

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 10th JANUARY, 2022

**DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

WP(PIL) No.04 of 2020

In Re : Recent Felling of Trees in Gangtok

Appearance

Mr. Jorgay Namka, Advocate as Amicus Curiae.

Ms. Yeshi Wangmo Rinchhen, Government Advocate for the State-Respondent No.1 (The State of Sikkim through the Chief Secretary).

Ms. Yeshi Wangmo Rinchhen, Government Advocate with Ms. Rita Sharma, Advocate for State-Respondent No.2 (The Forest, Environment and Wildlife Management Department, Government of Sikkim).

Mr. Karma Thinlay, Central Government Counsel for Respondent No.3 (The Union of India through Ministry of Road, Transport and Highways).

Mr. Karma Thinlay, Central Government Counsel for Respondents No.4 (The National Highways & Infrastructure Development Corporation Limited).

Mr. Karma Thinlay, Central Government Counsel for Respondents No.5 (The Ministry of Environment, Forest and Climate Change).

Ms. Yeshi Wangmo Rinchhen, Government Advocate for State-Respondent No.6 (The Urban Development and Housing Department, Government of Sikkim).

Dr. (Ms.) Doma T. Bhutia, Advocate for Respondent No.7 (Gangtok Smart City Development Limited).

J U D G M E N T

Meenakshi Madan Rai, J.

"Trees are Poems that the Earth writes upon the Sky"

- Kahlil Gibran

1. The genesis of this Writ Petition (PIL) lies in a letter petition dated 08-06-2020. The Petitioner, Kailash Pradhan, an

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Architect from Sikkim, being deeply troubled by the callous way that the trees in the city were being felled, averred that besides providing clean air, stabilising climate, binding soil and supporting other forms of biodiversity, trees are an intangible part of the collective memories of the residents, and give meaning to everyday urban existence. That, he was aware that the trees are required to be cleared for essential human activity and that the felled trees could not be resurrected, however, the Government could be made to acknowledge that trees are important and ought to be valued and saved. That, felling should be only for a good purpose after rendering serious consideration. Besides, the general public were not made aware of a plan of widening the National Highway for which the trees were being felled. That, the merits of a plan that warranted felling so many trees required questioning. That, the Government had justified their action by stating that for every felled tree 10 (ten) trees would be planted in another location, but for city dwellers the trees in the city cannot be compared to those in a forest. Hence, the prayer that this Court recognise the gravity of what is at stake and to do what is best for Gangtok and its citizens.

2. Besides the Respondent No.1 (The State of Sikkim through the Chief Secretary); Respondent No.2 (The Forest, Environment and Wildlife Management Department, Government of Sikkim); Respondent No.3 (The Union of India through Ministry of Road, Transport and Highways) and Respondent No.4 (National Highways and Infrastructure Development Corporation Limited); the Ministry of Environment, Forest and Climate Change, was arrayed as Respondent No.5 vide Order dated 23-06-2020. On the

submissions of Learned Advocate General, the Urban Development and Housing Department was impleaded as Respondent No.6, while on the submissions of the Learned Amicus Curiae, the Gangtok Smart City Development Limited was impleaded as Respondent No.7 vide Order dated 29-06-2020.

3. Learned Amicus Curiae submitted that after interactions with the Petitioner, retired Forest Officials, Architects of the town and other local persons certain suggestions were put forth which were brought to the notice of the Court. That, the Respondent No.2 was duty bound to get clearance for the felling of trees from the Central Government which the concerned Officers deliberately bypassed as no clearance would have been granted by the Central Government. That, the Respondent No.2 is to look into the interest and to protect the indiscriminate felling of trees which are young and healthy despite adverse public opinion. Reference was made by the Learned Amicus Curiae to the Royal Parks, a charity created in London, United Kingdom, to support and manage 5000 acres of Royal Park land across London. Reference was also made to efforts worldwide and pledges by different countries to plant trees. It was urged that trees have to be saved and the protection of the environment be given priority.

4. Learned Counsel for the Respondent No.2 while attempting to convince this Court that all relevant Rules had been complied with by the Department, referred to the Report dated 27-06-2020 and submitted that on receipt of an application dated 19-03-2019 from the Nodal Officer of the Respondent No.7 under Rule 4 of the Sikkim Private and Other Non-Forest Lands Tree Felling Rules, 2006 (for short, the "Rules of 2006"), requesting felling of

trees to improve the 9 (nine) Junctions in line with the Gangtok Smart City proposal, i.e., (a) Zero Point Junction; (b) Development Area Junction; (c) High Court Junction; (d) Hospital Dara Junction; (e) Ganju Lama Dwar Junction; (f) Smoke Test Junction; (g) Amdo Golai Junction; (h) Sikkim Jewels Junction; and (i) CRH (Manipal) Junction, the Joint Director, East Territorial Division of the Respondent No.2, on 05-09-2019, in terms of the process provided under the Rules of 2006, directed the Range Officer (T), Gangtok Territorial Range, to coordinate with the Nodal Officer of the Respondent No.7. The Range Officer submitted a Report dated 15-10-2019 after site verification of three Junctions, i.e., Zero Point Junction, Development Area Junction (I, II and III) and High Court Junction, identifying 121 (one hundred and twenty one) numbers of trees of different species and BHG, viz., 64 (sixty four) number of poles (trees with smaller girth and less height) and 147 (one hundred and forty seven) number of plants for removal for the said three Junctions in due consideration of Rules 4, 5, 6, 7 and 8 of the Rules of 2006. That, on this Report the Joint Director of the Respondent No.2 vide letter dated 22-10-2019 prepared a Compensatory Afforestation Management Plan, amounting to Rs.4,70,879/- (Rupees four lakhs, seventy thousand, eight hundred and seventy nine) only, under the Rules of 2006 and sent it to the Conservator of Forest. On 13-12-2019, the proposal for felling of 121 (one hundred and twenty one) numbers of trees, removal of 64 (sixty four) number of poles and 147 (one hundred and forty seven) numbers of plants, was approved by the concerned Minister. Following this approval, the felling of the trees and removal of poles and plants were ordered by the Respondent

No.2 on receipt of payment of Rs.4,70,879/- (Rupees four lakhs, seventy thousand, eight hundred and seventy nine) only, from the Respondent No.7, on 20-01-2020, on which day the trees identified were also hammer marked. Auction Notice was issued on the same date for 121 (one hundred and twenty one) trees and 64 (sixty four) poles with the offset price of Rs.7,66,183/- (Rupees seven lakhs, sixty six thousand, one hundred and eighty three) only, and one K. B. Gurung who offered the highest bid of Rs.7,67,900/- (Rupees seven lakhs, sixty seven thousand and nine hundred) only, was handed over the trees and poles. As per the Compensatory Afforestation Plan the Respondent No.7 will have to plant 1210 (one thousand and ten) tree saplings at locations identified by the Respondent No.2. The attention of this Court was invited to the Report dated 27-06-2020, the Smart Cities Mission Statement & Guidelines and the communication and Rules referred to hereinabove along with approval orders of felling of trees, bid documents, etc. Learned Counsel urged that there had been active application of mind by the Respondent No.2 to ensure that the barest minimum trees were felled and the Principal Secretary-cum-PCCF in his Note pointed out that the felling had to be minimized.

5. It was next contended that in another Report dated 15-07-2020 of the Respondent No.2 that the 2 (two) Junctions, i.e., Development Area Junction and the High Court Junction, were, vide Notification dated 07-11-1985, declared notified Green Belt Areas within the Gangtok town. Vide Notification dated 29-01-2018 (Denotification Notification) the majority of the area of the three Junctions, i.e., Zero Point Junction, High Court Junction and Development Area Junction, were denotified and excluded from the

Green Belt Area. The Denotification process was carried out and conducted by the Respondent No.6. That, while the Notification of Green Belt is a matter of policy in given circumstances it is possible for the Government to decide Denotification as well. That, the Hon'ble Supreme Court in ***T. N. Godavarman Thirumulpad vs. Union of India and Others***¹ has held that the term "forest land" occurring in Section 2 of the Forest (Conservation) Act, 1980 (which does not contain any definition of the term "forest land") will not only include (a) 'Forest' as understood in the dictionary sense; but also (b) any area recorded as forest in the Government record irrespective of ownership. That, in light of this pronouncement, a few acres around a traffic junction would not qualify as a 'Forest' nor can it be treated or equated to 'Forest' or "forest land". It was further urged that most of the trees to be removed were *Cryptomeria japonica* (Dhupi) and *Alnus nepalensis* (Uttis). That, the 'Dhupi' is known to suppress indigenous undergrowth, adversely affecting biodiversity, leading to increased surface runoff and soil erosion. It was also clarified that the Rules do not provide for any process or procedure to be followed for Auction of the trees felled under the rules and the Department has followed precedents and issued Notice for public Auction. In the instant matter, due to the non-availability of Experts and machineries for felling of trees, the trees were disposed of through open Auction in its standing form and the felling was carried out by the successful bidder. That, after the civil work is completed in the project sites of the Smart City at three Junctions identified, herbs and shrubs of aesthetic importance will be planted in the first few rows from the

¹ (1997) 2 SCC 267

road as avenue plantation to prevent threat to life and moving vehicles. Small to medium size trees with high air Pollution Tolerance Index (APTI), fast growing, high oxygen releasing and high dust accumulating species will be planted around the Project affected area. The work would be executed by the East Territorial Division of the Respondent No.2, as per approved plan, hence the stay ordered by this Court vide Orders dated 29-06-2020 and 17-07-2020 be vacated.

6. Learned Counsel for the Respondent No.7 while referring to its Report dated 15-07-2020 sought to explain the aims and objectives of the Smart City Mission. That, feedback was sought from the various stakeholders for Gangtok Smart City proposal by holding consultative meetings with elected representatives and three rounds of consultation were done in the Area Based Development (ABD) wherein various aspects were explained to citizens in a simplified manner to enable them to understand the concepts. Their opinions were sought in the consultative process. That, the major issues brought out by citizens after three consultative meetings through direct or indirect participation pertained to water supply, street lights, inadequate road infrastructure, lack of public transport, traffic congestion, indifference to mobility of differently-abled person, lack of footpaths and pedestrian connection. These issues are sought to be addressed by the Mission Document of Smart City Gangtok. The felling of trees at the Zero Point Junction, Development Area Junction and High Court Junction fall in the allotment of the proposed widening of the road and shifting of the footpath. Thereafter, necessary steps have been taken for felling of the trees

in tandem with the Respondent No.2. That, the project has considered the aspect of sustainable development and the Detailed Project Report has been prepared by the experts based on sustainable development and larger public interest without compromising on environmental issues. Learned Counsel has relied ***Narmada Bachao Andolan vs. Union of India and Others***²; ***Balco Employees' Union (Regd.) vs. Union of India and Others***³ and ***Research Foundation for Science Technology and Natural Resource Policy vs. Union of India and Others***⁴, in support of her submissions.

7. Learned Counsel for the Respondent No.6 while pointing out to its Report dated 18-08-2020, by and large reiterated the arguments advanced by the Learned Counsel of the Respondent No.2 and Respondent No.7 and had no specific independent point to emphasis.

8. Learned Counsel for the Respondent No.5 for his part referred to Section 2 of the Forest (Conservation) Act, 1980 and the ratio of the Supreme Court in ***T. N. Godavarman Thirumulpad (supra)***. That, the Supreme Court in ***Samatha vs. State of A.P. and Others***⁵ had observed that a large wooded area having a thick growth of trees and plants, the trees in such an area, resembling a large wooded area, especially in density, was a forest. That, the areas where the trees were felled and are to be felled, considering the density of trees could well be considered forest areas. That, the Government of Sikkim vide its letter dated 15-07-2020 informed the Respondent No.5 that no permission was sought for felling of trees from them as the status of land where the trees are felled, as

² (2000) 10 SCC 664

³ (2002) 2 SCC 333

⁴ (2007) 15 SCC 193

⁵ (1997) 8 SCC 191

per cadastral records is a "Government land" and not a "Forest land". That, Article 48A of the Constitution of India however mandates that it is the duty of the State to protect and improve the environment and safeguard forest and wildlife which the State Government ought to have given due consideration. That, the State Government is to comply with the doctrine of sustainable development to maintain ecological balance as held by the Hon'ble Supreme Court in **Indian Council for Enviro-Legal Action vs. Union of India and Others**⁶. Learned Counsel also drew strength from the ratiocinations in **M. C. Mehta vs. Union of India**⁷; **N. D. Jayal and Another vs. Union of India and Others**⁸; **State of NCT of Delhi and Another vs. Sanjeev alias Bitto**⁹ and **Lafarge Umiam Mining Private Limited vs. Union of India and Others**¹⁰.

9. On 13-11-2020, Respondents No.1, 2 and 6 filed written submissions on behalf of the Learned Advocate General to bring on record certain materials that would be essential to contextualise the present issues and its adjudication.

10. An additional Report dated 14-09-2021 was filed by the Respondents No.2 and 6 jointly placing on record certain pages which were missing in the earlier Reports.

11. On 22-09-2021 another Report was placed by the Respondent No.7 to queries raised by this Court, vide its Order dated 15-09-2021.

⁶ (1996) 5 SCC 281

⁷ (1996) 4 SCC 351

⁸ (2004) 9 SCC 362

⁹ (2005) 5 SCC 181

¹⁰ (2011) 7 SCC 338

12. On 25-10-2021, the Respondent No.7 filed a Joint Inspection Report carried out with the Respondent No.2 in compliance to the Order of this Court dated 24-09-2021.

13. On 17-11-2021 a Report on behalf of the Respondents No.1, 2 and 6 was again filed informing that with regard to the remaining 6 (six) Junctions that were identified for extension, the Respondent No.2 has received fresh applications from the Respondent No.7, dated 18-10-2021, for felling of trees in the remaining 6 (six) Junctions which also includes the Development Area Junction. That, fresh trees proposed to be felled in these Junctions are independent of the previously mentioned 121 (one hundred and twenty one) trees. That, the applications have been filed as per the Rules of 2006 and hence, the total number of trees that are proposed to be felled have now added up to 163 (one hundred and sixty three). That, the applications are under consideration of Respondent No.2 and the process under law will be scrupulously followed after a decision is taken.

14. Learned Counsel for the parties were heard at length on 06-12-2021 and 07-12-2021. The Learned Advocate General who was representing the Respondents No.1, 2 and 6 remained absent and the Learned Government Advocate made submissions in his stead. All the Reports filed by the parties have been duly perused by us and due consideration afforded to the verbal submissions.

15. The core question for consideration is whether the administrative decisions were tainted by illegality, irrationality or procedural impropriety.

16(i). Before dealing with the merits of the matter, it is apposite to cite a Poem which poignantly comes to mind, *On Killing a Tree*, by Gieve Patel. The poem is relevantly reproduced hereinbelow;

“On Killing a Tree

It takes much time to kill a tree,
Not a simple jab of the knife
Will do it. It has grown
Slowly consuming the earth,
Rising out of it, feeding
Upon its crust, absorbing
Years of sunlight, air, water,
And out of its leprous hide
Sprouting leaves.

So hack and chop
But this alone won't do it.
Not so much pain will do it.
The bleeding bark will heal
And from close to the ground
Will rise curled green twigs,
Miniature boughs
Which if unchecked will expand again
To former size

No,
The root is to be pulled out —
Out of the anchoring earth;
It is to be roped, tied,
And pulled out — snapped out
Or pulled out entirely,
Out from the earth-cave,
And the strength of the tree exposed
The source, white and wet,
The most sensitive, hidden
For years inside the earth.

Then the matter
Of scorching and choking
In sun and air,
Browning, hardening,
Twisting, withering,
And then it is done.

GIEVE PATEL”

(ii) The theme of the poem is a confrontation between two different attitudes, saving and cutting a tree. It is a tirade against the practice of felling a tree. The poem describes the growth of a tree, the years of consumption of the earth, absorption of sunlight, air, water and nutrients from the soil to grow into a mature tree

and the pain on its destruction. The poem makes an implied plea to maintain an ecological balance. The poem is extracted herein merely to sensitize us into the effort that goes into growing one tree. We may also look at a poem by Maya Angelou "When Great Trees Fall" which is rich in its ecological perspective, as also "Planting a Tree" by Joyce Kilmer which praises the planter, these are not being extracted herein to prevent prolixity. It is the visionary planters and foresters of the erstwhile Kingdom of Sikkim who had planted these trees which have been ruthlessly felled, these trees had stoically assisted the ecological balance thus far and stood witness to history unfolding in this State. It is indeed the bounden duty of every citizen to be sensitised about such matters and to ensure that each of us play an active role in ensuring the protection of a tree and to fell it only when no other option remains. Every effort should be made to construct alongside the tree or around it and to prioritise saving it.

17. The specific argument of the Respondent No.2 has been that the areas where the trees are felled is not 'Forest' as defined by the Supreme Court in *T. N. Godavarman Thirumulpad* (*supra*) indeed this may be true, but due attention must be paid to the fact that deforestation is an environmental issue and the continuous felling of trees illicit or otherwise has impacted the environment worldwide in terms of water cycle, soil quality, biodiversity and other environmental issues. The value of a forest, nay, a single tree and its utility cannot be over-emphasized.

18(i). Coming to the case at hand, specific procedure has been laid down for felling of trees under the Rules of 2006 while in the Sikkim Forests, Water Courses and Road Reserve Preservation

and Protection Act, 1988, 'forest' and "forest land" are defined under Sections 2(b) and 2(c) respectively, which are as follows;

- "(b) "forest" means an extensive tract of land covered with trees and undergrowth, sometime intermingled with pastures, alpine scrubs;
- (c) "forest land" means the land shown as forest land in the records of right including areas under perpetual snow, alpine scrubs or alpine pasture or the land declared as forest land by the Government, by notification;"

(ii) The areas where the trees were felled or proposed to be felled are not an exclusive tract of "forest land" nor reflected as 'forest' in the Revenue Records or notified by the Government as such. It also does not fall within the specifics of any of the criteria laid down in the definition of the Sikkim Forests, Water Courses and Road Reserve Preservation and Protection Act, 1988. Hence, we are satisfied that the areas in which the trees have already been felled or are proposed to be felled do not fall under the definition of 'Forest'. Nevertheless, it must be borne in mind that such a circumstance does not license anyone to carry out haphazard deforestation. That having been said, the Rules of 2006 is to be invoked whenever trees are felled in non-forest land. The documents on record establish that Rules 4, 5, 6, 7 and 8 of the 2006 Rules although not complied with to the letter, have been adequately complied with by the Respondent No.2. Annexure R-2 (collectively), a letter addressed to the Respondent No.2 by the Respondent No.7, filed by the Respondent No.2 along with the Affidavit dated 27-06-2020, also indicates satisfactory compliance.

19. Admittedly, the Rules of 2006 do not provide for any process or procedure for Auction of the trees felled. However,

precedence for such Auction was followed by the Respondent No.2 inasmuch as it is stated that–

- A Forest Officer not below the rank of Range Officer determines the offset value of the standing trees as per notified volume table and the notified rate of timber/firewood.
- After determination of the offset price, the Forest Officer issues notice for open public Auction and publishes it in the notice board of the Range Office, Division Office or in the Office of the Assistant Conservator of Forest or any other place as he deems fit mentioning the date and time of Auction and details of crop.
- People interested in taking part in the Auction may inspect standing trees and ensure their satisfaction.
- Thereafter, open bidding is carried out on the day and time as per Auction Notice. At least 3 (three) bidders must be present for the Auction to be conducted. If 3 (three) bidders do not turn up, the Auction is cancelled and a new date for the Auction is published.
- If there are 3 (three) or more bidders, the bidding is carried out for different rounds and the highest bidder is considered.
- All the bidders shall sign the bid paper along with the Auction conducting Officer (generally Range Officer).
- The highest bidder shall deposit the bid amount in the dedicated head on accounts of the Government and take possession of the trees.
- Apart from the bid amount, the bidder will have to deposit 18% GST.
- The felling cost or transportation cost shall be entirely borne by the bidder.

20. Although the documents on record indicate issuance of Notice of Auction and steps taken pursuant thereto in terms of what has been extracted hereinabove, however, we are dissatisfied with the issuance of the Auction Notice being put up only in the Notice Board of the Respondent No.2. Forest wealth belongs not only to the Department and the few persons who may have to access to such Notice, on them visiting the Forest Department, but should be widely advertised to ensure that the best value is obtained for the felled tree(s) and not reserved for a favoured few.

21. That having been said, from a perusal of the documents relied on by the Respondent No.7, we are satisfied that the necessary consultative process was carried out by the Government with all stakeholders including the public at large.

22. It is relevant to reiterate that development must go hand in hand with the preservation of the forests. In other words, there must be sustainable development. Vide Order of this Court dated 29-06-2020, we have already reflected that we deem it imperative to record that sustainable development is development that meets the needs of the present generation without compromising on the ability of future generations to meet their own needs (see Brundtland Report). It also encompasses social and economic progress along with climate protection. It may relevantly be noticed that the Learned Central Government Counsel while placing reliance on the decisions of the Hon'ble Supreme Court in **T. N. Godavarman Thirumulkpad** (*supra*); **Samatha** (*supra*), **Lafarge Umiam Mining Private Limited** (*supra*), had submitted that in view of the definition of 'Forest' given in the ratiocinations *supra* and considering that the areas where the trees were felled fall

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within the ambit of such definition, the State Government had necessarily to obtain clearance from the Ministry of Environment, Forest and Climate Change, Government of India, in terms of Section 2 of the Forest (Conservation) Act, 1980. That, this was bypassed by the State Government. In the first instance, it is worth-recording that the Respondent No.5 chose to turn a Nelson's eye on the felling of the trees when it was going on and subsequently woke up from its slumber only on being impleaded as a party vide Order of this Court dated 23-06-2020. That apart, the submissions hold no water in view of the discussions pertaining to Forest as already elucidated hereinabove.

23. Be that as it may, we may relevantly notice that the Supreme Court while elucidating the concept of sustainable development which all States should endeavour to adhere to as an integral part of 'life' under Article 21 of the Constitution of India, in *N. D. Jayal* (*supra*) observed as follows;

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

23.

24.

25. Therefore, the adherence to sustainable development principle is a *sine qua non* for the

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maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21.

....."

[emphasis supplied]

24. Compensatory Plantation is the next point that needs to be addressed. On this count, it is necessary to refer to the letter dated 12-10-2021 addressed to the Divisional Forest Officer, Territorial (East) of the Respondent No.2, by the Chief Executive Officer of the Respondent No.7 (Annexure R-1, Page 1170, Paper Book IV) wherein the Respondent No.2 has been informed that 76 (seventy six) number of trees and 34 (thirty four) numbers of Poles have already been felled although request had been made for felling of 121 (one hundred and twenty one) number of trees and 64 (sixty four) numbers of poles at Zero Point Junction, Development Area Junction and High Court Junction. That, there is no further requirement for felling of trees at these Junctions as the improvement of the Junctions were re-designed so as to minimize the felling of trees during the construction phase. We cannot but applaud this step taken by the Respondent No.7. At the same time, it is worth remarking that we are appalled by the proposal of Compensatory Plantation placed before us in the Affidavit dated 15-07-2020 of the Respondent No.2 wherein a proposal is placed for replacing the trees felled with bushes and shrubs. This does not tantamount to Compensatory Plantation but is eyewash. The Respondent No.2 necessarily ought to replace the felled trees by planting trees of equivalent value and other relevant ecological factors. Surely a felled tree cannot be replaced by shrubs or bushes, it has to be replaced by a tree.

25. That apart, this Court is indeed conscious and aware of the scope of judicial review without being reminded by the Respondent No.2 and Respondent No.7, in their averments of the ambit of judicial review. At the same time, it is worth-reminding all concerned that the Court has a duty to see that in the undertaking of a policy decision no law is violated and the fundamental rights of the public are not transgressed upon except to the extent permissible under the Constitution of India. This obviously is the only area in which this Court is examining the instant Writ Petition.

26. From the discussions hereinabove as already noticed there is no specific written policy for Auction of felled trees which ought to include Notice to the general public published in a daily newspaper, both in English and in the Nepali vernacular, for at least 3 (three) consecutive days. Let the Forest Department, Respondent No.2,

- (i) immediately develop policy guidelines which shall govern decision making with respect to the Auction of felled trees. This shall not be later than 3 (three) months from today.
- (ii) Eco-sensitive areas shall be given due consideration when felling of trees are unavoidable, imperative and are proposed.
- (iii) No tree or pole shall be unnecessarily felled for the personal enrichment of any person.
- (iv) Need based felling of identified trees in the 6 (six) remaining Junctions under the Gangtok Smart City Project may be carried out subject to strict and meticulous compliance of the relevant Rules. Due application of mind by the concerned Officers indicating

compliance to the letter of the Rules by the concerned Officers must be reflected in their notes and orders.

- (v) Once the trees have been felled in the 9 (nine) Junctions, so far as safety allows there shall be avenue plantation of trees. In the event of impossibility of tree plantation in any area, keeping in mind the geographical terrain, then shrubs are necessarily to be planted.
- (vi) The construction of the footpaths shall be made around the trees wherever possible duly bearing in mind the decision of the Hon'ble Supreme Court in **Rajive Raturi vs. Union of India and Others**¹¹ and taking into consideration the movement of physically challenged persons in Wheelchairs and of the visually challenged, on the footpaths.
- (vii) Afforestation in these areas shall be carried out as undertaken immediately on completion of the civil works in the Gangtok Smart City Project, viz., in Zero Point Junction, Development Area Junction and High Court Junction.
- (viii) The Respondent No.2 in its Report dated 22-06-2020 has stated that a plan with detailed estimates for Compensatory Afforestation has been prepared and the location for Compensatory Plantation identified. The locations have not been disclosed. The Respondent No.2 shall disclose the location to the Petitioner and the Learned Amicus Curiae within a month from today and carry out Compensatory Plantation within a period of 1 (one) year from today.
- (ix) Wherever trees have been felled Compensatory Plantation shall be done by planting of trees, viz.; Rani Champ (*Michelia excelsa*), Pipli (*Symingtonia populnea*), Buk (*Quercus lamellosa*), Badrasay (*Elaeocarpus sikkimensis*), Tooni (*Toona ciliata*), Pumsi

¹¹ (2018) 2 SCC 413

(Machilus edulis), Arupatay (Prunus nepalensis), Kawlo (Machilus spp.) and Katus (Castonopsis spp.) [these trees are reflected in the Report of the Respondent No.2].

- (x) A Committee comprising of 3 (three) senior department Officers of the rank of Conservator of Forest and above shall overlook the Project of Compensatory Afforestation. The composition of the Committee shall be informed to the Petitioner and the Learned Amicus Curiae within a month from today. The Committee shall ensure that every tree felled is compensated by 10 (ten) saplings as undertaken by the Respondent No.2.
- (xi) We make it clear that should the Compensatory re-plantation not be completed within the period specified above, the Petitioner is at liberty to approach this Court.
- (xii) Strict compliance be made by all the Respondents to the observations of the Supreme Court in **M. C. Mehta vs. Union of India and Others**¹², in that, the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance.

27. The stay ordered by this Court vide Order dated 29-06-2020 wherein the State Government was directed not to fell any further trees whatsoever, either in Zero Point Junction,

¹² (2002) 4 SCC 356

Development Area Junction or High Court Junction or in the remaining 6 (six) venues as listed in Report dated 27-06-2020 of the Respondent No.2 and also Order dated 17-07-2020 by inserting the words "till further orders of this Court", stand vacated with the hope and trust that all concerned Authorities shall stay their hands from unnecessary felling of trees under the Smart City Project.

28. With these directions, the Writ Petition is disposed of. Interim Application(s), if any, also stand disposed of.

(Bhaskar Raj Pradhan)
Judge
10-01-2022

(Meenakshi Madan Rai)
Judge
10-01-2022

Approved for reporting : **Yes**