

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

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**ORIGINAL APPLICATION No. 145/2017/EZ
(M.A. No. 13/2021/EZ)**

IN THE MATTER OF:

**Centre for Environment Protection (CEP),
B-27/1, Tuikual South,
Aizawl, Mizoram – 796001,
Represented by its Chairman,
Mr. A C Zonunmawia, Aizawl, Mizoram,**

....Applicant(s)

Versus

- 1. Union of India,
Through Secretary,
Ministry of Tourism,
Govt. of India,
C-I Hutments, Dalhousie Road,
New Delhi – 110011,**
- 2. State of Mizoram,
Through Chief Secretary,
Govt. of Mizoram,
New Capital Complex,
Aizawl, Mizoram – 796001,**
- 3. The Secretary,
Govt. of Mizoram,
Department of Tourism,
Aizawl, Mizoram – 796001,**
- 4. The Director,
Department of Tourism,
Govt. of Mizoram,
Aizawl, Mizoram – 796001,**

5. **The Secretary,**
Ministry of Environment, Forest and Climate Change,
Paryavaran Bhavan, Jorbagh Road,
New Delhi – 110003,
6. **The Principal Secretary,**
Govt. of Mizoram,
Department of Environment, Forest and Climate Change,
Aizawl, Mizoram – 796001,
7. **The Principal Chief Conservator of Forest,**
Department of Environment, Forest and Climate Change,
Govt. of Mizoram,
Aizawl, Mizoram – 796001,
8. **The Divisional Forest Officer,**
Darlawn Forest Division,
Govt. of Mizoram,
Darlawn, Mizoram – 796111,

....Respondent(s)

COUNSEL FOR APPLICANT:

Ms. Paushali Banerjee, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Saurabh Kripal, Sr. Advocate a/w Mr. Siddhesh Kotwal,
Advocate for R-2 to 4 & 6 to 8,
Mr. Gora Chand Roy Choudhury, Advocate for R-5,

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JIDICIAL MEMBER)
HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)

Reserved On:- 7th January, 2022
Pronounce On:- 19th January, 2022

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1. Whether the Judgment is allowed to be published on
the net?

Yes

2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**

JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the Applicant as well as the learned Counsel for the Respondents and perused the documents on record.

2. The Original Application No. 145/2017/EZ (Centre for Environment Protection Vs. Union of India & Ors.) was disposed of by this Tribunal vide its order dated 09.12.2019. The order dated 09.12.2019 reads as under:

1. The State of Mizoram has filed an affidavit in terms of our order dated 30.10.2019 which is taken on record. On perusal of the affidavit, it would be quite evident that the State has conceded in having committed the violations alleged in the original application. For convenience, we may refer to the following portions of the affidavit as follows:

“8. It is further pertinent to mention that the Phase-I of the Project amounting to Rs. 499 lakh was sanctioned and released by the Ministry of Tourism, Government of India in 2006-2007, and the construction of the said Phase was completed in the said year, prior to the institution of the present matter before the Hon’ble Court.

9. Thereafter, Phase II of the Project amounting to Rs. 500 lakh was sanctioned in the year 2013-14. However, only 20 % of the amount was released as the project was delinked from Central Financial Assistance in the year 2015, owing to which the construction of the project was

stopped by the Department due to shortage of funds. It is most respectfully submitted, that since 2015, no construction work has taken place, and a copy of photographs of the present project site as on September, 2019 indicating that the work has ceased onsite since 2015, are annexed hereto as annexure – A.

10. It is further most respectfully submitted that the State Government is in the process of preparing a plan of action to obtain the necessary permissions and environmental clearances from the concerned authorities, to ensure that development, if any in the said area and re-commencement of the project, if found feasible, is so done, in accordance with law and only upon obtaining the necessary sanctions, and till such permissions and approvals are obtained, the State is conscious that no construction work shall take place on the project site.”

2. A bare reading of the above would reveal that Phase-1 of the project had been taken up and completed without obtaining necessary clearance under the Forest (Conservation) Act, 1980, and environmental clearance under the EIA Notification, 2006. It is not disputed that the project falls within reserve forest area.

3. Under such circumstances, clear case of violation of Section 2 of the Forest (Conservation) Act, 1980, is made out apart from the violation of the EIA Notification, 2006.

4. We, therefore, direct the MoEF & CC to take up the matter and initiate appropriate proceedings under Sections 3 A and 3 B of the Act read with Rule 9 of the Forest (Conservation) Rules, 2003.

5. *With the above direction, this Original Application no. 145/2017 stands disposed off.*

6. *However action taken report shall be filed by the MoEF & CC before 31.01.2020 which may be registered as a fresh original application and placed before us.*

7. *Post on 04.02. 2020 for consideration of report.”*

3. However, the Tribunal had observed that there was a clear case of violation of Section 2 of the Forest (Conservation) Act, 1980, apart from violation of the EIA Notification 2006. The Tribunal had also directed the Ministry of Environment, Forests and Climate Change to take up the matter and initiate appropriate proceedings under Section 3A and 3B of the Act read with Rule 9 of the Forest (Conservation) Rules, 2003, and after disposing of the Original Application the Tribunal had further directed that the Action Taken Report be filed by the Ministry of Environment, Forests and Climate Change before 31.01.2020 which may be registered as a fresh Original Application.

4. The Action Taken Report was filed by the Ministry of Environment, Forests and Climate Change on 12.07.2020 disclosing the steps taken by it. The Tribunal vide its order dated 14.08.2020 also directed the Applicant as well as the State Respondents to be served with the copies of the Report. The learned Counsel for the Applicant had stated that the copy of the Action Taken Report had been served upon him. In the meantime, the Ministry of Environment, Forests and Climate Change was directed

to file further Action Taken Report and the State Respondents were also directed to file an affidavit placing on record the compliances made by them.

5. An updated Action Taken Report was filed by the Ministry of Environment, Forests and Climate Change on 21.01.2021 which mentions that show cause notices to appear had been issued against the officers of the Tourism Department, Govt. of Mizoram, who were in-charge of the project at the material time. Further action against the officers of the Public Works Department (in short 'PWD'), Govt. of Mizoram, still remained to be taken for want of necessary information from the State Government.

6. The Tribunal accordingly vide its order dated 05.01.2021 directed the Govt. of Mizoram to furnish particulars of all the officers of the PWD, Govt. of Mizoram who were responsible for implementation and construction of project road in respect of the project in question, namely, Chalfilh Tourist Destination, with all relevant documents as requested for by the Ministry of Environment, Forests and Climate Change in its letter dated 02.07.2020. The State of Mizoram and the Ministry of Environment, Forests and Climate Change were required to expeditiously file further Action Taken Report by the next date.

7. Thereafter, several orders were passed by the Tribunal in which it was noted that officers who were directed to appear before the Deputy Director General of Forest (C), Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Shillong,

had appeared on 23.08.2021 but some officers did not appear and, therefore, the State Respondents were directed to file further affidavit indicating which of the officers had not appeared.

8. This Tribunal in its order dated 17.11.2021 also noted that in the affidavit filed by the State Respondents, Govt. of Mizoram (at page no. 261 of the paper book), it was shown that large scale construction for Phase-I had been completed, whereas only part of the construction with regard to Phase-II had been made and thereafter the project was abandoned since the Ministry of Tourism did not release the complete funds. It is stated that for Phase-I of the project, Rs. 499 lakhs was sanctioned and released by the Ministry of Tourism, Government of India in 2006-07 and construction of the said phase had been completed in the said year itself. For Phase-II of the project, it was noted that Rs. 500 lakhs had been sanctioned in 2013-14 but only 20% of the fund was released as the project was de-linked from the Central Financial Assistance in the year 2015 and the construction of the project had been stopped for want of funds. Paragraphs 8 & 9 of the order of the Tribunal dated 17.11.2021 are extracted herein below:-

“8. We are informed by the learned Counsel for the State of Mizoram that till date no application for grant of Phase-I and Phase-II clearances have been filed by the Govt. of Mizoram with the Forest Department nor has any Environment Clearance been sought. That being the factual position, we find that the entire construction carried out either in Phase-I and Phase-II of Chalfilh Tourist Project is absolutely illegal and in

violation of the Forest (Conservation) Act, 1980 and Environmental laws.

9. We, therefore, direct the Govt. of Mizoram to demolish the illegal construction made on the land in question and remove all the debris from the area within a period of one month and file action taken report on affidavit with supporting photographic evidence by the next date of listing.”

9. Directions were also issued to the Govt. of Mizoram to remove the illegal constructions made on the land in question and remove all debris from the area within a period of one month and file an Action Taken Report with supporting photographic evidence before the next date of listing. The Govt. of Mizoram was further directed that after demolition of the illegal constructions from the Site Land in question and removal of all debris, it will also be responsible for restoration of the entire land including the road in question back to its original form.

10. An affidavit dated 07.01.2022 has been filed by the Ministry of Environment, Forests and Climate Change, wherein it has been stated that so far as prosecution of the officers responsible for degradation of the forest was concerned, Sri R.S. Sinha, IFS, APCCF & CWLW, Mizoram, had been nominated to accompany the four concerned officials of the PWD and Tourism Department, Govt. of Mizoram for personal appearance before the Deputy Director General of Forests (C), Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Shillong, on 21.10.2021. The affidavit further mentions that the two former

Tourism Officers will not be appearing on the fixed date as their flights from Aizawl to Shillong was cancelled on 19.10.2021 due to bad weather and they, therefore, requested that a fresh date for personal appearance be fixed preferably on 22.10.2021. Accordingly, Deputy Director General of Forests (C), Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Shillong, fixed the matter for 22.10.2021 for personal appearance of these two former officials of the Tourism Department, Govt. of Mizoram. It is also stated that the two former officials of the PWD Department, Govt. of Mizoram, namely, Shri Vanlalunga, former Superintending Engineer, National Highway Circle, PWD, Govt. of Mizoram, and Shri Malsawmdawngliana, former Executive Engineer, PWD, Highway Division No.-II, Govt. of Mizoram, appeared before the Deputy Director General of Forests (C), Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Shillong, on 21.10.2021 along with relevant documents and their statements were also recorded, but they failed to furnish any supporting documents on the ground that they could not state with certainty the exact length of the road of which the re-alignment was required i.e., diversion of the existing road. They were given 15 days time by the Deputy Director General of Forests (C), Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Shillong, to coordinate with their former department and submit hard copies of the documents. Sri R. Vanlalunga was also directed to substantiate his statement with respect to estimates as per Detailed Project Report (DPR) in which cost of earth cutting was

only Rs. 2,34,87,720/- which works out to Rs. 22,36,926/- Per/Km. which is less compared to the cost of formation cutting.

11. Out of the two former officials of the Tourism Department, Govt. of Mizoram, one Shri K. Lal Nghinglova, former Secretary, Tourism Department, Govt. of Mizoram, appeared before the Deputy Director General of Forests (C), Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Shillong, on 22.10.2021 along with supporting documents and his statement was recorded. The other former Tourism official, namely, Shri Biakthanmawia Pautu, former Joint Director, Tourism Department, Govt. of Mizoram, was advised by his doctor not to travel as he had suffered a heart attack and, therefore, the office permitted him to appear through video conference on 22.10.2021 and his statement was recorded by the Deputy Director General of Forests (C), Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Shillong through video conferencing. The affidavit further discloses that all nine former officials of PWD and Tourism Department, Govt. of Mizoram, to whom notices were issued, had appeared before the Deputy Director General of Forests (C), Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Shillong, out of which two officials appeared through video conference. The affidavit further discloses that since the statements of the officials and their documents have been taken on record, the final steps shall be taken by this office in compliance of the order of the Tribunal dated 09.12.2019.

12. In this view of the matter, nothing further remains to be adjudicated in this case, so far as the compliance of the directions of the Tribunal dated 09.12.2019 are concerned, except to observe that the Deputy Director General of Forests (C), Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Shillong, shall take the enquiry to its logical conclusion and expeditiously pass appropriate orders in respect of these nine former officials of the PWD and Tourism Department, Govt. of Mizoram, in accordance with law.

13. The Original Application No. 145/2017/EZ is accordingly disposed of.

14. There shall be no order as to costs.

M.A. No. 13/2021/EZ:-

1. This M.A. has been filed by the Department of Environment, Forest and Climate Change, Govt. of Mizoram, seeking modification of the order of the Tribunal dated 17.11.2021 with a prayer to permit the construction made on the site to stand and not be demolished.

2. In the M.A., it has been stated that the Department of Tourism, Govt. of Mizoram, has conveyed its willingness to handover the claims over the site measuring 11.95 decibel/ha. which includes 0.27 decibel/ha. of buildings covering the Tourist Destination Chalfih and the structures completed in Phase-I and Phase-II of the construction, 7.66 decibel/ha. of

area taken for road and the area covering the concrete flooring referred to as 'Site Land', in favour of the Department of Environment, Forest and Climate Change, Govt. of Mizoram. It is stated that the Department of Tourism is willing to handover the Site Land to the Department of Environment, Forest and Climate Change, Govt. of Mizoram, in the best interest of protection of the environment and Chalfilh Reserve Forest Region so that the same can be put to some suitable work relating to or ancillary to conservation, development and management of forests and wildlife.

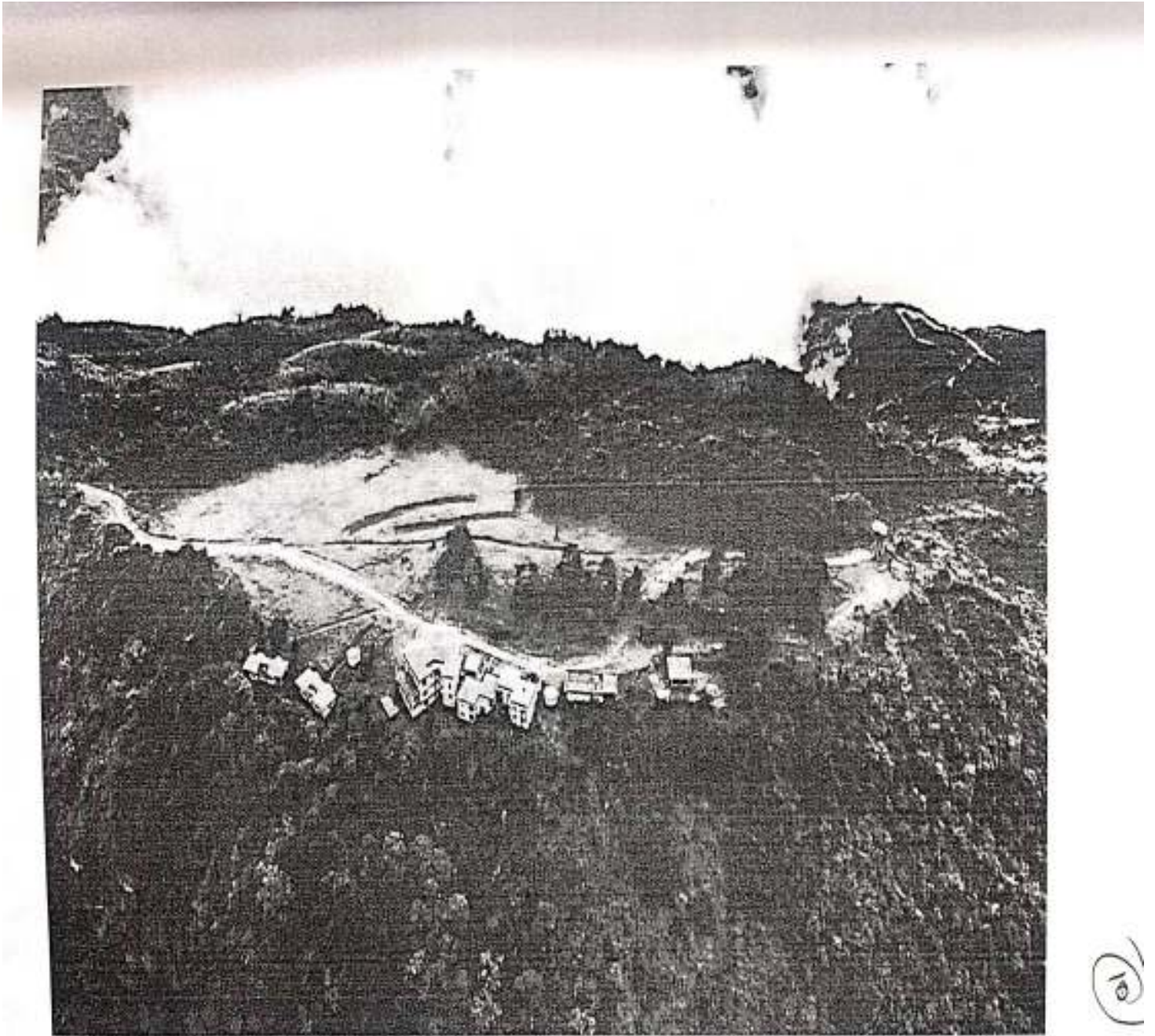
3. It is further stated that the width of the approach road measuring 10.5 Km. to the Chalfilh Tourist Destination is merely about 3.5 meters which is the standard road width of a single lane road. It is also stated that the demolition of the construction made on the Site Land and transportation of the debris, shall necessarily require transportation of heavy machinery through the approach road and since the approach road is a single lane, it may not be able to accommodate the transit of heavy machinery for which purpose the width of the road may have to be widened leading to further deforestation along the route.
4. It is also stated that after the abandonment of the Chalfilh Tourist Destination project, the said project has not been put to any use and has led to growth of natural vegetation in and

around the Site Land which shall be disturbed once the process of demolition begins.

5. It is also stated that the demolition of construction, if required to be done within one month, would require the use of explosives the vibration of which can trigger landslides in the area.
6. In our opinion, the plea of the Respondents in the M.A. is nothing but an eye wash and if permitted would only compound the illegal act of the State Government. Firstly, the construction of Chalfilh Tourism Destination was done without submitting any applications for seeking Forest Clearance for Phase-I and Phase-II from the Ministry of Environment, Forest and Climate Change. Secondly, when the illegality was discovered and prosecution of the officers of State Government ordered, the State Govt. is now coming up before us with a specious proposal to allow it to put the illegal constructions to the use of the Forest Department.
7. Mr. Saurabh Kripal, learned Senior Counsel referring to explanation (b) of Section 2 of the Forest (Conservation) Act, 1980, submitted that the State Government would not require taking permission/prior approval from the Central Government for putting to use any constructed portion on a forest land, for use of forest purpose and if the said premises in question on the site land are used for work relating to or ancillary to conservation, development and management of

forests and wildlife, the same would not require prior approval of the Central Government.

8. In our opinion, such a plea has been put forth by the State Government only to be rejected. This is nothing but a case of putting the cart before the horse. The Site Land was developed and extensive construction made as would be obvious from the photographic evidence which has been filed at page no. 10 of the M.A., for the purposes of Chalfilh Tourist Destination and such construction and degradation of forest extending over about 12 ha. was perpetrated not for forest activity but rather for tourism purpose, which is a commercial activity, by the Govt. of Mizoram. The illegality in using forest land without seeking prior permission/prior approval from the Central Government was in clear violation of the provisions of Section 2 of the Forest (Conservation) Act, 1980 and such illegality stares in the face from its very inception. This Tribunal will not legitimize the illegality inherent in the clearing and destroying and utilization of forest land for non-forest purpose. To allow the Govt. of Mizoram to use the illegal constructions, now, for alleged forestry purposes would tantamount to legitimizing the initial inherent illegal conduct of the Govt. of Mizoram. For proper appreciation of the case, we may reproduce the photograph of the Site Land filed at page no.10 of the M.A. which is as under:-



TRUE COPY

9. The Hon'ble Supreme Court in (1997) 1 SCC 35: (Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others), has held that illegal and ultra vires acts are not allowed to be legitimized.

10. Similar view has been taken by the Hon'ble Supreme Court in (2015) 7 SCC 601: (Rajasthan Housing Board Vs. New Pink City Nirman Sahakari Samiti Limited and Another).
11. The Hon'ble Allahabad High Court in Writ A. No. 4440 of 2012: (Phool Singh Vs. State of U.P. and Others), has held that the provisions of Section 161 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, enables the Gaon Sabha to effectively manage its land bank and use it to the optimal in public interest. It also facilitates the land owner or the bhumidhar to enter into a settlement which is beneficial to both parties. Notwithstanding the above, Section 161 is not envisaged to be a tool or measure to camouflage, overcome, legalise or legitimize the illegality. It is not meant to be used as an instrument or device to regularize or validate the illegality. It does not and cannot in law be countenanced as being a provision aimed at curing an illegality or according ipso facto approval to illegal act of usurpation or encroachment. It is not entitled to be viewed as either endorsing or legitimizing an illegality. Section 161 is essentially aimed at enabling a party to switch, barter or exchange land to the mutual benefit of both parties. A party cannot first encroach, trespass or intrude and then claim a right to exchange. The person who has encroached or trespassed upon land cannot subsequently turn around and seek condonation of that act or any infraction by seeking an exchange.

12. Even otherwise, an illegality which is inherent since its inception cannot be legitimized by subsequent proclamations of sincerity on the part of the Govt. of Mizoram in utilizing the illegal constructions for alleged forestry purposes and thereby seeking exemption from prior approval of the Central Government under explanation (b) to Section 2 of the Forest (Conservation) Act, 1980. The claim of the Govt. of Mizoram that the width of the road is only 3.5 meters and it would not be possible to transport heavy machinery over this road for carrying out the demolition activity of the illegal construction can hardly be accepted since the extensive and large scale constructions as depicted in the photographic evidence filed at page no. 10 of the M.A. could not have come up without the use of adequate transportation. We, therefore, reject the submission of the Govt. of Mizoram.

13. It has also been suggested by the Govt. of Mizoram that if the order of the Tribunal is to be complied with within one month, the Govt. of Mizoram would have to resort to use of explosives which could further damage the environment and to cause landslides due to vibrations. Such anxiety of the Govt. of Mizoram can be appreciated and we, therefore, while rejecting this M.A., grant the Govt. of Mizoram further four months time for removing all the illegal constructions made on the Site Land in question and remove the debris therefrom. The Govt. of Mizoram shall file an affidavit of compliance with photographic evidence showing complete removal of all the

illegal constructions by 17.05.2022. We further direct that after removal of the illegal constructions and removal of debris, the land in question needs to be restored back to its original form.

14. We may observe that the Govt. of Mizoram has already had more than one and half months since the order of demolition was passed by this Tribunal on 17.11.2021 and, therefore, the Govt. of Mizoram will now have adequate time till 17.05.2022 to comply with the order of the Tribunal dated 17.11.2021 otherwise the officers concerned, shall have to face consequences under Section 26 of the National Green Tribunal Act, 2010.

12. The M.A. No.13/2021/EZ is accordingly rejected.

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B. AMIT STHALEKAR , JM

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SAIBAL DASGUPTA, EM

**Kolkata,
January 19th, 2022,
Original Application No145/2017/EZ
(M.A. No. 13/2021/EZ)
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