

A IN RE: T.N. GODAVARMAN THIRUMULPAD

v.

UNION OF INDIA & ORS.

(Writ Petition (C) No.202/1995)

NOVEMBER 29, 2021

B

**[L. NAGESWARA RAO, B.R. GAVAI
AND B. V. NAGARATHNA, JJ]**

Environmental laws: Sustainable development – Preservation of the environment and ecology – Delhi Metro Project – Phase IV of MRTS Project – Implementation of, vis-a-vis preserving the ecology and environment of the areas surrounding the alignment of the metro railway – Issues pertaining to degradation of environment and ecology resulting in ‘Climate Change’ and problem of ‘greenhouse gas emissions’ – Held: Metro Projects has resulted in loss of vegetation as well as flora and fauna in certain areas – Implementation of Phase IV of MRTS Project is a further threat to the ecology of NCT of Delhi/NCR – Thus, to meaningfully arrest the problem of declining tree cover, the civil society to be given the collective responsibility to carry out reafforestation activities – Issuance of direction having regard to the precautionary principle as well as principle of sustainable development by ensuring citizens’ participation in the preservation of the environment and ecology – Direction to concerned departments to conceive plan of action for planting of saplings and trees in NCT of Delhi – Forest (Conservation) Act, 1980 – Forest (Conservation) Rules, 2003 – Delhi Preservation of Trees Act, 1994 – Wildlife Protection Act, 1972 – Environment (Protection) Act, 1986.

Lafarge Umiam Mining Corporation Vs. Union of India & Ors. (2011) 7 SCC 338 : [2011] 7 SCR 954; Milind Pariwakam & Anr. Vs. Union of India Original Application No. 52 of 2015 (order dated 13.03.2015); Vimal Bhai Vs. Union of India Appeal No.7 of 2012 (order dated 07.11.2012); T.N. Godavarman Thirumulpad Vs Union of India and Ors. Writ Petition (Civil) 202 of 1995 – referred to.

Case Law Reference

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|---|------------------|-------------|--------|
| H | [2011] 7 SCR 954 | referred to | Para 8 |
| | | 1146 | |

IN RE: T.N. GODAVARMAN THIRUMULPAD v. UNION OF INDIA & ORS. 1147

JURISDICTION ORIGINAL JURISDICTION : I. A. Nos. A
169030 of 2019 and 105674 of 2020.

In

Writ Petition (C) No.202 of 1995

With

I. A. Nos.142873 of 2021, 142876 of 2021 and 144462 of 2021 in
I. A. No.105674 of 2020 In Writ Petition (C) No.202 of 1995.

(Under Article 32 of The Constitution of India)

Tushar Mehta, SG, Balbir Singh, ASG, R. Ravindra Raizada, Barun C
Kr. Sinha, Nikhil Goel, AAGs, Rajiv Dutta, Ashok Sharma, Vikas Mahajan,
Nakul Dewan, Dr. Manish Singhvi, Sr. Advs., Suhaan Mukerji, Vishal
Prasad, Nikhil Parikshith, Abhishek Manchanda, M/s PLR Chambers
And Co., Syed Mehdi Imam, Mohd. Parvez Dabas, Uzmi Jameel Husain,
T. Harish Kumar, M/s Mitter & Mitter Co., M/s Lawyer S Knit & Co., D
Chanchal Kumar Ganguli, Manan Verma, Vinod Sharma, Anil Kumar,
Binod Kumar Singh, Parijat Som, Tarun Johri, Ms. Archana Pathak Dave,
D. L. Chidanand, S. S. Rebello, Ms. Suhasini Sen, Shyam Gopal, Sugosh
Subramanyam, G. S. Makker, Sarojanand Jha, M. R. Shamshad, Shovan
Mishra, Ms. Bipasa Tripathy, G. Prakash, Ms. Priyanka Prakash, Ms.
Beena Prakash, Manan Sanghai, Abhimanyu Tewari, Ms. Eliza Bar, E
Siddhesh Kotwal, Nirnimesh Dube, Akash Singh, Ms. Ranjeeta Rohatgi,
Ms. Deepanwita Priyanka, Chirag M. Shroff, Mahfooz A. Nazki, Polanki
Gowtham, Shaik Mohamad Haneef, T. Vijaya Bhaskar Reddy, K. V.
Girish Chowdary, Ms. Anil Katiyar, Raj Kishor Choudhary, Shuvodeep
Roy, Ishaan Borthakur, Upendra Mishra, Avijit Mani Tripathi, Shaurya
Sahay, Kynpham Kharlynydom, Ravindra Lokhande, Sudarsh Menon, F
Soumen Talukdar, Tejaswi Kumar Pradhan, Ajay Bansal, Kuldip Singh,
Gaurav Yadava, Ms. Veena Bansal, Sourav Jindal, Abhishekh Garg,
Akshay Goyal, Sushil Kumar Anand, Pravin Swaroop, Aravindh S., Mrinal
Gopal Elker, Manish Yadav, Sunny Choudhary, Manoj Kumar,
Raghuvendra Kumar, Anand Kumar Dubey, Narendra Kumar, Arpit G
Parkash, Sandeep Kumar Jha, Rajeev Kumar Dubey, Ashiwan Mishra,
Kamlendra Mishra, Abhinav Mukerji, Ms. Pratishtha Vij, Mrs. Bihu
Sharma, Akshay C. Shrivastava, Mrs. Pragya Baghel, Dr. Monika
Gusain, Kumar Anurag Singh, Anando Mukherjee, Gopal Balwant Sathe,
Naveen Kumar, P. Venkat Reddy, Prashant Kr. Tyagi, P. Srinivas Reddy,
M/s Venkat Palwai Law Associates, Saket Singh, Mrs. Niranjana Singh, H

- A Sunil Dogra, Vivek Vishnoi, Abhishek Sharma, Sarvam Ritam Khare, Nihar, Dr. Joseph Aristotle S., Ms. Preeti Singh, Ms. Ripul Swati Kumari, Kaushik Choudhury, B. K. Pal, Chirag M. Shroff, Abhishek Atrey, M/s Cyril Amarchand Mangaldas, Gaichangpou Gangmei, Ashok Mathur, M/s Arputham Aruna and Co., Raj Kumar Mehta, Rajesh Singh,
- B Mrs. Rekha Pandey, K. L. Janjani, Ravi Prakash Mehrotra, A. Venayagam Balan, Krishnanand Pandeya, Ms. Asha Gopalan Nair, T. Mahipal, Mrs. Kanchan Kaur Dhodi, E. C. Vidya Sagar, Himanshu Shekhar, Ms. Hemantika Wahi, Mrs. Rani Chhabra, Bikash Chandra, Rajeev Kumar Deora, Inder Mohan Singh, Ish Karan Singh Chhabra, Ms. Vishi Aggarwal, V. Balachandran, P. R. Ramasesh, Rajiv Mehta, Rathin Das,
- C Sudhir Kulshreshtha, Rakesh K. Sharma, Prashant Kumar, P. Parameswaran, S. R. Setia, M/s Parekh & Co., H. S. Parihar, Ms. Bina Madhavan, T. N. Singh, A. N. Arora, Ms. Pratibha Jain, Vikrant Singh Bais, E. M. S. Anam, Umesh Bhagwat, E. C. Agrawala, Ranjan Mukherjee, Gopal Singh, Jitendra Mohan Sharma, Ms. C. K. Sucharita, Ms. Sharmila Upadhyay, Ejaz Maqbool, M/s Corporate Law Group, Ms.
- D Binu Tamta, P. N. Gupta, Ms. Jyoti Mendiratta, Ms. Madhu Moolchandani, D. N. Goburdhan, Naresh K. Sharma, Jai Prakash Pandey, Ms. Rachna Srivastava, C. L. Sahu, Ms. Abha R. Sharma, Rauf Rahim, Rajat Joseph, Mrs. Nandini Gore, M/s M. V. Kini & Associates, Mohd. Irshad Hanif, Ms. Divya Roy, Radha Shyam Jena, Mrs. B. Sunita Rao,
- E T. V. George, Neeraj Shekhar, Mrs. Anjani Aiyagari, Ms. S. Janani, Surya Kant, Amit Anand Tiwari, Pradeep Kumar Bakshi, M/s K. J. John & Co., S. C. Birla, Mrs. Manik Karanjawala, Punit Dutt Tyagi, Ratan Kumar Choudhuri, Ajit Pudussery, Dharmendra Kumar Sinha, Ms. Sujata Kurdukar, Mrs. Bina Gupta, Mrs. M. Qamaruddin, Ms. Baby Krishnan, Ms. Charu Mathur, Sudhir Kumar Gupta, Irshad Ahmad,
- F Aniruddha P. Mayee, Rajeev Singh, Ramesh Babu M. R., Shiva Pujan Singh, Shibashish Misra, Sarad Kumar Singhanian, Ms. K. V. Bharathi Upadhyaya, Avijit Bhattacharjee, Ms. Malini Poduval, Ram Swarup Sharma, Kamal Mohan Gupta, Rajesh, Lakshmi Raman Singh, K. V. Vijayakumar, Gopal Prasad, S. Udaya Kumar Sagar, B. V. Deepak, P.
- G V. Yogeswaran, Ms. A. Sumathi, A. T. M. Sampath, M. C. Dhingra, Ms. Sumita Hazarika, Abhishek Chaudhary, M. Yogesh Kanna, Somesh Chandra Jha, Ms. Adarsh Nain, Ms. Seita Viadyalingam, V. N. Raghupathy, P. K. Manohar, Nishanth Patil, James P. Thomas, Ms. Vanshaja Shukla, Ms. Shalini Kaul, Guntur Pramod Kumar, Shubhanshu Padhi, P. S. Sudheer, Advs. for the appearing parties.
- H

By Courts Motion

A

The Order of the Court was passed by

NAGARATHNA J.

IA Nos.169030/2019 & 105674/2020 in Writ Petition (C) No.202/1995 With IA Nos.142873/2021, 142876/2021 & 144462/2021 In I.A. No.105674/2020 in Writ Petition (C) No.202/1995

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1. Heard Sri Tushar Mehta, learned Solicitor General appearing for Union of India and Delhi Metro Rail Corporation Ltd; Sri Chirag M. Shroff, learned counsel appearing for the Government of National Capital Territory of Delhi (for short, the 'GNCTD'), and Sri Rajiv Dutta, learned Senior Counsel appearing for the applicants and perused the material on record.

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2. IA Nos.169029 and 169030 of 2019 have been filed by the applicant viz., Delhi Metro Rail Corporation Ltd. (for short, the 'DMRC').

3. By order dated 02.02.2021, IA No.169029 of 2019 for impleadment was allowed and the applicant – DMRC was impleaded as party respondent in the matter for the purpose of passing orders on IA No.169030 of 2019.

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4. The following prayers are sought in IA No.169030 of 2019 :

(a) Refer the matter to the Central Empowered Committee appointed by this Hon'ble Court for detailed consideration and examination of the proposal of the applicant for construction of metro alignment, tunnels and metro station forming part of 22.34 km Aerocity - Tughlakabad Metro Corridor, being proposed for construction for Phase-IV of the MRTS Project on South Central/morphological Ridge as enclosed in Annexure P-1.

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(b) Allow the Applicant for carrying out the aforesaid Alignment, Tunnelling/ station/shaft construction activity, in the South Central/Morphological Ridge for construction of the tunnels and metro corridor forming part of 22.34 km Aerocity - Tughlakabad Metro Corridor being proposed for construction for Phase-IV of the MRTS Project, under the supervision of the Ridge Management Board.

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- A (c) Pass such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

5. IA No.105674/2020 has been filed by the applicant-DMRC seeking the following prayers:

- B (i) Allow the instant application, by declaring (1) the 5.34 km stretch on Road No.26 between Vikaspuri to Peeragarhi; (2) 1288.973 sqm land at Najafgarh drain, (3) area admeasuring 16097.75 sqm land located at Mangolpuri, and (4) area admeasuring 55.78 sqm at Krishna Park are non-forest areas and there is no requirement for the applicant to obtain permission for diversion of these lands as Forest land under the Forest (Conservation) Act, 1980.
- C (ii) Permit the applicant to carry out the construction activities of Phase-IV of Delhi Mass Rapid Transit System Project on the locations referred to in prayer (i) above, without any restrictions in the larger interest of the Project.
- D (iii) Pass such other order as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the case.

6. I.A. No.144462/2021 has been filed by the GNCTD seeking permission to file the additional documents in I.A. No.105674/2020. The said application contains:

- E (i) Report of Deputy Conservator of Forest, West Forest Division, GNCTD, on DMRC proposal for construction of corridor from Janakpuri to Derawal Nagar, Delhi (Annexure A-1);
- F (ii) Copy of submissions of GNCTD dated 24.02.2021 in the matter of DMRC and P.C. Prasad Vs. UOI (Annexure A-2);
- G (iii) Minutes of Meeting of the Ridge Management Board (for short, the 'RMB') dated 05.03.2021 (Annexure A-3) in which Agenda Item No.8 is relevant which is concerning the construction of metro line (Aerocity – Tughlakabad Corridor) of Delhi Mass Rapid Transit System (for short, the 'MRTS') Project Phase IV.

H The RMB has noted that the DMRC has submitted the proposal for use of forest land for construction of metro

line, stations and other operational requirement of Delhi MRTS Project Phase IV. The length of alignment falling under Southern Ridge, South Central Ridge and Morphological Ridge is 2.844 km, 1.491 km and 3.774 km respectively, giving further details of the exact location of the railway alignment in the forest land of the Ridges referred to above. It is also noted that 1109 trees are proposed to be felled in certain parts of the Southern Ridge, South Central Ridge and Morphological Ridge. Since the Central Empowered Committee (for the sake of convenience hereinafter referred to as the 'CEC') is visiting the entire railway alignment, the consideration of the matter was deferred.

(iv) Submissions of GNCTD dated 29.05.2021 through the Department of Forest & Wildlife, GNCTD and in the matter of DMRC is at Annexure A-4.

(v) The reply of GNCTD dated 29.05.2021 to the CEC is at Annexure A-5 in IA No.144462/2021.

(vi) The affidavit of the Conservator of Forest, GNCTD, dated 15.09.1997 filed before this Court is at Annexure A-6. The said affidavit is accompanied by nine annexures giving the details of protected forest, forest land and plantation areas under the management of Department of Forest, GNCTD.

7. I.A. Nos.142873/2021 and 142876/2021 have been filed by the applicants in I.A. No.105674/2020 who have prayed for intervention/impleadment as party respondents and have also sought appropriate directions for accepting and allowing the bona fide objections filed by the applicants and for rejecting Report No.8 of 2021 dated 13.05.2021 filed by the CEC in terms of the order dated 02.02.2021 passed by this Court in IA No.105674/2020 along with other directions sought in the prayer of the instant IA No.142876/2021.

8. In IA No.142876/2021, the applicants viz., Dr. PC Prasad and Aditya N. Prasad have filed their objections to Report No.8 of 2021 dated 13.05.2021 in IA No.105674/2020 and contended that the aforesaid application(s) filed by the DMRC is not maintainable as this Court cannot grant a declaration that certain areas are non-forest areas in the National Capital Territory of Delhi (for short, the 'NCT of Delhi'). It is averred

- A that DMRC ought to have approached the Regional Office of the Ministry of Environment, Forest & Climate Change (for short, the 'MoEF&CC'), Government of India (for short, 'GoI'), as per the Guidelines laid down by this Court in *Lafarge Umiam Mining Corporation Vs. Union of India & Ors.* – (2011) 7 SCC 338; that DMRC has directly approached this Court seeking a declaration without first approaching the MoEF&CC,
- B GoI; that in fact, DMRC has already addressed letter dated 25.08.2020 to the Deputy Conservator of Forest (West Forest Division), GNCTD, informing that it is in the process of applying for permission to use various land for the purpose of project as per FC Act, 1980; that DMRC has undertaken that in case diversion of forest land is denied it would realign
- C through the alternative route. A copy of the said letter is produced as Annexure-17 in IA No.105674/2020.

9. Objections have also been raised to the CEC Report No.8/2021 filed in IA No.105674/2020 by the aforesaid applicants in IA No.142876/2021 which are summarized as under :

- D (i) That none of their submissions raised before the CEC has been recorded nor referred to in the said Report.
- (ii) The Chief Wildlife Warden and the concerned Tree Officer(s) were not invited for the hearing nor have comments been sought from the said officers by the CEC.
- E (iii) It is stated that majority of the areas where DMRC is proposing to construct have been identified as 'deemed forest' areas in the affidavit dated 15.09.1997 submitted by the Conservator of Forest, GNCTD, before this Court in this very matter.
- F (iv) The metro line cannot be allowed to be constructed bypassing the requirement of obtaining forest clearance under the Forest (Conservation) Act, 1980 (for short, the 'FC Act, 1980').
- G (v) DMRC has to follow the statutory scheme of the FC Act, 1980 before any forest land is diverted for non-forest use. The statutory scheme under the said Act has been highlighted as under :
- (a) The officers of the Forest Department have to fill out the form under section 2 of the FC Act, 1980 providing details
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- of the project sought to be constructed on forest land, a cost-benefit analysis as well as alternatives examined with detailed recommendations accepting or rejecting the proposal. A
- (b) Then the proposal has to be placed before the Regional Empowered Committee which looks at all linear projects including the metro in the present case; B
- (c) The Regional Empowered Committee has to recommend the project and grant Stage I approval (in-principle approval).
- (d) Thereafter, as per the decision of the National Green Tribunal in Milind Pariwakam & Anr. Vs. Union of India, Original Application No.52 of 2015 (order dated 13.03.2015), an order of the State Government under section 2 of the FC Act, 1980 has to be passed after the State I clearance, before any non-forest activity can be carried out on forest land. C
- (e) The National Green Tribunal in Vimal Bhai Vs. Union of India, Appeal No.7 of 2012 (order dated 07.11.2012) has held that the order under section 2 is appealable under section 16(e) of the National Green Tribunal Act, 2010 and no party can be left remediless which is why the State Government order under section 2 is a pre-requisite before any action is taken. D
- (f) Para 1.14 of the Guidelines issued under the Forest (Conservation) Rules, 2003 (for short, the 'FC Rules, 2003') states that where projects involve both forest and non-forest lands, works should not be started on non-forest land till approval of the Central Government for release of forest land under the Act has been obtained unless and to the extent permitted by the Rules or guidelines issued thereunder. F
- (vi) It is also stated that the construction of Phase IV of MRTS project cannot be permitted unless a critical study is carried out under the Delhi Preservation of Trees Act, 1994 (for short, the 'DPT Act, 1994') before felling of trees. G
- (vii) The CEC has ignored in its report that 'Najafgarh drain basin' in New Delhi has been identified as a critically polluted H

A area by Central Pollution Control Board (CPCB) in the Comprehensive Environment Pollution Index (CEPI) Report, 2009.

(viii) It is also stated that ambient air quality in respect of noise has also to be taken into consideration.

B (ix) The objections in the aforesaid interlocutory application also state that the provisions of the Wildlife Protection Act, 1972 to be considered if trees are proposed to be felled and the threat to the eco system in the context of the wildlife prevalent in the particular eco system.

C (x) It is also stated that the Deputy Conservator of Forest (West Forest Division), GNCTD, by its order dated 28.02.2020 and letter dated 11.08.2020, has restrained DMRC from carrying out any construction activity on the 5.34 km on Road No.26 between Vikaspuri to Peeragarhi and Najafgarh drain as the DMRC illegally felled trees and barricaded the area for construction activity relating to Janakpuri West to R.K. Ashram corridor.

(xi) The objections have also averred about the economic value of the trees.

E 10. By order dated 02.02.2021, this Court had directed copies of the instant applications including the amended application to be served upon the CEC and directed the CEC to file its reports in the matter.

F 11. The CEC has submitted Report No.8 of 2021 in IA No.105674 of 2020 and Report No.10 with Corrigendum dated 09.09.2021 in IA No.169030 of 2019 in WP(C) No.202 of 1995. The said reports have been taken on record.

G 12. According to DMRC, which is a government company incorporated under the Companies Act, 1956 and which is engaged in Delhi MRTS Project to provide a pollution free transport system to the people of the NCT of Delhi/National Capital Region (for short, the 'NCR'), it has sought the aforesaid prayers with regard to a declaration that

(i) 5.34 km stretch on Road No.26 between Vikaspuri to Peeragarhi;

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- (ii) 1288.973 sqm land at Najafgarh drain; A
 - (iii) area admeasuring 16097.75 sqm land located at Mangolpuri; and
 - (iv) area admeasuring 55.78 sqm at Krishna Park
- are non-forest areas and hence, the requirement to obtain permission for diversion of these lands as forest land under the FC Act, 1980 would not arise. B

13. As a sequel, permission has been sought by the applicant-DMRC to carry out the construction activities of Phase-IV of MRTS Project on the aforesaid locations without any restrictions as such. C

14. In IA No.105674/2020, according to the applicant-DMRC, 61.679 Km of Phase IV of MRTS Project has been proposed, which, inter alia, includes the following construction proposed to be undertaken:

- (i) 20.201 km Metro corridor from Aerocity to Tughlakabad, D
- (ii) 28.920 km corridor *from* Janakpuri West to R.K. Ashram, and
- (iii) 12.558 km metro corridor from Mukundpur to Maujpur.

15. The total cost of Phase-IV of MRTS Project is estimated to the tune of Rs. 24948.65 crores. E

16. This Court vide its order dated 06.09.2019 in WP(C) No.13029 of 1985, observed that the parties have to ensure that there would be no delay caused in Phase IV of the Project and that the requisite amount has to be released in a timely manner to the acquiring authority. The commencement of Phase IV of MRTS Project by construction of civil works was made in November, 2019 and the said project is to be completed and commissioned by June, 2024. F

17. The application being IA No.105674/2020 contains the following steps that have been taken so far which are encapsulated as under:

- (i) The Detailed Project Report (DPR) of 103.93 km long Phase -IV MRTS Project was submitted to the Union Government and the GNCTD. The project report was reviewed in terms of the New Metro Policy, 2017 and the alignment was thereafter finalized in April, 2018. G

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- A (ii) It appears that in the period from 2018 to 2020, the DMRC carried out tree survey and applied for permission for cutting trees before the concerned department of Forest and Wildlife, GNCTD.
- B (iii) The concerned Public Works Department (PWD) has granted a No Objection Certificate (NOC) for carrying out the construction activity on the Right of Way (ROW) in the year 2019.
- C (iv) Similarly, permission has been obtained from the Police Department for diversion of traffic between Janakpuri and Mukarba Chowk and NOC from Irrigation and Flood Control Department have also been taken.
- (v) A contract has also been awarded for construction of elevated viaduct at the pertinent places and for 10 elevated stations on Janakpuri West-R.K. Ashram corridor.
- D (vi) From December, 2019 to August, 2020, the officials of the Forest Department and DMRC have conducted various joint site visits regarding permission for felling of trees falling within the area of Metro alignment. But no exact demarcation of forest areas has been made.
- E (vii) The Deputy Chief Conservator, Forest & Wildlife Department, GNCTD vide his letter dated 28.02.2020, restrained the DMRC from carrying out any construction activity at Najafgarh drain till necessary approval was issued by the concerned authorities.
- F (viii) By another letter dated 02.07.2020 issued by the Forest Department, the site near the railway line adjacent to Mangolpuri Industrial Area was stated to fall under the category of “Deemed Forest” as per the Affidavit dated 15.09.1997 filed in this case before this Court by GNCTD.
- G Therefore, the DMRC was requested to approach the Central Government for grant of permission for diversion of forest land under the FC Act, 1980.
- (ix) The Forest & Wildlife Department, GNTCD in its letter dated 07.07.2020, stated that one patch of Line 8 from Janakpuri (West) to Mukarba Chowk falls within the
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category of “Deemed Forest” and therefore, approval had to be taken from the Central Government for diversion of forest land. A

(x) On 05.08.2020, the Forest & Wildlife Department, GNCTD, directed the DMRC and PWD officials to attend a joint site visit on 10.08.2020 for ascertaining the exact location of 5.34 km area on Road No.26 between Keshorpur to Mukarba Chowk, as Road No.26 was mentioned as Forest/Planation Area in the affidavit dated 15.09.1997 filed before this Court in the main writ petition. B

(xi) As the exact location of the forest area could not be ascertained in the joint site visit, the Forest & Wildlife Department, GNCTD, requested the applicant – DMRC to approach the PWD to mark the area as forest area in terms of the affidavit dated 15.09.1997 filed before this Court. C

(xii) The Forest & Wildlife Department, GNCTD, also stated that the Najafgarh drain is marked as a plantation area as per Geospatial Delhi Ltd. (GSDL) Map and hence, no construction activity has been carried out on the said area. D

(xiii) Thereafter, on 14.09.2020, the Forest & Wildlife Department, GNCTD, permitted construction activity in the non-forest area subject to seeking approval of the competent authority vis-à-vis the trees in the said non-forest area. E

18. In the above circumstances, the present application has been filed by the DMRC before this Court seeking permission to carry out construction activities of Metro Rail on the following stretches/locations: F

(a) A stretch of 2.99 km, falling on Road No.26 between Keshopur to Mukarba Chowk being part of 28.920 km extension of Line-8 of MRTS Project; from Janakpuri West to R.K. Ashram of Phase IV Metro Project being constructed by the Applicant, which area forms part of Road No.26 (5.34km) classified as Forest Area/Plantation area by the Forest & Wildlife Department, GNCTD, in the above noted Affidavit dated 15.09.1997. G

(b) An area admeasuring 1288.973 sqm at Najafgarh drain, classified as Forest Area/Plantation Area, by the Forest & H

- A Wildlife Department, GNCTD, under Irrigation & Flood Control Department.
- (c) An area admeasuring 16097.75 sqm at Mangolpuri for construction of Mangolpuri Metro Station, classified as Forest Area by the Forest & Wildlife Department, GNCTD,
- B on the basis of availability of 100 trees per acre in an area above 2.5 acres.
- (d) An area admeasuring 55.78 sqm; 36.475 mt of which forms part of Road No. 26 (5.34km) at Krishna Park for construction of Entry/Exit of underground station at Krishna
- C Park of the Metro corridor/project.

19. Several averments have been made in the aforesaid application to contend that the aforesaid areas in respect of which the permission is sought, for carrying out the construction activity of Phase IV Metro Rail, are not forest areas and permissions/approvals are not required.

D They are summarized as under:

- (i) The project involves a huge capital expenditure and stoppage of construction activities and consequent delay in completion of the project would involve heavy financial implications owing to cost escalation, which would have a cascading effect on public exchequer.
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- (ii) The DMRC has undertaken the proposed project with a view to providing the citizen of NCT of Delhi/NCR a viable public transport option so as to reduce vehicular congestion on the road and consequently, reduce pollution in the NCT of Delhi/NCR.
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- (iii) The operation of Metro project has resulted in several advantages to the public at large.
- (iv) There would be a greater advantage to the public at large and essentially in the form of saving travel time and reducing the degree of pollution in the NCT of Delhi/NCR.
- G
- (v) Any delay in the commissioning of the project, on the other hand, would jeopardise the object and purpose of DMRC to provide efficient transport facility to the citizens.
- (vi) Hence, in IA No.105674 of 2020, the DMRC has sought a
- H declaration that -

- (a) the 5.34 km stretch on Road No.26 between Vikaspuri to Peeragarhi; A
 - (b) 1288.973 sqm land at Najafgarh drain;
 - (c) area admeasuring 16097.75 sqm land located at Mangolpuri; and B
 - (d) area admeasuring 55.78 sqm at Krishna Park
- are non-forest areas and there is no requirement for the applicant to obtain permission for diversion of these lands as Forest land under the FC Act, 1980.

20. Pursuant to the order of this Court dated 02.02.2021, the CEC has submitted its Report No.8 of 2021 dated 13.05.2021 in IA No.105674 of 2020. The relevant portions of the said report read as under: C

“17. Since this IA No. 105674 of 2020 filed by DMRC Limited mainly relates to the question of applicability of the Forest (Conservation) Act, 1980 to road side planted trees specific to the Metro corridor between Janakpuri West to R. K. Ashram and the issue raised in the W.P.(C) No.1774 of 2021 before the High Court of Delhi and before the CEC by the same petitioners mainly relates to proposed felling of 11,545 trees for implementation of the entire Phase IV of the Metro project, the CEC will submit a detailed report in the matter separately and along with the Report in IA No.91869 of 2020 filed by the DMRC Ltd relating to the Metro Corridor between Aerocity and Tughlakabad. D E

18. The felling of planted trees outside the forest are regulated under the provision of the Delhi Prevention of Trees Act, 1994 (DPT Act, 1994). The definition of a ‘tree’ under DPT Act, 1994 is as follows: F

“tree means any woody plant whose branches spring from and are supported upon a trunk or body is not less than five centimetre at a height of thirty centimetres from the ground level and is not less than one meter in height from the ground level.” G

Thus all plants of and above one meter in height are treated as trees under this Act.

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- A The DPT Act, 1994 also prescribes planting of a minimum of 10 times the number of trees for every tree felled. The Applicant is therefore required to obtain the requisite permission under the DPT Act, 1994.
- B 19. Keeping in view the above discussions CEC is of the considered view that the PWD land along Road No.26 on which the planted trees are seen are neither notified as ‘forest’ nor recorded in any government records as ‘forest’. These trees not being of natural origin cannot be branded as ‘forest’ for the purpose of Forest (Conservation) Act, 1980. It is therefore recommended for consideration of this Hon’ble Court that the prayer of the Applicant to declare that the 5.34 km stretch of Road No.26 between Vikaspuri to Peeragarhi, 1288.973 sqm land at Najafgarh drain, 16097.75 sqm land located at Mangolpuri and 55.78 sqm of Krishna Park are non-forest areas is allowed, subject to the condition that the Delhi Metro Corporation Limited will fell the trees only after obtaining permission under Delhi Preservation of Trees Act, 1994 from the concerned authorities and after complying with the conditions associated with such approvals including compensatory planting of 10 times the number of trees close to the site from where the trees are being felled.”
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- E 21. Report No.10 of 2021 in IA No.169030 of 2019 wherein the aforesaid prayers have been extracted, pertains to the construction of Metro alignment, tunnels and Metro stations located on Southern Ridge, South-Central Ridge and Morphological Ridge falling along the 23.62 km long metro corridor between Aerocity and Tughlakabad Station in Delhi. With regard to the extent and importance of Delhi Ridge Area/
- F Morphological Ridge Area and order of this Court in this regard, the following has been observed in the said report:
- G “19. i) The Master Plan for Delhi Perspective, 2001, notified by the Delhi Development Authority (DDA) on 1st August, 1990, states that the Ridge in Delhi is defined as rocky out-crop of Aravalli Ranges stretching from the University in the North of Union Territory boundary to the South and beyond. *The Delhi Ridge area extends over 7,777 ha out of which 87 ha falls in Northern Ridge, 864 ha falls in Central Ridge, and 6200 ha falls in South Central Ridge and 6200 ha falls in Southern Ridge.* The ridge area has been classified and included in the
- H Master Plan (Land use Plan) as Regional Park.

ii) The Government of National Capital Territory of Delhi by notification dated 24th May, 1994 under Section 4 of the Indian Forest Act, 1927 notified the 7,777 ha of Delhi Ridge area as Reserved Forests commonly referred to as Notified Ridge Area. The Delhi Ridge serves as the green lungs for Delhi and acts as a buffer against rising pollution levels. The pressures of rapid urbanization in Delhi have, over the years, threatened and adversely affected the forests in Delhi Ridge area. The Ridge area thus identified needs to be conserved with utmost care and should be afforested with the indigenous species with minimum of artificial landscape.

iii) This Hon'ble Court has passed a series of directions in Writ Petition (Civil) No. 4677 of 1985 for conservation and protection of Delhi Ridge. Pursuant to this Hon'ble Court order dated 29th September, 1995 the Government of NCT of Delhi by order dated 5th October, 1995 constituted the Ridge Management Board (RMB) under the Chairmanship of Chief Secretary, Delhi. The Board has been assigned various functions, relating to conservation and protection of Ridge. These include execution of the management scheme for the Ridge Forests, protection of boundaries, of the Ridge and preparation and execution of detailed plans for up gradation of the Ridge.

iv) *This Hon'ble Court by order dated 10th October, 1995 directed that the Ridge Management Board shall ensure that the Ridge is not occupied or encroached by any person for any unauthorised purpose.* This Hon'ble Court further directed the Chairman RMB to file an affidavit by a responsible officer after every eight weeks, indicating the progress made in preserving the status of the Ridge as a forest and also keeping it free from encroachers.

v) This Hon'ble Court, by order dated 25.01.1996 and 13.03.1996 in IA No.18 and IA No.22 in Writ Petition (C) 4677 of 1985 directed that the uncultivated surplus land of Gaon Sabha falling in the Ridge area may be excluded from vesting in Gaon Sabha u/s 154 of the Delhi Land Reforms Act, 1954 and made available for the purpose of Reserved Forest.

vi) The Government of NCT of Delhi in compliance of the above said orders of this Hon'ble Court issued Notification dated 2nd

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- A April, 1996 u/s 154 of the Delhi Land Reform Act, 1954 declaring 10,517 acres (about 4,206.68 ha) of uncultivated land of Gaon Sabha situated in Southern Ridge as surplus land and excluded the same for vesting in Gaon Sabha. Further by Notification dated 2nd April, 1996 placed the said 4206.68 ha land at the disposal of the Forest Department of Delhi Government and this 4206.68 ha of land stands included in the 7777 ha of Notified Ridge Area.
- B
- vii) *This Hon'ble Court by order dated 9th May, 1996 directed that the Ridge is to be kept free from encroachers and its pristine glory must be maintained for all times.*
- C viii) The Geological Survey of India (GSI) in the year 2001-02 carried out geological and geomorphological mapping of about 1482 sq km area of NCT of Delhi on 1: 10,000 scale with a view to provide the base map for seismic microzonation of Delhi and which map was published in the year 2006. *In the geological and geomorphological map prepared by the GSI the land forms found to be under rocky surface have been included and shown under the geomorphic unit "residual hills I Ridges".* It is relevant to mention that all the areas identified as Residual Hills I Ridges in the geological and geomorphological mapping done by the GSI are not included and shown as Ridge areas in the MPD 2001 and MPD 2021. For example, the areas between Tughlakabad to Okhla via Greater Kailash and Nehru Place have been identified as Ridge areas in the said Report of GSI but are not included as Ridge areas in the MPD 2001 and MPD 2021.
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- F ix) Initially, the clearance from the Ridge Management Board and the permission of this Hon'ble Court was being insisted upon only in respect of the Notified Ridge Areas. This Hon'ble Court by order dated 23.03.2007 has granted permission to the Delhi Metro Rail Corporation Limited for use of forest land and non-forest land falling in the Delhi Ridge area for the construction of the Central Secretariat -Qutab Minar -Gurgaon corridor of the metro line and by order dated 07.12.2007 has granted permission for use of forest land and non-forest land for construction of Express Metro Link to the Airport through the Central Ridge.
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- H x) Subsequently by order dated 03.11.2011 the Hon'ble High Court of Delhi in Writ Petition (Civil) No.3339 of 2011, filed by Shri

Ashok Kumar Tanwar, held that lands situated outside the Notified Ridge Areas but which have morphological features conforming to the ridge should be given the same protection as is given to the notified areas. Consequently, all the concerned agencies were restrained from carrying out construction works on such lands (Morphological Ridge) also referred to as “Extended Ridge Area” till necessary clearance from the Ridge Management Board and through the CEC the permission of this Hon’ble Court is first obtained.

20. *This Hon’ble Court by orders issued from time to time, since 02.11.2012 and till 06.09.2019, has given permission to various agencies of Central Government and Delhi Government for carrying out construction activities in notified Ridge area on forest land and non-forest land situated outside the notified Ridge Area in extended Ridge Area Morphological Ridge Area. These include the Border Roads Organization, the Delhi Metro Rail Corporation Limited, Jawaharlal Nehru University, Central Bureau of Investigation, Ministry of Defence, Ministry of External Affairs, Ministry of Textiles, South Delhi Municipal Corporation, Delhi Development Authority, Central Public Works Department, National Highways Authority of India (NHAI} and the Delhi Police.”*

22. The observations and recommendations are given in paragraph 21 of Report No.10 of 2021 in IA No.169030 of 2019 which read as under:

“OBSERVATIONS AND RECOMMENDATIONS

21. After considering that

i) the project is in public interest;
ii) it is proposed to construct the 23.62 km long Aerocity to Tughlakabad corridor Mass Rapid Transport System forming part of Phase IV Project in Delhi at an estimated cost of Rs. 8230 crores and scheduled to be commissioned by year 2024;

iii) the metro corridor will serve the densely populated areas and is integrated with

a) Airport Express Line which provides metro connectivity of South Delhi to Indira Gandhi International Airport;

- A b) Samaypur Badli to HUDA City Centre (Yellow Line) at existing Chhatarpur Metro Station which integrates the metro connectivity of South Delhi to Gurgaon and Faridabad;
- iv) the vehicular traffic of IG Airport from Delhi will be drastically reduced with consequent reduction in traffic on NH-8, Mahipalpur - Mehrauli Road, Mehrauli - Badarpur Road apart from the Metro Project providing the connectivity to Line-6 at Tughlakabad for commuters of Faridabad;
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- v) the total Ridge Area involved including Morphological Ridge is 12.97 ha extending over a length of 5.29 kms. Out of this 12.97 ha an area of 4.5 ha will be for tunnels 20 m below the ground while the remaining 8.4 ha is required for constructing Metro Stations;
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- vi) since tunnel boring machines will be used surface breaking is limited to 8.4 ha. required for constructing metro stations and therefore there will be minimal impact to the ecology or structure on Ridge I Morphological Ridge;
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- vii) the land required on permanent and temporary basis has been restricted to 14865 sqm and 69793 sqm respectively with minimal impact. The 69793 sqm land, held on temporary basis, shall be restored back after the completion of the Project;
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- viii) it is not possible to align the corridor outside the ridge area;
- ix) the total number of trees involved is 6961 trees break up being 1072 trees located in 12.97 ha over a length of 5.29 km in Ridge Area including Morphological Ridge, 2536 trees located in 3.79 ha identified as deemed forest over a length of 0.97 kms and 3353 trees located on 27.06 Ha non-forest land over a length of 17.35 km. A total of 2195 trees out of 6961 trees are to be transplanted while the remaining 4766 trees are to be felled;
- F
- x) the compensatory planting will involve about 34,000 saplings (ten times 3353 trees to be felled/transplanted) and will be located on land made available by DDA while transplantation of 2195 trees will be undertaken on open lands of DDA, Ministry of Defence and multiple land owning agencies in the vicinity of the Project;
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- xi) the corridor proposed has been found to be the most feasible route economically, environmentally and technically for the purpose of daily ridership and will be covering a sizeable population;
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xii) the Ridge Management Board has recommended the proposal; A
xiii) no viable alternative is feasible and the use of the ridge area has been restricted to the minimum; and

xiv) this Hon'ble Court by orders issued from time to time has for site specific projects given permission to various Central Government agencies and Delhi Government for carrying out construction activities on forest land, deemed forests and non-forest land situated B

a) in the Notified Ridge Area

b) outside the Notified Ridge Area but located in extended Ridge area/ Morphological Ridge area which have morphological features. C

It is recommended that this Hon'ble Court may consider permitting use of 7.42 Ha. Ridge area including Morphological Ridge and 3.79 Ha of deemed forest land involving 6961 trees (break up being felling of 4766 trees and transplantation of about 2195 trees) for construction of metro alignment tunnels and metro stations in the Southern Ridge, South Central Ridge and Morphological Ridge along the 23.62 km Aerocity-Tughlakabad Metro Corridor forming part of Phase IV of the Mass Rapid Transport System (MRTS) Project subject to the following conditions : D E

a) The Applicant Delhi Metro Rail Corporation Limited will deposit 5% of the Project cost proportionate to the area falling within the Southern Ridge, South Central Ridge and Morphological Ridge, with the Ridge Management Board Fund and which amount, under the close supervision of the Ridge Management Board, will be used by the Forest Department of Delhi Government for conservation and protection of the Delhi Ridge. F

b) The Applicant will obtain the statutory forest clearance for diversion of 7.42 Ha. forest land falling in Southern Ridge, South Central Ridge and 3.79 Ha of deemed forest for non-forest use in accordance with the provisions of the Forest (Conservation) Act, 1980 from the competent authority and shall comply with all the conditions that are laid down in the order to be passed for diversion of forest land. G H

- A c) The 25 Ha of land allotted by DDA for compensatory afforestation in Dhusiras Village, Dwarka shall be notified as protected forests under the provisions of the Indian Forest Act 1927 and shall be managed by the Forest Department of Delhi Government.
- B d) The area falling within the Delhi Ridge area I Morphological Ridge area will not be used for commercial purposes by the Applicant or any other party.
- e) The Applicant shall pay Net Present Value as assessed by the Forest Department, Delhi Government.
- C f) The applicant shall obtain necessary approvals under the Delhi Preservation of Trees Act, 1994 from the competent authority before felling of trees standing on non-forest land.
- g) Compensatory plantation of 34,000 saplings of indigenous species, being ten times in lieu of 3353 trees standing on non-forest land and proposed to be felled/transplanted, will be undertaken by the Forest Department of Delhi Government on the lands provided by ODA for the said purpose.
- D h) The cost of raising 34,000 saplings and raising compensatory afforestation in lieu of the diversion for forest land for non-forest use. will be deposited in advance by the Applicant with the Forest Department of Delhi Government who will undertake the planting and maintenance of the above trees for seven years.
- E i) Transplantation of 2195 trees will be undertaken by DMRC on open identified lands made available by DOA, Ministry of Defence and other multi land owing agencies including private trusts.
- F j) The transplantation of trees will be undertaken near the impact area itself.
- G k) The felling of tress proposed is limited to the bare minimum required for execution of the project.

Note : By corrigendum dated 09.09.2021 to Report No.10 of 2021 in IA No.169030/2019, the figure 12.98 Ha forest land to be read as 7.42 Ha of forest land.

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23. The justification for Aerocity – Tughlakabad Corridor Project is stated in paragraph 17 of the aforesaid Report i.e. Report No.10 of 2021 as under:

“JUSTIFICATION FOR AEROCITY – TUGHLAKABAD CORRIDOR PROJECT

17. i) According to DMRC the proposed metro Corridor is to serve the densely populated areas of Mahipalpur, Vasant Kunj, Chhatarpur, IGNOU, Maidangarhi, Neb Sarai, Saket, Khanpur, Sangam Vihar and Tughlakabad. The alignment is based on the proximity to the populated areas to be served and which areas are mostly along the Mahipalpur - Mehrauli Road and Mehrauli ~ Badarpur Road. There have been and there still are many constraints while finalizing the alignment such as minimum distance from the Protected Monuments avoiding built up areas and at the same time also minimizing the Ridge area as there are large extent of Ridge areas along the corridor. The present alignment is the best fit alignment meeting the above constraints and also simultaneously meets the technical requirements of metro alignments/stations and proximity to the target population to be served. There is a vast extent of Ridge on either side of the alignment because of which it has not been possible to shift the alignment out of Ridge area but efforts have been made to minimize the Ridge area involved. The daily ridership has been estimated at 1.66 lakhs trips per day by 2024.
- ii) The proposed Aerocity - Tughlakabad corridor is to be integrated with Airport Express Line which provides metro connectivity of South Delhi to Indira Gandhi International Airport. It is also to be integrated with Samaypur Badli to HUDA City Centre Line (Yellow Line) at existing Chhatarpur Metro Station which integrates the metro connectivity of South Delhi to Gurgaon and Faridabad.
- iii) This corridor provides connectivity to Chhatarpur Mandir, IGNOU University, Karni Singh Shooting Range and ASI Monuments including Tughlakabad Fort, Adilabad Fort and Ghyasuddin Tughlakabad Tomb.
- iv) The vehicular traffic of IGI Airport from Delhi will get drastically reduced with consequent reduction in traffic on N~H-8, Mahipalpur - Mehrauli Road, Mehrauli Badarpur Road apart

A from the Metro Project providing the connectivity to Line - 6 at Tughlakabad for commuters of Faridabad.

v) The reduction in vehicular traffic will also bring down the number of toad accidents and pollution levels.

B vi) Public interest is involved in the completion of Aerocity to Tughlakabad corridor as this corridor is the most feasible route economically, environmentally and technically for the purpose of the daily ridership and also will be covering a sizeable population.

C 24. It is noted in the aforesaid Report that the RMB in its meeting held on 14.07.2021 is said to have stated that the original alignment proposed by DMRC involving minimum use of forest area (12.97 Ha) and minimum felling of trees (1072 trees) has recommended the proposal subject to the following conditions:

D (a) The User Agency shall obtain necessary permission for diversion of forest area for non-forestry purposes as per provisions under FC Act, 1980.

E (b) The User Agency shall deposit 5% of the project cost proportionate to the area falling within Morphological Ridge area to RMB fund on the lines of conditions imposed by Hon'ble Supreme Court of India in Writ Petition (Civil) 202 of 1995 titled "T.N. Godavarman Thirumulpad Vs Union of India and Ors." for management of the Ridge.

F 25. As already noted, we have heard learned Senior Counsel and counsel appearing for the respective parties at length and perused the earlier orders of this Court and the aforesaid reports submitted by the CEC, the relevant portions of which are extracted above.

26. We have given our anxious consideration to the prayers sought by the applicant – DMRC in these applications.

G 27. At the outset, we may preface our discussion by observing that learned counsel appearing for the respective parties submitted at the Bar that in principle, their parties are not opposed to Phase IV of MRTS Project. The main consideration is making available transport facility to the public at large in NCR of Delhi in the form of Metro rail while at the same time, preserving the ecology and environment of the areas surrounding the alignment of the metro railway.

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28. To put it in a nutshell, the issue herein concerns sustainable development and preservation of the environment and ecology of NCT of Delhi/NCR. A

29. An introspection on the issue raised before this Court would draw our attention to the grave and pressing problem the world over including India, namely, degradation of environment and ecology resulting in what is simplistically called 'Climate Change' and the problem of 'greenhouse gas emissions'. B

30. The United Nations Conference on the Human Environment at Stockholm in 1972, United Nations Conference on Environment and Development (UNCED) known as the Rio de Janeiro Earth Summit in 1992; World Summit on Sustainable Development in Johannesburg in 2002 and Glasgow Climate Change Conference currently held in October-November, 2021, have all voiced grave concerns about the global environmental degradation resulting in extinction of certain flora and fauna and its cascading effect on planet Earth owing to man's growing need for development particularly economic development. C D

31. Projects such as the metro railway in question have already been implemented in parts of NCT of Delhi/NCR. One cannot lose sight of the fact that it has resulted in loss of vegetation as well as flora and fauna in certain areas. The implementation of Phase IV of MRTS Project may be a further threat to the ecology of NCT of Delhi/NCR. E

32. To meaningfully arrest the problem of declining tree cover, the civil society must also be placed with the responsibility to carry out reafforestation activities. While we cannot ignore the importance of governmental responsibility in materializing the goals of sustainable development through reafforestation, we strongly endorse the idea of collective responsibility towards ensuring a sustainable future. The engagement, inclusion and participation of citizens and perhaps more significantly, the ownership of the sustainable development agenda by empowered citizens and community-level actors will contribute in a significant manner to achieving the economic, social and environmental pillars of the sustainable development agenda. F G

33. Citizens, as the ultimate beneficiaries of development, have a critical role to play, not just in terms of effort and action towards the achievement of the environmental goals but also in terms of the associated monitoring of the progress towards these goals. H

A 34. One of the important steps that Parliament has taken is to have enacted the Environment (Protection) Act, 1986 and the FC Act, 1980. The FC Act, 1980 is a short but effective enactment comprising only of five sections. Section 2 of the FC Act, 1980 reads as under:

B “2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.— Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,—

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

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

D (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]

E [Explanation.—For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for—

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

F (b) any purpose other than reafforestation,

G but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]”

35. While interpreting the word “Forest”, this Court in this very matter, speaking through J.S. Verma and B.N. Kirpal, JJ as their Lordships then were, on 12.12.1996, have observed, *inter alia*, as under:

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“It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest (Conservation) Act, 1980 (for short the ‘Act’) and the meaning of the word “forest” used therein. There is also a resulting misconception about the need of prior approval of the Central government, as required by section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance: and therefore, the provisions made therein for the conservation of forests and for matters connected herewith must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily ‘recognised forests, whether designated as reserved, protected or otherwise for the purpose of section 2(1) of the Forest Conservation Act. The term ‘forest land’, occurring in section 2, will not only include “Forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this court in *Ambica Quarry Works v. State of Gujarat* (1987 (1) SCC 213). *Rural Litigation and Entitlement Kendra v. State of U.P.* (1989 Suppl. (1) SCC 504), and recently in the order dated 29th November, 1996 in *W.P. (c) No. 749/95 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority and Ors.* (1985 (3) SCC 643) has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this

A court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

We further direct as under:-

B I) General – In view of the meaning of the word “forest” in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any ‘forest’. In accordance with section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and, are therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

E The felling of trees in all forests is to remain suspended except in accordance with the Working Plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular state, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

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

(i) Identify areas which are ‘forests’ irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

G (ii) Identify areas which were earlier forest but stand degraded, denuded or cleared; and

(iii) Identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

H 36. We have considered the applications made by the applicants in the light of the aforesaid orders passed by this Court, the additional

documents filed by GNCTD, Report Nos.8 and 10 submitted by the CEC and the recommendations made therein and the objections filed by the applicants vide I.A. No.142876/2021. A

37. Pursuant to the Order of this Court dated 12.12.1996, an affidavit dated 15.09.1997 was filed by the Conservator of Forests, GNCTD. In the said affidavit under the head “Forest Areas and Plantation Areas along the Roads managed by PWD”, the State Government has included the trees planted along the road side including Road No.26 in respect of which the application is filed as part of Annexure IX of the said affidavit. B

38. On the other hand, the DPT Act, 1994 regulates felling of trees falling outside the notified forests and deemed forests. Under this Act, the user agency has to bear the cost of raising and maintenance of ten times the number of trees to be felled. C

39. Therefore, the crucial issue whether the areas through which the metro railway lines are to be constructed and pass through as noted hereinabove are forest areas or non-forest areas has to be determined by GNCTD. In this context, we note that the applications have already been filed by DMRC under the FC Act, 1980 on 02.11.2020 before the Chief Conservator (Forest) and Nodal Officer (FCA), GNCTD, seeking sanction under the FC Act, 1980, for conversion of 50,421 Ha of forest land for construction of underground stations at Krishna Park and elevated corridor to Keshopur to Mukarba Chowk from Janakpuri corridor in Phase-4 of MRTS project with a request to forward documents to the MoEF&CC, GoI for its consideration. Therefore, there has already been an application made seeking permission for diversion of Forest land or non-forest activity namely, the construction of the Metro railway line in respect of the aforesaid areas. D E F

40. Further, the MoEF&CC (Forest Conservation Division), GoI, has also communicated by its letter dated 14th November, 2019 to the Principal Secretary, Forest of State and Union Territories as under:

“2. Based on the recommendation of the FAC with regards to the definition of forests, the Ministry has decided as follows: G

(i) India is a vast country with varied geo-physical units and soil-climatic conditions that has given rise to a number of forest types. There are variations even within the forest types. H

A (ii) As far as developing criteria for ‘deemed forests’ is concerned, there cannot be any uniform criteria applicable to all forest types or all states. There has to be different criteria for different forest types or states.

B (iii) It is only that Hon’ble Supreme Court had directed states to identify their own forests, in fact the states, having well established forest departments, are in a better position, rather than MoEF&CC, to understand their own forests and needs, and should frame criteria for their forests.

C (iv) While framing criteria, due diligence should be exercised taking into account spirit of order of Supreme Court, National Forest Policy, the rationale of having adequate forests, site quality of naturally occurring forest species etc., for supporting a healthy environment.

D (iv) The criteria so finalised by a state, need not be subject to approval of MoEF&CC. This issues with the approval of competent authority.”

E 41. On perusal of Report No.8 of 2021 in IA No.105674/2020 submitted by the CEC, it is observed that where any area is declared to be forest area (within the meaning of the definition given by this Court in the aforesaid order dated 12.12.1995), for diversion of the said area for a non-forest purpose would require approval under the provisions of the FC Act, 1980. However, if there is need for felling of trees outside any forest area then the provision of DPT Act, 1994 has to be complied with.

F 42. As far as, 23.62 km long Metro Corridor between Aerocity and Tughlakabad stations in Delhi passing through Southern ridge, South-Central Ridge, Report No.10 of 2020 in IA No.169030/2019 states that an extent of 7,777 Ha of land of Delhi Ridge Area falls in the Northern Ridge, Central Ridge and South-Central Ridge as well as the Southern Ridge. The Ridge area has been described in the Master Plan (Land use Plan) as Regional Park.

G 43. By notification dated 24th May, 1994 under Section 4 of the Indian Forest Act, 1927, 7,777 Ha of Delhi Ridge area has been notified as Reserved Forest. It serves as the green lung for Delhi and acts as a buffer against rising pollution level and hence the Ridge area has to be conserved with utmost care and should be afforested with the indigenous

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species with minimum of artificial landscape is the recommendation of the CEC. A

44. Pursuant to the directions issued by this Court, the RMB under the Chairmanship of Chief Secretary, Delhi, has been constituted for the conservation and protection of Ridge. This is to ensure that the Ridge is not occupied or encroached upon by any person for any unauthorised purpose so as to preserve its status as 'forest'. B

45. Further, notifications have been issued to exclude areas comprising in the Ridge from the provisions of the Delhi Land Reforms Act and not vesting the same in the Gram Sabha.

46. This Court by order dated 03.11.2011 passed in WP(C) No.3339/2011, held that land situated outside the notified Ridge areas but which have morphological features conforming to the Ridge should be given the same protection as is given to the notified areas. Therefore, any construction work to be carried out on such lands also referred to as 'Extended Ridge Areas', must have clearance from the RMB. Accordingly, recommendations have been made by the CEC in the aforesaid Report No.10 while also noting the recommendations of the RMB. C D

47. In view of the above discussion, having regard to the specific recommendations of the CEC, the present interlocutory applications are disposed of in the following terms: E

- (i) DMRC to file applications under the FC Act, 1980 to the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, seeking permission for diversion of the following extents of land for the construction of Metro, Phase-IV of MRTS Project with a request to forward the said documents to the MoEF&CC, GoI, for its consideration under Section 2 of the FC Act, 1980: F
- (a) 5.34 km stretch on Road No.26 between Vikaspuri to Peeragarhi; G
- (b) 1288.973 sqm land at Najafgarh drain;
- (c) area admeasuring 16097.75 sqm land located at Mangolpuri; and
- (d) area admeasuring 55.78 sqm at Krishna Park. H

- A (ii) It is needless to observe that the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, shall consider the said application/s and forward the same to MoEF&CC, GoI, with his recommendations within a period of one month from the date of receipt of the said application/s.
- B (iii) MoEF&CC, GoI, on receipt of the application/s, shall consider the same expeditiously and within a period of three months from the date of its receipt, communicate its decision to the applicant-DMRC as well as to the Chief Conservator (Forest) and Nodal Officer (FCA), GNCTD.
- C (iv) Insofar as the prayer sought by the Applicant-DMRC vis-à-vis South Central/morphological Ridge forming part of Aerocity-Tughlakabad Metro Corridor is concerned, having regard to the recommendations made by the RMB, the DMRC is directed to file an application before the RMB so as to seek necessary permission for diversion of the
- D aforesaid Ridge areas for the purpose of Phase IV of the MRTS project passing through the said areas.
- (v) On such application being made, the RMB shall make its recommendations on the same and forward a copy of the said recommendations to the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, as well as to the
- E MoEF&CC, GoI, for its consideration under section 2 of the FC Act, 1980 within a period of one month from the date of receipt of the said application.
- F (vi) MoEF&CC, GoI, shall on receipt of the said application along with the recommendations of RMB and the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, if any, shall consider the said application within a period of three months from the date of its receipt.
- G (vii) DMRC shall also comply with all other conditions imposed by the RMB and also the orders passed by this Court in this very matter concerning the management of the Ridge.
- (viii) It is needless to observe that while considering the said applications, the directions and orders passed by this Court referred to above as well as the statutory scheme and
- H guidelines and parameters prescribed by MoEF&CC, GoI,

shall be borne in mind by the concerned authorities. The Reports referred to above may also be taken into consideration. A

- (ix) Irrespective of and *de hors* the decision to be taken by the concerned departments with regard to the recommendations made by the CEC in the aforesaid Report Nos.8 and 10, since the citizens of NCT of Delhi have had and would continue to have the facility of the metro rail, the GNCTD as well as DMRC are directed to conceive a plan of action for the purpose of planting trees in the NCT of Delhi. For that purpose, GNCTD may involve school and college students, educational institutions, Non-Governmental Organizations, Citizen Welfare Associations, public servants and every citizen or person who is interested in the ecology of NCT of Delhi to plant trees/saplings and ensure that they are nurtured and protected so that the NCT of Delhi would in passage of time have more greenery leading to afforestation. The aforesaid direction is issued having regard to the precautionary principle as well as principle of sustainable development by ensuring citizens' participation in the preservation of the environment and ecology. It is needless to observe that such a plan of action would be conceived by the Department of Forest and Environment of NCT of Delhi in consultation with the Public Works Department, Education Department and such other departments who will involve themselves in ensuring the planting of saplings and trees in NCT of Delhi. Such a plan of action be conceived and the same be placed on record before this Court within a period of twelve weeks for consideration of this Court. B
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