*** THE HON'BLE Dr. JUSTICE G. RADHA RANI**

+ WRIT PETITION No.10774 OF 2022

% 16.06.2022

Bolusani Gowri Shankar S/o.Satyanarayana,
Aged about 52 years, Occ: Agriculture, R.o.Eturunagaram
Village and Mandal, Mulugu District and others

…. Petitioners

Vs.

$ The State of Telangana, Rep. by Principal Secretary
Industries and Commerce Department, Secretariat,
Hyderabad, Telangana and others

….. Respondents

!Counsel for the Petitioner : Sri Ramesh Vishwanathula

Counsel for the Respondents : Government Pleader for Mines & Geology
Government Pleader for Forests.

<Gist :

>Head Note:

? Cases referred:

(2014) 6 SCC 590

THE HON'BLE Dr. JUSTICE G. RADHA RANI

WRIT PETITION No.10774 OF 2022

ORDER:

This petition is filed to issue a writ of Mandamus declaring the action of the 5th respondent in issuing notices dated 18.12.2021 and 01.01.2022 directing to stop de-casting of sand from the patta lands of the petitioners, as arbitrary, illegal and violative of Article 21 of the Constitution and to set aside the same with a consequential direction to the 5th respondent not to interfere.

2. Heard the learned counsel for the petitioners, the learned Government Pleader for Mines and Geology representing the respondent Nos.1 to 4 and the learned Government Pleader for Forests representing respondents No.5 to 7.

3. The learned counsel for the petitioners submitted that the petitioners were the owners and possessors of marginal extent of patta lands in Eturunagaram village. The said lands were near Jampanna Vagu river coast. Due to flash floods in the rainy season, the said lands were casted with sand and the thickness of the sand deposited was about three meters in the area. Since the Telangana State Mining Rules, particularly, Rule-7 provided for de-casting of mines from patta lands, the petitioners

made independent applications dated 08.06.2020 before the Assistant Director of Mines and Geology Department, who was the Member Convenor of the District Level Sand Committee (DLSC). A joint inspection was conducted on 12.06.2020 and proposals were discussed in the DLSC meeting held on 04.12.2020. Since all the officers, forming part of the Joint Committee, were of the considered opinion that sand had to be de-casted to make the lands fit for agricultural operations, the DLSC had issued proceedings dated 29.06.2021 according permission for de-casting of sand of 2,09,130 cubic meters from the patta lands of the petitioners through M/s. Telangana State Mineral Development Corporation Limited (TSMDC) subject to certain conditions. The petitioners entered into agreements with M/s.TSMDC as per the amended Rule-7 of the Telangana State Sand Mining Rules, 2015 (for short, 'Rules, 2015'). Pursuant to the agreements entered, the de-casting operations commenced immediately. Subsequently, the Forest Range Officer, Eturunagaram (South) WLM issued letter dated 18.12.2021 stating that the subject area was falling under Eco Sensitive Zone (ESZ) of Eturunagaram Wild Life Sanctuary and directed to stop the de-casting operations in the patta lands. Immediately, the TSMDC addressed a letter dated 17.01.2022 to the District Collector, Mulugu informing that the Forest Officials were interfering with the de-

casting operations on the alleged ground that the subject lands were falling in ESZ and it was also informed in the said letter that de-casting of sand from patta land was purely a time bound action to make the agricultural lands fit for agriculture. According to TSMDC, the area was not notified as ESZ. No draft map was available in the public domain. The de-casting operations could not be stopped as these areas were not even notified under the Wild Life Laws. The Assistant Director of Mines and Geology also addressed a letter to the District Forest Officer, Mulugu on 24.12.2021 stating that none of the area under question had been notified so far and there was no proposal even sent by the District Forest Officer from District Level seeking to notify the subject areas falling under ESZ. The particular village of Eturunagaram was not part of the villages and not part of the Geo-coordinates included in the said proposal to include certain habitations to be part of ESZ area. The Eco Sensitive Committee proposed inclusion of 33 villages in which Eturunagaram village was not found and requested the District Forest Officer not to stop the sand mining in the mentioned area and that the Forest Department had no locus standi in declaring the Eco Sensitive Zone even without sending the draft, and hindering the operations would attract penal provisions under Section 188 IPC. Despite the above two letters addressed by the District Collector and the Assistant

Director of Mines and Geology, the Forest Officials were interfering with the de-casting operations and were creating all sorts of problems. The petitioners were marginal farmers and due to inundation of flood and the sand casted in their lands, they were not in a position to carry on their agricultural activities. The small extents of agricultural lands were their only source of livelihood. Unless the sand casted was de-casted from their agricultural lands in accordance with the permission accorded by the DLSC under Rule 7 of Rules 2015, they would be put to grave hardship and irreparable loss and prayed to allow the petition.

4. Learned Government Pleader for Mines and Geology submitted that the petitioners filed applications on 27.07.2020 for grant of permission to de-cast the sand from their patta lands in terms of Rules 2015 issued vide G.O.Ms.No.3 dated 08.01.2015. The said applications were processed as per the procedure laid down under the Rules, 2015. A joint inspection team conducted inspection in respect of the sand bearing areas and de-casting of patta lands from 18.05.2020 to 31.07.2020. The Joint Inspection Team consisting of members from the departments of Revenue, Agriculture, Irrigation, Ground Water and Mines and Geology inspected the area and submitted a feasibility report for de-casting of sand in the patta lands. In respect of the petitioners' patta lands, a joint survey was

conducted on 05.06.2020 at Eturunagaram village as per the demarcation shown by the Mandal Surveyor and Village Revenue Officer, Eturunagaram and found that the said patta lands were casted with sand. The thickness of sand deposit was 3 meters in the area. The sand quantity was estimated and Geo-coordinates of patta lands were recorded. Finally, the Groundwater Department recommended for grant of permission to de-cast the sand for a quantity of 2,09,130 cubic meters in the patta lands in an extent of Acs.10.23 gts. The Tahsildar confirmed that as per the revenue records, the lands in the above survey numbers belonged to the petitioners and were casted with sand. The Mandal Agricultural Officer, Eturunagaram vide letter dated 18.07.2020 stated that the fields were covered with sand of Godavari river and without de-casting, they were not fit for cultivation. The Royalty Inspector, office of the Assistant Director of Mines and Geology, Mulugu in his report stated that the said lands were found with sand deposits. The Executive Engineer, I.B., I & CAD Department, Mulugu in his report stated that the lands were located within the river course/bed of Godavari and recommended for sanction of permission for de-casting of sand. As per the report of the Executive Engineer, the above patta lands were not abutting the river course, but were falling in the Godavari River Course (in the midst of the river

course). The Assistant Director of Mines and Geology, Mulugu vide letters dated 28.09.2020 and 12.10.2020 addressed to the District Forest Officer, Mulugu, furnishing the identified areas list along with Geo-coordinates list of the areas and requested to verify if there were any violations of ESZ notifications, Wild Life Protection Act and other Forest Acts and Rules and requested to send the remarks. The District Forest Officer, Mulugu submitted his remarks vide letters dated 04.11.2020. The said reports were placed before the DLSC meeting to call for opinion from the Forest Department with regard to Gazette notification, Tree density covered in the area and Canopy of the plants to be disturbed by the sand mining. The Assistant Director of Mines and Geology addressed a letter dated 04.12.2020 requesting to furnish the above information. Since there was no response, a reminder was also sent vide letter dated 21.12.2020. Inspite of the same, there was no proper response from the Forest Divisional Officer, WLM Eturunagaram, Mulugu District. As such, the DLSC after deliberating the issue in detail granted de-casting permissions to the petitioners vide proceedings dated 07.01.2021 subject to obtaining Environmental Clearance (EC), Consent for Establishment (CFE) and Consent for Operation (CFO) before excavation of sand.

5. Aggrieved by the said conditions, the petitioners submitted a representation before the DLSC stating that their patta lands were not falling in the river course but abutting the river bed and requested to resurvey their lands and to issue modified orders removing the condition of EC and also to permit them to de-cast the sand by using machinery. Pursuant to the same, the District Collector directed the concerned officials to resurvey the patta lands of the petitioners. Accordingly, a resurvey was conducted on 08.04.2021 by the Members of the Joint Inspection Team. Upon the joint inspection, the Executive Engineer, IB, Division-II, Eturunagaram vide his letter dated 26.04.2021 reported that the patta lands of the petitioners were abutting Right Flank of the river and got buried under sand accumulated by river Godavari every year due to inundation and recommended for de-casting of sand. The DLSC, Mulugu, in its meeting held on 11.06.2021 considered the report submitted by the officers and upon deliberations, issued modified orders to the petitioners as per Rule-7(1) of the Rules 2015 to de-cast 2,09,130 cubic meters of sand from their patta lands subject to certain conditions vide proceedings dated 29.06.2021. The TSMDC entered into agreements with the pattadars vide proceedings dated 17.11.2021 and commenced excavation of sand. Subsequently, the Forest Range Officer, Eturunagaram issued notice dated

18.12.2021 requesting to stop the de-casting of sand stating that the ESZ of Eturunagaram Wild Life Sanctuary where ESZ notification was not notified, it was 10 kms as per the Supreme Court orders and guidelines and prior clearance from the Standing Committee of the National Board for Wild Life (SCNBWC) was mandatory for sand mining and requested TSMDC to cancel the permissions issued for de-casting of sand from the lands of the petitioners and to issue instructions to stop the de-casting of sand from ESZ of Eturunagaram Wild Life Sanctuary.

6. Basing on the above complaint of the Forest Officer, the DLSC conducted meeting on 17.01.2022. The District Forest Officer, Mulugu also participated in the said meeting and requested to stop de-casting and stated that ESZ draft notification was under process and would be issued shortly and that a detailed procedure was involved for notification which would take six months time. Basing on the said request, the Forest Department and DLSC had taken a decision to prohibit all sand excavations in the ESZ of Eturunagaram Wild Life Sanctuary. The Chairperson, District ESZ Monitoring Committee, Mulugu submitted ESZ proposals of Eturunagaram Wild Life Sanctuary to the Principal Chief Conservator of Forests (PCCF), Telangana for onward transmission to the Ministry of Environment and Forests, Government of India, New Delhi for

draft publication vide letter dated 04.02.2022. The PCCF raised some queries vide letter dated 21.02.2022. Again the Chairperson, District Monitoring Committee, Mulugu District, sent the proposals to the PCCF vide letter dated 03.03.2022. Till date, no further information was received and the declaration of Draft ESZ notification was pending with the Forest Department.

7. The learned Government Pleader for Forests submitted that the petitioners did not have the required clearances and permissions for undertaking sand mining. Under Section 3 of the Environment Protection Act, 1986, the ESZ for Eturunagaram Wild Life Sanctuary was not notified. The Hon'ble Apex Court in **Goa Foundation v. Union of India and others (WP (C) No.460 of 2004 dated 04.12.2006)** directed the Ministry of Environment and Forests that MoEF would also refer to the Standing Committee of the National Board for Wildlife under Section 5 (b) & 5 (c) (ii) of the Wildlife Protection Act, 1972, the cases where environmental clearance had already been granted where activities are within 10 km zone of the boundaries of the Sanctuaries and National Parks. The developmental activities were prohibited/regulated in ESZs inter-alia including mining operations to be carried out in accordance with the order of the Hon'ble Apex Court dated 04.08.2006 in the matter of **T.N.**

Godavarman Thirumulpad v. Union of India (WP (C) No.202 of 1995) and another order dated 21.04.2014 in the matter of **Goa Foundation and Union of India (WP (C) No.435 of 2012)** as per the notifications issued for their constitution. The competent authority in the Ministry of Environment, Forest and Climate change vide office Memorandum dated 08.08.2019 issued detailed Guidelines under part-4 (iii) for consideration of Developmental projects allotted within 10 kms of National Parks/Wild Life Sanctuary seeking Environment Clearance under the provisions of Environmental Impact Assessment notification, 2006. The Forest Range Officer of Eturunagaram, South Range communicated the above provisions to the Pattadars of sand de-casting areas and asked to produce relevant documents and clearances obtained for sand mining. Necessary Wild Life clearances from National Board for Wild Life (NBWL), or even proposals for same, were not produced. Hence, it was advised to stop the mining. Until such clearances were obtained, mining would be in violation of Supreme Court orders as well as provisions of the Environmental Impact Assessment 2006 Notification and the Guidelines issued by the Government of India. It was the duty of every citizen to protect the natural resources from being exploited and it was a Constitutional mandate under Articles 48 and 51A of the Constitution of India to protect the

Environment and maintain ecological balance. The petitioners were bound by the observations of the Hon'ble Apex Court and strict compliance of the same and prayed to dismiss the writ petition.

8. On 29.03.2022, this Court passed an interim order in I.A. No.1 of 2022 suspending the notices issued by the Forest Department. The Forest Department filed W.A. No.317 of 2022 against the said interim order before the Division Bench of this Court and the Division Bench set aside the said interim orders dated 29.03.2022 and directed this Court to decide the main writ petition itself.

9. On hearing the submissions of the learned counsel for all the parties and on perusing the record, the point that arises for consideration is:

> Whether de-casting of sand from the patta lands of the petitioners require prior clearance from the Standing Committee of the National Board for Wild Life on the ground that the said patta lands were within the Eco Sensitive Zone as contended by the 5th respondent in the impugned notices dated 18.12.2021 and 01.01.2022?

10. As the 5th respondent in the impugned notices referred to the Statutory Provisions under Section 5-B and 5-C(2) of the Wild Life Protection Act, 1972 and the Guidelines issued by the MoEFCC vide Office Memo dated 08.08.2019, it is considered appropriate to extract the

same. Section 5-B is with regard to Constitution of a Standing Committee of the National Board and Section 5-C refers to the Functions of the National Board and they read as follows:

> **5B. Standing Committee of the National Board**.—
>
> (1) The National Board may, in its discretion, constitute a Standing Committee for the purpose of exercising such powers and performing such duties as may be delegated to the Committee by the National Board.
>
> (2) The Standing Committee shall consist of the Vice-Chairperson, the Member-Secretary, and not more than ten members to be nominated by the Vice-Chairperson from amongst the members of the National Board.
>
> (3) The National Board may constitute committees, sub-committees or study groups, as may be necessary, from time to time in proper discharge of the functions assigned to it.
>
> **5C. Functions of the National Board**.—(1) It shall be the duty of the National Board to promote the conservation and development of wild life and forests by such measures as it thinks fit.
>
> (2) Without prejudice to the generality of the foregoing provision, the measures referred to therein may provide for—
>
> > (a) framing policies and advising the Central Government and the State Governments on the ways and means of promoting wild life conservation and effectively controlling poaching and illegal trade of wild life and its products;
> >
> > (b) making recommendations on the setting up of and management of national parks, sanctuaries and other protected areas and on matters relating to restriction of activities in those areas;
> >
> > (c) carrying out or causing to be carried but impact assessment of various projects and activities on wild life or its habitat;

> (d) reviewing from time to time, the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto; and
>
> (e) preparing and publishing a status report at least once in two years on wild life in the country.

11. Section 3 of the Environment (Protection) Act 1986 (EPA) gives power to the Central Government i.e. the Union Ministry of Environment and Forests to take all measures that it feels necessary for protecting and improving the quality of the environment and to prevent and control environmental pollution.

12. To meet this objective, the Central Government can restrict areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards (Section 3(2)(v)).

13. Section 5(1) of the Environment (Protection) Rules, 1986 (EPR), states that the Central Government can prohibit or restrict the location of industries and carrying on certain operations or processes on the basis of considerations like the biological diversity of an area (clause v) maximum allowable limits of concentration of pollutants for an area (clause ii) environmental compatible land use (clause) proximity to protected areas (clause viii).

14. As per the guidelines for declaration of Eco Sensitive Zone around National Parks/Wild Life Sanctuary issued by Ministry of Environment and Forests, Government of India, dated 09.02.2011, a buffer zone would need to be created around the National Parks and Sanctuaries to act as some kind of shock absorber for the protected areas and the same is termed as Eco Sensitive Zone.

15. The National Board for Wild Life decided that the activities in the ESZ should be of regulatory in nature rather than prohibitive nature, unless and otherwise so required. It categorized the activities into three categories: (i) Prohibited, (ii) Restricted with safeguards and (iii) Permissible. It also stated therein 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. The activities which were prohibited, restricted with safeguards and permissible are listed in Annexure to the said guidelines. Commercial mining is shown as prohibited activity but ongoing agricultural and horticulture practises by local communities was shown as permitted

category of activity as per the guidelines issued by the Government of India.

16. Guideline No.3 deals with purpose for declaring Eco-Sensitive Zones. It reads as under:

> "The purpose of declaring Eco-Sensitive Zones around National Parks and Sanctuaries is to create some kind of "Shock Absorber" for the Protected Aras. They would also act as a transition zone from areas of high protection to areas involving lesser protection. As has been decided by the National Board for Wildlife, the activities in the Eco-Sensitive Zones would be of a regulatory nature rather than prohibitive nature, unless and otherwise so required."

17. It was undisputed that the petitioners were the pattadars of agricultural lands in Sy.Nos.11 and 12 of Eturunagaram Village and Mandal, Mulugu District over an extent of Acs.10.23 gts., and the said lands were casted with sand as they were abutting Jampanna Vagu river coast, due to flash floods during rainy season. The DLSC was constituted in exercise of the powers conferred by Section 15 (1) of the Mines Minerals (Development and Regulation) Act, 1957. In accordance with new Sand Mining Policy, 2014 for the State of Telangana, Rules were made to regulate the mining and transportation of Sand in the State of Telangana, as per G.O.Ms.No.3 Industries and Commerce (Mines-I) Department dated 08.01.2015. The DLSC consisted of the District

Collector as Chairman, the Joint Collector as Vice Chairman, the Project Officer, ITDA (in case the sand Reaches falling partly or fully in scheduled areas) as a Member, the District Panchayat Officer, The Deputy Director, Ground Water Department, the Executive Officer, Irrigation/River Conservator, Executive Engineer, Rural Water Supply, Environmental Engineer, Telangana Pollution Control Board, nominee of Telangana State Mineral Development Corporation Limited (TSMDL) as Members and the Assistant Director of Mines and Geology as Member Secretary. Rule-7 of G.O.Ms.No.3, dated 08.01.2015 deals with de-casting the sand from patta lands and the procedure adopted to be followed. It reads as under:

> "**7. De-casting sand from Pattalands:**
>
> In case of the sand cast in pattalands, the pattadar shall be allowed to de-cast sand to make the land fit for agriculture.
>
> To eliminate vested interests, no Agent/GPA/Lease holders other than the pattadar shall be involved in de-casting process.
>
> (1)De-casting in pattalands abutting the river course:
>
> > (a) The pattadar shall apply to the Asst. Director of Mines Geology concerned alongwith copy of pattadar pass book and Title deed book and location of the land on village map.
> >
> > (b) Asst. Director of Mines & Geology concerned shall take up Joint inspection of the pattaland with the following:
> >
> > > (i) Tahsildar shall identify the pattaland, possessor/ occupier and furnish attested

sketch demarcating the area. The boundaries will then be fixed on ground.

(ii) Mandal Agriculture Officer shall certify that without de-casting the pattaland is not fit for agriculture.

(iii)The Ground Water Dept. shall record the geo coordinates of the pattaland as per boundaries fixed by the Tahsildar, assess the thickness, quantify the sand to be de-casted and give specific recommendation on the mode of de-casting i.e. manual or mechanized.

(iv) Asst. Director of Mines & Geology shall certify the suitability of sand for construction.

(v) Executive Engineer, Irrigation Dept., concerned shall report on the location of patta land with reference to river course/bed.

(2) After receipt of joint inspection report, the Asst. Director of Mines & Geology shall submit the proposals duly stipulating the period of de-casting to the District Collector.

(3) District Collector after scrutiny shall submit proposal to the Govt.

(4) After receipt of orders from the Govt. the Asst. Director of Mines & Geology concerned shall collect the seigniorage fee for the entire assessed sand quantity in advance, security deposit in the form of Bank Guarantee in favour of Asst. Director of Mines & Geology equivalent to seigniorage fee on the assessed sand quantity and enter into an agreement in Form-S5 before issue of dispatch permits in Form-S3.

If Ad valorem rate of seigniorage fee is imposed, the Telangana State Mineral Development Corporation rate will be the bench mark for payment of seigniorage fee for de-casting sand from pattalands.

(5) Responsibilities of the pattadar:

(a) Shall extract sand from the pattaland by manual/mechanized means as recommended by Ground Water Department and transport to the stockyard by tractors capacity not more than 3 cu. mt. alongwith transit form issued by the Asst. Director of Mines & Geology.

(b) Shall establish a stockyard by obtaining registration under MDR, 2000 or any suitable subsequent rules/amendments to be issued by Government from time to time from the Competent Authority at a location having proper road connectivity.

(c) Shall dispatch sand from the stockyard to the consumers with Transit Pass in Form-E issued by Asst. Director of Mines & Geology concerned under MDR. 2000 or any suitable subsequent rules/amendments to be issued by Government from time to time.

(d) Shall dispose sand from the stockyard as per the sale price fixed by the Government from time to time.

(e) Loading of sand from the stockyard shall be as per the approved capacity of the vehicle with transit pass duty Indicating the destination, date and time.

(f) Any contravention by the pattadar during the de-casting, the Chairman, DLSC may order for collection of:

(i) Rs.1,00,000/- or Rs.500/- per cu.mt. whichever is higher shall be collected as penalty on de-casting of sand beyond the specified limits or in excess of permitted depth.

(ii) Repeated violations will result in cancellation of permission and forfeiture of security deposit.

> (iii) Penalty of Rs.10,000/- per ton on vehicles carrying more than the permitted capacity from the stockyard
>
> (6) To prevent indiscriminate removal of sand from pattalands abutting the Riverbed, more rigorous vigilance and inspections shall be taken up.
>
> (7) The District Level Sand Committee shall issue operational guidelines for de-casting sand from pattalands abutting river bed.
>
> (8) The pattalands located in the midst of the river course/bed:
>
> In case of pattalands located in the midst of the river bed/course, the pattadar shall enter into an agreement for removal of sand by Telangana State Mineral Development Corporation Ltd.
>
> The Chairman, District Level Sand Committee shall allot the pattalands located in the midst of the river course/bed to Telangana State Mineral Development Corporation Limited as per Rule 2(1) read with Rule 4 (iv) (c)."

18. In accordance with the procedure prescribed, the District Level Sand Committee issued proceedings dated 29.06.2021 according permission for de-casting of sand of 2,09,130 cubic meters from the patta lands of the petitioners through M/s.TSMDC Limited. Prior to the constitution of the DLSC, the petitioners used to de-cast the sand from their patta lands on their own. The State Government framed Rules for sand extraction so that it should not be over exploited. Later, the Telangana State Mineral Development Corporation was put into place and through it only the pattadars were permitted to de-cast the sand after

conducting necessary inspections and after obtaining necessary permissions. The amounts to be given to the pattadars were also prescribed. The Mandal Agricultural Officer would need to certify that without de-casting, the lands would not be fit for agriculture. The Executive Engineer has to certify with regard to location of the lands. If the lands were located within the river course/bed, Environmental Clearance was also required. If the agricultural lands were abutting the river, no environmental clearance was required.

19. As seen from the orders of the DLSC, in the case of the petitioners earlier the Executive Engineer, IB, I & CAD Department, Mulugu submitted a report that the patta lands were located within the river course, as such, permission was accorded by the DLSC subject to the condition that the pattadars had to obtain Environmental clearance from the SCNBWC and Consent for Establishment (CFC) and Consent for Operation (CFO) from TSPCB before excavation of sand, as the patta lands were falling in the midst of the Godavari River course. But, on the subsequent representation of the petitioners, the DLSC directed the concerned officials to resurvey the patta lands and basing on the report of the Executive Engineer, I.B., Division-II, Eturunagaram vide letter dated 26.04.2021 that the patta lands of the petitioners were abutting the right

flank of the river but not within the river bed, proceedings were issued by the DLSC on 29.06.2021 modifying the orders removing the conditions of obtaining Environmental clearance and also permitted to do de-casting by use of machinery. As such, DLSC observed it as a case which would not require Environmental Clearance. The said report of the Executive Engineer, I.B., I & CAD Department, Mulugu, dated 26.04.2021 as well as the proceedings of DLSC dated 29.06.2021 were not challenged by the Forest Department.

20. The Gazette Notification S.O.1224 (E), issued by the Ministry of Environment, Forest and Climate Change on 28.03.2020 stated that the removal of sand deposits on agricultural fields after floods by farmers was a case which did not require prior environmental clearance and was exempted from requirement of environmental clearance as mentioned in Appendix – IX. It could not even be considered as a mining activity as it was not done for exploitation of the deposits but for making the land fit for Agriculture. To control the economic aspects, the A.P. State Mineral Development Corporation and the Assistant Director of Mines and Geology were also involved in this process. The Forest Range Officer considered the same as a mining activity and demanded for prior clearance from the SCNBWL as per Para No.4 (iii) and para No.5 of Office

Memorandum dated 08.08.2019 of Ministry of Environment, Forest and Climate Change, Government of India.

21. The office Memorandum dated 08.08.2019 is pertaining to the procedure for consideration of developmental projects located within 10 km of National Park/Wildlife Sanctuary for environmental clearance under the provisions of Environmental Impact Assessment (EIA) Notification, 2006. The Forest Range Officer stated in his letter dated 18.12.2021 that the area of sand de-casting going on in Eturunagaram village noticed by him falls outside the Reserve Forest but would fall inside the ESZ of Eturunagaram Wildlife Sanctuary. As per para No.4 (iii) of the Office Memorandum dated 08.08.2019, proposals involving developmental activity/projects located within 10 kms of National Park/Wildlife Sanctuary wherein final ESZ notification was not notified or ESZ was in draft stage, prior clearance from SCNBWC was mandatory. In such case, the project proponent shall submit the application simultaneously for grant of terms of reference/environmental clearance as well as wildlife clearance.

22. The Ministry of Environment, Forest and Climate change after receiving letters from the States seeking clarifications regarding applicability of consideration by SCNBWC for developmental

projects/activities which did not require environmental clearance and were located outside the National Wildlife Sanctuaries subsequently, vide letter dated 16.07.2020 clarified that prior clearance from the SCNBWC would be required outside protected area only in the following cases:

> "After careful consideration of the matter, it is clarified that prior clearance from the standing Committee of the National Board of Wild Life will be required outside Protected Area in the following case:
>
> i. Proposals involving project/ activity located within the notified ESZ (not being draft notification) and listed in the Schedule of the EIA Notification 2006 and requiring environment clearance, prior clearance from Standing Committee of the National Board for Wild Life will be required.
>
> ii. Proposals involving activity project located within 10 km of National Park Wildlife Sanctuary wherein ESZ has not been finally notified and listed in the Schedule of the EIA Notification 2006 and requiring environment clearance, prior clearance from Standing Committee of the National Board for Wild Life will be required.
>
> iii. Proposals involving activity project, falling outside the protected areas linking one protected area or tiger reserve with another protected area or tiger reserve, prior clearance from the Standing Committee of the National Board for Wild Life as per the section 38 O(1)(g) of the Wild Life (Protection) Act, 1972 will be required."

23. Thus, prior clearance from the SCNBWC is required for activities located within 10 kms of National Parks/Wildlife Sanctuaries wherein ESZ has not been finally notified and listed in the Schedule of the EIA Notification 2006 and requiring Environmental clearance. For such activities only, prior clearance was required from the SCNBWC. It was

specifically mentioned that the **ESZ should be notified** (not being draft notification), but in the present case as per the counter filed by the respondent No.5, only the ESZ draft notification was under process and no final notification was issued. Prior clearance from SCNBWC was also required only in cases which would require environmental clearance. But, as per the proceedings of the DLSC dated 29.06.2021, no environmental clearance was required in this case. Hence, as seen from the office Memorandum dated 08.08.2019 which was subsequently clarified vide letter dated 16.07.2020, no prior clearance from SCNBWC was required, as no final notification of ESZ was issued and activity of de-casting of sand from patta lands of the petitioners abutting the river also would not require environmental clearance. Hence, the impugned notices issued by the 5th respondent dated 18.12.2021 and 01.01.2022 stopping the de-casting of sand from the patta lands of the petitioners as against the proceedings issued by the District Level Sand Committee permitting the same, is also not justified.

24. A Public Interest Litigation was also filed in the Goa Foundation vide Writ Petition No.460 of 2004 before the Hon'ble Supreme Court regarding the issues of declaration of Eco Sensitive Zones.

25. The Hon'ble Supreme Court in **Goa Foundation v. Union of India**[1] **(WP (C) No.435 of 2012),** held that:

> "50. When, however, we read the order dated 4.12.2006 of this Court in Writ Petition (C) No.460 of 2004 (**Goa Foundation v**. **Union** of **India**), we find that the Court has not prohibited any mining acti**v**ity within 10 kilometer distance from the boundaries of the National Parks or Wildlife Sanctuaries.
> .....
>
> It will be clear from the order dated 4.12.2006 of this Court that this Court has not passed any orders for implementation of the decision taken on 21st January, 2002 to notify areas within 10 kms. 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 04.12.2006 of this Court, however, the Ministry of Environment and Forest, 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 kms. 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 kms. of the boundaries of National Parks or Wildlife Sanctuaries."

26. Thus, the Hon'ble Apex Court made it clear that no direction either interim or final was given by it prohibiting even mining activities within 10 kms. of the boundaries of National Parks or Wildlife Sanctuaries, as contended by the learned Government Pleader for Forests in their counter by referring to the judgment in **Goa Foundation** case (supra).

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[1] **(2014) 6 SCC 590**

27. The Hon'ble Apex Court in its latest judgment in **Re.T.N. Godavarman Thirumulpad v. Union of India and others (WP (Civil) No.202 of 1995 dated 03.06.2022)** by referring to the Guidelines issued for declaration of Eco Sensitive Zones held that:

> "42. In our opinion, the Guidelines framed on 9th February 2011 appears to be reasonable and we accept the view of the Standing Committee that uniform guidelines may not be possible in respect of each sanctuary or national parks for maintaining ESZ. We are of the opinion that a minimum width of 1 kilometre ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of the CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in the special circumstances"

and accordingly directed:

> "(a) 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 9th February 2011 shall be strictly adhered to."

28. Commercial mining is shown as prohibited activity but ongoing agricultural and horticulture practises by local communities was shown as permitted category of activity as per the guidelines issued by the Government of India. Hence, de-casting of sand in the patta lands cannot be considered as a commercial mining activity, but an activity to make use of the land fit for agriculture by the local communities. As such, it is a permitted activity to be conducted within Eco Sensitive Zone as per the

guidelines issued by the Government of India for declaration of Eco Sensitive Zone around the National Parks and Wild Life Sanctuaries.

29. The 5th respondent in the impugned notice dated 01.01.2022 referred to the communication of M/s.TSMDC and observed that using heavy machines and transporting it by Trucks on commercial basis is considered as a mining activity.

30. The learned counsel for the petitioners relied upon the judgment of this Court in W.P .No.25715 of 2018 dated 31.10.2018 wherein the action of the authorities in imposing charges on the vehicles and introduction of claue-5 to the effect that no machinery shall be permitted to use for de-casting of sand from the land were challenged, observed that:

> "19) Since the patta land of the petitioners, would be fit for cultivation after de-casting; having regard to the fact that the land of the petitioners is eroded due to natural calamity ie. Floods and taking into consideration the location of the land, this Court is of the view that the petitioners can be permitted to use machinery for de-casting of the sand to the extent ordered by the authorities."

31. The proceedings of the DLSC dated 29.06.2021 also permits the usage of machinery for de-casting of sand from the patta lands of the petitioners. Hence, the usage of machinery itself cannot be the basis for considering it as a commercial mining activity.

32. In the result, the Writ Petition is allowed declaring the action of the 5th respondent in issuing the notices dated 18.12.2021 and 01.01.2022 in stopping the de-casting of sand from the patta lands of the petitioners is without power or authority and violative of Article 21 of the Constitution of India. Hence, the said notices are set aside and the respondent Nos.5 to 7 are directed not to interfere with the de-casting of sand from the patta lands of the petitioners issued vide order dated 29.06.2021. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

Dr. G. RADHA RANI, J

June 16, 2022
KTL