

A PRAGNESH SHAH
v.
DR. ARUN KUMAR SHARMA & ORS.
(Civil Appeal Nos. 7724-7725 of 2021)
B JANUARY 12, 2022
**[DR. DHANANJAYA Y. CHANDRACHUD AND
A. S. BOPANNA, JJ.]**

- C *National Green Tribunal Act, 2010 – Environment Protection Act, 1986 – Environment Protection Rules, 1986 – Eco-sensitive Zone Notification and Zonal Master Plan 2030 – NGT on basis of a report dated 08.12.2020 submitted by an Expert Committee, allowed an original application filed by the first respondent, which challenged the Zonal Master Plan 2030 prepared by the State of*
- D *Rajasthan, for the Mount Abu Eco-sensitive Zone – Report of the Expert committee had, inter-alia, declared land owned by the appellant to be unfit for construction – Review filed by the appellant was dismissed by NGT – On appeal, held: the Expert Committee has furnished valid reasons for determining that construction must not be allowed so as to preserve the eco-system of the region – Expert*
- E *Committee has noted that while the proposed site for residential buildings covers the land of low slopes which is stable, it also covers lands with a high slope domain which are not suitable for construction – Low slope domain site is a habitat for wildlife and footprints of sloth bear were also observed and it was in this context*
- F *the Expert Committee determined that construction must not be allowed – At places with a high slope domain, the landscape was noted to be fragile in terms of soil erosion – Further, the Expert Committee opined that the proposed tourism facility centre may disturb the wild life eco-system – The ESZ notification required, inter alia, the State of Rajasthan to prepare the ZMP 2030, so as to*
- G *ensure that future development activity in the region could be planned while accounting for potential environmental degradation, following the precautionary principle – The ESZ notification is backed by a statutory mandate of Union legislation – The Notification is an enforceable charter for the preservation of the*
- H *fragile eco-system of Mount Abu – Every authority is duty bound to*

comply with its terms and any action in breach must peril invalidation – NGT had correctly directed the ZMP 2030 to be modified to bring it into conformity with the ESZ Notification and the precautionary principle – Specifically, it correctly upheld the Expert Committee Report's recommendation that no construction should be allowed to take place on the appellant's land.

Environmental Law – Precautionary principle – Held: The precautionary principle envisages that the State cannot refuse to act to preserve the environment simply because all the scientific data may not be available – If there is some data to suggest that environmental degradation is possible, the State must step into action to prevent it from taking place.

Dismissing the appeal, the Court

Merits of Expert Committee Report

HELD: 1. As regards the disputed site in question in this appeal (“near STP plant”), the Expert Committee has furnished valid reasons for determining that construction must not be allowed so as to preserve the eco-system of the region. The Expert Committee has noted that while the proposed site for residential buildings covers the land of low slopes which is stable, it also covers lands with a high slope domain which are not suitable for construction. At places with a high slope domain, the landscape was noted to be fragile in terms of soil erosion. Further, the Expert Committee opined that the proposed tourism facility centre may disturb the wild life eco-system. Additionally, although the low slope domain may be suitable for construction, the site is a habitat for wildlife and footprints of the sloth bear were also observed during the field visit. It was in this context that the Expert Committee determined that construction must not be allowed on the site to preserve the eco-system. In comparison, the observations contained in Table 16 with reference to the “Sunset Road Scheme” and the “Sunrise Housing Society” sites clearly indicate that there is no discrimination against the appellant since there is a material difference in the location and suitability of the sites for construction. [Para 24][174-A-E]

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- A **Precautionary Principle**
- B 2. The report of the Expert Committee is consistent with the precautionary principle. The report has hence been correctly accepted by the NGT since it is mandated to follow the precautionary principle under Section 20 of the NGT Act. The precautionary principle requires the State to act in advance to prevent environmental harm from taking place, rather than by adopting measures once the harm has taken place. In deciding when to adopt such action, the State cannot hide behind the veil of scientific uncertainty in calculating the exact scientific harm. [Paras 25 and 31][174-E-F; 177-G-H]
- C 3. The precautionary principle envisages that the State cannot refuse to act to preserve the environment simply because all the scientific data may not be available. If there is some data to suggest that environmental degradation is possible, the State must step into action to prevent it from taking place. Indeed, it was this thought that compelled this Court in T.N. Godavarman to direct the State to identify ESZs across India, so that steps can be taken to identify areas where there is a greater possibility of environmental degradation and a plan is put in place to prevent such degradation before it actually makes the harm irreversible. [Para 32][180-G-H; 181-A]
- D 4. Mount Abu was identified as an ESZ, under the ESZ Notification. The reason for doing this is because the State recognized that environmental degradation of the fragile ecosystem is a real possibility in Mount Abu and the area surrounding it if action is not immediately taken. A significant amount of soil erosion, air and water pollution has already taken place due to the developmental activities. The recitals in the ESZ Notification recognize the ecological importance of Mount Abu since it PART H 32 contains both tropical dry deciduous forests and evergreen forests; its flora and fauna comprise of several endemic and rare species; and it also contains not only natural heritage such as Nakki lake but also man-made heritage sites such as the Dilwara temples. The ESZ notification required, inter alia, the State of Rajasthan to prepare the ZMP 2030, so as to ensure that future development activity in the region could be planned while accounting for potential environmental degradation, following the

precautionary principle. The ESZ notification is backed by a statutory mandate of Union legislation. The Notification is an enforceable charter for the preservation of the fragile eco-system of Mount Abu. Every authority is duty bound to comply with its terms and any action in breach must peril invalidation. [Para 33][181-A-E]

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M.C. Mehta v. Union of India (2004) 12 SCC 118 : [2004] 3 SCR 126; Research Foundation for Science Technology National Resource Policy v. Union of India (2005) 10 SCC 510; Hospitality Assn. of Mudumalai v. In Defence of Environment & Animals (2020) 10 SCC 589 : [2020] 10 SCR 273; H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee (2021) 4 SCC 309 : 2021 (1) JT 187 – relied on.

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T.N. Godavarman v. Union of India & Ors. Writ Petition No 202 of 1995; Mantri Techzone (P) Ltd. v. Forward Foundation (2019) 18 SCC 494; Municipal Corporation of Greater Mumbai v. Ankita Sinha and Others 2021 SCC OnLine SC 897 – referred to.

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| <u>Case Law Reference</u> | | |
|---------------------------|-----------|---------|
| [2004] 3 SCR 126 | relied on | Para 27 |
| [2020] 10 SCR 273 | relied on | Para 29 |

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7724-7725 of 2021.

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From the Judgment and Order dated 10.03.2021 of the National Green Tribunal, Principal Bench, New Delhi in Original Application No.312 of 2016 and Order dated 29.07.2021 in Review Application No.26 of 2021 in Original Application No.312 of 2016.

Mukul Rohatgi, Siddhartha Dave, Sr. Advs., Aditya Vaibhav Singh, Ms. Saumya Gupta, Ms. Aarushi Singh, Ms. Vidhi Thaker, Ms. Nidhi Jaswal, Advs. for the Appellant.

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Amit Sibal, Sr. Adv., Sameer Parekh, Vinay Tripathi, Sumit Goel, Ms. Nina R. Nariman, Ms. Geetika Kapur, Tanuj Agarwal, Paritosh Arora, M/s Parekh & Co., Advs. for the Respondents.

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A The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, J.

This judgment has been divided into the following sections to facilitate analysis:

- B **A The Appeal**
- B Eco-sensitive Zone Notification and Zonal Master Plan 2030**
- C Proceedings before NGT**
- C **D Submissions of counsel**
- E Jurisdiction of NGT**
- F Merits of Expert Committee Report**
- G Precautionary Principle**
- D **H Conclusion**

A The Appeal

E 1. These appeals under Section 22 of the National Green Tribunal Act¹ arise from judgments dated 10 March 2021 and 29 July 2021 of the National Green Tribunal². By its judgment dated 10 March 2021, the NGT, on the basis of a report³ dated 8 December 2020 submitted by an Expert Committee, allowed an original application⁴ filed by the first respondent, which challenged the Zonal Master Plan 2030⁵ prepared by the State of Rajasthan, for the Mount Abu Eco-sensitive Zone⁶. The F report of the Expert Committee had, *inter alia*, declared land owned by the appellant to be unfit for construction. Further, by its judgment dated 29 July 2021, the NGT dismissed an application for review⁷ which had been filed by the appellant.

G ¹ “NGT Act”

² “NGT”

³ “Expert Committee Report”

⁴ Original Application No 312 of 2016

⁵ “ZMP 2030”

⁶ “ESZ”

H ⁷ Review Application No 26 of 2021

**B Eco-sensitive Zone Notification and Zonal Master Plan A
2030**

2. The appellant is the owner of a certain parcel of land situated in Mount Abu in the State of Rajasthan. The appellant claims that the land was earmarked as “Residential” and as a “Tourist Facility” in the Zonal Master Plan 2025 for Mount Abu.

3. On 25 June 2009, the Union Government in the Ministry of Environment, Forest and Climate Change⁸ issued a Notification⁹ by which it notified Mount Abu and the area surrounding it as an ESZ. The ESZ Notification was issued in exercise of powers conferred by sub-Section (1) read with Clause (v) and Clause (xiv) of Section 3(2) of the Environment (Protection) Act 1986¹⁰ and Rule 5(3) of the Environment Protection Rules 1986. The preamble to the ESZ Notification contains recitals emphasizing the ecological importance of Mount Abu.

“S.O.1545(E) - WHEREAS, Mount Abu area has significant ecological importance comprising of tropical dry deciduous forests at lower altitude and evergreen forests at higher altitude and the flora and fauna of the region comprise of several endemic and rare species; besides Mount Abu has natural heritage such as Nakki Lake and man-made heritage like Dilwara temples and other heritage buildings and structures;

AND WHEREAS, considerable adverse environment impact has been caused due to degradation of the environment with excessive soil erosion and water and air pollution on account of certain developmental activities, thereby endangering not only the natural resources, but also affecting the health and very survival of living beings;

AND WHEREAS, it is necessary to conserve and protect the area from ecological and environmental point of view;

AND WHEREAS, a draft notification under sub-section (1) read with clause (v) and clause (xiv) of sub - section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) was published

⁸ “MoEF&CC”

⁹ “ESZ Notification”

¹⁰ “EPAct”

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- A in the Gazette of India, Extraordinary, vide Notification of Government of India in the Ministry of Environment and Forests vide number S.O. No. 2497 (E), dated the 22nd October, 2008, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of the Gazette containing the said notification were made available to the public;
- AND WHEREAS, copies of the Gazette containing the said notification were made available to the public on the 22nd October, 2008;
- AND WHEREAS, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government;
- D Now, THEREFORE, in exercise of the powers conferred by sub-section (1) read with clause (v) and clause (xiv) of sub - section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby notifies Mount Abu and surrounding region enclosed within the boundary described below in the State of Rajasthan as the Mount Abu Eco-sensitive Zone (hereinafter called “the Eco-sensitive Zone”).”
4. The ESZ Notification was preceded by a draft to which objections and suggestions were invited. The ESZ Notification outlines the boundaries of the ESZ in which activities are to be regulated. The F Notification envisages the preparation of a new Zonal Master Plan¹¹ for the restoration of denuded areas, conservation of existing water bodies including Nakki Lake, management of catchment areas, watershed management, groundwater management, soil and moisture conservation, preserving the needs of the local community, conservation of heritage G sites (both natural and cultural) and their surroundings, and such other aspects of the ecology and environment which may require attention. Clause 3(1)(i) of the ESZ Notification, in relation to the preparation of the ZMP, is extracted below:
- H ¹¹“ZMP”

“3. The following activities are to be regulated in the Eco-sensitive Zone, namely:- A

(1) Zonal Master Plan for the Eco-sensitive Zone:-

(i) A Zonal Master Plan for the Eco-sensitive Zone shall be prepared by the State Government within a period of two years from the date of publication of this notification and submitted for approval to the Central Government in the Ministry of Environment and Forests...” B

5. The ESZ Notification also envisages a Tourism Master Plan¹² to be prepared by the Department of Tourism of the Government for the State of Rajasthan. The TMP would form a component of the ZMP, and is to be based on a detailed Carrying Capacity Study of the ESZ. Further, the Carrying Capacity Study is to be based on the existing infrastructure and not on future projections of any project which requires environmental or forest clearance. While advertizing to the natural and man-made heritage in Mount Abu, the ESZ Notification stipulates that: C

“3. The following activities are to be regulated in the Eco-sensitive Zone, namely:-

[...]

(9) Man-made Heritage: Mount Abu is famous for several temples, the most prominent being Dilwara Temples and the main heritage and historical buildings are Achalgarh Fort, Dilwara Jain Temples, Rishav Deo Temple, Neminath Temple, Adinath Temple, Parshwanath Temple, Mahaveer Temple, etc., and later heritage buildings, structures and precincts. The plans for their conservation shall be prepared and incorporated in the Zonal and Sub-Zonal Master Plan and the development or construction activities at or around the heritage sites shall be regulated under the statutory provisions of the Rajasthan Monuments, Archaeological Sites and Antiquities Act and in accordance with the Draft Model Regulations for Conservation of Natural and Manmade Heritage Sites formulated by the Central Government in the Ministry of Environment and Forests in 1995. F G

¹² “TMP” H

- A **(10) Water:**
- (i) All future and existing buildings, where possible, in the Municipal Area shall provide roof-top rain water harvesting structures commensurate with their plinth area and the Institutional and commercial buildings shall not draw water from existing water supply schemes in a manner that adversely affects water supply especially to local villages or settlements.
- B (ii) In Non-Municipal Areas rain water harvesting shall be undertaken through such structures as percolation tanks and storage tanks and only other means. Ground water aquifer recharge structures shall be constructed wherever such structures do not lead to slope instabilities.
- C (iii) The rain water collected through storm water drains shall be used to recharge the ground water or to clean the waste disposal drains and sewers.
- D (iv) The extraction of ground water shall be permitted only for the bona-fide agricultural and domestic consumption of the occupier of the plot and the extraction of ground water for industrial or commercial or residential estates or complexes shall require prior written permission, including of the amount that can be extracted, from the State Ground Water Department. However, the areas rich in ground water may not be diverted for construction activities.
- E (v) No sale of ground water shall be permitted except with the prior approval of the State Ground Water Department and all steps shall be taken to prevent contamination or pollution of water including from agriculture.
- F (vi) The area has three big water bodies namely Upper Kodra dam, Lower Kodra dam and Nakki Lake and in addition to this the area has around 25 water places, where water remains through out the year, which include natural nalla, dams, anicuts, seepage and baoris that are spread over entire area and must be protected.
- G [...]
- H **(13) Development on and protection of hill slopes:**
- (i) The Zonal Master Plan shall indicate areas on hill slopes where development shall not be permitted.

(ii) No development shall be undertaken in areas having a steep slope or areas which fall in fault or hazard zones or areas falling on the spring lines and first order streams or slopes with a high degree of erosion as identified by the State Government on the basis of available scientific evidence. A

(iii) No development on existing steep hill slopes or slopes with a high degree of erosion shall be permitted." B

6. Under Clause 4 of the ESZ Notification, the Central Government has to constitute a Monitoring Committee. In pursuance of the ESZ Notification, a Monitoring Committee was constituted by the Union Government through MoEF&CC on 10 December 2009. The constitution of the Monitoring Committee was revised on 24 January 2012 and 5 May 2015. C

7. The appellant has a grievance that when a draft of ZMP 2030 was published, the status of his land was incorrectly changed from "Residential" and "Tourist Facility" to "Agricultural Zone". The appellant challenged this before the Chairman of the Monitoring Committee, the MoEF&CC and the State of Rajasthan. Based on it, the status of the appellant's land was again changed back to "Residential" and "Tourist Facility". Thereafter, ZMP 2030 was notified by the State of Rajasthan on 29 October 2015, following the approval of the MoEF&CC on 28 September 2015. D E

C Proceedings before NGT

8. The ZMP 2030 was challenged by the first respondent by his original application on the ground that it is not in conformity with ESZ Notification, since it fails to discourage construction activities at or near the heritage sites, conserve the existing water bodies and permits change of land use by illegal structures. Since the first respondent's original application mentioned the appellant's land, the appellant was allowed to intervene in the proceedings by the NGT in its order dated 10 April 2017. F

9. On 26 November 2018, the NGT issued an order which noted that the first respondent's original application contended, *inter alia*, that ZMP 2030 had permitted illegal change of land use, in direct contradiction to the ESZ Notification, in thirteen locations, which included the appellant's land. To assess the claims made in the first respondent's original application, the NGT constituted an Expert Committee consisting G H

- A of two representatives of MoEF&CC, a representative of the School of Planning and Architecture, Delhi (since it had been engaged by the State of Rajasthan as a consultant), and a representative of Central Pollution Control Board¹³. The mandate of the Expert Committee was as follows:
- B “21. The Committee will undertake comparison of ZMP 2030, in terms of letter of MoEF&CC dated 28.09.2015 and ESZ Notification dated 25.06.2009 and point out the aberrations in some besides comparing ZMP 2030 map with reference to pre-existing 2010 map in the light of ESZ notification. Thirteen (13) locations noted above must also be specifically looked into. The Expert Committee may also look into the suggestions relating to prohibiting use of plastics, burning of garbage/or any other waste, proper laying of high tension lines for protecting animals and birds life particularly in Salim Ali Bird Sanctuary area, preventing forest fire, conservation of Nakki lake and water quality management, siting and operation of Solid Waste processing plant in accordance with Solid Waste Management Rules, 2016 (with reference to sanctuary area), any other issues relating to environment management which may become a part of ZMP 2030, including observations of this Tribunal in Kasuali case.
- C 22. The Committee will also look into the points of concern raised by the applicant in reference to conversion of green areas to non-green areas, permissibility of construction on higher degree slopes, conservation of rocks, water bodies and wildlife and other heritage sites, the issue of water scarcity, carrying-capacity of Mount Abu with regard to number of tourists and vehicles to be permitted having regard to the availability of the infrastructure without relying upon future projection, as required in terms of ESZ notification.”
- D 10. The Expert Committee submitted a report on 4 September 2019, which was not found to be acceptable when it was considered by the NGT on 7 November 2019. As a consequence, the NGT modified the composition of the Expert Committee, with the following observations:
- E G “8. Though the Committee was to furnish its report within three months from the order dated 6.11.2018 report has been filed almost after more than 9 months on 04.09.2019. We find from the report that the Committee has assumed the ZMP to be conclusive on the

H ¹³ “CPCB”

ground that suitability analysis test had already been carried out by the State Government. This approach is inconsistent with the directions of this Tribunal. If the analysis of the State Government was to be treated as final, there was no need for the Committee.”

11. The reconstituted Committee then submitted the Expert Committee Report. The Expert Committee enquired into the change in land use through high resolution satellite images, while analysing the data with particular reference to ten identified sites, including the appellant’s land. The NGT then heard submissions on the Expert Committee Report. By its impugned judgment dated 29 July 2021, the NGT observed that the Expert Committee Report was based on authentic data and on field visits by the Committee and is supported by adequate reasons. The NGT noted that the object of notifying certain areas as ESZs is to protect certain specified sensitive areas by restricting and regulating development activities. Such areas may be based on species, geomorphologic features or on the eco-system. The NGT held that it was necessary to protect bio-diversity zones by creating regulated buffers around them to protect their flora and fauna, prevent habitat destruction and protect fragile ecology. Adverting to the backdrop of the ESZ Notification, the NGT noted that the Supreme Court had in **T.N. Godavarman v. Union of India & Ors.**¹⁴ (“**T.N. Godavarman**”) appointed Expert Committees to identify ESZs across India, and when such ESZs were eventually identified, Mount Abu was cleared as an ESZ as well. The NGT further observed that the object of notifying ESZs is to protect a specified area from the irreversible degradation of its environment with a view to give effect to the principles of sustainable development, inter-generational equity and the public trust doctrine in exercise of powers conferred by Section 3(2)(v) of the EP Act.

12. The NGT then proceeded to deal with individual sites under consideration. The subject matter of the present appeals pertains to an entry in Table 16 of the Expert Committee Report. Table 16 is titled as follows:

“Suitability of 10 identified sites within Mount Abu ESZ as reviewed by the expert committee based on the site visit/ground verification as well as interactions with the local residents/Mount Abu Municipality officials/Town Planning Department officials/other stakeholders during 16-17 January 2020”

¹⁴ Writ Petition No 202 of 1995

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A The evaluation of the site in question, *i.e.*, the appellant's land, is tabulated in Table 16 as follows:

| | Name of Site | Location (Lat & long with Accuracy/Altitude); Slope (o°) | Present land use & Vegetation type/Cover (%) | Recommendation (All these construction should comply the norm of 50 m away from forest boundary and from water body and 100 m away from wetland/river) |
|---|----------------|--|---|---|
| B | Near STP plant | 24°34'38.14"N 72°43'57.77"E (±3m) 1139 m; Two domains of land at this site is available. Partially, the site has slope>20° and partially <20°. | Vacant/agriculture; Open scrub/with tree and shrubs along the hill top and the slopes. | This site is considered for the (i) tourism center (ii) residential buildings in the ZMP 2030. The proposed site for residential buildings covers the land of low slopes that are geologically stable as well as the land with a high slope domain that is not geologically stable for construction. <ul style="list-style-type: none">• At this site, the bedrock is hard and compact with negligible weathering. In the stable slope region, no prominent fractures/joints are developed.• At places the measured slope towards STP site was found >20 degree even the landscape is fragile in terms of soil erodibility. Thus high slope domains must be kept as such.• The proposed tourism facility centre at the gentle slopes may be allowed. But may disturb the wildlife ecosystem.• Although the low slopes domain may be suitable for construction, geologically. But this site is the habitat of the wild animals. For example, footprints of the sloth bear were also observed during the field visit. Therefore, any construction may disturb the wildlife ecosystem. Therefore, any construction must not be allowed to preserve the ecosystem of this region.• The construction may be allowed in the land having gentle, i.e., stable slopes while the steep slope region closes to the cliff of the hill should be kept untouched. <p>Conclusion: Site is not suitable for construction.</p> |
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G 13. The NGT noted that the above site ("near STP Plant") has not been found suitable for construction on considerations based on the wild life eco-system. The NGT also accepted the view of the Expert Committee that the conversion of green areas into non-green areas should not be allowed, except in exceptional situations mentioned in the Report, and that the STP must be duly maintained. The NGT, while accepting the Expert Committee Report, thus directed that the ZMP 2030 should be brought in conformity within three months.

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14. The findings of the NGT in relation to appellant's land were challenged by the appellant in a review application, which was rejected on 29 July 2021. This has led to the present appeals. A

D Submissions of counsel

15. Mr Mukul Rohatgi, Senior Counsel appearing on behalf of the appellant has urged two submissions: B

(i) *Firstly*, the NGT, being an adjudicatory body constituted by the NGT Act, is vested with limited jurisdiction under Section 14 to deal with a substantial question of environment arising out of the statutes enumerated in Schedule I to the NGT Act. The NGT had acted beyond its jurisdiction in directing the amendment of the ZMP 2030; and C

(ii) *Secondly*, on merits:

a. The Expert Committee had prepared a draft report in July 2020¹⁵, which was not placed before the NGT and was obtained by the appellant through a Right to Information request on 1 February 2021. In the Draft Report, Table 23 pertains to the suitability of ten identified sites within the Mount Abu ESZ and it contained a column containing remarks on the bio-diversity at each of these locations. In this backdrop, it was submitted that the appellant's land was shown to be encompassed by the movement of wild life, more specifically, the sloth bear and panther. In this context, it was urged that a similar situation existed in Table 23 with respect to another site (described as "Sunrise Housing Society"). However, in the Expert Committee Report, the column on bio-diversity is missing, which hides crucial information on the basis of which the final recommendations were made. The appellant alleges that the column on bio-diversity is missing because the Expert Committee Report was manipulated to favor others over the appellant; and E

b. Whereas other similar sites have been granted clearances in the Expert Committee Report, the appellant has not been cleared. In other words, the F

¹⁵ "Draft Report"

- A submission is that the Report has proceeded on the basis of a “pick and choose” process.
16. Opposing these submissions, Mr Amit Sibal, Senior Counsel appearing on behalf of the respondents urged the following submissions:
- B (i) The ESZ Notification, which has been issued in pursuance of the intervention of this Court in **T.N. Godavarman** (*supra*), recognizes the ecological importance of Mount Abu, which is comprised of tropical dry deciduous forests at a lower altitude and evergreen forests at higher altitudes;
- C (ii) The ZMP 2030 was issued in accordance with the ESZ Notification;
- (iii) The Expert Committee included domain experts, town planners and government officials who proceeded to identify the issues with the specified sites in Table 16 after careful analysis and site visits;
- D (iv) The Expert Committee Report is founded on the precautionary principle and as it is based on a scientific approach, it must warrant deference;
- (v) Schedule I to the NGT Act, *inter alia*, refers to the Forest Conservation Act 1980¹⁶ and the EP Act;
- E (vi) The ESZ notification has been issued in exercise of powers conferred by the EP Act;
- (vii) The order of the NGT dated 7 November 2019 did not accept the report of the initial Expert Committee, and reconstituted it. This order has attained finality since it was not challenged by the appellants;
- F (viii) The appellant is relying upon the Draft Report, which was not in the public domain since it was an incomplete report. Moreover, the Draft Report contains endorsements as against the site in question to the effect that it was not suitable. Further, there is a valid distinction between the site in question and others (such as the “Sunset Road Scheme” and “Sunrise Housing Society”) where construction has been allowed. In the case of the “Sunset Road Scheme”, the land use was for residential purposes while on the contrary, the appellant
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- H ¹⁶“FC Act”

- has admitted to converting the site in question for tourism A
and residential buildings under the ZMP 2030; and
- (ix) While on the one hand, the Expert Committee which comprises, *inter alia*, of environmental experts had considered each of the sites in Table 16 of the Expert Committee Report, the appellant has brought on record no evidence to establish any error or perversity in the Report B
which was accepted by the NGT.

E Jurisdiction of NGT

17. Sub-Section (1) of Section 14¹⁷ of the NGT Act provides that the NGT shall have the jurisdiction over all civil cases where a substantial question relating to the environment, including the enforcement of any legal right relating to the environment is involved and such question arises out of the implementation of the enactments specified in Schedule I to the NGT Act. Under sub-Section (2) of Section 14, the NGT is empowered to hear disputes set out in sub-Section (1), and pass orders thereon. Section 15(1) further provides for the reliefs which may be granted by the NGT, and reads as follows:

“15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

- (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
(b) for restitution of property damaged;
(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.”

¹⁷ “**14. Tribunal to settle disputes.**—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:
Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

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- A 18. Among the statutes which are delineated in Schedule I are the FC Act (Entry 3) and the EP Act (Entry 5). There can be no manner of doubt that the original application filed by the first respondent before the NGT in the present case implicated a substantial question relating to the environment. The ‘substantial question’ arose from the provisions contained in the ESZ Notification in relation to the ESZ in Mount Abu.
- B The ESZ Notification traces its origin to the EP Act, under which the Union Government through MoEF&CC is empowered to issue it. In the exercise of its jurisdiction, the NGT is empowered under Section 15(1)(c) to provide for the restoration of the environment in such area or areas. The ESZ Notification in Clause 3(1) provides for the ZMP for the ESZ
- C in this context. Assessing the conformity of the ZMP 2030 with the terms of the ESZ Notification is clearly within the remit of the NGT.

19. In **Mantri Techzone (P) Ltd. v. Forward Foundation**¹⁸, a three-Judge Bench of this Court noted that Section 15(1)(c) of the NGT Act affords broad powers to the NGT. Speaking for the Court, Justice S

- D Abdul Nazeer held:

“43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.”

F 20. In another recent judgment in **Municipal Corporation of Greater Mumbai v. Ankita Sinha and Others**¹⁹, a three-Judge Bench of this Court held that the NGT can also exercise *suo motu* jurisdiction. While elaborating on the jurisdiction of the NGT in general, Justice Hrishikesh Roy held:

G “27. The paragraph 2 of the Statement of Objects and Reasons [of the NGT Act] refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the

¹⁸(2019) 18 SCC 494

H ¹⁹2021 SCC OnLine SC 897

preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. **The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a sui generis forum.**

[...]

36. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. **The precedents of this Court, suggest a construction which fulfills the object of the Act [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62, New India Assurance Co. Ltd. v. Nusli Neville Wadia, (2008) 3 SCC 279]. The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.**

[...]

38. While on the statutory provisions, it is seen that the Central Government has framed the National Green Tribunal (Practice & Procedure) Rules, 2011 (for short “the NGT Rules”). For our purpose, Rule 24 is important which reads thus:

“24. Order and directions in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.”

39. The said Rules make it clear that the NGT has been given wide discretionary powers to secure the ends of justice. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably

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- A **being to preserve and protect the environment and the matters connected thereto.**
40. By choosing to employ a phrase of wide import, i.e. secure the ends of justice, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. **It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.**
- B **It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.**
- C 41. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. **The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.”**
- D **It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.**

(emphasis supplied)

- E 21. The NGT has not acted in excess of or beyond its jurisdiction in testing ZMP 2030 on the anvil of the ESZ Notification. Having found that the report of the earlier Expert Committee appointed by it was not acceptable while adjudicating on the issue on 7 November 2019, the NGT constituted another Expert Committee. The Committee comprised of experts in the area of the environment as well as representatives of the CPCB and the Rajasthan Pollution Control Board. The Expert Committee was tasked with submitting a report to the NGT to aid it in discharging its functions of assessing the conformity of the ZMP 2030 with the terms of the ESZ Notification. On the submission of the Expert Committee Report, the NGT heard objections to it and delivered a reasoned order on why it was accepting the recommendations made in the Report. Hence, there is no merit in the submission that the NGT has
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F Merits of Expert Committee Report

- I 22. The second limb of the appellant's submission proceeds on merits. There has been a misconceived attempt on the part of the appellant to advert to the Draft Report which was prepared by the Expert Committee. The Draft Report was in the realm of an internal document

and was not in the public domain. Evidently, the Draft Report was a subject matter of deliberations, and it is only the final report which was submitted to the NGT that represented the views of the Expert Committee. Hence, there is no merit in the appellant's plea which is based on the Draft Report.

23. The Expert Committee Report has carefully analyzed ten sites in Table 16. Since the appellant's plea of discrimination is based on the observation pertaining to the "Sunset Road Scheme" and "Sunrise Housing Society", it would be material to extract the observations of the Expert Committee on the above two sites. The relevant part of Table 16 in relation to those sites is extracted below:

| Name of Site | Location (Lat & long with Accuracy/Altitude); Slope (o°) | Present land use & Vegetation type/Cover (%) | Recommendation (All these construction should comply the norm of 50 m away from forest boundary and from water body and 100 m away from wetland/river) |
|-------------------------|---|--|--|
| Sunset Road Scheme | 24°35'11.49"N 72°42'13.79"E (±3m) 1169 m; Most of the land at this site has slope <20° | Residential (Partly built/partly vacant); Open scrub/isolated trees (<10%) | <p>This site is stable with the granite as basement rock.</p> <ul style="list-style-type: none"> This site is close to the forest land. Therefore, the ESZ criteria of a buffer zone with forest and water stream must comply before the start of any construction activity. Already existing provision for farm house in state of Rajasthan may be made applicable with allowance of 10% of total area of construction as built up area or 5000 sq ft. (whichever is less) subject to NOC from Forest dept. <p>Conclusion: Site is suitable for construction.</p> |
| Sunrise Housing Society | 24°34'55.26"N 72°43'38.12"E (±3m) 1137 m; Most of the land at this site has slope <20° | Vacant; Open scrub with isolated trees (>20%) | <p>The basement rock is granite and is well exposed at this location with very thin soil cover.</p> <ul style="list-style-type: none"> The site is near a local natural stream (<i>Nala</i>). Therefore, the ESZ criteria of the buffer zone with water stream and forest must be complied before any constructional activity as per norms. Site is surrounded by habitation so it may cater to the residential needs of the local people. Thus, this site is stable and suitable for the construction of the residential complex. Construction may be allowed following criteria laid down in ESZ. <p>Conclusion: Site is suitable for construction.</p> |

- A 24. From the above extract, it is evident that the land used by the Sunset Road Scheme is described to be residential (partly built, partly vacant) and as regards the Sunrise Housing Society, the land use is described to be vacant. As regards the disputed site in question in this appeal (“near STP plant”), the Expert Committee has furnished valid reasons for determining that construction must not be allowed so as to preserve the eco-system of the region. The Expert Committee has noted that while the proposed site for residential buildings covers the land of low slopes which is stable, it also covers lands with a high slope domain which are not suitable for construction. At places with a high slope domain, the landscape was noted to be fragile in terms of soil erosion. Further,
- B the Expert Committee opined that the proposed tourism facility centre may disturb the wild life eco-system. Additionally, although the low slope domain may be suitable for construction, the site is a habitat for wildlife and footprints of the sloth bear were also observed during the field visit. It was in this context that the Expert Committee determined that
- C construction must not be allowed on the site to preserve the eco-system.
- D In comparison, the observations contained in Table 16 with reference to the “Sunset Road Scheme” and the “Sunrise Housing Society” sites clearly indicate that there is no discrimination against the appellant since there is a material difference in the location and suitability of the sites for construction.

E **G Precautionary Principle**

- F 25. The report of the Expert Committee is consistent with the precautionary principle. The report has hence been correctly accepted by the NGT since it is mandated to follow the precautionary principle under Section 20 of the NGT Act. Section 20 of the NGT Act states thus:

“20. Tribunal to apply certain principles.—The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.”

- G 26. The precautionary principle finds its clearest elaboration in Principle 15 of the Rio Declaration on Environment and Development 1992, which states:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities.

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” A

27. In **M.C. Mehta v. Union of India**²⁰, a two-Judge Bench of this Court noted the import of this principle in Indian jurisprudence by highlighting that it requires the State to act for *preventing* actual environmental harm, even in the face of scientific uncertainty. The Court held: B

“48. Development and the protection of environment are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck...**Principle 15 of the Rio Conference of 1992** [Ed.: Cited in (1999) 2 SCC 718, 733 in para 33] relating to the applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.” E F G

(emphasis supplied)

²⁰(2004) 12 SCC 118 H

- A 28. In **Research Foundation for Science Technology National Resource Policy v. Union of India**²¹, a two-Judge Bench of this Court noted that the precautionary principle is part of the Indian jurisprudence, arising from Articles 47, 48-A and 51-A(g) of the Constitution. The Court held:
- B “16. The legal position regarding applicability of the precautionary principle and polluter-pays principle which are part of the concept of sustainable development in our country is now well settled. In *Vellore Citizens' Welfare Forum v. Union of India* [(1996) 5 SCC 647] a three-Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of “sustainable development”, *inter alia*, held that the precautionary principle and polluter-pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in *Vellore Citizens' Welfare Forum* case [(1996) 5 SCC 647] that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law...”
- E 29. This position has been reiterated by a three-Judge Bench of this Court in **Hospitality Assn. of Mudumalai v. In Defence of Environment & Animals**²². The Court has held:
- F “39...As was held by this Court in *M.C. Mehta (Badkhal & Surajkund Lakes Matter) v. Union of India* [*M.C. Mehta (Badkhal & Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715] the “precautionary principle” has been accepted as a part of the law of our land. Articles 21, 47, 48-A and 51-A(g) of the Constitution give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wildlife and to have compassion for

²¹ (2005) 10 SCC 510

H ²² (2020) 10 SCC 589

living creatures. The precautionary principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. In this light, we have no hesitation in holding that in order to protect the elephant population in the Sigur Plateau region, it was necessary and appropriate for the State Government to limit commercial activity in the areas falling within the elephant corridor.”

(emphasis supplied)

30. In **Municipal Corporation of Greater Mumbai** (supra), this Court elaborated on the precautionary principle in the following terms:

“79. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other ‘decisions’ or ‘orders’ to governmental authorities or polluters, when they fail to “*to anticipate, prevent and attack the causes of environmental degradation*” [Vellore Citizens (supra), *S. Jagannathan v. Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board v. C Kenchappa*, (2006) 6 SCC 371]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT’s powers should be eschewed to adopt one which allows for full flow of the forum’s power within the environmental domain.

80. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial.”

(emphasis supplied)

31. The precautionary principle requires the State to act in advance to prevent environmental harm from taking place, rather than by adopting measures once the harm has taken place. In deciding when to adopt such action, the State cannot hide behind the veil of scientific uncertainty in calculating the exact scientific harm. In **H.P. Bus-Stand**

- A **Management & Development Authority v. Central Empowered Committee**²³, a three-Judge Bench of this Court emphasised the duty of the State to create conceptual, procedural and institutional structures to guide environmental regulation in compliance with the “environmental rule of law”. The Court noted that such regulation must arise out of a multi-disciplinary analysis between policy, regulatory and scientific perspectives. The Court held:
 - “49. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are *sui generis*. **The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges — of how they have been shaped by humanity’s interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity’s actions have charted.** The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the “law” element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and Judges. **On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats.** The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between concepts such as **sustainable development, the polluter pays principle and the trust doctrine**. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another

H ²³(2021) 4 SCC 309

part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. **The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, State and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system.** The environmental rule of law attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars of environmental regulation in the present and future. The environmental rule of law recognises the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance — of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.”

(emphasis supplied) H

- A The Court also acknowledged the difficulty faced in implementing such processes in the face of scientific uncertainty. However, it noted that Courts cannot be stupefied into inaction due to scientific uncertainty but must take decisions to protect the environment based on whatever information is available. The Court held:
- B “53. However, even while using the framework of an environmental rule of law, the difficulty we face is this — when adjudicating bodies are called on to adjudicate on environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. **While the framework provides valuable guidance in relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often times difficult to come by in individual situations.**
- C 54...The point, therefore, is simply this — the environmental rule of law calls on us, as Judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law.
- D **We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding.”**

(emphasis supplied)

- E 32. The precautionary principle envisages that the State cannot refuse to act to preserve the environment simply because all the scientific data may not be available. If there is some data to suggest that environmental degradation is possible, the State must step into action to prevent it from taking place. Indeed, it was this thought that compelled this Court in **T.N. Godavarman** (*supra*) to direct the State to identify ESZs across India, so that steps can be taken to identify areas where there is a greater *possibility* of environmental degradation and a plan is
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put in place to *prevent* such degradation before it actually makes the A
harm irreversible.

33. Mount Abu was identified as an ESZ, under the ESZ Notification. The reason for doing this is because the State recognized that environmental degradation of the fragile eco-system is a real possibility in Mount Abu and the area surrounding it if action is not immediately taken. A significant amount of soil erosion, air and water pollution has already taken place due to the developmental activities. The recitals in the ESZ Notification recognize the ecological importance of Mount Abu since it contains both tropical dry deciduous forests and evergreen forests; its flora and fauna comprise of several endemic and rare species; and it also contains not only natural heritage such as Nakki lake but also man-made heritage sites such as the Dilwara temples. The ESZ notification required, *inter alia*, the State of Rajasthan to prepare the ZMP 2030, so as to ensure that future development activity in the region could be planned while accounting for potential environmental degradation, following the precautionary principle. The ESZ notification is backed by a statutory mandate of Union legislation. The Notification is an enforceable charter for the preservation of the fragile eco-system of Mount Abu. Every authority is duty bound to comply with its terms and any action in breach must peril invalidation.

H Conclusion

34. Therefore, we hold that the NGT's judgment and order dated 10 March 2021 and 29 July 2021 correctly directed the ZMP 2030 to be modified to bring it into conformity with the ESZ Notification and the precautionary principle. Specifically, it correctly upheld the Expert Committee Report's recommendation that no construction should be allowed to take place on the appellant's land.

35. For the above reasons, we have come to the conclusion that there is no merit in the present appeal and it shall accordingly stand dismissed.