

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
APPEAL NO. 188 OF 2018**

**IN THE MATTER OF:**

**SUDIEP SHRIVASTAVA**

**...APPELLANT**

**VERSUS**


**UNION OF INDIA & ORS.**

**...RESPONDENTS**

**INDEX**

<b>S.NO.</b>	<b>PARTICULARS</b>	<b>PAGE NOS.</b>
<b>1.</b>	SHORT AFFIDAVIT ON BEHALF OF THE RESPONDENT NOS. 3	<b>1-8</b>
<b>2.</b>	<b>ANNEXURE A/1</b> True copy of the Order dated 08.08.2019 passed by this Hon'ble Tribunal in Appeal No. 151 of 2015	<b>9-58</b>
<b>3.</b>	<b>ANNEXURE A/2</b> A copy of the order dated 26.11.2024 passed by the Hon'ble Supreme Court	<b>59-62</b>
<b>4.</b>	<b>ANNEXURE A/3</b> True copy of the recent photographs of the completed and pending construction area	<b>63-78</b>
<b>5.</b>	<b>ANNEXURE A/4</b> True copy of the alternative routes considered	<b>79</b>
<b>6.</b>	<b>PROOF OF SERVICE</b>	<b>80</b>

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**D/587/2008**

**M-9818911510**

**Dated:-15.04.2025**

**New Delhi**

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**SHORT AFFIDAVIT ON BEHALF OF THE RESPONDENT NOS. 3**

1. That the captioned Civil Appeal was disposed of by this Hon'ble Tribunal vide order dated 29.04.2019. However, the said order was challenged before the Hon'ble Supreme Court of India in Civil Appeal No. 8253 of 2019. The Hon'ble Supreme Court, vide order dated 26.11.2024, has disposed of the appeal by restoring the captioned appeal for hearing and consideration of the Appellant's submissions regarding an alternative route to the one commencing from Pendra Road to Gevra Road.
- I. That the present affidavit is being filed on behalf of Respondent Nos. 3 and 7 to present a brief overview of the facts, provide an update on the current status of the Project, and submit clarifications regarding the proposed alternative route, which is the subject matter of the present Appeal. **For the convenience of this Hon'ble Court, a brief chronological set of facts is outlined as under:**
2. That a Memorandum of understanding ("MOU") dated 03.11.2012 was executed between the Govt. of Chhattisgarh, South Eastern Coalfields Ltd. ("SECL/Respondent No. 8") and IRCON International Ltd. ("IRCON/Respondent No. 7"), establishing the framework for construction of new BG Electrified Double Line in the State of Chhattisgarh over South East Central Railways East-West Corridor-Gevra Road, Pendra Road via Dipka, Kathghora, Sendurgarh and Pasan ("Project").
3. That the Chhattisgarh East West Railways Ltd. ("CEWRL/Respondent No. 3") submitted a proposal dated 20.09.2014, for the construction of the aforementioned Project.
4. That the project is divided into three corridors mentioned below:
  - a) **Corridor-I:** East corridor: Kharsia - Chhal - Gharghoda – Korichhapar-Dharamjaygarh up to Korba with a spur from Gharghoda

to Donga Mauha to connect mines of Gare-Pelma block, approximately 180 km in length.

- b) **Corridor-II:** North Corridor: Surajpur-Parsa-Katghora-Korba, approximately 150 km in length.
  - c) **Corridor-III:** East-west Corridor: Gevra Road to Pendra Road via Dipka, Katghora, Sendurgarh, Pasan, and approximately 122 km in length.
5. That the proposed rail link between Gevra Road and Pendra Road aims to address the lack of transport infrastructure in Northern Chhattisgarh and facilitate the rising coal movement from the Korba region. With increasing coal demand, particularly for power plants in north-west and central India, the existing route via Gevra Road and the Champa branch line is becoming inadequate. Despite ongoing doubling efforts on the Bilaspur-Anuppur section, congestion remains a major concern. Additionally, the East-West rail corridor will provide crucial infrastructure in the backward tribal areas of Northern Chhattisgarh, improving connectivity and integrating the region into the national mainstream.
  6. It is respectfully submitted that the Respondent No. 3 has submitted three proposals for the three corridors and sought permission under the FCA.
  7. That the Ministry of Environment, Forest and Climate Change (“**MoEF**”) issued guidelines dated 07.05.2015 regarding forest land, simplifying the procedure for grant of permission for the felling of trees for the execution of linear projects, including railways lines.
  8. On 26.06.2015, the State Government granted forest clearance under Section 2 of FCA after granting Stage-I & II clearance, for diversion of 76.099 hectares of forest land in Raigarh district for non-forest purposes, subject to 30 pre-conditions.
  9. Petitioner herein preferred an appeal bearing Appeal No. 151 of 2015, seeking quashing of forest clearance order dated 26.06.2015 passed under Section 2 of the FCA for diversion of 76.099 hectares of forest land in Raigarh district, before this Hon’ble Tribunal. That the said appeal was disposed of vide Order dated 08.08.2019, on the ground that the approvals were granted after due application of mind. It is pertinent to note here that the said order has not been challenged by the Appellant herein and has thus attained finality.

Additionally, this Hon’ble Tribunal conclusively stated in paragraphs 43-55 of the Order dated 08.08.2019 that that the requisite permissions for the

three corridors were obtained by Respondent No. 3, and that compliance with the necessary mitigating measures has also been duly addressed.

True copy of the Order dated 08.08.2019 passed by this Hon'ble Tribunal in Appeal No. 151 of 2015 is annexed herewith and marked as **Annexure A-1**.

10. That the Appellant filed an original application bearing O.A. No. 678 of 2016, whereby plea was raised to stop construction of rail line for diversion of 459.522 ha of forest land in Bilaspur and Korba district before this Hon'ble Tribunal.
11. On 12.05.2017, Forest Board Officer, Marwah, vide letter granted permission for cutting of 342 trees located on state and private land in East-West Rail Corridor.
12. That the MoEF granted Stage-I clearance dated 26.06.2017 and Stage-II clearance dated 04.09.2017, for diversion of 26.52 Ha of forest land for construction of 38 kms railways line.
13. Furthermore, Regional Empowered Committee ("REC") approved the project vide minutes of meeting dated 14.12.2017, for diversion of 459.522 ha of forest land in Bilaspur and Korba district subject to the conditions.
14. Subsequently on the basis of the approval of REC, MoEF vide letter dated 26.02.2018, granted stage-I forest clearance for the diversion of 459.522 ha of forest land in Bilaspur and Korba district.
15. Furthermore, the proposal of the Respondent No. 3 was vetted and recommended by the National Tiger Conservation Authority vide letter dated 17.04.2018.
16. That the MoEF vide letter dated 07.06.2018, granted stage-II forest clearance for the diversion of 459.522 ha of forest land in Bilaspur and Korba district.
17. That the State Government vide letter dated 04.07.2018, granted forest clearance under Section 2 of FCA, for diversion of 459.522 hectares of forest land in Bilaspur and Korba district.
18. That this Hon'ble Tribunal vide Order dated 24.08.2018, disposed of the O.A. No. 678 of 2016, as it had become infructuous, given that Respondent No. 3 had already received the forest clearance dated 04.07.2018 under Section 2 of FCA.
19. That the Appellant herein preferred an appeal no. 188 of 2018 against the forest clearance dated 04.07.2018, granted by the State government.
20. That this Hon'ble Tribunal disposed of the appeal no. 188 of 2019 vide Impugned Order dated 29.04.2019, holding that sufficient care had been taken to consider all aspects required for issuing clearance under Section 2 of the FCA for the diversion of 459.522 ha of forest land in Bilaspur and



Korba district, in which all the necessary permissions were granted by the MoEF namely Stage I, Stage II and Section 2 of the FCA.

21. That the Appellant preferred an appeal vide CA No. No. 8253 of 2019 against the Order dated 29.04.2019 before the Hon'ble Supreme Court.. That the Hon'ble Supreme Court vide Order dated 26.11.2024, while restoring the captioned appeal, limited its consideration to the specific issue of the alternative route. A copy of the order dated 26.11.2024 passed by the Hon'ble Supreme Court is annexed herewith and marked as **Annexure A/2**

## **II. Progress and current status of the Project**

22. The construction of the railway line from Pendra Road to Gevra Road is progressing steadily as per the approved timeline. As of January 2025, more than 90% of earthwork and structural works have been completed or are in the final stages. The project is being implemented with a focus on efficiency and minimal environmental disruption, ensuring seamless coal transportation from the Korba region.
23. That the work is ongoing across all designated fronts, and details of specific progress milestones have been provided below:

<b>S. No.</b>	<b>Items</b>	<b>Unit</b>	<b>Total Scope</b>	<b>Completed / In Progress</b>	<b>Progress (%)</b>
1	Earthwork in Formation	Lakh Cum	378.90	346.56	91.46%
2	Blanketing	Cum	969932	582291	60.03%
2	Minor Bridges & Syphon	Nos.	190	187	98.42%
3	Major/Imp Girder Bridges	Nos.	24	24	100%
4	ROR	Nos	2	2	100%
5	Elephant Passes	Nos	20	19	95%
6	ROB/RUB	Nos.	105	104	99.05%
7	Station Building	Nos.	10	10	100%
8	Ballast Supply	Cum	967150	535926	55.41%
9	Sleepers Supply	Nos	531200	531200	100%
10	Rail Supply	MT	40100	24534	61.18%
11	Track Linking	Km.	323	57.93	17.93%

24. Furthermore, despite challenges such as land acquisition, environmental clearances, and unforeseen regulatory hurdles, the project remains on track for completion by December 2025. This timeline has been carefully planned, taking into account all necessary approvals, workforce deployment, and logistics management. The stakeholders, including the Government of Chhattisgarh, IRCON, and SECL, are continuously monitoring progress to ensure the timely execution of the corridor.

True copy of the recent photographs of the completed and pending construction area is annexed herewith and marked as **Annexure A-3**.

25. It is respectfully submitted here that the project has seen significant investments, with an expenditure of INR 4,304.72 Crore incurred as of January 2025. The initial project cost of INR 4,970.11 Crore has escalated to INR 7,448.52 Crore due to factors such as wildlife mitigation measures and regulatory requirements.

### **III. Alternate route is not feasible**

26. That the alternative Champa-Bilaspur route has been thoroughly assessed and deemed impractical due to severe congestion at Bilaspur Yard. This yard is a critical railway junction already handling heavy traffic from industrial hubs such as Jharsuguda, Raigarh, and Korba. With the current burden on this section, adding an estimated 60 MTPA of additional coal traffic would cause significant operational bottlenecks, leading to delays and inefficiencies in coal evacuation. The existing infrastructure simply cannot accommodate the increased load without substantial disruptions to existing freight and passenger services.
27. Furthermore, despite ongoing doubling efforts in the Bilaspur-Anuppur section, this route remains unsuitable due to persistent congestion. Even with proposed flyovers and capacity expansion, the section will continue to face high traffic volumes, making it unviable for efficient coal transportation. The primary objective of the East-West Rail Corridor is to create a dedicated and streamlined coal evacuation route, which the alternative route via Champa-Bilaspur fails to achieve.
28. It is humbly submitted that shifting to an alternative route would have severe implications. The East-West Rail Corridor is a bank-funded project promoted by the Government of Chhattisgarh, IRCON, and SECL. Any change in alignment at this stage would result in significant cost overruns, further delaying the project's completion. The project cost has already escalated from INR 4,970.11 Crore to INR 7,448.52 Crore due to external factors, and altering the alignment would only exacerbate the financial burden on the exchequer.

29. That after careful assessment, the current alignment was selected as the most viable option due to its minimal impact on forest land and significantly lower environmental risks. Any deviation from this approved alignment would necessitate fresh environmental clearances, leading to prolonged delays in project execution and increased regulatory hurdles. True copy of the alternative routes considered is annexed herewith and marked as **Annexure A-4.**

**FILED BY**



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**New Delhi**

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...APPELLANT

**VERSUS**

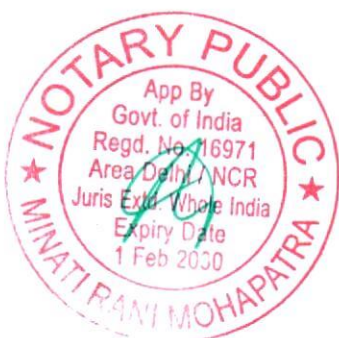
**UNION OF INDIA & ORS.**

...RESPONDENTS

**AFFIDAVIT**

I, Ravi Valluri, S/o Shri Vallri Shri Ram, aged 62 years, working as Chief Executive Office, Chhattisgarh East West Railway Limited, Raipur, presently at New Delhi, do hereby solemnly affirm and declare as under:

1. I am the concerned officer of the Respondent No. 3 and as such fully conversant with the facts of the case based on the records maintained by the Petitioner and therefore, competent to swear this present affidavit.
2. That the accompanying short affidavit has been drafted on my instructions and contents of the same are true and correct to the best of my knowledge based on the records of the Petitioner and nothing material has been concealed therefrom and that no part of it is false.



*Rani Valluri*

**DEPONENT**

**VERIFICATION**

07 APR 2025

Verified at New Delhi on this the      day of      , 2025 that the contents of my above affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

*Rani Valluri*

**DEPONENT**

*Ad*  
IDENTIFIED



**ATTESTED**

*Ad*  
MINATI RANI MOHAPATRA  
NOTARY DELHI-R-16971  
GOVERNMENT OF INDIA  
SUPREME COURT OF INDIA  
COMPOUND NEW DELHI  
REGISTER Pg./Sl. No. *Ad*

*Ad*  
MINATI RANI MOHAPATRA  
ADVOCATE (NOTARY)  
Mob. No.: 8130128457

07 APR 2025

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
(Through Video Conferencing)**

Original Application No. 470/2015  
(M.A. No. 1076/2015),  
(M.A. No. 505/2017) &  
(M.A. No. 860/2017)

**WITH**

Appeal No. 151/2015  
(M.A. No. 1349/2015),  
(M.A. No. 458/2016) &  
(M.A. No. 860/2016)

**WITH**

Appeal No.01/2018  
(M.A. No. 04/2018)

Sudiep Shrivastava & Anr Applicant(s)

Versus

Union of India & Ors Respondent(s)

With

Sudiep Shrivastava & Anr Applicant(s)

Versus

Union of India & Ors Respondent(s)

With

Sudiep Shrivastava & Anr Applicant(s)

Versus

Union of India & Ors Respondent(s)

Heard on: 16.07.2019  
Uploaded on: 08.08.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant/Appellant(s): Mr. Ritwik Dutta & Mr. Rahul Choudhary, Advs for Appellant

For Respondent (s): Mr. Balendu Shekhar, Adv for R-1, 5 & 8  
Ms. Priyanka Sinha, Adv for R-4 & 7  
Ms. Deepa Rai, Adv for CERL  
Mr. A.K. Prasad, Adv for R-9  
Mr. Om Prakash, Adv for M/o Railways  
Mrs. Shashi Juneja, Adv for Chattisgarh  
Mr. Soumyajit Pani, Adv for Odisha

**ORDER/JUDGEMENT**

**Per Justice K. Ramakrishnan, Judicial Member**

1. The Ministry of Railway through IRCON and Government of Chhattisgarh have formed a Company in the name of Chhattisgarh East Rail Ltd (herein after called CERL). They decided to lay a railway line from Kharsiya near Raigarh to Dharam Jaigarh of around 74 Km with a spur for Daunga Mahua in between of around 30 Km, totalling a length of 104 Km in Raigarh district of Chhattisgarh. The above such area is situated within two Forest Divisions namely Raigarh and Dharam Jaigarh.
2. The said Rail Corridor is primarily to transport coal from existing mines of Chhal area and of Gare Pelma area besides from virgin coal blocks of Dharam Jaigarh area of Mand Raigarh Coal fields.
3. The MOU with regard to the rail corridors was signed during 2012 between the State of Chhattisgarh and Ministry of Railways on some preliminary findings with the understanding that the mining companies would be invited to invest in the project which would be treated on Public Private Parameter mode.
4. The portion between 10 and 74 km area was allotted to the CERL. The State Government had forwarded the proposal with all documents submitted by the project proponent for this project for conversion of 76.099 ha of forest land for this purpose under Section 2 of the Forest (Conservation)



Act, 1980 for permission to MoEF & CC who in turn forwarded the same to Forest Advisory Committee (FAC) for its scrutiny and recommendations.

5. Accordingly the FAC considered the proposal and on 22.12.2014, in the meeting of the Forest Advisory Committee (hereinafter referred as FAC), the matter regarding diversion between 76.099 hectare of forest land for the construction of the rail line between Kharsiya and Dharam Jaigarh (the spur between Gharghoda and Donga Mauha not included) was considered and the same was recommended to the Ministry of Environment, Forest and Climate Change (MoEF & CC).
6. On the basis of the recommendations of the Forest Advisory Committee, the MoEF & CC had issued Stage-I approval known as “in principle” approval dated 26.02.2015 to the State of Chhattisgarh by citing 30 preconditions which are required to be complied by the State Government or project proponent. One of the conditions was with regard to preparation of Wildlife Management Plan and also a study pertaining to underpasses.
7. Thereafter on getting report of compliance from the State of Chhattisgarh, the MoEF vide order dated 22.05.2015 granted formal approval known as Stage II approval for diversion of forest land for this purpose.
8. When the applicant/appellant came to know that final order regarding diversion of the above forest land for this purpose



was not granted by the State Government under Section 2 of the Forest (Conservation) Act, 1980 and when he came to know that without obtaining the same the project proponent namely CERL was proceeding with the cutting of trees, he filed O.A. No 470/2015 stating that without getting the clearance from the State Government on this regard under Section 2 of the above said Act, proceeding with the cutting of trees is illegal. He has also alleged in the petition that the granting in principle approval and formal approval by the MoEF for this project on piecemeal manner is not legal. Further neither the MoEF & CC nor the Forest Advisory Committee nor the State Government had applied their mind regarding the impact of the project on forests, wild life, human-elephant conflict and the ecology and without conducting a comprehensive study of the entire project involving a large area of forest, granting approval is not legal. Further self work group created by State Government for this purpose is also not proper. The formal approval was granted without studying the Wildlife Management Plan which was directed to be prepared by the project proponent as one of the conditions in the “in principle” approval granted. The authorities have not considered the impact of the project on the movement of elephants in that area, number of elephant corridor within that area and the mitigation measures taken by the project proponent to mitigate that situation and also number of death of

elephants and human happened in that area before granting the approvals. So the applicant/appellant, on the impression that no final forest clearance was granted, filed originally O.A 470/2015 seeking following reliefs;

- i. Restrain the respondents from carrying out any Non Forest Activity including felling of trees in the Forest Area in question.
- ii. Direct the State Government to initiate Criminal Proceedings/Departmental Proceedings against the Officials and other persons involved in the violation of the provisions of the Forest (Conservation) Act, 1980.
- iii. Direct that a Comprehensive Impact Assessment be done so far as the impact of the proposed liner intrusion on elephant population in Orissa and Jharkhand is concerned.

9. In that case the State of Chhattisgarh and Chief Wildlife Warden have filed a joint reply statement denying the allegation. They have stated that in order to improve the connectivity of the people living in remote areas and to facilitate both freight and passenger traffic in remote areas of Northern Chhattisgarh, the State Government of Chhattisgarh as part of Rail Infrastructure Development Programme identified the proposed corridor for developing rail corridor through integrated infrastructure development committee. To implement the same, a joint venture company by name Chhattisgarh East Rail Limited (CERL)

comprising of Government of Chhattisgarh, South East Coalfields Limited and IRCON was formed.

10. To carry out the aforesaid purpose, diversion of 76.099 ha of forest land was proposed which was subject matter of the present application. Out of the proposed area, Revenue Forest Land comprises of 49.245 ha and protected/reserve/orange forest comprises about only 26.245 ha in the Dharamjaigarh and Raigarh divisions was proposed. The forest area to be diverted within this division excluding the revenue forest is only 26.245 ha of the entire project area of 342.421 ha which will come to only 7.62 % of the total land required. The proposed corridor was designed considering its geographical features of various routes, existing water sources and forest land. It contains built up areas, coal bearing areas, power lines and forest land and in fact, the forest area including revenue forest comprises only 22.2 % of the entire proposed rail corridor which is very insignificant comparing the total forest area of the State.

11. The entire forest area in that State is roamed by elephants. The proposed area to be diverted for the project falls under the area roamed by migrant elephant which is a long ranging nomadic animal which can travel more than 25 kms in a day. There is no area notified as elephant habitat or elephant corridor in the State of Chhattisgarh. They have stated that only after considering their responsibility of protecting forest and environment and

strictly in accordance with the provisions of the Forest Conservation Act that Stage-I approval was granted on 26.02.2015 and Stage-II approval was granted on 22.05.2015. As per the circular issued by the Department in the interest of such projects “in principle” approval is deemed as working permission for cutting trees and commencement of work if required, compensatory levies stipulated in “in principle” approval are realized from the user agency. It is only after the amount for compensatory afforestation as stipulated in Stage-I approval was deposited by CERL on 09.04.2015, permission for felling of trees was granted by Additional Principal Chief Conservator of Forests (Production), Government of Chhattisgarh vide letter No. *F. No./14/Utpadan1614/603 dated 25.04.2015*. After getting the formal approval namely Stage-II approval, the State Government vide letter No. *F-5-252014/10-2 dated 23.06.2015* accorded final sanction under Section 2 of the Act for diversion of 76.099 ha of forest land for this purpose. The said diversion permission was permitted vide letter *No./bhuprabandh/vividh/115-368/2125 dated 24.07.2015*. It is only thereafter that the work has been started. So the petitioner is not entitled to get the reliefs claimed.

12. The CREL, the project proponent filed reply statement denying the allegations and more or less supporting the contentions raised by the State Government. They have

further contended that it is only a public sector undertaking and there is no private equity involved. The Forest Advisory Committee held at New Delhi on 22.04.2014 to examine the East Corridor Project on all aspects in detail and made accommodation approving the same. As per the data available, there is no elephant corridor declared within the State.

13. After considering the project, the Committee recommended the same. As part of the project itself and as required by the Forest Advisory Committee, the Tropical Forest Research institute (TFRI), an autonomous council under the MoEF & CC, Government of India was granted the work to prepare the Wildlife Management Plan as earlier on January 16, 2015.

14. After considering the recommendation of the Forest Advisory Committee, Stage-I approval was granted by MoEF & CC for this corridor. Thereafter after getting the compliance report from the State Government regarding the conditions imposed in Stage-I approval, Stage-II approval was granted vide order dated 22.05.2015 and following the same, the State Forest Department issued Forest clearance order/approval as required under Section 2 of the Forest Conservation Act, 1980 vide O.M dated 23.06.2015. The CERL submitted draft report of Wild Life Management Plan as prepared by TFRI on 15.07.2015. The Principal Chief Conservator of Forest (Wildlife) made his observation on



27.07.2015 and referred the matter to Chief Conservator of Forest, Bilaspur with a copy to CERL.

15. The TFRI, Jabalpur revised the Wildlife Management Plan and it was completed the field work. The final Wildlife Management Plan has been submitted vide letter dated 18.11.2015 incorporating all the suggestions and comments made by PCCF, Chhattisgarh. Only after getting the formal permission, the CERL started cutting of the trees. They have deposited a total amount of Rs.8.35 crores with MoEF & CC in CAMPA account. For irrigated plantation of about 3,82,500 trees for an area 153 ha of forest land already identified and designated by the Forest department as compensatory afforestation as against 10,149 trees to be felled and also towards the expenses of cutting and transport of the above number of trees. The areas where 17 elephants died due to electrocution did not fall within the proposed rail corridor. As per the suggestion of FSE and MoEF & CC, the CERL has planned to construct 24 underpasses, bar crossing and undercrossing for passage of elephants and other wildlife /Cattle for the length of 64 km of wildlife. All necessary precautions have been taken by the authorities. Alternate alignments were also considered before approving this project. So according to them the allegations are not correct and they prayed for dismissal of the application.

16. On the basis of the contentions raised by the Respondents in the above Original Application that final approval has been granted under Section 2 of the Forest Conservation Act by the State Forest Department, the appellant/applicant filed Appeal No. 151/2015 challenging the forest clearance granted for diversion of 76.099 ha of forest land for the project to be established by CERL raising more or less the same contentions raised by them in the OA namely no comprehensive impact study was conducted before granting the approval, the Wildlife Management Plan has not been submitted for consideration by the Forest Advisory Committee or MoEF & CC before granting the approvals, etc. Further there was no field visit made by the officers of the MoEF&CC for ascertaining the genuineness and sufficiency of the data furnished by the State Government and the project proponent. There was no application of mind and the fact of human-elephant conflict and death of elephants caused and the impact of project on Wildlife on a larger angle were not considered which is essential to find out the mitigating measures provided were sufficient to meet the possible degradation to be caused to the environment on account of felling of trees and laying of railway line through this area. It is also challenged on the ground that it involves two portions of forest land of which only a portion of forest land was considered and the other portion was not included in the study and conducting

piecemeal appraisal of impact on environment is not proper and will not be sufficient to impose necessary conditions to mitigate the damage if any to the forest which ought to have been considered by the authorities before granting of the same.

17. To this also the State Government, MoEF & CC, the project proponent, the Forest Department have filed detailed reply statements, denying the allegation and supporting the granting of forest clearance. According to them all necessary precautions have been taken for this purpose.

18. When CERL applied for diversion of 26.52 ha of forest land for the remaining portion of the same project, the MoEF & CC issued Stage-I clearance dated 27.06.2017 and Stage-II clearance on 07.09.2017 and State Government proceeded to grant final forest clearance on 06.02.2017. This was challenged by the applicant/appellant by filing Appeal 01/2018, raising more or less similar objections raised by him in Appeal No. 151/2015 for granting the same. Further it was also alleged in the appeal memorandum that REC in their meeting dated 29.05.2017 wanted certain clarification before recommending the project and according to the applicant, later the Regional Expert Committee, without application of mind, simply accorded sanction changing from its earlier view without taking it account the environment impact on the forest. Reply has been filed to this also by the project proponent,



the State Government and the various departments explaining the circumstances and affirming their stand of granting clearance to the project. According to the Project Proponent there was no deliberate attempt on their part in not applying for forest clearance earlier for this portion as they were only awarded the work for the portion from 10 to 74 Km area and 0 to 10 with spur area having a distance of 28 Km was granted to some other agency. But since that agency did not properly proceed with the project, the CERL was directed to undertake this portion as well and that was how they had to apply for this portion separately. According to them, all precautionary measures have been taken to avoid any degradation on environment and bio diversity. So according to them, there is no illegality in granting the clearance to them.

19. Since, all these cases are inter connected and dealing with the same project but the forest clearance was granted on two occasion and the grounds raised all these cases are more or less similar, we decided to hear and dispose of the same together.

20. The learned senior counsel appearing for the appellant/applicant submitted that the project involves larger extent of forest area but forest clearance was granted in piecemeal which in fact not considered the cumulative and comprehensive impact of the project on environment and the ecology affecting the forest. They have also not

considered the human-animal conflict as several reports show there were casualties of elephants in the State and that aspect has not been properly considered. No Wildlife Management Plan was obtained before granting approval which would have been more appropriate for the authorities to consider all the aspects including the impact of the project on wildlife in the forest area. The precautionary principles and sustainable development have not been properly considered by the authorities before granting the same. They have also contended that the Wildlife Management Plan submitted was not in accordance with the guidelines given by MoEF & CC in this regard. The learned senior counsel also argued that the Division Forest Officer had recommended underpasses but the same was reduced to six by the PCCF without application of mind.

21. According to the learned senior counsel, a comprehensive study for the entire project has to be conducted before proceeding with the project so as to ascertain whether any further mitigating circumstances have to be considered and the precautionary measures to be provided to meet the same. Unless such study has been conducted, the impact of the project on environment will be irreversible and the granting of approval cannot be said to be legal.

22. On the other hand learned counsel appearing for the State Government, the Project Proponent and the MoEF & CC have contended that all precautions have been taken

before granting the approval. Necessary conditions have been imposed taking into account the impact of the project on forest, ecology and environment and the human-animal conflict and mitigating measures have been provided for these purposes. The approval was granted is strictly in accordance with law and no interference is required.

23. The counsel for the project proponent also submitted that all precautions had been taken and necessary conditions have been imposed. There is no need to set aside the approvals granted and prayed for dismissal of the application as well as the appeals. However he has further submitted that they have no objection in making any further study on this aspect for the purpose of providing any further conditions as a mitigating measure to protect environment if the Tribunal feels that it is necessary.

24. The points that arise for consideration:

- (i) *Whether the forest clearances granted to the project proponent on two different occasions are liable to be set aside for the reasons stated in the appeal memorandum?*
- (ii) *Whether the authorities have considered the principles of precautionary principles on sustainable development and inter generation equity, conservation of forest, etc before granting the forest clearance as mentioned above*
- (iii) *Whether there is any necessity for any further studies in this regard and if so what is the nature of the study to be conducted and for that purpose the forest clearances already granted*

*have to be set aside or even without setting aside the same direction can be issued to find out the mitigating circumstances in implementing the project?*

25. In fact O.A. No. 470/2015 has become insignificant and the averments in the same were raised in Appeal No.151/2015 and Appeal No. 1/2018.

26. Before going into the merits of the case let us analysis the statutory provisions and also the precedents on this aspect.

27. Section 2 of the Forest Conservation Act, 1980 deals with the restriction on the de-reservation of forest or use of forest land for non-forest purpose which reads as follows:

**“2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose:**

*Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-*

*(i) That any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;*

*(ii) That any forest land or any portion thereof may be used for any non-forest purposes;*

*(iii) That any forest land or any portion thereof may be assigned by way of lease of otherwise to any private person or to any authority, corporation, agency or any other Organisation not owned, managed or controlled by Government.*

*(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-forestation.*



*[Explanation:- For the purpose of this section “non-forest purpose” means the breaking or clearing of any forest land or portion thereof for-*

*(a) the cultivation of tea, coffee, species, rubber, palms, oil-bearing plants, horticultural crops of medicinal plants;*

*(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, Development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and Construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]”*

28. Rule 6 to 8 of the Forest Conservation Rules, 2003 deals with the procedure for grant of clearance by stage by stage which reads as follows:

*6. Submission of proposal seeking approval of the Central Government under section 2 of the Act- (1) Every User Agency that wants to use any forest land for non-forest purposes, shall make its proposal in the relevant Form appended to these rules, namely; Form ‘A’ for proposal seeking first time approval under the Act, Form ‘B’ for proposal seeking renewal of leases, where approval of the Central Government under the Act had already been obtained, and Form ‘C’ for prospecting of minerals, to the Nodal Officer of the concerned State Government or the Union Territory Administration, as the case may be, along with requisite information and documents, complete in all respect.*

*(2) The User Agency shall endorse a copy of the proposal, along with a copy of the receipt obtained from the office of the Nodal Officer to the concerned Divisional Forest Officer, District Collector and Regional Office as well as the Monitoring Cell of the Forest Conservation Division of the Ministry of Environment, Forests and Climate Change.*

*(3) (a) The Nodal Officer of the State Government or the Union Territory Administration, as the case may be, after having received the proposal under sub-rule (1) and on being satisfied that the proposal is complete in all respects and requires prior approval under section 2 of the Act, shall send the proposal to*

*the concerned Divisional Forest Officer and the District Collector within a period of ten days of the receipt of the proposal.*

*(b) If the Nodal Officer of the State Government or the Union territory Administration, as the case may be, finds that the proposal is incomplete, he shall return it within a period of ten days to the User Agency and this time period and the time taken by the User Agency to re-submit the proposal shall not be counted for any future reference.*

*(c) The Divisional Forest Officer shall examine the factual details and feasibility of the proposal, certify the maps, carry out site-inspection and enumeration of the trees and forward his findings in the Format specified in this regard to the Conservator of Forests.*

*(d) The Divisional Forest Officer shall process and forward the application along with his findings on the proposal involving forest land upto forty hectares, above forty hectares and up to one hundred hectares and above one hundred hectares to the Conservator of Forests within a period of thirty days, forty-five days and sixty days respectively.*

*(e) The District Collector shall-*

*(i) complete the process of recognition and vesting of forest rights in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) for the entire forest land indicated in the proposal;*

*(ii) obtain consent of each Gram Sabha having jurisdiction over the whole or a part of the forest land indicated in the proposal for the diversion of such forest land and compensatory and ameliorative measures, if any, having understood the purposes and details of diversion, wherever required; and*

*(iii) forward his findings in this regard to the Conservator of Forests;*

*(f) The entire process referred to in clause (e) shall be completed by the District Collector within the time period stipulated in these rules for grant of in-principle approval under the Act to the proposal;*

(g) The Conservator of Forests shall examine the factual details and feasibility of the proposal, carry out site- inspection in case the area of forest land proposed to be diverted is more than forty hectares, and forward the proposal along with his recommendations to the Nodal Officer;

(h) The time taken by the Conservator of Forests to process and forward to the Nodal Officer the proposal involving forest land up to forty hectares and above forty hectares shall not be more than ten days and thirty days respectively.

(i) The Nodal Officer, through the Principal Chief Conservator of Forests, shall forward the proposal to the State Government or the Union territory Administration, as the case may be, along with his recommendations.

(j) The Nodal Officer shall process and forward the proposal along with his findings on the proposal involving forest land, up to five hectares, above five hectares and up to forty hectares, above forty hectares up to one hundred hectares and above one hundred hectares, to the State Government or the Union territory Administration, as the case may be, within a period of ten days, twenty days, twenty five days and thirty days respectively.

(k) In case the State Government or the Union territory Administration, as the case may be, decides not to, de-reserve or divert for non-forest purpose or assign on lease the forest land indicated in the proposal, as the case may be, the same shall be intimated to the User Agency within thirty days of the receipt of proposal from the Nodal Officer: Provided, all proposals involving diversion of forest land for projects of the Central Government or Central Government Undertakings where the State Government or the Union territory Administration, as the case may be, does not agree in-principle to de-reserve or divert for non-forest purpose or assign on lease the forest land indicated in the proposal, as the case may be, shall be forwarded to the Central Government along with comments of the State Government or the Union territory Administration, as the case may be.

(l) The State Government or the Union territory Administration, as the case may be, shall forward along with its recommendations all those proposals where State Government or the Union Territory



*Administration, as the case may be, agrees in-principle to de-reserve or divert for non-forest purpose or assign on lease the forest land indicated in the proposal, as the case may be, and all proposals involving diversion of forest land for projects of the Central Government or Central Government Undertakings, to the Central Government within thirty days:*

*Provided that all proposals involving felling of trees on forest land or a portion thereof for the purpose of using it for re-afforestation shall be sent in the form of Working Plan or Working Scheme or Management Plan:*

*Provided further that the concerned State Government or the Union territory Administration, as the case may be, shall simultaneously send the intimation to the 12 User Agency about forwarding of the proposal, along with its recommendations, to the Regional Office or the Ministry of Environment, Forests and Climate Change, as the case may be;*

*Provided also that total time taken exclusively for transit of a proposal between various authorities in the State Government or the Union Territory Administration, as the case may be, shall not be more than twenty days, over and above the time period specified for processing of proposal by each authority.*

*(m) Whenever the time taken by the State Government or the Union territory Administration, as the case may be, for processing the proposal exceeds the time limits stipulated in clauses (a) to (l) above, the proposal shall be considered by the Central Government only if an explanation for the delay is furnished to the satisfaction of the Central Government, together with action taken against any individual held to be responsible for the delay.*

*(4)(a) The proposal referred to in clause (l) of sub-rule (3), involving forest land up to forty hectares and all proposals related to linear projects irrespective of the area of forest land involved, shall be forwarded by the concerned State Government or the Union Territory Administration, as the case may be along with its recommendations to the concerned Regional Office.*

*(b) The proposal referred to in clause (1) of sub rule (3), involving forest land of more than 40 hectares, other than proposals related to linear projects shall be forwarded by the concerned State Government or*



*the Union Territory Administration, as the case may be, along with its recommendations, to the Secretary, Government of India of Ministry of Environment, Forests, and Climate Change.*

*(c) The proposals referred to in clause (l) of sub-rule (3), involving clearing of trees in forest land or portion thereof for the purpose of using it for re-forestation shall be sent to the concerned Regional Office.*

*(5)(a) notwithstanding anything contained in these rules, the proposal to obtain approval under the Act to undertake prospecting of minerals without felling of trees and construction of new road or path in mining blocks falling outside the protected areas, eco-sensitive zone of protected areas, identified tiger corridors and having no forest cover of more than ten percent crown density as per the latest India State of Forest Report published by the Forest Survey of India, shall be submitted by the User Agency in a letter form along with a geo-referenced map indicating boundary of the prospecting block, location of each bore-hole site and roads or paths to be used for prospecting; and a certificate to the effect that the proposal meets the afore-mentioned requirements to the Nodal Officer;*

*(b) the Nodal Officer, after having received the proposal under clause (a) and on being satisfied that the geo- referenced map and the certificate are in order, shall send the proposal to the Divisional Forest Officer within a period of ten days of the receipt of the proposal;*

*(c) if the Nodal Officer, finds that the geo-referenced map or the certificate are not in order, he shall return the proposal within a period of ten days to the User Agency and the said period taken by the Nodal Officer and the time taken by the User Agency to re-submit the geo-referenced map and the certificate shall not be counted for any future reference;*

*(d) the Divisional Forest Officer shall authenticate the geo-referenced map and certificate submitted by the User Agency and forward the same directly to the State Government or Union territory Administration, as the case may be, or an officer not below the rank of the Nodal Officer, authorized by the State Government or Union territory Administration, as the case may be, to finally*

*dispose of such proposals, within thirty days of its receipt;*

*(e) the State Government or the Union territory Administration, as the case may be, or the officer not below the rank of the Nodal Officer, duly authorized by the State Government or the Union territory Administration, as the case may be, to finally dispose of such proposals, after examination of the geo-referenced map and certificate and after such further enquiry as it may consider necessary, grant permission for prospecting of minerals subject to fulfilment of stipulated conditions, or reject the same within twenty-five days of receipt of the proposal from the Divisional Forest Officer and communicate the same to the concerned Divisional Forest Officer and the User Agency, within next five days;*

*(6) (a) notwithstanding anything contained in these rules, proposal to obtain approval under the Act to undertake prospecting of minerals without felling of trees and construction of new road or path in mining blocks falling outside the protected areas, eco-sensitive zone of protected areas, identified tiger corridors and having no forest cover of more than forty percent crown density as per the latest India State of Forest Report published by the Forest Survey of India, shall also be submitted in a letter form along with a geo referenced map indicating boundary of the prospecting block, location of each borehole site and roads or paths to be used for prospecting; and a certificate to the effect that the proposal meets the afore-mentioned requirements to the Nodal Officer;*

*(b) the Nodal Officer, after having received the proposal under clause (a) and on being satisfied that the geo-referenced map and the certificate are in order, shall send the proposal to the Divisional Forest Officer within a period of ten days of the receipt of the proposal;*

*(c) if the Nodal Officer, finds that the geo-referenced map or the certificate are not in order, he shall return the proposal to the User Agency within a period of ten days and the said period taken by the Nodal Officer and the time taken by the User Agency to resubmit the proposal shall not be counted for any future reference;*

(d) the Divisional Forest Officer shall authenticate the geo-referenced map and certificate submitted by the User Agency and forward the same directly to the Nodal officer, within a period of thirty days of receipt of the geo-referenced map and the certificate;  
 (e) the proposal received by the Nodal Officer under clause (d) shall be further processed in the manner and within the period as provided in clause (i) to clause (m) of sub-rule (3) and sub-rule (4) of rule 6 and rule 7 of these rules.

**7. Processing of proposals received by the Central Government.** – (1) (a) The Regional Office, after having received the proposal referred in clause (a) and clause (c) of sub-rule (4) of rule 6 shall determine the completeness of proposal within five working days.

(b) If the Regional Office finds that the proposal is incomplete, it shall return it within the period of five working days as specified under clause (a), to the State Government or the Union Territory Administration, as the case may be, and this time period and the time taken by the State Government to re-submit the proposal shall not be counted for any future reference.

(2)(a) The regional office shall after examination of the proposal involving forest land up to 5 hectares other than the proposal relating to mining, encroachments, and hydel projects, which are complete in all respect, and after such further enquiry as it may consider necessary, grant in-principle approval subject to fulfilment of stipulated conditions, or reject the same within twenty five days of its receipt from the State Government or the United Territory Administration, as the case may be, and communicate the same to the concerned State Government or the United Territory Administration, as the case may be, within next five days.

(b) In case a proposal involves forest land more than one hundred hectares or renewal of lease, Regional Office shall within forty-five days of the receipt of the proposal complete in all respects from the State Government or the Union Territory Administration, as the case may be, inspect the forest land proposed to be diverted and prepare a site inspection report: Provided that in case of the proposals seeking approval under the Act for prospecting of minerals in forest land, prior site inspection by the Regional Office shall be required only if the area of forest land



*required for construction of roads, paths, drilling of bore holes and all such non-forest purpose is more than one hundred hectares.*

*(c) Regional office shall refer all proposals involving forest land above 5 hectares and up to forty hectares, proposals relating to mining, encroachments, and hydel projects involving forest land up to 5 hectares, and all proposals related to linear projects which are complete in all respect, including site inspection report, wherever required, to the Regional Empowered Committee within ten days of receipt from the State Government or the United Territory Administration, as the case may be:*

*Provided that the proposals referred to in clause (b) above shall be referred to the Regional Empowered Committee within five days of receipt of the site inspection report.*

*(d) The Regional Empowered Committee shall within a period of thirty days examine the proposal referred to it under clause(c) above and after such further enquiry as it may consider necessary, grant in-principle approval to the proposals other than proposals relating to mining, encroachment and hydel projects subject to fulfilment of stipulated conditions, or reject the same and the Regional Office shall communicate the decision of the Regional Empowered Committee to the concerned State Government or the United Territory Administration, as the case may be, within next five working days.*

*(e) The Regional Empowered Committee shall within a period of thirty days examine the proposals relating to mining, encroachments, and hydel projects involving diversion of forest land up to forty hectares and tender its advice:*

*Provided the Regional empowered Committee may suggest such conditions or restrictions if any, required to be imposed on the use of any forest land for non-forest purpose, which in its opinion would minimize adverse environmental impact.*

*(f) The Regional office shall within a period of five days of the receipt of the advice of the Regional Empowered Committee on proposals referred to it under clause (e) above, forward such proposal along with advice of the Regional Empowered Committee to the Secretary, Ministry of Environment, Forests,*

*and Climate Change for obtaining the decision of the Central Government:*

*Provided that time taken in transit of proposal from Regional Office to the Ministry of Environment, Forests and Climate Change shall not be more than five days.*

*(g) The Central Government shall, after considering the advice of the Regional Empowered Committee and after further enquiry as it may deem necessary, grant in principle approval subject to fulfilment of stipulated conditions, or reject the same within thirty days of its receipt from the regional office and communicate the same to the concerned State Government or the United Territory Administration, as the case may be, within next five working days.*

*(3)(a) All proposals involving clearing of trees in forest land or portion thereof for the purpose of using it for re-forestation shall be finally disposed of by the Regional Office within a period of sixty days of receipt of the proposals from the State Government or the Union territory Administration, as the case may be.*

*(b) While examining the proposal, the Regional Office shall ensure that the final decision is in conformity with the National Forest Policy, Working Plan guidelines and other relevant rules and guidelines issued by the Central Government from time to time.*

*(c) The Regional Office shall however seek prior clearance of the Ministry of Environment, Forests and Climate Change whenever the proposal involves clear-felling of forest land having crown density above forty per cent irrespective of the area involved, or clear-felling of forest area of size more than twenty hectares in the plains and ten hectares in the hilly region, irrespective of density.*

*(4)(a) The Ministry of Environment, Forests and Climate Change after having received the proposal referred to in clause (b) of sub-rule (4) of rule 6 shall determine the completeness of the proposal within ten days.*

*(b) If the Ministry of Environment, Forests and Climate Change finds that the proposal is incomplete, it shall return it within the period of ten days as specified under clause (a), to the State Government or the Union territory Administration, as*

*the case may be, and this time period and the time taken by the State Government to re-submit the proposal shall not be counted for any future reference.*

*(c) In case the proposal involves forest land more than one hundred hectares or renewal of lease, the Ministry of Environment, Forests and Climate Change shall within ten days of the receipt of a proposal complete in all respects, request the concerned Regional Office to inspect the forest land proposed to be diverted and submit a report to the Ministry of Environment, Forests and Climate Change within a period of forty-five days:*

*Provided that in case of the proposals seeking approval under the Act for prospecting of minerals in forest land, prior site inspection by the Regional Office shall be required only if the area of forest land actually required for construction of roads, paths, drilling of bore holes and all such non-forest purpose is more than one hundred hectares:*

*Provided further that the total time taken in communication of the request for site inspection from the Ministry of Environment, Forests and Climate Change to Regional Office and communication of the site inspection report from the Regional Office to the Ministry of Environment, Forests and Climate Change shall not be more than ten days, over and above the time taken in undertaking site inspection by the Regional Office.*

*(d) The Central Government shall refer every proposal, which is complete in all respects, received by it under clause (b) of sub-rule (4) of rule 6 including site inspection reports, wherever required, to the Committee for its advice and the Committee shall give its advice within thirty days from the date of receipt of the said proposal.*

*(e) The Committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under clause (d), namely: -*

*(i) whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, national park, wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of*



- flora and fauna or of an area lying in severely eroded catchment;*
- (ii) whether the use of any forest land is for agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydroelectric project;*
  - (iii) whether the State Government or the Union territory Administration, as the case may be, has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose;*
  - (iv) whether the State Government or the Union territory Administration, as the case may be, undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof;*
  - (v) whether the per unit requirement of forest land is significantly higher than the national average for similar projects; and*
  - (vi) whether the State Government or the Union territory Administration, as the case may be, before making their recommendation has considered all issues having direct and indirect impact of the diversion of forest land on forest, wildlife and environment.*
- (f) While tendering advice, the Committee may also suggest any condition or restriction on the use of any forest land for any non-forest purpose, which in its opinion would minimize adverse environmental impact.*
- (g) The Central Government shall, after considering the advice of the Committee under clause (e) and clause (f) and after such further enquiry as it may consider necessary, grant in-principle approval subject to fulfilment of stipulated conditions, or reject the same within thirty days of the receipt of advice from the Committee and communicate the same to the concerned State Government or the Union territory Administration, as the case may be, within next five working days.*

**8. Submission of report on compliance to conditions stipulated in the in-principle approval and grant of final approval.** (1)(a) The Nodal Officer shall within five days of receipt of the in-principle approval, endorse a copy of the same to

*the concerned Divisional Forest Officer and the Conservator of Forests;*

*(b) On receipt of a copy of the in-principle approval, the Divisional Forest Officer shall prepare a demand note containing item-wise amount of compensatory levies such as cost of creation and maintenance of compensatory afforestation, Net Present Value (NPV), cost of implementation of catchment area treatment plan or wildlife conservation plan etc. to be paid by the User Agency and communicate the same, along with a list of documents, certificates and undertakings required to be submitted by the User Agency in compliance with the conditions stipulated in the in-principle approval to the User Agency within ten days of the receipt of a copy of the in-principle approval.*

*(c) The User Agency shall within thirty days of receipt of demand note and list of documents, certificates and undertakings from the Divisional Forest Officer make payment of compensatory levies and submit a compliance report containing a copy of documentary evidence in respect of the payment of compensatory levies along with documents, certificates and undertakings indicated in the said list to Divisional Forest Officer.*

*(d) The Divisional Forest Officer, after having received the compliance report shall determine its completeness within a period of fifteen days of its receipt from the User Agency.*

*(e) If the Divisional Forest Officer finds that the compliance report is incomplete, he shall communicate the shortcoming or shortcomings in the compliance report to the User Agency within a period of fifteen days of its receipt from the User Agency and if the compliance report is complete in all respect, it shall be forwarded to the Conservator of Forests within a period of fifteen days of its receipt from the User Agency.*

*(f) The Conservator of Forests, after having received the compliance report shall determine its completeness within a period of fifteen days of its receipt from the Divisional Forest Officer.*

*<sup>1</sup>(g) in case the Conservator of Forests finds that the compliance report is complete in all respect, he shall forward such report along with the report on completion of the process of recognition and vesting*



*of forest rights and consent of the each Gram Sabha received from the District Collector referred to in sub-clause (f) of sub-rule (3) of rule 6, to the Nodal Officer within a period of fifteen days of its receipt from the Divisional Forest Officer:*

*Provided that in case the Conservator of Forests finds that the compliance report is incomplete, he shall communicate the shortcoming or shortcomings in the compliance report to the User Agency and the Divisional Forest Officer within a period of fifteen days of its receipt from the Divisional Forest Officer;*

*(h) The Nodal Officer, after having received the compliance report shall determine its completeness within a period of fifteen days of its receipt from the Conservator of Forests.*

*(i) in case the Nodal Officer finds that the compliance report is complete in all respect, he shall forward such report to the State Government or Union territory Administration, as the case may be, within a period of fifteen days of its receipt from the Conservator of Forests:*

*Provided that the State Government or the Union Territory Administration, as the case may be, may authorize the Nodal Officer to send the compliance report directly to the Ministry of Environment, Forest and Climate Change or the Regional Office, as the case may be;*

*Provided further that in case the Nodal Officer finds that the compliance report is incomplete, he shall communicate the shortcoming or shortcomings in the compliance report to the User Agency, the Conservator of Forests and the Divisional Forest Officer within a period of fifteen days of its receipt from the Conservator of Forests;*

*(j) The State Government or Union territory Administration, as the case may be, after having received the compliance report shall determine its completeness within a period of fifteen days of its receipt from the Nodal Officer.*

*(k) If the State Government or Union territory Administration, as the case may be, finds that the compliance report is incomplete, it shall communicate the shortcoming or shortcomings in the compliance report to the User Agency, the Nodal Officer, the Conservator of Forests and the*

*Divisional Forest Officer within a period of fifteen days of its receipt from the Nodal Officer and if the compliance report is complete in all respects, it shall be forwarded to the Ministry of Environment and Forests or the Regional Office, as the case may be, within a period of fifteen days of its receipt from the Nodal Officer.*

*(l) The Ministry of Environment, Forests and Climate Change or the Regional Office, as the case may be, after having received the compliance report shall determine its completeness within a period of fifteen days.*

*(m) in case the Ministry of Environment, Forests and Climate Change or the Regional Office, as the case may be, finds that the compliance report is complete in all respect, it shall accord the final approval under the Act and communicate such approval to the State Government or the Union Territory Administration, as the case may be, within a period of twenty days of the receipt of the compliance report:*

*Provided that in case the Ministry of Environment, Forests and Climate Change or the Regional Office, as the case may be, finds that the compliance report is incomplete, the shortcoming or shortcomings in the compliance report shall be communicated to the State Government or the Union territory Administration, as the case may be, to the Nodal Officer and the User Agency, within a period of twenty days of the receipt of the compliance report.*

*(n) The report on fulfilment of shortcoming or shortcomings in the compliance report shall be processed and forwarded to authorities concerned in the State Government or the Union territory administration, as the case may be, and Central Government in the manner and within the time limits stipulated in clause (d) to clause (l) above.*

*(2)<sup>1</sup>(a) In cases where compliance of conditions in the in-principle approval is awaited for more than five years from the State Government or the Union Territory Administration, as the case may be, the in-principle approval may be summarily revoked:*

*Provided that in cases where for valid and cogent reasons it has not been possible for the User Agency or the State Government or the Union Territory Administration, as the case may be, to comply with one or more of the conditions stipulated in the in-principle approval for obtaining final approval, the*

Central Government may extend the period for compliance of such conditions by further period as it deems fit.

(b) If the User Agency or the State Government or the Union territory Administration, as the case may be, is still interested in the project, after its revocation, they may submit a fresh proposal which shall be considered de-novo.

3 (a) In case, before submission of a report on compliance to conditions stipulated in the in principle approval accorded under the Act for a mining project by the State Government or the Union territory Administration, as the case may be, and grant of final approval by the Central Government within five years from the date of grant of in-principle approval, validity of the mining lease expires, instead of submission of a de-novo proposal to obtain approval of Central Government under the Act for diversion of such forest land, for renewal of mining lease, the State Government or Union territory Administration, as the case may be, while submitting report on compliance to conditions stipulated in the in principle approval may seek final approval of Central Government under the Act for diversion of such forest land for original period of the mining lease for which in-principle approval has already been accorded, and also for renewal of mining lease for a period, as specified by the State Government and Union Territory Administration, as the case may be, not exceeding twenty years.

(b) Report on compliance to statutes, circulars or directives, as applicable to such proposals, which came into force after grant of in-principle approval, if any, shall also be submitted to the Central Government along with the report on compliance to conditions stipulated in the in-principle approval.

19(c) In cases, apart from grant of final approval under the Act for diversion of such forest land for original period of mining lease, the central government, shall after considering advice of the Forest Advisory Committee or the Regional Empowered Committee, as the case may be, and after further enquiry as it may consider necessary, grant final approval to the proposal of the State Government or the Union Territory Administration, as the case may be, for renewal of the mining lease for a period, as may be specified by the Central Government, not exceeding twenty years, with appropriate conditions, or reject the same.



*(d) Procedure stipulated in clauses (a) to (c) above, shall also be applicable to the cases where in-principle approval under the Act for diversion of forest land has been accorded on a day more than five years prior to the date of expiry of the lease and for valid and cogent reasons it has not been possible for the User Agency or the State Government or the Union Territory Administration, as the case may be, to comply with one or more of the conditions stipulated in the in-principle approval and obtain final approval within five years from the date of in-principal approval:*

*Provided such in-principal approval has not already been summarily revoked by the Central Government; Provided further that in such cases, apart from the report referred to in clause (b) above, the State Government or the Union Territory Administration, as the case may be, shall also submit to the Central Government, reason or reasons for delay in compliance to conditions stipulated in the in-principal approval.*

*(e) Procedure stipulated in clause (a) to (e), shall also be applicable to the cases where mining lease expires or has already expired within the period of ten years from the date of grant of in-principal approval under the Act, even if final approval under the Act for diversion of such forest land has been granted prior to the expiry of the mining lease:*

*Provided that in such cases, in place of a report on compliance to conditions stipulated in the in-principal approval, a report on compliance to conditions stipulated in the final approval under the Act for diversion of such forest land during the validity of the original lease period shall be submitted to the Central Government by the State Government or the Union Territory Administration, as the case may be.*

29. Section 20 of the National Green Tribunal Act deals with the matters to be considered by the Tribunal while passing orders or award or judgement which reads as follows:

20. Tribunal to apply certain principles-

*“The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable*

*development, the precautionary principle and the polluter pays principle.”*

30. The decision reported in <sup>1</sup> **[T.N. Godavarman Thirumulpad Vs. Union of India and Others]** the Apex court has considered adherence of principles of sustainable development *vis a vis* environment impact and also given guidelines as to how this has to be considered while considering the project in question in the angle of environment protection and observed as follows:

*“Adherence to the principle of sustainable development is now a constitutional requirement. How much damage to the environment and ecology has got to be decided on the facts of each case. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs is sustainable development. Therefore, courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity.”*

31. The Apex court also relied on the decision reported in <sup>2</sup> **[A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (Retd.) & Others]**, in which also the same principle has been reiterated and also considered the role of State in protecting environment and selecting a particular area for a project before proceeding with the acquisition of land for that purpose.

<sup>1</sup> (2008) 2 Supreme Court Cases 222

<sup>2</sup> 1992 (2) SCC 718

32. In the decision reported in <sup>3</sup> [**T.N.Godavarman Thirumulpad Vs. Union of India and Others**], the scope of forest as defined under Forest Conservation Act was considered and observed as follows:

*“The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the 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(t) 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 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.*

*This aspect has been made abundantly clear in the decisions of this Court in **Ambica Quarry Works vs. State of Gujarat**<sup>4</sup>, **Rural Litigation and Entitlement Kendra v. State of U.P.**<sup>5</sup>, and recently in the order dated 29-11-1996 (**Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority**)<sup>6</sup>. The earlier decision of this Court in **State of Bihar v. Bansi Rain Modi**<sup>7</sup> has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the*

<sup>3</sup> 1997 (2) SCC 267

<sup>4</sup> (1987)1 SCC 213

<sup>5</sup> 1989 Supp (1) SCC 504

<sup>6</sup> WP (C) No 749 of 1995 decided on 29.11.1996

<sup>7</sup> (1985) 3 SCC 643



*decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority."*

33. In the decision reported in <sup>8</sup>**[Vellore Citizen Welfare Forum Vs Union of India & Others]**, the Apex Court has considered the question of striking balance between development and environment issue and observed as follows:

*"The traditional concept that development and ecology are <sup>9</sup>opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be human*

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<sup>8</sup> (1996) 5 SCC 647

*life while living within the carrying capacity of the supporting accepted as a viable concept to eradicate poverty and improve the quality of ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.*

*Some of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" in the context of the municipal law means:*

*(i) Environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.*

*(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

*(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.*

34. In the same decision it has been held:

*"In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.*

*Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them the rules of Customary International Law which are not contrary to the as part of the domestic law. It is almost an accepted proposition of law that municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khanna's opinion in **A.D.M. vs. Shivakant Shukla**<sup>10</sup>, **Jolly George Varghese case**<sup>11</sup> and **Gramophone Co. case**<sup>12</sup>.*

*The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876.<sup>13</sup>Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words:*

*Also, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, 'sic utere tuo, ut alienum non leadas' ; this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance.*

*With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for*

<sup>10</sup> (1976) 2 SCC 521: AIR 1976 SC 1207

<sup>11</sup> Jolly George Varghese v. Bank of Cochin (1980) 2 SCC 360: AIR 1980 SC 470

<sup>12</sup> Gramophone Co of India Ltd v Birendra Bahadur Pandey (1984) 2 SCC 534:1984 SCC



*the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of 'doing to others, as we would they should do unto ourselves'."*

35. The same principle has been reiterated by the Apex Court in the decisions reported ***Hanuman Laxman Aroskar Vs. Union of India*** in Civil Appeal No. 12251 of 2018 with ***Federation of Rainbow Warriors vs. Union of India and Ors*** in Civil Appeal No. 1053 of 2019.
36. It is clear from the above dictums that the forest as defined under the Forest Conservation Act has to be liberally construed so as to include not only the reserved, notified and protected forest but also forest like land in the generic sense. The Sustainable development must be understood as a development which is required to meet the needs of the present generation without compromising the needs of the future generation for their use. While applying the principle of sustainable development the functionaries must apply the precautionary principles so as to mitigate the circumstances to reduce the degradation that is likely to be caused to environment with a view to protect environment and support development. Only if it is proved that irreversible damage will be caused and none of the precautionary principles will protect environment, then only the authorities should decline permission for such projects.

With these principles in mind, the question that arises for consideration of this case has to be considered.

37. It is an admitted fact that Chhattisgarh East Railway Limited (hereinafter called CERL) was formed as a Public Private Partnership between the Ministry of Railways, State of Chhattisgarh and the South Eastern Coal Fields Ltd for the construction of a railway line for the transport of coal and passenger traffic between Kharsia and Dharamjaigarh. It is also not in dispute that it was connecting Katghora to Parsa and Dharamjaigarh to Pendra Road via Korba and Katghora totalling about 453 KM in length and it was divided in its three corridors as follows:

*Corridor 1: East Corridor- Kharsia-Gharghoda-Korichhapar- Dharamjaigarh up to Korba with a spur from Gharghoda to Donga Mauha to connect mines of Gare-Pelma block approximately 180 KM in length.*

*Corridor 2: North Corridor- Surjur-Parsa-Katghora-Korba, approximately 150 KM in length*

*Corridor 3: East West Corridor- Gevra Road to Pendra Road via Dipka, Katghora, Sindurgarh, Pasan, approximately 122 KM in length*

38. It is also an admitted fact that a portion of the project for 10 – 64 Km was granted to CERL earlier where 76.099 ha of forest land involved. So a proposal was given by the Project Proponent through the State of Chhattisgarh for permission for conversion of 76.099 ha of forest land for construction of East Rail Corridor with all relevant papers to the MoEF & CC and the same was forwarded to the Forest Advisory



Committee by the MoEF & CC for its comments and recommendations and in the meeting dated 22.12.2014, they considered the same and recommended the project with the following additional conditions:

- a. If required provision for construction of sufficient underpasses for safe crossing of animals shall be made in consultation with the Chief Wildlife Warden*
- b. As and when required speed of train shall be regulated in consultation with the Chief Wildlife Warden of the State Government*
- c. Integrated Wildlife Management Plan shall be prepared and implemented by the State Government as the project cost to mitigate the impact of railway project.*

39. On the basis of this recommendation, the MoEF & CC had granted Stage I approval dated 26.02.2015 with the 30 conditions of which following conditions relates to the protection of Wildlife namely;

*(12) If required provision for construction of sufficient underpasses for safe crossing of animals shall be made in consultation with the Chief Wildlife Warden*

*(13) As and when required speed of train shall be regulated in consultation with the Chief Wildlife Warden of the State Government*

*(14) Integrated Wildlife Management Plan shall be prepared and implemented by the State Government as the project cost to mitigate the impact of railway project.*

*(15) The forest land shall not be used for any purpose other than that specified in the proposal.*

*(16) The forest land proposed to be diverted shall under no circumstances be transferred to any other agency, department or person without prior approval of the Central Government.*

*(17) No damage to the flora and fauna of the adjoining area shall be caused.*

*(18) Any tree felling shall be done only when it is unavoidable and that too under strict supervision of the State Forest Department.*

*(19) The user agency in consultation with the State Government shall create and maintain alternate habitat/home for the avifauna whose nesting trees are to be cleared in this project. Bird's nests artificially made out of eco-friendly material shall be used in the area, including forest area and human settlements, adjoining the forest area being diverted for the project;*

*(20) The State Government shall ensure controlled speed limit of the trains passing through the forest portion to enable the trains drivers to react to the sudden appearance of the wild animals on the track;*

40. It is also mentioned as one of the conditions that the user agency shall submit the annual self compliance report in respect of above conditions to the Nodal Officer and to the Regional Office Ministry of Environment, Forest and Climate Change, Nagpur regularly and any other condition that the concerned Regional Office, Ministry of Environment, Forest and Climate Change, Nagpur may stipulate, from time to time, in the interest of conservation, protection and development of forest and Wildlife. So it is clear from above that while granting "in principle approval" known as Stage-I approval, the Central Government had considered the recommendations of the Forest Appraisal Committee and it is thereafter incorporated the above conditions taking into account the interest of Conservation, preservation and Protection of wildlife.

41. After getting the compliance report furnished, the State Government vide their letter No.Bhu-rabandh/Vividh/11-

368/1128 dated 02.05.2015 submitted before the Central Government for final approval and MoEF &CC granted formal approval to CERL Limited, Chhattisgarh for conversion of 76.099 ha of forest land in Raigarh district of Chhattisgarh subject to fulfilling as many as 12 conditions of which following conditions are relevant for this purpose for the purpose of protection of forest:

2. *Compensatory afforestation over the degraded forest land, twice in extent to the forest land being diverted, shall be raised and maintained by the State Forest Department from the funds already deposited by the user agency.*
3. *The user agency shall pay the additional amount of NPV, if so determined, as per the final decision of the Hon'ble Supreme Court of India*
4. *If required provision for construction of sufficient underpasses for safe crossing of animal shall be made in consultation with Chief Wildlife Warden.*
5. *As and when required speed of train shall be regulated in consultation with Chief Wildlife Warden of the State Government.*
6. *An integrated Wildlife Management Plan shall be prepared and implemented by the state Government at the project cost to mitigate the impact railway projects.*
7. *The user agency consultation with the State Government shall create and maintain alternate habitat/home for the avifauna, whose nesting trees are to be cleared in this project. Bird's nests artificially made out of eco-friendly material shall be used in the area, including forest area and human settlements, adjoining the forest area being diverted for the project.*
11. *Any other condition that the concerned Regional Office of this Ministry may stipulate, from time to time, in the interest of conservation, protection and development of forests & Wildlife.*

42. It is on the basis of this, final approval was granted by State Government dated 23.06.2015. There also the conditions imposed by MoEF & CC have been reiterated.

43. There is no case for the appellant/applicant that it is a declared reserved forest or it is part of any wild life sanctuary or declared elephant corridor. According to the State department including forest department none of this area is part of notified reserved forest or wild life sanctuary or bird sanctuary or part of national park. It is also stated by Government of Chhattisgarh that there is no declared or notified elephant corridor in their State. But it was admitted by them that elephant being a nomadic animal used to travel long distances from neighbouring state as well and they used to cross the forest and go to the area where human habitat is situated and there used to be some human-elephant conflict. They also admitted that some elephants died due to electrocution. There was no case of any elephant died due to the accident in the area covered by the present project.

44. It is also an admitted fact that the work of preparation of Wild Life Management Plan was entrusted to Tropical Forest Research Institute, Jabalpur known as TFRI and they prepared Wildlife Management Plan considering all aspects and it was submitted for approval of the Chief Wildlife Warden and on the basis of the directions given, certain modification were made and it was sent for approval and



later it was approved. The suggestions given by the Forest Department have been considered and incorporated in the management plan. It is not in dispute that the organisation which prepared the Wildlife Management Plan namely TFRI is an autonomous body under the MoEF&CC and they have the expertise in preparing the plan. There is no case for the appellant/applicant in this case that no management plan was prepared but their case was that it was not available for consideration before the Forest Appraisal Committee to consider as to whether the mitigation measures mentioned therein are sufficient or not. It may be mentioned here that even at the time it was mentioned that the plan is under preparation and it is also mentioned in the subsequent report also that it was submitted for approval and there were certain modification required and that was incorporated and revised Wildlife Management Plan was prepared and submitted for approval and it was undertaken by the State Government through the Project Proponent that the plan will be prepared, got approved and will be implemented and only thereafter the Stage-I and Stage-II approvals were granted by the MoEF&CC and the final approval granted by the State Government under Section 2 of the Forest Conservation Act. So under such circumstances it cannot be said that the interest of the forest protection, preservation and conservation were not

taken into consideration by the authorities before granting the same.

45. The other grievance was that only a piecemeal appraisal was done and it ought to have been done in respect of the entire area. It may be mentioned here that all the 03 corridors of the entire project was submitted and permission was sought in respect of the area for which work was awarded to CERL on the first occasion. So it is on that basis CERL had submitted permission for conversion of 76.099 ha of forest land for this purpose and even in that the entire project was mentioned and integrated Wildlife Management Plan was directed to be prepared for this purpose and only thereafter the implementation of the project can be proceeded with. It is seen from the reply statement submitted by the State officials that considering the linear project like railway line, roads, etc, the in principle approval given can be taken as working permit and the work can be started after depositing of the present net value and afforestation was done and they have produced circular issued by MoEF & CC in this regard as well.

46. It is thereafter, that the other portion of the project for a distance between 0 to 10 with a spur area of 0-28 was also granted to CERL and they applied for permission for conversion of 26.52 ha of forest land and Stage-I clearance was granted on 27.06.2017 and Stage-II clearance was

granted on 07.09.2017 and final forest clearance was granted on 06.12.2017 which is a subject matter of Appeal No 01/2018. In this, it has been categorically stated that the Regional Empowered Committee had made certain observations and it was returned and thereafter, compliance report was submitted by the project proponent and in the subsequent meeting, the officials of the project proponent explained the circumstances and only after satisfying with the same that the Regional Empowered Committee had recommended the project for this portion with certain conditions. The perusal of the minutes of the Regional Empowered Committee on two occasions referred to by the appellant himself in his appeal memorandum and produced as Annexure will go to show that there was application of mind by the REC before recommending the project and it cannot be said that they had simply accepted the proposal and forwarded the same to the Government with their recommendations without application of mind.

47. The shortcomings found by the REC were rectified to their satisfaction and only thereafter it had recommended the project and that was also incorporated as conditions for granting the approval which the Project Proponent is expected to comply with.

48. Further the documents produced by both the sides namely the correspondence between the TFRI, CERL and the Forest department will go to show that Wildlife

department had conducted a study about the impact of the project on forest and made recommendation regarding construction of underprocess and over passes, the number of such passes and other conditions to be incorporated taking it account the conservation, protection and preservation of forest and wild life of that area. Merely because elephants are likely to or expected to pass through the area which was not treated as a regular corridor of elephant movement, it cannot be treated as a regular elephant corridor for the purpose for appraising the project. However, passing of elephants through these area and some incident occurred involving human-elephant conflict and death of elephants and human beings have been considered and necessary conditions have been imposed by the forest department to mitigate the circumstances to make the movement of animal in that area easier through which, the project was allowed to be implemented in that forest area.

49. It is an acceptable principle that country cannot survive without development and Sustainable development with application of precautionary principle has to be applied while evolving the principle of sustainable development. While considering the approval granted by the Government for conversion of forest area, the Tribunal has only to consider whether the above principles have been considered by the concerned departments before granting the permission. It cannot be said that for providing



connectivity by constructing railway line is not a public project. Further there is no private involvement in this case and entire project is undertaken by a public sector undertaking namely CERL. So there is no necessity to doubt the genuineness of this project and the profit aspect of the project need not be considered when public interest demand such a project to be implemented to provide easy connectivity from one region to another for the public and also for transport of goods. So under such circumstance, all the documents produced and the appreciation made by the concerned departments before granting the approval show that the Government has taken all necessary precautions to protect the forest before granting the approval.

50. Though the approval were granted in piecemeal, it will be seen from the documents produced that an integrated wildlife management plan of the entire area was prepared and it was considered by the Forest department and approved by the Chief Wildlife Warden and the Conservator of Forest.

51. So under such circumstances we do not find any reason to set aside the approvals granted by the MoEF & CC and the State Government to CERL for construction of railway project through the forest area and granting permission for conversion for 76.099 ha and 26.52 ha respectively of forest land for non-forest purpose.

52. The apprehension of the appellant/applicant is that the present Wildlife Management Plan is not sufficient and did not take care of the entire mitigating circumstances required for protecting the Wildlife. Some more conditions should have been imposed which according to the applicant or even for the court considered to be necessary is not a ground for setting aside the approval already granted, once the Tribunal is satisfied that all reasonable precautions have been taken applying the principles of precautionary principle for maintaining sustainable development and in spite of the conditions, imposed the impact of the project on forest is more which is irreversible in nature is not established.

53. As per order dated 07.12.2018 in M.A. No. 906/2017, this Tribunal has modified the order of injunction restraining the project proponent from proceeding with the work of the project and after apprising all the approval granted by the Government in this regard modified the order and granted permission to the project proponent to proceed with the project, after getting necessary final approval from the State Government under Section 2 of the Forest (Conservation) Act, 1980. It is true that it was mentioned that it will be subject to validity of the approval will be considered at the time of hearing the appeals. That also will go to show that Tribunal had prima-facie come to the conclusion that the department have applied their mind

while granting the approval and on the basis of the circular issued, the “in principle” approval can be taken as a permission subject to further approval granted by the forest department with conditions, the project proponent is entitled to proceed with once such approvals are granted. It is also seen from the reply that work was in progress and huge amount has been spent for the project so far.

54. So under such circumstances we feel that without setting aside the forest clearance granted by the government for this project, an expert committee can be appointed for the purpose of exploring the possibility as to whether any further conditions have to imposed for the purpose of providing more mitigating measures to be taken to meet the human-elephant conflict and also protect the wildlife and flora and fauna in that area. So for that purpose we constitute an Expert Committee consisting of Senior representative of MoEF & CC, National Wildlife Board, Wildlife Institute of India, Chief Wildlife Warden of the State and Principle Conservator of Forest of the State to make an assessment of additional mitigation measures for the project and to ascertain as to whether any further conditions are to be incorporated to mitigate the probable or possible impact of the project on wildlife and also to avoid the human-elephant and other wild animals conflict, which is expected to happen or which is likely to be anticipated in view of the random movement of elephants and other wild

animals found in these areas and submit a report to MoEF & CC and MoEF & CC, in consultation with Forest Advisory Committee, consider that report as well and impose further conditions if any required to be complied with by the project proponent in implementing the project.

55. So under such circumstances, we do not feel it necessary to set aside the approval already granted. Further condition if any necessary that can be considered as an additional precautionary measures as part of precautionary principle in permitting sustainable development *vis a vis* protection of environment, on the basis of report to be submitted by the Committee and can be imposed by the Government in this regard as directed by this Tribunal in the preceding paragraphs.

56. With the above directions and observations the appeals as well as Original Application are disposed off.

.....  
Adarsh Kumar Goel, CP

.....  
K. Ramakrishnan, JM

.....  
Dr. Nagin Nanda, EM

*True copy*



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO(S). 8253 OF 2019

SUDIEP SHRIVASTAVA

...Appellant(s)

Vs.

UNION OF INDIA &amp; ORS.

...Respondent(s)

O R D E R

1. The Civil Appeal arises out of the judgment of the National Green Tribunal in Appeal No. 188 of 2018 dated 29.04.2019 before which grant of final forest clearance on 04.07.2018 was challenged.

2. Mr. Prashant Bhushan on behalf of the appellant raised a specific point that the corridor commencing from Pendra Road to Gevra Road could have been avoided in view of the alternative route. It is however apparent that this point is not reflected in the judgment of the National Green Tribunal.

3. Mr. Ajit Kumar Sinha, learned senior counsel appearing on behalf of the respondents has raised a strong objection to the above referred submission of the appellant. He would submit that this plea was taken up for consideration by a full Bench of the National Green Tribunal. Before the full Bench all issues relating to corridor nos. 1, 2 and 3 were raised. Having considered the matter in detail, the full Bench disposed it of by the common judgment and order dated 08.08.2019. It is submitted by Mr. Sinha that this order has attained finality as the same was not challenged by the

appellant before this Court.

4. As the submission relating to alternative road is not reflected in the order impugned before us, without disturbing the finding arrived at by the Tribunal, we think it appropriate to remand the matter to the National Green Tribunal to consider and dispose of the said objection. Needless to say, we have not expressed any opinion on the merits of the matter and it is for the Tribunal to take up, consider and dispose of the appeal on its own merit. The respondents will also be entitled to raise all such pleas that are available to them in law including the issue of maintainability. The Tribunal shall endeavour to dispose of the appeal within a period of four months from the date of receipt of this order.

5. With these observations, the Civil Appeal is disposed of with a direction that the National Green Tribunal will restore Appeal No. 188 of 2018 to its original number and hear and dispose of the submission of the appellant on the issue of alternative route to the one commencing from Pendra Road to Gevra Road.

6. Pending application(s), if any, shall stand disposed of.

.....J.  
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.  
[MANOJ MISRA]

NEW DELHI;  
NOVEMBER 26, 2024

ITEM NO.11

COURT NO.13

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 8253/2019

SUDIEP SHRIVASTAVA

Appellant(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

IA No. 69806/2020 - EXEMPTION FROM FILING AFFIDAVIT  
 IA No. 152041/2019 - EXEMPTION FROM FILING O.T.  
 IA No. 69283/2022 - EXEMPTION FROM FILING O.T.  
 IA No. 69803/2020 - EXEMPTION FROM FILING O.T.  
 IA No. 106022/2020 - GRANT OF INTERIM RELIEF)

Date : 26-11-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA  
 HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s) Ms. Neha Rathi, AOR

For Respondent(s) Ms. Aishwarya Bhati, A.S.G.  
 Ms. Swarupama Chaturvedi, Sr. Adv.  
 Mr. Gurmeet Singh Makker, AOR  
 Ms. Ruchi Kohli, Adv.  
 Ms. Chinmayee Chandra, Adv.  
 Mr. Ishaan Sharma, Adv.  
 Mr. B K Satija, Adv.

Mr. Abhishek Pandey, Adv.  
 Mr. Prashant Kumar Umrao, AOR

Mr. Ajit Kumar Sinha, Sr. Adv.  
 Mr. Ashwarya Sinha, AOR  
 Mr. Aditya Malhotra, Adv.  
 Mr. Naveen Soni, Adv.  
 Ms. Surbhi Kumari, Adv.

Mrs. Aishwarya Bhati, A.S.G.  
 Mrs. Swarupama Chaturvedi, Sr. Adv.  
 Mr. Amrish Kumar, AOR  
 Mrs. Ruchi Kohli, Adv.  
 Mr. Chinmayee Chandra, Adv.  
 Mrs. Sushma Verma, Adv.

Mr. Vmz Chambers, AOR

Mr. Vishal Bhatnagar, Adv.

Ms. Lata Walia, Adv.

Ms. Reena Khunger, Adv.

Ms. Rani Yadav, Adv.

Mr. Ashwani Kumar, AOR

Mr. Vishal Bhatnagar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

1. The Civil Appeal is disposed of in terms of the Signed Order.
2. Pending application(s), if any, shall stand disposed of.

(KAPIL TANDON)  
COURT MASTER (SH)

(NIDHI WASON)  
COURT MASTER (NSH)

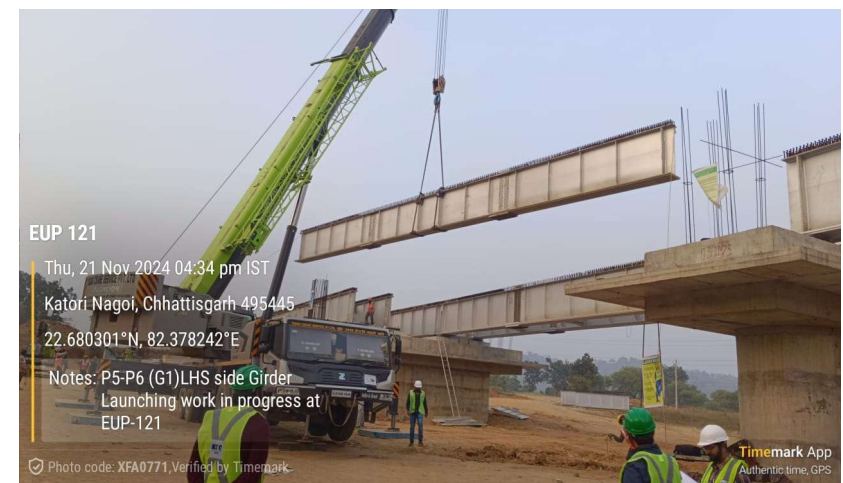
(Signed Order is placed on the file)



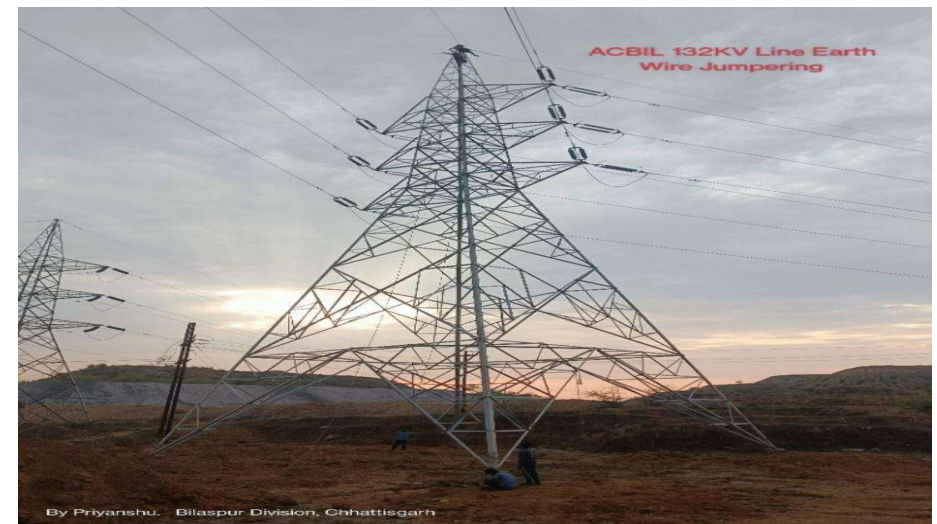


## ANNEXURE A/3





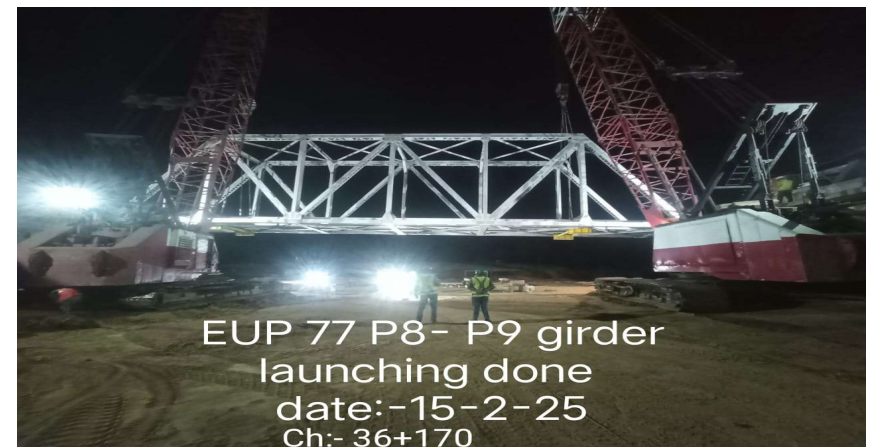






















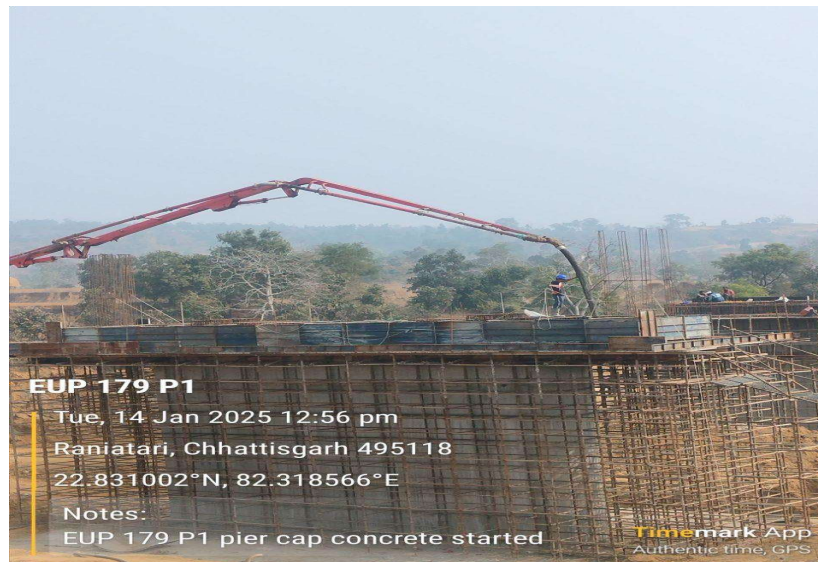
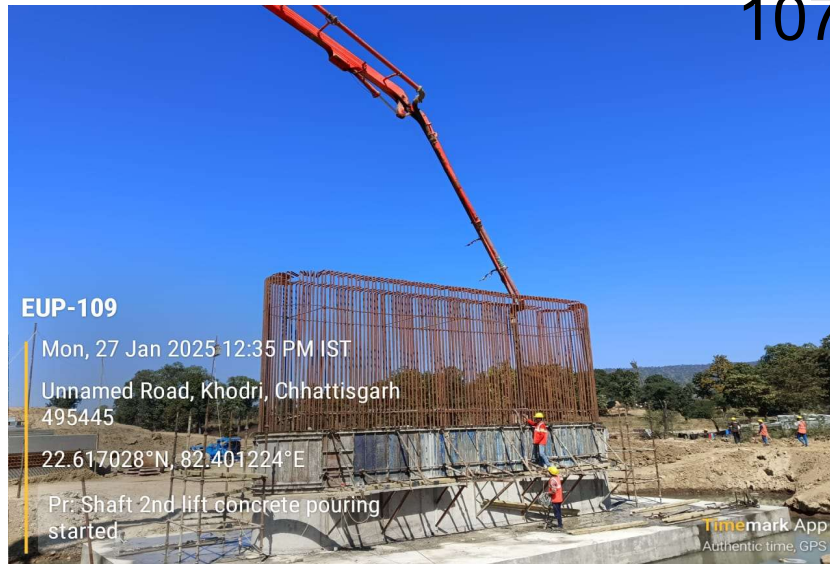












MJ-20 Span-4x30.5m CH:108+980, Dt-17.02.2025



ROB-22, Sapn- 1x24m, CH:119+018, Dt.-17.02.2025



MJ-20 Span-1x30.5m CH:108+980 Dt-17.02.2025



Pkg-3B ,130+000 Km  
(Y Junction U/L & D/L )  
Dt. 17.02.2025







**Package 3B**  
**At Ch. from 129+100 to**  
**129+840**  
**Work- In Hard Rock ( Blanket**  
**Finishing work in Progress).**



**MJ-24(ROR) Span 1x45.7+1x61m,**  
**CH:129+298(UP Line), Dt-17.02.2025**





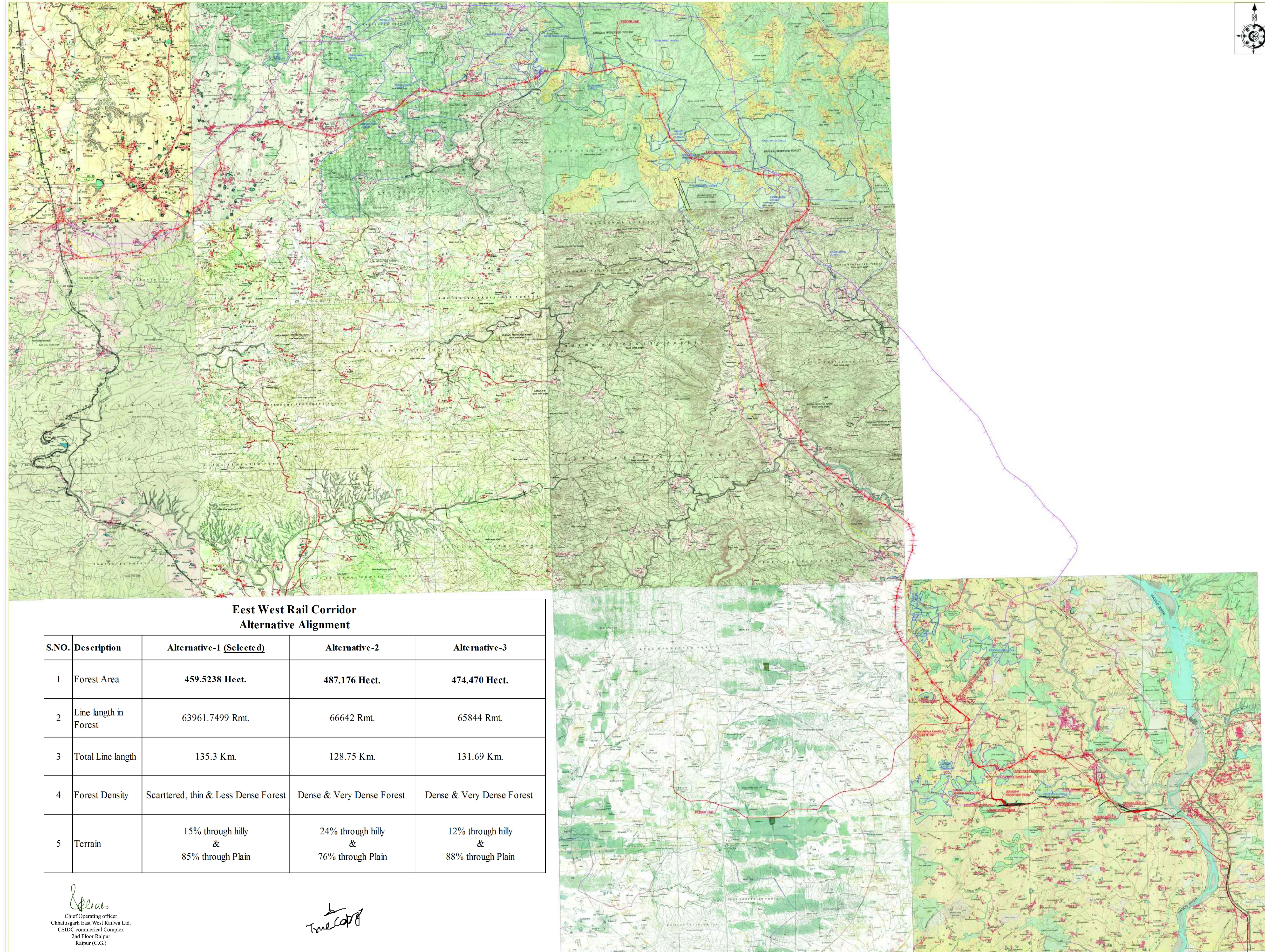





*True Copy*



**ANNEXURE A/4**  
**EAST-WEST RAIL CORRIDOR GEVRA ROAD TO PENDRA ROAD**  
**COMPARISON OF FOREST AREA B/W FINAL ALIGNMENT VS ALTERNATIVE ALIGNMENTS**



 <b>DTDC Express Limited</b> Regd. Office: No-3, Victoria Road Bengaluru - 560047		<b>ORIGIN</b> <b>POUCH NO.</b>	<b>DEST.</b> <b>DATE</b>
Non Negotiable Consignment Note / <b>Source of Bengaluru Jurisdiction.</b>			
<b>1</b> Sender's (Consignor) Name: Company Name & Address: City: State: PIN Code:		<b>2</b> Recipient's (Consignee) Name: Company Name & Address: City: State: PIN Code:	
<b>3</b> Nature of consignment (✓) <input checked="" type="checkbox"/> <b>Dom</b> <input type="checkbox"/> <b>Non-Dom</b> Total Num Pcs: Actual Wt: kg Volumetric Wt: kg Chargeable Wt: kg		<b>4</b> Description of content: <b>Value of consignment for carriage (₹)</b> <b>49500</b>	
<b>5</b> Paper Work Enclosures		<b>6</b> Type of consignment (✓) <input checked="" type="checkbox"/> <b>Commercial</b> <input type="checkbox"/> <b>Non Commercial</b> <input type="checkbox"/> <b>Value Added Services</b> <input type="checkbox"/> <b>Not Available</b>	
<b>10</b> I/We declare that this consignment does not contain personal mail, cash, jewellery, contraband, illegal drugs, any prohibited items and commodities which can cause safety hazards while transporting		<b>8</b> Mode (✓) <input checked="" type="checkbox"/> <b>Surface</b> <input type="checkbox"/> <b>Air Cargo</b> <input type="checkbox"/> <b>Express</b>	
Sender's Signature & Seal		<b>Consignment Number:</b> <b>Z54745326</b>	
Date: Time: AM/PM		<b>12</b> Risk Surcharge	
I have read and understood terms & conditions printed overleaf of this consignment note and I agree to the same.		<b>11</b> Booking Branch / Franchisee Code: <b>15</b>	
<a href="http://www.dtdc.in">http://www.dtdc.in</a>    <a href="mailto:customersupport@dtcd.com">customersupport@dtcd.com</a>    +91-9606 911 811		<b>SENDER COPY</b> Jan. 2024	