

Uttarakhand High Court
WPIL/68/2022 on 16 September, 2022

RESERVED ORDER

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
HON'BLE SRI JUSTICE R.C. KHULBE

WRIT PETITION (PIL) No. 68 OF 2022

ORDER RESERVED : 24th AUGUST, 2022
ORDER DELIVERED : 16th SEPTEMBER, 2022

Between:

Ashish Kumar Garg.

...Petitioner

and

State of Uttarakhand and another.

...Respondents

Counsel for the petitioner. : Mr. Abhijay Negi and Ms. Snigdha Tiwari, the learned counsel.

Counsel for the respondents. : Mr. S.N. Babulkar, the learned Advocate General assisted by Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand.

ORDER : (per Hon'ble The Chief Justice Sri Vipin Sanghi) STAY APPLICATION (IA No. 06 OF 2022) The petitioner has preferred the present Writ Petition, in public interest, to seek the intervention of this Court against the proposed felling of 2057 trees for the purpose of widening of the road from Jogiwala/ Ladpur/ Sahastradhara Crossing/ Krishali Square/ Pacific Golf Estate in Dehradun. The petitioner also seeks a direction to the respondents to frame guidelines for any road widening exercise that may lead to consequent felling of trees.

2. The petitioner is a Civil Engineer, M.B.A., and also a fellow of Institution of Engineers. He is the President of the EcoGroup society of Dehradun, which is an environment conservation group working for the awareness of climate change, and to deal with the aspects of waste management, water conservation, solar, forest conservation and tree plantation.

3. The petitioner states that the planned felling of 2057 trees, for expansion of Jogiwala/ Ladpur/ Sahastradhara Crossing/ Krishali Square/ Pacific Golf Estate road, so as to facilitate traffic

movement between Mussoorie and Sahastradhara, would adversely impact the ecological and heritage value of the said trees, which are critical to the watershed of the Doon Valley. The petitioner states that the said proposed felling of trees falls foul of the accepted canons of sustainable development. According to the petitioner, alternatives are available to mitigate the traffic congestion, as well as to propagate environment conservation. The petitioner states that most of the said 2057 trees are fully grown varieties of the Peepal (7 peepal trees), Pilkhan, Amaltas, Mango (122 trees in all), Eucalyptus (1006) and other exquisite varieties of trees, which play a vital role in maintaining the ecology of the place, and in keeping the entire area cool in summer, and retaining water in their roots, which helps in maintaining the water table and lowering the air pollution.

4. The petitioner states that Dehradun city is now witnessing reduced rainfall, hotter summers and many heat islands have developed in and around the city, as witnessed in many barren/ desert like areas across North India. The petitioner states that greenery mitigates the effect of climate change naturally, since fully grown trees are natural absorbers of carbon. The petitioner further states that the Sahastradhara Road, which was once totally lush green, has already seen a great reduction in its green cover due to the coming up of various housing projects, and the cutting of further trees would imperil the entire watershed area of Sahastradhara road. The petitioner states that, rather than removing encroachments, stalls, electric poles, transformers, haphazard parking of tankers & vehicles, squatters/ hawkers and encroachment of walking places, the respondents are bent upon cutting the fully grown trees.

5. According to the petitioner, the respondents should lay the electrical and internet lines underground, and if such steps are taken, it would not be necessary for the respondents to expand the width of the motorable road to 12 meters from the existing 9.1 meters. The petitioner states that in July/ August, 2018, he had addressed a communication to the Chief Engineer of the Public Works Department (PWD) to adopt the concept of smart roads while undertaking road widening, and to protect existing fully grown trees for greener Doon and protection from pollution. Neither footpaths are available for pedestrians, nor are cycle tracks available for people to take up cycling. This leads to risk of accidents for the pedestrians, children, old aged citizens and cyclists. The petitioner has placed on record the communication dated 07.08.2018 received from the Office of the Superintending Engineer, P.W.D., Dehradun, Uttarakhand, wherein it was stated that encroachment was being removed along the road in question. The communication further stated that the suggestions made by the petitioner would be taken into consideration while preparing the DPR in the light of the existing width of the road, and the availability of monetary resources. A copy of this communication was also marked to the petitioner.

6. The petitioner states that the aforesaid assurance given by the respondents has been belied, and the respondents have suddenly started the work of cutting of trees. The petitioner states that the trees in question are also the abode of many species of birds, bees and other winged members, which form part of the biodiversity of the area.

7. The petitioner places reliance on the order dated 06.04.2022, passed in Writ Petition (PIL) No. 36 of 2022, to submit that this Court has intervened against construction, which would obstruct water retention in the Doon Valley. The petitioner states that he made a detailed representation to the

Chief Secretary, as well as to the P.W.D. on the aforesaid subject, but to no avail. The petitioner has placed on record the photographs to show the existing green cover on the road in question, on either side of the road. According to the petitioner, an alternative route exists from Ladpur Junction to Krishali Chowk via Tapovan Danda Gujrara Mansingh Wala, instead of the existing route from Sahastradhara Crossing to Krishali Chowk, which passes through the main residential areas. With these averments, the petitioner seeks the following reliefs in the Writ Petition :-

"1. Issue a writ, order or direction in the nature of certiorari to quash the proposed widening of the road from Jogiwala / Ladpur/ Sahastradhara Crossing / Krishali square/ Pacific golf estate, vide which 2057 trees have been earmarked as obstruction.

2. Issue a writ, order or direction in the nature of mandamus, commanding the respondents to frame guidelines for any road widening exercise that may lead to consequent felling of trees."

8. The Writ Petition was first taken up by the Division Bench of this Court on 11.05.2022. On that date, this Court directed that, in pursuance of the proposed road widening from Jogiwala/ Ladpur/ Sahastradhara Crossing/ Krishali Square/ Pacific Golf Estate, no trees shall be felled by the respondents. The matter was adjourned to 08.06.2022. On 08.06.2022, the matter was further adjourned to 20.06.2022, and the interim order dated 11.05.2022 was continued. The matter was further adjourned to 22.06.2022, and the interim order was continued.

9. The respondent no. 1-State of Uttarakhand filed its counter affidavit, and also moved an application, being IA No. 03 of 2022, for vacation of the stay order dated 11.05.2022. The respondent no. 2 has also filed its counter affidavit. The petitioner has filed its rejoinder affidavits to the counter affidavit of the respondent no. 1, as well as to the counter affidavit of the respondent no.2.

10. On 22.06.2022, the Division Bench heard the matter. The Division bench noticed the stand of the respondents in their counter affidavit, that the widening of the road is very much necessary for the proper development of communication and tourism in the State of Uttarakhand and that they proposed to transplant the precious trees and fruit bearing trees. However, they want to remove/ fell certain trees, which are not very ecologically friendly i.e. Eucalyptus trees.

11. The Court rejected the submission of the petitioner, premised on the report filed alongwith the rejoinder to the counter affidavit of the respondent no. 1, that even the Eucalyptus trees are good for the ecology and have cooling effect on the environment. The Court observed that it is well known that Eucalyptus trees have adverse effect on soil conservation and soil texture, as well as on the water table of the area where they are planted. The Division Bench then proceeded to pass the following directions :-

"3. So we, after having given anxious thought to this serious issue of conflict between man and nature, the requirement of development and protecting ecology and

environment, have come to the conclusion that we should accept the proposal submitted by the State of Uttarakhand through Executive Engineer, PWD, Rishikesh with certain modifications.

4. In that view of the matter, we modify the earlier order dated 06.04.2022 with the following directions:-

a) That widening of the road shall continue but, out of 2057 trees that is proposed to be felled, only 1006 eucalyptus trees are allowed to be felled by the authorities in the widening of road. As far as 79 trees are concerned, as per the counter affidavit they shall remain, as is where is basis and they shall not be cut or harmed in any way. Regarding the rest 972 trees, which include valuable fruit bearing trees belonging to the precious flora of SubHimalayan region shall be transplanted to a suitable place as undertaken by Mr. C.S. Rawat, learned Chief Standing Counsel for the State as well as by Mr. Dharendra Kumar, Executive Engineer, PWD, Rishikesh Division.

b) We further direct that the respondents shall also plant appropriate trees, in addition to construction of the road and transplantation of trees existing thereon, as per the recommendations of DFO, Mussoorie on both sides of the proposed road. Not only such trees shall be planted but appropriate steps shall be taken in the next five years for their protection, watering and manure/ fertilizer etc. and then in every six months State Government will submit a report regarding it.

5. With such observations, the matter be listed after six months awaiting the report of the concerned authorities. The first report will be submitted in the second week of December, 2022."

12. Aggrieved by the aforesaid order, the petitioner preferred Special Leave to Appeal (C) No(s). 12591/2022 before the Supreme Court. On 01.08.2022, the Supreme Court, after taking notice of the order dated 22.06.2022, directed that, since the matter is pending before this Court, it would be appropriate if the Bench hearing PIL matters in this Court takes up the matter on an expeditious basis, so that the submissions of the petitioner can be duly considered by this Court. The petitioner was permitted to mention the proceedings on 02.08.2022, so that the matter could be listed expeditiously, preferably within a period of one week.

13. As a consequence of the aforesaid order passed by the Supreme Court, the matter was mentioned before this Court on 02.08.2022. In deference to the said order, we directed listing of the matter on 04.08.2022. The State was directed to file the status report indicating the current status with regard to the 2057 trees, in respect whereof this Court had earlier passed an order on 22.06.2022.

14. On 04.08.2022, the Court took up the fresh Stay Application, being IA No. 06 of 2022, filed by the petitioner seeking stay of further felling of trees for the project in question. Since, we intended to hear the parties early, we directed the respondents not to cut any further trees, or re-transplant any trees, for the project in question till the next date. The matter was kept on 17.08.2022 i.e. soon after

a week long break between 08.08.2022 to 15.08.2022. We heard submissions of learned counsels from 17.08.2022, and reserved orders on 24.08.2022.

15. Mr. Abhijay Negi, the learned counsel for the petitioner, submits that the Doon Valley is an eco-sensitive zone. In this regard, he has drawn the attention of the Court to the notification issued by the Ministry of Environment and Forests dated 01.02.1989, under Section 3(2)(v) of the Environment (Protection) Act, 1986 and Rule 5(3)(d) of the Environment (Protection) Rules, 1986, for the purpose of restricting location of industries, mining operations and other development activities in the Doon Valley.

16. Under the said notification, the Central Government imposed restrictions on the enlisted activities in the Doon Valley, except those, which are permitted by the Central Government, after examining the environmental impacts. The said notification, inter alia, prohibits taking up of tourism activities, and provides that the tourism activities could be undertaken as per the Tourism Development Plan to be prepared by the State Department of Tourism, and duly approved by the Union Ministry of Environment and Forests. Similarly, Land Use Plan is required to be prepared by the State Government and approved by the Union Ministry of Environment and Forests.

17. Mr. Negi submits that the proposed expansion of the road in question is being undertaken for the purpose of encouraging tourism in the State, and it also tantamounts to change of land use, as the width of the road is sought to be increased.

18. Mr. Negi has also sought to place reliance on various reports on climate change.

19. Mr. Negi has advanced his submissions in relation to the removal/ proposed removal of the Eucalyptus trees. Mr. Negi has sought to place reliance on an order passed by the National Green Tribunal (NGT) in Original Application No. 09 of 2014 "Safal Bharat Guru Parampara v. State of Punjab and others" on 20.07.2015, to submit that the Tribunal has recognised the fact that Eucalyptus is not a harmful tree, and the myths about Eucalyptus tree consuming too much water, and causing dryness in the soil, have been shattered.

20. Mr. Negi submits that the cutting down of over 1000 Eucalyptus Trees, which are very efficient in carbon sequestering, would only increase the impact of the vehicular traffic. He also relies on the National Urban Transport Policy, 2014, which prescribes various activities like cycling and walking, with restricted usage of personal vehicles.

21. Mr. Negi further submits that, while claiming that the road in question is congested, the respondents have actually not undertaken any traffic assessment study before sanctioning, or starting the work under the project. Mr. Negi further submits that the respondents should construct elevated footpath, which should be 10-12 feet wide, on either side of the road. If this were to be done, about 70-80% of the trees proposed to be cut could be saved. He further submits that the respondents are exceeding the norm of 3.5 metre width for each lane, by proposing the width of the lanes as 4.5 metre, just to axe the trees on either side of the road. He further submits that the respondents are unnecessarily proposing to create a median of 02 metre, which is not required, and,

if its width is reduced, many of the trees proposed to be cut could be saved. He relies on the order of the Supreme Court in *Association For Protection of Democratic Rights and another v. State of West Bengal and others*, (2021) 5 SCC 466, to submit that it is essential to strike a balance between environmental conservation with right to development.

22. The next submission of Mr. Negi is in relation to the transplantation of 478 other varieties of trees. Mr. Negi has argued that the manner in which the respondents are undertaking the process of transplantation, is completely unscientific. The petitioner has placed on record photographs of the trees, which the respondents have uprooted for the purpose of transplantation. Mr. Negi submits that all the branches and leaves of such trees have been cut, and only the trunk of the tree has been transported for translocation.

23. Mr. Negi submits that the Forest Research Institute (FRI) has opined that the best time for translocation of trees are the months of November and December, and the same should not be undertaken during the rainy season. This is for the reason that the ground is soft. Mr. Negi submits that the translocation being undertaken presently is likely to result in failure.

24. Mr. Negi submits that the Government of NCT of Delhi has prescribed standard norms, and evolved a Standard Operating Procedure for the purpose of transplantation of trees. He submits that the respondent- State, however, has no such policy, or Standard Operating Procedure, and the trees are being cut mercilessly for the purpose of transplantation, and they are likely to perish due to the manner in which they are being handled. He submits that the respondents are only interested in completing a paper and formal exercise of claiming that they have relocated the trees, and are not concerned about their survival post translocation.

25. He has also referred to an article titled "Tree Transplanting: Success Stories of Trees Transplanting at Karnataka, India" published in the *International Journal of Current Microbiology and Applied Sciences* in Volume 7 Number 10 (2018). The said Article states that translocation technique cannot be applied for all species of all ages at all place. It cannot be done on a large scale basis. This technique can be employed for a small scale, exigent situation and site specific reasons, where few trees of immense importance can be tried for transplanting. The Article states that a well-structured 'Standard Operative Procedure' (SOP) can be developed on Tree Transplanting based on the past experience and the on-going experiments at various forest divisions in the State of Karnataka. Under the heading "Methodology Adopted", the Article recommends that various teams should be formed like, Tree Treatment Team, Transport Team, Machine/ Material Procurement Team, Logistics Team, Liaison Team etc., with designated work chart and responsibilities. Overall works have to be planned, executed and monitored by the Steering Team comprising of senior level officers of all the departments involved, and they should own responsibility for the outcome of the process.

26. Mr. Negi has drawn the attention of the Court to the way tree transplanting has been done in the State of Karnataka. The entire tree, with its roots is removed and transplanted to the new location and replanted. However, in the present case, the trees, which are sought to be transplanted, have been denuded of all their branches and leaves, and in the process of their uprooting and of being cut

down, they have been badly injured. Mr. Negi submits that there are equipment and machinery available for the uprooting and transportation of trees, without causing any damage to them. The respondents are, however, undertaking the exercise manually and in a most insensitive manner. Mr. Negi further submits that trees are being transplanted in flood zone and, therefore, they are not likely to survive in the eventuality of the area being inundated.

27. Mr. Babulkar submits that the State of Uttarakhand has forest land to the extent of 64% and forest cover to the extent of 45.74%. 86% of the land of the State is in hilly areas. Significant area is consumed by rivers, streams and lakes. Therefore, very limited plain areas are available with the State for the purpose of development. He submits that sustainable development requires the balancing of the rights of the people to neat and clean environment, with the right of the people to reap the fruits of development. Neither of these two rights can be overlooked, and it is necessary to balance the two rights.

28. Mr. Babulkar submits that the Sahastradhara road is one of the important roads (amongst all other roads) of Dehradun city. This road is also one of the bypass routes for Mussoorie. All other accesses to Mussoorie road have already exhausted their capacity and, thus, there is no option except to widen the Sahastradhara Road. Sahastradhara Road is one of the main roads, and a State Highway as well. Mr. Babulkar points out that urbanisation has started on this route, and I.T. Park of Uttarakhand has also been constructed on this road. There are many offices, including the Office of the D.G Medical Health, NABARD, State Human Rights Commission, URRDA, Panchayati Raj Bhawan, Election Commission, Agriculture Department and many other important offices on this road. The traffic to and fro from these institutions is leading to traffic congestion on the road. Moreover, a large number of Group Housing Societies have also come up on the said road. The total number of flats on this road will increase to about 7000, adding to traffic congestion. The State has disclosed in its affidavit, that over the past four to five years, the area adjoining the road has also become a hub for students/ aspirants of defence forces, and students from all over India come to Dehradun to prepare for entrance examinations conducted by the defence forces. Many hostels are also located in the vicinity of the Sahastradhara Road.

29. Since Sahastradhara road is also a common tourist destination, in every tourist season, there is a spike in the Passenger Car Unit (PCU). Thousands of tourists visit Sahastradhara on daily basis. The affidavit discloses that, keeping in view the aforesaid aspect, land on both sides of the Sahastradhara Road was procured/ bought by the P.W.D. as far as back in the year 1948, and part of the land consumed in the widening of the Ring Road was procured between 2001-2009. The State has disclosed that another alternate route, by the name of Sahastradhara-Chamasari-Barlowganj Road, for reaching Mussoorie, connecting many villages is already under construction, and that the Sahastradhara Road/ Ring Road would feed and connect to the said Sahastradhara-Chamasari-Barlowganj road. This would reduce the pressure of traffic within the State, especially in the peak season.

30. The respondents submit that it is necessary to upgrade the road from the present two lanes to four lanes. The respondents state that in any four lane project, as per the guidelines of the Indian Road Congress, the Central Verge (Divider) is necessary to be constructed for safer traffic

movement. The respondents state that, as per the Indian Road Congress - 73, 1980, the maximum traffic carrying capacity of a two lane road is 10,000 PCU per day. The traffic census conducted on the Sahastradhara Road in the year 2019 shows that the total traffic count on the said road was 11,359 PCU per day, which is already higher than the traffic carrying capacity of the two lane road. Assuming a 6% annual growth of traffic count over three years, the estimated PCU per day would be 13,500 PCU per day. Thus, the upgradation of four lanes from two lanes is needed. The guidelines of the Central Road Research Institute (CRRI-CSIR) also states that, where there is movement of more than 10,000 PCU per day, then the two lane road must be upgraded to four lane.

31. The respondents state that, since the opening of the COVID-19 lockdown, travelling a distance of around four kilometres on the Sahastradhara Road can take more than one hour in peak rush hours. Failure to upgrade the existing two lanes to four lanes would result in traffic congestion on the already busy road, which, in turn, would lead to higher consumption of petrol and diesel by vehicles, leading to emissions of highly polluting Green House Gases. He has relied upon an academic study/report of learned Academicians titled "Analysis of Traffic Congestion Impacts of Urban Road Network under Indian Condition". According to the said report, traffic congestion causes significant noise and air pollution. Thus, road widening on the said road would reduce consumption of fuel and time, and bring down the emission of harmful gases.

32. Mr. Babulkar submits that it is absolutely essential for the betterment of the people of the State, that the State creates new infrastructure, including transportation, to promote welfare of the people by securing standard of living and economic justice. In support of this submission, he has placed reliance on the observations made by the Supreme Court in *Jindal Stainless Limited and another v. State of Haryana and others*, (2017) 12 SCC 1, and, in particular, on paragraph no. 415 of the said judgment, which reads as follows :-

"415. Reorganisation of the States is yet another factor which has to be borne in mind. Creation of the State of Uttarakhand from the undeveloped hilly area of Uttar Pradesh; the State of Jharkhand from the predominantly tribal areas of the State of Bihar, the State of Chhattisgarh from the State of Madhya Pradesh and the recent bifurcation of the State of Telangana from the State of Andhra Pradesh comes to mind. The newly bifurcated States have to develop their new capitals, create new State infrastructure including High Courts in due course. They have to develop their own industrial bases for manufacture and production and for creating job opportunities. To attract capital investment, they have to provide infrastructure like transport, communication, power and technology. Reorganisation of the States apart, as a welfare State, a State is under an obligation to create job opportunities and promote welfare of the people by securing standard of living and economic justice. Having regard to the multifarious activities of a welfare State, it is necessary that the States must have leverage/flexibility in exercise of their power to levy taxes and, therefore, steps taken by the States that result in differentiation cannot amount to discrimination that impedes the free flow of trade, commerce and intercourse."

33. He also places reliance on the judgment of the Supreme Court, in *N.D. Jayal and another v. Union of India and others*, (2004) 9 SCC 362, in support of his submission that the balance between environmental protection and developmental activities should be maintained by strictly following the principle of sustainable development. The Supreme Court, in its judgment, inter alia, observed as follows :-

"22. Before advertng to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In *Vellore Citizens' Welfare Forum v.*

Union of India, (1996) 5 SCC 647, and in *M.C. Mehta v. Union of India*, (2002) 4 SCC 356, it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of the coming generations will be in jeopardy.

23. In a catena of cases we have reiterated that right to clean environment is a guaranteed fundamental right. Maybe, in different context, the right to development is also declared as a component of Article 21 in cases like *Samantha v. State of A.P.*, (1997) 8 SCC 191 and in *Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 125.

24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well- being, and includes within its definition the guarantee of fundamental human rights. The "development" is not related only to the growth of GNP. In the classic work, *Development As Freedom*, the Nobel prize winner Amartya Sen pointed out that "the issue of development cannot be separated from the conceptual framework of human right". This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.

25. Therefore, the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated an integral part of "life" under Article 21. Weighty concepts like intergenerational equity (*State of H.P. v. Ganesh Wood Products*, (1995) 6 SCC 363), public trust

doctrine (M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388) and precautionary principle (Vellore Citizens), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development."

34. Mr. Babulkar also places reliance on the order passed by the Gujarat High Court in Vikram Trivedi v. Union of India, 2013 SCC OnLine Guj 5792, wherein the High Court observed as follows :-

"19. No development is possible without some adverse effect on the ecology and the environment but the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests and this exercise must be left best to the persons who are familiar and who have specialized in the field.

20. The expansion of highway is a project of wide public importance. It is not open to frustrate the project of such public importance only with a view to safeguard few trees standing on the land of the petitioners which has vested with the Government. While examining the grievance about adverse impact of cutting the trees and thereby disturbing the birds, the benefit which will be derived by the large number of people by expansion of the highway should also not be brushed aside. The Courts are bound to take into consideration the comparative hardship which the people at large would suffer by stalling the project of great public utility. Trees are to be cut for a public purpose to facilitate expansion of the national highway. Once the Government has taken all precautions to ensure that the impact on the environment is transient and minimal, the Court will not substitute its own assessment in place of the opinion of persons who are specialists and who may have decided the question with objectivity and ability. The Courts should not be asked to assess the environmental impact of expansion of highway but at the most could ensure that the recommendations of the experts have been abided by the government or the authority concerned."

35. Mr. S.N. Babulkar, the learned Advocate General for the State of Uttarakhand, has submitted that up till 02.08.2022, 326 trees have already been transplanted in three different locations and the type of trees, which have been transplanted, are :- (i) Bottle Brush (ii) Ashok (iii) Kenji and (iv) Ghaitoon. The transplanted trees have a diameter ranging from 40 to 60 centimetres. The affidavit categorically states that all the 326 transplanted trees have been found to be alive and surviving as on 10.08.2022, as new branches and buds have sprouted on the transplanted trees. The respondent no. 1 has also placed on record photographs of the transplanted trees, which show that new shrubs have sprouted on the transplanted trees.

36. Mr. Babulkar further submits that the relocated and replanted trees are at a distance of 300 to 400 meters from their original location, which ensures that the natural soil texture as well as the soil behaviour, to which the trees were accustomed to, has remained unchanged. Mr. Babulkar submits that a survey regarding the transplantation was conducted by the Forest Research Institute (F.R.I.), which submitted its report to the Ministry of Environment, Forest & Climate Change, Government

of India, laying down the guidelines. The respondents state that they have transplanted the trees as per the said guidelines.

37. Mr. Babulkar further states that for establishment of IIM, Kashipur in the year 2017-18, 128 trees were transplanted, whose survival rate till date is 100%. Another example cited by Mr. Babulkar is that of the transplantation of 457 trees in Gadag Forest Division, Dharwad, where 457 trees were transplanted and the survival rate of the said trees was again very high; and trees with diameter more than 90 centimetres had 100% survival rate.

38. In response to our query, whether the State was willing to undertake the process of transplantation of the remaining trees under the supervision of the Forest Research Institute, Mr. Babulkar, on instructions, states that the State Government has no objection to that.

39. In his rejoinder, Mr. Negi has argued that, rather than resorting to widen the road in question, the respondents should focus on removing the existing encroachments on the existing road itself, which is broad enough. He has referred to the photographs placed by him on record to show that on either side of the road, there are encroachments by shop owners, apart from unauthorised parking of vehicles. Several vendors have placed their products/ wares on roadside, which too is preventing easy flow of traffic. He submits that the report relied upon by the respondents, as aforesaid, does not suggest cutting down of trees, for the purpose of road widening, as an option. Other mitigating steps should be taken by the respondents in terms of the said report.

40. Mr. Negi has also urged that the respondents have also not explored the feasibility of widening the alternative route suggested by the petitioner. According to the petitioner, there is an alternate route from Ladpur Junction to Krishali Chowk via Tapovan Danda Gujrara Mansingh Wala, rather than the proposed route via Sahastradhara. According to the petitioner, if this route were to be developed, it would lead to cutting of fewer trees. He has also placed reliance on Google Maps to show that the alternate route, between Tapovan Chowk to I.T. Park via Tapovan, saves 3-5 minutes.

41. Mr. Negi has also placed reliance on the order passed by the Supreme Court in T.N. Godavarman Thirumulpad v. Union of India and others, Writ Petition (Civil) No. 202 of 1995 dated 09.05.2022, to submit that if there is a doubt, protection of environment would have to take precedence over the economic interest. He submits that the petitioner has pointed out serious issues, which create enough doubt with regard to the prudence of the decision taken by the respondents to undertake expansion of the road in question by felling thousands of trees.

42. We have given due consideration to the rival submissions advanced before us, as also the materials placed before us and relied upon by the learned counsels.

43. We may first deal with the submission of Mr. Negi premised on the Notification dated 01.02.1989. The project to expand the road in question is being undertaken to facilitate smooth movement of traffic on the road in question, which is experiencing high volume of vehicular traffic. It also caters to the traffic from Dehradun to Mussoorie, via Sahastradhara, and back. The removal of congestion on the road is not intended only for tourism purposes. The said project cannot be

classified as a tourism project. It is a developmental project for the development and upgradation of the existing transport infrastructure which is essential for the people of Dehradun, in as much, as, it is essential for those living and working in Dehradun, as it is for people going to Mussoorie for tourism, or otherwise. There is no change of land use, since it is the stand of the respondents that the land already stands acquired by the Government, on either side of the road in question. Mr. Negi has not even ventured to elaborate on either of the aforesaid two aspects, apart from making a faint argument. Therefore, in our view, reliance placed on the notification dated 01.02.1989, issued by the Ministry of Environment and Forests, is of no avail for the present purpose.

44. Reliance placed by Mr. Negi on the order dated 06.04.2022, passed in Writ Petition (PIL) No. 36 of 2022, which refers to, and relies upon the aforesaid notification dated 01.02.1989, appears to be misplaced. From the said order, it appears that the Court was dealing with the specific case of raising of construction on land bearing Khasra No. 277, which had been converted by the Revenue Authorities, from water logged area to barren/ banjar land, to enable construction thereon.

45. There is no denying the fact that the entire world is facing the threat of environmental and climatic change due to Global warming. This is happening due to rapid industrialization, cutting of forests, burning of fossil fuel, which is leading to carbon emissions in the environment. However, that cannot be cited as a general reason to stop all developmental activities. Certain developmental activities may, in fact, contribute to reduction of carbon emissions. Widening of a busy and congested road would, in fact, help the environment, as it would lead to smooth running of traffic and lesser carbon emissions. It is well known that busy roads, with slow moving traffic, contribute greatly to air pollution, as a result of unproductive and inefficient burning of fuel.

46. We have perused the detailed order passed by the National Green Tribunal dated 20.07.2015. The Tribunal has dealt with the said aspect in paragraph nos. 27 to 32 of its said order. The Tribunal also referred to its earlier order of 16.04.2015, which, unfortunately, the petitioner has not placed before us. The Tribunal noted its earlier observations that the Eucalyptus trees consume more water, but are water efficient plants, and that the Government was encouraging growing of the said plants in water logged areas, and where the ground water levels are safe.

47. On 16.04.2015, the Tribunal held that the plantation of Eucalyptus trees should not be totally banned in interest of either the environment, or the ecology, or the public at large. The Tribunal, however, held that the State may encourage farmers to plant Eucalyptus trees preferably in the water logged areas, or the areas, which are declared as safe by the Central Ground Water Authority. The Tribunal found that the plantation of Eucalyptus trees would better serve environmental causes, and it cannot be disputed that these trees yield more biomass and, therefore, are more carbon sequestering trees, as compared to other species of trees. The Tribunal recognised the fact that Eucalyptus serves as timber. In paragraph no. 32 of the said order, the Tribunal observed as follows :-

"32. In view of the same while reiterating the findings of the Tribunal dated 16-04-2015 in respect of eucalyptus plants, we record the above said studies and hold that there cannot be a complete ban on eucalyptus plantation in the State of Punjab.

However it is for the Forest department to evolve appropriate policy by regulating and restricting the growth of the said plantation in the water logged and safe areas by way of proper regulations and continuously monitoring of the same. Issue No. 2 is answered accordingly."

(emphasis supplied)

48. Thus, while it may be true that Eucalyptus trees can achieve high biomass production on a low nutrient uptake, and thus are more carbon sequestering trees as compared to other species of trees, at the same time, there is no denying the fact that they consume more water, and they do cause the area to dry up, wherever they are planted. Therefore, their plantation in water logged areas, or areas where the Central Ground Water Authority finds their plantation as not objectionable, may be undertaken. Their growth has to be regulated and restricted in water logged and safe areas by the Forest Department.

49. Even if we were to accept the submission of Mr. Abhijay Negi that Eucalyptus trees do not have any adverse effect either on the soil, or on the environment generally, and that they serve the environmental cause, it is also a fact that Eucalyptus trees consume large amounts of water - that is why they should be planted in water logged areas and areas having high water table, and; they are fast growing and they are harvested as a crop to produce timber, which is used for several purposes. It is not the petitioner's case that the area where the Eucalyptus Trees in question are planted/standing is a water logged area. The photographs placed on record also do not show any water logging in the area, or the existence of trenches, wherein water gets logged.

50. Though, there is no denying the fact that the cutting of the 1006 Eucalyptus trees would, at least for some time, adversely impact the environment, and also affect the birds and insects which nest in such trees, looking to the extent of forest cover in the Doon Valley itself, and the State of Uttarakhand as a whole, we cannot accept the submission that the species of birds and insects, which nest on trees, including Eucalyptus trees, would be rendered vulnerable. This is so, because the Doon Valley specifically, and the State of Uttarakhand generally, have a large forest cover, and it is not that all the trees, or all Eucalyptus trees, are being destroyed.

51. The respondent no. 1 has disclosed, in its affidavit dated 16.08.2022, that out of the 1006 Eucalyptus trees, which are required to be cut for the project of road widening, 528 Eucalyptus trees have already been cut down up to 04.08.2022, when this Court passed an order restraining the cutting down of further trees. The respondents further state that the DFO (Divisional Forest Officer), Mussoorie has, vide his letter dated 04.04.2022, stated that the Eucalyptus trees, which are within the Right of Way (ROW), had been planted in the year 1976, and the said trees are oversized and have already completed their rotation period (optimum age).

52. In the light of the aforesaid, we are of the view that the cutting down of the 1006 Eucalyptus trees, which have already lived their full lifecycle, and which have the potential of causing accident in case they fall on their own, does not call for interference by us in these proceedings. The

petitioner has himself placed on record literature to show that Eucalyptus trees have very shallow roots and, therefore, such trees are prone to getting uprooted due to strong winds and storms. We, therefore, reject the submission of Mr. Abhijay Negi that the respondents should not be permitted to cut the 1006, or the remaining 478 Eucalyptus trees.

53. So far as the aspect of transplantation of 972 trees is concerned, though, it appears that the trees, which have been transplanted, have been substantially cut down before transplantation - leaving only the bare trunk, at the same time, the respondents have stated, on affidavit, that the success rate of the transplanted trees is nearly 100%. The photographs of the transplanted trees have been placed on record, which show that new branches have germinated, which would be possible only if they have taken roots at the relocated place. Moreover, the respondents have stated that they are undertaking the transplantation process by following the guidelines laid down by the Forest Research Institute, Dehradun.

54. Mr. Babulkar, on instructions, also states that the State has no objection if this Court were to direct the F.R.I., Dehradun to supervise the process of relocation of the trees, which are yet to be relocated.

55. It appears that the State does not have, and is not deploying the equipment, such as cranes devised for transporting the uprooted trees with their roots, from one place to another, as is shown to be done in the NCT of Delhi. The State would do better by procuring the necessary equipment without any delay, so that the transplantation of the trees in the State can be undertaken in a more scientific way. The trees, which have been transplanted, would take a long time to develop branches. However, if the tree could be transplanted without cutting down the branches, or, at least, while retaining some of them, it would certainly increase their chances of survival, and would also enable the tree to serve the environmental needs faster.

56. We are, therefore, inclined to direct the State to buy the necessary equipment, for transplantation of the fully grown trees, positively within the next four months. However, since the work of expansion of the road in question has already commenced, and appears to be necessary to meet the urgent needs of smooth flow of traffic, we are inclined to permit the transplantation of the trees, though under the supervision of the experts of the F.R.I., Dehradun. The F.R.I., Dehradun shall nominate at least two experts, who shall be involved at every stage of transplantation of the fully grown trees, i.e. from the uprooting of the trees; to its transportation; thereafter, to their re-transplantation, and; their upkeep till they stabilize at their new location. The transplanted trees should be given necessary treatment for the injury caused to them in the process of relocation, to prevent them getting infected. The respondents shall ensure compliance with the instructions and advice rendered by the experts from F.R.I. in all such matters of transplantation/ treatment of trees. The suitability of the area, where the transplantation of the trees is being undertaken, shall also be examined and certified by the experts of the F.R.I, Dehradun.

57. The last submission of Mr. Negi, with regard to the alternate route suggested by the petitioner, does not impress us. While the petitioner claims that the development of the alternate route would involve the cutting down of lesser number of trees, there is no basis for the said claim made by the

petitioner. We have no reason to assume that the respondents have not conducted a survey, and have not examined all the pros and cons of developing/ expanding one, or the other road. The process of development/ expansion of road places huge financial burden on the State. The respondent-State has disclosed in its affidavit, that it acquired the lands, falling on either side of the Sahastradhara Road, between 1948 to 2009. To widen the alternate route suggested by the petitioner, the State may have to pay huge amounts of compensation for acquiring the lands falling on either side of the road.

58. The State has disclosed in its affidavit that, on the road in question, large scale development of Public Offices and private residences/ Group Housing Societies, have taken place leading to increased traffic.

59. As to which road should be developed or expanded, is a matter of policy decision. Neither the petitioner has a vested right to claim that the respondent should formulate a policy which he thinks proper, nor is it for this Court to lay down the policy for the State Government. We are only concerned with the examination of the issue, whether the impugned actions of the State are illegal or unconstitutional, and, on that ground, whether they call for interference.

60. We are, therefore, not inclined to interfere with the decision taken by the respondent-State to develop and widen the road in question, in preference over the alternate route suggested by the petitioner, as we are not satisfied that the petitioner has made out a case of irrationality, arbitrariness or malafides in the decision making process.

61. We also find merit in the submission of Mr. Babulkar that, while environmental concerns have to be kept in mind, the State of Uttarakhand - which is relatively a new and upcoming State, also needs development and infrastructure to meet the aspirations of the people, and to achieve the economic upliftment and developments.

62. The State needs sustainable development, which means that a balance has to be struck between the environmental needs and the need of development. So far as the removal of 1006 Eucalyptus Trees is concerned, it appears, that the said trees have practically lived their life, and considering the fact that Eucalyptus Trees are fast growing species, the State can, and should replenish the said loss by planting many more trees, than the numbers being cut down, in appropriate areas, where there is water logging, or the water table is high, after approval of the Ground Water Authority.

63. Other trees, which would compensate for the loss of carbon sequestering due to the removal of the 1006 Eucalyptus Trees, should be planted in appropriate areas, under the supervision of the F.R.I., Dehradun.

64. Since, we have directed the involvement of F.R.I., Dehradun in the matter of transplantation of the remaining trees, out of the 972 trees, we are hopeful that the transplanted trees would do well, and continue to serve the environmental needs after relocation.

65. Mr. Negi has also sought to raise issues with regard to the width of the proposed four lane road/ highway, and its design.

66. We do not find any merit in the said submission. There is nothing to show that there is any prohibition in law to the State developing the highway in the manner proposed. The respondents have been able to show that the current Passenger Car Unit (PCU) is high, and there is urgent need to develop the State Highway/ road in question.

67. For the aforesaid reasons, we dismiss the Stay Application (IA No. 06 of 2022) moved by the petitioner. The State shall, however, continue to comply with the conditions imposed upon it vide order dated 22.06.2022, as well as the directions issued by us in this order.

_____ VIPIN SANGHI, C.J.

_____ R.C. KHULBE, J.

Dt: 16th September, 2022 Rahul