

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No. 102 of 2016 (SZ)

IN THE MATTER OF:

M. Saravanan
41, Kathirvel Nagar,
1st Street, Villapuram
Madurai-625020.

..... Applicant

AND

1. The Secretary to Government of Tamil Nadu,
Environment and Forest Department
Secretariat, Chennai-6000 009.
2. The Principal Chief Conservator of Forest,
Panagal Maligai,
Saidapet, Chennai.
3. The Conservator of Forests,
Madurai Division, Madurai.
4. The District Collector
Theni District.
5. The Wildlife Warden,
Megamalai Wildlife Sanctuary,
6. The Superintending Engineer,
Highways Department, Theni District.
7. T. Vishwanathan
Iravangalar Estate Village
Venniyur Post, Chinnamanur
Theni District - 625519

..... Respondents

Counsel appearing for the applicant: M/s M.R.Sivakumar

Counsel appearing for the respondents: Mr. M.K. Subramanian, Mr. E. Manoharan & P. Velmani for respondents 1 to 5; M/s Abdul Saleem, S. Saravan and Vidhyalakshmi for respondent No.6, Mr. P.H. Manoj Pandian, Senior Counsel for M/s Taurus Associates for respondent No.7

ORDER

Coram: Hon'ble Shri Justice Dr. P. Jyothimani, Judicial Member

Hon'ble Shri P.S. Rao, Expert Member

Whether the judgment is allowed to be published on the internet Yes/No

Whether the judgment is to be published in the All India NGT Reporter Yes/No

1. Claiming that he is an advocate by profession and a keen naturalist fighting for the preservation of nature and environment, the applicant has filed the application against the alleged illegal widening of 35 km stretch of road from Thenpalani to Highways in Theni District and to stop further construction of the road. It is the case of the applicant that Megamalai Wildlife Sanctuary is situated in the Western Ghats in Theni district of Tamil Nadu which is rich in wildlife and houses rare and threatened species like *Lion tailed macaque*, *Grizzled giant squirrel*, *Great Indian hornbill*, *Slender loris* etc. Scientists have recorded 63 species of mammals belonging to 24 families of which 24 were globally threatened. One critically endangered species is also found in the area. It is further submitted that Megamalai Reserved Forest falls under the Eco-Sensitive Zone of the Megamalai Wildlife Sanctuary and Periyar Tiger Reserve and also it is continuous with the Srivalliputhur Grizzled Squirrel Sanctuary. A proposal is pending for the declaration of the Megamalai Wildlife Sanctuary as Tiger Reserve.

2. Further, it is the case of the applicant that nearly 150 trees were felled in Megamalai Reserved Forest for widening a stretch of 35 km road adjoining the Wildlife Sanctuary in Theni district for benefitting estate workers, encroachers and for promoting tourism. The width of the existing road is 5.5 m but on re-laying, the width will be increased to 10-22 m by the Highways Department by cutting down a large number of old trees on either side of the road without obtaining necessary permissions. It is further stated that the 6th respondent herein, namely the State Highways Department, has not obtained the requisite legal clearances claiming that

no permission is required from the Forest Department and is indulging in several violations. This area being a Reserved Forest and classified as forest, attracts the provisions of Forest (Conservation) Act, 1980 and any kind of non-forestry activity such as widening of road, is absolutely prohibited. Further, such felling of trees leading to loss of forest cover is against the orders of the Hon'ble Supreme Court in W.P No 202/95. Moreover, the tree felling requires permission from the District Level Committee under the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955 and also from the Hill Area Conservation Authority formed there under. This area being notified under the Tamil Nadu Preservation of Private Forests Act, 1949 permission is also required from the District Committee formed thereunder. It is further submitted by the applicant that the on-going massive tree felling for road widening would lead to degradation of green cover and loss of habitat resulting in landslides and loss of ecology and it is a well established fact that roads are linear intrusions that cause severe damage in terms of fragmentation and modification of animal behavioural dynamics. Finally the applicant stated that no steps are being taken by the concerned officials despite writing to them on several occasions and thus he filed this application praying to call for the records from respondents 3 to 6 and to prohibit them from further illegal widening of 35 km of road from Thenpalani to Highways in Theni District and to issue directions to restore the land illegally cleared and also to direct the first and second respondents to take action against the concerned officials who are responsible for such illegal activities.

3. In the reply filed by the 3rd respondent namely the District Collector, Theni District dated 26.07.2016, it is stated that pursuant to the announcement made by the Hon'ble Chief Minister of the State in the year 2012 that the road will be laid between Chinnamanur and Megamalai in Theni District, the Government handed over the '*poramboke land- pathai*' to the State Highways Department. The said road starting from Chinnamanur and running to a length of 48.4 km is in a

damaged condition for a long period because of which the Government has cancelled the lease assignment of 99 years granted to the Tea Estate India Ltd which was responsible for maintaining the road and then handed over the said land to the State Highways Department *vide* G.O.Ms.No.97 dated 20.03.2009, G.O. Ms. No.304 dated 30.08.2012, G.O.Ms. No. 73 dated 13.02.2014 and G.O. Ms. No. 44 dated 21.01.2015 of Revenue Department. It is further submitted that the right of way in respect of the road handed over to the Highways Department is to an extent of 14 - 22 m width. Further, there is no proper drainage as the culverts and minor bridges in the existing road were constructed with cut stone and are completely in deteriorated condition and to construct the culverts with departmental specifications, widening of the road becomes an absolute necessity. The road edges on the entire stretch of road on the valley side have been fully eroded and it is not safe for motoring. 3rd respondent further submits that it is pertinent to note that many accidents have taken place in the recent years because of the damaged condition of the road. Based on these two important technical aspects, the minor bridges and culverts have to be properly constructed with a provision for the drainage system and protective walls to be provided on the valley side of the road. It is further submitted that these works are being carried out within 10 m width only which is well within the available Highways boundary limits of 14-22 m and after reconstructing the minor bridges, culverts, side drains and protective walls, the black topping of the road will be done only to a width of 5.5 m.

4. It is further submitted by the 3rd respondent that, as per revenue records like FMB, 'A' register, '*adangal*' etc, this road consists of a series of survey numbers and noted as private '*patta*' road and the Government classified this road as Government '*poramboke-salai/pathai*' and thus there is no mention about this road falling in Megamalai Reserved Forest in notification dated 25.11.2009. This road has been in existence for over 100 years prior to the enactment of the Forest

(Conservation) Act, 1980 and hence the provisions of the Act would not be applicable to the facts of this case.

5. It is further submitted by the 3rd respondent that requisite permission from the Wildlife Warden, Megamalai Wildlife division, Theni namely the 5th respondent herein, was obtained by the 6th respondent *vide* Proceedings No. 2030/2015/D, dated 03.09.2015 for the improvement and widening of the road and for clearing the bushes and trees existing inside the boundary limits of the 6th respondent within the available width of 14-22 m from 0/0 -35/0 km. *Vide* Proceedings No. 45180/2015/A3 dated 21.12.2015 permission was granted for removal of the trees within the Highways boundary which were uprooted and fallen down during monsoon rains causing disruption to the traffic. The Theni District Hill Area Tree Protection Committee constituted under the Tamil Nadu Hill Area (Preservation of Trees) Act, 1955 headed by the District Collector and consisting Wildlife Warden, Megamalai Wildlife Division, Executive Engineer, Agri. Engineering Department, Theni and Tahasildar, Andipatti as members, convened a meeting on 14.03.2016 and gave permission to the 6th respondent to cut and remove the trees in order to carry out road improvement works. In the above meeting the committee ratified the orders passed by the District Collector, Theni district dated 21.12.2015 who had issued permission to remove the trees that have been uprooted during the rainy season, and keep them along the sides of the road, without any hindrance to the movement of the traffic

6. It is further submitted by the 3rd respondent that as a compensatory measure, the 6th respondent is planting 10 trees per tree cut and the planting of saplings has already started and is in progress. The existing road from 0 km to 6 km passes through the plain terrain and the stretch from 6 km to 35 km (between Thenpalani and Highways) passes through hilly terrain and part of the road between 0-35 km is

below 1000 m and part 1000 m mean sea level. The traffic in this stretch is 3802 PCU and this road caters to the movement of about 40,000 people residing in the villages of Megamalai, Manaluru, Highways, Melmanaluru, Venniyaru, Maharajan Mettu and Iravangalar to and from Chinnamanur town and it is the only road that connects the villages with this town as no other alternative road is available. It is further submitted that inhabitants of all the aforesaid seven villages have been repeatedly appealing and protesting for repairing the road, since their livelihood depends entirely on the above said road connectivity.

7. In the reply filed by the 5th respondent Wildlife Warden, Megamalai Wildlife Division dated 01.08.2016, it is stated that as per the orders of the Hon'ble Supreme Court of India dated 01.12.2006, a proposal to declare Eco-Sensitive Zone (ESZ) around Megamalai Wildlife Sanctuary is under active consideration of the Government. Megamalai is formerly known as Panchakumachi Hills and houses rare species of wildlife like *Nilgiri Tahr*, *Lion Tailed Macaque*, *Indian Gaur*, *Nilgiri Langur*, *Common Langur*, *Grizzled Giant Squirrel*, *Malabar Squirrel* and a large variety of Deer species and Elephant along with many endangered and endemic flora. It is submitted that the said area was maintained and managed by the erstwhile Zamindar of Kandamanur and during the British rule it was used to cultivate Tea plantations and most of the lands were given on lease or purchased by the British Companies. One, India Tea Estate Company Ltd. was occupying most of the area including the roads. Subsequently the said company sold some of the plantations along with the Sy.Nos. used for the purpose of road to Wood Briar Tea Estate Company which failed to maintain the roads. Thus for the maintenance and relaying, the company handed over its private road to the Revenue Department and subsequently it was handed over to the State Highways Department, Government of Tamil Nadu. The Government cancelled the land assignment issued by virtue of G.O. Ms. No.97 dated 20.03.2009, G.O. Ms. No.304 dated 30.08.2012,

G.O. Ms. No.73 dated 13.02.2014 and G.O. Ms. No.44 dated 21.01.2015 and transferred the land recorded in revenue records as '*poramboke pathai*', to the Highways Department. The G.Os reveal that the above said land was used as road for more than 100 years and did not contain any valuable trees and the trees were planted by the adjacent patadhars and were to be removed for the maintainance/ improvement of the roads.

8. It is further submitted by the 5th respondent that the area mentioned in the Application is not under the control of Wildlife Warden, Megamalai Wildlife Sanctuary and the land in question is classified as '*patta*' land as per the revenue records. In the notification dated 25.11.2009 declaring Megamalai Reserved Forest, the said road is not mentioned in the revenue records like FMB, "A" register, Survey Nos; the road is mentioned as a series of survey nos. and is noted as private '*patta*' road. The width of the road is varying between 14 – 22 m. The said road in question starts from Thenpalani and for nearly 12 km it is crossing through Megamalai Reserved Forest and the remaining portion is passing through private estate. Therefore it is submitted by the 5th respondent that the said road is neither part of the Reserved Forest nor part of the Wildlife Sanctuary as could be seen from the available records.

9. The 5th respondent further stated that the Highways Department which is the project proponent for re-laying of road from Chinnamanur to Megamalai decided to cut 122 non-schedule trees from the '*poramboke*' land for which permission under the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955 was obtained after observing that none of the trees proposed to be cut are scheduled trees and not growing in the forest area. Further, the District Committee also advised the project proponent i.e. the State Highways Department to plant 10 trees for each tree cut as per the directions of the Hon'ble Supreme Court of India and Hon'ble High Court

of Madras to maintain tree cover in the said area. The 6th respondent State Highways Department has already started planting saplings of Aal, Arasu etc on either side of the road. Further, the apprehension of the applicant that nearly 150 trees were cut without permission from the Forest Department for widening of road adjoining Wildlife Sanctuary, is not correct as the District Committee has authorised the State Highways department to cut 122 non-schedule trees based on the report submitted by the Forest Department. It is further submitted since that the road passes through notified Megamalai Reserved Forest, the Forest Department has issued orders and laid down certain conditions to be followed while executing the work and cautioned the project proponent herein, the State Highways Department that in case of any violations, legal action shall be initiated in the interest of Biodiversity Conservation.

10. It is further submitted by the 5th respondent that all statutory permissions have been obtained from the Revenue Department for the formation of road *vide* G.O. Ms. No.304 dated 30.08.2012 and necessary administrative sanction has been obtained from the Government of Tamil Nadu in completing the work in four phases at a cost of Rs. 80.67 Crores. Further, it is the case of the 5th respondent that the project proponent has already got right of way ranging from 14-22 m width and even the FMB sketch of the villages illustrates the same. The existing carriageway is only 3 m wide and is being widened to an extent of 5.5 m which is well within the permissible 14-22 m right of way and as such there is no expansion of road as alleged by the applicant. Further, Section 7(f) of the EIA Notification, 2006 mandates the requirement of Environmental Clearance (EC) only in case of expansion of the roads but in the instant case, the project proponent is not expanding the road. The project proponent has been directed by the 5th respondent to confine its activity within the existing right of way.

11. The 6th respondent herein, the superintending Engineer, State Highways Department on whose behalf the Divisional Engineer has filed M.A No. 70 of 2016 for vacating the interim stay granted by the Tribunal, submitted that the Government of Tamil Nadu has leased 85.98 acres of land in Sy. No. 1/2 in Megamalai village, Andipatti Taluk in Madurai District in the year 1966 to M/s Tea Estate India Ltd, Coonoor for the formation and maintenance of road as per the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948 for 99 years and the said company has formed the road running to a length of 48.4 km from Seepalakottai junction to Maharaja Mettu Electricity Board Camp for the movement of labourers in the tea estate. As the said company failed to maintain the said road, the Government, vide G.O.Ms No 97 of the Revenue Department dated 20.03.2009, transferred the land of an extent of 85.98 acres in Sy. No. 1/2, Megamalai village to the 6th respondent for the maintenance of the road and requested the 4th respondent District Collector to send proposals for the transfer of the said land to the 6th respondent through Principal Secretary/Revenue Commissioner of Land Administration. Further, it is submitted by the 6th respondent that based on the proposals received from the 4th respondent District Collector, the Government vide G.O Ms. No. 304 dated 30.08.2012 transferred the entire extent of 85.98 acres (34.980 ha) to the 6th respondent for the maintenance of the road with certain conditions and classified the land as 'salai'. In G.O Ms. No. 73 dated 13.02.2014 an extent of 7.675 ha of land has been transferred in Odaipatti village, Uttamapalayalm Taluk, Theni District and vide G.O. Ms. No. 44 dated 21.01.2015, 8.015 ha of land in Narayanadevanpatti North Village, Uttamapalayam Taluk, Theni District has also been transferred to the 6th respondent for the maintenance of the road and the said lands were classified as Government 'poramboke-pathai'. It is clearly mentioned that the trees were planted by the adjacent pattadhars and the same to be removed during the expansion of the road.

Further, the entire stretch of the road starting from Chinnamanur to a length of 48.4 km is classified as 'salai-pathai' as per the revenue records and handed over to the 6th respondent for the maintenance of the same. The condition of the road is so bad that the State Transport Corporation through a letter dated 21.01.2014 has informed that it stopped the bus services to the villages.

12. It is further submitted by the 6th respondent that to cater to the needs of present traffic conditions, a DPR was prepared for the improvement of the road. In the first phase, it was suggested to widen and improve the road from 0/0 km to 35/0 km and the balance 35/0 to 48/4 km in the second phase for which the Government has sanctioned Rs. 80.67 Crores in the Comprehensive Road Improvement Development Programme vide G.O.M.s No.5, Highways and Minor Ports (HS1) Department dated 14.01.2015 for re-building and widening from single lane to intermediate lane of Chinnamanur Iravangalar road via Megamalai in 0/0 km to 35/0 km. Further, the Government vide G.O.Ms. No. 27, Highways and Minor Ports (HS-1) Department dated 24.02.2015 issued orders for splitting of the project into 4 packages for speedy execution and the nature of work involves immediate repair works to the road, widening of the road, construction of culverts, protective walls, drain, bus lay-by, raising avenue plantation etc. Since most of the road passes though the hilly terrain, it is very essential to construct culverts with protective walls for proper drainage and safety. Due to recent rain the road was damaged which requires immediate repair works and is carried out within 10 m width which is well within the Highways Boundary limit of 14-22 m. After reconstructing the minor bridges, culverts, side drains and protective walls, the black topping of the road will be done only for a width of 5.5 m.

13. A resident of Iravangalar estate village, Venniyar post, Chinnamanur has filed M.A. No. 114 of 2016 to implead himself as the 7th respondent and the same

was ordered dated 26.07.2016. It is submitted by the 7th respondent that the only road access available to the villages is a 48 km length road from Seepalakottai Junction to Maharaja Mettu Electricity Board Camp which connects the villages to all other neighbourhood areas to transport essential commodities to their villages. Further, the said road is the only connecting road for the seven villages to Theni town and the said seven villages lack facilities such as hospitals, colleges etc. Therefore for fulfilling their basic needs the villagers have to travel to Theni town through the said road only. In the said route, only three buses are operated, two Government and one private bus and even the said buses were stopped by the State Transport Corporation by a communication dated 21.01.2014 due to the bad condition of the road. The villagers made several representations to the authorities to reconstruct the said narrow road for better facilities and the Government in G.O. Ms. No. 73 and 44, Revenue Department dated 13.02.2014 and 21.01.2015 respectively, transferred lands to the Highways Department for maintenance of the said road. It is submitted that the villagers have taken serious and painful efforts to bring the issue to the notice of the Government and only after such protracted efforts; the Government was pleased to allot funds and take steps in reconstructing the said road which is a long pending dream of the people living in the Hills to provide better transport facility to them. It is further submitted by the impleaded 7th respondent herein that he had the knowledge of the said application only on sudden stoppage of the road construction works due to the interim stay granted by this Tribunal on 28.04.2016. The stoppage of work had led to serious inconvenience to the villegers as the condition of the road is totally deplorable and totally non motorable and due to stoppage of work the village of the 7th respondent has been literally cut off from the rest of the world.

14. We have gone through the records placed before us and heard the parties. The issue to be settled here is whether by undertaking such road improvement

activity by the 6th respondent State Highways Department in Theni District from Chinnamanur to Iravangalar over a total length of 48.4 km falling in 2 stretches with stretch-I being 0-35 km from Chinnamanur to Highways Town Panchayat and stretch-II 35-48/4 km from Highways Town Panchayat to Iravangalar, any environmental damage is going to be caused. The total extent of road measuring 48.4 km in length is classified as '*salai/pathai*' as per the revenue records when the Sy. Nos. were handed over to the State Highways Department for improvement and maintenance as the road was found to be in a damaged condition for a long time.

15. The total extent of land covered by the 48.4 km length road is 50.670 ha which includes 34.980 ha in Megamalai Village, 7.675 ha in Odaipatti Village and 8.015 ha in Narayanadevanpatti North Village transferred *vide* G.Os. dated 30.08.2012, 13.02.2014 and 21.01.2015, respectively. This entire extent of the land covering the total length of 48.40 km, is classified as '*salai*' which was recorded as '*Government poromboke - pathai*' in revenue records. The Government Orders also reveal that trees existing on either side of the '*salai*' are planted by the adjacent pattadhars. The width of this road over which right of way is available is ranging from 14 - 22 m though presently the carriageway is limited to 3 m width and the State Highways Department got the DPR prepared and obtained sanction orders for an amount of Rs. 80.67 Crores from the Government for widening and improving the road falling in stretch-I i.e., 0/0 km – 35/0 km under phase I of Comprehensive Road Improvement Development Programme for rebuilding and widening from single lane to intermediate lane and the work was split into four packages for speedy execution. The nature of work involves widening of road, construction of culverts, protective walls, improving drainage system by providing side drains, provision for bus bay and raising avenue plantations. Of the 35 km of

stretch-I, 6 km length falls in plain area and the rest 29 km passes through hilly terrain from Thenpalani to Highways.

16. The apprehension of the applicant is that this road widening work is not only illegal but it is detrimental to the local flora and fauna particularly from Thenpalani to Highways since it causes damage to the biodiversity rich Megamalai Wildlife Sanctuary located in Western Ghats in Theni District and also involves illegal cutting of trees in Reserved Forest. However, the records placed before us particularly the reply filed by the Respondent No.5 Wildlife Warden, Megamalai Wildlife Division, is very clear that there is a right of way ranging from 14 - 22 m width and out of 29 km stretch of road running through the Ghat section 13 km passes through Megamalai Reserved Forest which was notified as Reserved Forest *vide* notification dated 25.11.2009. The proposed expansion does not involve forest land and is confined within the existing right of way ranging from 14 - 22 m width and no tree in forest boundary limits is either required to be cut or already cut and only 122 non schedule trees are required to be cut since they are standing on either side of the road within the existing right of way which is '*poromboke pathai*'. Hence the District Hill Area Tree Protection Committee constituted under the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955 has granted permission to cut and remove the 122 trees. As stated by the District Collector, out of these 122 trees, some trees have already fallen due to heavy rainfall and winds and they were permitted to be removed from obstructing the traffic. The Wildlife Warden, Megamalai Wildlife Division who was also a member of the aforesaid Committee, in his reply has categorically stated that no forest area is involved for the road widening and no forest trees are required to be cut.

17. From all the above, it is evident that no forest land is involved for widening the existing '*salai*' right from 0/0 km Chinnamanur to 35/0 km Highways Town

Panchayat out of which 13 km runs through Megamalai Reserved Forest. However, since the 29 km stretch falls in Ghat section which is ecologically sensitive, the question arises as to whether it requires EC under the EIA Notifications, 2006 though no forest land is involved and no Forest Clearance (FC) is required. As per the EIA Notifications, 2006 amended from time to time, under the activity 7 (f) listed in the Schedule to the Notifications, State Highway expansion projects in hilly terrain (above 1000 m AMSL) and or ecologically sensitive areas are required to obtain EC. It is now crucial to understand as to whether the road improvement works carried on by the 6th respondent project proponent amounts to expansion of road as understood from the EIA Notification, 2006 since it becomes the basis for obtaining EC. The term expansion is neither defined under the National Highways Act, 1956 nor in the Rules made thereunder nor in the Tamil Nadu State Highways Act, 2001. Therefore, in the instant case, relying on the meaning of the word 'expansion' in noun form as per the Free Dictionary by Farlex which defines the word expansion as "*the act of increasing in dimensions, scope, or inclusiveness*" and as the Thenpalani State Highways road is having right of way for a width of 14 – 22 m and the present carriageway is limited to 3 m width and the proposal is to expand the carriageway upto 5.5 m width within the 14 – 22 m right of way, it does not amount to expansion of road as understood in the EIA Notifications, 2006. We are of the considered opinion that EC is not required to be obtained though 29 km length of the road is falling in hilly terrain. It is also worthwhile to note that while granting permission to the 6th respondent project proponent to carry out the improvement and widening of road from 0/0 km to 35/0 for a carriageway of 5.50 m within the Highways Department boundary limits the following 35 conditions are imposed by the 5th respondent in his Proceedings No. 2030/2015/D dated 03.09.2015:

1. *Materials of any sort like stones, sand, earth etc should not be collected within the forest limits.*
2. *Widening and improvement of the road inside the forest area attracts Forest (Conservation) Act, 1980 for which permission is to be obtained from the Central Government. Hence these works should be strictly avoided inside the forest limits.*
3. *The terms and conditions stipulated by the Wildlife Warden, Megamalai Wildlife Division, Theni should be abided before undertaking work. Any damages to wildlife and Forests should not be caused.*
4. *The existing bushes and trees inside the boundary of the Highways department may be cleared without any disturbance to the trees in adjoining forest area. For this work, necessary permission of the District Collector, Theni should be obtained.*
5. *Preferably felling of trees may be avoided and if necessary transplanting may be considered.*
6. *The surrounding forest area of this road should not be disturbed in any manner.*
7. *The labourers should not be stayed in the Forest area.*
8. *The Divisional Engineer should take responsibility for any fellings inside the adjacent forest area till the completion of work.*
9. *The Divisional Engineer should see that no fire escapes into the forests from the project area of patta lands and the Divisional Engineer should always render all the possible help to the Forest Department to extinguish the fire that may occur in the adjacent forest from the project area.*
10. *The Divisional Engineer is responsible for any wild animal that may die or sustain injury due to transport of their vehicle and the compensation levied by the Wildlife Warden should be paid as decided fit.*
11. *There should not be any clearing, felling and removal of any materials in the Wildlife Sanctuary area and Reserved forest area.*
12. *No clearing even removal of grass, no damage of flora and fauna inside forest area is permitted.*
13. *On completion of the work, detailed report along with photographs should be submitted both in the Hard and Soft Copy of this office.*
14. *No damage on any sort to the Forest / Wildlife of the Reserved should be caused.*

15. *The plastic carry bags and other non-biodegradable articles etc., should not be thrown inside the Forest area.*
16. *Alcoholic drinks and smoking are prohibited inside the Forest areas.*
17. *Carrying Flash Cameras inside the Forest Areas should be avoided.*
18. *Trapping or Capturing of any animals inside the Forest areas should not be done.*
19. *Collecting of any specimen dead or alive of flora and fauna are prohibited inside the Forests.*
20. *Highways authorities should contact the concerned Ranger / Foresters and intimate them about the Forests.*
21. *They should discuss periodically with Wildlife Warden, Megamalai Wildlife Division, Theni regarding the progress of work.*
22. *The Highways authorities should submit the report of their visit to forest area each and every time to the officers concerned.*
23. *The Highways authorities or their workers should not take any weapons or inflammable articles, etc along with them inside the Reserved Forest.*
24. *The Highways authorities or their workers should comply with provisions of the Tamil Nadu Forest Act 1882, Forest Conservation Act 1980, Wildlife (Protection) Act, 1972 and all Rules framed there under.*
25. *The Highways authorities or their workers should not collect firewood or set fire for cooking etc., inside the forest area.*
26. *The Highways authorities should carry out only the works permitted as cited above.*
27. *The Highways authorities should not erect any shed inside the Reserved Forest area.*
28. *The identification card issued by the parent organization should be carried by the Highways authorities. Only persons authorised shall be permitted for the above work.*
29. *The Wildlife Warden, Megamalai Wildlife Division, Theni and the Forest Range Officer, Chinnamanur is to be informed in advance (at least one week before) about the place of work adjacent to the Sanctuary/ Reserved Forest and they shall enter into the Reserved Forests only with the assistance of a guide or field staff provided by the concerned Forest Range Officer.*

30. *Every member of the Highways authorities shall abide by all the laws, rules, orders and guidelines, which are meant for conservation of nature. They will be assumed to know the penal provisions of the Acts like Wildlife (Protection) Act, 1972, Tamil Nadu Forest Act, 1882 etc.*

31. *They should not stay in the Forest area after 6.00 P.M.*

32. *List of each member should be given intimation to the concerned Forest Range Officer during their work.*

33. *Progress of works details should be sent to Wildlife Warden fortnightly.*

34. *If the Divisional Engineer fails to adhere to any of the above conditions, the permission is liable for cancellation whatever shall be claimed by the Divisional Engineer on account of such cancellation.*

35. *As per Hon'ble Supreme Court's order, 10 plants equal to one tree to be felled will be planted at the Highways Department cost.*

18. In so far as cutting of trees lying on either side of the carriageway but existing within the limits of right of way is concerned, the District Hill Area Tree Protection Committee has already granted permission and all the trees required to be cut are non schedule trees. It is a fact that the Megamalai Wildlife Sanctuary located in the Western Ghats is rich in biodiversity and requires protection and least interference from external activities. The area where the road in question is passing through is declared as Reserved Forest only recently in 2009 and the road is existing for a long time right from the British days connecting the tea estates and also the village habitations. It cannot be construed that maintaining and widening of road within the notified right of way is illegal and detrimental to the flora and fauna. One also has to look into the requirement of local inhabitants who need connectivity with the adjacent towns for the purpose of meeting their medical emergencies, education, transportation of essential commodities etc. Moreover since the existing road is in bad condition, it may in fact lead to land slips, soil

erosion besides causing accidents leading to loss of precious human life which the Respondent No.4 District Collector has already stated in his reply.

19. No doubt such linear projects particularly the stretches of the road passing through Wildlife Sanctuaries and Ecologically Sensitive Areas to some extent cause negative impact on the protection of biodiversity, but one has to take a holistic approach and basic minimum needs of local inhabitants cannot be sacrificed. In the case of *Vinod Raichand Jain v. Union of India & Ors.* in Application No. 90 of 2014 filed before the Western Zone Bench of this Tribunal at Pune, it was observed that:

“15. In our view, expansion of State Highway, is an important project in public interest, which cannot be stopped, only because there are trees, which may obstruct the project when alternative arrangement for plantation/afforestation can be made.”

The Bench also relied upon the decision of the Hon’ble Apex Court in *Essar Oil Limited v. Halar Utkarsh Samiti and Ors.* reported in AIR 2004 SC 1834. While considering the destruction of certain area in a sanctuary, particularly, on account of laying of pipelines carrying crude oil, the Hon’ble Apex Court observed as follows:

“Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life. The importance of maintaining a balance between economic development on the one hand and environment protection on the other is again emphasized in Principle 11 which says “The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all”.

20. The cooperation and involvement of local communities in management of natural resources including the flora and fauna cannot be ignored and if basic minimum needs of communities are not met and their quality of life is not improved, they may even turn against the preservation and protection of biodiversity and this will go against the very basic concept of protection of

biodiversity particularly in such ecologically sensitive areas like Western Ghats. Here one has to understand that no new road is permitted to be laid, no forest land is involved, no felling of forest trees is permitted and no civil structures other than structures for strengthening the road, are allowed to be constructed. As per the records produced before us only carriageway is being widened from 3.5 to 5.5 m width within the existing right of way besides strengthening the culverts, bridges and protective walls in the interest of smooth flow of traffic and safety of passengers.

21. Though we have no hesitation in concluding that the prayer made by the applicant to restrain the respondents from widening the road running to a stretch of 35 km from Thenpalani to Highways in Theni District, is not sustainable and cannot be agreed to considering the fact that it does not involve any notified forest much less Wildlife Sanctuary and no illegal cutting of trees is involved, but as a precaution, we feel that it is prudent to issue the following directions to the respondents to ensure that there should not be any scope for causing damage to the local flora and fauna which are rich in diversity:

- i. The widening of the road must be only within the boundaries of existing right of way which is a '*poromboke*' land handed over to the State Highways Department and should not go beyond the limits under any circumstances.
- ii. The boundary between the '*salai*' and the forest on either side of the '*salai*' should be clearly demarcated and boundary pillars should be erected at regular intervals, wherever they do not exist.
- iii. The existing vegetation except those 122 non schedule trees which were identified to be cut for widening the carriageway, should not be touched and should be allowed to remain except bush cutting in the

right of way to allow the drivers to notice the approaching vehicles from opposite direction.

- iv. Stretches of the road found to be vulnerable for crossing of the wild animals are to be identified and declared as 'Silent Zone' as well as laying of a series of speed breakers to make the fast moving vehicles slow down at such vulnerable points.
- v. The authorities should consider restricting the speed limits particularly in the 13 km stretch of the road in the limits of Megamalai Reserved Forest.
- vi. The Forest/Wildlife Department should examine the possibility of restricting the traffic during the night hours and even consider total prohibition of traffic from 9.00 PM to 6.00 AM under the provisions of the Wildlife (Protection) Act, 1972 and Tamil Nadu Forest Act, 1882 as the case may be, so that the wildlife is not disturbed.
- vii. It is an established fact that good road network may sometimes lead to spurt in poaching and smuggling activities. Therefore Forest Check posts should be established/strengthened at vulnerable points and if required, notification in this regard needs to be issued under the Wildlife (Protection) Act, 1972 and Tamil Nadu Forest Act, 1882.
- viii. Suitable sign boards warning the drivers about the wild animals crossing the road and their movement, should be erected at all the vantage points.
- ix. Suitable engineering structures including protection/retaining walls should be constructed besides laying side drains to allow proper drainage to prevent landslides and soil erosion.
- x. Since the basic objective of widening the existing carriageway is only for the convenience of the local villagers, movement of

commercial/tourist vehicles may be regulated to cause least disturbance to flora and fauna, particularly the stretch of the road passing through the Megamalai Wildlife Sanctuary.

xi. The Forest Department should involve the local communities/villagers who are benefited by improving and widening the existing road, in protection of forests and wildlife and conservation of rich biodiversity existing in the area.

xii. Preference should be given to indigenous species suitable to the local conditions while planting 10 trees for each tree being cut on the road side to raise a good avenue plantation.

xiii. The resultant timber and firewood from the 122 trees permitted to be felled on account of the widening of the carriage way should be accounted for and disposed as per the rules and no scope should be given for misuse.

22. With the above observations and directions, the interim injunction granted by this Tribunal dated 28.04.2016 stands vacated and the application is disposed of. There shall be no order as to cost.

Justice Dr. P. Jyothimani
(Judicial Member)

Shri.P.S.Rao
(Expert Member)

Date: 01.09.2016

Chennai