

HOSPITALITY ASSOCIATION OF MUDUMALAI

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v.

IN DEFENCE OF ENVIRONMENT AND
ANIMALS AND ORS. ETC.

(Civil Appeal No. 3438-3439 of 2020)

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OCTOBER 14, 2020

[S. A BOBDE, CJI, S. ABDUL NAZEER AND
SANJIV KHANNA, JJ.]

Wildlife (Protection) Act, 1972– Elephant Corridor notified in Sigur Plateau of Nilgiris District – Resort owners/other private land owners directed to vacate the lands falling within the notified elephant corridor – Notification challenged – Upheld by High Court – On appeal, held: State Government empowered to take measures to protect forests and wildlife falling within its territory in light of Entries 17A, 17B in the concurrent list and its power under the Wildlife Act – State Government empowered to protect the habitats situated on the appellants’ land by notifying an elephant corridor thereupon – Environmental Law – Constitution of India – Concurrent List- Entries 17A, 17B.

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Environmental Law – Precautionary Principle – Held: Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation.

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Disposing of the appeals, the Court

HELD: 1.1 The Wildlife Trust of India terms elephants as a “keystone species” because their nomadic behavior is immensely important to the environment. Herds of roaming elephants play several important roles in the ecosystem:

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(i) Landscape architects: Elephants create clearings in the forest as they move about, preventing the overgrowth of certain plant species and allowing space for the regeneration of others, which in turn provide sustenance to other herbivorous animals.

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(ii) Seed dispersal: Elephants eat plants, fruits and seeds, releasing the seeds when they defecate in other places as they

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A travel. This allows for the distribution of various plant species, which benefits biodiversity.

(iii) Nutrition: Elephant dung provides nourishment to plants and animals and acts as a breeding ground for insects.

B (iv) Food chain: Apex predators like tigers will sometimes hunt young elephants. Further, elephant carcasses provide food for other animals.

(v) The umbrella effect: By preserving a large area for elephants to roam freely, one provides a suitable habitat for many other animal and plant species of an ecosystem.

C Elephant corridors allow elephants to continue their nomadic mode of survival, despite shrinking forest cover, by facilitating travel between distinct forest habitats. Corridors are narrow and linear patches of forest which establish and facilitate connectivity across habitats. In the context of today's world, where habitat fragmentation has become increasingly common, these corridors play a crucial role in sustaining wildlife by reducing the impact of habitat isolations. In their absence, elephants would be unable to move freely, which would in turn affect many other animal species and the ecosystem balance of several wild habitats would be unalterably upset. It would also eventually lead to the local extinction of elephants, a species which is widely revered in our country and across the world. To secure wild elephants' future, it is essential that their uninterrupted movement between different forest habitats is ensured. For this, elephant corridors must be protected. [Para 34][292-A-G]

F 1.2 Legal intervention in preservation of these corridors has been necessitated because wildlife corridors are threatened by various social, economic and anthropogenic factors, as noted above. Commercial activities such as running of private resorts and construction of new buildings with barbed and electric fences within elephant corridors pose a serious threat of fragmentation and destruction of habitats. The long-term survival of the species depends on maintaining viable habitats and connecting corridors which maintain variance in the species' gene pool and avoid other risks associated with habitat fragmentation and isolation of species. Overtime, several environmental legislations including

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the Indian Forest Act, 1927 and the Wildlife Act have been enacted to provide for the protection of forests and wild animals, with a view to ensuring ecological balance and preserving natural habitats including such corridors. The corridor in the Sigur Plateau of Tamil Nadu connects the Western and the Eastern Ghats and sustains elephant populations and their genetic diversity. The Sigur Plateau has the Nilgiri Hills on its south-western side and the Moyar River Valley on its north-eastern side. Depending on the monsoon, the elephants migrate in search of food and water and during the course of their migration, they have to cross the Sigur Plateau. This migratory path is considered to be very crucial as it connects several contiguous forest areas forming the Nilgiri Biosphere Reserve in the states of Tamil Nadu, Karnataka and Kerala, the largest protected forest area in India. [Paras 35-37][292-H; 293-A-C; 294-B-C]

State of Bihar v. Murad Ali Khan (1988) 4 SCC 655 : [1988] 3 Suppl. SCR 455 – relied on.

1.3 Conflicting maps of this corridor were presented before the Madras High Court, which thus directed the State Government to choose between: (i) the elephant corridors identified in the Wildlife Trust of India's book titled "Right of Passage – Elephant Corridors of India" which were referred to by the Central Government in its letter dated 11.08.2006 to the State Government; or (ii) the single elephant corridor identified by the Expert Committee appointed by the High Court. As per the aforesaid book titled "Right of Passage", the following 4 corridors lie in the Sigur Plateau region: (i) Avarahalla – Sigur, (ii) Kalhatti – Sigur at Glencorin, (iii) Moyar – Avarahalla and (iv) Kalmalai – Singara and Avarahalla. The Expert Committee examined all the elephant corridors in the area and identified a single elephant corridor comprising of various elephant corridors in the Sigur Plateau region. The State Government, vide the impugned G.O., notified this single elephant corridor, along the lines of the recommendations made by the Expert Committee. [Para 38][294-D-F]

1.4 The State Government is empowered to take measures to protect forests and wildlife falling within its territory in light of Entries 17A 'Forest' and 17B 'Protection of wild animals and

A birds’ in the concurrent list and the power of the State Government under the Wildlife Act to notify Sanctuaries and other protected areas. It is an admitted position that the land of the appellants has also been notified as private forest in 1991 under the Tamil Nadu Preservation of Private Forests Act, 1949, which prohibits cutting of trees in private forests. Given that the classification of the appellants’ land as private forest land is not in dispute here, there is no difficulty in holding that the State Government was empowered to protect the habitats situated on the appellants’ land by notifying an elephant corridor thereupon. [Para 39][294-H; 295-A-C]

C 1.5 Furthermore, since the impugned decision of the High Court, the Ministry of Environment, Forest and Climate Change vide its Notification S.O. 4498(E) dated 13.12.2019 has declared the entire area in question and adjoining areas around the Mudumalai Tiger Reserve as an Eco-Sensitive Zone. Under this Notification, the State Government of Tamil Nadu has been expressly directed to regulate land use generally, as well commercial establishment of hotels/resorts specifically, in the Eco-Sensitive Zone so established. The “Precautionary Principle” has been accepted as a part of the law of the land. Articles 21, 47, 48A and 51A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wild life and to have compassion for living creatures. The Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. 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. [Para 40][295-D-G]

G *M.C. Mehta v. Union of India and Ors.* (1997) 3 SCC 715 : [1996] 7 Suppl. SCR 465 – relied on.

H 1.6 The second limb of the appellants’ submissions comprises of questions about the scientific accuracy of the Expert Committee’s Report and contentions that the dimensions as well

as the location of the single corridor identified therein are at odds with authoritative scientific publications. It has been argued by the appellants that their resorts and other establishments do not fall within the historic corridors identified in these publications. These assertions were dealt with by the High Court which held that there was material on record to show presence of elephants as well as a past incident of human-elephant conflict, which resulted in the death of a French tourist, in the region where the appellants' resorts are located. The High Court also held that any absence of elephants from the areas surrounding the appellants' resorts was, in fact, due to the construction activities of the appellants whereby access of the elephants has been restricted through erection of electric fencing. The Court sees no reason to interfere with the above factual findings of the High Court and also do not find fault in the State Government's adoption of the recommendations of the High Court-appointed Expert Committee, through the impugned G.O. [Para 41][296-A-D]

1.7 The appellants have contended that there has been substantial variance between the acreage recommended for acquisition by the Expert Committee Report and the acreage in the impugned G.O. It is further alleged that the acreage in the newspaper advertisement by the State Government inviting objections to notification of the corridor is also different from the acreage in the impugned G.O. As all the objections received pursuant to the said newspaper advertisement were rejected by the State Government and since the impugned G.O. purported to adopt the recommendations of the Expert Committee, the appellants allege that the said variance in acreage is arbitrary and unreasonable. It has also been alleged that the District Collector, Nilgiris has acted arbitrarily in sealing their resorts after rejecting the documents submitted by the appellant resorts purporting to show approvals and title. Similarly, it has been alleged that the District Collector went beyond the scope of this Court's order dated 24.12.2018 wherein immediate removal of electric fences and barbed wire was directed. It is the appellants' case that non-electric fences as well as fences beyond the notified elephant corridor area were removed by the District Collector. It is just and proper to hold an inquiry to establish the veracity of

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- A the above factual objections of the appellants. Therefore, a 3-member Inquiry Committee is appointed to decide the individual objections of the appellants and any other persons claiming to be aggrieved by the actions of the District Collector, Nilgiris pursuant to the impugned G.O. and as recorded before the Court through her Plan of Action Report and her twin Action Taken Reports, as also the allegations regarding arbitrary variance in acreage of the elephant corridor under the impugned G.O. [Paras 42, 43][296-E-H; 297-A-D]

- C *T. N. Godavaraman Thirumulkpad v. Union of India* (1997) 2 SCC 267 : [1996] 9 Suppl. SCR 982 – referred to.

Case Law Reference

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|---|-------------------------|-------------|---------|
| | [1988] 3 Suppl. SCR 455 | relied on | Para 36 |
| | [1996] 9 Suppl. SCR 982 | referred to | Para 39 |
| D | [1996] 7 Suppl. SCR 465 | relied on | Para 40 |

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3438-3439 of 2020.

- E From the Judgment and Order dated 07.04.2011 of the High Court of Judicature at Madras in Writ Petition Nos. 10098 of 2008 and 23939 of 2010.

With

- F Civil Appeal Nos. 3437, 3440, 3442-3443, 3444, 3445, 3447, 3448-3449, 3450-51, 3446, 3452, 3453, 3454, 3455, 3456, 3457, 3458, 3459, 3460, 3461, 3462, 3463, 3464, 3465, 3466, 3467, 3468, 3469, 3476, 3477, 3470, 3471-3472, 3473, 3475, 3474 Of 2020.

- G Jayant Muthuraj, Sr. Adv. (AAG), Raju Ramachandran, Sr. Adv., Rahul Shyam Bhandari, Senthil Jagadeesan, Sridhar Potaraju, Ms. Shiwani Tushir, Vishnu Tulashi Menon, Trideep Pais, Ms. Sanya Kumar, N.K. Verma, Ms. Anjana Chandrashekar, Ms. Diksha Rai, P. Soma Sundaram, Naveen Kumar, Vikas Mehta, Zulfiker Ali P. S, V. Balachandran, Kaustubh Shukla, Abhay Singh, S. Ravi Shankar, Ms. Yamunah Nachair, Shashi Bhushan Kumar, Deepayan Mandal, Janmejay Giridhar, Shakil Ahmed Syed, K. V. Mohan, K. V. Balakrishnan, M.F. Philip, Ms. Purnima

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Krishna, Sudarsh Menon, Mrs. Lalita Kaushik, Ms. N. Annapoorani, G. Balaji, M. Yogesh Kanna, Rajarajeswaran, Ms. Aparna Bhat, Gurmeet Singh Makker, B. Balaji, B. Krishna Prasad, Vinodh Kanna B., K. V. Vijayakumar, P. A. Noor Muhamed, Annam D. N. Rao, B. Krishna Prasad, Ms. Mayuri Raghuvanshi, Advs. for the appearing parties. A

Caveator-in-person. B

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.

1. Leave granted.

2. The appellants in these appeals have assailed the final judgment and order dated 07.04.2011 of the High Court of Judicature at Madras, passed in Writ Petition (PIL) No. 10098 of 2008 along with several other writ petitions including Review Application No. 131 of 2010 and Writ Petition No.23939 of 2010 filed by the Hospitality Association of Mudumalai. The High Court by the impugned judgment has upheld the validity of the Tamil Nadu Government Notification G.O.(Ms.) No.125, dated 31.08.2010 which had notified an 'Elephant Corridor' in the Sigur Plateau of Nilgiris District and has further directed resort owners and other private land owners to vacate and hand over the vacant possession of the lands falling within the notified elephant corridor to the District Collector, Nilgiris within three months from the date of the judgment. C D E

3. The appellant in Civil Appeal Nos. _____ 2020 (arising out of SLP (C) Nos.17313-17314 of 2011), is the Hospitality Association of Mudumalai, registered under the Tamil Nadu Societies Registration Act, 1975, situated in the Nilgiris District of Tamil Nadu. The members of this association have established resorts/guest houses in the Nilgiris forest area. The other appellants are either the owners of the resorts/guest houses or the owners of the lands in and around the Nilgiris forest area. Some of them have built dwelling houses on their lands, some of them have encroached upon government lands and put up constructions thereon and some of them are cultivating the said lands. F G

4. Before referring to the proceedings before the High Court and this Court, as well as the submissions made by the learned counsel for the parties, it would be helpful to refer to the background facts and the prevailing ecological context in which the impugned G.O. was notified.

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A **A. BACKGROUND**

5. Despite being a figure of traditional cultural reverence, today the elephant species is severally threatened in India. The crux of the problem is one that affects all wildlife in the country: land. As India's human population has grown exponentially in the past several decades, so has its demand for resources. At its essence, that demand boils down to the requirement for more land – for agriculture to grow more food and for construction of roads, dams, mines, railways and housing. This demand for land has led to the degradation and fragmentation of the country's forest cover. The elephant, being a large agrarian animal, may weigh upto 4-5 tons and requires about 200-300 kgs. of fodder comprising of various plant species daily. It, therefore, needs large areas, which it uses by rotation, so that it may not overgraze an area and in the process destruct it altogether. This allows the natural vegetation of the habitats a chance to re-generate.

6. However, the ever-growing need for land, infrastructure and energy requirements of our large population have slowly fragmented the elephant's natural spaces which are now surrounded by human habitation, agriculture, mining, roads and railways. The more forest habitat is fragmented, the farther an elephant herd has to roam in search of food and water. Increasingly, elephants have to move farther and farther afield, even from one forest area to another, often through small patches of forests called corridors. As forest lands continue to be lost, these relatively narrow and linear patches of vegetation form vital natural habitat linkages between larger forest patches. They allow elephants to move between secure habitats freely, without being disturbed by humans. Further, elephants are genetically programmed by nature to never inbreed within their birth family and thus need to move around between gene pools to reproduce. These corridors aid this process by helping different elephant populations to intermingle, which is essential for retaining the vigour of the species and ensuring its long-term survival. By identifying and nurturing such corridors, deadly confrontations between humans and elephants can be avoided, in addition to safeguarding the welfare of the wildlife. Unfortunately, in most areas, the existing corridors are repeatedly being destroyed which will block migration routes of the elephants and would result in the fragmentation of the habitats as well as increased human-elephant conflict.

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7. To prevent such conflict and protect elephants, the Government of India through the then Ministry of Environment and Forests launched a centrally sponsored scheme 'Project Elephant' to provide financial and technical support to the wildlife management efforts by States for their free ranging populations of wild elephants. The 'Project Elephant' document was released in the year 1993. It admits that elephants are facing serious threat due to large scale destruction and fragmentation of their habitat due to increase in human and cattle populations, felling of natural forest and replacing them with single species, commercial plantation, excessive grazing, forest fires and shifting cultivation, destruction or capture for crop raiding, human killings, encroachments and man-made barriers/destructions such as roads, railway lines, dams, canals, tea gardens, agriculture and industry etc. The 'Project Elephant' was to provide financial and technical support to major elephant bearing States in the country. The project aims to ensure long term survival of viable conservation reliant population of elephants in their natural habitats by protecting the elephants, their habitats and migration corridors. Other goals of the 'Project Elephant' are addressing issues of human-animal conflict and providing for welfare of captive elephants. The main activities under this project include the following:

1. Ecological restoration of existing natural habitats and migratory routes of elephants;
2. Development of scientific management planning for conservation of elephant habitats and viable elephant populations in India;
3. Promotion of measures for mitigation of human-elephant conflict in crucial habitats;
4. Moderating impact of human and domestic livestock activities in crucial elephant habitats;
5. Strengthening of measures for protection of wild elephants from poachers and unnatural causes of death;
6. Research on elephant management related issues;
7. Public conservation education and awareness programmes about elephants;
8. Eco-development of elephant habitats; and

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A 9. Provision of improved veterinary care for elephants.

8. Specifically in the context of elephant preservation in Tamil Nadu, on 14.06.2006, the State's Principal Chief Conservator of Forests and Chief Wildlife Warden ('PCCF') had requested that the private/patta lands forming the traditional movement corridors of elephants between the Mudumalai Wildlife Sanctuary and National Park to other parts and also between Eastern and Western Ghats be brought under the control of the Forest Department, by acquiring the lands after paying compensation to the owners. The PCCF had highlighted the use of these patches of private forest land, which serve as vital migratory routes, for non-forestry use as a serious threat to free movement of elephants. The PCCF addressed another letter dated 6.11.2006 to the State Government, proposing the Survey Nos. of the patta land to be acquired for the purpose of the elephant corridors. Similarly, the Ministry of Environment and Forests, Government of India, by its letter dated 11.08.2006 to the State Government of Tamil Nadu had noted that 88 elephant corridors had been identified by the Wildlife Trust of India's book titled "Right of Passage – Elephant Corridors of India" and requested that necessary action be taken for notification and protection of the elephant corridors situated in Tamil Nadu, as identified in the aforesaid publication.

9. Pursuant to this communication, the Government of Tamil Nadu issued a Government Order dated 21.08.2007, appointing an Exploratory Committee with Collector of Nilgiris as the Chairman and four other members consisting of District Forest Officer, Nilgiris North Division, Wildlife Warden, Ooty, Officer of the Revenue Department, Ooty and the concerned Tehsildar. This Committee was constituted for exploring the possibility of acquiring the patta lands with the willingness of farmers who could spare their lands for acquisition for elephant corridors.

B. Proceedings before the Madras High Court

10. During this period, an organization called 'In Defence of Environment and Animals', represented by its Managing Trustee 'Elephant' G. Rajendran, filed Writ Petition No.10098 of 2008 before the Madras High Court seeking issuance of a Writ of Mandamus directing the official respondents therein to keep the elephant corridors free from encroachment and to prevent any other disturbances to the free movement of elephants and other animals. It was the specific case of the petitioner therein that the elephant corridor was being disturbed by

some encroachers and builders. Due to mushrooming of resorts, elephant corridors were either closed or becoming narrow. It was further contended that the Forest Department had not taken any stringent action to evict the encroachers from the elephant corridor. On 02.02.2009, the High Court passed an interim direction to the District Collector, Nilgiris to file a status report showing the steps taken to remove the encroachers from the lands falling under the elephant corridor.

11. Certain other writ petitions were filed by the Schedule Tribes and other Traditional Forest Dwellers contending that they were not encroachers and that they had a right to occupy the land in question under the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. It was further contended that on the strength of the order dated 02.02.2009 in Writ Petition No.10098 of 2008, the District Collector had directed them to stop the cultivation of these lands and that they were being prevented from collection of minor forest produce and grazing their cattle. These writ petitions were clubbed together for hearing before the Madras High Court.

12. At this stage, Hospitality Association of Mudumalai, the appellant herein, filed an impleadment application in the said case. It was contended that this association consisted of residents of the Masingudi Bokkapuram area and that they had been providing hospitality services to tourists who visit the area to see the wildlife and that there was a misguided sense of hostility towards the people who own and run guest houses in this area from the authorities and self-proclaimed environmentalists dwelling outside the area. It was also contended that the members of the said association had been living in the said area for more than 50-60 years and that there had been virtually no human-animal conflict in the area since there is little to no agriculture and the elephants can freely move around throughout the area.

13. During the course of hearing, the District Forest Officer of Nilgiris North Division made a presentation before the High Court to highlight the importance of the forests and corridors in the region. The District Collector, Nilgiris also appeared before the High Court and showed certain slides on his computer depicting a map of the corridor of elephants. He stated that to allow the elephants to pass through the corridor, the unauthorized occupants had to be evicted. Similarly, the State's PCCF also made submissions before the High Court to highlight the necessity of preservation of the elephant corridor by acquisition of patta lands.

A Considering the rival contentions of the parties, on 30.09.2008, the High Court issued the following directions:

- “(i) *forest department, which has the knowledge of movement of elephant in the corridor, may identify and inform the same;*
- B (ii) *the State Government may publish the information regarding the elephant corridor and the area, in leading newspapers and also by drum beating/tom tom, calling for objections of locals, if any, in the area in question;*
- C (iii) *after hearing the locals, particularly those who may be affected, they may finalize the elephant corridor from which unauthorized occupants are to be evicted;*
- D (iv) *to ensure that schedule tribes and other forest traditional dwellers are not affected, it is required to identify the other traditional forest dwellers in terms with Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Tribes) Rules, 2007;*
- E (v) *only after the recommendation and recording their names in the appropriate register, they may proceed with eviction, by giving notice in the newspaper, by drum beating/tom tom and by giving individual notice to the unauthorised occupants.*
- F (vi) *So far as the acquisition of the land is concerned, if any private land is required to be acquired, they will have to follow the procedure under the Land Acquisition Act. Prima facie, as the tribals and other forest dwellers cannot be evicted from the unauthorized lands, their lands need not required to be acquired, if it is a forest land. Learned counsel for the parties are requested to give further suggestion in the matter, in the interest of public and elephants.”*
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14. Since there was opposition to the map prepared by the District Collector by the contesting parties, the Court felt it necessary that a team of experts of the Environment and Forest Department be constituted to identify the elephant corridor and submit a report after taking into consideration different books published with regard to elephant corridors.

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15. In pursuance of the directions of the High Court, an Expert Committee was constituted by the Government. The Expert Committee visited the elephant corridor area in the Nilgiris twice, enquired with the field officers and tribals of the area and obtained opinions from experts before submitting its report on 04.11.2009. A map of the elephant corridor in the Sigur Plateau in Nilgiris region was also filed by the said expert Committee before the High Court. Noting that the State Government was responsible for notifying elephant corridors within its territory, the High Court on 01.12.2009 directed the State Government to choose one of the maps for the elephant corridor out of either the one identified by the Expert Committee or the one identified by the Wildlife Trust of India's publication "Right of Passage – Elephant Corridors of India", which was referred to in the Central Government's abovementioned letter dated 11.08.2006. This order also directed the State Government to file an affidavit disclosing the actions it intends to take against resort owners and residents of the elephant corridor. In accordance with the High Court's directions, the State Government came forward with a decision that it will ensure that no illegal construction takes place in the area shown as 'elephant corridor' in the report of the Expert Committee and that no person will be allowed to put up fresh solar/electrical fencing within the proposed area of the elephant corridor. Taking into account the materials on record, the High Court passed a fresh order dated 03.12.2009 as under:

- “(i) *The State Government will have to decide as to which Elephant Corridor has to be identified, i.e. corridor identified by the Central Government in the letter dated 11.08.2006, with the help of the State Forest Department and NGOs, or the proposed Elephant Corridor as identified by the Expert Committee in the present cases, preferably within one month.*
- (ii) *The publication of such map showing the Elephant Corridor, should be made by the State through the Forest Department, in two local newspapers, one in English and another in vernacular Tamil, giving the details of Survey Numbers of private lands which are falling within the proposed Elephant Corridor. The persons may be asked to submit their objections within a time frame, say one month.*

- A (iii) *The intimation of such proposed Elephant Corridor along with a copy of the report of the Expert Committee, should be also forwarded to each local Panchayats, which fall within the proposed Elephant Corridor, so that the local persons can have the knowledge of the corridor of their own, if they so choose.*
- B (iv) *No separate individual hearing is required to be given to any person, though a mass hearing may be given as generally given in the “Land Acquisition” cases and on hearing such objections, the proposed Elephant Corridor including the map containing the different Survey Numbers should be finalized and be also published at an early date, say maximum within six months.*
- C (v) *No individual or any Association generally should intervene in the case. If they have any objection, they may raise before the authorities concerned.*
- D 23. *On such finalization, it will be open for the State to decide:*
- E (a) *Whether the private lands which are falling within the Elephant Corridor, do not belong to Schedule Tribe and other traditional forest dwellers, who have a right under the provisions of the Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and whether such lands should be acquired. If the decision is taken to acquire the lands, they will follow the regular procedures as laid down under the provisions of the Land Acquisition Act.*
- F (b) *If the State Government, in the meantime, wants to take over the management of the private forest, it may do so in terms of Section 3 of the Tamil Nadu Private Forest (Assumption of Management) Act (LV of 1961), so as to enable the elephants to pass through the corridor without any hindrance till the lands are acquired.”*
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16. Here, it may be noted that the aforesaid order of 03.12.2009 passed by the High Court was challenged before this Court through Special Leave Petition (Civil) Nos. 14416–14422 of 2010 which was

H disposed vide order dated 30.04.2010 in the following terms:

“Permission to file special leave petitions is granted. A

Delay condoned.

Heard learned counsel for the petitioner and learned counsel for respondent no.1.

The learned counsel for the petitioner contends that if proposed Elephant Corridors established, the petitioner would be seriously effected as his land falls in that area. B

The petitioner would be at liberty to approach the Committee which is likely to finalize the Elephant Corridors and also would be at liberty to approach the High Court and seek intervention proceedings though the division Bench has already indicated under other proceeding that no intervention is allowed. C

With the above directions, the special leave petitions are disposed of.” D

17. In pursuance of the directions of the High Court, the State Forest Department issued a public notice dated 07.01.2010, thereby publishing a proposed elephant corridor, as identified by the Expert Committee, and requiring the persons whose private lands are falling within the proposed corridor to submit objections. Public hearings were also held by the authorities concerned and the objections raised by various persons were rejected. Thereafter, the State Government issued the impugned G.O., thereby confirming the elephant corridor map as published on 07.01.2010 and also specifying the boundaries of the elephant corridor and the Survey Nos. falling within the said corridor. E

18. Several writ petitions were filed before the High Court challenging the impugned G.O. These were clubbed with the other pending writ petitions and PIL and came to be decided by the High Court’s impugned order dated 07.04.2011. F

19. The High Court rejected the appellant’s contentions regarding the propriety of constitution of the Expert Committee given that the Wildlife (Protection) Act, 1972(‘**Wildlife Act**’) does not envisage the same and rather provides for constitution of State and National Boards for Wildlife. It was held that the Expert Committee’s mandate did not impinge upon that of the Boards under the Wildlife Act. The High Court also did not find merit in the appellant’s contention that the State Government lacked H

A the power to notify an elephant corridor. For this, the High Court relied upon Entries 17A 'Forest' and 17B 'Protection of wild animals and birds' in the concurrent list and the power of the State Government to notify Sanctuaries, National Parks, Conservation Reserves and Community Reserves under Chapter IV of the Wildlife Act.

B 20. Before the High Court, the appellant had also contended that the impugned G.O. sought to create an "artificial corridor" in an area through which elephants do not traditionally pass. In rejecting this contention, the High Court held that the material on record clinchingly showed that the animals were already moving through the said area. The High Court observed that the appellant and others have constructed holiday resorts and are carrying on commercial activities in the area despite only holding permissions for construction of dwelling houses. The mushrooming of such resorts, which were bounded by electric fencing and barbed wires, had severally restricted the movement of elephants and caused an increase in incidents of human-elephant conflict. C Accordingly, the High Court passed the following directions which are under challenge before us: D

E *"The resort owners and other private land owners are directed to vacate and hand over the vacant possession of the lands falling within the notified 'elephant corridor' to the District Collector, Nilgiris within three months from today. In the meanwhile, the Government of Tamil Nadu is permitted to go on with the implementation of the project as has been notified in G.O.M.s. No. 125, dated 31.08.2010, in the best interest of the wildlife, particularly elephants so as to notify and improve the elephant corridor."* F

F 21. The High Court also directed the State to strictly adhere with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and in case any forest dwellers are evicted from the elephant corridor, they be provided alternate accommodation or compensation as per the procedure contemplated under law. G

H 22. A Review Application No. 157 of 2011 was filed against the above decision of the High Court. The same was dismissed by the High Court vide its order dated 16.11.2011 on the ground that the impugned judgement was a reasoned order which did not suffer from any error apparent on the face of the record.

C. Proceedings before this Court

23. During the pendency of the present appeals, this Court was informed that large scale construction was underway in the elephant corridor in Tamil Nadu. In its order dated 12.07.2018, this Court had made it clear that no construction is allowed in the elephant corridor in Tamil Nadu and directed District Collector, Nilgiris to prepare and present a plan of action on how to identify the constructions that have been made, when they have been made and for what purpose the constructions are being utilized. This plan of action was to be with respect to the elephant corridors as mentioned in the Report of the Elephant Task Force titled “Gajah” as well as the elephant corridor as notified by the impugned G.O.

24. In compliance with this order, the District Collector, Nilgiris filed a Plan of Action Report which identified the following constructions in the elephant corridor areas:

Sl. No.	Nature of the construction	Total number of constructions
01.	Total No. of Buildings within Resort Complexes (numbering 39)	309
02.	Houses	390
03.	Other Common Buildings (Schools, Water Tank, Community Halls, Temple, Public Toilet etc.)	27
04.	No. of Estates/Plantations	9
05.	No. of Cultivation Fields	77
06.	Other Constructions	9
Total		821

Specifically in respect of the resorts, the District Collector submitted that all 39 of them were operating illegally as 27 of them had obtained approvals only for residential purpose whereas 12 of them had not obtained any approval at all.

25. At the next hearing on 09.08.2018, this Court noted that only advocates on behalf 12 out of the 39 resorts were present before the Court and thus deemed that the remaining 27 resorts had accepted the Collector’s above-mentioned report. Accordingly, this Court directed that these 27 resorts be closed down/sealed by the Collector and granted 48 hours to the other 12 resorts to produce documents showing approvals and title for running of their resorts before the Collector. If the Collector were to find the documentation incomplete, she was directed to immediately close down/seal the premises. Further, the non-resort dwellers who were identified by the Collector’s report to be occupying

- A land in the corridor area, were granted a period of 2 months to produce necessary documents for verification before the Collector.

26. Thereafter, the District Collector, Nilgiris filed an Action Taken Report dated 23.10.2018 stating that 27 resorts had been sealed as per this Court's above direction and documents were received from the other 12 resorts. The Collector submitted that out of these 12 resorts, only 1 resort owner could show proof of use of his premises for residential purpose while the remaining 11 resort owners did not have valid documents. Accordingly, these 11 resorts were also sealed by the Collector in accordance with the above order of this Court. In this Report, the Collector additionally highlighted that the Forest Department had directed the sealed resorts to remove solar, electric and barbed wire fences erected around their premises as the same hinder the free movement of elephants in the corridor. However, only a few of the resort owners had complied with the Forest Department's directive. In this connection, on 24.10.2018, this Court directed that electric fences and barbed wire, wherever installed by these resort owners, should be removed immediately. The District Collector, Nilgiris filed another Action Taken Report dated 29.11.2018 reporting that she had ensured removal of electric fences and barbed wire from the premises of the aforesaid resorts in the corridor area.

- E 27. During this time, in addition to the 12 resorts which were initially represented before this Court, several other owners of resorts/ guest houses as well as the owners of cultivated lands, dwelling houses and other constructions in and around the elephant corridor area have sought to be impleaded before us, being aggrieved by the actions of the District Collector, Nilgiris and also the impugned High Court decision.

F **D. Contentions of the Parties**

28. Appearing for the appellants, Shri Salman Khurshid, learned Senior Counsel argues that the appellants' lands do not fall within an elephant corridor and that the area notified under the impugned G.O. does not fall within any scientifically recognized elephant corridor and seeks to cover areas which are not traversed by elephants. It is further contended that the identification of elephant corridors is a scientific process and that the impugned G.O., which was issued in pursuance of the recommendations of the Expert Committee appointed by the High Court, was erroneous and untenable in law. The resort owners claim that they

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run small resorts which are compatible with the environment and are essentially for tourists who want to be close to nature and wildlife. It is also asserted that these resorts help tourists acquire sensitivity towards animals and the environment, while preventing any exploitation or damage by their presence. Some of the other appellants have also contended that their lands do not fall within the elephant corridor from which the removal of encroachment was sought.

29. It is further argued that the areas which have been notified as elephant corridor by the State Government through the impugned G.O., are in variance with all authoritative studies on historic elephant corridors in Sigur Plateau from 1972 till date. It is also submitted that there is a variance in acreage between the recommendations of the Expert Committee formed by the High Court and the impugned G.O. issued by the State Government. It is contended that the unilateral addition and deletion of private/Government lands in the said G.O. is arbitrary and illegal. The expansion of the corridor areas under the G.O. amounts to creation of a new elephant corridor which does not presently exist and the same is unlawful.

30. Learned counsel for some of the other appellants have made similar submissions. It was argued that the lands of the appellants do not fall within the elephant corridor. It was also argued that the Plan of Action Report filed by the District Collector, Nilgiris before this Court is clearly fallacious and the actions of the District Collector in pursuance thereof are illegal. Some of the appellants have further alleged that the District Collector, Nilgiris has illegally removed fencing from establishments outside the notified elephant corridor area as well.

31. On the other hand, learned advocate appearing for the contesting respondents, has sought to justify the impugned judgment of the High Court, so also the Plan of Action Report and Action Taken Reports filed by the District Collector, Nilgiris.

32. Learned advocate appearing as Amicus Curiaehas supported the submissions of the contesting respondents and the Reports submitted by the District Collector, Nilgiris.

E. Our Analysis

33. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials on record.

A 34. At the very outset, it must be noted that the Wildlife Trust of India terms elephants as a “keystone species” because their nomadic behavior is immensely important to the environment. Herds of roaming elephants play several important roles in the ecosystem:

- B (i) Landscape architects: Elephants create clearings in the forest as they move about, preventing the overgrowth of certain plant species and allowing space for the regeneration of others, which in turn provide sustenance to other herbivorous animals.
- C (ii) Seed dispersal: Elephants eat plants, fruits and seeds, releasing the seeds when they defecate in other places as they travel. This allows for the distribution of various plant species, which benefits biodiversity.
- (iii) Nutrition: Elephant dung provides nourishment to plants and animals and acts as a breeding ground for insects.
- D (iv) Food chain: Apex predators like tigers will sometimes hunt young elephants. Further, elephant carcasses provide food for other animals.
- (v) The umbrella effect: By preserving a large area for elephants to roam freely, one provides a suitable habitat for many other animal and plant species of an ecosystem.

E Elephant corridors allow elephants to continue their nomadic mode of survival, despite shrinking forest cover, by facilitating travel between distinct forest habitats. Corridors are narrow and linear patches of forest which establish and facilitate connectivity across habitats. In the context of today’s world, where habitat fragmentation has become increasingly common, these corridors play a crucial role in sustaining wildlife by reducing the impact of habitat isolations. In their absence, elephants would be unable to move freely, which would in turn affect many other animal species and the ecosystem balance of several wild habitats would be unalterably upset. It would also eventually lead to the local extinction of elephants, a species which is widely revered in our country and across the world. To secure wild elephants’ future, it is essential that we ensure their uninterrupted movement between different forest habitats. For this, elephant corridors must be protected.

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H 35. Legal intervention in preservation of these corridors has been necessitated because wildlife corridors are threatened by various social,

economic and anthropogenic factors, as noted above. Commercial activities such as running of private resorts and construction of new buildings with barbed and electric fences within elephant corridors pose a serious threat of fragmentation and destruction of habitats. The long-term survival of the species depends on maintaining viable habitats and connecting corridors which maintain variance in the species' gene pool and avoid other risks associated with habitat fragmentation and isolation of species.

36. Overtime, several environmental legislations including the Indian Forest Act, 1927 and the Wildlife Act have been enacted to provide for the protection of forests and wild animals, with a view to ensuring ecological balance and preserving natural habitats including such corridors. The object of the Wildlife Act was interpreted emphatically by this Court in *State of Bihar v. Murad Ali Khan*¹ in the following terms:

“8. ... The policy and object of the Wild Life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological-imbalance introduced by the depredations inflicted on nature by man. The state to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last-ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment.

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10. ... Environmentalists' conception of the ecological balance in nature is based on the fundamental concept that nature is “a series of complex biotic communities of which a man is an inter-dependant part” and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature

¹(1988) 4 SCC 655

A *has been the “civilized man” operating directly through excessive commercial hunting or, more disastrously, indirectly through invading or destroying natural habitats.”*

37. Specifically in issue before us, is the corridor in the Sigur Plateau of Tamil Nadu. It connects the Western and the Eastern Ghats and sustains elephant populations and their genetic diversity. The Sigur Plateau has the Nilgiri Hills on its south-western side and the Moyar River Valley on its north-eastern side. Depending on the monsoon, the elephants migrate in search of food and water and during the course of their migration, they have to cross the Sigur Plateau. This migratory path is considered to be very crucial as it connects several contiguous forest areas forming the Nilgiri Biosphere Reserve in the states of Tamil Nadu, Karnataka and Kerala, the largest protected forest area in India.

38. Conflicting maps of this corridor were presented before the Madras High Court, which thus directed the State Government to choose between: (i) the elephant corridors identified in the Wildlife Trust of India’s book titled “Right of Passage – Elephant Corridors of India” which were referred to by the Central Government in its letter dated 11.08.2006 to the State Government; or (ii) the single elephant corridor identified by the Expert Committee appointed by the High Court. As per the aforesaid book titled “Right of Passage”, the following 4 corridors lie in the Sigur Plateau region: (i) Avarahalla – Sigur, (ii) Kalhatti – Sigur at Glencorin, (iii) Moyar – Avarahalla and (iv) Kalmalai – Singara and Avarahalla. The Expert Committee examined all the elephant corridors in the area and identified a single elephant corridor comprising of various elephant corridors in the Sigur Plateau region. The State Government, vide the impugned G.O., notified this single elephant corridor, along the lines of the recommendations made by the Expert Committee.

39. The first limb of the appellants’ contentions before us is that there is no statutory power for creating/recognition of new corridors by the State Government. We do not find merit in this argument and, in principle, are in agreement with the findings of the High Court regarding the power of the State Government to take measures, including issuance of the impugned G.O., for protection of wildlife in Tamil Nadu. It is undeniable that the State Government is empowered to take measures to protect forests and wildlife falling within its territory in light of Entries 17A ‘Forest’ and 17B ‘Protection of wild animals and birds’ in the concurrent list and the power of the State Government under the Wildlife

Acto notify Sanctuaries and other protected areas. It is an admitted position that the land of the appellants has also been notified as private forest in 1991 under the Tamil Nadu Preservation of Private Forests Act, 1949, which prohibits cutting of trees in private forests. Our attention has also been drawn to the decision of this Court in *T.N. Godavaram Thirumulkpad v. Union of India*² wherein felling of trees in the state of Tamil Nadu was prohibited in all forests, including forests situated in privately owned lands. The contesting respondents have argued that the construction of the appellants' resorts must have necessarily run afoul of the above decision of this Court. Without commenting on the factual accuracy of this assertion, given that the classification of the appellants' land as private forest land is not in dispute here, we find no difficulty in holding that the State Government was empowered to protect the habitats situated on the appellants' land by notifying an elephant corridor thereupon.

40. Furthermore, since the impugned decision of the High Court, the Ministry of Environment, Forest and Climate Change vide its Notification S.O. 4498(E) dated 13.12.2019 has declared the entire area in question and adjoining areas around the Mudumalai Tiger Reserve as an Eco-Sensitive Zone. Under this Notification, the State Government of Tamil Nadu has been expressly directed to regulate land use generally, as well commercial establishment of hotels/resorts specifically, in the Eco-Sensitive Zone so established. As was held by this Court in *M.C. Mehta v. Union of India and Ors.*³ the "Precautionary Principle" has been accepted as a part of the law of our land. Articles 21, 47, 48A and 51A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wild life and to have compassion for 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.

²(1997) 2 SCC 267

³(1997) 3 SCC 715

A 41. The second limb of the appellants' submissions comprises of
questions about the scientific accuracy of the Expert Committee's Report
and contentions that the dimensions as well as the location of the single
corridor identified therein are at odds with authoritative scientific
publications. It has been argued by the appellants that their resorts and
B other establishments do not fall within the historic corridors identified in
these publications. These assertions were dealt with by the High Court
which held that there was material on record to show presence of
elephants as well as a past incident of human-elephant conflict, which
resulted in the death of a French tourist, in the region where the appellants'
resorts are located. The High Court also held that any absence of
C elephants from the areas surrounding the appellants' resorts was, in fact,
due to the construction activities of the appellants whereby access of
the elephants has been restricted through erection of electric fencing.
We see no reason to interfere with the above factual findings of the
High Court and also do not find fault in the State Government's adoption
D of the recommendations of the High Court-appointed Expert Committee,
through the impugned G.O.

 42. This brings us to the last limb of the submissions of the
appellants, which is comprised of factual objections to the acreage of
the elephant corridor as notified by the impugned G.O. and the actions
taken by the District Collector, Nilgiris in pursuance thereof. The
E appellants have contended that there has been substantial variance
between the acreage recommended for acquisition by the Expert
Committee Report and the acreage in the impugned G.O. It is further
alleged that the acreage in the newspaper advertisement by the State
Government inviting objections to notification of the corridor is also
F different from the acreage in the impugned G.O. As all the objections
received pursuant to the said newspaper advertisement were rejected
by the State Government and since the impugned G.O. purported to
adopt the recommendations of the Expert Committee, the appellants
allege that the said variance in acreage is arbitrary and unreasonable. It
has also been alleged that the District Collector, Nilgiris has acted
G arbitrarily in sealing their resorts after rejecting the documents submitted
by the appellant resorts purporting to show approvals and title. Similarly,
it has been alleged that the District Collector went beyond the scope of
this Court's order dated 24.12.2018 wherein immediate removal of electric
fences and barbed wire was directed. It is the appellants' case that non-
H electric fences as well as fences beyond the notified elephant corridor

area were removed by the District Collector. We are of the view that it is just and proper to hold an inquiry to establish the veracity of the above factual objections of the appellants. A

43. Therefore, we appoint a 3-member Inquiry Committee consisting of: (i) Hon'ble Mr. Justice K. Venkatraman, Former Judge of the Madras High Court (Chairman); (ii) Mr. Ajay Desai, Consultant to World Wide Fund for Nature-India and Member of the Technical Committee to come up with a National Elephant Action Plan (NEAP), constituted by the Union Ministry of Environment, Forest and Climate Change (MOEF&CC); and (iii) Mr. Praveen Bhargava, Trustee of Wildlife First and Former Member of National Board for Wildlife to decide the individual objections of the appellants and any other persons claiming to be aggrieved by the actions of the District Collector, Nilgiris pursuant to the impugned G.O. and as recorded before us through her Plan of Action Report and her twin Action Taken Reports, as also the allegations regarding arbitrary variance in acreage of the elephant corridor under the impugned G.O. The State Government is directed to consult the Chairman of the Inquiry Committee and pay remuneration to him and the other Members of the Inquiry Committee. Further, we direct the State Government to provide appropriate secretarial assistance and logistical support to the Inquiry Committee for holding the inquiry within four weeks from today. B C D E

44. We leave it to the discretion of the Inquiry Committee to decide the location for its inquiry proceedings. We also authorize the Inquiry Committee to appoint requisite staff on temporary basis to assist the Committee in the inquiry and to fix their salaries. The State Government is directed to pay their salaries. The State Government and the district level authorities are directed to provide their full cooperation and produce any and all files/documents required by the Inquiry Committee to address the grievances of the appellants and any other persons claiming to be similarly aggrieved. The appellants and other persons claiming to be aggrieved by the plan of action/actions of the District Collector, Nilgiris pursuant to the impugned G.O. and the allegations regarding variance in acreage under the impugned G.O, are permitted to file objections containing their grievances before the Inquiry Committee within a period of four months from today. The Inquiry Committee is directed to consider the objections filed before it and pass appropriate orders thereon after granting the parties a reasonable opportunity of being heard. The parties F G H

A are also permitted to file documents in support of their respective contentions before the Inquiry Committee.

45. The present appeals are disposed of in the aforesaid terms, leaving the parties to bear their own costs. All pending applications shall stand disposed of.

Divya Pandey

Appeals disposed of.