Yellowstone National Park.

Wolves were hunted down by the mankind and the last recorded wolf in the park was shot down by a park ranger in the year 1926. Resultantly, owing to lack of apex predators in the park, the population of deer and other herbivores rose significantly. Efforts made by humans to control the herbivore population proved unsuccessful and resultantly these animals grazed away the vegetation which had the cascading effect of soil erosion and depletion of forest. As an ambitious restoration experiment, the scientists re-introduced a pack of wolves in the Yellowstone National Park in the year 1995.

Once the wolves arrived, even though few in number, the same had remarkable effects. The obvious outcome of such reintroduction was the reduction in the population of deer; but even more significantly, the wolves changed the behaviour of the deer which started avoiding certain parts of the park, particularly the valleys and gorges. This resulted in regeneration of the flora of the national park and an increase in the height of trees which quintupled in mere six years. The valley sides quickly became forests of aspen and willow and cottonwood. Consequently, the birds started migrating to the Yellowstone National Park, sparking an increase in migratory and songbirds. The population of beavers increased and like the wolves, they too are ecosystem engineers who built natural dams in the rivers, creating habitat for otters, muskrats, ducks, fishes, reptiles and amphibians.

The wolves hunted the coyotes as well, which resulted in the rise of rabbits and mice, enticing more hawks, weasels and foxes. The ravens and eagles came down to feed on the carrion left by the wolves. The regeneration of shrubs also aided in the growth of bears, who mostly fed on berries and the carrion. The bears also reinforced the impact of the wolves by killing deer. Most interestingly, the experiment of reintroduction of the wolves helped in stabilising the water banks and fixing the course of rivers. There was reduction in soil erosion due to recovery of the valley and the vegetation. So, a small number of wolves left an indelible mark in the transformation of the first national park of the world, the Yellowstone National Park and its physical geography within a short period of around 20 years. This kind of regenerative effect cannot even be thought of by human efforts

whatever the magnitude be thereof.

Looking at the empirical evidence of the impact of carnivores in maintaining the ecosystem of forests, the efforts of tiger conservation in the Jim Corbett National Park, an iconic National Park of this country is imperative and of utmost importance. I. BACKGROUND

1. The background leading to the present proceedings, in brief, is thus:

> 1.1 Mr. Gaurav Kumar Bansal, who has intervened in the present proceedings, had approached the Delhi High Court by filing W.P. (C) No. 8729 of 2021 and CM Application No. 27181 of 2021, alleging therein that illegal construction of bridges and walls within the Tiger Breeding Habitat of Corbett Tiger Reserve and that too, without the approval from the Competent Authority were being carried out. He had sought intervention of the Court to protect and conserve the Biological Diversity, flora and fauna as well as the ecology of the Corbett National Park.
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> 1.2 The Delhi High Court vide its judgment dated 23rd August 2021, disposed of the said petition observing thus:
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> "We have heard the Petitioner. Looking to the averments in the writ petition and the provisions of the Wildlife Protection Act, 1972, more particularly, Section 38(O)(b) thereof, we deem it appropriate, at this stage, to direct the Respondent to treat this writ petition as a Representation and look into the issues flagged and highlighted by the Petitioner. Needless to state that in case the Respondent finds merit in the issues raised, necessary action shall be taken by the Respondent, in accordance with law, keeping in mind the provisions of the Wildlife Protection Act, 1972 and the necessity of conserving the flora and fauna as well as the ecology of the National Park. For the purpose of taking a decision and consequential action, if any, it is open to the Respondent to call for an inspection report, in order to verify the factual status with respect to the allegations made in the writ petition. The exercise shall be carried out by the Respondent as expeditiously as possible and practicable." 1.3 The Division Bench of the High Court of Uttarakhand at Nainital, noticing a news published in "Times of India", vide its order dated 27th October 2021, in Writ Petition (PIL) No. 178 of 2021, took suo motu cognizance of the illegal construction activities being undertaken by unknown persons. It will be relevant to refer to the said order, which reads thus:
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> "A news item has appeared in the "Times of India" newspaper, dated 23.10.2021, regarding the illegal construction activities being undertaken by unknown persons, which are clearly in violation of the Forest Laws. The said illegal construction activities are being undertaken in the Corbett Tiger Reserve, one of the premier Tiger Reserves of the country.

2. According to the said article, a Committee of the National Tiger Conservation Authority ("NTCA" for short) had recently visited the Corbett Tiger Reserve. The Committee discovered not only illegal construction of bridges and buildings, but even the felling of trees. The Committee further noted that there has been violation of the provisions of the Wildlife (Protection) Act, 1972, the Forest (Conservation) Act, 1980, as well as the Indian Forest Act, 1927.

Surprisingly, a single lane road is being constructed in the core/critical habitat of the Corbett Tiger Reserve. Despite the fact that the Committee has recommended that all illegal constructions in Morghatti and Pakhrau FRH campuses be demolished, and eco-restoration work be undertaken with immediate effect, no concrete steps have been taken by the respondents.

3. Moreover, despite the fact that the Committee recommended that the Ministry of Environment should initiate action against the responsible officers, as per the provisions contained in the Forest (Conservation) Act, 1980, not even initial steps have been taken even by the Ministry. Therefore, this Court issues notices to the respondents.

4. Mr. Rakesh Thapliyal, the learned Assistant Solicitor General for the Union of India, accepts notice on behalf of the respondent no.1.

5. Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand, accepts notice on behalf of the respondent nos. 2, 3, 5, 6, 7, 8, 9, 10 and 11.

6. Issue notice to the respondent no.4.

Rule made returnable within four weeks.

7. The Registry is directed to implead the National Tiger Conservation Authority as a party respondent in this Writ Petition.

8. Meanwhile, the Principal Chief Conservator of Forest (General), Uttarakhand, the respondent no.5, the Principal Chief Conservator of Forest (Wildlife), Uttarakhand, the respondent no.6, and the Director of the Corbett National Park, Uttarakhand, the respondent no.8, are directed to inspect the site, and to submit a report with regard to the nature and extent of the illegal constructions being carried out, with regard to the persons, who are responsible for carrying out the said illegal constructions, and with regard to the concrete steps taken by the respondent nos. 5, 6 and 8 against such persons, and against the illegal constructions." 1.4 It appears that in the meantime, Mr. Gaurav Kumar Bansal also filed an Application No.1558 of 2021 before the Central Empowered Committee ("CEC" for short), bringing to the notice of the CEC the following:

> "a. Illegal felling of trees in the name of establishment of Tiger Safari in Gujjar Sot, Pakhrau Block, Sonandi Range, Kalagarh Division, Corbett Tiger Reserve;
>
> b. Illegal construction of buildings and waterbodies etc. by way of cutting trees illegally in

(i) Saneh Forest Rest House toward Pakhrau Forest Rest House.

(ii) Pakhrau Forest Rest House towards Morghatti Forest Rest House and

(iii) Moraghatti Forest Rest House towards Kalagarh Forest Rest House.

According to the Applicant the above said activities within buffer area of Corbett Tiger Reserve apart from being illegal also cause irreversible damage to the Biological Diversity, Ecology, Flora and Fauna in the Corbett landscape. The Applicant has requested that appropriate action be taken in accordance with law." 1.5 It further appears that I.A. No. 186910 of 2022 came to be registered in the present proceedings based on the CEC Report No.30 of 2022 in Application No.1557 of 2022 filed before it by Mr. Gaurav Kumar Bansal. It was alleged by Mr. Gaurav Kumar Bansal in the said proceedings that in the Rajaji National Park as well as in the Corbett National Park, illegal roads were being constructed. In the said I.A., we have passed the following order on 11th January 2023:

> [CEC REPORT 30/2022- REPORT OF CEC IN APPLN. NO.1557/2022 FILED BEFORE IT BY GAURAV KR. BANSAL] IN RE: GAURAV KR. BANSAL Issue notice, returnable on 08.02.2023.
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> Shri Abhishek Atrey, learned counsel, appears and accepts notice on behalf of the State of Uttarakhand.
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> By way of ad interim order, we direct that all construction activities in respect of the road in question shall be stopped, until further orders." 1.6 Shri Bansal had also filed a Contempt Petition (Civil) No.319 of 2019, alleging that the Authorities had acted in violation of the orders passed by this Court. We, therefore, passed the following order on 11th January, 2023:
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> "Shri Mahendra Vyas, Member of the CEC, states that report of the CEC would be filed within ten days and copies thereof shall also be supplied to the counsel for the State of Uttarakhand.
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> The respondent(s)/State shall file reply to the report of the CEC prior to 03.02.2023.
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> Put up on 08.02.2023." 1.7 When the aforesaid I.A.(s) and Contempt Petition(s) along with I.A. No.20650 of 2023, containing the report of the CEC on Application No.1558 of 2021 filed by Mr. Gaurav Kumar Bansal before it was placed before us on 8th February 2023, we have passed the following order:
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> "CONTEMPT PETITION (C) NO.319/2021, (ITEM NO.8.)
>
> 1. Issue notice in I.A. Nos.186910/2022 and 20650/2023 to the Ministry of Environment, Forest and Climate Change and the National Tiger Conservation Authority (NTCA), returnable on 15.03.2023.

2. In addition to the usual mode, liberty is granted to the petitioner to serve notice through the Standing Counsel for the respondent/State.

3. A perusal of the report(s) would reveal that various constructions have been carried out within the area of the Tiger Reserve. The photograph would show that a cordoned area has been constructed between the Tiger Reserve.

4. Mr. Abhishek Attri, learned counsel appearing for the State of Uttrakhand, submits that the concept of jungle tourism permits such a safari to be constructed in jungle areas, and according to the learned counsel, such a phenomenon is acceptable worldwide.

5. Prima facie, we do not appreciate the necessity of having a zoo inside Tiger Reserves or National Parks. The concept of protecting Tiger Reserves and National Parks is that the fauna must be permitted to reside in the natural habitat and not the artificial environs.

6. We, therefore, call upon the NTCA to explain the rationale behind granting such a permission for permitting Tiger Safaris within Tiger Reserves and National Parks.

7. Until further orders, we restrain the authorities from making any construction within the areas notified as Tiger Reserves and National Parks and Wildlife Sanctuaries.

8. The State of Uttarakhand is directed to file its reply in I.A. Nos.186910/2022 and 20650/2023, within three weeks.

CONTEMPT PETITION (C) NO.302/2020 (ITEM NO.9) List on 13.02.2023." 1.8 Subsequently, an I.A. came to be filed by the State of Uttarakhand for modification of the order passed by this Court dated 8th February 2023. It was submitted in the I.A. that the State of Uttarakhand was not in a position to even carry out the routine management activities, such as construction of watch towers, water bodies, and other necessary activities required for the day-to-day management of the Sanctuary, National Parks, and Reserves. It was submitted on behalf of the State that all such works are covered and approved by this Court in its order of 14th September 2007, upon recommendation of the CEC. In the said I.A., it was submitted that all illegal constructions have since been demolished and even the debris has been removed. The State of Uttarakhand, therefore, prayed for modification of the order of this Court dated 8th February 2023.

1.9 We passed the following order dated 28th November 2023:

"1. I.A.No.181182 of 2023 is filed for modification of the order dated 08th February 2023 permitting the construction activities mentioned in paragraph 6 and 8 of I.A. No.181182 of 2023.

2. Shri K. Parameshwar, learned Amicus Curiae, has raised concern about some of the items with regard to which permission is sought.

3. We find that most of the items for which the permission is sought are essential for maintaining the Tiger Reserves, National Parks and Wildlife Sanctuaries.

4. Therefore, we allow the construction activities as mentioned in paragraph 6 and 8 of the I.A. No.181182 of 2023.

5. If under the garb of the orders passed by this Court, the State Government misuses the liberty and raises some constructions which are unnecessary, the same can always be brought to the notice of the Court.

6. However, taking into consideration the past experience with regard to illegal construction in Jim Corbett National Park and Rajaji National Park, we warn the State Government that it shall ensure that the aforesaid constructions are made strictly in accordance with the relevant guidelines.

7. With these observations and directions, these applications are disposed of." 1.10 On 11th January 2024, we segregated the Contempt Petition (C) No. 319 of 2021 and I.A. No.186910 of 2022, since they pertained to the Rajaji National Park.

1.11 In the meantime, Writ Petition No. 178 of 2021 was also heard by the Division Bench of the High Court of Uttarakhand at Nainital on 1st September 2023. The judgment in the said matter came to be delivered on 6th September 2023. The operative part of the judgment and order dated 6th September 2023 reads thus:

> "29. This Court, after considering the material on record, comes to the conclusion that the present matter falls within the principles enunciated by the Hon'ble Constitution Bench and we are satisfied that the material on record does disclose a prima facie case calling for an investigation by the Central Bureau of Investigation.
>
> 30. Therefore, the present matter is referred to C.B.I. for proper and uninfluenced investigation in accordance with law.
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> 31. A copy of this order be sent to the Director, C.B.I., New Delhi for compliance.
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> 32. All the authorities in the State, if requested, are directed to cooperate with the C.B.I. in conducting fair investigation of the case.
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> 33. We make it clear that we have not expressed any opinion on the merits of the allegations or make any comment on the contents of the enquiries and reports." 1.12 We have heard the I.A. No.20650 of 2023 about the issues concerning the Corbett National Park on the 11th and 12th of January 2024.

2. A perusal of report of the CEC, which is numbered as I.A. No.20650 of 2023 as well as other reports submitted by various authorities, which were also taken into consideration by the CEC in its report, depicts a bleak picture of things in the Corbett National Park which is one of the first National Parks established in India. The reports make it clear that some of the Forest officers have blatantly resorted to illegal felling of trees, proceeding with construction activities in flagrant disregard of the provisions of the law and orders of this Court. We therefore decided to treat this as a test case and determine as to what directions are necessary to be issued, so that in future, such illegal activities are not repeated and as to what measures are required to be resorted to for protecting the precious wildlife.

3. We extensively heard Mr. K. Parameshwar, learned Amicus Curiae, Mr. A.N.S. Nadkarni, learned Senior Counsel appearing for the State of Uttarakhand, Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for the Union of India and Mr. Gaurav Kumar Bansal, applicant-in-person.

II. SUBMISSIONS OF THE PARTIES

4. The submissions made by Mr. K. Parameshwar could be summarized as under:

(i) The forests of the Corbett Tiger Reserve form an essential corridor link between the Corbett and the Rajaji National Park through the Rawasana – Sonanadi Corridor in the Lansdowne Forest Division. The construction of 'Tiger Safari' would lead to habitat fragmentation.

(ii) That, under Section 38V of the Wild Life (Protection) Act, 1972 (hereinafter referred to as "WLP Act"), the State Government, on the recommendations of the Tiger Conservation Authority, is required to notify an area as a tiger reserve. It is also required to prepare a Tiger Conservation Plan (hereinafter referred to as "TCP") including the staff development and deployment plan for the proper management of each area to ensure the protection of the tiger reserve, ecologically compatible land uses in the tiger reserves and the forestry operations of regular forest divisions.

(iii) That, under sub-section (4) of Section 38V of the WLP Act, the concept of integrity of Tiger Reserve requires protection of buffer area and adequate dispersal for the species.

(iv) That, the TCP prepared by the National Tiger Conservation Authority ("NTCA" for short) proposed a Safari at the Karnashram area of Lansdowne Forest Division. However, the Central Zoo Authority ("CZA" for short) unilaterally changed the proposed site to Pakhrau Block, Kalagarh Division.

(v) That, the WLP Act emphasizes on the conservation of wildlife and not tourism. However, establishing a zoo in a buffer area would amount to giving preference to

tourism over wildlife protection.

(vi) That, conservation of wildlife should be eco-centric and not anthropocentric.

(vii) That, the provisions of the WLP Act would reveal that the National Board of Wildlife, State Board of Wildlife, Chief Wildlife Warden, and the NTCA are experts for in situ conservation of wildlife whereas the CZA is an expert body for ex situ mode of conservation.

(viii) That, the final authority insofar as in situ 'Tiger Safari' is concerned should be exclusively within the domain of NTCA, which is an expert body insofar as conservation and protection of Tigers is concerned. He therefore submits that the 2019 Guidelines, which restore the primacy to the CZA, are against the said principle.

(ix) That, until 2016, the regulatory regime only recognized safaris as being an ex-situ mode of conservation.

(x) That, the 'Tiger Safari' is not defined under the WLP Act or any other statute. The concept of 'Safari' is found only in the proviso to Section 33(a). The proviso to Section 33(a) also bans the construction of 'hotels, zoos and safari parks' inside a sanctuary and National Parks without the prior approval of the National Board.

(xi) That, for the first time, the concept of "Tiger Safari" in the wild was introduced by the Government in the Tourism Guidelines, 2012. It provided for the creation of 'Tiger Safaris' in the buffer areas of tiger reserves 'which experience immense tourist influx in the core/critical tiger habitat for viewing tigers.'

(xii) That, the "Tiger Safari" as is envisaged, is not a measure of conservation but a means for tourism.

(xiii) That, though the 2016 Guidelines provided that the injured, conflict or orphaned tigers may be exhibited in 'Tiger Safaris', the 2019 Guidelines provided that the animals shall be selected as per Section 38I of the WLP Act, providing thereby that the animals from the zoos would be brought in the 'Tiger Safaris'.

(xiv) That, the understanding of the NTCA is that 'Tiger Safaris' are merely 'zoos' made inside the Tiger Reserve, which is erroneous.

(xv) That, the 2019 Guidelines which permit the animals from zoos outside their natural habitat to be relocated in the 'Tiger Safaris' situated in the buffer zone, would lead to the risk of zoonotic disease transmission. It is submitted that, if the animals from zoos are allowed into the Tiger Reserves, it will not only cause interference with the natural habitat of the animals, but the onset of zoonotic disease would be highly dangerous to the tigers in the National Park.

(xvi) Insofar as existing zoos in the Tiger Reserves are concerned, the said zoos were established much before the creation of the NTCA and the conservation of tigers through Tiger Reserves.

(xvii) That, it is necessary to employ the precautionary principle so as to prevent harm that would be caused on account of the relocation of animals from the zoos to the Tiger Reserves/Safaris.

(xviii) That, the delegation of power by the NTCA to the CZA, which is an expert body only for captive animals in ex situ conservation violates the entire scheme of the WLP Act.

(xix) That, the Court must employ the restorative principle to restore the damages caused to the environment when constructions were raised for the Safari.

(xx) Mr. Parmeshwar has also given various suggestions for the protection of wildlife and restoration of environmental damages as has been done in the case of the Jim Corbett National Park.

5. The submissions of Mr. A.N.S. Nadkarni could be summarized as under:

(i) It is submitted that insofar as the illegal constructions are concerned, the same has already been demolished and even debris has been removed.

(ii) That, all illegal construction works of buildings including the Forest Rest House at Mor Ghatti, Pakhrau, Kugadda Forest Camp, and Saneh Forest Rest House were being carried out by the Divisional Forest Officer ("DFO" for short), Kalagarh without the requisite administrative and financial approvals of the Competent Authority. That, the said works were executed solely under the orders of the DFO, Kalagarh, who was not competent to sanction the said works.

(iii) That, proceedings have been initiated against the erring officials/officers. Immediately Mr. J.S. Suhag, the then Principal Chief Conservator of Forests ("PCCF" for short) Wildlife, since deceased, was suspended; the Field Director of Corbett was transferred and the DFO Kalagarh along with the Range Officer, Kalagarh and several other officials lower in rank were also suspended.

(iv) An FIR was also lodged by the Vigilance Department against the DFO Kishan Chand and a Forest Ranger for offences punishable under Sections 420, 466, 467, 468, 471, 409, 120B, 218/34 IPC, Section 26 of the Forest Act and Section 13(1)(a) and 13(2) of the Prevention of Corruption Act.

(v) The buffer areas are peripheral to core areas. As per Section 38V(4) of the WLP Act, a lesser degree of habitat protection is accorded and this aims to promote co-

existence between wildlife and human activity with due recognition of the livelihood, developmental, social, and cultural rights of the local people. However, in carrying out these activities, the requisite permissions have been taken.

(vi) That, the project for establishing 'Tiger Safari' was not initiated by the State of Uttarakhand. It was NTCA, which wrote to the Field Directors of four (04) Tiger Reserves across the county, by letter dated 19th December 2014, calling upon them to send a proposal for the establishment of 'Tiger Safari' in the buffer area of Tiger Reserves.

(vii) Pursuant to this, a proposal was forwarded by the State of Uttarakhand on the 5th of June 2015 to establish the 'Tiger Safari' and an in-principal approval was granted by the NTCA with a further direction to forward the same to the CZA for vetting.

(viii) That, under the provisions of Section 38H of the WLP Act, the CZA is the statutory authority for grant of approval for the establishment of 'Tiger Safaris'.

(ix) That, TCP for the Corbett Tiger Reserve was forwarded by the State of Uttarakhand to the Government of India on 27th January 2015. That, the Government of India granted its approval on 4th March 2015 to the TCP prepared by the State of Uttarakhand. The said TCP also had a plan for the setting up of a rescue centre- cum-tiger safari in the buffer area of Corbett Tiger Reserve.

(x) Vide letter dated 12th February 2019, the CZA conveyed its approval for the establishment of 'Tiger Safari' in the Gujar Sot, Pakhrau Block, Sona Nadi Range, Kalagarh Division, Corbett Tiger Reserve (hereinafter referred to as "Pakhrau") on an area of 106.16 Hectares.

(xi) Though initially it was proposed to establish the 'Tiger Safari' at Karnashram area of Lansdowne Forest Division, the said site was found unsuitable. The site at Pakhrau was found to be more suitable since it was at the edge of the buffer zone.

(xii) After the CZA granted its approval, an in-principal approval under the Forest Conservation Act was granted by the Government of India on 30th October 2020.

(xiii) That, at the relevant time, setting up of a 'Tiger Safari' was considered as a 'part forest and part non-forestry' activity. As such, the State of Uttarakhand had approached the Government of India for getting the Forest Clearance for 15% of the area, as mandated. However, as of today, the position is different inasmuch as the establishment of zoos and the 'Tiger Safari' are now considered as 'forestry activities' and do not require any Forest Clearance.

(xiv) Thereafter, Stage-II clearance was granted on 10th September 2021.

(xv) As such, the 'Tiger Safari' was established due to the initiative taken by the NTCA and after the grant of all the requisite approvals.

(xvi) It was submitted that the project "Tiger Safari' has been completed to the extent of 80%, investing a huge amount of public money.

(xvii) As such, the allegations about the violation of statutory provisions for the establishment of the 'Tiger Safari' are without substance.

(xviii) That, the report of the Forest Survey of India ("FSI" for short) which was entrusted with the work of carrying out the survey regarding the illegal felling of trees is concerned, the same does not depict a correct picture.

(xix) That, the total area involved in the construction of the 'Tiger Safari' was approximately 16 Hectares and it is impossible that in such a small area, 6000 trees could be felled.

(xx) When the State applied for Forest Clearance for the establishment of the 'Tiger Safari' project, the number of trees present in the 16 Hectares was enumerated after counting them physically which was also contained in the proposal. The said proposal mentioned that there are 3,620 trees standing on the site.

(xxi) In the survey conducted by the Forest Department, it was found that, apart from 163 trees for which there was valid permission, an additional 97 trees were cut down in the process.

(xxii) That, the FSI report is based on Google Image calculation and does not depict the correct picture. (xxiii) That, the FSI was asked by the State of Uttarakhand to provide the methodology used for arriving at its report, but the FSI failed to do so. (xxiv)That, the works which are carried out after obtaining the permission of this Court by order dated 28th November 2023 are all routine management activities, such as setting up of watch towers and other necessary activities required for the day-to-day management of the Sanctuaries, National Parks and Reserves. (xxv) Insofar as Interpretation Centre is concerned, it was submitted that the Interpretation Centre has been held to be a 'forestry activity' not requiring Forest Clearance from the Central Government.

(xxvi)It was further submitted that, the area of Pakhrau Tiger Safari is 106.16 Hectares, which amounts to only 0.082% of the total area of the Corbett Tiger Reserve and 0.22% of the buffer area of the Tiger Reserve. In any case, it is situated at the edge of the buffer zone. On the other side of the buffer zone, there are farm lands of the villagers residing in the adjoining area. As such, the contention that the establishment of 'Tiger Safari' would shrink the available tiger habitat and as such, obstruct the corridors for the movements of the tigers is without substance.

6. Ms. Aishwarya Bhati, learned ASG submitted that the 2016 Guidelines took into consideration the concern of injured tigers, conflict tigers, or orphaned tiger cubs. However, the 2019 Guidelines were issued to bring it in tune with Section 38I of the WLP Act. It is submitted that, in the TCP submitted by the State of Uttarakhand, a 'Tiger Safari' was proposed at the Karnashram area of Lansdowne Forest Division. Ms. Bhati submitted that there are about 20 Safaris situated in the National Parks. Some of them have been operating since the 1970s.

7. Mr. Gaurav Kumar Bansal reiterated that various illegal constructions were made in the Corbett National Park in total violation of the statutory provisions. He further submitted that illegal felling of trees was also done to facilitate the illegal construction.

III. STATUTORY PROVISIONS

8. Before we consider the submissions of the learned counsel for the parties, it will be relevant to refer to certain provisions of the WLP Act.

9. The statement of objects and reasons for the WLP Act would reveal that the enactment of the WLP Act was necessitated since it was noticed that there was rapid decline of India's wild animals and birds, which was one of the richest and most varied in the world. Some wild animals and birds had already become extinct in the country and others were in danger of being so. Areas that were once teeming with wildlife had become devoid of it and even in Sanctuaries and National Parks, the protection afforded to wildlife needed to be improved. It was noticed that, the Wild Birds and Animals Protection Act, 1912 (8 of 1912) had become completely outmoded. The existing State laws were not only outdated but provided punishments that were not commensurate with the offence and the financial benefits which accrue from poaching and trade in wildlife produce. It was noticed that such laws mainly related to the control of hunting and did not emphasize the other factors which were also prime reasons for the decline of India's wildlife, namely, taxidermy and trade in wildlife and products derived therefrom.

10. However, since the subject matters were relatable to Entry 20 of the State list in the Seventh Schedule to the Constitution of India, the Parliament had no power to make a law unless the Legislatures of two or more States passed a resolution in pursuance of Article 252 of the Constitution of India. Accordingly, 11 States had passed resolutions to that effect. In this background, the WLP Act came to be enacted.

11. The long title of the WLP Act was amended by the Wild Life (Protection) Amendment Act, 2022 (No. 18 of 2022), which reads thus:

> “An Act to provide for the [conservation, protection and management of wild life] and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country.” [emphasis supplied]

12. Prior to the aforesaid amendment, the bracketed portion read thus:

> “protection of wild animals, birds and plants”

13. Sub-section (1) of Section 2 of the WLP Act defines “animal”, which reads thus:

> “(1) “animal” includes mammals, birds, reptiles, amphibians, fish, other chordates and invertebrates and also includes their young and eggs;”

14. Sub-section (5) of Section 2 of the WLP Act defines “captive animal”, which reads thus:

> “(5) “captive animal” means any animal, specified in Schedule I or Schedule II, which is captured or kept or bred in captivity;”

15. Sub-section (20A) of Section 2 of the WLP Act defines “National Board”, which reads thus:

> “(20A) “National Board” means the National Board for Wild Life constituted under Section 5A;”

16. Sub-section (21) of Section 2 of the WLP Act defines “National Park”, which reads thus:

> “(21) “National Park” means an area declared, whether under Section 35 or Section 38, or deemed, under sub-section (3) of Section 66, to be declared, as a National Park;”

17. Sub-section (24A) of Section 2 of the WLP Act defines “protected area”, which reads thus:

> “(24A) “protected area” means a National Park, a sanctuary, a conservation reserve or a community reserve notified under Sections 18, 35, 36-A and 36-C of the Act;”

18. Sub-section (26) of Section 2 of the WLP Act defines “sanctuary”, which reads thus:

> “(26) “sanctuary” means an area declared as a sanctuary by notification under the provisions of Chapter IV of this Act and shall also include a deemed sanctuary under sub-section (4) of Section 66;”

19. Sub-Section (36) of Section 2 of the WLP Act defines “wild animal”, which reads thus:

> “(36) “wild animal” means any animal specified in Schedule I or Schedule II and found wild in nature;”

20. Sub-section (39) of Section 2 of the WLP Act defines “zoo”, which reads thus:

> “(39) “zoo” means an establishment, whether stationary or mobile, where captive animals are kept for exhibiting to the public or ex- situ conservation and includes a circus and off- exhibit facilities such as rescue centres and conservation breeding centres, but does not include an establishment of a licensed dealer in captive animals.”

21. Chapter IV of the WLP Act deals with “protected areas”. Section 18 provides for “Declaration of sanctuary”, which reads thus:

> "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."

22. It will be relevant to refer to Section 33 of the WLP Act, which deals with "Control of sanctuaries". It reads thus:

> "33. Control of sanctuaries.—The Chief Wild Life Warden shall be the authority who shall control, manage and protect all sanctuaries in accordance with such management plans for the sanctuary approved by him as per the guidelines issued by the Central Government and in case the sanctuary also falls under the Scheduled Areas or areas where the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is applicable, in accordance with the management plan for such sanctuary prepared after due consultation with the Gram Sabha concerned and for that purpose, within the limits of any sanctuary,—
>
> (a) may construct such roads, bridges, buildings, fences or barrier gates, and carry out such other works as he may consider necessary for the purposes of such sanctuary:
>
> Provided that no construction of tourist lodges, including Government lodges, for commercial purposes, hotels, zoos and safari parks shall be undertaken inside a sanctuary except with the prior approval of the National Board;
>
> (b) shall take such steps as will ensure the security of wild animals in the sanctuary and the preservation of the sanctuary and wild animals therein;
>
> (c) may take such measures, in the interests of wild life, as he may consider necessary for the improvement of any habitat;
>
> (d) may regulate, control or prohibit, in keeping with the interests of wild life, the grazing or movement of livestock." [emphasis supplied]

23. Section 35 of the WLP Act deals with "Declaration of National Parks", which reads thus:

> "35. Declaration of National Parks.—(1) Whenever it appears to the State Government that an area, whether within a sanctuary or not, is, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park:
>
> Provided that where any part of the territorial waters is proposed to be included in such National Park, the provisions of Section 26A shall, as far as may be, apply in relation to the declaration of a National Park as they apply in relation to the declaration of a sanctuary. (2) The notification referred to in sub-section (1) shall define the limits of the area which is intended to be declared as a National Park. (3) Where any area is intended to be declared as a National Park, the provisions of Sections 19 to 26-A [both inclusive except clause (c) of sub-

section (2) of Section 24)] shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of rights, in relation to any land in such area as they apply to the said matters in relation to any land in a sanctuary.

(3A) When the State Government declares its intention under sub-section (1) to constitute any area as a National Park, the provisions of Sections 27 to 33-A (both inclusive), shall come into effect forthwith, until the publication of the notification declaring such National Park under sub-section (4).

(3B) Till such time as the rights of the affected persons are finally settled under Sections 19 to 26A [both inclusive except clause (c) of sub- section (2) of Section 24], the State Government shall make alternative arrangements required for making available fuel, fodder and other forest produce to the persons affected, in terms of their rights as per the Government records. (4) When the following events have occurred, namely,—

(a) the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a National Park, have been disposed of by the State Government, and

(b) all rights in respect of lands proposed to be included in the National Park have become vested in the State Government, the State Government shall publish a notification specifying the limits of the area which shall be comprised within the National Park and declare that the said area shall be a National Park on and from such date as may be specified in the notification.

(5) No alteration of the boundaries of a National Park by the State Government shall be made except on a recommendation of the National Board.

(6) No person shall destroy, exploit or remove any Wild Life including forest produce from a National Park or destroy or damage or divert the habitat of any wild animal by any act whatsoever or

divert, stop or enhance the flow of water into or outside the National Park, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the National Board that such removal of wild life from the National Park or the change in the flow of water into or outside the National Park is necessary for the improvement and better management of wild life therein, authorises the issue of such permit:

> Provided that where the forest produce is removed from a National Park, the same may be used for meeting the personal bona fide needs of the people living in and around the National Park and shall not be used for any commercial purpose.
>
> (7) No grazing of any livestock shall be permitted in a National Park and no livestock shall be allowed to enter therein except where such livestock is used as a vehicle by a person authorised to enter such National Park. (8) The provisions of Sections 27 and 28, Section 30 to 32 (both inclusive), and clauses (a), (b) and
>
> (c) of Section 33, Section 33A and Section 34 shall, as far as may be, apply in relation to a National Park as they apply in relation to a sanctuary.

Explanation.—For the purposes of this section, in case of an area, whether within a sanctuary or not, where the rights have been extinguished and the land has become vested in the State Government under any Act or otherwise, such area may be notified by it, by a notification, as a National Park and the proceedings under Sections 19 to 26 (both inclusive) and the provisions of sub-sections (3) and (4) of this section shall not apply."

24. Section 36A of the WLP Act deals with "Declaration and management of a conservation reserve", which reads thus:

> "36A. Declaration and management of a conservation reserve.—(1) The State Government may, after having consultations with the local communities, declare any area owned by the Government, particularly the areas adjacent to National Parks and sanctuaries and those areas which link one protected area with another, as a conservation reserve for protecting landscapes, seascapes, flora and fauna and their habitat:
>
> Provided that where the conservation reserve includes any land owned by the Central Government, its prior concurrence shall be obtained before making such declaration. (2) The provisions of sub-section (2) of Section 18, sub-sections (2), (3) and (4) of Section 27, Sections 30, 32 and clauses (b) and (c) of Section 33 shall, as far as may be, apply in relation to a conservation reserve as they apply in relation to a sanctuary."

25. Section 36C of the WLP Act deals with "Declaration and management of community reserve", which reads thus:

> "36-C. Declaration and management of community reserve.—(1) The State Government may, where the community or an individual has volunteered to conserve wild life and its habitat, declare any private or community land not comprised within a National Park, sanctuary or a conservation reserve, as a community reserve, for protecting fauna, flora and traditional or cultural conservation values and practices. (2) The provisions of sub-section (2) of Section 18, sub-sections (2), (3) and (4) of Section 27, Sections 30, 32 and clauses (b) and (c) of Section 33 shall, as far as may be, apply in relation to a community reserve as they apply in relation to a sanctuary.

(3) After the issue of notification under sub- section (1), no change in the land use pattern shall be made within the community reserve, except in accordance with a resolution passed by the management committee and approval of the same by the State Government."

26. Chapter IVA of the WLP Act deals with "Central Zoo Authority and Recognition of Zoos". The only relevant provision for consideration of the issue in the present matter is Section 38-I, which reads thus:

> "38-I. Acquisition of animals by a zoo.—(1) Subject to the other provisions of this Act, no zoo shall acquire, sell or transfer any wild animal or captive animal specified in Schedules I except with the previous permission of the Authority.
>
> (2) No zoo shall acquire, sell or transfer any wild or captive animal except from or to a recognized zoo:
>
> Provided that nothing in this sub-section shall apply to a conservation breeding centre."

27. Chapter IVB of the WLP Act deals with "National Tiger Conservation Authority". Section 38-O deals with "Powers and Functions of Tiger Conservation Authority", which reads thus:

> "38-O. Powers and functions of Tiger Conservation Authority.—(1) The Tiger Conservation Authority shall have the following powers and perform the following functions, namely:—
>
> (a) to approve the Tiger Conservation Plan prepared by the State Government under sub-section (3) of Section 38V of this Act;
>
> (b) evaluate and assess various aspect of sustainable ecology and disallow any ecologically unsustainable land use such as, mining, industry and other projects within the tiger reserves;
>
> (c) lay down normative standards for tourism activities and guidelines for project tiger from time to time for tiger conservation in the buffer and core area of tiger reserves and ensure their due compliance;

(d) provide for management focus and measures for addressing conflicts of men and wild animals and to emphasise on co-

existence in forest areas outside the National Parks, sanctuaries or tiger reserve, in the working plan code;

(e) provide information on protection measures including future conservation plan, estimation of population of tiger and its natural prey species, status of habitats, disease surveillance, mortality survey, patrolling, reports on untoward happenings and such other management aspects as it may deem fit including future plan conservation;

(f) approve, co-ordinate research and monitoring on tiger, co-predators, prey, habitat, related ecological and socio-

economic parameters and their evaluation;

(g) ensure that the tiger reserves and areas linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for ecologically unsustainable uses, except in public interest and with the approval of the National Board for Wild Life and on the advice of the Tiger Conservation Authority;

(h) facilitate and support the tiger reserve management in the State for biodiversity conservation initiatives through eco-

development and people's participation as per approved management plans and to support similar initiatives in adjoining areas consistent with the Central and State laws;

(i) ensure critical support including scientific, information technology and legal support for better implementation of the tiger conservation plan;

(j) facilitate ongoing capacity building programme for skill development of officers and staff of tiger reserves; and

(k) perform such other functions as may be necessary to carry out the purposes of this Act with regard to conservation of tigers and their habitat.

(2) The Tiger Conservation Authority may, in the exercise of its powers and performance of its functions under this chapter, issue directions in writing to any person, officer or authority for the protection of tiger or tiger reserves and such person, officer or authority shall be bound to comply with the directions:

Provided that no such direction shall interfere with or affect the rights of local people particularly the Scheduled Tribes."

28. Section 38V of the WLP Act deals with "Tiger Conservation Plan", which reads thus:

> "38V. Tiger Conservation Plan.—(1) The State Government shall, on the recommendations of the Tiger Conservation Authority, notify an area as a tiger reserve.
>
> (2) The provisions of sub-section (2) of Section 18, sub-sections (2), (3) and (4) of Section 27, Sections 30, 32 and clauses (b) and (c) of Section 33 of this Act shall, as far as may be, apply in relation to a tiger reserve as they apply in relation to a sanctuary.

(3) The State Government shall prepare a Tiger Conservation Plan including staff development and deployment plan for the proper management of each area referred to in sub- section (1), so as to ensure—

(a) protection of tiger reserve and providing site specific habitat inputs for a viable population of tigers, co-predators and prey animals without distorting the natural prey-predator ecological cycle in the habitat;

(b) ecologically compatible land uses in the tiger reserves and areas linking one protected area or tiger reserve with another for addressing the livelihood concerns of local people, so as to provide dispersal habitats and corridor for spill over population of wild animals from the designated core areas of tiger reserves or from tiger breeding habitats within other protected areas;

(c) the forestry operations of regular forest divisions and those adjoining tiger reserves are not incompatible with the needs of tiger conservation.

(4) Subject to the provisions contained in this Act, the State Government shall, while preparing a Tiger Conservation Plan, ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve.

Explanation.—For the purposes of this section, the expression "tiger reserve" includes,—

(i) core or critical tiger habitat areas of National Parks and sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and notified as such by the State Government in consultation with an Expert Committee constituted for the purpose;

(ii) buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in Explanation (i) above, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species, and which aim at promoting co-

existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purpose.

(5) Save as for voluntary relocation on mutually agreed terms and conditions, provided that such terms and conditions satisfy the requirements laid down in this sub-section, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected for the purpose of creating inviolate areas for tiger conservation unless—

(i) the process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons is complete;

(ii) the concerned agencies of the State Government, in exercise of their powers under this Act, establishes with the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities of the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat;

(iii) the State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consultation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of co-existence, are not available;

(iv) resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfils the requirements given in the National Relief and Rehabilitation Policy;

(v) the informed consent of the Gram Sabha concerned, and of the persons affected, to the resettlement programme has been obtained;

(vi) the facilities and land allocation at the resettlement location are provided under the said programme, otherwise their existing rights shall not be interfered with."

29. Section 38W of the WLP Act deals with "Alteration and de- notification of tiger reserves", which reads thus:

> "38W. Alteration and de-notification of tiger reserves.—(1) No alteration in the boundaries of a tiger reserve shall be made except on a recommendation of the Tiger Conservation Authority and the approval of the National Board for Wild Life.
>
> (2) No State Government shall de-notify a tiger reserve, except in public interest with the approval of the Tiger Conservation Authority and the National Board for Wild Life."

30. It will also be relevant to refer to Section 38XA of the WLP Act, which reads thus:

> "38-XA. Provisions of Chapter to be in addition to provisions relating to sanctuaries and National Parks.—The provisions contained in this Chapter shall be in addition to, and not in derogation of, the provisions relating to sanctuaries and National Parks (whether included and declared, or are in the process of being so declared) included in a tiger reserve under this Act."

31. A perusal of the entire scheme of the WLP Act read with the Statement of objects and reasons would clearly reveal that the entire emphasis is on "conservation, protection and management of the wildlife". The WLP Act also provides for the matters connected therewith or ancillary or incidental thereto for the conservation, protection and management of wildlife. It also emphasizes on ensuring the ecological and environmental security of the country.

32. A perusal of the aforementioned provisions of the WLP Act would reveal that various measures have been provided under the said Act for the protection of protected areas. No doubt that the definition of "protected area" as defined under sub-section (24A) of Section 2 of the WLP Act only includes a National Park, a sanctuary, a conservation reserve, or a community reserve, which are notified under Sections 18, 35, 36A and 36C of the WLP Act. However, the harmonious construction of the various provisions of the WLP Act would reveal that the legislature intended the "Tiger Reserves" to be kept at a higher pedestal than a sanctuary, a National Park, a conservation reserve, or a community reserve.

33. As discussed hereinabove, the declaration of sanctuary is as provided under Section 18 of the WLP Act. We have already reproduced Section 18 hereinabove.

34. The Chief Wild Life Warden has been entrusted with the functions and duties to control, manage, and protect all sanctuaries in accordance with such management plans for the sanctuary as approved by him as per the guidelines issued by the Central Government. Under clause (a) of Section 33 of the WLP Act; though construction of roads, bridges, buildings, fences or barrier gates, and such other works as he may consider necessary for sanctuary is permissible, the proviso thereto specifically prohibits the construction of tourist lodges including Government lodges for commercial purposes. It further prohibits the construction of hotels, zoos and safari parks inside a sanctuary except with the prior approval of the National Board. Clause (b) thereof requires the Chief Wild Life Warden to take such steps as would ensure the security of wild animals in the sanctuary and the preservation of the sanctuary and wild animals therein. He is also authorized to take such measures, in the interests of wildlife, as he may consider necessary for the improvement of any habitat. He is also authorized to regulate, control, or prohibit, in keeping with the interests of wildlife, the grazing or movement of livestock.

35. Section 35 of the WLP Act deals with "Declaration of National Parks". In view of sub-section (8) thereof, the provisions which are applicable under clauses (a), (b) and (c) of Section 33 of the WLP Act to the 'sanctuary' would also be applicable to a 'National Park'.

36. Section 36A of the WLP Act deals with "Declaration and management of a conservation reserve". In view of sub-section (2) thereof, the provisions under clauses (b) and (c) of Section 33 of the WLP Act, which are applicable to a 'sanctuary' shall, as far as may be, apply also in relation to a 'conservation reserve'.

37. Section 36C of the WLP Act deals with "Declaration and management of community reserve". In view of sub-section (2) thereof, the provisions under clauses (b) and (c) of Section 33 of the WLP Act, which are applicable to a 'sanctuary' shall, as far as may be, apply also in relation to a 'community reserve'.

38. Section 38-O deals with "Powers and Functions of Tiger Conservation Authority". Clause (a) thereof provides for approval of the TCP prepared by the State Government under sub-section (3) of Section 38V of the WLP Act. Under clause (b), it has to evaluate and assess various aspects of sustainable ecology and disallow any ecologically unsustainable land use such as setting up of mining, industry, and other projects within the tiger reserves. Under clause (c), it is required to lay down normative standards for tourism activities and guidelines for 'Project Tiger' from time to time for tiger conservation in the buffer and core area of tiger reserves and ensure their due compliance. Under clause

(d), it has to provide for management focus and measures for addressing conflicts of men and wild animals and to emphasize on co-existence in forest areas outside the National Parks, sanctuaries, or tiger reserves in the working plan code. Under clause (e), it has to provide information on protection measures including future conservation plans, estimation of the population of tigers and its natural prey species, status of habitats, diseases surveillance, mortality surveys, patrolling, reports on untoward happenings, and such any other management aspects as it may deem fit including future plans for conservation. Under clause (f), the Tiger Conservation Authority is required to approve, co- ordinate research and monitor on tigers, co-predators, prey, habitats, related ecological and socio-economic parameters, and their evaluation. Under clause (g), it is required to ensure that the tiger reserves and areas linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for ecologically unsustainable uses, except in public interest and that too, with the approval of the National Board for Wild Life and on the advice of the Tiger Conservation Authority. Under clause (h), it is required to facilitate and support the tiger reserve management in the State for biodiversity conservation initiatives through eco-development and people's participation as per approved management plans and to support similar initiatives in adjoining areas consistent with the Central and State laws. Under clause (i), it is required to ensure critical support including scientific, information technology, and legal support for better implementation of the TCP. Under clause (j), it is required to facilitate an ongoing capacity building programme for the skill development of officers and staff of tiger reserves. Under clause

(k), it is required to perform such other functions as may be necessary to carry out the purposes of the WLP Act with regard to the conservation of tigers and their habitat.

39. The importance given to the Tiger Conservation Authority can be seen in sub-section (2) of Section 38-O of the WLP Act, which empowers it to issue directions in writing to any person, officer

or authority for the protection of tiger or tiger reserves and such person, officer or authority are bound to comply with the directions. No doubt that the proviso thereto provides that no such direction shall interfere with or affect the rights of local people, particularly the Scheduled Tribes.

40. Section 38V of the WLP Act deals with the notification of an area as a tiger reserve and preparation of the "TCP". Under sub- section (1) thereof, the State Government is required to notify an area as a tiger reserve, on such recommendations being made by the Tiger Conservation Authority. Sub-section (2) thereof provides that the provisions of sub-section (2) of Section 18, sub-sections (2), (3) and (4) of Section 27, Sections 30, 32 and clauses (b) and

(c) of Section 33 of the said Act shall, as far as may be, apply in relation to a tiger reserve as they apply in relation to a sanctuary.

41. Under sub-section (3) of Section 38V, the State Government is required to prepare a TCP including staff development and deployment plan for the proper management of each area referred to in sub-section (1), so as to ensure protection of tiger reserve and providing site specific habitat inputs for a viable population of tigers, co-predators and prey animals without distorting the natural prey-predator ecological cycle in the habitat. It is also required to ensure ecologically compatible land uses in the tiger reserves and areas linking one protected area or tiger reserve with another for addressing the livelihood concerns of local people, so as to provide dispersal habitats and corridor for spill over population of wild animals from the designated core areas of tiger reserves or from tiger breeding habitats within other protected areas. It is also required to ensure that the forestry operations of regular forest divisions and those adjoining the tiger reserves are not incompatible with the needs of tiger conservation.

42. Under sub-section (4) of Section 38V, the State Government, while preparing a TCP, is also required to ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve. Explanation thereto provides that the 'tiger reserve' shall consist of two areas. The first area shall be core or critical tiger habitat areas of National Parks and sanctuaries; which, on the basis of scientific and objective criteria, are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and notified as such by the State Government in consultation with an Expert Committee constituted for the said purpose. The second area, i.e., the buffer or peripheral area, shall consist of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in Explanation (i). In such area, a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species. The creation of the buffer zone is aimed at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the said purpose.

43. Sub-section (5) of Section 38V deals with resettlement etc. of the Scheduled Tribes and, therefore, it may not be necessary for us to go into the provisions of sub-section (5).

44. Section 38W of the WLP Act deals with alteration and de- notification of tiger reserves. It provides that no alteration in the boundaries of a tiger reserve shall be made except on a recommendation of the Tiger Conservation Authority and the approval of the National Board for Wild Life. Sub-Section (2) thereof prohibits the State Government from de-notifying a tiger reserve, except in public interest with the approval of the Tiger Conservation Authority and the National Board for Wild Life.

45. Section 38XA of the WLP Act which was inserted by the Wild Life (Protection) Amendment Act, 2022 (No. 18 of 2022) makes the legislative intent amply clear. It provides that, the provisions contained in the said Chapter shall be in addition to, and not in derogation of the provisions relating to sanctuaries and National Parks (whether included and declared, or are in the process of being so declared) included in a tiger reserve under this Act.

46. It could thus be seen that, the entire emphasis of the WLP Act is on the conservation, protection, and management of wildlife. Various provisions contained in the WLP Act, discussed hereinabove, emphasize on providing measures for the conservation, protection and management of wildlife. The provisions contained in Chapter IVA lay a specific emphasis on the protection of tigers and other habitats in the tiger reserve. The provisions contained therein are in addition to the provisions contained for sanctuaries and National Parks. IV. GUIDELINES ISSUED BY VARIOUS AUTHORITIES

47. In light of the aforesaid statutory provisions, it will also be necessary to refer to certain guidelines issued by various authorities.

48. The NTCA published guidelines for preparation of TCP in 2007. The said guidelines provide for what should be the approach for preparation of TCP. It will be relevant to refer to clause 3.1 thereof, which reads thus:

> "3.1 Consolidating and strengthening of 'source' populations of tiger in tiger reserves and protected areas The management interventions would involve:
>
> 1. Protection, anti-poaching activities and networking
>
> 2. Strengthening of infrastructure within Tiger Reserves
>
> 3. Habitat improvement including water development
>
> 4. Rehabilitation package for traditional hunting tribes living around tiger reserves
>
> 5. Staff development and capacity building
>
> 6. Delineating inviolate spaces for wildlife and relocation of villagers from crucial habitats in Tiger Reserves within a timeframe (five years) and settlement of rights

7. Safeguarding tiger habitats from ecologically unsustainable development"

49. It will also be relevant to refer to clause 3.2 thereof, which reads thus:

"3.2 Managing 'source-sink' dynamics by restoring habitat connectivity to facilitate dispersing tigers to repopulate the core areas The management interventions would involve:

1. Co-existence agenda in buffer/fringe areas (landscape approach/sectoral integration) with ecologically sustainable development programme for providing livelihood options to local people, with a view to reduce their resource dependency on the core. The strategy would involve reciprocal commitments with the local community on a quid-pro-quo basis to protect forests and wildlife, based on village level, participatory planning and implementation through ecodevelopment committees (EDC).

2. Addressing man-animal conflict issues (ensuring uniform, timely compensation for human injuries and deaths due to wild animals, livestock depredation by carnivores, crop depredation by wild ungulates).

3. Mainstreaming wildlife concerns in the buffer landscape by targeting the various production sectors in the area, which directly or incidentally affect wildlife conservation, through 'Tiger Conservation Foundation', as provided in the Wildlife (Protection) Amendment Act, 2006.

4. Addressing tiger bearing forests and fostering corridor conservation through restorative strategy in respective working plans of forest divisions, involving local communities, to arrest fragmentation of habitats.

5. Ensuring safeguards/retrofitting measures in the area in the interest of wildlife conservation."

50. The guidelines also deal with various production sectors in the buffer zone which require mainstreaming of wildlife concerns in these sectors like:

"(a) Forestry (D)

(b) Agriculture (D)

(c) Integrated Development (ecodevelopment, development through District Administration) (D)

(d) Tourism (D)

(e) Fisheries (D)

(f) Tea/Coffee Estates (I)

(g) Road / Rail transport (D)

(h) Industry (D)

(i) Mining (I)

(j) Thermal power plants (I)

(k) Irrigation projects (D)

(l) Temple tourism (I)

(m) Communication projects (D)"

51. Clause 6 of the said guidelines deals with importance of a buffer zone vis-à-vis the tiger land tenure dynamics, which reads thus:

> "6. Importance of a buffer zone vis-à-vis the tiger land tenure dynamics 6.1 Tiger is a territorial animal, which advertises its presence in an area and maintains a territory. It is a well known fact that partial overlaps of resident male territories in an area do occur. However, the degree of overlap increases lethal internecine combats. Several female territories do occur in an overlapping manner within the territory of a male tiger. The tiger land tenure dynamics ensures presence of prime adults in a habitat which act as source populations, periodically replacing old males by young adults from nearby forest areas (Plate 2). 6.2 The ongoing study and analysis of available research data on tiger ecology indicate, that the minimum population of tigresses in breeding age, which are needed to maintain a viable population of 80-100 tigers (in and around core areas) require an inviolate space of 800 -1000 sq km (see Annexure I). Tiger being an "umbrella species", this will also ensure viable populations of other wild animals (co-predators, prey) and forest, thereby ensuring the ecological viability of the entire area / habitat. Therefore, buffer areas with forest connectivity are imperative for tiger dynamics, since such areas foster sub adults, young adults, transients and old members of the population. The young adults periodically replace the resident ageing males and females from the source population area.

6.3 The buffer area, absorbs the "shock" of poaching pressure on populations of tiger and other wild animals. In case of severe habitat depletion in buffer areas, the source population would get targeted and eventually decimate. Plate 2: Tiger Land Tenure Dynamics.

Minimum population of tigers in breeding age needed for maintaining a viable population (80-100 tigers), which require an inviolate space of 800-1000 square kilometers."

52. Clause 8 of the said guidelines deals with the importance of the corridors, which reads thus:

> "8. Value of Corridors 8.1 Isolated populations of wild animals face the risk of extinction owing to insularization.

Habitat fragmentation adversely affects wildlife due to decreased opportunity available for wild animal movement from different habitats. This in turn prevents gene flow in the landscape. The equilibrium theory of island biogeography predicts greater species richness in large wildlife areas or in smaller areas connected by habitat corridors owing to increased movements of wild animals. Such connecting habitats, apart from facilitating animal movements also act as refuge for spill over populations from the core areas. They may also act as smaller "source" by facilitating breeding and movement of native wildlife populations to colonize adjoining habitats. Natural linear features like rivers or mountain ranges may act as boundaries for wildlife populations. However, disturbance of corridors on account of human interventions (highways, canals, industries, roads, railway tracks, transmission lines) is deleterious to wildlife." Plate 3: Tiger Land Tenure Dynamics .

8.2 "Source" populations are those which produce a surplus of animals which are potential colonizers. On the other hand, "Sinks" are those populations in which deaths exceed births, and their persistence depends on regular influx of immigrants.

8.3 Patches of suitable habitats in the landscape may support wildlife populations (local populations), which may be separated from one another on account of various disturbance factors. Collectively, such patches of local populations are known as "regional populations". This general situation of sub divided populations interacting with one another in a landscape to supplement new genes through movement, is known as a "meta population". In the context of tiger land tenure dynamics, the core- buffer areas conform to the "island-mainland" or "coresatellite" form of meta population model. The core area of a tiger reserve provides a source of colonizers for the surrounding local populations of different sizes and varying degrees of isolation. The core area may not readily experience extinction owing to the protection inputs for maintaining its inviolate nature. However, the surrounding isolated patches in the buffer area may suffer from local extinction if wildlife concerns are not mainstreamed in the area. Therefore, a meta population management approach is required for the buffer zone as well as corridors to facilitate:

> (a) Supplementing declining local tiger populations
>
> (b) Facilitating re-colonization in habitat patches through restorative management
>
> (c) Providing opportunity to tiger for colonizing new areas through patches of habitats (stepping stones) between isolated populations (Plate 4).

Plate 4: Meta population dynamics.

Corridors become crucial for maintaining viability of Population 2 as by itself it does not have the habitat to sustain greater than 20 breeding tigers."

53. In 2012, the NTCA issued Guidelines for Normative Standards for Tourisms Activities and for Project Tiger for tiger conservation in the buffer and core areas of the tiger reserves which were notified vide Gazette Notification dated 15th October 2012 (hereinafter referred to as "the 2012 Guidelines")

54. Clause 16.2 of the 2012 Guidelines deals with strengthening of infrastructure within the tiger reserve, which reads thus:

> "16.2. Strengthening of infrastructure within Tiger Reserves (ongoing) (non recurring for new civil works and recurring for maintenance).
>
> The following activities, inter alia, would form part of reinforcing the infrastructure of tiger reserves (including support to new tiger reserves):
>
> (i) Civil Works (staff quarters, family hostels, office improvement, patrolling camp, house keeping buildings, museum, culverts).
>
> (ii) Maintenance, creation and upgradation of road network.
>
> (iii) Maintenance and creation of wireless tower.
>
> (iv) Maintenance and creation of fire watch tower.
>
> (v) Maintenance and creation of bridges, dams, anicuts.
>
> (vi) Maintenance, creation of firelines and firebreaks.
>
> (vii) Maintenance and creation of earthen ponds.
>
> (viii) Procurement and maintenance of vehicles (Gypsy, Jeep, Truck, Tractor etc.).
>
> (ix) Habitat improvement works.
>
> (x) Procurement of hardware, software/Geographical Information System (GIS).
>
> (xi) Procurement of compass, range finder, Global Positioning System (GPS), camera traps.
>
> (xii) Procurement of satellite imageries for management planning.

(xiii) Map digitization facility for management planning.

(xiv) Monitoring system for Tigers' Intensive Protection and Ecological Status (M-STrIPES) monitoring.

(xv) E-surveillance."

55. Clause 16.21 of the 2012 Guidelines deals with establishment of Tiger Safari, interpretation and awareness centres in buffer and fringe areas, which reads thus:

> "16.21 Establishment of Tiger Safari, interpretation and awareness centres under the existing component of 'co-existence agenda in buffer and fringe areas', and management of such centres through the respective Panchayati Raj Institutions (creation - Non-Recurring; maintenance - Recurring).
>
> The Tiger Safaris may be established in the buffer areas of tiger reserves which experience immense tourist influx in the core/critical tiger habitat for viewing tiger. The interpretation and awareness centres would also be supported in such buffer areas to foster awareness for eliciting public support. The management of such centres would be through the respective Panchayati Raj (PR) institutions."

56. In 2016, the NTCA notified the Guidelines to Establish Tiger Safaris in Buffer and Fringe Areas of the Tiger Reserves (hereinafter referred to as "2016 Guidelines"). These guidelines provide for the basic criteria, and procedure required to be followed in the buffer and fringe areas of tiger reserves for dealing with the establishment, management, and administration of the 'Tiger Safaris' after following the due procedure prescribed under the law and the 2012 Guidelines. Clause 8 thereof provides that, tourism activities in the tiger reserves are regulated by the normative guidelines on tourism issued by the NTCA as well as by the prescriptions on eco-tourism as contained in the TCPs of the tiger reserves. It provides that the last three years' average visitation will be taken into consideration while determining the need for a tiger safari. It provides that, if the carrying capacity is 100% utilized, then a proposal for establishing a tiger safari can be placed before the NTCA.

57. Clause 9 of the 2016 guidelines is very important. It provides that no tiger shall be obtained from the zoo exhibit. Wild tigers that are from the same landscape as that of the area where the tiger safari is established, falling under the categories of (a) injured tigers (after suitable treatment); (b) conflict tigers; and (c) orphaned tiger cubs which are unfit for re-wilding and release into the wild shall be selected. It further provides that no visibly injured or incapacitated tiger shall be put on the safari. It further provides that recovered/treated animals shall be put on display only after assessment by the NTCA. Further, no healthy wild tiger or any other animal shall be sourced from the wild as per provisions of the National Zoo Policy.

58. Clause 10 of the 2016 guidelines further provides that the location of the tiger safari shall be identified preferably in the buffer (not falling in notified National Parks and/or Wildlife Sanctuary)/peripheral area of the tiger reserve based on the recommendations of a committee

comprising of members from the NTCA, CZA, Forest Department of State concerned, an experienced tiger biologist/scientist/conservationist and a representative, nominated by the Chief Wildlife Warden of the concerned State. It also provides that tiger dispersal routes shall be avoided in all circumstances. The area of a Safari Park should be as large as possible; however, the minimum area of a tiger safari should be 40 hectares, extendable as per requirements. The topography for the safari should be undulating and well- drained, without steep slopes. The vegetation maintained in the Safari Park should be indigenous. The density of flora should be regulated according to needs, and to provide a naturalistic effect. It should provide shelters and withdrawal areas for animals. It provides that the entire safari area should be surrounded by a suitable peripheral chain link fence. The said chain link fence should be of a minimum height of 5 meters in case of large carnivores like tigers with a suitable both way –overhang at the top or as prescribed by the CZA from time to time. It also provides that a buffer zone (strip) of about 5 meters width be provided around the fenced area. It also provides for the erection of a watch tower of about 5 meters in height. It also provides for the sensitization of visitors at 'Visitor Centres'. It provides that visitors shall enter the park in eco-friendly vehicles which run on solar and/or battery power only. There are various other details with regard to layout of roads, hours of the day during which vehicles should be permitted, the equipment to be provided, veterinary care, education. It also provides for the frequency of vehicles entering the Safari Park. It further restricts taking the vehicles near the animals and to maintain a distance of at least 10 meters. It also provides for waste disposal, monitoring, and supervision.

59. Clause 14 of the 2016 guidelines provides for management of the tiger safari based on prescriptions of a Master Plan which shall be formulated as per guidelines of the CZA and duly approved by the said Authority. It further provides that care should be taken to harmonize the Master Plan with prescriptions of the TCP of the area concerned.

60. The NTCA again in 2019 notified guidelines to establish tiger safaris in buffer and fringe areas of tiger reserves. Most of the guidelines are similar to those contained in the 2016 guidelines. In some areas, elaborate details have been provided. The only substantial distinction is about clause 9, which reads thus:

> "9. Selection of Animal: The selection of the animal shall be done in conformity of section 38I of Wildlife (Protection) Act, 1972 after due approval of the Central Zoo Authority (CZA)."

61. It will further be relevant to note that the NTCA has notified the Standard Operating Procedure to deal with orphaned, abandoned tiger cubs and old/injured tigers in wild (hereinafter referred to as "SOP"). The said SOP provides detailed procedures as to what are the causes and circumstances leading to orphaned/abandoned tiger cubs and old/injured tigers in the wild. It provides a procedure for establishing the identity of the tigresses/cub(s)/old/injured/sick tigers by comparing camera trap photographs with the National Repository of Camera Trap Photographs of Tigers. It provides for the collection of recent cattle/livestock depredation or human injury/fatal encounter data, if any, in the area. It further deals with how such cubs and tigers are to be dealt with.

62. The said SOP provides that, rearing of the tiger cubs should be in the in situ enclosure for wilding/re-wilding towards subsequent release in the wild. It provides a detailed procedure as to how the in situ enclosure should be constructed in order to avoid the 'Pavlovian' conditioning of tiger cubs in the in situ enclosure and the release of natural prey animals within the tiger enclosure with minimum sound. It also provides for maintaining of a record of the kills made by the tiger cubs. It provides that the tiger cubs should be reared in the in situ enclosure for a minimum of two years, and each cub should have a successful kill record of at least 50 prey animals. It provides that the tiger cubs which have a successful kill record may be released in the wild in consultation with the NTCA after radio collaring, to a suitable, productive habitat within the same landscape, while keeping in mind the land tenure dynamics of tigers or the presence of human settlements in the new area. The SOP also deals with 'Hard' release of tiger cubs in the wild.

63. The SOP also provides for the rehabilitation of the sick/injured/old tigers in zoos. A perusal of the SOP would reveal that only in extreme situations, where an old/injured tiger may create a human-tiger interface problem leading to livestock/human depredation; such tigers should be rehabilitated in a recognized zoo.

64. The SOP also, in detail, has provisions with regard to the design of cages/transportation protocol; design and related details of the in situ enclosure; housekeeping details for the rearing of abandoned/orphaned newborn tiger cubs; and safeguards for the field staff.

65. It is further relevant to note that, the Ministry of Environment and Forests, Department of Environment, Forests & Wildlife, Union of India has issued a Resolution dated 7th December 1988, thereby providing for the National Forest Policy, 1988. Para 4.5 of the said Policy deals with 'Wildlife Conservation', which reads thus:

> "4.5 Wildlife Conservation Forest Management should take special care of the needs of wildlife conservation, and forest management plans should include prescriptions for this purpose. It is specially essential to provide for "corridors" linking the protected area in order to maintain genetic continuity between artificially separated sub- sections of migrant wildlife."

66. It is further relevant to note that the National Wildlife Action Plan, 2017-2031 also emphasizes on the concept of protection of the wildlife as a whole, beyond protected areas to protect the integrity of the Tiger Reserve. The relevant portion of the Plan is reproduced herein below:

> "Landscape Level Approach for Wildlife Conservation Overview and Objectives-
>
> 1. It is increasingly recognized that wildlife conservation has to go beyond Protected Areas (PAs) to the larger landscapes in which these are embedded.

A landscape is defined as 'a large tract of land constituted by a mosaic of interacting land uses with people and the impacts of their activities as the cornerstone of its management.' Landscape allows ecosystem level conservation actions at the existing internal smaller nested spatial scales of

management/ administration such as PAs and territorial forest divisions as well as larger units to achieve conservation goals at the largest spatial scale possible in practical terms.

2. Landscape level conservation of species must be seen as maintaining or enhancing genetic exchanges between metapopulations and significantly improving the prospects of their long term persistence. Therefore, the plans must address species loss in the short-term and the reasons for such depletions in the long run.

xxx xxx xxx

6. Further, conservation of wildlife can not be seen isolated from the whole development of the region or landscape. Local governance systems, local land use patterns and land use systems, ecosystem-interfaces and socio-economic circumstances are mutually intertwined at the landscape level. Therefore, a mosaic approach to landscape planning needs to be developed in partnership with other agencies and stakeholders." [emphasis supplied]

67. It is thus amply clear that the National Wild Life Action Plan also recognizes the necessity of wildlife conservation beyond the protected areas. It states that the landscape allows ecosystem level conservation actions at the existing internal smaller nested spatial scales of management/administration such as protected areas and territorial forest divisions as well as larger units to achieve conservation goals at the largest spatial scale possible in practical terms. It further states that the conservation of wildlife cannot be seen to be isolated from the whole development of the region or landscape. It states that the local governance systems, local land use patterns and land use systems, ecosystem- interfaces and socio-economic circumstances are mutually intertwined at the landscape level. It emphasizes that a mosaic approach to landscape planning needs to be developed in partnership with other agencies and stakeholders. V. CONSIDERATION

68. This Court had an occasion to consider an issue with regard to environmental justice in the case of T.N. Godavarman Thirumulpad v. Union of India and others2, wherein this Court held thus:

"17. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, intergenerational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and that non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non- human based benefits to humans. Ecocentrism is nature-centred where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature includes both humans and non-humans. The National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 are centred on the principle of ecocentrism." [emphasis supplied]

69. It could thus be seen that this Court has held that, to achieve environmental justice, the approach of anthropocentrism i.e. human interest focused and that non-human has only

instrumental value to humans will have to be avoided. It has been (2012) 3 SCC 277=2012 INSC 81 held that ecocentrism i.e. nature centered where humans are a part of nature and non-humans have intrinsic value will have to be adopted. It has been held that human interest does not take automatic precedence and humans have obligations to non- humans independently of human interest. It has been held that the National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 are centred on the principle of ecocentrism.

70. This Court again in the case of Centre for Environmental Law, World Wide Fund-India v. Union of India and others3, following the earlier judgments, observed thus:

> "44. The scope of the Centrally-sponsored scheme was examined in T.N. Godavarman Thirumulpad v. Union of India [(2012) 3 SCC 277] (Wild Buffalo case) and this Court directed implementation of that scheme in the State of Chhattisgarh. The Centrally-sponsored scheme, as already indicated, specifically refers to the Asiatic lions as a critically endangered species and highlighted the necessity for a recovery programme to ensure the long-term conservation of lions. NWAP, 2002-2016 and the Centrally- sponsored scheme, 2009 relating to integrated development of wildlife habitats are schemes which have statutory status and as held in Lafarge case [Lafarge Umiam 3 (2013) 8 SCC 234=2013 INSC 254 Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338] and have to be implemented in their letter and spirit. While giving effect to the various provisions of the Wildlife (Protection) Act, the Centrally-sponsored scheme, 2009, the NWAP, 2002-2016 our approach should be ecocentric and not anthropocentric." [emphasis supplied]

71. It could thus be seen that, this Court held that the National Wildlife Action Plan (NWAP), 2002-2016, and the Centrally- sponsored scheme, 2009 related to the integrated development of wildlife habitats are schemes that have a statutory status, and will have to be implemented in letter and spirit.

72. It can further be seen that, this Court has emphasized on the importance of sustainable development, i.e., balancing the rights of the citizens and the concern for the environmental and ecological issues.

73. In this respect, it will be appropriate to refer to Articles 48-A and 51-A(g) of the Constitution, which read thus:

> "48-A. Protection and improvement of environment and safeguarding of forests and wildlife.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.
>
> *** 51-A. Fundamental duties.—It shall be the duty of every citizen of India— ***
>
> (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;"

74. In Vellore Citizens' Welfare Forum v. Union of India and others4, this Court observed thus:

> "10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in history—deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate 4 (1996) 5 SCC 647=1996 INSC 952 change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents, namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution.

During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.

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16. The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, Fourth Edn. published in 1876. Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words:

> 'Also, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it

> tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, “sic utere tuo, ut alienum non leadas”; this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance.
>
> ... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of “doing to others, as we would they should do unto ourselves”.’ ””
>
> 75. Further in the case of Intellectuals Forum, Tirupathi v. State of A.P. and others5, this Court observed thus:
>
> 5 (2006) 3 SCC 549=2006 INSC 101 “84. The world has reached a level of growth in the 21st century as never before envisaged.

While the crisis of economic growth is still on, the key question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us to the conception of growth and development, which sustains from one generation to the next in order to secure “our common future”. In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, “conservation, however, always takes a back seat in times of economic stress”. It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally.”

76. In Indian Council for Enviro-Legal Action v. Union of India and others6, this Court observed thus:

> 6 (1996) 5 SCC 281=1996 INSC 543 “41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been

> tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-

spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-

functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law."

77. Emphasizing on the concern for environmental and ecological protection, the Courts have recognised the importance of sustainable development. Development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of humanity and future generations. This Court holds that, it is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that the present as well as future generations will be aware of them equally. This Court has further held that, the primary effort of the court while dealing with the environment-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. It has been held that the courts, in a way, act as the guardian of the people's fundamental rights. This Court has observed that it is not the function of the court to see the day-to-day enforcement of the law; that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts out of necessity have had to pass orders directing the enforcement agencies to implement the law. In the recent judgments of this Court in the cases of Resident's Welfare Association and another v. Union Territory of Chandigarh and others7, State of Himachal Pradesh and others v. Yogendera Mohan Sengupta and another8 and State of Uttar Pradesh and others v. Uday Education and Welfare Trust and others9, to which one of us (B.R. Gavai, J.) was a party, this Court has also emphasized on the principle of sustainable development.

(a) Consideration as to whether Tiger Safaris and Zoos are on the same footing or not.

78. In this background, we will have to consider the question as to whether the 'zoo' as defined under Section 2(39) and dealt with under Chapter IVA of the WLP Act and the 'Tiger Safaris' as conceptualized by the NTCA would stand on a same footing or not.

79. We have already reproduced the definition of 'zoo' as defined under Section 2(39) of the WLP Act. The definition of 'zoo' itself would show that it is meant to be an establishment, whether stationary or mobile, where captive animals are kept for exhibiting to the public or ex-situ conservation and include a circus and off- 7 (2023) 8 SCC 643=2023 INSC 22 8 2024 SCC OnLine SC 36=2024 INSC 30 2022 SCC OnLine SC 1469 = 2022 INSC 465 exhibit facilities such as rescue centres and conservation breeding centres. However, it does not include the establishment of a licensed dealer in captive animals. It could thus be seen that though a 'zoo' as contemplated under Chapter IVA of the WLP Act also deals with conservation, it emphasizes on ex situ conservation.

80. Proviso to Section 33(a) of the WLP Act specifically prohibits any construction of tourist lodges, including Government lodges for commercial purposes, hotels, zoos and safari parks inside a sanctuary except with the prior approval of the National Board. It could thus be seen that, insofar as the area which is covered under a sanctuary is concerned, there will be no difficulty to hold that a safari cannot be constructed within the said area unless there is a prior approval of the National Board. However, the question that falls for consideration in the present case is, as to whether a 'Tiger Safari' would be permissible in the buffer zone or not.

81. For the first time, a 'safari' was defined in the 'Guidelines for Safari Parks which are Working either as Zoos or as Extension to Zoos, 1996'. It reads thus:

> "Safaries are specialized zoos where the captive animals are housed in any large naturalistic enclosures to and the visitors are allowed to enter the enclosure to view the animals in a mechanized vehicle or a pre-determined route from close quarters."

82. It could thus be seen from the title of the said Guidelines itself that the same would be applicable only insofar as safari parks which are working either as zoos or as an extension to zoos.

83. Undisputedly, the 'Tiger Safaris' which are conceptualized by the NTCA are not for the parks which are working either as zoos or as an extension to zoos.

84. As already discussed herein above, the entire thrust of the WLP Act is on the conservation, protection, and management of wildlife. Noticing the importance of tigers as a centre of the eco-system, Chapter IVB of the WLP Act, which deals with NTCA, was inserted by the Wild Life (Protection) Amendment Act, 2006 (No. 39 of 2006) with effect from 4th September 2006. A perusal of Chapter IVB would reveal that it emphasizes on the conservation and protection of tigers and the management of the 'Tiger Reserves'. A very important role has been entrusted to the NTCA which is to be chaired by the Minister in charge of the Ministry of Environment and Forests insofar as the conservation and protection of tigers and the management of 'Tiger Reserves' is concerned.

85. As already discussed herein above, clause (c) of Section 38- O of the WLP Act requires the NTCA to lay down normative standards for tourism activities and guidelines for project tiger from time to time for tiger conservation in the buffer and core area of tiger reserves and ensure their due compliance. Clause (g) thereof requires the NTCA to ensure that the tiger reserves and areas linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for

ecologically unsustainable uses, except in public interest and that too, with the approval of the National Board for Wild Life and on the advice of the Tiger Conservation Authority.

86. It is to be noted that after the State Government, on the recommendation of the NTCA, notifies an area as a 'Tiger Reserve', the restriction as provided under the provisions of sub-section (2) of Section 18, sub-sections (2), (3) and (4) of Section 27, Sections 30, 32 and clauses (b) and (c) of Section 33 of this Act shall, as far as may be, apply in relation to a 'Tiger Reserve' as they apply in relation to a sanctuary.

87. Section 38XA of the WLP Act specifically provides that the provisions contained in the said Chapter shall be in addition to, and not in derogation of, the provisions relating to sanctuaries and National Parks. As such, it could be seen that the legislature has put 'Tiger Reserve' on a higher pedestal than the sanctuaries and the National Parks.

88. Sub-section (4) of Section 38V of the WLP Act requires the State Government, while preparing a TCP, to ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve. Explanation thereto divides the 'Tiger Reserve' into two areas, i.e.,

(i) core or critical tiger habitat areas of National Parks and sanctuaries, which are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers; and (ii) buffer or peripheral area, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat. While doing so, the State Government is required to ensure adequate dispersal for the tiger species, which aims at promoting co- existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined based on the scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purpose are to be provided.

89. It is thus clear that, even in buffer or peripheral areas, though a lesser degree of habitat protection than the core area is to be provided, however, the provisions are required to be made to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species. An effort has to be made to promote co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights.

90. It is further to be noted that the National Forest Policy, 1988 also emphasizes the necessity to provide for "corridors" linking the protected areas to maintain genetic continuity between artificially separated sub-sections of migrant wildlife. Even the National Wildlife Action Plan 2017-31 emphasizes on the same. As held by this Court in the case of Centre for Environmental Law, World Wide Fund-India (supra), this Policy has a statutory flavor.

91. As held by this Court in the case of T.N. Godavarman Thirumulpad v. Union of India and others (supra), the approach has to be ecocentric and not anthropocentric. The approach has to be nature-centred where humans are a part of nature and non-humans have intrinsic value.

92. We will now have to examine as to how the concept of 'Tiger Safaris' came to be introduced.

93. We have already reproduced the relevant part of the Guidelines for Preparation of Tiger Conservation Plan, 2007. The said Guidelines show how important is the buffer zone vis-à-vis the tiger land tenure dynamics. Based on the available research data, it has been found that the minimum population of tigresses in breeding age, which is needed to maintain a viable population of 80-100 tigers (in and around core areas) requires an inviolate space of 800 -1000 sq. km. It also states that the tiger being an "umbrella species", such an area would also ensure viable populations of other wild animals (co-predators, prey) and forest, thereby ensuring the ecological viability of the entire area/habitat. It can also be seen that the buffer areas with forest connectivity are imperative for tiger dynamics since such areas foster sub- adults, young adults, transients, and old members of the population. The young adults periodically replace the resident aging males and females from the source population area. It also states that the buffer area absorbs the "shock" of poaching pressure on populations of tigers and other wild animals.

94. It is for the first time, in "the 2012 Guidelines" issued by the NTCA on 15th October 2012, that the concept of establishment of the 'Tiger Safari' could be found, which has already been reproduced herein above. The said Guidelines provided that the 'Tiger Safaris' may be established in the buffer areas of tiger reserves which experience immense tourist influx in the core/critical tiger habitat for viewing tigers. It also provided for the establishment of interpretation and awareness centres in such buffer areas to foster awareness for eliciting public support. It provided that the management of such centres would be through the respective Panchayati Raj (PR) institutions.

95. Thereafter in 2016, the NTCA issued guidelines to establish 'Tiger Safaris' in the buffer and fringe areas of tiger reserves. These guidelines provided for the basic criteria, and procedure required in the buffer and fringe areas of tiger reserves for dealing with the establishment, management, and administration of 'Tiger Safaris' after following the due procedure prescribed under the law and the 2012 guidelines as also the CZA guidelines for the establishment of new zoos under section 38H(1A) of the WLP Act. Clause 8 of the said Guidelines provides that, if the carrying capacity is 100% utilized, then a proposal for establishing a 'Tiger Safari' can be placed before the NTCA.

96. Clause 9 of the 2016 guidelines is very important. It specifically provides that no tiger shall be obtained from a zoo exhibit. It further provides that wild tigers which are from the same landscape as that of the area where the tiger safari is established, would fall under the categories of (a) injured tigers (after suitable treatment); (b) conflict tigers; and (c) orphaned tiger cubs which are unfit for re-wilding and release into the wild should be selected. It further provides that no visibly injured or incapacitated tiger shall be put in the safari. It further provides that recovered/treated animals shall be put on display only after assessment by the NTCA. It further provides that no healthy wild tiger or any other animal shall be sourced from the wild as per the provisions of the National Zoo Policy.

97. Clause 10 of the 2016 guidelines further provides that the location of the tiger safari shall be identified preferably in the buffer (not falling in notified National Parks and/or Wildlife Sanctuary)/peripheral area of the tiger reserve on the basis of the recommendations of a committee

comprising of members from the NTCA, CZA, Forest Department of State concerned, an experienced tiger biologist/scientist/conservationist and a representative, nominated by the Chief Wildlife Warden of the concerned State. It further provides that tiger dispersal routes shall be avoided in all circumstances.

98. However, the NTCA has issued fresh guidelines in November 2019. The 2019 Guidelines are similar to the 2016 Guidelines, except clause 9, which provides that the selection of the animal shall be done in conformity with Section 38I of the WLP Act after due approval of the CZA.

99. It could thus be seen that under the 2016 Guidelines, the concept of 'Tiger Safaris' was mainly for rehabilitation of the injured tigers (after suitable treatment), conflict tigers, and orphaned tiger cubs which are unfit for re-wilding and release into the wild. The final authority insofar as selection of the animals is concerned, vested with the NTCA. It could also be seen that the said 2016 Guidelines are also consistent with the SOP of the NTCA to deal with orphaned, abandoned tiger cubs and old/injured tigers in wild. The concept was changed in the 2019 Guidelines i.e. animals from zoo will be put in Safari. It provided that the selection of the animals shall be done in conformity with Section 38I of the WLP Act. The final authority of the selection of animals is vested with the CZA.

100. We prima facie find no infirmity in the guidelines issued by the NTCA, i.e., the 2012 Guidelines and the 2016 Guidelines for establishing the 'Tiger Safaris' in the buffer and fringe areas of the 'Tiger Reserve'. In our view, the said Guidelines emphasizes on the rehabilitation of injured tigers (after suitable treatment), conflict tigers, and orphaned tiger cubs which are unfit for re- wilding and release into the wild. However, the 2019 Guidelines, departing from the aforesaid purpose, provide for sourcing of animals from zoos in the Tiger Safaris. In our view, this would be totally contrary to the purpose of the Tiger Conservation. Similarly, the vesting of final authority in the CZA and not in the NTCA, in our view, is not in tune with the emphasis on tiger conservation as provided under Chapter IVB of the WLP Act. We are also of the view that since undertaking of establishment of such a 'Tiger Safari' would be basically for the 'in-situ' conservation and protection of the tiger, it is the NTCA that shall have the final authority. No doubt that the CZA can be taken on board so that it can render its expertise in the management of such 'Safaris'.

101. We also find that, a reading of the provisions contained in the proviso to Section 33(a) and the provisions contained in the Explanation (ii) of sub-section 4 of Section 38V of the WLP Act would reveal that, although it will not be permissible to establish a 'Tiger Safari' in a core or critical tiger habitat area without obtaining the prior approval of the National Board, such an activity would be permissible in the buffer or peripheral area.

102. As already discussed herein above, while preparing a TCP, the State Government is required to ensure that the agricultural, livelihood, developmental, and other interests of the people living in tiger bearing forests or a tiger reserve are taken care of.

103. Undisputedly, it may not be out of place to mention that the establishment of such 'safaris' in the buffer zone would generate employment for the local people and promote co-existence between

wildlife and human activity. However, we are of the considered view that such a 'safari' can be established only for the purposes specified in clause 9 of the 2016 Guidelines and not as per the 2019 Guidelines.

(b) Whether establishment of a 'Tiger Safari' at Pakhrau is legal or not.

104. We will now have to consider whether the establishment of the 'Tiger Safari' at Pakhrau is legal or not.

105. TCP in respect of the Corbett Tiger Reserve Core Zone for the period 2012-13 to 2021-2022 was submitted to the NTCA on 27th January 2015. The said TCP has been approved by the NTCA on 4th March 2015.

106. It will be apposite to refer to the relevant portion of clause 13.1.2 of the said TCP, which reads thus:

> "There is also need to develop a Rescue Centre cum Tiger Safari in the buffer area of CTR so as to provide an easy option for rescue and rehabilitation of injured and/or infirm or problem tigers and to provide opportunities for visitors to see tigers up close in a near natural controlled environment."

> 107. It could thus be seen that, the TCP also provided for developing a Rescue Centre-cum-Tiger Safari to provide an easy option for the rescue and rehabilitation of the injured and/or infirm or problem tigers and also to provide an opportunity for visitors to see tigers up close and in a near-natural controlled environment.

> 108. It will be relevant to refer to clause J of the said TCP, which reads thus:

> "J. Exploring the possibility of a Tiger Safari:

> Though Corbett Tiger Reserve is known for its tigers and it attracts lots of tourists, many of them could not see tiger and they return with heavy hearts. It is a fact that maximum tourists are only interested with the sighting of tigers. Although the park administration is trying its best to educate and aware tourists to enjoy the breath taking landscape with wildlife such as elephants, deer and crocodiles, casual tourists always hunt for sighting of a tiger. At this point the recent guideline enacted by NTCA for setting up of a 'Tiger Safari' in the buffer area to divert casual tourists from the tourism zone which will ultimately benefit the habitat from unnecessary pressure from growing tourists. The tiger safari will generate huge revenue which will enrich the 'Tiger Conservation Foundation of CTR' and ultimately the fringe villagers. A detail proposal will be prepared as per the guidelines of NTCA and CZA for funding by NTCA. There is a strong possibility of developing such a safari in Karnashram area of Lansdowne Forest Division."

> 109. The TCP takes into consideration the concept of diversion of casual tourists from the tourism zone to the 'Tiger Safari' in the buffer zone. It also states that this will ultimately benefit the habitat from unnecessary pressure from the growing tourists. It states that the 'Tiger Safari' will generate huge revenue which will enrich the 'Tiger Conservation Foundation of CTR' and ultimately the fringe villages. It also proposed a site for a 'Tiger Safari' at Karnashram area of Lansdowne Forest Division.
>
> 110. A perusal of the materials placed on record would reveal that the NTCA vide its order dated 5th June 2015, had granted an in-

principal approval for establishment of the 'Tiger Safari' in Pakhrau. The CZA, vide order dated 12th February 2019, conveyed its approval on the conditions stipulated therein. The 'Tiger Safari' project, therefore, was approved by the CZA. Since at the relevant time, 'Tiger Safari' was considered as a 'part forest and part non-forestry' activity, an in-principal approval was granted by the Government of India under the Forest Conservation Act on 30th October 2020 for the Forest Clearance of 15% of the area. The Stage-I clearance was granted on 30th October 2020 and the Stage II clearance was granted on 10th September 2021.

111. It could be seen that, the location of the 'Tiger Safari' has not been identified as per clause 10 of the 2016 Guidelines which requires recommendations of the Committee comprising of the members from (i) NTCA, (ii) CZA, (iii) Forest Department of concerned State, (iv) an experienced tiger biologist/scientist/conservationist, and (v) a representative, nominated by the Chief Wildlife Warden of the concerned State.

112. From the record, it does not appear that such a Committee was constituted for the purpose of determining the location of the 'Tiger Safari' at Pakhrau. However, since there are approvals from the NTCA and the CZA and since the proposal for the establishment of 'Tiger Safari' was submitted by the Forest Department of the State, and since the Chief Wildlife Warden was also associated with identification of the location, we find that, though technically there will be non-compliance with the requirement of clause 10 of the 2016 Guidelines; in fact, since most of the authorities mentioned therein are ad idem, we do not wish to interfere with the decision to establish the 'Tiger Safari' at Pakhrau.

113. We also place on record that Shri Anup Malik, IFS, PCCF (HoFF), Uttarakhand, and Dr. Samir Sinha, IFS, PCCF (Wildlife) & Chief Wildlife Warden, Uttarakhand, who were present in the Court during the hearing, have informed the Court that 80% of the work of the 'Tiger Safari' is complete. It is further informed that there are many tigers, who after their treatment are waiting in the rescue centre for being rehabilitated in the 'Safari'. It is also informed that the location of the 'Tiger Safari' is at the edge of the buffer zone, abutting the farmlands of the villagers. It is also informed that the topography of Karnashram area of Lansdowne Forest Division was not found suitable for the 'Tiger Safari' due to its terrain and the site at Pakhrau was found to be suitable. In any case, the concerned authorities, who have expertise in the matter, have approved the said site at Pakhrau.

114. In these peculiar facts, we are inclined to approve the establishment of the 'Tiger Safari' at Pakhrau. However, we find that when the TCP of 2015 itself provided for the establishment of a Rescue Centre-cum-Tiger Safari at a nearby place, there appears to be no logic for establishing a rescue centre at another place. We therefore find that it will be appropriate that the State of Uttarakhand is directed to also relocate the rescue centre nearby the 'Tiger Safari'. At the same time, it will also be necessary to issue directions that, while undertaking construction of these 'Tiger Safaris', the provisions of the 2016 Guidelines are scrupulously followed. We also propose to issue further directions in this regard, in the operative part of the judgment. The directions which would be issued by us would also be applicable to the existing safaris including the Pakhrau Tiger Safari.

(c) Illegal construction and felling of trees

115. The next question that requires consideration is with regard to the illegal construction carried out in the Corbett Tiger Reserve and the illegal felling of trees for the said purpose.

116. The Corbett National Park is one of the oldest parks in the country. It was declared a National Park by the United Provinces National Park Act, 1935. After the launch of 'Project Tiger' and the amendment to the WLP Act in the year 2006, which inserted Chapter IVB, a Tiger Reserve admeasuring 1,288.31 sq. km. was notified by the Government of Uttarakhand by notification dated 26th February 2010, issued under Section 38V(1). Out of this 1,288.31 sq. km., 821.99 sq. km. has been declared as the core critical Tiger Habitat. Further, out of this 821.99 sq. km., 520.82 sq. km. forms part of the Corbett National Park, and 301.17 sq. km. of the Sonanadi Wildlife Sanctuary. The remaining reserved forest to the extent of 466.32 sq. km is a buffer area constituting 306.90 sq. km. in the Kalagarh Forest Division and 159.4 sq. km. in the Ram Nagar Forest Division.

117. The forests of the Corbett Tiger Reserve form an essential link corridor between Corbett and Rajaji National Park through the Rawasana – Sonanadi Corridor in the Lansdowne Forest Division.

118. The importance of the Corbett National Park has been captured in the "Status of Tigers, Co-predators & Prey in India" in the following words:

> "Corbett Tiger Reserve is the largest source population for tigers in Shivalik-Gangetic landscape and responsible for the remarkable recovery of tiger population in this landscape. The corridors connecting Corbett with the surrounding forest divisions and protected areas are crucial for the long-term survival of this metapopulation.
>
> xxx xxx xxx With a high ungulate biomass in the park Corbett Tiger Reserve maintains a high tiger density acting as a source of dispersing tigers to neighbouring protected areas (Lansdowne, Terai West, Amangarh and Ramnagar Forest Division) and is therefore of great importance for tiger and wildlife conservation in this landscape. Corbett Tiger Reserve has the largest tiger population in any single Protected Area in the world."

119. The Fifth Cycle of the 'Management Effectiveness Evaluation of Tiger Reserves in India' was released in the year 2023 based on the survey conducted in the year 2022. Though this evaluation gives a good rating to the Corbett Tiger Reserve, yet certain weaknesses have been pointed out. The Indian State of Forest Report 2021 (ISFR 21) suggests that the forest cover in the Corbett Tiger Reserve in 2011 was VDF 330.88 sq. km.; MDF 825 sq. km.; and OF 91.61 sq.km. and that it has undergone changes, as found in the year 2021. The report also says that there has been a loss of 22 sq. km. of forest cover in the Tiger Reserve. It further noticed that the human-tiger conflict in the landscape is also increasing, and the loss of tree cover has resulted in loss of habitat and increased conflict with humans. It is pointed out that, as of now no Eco Sensitive Zone ("ESZ" for short) has been notified for the Corbett Tigre Reserve. It suggested that in the absence of such notification, the activities in the 10 km. deemed ESZ must be regulated.

120. It further points out that the building materials were found stored for remodeling private resorts along the Ramnagar- Ranikhet highway. It recommended that such activities must be regulated. It also points out that the Ramnagar-Ranikhet highway is persistently acting as a barrier for many species, including the elephant. It suggested that these roads have to be made eco-friendly according to the guidelines.

121. Report No. 3 of 2023 in Application No.1558 of 2021 in Writ Petition (Civil) No.202 of 1995 submitted by the CEC has annexed various reports containing findings of the Committees constituted under the orders of the High Courts. The CEC has considered the following:

> (i) Findings of the Committee constituted by the NTCA pursuant to the order dated 23rd August 2021, passed by the High Court of Delhi in Writ Petition No.8729 of 2021 filed by the applicant-Mr. Gaurav Kumar Bansal;
>
> (ii) Report dated 9th November 2021 filed jointly by PCCF (General), PCCF (Wildlife) and the Director of the Corbett National Park before the High Court of Uttarakhand pursuant to the order of the High Court dated 27 th October 2021 in Writ Petition No.178 of 2021;
>
> (iii) Site Inspection Report of the Regional Office, MoEF&CC, Dehradun in respect of the illegal felling of trees and illegal construction of buildings and waterbodies in the Corbett Tiger Reserve Landscape, Uttarakhand.
>
> (iv) Findings of the Five Member Kapil Joshi Committee constituted by the Principal Chief Conservator of Forest (HoFF) vide letter No.948/P.O. dated 27th December 2021 and 1002/P.O. dated 12th January 2022.
>
> (v) Report of FSI dated 20th October 2022 on the felling of trees in the name of establishment of the Pakhrau Tiger Safari, Uttarakhand.

122. After considering the aforesaid reports/findings, the CEC has come to a finding that various irregularities have been committed in the areas outside the Tiger Safari as well as in the Pakhrau

Tiger Safari. They have been listed as under:

> "A. IRREGULARITIES OUTSIDE THE TIGER SAFARI
>
> a) improvement to Kandi Road over a length of 1.2 KM by way of raising the level of the road and construction of culverts without the approval/ sanction of the competent authority and without any provision in the budget.
>
> b) construction of four buildings each with 4 rooms at Forest Rest House (FRH) complex, Pakhrau.
>
> c) construction of four buildings, each with 4 rooms at Forest Rest House Complex, Morghatti.
>
> d) construction of a water body each near Pakhrau FRH and Morghatti FRH after clearing the tree growth
>
> e) construction of four buildings outside the Kugadda Forest CAMP in Palean Range, Kalagarh Forest Division falling with in the Corbett Tiger Reserve. These four buildings had identical building plans similar to those seen in Morghatti and Pakhrau, FRH Complex.
>
> f) construction by DFO, Kalagarh of Saneh Forest Rest House falling in Lansdowne Forest Division pursuant to the directions of CCF, Garhwal vide letter dated 15.09.2021.
>
> g) laying of underground 11 KV electrical cables between Saneh and Pakhrau.

The noted works at (a) to (g) above were being carried out without requisite administrative and financial approvals of the competent authority. The works were being executed solely under the orders of the DFO, Kalagarh and DFO Kalagarh is not competent to sanction these works.

B. IRREGULARITIES IN PAKHRAU TIGER SAFARI

a) Illegal felling of estimated 6053 trees at the proposed Tiger Safari construction sites in place of 163 permitted to be cut in the FC clearance granted by MoEF&CC

b) Commencement of construction work of Pakhrau Tiger Safari even before getting stage II clearance under FC Act 1980 and final approval of the Layout Plans by the Central Zoo Authority

c) Concrete buildings are being constructed instead of using bamboo which has been approved by MoEF&CC.

d) Additional civil structures are planned and being built without approval of the revised plan and accordingly the estimate has escalated from Rs.26.81 crores to Rs.102.11 crores"

123. The aforesaid list of irregularities would reveal that a vast number of illegal construction activities have been carried out. Such constructions cannot be completed overnight. Though an action has been taken in respect of certain officers of the Forest Department, we are of the prima facie view that many other persons must have been involved in the commission of the said irregularities. However, since the CBI is conducting the investigation as per the orders passed by the High Court, we do not propose to make any comments thereto.

124. It has been categorically stated in the report that CEC was informed about all the civil structures being constructed in respect of works at "A" except one building at Kuggada which has been demolished. It has been stated that one building which has not been demolished has been used by the Forest Staff as their camping place because of lack of alternative accommodation. We are also informed during the hearing that, except for the works executed at the Pakhrau Tiger Safari site, the contractors who executed the works without the approval of competent authorities have not been made any payments and that the contractors have also not made any claims in this regard.

125. The CEC during the site visit was shown the locations where the unauthorized buildings once stood but these buildings were not there at the time of the site visit of CEC as they had been demolished on the orders of the Director, 'Project Tiger'.

126. The CEC has further noticed that the DFO, Kalagarh who executed the work illegally had committed similar irregularities during his earlier postings. It is also noticed that the PCCF & HoFF and the DIG Police, Vigilance Department had written in this regard to the Government requesting not to post the said officer in any sensitive post. The Range Officer posted in Pakhrau range had earlier worked with Kishan Chand, DFO, Kalagarh while he was the DFO in the Rajaji Tiger Reserve. Despite the fact that both these officers were accused of the irregularities that took place in the Rajaji Tiger Reserve, they were again posted together in the Kalagarh Forest Division.

127. The CEC also noticed that the DFO, Kalagarh was transferred from the Kalagarh Forest Division only after the site visit of the CEC even though the report submitted by the NTCA had found that the illegalities/irregularities were committed by him. It is also noticed that even after it came to the notice of the higher authorities that the DFO, Kalagarh had issued work orders without any authority in respect of the works which have been listed above, yet for unknown reasons, he was not named as an accused in the forest offences.

128. The CEC has formed an opinion that the cavalier attitude of the Government of Uttarakhand indicated that the officer was having tacit backing of his bosses in the execution of the unauthorized works worth crores of rupees at the cost of the environment and the wildlife in a prestigious and world-renowned Tiger Reserve.

129. The CEC further found that, though the works at the Forest Rest House Campuses were supposed to be for the accommodation of the forest staff, they do not appear to be so. They appear

to be meant for providing accommodation consisting of 16 rooms at four locations (64 rooms) for tourists. As per the CEC, it was clear that this was done for the promotion of tourism.

130. The report of the CEC further found that the proposal for the felling of trees at the site of Pakhrau Tiger Safari submitted to MoEF&CC under the Forest (Conservation) Act, 1980 relates to the felling of only 163 trees out of 3,620 trees that have been enumerated within the 16 Hectares out of the 106.16 Hectares that has been approved for the establishment of the Tiger Safari. It also refers to the report of the FSI dated 20th October 2022, which has estimated the total number of trees felled at the Pakhrau Tiger Safari site to be 2,651. The report further states that approximately additional 534 trees have been felled for the construction of tourist accommodation facilities and water bodies outside the proposed Pakhrau Tiger Safari.

131. No doubt that the report refers to the objection of the Uttarakhand Forest Department to the estimation of the FSI, which is also reiterated before us by Mr. Nadkarni, learned Senior Counsel during his arguments.

132. The report of the CEC further highlights that taking into consideration the sequence of events that happened, it was of the opinion that it was the then Hon'ble Forest Minister who was the main architect of the entire matter. In a nutshell, the reasons thereof are as under:

> (i) That, the State Vigilance Department vide letter dated 19th September 2019 and the PCCF and HoFF vide letters dated 18th September 2019 and 21st September 2019 had requested the State Government not to post Mr. Kishan Chand at any sensitive post, he was still given a posting in a sensitive post.
>
> (ii) That, though there was no proposal from the Forest Department and no recommendation from the Civil Service Board (CSB) to post Mr. Kishan Chand at the Kalagarh Forest Division, ignoring the recommendation of the PCCF & HoFF and the State Vigilance Department, the then Hon'ble Forest Minister inserted the name of Mr. Kishan Chand, DFO at serial No. 11 in the proposal relating to transfer and postings. This insertion was made on 26th April 2021 before the concerned file was submitted to the Hon'ble Chief Minister for approval of the posting proposal.
>
> (iii) Though the Secretary (Forests) vide notings dated 27th October 2021, after considering the seriousness of the irregularities reported by the NTCA, recommended placing Mr. Kishan Chand under suspension, the then Hon'ble Forest Minister has not only overruled the recommendation of the Secretary (Forests) for suspension but also justified the proposed posting to Lansdowne Division stating that Mr. Kishan Chand only executed works which had been started by his predecessors.
>
> (iv) The then Hon'ble Forest Minister justified the construction of new buildings on the ground that they were being constructed as per the approvals granted by the Corbett Tiger Reserve Foundation. Overruling the proposal of the Secretary (Forest) for suspension, the then Hon'ble Forest Minister justified the actions of the DFO Mr.

Kishan Chand, and recommended that the officer be transferred from the post of DFO Kalagarh Forest Division to the post of DFO Lansdowne Forest Division, Lansdowne.

(v) Subsequently, the posting of Mr. Kishan Chand was reviewed and revised on 24th November 2021 by the Hon'ble Chief Minister and the officer was posted to the Office of the HoFF on administrative grounds. This change in proposal relating to the posting of Mr. Kishan Chand was put up to the Chief Minister directly as was noticed by the CEC from the copies of the notings on the file.

(vi) Ignoring the recommendation of the authorities to place Mr. Kishan Chand under suspension, the then Hon'ble Forest Minister once again attempted to post the officer to Lansdowne Territorial Forest Division by inserting his name at serial no. 16 in the transfer and posting proposals. This was done again without any proposal from the Forest Department and without the recommendation of CSB.

(vii) That, it was only after the then Forest Minister demitted office that Mr. Kishan Chand, DFO was finally put under suspension.

(d) 'Public Trust' Doctrine

133. It appears that the then Hon'ble Forest Minister and Mr. Kishan Chand had completely forgotten about the 'Public Trust' doctrine.

134. The importance of the 'Public Trust' doctrine in environmental and ecological matters has been explained by this Court in the case of M.C. Mehta v. Kamal Nath and others10.

This Court has elaborately referred to various articles and the judgments on the issue to come to a conclusion that the 'public trust' doctrine is a part of the law of the land in the following paragraphs:

"23. The notion that the public has a right to expect certain lands and natural areas to retain 10 (1997) 1 SCC 388=1996 INSC 1482 their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled An ecological perspective on property: A call for judicial protection of the public's interest in environmentally critical resources published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:

"Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our

disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

'Human activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.' Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

'We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".' There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources — for example, wetlands and riparian forests — can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions."

24. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the

free and unimpeded use of the general public. Our contemporary concern about "the environment" bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullious) or by every one in common (res communious). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article "Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

"The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — 'perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government."

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."

26. The American law on the subject is primarily based on the decision of the United States Supreme Court in Illinois Central Railroad Co. v. People of the State of Illinois [146 US 387: 36 L Ed 1018 (1892)]. In the year 1869 the Illinois Legislature made a substantial grant of submerged lands — a mile strip along the shores of Lake Michigan extending one mile out from the shoreline — to the Illinois Central Railroad. In 1873, the Legislature changed its mind and repealed the 1869 grant. The State of Illinois sued to quit title. The Court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to pre- emption and sale. It was a title held in trust — for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public. According to Professor Sax the Court in Illinois Central [146 US 387: 36 L Ed 1018 (1892)] "articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties".

27. In Gould v. Greylock Reservation Commission [350 Mass 410 (1966)] the Supreme Judicial Court of Massachusetts took the first major step in developing the doctrine applicable to changes in the use of lands dedicated to the public interest. In 1886 a group of citizens interested in preserving Mount Greylock as an unspoiled natural forest, promoted the creation of an association for the purpose of laying out a public park on it. The State ultimately acquired about 9000 acres, and the legislature enacted a statute creating the Greylock Reservation Commission. In the year 1953, the legislature enacted a statute creating an Authority to construct and operate on Mount Greylock an Aerial Tramway and certain other facilities and it authorised the Commission to lease to the Authority any portion of the Mount Greylock Reservation. Before the project commenced, five citizens brought an action against both the Greylock Reservation Commission and the Tramway Authority. The plaintiffs brought the suit as beneficiaries of the public trust. The Court held both the lease and the management agreement invalid on the ground that they were in excess of the statutory grant of the authority. The crucial passage in the judgment of the Court is as under:

> "The profit-sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority or power to permit use of public lands and of the Authority's borrowed funds for what seems, in part at least, a commercial venture for private profit." Professor Sax's comments on the above-quoted paragraph from Gould decision are as under:
>
> "It hardly seems surprising, then, that the court questioned why a State should subordinate a public park, serving a useful purpose as relatively undeveloped land, to

> the demands of private investors for building such a commercial facility. The court, faced with such a situation, could hardly have been expected to have treated the case as if it involved nothing but formal legal issues concerning the State's authority to change the use of a certain tract of land.... Gould, like Illinois Central, was concerned with the most overt sort of imposition on the public interest : commercial interests had obtained advantages which infringed directly on public uses and promoted private profits. But the Massachusetts court has also confronted a more pervasive, if more subtle, problem — that concerning projects which clearly have some public justification. Such cases arise when, for example, a highway department seeks to take a piece of parkland or to fill a wetland."

28. In Sacco v. Development of Public Works [532 Mass 670], the Massachusetts Court restrained the Department of Public Works from filling a great pond as part of its plan to relocate part of State Highway. The Department purported to act under the legislative authority. The court found the statutory power inadequate and held as under:

> "the improvement of public lands contemplated by this section does not include the widening of a State highway. It seems rather that the improvement of public lands which the legislature provided for ... is to preserve such lands so that they may be enjoyed by the people for recreational purposes."

29. In Robbins v. Deptt. of Public Works [244 NE 2d 577], the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, "wetlands of considerable natural beauty ... often used for nature study and recreation" for highway use.

30. Professor Sax in the article (Michigan Law Review) refers to Priewev v. Wisconsin State Land and Improvement Co. [93 Wis 534 (1896)], Crawford County Lever and Drainage Distt. No. 1 [182 Wis 404], City of Milwaukee v. State [193 Wis 423], State v. Public Service Commission [275 Wis 112] and opines that "the Supreme Court of Wisconsin has probably made a more conscientious effort to rise above rhetoric and to work out a reasonable meaning for the public trust doctrine than have the courts of any other State".

31. Professor Sax stated the scope of the public trust doctrine in the following words:

> "If any of the analysis in this Article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffused public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the delicate mixture of procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining of wetland filling on private

lands in a State where governmental permits are required."

32. We may at this stage refer to the judgment of the Supreme Court of California in National Audubon Society v. Superior Court of Alpine County [33 Cal 3d 419]. The case is popularly known as "the Mono Lake case". Mono Lake is the second largest lake in California. The lake is saline. It contains no fish but supports a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tura (sic) on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the City of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the ecological values of Mono Lake were imperilled. The plaintiffs environmentalist — using the public trust doctrine — filed a law suit against Los Angeles Water Diversions. The case eventually came to the California Supreme Court, on a Federal Trial Judge's request for clarification of the State's public trust doctrine. The Court explained the concept of public trust doctrine in the following words:

> "'By the law of nature these things are common to mankind — the air, running water, the sea and consequently the shores of the sea.' (Institutes of Justinian 2.1.1) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns 'all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people.' " The Court explained the purpose of the public trust as under:
>
> "The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in Marks v. Whitney [6 Cal 3d 251] , '[p]ublic trust easements (were) traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the State, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses — navigation, commerce and fishing — did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that '[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the State is not burdened with an outmoded classification favouring one mode of utilization over another. There is a growing public recognition that one of the important public uses of the tidelands — a use encompassed within the tidelands trust — is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favourably affect the scenery and climate of the area.' Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavour probably qualifies the lake as a 'fishery'

> under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological — the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds. Under Marks v. Whitney [6 Cal 3d 251], it is clear that protection of these values is among the purposes of the public trust." The Court summed up the powers of the State as trustee in the following words:
>
> "Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust...." The Supreme Court of California, inter alia, reached the following conclusion:
>
> "The State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this State shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (See Johnson, 14 U.C. Davis L. Rev. 233, 256-57/; Robie, Some Reflections on Environmental Considerations in Water Rights Administration, 2 Ecology L.Q. 695, 710-711 (1972); Comment, 33 Hastings L.J. 653,
>
> 654.) As a matter of practical necessity, the State may have to approve appropriations despite foreseeable harm to public trust uses.

In so doing, however, the State must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see United Plainsmen v. N.D. State Water Cons.

Comm'n [247 NW 2d 457 (ND 1976)] at pp.

462-463, and to preserve, so far as consistent with the public interest, the uses protected by the trust." The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin.

33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case [33 Cal 3d 419] clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in Mono Lake case [33 Cal 3d 419] to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs

are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In Phillips Petroleum Co. v. Mississippi [108 SCt 791 (1988)] the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case [108 SCt 791 (1988)] assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.

34. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

135. This Court in unequivocal terms has held that the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

136. The law with regard to the importance of the 'public trust' doctrine in ecological/environmental matters has further been evolved and expanded by this Court in subsequent judgments. In the case of Association for Environment Protection v. State of Kerala and others11, this Court has referred to some of the judgments which followed the law laid down in the case of Kamal Nath (supra), which are as under:

> "6. In M.I. Builders (P) Ltd. v. Radhey Shyam Sahu [(1999) 6 SCC 464], the Court applied the public trust doctrine for upholding the order of the Allahabad High Court which had quashed the decision of Lucknow Nagar Mahapalika permitting appellant M.I. Builders (P) Ltd. to construct an underground shopping complex in Jhandewala Park, Aminabad Market, Lucknow, and directed demolition of the construction made on the park land. The High Court had noted that Lucknow Nagar Mahapalika had entered into an agreement with the appellant for construction of shopping complex and given it full freedom to lease out the shops and also to sign agreement on its behalf and held that this was impermissible. On appeal by the builders, this Court held that the terms of agreement were unreasonable, unfair and atrocious. The Court then invoked the public trust doctrine and held that being a trustee of the park on behalf of the public, the Nagar Mahapalika could not have transferred the same to the 11 (2013) 7 SCC 226=2013 INSC 413 private builder and thereby deprived the residents of the area of the quality of life to which they were entitled under the Constitution and municipal laws.
>
> 7. In Intellectuals Forum v. State of A.P. [(2006) 3 SCC 549] , this Court again invoked the public trust doctrine in a matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati Town, referred to some judicial precedents including M.C. Mehta v. Kamal Nath [M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388] , M.I. Builders (P) Ltd. [(1999) 6 SCC 464] , National Audubon Society [National Audubon Society v. Superior Court, 658 P 2d 709 : 33 Cal 3d 419 (1983)] and observed: (Intellectuals Forum case [(2006) 3 SCC 549] , SCC p. 575, para 76) "76. ... This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust.

Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources...." (emphasis in original)

8. In Fomento Resorts and Hotels Ltd. v. Minguel Martins [(2009) 3 SCC 571:

> (2009) 1 SCC (Civ) 877] , this Court was called upon to consider whether the appellant was entitled to block the passage to the beach by erecting a fence in the garb of protecting its property. After noticing the judgments to which reference has been made hereinabove, the Court held: (SCC pp. 614-15 & 619, paras 53-55 & 65) "53. The public trust 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.

This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, 'The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention' (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including downslope lands, waters and resources.

***

65. We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems."

137. The importance of the doctrine of 'public trust' has further been emphasized in the case of Tata Housing Development Company Limited v. Aalok Jagga and others12 to which one of us (B.R. Gavai, J.) was a party.

138. In the present case, it is clear beyond doubt that the then Forest Minister and Mr. Kishan Chand, DFO considered them to be the law unto themselves. They have, in blatant disregard of the law and for commercial purposes, indulged in the illicit felling of trees on a mass-scale to construct buildings on the pretext of promotion of tourism. This is a classic case that shows how the politicians and the bureaucrats have thrown the public trust doctrine in the dustbin. Though Mr.

Kishan Chand, DFO was found to have been involved in serious irregularities at his earlier 12 (2020) 15 SCC 784=2019 INSC 1203 postings, and even though the Authorities had recommended not to post the said officer at any sensitive post, the then Hon'ble Forest Minister inserted his name in the proposal relating to transfer and postings at a sensitive post. Not only that, even after the NTCA found Mr. Kishan Chand, DFO involved in serious irregularities, and the Secretary (Forests) recommended placing him under suspension, the then Hon'ble Forest Minister has not only overruled the recommendation of the Secretary (Forest) for suspension but also justified his proposed posting to the Lansdowne Division. It was only after the then Hon'ble Forest Minister demitted his office, that Mr. Kishan Chand, DFO could be put under suspension. This is a case that shows how a nexus between a Politician and a Forest Officer has resulted in causing heavy damage to the environment for some political and commercial gain. Even the recommendation of the Senior Officers of the Forest Department, the Vigilance Department, and the Police Department which objected to his posting at a sensitive post have been totally ignored. We are amazed at the audacity of the then Hon'ble Forest Minister and Mr. Kishan Chand, DFO in giving a total go-bye to the statutory provisions. However, since the matter is pending investigation by the CBI, we do not propose to comment any further on the matter.

(e) Concern of the CEC

139. The CEC in its report has also elaborately dealt with the past and present policy of MoEF&CC in granting the Forest Clearance (FC) and the Standing Committee of National Board for Wild Life (SC, NBWL) clearances to set up zoos and safaris as forestry and non-forestry activities. It is stated that from the perusal of the minutes of the meeting of the Forest Advisory Committee (FAC) held on 17th February 2021, it would show that, in order to grant clearances under the Forest (Conservation) Act,1980 ("FC Act" for short), zoos were treated as forestry activity till 2007. However, from 2017 onwards, it was treated as a non-forestry activity. Thereafter, only 15% of the total area required for parking and cafeteria, etc. for the setting up of zoos/safaris was treated as a non-forestry activity. However, the State is required to get an approval from the MoEF&CC under the FC Act for the entire area required for the setting up of zoos and safaris. The Net Present Value (NPV) is being collected only in respect of 15% of the total area. The CEC therefore observed that there was a lack of clarity in policy regarding the setting up of zoos and safaris inside the forest boundary in such a sensitive matter.

140. The CEC has also highlighted various clauses in the NTCA Guidelines. It has referred to inconsistencies between the 2016 Guidelines and the 2019 Guidelines. We do not want to elaborately discuss the said issue since we have already referred to the same in the earlier paragraphs.

141. The CEC has also expressed its concern about the issue that the location of Tiger Safaris within Tiger Reserve with tigers sourced from zoos is bound to endanger the population of wild tigers in the Tiger Reserves.

142. The CEC has further observed that, the Tiger Safaris are not site-specific activities as confirmed by the MoEF&CC. It also expressed its opinion that the Tiger Safaris do not have to be necessarily

located within the notified Tiger Reserves, be it buffer or fringe areas of the Tiger Reserves. It has been stated in the report that at times the density of the tiger population is higher in the buffer area as compared to the core area. The concern expressed is that, by permitting the "zoos bred captive animals" in the buffer or fringe areas, the possibility of tigers being exposed to pests and diseases is enhanced. The CEC has also expressed that even the visitors to the Tiger Safari can be carriers of diseases and pests. It has recommended that the Tiger Safaris, not being site-specific, are to be discouraged within the forest areas.

143. The CEC has further expressed that there is a great risk to free-ranging animals from zoos/Safaris which have been set up close to the wildlife-rich protected areas because of epidemiological reasons. It states that zoonosis, especially of infectious diseases, is commonly found in zoo/safari animals, including the tigers. It states that, hundreds of pathogens and many different transmission modes are involved and many factors influence the epidemiology of the various such zoonosis. It further states that the risk of such zoonotic disease transmission drastically increases in any setting where wild animals are confined in close proximity to humans, including the public display facilities like zoos and safaris.

144. The report refers to some of the studies in various zoos/Safari Parks, including Hyderabad Zoo, Jaipur Zoo, Etawah Safari Park, etc.

145. The CEC elaborately refers to various mortalities that occurred in various zoos in the recent past. The CEC report also refers to the stand of the NTCA about the in-principle approvals that have been granted by them for 5 Tiger Safaris in and around the Tiger Reserves of India. The report states that the NTCA highlighted the following main advantages/disadvantages in setting up zoos and safaris within the forest area/protected area/Tiger Reserve:

> "Advantages i. Will help to reduce the pressure from core/critical tiger habitat area ii. Will facilitate promotion of conservation education and livelihood generation Disadvantages i. Its an intensive resource use establishment ii. Clearance/modification of forest area will have to be resorted to in certain cases."

146. The CEC also refers to the stand of the CZA with regard to locating the Tiger Safaris inside the Tiger Reserves. The report states thus:

"55. A. The Central Zoo Authority have supported the establishment of Tiger Safari inside the Tiger Reserve stating that:

> i) there is need for development of off-display facilities under fairly undisturbed conditions alongwith availability of adequate and optimal land and which may be challenging. Under the given circumstances, forest land could offer optimal conditions to establish such facilities;
>
> ii) standards/norms for recognition of Elephant Rehabilitation/Rescue Centres (ERC) under Section 42 of the Wildlife (Protection) Act, 1972 recommends that ERCS

should be located, preferably near the forest areas with access to water body/streams (F.No.2-5/2006-PE (Vol.II) dated 29.10.2017;

iii) as per provision 2.1.4 of National Zoo Policy, 1998,'....zoos shall continue to function as rescue centres for orphaned wild animals, subject to the availability of appropriate housing and upkeep infrastructure...'. In consonance with this, Rescue Centres are an important component of all recognized zoos in the country. This will therefore aid in the mitigation of conflict in a particular region (e.g. to ensure that rescued animals do not have to be transported long-

distances/have a better chance at rehabilitation); and

iv) Wildlife Tourism is a thriving sector in India, and with over 8 crore visitors annually, zoos are in the forefront of this sector and significantly contribute to spreading awareness about wildlife conservation. Most zoos are easily accessible to people, are open year-round and are relatively economical while having high impact in spreading wildlife awareness. This gives zoos an edge over more expensive and relatively less accessible wilderness area such as wildlife safaris.

B) The disadvantages of establishment of Tiger Safari inside Tiger Reserves include

i) clearing of vegetation which could be denser in forest lands; and

ii) accessibility to forest areas may be limited and hence, the establishment could be resource intensive."

147. The CEC also gives its opinion about the impact of the Pakhrau Tiger Safari on the disbursal of tigers from the Corbett Tiger Reserve. The CEC in its report opines that it may not be feasible to locate the Tiger Safaris in the Tiger Reserves including the protected area, buffer zone, on the fringe area.

148. The report of the CEC as also the reports of various Committees which were constituted as per the directions of the High Court of Uttarakhand as well as other authorities would clearly show that there has been rampant deforestation in the Corbett National Park. A huge number of trees have been felled thereby causing a heavy loss to the environment.

149. It is also brought to our notice that in the Ramnagar area as also in other areas around the Corbett Tiger Reserve, there is a mushrooming growth of resorts, which are acting as a hindrance to the free movement of animals including the tigers and elephants. It is also brought to our notice that similarly, there is a mushrooming growth of resorts around various Tiger Reserves throughout the country which are now being used as marriage destinations. It is brought to our notice that in the said resorts, music is played at a very loud volume which causes disturbance to the habitat of the forests. Undisputedly, mushrooming growth of resorts within the close proximity of the protected areas and uncontrolled activities therein, including sound pollution are capable of causing great harm to the ecosystem. We propose to issue certain directions in that regard in the operative part of

our judgment.

(f) Principle of Ecological Restitution

150. It will be relevant to refer to the Convention on Biological Diversity, 1992 ("CBD" for short), to which India is a signatory. Article 8 of the CBD pertains to in situ conservation. Under clause

(f) thereof, it requires the contracting parties to, as far as possible and as appropriate, to rehabilitate and restore the degraded ecosystems and promote the recovery of threatened species. It reads thus:

> (f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies.

[emphasis supplied]

151. In the Chorzow Factory Case13, the Permanent Court of International Justice (PCIJ) laid down the standard in international law for reparations for the commission of internationally wrongful acts. The Court held:

> "The essential principle contained in the actual notion of an illegal act – a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it -such are the principles which should serve to determine the amount of compensation due for an act contrary to international law (...)" [emphasis supplied] 13 The Factory at Chorzow (Germany v. Poland), 13 September 1928, PCIJ, Merits, p. 47)

152. The International Court of Justice (ICJ), while applying the principle of restoration of degraded ecosystem in the case of Costa Rica v. Nicaragua14, has observed thus:

> "42. The Court is therefore of the view that damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law. Such compensation may include indemnification for the impairment or loss of environmental goods and services in the period prior to recovery and payment for the restoration of the damaged environment.
>
> 43. Payment for restoration accounts for the fact that natural recovery may not always suffice to return an environment to the state in which it was before the

> damage occurred. In such instances, active restoration measures may be required in order to return the environment to its prior condition, in so far as that is possible.

(...)

53. In determining the compensation due for environmental damage, the Court will assess, as outlined in paragraph 42, the value to be assigned to the restoration of the damaged environment as well as to the impairment or loss of environmental goods and services prior to recovery." (emphasis supplied) Certain Activities Carried Out by Nicaragua in the Border Area, Compensation Judgment, (2018) I.C.J. Reports 15

153. While considering the aspect of valuation of environmental restoration costs to be awarded to Costa Rica, the ICJ observed thus:

> "85. (...) with respect to biodiversity services (in terms of nursery and habitat), the "corrected analysis" does not sufficiently account for the particular importance of such services in an internationally protected wetland where the biodiversity was described to be of high value by the Secretariat of the Ramsar Convention. Whatever regrowth may occur naturally is unlikely to match in the near future the pre- existing richness of biodiversity in the area. Thirdly, in relation to gas regulation and air quality services, Nicaragua's "corrected analysis" does not account for the loss of future annual carbon sequestration ("carbon flows"), since it characterizes the loss of those services as a one-time loss. The Court does not consider that the impairment or loss of gas regulation and air quality services can be valued as a one-time loss.
>
> 86. The Court recalls (...) that the absence of certainty as to the extent of damage does not necessarily preclude it from awarding an amount that it considers approximately to reflect the value of the impairment or loss of environmental goods and services. In this case, the Court, while retaining some of the elements of the "corrected analysis", considers it reasonable that, for the purposes of its overall valuation, an adjustment be made to the total amount in the "corrected analysis" to account for the shortcomings identified in the preceding paragraph. The Court therefore awards to Costa Rica the sum of US$120,000 for the impairment or loss of the environmental goods and services of the impacted area in the period prior to recovery." (emphasis supplied)

154. This Court also while applying the principle of environmental restitution in the case of Indian Council for Enviro-Legal Action and others v. Union of India and others15 observed thus:

> "60. (...) we are of the considered opinion that even if it is assumed (for the sake of argument) that this Court cannot award damages against the respondents in these proceedings that does not mean that the Court cannot direct the Central Government to determine and recover the cost of remedial measures from the respondents. Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central

> Government (or its delegate, as the case may be) to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment…". Section 5 clothes the Central Government (or its delegate) with the power to issue directions for achieving the objects of the Act. Read with the wide definition of 'environment' in Section 2(a), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for for the above purpose. In the present case, the said powers 15 (1996) 3 SCC 212=1996 INSC 237 will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilise the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. (…) xxx xxx xxx
>
> 66. (…) it follows, in the light of our findings recorded hereinbefore, that Respondents 4 to 8 are absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area (…) and also to defray the cost of the remedial measures required to restore the soil and the underground water sources. Sections 3 and 4 of Environment (Protection) Act confers upon the Central Government the power to give directions of the above nature and to the above effect. Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 4 which are couched in very wide and expansive language. Appropriate directions can be given by this Court to the Central Government to invoke and exercise those powers with such modulations as are called for in the facts and circumstances of this case." [emphasis supplied]

155. In the case of S. Jagannath v. Union of India and others16, this Court was considering the issue of pollution created by the industry which had caused harm to the villagers in the affected area, to the soil and to the underground water. This Court observed thus:

> "49. (…) Consequently the polluting industries are 'absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas'. The 'Polluter Pays Principle' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology (…)." [emphasis supplied]

156. It could thus be seen that, worldwide as well as in our jurisprudence, the law has developed and evolved emphasizing on the restoration of the damaged ecological system. A reversal of environmental damage in conformity with the principle under 16 (1997) 2 SCC 87=1996 INSC 1466 Article 8(f) of the CBD is what is required. At times, the compensatory afforestation permits forestation at some other site. However, the principle of restoration of damaged ecosystem would require the States to promote the recovery of threatened species. We are of the considered view that the States would be required to take steps for the identification and effective implementation of active restoration measures that are localized to the particular ecosystem that was damaged. The focus has to be on restoration of the ecosystem as close and similar as possible to the specific one that was damaged.

157. No doubt that the CBI is investigating the issue as to who is responsible for the same. However, the investigation by the CBI would only lead to finding out the culprits who are responsible for such huge devastation. The law will take its own course.

158. We find that, bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter. We are of the considered view that the State cannot run away from its responsibilities to restore the damage done to the forest. The State, apart from preventing such acts in the future, should take immediate steps for restoration of the damage already done; undertake an exercise for determining the valuation of the damage done and recover it from the persons found responsible for causing such a damage. VI. CONCLUSIONS

159. It is well known that the presence of a Tiger in the forest is an indicator of the well-being of the ecosystem. Unless steps are taken for the protection of the Tigers, the ecosystem revolving around Tigers cannot be protected. The figures which are placed before us to show that there has been a substantial reduction in tiger poaching and an increase in the tigers' strength throughout the country. However, that should not be enough. The ground realities cannot be denied. The events like illegal constructions and illicit felling of trees on a rampant scale like the one that happened in the Corbett National Park cannot be ignored. Steps are required to prevent this.

160. We therefore requested Shri Chandra Prakash Goyal, former Director General of Forest, Shri Anup Malik, IFS, PCCF (HoFF), Uttarakhand, and Dr. Samir Sinha, IFS, PCCF (Wildlife) & Chief Wildlife Warden, Uttarakhand to give their suggestion for more effective management of the "Tiger Reserves" in India. Accordingly, they have given their suggestions. No doubt that on some issues there is no coherence in the suggestions given. They are conflicting and contradictory to each other. In any event, all three Officers have vast experience in the Forest Department. Dr. Samir Sinha is a person who has prepared the TCP for the Corbett Tiger Reserve. Similarly, Shri Goyal has worked as the Director General of Forest and has also worked as a Field Director of some of the Tiger Reserves. At the same time, we are not experts in the field. We therefore find that it will be appropriate that experts in the field come together and come out with a solution that would go a long way in the effective management and protection of the Tiger Reserves.

161. We therefore find that the following directions need to be issued in the interests of justice:

A. The Safaris which are already existing and the one under construction at Pakhrau will not be disturbed.

However, insofar as the Safari at 'Pakhrau' is concerned, we direct the State of Uttarakhand to relocate or establish a rescue centre in the vicinity of the 'Tiger Safari'. The directions which would be issued by this Court with regard to establishment and maintenance of the 'Tiger Safaris' upon receipt of the recommendations of the Committee which we are directing to be appointed would also be applicable to the existing Safaris including the Safari to be established at Pakhrau.

B. The MoEF&CC shall appoint a Committee consisting of the following:

(i) a representative of the NTCA;

(ii) a representative of the Wildlife Institute of India (WII);

(iii) a representative of the CEC; and

(iv) an officer of the MoEF&CC not below the rank of Joint Secretary as its Member Secretary.

We however clarify that the Committee would be entitled to co-opt any other authority including a representative of CZA and also take the services of the experts in the field, if found necessary.

C. The said Committee will:

(i) recommend the measures for restoration of the damages, in the local in situ environment to its original state before the damage was caused;

(ii) assess the environmental damage caused in the Corbett Tiger Reserve (CTR) and quantify the costs for restoration;

(iii) identify the persons/officials responsible for such a damage. Needless to state that the State shall recover the cost so quantified from the persons/delinquent officers found responsible for the same. The cost so recovered shall be exclusively used for the purpose of restoration of the damage caused to the environment.

(iv) specify how the funds so collected be utilized for active restoration of ecological damage.

D. The aforesaid Committee, inter alia, shall consider and recommend:

(i) The question as to whether Tiger Safaris shall be permitted in the buffer area or fringe area.

(ii) If such Safaris can be permitted, then what should be the guidelines for establishing such Safaris?

(iii) While considering the aforesaid aspect, the Committee shall take into consideration the following factors:

a) the approach must be of ecocentrism and not of anthropocentrism;

b) the precautionary principle must be applied to ensure that the least amount of environmental damage is caused;

c) the animals sourced shall not be from outside the Tiger Reserve. Only injured, conflicted, or orphaned tigers may be exhibited as per the 2016 Guidelines. To that extent the contrary provisions in the 2019 Guidelines stand quashed.

d) That such Safaris should be proximate to the Rescue Centres.

Needles to state that the aforesaid factors are only some of the factors to be taken into consideration and the Committee would always be at liberty to take such other factors into consideration as it deems fit.

(iv) The type of activities that should be permitted and prohibited in the buffer zone and fringe areas of the Tiger Reserve. While doing so, if tourism is to be promoted, it has to be eco-tourism. The type of construction that should be permissible in such resorts would be in tune with the natural environment.

(v) The number and type of resorts that should be permitted within the close proximity of the protected areas. What restriction to be imposed on such resorts so that they are managed in tune with the object of protecting and maintaining the ecosystem rather than causing obstruction in the same.

(vi) As to within how much areas from the boundary of the protected forest there should be restriction on noise level and what should be those permissible noise levels.

(vii) The measures that are required to be taken for effective management and protection of Tiger Reserves which shall be applicable on a Pan India basis.

(viii) The steps to be taken for scrupulously implementing such recommendations.

E. The CBI is directed to effectively investigate the matter as directed by the High Court of Uttarakhand at Nainital in its judgment and order dated 6th September 2023, passed in Writ Petition No.178 of 2021. F. The present proceedings shall be kept pending so that this Court can monitor the steps taken by the Authorities as well as the investigation conducted by the CBI.

G. We will consider issuing appropriate directions after the recommendations are received by this Court from the aforesaid Committee. We request the Committee to give its preliminary report within a period of three months from today.

H. The CBI shall submit a report to this Court within a period of three months from today. We request the learned ASG to communicate this order to the Director, CBI.

I. The State of Uttarakhand is directed to complete the disciplinary proceedings against the delinquent officers as expeditiously as possible and in any case, within a period of six months from today. The status report in this regard shall be submitted to this Court within a period of three months from today.

162. We place on record our appreciation for the assistance rendered by Ms. Aishwarya Bhati, learned ASG, Mr. A.N.S. Nadkarni, learned Senior Counsel, Mr. Gaurav Kumar Bansal, applicant-in-person. However, we will be failing in our duty if we do not make a special mention of the valuable assistance rendered by Mr. K. Parameshwar, learned Amicus Curiae. His in-depth research and meticulous formulations have immensely assisted us in deciding this issue, which is of paramount importance to environmental and ecological justice. We direct the State of Uttarakhand to pay an amount of Rs.10,00,000/- (Rupees Ten lakh) to Mr. K. Parameshwar, learned Amicus Curiae, as honorarium.

163. The matter is stand over for Twelve (12) weeks.

.....J (B.R. GAVAI) .....J (PRASHANT KUMAR MISHRA) .....J (SANDEEP MEHTA) NEW DELHI;

MARCH 06, 2024