

Amrut/Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.15/2022

THE GOA FOUNDATION, through its Secretary, Dr. Claude Alvares, age 71 years, having Regd. Office at Room No.7, above Mapusa Clinic, Mapusa, Goa 403 507, PAN No. AAAAG0249C
Email id: goafoundation@gmail.com

... PETITIONER

Versus

1. STATE OF GOA, Through its Chief Secretary, Secretariat, Porvorim, Goa.

2. THE GOA STATE BOARD FOR WILDLIFE, through its Member Secretary, CWW, with address at Gomantak Maratha Samaj Building, Panjim, Goa 403001

3. THE CHIEF WILDLIFE WARDEN, Madei Wildlife Sanctuary, with address at Gomantak Maratha Samaj Building Panjim, Goa 403001.

4. PRINCIPAL CHIEF CONSERVATOR OF FORESTS (PCCF) Government of Goa, with address at Gomantak Maratha Samaj Building, Panjim, Goa 403001.

5. NATIONAL TIGER CONSERVATION AUTHORITY, B-1 Wing, 7th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi-110003.

6. MINISTRY OF ENVIRONMENT, FORESTS & CC, through its Secretary Indira Paryavaran Bhavan, Jor Bagh Rd, New Delhi 110 003.

... RESPONDENTS

Ms Norma Alvares with Mr Om D'Costa, Advocates for the Petitioner.

Mr D. Pangam, Advocate General with Ms Maria Correia, Additional Government Advocate for the Respondents 1 to 4 (State).

Mr R. Chodankar, Central Govt. Standing Counsel for Respondents No.5 and 6.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

**Reserved on: 10th JULY 2023
Pronounced on: 24th JULY 2023**

JUDGMENT: (Per M. S. Sonak, J.)

निर्वनो वध्यते व्याघ्रो निर्व्याघ्रं छिद्यते वनम्।
तस्माद्वाघ्रो वनं रक्षेद्वयं व्याघ्रं च पालयेत् ॥
-महाभारत - उद्योग पर्व : ५.२९.५७

If there is no forest, then the tiger gets killed;
if there is no tiger, then the forest gets destroyed.

Hence, the tiger protects the forest and the forest guards the tiger!

**-Mahabharat (Kumbhaghonam Edition) - Udyoga Parva: 5.29.57
(NTCA Report on Status of Tigers - 2022)**

1. The International Union for Conservation of Nature (IUCN) estimates that 3726 to 5578 tigers live in the wild worldwide. Out of these, the tiger population in India, as per the 2023 Tiger Census, is estimated at 3167. In 1947, at the time of

independence of India, the estimate in India was 40,000 tigers. Therefore, in less than 76 years, the tiger population has decreased by almost 92%. The Tigers are still considered endangered and remain on IUCN's red list, assessing the endangered species status. About 2000 tigers (65%) are estimated to exist within the notified tiger reserves in India. Thus, about 1167 tigers (35 %) are outside India's declared 54 tiger reserves. The exhaustive studies undertaken or commissioned by the Central Ministry of Environment and Forest indicate the need for better-protected tiger source sites, especially tiger reserves, to maintain viable populations. The studies note that the area occupied by tigers outside protected areas has decreased considerably. This demonstrates the need to protect the Tiger Corridors to facilitate the movement of tigers between source sites. (See *Jhala Y., Gopal R., Mathur V., Ghosh P., Negi H.S., Narain S., et al. (2021), Recovery of tigers in India: Critical introspection and potential lessons, People and Nature.*)

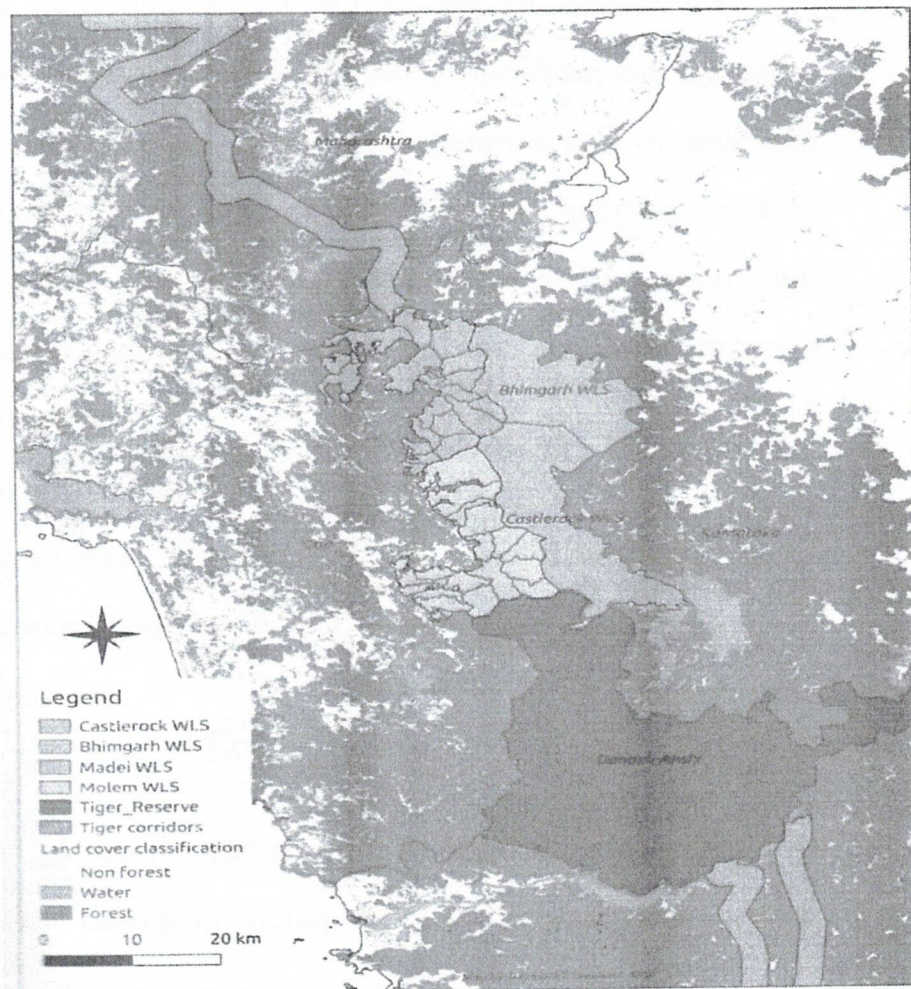
2. The Status of Tigers (Co-predators & Prey) in India, 2014 reports that the Cotigao-Mhadei Mhadei forest complex of Goa comprises five protected areas, namely, Mhadei Wildlife Sanctuary (208 km²), Bhagwan Mahavir Wild Life Sanctuary (133 km²), Bhagwan Mahavir National Park (107 km²), Netravali Wildlife Sanctuary (211 km²) and Cotigao Wildlife

Sanctuary (86 km²) along the Western Ghats ridge. They cover an area of about 750 km², forming a contiguous belt of forest connecting the forests of Karnataka and Maharashtra. To the south of Mhadei is the Bhagwan Mahavir Wildlife Sanctuary and Bhagwan Mahavir National Park. The Netravali Wildlife Sanctuary lies between the Bhagwan Mahavir National Park on the north and the Cotigao Wildlife Sanctuary to its south. This region typically contains evergreen, semi-evergreen and moist deciduous forest types. The evergreen forests are mainly seen at higher altitudes and along the river banks. **This report records that Goa has a persistent tiger presence with about three to five tigers.** (*See Cotigao-Mhadei Forest Complex of Goa – K. Ulhas Karanth, N. Samba Kumar, Ravishankar Parameshwaran, Arjun Srivathsa, Sushma Sharma, Wildlife Conservation Society – India and Centre for Wildlife Studies*).

3. This petition, instituted in the public interest, seeks directions to the respondents to notify Mhadei Wild Life Sanctuary and other areas as a “*tiger reserve*” under Chapter IV-B of the Wild Life (Protection) Act, 1972 (WLPA). In any case, the petitioner seeks directions from the respondents to take steps towards notifying Mhadei Wild Life Sanctuary (Mhadei WLS) and other areas as a “*tiger reserve*” under Chapter IV-B of the (WLPA). In addition, the petitioner seeks an order directing

respondent no.4 to set up Anti-Poaching Camps (APC) at strategic locations in the wildlife sanctuaries and national park of Goa to be staffed by Forest Guards/ Watchers around the clock to control instances of poaching effectively.

4. A map showing the location of Mhadei WLS in the western ghats landscape with the adjoining forests in Karnataka and Maharashtra is printed below for the convenience of reference. The map depicts “tiger corridors” critical for the tiger's survival in the western ghats.



(From page 3 of NTCA's REPORT ON "TIGER DEATHS IN MHADEI WILDLIFE SANCTUARY, GOA")

5. Beginning in 2011, the Central Government and the National Tiger Conservation Authority (NTCA) have repeatedly pursued the issue of the State of Goa (State) notifying Mhadei WLS and certain other contiguous areas as a tiger reserve. In January 2020, the petitioner and other environmentalists also pursued this issue after a tigress and her three cubs died from poisoning in the Mhadei WLS. However, since the State has refused to budge, the petitioner has instituted the present petition seeking the above reliefs in the public interest.

6. Ms Alvares, learned counsel for the petitioner, submits that there was no justification for the State to ignore with impunity the Union Environment Minister's letter dated 28.06.2011 regards notifying Mhadei WLS and other contiguous areas as a tiger reserve. She submits that, in any case, NTCA's repeated recommendations starting from the communication dated 31.03.2016, were binding on the State Government under Section 38-V (1) of the WLPA. She submits that there was a breach of statutory duty on the part of the State Government in not notifying the tiger reserve despite repeated recommendations from the NTCA.

7. Ms Alvares submitted that the State forest authorities, with experts' aid, have already prepared proposals and plans for

notifying the tiger reserve. However, the State Board for Wildlife stalled such a proposal at least twice. She pointed out that four tigers died from poisoning in the Mhadei WLS due to such stalling. She pointed out that the expert committee appointed by the NTCA has reported on the mismanagement of protected areas in Goa. NTCA warned that further delay in notifying the tiger reserve and implementing a robust protection regime might lead to Goa becoming a “**death trap for the tigers**” dispersing in the western ghats landscape.

8. Ms Alvares submitted that the provisions of Section 38-V (1) of the WLPA were mandatory, and the State could not refuse or unreasonably delay notifying a tiger reserve after NTCA recommendations. She referred to the Central Empowered Committee’s report and the Hon’ble Supreme Court’s order in *T. N. Godavarman Thirumulpad v/s Union of India & Others*¹. She referred us to the guidelines issued by the NTCA on 15.10.2012 under Section 38-O of the WLPA. She also referred us to expert reports and other scientific literature. She referred to the legal provisions of WLPA and circulars issued by the NTCA on the subject. She pointed out how the delay was impairing the cause of tiger conservation in the Goa and the Western Ghats landscape. Based on all this, Ms Alvares urged that the Rule in

¹ (2022) 9 SCC 306

this petition may be made absolute by issuing time-bound directions to the State and the NTCA.

9. Mr Raviraj Chodankar, learned counsel for the NTCA and the Ministry of Environment, Forest & Climate Change, submitted that the NTCA had not only made *recommendations* vide communication dated 31.03.2016 read with the Office Memorandum dated 04.02.2020 and communication dated 29.09.2022 but further, that such communications spell out a *direction* as contemplated by Section 38-O of the WLPA. Based upon instructions he received, Mr Chodankar thus categorically submitted that the NTCA's communications to the State constituted not only the recommendations as contemplated by Section 38-V but also directions as contemplated by Section 38-O (2) of the WLPA.

10. Mr Chodankar submitted that directions under Section 38-O (2) are binding upon the State. Similarly, he presented that even the recommendation of the NTCA binds the State because Section 38-V (1) provides that the State Government “*shall*”, on the recommendation of the NTCA, notify an area as a tiger reserve. Mr Chodankar, therefore, supported the petitioner and submitted that the State must not delay the notification of the

area as a tiger reserve and the dispatch of the proposal to enable the NTCA to take further steps in the matter.

11. Mr D. Pangam learned AG clarified that the State was not opposed to notifying the area as a tiger reserve. However, he submitted that the time was not right to make such a declaration, issue such a notification, or even forward any proposal to the NTCA. He pointed out that the State, in its affidavit, had nowhere stated that it did not wish to send a proposal to the NTCA or to notify the area as a tiger reserve. However, he pointed out that further studies were necessary, and the rights of the forest dwellers also needed to be settled entirely before such steps could be taken.

12. Mr Pangam submitted that, to date, the final declaration as contemplated by Section 26-A of the WLPA had not been issued in respect of five out of the six wildlife sanctuaries/national park in the State. He pointed out that the final notification under Section 26-A was issued only regarding Cotigao Wild Life Sanctuary and not others. He submitted that unless such final notifications/declarations under Section 26-A are issued, taking further steps to notify the said area as a tiger reserve would not be appropriate.

13. Mr Pangam submitted that the communications relied upon by the petitioner or referred to by Mr Chodankar were neither “*directions*” nor “*recommendations*” as contemplated under the WLPA. He submitted that the communications contained only “*suggestions or advice.*” He offered that even otherwise, the provisions of Section 38-V (1) were only directory and not mandatory. He submitted that the mere use of the expression “*shall*” in Section 38-V (1) was insufficient to construe this provision as mandatory and not directory. He submitted that the Legislature had not provided for the consequences of a State Government rejecting NTCA’s recommendation. Therefore, the provisions of Section 38-V (1) must be construed as directory and not mandatory. He relied on *State of UP v/s Manbodhan Lal Srivastava*², *Kailash v/s Nanhku and Others*³ and *M/s. B. P. Khemka Pvt. Ltd. v/s Birendra Kumar Bhowmick and Another*⁴ to support his contention that the provisions of Section 38-V (1) were not mandatory but were only directory.

14. Mr Pangam submitted that none of the communications issued by the NTCA were shown to be backed by any resolutions of the NTCA. He handed in a bunch of NTCA minutes to submit that in none of the minutes except perhaps the minutes of 05.01.2022, was there any discussion on the issue declaring

2 1958 SCR 533

3 (2005) 4 SCC 480

4 (1987) 2 SCC 407

Mhadei WLS or other areas in Goa as a tiger reserve. He relied on the minutes and the NTCA Guidelines, 2012, to submit that the notification of a tiger reserve involves three stages, i.e. (i) Advise/Suggestion; (ii) In-principle approval (having effect of recommendation); and (iii) final approval (for the management plan proposed for the tiger reserve notified under Section 38-V). He submitted that the NTCA could not insist upon the State notifying a tiger reserve unless this procedure was followed. He submitted that the present petition was premature and must be dismissed.

15. Mr Pangam submitted that the State, in the past, experienced the unfortunate incident of revenge killing of four tigers. He pointed out that some of the forest settlers poisoned four tigers because their cattle were killed by one of the tigers. He submits that until and unless the rights of the forest dwellers are fully settled and notification, as contemplated by Section 26-A of the WLPA, was issued, it would not be appropriate to notify any area in Goa as a tiger reserve.

16. Mr Pangam finally submitted that the protected areas under the WLPA enjoy the same level of protection for all flora and fauna as in a tiger reserve. He offered that no additional protection was necessary for the tiger because all wild animals

deserved equal protection. He presents that the State, considering the death of four tigers, had taken additional measures to safeguard all wildlife. He, therefore, submitted that there was no prejudice due to the non-declaration of any area as a tiger reserve. He urged this as an additional reason to dismiss this petition.

17. For all the above reasons, Mr Pangam submitted that this petition may be dismissed.

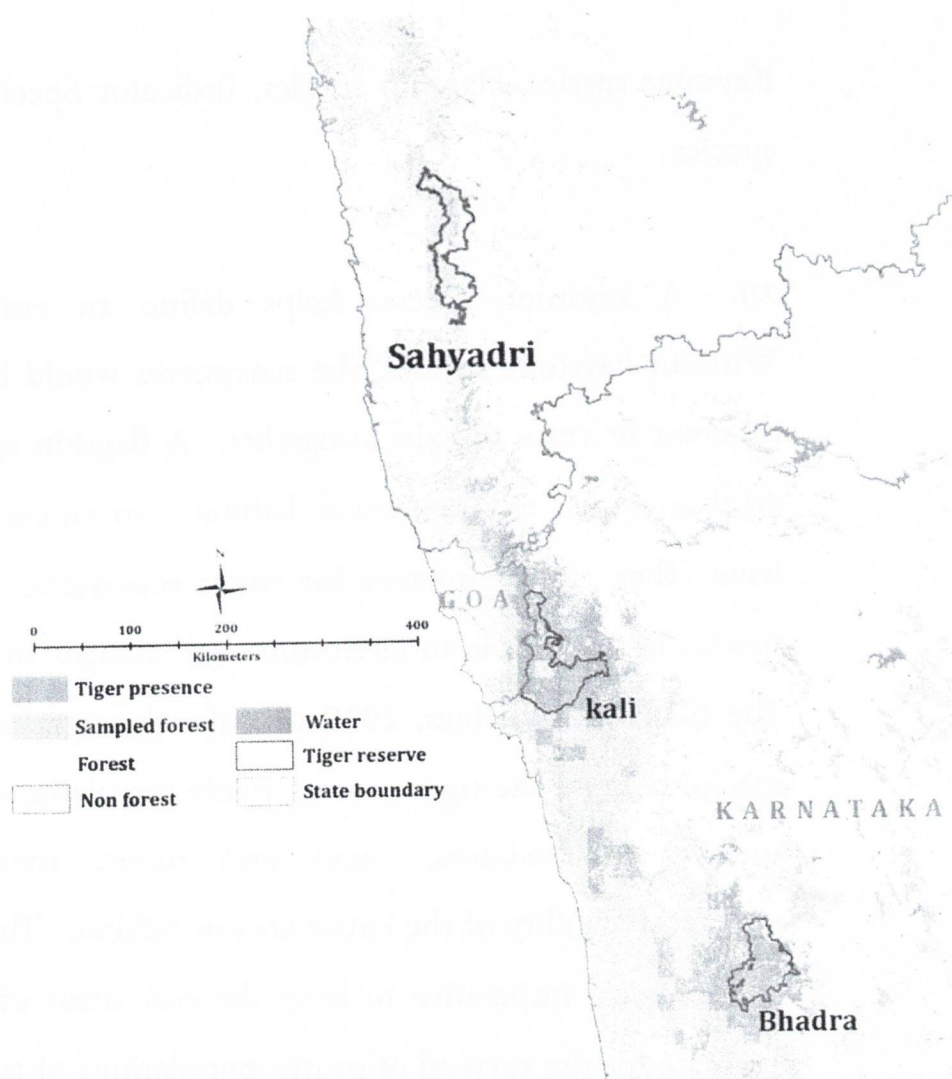
18. The rival contentions now fall for our determination.

19. The World Wildlife Fund (WWF) – India describes the tiger as a unique animal which plays a pivotal role in the health and diversity of an ecosystem. It is a top predator at the apex of the food chain. Therefore, the presence of tigers in the forest is an indicator of the well-being of the ecosystem. Protection of tigers in forests protects the habitats of several other species. Indirect benefits of preserving a tiger include several ecosystem services like protection of rivers and other water sources, prevention of soil erosion and improvement of ecological services like pollination, water table retention etc. Conversely, the absence of this top predator indicates that its ecosystem is not sufficiently protected. Tigers are variously described as

Keystone species, Flagship species, Indicator Species or Umbrella species.

20. A keystone species helps define an entire ecosystem. Without keystone species, the ecosystems would be dramatically different or cease to exist altogether. A flagship species acts as a symbol for an environmental habitat, movement, campaign or issue. They can be mascots for entire ecosystems. An indicator species is susceptible to environmental changes in an ecosystem. The NTCA Guidelines, 2012 describe the tiger as an Umbrella species because the tiger ensures viable populations of other wild animals (co-predators, prey) and forest, thereby ensuring ecological viability of the entire area or habitat. Thus, it becomes an ecological imperative to keep the core areas of tiger reserves inviolate for the survival of source populations of tigers and other wild animals.

21. The research and scientific reports produced by several Government and non-Government agencies establish the presence of the tiger in the protected areas in Goa. The NTCA maps indicating tiger presence not only within the boundaries of Goa but in the contiguous regions of the neighbouring States of Karnataka and Maharashtra are shown below for the convenience of reference:-



(A composite map manually created utilising maps from page 17 (MH) & page 20 (Goa & Karnataka) from the report of NTCA on Status of Tigers 2022)

22. The above map, together with the map in paragraph 4, depict how the Mhadei WLS and other contiguous areas constitute a tiger corridor for the movement of the tigers in the Western Ghats landscape. The NTCA Guidelines, 2012, explain the value of tiger corridors in Clause 7.4. This clause records that isolated populations of wild animals face the risk of extinction owing to insularisation. Habitat fragmentation adversely affects

wildlife due to decreased opportunities for movement, interbreeding, etc. The Guidelines record that tiger corridors become crucial for maintaining the viability of tiger populations.

23. (*Sanderson et al., 2006, 2010; Wikramanayake et al., 2010*) report that to conserve a large, wide-ranging carnivore like the tiger; it is critical not only to maintain populations but also to enable the persistence of the species across much larger landscapes. To do this, it is essential to establish well-linked habitat networks where opportunities for dispersal and colonisation complement sites for the survival and reproduction of tigers. Among the critical global tiger conservation strategies are landscape-based approaches to sustain existing populations and attain recovery goals.

24. *Gubbi, Sanjay & Harish, N & Kolekar, Aparna & Poornesha, Heruru & Reddy, Vasanth & Mumtaz, Javeed & Madhusudan, M.. (2017)* report that Landscape-based approaches emphasise habitat connectivity as a means of enhancing gene flow, providing opportunity for dispersal, thereby increasing the persistence of populations, reducing the risk of inbreeding depression and local extinction, and finally, avoiding costly interventions such as translocation. The landscape-based approach has two key ingredients: first, it involves the identification of key source populations, and second, it involves

the consolidation and improvement of potential tiger habitat in and around these sites, as well as an enhancement of habitat connectivity within the larger landscape.

25. *Gubbi et al., (Providing more protected space for tigers Panthera tigris: A landscape conservation approach in the Western Ghats, southern India. (Oryx. 50.10.1017/S0030605314000751) 2016); Chapron et al., 2008; Rathore et al., 2012; Mondol et al., 2013; Sharma et al., 2013* report that the protected areas are a mainstay of tiger conservation but often lack connectivity, which is critical to ensuring both genetically and demographically viable populations. Enhancing the protected area network would provide protected space for more breeding tigresses and preserve landscape corridors, facilitating multi-directional connections for this far-ranging species. *Goodrich et al., 2013* reported that one of the solutions for ensuring viable tiger populations is to recover populations in a few core areas and link them through tiger-compatible landscapes. *Wikramanayake et al., 2004; Walston et al., 2010; Jhala et al., 2011* report that maintaining forest connectivity between tiger populations and adding new regions where existing populations can expand is vital for long-term persistence.

26. Thus, the tiger corridors are vital for the survival of the tiger. A tiger corridor is generally described as a stretch linking

tiger habitats, allowing tigers, prey and other wildlife to move. Without corridors, tiger habitat can become fragmented, and tiger populations isolated, leaving the tiger vulnerable to localised extinction. The consensus amongst researchers is that such tiger corridors not only ensure the free movement of tigers but the free intermixing of tiger populations, thereby strengthening the species' genetic health by preventing inbreeding caused by the fragmentation of habitats. The tiger corridors avoid the overcrowding of the protected areas by accommodating a growing population of cubs and tigers and allowing them to move away from the territory that adult tigers have already claimed; they also aid the survival of ageing tigers which naturally move outwards to avoid conflict with younger males.

27. Conscious of the importance of the Mhadei WLS and the tiger corridor that it provides, as early as 28.06.2011, Shri Jairam Ramesh, the Hon'ble Minister of State, Environment and Forest, Government of India, wrote to Shri Digambar Kamat, the then Hon'ble Chief Minister, Government of Goa requesting him to declare the Mhadei WLS situated in the Sattari Taluka of North Goa as a tiger reserve. (*Annexure 6 at page 58 of the petition paper book*).

28. The Union Environment Minister's letter dated 28.06.2011 is transcribed below for the convenience of reference:-

“JAIRAM RAMESH

MINISTER OF STATE (INDEPENDENT
CHARGE) ENVIRONMENT & FORESTS
GOVERNMENT OF INDIA
NEW DELHI - 110 003

28th June 2011

Dear Digambar

I am writing to you with the request for declaring the Mhadei Wildlife Sanctuary situated in Sattari Taluk of North Goa as a tiger reserve. There is evidence to show that tigers in Goa are not merely transient animals but are a resident population as well. Mhadei is a contiguous tiger landscape to Bhimgad Wildlife Sanctuary in Karnataka to its south-east and to Anshi Dandeli Tiger Reserve to its south which has around 35 tigers.

2. In a study carried out in 2008, the Wildlife Institute of India had pointed out that the protected areas of Goa and their contiguous forests in Karnataka and Maharashtra are possibly some of the best potential tiger habitats in the Western Ghats region and they are in need of protection.

3. I understand that there is considerable local community support for the creation of a tiger reserve and for wildlife conservation. By declaring Mhadei Wildlife Sanctuary as a tiger reserve, we would also ensure the long-term protection of biodiversity-rich areas.

4. I urge you to give this idea the most serious consideration and submit a proposal to us so that we can take it forward quickly. You may also want to consider expanding the tiger reserve beyond the existing Mhadei Wildlife Sanctuary.

With warm personal regards,

Yours sincerely,

sd/-

Jairam Ramesh

Shri Digambar Kamat,
Chief Minister
Government of Goa”

29. For about five years, absolutely nothing was done by the State on the Union Environment Minister's letter dated 28.06.2011. After five years, the NTCA, by its communication dated 31.03.2016, wrote to the Principal Chief Conservator of Forests (Wildlife) & Chief Wildlife Warden, Goa, about notifying Cotigao-Mhadei forest complex in Goa as a tiger reserve. This communication is vital to the issues raised in this petition, and therefore, the same is transcribed below for the convenience of reference.

*"F.No. 1-20/2013-NTCA,
Government of India
Ministry of Environment, Forests & Climate Change
National Tiger Conservation Authority*

*B-1 Wing, 2nd Floor
Paryavaran Bhavan CGO Complex
Lodhi Road New Delhi 110 003*

Dated: 31.3.2016

*To:
The Principal Chief Conservator of Forests (Wildlife) &
Chief Wildlife Warden, Goa
Goa Forest Department
Gomantak Maratha Samay Building
S. V. Road,
Panaji Goa 403 001*

*Sub: Constitution of a New Tiger Reserve in the State of
Goa — reg*

Sir,

As you are aware the National Tiger Conservation Authority had conducted status of tigers co-predators and prey in India in collaboration with the Wildlife Institute of India and the State. As per the said exercise Cotigao-Madei Forest Complex of your state has recorded tiger presence meaning thereby having potential to head tiger population. This forest complex comprises of the protected areas covering an area of about 750 sq.mts having contiguity with the Kali Tiger Reserve and Bhimgad Wildlife Sanctuary of Karnataka and other protected areas of Maharashtra state.

In view of the above it would be in the fitness of things to notify the said area as a tiger reserve. This would enable us to provide central assistance to the state to upgrade the protection status of the said landscape under the ongoing Centrally Sponsored Scheme of project tiger (CSS-PT) besides fostering the existence agenda with local people in peripheral buffer area.

In this context I am directed to request you that a proposal in this regard may be sent to the Authority from the State Government as required under Section 38 (v) of the Wildlife Protection Act 1972 to enable us to take further steps in this matter.

Yours faithfully

Sd/-

Dr. H.S. Negi

Inspector General of Forests (N)”

30. Acting on NTCA's above communication dated 31.03.2016, the Conservator of Forests, Goa, wrote to the

Deputy Conservator of Forests (Goa) on 19.04.2016 informing him about NTCA intimating that the protected area network of Goa in the western ghats are critical for tiger conservation in the region as these complexes are in continuity with the protected areas like Kali tiger reserve of Karnataka and protected areas in North (Maharashtra). Therefore, the protected network areas in the State of Goa can be notified as a tiger reserve. The Conservator of Forests directed the Deputy Conservator of Forests to demarcate the continuous forested habitat of Goa protected areas in the western ghats, excluding the human habitation/villages which could form the core of a future tiger reserve in Goa. The Conservator directed the Deputy Conservator to prepare the map showing linkages to the protected areas/tiger reserve of Karnataka and Maharashtra in consultation with the Deputy CF (working plan) and submit the same in time bound manner by the end of June 2016 or before.

31. On 20.06.2016, a meeting was convened upon the directions of the Conservator of Forests, Goa, attended by the three Deputy Conservators of Forests, three Assistant Conservators of Forests, the Chief Forest Surveyor and two Forest Surveyors. This meeting was specially convened for the constitution of the tiger reserve in the State of Goa. After deliberation at this meeting, the directions were issued to the Forest Officers to undertake the works of a tentative tiger reserve

map after compiling the relevant information and, based upon the same, to prepare a comprehensive proposal for the constitution of a new tiger reserve in the State of Goa. The minutes of this meeting are in Annexure -10 (*pages 64 and 65 of the paper book*).

32. The State Board for Wildlife, as reconstituted vide notification dated 05.08.2016, met on 12.10.2016 under the Chairmanship of the Hon'ble Chief Minister, State of Goa. The Hon'ble Minister for Forests, Panchayats and Environment & Vice Chairperson was also present. In this meeting, under Agenda 3.7 – the subject of the Constitution of a tiger reserve in Goa was considered. No objections were raised about the NTCA's recommendation for the constitution of the tiger reserve. However, it was decided that the final proposal should be brought to the Board for approval before it is sent to NTCA for consideration.

33. By communication dated 13.12.2016, the Deputy Conservator of Forests (North) Division forwarded to the Deputy Conservator of Forests, Working Plan Division “*the proposed tiger reserve plan for Madei Wildlife Sanctuary and Bhagwan Mahaveer Wildlife Sanctuary & National Park, Mollem showing the location of all habitats, all weather roads, large habitations excluded from the proposed tiger reserve and household*”

particulars inside & outside the proposed tiger reserve” for information and necessary action. To this communication was attached the plan showing the proposed tiger reserve area in North Goa Division along with road network and human habitation (Annexure-12 on pages 68 and 69 of the paper book).

34. The Petitioner has also placed on record the steps taken by the Forest Officers and other experts in the context of the constitution of a tiger reserve in Goa. This includes tour notes of Dr Debabrata Swain, ADG (PT) & MS (NTCA) in Goa and Karnataka. This note discusses the extensive consultations the Member Secretary of NTCA held with high-level forest officials in the State of Goa and Karnataka. Several directions were also issued concerning this protected area. This tour note speaks about camera trap photographs of tigers in the area. This note also records the PCCF, Goa, informing the Member Secretary of NTCA that the Government of Goa is considering constituting Mhadei Wildlife Sanctuary, Bhagwan Mahaveer Wildlife Sanctuary & National Park, Netravali Wildlife Sanctuary and Cotigao Wildlife Sanctuary in the western ghats as a proposed tiger reserve. The note records that the PCCF, Goa, was requested to submit a proposal for constituting a tiger reserve as soon as possible and that the proposal would be considered favourably by the NTCA. (*See Annexure -13 on pages 70-71 of the paper book*).

35. The Petitioner has placed on record a short report on rapid field surveys carried out by the Nature Conservation Foundation, Mysore, in association with the Goa Forest Department between January 20 and 26, 2016, in five protected areas of Goa to evaluate habitat status, forest connectivity and status of the tiger and its prey species. This report was prepared by **Dr A. J. T. Johnsingh** – Ex-Dean, Wildlife Institute of India, Dehra Dun, Nature Conservation Foundation, Mysore; WWF – India and Corbett Foundation, Dikhuli, Uttarakhand. This report is titled “*Bringing back the Tiger to Goa*” and was submitted to the Goa Forests Department on 05.05.2017 (*pages 229 to 252 of the paper book*).

36. Dr Johnsingh's report contains photographs, maps and details of protected areas in the State of Goa. The data collected during the survey for preparing this report included the occurrence of the tiger and its prey species based on evidence and direct sightings with information on the geographic location and habitat characteristics for direct and indirect (e.g., droppings and tracks) evidence. The report records that the surveyors saw a large scat near the Karnataka border, which could be that of a tiger. The report notes that the tiger should be ranging between Bhimgad WLS and Mhadei WLS as it seems to be an undisturbed tract of forest devoid of human habitation. As a result, here in the early summer of 2017, Goa Forest Department could get evidence of a

tiger, two tigresses and two cubs with the help of camera traps (Kerkar 2017).

37. Dr Johnsingh's report gives its findings, key conservation issues, suggestions, and conclusion. The report states that Mhadei WLS being closer to Bhimgad WLS, is in an advantageous position to have the first residential population of tigers in Goa. There are no mines within the sanctuary, and with the resettlement of Codaval village, Mhadei has the potential to become the primary core of the tiger reserve. Bhagawan Mahaveer WLS and NP have records of tiger sightings. Netravali WLS has reports of tiger sightings as the sanctuary has connectivity with the Kali tiger reserve in Karnataka. No mining occurs within the sanctuary limits. Therefore, if sufficient protection is given, this sanctuary can be a safe haven for large animals. Attempts should be made to establish a satellite core of around 100 sq. km within Netravali WLS. Cotigao WLS is connected to the Kali tiger reserve, so tigers reportedly range into the sanctuary. The report also adds that, *“It is likely that in the past the mining lobby exerted considerable influence against the establishment of a tiger reserve. We wish that this threat does not delay the establishment of the tiger reserve in Goa”*.

38. Dr Johnsingh's report concludes by reference to the status of the tigers report, 2014, in which the population estimate of

tigers in Goa was five. The conclusion states that the situation is promising as the contiguous forests of Mhadei WLS, Netravali WLS, Bhagawan Mahaveer NP and WLS and Cotigao WLS of Goa, the reserved forests of Sindhudurg district in Maharashtra, Bhimgad WLS and Kali tiger reserve in Karnataka make this landscape a potential habitat for long term conservation of tiger and other associated species. Accordingly, the report recommends that the entire protected landscape of five existing protected areas (755 sq. km) should be declared as Tiger Reserve with a primary core of 150-200 in Mhadei WLS and a satellite core of 100 sq. km in Netravali WLS. Declaration of this tiger reserve will also protect the catchment areas of important rivers like Mhadei, Malapradha and Tillari. It will help to ensure continuous water availability for the three States of Goa, Karnataka and Maharashtra.

39. The conclusion also flags that the priority in the entire landscape should be “*control of poaching of prey. Functional anti poaching camps are a must.....*”. The report also recommends that generous voluntary resettlement packages be offered to the locals in the area. The long-term tiger conservation goal for Goa should be to have a breeding population of a minimum of ten adult tigers ranging not only in Mhadei but also in Netravali, Bhagwan Mahaveer and Cotigao Wildlife Sanctuaries. The report ends with a pious hope “*We are sure that this is bound to happen*”

if the present leadership in the forest department continues and such leadership is perpetuated for decades to come as conservation is a never ending endeavour”.

40. The Petitioner has placed on record the minutes of the State Board for Wildlife meeting held on 16.12.2017 when the Board considered Dr Johnsingh’s report. The meeting minutes at Agenda item No.4.5 record Member Secretary informed the Board Members that the “*proposed tiger reserve map is prepared after the Forest Department intensively studies the area in association with Wildlife expert Dr. A.J.T. Johnsingh, Retd. Scientist, WII.*” After this, the Chairperson of the Board desired that he be furnished the details along with a study report on the socio-economic impact on locals residing in the fringe areas before the Board could discuss the same.

41. The relevant extract of the minutes of the State Board for Wildlife meeting held on 16.12.2017 (Annexure -14 on pages 72 and 73 of the paper book) is transcribed below for the convenience of reference.

“Agenda item: 4.5 Proposed Tiger Reserve:

Member Secretary informed about the proposed Tiger Reserve for which a map has been prepared comprising largely undisturbed areas with few human hamlets as core

zone adjoining the Kali Tiger Reserve and Bhimgad Wildlife Sanctuary of Karnataka and Maharashtra in the North of Madei WLS, Bhagwan Mahaveer WLS & NP, Netravali and Cotigao WLS. He explained that the large human settlements and tourism areas have been proposed in the buffer zone in the existing PA. Member Secretary informed that the proposed Tiger Reserve map is prepared after the area is intensively studied by the Forest Department in association with Wildlife expert Dr. A.J.T. Johnsingh, Retd. Scientist, WII. Chairperson desired to furnish him details along with study report on socio-economic impact on locals residing in the fringe areas before discussing the same in the Board.”

42. Thus, by December 2017, i.e. within about 18 months from the receipt of NTCA's recommendation dated 31.03.2016, at least officials of the Goa Forest Department prepared a map for the tiger reserve “*comprising largely undisturbed areas with few human hamlets as core zone adjoining the Kali Tiger Reserve and Bhimgad Wildlife Sanctuary of Karnataka and Maharashtra in the North of Madei WLS, Bhagwan Mahaveer WLS & NP, Netravali and Cotigao WLS*”. As the minutes disclose, the tiger reserve map was prepared after the area was “*intensively studied by the Forest Department in association with Wildlife expert Dr. A.J.T. Johnsingh, Retd. Scientist, WII.*” Most of the groundwork necessary to constitute a tiger reserve was complete by this date. However, no decision was taken by the State Board for Wildlife on 16.12.2017 because the Chairperson desired to be furnished details along with a study report on the socio-economic impact

on locals residing in the fringe areas before the matter could be discussed in the Board.

43. The Petitioner has then placed on record the office note dated 21.03.2018 (*Annexure -15 on pages 74 to 76 of the paper book*) prepared by the Deputy Conservator of Forests. This office note concerns the proposal for the constitution of a tiger reserve in the State of Goa. This office note refers to the State Board meeting held on 16.12.2017, in which the Chairperson, i.e. the Hon'ble Chief Minister, desired that he be furnished details about the proposal for the tiger reserve. The office note states: "*Upon the direction the detail of proposal is framed and submitted as below*".

44. The document dated 21.03.2018 gives the overview of the proposal for establishing a tiger reserve by explicitly referring to NTCA's communication dated 31.03.2016 by which the MoEF & CC, Government of India had urged the State to consider the constitution of a tiger reserve and to prepare a proposal in that regard. The document refers to the history of the project Tiger in India and its aim & objectives and key tiger habitats. This includes the western ghats landscape complex comprising Karnataka, Kerala, Tamil Nadu and Goa, with about 776 tigers. The details of tiger density extent and population block within

the western ghat landscape were placed separately in the file on page 4/c.

45. The document dated 21.03.2018 records that the entire stretch of the protected area network in Goa exists along the western Ghats. Due to better protection, habitat improvement and monitoring using technology such as camera traps, the Goa Forest Officials have confirmed tiger records in North-Eastern parts. The document refers to the action taken on NTCA's communication dated 31.03.2016 and documents about the discussions, workshops, preparation of maps and working plan. In particular, the document records that the map has been drawn to demarcate the contiguous forest habitat in the existing protected area in western Ghat as a core zone keeping main villages and human habitation outside this zone and placing them in the proposed buffer zone as far as possible.

46. A copy of the map prepared by DCF, a working plan showing the buffer zone, including eco-tourism zones in Mhadei, Bhagwan Mahaveer, Netravali and Cotigao Wildlife Sanctuary, in the proposed tiger reserve, was annexed to the document as Annexure-II. The document records that out of 745.18 sq. km of protected area, about 578.33 sq. km is proposed as the core zone and about 166.85 sq. km as the buffer zone. All this was indicated in the working plan prepared by DCF, which was annexed to the

document as Annexure – III. The details of the core and buffer area of the proposed tiger reserve (area-wise), along with the legal status, were shown in tabular format on page 7/C.

47. The document dated 21.03.2018 significantly records that the locations in the protected areas with large habitations have been left out (excluded) from the proposed tiger reserve. Only sites with smaller habitations have been included so that relocations could be minimum. The document concludes by noting that Central assistance of 100% would be provided for non-recurring expenditures and 50% for recurring on the notification of a tiger reserve.

48. Thus, even the document dated 21.03.2018 shows that the major steps concerning the notification of the tiger reserve were complete. All details as desired by the Chairperson of the State Wildlife Board were also duly furnished. Significantly, in demarcating the tiger reserve areas, care was taken as far as possible to ensure that human habitation areas were excluded from the core zone by placing them in the buffer zone to the extent possible. Several plans were prepared, including the core and buffer areas' locations. Still, from 2018 to date, the State Government avoided acting on the recommendation of the NTCA.

49. The Petitioner has also placed on record the NTCA document dated 02.12.2019 (Annexure -16 on pages 77 and 78 of the paper book), titled “*Connecting Tiger Populations for Long-term Conservation*’. This document has mapped out 32 major corridors across the country, including macro/landscape-level tiger corridors. Goa is included in Item No.2, the “*Sahyadri-Radhanagari-Goa*’ corridor. Factually, even the State does not dispute the presence of tigers or the tiger corridor in Goa. The importance of protecting tiger corridors is already discussed earlier.

50. While the State Government was proceeding at a snail’s pace, in January 2020, the national and local newspapers reported that four tigers were found dead in Mhadei WLS. The investigations ultimately suggested that the tigress and her three cubs died in the Mhadei WLS by consuming poisoned buffalo carcasses. A forest dweller poisoned the carcass because the tigress had killed his buffalo a couple of days earlier. This unfortunate incident could have been easily avoided if the State Government had acted with alacrity. While the state attempted to downplay this incident, the Central Government and the NTCA swung into action.

51. Mr Chodankar, learned counsel for the Central Government and the NTCA, placed on record an Office

Memorandum dated 04.02.2020 issued by the NTCA to the Principal Secretary (Forest), Government of Goa informing him that the requisite action as per the SOP and guidelines of NTCA had been taken in the case of death of a tigress with three cubs inside the Mhadei WLS. Further, a team had been constituted by the NTCA to inquire and facilitate the legal action involved in connection with the tiger deaths. This communication also states that the IGF, NTCA, RO, Bengaluru had conducted a supervisory visit on 28.01.2020 and suggested/assisted the future line of action to strengthen the measures in the Mhadei WLS. The action taken report (ATR) was also enclosed for kind information and necessary action by the Government of Goa.

52. The ATR records that as part of All India Tiger Estimation (AITE) – 2018, the Goa Forest Department carried out sign survey activities (Phase I) in May 2018 in potential tiger-bearing areas, including the Mhadei WLS. The survey confirmed the presence of tigers in Mhadei WLS. The ATR records that the preliminary investigation by the Goa Forest Department had revealed that all four tigers had died due to consumption of poisoned buffalo meat. Per the accused's statement, they poisoned the buffalo to kill the tigers and avenge their buffaloes' loss.

53. The ATR refers to IGF's supervisory visit to the protected areas. This report suggested several steps, including strict adherence to the SOPs issued by NTCA in respect of matters involving Tigers and Leopards; expeditious settlement of rights of the forest dwellers; implementation of M-StripES Scheme; placing of additional camera traps; posting of full-time veterinary officers; timely payment of compensation in cases of human-animal conflicts. The ATR records that the Mhadei WLS has been managed for two decades without any management plan. Therefore, the management plan must be completed at the earliest and on a priority basis. The ATR finally urges that the proposal to declare a tiger reserve should be expedited.

54. The two-member expert committee of NTCA to probe into the death of four tigers in the Mhadei WLS was accompanied on a field visit by the High Ranking Officials of the Goa Forest Department. The report of this committee is quite detailed and exhaustive (*See Annexure-19 - pages 87 to 101 of the paper book*). The plan at paragraph 5 of this Judgment and Order is from this report. The expert committee made as many as twenty-three observations and eighteen recommendations.

55. The NTCA expert committee observed that the unfortunate death of four tigers revealed that not all was not well with the management of Mhadei Wildlife Sanctuary. The report quotes some wildlife activists who stated that the presence of tigers in this area was well-known and documented. However,

over the years, the Forest Department failed to take any serious and sincere steps to protect and conserve tigers. The expert committee observed no proper protection mechanism inside the sanctuary, like a network of well-connected Anti-Poaching Camps (APC) at strategic locations staffed by Forest Guard/Watchers around the clock, a common feature of well-managed PA/Tiger Reserve. The expert committee observed a high probability that the tigers, their prey base and other flora and fauna might be subjected to varying degrees of poaching pressure. Still, there was no way to know unless a good protection and information network was put in place.

56. The NTCA expert committee reported that, unfortunately, even after more than two decades since Mhadei WLS was declared a Wildlife Sanctuary, it was managed on a completely ad-hoc basis as no management plan existed for such an important sanctuary of Western Ghat. The expert committee observed, “*It gives an impression that wildlife management appears to be a subject which is of least priority for the Goa Forest Department.*”

57. The expert committee observed that there had been several instances of cattle depredation by the tigers and leopards in the past. Still, hardly any compensation was paid by the Forest Department officials to the victims. The representatives of the local Dhangar community also alleged that neither the forest

department nor other Government Departments conducted any awareness about human-wildlife conflicts and government schemes for payment of compensation. Similarly, no systematic efforts have been made to estimate the tiger population in the sanctuary using camera trap-based monitoring protocols. The expert committee reported that because only opportunistic camera trapping was done by the Forest Department inside the sanctuary without a designed survey protocol, it was highly possible that the projected tiger population size of Goa may be an understatement.

58. The NTCA expert committee also observed that the protected areas of Goa (Mhadei WLS and Mollem WLS) are part of the Western Ghats landscape complex, with the unique distinction of having the world's largest tiger population. This landscape has several interconnected tiger reserves and protected areas. According to the Status of Tigers in India, 2014 report, Goa has a persistent tiger presence with a conservative estimate of 3-5 tigers. Still, this landscape has the potential to serve as a home for breeding tigers and to increase overall tiger population numbers by providing targeted management inputs. The expert committee strongly recommended that the Protected Areas of Goa and the protected forests of Karnataka should be brought under Tiger Reserve at the earliest to facilitate tiger recovery and conserve this biodiversity hot-spot's rich biodiversity. The expert

committee reported that this would enhance the value of Western Ghats as a World Heritage Site.

59. The NTCA expert committee also noted that the narrow forest connectivity of the Western Ghats ridge between Goa and Maharashtra is vital in facilitating contiguous tiger occupancy within this landscape. Without up-grading the legal status of Goa's Protected Areas to that of tiger reserves and putting in place a robust protection regime, **“the State may become death trap for tigers dispersing in this landscape”**.

60. The NTCA expert committee noted with regret that the issue of declaring Mhadei WLS as a tiger reserve is a long pending one, with the Central Government initiating steps in 2012. The expert committee also referred to the estimates of the economic valuation of the tiger reserves. The research findings indicate that the annual benefits derived from tiger reserves ranged from USD 128 million to 271 million. The expert committee observed that contrary to the claims of certain vested interests that the declaration of tiger reserves will stall the development of the State, an economic evaluation study by NTCA and the Indian Institute of Forest Management (IIFM) establishes that tiger reserves make a significant contribution to the State economy by providing various ecosystem services.

61. The NTCA expert committee finally observed that it was the right time not only for the Mhadei WLS in the State of Goa but to submit proposals for the declaration of WLS for Bhagwan Mahavir National Park, Bhagwan Mahavir Wildlife Sanctuary, Cotigao Wildlife Sanctuary and Netravali Wildlife Sanctuary as Tiger Reserves. This move will secure the habitat for mega carnivores and the associated floral & faunal diversity at the State level and contribute towards conserving the Western Ghats, a biodiversity hot-spot and a 'World Heritage Site'."

62. The NTCA's expert committee report then proceeded to make almost eighteen recommendations, the first of which was to declare the Mhadei WLS as a tiger reserve which would provide the much-needed access to technical, financial and monitoring support from NTCA to safeguard the conservation values of the sanctuary. The expert committee recommended setting up Anti-poaching Camps and delineation of sanctuary boundaries, a systematic survey of the sanctuary, constituting State level Task Force, Deployment of M-StrIPES, Developing informer network, setting up of wireless network, Appointment of dedicated Forest Settlement Officer, Capacity Building, Awareness campaigns, simplifying compensation payment mechanism, preparation of Management plan, Shifting headquarter of Wildlife Division, Posting young, energetic and

trained forest officers for the sanctuary, State level monitoring of tigers and, Planning voluntary village relocation, etc.

63. Though the expert committee report was furnished to the State Government and the officers of the Goa Forest Department, the record bears out that hardly any steps based upon the observations or recommendations were initiated. The unfortunate death of four tigers in the Mhadei WLS was treated as some one-off incident without appreciating the severe implications. Even three years after the submission of this detailed report by the NTCA's expert committee, the proposal for notifying the tiger reserve moved no further. We say nothing further!

64. In 2021-22, an issue arose about doubling the stretch of the railway line from Castlerock Karnataka to Kulem in Goa (Part of Phase II of the project from Tinaighat to Vasco). The Central Empowered Committee constituted by the Hon'ble Supreme Court made its report no.6/2021 in Application No.1440 in Writ Petition (C) No.202/1995 before the Hon'ble Supreme Court by the petitioner-Goa Foundation. This report, inter alia, refers to the status of Kali Tiger Reserve (KTR), comprising two important protected areas of the region Dandeli Wildlife Sanctuary (DWS), and Anshi National Park (ANP), which are contiguous. The area of KTR is 1101.51 sq. km. and is bounded by the protected areas

of Bhimgad Wildlife Sanctuary (BWS) and Bhagwan Mahaveer Wildlife Sanctuary (BMWS) with wildlife-rich regions of Supa backwaters and forests of Tinaighat Range of Haliyal Division. The forest area of Castlerock Range holds a sizeable population of tigers (25 in 2020). It is also an important tiger corridor in the Central Western Ghats connecting the tiger habitats in Karnataka, Goa and Southern Maharashtra. The camera trap records show that tigers from Bhadra Tiger Reserve, Kali Tiger Reserve, and Sahyadri Tiger Reserve (STR) actively use this corridor for dispersal.

65. On 09.05.2022, Hon'ble Supreme Court disposed of Goa Foundation's above application based upon the CEC report. This order is reported in *T. N. Godavarman Thirumulpad v/s. Union of India (supra)*. In para 22 and 26 of this order, there is a direct reference to areas in Goa forming a tiger corridor for the region. Para 22 of the Hon'ble Supreme Court Order reads as follows:-

"22. The landscape in which the railway line is proposed to pass is an important tiger corridor, connecting the three States of Goa, Karnataka and Maharashtra. The report prepared by NTCA regarding the viability of such a railway line is only for the Karnataka part of the project. No such report has been prepared for the Goa part. The Standing Committee of NBWL ought to have sought for a report from NTCA on the Goa part of the project before granting approval for the doubling of the railway line between

Castlerock to Kulem in view of the fact that it is an important tiger corridor where instances of killing of tigers have been reported. We find merit in the recommendations made by CEC regarding the necessity of taking into account the actual loss of the wildlife habitat by the construction activity for the doubling of the railway line for which heavy machinery would have to be moved and crusher units will have to be established for dumping construction material.”

(Emphasis supplied)

66. Thus, even the Hon'ble Supreme Court has taken cognisance of the fact that the Mhadei WLS and areas contiguous to it constitute a vital tiger corridor where instances of killing of tigers have been reported. The Court has also taken cognisance that this important tiger corridor connects three States: Goa, Karnataka and Maharashtra.

67. Mr Chodankar, learned counsel for the Central Government and NTCA, also placed on record a communication dated 29.09.2022 addressed by NTCA to the Chief Wildlife Warden, Government of Goa, on the declaration of a tiger reserve in Goa. This communication reads as follows:-

“NATIONAL TIGER CONSERVATION AUTHORITY

(Statutory Body under Ministry of Environment, Forest and Climate Change, Govt. of India)

F. No. 1-12/2013-NTCA

New Delhi,

September 29th 2022

To,

*The Chief Wildlife Warden,
Government of Goa*

Sub: Declaration of Tiger Reserve in Goa - reg.

Sir,

I am directed to enclose herewith a copy of email received from Brunila De Souza, Nigvaddo, Saligao, Goa regarding the presence of tigers in Goa and the need for constituting tiger reserve, for your kind information.

In 2020, in the aftermath of death of a tigress and three cubs inside the Mhadei Wildlife Sanctuary, this Authority had requested the State to speed up the process of notifying Mhadei Wildlife Sanctuary as tiger reserve (copy enclosed).

Considering the strategic location of Goa's Protected Areas (PA) within the Western Ghat landscape and the importance of these PAs in ensuring long-term conservation of tigers, it is requested that necessary steps may be initiated for bringing the area under the ambit of NTCA.

Endi: As above.

Yours faithfully,

Sd/-

(Rajendra G. Garawad)

Deputy Inspector General (NTCA)

Email: dig2-ntca@nic.in

Tel. (EPABX): + 91 11 24367837-39

FAX: +91 11 24367836

Copy to: IGF, NTCA, Regional office (Southern Zone), Bengaluru, Karnataka.”

68. The conspectus of the documents, reports, communications, minutes, office notes, maps, plans, etc., establish the presence of tigers in Mhadei WLS and its contiguous areas. Further, due to the contiguity of this area with the wildlife sanctuaries and tiger reserves in Karnataka and Maharashtra, this area is a vital tiger corridor critical for the conservation and protection of the tiger. Based upon recommendations of the NTCA, at least the Goa State Forest Officials have already prepared detailed proposals and plans to constitute the tiger reserve. But the State continues to steadfastly avoid notifying the tiger reserve.

69. The Goa State Wildlife Board minutes dated 12.10.2016 record that an area of 590 square kilometres is relatively free of any human habitation and has now been identified as the likely area for the core zone of the proposed tiger reserve. The material on record shows that regions with significant habitation were excluded from the proposed tiger reserve. Dr Johnsingh's report, while pointing out the necessity of constituting a tiger reserve at the earliest, refers to the mining lobby in Goa exerting considerable influence against establishing a tiger reserve. This report concludes by observing that the declaration of this tiger

reserve will protect catchment areas of important rivers like Mhadei, Malaprabha and Tillari. This will also help to ensure continuous water availability for the three States of Goa, Karnataka and Maharashtra.

70. The State Board of Wildlife duly considered all such material in its meeting on 16.12.2017. However, no decision was taken at this meeting because the Chairperson requested a study of socioeconomic impacts on locals. Even this was provided to the Chairperson and the State Board, as evidenced by the Deputy Conservator of Forest note dated 21.03.2018. This document gives details of all particulars of the proposed tiger reserve, including the socio-economic impact on locals residing in contiguous areas. This document refers to the working plan showing core and buffer zones and confirms that high-habitation regions have been excluded from the tiger reserve. Despite all this material, the State Government or the State Board for Wildlife avoided taking any decision on the issue of tiger reserve.

71. After the unfortunate death of four tigers in the Mhadei WLS in January 2020, it was expected by all concerned that the area would be notified as a tiger reserve to ensure a more significant level of protection for the tiger and the tiger corridor. However, even this incident was sought to be trivialised and downplayed. The recommendations made by the NTCA through

its ATR or the recommendations in the NTCA's two-member expert committee report were mostly ignored. All recommendations strongly urged the State Government to notify this area as a tiger reserve at the earliest, failing which the State of Goa may become a death trap for tigers dispersing in this landscape. Even these desperate warnings of the NTCA's expert committee were insufficient to move the State Government into action. Therefore, the NTCA, as late as 29.09.2022, once again urged the Goa Government to speed up the process of notifying Mhadei WLS and areas contiguous to it as a tiger reserve.

72. Possibly having regard to such voluminous material and the strong recommendations of the NTCA, the learned AG submitted that the State was not opposed to notifying the area as a tiger reserve. Still, the State believed such a notification could be issued only after the rights and claims of all the forest dwellers in the protected areas were determined and settled. Learned AG submitted that until and unless final notifications under Section 26-A of the WLPA were issued regarding all the areas within the WLS and National Parks, the time was not opportune to notify this area as a tiger reserve. For reasons discussed later, this contention or excuse cannot be accepted.

73. Based on the above factual background and given the rival contentions, the first point to be determined is whether the

NTCA's communication dated 31.03.2016, O.M. dated 04.02.2020, action taken report (ATR) dated 04.02.2020, NTCA's expert committee report (pages 87 to 101 of the paper book) and NTCA's communication dated 29.09.2022 amount to "recommendations" under Section 38-V(1) of the WLPA?

74. Section 38-V (1) of the WLPA provides that the State Government shall, "*on the recommendation of the Tiger Conservation Authority*", notify an area as a tiger reserve. WLPA neither defines the expression "*recommendation*" nor prescribes any particular form or format in which the NTCA could make a recommendation under Section 38-V (1) of WLPA. Therefore, we could consider the natural meaning of the expression "*recommendation*", bearing in mind the context of its setting in the statutory scheme. This is a permissible exercise in statutory interpretation.

75. In *Commissioner of Income Tax, West Bengal, Calcutta v/s. Raja Benoy Kumar Sahas Roy*⁵ the Hon'ble Supreme Court has held that when a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the word's various meanings, regard must always be had to the context as it is a fundamental rule that the

5 AIR 1957, 768

meanings of words and expressions used in an Act must take their colour from the context in which they appear. (*See also Ramnarayan v/s. State of UP*⁶). Therefore, reference to some well-known dictionaries and the decisions on the scope of the expression “*recommendation*” would not be out of place.

76. The Concise Oxford English Dictionary (Indian Edition) gives the following meaning for the expressions “*recommend*” and “*recommendation*”:

Recommend – V. 1 put forward with approval as being suitable for a purpose or role, » advise as a course of action. » advise to do Something. 2 make appealing or desirable, 3 (**recommend someone/thing to**) archaic commend or entrust someone or something to. - DERIVATIVES **commendable** adj, **commendatory** adj. **Recommender**

77. The Cambridge Dictionary offers the following meanings for “*recommendation*”:

a suggestion that something is good or suitable for a particular purpose or Job:

78. In P. Ramanatha Aiyar’s Law Lexicon, the word “*recommendation*” means “a statement expressing commendation or a message of this nature or suggests fit.”

6 AIR 1957 SC 18

79. In *Union of India v/s. Telecom Regulatory Authority of India*⁷ the Delhi High Court has explained the expression "*recommend*" as defined in the Webster's Dictionary means, "*to advise, to counsel, as recommend that something be done, to speak favourably as suited for some use, function, position etc., to make acceptable or pleasing to suggest, to counsel a course of action and leave its acceptance to that person.*" "*Recommend*" implies a favourable or favouring report and precludes an unfavourable or opposing report. Thus "*recommend*" is to present one's advise or choice or as having one's approval and involves the idea that another has the final decision.

80. The United States Court of Appeal, Third Circuit, in *People of Virgin Islands V. Price, CA*, expressed a similar opinion in *Virgin Islands, 181 Federal Reports 2d 394, 396*. The Court held that the word "*recommend*" has to be seen in the context in which it was suggested by the Standing Committee, conveying the intention of the Legislature to mean "*advise*", "*suggest*" and "*counsel*".

81. Crucial on this subject is the decision of the Hon'ble Supreme Court in *V. M. Kurian v/s. State of Kerala & Others*⁸, wherein the Hon'ble Supreme Court was considering the scope of the expression "*recommendation*" in Rule 5 of the Kerala

⁷ 1998 (46) DRJ

⁸ (2001) 4 SCC 215

Building Rules, which empowered the Government to exempt certain buildings from applying the said rules. The Court held that the perusal of Rule 5 shows that an application for exemption from the provisions of the Rules was required to be processed through GCDA and the Chief Town Planner. The Rule further requires that the application be forwarded to the State Government along with the specific recommendations of GCDA and the Chief Town Planner. The question, therefore, that arose for consideration was the scope of the expression *recommendation* in the context of Rule 5. The Court noted that the Rules or the Statute provided no statutory definition. Therefore, the Court accepted the dictionary meaning of the word “*recommend*,” i.e., “*to advise*”, “*to praise or commend*”.

82. The Court noted that there was no statutory definition of “*recommendation*” in the Rules. Therefore, the meaning of the word has to be understood in the context of the provisions of the Rules and the object behind such Rules. Since the Rules concerned regulation and construction of a building in an urban area, the object of such rules was the maintenance of public safety and convenience. Thus, the meaning of the word “*recommend*”, when read in the context of the Rules, shows that it means “*giving of a favourable report opposed to an unfavourable one*”.

83. Even otherwise, NTCA's communications contain proper recommendations, not merely suggestions or advice regarding notifying the Mhadei WLS and other areas as a tiger reserve. Repeatedly the NTCA exhorted the State Government to notify the tiger reserve expeditiously to arrest further degradation of the tiger and tiger habitat. The NTCA expert committee went to the extent of saying that the delay in notifying might as well render the Goan sanctuaries a death trap for the tigers accessing the well-defined tiger corridor. These strong observations were made after the State Government virtually ignored repeated NTCA and the Central Government recommendations. This led to the unfortunate death of 4 tigers in Mhadei WLS in January 2020.

84. Thus, it is clear that the NTCA's communication dated 31.03.2016, O.M. dated 04.02.2020, action taken report (ATR) dated 04.02.2020, NTCA's expert committee report (*pages 87 to 101 of the paper book*) and NTCA's communication dated 29.09.2022 amount to a recommendation as contemplated by Section 38-V (1) of the WLPA.

85. The second point which arises for consideration is whether the provisions of Section 38-V (1) of WLPA, which provides that the State Government shall, on the recommendation of the NTCA, notify an area as a tiger reserve, is mandatory or only directory?

86. In *Anant H. Ulahalkar & Anr v/s. Chief Election Commissioner & Ors.*⁹, the Full Bench of this Court, considered in some detail the tests to determine whether a legislative provision is mandatory or directory. The use of expressions like “shall” or “may” are not conclusive, and regard must be had to the true intent of the legislation. However, the use of expressions like “shall”, “should”, or “must” by the legislature, at least *prima facie*, indicates mandatory nature. Similarly, using expressions like “may” or “as nearly as may be” by the legislature, at least *prima facie*, reveals *directory* nature. This decision was affirmed by the Hon'ble Supreme Court in *Shankar Raghunath Devre (Patil) Vs State of Maharashtra and others* - [(2019) 3 SCC 220].

87. In *Khub Chand and others Vs State of Rajasthan and others* - AIR 1967 SC 1074, *State (NCT of Delhi) Vs Sanjay (2014) 9 SCC 772*, and *State of U.P. vs. Babu Ram Upadhya, AIR 1961 SC 751*, the Hon'ble Supreme Court has held that the term “shall” in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or bring it in variance with the intent of the legislature, to be collected from other parts of the Act. The Court has held that whether a statute is mandatory or directory depends upon the Legislation's language and phraseology, the Legislature's

⁹ [(2017) 1 Mh. L.J. 431]

intention and the nature, design, and consequences which would follow from construing it one way or another.

88. In *Manbodhan Lal Srivastava* (supra), *M/s B. P. Khemka* (supra) and *Kailash Vs Nankhu* (supra), relied upon by the learned AG, the Hon'ble Supreme Court formulated no different principles. However, the Hon'ble Supreme Court did hold that procedural provision or beneficial legislation must not ordinarily be construed as mandatory unless compelled by expression and specific language of the statute. These decisions also hold that one of the tests for determining whether a provision is mandatory or directory is whether the Legislature has provided any consequences for disobedience.

89. The learned AG emphasised that no civil or penal consequences were provided should the State Government defy or delay the implementation of NTCA's recommendations. He was at pains to submit that once the Legislature provided no such consequences, Section 38-V (1) should not be construed as mandatory. According to us, this cannot be the sole factor for construing Section 38-V (1) as directory. In *Surjeet Singh Bhamra Vs Bank of India and others*¹⁰ and *Balwant Singh Vs Anand Kumar Sharma*¹¹, the Hon'ble Supreme Court has held that the fact that no consequences of non-compliance are stated

10 (2016) 4 SCC 204

11 (2003) 3 SCC 433

in the statute has been considered as a factor tending towards a directory construction. But this is only an element to be considered and is by no means conclusive.

90. Section 38-V (1) uses the expression “*shall*”. Therefore, going by the precedents, this would at least prima facie indicate a mandate. No absurd or inconvenient consequence would result from construing this provision as mandatory. Instead, a problematic consequence might ensue by construing this provision as directory because then it would be open to the State Government to defy the recommendation of an expert, high-powered central body constituted by Parliamentary Legislation for the specific purpose of adequate protection of the tiger and tiger habitat in India.

91. If each State Government must be given the absolute discretion to notify or not to notify a tiger reserve, notwithstanding the strong recommendation of NTCA, the protection of the tiger, our national animal, and its habitat would be rendered a casualty. The object of the WLPA is to protect wild animals to ensure the ecological and environmental security of the country. The 2006 amendment by which the NTCA was constituted aimed to strengthen project tiger for conserving endangered tigers and tiger habitats. Therefore, even the

legislative object and NTCA's statutory position would not support a directory construction.

92. The NTCA is a high-powered central body constituted under the Parliamentary statute. This is Chaired by Union Environment Minister and Vice Chaired by the Minister of State Environment. Three members of the Parliament, eight experts or professionals having prescribed qualifications and experience in the conservation of wildlife and the welfare of the people living in tiger reserves (out of which two shall be from the field of tribal development) are its members. Besides, an environment Secretary, Secretary, Ministry of Tribal Affairs, Secretary, Ministry of Social Justice and Empowerment, Secretary, Ministry of Panchayati Raj are the members of NTCA. The Director General of Forests, Director Wild Life Preservation, six Chief Wild Life Wardens from the tiger reserve States, an officer not below the rank of Joint Secretary and a Legislative Counsel from the Ministry of Law and Justice are also members of the NTCA. An officer not below the level of Inspector-General for Forests having at least ten years of experience in a tiger reserve or wildlife management is the Member Secretary of the NTCA. Sweeping powers have been conferred, and critical functions have been assigned to the NTCA under Section 38-O of the WLPA.

93. Therefore, to hold that Section 38-V (1) is only a directory so that the State Government can brush aside the recommendation of the NTCA would be contrary to the language and phraseology of the provision, the intention of the Legislature and the nature, design and consequences which would follow from construing the same as directory. The vesting of absolute discretion in the State Government to unreasonably delay or even refuse to notify a tiger reserve despite recommendations from the expert high-powered central body like NTCA, even with no cogent reasons, would spell doom for the cause of tiger protection. The cause of tiger protection would then be a casualty. This Court cannot blink at the reality that often at the State level, regional, parochial, anthropomorphic, and times, even narrow political considerations would prevail over the more significant national interests involved in conserving and protecting the tiger and the tiger habitat.

94. Regards the absence of consequences, Section 38-O (2) in Chapter IV-B provides that the directions issued by the NTCA in the context of the conservation of tiger or tiger reserves are binding. However, this provision, or no other provision in WLPA, provides for consequences should the State Government embark upon a misadventure of defying such direction. Yet even the learned AG does not dispute that the provisions of Section 38-O (2) are mandatory.

95. Similarly, Section 38-W, which also forms part of Chapter IV-B of WLPA, provides that no alteration in the boundaries of a tiger reserve shall be made except on the recommendation of NTCA and approval of NBWL. Further, no State Government is permitted to denotify a tiger reserve except in the public interest with the approval of NTCA and the National Board for Wildlife (NBWL). This section uses the expression “shall” but does not provide for any consequences should the State Government decide to defy this provision and proceed to alter the boundaries of a tiger reserve or even denotify a tiger reserve. Yet, there can be no doubt that Section 38-W is mandatory, and the State is enjoined from acting otherwise.

96. Ms Alvares referred to *Ajay Dubey Vs NTCA*¹² and *Centre for Environment Law WWF-India Vs Union of India*¹³ to point out how the Hon'ble Supreme Court has interpreted the expression “shall” appearing in WLPA. In the context of Section 38-V (3) of WLPA, the Court directed that the respective State Governments prepare a tiger conservation plan within six months and submit the same to NTCA for approval where the Legislature had used the expression “shall” in the said provision. Similarly, the Hon'ble Supreme Court held that under Section 33-A of WLPA, the Chief Wild Life Warden was mandated to take such measures in such manner as may be prescribed for immunisation

¹² (2012) SCC OnLine SC 875

¹³ (1998) 6 SCC 483

against communicable diseases of the live-stock kept in or within five kilometres of a sanctuary. Again both these sections use the expression "*shall*" but provided no consequences for disobedience.

97. The learned AG submitted that Section 38-O (2) empowers the NTCA to issue binding directions. He proposed that the Legislature could have easily used the expression "*directions*" in Section 38-V (1) if it intended the provisions to be mandatory. He submitted that the fact that the Legislature has consciously not used this expression means that the provisions of Section 38-V (1) are only directory and not mandatory. We cannot agree for the reasons discussed hereafter.

98. A careful reading of Section 38-O (2) provision clarifies that the directions referred to therein are general and broad-based for protecting tiger or tiger reserves. Instead, the recommendations contemplated under Section 38-V (1) of WLPA are in the specific context of the State Government notifying a tiger reserve. The legislature was undoubtedly conscious of the distinction between a direction and a recommendation. Yet, the legislature used the expression "recommendation" but clarified that even such a recommendation from a high-powered expert body like the NTCA would oblige the State Government to notify a tiger reserve. The Parliament did not possibly conceive of a situation where a State Government

would defy the recommendation of NCTA and insist upon reading the expression “shall” as “may”.

99. Incidentally, we must add that even if the provision is directory, it does not mean the State has a licence to openly flout the same without rhyme, reason, or legitimate cause. Substantial compliance is usually expected. At least weighty reasons for incomplete compliance or non-compliance are expected. As discussed later, the State Government's only reason for defying the NTCA is that the rights and claims of the forest dwellers in some of the protected areas of the State of Goa are yet to be settled. This reason, in our opinion, is unacceptable. Such a reason neither constitutes a legal impediment nor a lawful excuse for the State Government to evade notifying the tiger reserve. Besides, by putting forth such cause, the State Government is trying to draw mileage out of its abject failure to adhere to the statutorily prescribed timeline in Section 25-A of the WLPA and the judicial directives of the Hon'ble Supreme Court in Writ Petition No.337/1995.

100. For all the above reasons, we hold that the provisions of Section 38-V (1) of WLPA are mandatory. The State Government was bound to notify Mhadei WLS and other areas as a tiger reserve, given the recommendations of the NTCA on this issue.

101. The third point which arises for determination is whether, for want of final notification under Section 26-A of the WLPA or due to non-settlement of rights and claims of forest dwellers, can the State Government refuse or unreasonably delay the notification of the tiger reserve?

102. In the affidavit filed by Santosh Kumar, Chief Wild Life Warden, on behalf of the State Government, no contention is raised that the State Government is barred or disabled from notifying Mhadei WLS and other areas as a tiger reserve because the State Government is yet to settle the rights and claims of the forest dwellers in the protected area of Goa. The only contention in paras 8 and 10 of the affidavit is that final notification under Section 26-A of the WLPA is yet to be issued in cases of Bhagwan Mahaveer, Mhadei WLS (partly), Netravali WLS (partly). Therefore, it is urged that proposing these areas as tiger reserves without settlement of rights and claims of the forest dwellers "*may be a premature, and will adversely affect larger public interest and further aggravate man-tiger conflict.*"

103. Further, in paragraph 10, affiant states that the proposal for notifying tiger reserve in any one of the wildlife sanctuaries "*without first issuing a final notification under the Wildlife (Protection) Act, 1972 would have adverse impact on the larger public as well as aggravate the human-tiger conflict.*" Thus, at

least in the State's return, there is no case pleaded that the State Government is barred or disabled from notifying a tiger reserve unless a final notification under Section 26-A of the WLPA is issued in cases of its wildlife sanctuaries which may have part of the tiger reserve. In short, at least in its return, the State does not contend that issuing final notification under Section 26-A of the WLPA is a sine qua non for declaring the area a tiger reserve.

104. On the careful analysis of the scheme of WLPA, it is clear that there is no bar or a legal impediment to notify a protected area as a tiger reserve even though final notification under Section 26-A of WLPA may not have been issued concerning protected areas like the sanctuary or national park. Thus, issuing final notification under Section 26-A of WLPA is not a sine qua non for declaring the protected area a tiger reserve.

105. Incidentally, the State Government's return clarifies that no final notification under Section 26-A of WLPA has been issued regarding Bhagwan Mahaveer WLS. But the final notification for an area of 44.27 sq. km from out of 208.48 sq. km is issued in respect of Mhadei WLS. Similarly, a final notification for an area of 56.23 sq. km out of the 211.05 sq. km area is issued in the case of Netravali WLS. A final notification under Section 26-A is already given regarding the entire area of 85.65 sq. km in the case of Cotigaon WLS. Apart from the fact that the issuance of the

final notification under Section 26-A of the WLPA is not sine qua non for declaring the protected area as a tiger reserve, even otherwise, non-settlement of rights and claims of forest dwellers in sanctuaries or protected areas cannot always be a valid ground to refuse or to delay the notification of a tiger reserve unreasonably.

106. Under Section 25-A of the WLPA, the Collector shall, as far as possible, complete the proceedings under Sections 19 to 25 (both inclusive) within two years from the date of notification of the declaration of sanctuary under Section 18. Section 19 requires the Collector to inquire into and determine the existence, nature, and extent of the rights of any person in or over the land within the sanctuary's limits. Section 21 requires the Collector to issue a proclamation specifying, as nearly as possible, the sanctuary's situation and limits. It requires any person claiming any right mentioned in Section 19 to prefer a written claim in the prescribed form before the Collector, specifying the nature and extent of such right with necessary details and the amount and particulars of compensation, if any, claimed in respect thereof. Section 22 provides for inquiry by the Collector. Section 23 deals with the powers of the Collector during such inquiry. Section 24 deals with the acquisition of rights and Section 25 deals with acquisition proceedings.

107. Section 26-A declaration referred to by the learned AG is made when a notification is issued under Section 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary have been disposed of by the State Government; or any area comprised within any reserve forest or any part of the territorial waters, which the State Government considers to be of adequate ecological faunal, floral, geomorphological, natural or zoological significance to protect, propagate or to develop wildlife or its environment, is to be included in a sanctuary.

108. Thus, the statutorily prescribed timeline for the settlement of rights and claims of forest dwellers is typically two years from the Section 18 notification date. Section 18(1) notification for Bhagwan Mahaveer Wildlife Sanctuary was issued in 1967; for Mhadei and Netravali Wild Life Sanctuary in 1999. However, to date, i.e. for 56 and 24 years, respectively, the State Government has not bothered to settle the rights and claims of forest dwellers. The Hon'ble Supreme Court, in its order dated 22.08.1997 in Writ Petition No.337 of 1995 in *Centre for Environment Law, WWF-India Vs Union of India & others (supra)*, took cognisance of the failure of several State Governments in settling rights and claims of forest dwellers within the statutorily prescribed period of two years. The Hon'ble Supreme Court directed the State Government to complete this process within one year, i.e. by

21.08.1998. Despite the expiry of almost 25 years since this direction was issued, the State of Goa has not bothered to complete the process of determining and settling the rights of the various dwellers. And now, this abject failure, if not open disobedience, is cited as an excuse to avoid notifying the tiger reserve.

109. Therefore, when it comes to determining and settling the rights and claims of the various dwellers, the State of Goa has defaulted in compliance with the time schedule prescribed under the WLPA. Further, the State of Goa, in defiance of directions of the Hon'ble Supreme Court dated 22.08.1997, has failed to determine and settle the rights of forest dwellers. As if this was insufficient, the State of Goa now puts forth its own lapses as an excuse for not notifying this area as a tiger reserve.

110. Thus, the State of Goa wishes to take undue advantage of its wrongful acts of defying the statutory timelines and the express direction of the Hon'ble Supreme Court on this subject. Such an excuse can hardly be countenanced. Based upon such reason and by trying to take undue advantage of its lapse, the State is not justified in not notifying the said area as a tiger reserve or contending that it would notify the said area as a tiger reserve only after rights and claims of the forest dwellers in the area are

settled and final notification is issued under Section 26A of the WLPA.

111. The NTCA has issued directions under Section 38-O (2) of WLPA vide Circular dated 19.02.2006 that in the areas of Wildlife Sanctuary & National park included in a tiger reserve and where the process of final declaration under Section 26A is yet to be completed (due to non-settlement of rights of forest dwellers), the same must be completed under Chapter IV read with Chapter IV-B of the WLPA. From this, it is pretty clear that there is no bar to notifying an area as a tiger reserve even before final notification under Section 26-A of WLPA is issued or even before the determination of rights and settlement of claims of forest dwellers may not be completed for all the above reasons. Instead, the process must be completed under the new provisions more beneficial to the dwellers.

112. For all the above reasons, we hold that issuing final notification under Section 26-A of WLPA is not a sine qua non for notifying protected areas as a tiger reserve. Even otherwise, the non-settlement of rights and claims of forest dwellers in the sanctuary and protected areas of Goa cannot, in the facts and circumstances discussed above, constitute a valid ground for the State Government to refuse or unreasonably delay in notifying Mhadei WLS and other areas as a tiger reserve.

113. The fourth point for determination is whether there are any statutory procedural fetters for notifying a tiger reserve?

114. The learned AG first contended that there were no resolutions to back what he termed “suggestions or advise” of the NTCA; therefore, the NTCA's communications had no legal sanction. Secondly, he contended that the NTCA procedure contemplated invitation of the proposal from the State to notify to constitute tiger reserve, grant of “in principle” approval by the NTCA to such proposals, and the final approval after the tiger reserve States submit the tiger conservation plan under Section 38-V (3) of the WLPA. The learned AG submitted that unless there is strict compliance with this procedure, there was no question of the Petitioner or the NTCA insisting that the State notifies Mhadei WLS and other areas as a tiger reserve.

115. On the aspect of the resolutions, no such defence is even remotely raised in the return filed on behalf of the State Government. The learned AG merely handed in some minutes of the NTCA proceedings and, based upon the same, contended that no resolution backed the NTCA's communications. Without the State Government's reply laying any foundation for such an argument, such an argument cannot be accepted.

116. Besides, the minutes produced by the learned AG do not show some consistent practice or procedure. There are instances where the tiger reserves were finally approved without this aspect being reflected, at least in the minutes produced by the learned AG. There are cases of tiger reserves being notified without calling for any proposal from the State Government. Mr Chodankar, learned counsel for Central Government and NTCA, based on instructions clearly stated that the NTCA has issued not only the recommendation contemplated by Section 38-V (1) but also directions under Section 38-O (2) of the WLPA to the State Government to notify the tiger reserve. Therefore, the State Government cannot avoid notifying Mhadei WLS and the other areas as a tiger reserve based upon a vague plea based upon some ambiguous practice or procedure.

117. The procedure referred to by the learned AG finds no reference in the WLPA. However, Section 38-P (3) does provide that the NTCA shall have the power to regulate its own procedure. Section 38-P (4) of WLPA provides that all orders and decisions of the NTCA shall be authenticated by the Member Secretary or any other officer of the NTCA duly authorised by the Member Secretary in this behalf. The Member Secretary has duly authenticated the communications on which the Petitioner rely. Mr Chodankar, learned counsel for the NTCA, asserts that these are the NTCA's recommendations.

118. Therefore, it is difficult to read or construe some procedural fetters as suggested by the learned AG. The State Government cannot avoid notifying Mhadei WLS and other areas as a tiger reserve based upon such alleged and vague procedural fetters. Though the NTCA can formulate its procedure, it cannot impose any impediments when the Parliamentary Statute that constitutes it has chosen not to do so. So also, the states cannot place such fetters on the NTCA based on some vague practices or undefined procedures.

119. The NTCA (normative Standards for tourism activities and project tiger) Guidelines, 2012, were referred to by the learned AG and Ms Alvares. Recitals to these guidelines referred to clause (c) of sub-section (1) of Section 38-O of the WLPA, which empowers the NTCA to lay down normative standards for tourism activities and guidelines for project tiger from time to time for tiger conservation in the buffer and core areas of tiger reserves to ensure their due compliance. The NTCA has made these 2012 guidelines.

120. Clause 3 of the Guidelines refers to “background”. This clause lists various tiger reserves and the area over which they are spread. This clause also refers to final approval being accorded to Kudremukh (Karnataka) for declaring it a tiger reserve. Finally, this clause also refers to the concerned State

Governments having been advised to send proposals for declaring the specified areas as tiger reserves. In clause (v), there is a reference to “Mhadei Sanctuary (Goa)”.

121. Based on Clause 3 of the Guidelines, the learned AG argued that the NTCA communications constituted only some advice to send a proposal to the NTCA. He argued that advice did not amount to a recommendation. He further argued that the NTCA procedure required the proposal to be approved in principle. Only “in-principle approval” could be taken as NTCA’s recommendation, based upon which the State Government would have a discretion whether or not to notify the area in question as a tiger reserve.

122. As discussed earlier, the minutes handed in by the learned AG do not show any consistent practice or procedure adopted by the NTCA. Besides, we found no significant difference between advice, suggestion or recommendation. Therefore, even in clause (3) of the guidelines, the NTCA recommended that the State Government notify a tiger reserve. The provisions of Chapter IV-B of WLPA do not expressly contemplate the invitation of the proposal from the State before any recommendation can be made or directions issued to notify a tiger reserve. The vague practice or undefined procedure referred to by the learned AG would have to yield to the provisions in Chapter IV-B of WLPA. Therefore, even

assuming that there is any procedure or practice, the same cannot indeed operate as a fetter to the NTCA recommending the State Government to notify a tiger reserve.

123. For all the above reasons, we find no statutory fetters disabling the NTCA to make a recommendation and the State of Goa to notify a tiger reserve based upon such a recommendation.

124. Fifthly, the State contends that equal protection is due to all wild animals, not just tigers. While the State's claim to steer clear of the Orwellian manner of treating some animals more equal than the others is appreciable, this should not be achieved by collectively reducing the level of protection for all wild animals, as the record unfortunately shows. Dr Johnsingh Report and the NCTA expert Committee Report speak of how the Mhadei WLS is still without a proper management plan. The reports talk about poaching pressure and unscientific data collection techniques.

125. Besides, the argument forgets that the entire ecosystem, including other animals, is protected by protecting the tiger. As discussed earlier, the tiger is a unique animal which plays a pivotal role in the health and diversity of an ecosystem. It is a top predator at the apex of the food chain. Therefore, the presence of tigers in the forest is an indicator of the well-being of the ecosystem. Protection of tigers in forests protects the habitats of

several other species. Indirect benefits of preserving a tiger include several ecosystem services like protection of rivers and other water sources, prevention of soil erosion and improvement of ecological services like pollination, water table retention etc. Conversely, the absence of this top predator indicates that its ecosystem is not sufficiently protected. Based on such considerations, not only was the *Project Tiger* formulated by the Central Government but the Parliament deemed it appropriate to arm this project with a statutory status by amending the WLPA and constituting the NTCA to give special protection to tigers and tiger habitats.

126. Finally, we refer to some Constitutional provisions, the scheme of WLPA, and precedents supporting the notification of a tiger reserve, given the repeated recommendations of NTCA and other factual and scientific material on record.

127. Article 48-A of the Constitution exhorts that the State shall endeavour to protect and improve the environment and safeguard the country's forests and wildlife. Article 48-A is a directive principle of State policy. Article 37 provides that directive principles shall not be enforceable by any Court. Still, the principles laid down therein are fundamental in the country's governance, and it shall be the duty of the State to apply these principles in making the laws. Similarly, Article 51-A(g) provides that every citizen of India shall be responsible for protecting and

improving the natural environment, including forests, lakes, rivers and wildlife and having compassion for living creatures.

128. Given these Constitutional provisions, the least expected of the State was not to oppose or unreasonably delay the proposal for notifying an area as a tiger reserve when a high-powered, expert, central body, i.e. the NTCA, recommends its notification. Even the material on record in the form of Forest Department officials' documentation & detailed studies, expert studies, etc., cries out for such notification if further damage is to be halted. The learned AG was at pains to point out that the State was not opposed to notifying the area as a tiger reserve but only felt that such notification could be issued once the rights and claims of all forest dwellers in the protected areas are determined and settled. Such an argument found no support in the legal regime of WLPA or even otherwise, as discussed above.

129. The WLPA was enacted to protect wildlife animals, birds and plants and to ensure the country's ecological and environmental security. The Statement of Objects and Reasons (SOR) records that the rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country, and others are in danger of being so. Areas once teeming with wildlife have become devoid of it,

and even in Sanctuaries and National Parks, the protection afforded to wildlife needs to be improved.

130. The S.O.R. records that the Wild Birds and Animals Protection Act 1912 has become entirely outmoded. The existing State laws are outdated and provide punishments that are not commensurate with the offence and the financial benefits of poaching and trade in wildlife produce. Further, such laws mainly relate to the control of hunting and do not emphasise the other factors which are also prime reasons for the decline of India's wildlife, namely, taxidermy and trade in wildlife and products derived from there.

131. The S.O.R. records that having considered the relevant local provisions in the States; the Government concluded that these are neither adequate nor satisfactory. Therefore, there was a need for comprehensive legislation that would protect wild animals and birds and for all matters connected therewith or ancillary and incidental to it. Accordingly, the WLPA was enacted to (a) constitute a Wild Life Advisory Board for each State; (b) regulate the hunting of wild animals and birds; (c) lay down the procedure for declaring areas as Sanctuaries, National Parks, etc.; (d) regulate possession, acquisition or transfer of, or trade-in wild animals, animal articles and trophies and taxidermy thereof; and, (e) provide penalties for contravention of the Act.

132. Project Tiger was launched in the country on 1st April 1973 to conserve the endangered tiger. Initially, nine Tiger Reserves were covered under the project, which, when the Wildlife (Protection) Amendment Act, 2006 was introduced, had increased to twenty-eight Tiger Reserves, falling in seventeen States. The SOR to the 2006 Amendment records this fact and refers to the Central Government funding support to the States under the “*Project Tiger*”. It records that the implementation of the project over the years highlighted the need for a statutory Authority, having legal backing with well-defined functions, for the conservation of tigers in the country. Despite the project being ongoing for more than three decades, the status of tigers in the country remains critical, necessitating the need to address the issue right from planning to administration and making provisions for dealing with cases of violation.

133. The Task Force appointed for this purpose recommended strengthening Project Tiger by giving it statutory and administrative powers. The 2006 amendments note the concerns and needs of the local people. The amendments aimed to put in place a mechanism which would balance and manage the livelihood needs of the local people with the imperatives of tiger conservation. One of the significant objectives of the 2006 Amendment was to provide for the constitution of the National Tiger Conservation Authority (NTCA) and define its powers and

functions. Accordingly, amongst other amendments, Chapter IV-B, entitled “NATIONAL TIGER CONSERVATION AUTHORITY”, in WLPA comprising Sections 38-K to 38-XA, was introduced in WLPA.

134. Section 38-K contains definitions. Section 38-L requires the Central Government to constitute the NTCA to exercise the power conferred on and to perform the functions assigned to it under the WLPA.

135. Section 38-O is concerned with the powers and functions of the NTCA, and the same reads as follows:-

***38-O. Powers and functions of Tiger Conservation Authority** —(1) The Tiger Conservation Authority shall have the following powers and perform the following functions, namely:-*

(a) to approve the Tiger Conservation Plan prepared by the State Government under sub-section (3) of section 38-V of this Act;

(b) evaluate and assess various aspects of sustainable ecology and disallow any ecologically unsustainable land use such as, mining, industry and other projects within the tiger reserves;

(c) lay down normative standards for tourism activities and guidelines for Project Tiger from time to time for

tiger conservation in the buffer and core area of tiger reserves and ensure their due compliance;

(d) provide for management focus and measures for addressing conflicts of men and wild animals and to emphasise on co-existence in forest areas outside the National Parks, sanctuaries or tiger reserve, in the working plan code;

(e) provide information on protection measures including future conservation plan, estimation of population of tiger and its natural prey species, status of habitats, disease surveillance, mortality survey, patrolling, reports on untoward happenings and such other management aspects as it may deem fit including future plan conservation;

(f) approve, co-ordinate research and monitoring on tiger, co. predators, prey, habitat, related ecological and socio-economic parameters and their evaluation;

(g) ensure that the tiger reserves and areas linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for ecologically unsustainable uses, except in public interest and with the approval of the National Board for Wild Life and on the advice of the Tiger Conservation Authority;

(h) facilitate and support the tiger reserve management in the State for biodiversity conservation initiatives through eco-development and people's participation as per approved management plans and to support similar initiatives in adjoining areas consistent with the Central and State laws;

(i) ensure critical support including scientific, information technology and legal support for better implementation of the Tiger Conservation Plan;

(j) facilitate ongoing capacity building programme for skill development of officers and staff of tiger reserves; and

(k) perform such other functions as may be necessary to carry out the purposes of this Act with regard to conservation of tigers and their habitat.

(2) The Tiger Conservation Authority may, in the exercise of its powers and performance of its functions under this Chapter, issue directions in writing to any person, officer or authority for the protection of tiger or tiger reserves and such person, officer or authority shall be bound to comply with the directions:

Provided that no such direction shall interfere with or affect the rights of local people particularly the Scheduled Tribes.”

136. Section 38-P provides that the NTCA shall regulate its own procedure, and all orders and decisions of the NTCA shall be authenticated by the Member Secretary or any other officer of the said Authority duly authorised by the Member Secretary in this behalf.

137. Section 38-V is concerned with “*tiger conservation*”, and the same, being most relevant for the issues raised in the present petition, is transcribed below for the convenience of reference:-

“38-V. Tiger Conservation Plan.—(1) The State Government shall, on the recommendation of the Tiger Conservation Authority, notify an area as a tiger reserve.

(2) The provisions of sub-section (2) of section 18, sub-sections (2), (3) and (4) of section 27, sections 30, 32 and clauses (b) and (c) of section 33 of this Act shall, as far as may be, apply in relation to a tiger reserve as they apply in relation to a sanctuary.

(3) The State Government shall prepare a Tiger Conservation Plan including staff development and deployment plan for the proper management of each area referred to in sub-section (1), so as to ensure -

(a) protection of tiger reserve and providing site specific habitat inputs for a viable population of tigers, co-predators and prey animals without distorting the natural prey-predator ecological cycle in the habitat;

(b) ecologically compatible land uses in the tiger reserves and areas linking one protected area or tiger reserve with another for addressing the livelihood concerns of local people, so as to provide dispersal habitats and corridor for spill over population of wild animals from the designated core areas of tiger reserves or from tiger breeding habitats within other protected areas;

(c) the forestry operations of regular forest divisions and those adjoining tiger reserves are not incompatible with the needs of tiger conservation.

(4) Subject to the provisions contained in this Act, the State Government shall, while preparing a Tiger Conservation Plan, ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve.

Explanation.— For the purposes of this section, the expression “tiger reserve” includes

(i) core or critical tiger habitat areas of National Parks and sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and notified as such by the State Government in consultation with an Expert Committee constituted for the purpose;

(ii) buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in Explanation (i) above, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species, and which aim at promoting co-existence between wild life and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purpose.

(5) Save as for voluntary relocation on mutually agreed terms and conditions, provided that such terms and conditions satisfy the requirements laid down in this subsection, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected for the purpose of creating inviolate areas for tiger conservation unless -

(i) the process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons is complete;

(ii) the concerned agencies of the State Government, in exercise of their powers under this Act, establishes with the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities of the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat;

(iii) the State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consultation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of co-existence, are not available;

(iv) resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfils the requirements given in the National Relief and Rehabilitation Policy;

(v) *the informed consent of the Gram Sabha concerned, and of the persons affected, to the resettlement programme has been obtained; and*

(vi) *the facilities and land allocation at the resettlement location are provided under the said programme, otherwise their existing rights shall not be interfered with.”*

138. Section 38-W bars the alteration in the boundaries of a tiger reserve except on a recommendation of the NTCA and approval of the National Board for Wild Life (NBWL). Further, this Section provides that no State Government shall de-notify a tiger reserve except in the public interest with the approval of the NTCA and NBWL. Section 38-X provides for the establishment of Tiger Conservation Fund by the respective State Governments for tiger reserves within the State.

139. The 2006 amendment provided for the constitution of NTCA, and the 2003 amendment introduced Section 5A for the constitution of the National Board for Wildlife (NBWL). Considering the powers and functions of the NBWL, the Hon'ble Supreme Court in *Center for Environmental Law, World Wide Fund-India v/s. Union of India*¹⁴ held that NBWL is the top most scientific body established to frame policies and advise the Central and State Governments on the ways and means of promoting wildlife conservation and to review the progress in the field of

14 (2013) 8 SCC 234

wildlife conservation in the country and suggesting measures for improving the same. The Court held that Central and the State Governments could not brush aside NBWL's opinion without any cogent or acceptable reasons having regard to the position, the constitution, powers and functions of the NBWL.

140. Despite providing for the constitution of NBWL by the 2003 amendment, Parliament deemed it appropriate to constitute the NTCA vide the 2006 amendment. Thus, yet another expert and high-powered body was constituted that focused on protecting the tiger and tiger habitat. Accordingly, the observations of the Hon'ble Supreme Court in *Center for Environmental Law, World Wide Fund-India* (supra) would equally apply, and the State Government cannot be permitted to brush aside the NTCA's opinion without any cogent or acceptable reason. Delaying implementation of the NTCA's recommendations unreasonably and for reasons which are neither genuine nor germane amounts to brushing aside the NTCA's opinion without any cogent or acceptable reasons.

141. In *Center for Environmental Law, World Wide Fund-India* (supra), the Hon'ble Supreme Court observed that the rapid deterioration of the ecology due to human interference is aiding the rapid disappearance of several wild animal species. Poaching and the wildlife trade, habitat loss, human-animal conflict,

epidemics etc., are also some of the reasons which threaten and endanger some species. The Court recorded in para 42 that the fragmented nature of wildlife-rich areas, increased human pressure, habitat degradation, the proliferation of invasive species, human-animal conflicts, poaching, impacts of changing climate etc., are some challenges that must be addressed at a war footing. The necessity for ensuring better wildlife protection outside the protected areas and initiating recovery programmes for saving critically endangered species and habitats was also highlighted by the Court.

142. In *Center for Environmental Law, World Wide Fund-India* (supra), the controversy concerned the translocation of some of the Gir Asiatic Lions from the State of Gujarat to the State of Madhya Pradesh. The NBWL had opined that the Gir Asiatic Lions must have a second home in Kuno, Madhya Pradesh. The State of Gujarat and its Board for Wildlife argued that the Gir Asiatic Lions were well cared for in Gujarat. Further, such lions were like family members of all Gujarathis, and therefore, the same could not be parted with. The Court rejected the State of Gujarat's contention by styling the same as anthropocentric, not ecocentric. The Court held that the views of NBWL constituted by the Central Government must prevail over the opinions expressed by the State Government or the State Board for Wildlife.

143. In *Center for Environmental Law, World Wide Fund-India* (supra), the Hon'ble Supreme Court held that in such matters, our approach should be ecocentric and not anthropocentric. Anthropocentrism is always human interest focused, thinking that a non-human has only instrumental value to humans; in other words, humans take precedence and human responsibilities to non-human are based on human benefits. Eco-centrism is nature-centred, where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence, and humans have obligations to non-humans independently of human interest. Eco-centrism is life-centred and nature-centred, where nature includes both humans and non-humans. The Court also held that we must apply “*species best interest standard*” because such species have equal rights to exist on this earth. The Court held that Article 21 of the Constitution of India protects human rights and casts an obligation on human beings to protect and preserve a species becoming extinct. Conservation and protection of the environment is an inseparable part of the right to life.

144. In *T. N. Godavarman Thirumulpad v/s. Union of India*¹⁵ (*wild buffalo case*), the Hon'ble Supreme Court issued sweeping directions for protecting wild buffaloes in the State of Chattisgarh. In the context of the schemes for protecting and

¹⁵ (2012) 3 SCC 277

conserving wild buffaloes, Asiatic lions, and other critically endangered species, the Court highlighted the necessity for a recovery programme to ensure long-term conservation schemes. The Court held that such schemes have statutory status and must be implemented in their letter and spirit.

145. In *T. N. Godavarman Thirumulpad (wild buffalo case)* (supra), the Hon'ble Supreme Court held that the human-wildlife conflict is fast becoming a critical threat to the survival of many endangered species like wild buffalo, elephants, tigers, lions, etc. Such conflicts affect its population and have broadened environmental impacts on ecosystem equilibrium and biodiversity conservation. *Laws are man-made, hence there is likelihood of anthropocentric bias towards man, and rights of wild animals often tend to be of secondary importance but in the universe man and animals are equally placed, but human rights approach to environmental protection in case of conflict, is often based on anthropocentricity. Man-animal conflict often results not because animals encroach human territories but vice versa. Often, man thinks otherwise, because man's thinking is rooted in anthropocentrism. The Court said that we must remember that we are talking about the conflict between man and endangered species, endangered not because of natural causes alone but because man failed to preserve and protect them; the attitude was destructive, for pleasure and gain.*

146. In the above case, the Court further emphasised that the State was duty-bound to preserve and protect wildlife and its corridors. The Court noted that *areas outside protected areas is reported to have the maximum number of man-animal conflict where the wild animals fall prey to poachers easily and often invite ire of the cultivators when they cause damage to their crops.* The Court held that these issues have to be scientifically managed to preserve and protect the endangered species, like wild buffalo and other species included in Schedule I, Part I of the WLPA, and other species that face extinction. The Court stressed that environmental justice could be achieved only if we drift away from the anthropocentric principle to ecocentric. The Court held that Ecocentrism is nature-centred, where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence, and humans have obligations to non-humans independently of human interest. Ecocentrism is life-centred and nature-centred, where nature includes both humans and non-humans.

147. In *State of Bihar Vs Murad Ali Khan*¹⁶, the Hon'ble Supreme Court held that the policy and object of the wildlife laws have a long history and are the result of increasing awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The

¹⁶ (1988) 4 SCC 655

State to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps are taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and *these laws reflect a last-ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment.* The tragedy of the predicament of the civilised man is that "*Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee*".

148. In the above case, the Court, after quoting King Asoka's decree for the preservation of wildlife and environment (Third Century B.C.), held that Environmentalists' conception of the ecological balance in nature is based on the fundamental concept that nature is "*a series of complex biotic communities of which a man is an inter-dependant part*" and that it should not be given to a part to trespass and diminish the whole. *The largest single factor in the depletion of the wealth of animal life in nature has been the "civilized man" operating directly through excessive*

commercial hunting or, more disastrously, indirectly through invading or destroying natural habitats.”

149. In *World Wild Fund for Nature India v/s. Union of India & Ors.*¹⁷, the Division Bench of Delhi High Court speaking through Dalveer Bhandari, J (as His Lordship then was) discusses in great detail the genesis of WLPA in a public interest litigation seeking directions to take all proper and necessary steps to protect wild animals including tigers in particular from being poached or illegally hunted. The Court referred to Articles 21 and 48-A of the Constitution and observed that the directive principle is neither “a mere rope of sand” nor “a mere pious wish.” The Court held that both the fundamental rights and directive principles are supplementary and complementary to each other. The fundamental rights are a means to achieve the directive principles that constitute the aspirations whose fulfilment is regarded as essential to the kind of society our country should have.

150. The Division Bench of Delhi High Court refers to an article in “Time Magazine” (March 28, 1994) about how Asia's giant cats are a vanishing breed, disappearing faster than any other large mammal except for the rhinoceros. This article warns that unless something dramatic is done to reverse the trend, tigers will be seen only in captivity, prowling in zoos or performing in

¹⁷ 1994 SCC Online Del 233

circuses. The wild tigers of old will be gone forever, their glory surviving merely in storybooks, on film and in dreams. The article also mentions, “..... for all the tiger's power, it can be an easy animal to kill. Many cats in the Ranthambhore park have died from the poison that villagers sprinkled on animals that the tigers had killed and temporarily left on the ground.....”.

151. Therefore, based upon provisions of the Constitution of India and the WLPA, we cannot allow the tiger, which is a national animal, to fall into a death trap (to quote the exact words of the NTCA expert committee constituted to inquire into unfortunate death of tigress and three cubs in the Mhadei WLS in January 2020.) On the conspectus of material on record, the legal and constitutional scheme and repeated recommendations of the NTCA, a mandamus is liable to be issued to the State of Goa to notify the Mhadei WLS and other areas referred by the NTCA as a tiger reserve in compliance with the mandate of Section 38-V(1) of the WLPA. Further, the State Government must take emergent steps to prepare a tiger conservation plan and submit the same for approval to the NTCA as required by Section 38-V (3) of the WLPA.

152. There appears to be some misimpression that the moment the area is notified as a tiger reserve, there would be large-scale displacements of populations and the rights of the forest dwellers

would be drastically affected. This needs to be corrected. The material on record shows that the Goa Forest Department officials have already excluded the high-habitation areas from the proposed tiger reserve when preparing the plan. Besides, several provisions in WLPA and the NTCA Guidelines of 2012 stress the co-existence of humans with wildlife. Therefore, the Goa Forest Department officials must initiate a campaign to assure the scheduled tribes or other forest dwellers that their interests will not be adversely affected and their concerns will be suitably addressed.

153. The Forest Department of the State of Goa must make forest dwellers, including in particular the Scheduled Tribes, aware that every care would be taken to secure their rights instead of creating an impression that their rights would be adversely affected by notifying the Mhadei WLS and other areas as a tiger reserve. Further, while preparing the tiger conservation plan, the State Government must address the local persons' livelihood concerns as required under Section 38-V (b) of the WLPA.

154. Regards the rights of the Scheduled Tribes and other forest dwellers, the explanation to Section 38-(V) of the WLPA provides that the expression "tiger reserve" includes the critical tiger habitat areas of national parks and sanctuaries, where it has been established, based on scientific and objective criteria, that such

areas are required to be kept as inviolate for tiger conservation, “without affecting the rights of the Scheduled Tribes or such other forest dwellers” and notified as such by the State Government in consultation with an expert committee constituted for the purpose.

155. Similarly, a tiger reserve includes buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species, and which aim at “*promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people*”, wherein the limits of such areas are determined based on scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purpose.

156. Section 38-V (5) provides that save as for voluntary relocation on mutually agreed terms and conditions, provided that such terms and conditions satisfy the requirements laid down in this sub-section, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected to create inviolate areas for tiger conservation unless:-

(i) the process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons is complete;

(ii) the concerned agencies of the State Government, in exercise of their powers under this Act establishes with the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities of the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat;

(iii) the State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consultation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of co-existence, are not available;

(iv) resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfils the requirements given in the National Relief and Rehabilitation Policy;

(v) the informed consent of the Gram Sabha concerned, and of the persons affected, to the resettlement programme has been obtained; and

(vi) the facilities and land allocation at the resettlement location are provided under the said programme, otherwise their existing rights shall not be interfered with.

157. Therefore, it is not as if no sooner than a tiger reserve is notified, there would be some large-scale resettlement and relocation of Scheduled Tribes or other forest dwellers occupying some areas in the tiger reserve. Besides, from the material on record, the Goa Forest Department officials have ensured that most habitation areas are already excluded from the core area of the proposed tiger reserve.

158. The NTCA's Guidelines of 2012 also contain provisions for promoting coexistence between wildlife and human activity with due recognition of the local people's livelihood, developmental, social and cultural rights. We think that the Forest Department should disseminate the information about these guidelines and policy instead of encouraging the impression that the rights of the Scheduled Tribes and other forest dwellers would be adversely affected or that there would be some large-scale immediate displacement.

159. For all the above reasons, we dispose of this petition by making the following order:-

(i) We direct the State Government to notify the Mhadei WLS and other areas referred to in NTCA's communications (and the plans prepared by the Goa Forest Department Officials) as a tiger reserve under

Section 38-V (1) of the WLPA within three months from today;

(ii) We direct the State Government to take all steps to prepare a tiger conservation plan as contemplated by Section 38-V (3) of the WLPA and to forward the same to the NTCA within three months from notifying the Mhadei WLS and other areas as a tiger reserve;

(iii) We direct the NTCA to render full assistance to the State Government for completing the above process and after that to expeditiously process the State Government's Tiger Conservation Plan and take a decision thereon within three months of receiving the tiger conservation plan from the State Government;

(iv) We direct the State Government to set up anti-poaching camps at strategic locations to be staffed by forest guards, watchers, etc., in the WLS and National Parks in the State of Goa. This exercise must be completed within six months;

(v) We direct the State Government and the Forest Department authorities to take emergent steps to ensure that there are no encroachments in the protected forest

areas like WLS and National Parks pending notification of the tiger reserve, and even after that;

(vi) We direct the State Government to determine and settle the rights and claims of the Scheduled Tribes and other forest dwellers following the law as expeditiously as possible and preferably within 12 months from today.

160. The rule is made absolute in the above terms without any cost order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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