

IN RE: T.N. GODAVARMAN THIRUMULPAD

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v.

UNION OF INDIA AND OTHERS

(I.A. Nos. 131377, 147102, 195467, 195468, 205092 of 2022 & Ors)

In

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(Writ Petition (Civil) No. 202 of 1995)

APRIL 26, 2023

[B. R. GAVAI, VIKRAM NATH AND SANJAY KAROL, JJ.]

Environment (Protection) Act, 1986 – Environment (Protection) Rules, 1986 – r. 5 – Eco-sensitive zone (ESZ) – Protection of forest land – Issuance of directions by this Court, by order dated 03.06.2022 that each protected forests-national park or wildlife sanctuary, to have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest, wherein the activities proscribed and prescribed in the Guidelines of 9.2.2011 shall be strictly adhered to; that with respect to the activities that were already being undertaken within the one kilometre or extended buffer zone-ESZ and which was not prohibited under the ESZ Guidelines, such activities to continue with the permission of the Principal Chief Conservator of Forests of each State or Union Territory; and no new permanent structures permitted to come up within the ESZ – Modification/clarification of the directions sought– Held: Direction in paragraph 56.1 of the order dated 03.06.2022 is modified and clarified – Area to be declared as ESZ cannot be uniform and will be Protected Area specific – In some cases, it may be 10 kilometres on one side and 500 meters on the other side – As such, the direction which prescribes a uniform one kilometre ESZ to be modified – Mining activities within an area of one kilometre of the boundary of the Protected Areas would be hazardous for the wildlife, such directions to be issued on Pan-India basis – Furthermore, the directions contained therein would not be applicable to the ESZs in respect of which a draft and final notification has been issued by the MoEF & CC and in respect of the proposals which have been received – Also the direction contained therein would not be applicable where the National Parks and Sanctuaries are located on inter-State borders and/or share

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- A *common boundaries – Directions contained in paragraph 56.5 are modified and replaced that MoEF & CC and all State/Union Territory to strictly follow the provisions in the Guidelines of 9.02.2011 and so also the provisions contained in the ESZs notifications; and that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments to strictly follow the provisions contained in the OM dated 17.05.2022 issued by MoEF & CC – Environmental laws.*
- B *Union of India as well as various State/Union Territory Governments to strictly follow the provisions contained in the OM dated 17.05.2022 issued by MoEF & CC – Environmental laws.*

Disposing of the I.As, the Court

- C **HELD:** 1.1 If the direction as issued by this Court in paragraph 56.5 of the order dated 3rd June 2022 is continued, then no permanent structure would be permitted to come up for whatsoever purpose in the Eco-sensitive zones-ESZs. Hundreds of villages are situated within the ESZs in the country. If no permanent construction is to be permitted for any purpose, a villager who is desirous to reconstruct his house would not be permitted. Similarly, if there is an extension in their family and some additional construction is required for accommodating the enlarged family, the same would also not be permitted. Similarly, if the Government decides to construct schools, dispensaries, anganwadis, village stores, water tanks and other basic structures for improvement of the life of the villagers, the same would also not be permitted. The effect of the order would be to prevent the State or the Central Government from constructing roads and provide other facilities to the villagers. [Para 48][629-C-E]
- F 1.2 If the order dated 3rd June 2022 is not modified, it would also be impossible for the Forest Departments to conduct eco-development activities around National Parks and Sanctuaries. The said activities are required with the dual objectives of protection of wildlife and provision of benefits for the local communities. MoEF & CC provides financial assistance to the States under the Centrally Sponsored Scheme-Integrated Development of Wildlife Habitats, which includes assistance for eco-development activities. These activities often involve construction of small structures which are permanent in nature in areas including ESZs. [Para 49][629-E-G]
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1.3 There are various regulated and permissible activities. A
There are also certain projects of national and strategic importance such as construction of National Highways, Railways, Defence related infrastructure etc. The effect of the direction in 56.5 of the order dated 3rd June 2022 is that all such activities would be permanently prohibited. In this respect, it is to be noted that MoEF & CC has issued an Office Memorandum dated 17th May 2022 which required that any activity listed in Schedule of the EIA Notification 2006, when conducted in a notified ESZs, or in the case of National Parks and Sanctuaries for which no ESZ has been finally notified, when conducted within 10 kilometres of such National Park or Sanctuary, requires the consideration and recommendation of the NBWL or its Standing Committee in addition to the Environment Clearance under the Environment (Protection) Act, 1986. Additionally, activities which are regulated as per the specific ESZ notification, require approval as per that notification. As such, there are inbuilt safeguards for preventing rampant construction and abuse of process which may be detrimental to the development and maintenance of wildlife habitats. If the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 that even for continuation of existing activities, the permission of the PCCF of each State or Union Territory would be necessary, remains unmodified, taking into consideration that in each State or Union Territory there would be hundreds of villages wherein millions of people would be residing, the PCCF would be left with no other job except to consider such applications for permission to continue such activities. Even a farmer desirous to continue farming activities would be required to seek such permission. Such a direction is impossible to be implemented. [Para 50][630-B-G]

1.4 If such a direction is continued, rather than avoiding man-animal conflict, it would intensify the same. G
As observed in the said guidelines, the requirement of declaring ESZs is not to hamper day to day activities of the citizens but is meant to protect the precious forests/Protected Areas from any negative impact, and to refine the environment around the Protected Areas. [Para 51][630-G-H]

- A 1.5 The necessity to have ESZs is to provide a buffer zone around the Protected Areas. The rights of the villagers residing in the Protected Areas are required to be settled in accordance with the provisions contained in the Wild Life (Protection) Act, 1972 and such villagers are rehabilitated outside the Protected Areas. However, no such settlement of rights is available to the villagers residing in the ESZs areas. As stated in the said Guidelines, the purpose of declaring ESZs is not to hamper the day to day activities of the citizens. If the direction as issued is continued, it would certainly hamper the day to day activities of the citizens residing in ESZs. As such, the said direction needs to be modified. [Para 52][631-A-C]
- B 1.6 Insofar as direction in paragraph 56.1 of the order dated 3rd June 2022 is concerned, a perusal of various orders would reveal that this Court has not directed any minimum area from the demarcated boundary of such Protected Areas. The area to be declared as ESZ cannot be uniform and would be Protected Area specific. In some cases, it may be 10 kilometres on one side and 500 meters on the other side. In certain cases, it may not be possible to have a uniform minimum area by virtue of inter-state boundaries or a sea or a river beyond one side of the Protected Area. In any case, a detailed procedure is required to be followed as prescribed under Rule 5 of the 1986 Rules. Once such a notification is issued after following the procedure prescribed under the Environment (Protection) Rules 1986, the ESZs would have to be as per the said notification. [Para 55][631-D-F]
- C 1.7 As required under sub-rule (3) of Rule 5 of the 1986 Rules, before any final notification is issued, a draft notification is required to be published in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time. Any person interested in filing any objection to such a draft notification is entitled to file objection within a period of 60 days from the date of publication of the draft notification in the Official Gazette. The Central Government can be directed to give a wide publicity to the draft notification so that all persons interested have knowledge about issuance of such draft notification. [Para 56][631-G-H; 632-A]
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1.8 After following the said procedure, the matter is placed before the Expert Committee consisting of 13 organizations having expertise in the relative field. As such, before an ESZ area is specified, various factors are taken into consideration. There are various factors which would determine the ESZs for a particular Protected Area. The circumstances may differ from one Protected Area to another Protected Area. As such, the direction which prescribes a uniform one kilometre ESZ requires to be modified. [Para 57][632-B-C]

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1.9 On the date of filing of the present application, final notifications have been issued in respect of 474 Protected Areas whereas draft notifications have been issued in respect of 102 Protected Areas. 73 proposals are pending. This Court has already found the said Guidelines to be reasonable and has accepted the same. The Court has also accepted the view of the Standing Committee of the NBWL that uniform guidelines may not be possible in respect of each Sanctuary or National Park for maintaining ESZs. Though the Court has observed that a minimum width of one kilometre in ESZ ought to be maintained, in paragraph 56.6 of the order dated 3rd June 2022 itself, it has observed that minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned is required to approach Central Empowered Committee (CEC) and MoEF & CC. Both these bodies shall give their respective recommendations before this Court and on that basis, the Court should pass appropriate order. [Para 58][632-C-F]

1.10 The ESZs are required to be notified after following the procedure as prescribed under the 1986 Rules and the said Guidelines. Such notifications cannot be issued unless a close scrutiny at various levels including the scrutiny by Expert Committee consisting of experts from 13 organizations. As such, the direction as contained in paragraph 56.6 of the order dated 3rd June 2022 also needs to be modified. [Para 59][632-G]

1.11 Insofar as the restriction on mining is concerned, it has been the consistent view of this Court that the mining activities

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- A **within an area of one kilometre of the boundary of the Protected Areas would be hazardous for the wildlife. Though in the case of Goa Foundation's case the said directions were issued in respect of State of Goa, such directions need to be issued on Pan-India basis. [Para 60][632-H; 633-A]**
- B **1.12 The direction in paragraph 56.1 of the order dated 3rd June 2022 is modified and clarified that the directions contained therein would not be applicable to the ESZs in respect of which a draft and final notification has been issued by the MoEF & CC and in respect of the proposals which have been received by the Ministry. However, the Central Government is directed that wide publicity should be given to the draft notification which is required to be published under the provisions of clause (a) of sub-rule (3) of Rule 5 of the 1986 Rules. The final notification to be published under clause (d) of sub-rule (3) of Rule 5 of the 1986 Rules shall not be given effect for a period of 30 days from the date of issuance thereof. It is further directed that any person who is aggrieved with such a final notification would be entitled to approach this Court directly by filing an application in the instant proceedings. [Para 61-63][633-B-D]**
- C **1.13 It is clarified that the direction contained in paragraph 56.1 of the order dated 3rd June 2022 would not be applicable where the National Parks and Sanctuaries are located on inter-State borders and/or share common boundaries. The direction contained in paragraph 56.4 of the order dated 3rd June 2022 is modified and directed that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wildlife Sanctuary shall not be permissible. [Para 64, 65][633-E-F]**
- D **1.14 The directions contained in paragraph 56.5 of the order dated 3rd June 2022 is modified and replaced as under:**
- E **(i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities;**
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(ii) While granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May 2022 issued by MoEF & CC. [Para 66][633-G-H; 634-A-B]

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T.N. Godavarman Thirumulpad Vs U.O.I (2006) 5 SCC 25; T.N. Godavarman Thirumulpad Vs U.O.I (2010) 13 SCC 740; Goa Foundation v. U.O.I. (2011) 15 SCC 791; Goa Foundation v. Union of India and Others (2014) 6 SCC 590 : [2014] 5 SCR 302 - referred to.

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Case Law Reference

(2022) 10 SCC 544	referred to	Para 1
(2006) 5 SCC 25	referred to	Para 14
(2010) 13 SCC 740	referred to	Para 18
(2011) 15 SCC 791	referred to	Para 19
[2014] 5 SCR 302	referred to	Para 21

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CIVIL ORIGINAL JURISDICTION : I.A. Nos.131377, 147102, 195467, 195468, 205092 of 2022, I.A. Nos.162283 and 162284 of 2022 In I.A. D. No.125746 of 2022

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With

I.A. Nos.118604, 118606, 119400, 119401, 119404, 137132, 137138, 137140 and 137143 of 2022, I.A. Nos.5764, 6804 And 10911 of 2023

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In The Matter Of:

Writ Petition (Civil) No.202 Of 1995

(Under Article 32 of The Constitution of India)

A.D.N. Rao, Sr. Adv. (Amicus Curiae), K. Parameshwar, (Amicus Curiae) Ms. Arti Gupta, Ms. Kanti, Advs.

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Ms. Aishwarya Bhati, A.S.G, Nikhil Goel, A.A.G, Jaideep Gupta, V. K. Shukla, K. Radhakrishnan, Sr. Advs., Gurmeet Singh Makker, Ms. Archana Pathak Dave, Ms. Suhashini Sen, S. S. Rebello, Shyam Gopal, Raghav Sharma, Sughosh Subramanyam, Dr. Arun Kumar Yadav, Ms. Sabina Shahid, Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, Rajeev

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- A Kumar Dubey, Kamlendra Mishra, Dr. Joseph Aristotle S., Shobhit Dwivedi, V.K. Biju, Ms. Ria Sachthey, Chetanya Singh, Dr. Ranjeet Bharti, M.K.S. Menon, Ms. Usha Nandini V., Biju P. Raman, Ravi Lamod, Arun Kumar Jaiswal, Wills Mathew, V. N. Raghupathy, Manendra Pal Gupta, Adithya Roy, Deepak Prakash, Raneev Dahiya, Pawan Kr. Dabas, Nachiketa Vaijpayee, Ms. Divyangna Malik, Ms. Vishnu Priya, Shyam Nair, Vardaan Kapoor, Ms. Disha Gupta, Gautam S. Bhardwaj, Ms. Manvi Bhandari, Ashwin Kumar D.S., Ms. Surbhi Mehta, Advs. for the Petitioner.
- K.M. Nataraj, Balbir Singh, A.S.Gs., Dr. Manish Singhvi, Sr. Adv., M. C. Dhingra, Gaurav Dhingra, Vikrant Yadav, Ms. Vijay Lakshmi, Neeraj Shekhar, Dr. Sumit Kumar, Keshav Baheti, Ms. Asha Gopalan Nair, E. M. S. Anam, B V Deepak, Vikas Kumar Singh, Vikram Singh, Ms. Rajshree Singh, Dr. Sham Chand, T. N. Singh, Somesh Chandra Jha, Sunil Kumar Sharma, Shreekant Neelappa Terdal, Mrinal Elkar Mazumdar, Mukesh Kr. Verma, Neeraj Kr. Sharma, Ms. Indira Bhakar,
- B Ms. Priyanka Sharma, Harender Singh, Ambuj Saraswat, P. S. Sudheer, Sunny Choudhary, Abhimanyu Singh, Ms. Manicka Priya, Mrs. Kirti Renu Mishra, Dr. Monika Gusain, Goverdhan Bhardwaj, P. K. Manohar, Ms. Deepanwita Priyanka, Ms. Archana Pathak Dave, Shailesh Madiyal, Vaibhav Sabharwal, Akshay Kumar, Naveen Kumar, James P. Thomas, Mrs. Niranjana Singh, Dhaval Mehrotra, B. K. Pal, Ms. Shalini Kaul, Sarvam Ritam Khare, Gaurav Agrawal, Shubhranshu Padhi, Aravindh S., Ms. Uma Bhuvaneshwari, C. Abbas. B, M/s. D.S.K. Legal, Mrs. Pragya Baghel, Mrinal Gopal Elker, Arpit Parkash, Ms. Shubhangi Agarwal, Milind Kumar, Gopal Balwant Sathe, Ms. Suhasini Sen, Naman Tandon, Piyush Beriwal, Samarvir Singh, Navanjay Mahapatra, Amrish F Kumar, T.S. Sabarish, Kaushik Choudhury, Sandeep Kumar Jha, Ms. Anzu. K. Varkey, Abhishek Atrey, Dr. Abhishek Atrey, Ms. Ambika Atrey, Ms. Vidyottma Jha, Akash Giri, M. R. Shamshad, Ajay Marwah, Naveen Kumar, Guntur Pramod Kumar, Ms. Mayuri Raghuvanshi, M/s. Cyril Amarchand Mangaldas, Abhinav Mukerji, Akshay C. Shrivastava, Mrs. Bihu Sharma, Ms. Pratishtha Vij, Ms. Ruchira Goel, Ms. Surbhi Mehta, Ms. Adarsh Nain, Anando Mukherjee, Siddhartha Jha, A. Karthik, Ms. Seita Vaidyalingam, M/s. Venkat Palwai Law Associates, Vinod Sharma, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Nishanth Patil, Chirag M. Shroff, Nishit Agrawal, Siddharth Dharmadhikari, Aaditya A. Pande, Bharat Bagla, Sourav Singh, Advs. for the Respondents.
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The Judgment of the Court was delivered by A

B. R. GAVAI, J.

I.A. NO. 131377 OF 2022:

1. The present I.A. is filed by the Union of India praying for modification/clarification of the order passed by this Court dated 3rd June 2022¹ in I.A. No. 1000 of 2003 in WP(C) No. 202 of 1995. B

2. The applicant specifically seeks modification of the directions contained in paragraphs 56.1 and 56.5 of the order dated 3rd June 2022 (supra). The said paragraphs are reproduced hereinbelow:

“56.1. Each protected forest, that is, national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9-2-2011 shall be strictly adhered to. For Jamua Ramgarh Wildlife Sanctuary, it shall be 500 m so far as subsisting activities are concerned. C D

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56.5. In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.” E F G

3. The clarification/modification of paragraph 56.1 of the order dated 3rd June 2022 (supra) is sought to the extent that the Eco-Sensitive Zones (for short, “ESZs”) which have already been notified (final and draft) by the Ministry of Environment Forests and Climate Change (for

¹(2022) 10 SCC 544 H

- A short, “MoEF & CC”) or the proposals for which have been received in the Ministry be exempted from the directions therein. The applicant also sought modification to the extent that paragraph 56.1 of the order dated 3rd June 2022 (supra) may not be made applicable where National Parks and Wildlife Sanctuaries are located along inter-State boundaries and/or common boundaries. Modification/clarification of the directions in paragraph 56.5 of the order dated 3rd June 2022 (supra) in its entirety is additionally sought.

4. We have heard Ms. Aishwarya Bhati, learned Additional Solicitor General (for short, “ASG”) appearing on behalf of the applicant, Shri K. Parameshwar, learned *amicus curiae* as well as Senior Counsel appearing on behalf of various State Governments.

5. It is submitted that the Government of India has already issued Guidelines on 9th February 2011 (hereinafter referred to as the “said Guidelines”) for declaration of ESZs around National Parks and Wildlife Sanctuaries. The said Guidelines were framed after consulting the National Board for Wildlife (hereinafter referred to as “NBWL”), and all the State and Union Territory Governments. The said Guidelines provide a detailed procedure for submitting a proposal for declaration of the areas around National Parks and Wildlife Sanctuaries as ESZs. It is further submitted that the said Guidelines itself contain various activities which have been categorized as prohibited, regulated and permitted.

6. It is further submitted that the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) is likely to cause great hardship to the citizens residing in the ESZs. It is further submitted that the said directions provide that if any activity is already being undertaken within one kilometre or extended buffer zone (ESZ), and which does not come within the ambit of prohibited activities as per the said Guidelines, such activities may continue with the permission of the Principal Chief Conservator of Forests (for short, “PCCF”) of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. The said Guidelines further provide that such permission shall be given once the PCCF is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this Court’s order dated 3rd June 2022 (supra) in a legitimate manner. It is further submitted that the direction that no new permanent structure shall be permitted to

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come up for whatsoever purpose within the ESZs would also cause A great hardship.

7. It is further submitted that insofar as the direction in paragraph 56.1 of the order dated 3rd June 2022 (*supra*) is concerned, it mandates that each protected forest, that is, National Park or Wildlife Sanctuary, must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the said Guidelines shall be strictly adhered to. Insofar as Jamua Ramgarh Wildlife Sanctuary is concerned, it is directed that the ESZ shall be 500 meters so far as subsisting activities are concerned.

8. The learned ASG, *amicus curiae* and Senior Counsel appearing on behalf of various States submitted that in respect of various National Parks and Wildlife Sanctuaries, already final notifications had been issued, prescribing the boundaries for the ESZs. In some cases, the draft notifications are pending and in some other cases, the proposals for issuance of draft and final notifications are pending with the Government of India.

9. It is submitted that there cannot be a uniform boundary for all the National Parks and Wildlife Sanctuaries. It is further submitted that there cannot also be a uniform boundary for a particular National Park or Wildlife Sanctuary. At times, it may be longer on one side and shorter on the other side depending on various circumstances.

10. It is submitted that the rights of the citizens who are residing in the Protected Areas are settled under the provisions of Sections 18 to 25A of the Wild Life (Protection) Act, 1972 (hereinafter referred to as “1972 Act”) whereas there is no settlement of rights of citizens residing in ESZs. The citizens therein continue to reside and are also continuing with their daily avocation like farming etc. It is submitted that various developmental activities like construction of schools, dispensaries, anganwadis, public health centres etc. are required to be undertaken in such areas. Not only that, but if the direction not to make any construction is continued, the persons residing therein would not be in a position to construct or reconstruct houses on their own land. It is submitted that the procedure prescribed for obtaining the permission of the PCCF is very tedious. If such a direction is issued, the PCCF would be left with no other work but to consider the applications for continuation of such activities.

- A 11. It is further submitted that though this Court has observed in paragraph 54 of the order dated 3rd June 2022 (*supra*) that the said Guidelines are reasonable, it has nevertheless issued directions which are in conflict with the said Guidelines.
- B 12. It is further contended that the issue in I.A. No. 1000 of 2003 was restricted to prohibition of mining activities in and around Jamua Ramgarh Wildlife Sanctuary and prescribing ESZs for the said Wildlife Sanctuary only. As such, various State Governments did not have an opportunity to address this Court.
- C 13. Having considered the rival submissions, we find it appropriate to refer to various orders passed by this Court on the issue of ESZs/ Buffer Zones.
- D 14. The first of such orders was passed by this Court on 16th September 2005². It will be relevant to refer to paragraph 13 of the said order, which reads thus:
- E “**13.** We have perused the affidavit dated 14-9-2005 filed by Mr Anurag Bajpai on behalf of MoEF and the statement showing the grant of temporary working permit in the last two years i.e. from 1-1-2003 to 31-12-2004 in the national parks, sanctuaries and forest area. This is despite the order passed by this Court restraining the mining activities in these areas. Learned amicus curiae submits that the inspection of the government record shows a dismal picture and he would shortly file an application for taking appropriate action against the persons concerned. Pending filing of the said application and further orders, we again reiterate that without compliance with the environmental laws, in particular the permission under the Forest (Conservation) Act, 1980, no temporary working permission or temporary permit or any other permission by whatever name called shall be granted for mining activities in the aforesaid areas. *We further direct that no mining activity would continue under any temporary working permit or permission which may have been granted. It appears from the chart filed with the affidavit of Mr Anurag Bajpai that no temporary working permission is in operation as of today. If it is otherwise, an affidavit to that effect shall be filed within two weeks giving the particulars of such permission.”*
- F [emphasis supplied]

15. It can thus clearly be seen that this Court directed that no mining activity would be permitted to continue under any temporary working permit or permission which may have been granted. A

16. It will further be relevant to refer paragraph 15 of the said order, which reads thus:

“15. MoEF is directed to place on record within three weeks its viewpoint on the question of area of buffer zone and other related matters such as should it be universal or place specific. This should be done after also obtaining the viewpoint of the National Board of Wildlife.” B

17. It can thus be seen from the said paragraph that this Court directed MoEF to place on record within three weeks its viewpoint on the question of area of buffer zone and other related matters such as should it be universal or place specific. The Court further directed that this should be done after obtaining the viewpoint of the NBWL. C

18. The second of such orders is passed on 4th August 2006³. The said order basically pertains to banning the mining activities in the National Parks, Sanctuaries and forest areas. The Court laid down various pre-conditions wherein temporary working permits could be granted. D

19. The next order is passed on 4th December 2006⁴. In the said order, the Court expressed its anguish towards the various State Governments for not responding to the letter issued by MoEF dated 27th May 2005 requiring them to initiate measures for identification of suitable areas and submit detailed proposals at the earliest. It will be relevant to refer to paragraphs 3 and 4 of the said order, which read thus: E

“3. The order earlier passed on 30-1-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 793] refers to the decision which was taken on 21-1-2002 to notify the areas within 10 km of the boundaries of national parks and sanctuaries as eco-sensitive areas. The Letter dated 27-5-2005 is a departure from the decision of 21-1-2002. For the present, in this case, we are not considering the correctness of this departure. That is being examined in another case separately. Be that as it may, it is evident that the States/Union Territories have not given the importance F

³ (2010) 13 SCC 740

⁴ (2011) 15 SCC 791

- A that is required to be given to most of the laws to protect environment made after Rio Declaration, 1992.
- B 4. The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its Letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21-1-2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.”
- C 20. It can be seen that this Court refers to its earlier order dated 30th January 2006 wherein a reference is made to the decision dated 21st January 2002 to notify the areas within 10 kilometres of the boundaries of National Parks and Sanctuaries as ESZs. Though the order records
- E that the letter dated 27th May 2005 is a departure from the decision taken on 21st January 2002, the Court observes that, in the said case, the Court was not considering the correctness of the said departure. The Court therefore directed the Ministry to give a final opportunity to all States/Union Territories to respond to its Letter dated 27th May 2005. The said order states that the communication should mention that if the
- F proposals were not sent within a period of four weeks from the receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21st January 2002, i.e., notification of the areas within 10 kilometres of the boundaries of the sanctuaries and National Parks as ESZs.
- G 21. The next order of this Court is dated 21st April 2014 in the case of **Goa Foundation v. Union of India and Others**⁵. It will be relevant to refer to the following observations of this Court in the said order:

H ⁵(2014) 6 SCC 590

“**49.**The result is that the order passed by this Court saying that there will be no mining activity within one kilometre safety zone around national park or wildlife sanctuary has to be enforced and there can be no mining activities within this area of one kilometre from the boundaries of national parks and wildlife sanctuaries in the State of Goa.”

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22. The Court has clarified that there shall be no mining activity within one kilometre of the safety zone around National Park or Wildlife Sanctuary and that this has to be enforced. It is also reiterated that there can be no mining activities within this area of one kilometre from the boundaries of National Parks and Wildlife Sanctuaries in the State of Goa.

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23. The Court thereafter refers to the earlier order dated 4th December 2006 (supra) in the said case and observed thus:

“**50.**It will be clear from the order dated 4-12-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 791] of this Court that this Court has not passed any orders for implementation of the decision taken on 21-1-2002 to notify areas within 10 km of the boundaries of national parks or wildlife sanctuaries as eco-sensitive areas with a view to conserve the forest, wildlife and environment. By the order dated 4-12-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 791] of this Court, however, the Ministry of Environment and Forests, Government of India, was directed to give a final opportunity to all States/Union Territories to respond to the proposal and also to refer to the Standing Committee of the National Board for Wildlife the cases in which environment clearance has already been granted in respect of activities within the 10 km zone from the boundaries of the wildlife sanctuaries and national parks. There is, therefore, no direction, interim or final, of this Court prohibiting mining activities within 10 km of the boundaries of national parks or wildlife sanctuaries.”

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24. It could thus be seen that the Court has specifically observed that this Court had not passed any orders for implementation of the decision taken on 21st January 2002 to notify areas within 10 kilometres of the boundaries of National Parks or Wildlife Sanctuaries as ESZs with a view to conserve the forest, wildlife and environment. The Court therefore clarified that there is no direction, interim or final, prohibiting

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- A mining activities within 10 kilometres of the boundaries of National Parks or Wildlife Sanctuaries.

25. It will be relevant to refer to paragraphs 87.3 and 88.1 of the said order, which read thus:

- B “**87.3.** Until the order dated 4-8-2006 [*T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 740] of this Court is modified by this Court in IA No. 1000 in *T.N. Godavarman Thirumulpad v. Union of India*, there can be no mining activities within one kilometre from the boundaries of national parks and sanctuaries in Goa.

- C **88.1.** MoEF will issue the notification of eco-sensitive zones around the national park and wildlife sanctuaries of Goa after following the procedure discussed in this judgment within a period of six months from today.”

- D 26. It can thus be seen that this Court has held that until the order dated 4th August 2006 (supra) is modified by this Court in IA No. 1000 of 2003 in the case of *T.N. Godavarman Thirumulpad v. Union of India*, there can be no mining activities within one kilometre from the boundaries of National Parks and Sanctuaries in Goa. The Court further directed MoEF to issue the notification of ESZs around the National Park and Wildlife Sanctuaries of Goa after following the procedure discussed in the said judgment. The same was directed to be done within a period of six months from the date of the said order.

E 27. The next relevant order would be dated 11th December 2018. It will be relevant to refer to the following part of the said order:

- F “The learned ASG has informed us that there are 104 National Parks and 558 Wildlife Sanctuaries making a total of 662 National Parks and Wildlife Sanctuaries in the country.

- G The proposals for declaring areas around these National Parks and Wildlife Sanctuaries as Eco Sensitive Zone have been received from State Governments / UT Administrations for 641 National Parks and Wildlife Sanctuaries. No proposals have been received in respect of 21 National Parks and Wildlife Sanctuaries.

H The proposals have been accepted and Notification has been issued in respect of 289 National Parks and Wildlife Sanctuaries as on 26.11.2018 and draft Notification has been prepared in respect of 206 National Parks and Wildlife Sanctuaries.

The declaration with regard to Eco Sensitive Zone is under process with the Ministry of Environment, Forests and Climate Change (MoEF) as well as with the State Governments in respect of 4 146 National Parks and Wildlife Sanctuaries.

We expect the Ministry of Environment, Forests and Climate Change to actively pursue the preparation of the draft Notification and to issue a final Notification at the earliest.

The proposals for 21 National Parks and Wildlife Sanctuaries in respect of which proposals have not yet been received by the MOEF are as follows:-

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It is submitted by the learned Amicus that this issue has been pending since sometime in December, 2006. 12 years have gone-by but no effective steps have been taken by the State Governments in respect of the National Parks and Wildlife Sanctuaries mentioned above.

Under the circumstances, we direct that an area of 10 Kms around these 21 National Parks and Wildlife Sanctuaries be declared as Eco Sensitive Zone by the MoEF. The declaration be made by the MoEF at the earliest.

Liberty is granted to the State Governments to move an application for modification of this order along with proposal only two weeks after submission of the proposals to the MoEF.”

28. It can be seen that this Court has recorded the submissions of the learned ASG that there were 104 National Parks and 558 Wildlife Sanctuaries making a total of 662 National Parks and Wildlife Sanctuaries in the country. It was further recorded that the proposals for declaring areas around these National Parks and Wildlife Sanctuaries as ESZs had been received from the State Governments/Union Territories. It can further be seen that no proposals have been received in respect of 21 National Parks and Wildlife Sanctuaries. It further recorded that the proposals had been accepted and notification had been issued in respect of 289 National Parks and Wildlife Sanctuaries as on 26th November 2018 and draft notification had been prepared in respect of 206 National Parks and Wildlife Sanctuaries. The Court therefore expected the MoEF & CC to actively pursue the preparation of the draft Notification and to

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- A issue a final Notification at the earliest. The Court then recorded 21 National Parks and Wildlife Sanctuaries in respect of which proposals have not yet been received by the MoEF & CC alongside its anguish that though 12 years had been passed, no effective steps have been taken by the State Governments in respect of the National Parks and Wildlife Sanctuaries named in the said order. Therefore, the Court directed that an area of 10 kilometres around these 21 National Parks and Wildlife Sanctuaries be declared as ESZs by the MoEF & CC. Liberty was granted to the State Governments to move an application for modification of the said order. However, it further directed that the application should be along with the proposal for declaration of ESZs.
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- C 29. It is to be noted that the learned Judges of this Court, in the case of *Goa Foundation*⁶, had directed that the MoEF & CC shall follow the procedure and issue notification of ESZs under Rule 5 of the Environment (Protection) Rules, 1986 (hereinafter referred to as “1986 Rules”). The relevant provisions of the 1986 Rules are reproduced hereinbelow:
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 - “5. Prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas.—(1)** The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:
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 - (i) Standards for quality of environment in its various aspects laid down for an area.
 - (ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.
 - (iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.
 - (iv) The topographic and climatic features of an area.
 - (v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.
 - (vi) Environmentally compatible land use.
 - (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.
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⁶(2014) 6 SCC 590

(viii) Proximity to a protected area under the Ancient A

Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

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(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment C in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

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(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

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(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.

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(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication in the notification in the Official Gazette.

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(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may [within [seven

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- A hundred and twenty-five days [, and in respect of the States of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim and Jammu and Kashmir in exceptional circumstance and for sufficient reasons within a further period of one hundred and eighty days,]] from such date of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area:
- B [Provided that on account of COVID-19 pandemic, for the purpose of this clause, the period of validity of the notification expiring in the financial year 2020-2021 and 2021-2022 shall be extended up to [30th June, 2022] or six months from the end of the month when the relevant notification would have expired without any extension, whichever is later.]
- C [(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3).]"
- D 30. It is to be noted that Rule 5 of the 1986 Rules prescribes a detailed procedure for issuing notification prohibiting or restricting various activities in the specified areas. The said power flows from Sections 3(v) of the Environment (Protection) Act, 1986 (hereinafter referred to as "1986 Act").
- E 31. A perusal of clause (viii) of sub-rule (1) of Rule 5 of the 1986 Rules would reveal that one of the factors that has to be taken into consideration for declaring ESZ is the proximity to a sanctuary, National Park, game reserve or closed area notified, as such under the 1972 Act. Sub-rule 3(a) of Rule 5 of the 1986 Rules requires that whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions, it is required to give notice of its intention to do so by notification in the Official Gazette and in such other manner as the
- F Central Government may deem necessary from time to time. As per sub-rule 3(b) of Rule 5, every such notification is required to give a brief description of the area, the industries, operations processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries on carrying out of the processes or operations in that area. Accordingly,
- G as per sub-rule 3(c) of Rule 5, any person interested in filing an objection

is entitled to file an objection to the Central Government within sixty days from the date of publication in the notification in the Official Gazette. The Central Government thereafter within the prescribed period provided under clause (d) of sub-rule (3) of Rule 5 of the 1986 Rules is required to issue a notification in the Official Gazette imposing such prohibition or restrictions in an area. This is required to be done only after considering all the objections received under clause (c) of sub-rule (3) of Rule 5 of the 1986 Rules. It can thus be seen that a detailed procedure is prescribed under the 1986 Rules for notifying ESZs.

32. It is to be noted that MoEF & CC has issued the said Guidelines for declaration of ESZs around the National Parks and Wildlife Sanctuaries.

33. The said Guidelines refer to a meeting of the Indian Board for Wildlife held on 21st January 2002, in which “Wildlife Conservation Strategy-2002” was adopted. Point No. 9 of the said Strategy envisaged that lands falling within 10 kilometres of the boundaries of National Parks and Sanctuaries should be notified as eco-fragile zones under Section 3(v) of the 1972 Act and clause (viii) of sub-rule (1) of Rule 5 of the 1986 Rules. It further states that when the views were obtained from all the State Governments, some of the State Governments had raised concern over applicability of 10 kilometres range from the Protected Area boundary and informed that most of the human habitation and other areas including important cities in these States would come under the purview of ESZs and will adversely affect the development. The said Guidelines also refer to the National Wildlife Action Plan (2002-2016). The NBWL, in its meeting held on 17th March 2005, decided that the delineation of ESZs would have to be site specific and relate to regulation rather than prohibition of specific activities. The said decision was communicated to all the State Governments for compliance vide letter dated 27th May 2005.

34. The said Guidelines thereafter refer to the directions of this Court dated 4th December 2006. It also refers to the statutory provisions as contained in Section 5C (1) of the 1972 Act, Section 3 of the 1986 Act and Rule 5 of the 1986 Rules. The said Guidelines state that the purpose of declaring ESZs around National Parks and Sanctuaries is to create some kind of Shock Absorber for the Protected Areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. It also reiterates the decision of the NBWL that the

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- A activities in the ESZs would be of a regulatory nature rather than prohibitive nature unless and otherwise so required. Paragraph 4 of the said Guidelines notes that many of the existing Protected Areas have already undergone tremendous development in close vicinity to their boundaries. It refers to the Guindy National Park, Tamil Nadu, Sanjay Gandhi National Park, Maharashtra, etc. and notes that the Protected Areas are lying in the urban set up. It therefore observes that defining the extent of ESZs around Protected Areas will have to be kept flexible and Protected Area specific. It notes that the width of ESZs and type of regulations will differ from one Protected Area to another Protected Area. It however notes that, as a general principle, the width of the
- B ESZs could go up to 10 kilometres around a Protected Area as provided in the Wildlife Conservation Strategy-2002. It further notes that in case where sensitive corridors, connectivity and ecologically important patches, crucial for landscape linkage, are even beyond 10 kilometres width, these should be included in the ESZs. It further notes that even in context of a particular Protected Area, the distribution of an area of the ESZ and the extent of regulation may not be uniform all around and it could be of variable width and extent. The said Guidelines notes that though the directions were issued by this Court to all the States/Union Territories, except a few States, several other States/Union Territories have not come forward with the proposals for declaration of ESZs. It was
- C observed that this could be perhaps for want of guidelines in this regard. It further notes that this Court in its judgment and order dated 3rd December 2010 in a case relating to construction of park at Noida near Okhla Bird Sanctuary, observed that the ESZs around the Protected Areas had not been notified as the Government of India had not issued any guidelines in this regard.

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- 35. It thereafter refers to the Committee under the Chairmanship of Shri Pronab Sen for identifying parameters for designating Ecologically Sensitive Areas in India.
- G 36. The said Guidelines thereafter state in paragraph 6 that the basic aim of notifying ESZs is to regulate certain activities around National Park and Wildlife Sanctuary so as to minimize the negative impact of such activities on the fragile ecosystem encompassing the Protected Area. It states that the first step towards it is to prepare an inventory of the different land use patterns and the different types of activities, types and number of industries operating around each of the Protected Area
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as well as important Corridors. It states that the inventory could be done by the concerned Range Officers, who can take a stock of activities within 10 kilometres of the range. It further notes that a Committee comprising of the concerned Wildlife Warden, an Ecologist, an official from the Local Self Government and an official of the Revenue Department of the concerned area, could be formed to suggest the following:

- (i) Extent of eco-sensitive zones for the Protected Area being considered.
- (ii) The requirement of such a zone to act as a shock absorber
- (iii) To suggest the best methods for management of the eco-sensitive zones, so suggested.
- (iv) To suggest broad based thematic activities to be included in the Master Plan for the region.

37. It further notes that based on the above, the Chief Wildlife Warden could group the activities under the following categories:-

- (i) Prohibited
- (ii) Restricted with safeguards.
- (iii) Permissible

38. The said Guidelines thereafter note that once the proposal for ESZs has been finalized, the same should be forwarded to the MoEF & CC for further processing and notification. An indicative list of details that need to be submitted along with the proposals is also appended to the said Guidelines.

39. The said Guidelines further note that where the boundary of a Protected Area abuts the boundary of another State/Union Territory where it does not form part of any Protected Area, it should be the endeavour of both the State/Union Territory Governments to have a mutual consultation and decide upon the width of the ESZs around the Protected Area in question. The said Guidelines emphasize that the State Government should endeavour to convey a very strong message to the public that ESZs are not meant to hamper their day to day activities, but instead, are meant to protect the precious forests/Protected Areas in their locality from any negative impact, and also to refine the environment around the Protected Areas. It further notes that these guidelines are

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- A indicative in nature and the State/Union Territory Governments may use these as basic framework to develop specific guidelines applicable in the context of their National Parks, Wildlife Sanctuaries, important corridors etc. with a view to minimizing and preferably eliminating any negative impact on Protected Areas.
- B 40. A list of the activities which are prohibited, regulated and permitted is contained in Annexure-I of the said Guidelines, which reads thus:

	Sl. No.	Activity	Prohibited	Regulated	Permitted	Remarks
C	1.	Commercial mining	Y			Regulation shall not prohibit the digging of earth for construction or repair of houses for manufacture of country tiles or bricks for housing for personal
	2.	Felling of trees		Y		With permission from appropriate authority
D	3.	Setting of saw mills	Y			
	4.	Setting of industries causing pollution (Water, Air, Soil., Noise, etc.)	Y			
E	5.	Establishment of hotels and resorts		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals
	6.	Commercial use of firewood	Y			For hotels and other business related establishment
F	7.	Drastic change of agriculture systems		Y		
	8.	Commercial use of natural water resources including ground water harvesting		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.
G	9.	Establishment of major hydroelectric projects	Y			
	10.	Erection of electrical cable		Y		Promote underground cabling
H	11.	Ongoing agriculture and horticulture practices local communities			Y	However, excessive expansion of some of these activities should be regulated as per the master plan

12.	Rain Water harvesting			Y	Should be actively promoted	A
13.	Fencing of premises of hotels and lodges		Y			B
14.	Organic farming			Y	Should be actively promoted	C
15.	Use of polythene bags by shopkeepers		Y			D
16.	Use of renewable energy sources			Y	Should be actively promoted	E
17.	Widening of roads		Y		This should be done with proper EIA and mitigation measures	F
18.	Movement of vehicular traffic at night		Y		For commercial purpose	G
19.	Introduction of exotic species		Y			H
20.	Use of production of any hazardous substances	Y				
21.	Undertaking activities related to tourism like over-flying the National Park are by any aircraft, hot-air balloons					
22.	Protection of hill slopes and river banks		Y		As per the master plan	
23.	Discharge of effluents and solid waste in natural water bodies or terrestrial area	Y				
24.	Air and vehicular pollution		Y			
25.	Sign board & hoardings		Y		As per the master plan	
26.	Adoption of green technology for all activities			Y	Should be actively promoted.	

41. It is to be noted that this Court in paragraph 54 of the order dated 3rd June 2022 (*supra*) has, in fact, held the said Guidelines to be reasonable and also accepted the view of the Standing Committee of the NBWL that uniform guidelines may not be possible in respect of each sanctuary or National Park for maintaining the ESZs. It is also observed that the sanctuaries like Sanjay Gandhi National Park and

- A Guindy National Park in Mumbai shall form special cases. The said paragraph 54 is reproduced hereinunder:

“**54.** In our opinion, the Guidelines framed on 9-2-2011 appear to be reasonable and we accept the view of the Standing Committee that uniform guidelines may not be possible in respect of each B sanctuary or national park for maintaining ESZ. We are of the opinion, however, that a minimum width of 1 km ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in special circumstances. We have considered CEC’s recommendation that the ESZ should be relatable to the area covered by a protected forest but the Standing Committee’s view that the area of a protected forest may not always be a reasonable criteria also merits consideration. It was argued before us that the 1 km wide “no-development-zone” may not be feasible in all D cases and specific instances were given for Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity. These sanctuaries shall form special cases.”

42. It is to be noted that an elaborate and exhaustive list has been E prepared by MoEF & CC of the activities which shall be prohibited, the activities which shall be regulated and the activities which shall be permitted.

43. In the application, it is stated that after the proposals are received from the State Governments/Union Territory Administrations, F they are scrutinized in consultation with the Wildlife Institute of India, Dehradun, and in case of tiger reserves, with the National Tiger Conservation Authority. They are thereafter published in the Official Gazette of the Central Government in both Hindi and English. They are also placed in the public domain for 60 days for seeking comments of concerned stakeholders. The comments so received are compiled and G scrutinized and observation of the concerned State Government/Union Territory Administration is sought on the same. The aforesaid requirements are in tune with the provisions of Rule 5 of 1986 Rules.

44. The application further states that the proposal is thereafter H placed before an Expert Committee constituted for ESZ within the MoEF & CC. The said Committee comprises of the following:

- (i) Indian Institute of Remote Sensing/Indian Space Research Organization, A
- (ii) Ministry of Jal Shakti,
- (iii) Ministry of Rural Development,
- (iv) Forest Survey of India, B
- (v) Town & Country Planning Organization, Government of India,
- (vi) National Tiger Conservation Authority,
- (vii) Wildlife Institute of India, C
- (viii) GB Pant Institute of Himalayan Environment & Development,
- (ix) Indian Council of Forestry Research and Education,
- (x) World Wildlife Fund, D
- (xi) Zoological Survey of India,
- (xii) Botanical Survey of India,
- (xiii) Salim Ali Centre for Ornithology and Natural History (SACON).

45. It is further stated in the application that based on the recommendation of the Expert Committee (ESZ), the Ministry finalizes the notification of ESZs and after due legal vetting by the Ministry of Law & Justice, final notifications specifying the ESZs around the Protected Areas are notified. It could thus be seen that an elaborate procedure including consideration by a Committee of Experts coming from 13 organizations having expertise in wildlife ecology, forest etc. is followed before a final notification prescribing ESZs is notified. E F

46. In the application filed by the Union of India, various illustrations have been given to point out as to how if the directions issued in paragraph 56.5 of the order dated 3rd June 2022 (supra) are not modified, a severe hardship would be caused to the millions of people. We refer to the same hereunder: G

- (i) “The ESZ around Nagarjunasagar Srisailam Tiger Reserve in Andhra Pradesh extends from 0 to 26 kilometres and 100 villages are situated within it (*Zero extent of ESZ is* H

- A *due to Krishna River and interstate boundary with Telangana);*
- (ii) The ESZ around Valmiki Wildlife Sanctuary, Valmiki National Park and Valmiki Tiger Reserve in Bihar extends from 0 to 9 kilometres and 323 villages are situated within it
- B *(zero extent of ESZ is towards Western side sharing inter-state boundaries with Uttar Pradesh and towards Northern side sharing international boundary with Nepal);*
- (iii) The ESZ around Betla National Park, Palamau Wildlife Sanctuary, and Mahuadand Wolf Sanctuary in Jharkhand extends from 0 to 9 kilometres and 382 villages are situated within it (*Zero extent of ESZ is due to Inter-State boundary*);
- D The ESZ around Cauvery Wildlife Sanctuary in Karnataka extends from 1 to 14.5 kilometres and 107 villages are situated within it;
- (v) The ESZ around Kanha National Park and Phen Wildlife Sanctuary in Madhya Pradesh extends from 0 to 30 kilometres and 168 villages are situated within it (*Zero extent of Eco-sensitive Zone is towards the eastern side having interstate boundary with Chhattisgarh*);
- (vi) The ESZ around Tadoba-Andhari Tiger Reserve in Maharashtra extends from 3 to 6 kilometres and 150 villages are situated within it;
- F (vii) The ESZ around Jaisamand Wildlife Sanctuary in Rajasthan extends from 1.6 to 8.9 kilometres and 83 villages are situated in it;
- G (viii) Even a small ESZ such as the one around Keoladeo National Park in Rajasthan which extends from 0.5 to 1.5 kilometres has 22 villages situated in it.”

H 47. It would thus reveal that in the ESZ around Nagarjunasagar Srisailam Tiger Reserve in Andhra Pradesh, 100 villages are situated within it. In the ESZ around Valmiki Wildlife Sanctuary, Valmiki National Park and Valmiki Tiger Reserve in Bihar, 323 villages are situated within it. In the ESZ around Betla National Park, Palamau Wildlife Sanctuary,

and Mahuadanr Wolf Sanctuary in Jharkhand, 382 villages are situated within it. In the ESZ around Cauvery Wildlife Sanctuary in Karnataka, 107 villages are situated within it. In the ESZ around Kanha National Park and Phen Wildlife Sanctuary in Madhya Pradesh, 168 villages are situated within it. In the ESZ around Tadoba-Andhari Tiger Reserve in Maharashtra, 150 villages are situated within it. In the ESZ around Jaisamand Wildlife Sanctuary in Rajasthan, 83 villages are situated in it. Even in a small ESZ around Keoladeo National Park in Rajasthan, 22 villages situated in it.

48. If the direction as issued by this Court in paragraph 56.5 of the order dated 3rd June 2022 (*supra*) is continued, then no permanent structure would be permitted to come up for whatsoever purpose in the aforesaid ESZs. As already pointed out from the aforesaid examples, hundreds of villages are situated within the ESZs in the country. If no permanent construction is to be permitted for any purpose, a villager who is desirous to reconstruct his house would not be permitted. Similarly, if there is an extension in their family and some additional construction is required for accommodating the enlarged family, the same would also not be permitted. Similarly, if the Government decides to construct schools, dispensaries, anganwadis, village stores, water tanks and other basic structures for improvement of the life of the villagers, the same would also not be permitted. The effect of the order will be to prevent the State or the Central Government from constructing roads and provide other facilities to the villagers.

49. If the order dated 3rd June 2022 (*supra*) is not modified, it will also be impossible for the Forest Departments to conduct eco-development activities around National Parks and Sanctuaries. The said activities are required with the dual objectives of protection of wildlife and provision of benefits for the local communities. MoEF & CC provides financial assistance to the States under the Centrally Sponsored Scheme-Integrated Development of Wildlife Habitats, which includes assistance for eco-development activities. These activities often involve construction of small structures which are permanent in nature in areas including ESZs. For example, the said activities which are likely to be prohibited are thus:

- (i) The construction of community halls, bridges, threshing floors, fish-drying platforms, drinking water storage, etc., for the benefit of local communities/villages;

- A (ii) The construction of forest chowkies, watch towers, and other structures for protection of wildlife and forests;
- (iii) The construction of interpretation centres, toilets and other basic structures for the environmental education of visitors to National Parks and sanctuaries.
- B 50. It is further to be noted that there are various regulated and permissible activities. There are also certain projects of national and strategic importance such as construction of National Highways, Railways, Defence related infrastructure etc. The effect of the direction in 56.5 of the order dated 3rd June 2022 (*supra*) is that all such activities will be
- C permanently prohibited. In this respect, it is to be noted that MoEF & CC has issued an Office Memorandum dated 17th May 2022 which required that any activity listed in Schedule of the EIA Notification 2006, when conducted in a notified ESZs, or in the case of National Parks and Sanctuaries for which no ESZ has been finally notified, when conducted within 10 kilometres of such National Park or Sanctuary, requires the
- D consideration and recommendation of the NBWL or its Standing Committee in addition to the Environment Clearance under the 1986 Act. Additionally, activities which are regulated as per the specific ESZ notification, require approval as per that notification. As such, we find that there are inbuilt safeguards for preventing rampant construction
- E and abuse of process which may be detrimental to the development and maintenance of wildlife habitats. It is further to be noted that if the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 (*supra*) that even for continuation of existing activities, the permission of the PCCF of each State or Union Territory would be necessary, remains unmodified, taking into consideration that in each State or Union Territory
- F there will be hundreds of villages wherein millions of people would be residing, the PCCF would be left with no other job except to consider such applications for permission to continue such activities. Even a farmer desirous to continue farming activities would be required to seek such permission. We find that such a direction is impossible to be implemented.
- G 51. We are of the view that if such a direction is continued, rather than avoiding man-animal conflict, it will intensify the same. As observed in the said Guidelines, the requirement of declaring ESZs is not to hamper day to day activities of the citizens but is meant to protect the precious forests/Protected Areas from any negative impact, and to refine the
- H environment around the Protected Areas.

52. As already discussed hereinabove, the necessity to have ESZs is to provide a buffer zone around the Protected Areas. The rights of the villagers residing in the Protected Areas are required to be settled in accordance with the provisions contained in the 1972 Act and such villagers are rehabilitated outside the Protected Areas. However, no such settlement of rights is available to the villagers residing in the ESZs areas. As stated in the said Guidelines, the purpose of declaring ESZs is not to hamper the day to day activities of the citizens. If the direction as issued is continued, it would certainly hamper the day to day activities of the citizens residing in ESZs. As such, we find that the said direction needs to be modified.

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53. It is further to be noted that the NBWL, in its meeting dated 17th March 2005, has also recommended that the delineation of ESZs should project as regulation rather than prohibition of activities.

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54. As was pointed out by the counsel for one of the States, the entire municipal area of the Sultan Bathery Block Panchayat is situated within the ESZ area.

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55. Insofar as direction in paragraph 56.1 of the order dated 3rd June 2022 (*supra*) is concerned, a perusal of various orders would reveal that this Court has not directed any minimum area from the demarcated boundary of such Protected Areas. The area to be declared as ESZ cannot be uniform and will be Protected Area specific. In some cases, it may be 10 kilometres on one side and 500 meters on the other side. In certain cases, it may not be possible to have a uniform minimum area by virtue of inter-state boundaries or a sea or a river beyond one side of the Protected Area. In any case, a detailed procedure is required to be followed as prescribed under Rule 5 of the 1986 Rules which we have already referred hereinabove. We find that once such a notification is issued after following the procedure prescribed under the 1986 Rules, the ESZs will have to be as per the said notification.

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56. It is further to be noted that, as required under sub-rule (3) of Rule 5 of the 1986 Rules, before any final notification is issued, a draft notification is required to be published in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time. Any person interested in filing any objection to such a draft notification is entitled to file objection within a period of 60 days from the date of publication of the draft notification in the Official Gazette. We

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- A find that the Central Government can be directed to give a wide publicity to the draft notification so that all persons interested have knowledge about issuance of such draft notification.

57. It is pertinent to note that after following the aforesaid procedure, the matter is placed before the Expert Committee consisting

- B of 13 organizations having expertise in the relative field. As such, before an ESZ area is specified, various factors are taken into consideration. There are various factors which will determine the ESZs for a particular Protected Area. The circumstances may differ from one Protected Area to another Protected Area. As such, we find that the direction which prescribes a uniform one kilometre ESZ requires to be modified.

- C 58. It is further to be noted that on the date of filing of the present application, final notifications have been issued in respect of 474 Protected Areas whereas draft notifications have been issued in respect of 102 Protected Areas. 73 proposals are pending. As already discussed hereinabove, this Court has already found the said Guidelines to be reasonable and has accepted the same. The Court has also accepted the view of the Standing Committee of the NBWL that uniform guidelines may not be possible in respect of each Sanctuary or National Park for maintaining ESZs. Though the Court has observed that a minimum width of one kilometre in ESZ ought to be maintained, in paragraph 56.6 of the order dated 3rd June 2022 (*supra*) itself, it has observed that minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned is required to approach Central Empowered Committee (CEC) and MoEF & CC. It has further observed that both these bodies shall give their respective recommendations before this Court and on that basis, the Court should pass appropriate order.

59. As already discussed hereinabove, the ESZs are required to be notified after following the procedure as prescribed under the 1986 Rules and the said Guidelines. Such notifications cannot be issued unless a close scrutiny at various levels including the scrutiny by Expert Committee consisting of experts from 13 organizations. As such, we find that the direction as contained in paragraph 56.6 of the order dated 3rd June 2022 (*supra*) also needs to be modified.

- G H 60. Insofar as the restriction on mining is concerned, we are of the considered view that it has been the consistent view of this Court that the mining activities within an area of one kilometre of the boundary

of the Protected Areas will be hazardous for the wildlife. Though in the case of **Goa Foundation** (supra), the said directions were issued in respect of State of Goa, we find that such directions need to be issued on Pan-India basis.

61. We are therefore inclined to allow the present I.A. The direction in paragraph 56.1 of the order dated 3rd June 2022 (supra) is modified and clarified that the directions contained therein would not be applicable to the ESZs in respect of which a draft and final notification has been issued by the MoEF & CC and in respect of the proposals which have been received by the Ministry.

62. We, however, direct the Central Government that wide publicity should be given to the draft notification which is required to be published under the provisions of clause (a) of sub-rule (3) of Rule 5 of the 1986 Rules. We further direct that the final notification to be published under clause (d) of sub-rule (3) of Rule 5 of the 1986 Rules shall not be given effect for a period of 30 days from the date of issuance thereof.

63. It is further directed that any person who is aggrieved with such a final notification would be entitled to approach this Court directly by filing an application in the present proceedings.

64. We further clarify that the direction contained in paragraph 56.1 of the order dated 3rd June 2022 (supra) would not be applicable where the National Parks and Sanctuaries are located on inter-State borders and/or share common boundaries.

65. We also modify the direction contained in paragraph 56.4 of the order dated 3rd June 2022 (supra) and direct that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wildlife Sanctuary shall not be permissible.

66. We also modify the directions contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) and replace the same as under:

- (i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities;

- A (ii) We further direct that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May 2022 issued by MoEF & CC.
- B 67. All the other present I.As shall stand disposed of in terms of the above. No costs.

Nidhi Jain
(Assisted by : Tamana, LCRA)

I.As disposed of.