

## High Court Of Judicature At Madras

Writ Petition No. 10098 Of 2008

Judgment Date:

07-04-2011

**In Defence of Environment and Animals, by its Manager Trustee  
Elephant G. Rajendran, Chennai**

**..Petitioner**

**Principle Chief Conservator of Forest & Others**

**..Respondent**

Bench:

**{ HON'BLE MR. JUSTICE ELIPE DHARMA RAO , HON'BLE MR. JUSTICE D.  
HARIPARANTHAMAN }**

Citation:

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COMMON ORDER:

ELIPE DHARMA RAO, J.

1. By these matters, the legality or otherwise of the decision of the Government of Tamil Nadu to identify and notify ' Elephant Corridor ' at Nilgiris, and its consequential actions have been questioned by various parties.

2. ' The greatness of a Nation and its moral progress can be judged by the way its animals are treated ' , so said the Father of the Nation Mahatma Gandhi.

3. It is with this spirit, the ' Project Elephant ' was launched in February, 1992 by the Government of India, Ministry of Environment and Forests, as a centrally sponsored scheme, to provide financial and technical support of wildlife management efforts by States for their free ranging populations of wild Asian Elephants. This project was to provide financial and technical support to major elephant bearing States in the country for protection of elephants, their habitats and corridors. The project aims to ensure long term survival of viable conservation reliant populations of elephants in their natural habitats by protecting the elephants, their habitats and migration corridors. Other goals of Project Elephant are supporting research of the ecology and management of elephants, creating conservation awareness among local people, providing improved veterinary care for captive elephants. It also seeks to address the issues of human elephant

conflict and welfare of domesticated elephant. This project also aims to achieve the following objects:

1. Ecological restoration of existing natural habitats and migratory routes of elephants.
2. Development of scientific management planning for conservation of elephant habitats and viable elephant populations in India;
3. Promotion of measures for mitigation of man-elephant conflict in crucial habitats;
4. Moderating impact of human and domestic stock activities in crucial elephant habitats;
5. Strengthening of measures for protection of wild elephants from poachers and unnatural causes of death;
6. On Elephant management related issues;
7. Increase public conservation education and awareness programmes about elephants;
8. Eco-development of elephant habitats;
9. Provide improved veterinary care for elephants.

4. Under this scheme, with a view to minimize the incidents of man-animal conflict and to have effective control to check poaching, the Principal Chief Conservator of Forests and Chief Wildlife Warden has suggested that the private/patta lands forming the traditional movement corridors of animals, particularly elephants, between the Mudumalai Wildlife Sanctuary and National Parks to other parts and also from Eastern and Western Ghats may be brought under the control of the Forest Department, by acquiring the lands after paying compensation to the owners. The Ministry of Environment and Forests, Government of India, by its proceedings No. 2-15/2002-PE, dated 11.8.2006 has requested the Government of Tamil Nadu to take necessary action for notification and protection of the identified elephant corridors in the State. This is followed by another communication dated 14.12.2009.

5. Pursuant to the Government of India's communication, above referred, dated 11.8.2006, the Government of Tamil Nadu, under G.O. Ms. No. 93, Environment and Forests Department, dated 21.8.2007, has appointed an Exploratory Committee with Collector of Nilgiris as the Chairman, the members being (i) District Forest Officer, Nilgiris North Division; (ii) Wildlife Warden, Ooty; (iii) Revenue Development Officer, Ooty and (iv) the concerned Tahsildar. It has been stated by the official respondents that the said Committee was pursuing action to explore the possibility of acquiring the patta lands with the willingness of the farmers, who can spare their lands for elephant corridors.

6. While things stood thus, W.P. Nos. 10098 of 2008 has been filed by an Organisation named ' In Defence of Environment and Animals ' , represented by its Managing Trustee Elephant G.

Rajendran, a practicing advocate of this Court as a *probona publico* praying to issue a writ of mandamus directing the official respondents to keep the corridor of the animal without any encroachment and any other distribution for the free movement of elephants and other animals. It has been contended by this petitioner that the elephant corridor is being disturbed by some encroachers and builders and due to several factors including mushrooming of resorts, elephant corridors were either closed or becoming narrow. While appreciating the move of the Government to acquire the lands near the corridor, the petitioner has stated that the corridor to be kept without any encroachment since, to his knowledge, there are several encroachments by way of constructing buildings and cultivation process. According to the petitioner, the Forest Department has not taken any stringent action to evict the encroachers of all kinds. Therefore, he contended that the electric power connection to all the encroachments and resorts to be disconnected at once and the Forest and Revenue Departments shall take necessary steps to evict all the encroachings from the elephant corridor and that all the corridors are to be kept available for the free movement of the animals since there cannot be any disturbance to the corridors.

7. During the pendency of the W.P. No. 10098 of 2008, this Court, by the order dated 2.2.2009, has directed the District Collector to file a status report showing the steps taken to remove all the encroachments from lands identified for development of the elephant corridor. Aggrieved against this order of this Court, W.P. Nos. 2762 and 2839 of 2009 have been filed by the Scheduled Tribes and others traditional forest dwellers.

8. It has been averred in this writ petitions that they are residing in the Revenue lands for more than 50 to 100 years and had right to occupy the lands under the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. They have also contended that the District Collector of Nilgiris, issued proceedings dated 11.8.2008 constituting the Divisional Level and Sub Divisional Level Monitoring Committees as stipulated in Rules 5 and 7 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007. It is their contention that the officials such as the Tahsildar, RDO along with the police on the orders of the District Collector have visited the village on 7.2.2009 and directed all the villagers to stop all cultivation activities and threatened to destroy all the standing crops. They have also threatened to disconnect the electricity to these villages. The officials are also preventing the petitioners from carrying on their regular livelihood activities such as collector of minor forest produce and they have also prohibited the petitioners from grazing cattle and other the stock and these acts of the District Collector are contrary to the Act. These petitioners fear that they are likely to be evicted as encroachers and be deprived of their livelihood. In this writ petition, status quo was ordered by the Court on 12.2.2009 by a learned single Judge and after it has been brought to the notice of the said Court about the order of removal of encroachments already passed by a Division Bench, the said order of status quo was recalled by the order dated 13.2.2009 and a modified order was passed by the Division Bench, after posting these two writ petitions along with W.P. No. 10098 of 2008, directing the authorities concerned not to evict the Scheduled Tribes and other Traditional forest dwellers and others, whose claims are pending and may have some right under the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The State Level Monitoring Committee, which was constituted by the State under the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, vide G.O.

Ms. No. 19, dated 9.2.2008 was also directed to look into the matter and submit its report to the State Government and also to file a copy of the same before this Court.

9. At this stage, Hospitality Association of Mudumalai, has come forward to file an impleadment petition, objecting the writ petition on the ground that their association consists of residents of the Masingudi Bokkapuram area and they are providing hospitality to the tourists who visit the area to see wildlife; that there is misguided sense of hostility towards the people who own and run guest houses in this area from the authorities and self proclaimed environmentalists dwelling outside the area and one needs to understand that wild life tourism sustains conservation as it is in the interest of the promoters of wild life tourism to conserve and sustain the environment, ecology and wild life in the region and therefore, they act as guardians of nature.

10. Though this argument advanced on the part of association seems to be attractive, in practice, the facts are different. There is voluminous material on record to show that the guest house owners in this area have indulged in nature destruction causing obstruction to the free passage of the wild life since there is continuous vehicle passages and under the name of eco-homestay accommodation in the locality, they have indulged in eco-destruction.

11. It is also their contention that the members of the petitioner association are living there for more than 50 to 60 years; that there is virtually no man animal conflict in the area since there is little or no agriculture and the elephant can freely move around throughout the area. They would further say that they are very keen and will cooperate to a scientific solution for living in harmony and co-exist with wild life and nature.

12. Elephant is the largest terrestrial mammal of India. Elephant being wide ranging animal requires large areas. It being the herbivore, the requirement of food and water for elephants are very high and therefore their population can be supported only by forests that are under optimal conditions. The status of elephant can be the best indicator of the status of the forests. About half of the Asian elephant population is in India. We are informed that elephants need 200-250 kgs. of food and 200-300 litres of water daily and since it has a very weak digestive system, which can only digest 40% of the food it eats, the elephant needs to move around other areas of the habitat or food to enable the greenery to revive before it can feed in same area again and therefore, the elephant needs to move around for the purposes of breeding since it has been scientifically programmed by nature never to inbreed within its own birth family and hence it needs to move around between gene pools.

13. The District Forest Officer at Nilgiris North Division did a power point presentation before this Court during the course of arguments wherefrom it is seen that Nilgiris Eastern Ghats landscape is more 10,000 sq.km. in forest area with good connectivity and nearly all the western forests are connected to the eastern ghats landscape by the crucial area of the Nilgiris North Division; that more than 8000 elephants are found in this connected landscape with more than 260 tigers in the same space. Explaining the connectivity aspect, it has been asserted that forests of Nagechole are connected to the forests of the Bandipur in the East and western side the forests of Brahmagiri, Bandipur in turn connects to the forests of Mudumalai which connects to Nilgiris North Division and to the forests South and the Eastern ghats. This landscape is the single largest population of

the Asian Elephant in the world and also has the largest tiger area, which indicates the quality of the forest. The importance of the area led to the declaration of Nilgiris as the first designated Biosphere Reserve in India in 1986 since it is a hotspot among the Western ghats. It is also seen that even though there is more than 50% of area covered by forests, only a small fraction is available for the Tigers in this area. But this information furnished by the District Forest Officers has also been objected by the petitioners as being one sided. We do not understand such a blanket negative statement made by the private land owners as against a scientific study made by the Forest Officer, who is having personal working experience in the area and to whom no bias could also be attributed.

14. The Elephant habitations in Tamil Nadu seem to lie primarily along the slopes of the Western Ghats adjoining the State of Kerala and Karnataka and portions of Eastern Ghats abutting Mysore Plateau. It is also seen that the largest population of elephant in Tamilnadu is found in Nilgiris Eastern Ghats Elephant Reserve at Nilgiris.

15. Since the Moyar Elephant Corridor plays a vital role in migration of elephants from Eastern Ghats to Western Ghats and vice versa, an extent of 515.22 acres of patta lands in Masinagudi, Hullathi and Kadanad villages has been proposed for acquisition by the Forest Department at a cost of ` 1,545.66 lakhs. Likewise, another elephant corridor, Kallar, Jakkanarai which lies in the jurisdiction of Kotagiri range of North Nilgiris division is very critical one for connecting silent valley. Coimbatore/Nilgiris North/Nilgiris East and in turn connecting Western Ghats and Eastern Ghats. So, an extent of 68.20 acres of patta lands in Jackanarai village at the cost of ` 390 lakhs has also been proposed to be acquired with the financial assistance from the Government of India. The Forest Department is the requisiting Department in the land acquisition proceedings initiated to acquire patta lands for the elephant corridor.

16. On 10.9.2009, the then District Collector, Nilgiris (Mr. Anandrao Patil, IAS) appeared before this Court and has shown certain slides in the laptop showing the corridor of elephant. He has stated that to allow the elephants to pass through the Corridor, the unauthorised occupants are to be evicted, but it has been admitted by him that those who are tribals and traditional forest dwellers and are protected under the provision of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, their rights will be protected and they will not be evicted from the corridor. While on the part of the petitioner, Mr. Elephant Rajendran, it has been argued and requested the Court to direct the eviction of the unauthorised occupants from the elephant corridor for smooth movement of elephants, Ms. Vaigai, learned counsel appearing on behalf of the petitioner in W.P. No. 2839 of 2009 and representing other forest dwellers submitted that without giving proper opportunity to all affected persons, neither an area can be declared as forest corridor nor persons could be evicted.

17. Considering the facts and circumstances, this Court has issued the following directions:

“ (i) Forest Department, which has the knowledge of movement of elephants in the corridor, may identify and inform the same;

(ii) the State Government may publish the information regarding the elephant corridor and the

area, in leading newspapers and also by the drum beating/tom tom, calling for objections of locals, if any, in the area in question;

(iii) after hearing the locals, particularly those who may be affected, they may finalise the elephant corridor from which unauthorised occupants are to be evicted;

(iv) to ensure that scheduled tribes and other forest traditional dwellers are not affected, it is required to identify the other traditional forest dwellers in terms with the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Tribes) Rules, 2007; and

(v) only after the recommendation and recording their names in the appropriate register, they may proceed with eviction, by giving notice in the newspaper, by them beating/tom tom and by giving individual notice to the unauthorised occupants.

5. So far as the acquisition of the land is concerned, if any private land is required to be acquired, they will have to follow the procedure under the . Prima facie, as the tribals and other forest dwellers cannot be evicted from the unauthorised lands, their lands need not required to be acquired, if it is a forest land. Learned counsel for the parties are requested to give further suggestion in the matter, in the interest of public and elephants. ”

18. When the case proceeded, the map prepared by the District Collector was stiffly objected by the learned counsel appearing on behalf of the Scheduled Tribes and Traditional Forest Dwellers on the ground that it is the Forest Department, which is empowered to point out the elephant corridor to the State. In this background, on 22.10.2009, the Principal Secretary of the Environment and Forest Department the Principal Chief Conservator of Forest and Chief Wildlife Warden; the Principal Chief Conservator and Head of the Forest Department and the District Forest Officer, Nilgiris Northern Division appeared person before the Court and after hearing them, it was felt that a team of experts of the environment and forest departments be constituted, including the Principal Chief Conservator of Forests, to suggest the elephant corridor and submit a report after taking into consideration the different books published with regard to the elephant corridor, namely:

“ (a) Ecology of the Asian Elephant

(b) The Asian Elephant in Southern India;

(c) A brief documentation of elephant corridors in South India;

(d) Acquisition/Transfer of sensitive areas for restoring/maintaining the sanctity of the Moyar Valley Elephant Corridor and Evaluation of the status, and

(e) Land use pattern and Habitat Utilization of Elephant in Corridors between Western Ghats and Eastern Ghats through Mudumalai Wildlife Sanctuary and National Part and Nilgiris, Tamil Nadu. ”

19. In pursuance of the directions of the Court, an Expert Committee was constituted by the

Government with the following members:

1. Principal Chief Conservator of Forests and Chief Wildlife Warden, Chennai - Chairman
2. Chief Conservator of Forests (Tamil Nadu Afforestation Project) and Regional Chief Conservator of Forests for Nilgiris District, O/o. Principal Chief Conservator of Forests, Chennai - Member
3. Conservator of Forests, Coimbatore Circle, Coimbatore - Member
4. Conservator of Forests and Field Director, Mudumalai Tiger Reserve, Udthagamandalam - Member
5. District Forest Officer, Nilgiris North Division, Udthagamandalam Member - Secretary

20. The terms of reference of this Committee are:

“ (1) Examine the books and study reports referred in Para 3 above and also other authenticated/specialized books and documents relating to elephant corridor, identify the elephant corridor and prepare a detailed report;

(2) The books, reports and other particulars referred in the Expert Committee Report shall be specifically referenced with page numbers.

(3) Enquire Forest Officers, local people, tribal and also avail option from the experts etc. regarding the elephant corridor in the Nilgiris area and specify the results in the report.

(4) Any other points/suggestions relating to elephant corridor. ”

21. It is seen from the records that the said Expert Committee visited the elephant corridor area on 28.10.2009 and 29.10.2009 and enquired the field officers, tribal people and local people and obtained opinion from the following experts, scientists and senior forest officers about the elephant corridor in the Moyar Valley of Nilgiris.

Senior Forest Officers:

1. Mr. S. John Joseph, IFS

Former Principal Chief Conservator of Forests and Chairman,

Society for Social Forestry Research and Development, Tamil Nadu

2. Mr. S. Sankaramurthy, I.F.S., Former Principal Chief Conservator of Forests, World Wide Fund for Nature-India, Tamil Nadu State Office, No. 297, TTK Road, Alwarpet, Chennai-600018.

Experts and Scientists:

3. Mr. R. Sukumar, Professor and Chairman, Centre for Ecological Sciences, Indian Institute of Science, Bangalore.

4. Mr. Ajay A. Desai, Wild Life Consultant

5. Dr. N. Sigaganesan,

Principal Consultant, Wild Life and Forests, No. 40, Kavara Street, Koranad, Mayiladuthurai, Nagapattinam District.

6. Mr. B. Ramakrishnan,

Field Officer, Wild Life Trust of India, No. 10, Sandal Wood Depot Road, Northpet, Sathyamangalam-638401, Erode District.

7. Mr. R. Arumugam, Wild Life Biologist Wild Life Trust of India, 149/13, Sumangali Nagar, Suleeswaranpatti, Pollachi, Coimbatore

NGOs:

8. Mr. A.C. Soundarrajan,

Member - The Nilgiris Wild Life and Environment Association

Member - State Wild Life Advisory Board

Member - Governing Council Mudumalai Tiger Reserve

" Aaditya " , 129 Avalanchi Road, Fern Hill Post, Ootacamund-643001.

9. Mr. Krupakar and Senani, Wild Life Film Maker, Nilgiris South Biosphere Reserve, Mysore.

10. Mr. N. Mohanraj, WWF-India, Western Ghats Landscape Officer, 5/2, Second Cross, Chinthamani Nagar, K.K. Pudur Post, Coimbatore-643038.

11. Mr. S. Jayachandran, Joint Secretary, The Nilgiris and Environment Association, C/o. District Forest Office (North) Mount Stuart Hill, Udagamandalam, Nilgiris.

12. Mr. Ramesh Bellie, Secretary, Nilgiris Potato and Vegetable Growers Association, Geetha Lodge Complex, Ooty.

22. Thereafter, the Expert Committee submitted its report on 4.11.2009 along with its field staff reports, to this Court. Considering this arguments advanced, this Court allowed the Expert Committee to file a map showing the boundaries of the Elephant Corridor and the State Government was also directed to state as to whether they intend to accept the report in his

totality or with modification.

23. At that stage, the learned counsel for one of the writ petitioners viz. The Hospitality Association of Mudumalai (who is also the sixth respondent in W.P. No. 10098 of 2008) has argued that there is hostile attitude towards the resorts and that they have constructed the resorts after obtaining permission on the private forest area.

24. Considering the stand of the Central and State Governments that it is the State Government which is to decide as to what is the elephant corridor within their territory and the rival arguments, this Court, by the order dated 1.12.2009, directed the State Government to file an affidavit stating as to what action it intends to take with regard to the resort owners residents and also on the corridor map prepared by the Central Government. Accordingly, on 2.12.2009, the State Government has come forward with its decision, as contained in the letter No. 2805/FR.5/2008 of the even date, thereby stating that they will ensure that no illegal construction is made in the area shown as elephant corridor in the report of the Elephant Committee and that no person will be allowed to put a fresh solar/electrical fencing within the proposed area of elephant corridor.

25. Thereafter, hearing both the parties and taking into consideration the earlier actions of the State Government with regard to the issues involved in the matter, this Court, by the order dated 3.12.2009 has ordered as follows:

“ (i) The State Government will have to decide as to which Elephant Corridor has to be identified, i.e. corridor identified by the Central Government in the letter dated 11.8.2006, with the help of the State Forest Department and NGOs, or the proposed Elephant Corridor as identified by the Expert Committee in the present cases, preferably within one month.

(ii) The publication of such map showing the Elephant Corridor, should be made by the State through the Forest Department, in two local newspapers, one in English and another in vernacular Tamil, giving the details of Survey Numbers of private lands which are falling within the proposed Elephant Corridor. The persons may be asked to submit their objection within a time frame, say one month.

(iii) The intimation of such proposed Elephant Corridor along with a copy of the report of the Expert Committee, should be also forwarded to each local Panchayats, which fall within the proposed Elephant Corridor, so that the local persons can have the knowledge of the corridor of their own, if they so choose.

(iv) No separate individual hearing is required to be given to any person, though amass bearing may be given as generally given in the ‘ land Acquisition ‘ cases and on hearing such objections, the proposed Elephant Corridor including the map containing the different Survey Numbers should be finalised and be also published at an early date, say maximum within six months.

(v) No individual or any Association generally should intervene in the case. If they have any objection, they may raise before the authorities concerned. ”

23. On such finalisation, it will be open for the State to decide:

(a) whether the private lands which are falling within the Elephant Corridor, do not belong to Scheduled Tribes and other traditional forest dwellers, who have a right under the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and whether such lands should be acquired. If the decision is taken to acquire the lands, they will follow the regular procedures as laid down under the provisions of the .

(b) If the State Government, in the meantime, wants to take over the management of the private forest, it may do so in terms of Section 3 of the Tamil Nadu Private Forests (Assumption of Management) Act (53 of 1972), so as to enable the elephants to pass through the corridor without any hindrance till the lands are acquired. "

26. It is to be mentioned that pursuant to the directions of this Court dated 3.12.2009, the Forest Department has issued a public notice dated 7.1.2010, thereby publishing the proposed elephant corridor and requiring the persons, whose private lands are falling within the proposed corridor to submit objections. Challenging this action of the Government, in issuing the Notice dated 7.1.2010, W.P. Nos. 1897 of 2010; 2915 of 2010; 3326 of 2010; 4978 of 2010; 5740 of 2010; 5774 of 2010; 7960 of 2010; 7962 of 2010; 8022 of 2010 and 8237 of 2010 have been filed. Review Application No. 131 of 2010 has been filed to review the order dated 3.12.2009. The formation of the above said Expert Committee by this Court and the report filed by the Expert Committee dated 4.11.2009 have been challenged in W.P. Nos. 7961 of 2010, 7963 of 2010, 8023 of 2010 and 7672 of 2010.

27. Pursuant to the publication of the public notice dated 7.1.2010 along with the maps of proposed corridor and other documents in four villages viz. Sholur, Masingudi, Hullathi and Kadanadu, which are to affect by the proposed corridor, public hearings were held on 8.2.2010 and after verifying all the objections and rejecting the same, the Government has issued G.O. Ms. No. 125, Environment and Forest (FR.5) Department, thereby confirming the elephant corridor map published and further mentioning that the lands falling within the boundary description form the elephant corridor. This G.O. has been challenged in W.P. Nos. 23578 of 2010; 23939 of 2010; 23950 of 2010; 23951 of 2010; 25713 of 2010; 26053 of 2010; 27550 of 2010; 27561 of 2010; 28580 of 2010; 1519 of 2011; 1520 of 2011 and 2845 of 2011. Since all these matters are thus, inter-connected with each, they are heard together and are being disposed of by this common order.

28. The contention of the petitioners, challenging this public notice dated 7.1.2010 are that it is bereft of details; that the , composition and recommendations of the Expert Committee is without jurisdiction in law; that the procedure prescribed in law to initiate the process for acquisition of lands which are not forest lands has not been followed; that immense prejudice has been caused by the impugned notice to the petitioners since the official respondents have not followed any of the statutorily prescribed rules and/or regulations before the issue of the impugned notice.

29. From the voluminous material available on record, it is seen that as against the above extracted order dated 3.12.2009 passed by this Court, appeals have been filed before the

Honourable Apex Court in C.C. Nos. 6342 to 6348 of 2010 and a Three Judge Bench of the Honourable Apex Court, headed by His Lordship. The Honourable The Chief Justice of India, has disposed of the matters by the order dated 30.4.2010. Since this order of the Honourable Apex Court has also been attempted to be interpreted by some of the parties in these batch of cases, to suit their convenience, we extract hereunder the said order for better understanding:

“ Permission to file special leave petition is granted.

Delay condoned.

Heard learned counsel for the petitioner and learned counsel for respondent No. 1.

The learned counsel for the petitioner contends that if proposed Elephant Corridors established, the petitioner would be seriously effected as his agricultural land falls in that area.

The petitioner would be at liberty to approach the committee which is likely to finalize the Elephant Corridors and also would be at liberty to approach the High Court and seek intervention proceedings though the Division Bench has already indicated under other proceeding that no intervention is allowed.

With the above directions, the Special Leave Petition is disposed of.

30. On the part of the petitioners, it has been argued that under Section 6 of the Wildlife Protection Act, a Committee has been constituted and when law contemplates a particular way of doing things, by way of constituting a Committee under Section 6 of the Wild Life Protection Act, both resorting to constituting a Committee and entrusting the matter to the Committee is in violation of the provisions of the Act.

31. At this juncture, it is to be pointed out that all the points which have been raised before this Court were also argued before the Honourable Apex Court. Even though arguments have been advanced before the by this Court, the same was not interfered with by the Honourable Apex Court. Instead, as could be seen from the order of the Honourable Apex Court, the petitioners were given liberty ‘ to approach the Committee, which is likely to finalize the Elephant Corridors ‘ . Therefore, it goes without saying that the aspect of of an expert committee by this Court was confirmed by the Honourable Apex Court. Further, the of this Committee by this Court was done in the best interest of all the parties concerned. It is to be mentioned that in Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association(2009) 9 SCC 737 : (2009) 8 MLJ 1164, also when his High Court has constituted a monitoring committee, the Honourable Apex Court has held it as not vitiated by law, since towards upholding the majesty of law and justice. Therefore, the argument advanced on the part of the petitioners with regard to the validity of of the Expert Committee by this Court cannot be appreciated.

32. In the meantime, W.P. Nos. 2839 and 2762 of 2010 have been filed by the forest dwells praying for a direction to the authorities to implement the Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and to complete the process of

recognition of forest rights of the traditional forest dwelling communities and traditional forest dwellers.

33. Considered as the supreme most level of creation on earth, we, the human beings, must not forget that Mother Earth, which is full of lots of creatures and living organisms, is for all and like humans, animals also have a right to live, because they are the same as us, but, may be with a lower brain capacity than humans. That does not give any unassailable power and right for the humans to act in a manner detrimental to the interest and welfare of the so called lower brain capacity beings on earth/the animals since animals too have rights to live their lives free from suffering and pain and we, as the humanbeings, must feel solidarity with them. Preservation of wildlife is important for maintaining the ecological balance in the environment and sustaining the ecological chain.

34. The framers of Constitution, being well aware of these, have introduced Article 51 -A(g) of the Constitution which says that ' it is the duty of every citizen of India to protect and improve the natural environment including the wildlife ' . The Government of India has enacted a comprehensive legislation ' Wild Life (Protection) Act, 1972 for this Constitutional purpose. Chapter III of the said Act prohibits hunting of wild animals except in certain limited circumstances. Chapter IV enables the State Government to declare any area as a sanctuary or national park, and destruction or removal of animals from those areas is prohibited except under very limited circumstances. Chapters V and V-A prohibit trade or commerce of wild animals, animal articles or trophies. Chapter VI makes violation of the provisions of the Act a criminal offence. By the Wild Life (Protection) Amendment Act, 2002, the punishment has been increased vide Section 51 as amended, and the property derived from illegal hunting and trade is liable to forfeiture vide Chapter VI-A. In 1977, the Indian elephant was brought within the purview of Schedule ' A ' of the Act.

35. ' Nature is a series of complex biotic communities of which the man is an interdependent part and that it should not be given to a part to trespass and diminish the whole. It is considered that the largest single factor in the depletion of the wealth of animal life in nature has been the " civilised man " operating directly through excessive commercial hunting or, more disastrously, indirectly through invading or destroying natural habitats ' , so observed by the Honourable Apex Court in State of Bihar v. Murad Ali Khan AIR 1989 SC 1 : (1988) 4 SCC 655.

36. The policy and object of the wild life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The state to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were 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 only way we can guarantee our continued survival on earth is to recognize the importance of other non human life forms and stop pretending we are on top of some pyramid of

domination over other beings. It is the time to think big and accept no limits as we have to work towards a better tomorrow.

37. With regard to the argument advanced on the part of some of the writ petitioners challenging the power of the State Government to exercise its executive power to identify elephant corridors when the same is occupied by a Parliamentary legislation and a statute occupying the field viz. National/State Wild Life Boards having extensive powers rather duty to protect wild life, it is to be mentioned that the subject, protection of wild animals and birds has been made concurrent by the (42nd Amendment) Act, 1976 by making Entry as 17B, while the subject ' Forest ' has also been included by the same amendment as Entry No. 17A to the concurrent list. This empowers the Central Government to issue advisories/directions to the States/UTs from time-to-time to take appropriate actions for conservation and protection of wildlife and its habitats. The Wildlife being in the concurrent List (Entries 17A and 17B of List III) of the , both the Central and State Governments/UTs are mandated with the responsibility of the protection and conservation of the wildlife and its habitat. Therefore, the primary duty of protection and management of wildlife and its habitat lies with the State Forest Department and the States/UTs are at liberty to take steps for conservation and protection of wildlife and its habitat. Under the Wildlife (Protection) Act, 1972, the State Governments are empowered to declare protected areas, including Sanctuaries, National Parks, Conservation Reserves and Community Reserves under Chapter IV of the Act. Therefore, when the State Governments are empowered under the said Act to notify any area having adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment as Protected Areas under Chapter IV of the Act, the authority of the State Government in identifying the elephant corridors cannot be challenged. Therefore, the petitioners are not justified in contending that the State Government is bereft of its powers in identifying the elephant corridor.

38. It is also to be stated that the impugned G.O. (Ms) No. 125, Environment and Forests (FR.5) Department, dated 31.8.2010 has been issued, confirming the elephant corridor map published on 6.1.2010 and 7.1.2010 furnishing the boundary details to form the elephant corridor, further directing the Principal Chief Conservator of Forests to publish the final elephant corridor in the cadastral map prepared by the Expert Committee, pursuant to the direction of this Court dated 3.12.2009 and 1.3.2010. But, the said G.O. is also being challenged by some of the writ petitions as being illegal and ultra vires of the provisions of the Wildlife (Protection) Act, 1972.

39. The contentions of the petitioners, who are challenging the G.O. Ms. Nos. 125, dated 31.8.2010 are that the report of the Expert Committee in W.P. No. 10098 of 2008, whose report led to the issuance of this impugned G.O., is also in violation of the provisions of the Act; that the proposed elephant corridor as identified by the Committee is erroneous specifically in respect of the areas marked across the undulating hills in the south of the village of Bokkapuram; that the impugned G.O. 125, dated 31.8.2010 has been issued by the State Government in violation of the Scheduled Tribes and other Traditional Forest Dwellers Act, 2006.

40. The Expert Committee was constituted by the orders of this Court dated 22.10.2009 under the chairmanship of Principal Chief Conservator of Forests and Chief Wildlife Warden, who is the highest expert in the field.

41. The main attack made on the part of the petitioners the formation of such an Expert Committee by this Court is that under the s, State and National Boards are formed and therefore, the formation of the Expert Committee by the Court is nothing but in derogation of the said Act. In these circumstances, they have argued that when the law contemplates certain things to be done in a particular manner, the same has to be done only in that manner and not otherwise.

42. No doubt, State and National Boards are formed under the . But, while hearing the Public Interest Litigation W.P. No. 10098 of 2008, when this Court has thought it fit and proper to frame a body of experts to go into the matter and the said committee formation was not interfered with by the Honourable Apex Court in the proceedings initiated by some of the petitioners in C.C. Nos. 6342-6348 of 2010 and further, no motives could be imparted to the said expert committee, which has gone a long way to assess the entire gamut, we are unable to appreciate the arguments advanced on behalf of the petitioners in this regard.

43. It is also to be mentioned that the are in question has already been notified in 1991 under the ' Tamil Nadu Preservation of Private Forests Act ' and therefore, the Government can very well take possession of the said lands. The arguments advanced on the part of private land owners that the said notification dated 1.11.1991 is a blanket one and is illegal cannot be appreciated in view of the admitted fact that no orders of such nature have been passed in W.P. Nos. 7612 and 7613 of 2010 filed before this Court challenging the Notification dated 1.11.1991 issued under Section 1(2) (ii) of the Tamil Nadu Preservation of Private Forest Act, 1949 and published in the District Gazette on 15.11.1991 by the District Forest Officer, Nilgiris.

44. The Scheduled Tribes and other Traditional Forest Dwellers Act, 2006 has been enacted to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. The learned counsel appearing for the forest dwellers have argued that because of the action of the Government to identify the elephant corridor, the rights of the forest dwellers ensured under the said Act are infringed.

45. It has been asserted before us on behalf of the State Government that the proposed notification of elephant corridor is only a management activity, to take care of the welfare of the elephant and other wildlife and the notification of the elephant corridor has nothing to do with the possession, legal ownership and rights of the concerned. It is also the stand of the State Government that the legal status of the land is not the criteria for notifying the Elephant corridor and the lands which are in the pathway of movement of elephants and other wildlife, including patta lands and estates, which are already notified as private forest under the Tamil Nadu Preservation of Private Forest Act, 1949 irrespective of the legal status, are proposed to be notified as Elephant corridor. It has been assured on behalf of the State Government before us that the interest of the existing community and interest would not be affected.

46. No doubt, under the scheme of things, it is the responsibility of the State Government to implement the Scheduled Tribes and other Traditional Forest Dwellers Act. In view of the above

and in view of the assertions made before us by the State Government, we direct the State Government to stick on the assertions made before us, while dealing with such communities.

47. It has also been argued on behalf of the private land owners that never there was any movement of elephants in South of Bokkapuram as the village of Bokkapuram is abutting the steep slopes of the Nilgiris and therefore, the inclusion of this area also in the elephant corridor is illegal. On a perusal of voluminous materials placed on record, it is clear that on an earlier occasion, two elephants were caught in Hassan (Karnataka) radio collared and released in Bandipur, which found their way to the Sigur Plateau and used all areas including the Sough of the village of Bokkapuram and that a French lady was attacked and killed in Bokkapuram. Therefore, on a factual analysis of the materials placed on record, we are unable to appreciate this stand taken on the part of the private land owners and hence this argument advanced on their part is rejected.

48. A fancy argument has been advanced on the part of the private land owners that with a view to create an ' artificial corridor ' , their lands are sought to be acquired, which is illegal. There is no dispute that the elephant requires large space for movement, without any obstruction and it is the burden of the Government to see that there is no man animal conflict in the area, so as to protect the interest of the protected animal and also the human habitation. When it has been established that the elephants needed space without any man made obstructions and that the area is famous for its elephant population, but requiring attention from the Government, which is even obliged under Article 51 -A(g) of the Constitution, the steps initiated on the part of the Government to preserve the area as ' elephant corridor ' cannot be branded as a step to establish ' artificial corridor ' . In fact, as has been rightly argued on the part of some of the private land owners themselves, there cannot be any such artificial corridors, since the animals cannot adjust to the same. The entire material on record would clinchingly establish that the Government has taken all necessary steps to protect the interest of not only the animals but also the human habitation in the locality and only taking into consideration the need to protect the animal and to provide the required passage for them, the area wherein the animals are already moving, is only sought to be declared as the elephant corridor and no new area has been created or formed for the animals, so as to say that an ' artificial corridor ' is being created by the Government. Therefore, this argument advanced on the part of the private land owners cannot be accepted.

49. It is the common knowledge of everyone that the greatest threat that is being faced by many species is the widespread destruction of habitat and hunting. Habitat destruction can force the wildlife extinction. By protecting habitat, entire communities of animals can be protected together and when communities are kept intact, less conservation intervention is required to ensure species survival. The species is targeted by poachers who hunt the elephants for their valuable ivory tusks. Therefore, parks, reserves and other protected lands are too often considered as the only habitats left untouched by habitat destruction. By identifying and nurturing such elephant corridors, deadly confrontations between the elephants and the human being could be avoided, besides protecting the welfare of the animals and to avoid threat to the wildlife in the area by avoiding poaching, most particularly commercial poaching.

50. From the materials placed on record, it is seen that number of Holiday resorts have sprung up in the area without proper approval and in total violation of the provisions of the Tamil Nadu Preservation of Private Forest Act, 1949. These Holiday Resorts are carrying on commercial activities in violation of the Tamil Nadu Preservation of Private Forest Act, 1949; , 1882; , 1980; Wildlife Protection Act, 1972 etc. It is also seen that because of the location of these Holiday Resorts, large number of tourists along with vehicles are moving frequently in the resort areas, which led to man-animal conflict in the area. It has even been brought to our knowledge by the learned Advocate General arguing on behalf of the State Government that these resorts have originally obtained permission for construction of dwelling houses and therefore, constructed resorts, without obtaining permission from the concerned authorities, which is illegal. Therefore, it is clear that when the very inception of the resorts is by illegal means, they cannot be permitted to take shelter under the ground that they cannot be denied the right to practice any profession ensured under Article 19 (g) of the Constitution.

51. The conclusions of our above discussions are:

(a) The subject ' forests ' and ' protection of wild animals and birds ' are in the List-III (concurrent list) of the Constitution and it is also the fundamental duty of every citizen of India under Article 51 -A(g) of the Constitution to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. The Government of India has made it clear before us, by way of an affidavit that at least the corridors identified in the book ' RIGHT OF PASSAGE - ELEPHANT CORRIDORS OF INDIA ' published by Wildlife Trust of India, which was taken into account while drawing the present proposed elephant corridor, needs to be notified, but it did not restrict the State Government to notify the actual elephant corridors. The State Government is fully empowered to notify the elephant corridor as a management strategy and is also authorized by the Project Elephant of Central Government since there is no impediment in Wild Life Protect, 1972, in declaring the elephant corridor by the State Government. Therefore, the action initiated by the State Government to identify the elephant corridor cannot be found fault with since it has only acted towards implementing its obligation created under Article 51 -A(g) of the Constitution.

(b) This Courts, while exercising its extraordinary jurisdiction under Article 226 of the Constitution, after hearing the parties and taking into consideration various factors, has ordered formation of an Expert Committee, by the order dated 3.12.2009, to go into various aspects of the case and the said Committee has also submitted its report. When the said order of this Court dated 3.12.2009 was challenged before the Honourable Apex Court in C.C. Nos. 6342-6348 of 2010, the same was not interfered with by the Honourable Apex Court. But, on the other hand, the petitioner was given a liberty ' to approach the Committee ' . Further, no ill motives could be attributed to the said Committee which has travelled extensively and arrived at its logical conclusions after the well established process of deliberations and consultations and after taking into consideration the various literature available on the subject. Therefore, the challenge made to the formation of the Committee and the report filed by the said Committee cannot be found fault with as though the formation of the Committee by this Court is nothing but intruding into the powers of the State and National Boards formed under the Wild Life (Protection) Act.

(c) Further more, though Section 5 (c) of the Wild Life (Protection) Act states about the functions of the National Board and Section 8 states about the duties of the State Board, the notification of the elephant corridor did not intervene or violate the functions and duties of these Boards and in fact, by this act, the State Government has fulfilled its obligations created under Article 51 -A(g) of the Constitution, in which we are unable to find any illegality.

(d) G.O. Ms. No. 125, dated 31.8.2010, has been issued by the State Government after a detailed study of the committee ' s report and after duly considering the various objections raised by the parties before the Committee and under the scheme of this G.O., the State Government has better protected the interests of the tribal and traditional dwellers.

(e) All the members of the Committee were forestry and wildlife professions, and we are informed that they had carriers in forestry management for 25 to 35 years, besides having personal experience of managing these areas at one point of time or other and had thorough professional knowledge and expertise on the movement of the elephants in this area. The data relating to the movement of elephant over a considerable period which were already available in the form of literature and notifications, research study reports by various research scholars, scientists and agencies were all collected, examined and discussed in detail by the Committee and hence, it cannot be said that in such a short span of time, no material could have been collected by the Committee.

(f) State is the Guardian of the interests of not only the human beings but also the wildlife, under the sacred document/the . Under the scheme of things proposed in G.O. Ms. No. 125, dated 31.8.2010, the considered opinion of this Court, the Government has consciously applied its mind to the interests of various parties and has come out with a more practicable and workable solutions. On a complete analysis of the entire materials placed on record and upon hearing the parties at length, we are unable to find any illegality or irregularity in the action of the State Government in notifying the elephant corridor.

(g) On a perusal of voluminous materials placed on record, it is clear that on an earlier occasion, two elephants were caught in Hassan (Karnataka) radio collared and released in Bandipur, which found their way to the Sigur Plateau and used all areas including the South of the village of Bokkapuram and that a French lady was attacked and killed in Bokkapuram. Therefore, on a factual analysis of the materials placed on record, we are unable to appreciate the stand taken on the part of the private land owners that never there was any movement of elephants in South of Bokkapuram as the village of Bokkapuram is abutting the steep lopes of the Nilgiris and therefore, the inclusion of this area also in the elephant corridor is illegal. Therefore, this argument advanced on the part of the private land owners is rejected.

(h) The argument advanced on the part of some of the private land owners that the elephants are not coming into their areas also cannot be accepted in view of the established fact that the movement of the elephants in the area was restricted because of the developmental activities of the illegally raised resorts and some of the greedy private land owners. It is also on record that each private holding are bounded by solar electric fencing, (which was subsequently restricted because of the intervention of this Court by way of interim orders in these matters) virtually

cutting across the elephant corridor and thus, the people are developing this area for pleasure of individuals at the cost of elephant and wildlife and we are confident that the proposed elephant corridor would better protect the elephants, further avoiding man animal conflicts.

For all the above reasons and discussions, W.P. Nos. 10098 of 2008, 2762 of 2009 and 2839 of 2009 are disposed of. All other writ petitions and review applications are dismissed. Impleadment petitions filed by some of the parties, to implead them as party respondents to these writ petitions are allowed, since they are also heard in these matters, being the interested parties and whose rights are also involved in these matters. For the same reasons, Rev. A.S.R. 27427 of 2010 is closed. Other connected miscellaneous petitions are closed.

The resort owners and other private land owners are directed to vacate and hand over vacant possession of the lands falling within the notified ' elephant corridor ' to the District Collector, Nilgiris within three months from today. In the meanwhile, the Government of Tamil Nadu is permitted to go on with the implementation of the project as has been notified in G.O. Ms. No. 125, dated 31.8.2010, in the best interest of the wildlife, particularly elephants so as to notify and improve the elephant corridor. With regard to the forest dwellers, whose interests are protected under the provisions of Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the State Government is directed to strictly adhere to and comply with the provisions of this Act while dealing with the forest dwellers, who fall within the ambit of this Act and in any forest dweller is evicted from and out of the identified elephant corridor, they be provided with the best alternate and suitable accommodation. For the forest dwellers, who deny such alternate and suitable accommodation may be provided with the compensation, as per the procedure contemplated under law. While dealing with the forest dwellers, the State Government is directed to strictly adhere to the various orders passed by this Court in these manners; the terms of G.O. Ms. No. 125, dated 31.8.2010 and the assertions made by them before this Court, as has been narrated by us in the preceding paragraphs.