Item No.1:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No. 239 of 2021 (SZ)

IN THE MATTER OF

Navroz Kersasp Mody
S/o Kersasp Mody,
Aged about 76
Aurodam, Auroville, Vanur Taluk,
Viluppuram- 605101 and Anr.

…Applicant(s)

Versus

The Auroville Foundation
Rep by its Secretary,
Auroville Foundation Bhavan
Auroville, Tamil Nadu- 605101 and Ors.

...Respondent(s)

For Applicant(s): Mr. A. Yogeshwaran.

For Respondent(s): Mr. R. Sankaranarayanan, Addl. Solicitor General along with Mr. V. Chandrasekaran, Senior Panel Counsel – Union of India for R1.
Mr. G.M. Syed Nurullah Sheriff for R2.
Dr. D. Shanmuganathan for R3.
Mr. H. Rajaram along with
Mr. Nithyaesh for Intervenor (Supporting 1st Respondent)
Mr. M.V. Swaroop for Intervenor (Supporting Applicants)

Date of Judgment: 28th April 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

O R D E R

Judgment pronounced through Video Conference. The Original Application is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

O.A. No.239/2021 (SZ)
28th April 2022. AM, Mn.

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IN THE MATTER OF

1. **Navroz Kersasp Mody**
   S/o Kersasp Mody,
   Aged about 76
   Aurodam, Auroville, Vanur Taluk,
   Viluppuram- 605101

2. **Sandeep Vinod Sarah**
   S/o Vinod Gopalan
   Panayoram, Fertile, Thelem Road,
   Auroville Tami Nadu- 605101

…Applicant(s)

Versus

1. **The Auroville Foundation**
   Rep by its Secretary,
   Auroville Foundation Bhavan
   Auroville, Tamil Nadu- 605101

2. **Union of India**
   Rep by its Secretary,
   The Ministry of Environment Forests and Climate Change,
   Jorbagh, New Delhi

3. **The State of Tamil Nadu**
   Rep by its Director,
   Department of Environment,
   No. 1, Jeenis Road, Panagal Building,
   Ground Floor, Saidapet, Chennai- 600 015

...Respondent(s)

ADDITIONAL PARTIES

1. **Ravindrakumar Solanki**
   S/o. Khatubhai, Vikas
   Community
   Auroville – 605 101
   Tamil Nadu

2. **Joy Chowdhury**
   D/o. Chowdhury
   Dana Community
   Auroville – 605 101
   Tamil Nadu

3. **Divya Karun**
   W/o. Manish Chaudhry
   Flat No.703, Jawahar Nagar
   Jaipur (Rajasthan) – 302 004.

4. **Alok Malick**
   S/o. Babaji Mallick
   138, Akka Samu Madam Street,
   Vazhaikulam Padmini Nagar
   Pondicherry – 605 012.

Intervenor – Supporting 1st Respondent

(Additional Parties No.1 to 4 are impleaded as Intervenor supporting the 1st Respondent as per order in I.A. No.206/2021 dated 21.12.2021.)

5. **Tejaswini Mistri**
   W/o. Ritesh Kapoor,
   Aged about 41
   House No.1, West Gate,
   Prarthana Community, Auroville
   Tamil Nadu – 605 101.

6. **Archana Saraf**
   W/o. Atul K Saraf
   Aged about 48
   Grace Community,
   Auroville, Villupuram
   Tamil Nadu – 605 101.

7. **Natasha Storey**
   D/o. Peter Patrao
   Aged about 49
   Evergreen, Auroville,
   Tamil Nadu – 605 101.

Intervenor – Supporting Applicants

8. **Sangeetha Sriram**
W/o. Rajeev Natarajan
Aged about 45
Pump House Community
Auroville, Villupuram
Tamil Nadu – 605 101.

9. **Swarna Lata**
W/o. Prashant Madhukar Hedao
Aged about 59
C-1 Ahana Complex
Kuruchikuppam,
Padmini Nagar,
Puducherry – 605 012.

Intervenor – Supporting Applicants

(Additional Parties No.5 to 9 are impleaded as Intervenor supporting applicants as per order in I.A. No.01/2022 dated 03.01.2022)

For Applicant(s): Mr. A. Yogeshwaran.

For Respondent(s): Mr. R. Sankaranarayanan, Addl. Solicitor General along with Mr. V. Chandrasekaran, Senior Panel Counsel – Union of India for R1.
Mr. G.M. Syed Nurullah Sheriff for R2.
Dr. D. Shanmuganathan for R3.
Mr. H. Rajaram along with
Mr. Nithyaesh for Intervenor *(Supporting 1st Respondent)*
Mr. M.V. Swaroop for Intervenor *(Supporting Applicants)*

Judgment Reserved on: 17th January 2022.

Judgment Pronounced on: 28th April 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Whether the Judgement is allowed to be published on the Internet – Yes.

Whether the Judgement is to be published in the All India NGT Reporter – Yes.

J U D G M E N T

Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The grievance in this application is regarding cutting of large number of trees by 1st respondent, namely, Auroville Foundation from Auroville forest area, which according to the applicant has its own biological diversity and eco-sensitiveness.

2. According to the applicant, the Auroville Foundation was established in the year 1968 as an autonomous body and they visualised a project for development of that area. The Auroville was born on 28 February 1968. Its founder, the MOTHER, created the Auroville Charter consisting of four main ideas which underpinned her vision for Auroville. The lands in question are owned by the Auroville Foundation, an autonomous organisation created by the Auroville Foundation Act 1988. Its nodal ministry is the Ministry of Education (earlier known as the Ministry of Human Resource Development).

3. Under the Auroville Foundation Act, 1988, a Master Plan of Auroville was made in 1999 by residents of Auroville and approved by the Residents' Assembly. However, the Governing Board felt that eminent town planners on the national and state level needed to become involved before approving it. This led to the Auroville Universal

Township Master Plan Perspective 2025, made in 2001, which was approved by the Ministry of Human Resource Development as well as the Governing Board. The plan was not again submitted for approval to the Residents' Assembly. For unknown reasons, the plan was only gazetted by the Auroville Foundation in part 3 of the Gazette of India in 2010.

4. The Auroville Universal Township Master Plan Perspective 2025 specifies in section 1.1.2 that it provides a policy framework which will serve as a guide in the preparation for Five Year Development Plans and Annual Plans. This was further specified in its Section 2.11.1, which states that Five Year Development Plans were to be made containing the priority items to be taken up for development, and that at the close of the first Five Year Development Plan, the progress would be assessed, after which second detailed development plan would be prepared, followed by further detailed development plans for subsequent 5 year periods. Section 2.11.2 then states that the Five-Year Development Plans would be reviewed, and that the review process will be the same as followed for the preparation of the Perspective Plan.

5. Since the approval of this Master Plan in 2001, neither Five-Year Development Plans nor Annual Plans have been made. Neither was the Master Plan ever adapted to the present and evolving ground realities, even though several experts and groups within and outside Auroville proposed to do so. Also, no "water plan", which all urban planning bodies now have to make as the basis of their development

proposal in accordance with the Amruth Operational guidelines 2.0 - Making Cities Water Secure, was made.

6. It was alleged that 1st respondent is now focusing on the manifestation of the roads mentioned in the Master Plan, e.g. the Crown road, a road encircling the centre of the township, and an Outer Ring Road. These roads have only been indicated by a sketch in the Master Plan on its page 59. They have failed to see that the Master Plan is only a Perspective Plan and is not a project report.

7. For implementation of specific activities mentioned in the master plan, each component has to be studied, assessed for its impact, the least deleterious alternative chosen for the implementation of the project in light of existing ground realities. According to the applicant, the master plan does not propose that forests with endangered flora and serving as habitat of several species of fauna be destroyed for the construction of a road envisaged in the Master plan. They have also failed to appreciate this fact and has blindly decided to implement the components mentioned in the master plan without any examination as to its siting and sustainability. The Master plan cannot be taken as a design document and the proposed road cannot be built in the exact shape specified therein. The diagrams in the master plan are indicative – they are not project designs.

8. The 1st Respondent has failed to consider the objections of a section of the Auroville residents to the manifestation of these roads and is not willing to follow the due process of dialogue, consultation and

adaptation of the Master Plan. They intended to destroy the forest area which was developed in 1970. The first tree nurseries were started in Success and Kottakarai and, with the help of grants from the Point Foundation, the Tamil Fund and friends abroad, large-scale tree planting began. In the next ten years, as part of a massive soil and water conservation programme, over a million trees - timbers, ornamentals, fencing, fruit and fodder trees, nut trees etc.- were planted here. As the trees grew, and micro-climates formed, many species of bird-life and animals returned, further accelerating the dissemination of seeds and enriching the environment. Endangered floral species were planted and thrived in these forests. These lands fit the dictionary meaning of forests and are entitled to protection as mandated in the *T.N. Godavarman's* case by the Hon'ble Supreme Court.

9. They are trying to distract Darkali forest by using huge machineries for carrying out the destructive process and causing deterioration to the environment especially developed forest in that area. Though lot of objections were raised and protest were conducted, the officials of the 1st respondent are proceeding with the project of destruction of the forest area that prompted the applicant to file this application seeking the interim as well as final reliefs:-

> *"**INTERIM RELIEF**:*
>
> *A. Injunct the 1st respondent from felling any tree or clearing undergrowth in the Darkali forest or any area in Auroville for the proposed crown road project.*
>
> *B. Issue such other orders as it deems fit in the interest of the case and render justice.*

MAIN PRAYER

A. Direct the 1st respondent to prepare a Detailed Development Plan including a mobility plan which is based on and respects the present day ground realities, to be approved as mandated in the Master Plan and implement projects based on such plan after necessary impact assessments and feasibility studies in an environmentally sustainable manner.

B. Direct the respondent to pay costs to the applicant.

C. Issue such other orders as it deems fit in the interest of the case and render justice."

10. As per order dated 10.12.2021, this Tribunal had admitted the matter and also granted an interim order directing the 1st Respondent not to cut any further trees till 17.12.2021 and directed the parties to appear and file their objections and posted the case to 17.12.2021 for this purpose.

11. The applicant has filed additional affidavit in the form of new grounds alleging that without conducting a proper impact study of the project, the work should not be proceeded with. They also reiterated the contention that the master plant is not a project document, it is only a vision document of the MOTHER and the document did not deal with the nature, alignment, impact and feasibility of the proposed infrastructure. Further this cannot be treated as a master plan as envisaged in Tamil Nadu Department of Town and Country Planning hand book and also under the Tamil Nadu Town and Country Planning Act.

12. Even the various clauses in the master plan which were approved only envisages the prospective plan of development without envisaging as to how it has to be implemented and without preparing a project on that basis. Unless such a project is framed, it cannot be said that it was properly executed. Further, though it was visualised by MOTHER in 1968, the project got approved only in 2001. Further, since there were some irregularities in managing the Auroville Foundation by the then office bearers, the Central Government thought of making a permanent solution for management of the same. Accordingly, the Auroville Foundation Act, 1988 was passed envisaging the manner in which the activities of the foundation will have to be managed by different bodies constituted under the Act.

13. Though the master plan was approved in 2001, the approval stated that it will come to effect only from its date of notification and it was really published in the year 2010. Though there was certain provisions made for constitution of town development council etc and the same has been constituted but there was no detailed development plan, zonal plan and local plan were made by the Town Development Council constituted. The responsibility of Town Development Council to implement the master plan is very important and as per the standing order of 06.05.2011, the council is tasked with framing rules, regulation for enforcing the master plan, obtaining endorsement and remuneration from appropriate States and Central Government for implementation of the master plan and also to secure the services of town planners, urban designers, consultants and experts in implementation of the master plan.

14. Earlier tree plantation drive was conducted and that was also implemented making the entire area resembling the forest. It was also mentioned that all master plan deviations on land earmarked for crown road have to be cleared so that the circular crown road and related infrastructure can be built without delay. A similar exercise shall be implemented for 12 radial and outer ring where land ownership permits which was so envisaged in 2.8 of master plan. Further, this being a township plan, this will fall, under Item 8 (b) of Schedule to the EIA Notification, 2006 and they will have to obtain prior Environmental Clearance from the authorities and they will have to conduct a proper environmental impact assessment before proceeding with the project. Further, the extended dictionary meaning of forest will apply as envisaged by the Hon'ble Supreme Court in **T.N. Godavarman Thirumulpad Vs. Union of India & Ors.,**[1] and as such cutting of trees without obtaining prior clearance from the Central Government under Forests (Conservation) Act, 1980 will be illegal one. Further whenever, they are having clear cut master plan, then the same can be assessed with its environment impact and piecemeal implementation and segmentation will only affect the entire area. Though, there was a proposal to have a green belt, the place where they will have the same is also not clear. The entire land required for the purpose has not been obtained so far. So under such circumstances, according to the applicant without conducting proper impact assessment, the same cannot be implemented as it will have greater impact on environment.

[1]**(1997) 2 SCC 267**

15. Certain interested persons, who wanted to come on record and to support the 1st Respondent as well as applicants were permitted to join as internevor as per order in I.A. No. 206 of 2021 (SZ) dated 21.12.2021 and I.A. No. 01 of 2022(SZ) dated 03.01.2022 respectively and accordingly, they were shown as intervenors in the cause title.

16. **This Tribunal had extended the interim order on various occasions and lastly till the disposal of the case.**

17. The first respondent filed counter affidavit contending that the application is not maintainable and the applicant has not approached this Tribunal with clean hands and suppressed material facts before this Tribunal and as such, he is guilty of *suppressio veri suggestio falsi*. It was further contended that from its inauguration in February, 1968 Auroville has been developed as an international cultural township and not as a forest. Auroville Foundation was established by an Act of Parliament (The Auroville Foundation Act, 1988 was wrongly shown as 1998 in the counter) for the purpose of realising the ideals of Auroville including the building of Auroville township with a population of 50,000. The Auroville Master Plan has been prepared and was approved under the authority of the Act of 1988. The Auroville Universal Township Master Plan (Perspective 2025) was approved by the Government of India, Ministry of HRD in the year 2001.

18. The Auroville Master Plan provides for a greenbelt that is planned to be three times the size of the city area. The city area of the township also has green corridors and parks. Trees have been planted in

Auroville in the greenbelt, in designated city green corridors and parks but also on land earmarked for roads and urban development to stop soil erosion along with bunding with the clear understanding that these trees will be removed when a particular area is ready for development.

19. The crown road is a master plan ring road with a length of 4.3 km. A major part of the crown right-of-way (RoW) area has been cleared and infrastructure (electricity, water, OFC) has been installed along it. Auroville Foundation is now clearing the last part of crown right-of-way with 16.07m. The land area of the crown right-of-way is only 0.36% of the total Auroville Master Plan area.

20. The clearing work must be completed soon so that infrastructure work can be completed and proper access can be provided to underground infrastructure services that have already been installed. Auroville Foundation is constructing the township including the crown road on its own land and this land is not designated as a forest. The Auroville Master plan area is not a deemed forest as envisaged by the Hon'ble Apex Court in the *T.N. Godvaraman's* case since it is not a statutorily recognised forest, whether designated as reserved, protected or otherwise for the purpose of Section 2 (1) of the Forest Conservation Act and is also not a forest in the government record. As per revenue records of the Government of Tamil Nadu, the lands situated at Auroville are not classified as forest lands. Hence the very premise of the assertion of the applicant is without any basis and liable to be rejected in liminie. If Auroville area was indeed a deemed forest as

claimed by the applicant, then the applicant's own house in Auroville and all the facilities that applicants use in Auroville could not have been constructed and will have to be demolished.

21. The claim that cutting of trees within the crown right-of-way will have great impact on environment is not maintainable on following grounds:

> *"i. The trees that are being removed for the last segments of the Crown Row represents an estimated 0.05% of the trees already planted.*
>
> *ii. New solar PV capacity installed in Auroville during the last two years alone, results in annual CO2 emission reduction equal to what 20,000 trees would absorb.*
>
> *iii. In the last 3-4 years alone more than approximately 10,000 trees have been planted all over Auroville.*
>
> *iv. There is a green belt and there are green corridors inside the city. Green work has taken place, and will continue to happen there.*
>
> *v. Trees alone cannot take care of emission reduction. Trees absorb CO2 and release it again when they die or are burnt. Auroville targets 100% renewable energy and that will avoid CO2 emission to start with.*
>
> *vi. Auroville has demonstrated the use of both stand - alone and grid connected solar energy. Auroville plans to have a network of solar energy generation and storage systems that are interconnected with an internal grid that is coupled with the State grid. This is the way forward for a sustainable energy future.*
>
> *vii. Auroville has made progress with the introduction of e - mobility that will replace the fossil fuel motorcycles and cars that are still used by many of its residents. The master plan road lay - out with a circular inner ring (the "Crown"), 12 radials and an outer ring, allow for sustainable mobility solutions and resilient infrastructure services."*

22. These are just of a few of the many measures that Auroville has already taken and will continue to take to ensure a sustainable future for all. Contrary to what the applicant claims, there is no negative environmental impact and in fact a net positive impact if the total picture is taken into account. The applicant approached this Tribunal

with misleading and incomplete facts which are contrary to record. The foundation has already decided to continue with Auroville's tree plantation drive to increase biodiversity.

23. There exists no Auroville forest area that needs to be protected against destruction. The argument of the applicant is misconceived. Auroville is a township under construction since 1968 where trees have been planted in designated green zones and also in areas that are earmarked for roads, community services, residential and other buildings. The trees were planted to stop soil erosion with the clear understanding that they would be removed if needed for development in a given area as stated above. It was not classified forest land or Auroville forest. Auroville is a township under construction and was inaugurated by the MOTHER on 28.02.1968 with following Auroville charter:

> *"i. Auroville belongs to nobody in particular. Auroville belongs to humanity as a whole. But to live in Auroville one must be a willing servitor of the Divine Consciousness.*
>
> *ii. Auroville will be the place of an unending education, of constant progress, and a youth that never ages.*
>
> *iii. Auroville wants to be the bridge between the past and the future. Taking advantage of all discoveries from without and from within, Auroville will boldly spring towards future realizations.*
>
> *iv. Auroville will be a site of material and spiritual researches for a living embodiment of an actual Human Unity."*

24. The word forest did not appear anywhere in the Auroville Charter and is also not found in the Act of 1988. They denied the allegation that it was a deemed forest and they require prior clearance under the Forest (Conservation) Act, 1980 etc., Voluntary planting of trees that were on Auroville Foundation's own land does not make Auroville or any part of it a forest or deemed forest. If that be the case, no person will be

interested in planting trees in an institution including educational campuses or government estates and voluntary tree planting initiatives would come to stand still. Auroville has presently a population of about 3,500. In the centre of Auroville is a Matrimandir, which the MOTHER referred to as a soul of Auroville. There were different township zones viz., residential, international, industrial and cultural and additionally, a green belt which is planned to be three times the size of the city area of which more than 50 per cent is open and green. In addition to the Matrimandir, developments have taken place in each of the township zones, some of which were listed as follows:

> *"i. The residential zone: various types of residential buildings, mainly in sector 1 and 2 and community services.*
>
> *ii. The international zone: Bharat Nivas the pavilion of India, various other pavilions, and spaces for cultural activities.*
>
> *iii. Industrial zone: various income - generating units, the Center for Scientific Research, an e - cycle service, guesthouses etc.*
>
> *iv. Cultural zone: Schools and other educational facilities, residential quarters.*
>
> *v. City Center: The Town Hall, various office buildings, the Auroville Archives building, a media center, various community services, residential buildings etc.*
>
> *vi. Crown: Community kitchen, library, health services, residential buildings etc.*
>
> *vii. Green corridors and parks inside the city area: Trees, landscaping.*
>
> *viii. The Green Belt: Trees, botanical garden, agriculture, some residences."*

25. Most of the above have been completed and functional. A small section of the residents were attempting to enjoy the lands of Auroville like Zamindars and as their own private fiefdoms and they were trying to obstruct the implementation of the master plan envisaged by the MOTHER.

26. In 1999, the Resident Assembly of Auroville approved the Auroville Universal Township Integrated Master Plan formulated by it. Thereafter, the Governing Board finalized and approved the Master Plan after taking expert advice from the Town and Country Planning Organisation (TCPO) of the Ministry of Urban Development, Government of India and resolved to implement the same vide minutes of meeting dated 15.02.2001. The said meeting was attended by the Chairman and members of the Governing Board, Auroville Foundation, Chief Planner and Additional Planner, TCPO, (Ministry Urban Development, Government of India), Special Commissioner, Town and Country Planning, Tamil Nadu Government, an architect-planner from Auroville and an educationist from Auroville. Further, post this meeting and approval from the Governing Board, the Ministry of Human Resource Development, Department of Secondary Education and Higher Education, Government of India issued a letter dated 26.02.2001 forwarding the minutes of the aforesaid meeting to the Ministry of Urban Development. Subsequently on 12.04.2001 a letter was sent by the Ministry of Human Resource Development to the Secretary of Auroville Foundation informing him that the master plan of Auroville has been approved. It is in pursuance to the aforementioned actions that on 16.08.2010, Auroville Foundation notified the Auroville Master Plan in Gazette of India. Till date, no one has challenged the notification dated neither 16.08.2010 nor the approval of the concerned Ministry in the year 2001.

27. There is no necessity in law for the decision of the Governing Board to be submitted to the Resident Assembly. They have not mentioned about the steps taken from 2001 till date for non-preparation of the approved master plan which was one of the ground alleged by them for implementation of the same. The master plan envisages the development of first five years which include the crown and outer ring road, which were specifically provided with an estimated cost. The work has already been started and major portion of the work has been completed and only a small portion has to be carried out. A drawing was also approved showing the manner in which it will have to be done. They have more or less repeated what was stated by them in the earlier paragraphs.

28. As per the Auroville Foundation Act, 1988, their activities will have to be governed by the Auroville Foundation Act, 1988 and the Tribunal has no jurisdiction to enquire into the same. The Secretary of Auroville Foundation is also the Estate Officer of Auroville Foundation under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and as such is empowered to ensure that Auroville Foundation lands are used strictly in accordance with the land use as stated in the Auroville Master Plan and the prayer of the applicant to stop the work of the crown road until detailed developments plans have been completed needs to be rejected. They were only following the statutory mandate in terms of Section 17 (e) of the Act of 1988.

29. The 2001 approved master plan has been notified as early as on 16.08.2010 and as such the application filed in 2021 is beyond limitation. Further even as per the applicants version, the Auroville was inaugurated on 28.02.1968 with a charter of Auroville and the Auroville galaxy plan approved by the MOTHER which forms the basis of the Auroville Master Plan. It was known to all including the applicant. There was no merit in the application and they prayed for dismissal of the application.

30. The applicant filed rejoinder to the counter filed by the 1st respondent, wherein they had reiterated their earlier contentions raised by them in the original application and also in the additional affidavit filed by them. According to the applicants, though the order of status quo restraining further felling of trees dated 10.12.2021 was extended on 17.12.2021 by directing the 1st respondent to maintain status quo, they continued to engage in that activity.

31. They denied the allegation that they have suppressed the material fact and made misrepresentation of facts. Further there was no proper project prepared on the basis of the conceptual township envisaged by MOTHER and even the township was approved in 2001 but it was specifically mentioned that it will come into force from the date of this publication in the gazette which was gazetted only in 2010 and by the time EIA Notification, 2006 has come into effect and as such for township project, they will have to obtain prior Environmental Clearance under item 8(b) of the EIA Notification, 2006. The crown road is only 0.36 per cent of the total area of Auroville Master Plan area

is relevant when considering the question of making the study in respect of impact of environment. They were only trying to implement the policy document without obtaining the statutory approvals required under the planning laws as well as under the Environmental laws. As per the master plan, they intend to develop a township of more than 1963 ha of which they have obtained only 778 Ha in their possession. They also propose to acquire 100 Ha per area over a period of 10 year period. Even the land consolidation process was not complete and even assuming that they are going to develop a township of 778 Ha within their possession, they will have to obtain Environmental Clearance for that purpose as if the entire construction is to be taken of the proposed project, then it will go beyond 1,50,000 Sq.m. and also if more 50 Ha of land is involved in township project, then it will fall under item 8 (b) of the EIA Notification, 2006. Further, even assuming that trees were planted for the purpose of avoiding soil erosion and it need not be a spontaneous growth of forest nature but when the area is having more than 5 Ha and the tree growth is more than 0.42 per cent, then the Forest (Conservation) Act, 1980 will apply.

32. Further, trees do not release carbon dioxide when they die and they release it only when it decomposes. The existence of forest like area was anticipated by the Hon'ble Apex Court while extending the dictionary meaning of forest. Further when the forest like area was created on the basis of tree plantation drive to protect environment, it will have to be treated as forest for all purposes.

33. It is for the authorities under EIA Notification, 2006 to consider as to whether what is the nature of impact that may be caused on account of the activities of the 1st respondent and it is not for the 1st respondent to unilaterally declare that it will not have any adverse impact on environment. They have not identified the area where the green belt is to be developed and all those things can be possible only if they have got a proper project document which has to be assessed by a proper authority regarding its impact on environment, especially when they are visualizing a large township project including several activities like cultural, religious, international, industrial, residential and occupational activities and the impact of each has to be considered while assessing the project as such and such a study has not been conducted by them. The Auroville Foundation Act, 1988 will not override the provisions of the Environment (Protection) Act, 1986 and also the EIA Notification and any improvement in that area will be subject to these environmental laws.

34. The study report submitted by the applicant will go to show the nature of flora and fauna in the forest area according to the applicant and the nature of trees that has been cut and removed and impact of those on environment. Further, when it constitute as a total project or township, even laying down roads which amount to preparation for the project, since as per the EIA Notification, 2006 only those things which are permitted for preparation, namely, fencing the area, putting temporary sheds for employees alone is permissible. No other activity is permissible in a case where prior Environmental Clearance is required. The attempt of the applicant is only to see that the 1st respondent

follows the environmental laws strictly and they were not against the establishment of the township. The averment in the counter statement that the applicant has come with malafides in order to safeguard his possession of the land is without any merit and he was not against the project and he wants only to comply with environmental laws by 1st respondent in implementing the project. So, he prayed for accepting their contentions in the rejoinder and allow the application.

35. The second respondent filed counter affidavit contending that the application is not maintainable. This counter affidavit is being filed in compliance with the order passed by this Tribunal dated 21.12.2021 to indicate their stand and role of the Ministry in the case. The MoEFF&CC is anodal agency of the Central Government for planning promotion, coordination and overseeing the implementation of India's environment and forest policy. The primary concerns of the Ministry are implementation of policies and guidelines relating to conservation of country's forest, biodiversity, natural resources, wildlife. Most of the allegations in the application pertain to the State respondents and they have nothing to do with the same. The 2nd respondent had issued EIA Notification, 1994 S.O. 60(E) dated 27.01.1994 mandating requirement of Environmental Clearance for undertaking any new project in any part of India or the expansion or modernization of any industry or project listed in Schedule I evidenced by annexure-A1 produced along with the reply affidavit. The requirement of prior Environmental Clearance for certain categories of construction and development activities (new construction projects and new industrial estates) in the Country was inserted in Schedule I after Item 30 through an

amendment in EIA Notification, 1994 (operative at that time) vide notification no. S.O No. 801(E) dated 07.07.2004, the above said notification mention that new construction projects which were undertaken without obtaining the clearance required under this notification where the construction work has not come up to the plinth level shall require clearance under the notification with effect from 07.07.2004 and the said notification is produced as annexure A-2 along with the counter affidavit.

36. Under the Environment (Protection) Act, 1986 the Central Government issued Environment Impact Assessment Notification vide S.O. No. 1533(E) dated 14.09.2006, herein referred to as EIA Notification, 2006, superseding Environment Impact Assessment Notification, 1994. As per EIA Notification, 2006, the projects/activities listed in Schedule shall require prior Environmental Clearance from the concerned regulatory authority which shall herein refereed to Central Government in the Ministry of Environment and Forests for the matter falling under category A in the Schedule and at the State Level, the State Impact Assessment Authority for matter matters falling under Category B in the Schedule before any construction work or for preparation of land by the project management except for securing land is started in the project activity. All (1) new projects/activities listed in the Schedule to the notification, (2) expansion or modernization of existing projects or activities listed in the Schedule to the notification with addition of capacity beyond limit specified for concerned sector i.e. projects or activities which cross the threshold limits given in the Schedule after expansion or modernization, (3) any

change in product mix in an existing manufacturing unit included in Schedule beyond the specified range. As per EIA Notification, 2006 Environmental Clearance for building and construction projects and township and area development are covered under Entry 8(a) and (b) of Schedule to the notification. The Entry 8(a) and 8(b) of EIA Notification reads as follows:

(1)	*(2)*	*(3)*	*(4)*	*(5)*
8		***Building or Construction projects or Area Development projects and Townships***		
8(a)	*Building and Construction projects*		*220000 sq.mtrs and <1,50,000sq.mtrs. of built-up area*	*The term "builtup area" for the purpose of this notification is the built-up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects.* ***Note 1.*** *The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks.* ***Note 2.*** *"General Conditions" shall not apply.*

8(b)	*Townships and Area Development projects.*		*Covering an area 2 50 ha and or built up area >1,50,000 sq. mtrs*	*A project of Township and Area Development Projects covered under this item shall require an Environment Assessment Report and be appraised as Category '131' Project.* ***Note:*** *"General Conditions" shall not apply.*

37. The aforementioned entries in 8(a) and 8(b) are qualified as category B projects under EIA Notification, 2006 and the projects are appraised by State Level Expert Appraisal Committee and approved by the State Environmental Impact Assessment Authority. Further, as per EIA Notification, 2006 the absence of duly constituted SEIAA or SEAC, Category B will be considered at Central level as Category A project. The instant project has been examined by the respondents for applicability of Environmental Clearance as directed by this Tribunal, they had a meeting with the officers of 1st respondent and subsequent to the discussions the 1st respondent produced certain documents and made following submissions:

i. *"The Foundation has been developed as an international cultural township. It was established under the Auroville Foundation Act, 1988 (hereinafter referred to as the Act, 1988).*
ii. *The Galaxy Plan was prepared in 1968 which was the basis of Auroville Master Plan of 2001. The Master Plan of the Foundation was prepared and was approved by the Governing Body of the Foundation under the authority of the Act.*
iii. *Thereafter, The Auroville Master Plan was approved by the Ministry of Human Resource Development, (now known as Ministry of Education) Government of India in April 2001. The same has been notified in the Gazette of India on 16th August 2010.*
iv. *The Galaxy Plan as approved by the Mother was displayed during the Auroville inauguration on 28-02-1968 along with the Auroville Charter*

v. *The development of the Auroville Project has been put into execution on the basis of the Galaxy Plan which was also the basis of the Auroville Master Plan of 2001 and various components of the Main Auroville Project have already been completed*

vi. *The list below indicates township components arising from the Master Plan. It is pertinent to note that works in respect of these components were being executed as on 2001 when the Master Plan was approved*

a) *Peace Area:- Matrimandir, Matrimandir gardens, Matrimandir Lake, Amphitheatre*

b) *Residential Zone:- Housing, Community services, Health services*

c) *International Zone:- Bharat Nivas, Country Pavilions, Visitors Centre, SavitriBhavan, Unity Pavilion, Language Lab, Guesthouses, Residential quarters*

d) *Economic Zone:- Buildings for economic activities, Guesthouses, Earth Institute, Centre for Scientific Research, Residential quarters.*

e) *Cultural zone:- Schools, Other educational facilities, Residential quarters, Facilities for cultural programs*

f) *Green belt:- Tree plantation work, Agriculture, Botanical gardens*

g) *Township-wide:- Community services, Workshops, Restaurants and guesthouses, Roads and paths Infrastructure services (electricity, water, mobility, communication etc.*

vii. *The building of the Auroville Township began in 1968 on the basis of the galaxy plan and since that time, this is an on-going project of which a significant part has been completed. Therefore, it is seen that substantial work of the Auroville project has already been ongoing and completed at various stages even as far back as in 2001.*

viii. *All developments initiated by the Auroville Foundation have been taking place as per the approved Master Plan and there is no change in scope from the original approved master plan.*

True copy of the above mentioned Auroville Foundation Act, 1988 has been annexed as ANNEXURE A/3 and approval on the Master Plan has been annexed as ANNEXURE A/4."

38. In view of the information made available and submissions made by 1st respondent, it will have to be inferred that the instant township project in question has been under construction much before the EIA Notification, 1994 and its amendment dated 7th July, 2004 and

therefore, it could not have been considered as a new project under the provisions of the said notification as on 07.07.2004. There was no change in scope of township project from the original master plan as such. The township project may not attract the provisions of the EIA Notification, 2006 and its amendment for grant of Environmental Clearance. It is pertinent to mention that in case of any change in scope of the township project from the original approved master plan, prior Environmental Clearance may be required as per the provisions of the EIA Notification, 2006.

39. They have further mentioned that as adequate information is not available on the details of balance construction activities within different zones of township, namely, Residential Zone, International Zone, Industrial Zone and Cultural Zone with respect to their built up area and their construction status, all such individual project activities within such zone may require separate Environmental Clearance in case they fall under the Schedule of activities requiring prior Environmental Clearance as per provisions of EIA Notification, 2006. They prayed for liberty to file additional affidavit if further materials are obtained. They prayed for passing appropriate orders accepting their contentions.

40. The applicant also filed another rejoinder to the counter filed by the 2nd respondent contending that the 2nd respondent had only extracted the details and information collected from the 1st respondent for giving their opinion as to whether the EIA Notification will apply or not. They have not independently conducted any inspection or collected material

through their Regional Office before coming to such conclusion. These observation made by them without obtaining any details of the galaxy plan, total proposed construction in the township i.e. area/structural construction as on 2004 and other information and documents. Without getting the details of footprint, built up area of structure claimed to have been built already, the MoEF&CC should not have given their opinion on this aspect. The galaxy plan is only a conceptual plan and not a plan for development of township. It did not contain the details of the building to be built, road to be built, utility to be provided, it's built up area, footprints, impact etc.

41. The galaxy concept is not a township development plan based on which township has to be developed. The use of the word plan has to be seen in the context of word galaxy as envisioned by the MOTHER. Useful information will be available in the website of the 1st respondent which was produced as annexure A-1 along with the rejoinder which reads as follows:

> *"In interviews with Auroville Today in 1988 and in 1992, Roger Anger explained how this plan came into existence.*
>
> *"Mother had given a couple of parameters: the division of the city into four areas, or zones, and the number of people for whom the city is envisaged (50.000). The division into those four zones (industrial, residential, international and cultural) is unique, and has no precedent in town planning. On the basis of this scheme, we, the architects and town planners, started to make suggestions to her. This was done in several stages, and finally the Galaxy came out and was presented as a model to Mother, and accepted by her as a plan that answered to her parameters. She inspired and guided the work. When I talked to Mother one day about Auroville, she said that the city already exists in a subtle level, that it is already constructed, that it is only necessary to pull it down, to make it descend on earth."*
>
> *The galaxy plan shows the four zones, which are interconnected through the 'Crown', the second circular road around the Matrimandir. From the Crown, twelve roads radiate outwards as part of the infrastructure.*

Some of them are accompanied by a succession of high-rise buildings, which constitute the so-called 'Lines of Force', essential for the framework of the city and for the integration of all access to the city center. But the plan is not finished. On the contrary, the city is still to be invented, everything has still to be done through the daily experience and rhythm of the Aurovilians. Apart from these lines of force, everything is flexible, nothing is fixed."

42. Except the fact that it was divided into four zones, there was no material as to how it will have to be developed and what are all the things to be included in each zone etc. Further, the master plan said to have been approved has come into force in 2010 which was published on 16.08.2010 and prior to that there was no plan as such which can be implemented as per law.

43. The allegation that there was substantial construction of township as envisioned in the galaxy model is not correct. The following Google earth imagery has been produced to prove that there was not much construction.

"a. Google earth imagery of the subject city area – with the Matrimandir at the centre, marking the city area is filed herewith. The constructions that have come up in the city area till date can be seen on the satellite imagery.

b. On the same imagery, the galaxy model has been superimposed – this shows how the city area will appear if the city is built according to the galaxy model.

c. On the same satellite imagery, the galaxy model has been overlaid translucently – to show in context how the existing constructions and the ultimate galaxy model compare."

44. Further, certain constructions have been made without any master plan as envisaged in law. There are certain residential buildings, schools, office, cultural, social infrastructure buildings in the white area and also have certain number of floors associated with it for example lines

of force buildings are long buildings that stretch upto 1000+ meters in length and are at their highest point at about 18 to 20 stories height, lowest point being 2-3 stories. According to Roger Anger these Line of Force buildings is one of the main defining element of the Galaxy Master Plan when it is detailed out. So the shape that we see in the plan as a certain area but to get the built up area one has to multiply with the number of floors. The entire constructive area has not been completed and as such, it cannot be said that the substantial portion of the township has been reached the plinth area level so as to get the exemption under 2004 notification. They have given the details of the construction and the built up area as follows:

	Galaxy	**Master Plan 2001**	**2021 Built**	**% Built**
Building Footprint	15,16,436	No building Footprints	1,42,117	9.37%
Road Lengths	No Roads	20.1 Kms	2.4 Kms	12%

45. A comparison of the galaxy with the present existing development will go to show that they have completed only 9.37% of building footprint and 12% of the road and the remaining portion has not been completed so far. So according to the applicant, this will come under the purview of the amendment notification of 1994 which came into force from 07.07.2004.

46. Considering the fact that this is scattered, sporadic and ad-hoc development would not entitle the 1st respondent to go ahead with the development on several 100 ha without Environmental Clearance which will amount to mockery of law. They have reiterated that the application will have to be allowed after accepting their contentions.

47. The 3rd respondent has not filed any statement.

48. Intervening parties have filed their written submissions.

49. Heard Mr. A. Yogeshwaran, the learned counsel for the applicant, Mr. R. Sankaranarayanan, Additional Solicitor General of India along with Mr. V. Chandrasekaran, Senior Panel Counsel for 1st respondent, Mr. G.M. Syed Nurullah Sheriff for 2nd respondent, Dr. D. Shanmuganathan for 3rd respondent.

50. The Learned Counsel for the applicant argued that the video clippings and other material produced by the applicant would go to show that there was only a galaxy plan envisioned by the MOTHER to be developed in that area as Auroville Foundation Village and there was no proper plan prepared. It was only a conceptual plan envisaged by MOTHER to develop that area into township covering large extent of land to attract international people to make this area as an international cultural township providing various employment opportunities for the people who are likely to settle in that village. The conceptual plan is having an idea of development of 1963 ha. out of which, only they were in possession of 778 ha. only. Further area has not been acquired or purchased so far.

51. Further, even at the time when MOTHER was alive, as directed by the MOTHER a tree plantation drive was made as the entire area was dry land with some water bodies and in order to protect the water bodies and avoid soil erosion, large number of trees were planted which are having more biological value and it has become a forest area. If the

extended meaning of forest is made applicable to this area as observed by the Hon'ble Apex Court in *T.N. Godvaraman* case, then Forest (Conservation) Act, 1980 will apply and the prior clearance is required for this purpose. Even assuming that no prior clearance was required for this purpose, considering the impact of the destruction of large scale green cover area without conducting an impact of such activity, will have great adverse impact on the environment as trees play a great role in protection of the environment providing clean air by absorbing carbon dioxide in the atmosphere and releasing oxygen which is most required component for healthy life of the people.

52. Further, the master plan even according to the 1st respondent was approved in 2001 and it was mentioned therein that it will come into effect only from the date of its notification and it was notified only in 2010 by the time 2006 Notification has come into effect and development that will be made to be in tune with the master plan approved and came into force will have to abide by the provisions of the EIA Notification, 2006. Since, there was no approved master plan prepared prior to 1994, any construction made in scattered or sporadic manner will not make it a township project. Further, there are no details available before this Tribunal what are all buildings constructed and at what time so as to ascertain as to whether the subsequent constructions were made after 2004 or after 2006 after the coming into force of amendment as well as further notification under EIA Notification.

53. The 2nd respondent has also not conducted proper enquiry on this aspect and as such opinion given by them on this aspect cannot be relied for the purpose of coming to the conclusion that there was no prior Environmental Clearance required. So, he prayed for allowing the application directing the 1st respondent to conduct environment impact assessment even assuming not admitting that the Environmental Clearance not required as the construction was prior to 2004 Notification and there was no change in the scope of the project besides considering the nature of impact that is likely to be caused on account of cutting the large scale trees in that area.

54. The learned counsel appearing for the applicant had relied on the decisions reported in **Hanuman Laxman Aroskar Vs. Union of India & Ors.**[2], **Keystone realtors Private Limited Vs. Anil V. Tharthare & Ors.**[3]and **T.N. Godavarman Thirumulpad Vs. Union of India & Ors.**[4] He had also relied on **Municipal Corporation of Greater Mumbai Vs. Ankita Sinha and Ors.**[5], **Goa Foundation & Anr. Vs. Union of India & Ors.** order dated 18.07.2013 [6] and **M.J. Irani Vs. State of Madras**[7] and **Sushanta Tagore & Ors. Vs. Union of India & Ors.**[8] in support of their case.

55. The Learned Counsel appearing for the intervenor who are supporting the applicants supported the case of the Original Applicants and the arguments advanced by the learned counsel for the Original Applicants.

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[2] **(2019) 15 SCC 401**
[3] **(2020) 2 SCC 66**
[4] **(1997) 2 SCC 267**
[5] **(2021) SCC Online SC 897**
[6] **M.A. No. 49 of 2013 in O.A. No. 26 of 2012**
[7] **(1967) 2 MLJ 253**
[8] **(2005) 3 SCC 16**

56. On the other hand, Mr. R. Sankaranarayanan, the learned Additional Solicitor General of India appearing for 1st respondent submitted that the grievance of the applicants in the application was that they are going to cut the trees and remove the forest area without obtaining clearance under the Forest (Conservation) Act, 1980 as it is a deemed forest. Only subsequently when this Tribunal has raised the question whether it is a township project and it will come under the purview of EIA Notification, then only by way of filing additional affidavit, they raised the question of prior Environmental Clearance without making any proper amendment of the application incorporating those aspects giving an opportunity to the 1st respondent to answer the same.

57. Further, this cannot be treated as forest for the purpose of Forest (Conservation) Act, 1980 as it was not shown as forest in any of the revenue records and it was not a spontaneous growth on larger extent as envisaged by Hon'ble Apex Court in *T.N. Godvaraman* case, so as to attract the definition of deemed forest to bring within the ambit of Forest (Conservation) Act, 1980. Further, the master plan as envisioned by MOTHER was prepared in the year 1968 and mathrimandir was constructed long ago even prior to 1994. Certain constructions were also made including schools and residential buildings where people are residing and large scale green area was also developed along mathrimandir. Laying down roads for right of approach cannot be said to be development which requires any approval under Town and Country Planning Act. For construction of road, there is no necessity of Environmental Clearance as well.

58. Further, even as per the provisions of the Auroville Foundation Act, 1988 in view of the non-obstante clause area of activities of the Foundation are to be governed by the provisions of this Act and they are not governed by any other law for the time being in force and as such they are outside the purview of the Town and Country Planning Act and also the Environment (Protection) Act, 1986.

59. Further, crown roads and rings road were part of the master plan which was approved in 2001 and major portion of the road has been constructed which was not opposed by the applicants or any person from that area. Further, once the master plan has been approved by the Competent Authority, there is no necessity to place the same before the resident assembly constituted under Act of 1988 as that is required only prior to preparation of the master plan and recommendations will have to be collected and the management committee has to take a decision on that. Further this was placed before the Ministry and the Ministry with consultation with the Central Town and Country Planning Authority has approved the master plan and as such there is no necessity to obtain any other approval for the township or lay out permission under the local laws.

60. Further, whether any approval has to be obtained for the layout under the local law is not coming under the purview of this Tribunal as Town and County Planning Act is not one of the enactments provided under Schedule attached to National Green Tribunal Act, 2010. Further, most of the construction was made prior to 1994 even before coming into enforce of EIA Notification, 1994 and at the time of 2004 Notification

came, the most of the construction reached the stage mentioned in the notification coming within the exemption category of obtaining any Environmental Clearance. So according to the Learned Additional Solicitor General of India, none of the contention raised by the applicant are applicable to them and the application lacks merits and the same is liable to be dismissed. He had relied on the decision reported in **Bengaluru Development Authority Vs. Mr. Sudhakar Hegde & Ors** [9] , **P. Karthikeyan & Ors. Vs. Commissioner - Coimbatore Corporation, Coimbatore & Ors.**[10], **Noida Near Okhla Bird Sanctuary, Anand Arya & Anr. Vs. Union of India & Ors.**,**T.N. Godavarman Thirumulpad Vs. Union of India & Ors.**[11] and **Project Director, Project Implementation Unit Vs. P.V. Krishnamoorthy & Ors.**[12] in support of their case.

61. Learned Counsel appearing for the intervenor supporting the 1st Respondent also more or less argued in tune with the submissions made by the Learned Additional Solicitor General of India. Learned Counsel also argued that the conceptual plan of township as envisioned by MOTHER came in the year 1968 and mathrimandir was constructed in the year 1968 itself and large scale construction including schools and buildings were constructed and those things were not challenged by the applicants. When applicants made some illegal constructions which was about to be removed, at that time, the applicants projecting themselves as environmentalist filed this application with malafide intentions and the applicants being a

[9] **Civil Appeal No.2566 of 2019**
[10] **2021 SCC Online Mad 5488**
[11] **(2011) 1 SCC 744**
[12] **(2021) 3 SCC 572**

persons residing in the place where they have no right, unauthorisedly they cannot claim the benefits.

62. Further, the Auroville Foundation Act, 1988 was challenged before the Hon'ble Apex Court and same has been upheld. He had relied on the decision of the Principal Bench in **Society for Preservation of Kausali and its Environ vs. Birds View Resorts & Ors.**[13] dated 30.05.2017 which was approved by the Hon'ble Apex Court in **M/s Narayani Guest House Vs. Society for Preservation of Kausali and its Environ & Ors.**[14]

63. Mr. G.M. Syed Nurullah Sheriff, the learned counsel appearing for the MoEF&CC argued that as per the information collected from the 1st Respondent, the 2nd Respondent is of the opinion that the township project was started prior to 1994 Notification and at the time of 2004 amendment of the EIA Notification, 2006, it has reached the plinth area level and it fall under the exemption category. If further activity (if any) to be started which fall under any of the item in the schedule to the EIA Notification, then it can be started only after obtaining prior Environmental Clearance (EC).

64. We have considered the pleadings, submissions made by the Learned Counsel for all the parties and perused the documents and precedents produced.

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[13] **O.A No. 69/2017 and other connected cases**
[14] **Civil Appeal No. 8343/2017 and Connected cases**

65. The points that arise for consideration are:-

(i) Whether the application is maintainable?

(ii) Whether it was barred by limitation?

(iii) Whether the intended activity of the 1st respondent requires any prior Environmental Clearance or clearance under the Forest (Conservation) Act, 1980 as claimed by the applicant. Even if they are not required, is there any necessity to issue any directions applying the *"Precautionary Principle"* to protect environment and if so, what are the nature of directions to be issued?

(iv) Relief and Costs.

POINTS:-

66. Before going into the merits of the case, let us discuss the precedents relied on by both sides.

67. In the decision reported in **Bengaluru Development Authority Vs. Sudhakar Hegde & ors.,**[15] the Hon'ble Apex Court observed that while Bengaluru Development Act, 1976 was enacted for the purpose of establishing a development authority for the development of Bengaluru City and adjacent area, 2006 notification embodies the notion that the development agenda of the Nation must be carried out

[15] **Civil Appeal No.2566 of 2019**

in compliance with the norms stipulated for protection of environment. BDA Act and 2006 Notification operating in different fields, it cannot be said that a site is deemed identified for the purpose of triggering the obligations of 2006 Notification upon the issuance of preliminary notification under Section 17 of BDA Act adopting a contrary interpretation would lead to absurd result where a project proponent is obligated to carry out the EIA process for scheme prior to grant of Government sanction and a final notification carrying the effect of proposed scheme. In this view of the matter, the prospective site is deemed to be identified only upon the final notification under Section 19 after the proposed scheme received the Government sanction under Section 18(3). The final notification under Section 19 (1) of the BDA Act was issued on 29.07.2007 following Government sanction for the acquisition of land. This being after coming into force of 2006 Notification, the contentions urged by the applicant (Bengaluru Development Authority) that the project commenced prior to coming into force of 2006 notification cannot be accepted. After considering all the aspects the Hon'ble Apex Court came to the conclusion that the project requires prior Environmental Clearance.

68. In the decision reported in **P. Karthikeyan and ors. Vs. Commissioner, Coimbatore Corporation, Coimbatore and Ors.**[16] the Full Bench of the Hon'ble Madras High Court, while considering the conflicting decision as to whether the micro compositing units can be set up in the parks, came to the conclusion that location of micro compost units or compost yard in a park or open recreational space can be held as permissible

[16] **2021 SCC Online Mad 5488**

deviation if it could be called as a deviation in the first place and the objection for its location, therefore have to be rejected as the same are out of tune with contemporary national thinking. As regards the upkeep and maintenance of compost yard is concerned, constitution of advisory committee is provided under Rule 23 and also the duties have been specified under various rules provisions. The rule also mandates the local authorities and village panchayats of census towns and urban agglomeration to frame bye-laws incorporating the same within one year from the date of the notification. Since no data was provided as to whether such rules have been framed, the Full Bench had issued following directions:

"DIRECTIONS:

250. Accordingly, the following directions are given to the State Government: -

(1) The Government is directed to form a Committee at the State, District, Municipal and Panchayat levels with the officials concerned at each level, monitoring the implementation of the SWM Rules, 2016.

(2) The Committees, apart from chosen officials, may also include a concerned member, from the neighbourhood wherever such MCCS or the Compost Yard is to be located.

(3) The Committees are responsible for monitoring the upkeep and maintenance of MCCS and the Compost Yards and any issues relating to improper upkeep and poor maintenance of MCCS, or Compost Yards, the Committees should be empowered to intervene and take immediate remedial action.

(4) Once the site for location of an MCC or other Compost Yard is identified and set up, thereafter, the objections regarding the proper maintenance of the park / recreational area from being spoiled by the operation of MCC, if raised, shall be addressed, with all earnestness.

(5) The officials who are incharge of MCCs and Compost Yards shall ensure that the disposal facility does not fall into disuse, resulting in the place becoming a dumping yard of garbage, leading to the degradation of the entire open space toxically detrimental to the citizens enjoyment of clean environment.

(6) Any negligence of officials towards proper upkeep and maintenance of MCC or Compost Yards, stern disciplinary action to be initiated promptly

against the officials concerned and if negligence is proved, appropriate punishment to be imposed on them.

(7) The Government is directed to issue a comprehensive Circular incorporating all necessary guidelines for the State / District / Panchayat Committees in implementation of the various facets of the SWM Rules, 2016, ensuring that the guidelines are strictly followed and implemented on the ground.

251. This Bench, in the conspectus of the above judicial discourse, answers the reference as follows.

252. Location of MCCs or the Compost Yard in the park / play field cannot be construed as Development in terms of the scheme of the Act, 1971 of the Combined. Development Rules, 2019, and therefore, any prohibition contemplated in the statutory rules and regulations does not apply to the implementation of the concept of solid waste management as envisaged in the SWM Rules, 2016.

253. The SWM Rules, 2016, are framed under the Central enactment, viz., the Environment [Protection] Act, 1986. The Rules thus prevail over the State laws to the solid waste extent of the implementation of the policies outlined towards management. Even otherwise, this Court does not see any palpable repugnancy between the SWM Rules, 2016 and the State laws.

CONCLUSION:

254. In the exact words of reference, implementation of SWM Rules, 2016, fall within the "permissible deviation" in larger public interest even in terms of the Tamil Nadu Town and Country Planning Act, 1971, read with the Development Control Rules framed thereunder.

255. The reference is answered accordingly."

69. In that decision, it was observed that Solid Waste Management Rules, 2016 are framed under Central enactment, namely, Environment (Protection) Act, 1986. The Rules thus prevail over the State laws to the extent of the implementation of the policies outlined towards Solid Waste management. Even otherwise, this Court does not see any palpable repugnancy between the Solid Waste Management Rules, 2016 and the State laws. It is also observed in the decisions that the implementation of the Solid Waste Management Rules, 2016 fall within the permissible deviation in larger public interest even in terms of the Tamil Nadu Town and Country Planning Act, 1971 read with the

Development Control Rules framed thereunder. This will not helpful to come to the conclusion that Auroville Foundation Act, 1988 will have any overriding effect on the provisions of Environment (Protection) Act, 1986 or other environmental laws.

70. The Auroville Foundation Act, 1988 was passed for the management of the properties of the foundation in an effective manner by the Governing body constituted under the said Act and Section 27 of the said Act says that the provisions of this Act shall have effect not withstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of law other than this Act or any decree or order of any Court, Tribunal or any Authority. Combined reading of the provisions of the Act will go to show that this is nothing but for management of the property and the implementation of provisions of this Act. As regards management or other activities connected with management are concerned, the provisions will have overriding effect, over any other provisions in any other law for the time being in force or any decree or order passed by the Court, Tribunal or Authority before coming into force of this Act. So, it cannot be said that this Act will have any overriding effect over the environmental laws, if any project or activity contemplated by the Foundation for the upliftment of the activities of the Foundation, if it attracts the prior Environmental Clearance, then EIA Notification, 2006 will prevail over the same as no Act will have any overriding effect on environmental laws which are intended for the purpose of protection of environment and the intention of the legislature while interpreting the non-obstante clause cannot be

extended for more than what was intended by the Act. So, under such circumstances, it is not possible to accept the contentions of the 1st respondent submitted through Learned Additional Solicitor General of India and the Learned Counsel for the intervenor who are supporting the 1st respondent that Auroville Foundation Act, 1988 will have overriding effect over environmental laws and the same will have to be rejected.

71. In the decision report in **In Re: Construction of Park at Noida near Okhla Bird Sanctuary, Anand Arya & Anr. Vs. Union of India & Ors. and T.N. Godavarman Thirumulpad Vs. Union of India and Ors.**[17] the Hon'ble Supreme Court had considered the question as to whether area in question can be treated as forest for the purpose of extended dictionary meaning of forest as envisaged in *T.N. Godavarman Thirumulpad's* case. The Hon'ble Apex Court observed that there was not even a single tree on any of the plots under acquisition. The records of the land acquisition proceedings, thus, complement the revenue record of 1952 in which the lands were shown as agricultural and not as jungle or forest. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene.

72. The Hon'ble Apex Court observed that in the above decision the court mainly said three things: one, the provisions of the Forest (Conservation) Act, 1980 must apply to all forests irrespective of the nature of ownership or classification of the forest; two, the word

[17] **(2011) 1 SSC 744**

"forest" must be understood according to its dictionary meaning and three, the term "forest land", occurring in section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. It is further reiterated that the term forest land occurring in section 2, will not only include `forest' as understood in the dictionary sense, but also an area recorded as forest in the Government record irrespective of the ownership. The Hon'ble Apex Court also agreeing with the contention of the respondent that to an extent Mr. Bhushan is right in contending that a man made forest may equally be a forest as a naturally grown one. He is also right in contending that non forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal application and must be examined in the overall facts of the case otherwise it would lead to highly anomalous conclusions.

73. But in the circumstances of the case mentioned therein, where it was not mentioned as forest in any of the records and it was only shown as agricultural land in revenue land since long time, the Hon'ble Apex Court came to the conclusion that certain man made plantation in that area cannot be treated as forest for the application of Forest (Conservation) Act, 1980. If certain trees were planted by a private party to raise a green cover in a private land which was neither shown as forest reserve or forest in the revenue records, do not notified, then provisions of Forest (Conservation) Act, 1980 will not be applicable to that case in such circumstances. Since, construction does not fall under item 8(a) and 8(b) of EIA Notification, the Hon'ble Apex Court also

came to the conclusion that it will not attract EIA Notification, 2006. It is further observed in that decision that planting of trees in agricultural/non-forest land being for the purpose of creating urban parks and not for the purpose of afforestation such trees being allowed to stand or grow for about 12 to 14 years when they were cut down to make the area clear for alleged project on forest land, then such plantation cannot be classified as forest land nor deemed forest and nor forest like area.

74. The Hon'ble Apex Court also observed that the satellite images tell us how things stand at the time the images were taken. We are not aware whether or not the satellite images can ascertain the different species of trees, their age and the girth of their trunks, etc. But what is on record does not give us all that information. What the satellite images tell us is that in October, 2006 there was thin to moderately dense tree cover over about half of the project site. But this fact is all but admitted; the State Government admits felling of over 6000 trees in 2008. How and when the trees came up there we have just seen with reference to the revenue and land acquisition proceedings records. Now, we find it inconceivable that trees planted with the intent to set up an urban park would turn into forest within a span of 10 to 12 years and the land that was forever agricultural, would be converted into forest land. One may feel strongly about cutting trees in such large numbers and question the wisdom behind replacing a patch of trees by large stone columns and statues but that would not change the trees into a forest or the land over which those trees were standing into forest land.

75. In the decision reported in **Project Director Project Implementation Unit Vs. P.V. Krishnamoorthy & Ors.** [18] while considering the direction being issued under the National Highway Authority Act, the Hon'ble Apex Court held that the said being a Central Act, the Union has power to give directions to the States as may appear to Government of India as necessary for the purpose of implementation of the provisions of the National Highway Act, 1956.

76. Prior Environmental Clearance or Forest Clearance is required only at the stage where final notification issued under Section 3(D) of National Highway Act, 1956. The dictum laid down is not applicable to the facts of this case as the road that is laid as crown road in the Auroville Foundation area cannot be treated as a National Highway or State Highway but at the same time it will amount to part of the development of the township and if prior Environmental Clearance is required for this project, then it will amount to preparation of the project which cannot be undertaken without obtaining prior Environmental Clearance. The definition of development as envisaged under Town and Country Planning Act, 1971 as such will not be applicable to EIA Notification, 2006. Section 2(13) of Tamil Nadu Town and Country Planning Act, 1971 defines development means carrying all or any of the works contemplated in a regional plan, master plan , detailed development plan or new town development plan prepared under this Act and shall include the carrying out of building, engineering, mining or other operation in and over or under the land or making any of the material changes in the use of any building or

[18] **(2021) 3 SCC 572**

land provided that for the purpose of this Act the following operations or users of land shall not be deemed to involve development of the land that is to say a) carrying out of any temporary work for maintenance, improvement or other alterations of any buildings being works which do not materially affects the external appearance of the building, b) carrying out by any local authority or the temporary works required for the maintenance of improvement of the road or works carried out on land within the boundaries of the road, c) the carrying out by a local authority or statutory undertaker of any temporary works for the purpose of inspecting, repair or renewal of any sewer, mains pipe, cable or other apparatus including breaking up of any other land for that purpose, d) the use of any building or other land within the cartilage of any dwelling house for any purpose incidental to employment of dwelling house as such and e) use of any land for agricultural, gardening or forestry including afforestation and the use for any purpose specified in this class of this proviso of any building occupied together with the land so used.

77. In order to attract the exemption, there must be road in existence and improvement of road is required and if carrying out of that improvement will not amount to development which requires any permission under this Act. But in the EIA Notification, 2006, it was specifically mentioned that prior Environmental Clearance (EC) is required before any construction work or preparation of land by the project management, except for securing the land, is started on the project activity. Any other activity pertaining to the project cannot be carried out if it falls under any of the items provided under the

schedule without getting prior Environmental Clearance.

78. In the decision report in Hanuman **Laxman Aroskar Vs. Union of India &Ors.**[19] the Hon'ble Apex Court while considering the impact of the compliance of the provisions of the EIA Notification observed that any material suppression of fact will amount to violation of the statutory provisions and if there was no occasion for Expert Appraisal Committee or the issuing authority to consider those aspects which will have some impact on environment, then it cannot be said that there was proper appraisal of the project. The Hon'ble Apex Court also raised the necessity for evolving an environmental jurisprudence for the purpose of protecting environment. That was a case where the existence of certain forest area was not mentioned while applying for Environment Clearance by the project proponent for establishing an Airport in Goa and Environmental Clearance granted was challenged before the National Green Tribunal and National Green Tribunal approved the same which was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court set aside the Environmental Clearance granted and directed to conduct fresh appraisal.

79. In the decision reported in **Key Stone Realtors Private Limited Vs. Anil V. Tharthare & Ors.**[20]**,** the Hon'ble Apex Court has held that if the project proponent wanted to make any change in the earlier Environmental Clearance (EC) granted, even if he want to reduce the extent of construction than the earlier permission of construction, he cannot do the same, without obtaining prior Environmental Clearance

[19] **(2019) 15 SCC 401**
[20] **(2020) 2 SCC 66**

(EC), as it will amount to modification or expansion of the existing project and in that case, it was further observed that in such case, they will have to file a fresh and mere amendment without following the procedure under the EIA Notification, 2006 will not be sufficient.

80. In the decision reported in the **Municipal Corporation of Greater Mumbai Vs. Ankita Sinha & Ors.**[21], the Hon'ble Apex Court while dealing with the powers of the National Green Tribunal, observed that "*Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties. Another distinguishing feature of the environmental forum is on the aspect of locus standi which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution. The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. The NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its*

[21]**2021 SCC Online SC 897**

adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi- dimensional environmental issues allows for an all- encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise."

81. Further, it was also observed that *"The NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated later. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "dispute", but the formulation of decisions."*

82. It was also observed that the Tribunal has to apply the principles of *"Sustainable Development"*, *"Precautionary Principle"* and *"Polluter Pays"*. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other 'decisions' or 'orders' to governmental authorities or polluters, when they fail to "to anticipate, prevent and attack the causes of environmental degradation". Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out

preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non- adversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, 'The Nature of the Judicial Process', stated thus, "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

83. It was also observed in the decision regarding the role of the NGT in promoting environmental justice and environmental equity. Further, the Hon'ble Apex Court also observed in that decision that how far the environment is important as part of Right to Life providing clean air and water as enshrined under Article 21 of the Constitution of India and it has become the duty of the NGT to ensure clean environment which is part of Right to Life and also part of human right to have healthy environment.

84. After discussing about the necessity of establishment of National Green Tribunal and its role in protecting environment as expected under the statute, came to the conclusion that it must be given the power of taking Suo Moto cases on the basis of the letter petition as well as media reports and exercising that right and achieve the purpose as provided under the Rules.

85. In the decision reported in **Goa Foundation & Anr. Vs. Union of India & Ors.** [22], the Principal Bench of National Green Tribunal after analyzing the provisions of the National Green Tribunal Act, 2010, observed that "*The very Preamble of this Act is a sufficient indicator of the jurisdiction that was to be vested in the Tribunal. The issue relating to environmental protection and conservation was one of the paramount pillars, amongst others, of the adjudicatory process by the Tribunal. It was expected to dispose of cases relating to above matters expeditiously*".

86. It was also observed in that decision that "*Under the scheme of the Act, an anticipated action will also fall within the ambit of the jurisdiction of the Tribunal. Section 20 of the NGT Act provides that, while deciding cases before it, the Tribunal shall take into consideration the three principles – principle of sustainable development, precautionary principle and the polluter pays principle. The precautionary principle would operate where actual injury has not occurred as on the date of institution of an application. In other words, an anticipated or likely injury to environment can be a sufficient cause of action, partially or wholly, for invoking the jurisdiction of the Tribunal in terms of Sub-sections (1) and (2) of Section 14 of the NGT Act. The language of*

[22]**M.A. No.49 of 2013 in O.A. No.26 of 2012**

Section 20 is referable to the jurisdiction of the Tribunal in terms of Sections 14 and 15 of the Act. The precautionary principle is permissible and is opposed to actual injury or damage. On the cogent reading of Section 14 with Section 2(m) and Section 20 of the 38 NGT Act, likely damage to environment would be covered under the precautionary principle, and therefore, provide jurisdiction to the Tribunal to entertain such a question."

87. The Tribunal need only to consider whether it is a case of civil nature and whether the allegations in the application raises a substantial question of environment and if these aspects are available, then Court will get jurisdiction to entertain the case.

88. While considering the question of forming a new road as part of Mylapore and Teynampet Area Town Planning Scheme and when a notification was issued under Section 12 of the Town and Country Planning Act, when the same was challenged before the Hon'ble High Court of Madras and the Hon'ble High Court of Madras in **M.J. Irani Vs. State of Madras**[23] observed that the purpose of Town Planning Act is to regulate the development of towns, so as to secure their present and future inhabitants sanitary conditions, amenity and convenience. One of the most important things for consideration in the preparation of a Town Planning Scheme is the formation of roads. There are three kinds of roads to be considered: 1) Main traffic roads, 2) the secondary roads and 3) the residential road. In the present case, the scheme envisages various roads to be formed mainly with a view to have inter communication with the existing roads, for the purpose of making it

[23] **(1967) 2 MLJ 253**

convenient for the residents to reach the main traffic road. But originally when the plan was prepared, there was real and proved need for the particular development proposal namely, the formation of EE Road to connect the BB Road. But thereafter, it went underwent lot of changes and on the facts of the case, the Hon'ble High Court came to the conclusion that formation of the road through the property of the applicant is not necessary and set aside the proposal for acquisition.

89. It was also observed that whenever there is a scheme approved and sanctioned and if there is any variation required, the subsequent scheme also should be published and sanctioned in accordance with provisions of the Act.

90. In the decision reported in **Sushantha Tagore & Ors. Vs. Union of India & Ors.**[24], while considering the question of certain construction of buildings of both residential and commercial complex in Visva – Bharati University, Santiniketan area, considering the scope of the Visva Bharati Act, 1951, the West Bengal Town and Country (Planning and Development) Act, 1979 and the West Bengal Estates Acquisition Act, 1953 and also after considering the scope of parliaments debates while enacting the Visva Bharati Act, the Hon'ble Apex Court had observed that "*The Parliamentary Debates, some of which we have noticed hereinbefore, clearly go to show that the Act was enacted with particular objectives in view. Such statutory objects could not have been given a go by. It is not suggested that the Santiniketan should remain as it was in 1921 but it cannot be permitted to become full of concrete jungles and industrial hub. For*

[24]**(2005) 3 SCC 16**

carrying out further constructional activities, it may not be necessary for a builder to apply to the University for seeking its permission but the local-self government which is responsible therefor must take into consideration the salutary principles laid down in the pollution control laws as well as the Act. The land use and future planning of Santiniketan must be done in such a manner so that the changes be brought about which would not be beyond the recognition of the poet as also the provisions of the Act. SSDA in that sense must distinguish itself from the other development authorities. It has an extra-burden to shoulder. It cannot shut its eyes to the provisions of the Act and the object and purport it seeks to achieve. It cannot ignore the environmental impact assessment made by the Board. It is one thing to say that the SSDA may permit small constructions to be made by the owners of the land or additions or allow alterations to the existing building for residential purposes but it is another thing to say that it would not consider the effect of the changes which may be brought about by turning Santiniketan into a commercial and industrial hub."

91. Further, in **Society for Preservation of Kasauli and its Environs Vs. Bird's View Resort and Ors.**[25] **(O.A. No.69 of 2017 and Other connected cases)** in respect of number of unauthorized constructions made in Kasuali area, the Principal Bench of National Green Tribunal, New Delhi came to the conclusion that any construction made in violation of environmental laws should not be permitted to continue and direction to demolish the buildings were ordered, apart from ordering the persons who made the unauthorized construction to pay compensation and certain other further directions were also issued.

[25] **MANU/GT/0053/2017**

92. One of the resort owners namely, **M/s. Narayani Guest House** have challenged the same by filing **Civil Appeal No.8343 of 2017 and other connected case**, the Hon'ble Apex Court confirmed the directions of the National Green Tribunal including imposition of compensation and granted time for payment of amount and also directed the appellants to obtain Consent to Operate before proceeding further. Further directions were also given to consider the application filed by the parties for Consent to Operate within a time frame provided in the order.

93. In the decision reported in **T.N. Godavarman Thirumulpad Vs. Union of India & Ors.**[26], the Hon'ble Apex Court had extended the meaning of forest as understood in the dictionary meaning and any restrictive definition given, will have an adverse impact on environment. It was observed therein that the Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecologically imbalance and therefore, the provisions made therein for the conservation of Forest and for matters connected herewith must apply to all forest irrespective of nature of ownership or classification thereof. The word "forest: must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it

[26] **(1997) 2 SCC 267**

has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.

94. With the above principles in mind, the case in hand has to be considered.

95. As regards maintainability of the application is concerned, when a substantial question of environment arises for consideration and when the applicant points out certain alleged violations of environmental laws in implementing a project by the project proponent, then the Tribunal will be getting jurisdiction to entertain the application under Section 14 and 15 of the National Green Tribunal Act, 2010. In this case, the case of the applicant was that the 1st respondent is trying to cut large number of trees from the property without making any impact assessment for the purpose of laying the crown road as part of their project without complying with the provisions of Forest (Conservation) Act, 1980. Whether the provisions of the Forest (Conservation) Act, 1980 will apply or not is a matter to be considered after hearing both sides and it is for the judicial interpretation of the Tribunal as to whether this will come under the extended definition of forest as envisaged by the Hon'ble Apex Court in *T.N. Godvaraman's* case. Further during course of hearing, this Tribunal also raised a question as to whether, if it is treated as a township project without obtaining prior Environmental Clearance whether they can proceed with the

project and that is also a substantial question to be considered by the Tribunal, though such an issue was not raised by the applicant in the Original Application but by way of additional affidavit this point was also raised as additional ground.

96. In the case of environmental issues, it is not necessary that all points must be raised by the applicant. If during the course of hearing incidentally if those arise for consideration, then that can be considered by the Tribunal but that can be decided only after giving an opportunity to the other side to meet the issue and it should not be taken as a surprise for them and no decision can be taken behind their back. So in this case, the Tribunal has raised a question and the both sides were heard on the aspect and no prejudice will be caused to both the sides even if the Tribunal consider that aspect in the absence of pleadings in the Original Application but subsequently it was raised by way of additional affidavit by the applicant.

97. Further, it was argued by the learned Additional Solicitor General appearing for the 1st Respondent and the learned counsel appearing for the intervenor who is supporting the activity of the 1st Respondent that the vision project was envisaged in 1968 and various constructions were made in the property and the same was not challenged by the applicant. Further, the major portion of the crown road was constructed and only a small portion has to be constructed and since it was touching the property in the possession of the applicant, in order to protect his interest of unauthorized occupation that they have filed the application.

98. According to the learned counsel appearing for the 1st Respondent that the cause of action first arose long ago and they have not come within six months.

99. On the other hand, the learned counsel appearing for the applicant and the learned counsel appearing for the intervenor who are supporting the applicant argued that it was a continuous violation and if there is any violation of statutory rules and proceeding with the work without obtaining certain permissions, then it will be continuing and recurring cause of action and the application can be filed whenever the violations were repeated.

100. It may be mentioned here that though the vision statement of the MOTHER was envisaged in the year 1968, there was no proper layout plan prepared and it was not got approved either by the authorities or even by the foundation. They were relying on the galaxy plan that was envisioned by the MOTHER as a basic document for the purpose of proceeding with the township project.

101. Though the applicant had a case that the 1st Respondent had not prepared any proper layout of the proposed township project envisioned by the MOTHER and they have got a specific case that there was no blueprint for the proposed township project, the 1st Respondent has not produced any document to show that there was a proper layout made out for the purpose of proceeding with the proposed envisioned project of MOTHER of Auroville International Township. Even the so called township scheme said to have been

approved in 2001 and notified in 2010 also did not speak about any proper preparation of the plan. It only explains the project aspect and it was also mentioned in the document at several places, that proper annual plan will have to be prepared for the purpose of carrying out the project and every five year, the project will have to be reviewed and proper technical assistance will have to be obtained for the purpose of carrying out the project. There was no document produced by the 1st Respondent even to show these aspects that such an exercise has been done by the foundation.

102. It was also in a way admitted that when there was some dispute regarding mismanagement of foundation, the Central Government intervened in the matter and the management was taken over on the basis of the statute by name Auroville Foundation Act, 1988. Even, at that time, they have not prepared any plan on the basis of ground reality, but they were only anticipating the implementation of vision plan envisioned by the MOTHER. Further, when the environmental laws are violated and any constructions / activities are being done in violation of environmental laws, each violation will give raise to a fresh cause of action for the applicant who wants to protect the environment. Further, in this case, the application was filed at the time when they were about to cut more than 3,000 trees from the area, claiming to be a forest as per the extended dictionary meaning of forest directed by the Hon'ble Apex Court in **T.N. Godavarman's** case and any cutting of tree will have to be done only with the prior clearance under the Forest (Conservation) Act, 1980, as it will be deemed forest falling under the provisions of the Forest (Conservation) Act, 1980. Admittedly, when

certain actions were taken by the 1st Respondent to cut and remove certain trees, the present application has been filed, alleging violation of environmental laws. So under such circumstances, it cannot be said that the action of the applicant is barred by limitation and the contention of the contesting respondents that it is barred by limitation is rejected.

103. It is an admitted fact that MOTHER had envisioned a cultural township in a particular fashion as a dream of MOTHER, which MOTHER wanted to be implemented through her disciples. It is also an admitted fact that MOTHER had envisioned to develop a township of having an extent of 1963 ha which will have to be divided into four zones, namely, Residential Zone, International Zone, Industrial Zone and Cultural Zone. Though, a galaxy plan was prepared at the time when MOTHER was alive during 1968 and some construction like mathrimandir and some residential and school buildings were constructed as part of the project in a sporadic manner, it cannot be said that there was proper layout plan prepared for this purpose. It is true that the crown road, ring road etc. were envisioned in the galaxy plan and as such they have not prepared any scientific layout of the entire project area locating the places of each zone and nature of constructions and extent of constructions they are expected to make, width of the road etc. A reading of the entire the supposed Auroville Universal Township Master Plan relied on both sides said to be approved by the Central Government in 2001 and which was published in the gazette in 2010 the details extracted above were not mentioned in the document, though certain anticipated estimate of

expenditure was mentioned in crores. Unless these things were envisaged and proper master plan is prepared with lay out of the places locating the zones and the extent of construction, the plinth area of the construction that they are going to make in each zone, what is the nature of industrial activities that they are going to permit etc are required for the purpose of complete impact assessment of the township. There was no case for 1st respondent that they have made any impact assessment before envisaging the project and any study was conducted on that basis. So under such circumstances, the submission made by the Additional Solicitor General that the township was envisaged in 1968 and it was started long ago and as such the submission made by the Learned Counsel for the applicant that no impact assessment study conducted is without any basis cannot be accepted.

104. The regime of Environmental Clearance was brought for the first time in 1994 by way of EIA Notification 1994. The building concept was not there within the regime of Environmental Clearance notification. In view of the direction issued by the Hon'ble Apex Court in W.P (C) No. 725/1994 with I.A. No. 216 to 251 in W.P. No. 4677/1985 and also the decision of Hon'ble Madras High Court in W.P No. 33493/2003 and W.P. No.35205, 3317, 35961, 35692 and 35852 of 2005, the MoEF&CC had decided to amend the EIA Notification, 1994 and issued EIA Notification (amendment) of 2004 dated 07.07.2004 including certain projects intervals "(g) any construction project falling under Entry 31 of Schedule 1 including new township, industrial township, settlement colonies, commercial complexes, hotel complexes, hospital and office

complexes for 1000 persons or below or discharging sewage of 50,000 litres per day or below or with an investment of 50 crore or above and (h) the construction project were included in respect of any industrial estates following under Entry 32 of Schedule I including estate accommodating industries in an area of 50 ha or below but excluding the industrial estate irrespective of the area if the pollution potential is high."

105. An explanation was added to the same whereby the following were added "new construction projects which were undertaken without obtaining clearance required under this notification and where construction work has not come to the plinth level shall require clearance under this notification with effect from 07.07.2004. In case of industrial estate which were undertaken without obtaining the clearance required under this notification and where the construction work has not commenced or the expenditure does not exceed 25 per of total sanctioned cost shall require clearance under this notification with effect from 7th day of July, 2004."

106. Any project proponent intending to implement the proposed project under Sub-Section (g) and (h) in a phased manner or in a module shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification.

107. It is an admitted fact that it is a township project intended to extend for an area of more than 50 Ha. viz., 1963 Ha of land. Further, they want to have four zones viz., Residential, International, Industrial and

Cultural Zones. Admittedly, they have not obtained 1963 Ha of land, but they are in possession of 778 Ha. of land only. They have no idea as to when they are going to acquire the entire land and how they visualized to complete the project envisioned by the MOTHER for the total extent of land.

108. Further, it is also an admitted fact that for the first time, the building projects and township projects were brought under the regime of Environmental Clearance (EC) by way of amendment to the EIA Notification, 1994 in 2004 by Notification dated 07.07.2004. If certain township projects were started prior to 2004 and if it reached the plinth area level, then they need not obtain Environmental Clearance (EC), but they have not achieved the exemption level, then they will have to obtain Environmental Clearance (EC). Further, in 2006, EIA Notification, 1994 was superseded and by virtue of Item 8 (a) & (b), the building projects including the township project was brought under the regime of Environmental Clearance (EC). It is true that those entries also exempt certain activities which have already been completed and only for expansion of the project, they will have to obtain prior Environmental Clearance (EC).

109. The question in this case is whether it can be treated as a proper township project, for which, a project plan has prepared known to law and it has been put into action for the purpose of claiming the exemption. Admittedly, there was no approved layout plan prepared covering the entire township project of 1963 Ha or even the 778 Ha in their possession. Certain constructions were made on the basis of the

envisioned galaxy plan which was not even approved by the authorities, after the Auroville Foundation Act, 1988 was passed.

110. So under such circumstances, there is some force in the submission made by the learned counsel appearing for the applicant that it cannot be treated as a proper township project approved by the authorities known to law which has been put into action.

111. Admittedly, even the galaxy plan envisioned by the MOTHER was approved by the Central Government in the year 2001. But it was specifically mentioned in the Letter of Approval that it will come into force only after it was notified and it was notified only on 16.08.2010 by the time, 2004 and 2010 Notifications have come into effect. Even if it is treated as approved plan in 2001, they ought to have applied for Environmental Clearance (EC) as required under EIA Notification, 2004.

112. Further, in the decision reported in **Bengaluru Development Authority Vs. Sudhakar Hegde**[27], it was observed that only when the final notification was issued, it was said to be come into operation and only thereafter, they will have to apply for Environmental Clearance (EC). The Hon'ble Apex Court rejected the contention that even when the draft notification issued, the project was said to be started and as such, the EIA Notification is not applicable was not accepted by the Hon'ble Apex Court. If that analogy is applied, in this case, the plan was approved in 2001 and it was notified only in 2010 and at the time

[27] **Civil Appeal No.2566 of 2019**

when it was notified, the EIA Notification, 2006 was in vogue and they ought to have obtained Environmental Clearance (EC) for this purpose. We do not want to demolish the constructions already made from 1968 onwards which was done on the basis of some broad idea of township on the basis of the galaxy plan which cannot be said to be an approved plan after taking into account all environmental impact and other aspects.

113. So under such circumstances, without disturbing the development already taken place, if any further development will have to be done in respect of construction or other development, the 1st Respondent is not entitled to proceed with the project and the 1st Respondent has to prepare a proper layout of the township showing the existing structures already made and also future constructions and its extent, plinth area of construction and nature of activities that they are expected to incorporate, the quantity of waste that is to be generated, the water requirement, how they are going to meet all those aspects and the facilities to be provided for disposal of the waste generated and in the industrial zone, what is the nature of industries to be intended for and how the waste likely to be generated including effluents, if any, are to be dealt with in an environment friendly manner, after preparing the EIA Report on these aspects. If they want to do the work in phased manner, dividing the activities, they must also mention in how many phases they are going to complete it and each phase, what is the nature of work that they are going to undertake, etc.

114. We are not in agreement with the stand taken by the MoEF&CC, as they came to the conclusion that the project was started even prior to 1994 Notification and that will fall within the exempted category of 2004 Notification, without ascertaining the ground reality and relying only on the information collected from the 1st Respondent. But at the same time, they also mentioned that if any other activities will have to be done and industrial or other zones will have to be established even within the township, then they will have to apply for Environmental Clearance (EC) for that purpose. If it is in exempted category as according to them, then there is no necessity for obtaining Environmental Clearance (EC), as the entire plan has been considered by them. But that was not the case here.

115. So under such circumstances, the stand taken by the MoEF&CC that no Environmental Clearance (EC) is required appears to be without considering the ground reality and also without considering the documentary evidence, if any, available in this regard. Even, they do not have a case that they have verified the documents and satisfied that there was approved township plan prepared in the practical sense which was put into action even prior to 1994 and prior to 2004 Notifications.

116. So under such circumstances, we hold that any further activity that will have to be done by the 1st Respondent can be permitted to be carried out only after obtaining necessary prior Environmental Clearance (EC).

117. As regards the disputed crown road is concerned, admittedly, a major portion of the crown road has been completed and only a small portion will have to be completed by them. If it is not allowed to be completed, then there will be some hardship caused. So, considering it as an exceptional circumstance, as some constructions have been made, for which, certain facilities has to be provided with right of way, this road will have to be permitted to be completed.

118. The question as to whether it is a forest as envisaged in **T.N. Godavarman's** case, on the basis of the subsequent decision of the Hon'ble Apex Court in **Okhla Bird Sanctuary's** case, it cannot be treated as forest, as in any of the Government documents produced, it was not treated as forest and not even shown as forest and admittedly, it was manmade plantation of some species. So, it will not come under the definition of forest for the purpose of obtaining Clearance under the Forest (Conservation) Act, 1980. But at the same time, one will have to visualize the vision of the MOTHER when they planted the trees of such a nature which are intended for the purpose of attracting large scale biological resources and also for the purpose of protecting soil erosion etc. Further, it is seen from the photographs produced by the applicant and also by the project proponent that even when the right of ways were provided through this densely vegetated area, care was taken for the purpose of protecting the green cover that has been developed on either side of the right of ways provided.

119. Further, the MOTHER never intended to destroy the green cover for the purpose of making the construction as well, as far as possible, as MOTHER was aware of impact of planting of trees on Earth and how it is playing a role in protecting environment. There was no impact assessment made by the authority viz., the 1st Respondent as to how many trees will have to be cut and what will be the impact of cutting of trees in the project area. They also did not consider the question as to whether cutting of trees can be minimized before proceeding with the construction of road.

120. So under such circumstances, we feel that some mechanism will have to be evolved to ascertain as to whether the number of trees can be minimized and whether taking into account the necessity of road or right of way, the width of the way/road can be reduced in such a way in those areas where large tree cover is there to minimize cutting of trees. For that purpose, we feel that a committee can be appointed by this Tribunal which can inspect the area and find out as to whether any small deviation or reducing the width of the proposed crown road can be made, so as to minimize the number of trees to be cut and what are the remedial measures to be taken, if the proposed tree cutting is essential considering the likely impact of cutting of trees etc.

121. So, in order to achieve the purpose of protecting environment and applying the "*Precautionary Principle*", we feel that Joint Committee can be constituted with the District Collector of the concerned area who is supposed to be the Chairman of the District Green Committee constituted by the Government of Tamil Nadu, based on the directions

issued by the Hon'ble High Court of Madras in one of the writ petition dealing with cutting of trees and granting permission in this regard for public purposes and other experts. Though it was said to be a private project of the foundation, but taking into the fact that the entire property was vested with the Central Government by virtue of the Auroville Foundation Act, 1988, then it will be of public character and nobody can claim any proprietary right over the same, as the entire management is being done on the basis of the provisions of Auroville Foundation Act, 1988 and prior approvals are also required for the purpose of carrying out certain aspects, for which, funds are also provided by the Central Government from the Ministry of Human Resources.

122. So under such circumstances, we feel it is necessary to appoint a Joint Committee comprising of **(i)** the District Collector who is the Chairman of the District Green Committee of the concerned district along with **(ii)** the Forest Officer not below the rank of Conservator of Forest, as deputed by the Principal Chief Conservator of Forests (Head of Forests Force), State of Tamil Nadu to inspect the area in question and ascertain whether any modification can be made in the width of the road or by slight realignment (if any) required, so that the number of trees to be cut can be minimized, find out whether there is any water body existing within that area and if that be the case, how the road will have to be constructed without obstructing the water flow by providing elevated bridge or other methodology without affecting the water flow inside the project area and give their recommendations to the 1st Respondent who is directed to carry out the recommendations

and complete the construction of the crown road alone on the basis of the recommendations given by the committee appointed by this Tribunal. The Joint Committee is directed to submit a report to the 1st Respondent within a period of two months and thereafter, the 1st Respondent is directed to carry out the work in compliance with the recommendations made by the Committee. Till then they are directed not to cut any further trees from the property. However, the foundation can carry on its crown road work in stretches where there are no trees.

123. So under such circumstances, we feel that the matter can be disposed of by giving the following directions:-

a. The 1st Respondent is directed to prepare a proper township plan either in respect of 778 Ha which is in their possession now or in respect of 1963 Ha which was visualized by the MOTHER by identifying the locations where each zone will have to be located, where the roads will have to be laid showing the location of the ring roads with their width and further road, if any, to be constructed, the nature of industries and other activities which they are expected to establish in the township and if it is not going to be implemented as one phase, how many phases in which they are going to complete the project and then apply for Environmental Clearance (EC) as it will fall under Item 8 (b) of the EIA Notification, 2006 as amended from time to time. Till then they are directed not to proceed with further construction in the project area.

b. Considering it as an exceptional circumstances, even before obtaining Environmental Clearance (EC) for further activity, we are permitting the 1st Respondent to complete the crown road on the following conditions:-

- The Joint Committee appointed by this Tribunal viz., **(i)** the District Collector who is the Chairman of the District Green Committee of the concerned district along with **(ii)** the Forest Officer not below the rank of Conservator of Forest, as deputed by the Principal Chief Conservator of Forests, (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu to inspect the area in question and ascertain whether by reducing the width of the road at suitable places or by slight realignment (if any) required, so that the number of trees to be cut can be minimized so that the vision of the MOTHER of creating a green cover in that area can be protected.
- The Joint Committee is also directed to ascertain as to whether there are any water bodies/streams exists in that area and if the road passes through the water body, then what is the manner in which the road will have to be constructed by elevation without affecting the water body/water flow or a bed level causeway with box type of vents will suffice. If such a recommendation is made, that also will have to be

implemented, and the 1st Respondent is to undertake the construction as suggested by the committee.

- The Joint Committee is directed to complete the process and submit the report to the 1st Respondent **within a period of two months** and on receipt of the same, the 1st Respondent is directed to carry out the crown road work, in the impugned area with tree cover, strictly in accordance with the recommendations made by the Joint Committee.
- Till that exercise is completed, the 1st Respondent is directed not to cut any further trees from the property. The 1st Respondent is at liberty to undertake the crown road work in the remaining stretches where there are no trees. The 1st Respondent is also at liberty to take action against unauthorized occupations, if any, strictly in accordance with the law in force.

c. The 1st Respondent is also directed to plant trees in the **ratio of 1 : 10** for the number of trees to be cut, and the species to be recommended by the Joint Committee may be considered for planting either on the side of the road or other area identified by the Joint Committee, in order to protect environment and also to maintain the green cover in that area.

124. The points are answered accordingly.

125. In the result, this Original Application is allowed in part and disposed of with the following directions:-

(i) The 1st Respondent is directed to prepare a proper township plan either in respect of 778 Ha which is in their possession now or in respect of 1963 Ha which was visualized by the MOTHER by identifying the locations where each zone will have to be located, where the roads will have to be laid showing the location of the ring roads with their width and further road, if any, to be constructed, the nature of industries and other activities which they are expected to establish in the township and if it is not going to be implemented as one phase, how many phases in which they are going to complete the project and then apply for Environmental Clearance (EC) as it will fall under Item 8 (b) of the EIA Notification, 2006 as amended from time to time. Till then they are directed not to proceed with further construction in the project area.

(ii) Considering it as an exceptional circumstances, even before obtaining Environmental Clearance (EC) for further activity, we are permitting the 1st Respondent to complete the crown road on the following conditions:-

a. The Joint Committee appointed by this Tribunal viz., **(i)** the District Collector who is the Chairman of the District Green Committee of the concerned district along with **(ii)** the

Forest Officer not below the rank of Conservator of Forest, as deputed by the Principal Chief Conservator of Forests, (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu to inspect the area in question and ascertain whether by reducing the width of the road at suitable places or by slight realignment (if any) required, so that the number of trees to be cut can be minimized so that the vision of the MOTHER of creating a green cover in that area can be protected.

b. The Joint Committee is also directed to ascertain as to whether there are any water bodies/streams exists in that area and if the road passes through the water body, then what is the manner in which the road will have to be constructed by elevation without affecting the water body/water flow or a bed level causeway with box type of vents will suffice. If such a recommendation is made, that also will have to be implemented, and the 1st Respondent is to undertake the construction as suggested by the committee.

c. The Joint Committee is directed to complete the process and submit the report to the 1st Respondent **within a period of two months** and on receipt of the same, the 1st Respondent

is directed to carry out the crown road work, in the impugned area with tree cover, strictly in accordance with the recommendations made by the Joint Committee.

d. Till that exercise is completed, the 1st Respondent is directed not to cut any further trees from the property. The 1st Respondent is at liberty to undertake the crown road work in the remaining stretches where there are no trees. The 1st Respondent is also at liberty to take action against unauthorized occupations, if any, strictly in accordance with the law in force.

(iii) The 1st Respondent is also directed to plant trees in the **ratio of 1 : 10** for the number of trees to be cut, and the species to be recommended by the Joint Committee may be considered for planting either on the side of the road or other area identified by the Joint Committee, in order to protect environment and also to maintain the green cover in that area.

(iv) Considering the circumstances, parties are directed to bear their respective costs in the application.

(v) The Registry is directed to communicate this order to the members of the Joint Committee appointed by this Tribunal, the Principal Chief Conservator of Forests (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu, the Ministry of Environment,

Forests & Climate Change (MoEF&CC) and the Additional Chief Secretary to Government, Department of Environment, Forests & Climate Change for their information and compliance of directions.

126. With the above observations and directions, this Original Application is disposed of.

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

O.A. No.239/2021 (SZ)
28th April 2022. AM, Mn.