

IN RE : T. N. GODAVARMAN THIRUMULPAD

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v.

UNION OF INDIA & ORS.

(IA No. 3949 of 2016)

In

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(Writ Petition (C) No. 202 of 1995)

APRIL 28, 2023

[B. R. GAVAI AND VIKRAM NATH, JJ.]

Environmental Laws: Mining activities beyond the distance of one kilometer from the boundary of the Protected Area, irrespective of the fact that such an area falls under the Eco-Sensitive Zone-ESZ – Permissibility of – Held: Some of the National Parks and Wildlife Sanctuaries, the ESZ areas are less than one kilometer, in some, it is as less as 500 meters or even less than 500 meters – Thus, it is clarified that even in case where the ESZ boundaries are less than one kilometer from the Protected Area, the ban on mining shall extend upto a distance of one kilometer from the boundary of such areas – Since the mining activity in ESZ area is a prohibited activity, even if in a particular case, the ESZ is more than one kilometer, still, if the concerned area where mining is proposed falls within the ESZ, the mining activity will not be permitted, even if it falls in an area which is beyond one kilometer from the boundary of the Protected Area.

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T.N. Godavarman Thirumulpad Vs. Union of India (2010) 13 SCC 740; Goa Foundation v. Union of India and Others (2014) 6 SCC 590 : [2014] 5 SCR 302 – referred to.

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Case Law Reference

(2010) 13 SCC 740 referred to **Para 18**

[2014] 5 SCR 302 referred to **Para 18**

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CIVIL ORIGINAL JURISDICTION : IA No.3949 of 2016. In Writ Petition (C) No.202 of 1995

Under Article 32 of The Constitution of India

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Sabharwal, Akshay Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

B. R. GAVAI, J. G

1. When we pronounced our judgment in I.A. No. 131377 of 2022
along with connected applications in Writ Petition (Civil) No. 202 of
1995 on 26th April 2023, we did not anticipate that within a few days, we
would be called upon to clarify the position as to whether mining activities
would be permissible beyond the distance of one kilometer from the H

A boundary of the Protected Area, irrespective of the fact that such an area falls under the Eco-Sensitive Zone (in short “ESZ”) notified by the Ministry of Environment, Forest and Climate Change (“MoEF” for short).

2. We are grateful to the applicant in the present application for giving us this opportunity to clarify this position so that further environmental damage is avoided.

3. The case of the applicant, in brief, is that the applicant was granted permission to execute a mining lease as early as in 2005, subject to clearance from MoEF as well as the National Board for Wild Life.

C 4. Shri Ranjit Kumar, learned senior counsel appearing for the applicant, submits that the area where the applicant proposes to carry out the activity is beyond 2.26 kilometer from the nearest boundary of the Radhanagari Wildlife Sanctuary. It is, therefore, submitted that it falls beyond a distance of one kilometer from the boundary of the Protected Area.

D 5. Mr. Ranjit Kumar, learned senior counsel, therefore, relying on our judgment dated 26th April 2023 passed in in I.A. No. 131377 of 2022 along with connected applications in Writ Petition (Civil) No. 202 of 1995, the ink of which is yet to dry, submits that, since mining is proposed to be carried out beyond a distance of one kilometer from the boundary of Protected Area, it would very much be permitted.

E 6. Learned senior counsel submits that this Court has clearly held that mining within a distance of one kilometer from the boundary of the Protected Area is banned. He submits that, however, the judgment does not prohibit mining activities even in ESZ, which is a buffer area, if it extends beyond a distance of one kilometer from the boundary of the Protected Area.

F 7. He, however, submits that this would be subject to permission from the Standing Committee of National Board for Wild Life (in short “SCNBWL”), which admittedly, has granted permission.

G 8. Mr. Balbir Singh, learned Additional Solicitor General appearing for the Union of India as well as Mr. A.D.N. Rao, learned Amicus Curiae have vehemently opposed this prayer and they submit that the contention of the applicant is based on a misreading of the directions issued by this Court.

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9. We find that the directions issued in paragraph 65 of the judgment of this Court delivered on 26th April 2023 are very much clear. It reads thus: A

“65. We also modify the direction contained in paragraph 56.4 of the order dated 3rd June, 2022 (Supra) and direct that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wild Life Sanctuary shall not be permissible.” B

10. The perusal of the above para would reveal that the directions, which were issued by this Court earlier for prohibiting mining activities within a distance of one kilometer from the boundary of such National Parks and Wildlife Sanctuaries only insofar as the State of Goa was concerned, has been made applicable pan-India. C

11. The aforesaid question arose since in case of some of the National Parks and Wildlife Sanctuaries, the ESZ areas are less than one kilometer. In some, it is as less as 500 meters and in some others, it is even less than 500 meters. D

12. We, therefore, clarified that even in case where the ESZ boundaries are less than one kilometer from the Protected Area, the ban on mining shall extend upto a distance of one kilometer from the boundary of such areas. E

13. It will further be relevant to refer to paragraph 66.1 of our judgment dated 26th April, 2023, which reads thus:

“66(i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities;” F

14. It could thus clearly be seen that we have directed that MoEF as well as all the State Governments/Union Territories shall strictly follow the provisions in the Guidelines dated 9th February, 2011, as also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities. G

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A 15. As such, our directions are very much clear. Whatever is prohibited under the 2011 guidelines and whatever is additionally prohibited under the specific ESZ notifications of the particular Protected Areas have to be strictly followed.

B 16. The perusal of paragraph 40 of the judgment dated 26th April 2023 would reveal that the very first activity, which is contained in Annexure-I of the Guidelines, is commercial mining and the same is prohibited.

C 17. Apart from that, it will also be relevant to refer to paragraph 4 of the Notification dated 15th October, 2020 vide which a final notification had been notified in so far as the ESZ for Radhanagari Sanctuary is concerned, which reads thus:

D “4. List of activities prohibited or to be regulated within Eco-sensitive Zone.- All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment (Protection) Act, 1986 and the rules made there under including the Coastal Regulation Zone, 2011 and the Environmental Impact Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act 1972 (53 of 1972), and amendments made thereto and be regulated in the manner specified in the Table below, namely:-

S.No. (1)	Activity (2)	Description (3)
A. Prohibited Activities.		
F 1.	Commercial mining, stone quarrying and crushing units	(a) All new and existing mining (minor and major minerals), stone quarrying and crushing units shall be prohibited with immediate effect except for meeting the domestic needs of bona fide local residents including digging of earth for construction or repair of houses within Eco Sensitive Zone; G (b) The mining operations shall be carried out in accordance with the order of the Hon'ble Supreme Court dated the 4 th August, 2006 in the matter of T.N. Godaverman Thirumulpad Vs. UOI in W.P.(C) No. 202 of 1995 and dated the 21 st April, 2014 in the matter of Goa Foundation Vs. UOI in W.P(C) No. 435 of 2012.

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18. It could thus clearly be seen that Clause A

(a) of the Notification of the MoEF also clearly mentions that all the new and existing minor and major minerals, stone quarrying and crushing units shall be prohibited with immediate effect, except for meeting the domestic needs of bona fide local residents, including digging of earth for construction or repair of houses within ESZ. B

19. No doubt that Clause (b) of the Notification of the MoEF mentions that the mining operation shall be carried out in accordance with the order of this Court dated 04th August 2006 in the matter of *T.N. Godavarman Thirumulpad Vs. Union of India reported in (2010) 13 SCC 740* and order dated 21st April 2014 in the case of *Goa Foundation v. Union of India and Others reported in (2014) 6 SCC 590*. C

20. However, the last word on the issue is the judgment dated 26th April 2023. The notification is dated 15th October 2020, i.e. prior to the pronouncement of our judgment. D

21. As such, the provisions made in clause 1(b) of paragraph 4 of the Notification dated 15th October 2020 would now become redundant in view of our judgment and order dated 26th April 2023.

22. As such, any activity, which is prohibited by both the guidelines as well as the ESZ notification shall strictly be prohibited. Since the mining activity in ESZ area is a prohibited activity, there is no question of such an activity being permitted in an ESZ area even if it falls beyond the distance of one kilometer from the boundary of the protected area. E

23. We clarify that even if in a particular case, the ESZ is more than one kilometer, still, if the concerned area where mining is proposed falls within the ESZ, the mining activity will not be permitted, even if it falls in an area which is beyond one kilometer from the boundary of the Protected Area. F

24. The prohibition of one kilometer from the boundary of Protected Area is only with regard to the cases where the boundary of ESZ is less than one kilometer from the boundary of the sanctuary. Only in such cases, the ban on mining will travel beyond the ESZ area and cover an area upto a distance of one kilometer. G

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A 25. The aforesaid directions were issued in order to protect the National Parks and Wildlife Sanctuaries so that the mines would not become a death trap for the flora and fauna within them.

 26. Apart from that, the judgment dated 26th April 2023 is delivered by a Bench of three Judges of this Court, which is binding on us.

B 27. As such the application is rejected.

Nidhi Jain

Application rejected.