

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WRIT PETITION NO.15
OF 2021

1. Ganv Bhavanco Ekvott
A Society Registered under the Societies
Registration Act,
Under Registration No.85/Goa/2008,
with its address c/o Felix Furtado
H No 330, Cavorim, Chandor, Salcete, Goa
Through its President, Mr Muiguel Francisco
Felix Furtado,
Age: 64 years; Adult, Indian National,
Phone No:9822980590
Email:felixfurtado@gmail.com
PAN Card No:AACPF5122C
[REDACTED]
Annual Income:Rs.4,00,000/-

2. Mr. Claudius D'Costa
Age: 60 years, Adult, Indian National,
Resident of House No.290, Ponsabhath,
Guirdolim, Salcete, Goa-403714
Email:claudiusdcosta@rediffmail.com
Phone:9822388765
PAN Card No:ATHPD9784C
[REDACTED]
Annual Income:Retired.

3. Mr. Menino Piedade Fernandes Gomes
Age: 46 years, Adult, Indian National,
Resident of House No.309, Volly,
Cavorim, Chandor, Goa-403714
Email:none, Phone:9881884166
PAN Card No:BBDPG7957D
[REDACTED]
Annual Income:Retired.

4. Mr. Francis Coutinho,

Age: 27 years; Adult, Indian National,
Resident of House No.160/A, Culsabhatt,
Cavorim, Chandor, Goa-403714
Email:franciscoutinho721@gmail.com
Phone:9325186379
PAN Card No:BLYPC8924P

Annual Income:Rs.80,000/-

..Petitioners

Versus

1. South Western Railways
through its General Manager
having office at Rail Vikas Nigam Limited,
Block B, 5th Floor, L & L Building, 5B-12,
Near Collectorate Building (South Goa), Margao,
Goa.
2. The Village Panchayat of Guirdolim
through its Secretary
Having office at The Village Panchayat of
Guirdolim
Guirdolim, Salcete, Goa-403714.
3. The Town And Country Planning
Department,
Through the Chief Town Planner,
Having office at 2nd Floor, Dempo Towers,
Patto, Panaji, Goa-403001
4. The Goa Coastal Zone Management
Authority,
Through its Member Secretary,
Having office at 4th Floor, Dempo Towers,
Patto, Panaji, Goa-403001
5. The Collector, South Goa District,
The South Goa Collectorate, Margao,
Goa-403601.

6. The Water Resources Department,
Through its Chief Engineer,
Having office at Sinchai Bhavan,
Near Police Station, Porvorim,
Bardez, Goa-403521.

7. The Government of Goa,
Through its Chief Secretary,
Having office at The Secretariat,
Alto Porvorim, Bardez, Goa-403521

8. The General Manager,
Rail Vikas Nigam Limited,
with its office at 5th Floor, L & L Building
Near Mathany Saldanha Administrative
Complex, Margao, Salcete, Goa.

..Respondents

Ms. Maria Caroline Collasso, Advocate for the Petitioners.

**Mr. P. P. Singh with Mr. D. Bhardwaj, Advocates for the
Respondent No.1.**

**Mr. Devidas J. Pangam, Advocate General with Mr. Deep D.
Shirodkar, Additional Government Advocate for the
Respondents No.3 to 7.**

**Mr. Iftikar Agha with Ms. Valencia Fernandes, Advocates
for the Respondent No.8.**

**CORAM : DIPANKAR DATTA, CJ. &
M. S. SONAK, J.**

Dated : Dated : 3rd August, 2022

ORAL JUDGMENT: (Per DIPANKAR DATTA, CJ.)

1. We heard this public interest litigation (hereafter 'PIL', for short) for a little while on Monday and the major part of yesterday. We have heard the parties for quite some time today. Had a particular submission, which was made by Mr. Agha, learned advocate for the respondent no.8, i.e., General Manager, Railway Vikas Nigam Limited (hereafter 'GM, RVNL', for short), been heard by us yesterday, we could have disposed of the writ petition relying upon the law laid down in paragraph 7 of the decision of the Supreme Court in **Beg Raj Singh vs. State of Uttar Pradesh**, (2003) 1 SCC 726. It has been held there, *inter alia*, as follows:

"7. *** The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment. Third-party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in-between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. ***"

(emphasis ours)

However, since we have heard the parties on the merits of the contentions and an important question of law emerges for our consideration, we feel disinclined to dispose of the PIL by merely holding that by lapse of time and the intervening events between the date of commencement of this PIL and the date of this judgment, the relief claimed by the petitioners cannot and should not be granted.

2. This PIL is at the instance of a society registered under the Societies Registration Act, 1860 and three residents of Guirdolim, Chandor and Cavorim villages of Salcete taluka. The petitioners are aggrieved because the respondent no.1, i.e., South Western Railways (hereafter 'SWR', for short) and RVNL have been making large scale construction for doubling of the railway track in the Vasco-Da-Gama - Kulem section of Tinaighat - Vasco-da-Gama area of the State of Goa without obtaining requisite permissions under the Goa Panchayat Raj Act, 1994 (hereafter 'Panchayat Act', for short), the Goa Town And Country Planning Act (hereafter 'T&CP Act', for short), the Goa Irrigation Act, 1973 (hereafter 'Irrigation Act', for short), the Goa Daman & Diu Land Revenue Code, 1968 (hereafter 'Land Revenue Code, for short) and the Coastal Regulation Zone Notification, 2011 (hereafter '2011 CRZ Notification', for short) issued by the Department of

Environment, Forest And Wild Life, Ministry of Environment And Forests, Government of India in exercise of powers conferred by sub-section (1) and clause (v) of sub-section 2 of section 3 of the Environment Protection Act, 1986 (hereafter 'EP Act', for short).

3. The pleaded case in the writ petition, giving rise to this PIL, reveals that at the beginning of 2019, the villages of Guirdolim, Chandor and Cavorim for the first time came to know of a proposal to carry out double tracking of railway lines and development of Chandor railway station. The respondent no.2, i.e., Village Panchayat of Guirdolim, called upon SWR and the GM of RVNL vide letter dated 14th March, 2019 to provide details and to inform the Panchayat and the Gram Sabha regarding any proposal for double tracking of railway tracks and development of Chandor railway station. This was followed by another letter dated 8th August, 2019 of the Village Panchayat of Guirdolim whereby a request was made to the GM of RVNL to depute a person to explain the plan for double tracking of railway tracks and the development of Chandor railway station. These letters did not elicit any response either from SWR or the GM, RVNL, although construction work commenced in October 2020 notwithstanding the stiff opposition from the villagers of Guirdolim and other neighbouring villages. Towards the end of October 2020, large scale filling of low-lying,

water-logged, prime agricultural lands was started including the filling of a major rivulet running parallel to and to the north of the existing track. Despite complaints lodged by the villagers, all attempts proved abortive resulting in the Village Panchayat of Guirdolim writing to the Director, RVNL as well as the GM, RVNL on 17th December, 2020 demanding a halt of the construction of double tracking of railway line. Even then, the officers of RVNL chose not to halt the construction work. The petitioners have alleged that in the process of construction, SWR and RVNL were found to have trespassed into a church property. On protests being raised by the villagers, better sense prevailed and work was stopped by the representatives of SWR. The writ petition, thereafter, reveals several attempts made by the petitioners seeking intervention of the respondent no.4, i.e., the Principal Secretary, Goa Coastal Zone Management Authority (hereafter 'GCZMA'), the respondent no.5, i.e., the Collector, South Goa District and the respondent no.3, i.e., the Town and Country Planning Department, Government of Goa. Not only did the said respondents not take any steps against SWR and RVNL by issuing stop work orders to ensure that all mandatory permissions are first obtained and submitted to the Village Panchayat of Guirdolim for review, there was no response and on the contrary SWR and RVNL repeatedly encroached or trespassed into private properties of the residents without any permissions or

consent of the owners. The police were duly approached but the same also did not yield any result, resulting in institution of this PIL on 1st April 2021 wherein the petitioners have prayed the following substantial relief:

"(i) That this Hon'ble Court be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, or a prohibitory writ, or writ in the nature of certiorari, or an order or direction to direct Respondents No.1 and Respondent No.8 to obtain prior permissions under the Goa Panchayat Raj Act, 1994, the Goa Town & Country Planning Act, 1974, the Coastal Regulation Zone Notification, 2011, the Goa Daman & Diu Land Revenue Code, 1968 and the Goa Irrigation Act, 1973.

(ii) That this Hon'ble Court be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, or a prohibitory writ, or writ in the nature of certiorari, or an order or direction to direct Respondents No.1 and Respondent No.8 to stop all the ongoing works until all necessary permissions are obtained from Respondents No.2 to 6.

(iii) That this Hon'ble Court be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, or a prohibitory writ, or writ in the nature of certiorari, or an order of direction directing the Respondent No.1 and Respondent No.8 to first explain the scope of works and the plans and designs to the Gram Sabha of Guirdolim and Chandor-Cavorim Village Panchayats."

4. Therefore, in essence, this PIL challenges the failure/omission of SWR and RVNL to obtain prior

permission under various Central and State legislation prior to carrying out the construction of the double tracking of the Vasco-Hospet railway line through the villages of Goa as well as its refusal to inform the local authorities about the proposed works.

5. Appearing in support of the writ petition, Ms. Collasso, learned advocate contends as follows:

(i) The construction work for the doubling of the railway track is being carried out in violation of the statutory mandate to obtain prior permissions which includes the 2011 CRZ Notification, the LR Code, the Irrigation Act, the Panchayat Act and the T&CP Act;

(ii) The Supreme Court in its decision dated 9th May, 2022 in **T. N. Godavarman Thirumulkpad v/s Union of India And Ors.**, (2022) SCC OnLine SC 583, has revoked the permission granted by the Standing Committee of the National Board of Wild Life (hereafter 'NBWL', for short) under the Wildlife (Protection) Act, 1972 for the work of doubling of the railway track on the ground that the railway authorities have failed to provide any substantial basis for such requirement. In the process, the Supreme Court agreed with the report of the Central Empowered Committee (hereafter 'CEC', for short) that the double tracking is unnecessary based on the data obtained from the railway authorities themselves. The CEC had observed that 80% of the rakes are returning

empty from Karnataka to Goa, which leaves a huge unutilised capacity in the single line itself. Coal makes up over 90% of the goods traffic from Mormugao Port Trust, and that this was likely to be reduced in the future consequent to Government policy.

(iii) Section 11 of the Railways Act, 1989 (hereafter the 'Railways Act') does not explicitly provide for exemption from permissions required under other laws. The said provision merely enables the railway authorities to make or construct railway lines upon, across, under or over any lands, etc., but does not state explicitly that permissions mandated under other laws need not be obtained. In the absence of any express provisions exempting the railway authorities from obtaining permissions under other laws, the railway authorities acted illegally, arbitrarily and in a high-handed manner in proceeding to commence the work of double tracking of the railway line without obtaining requisite permissions under the other applicable laws.

(iv) Having regard to the provisions of sections 5 and 24 of the EP Act, such provisions would have effect notwithstanding anything inconsistent therewith contained in any enactment other than the EP Act and, therefore, it was obligatory for the railway authorities to obtain CRZ clearance from the GCZMA. Having not so obtained, commencement of the work is absolutely unauthorised.

(v) Since it is apparent from the decision in **T. N.**

Godavarman Thirumulkpad (supra) that the railway authorities had sought for permission under the Wildlife (Protection) Act and though the same was granted by the NBWL, which now stands revoked, the position seems to be clear that section 11 of the Railways Act does not empower the railway authorities to proceed with construction work without obtaining requisite permission under other laws. Significantly, the railway authorities not having invited the attention of the Supreme Court to section 11 of the Railways Act must be deemed to have abandoned their argument touching the *non-obstante* clause in section 11. Also, by not referring to section 11 of the Railways Act, it must be regarded as an admission by the railway authorities that such provision does not give any exemption from obtaining statutory permissions under other laws.

(vi) The railway authorities have applied for permission under the Wildlife (Protection) Act, the Forest (Conservation) Act, 1980 and the Goa Preservation of Trees Act, 1984 (hereafter 'Trees Act', for short) without contesting the applicability of these laws before the authorities or any court. The very acceptance by the railway authorities of the applicability of these laws and the mandate to obtain permissions under these laws would imply that all the laws are applicable to the railway authorities, since section 11 of the Railways Act provides no intelligible differentia for applicability of the provisions to different laws. Section 11 has not been construed by

the railway authorities to provide that it enjoys exemption from obtaining permissions under the Wildlife (Protection) Act, the Forest (Conservation) Act and the Trees Act; hence, the same interpretation ought to apply to all other laws.

(viii) The EP Act and the T&CP Act contain *non-obstante* clauses and there has been no attempt to amend such clauses to exempt the Railways Act from the ambit thereof. This also re-affirms the position that the legislative attempt behind section 11 of the Railways Act has never been to exempt the railway authorities from obtaining permissions under other laws.

(ix) There is sufficient material on record to reveal the destruction of water resources, agricultural land and coastal zones by the railway authorities. Such damage to agriculture, water bodies, drainage, etc., can be mitigated only if statutory permissions under various laws are obtained and the authorities are given a chance to apply their mind to ensure that the best methods are followed. The 2011 CRZ Notification framed under the EP Act, the T&CP Act, the LR Code, the Panchayat Act and the Irrigation Act all have objectives, among others, of protecting the environmental facets they deal with and ensuring sustainable development. As such, the rationality and judicial observations related to applicability of environmental laws are equally applicable to all these enactments.

(x) The decision of a coordinate Bench of this Court

in **Goa Foundation and Anr. vs Konkan Railway Corporation and Others**, AIR 1992 Bom 471, was sought to be distinguished by contending that the same is no longer relevant in the present context being more than 30 years old. The rapid evolution of environmental jurisprudence has rendered such decision irrelevant and obsolete. Ratio of such decision has been superseded by numerous subsequent decisions which, *inter alia*, include the decision of the Supreme Court in **Vellore Citizens Welfare Forum vs Union of India**, (1996) 5 SCC 647, the decision in **Bombay Dyeing & Manufacturing Co. Ltd. vs Bombay Environmental Action Group & Others**, (2006) 3 SCC 434, the decision in **T. N. Godavarman Thirumulpad** (supra) and the order dated 18th November, 2021 of the National Green Tribunal (hereafter 'NGT', for short) in Original Application No.141/2014 (**Saloni Singh and Anr v/s. Union of India And Others**). The decision in **Vellore Citizens Welfare Forum** (supra) enlightens as to what sustainable development is and how it is relevant in the present context where development and ecology are opposed to each other. The decision in **Bombay Dyeing & Manufacturing Co. Ltd.** (supra) holds that environmental laws must be read into all statutes. In such decision, the Supreme Court had observed that a legislation subsequent to the EP Act would also require to conform to environmental laws and, thus, it follows that section 11 of the Railways Act would be amenable to all

environmental laws. In **Saloni Singh** (supra), the NGT has declared the decision in **Goa Foundation** (supra) to be no longer valid in view of the huge changes in environmental jurisprudence in the last 30 years; hence, it is no longer open to the railway authorities to contend that section 11 of the Railways Act would not apply to environmental laws.

(xi) The decision of the Supreme Court in **Village Panchayat Calangute vs The Additional Director of Panchayat-II and Others**, (2012) 7 SCC 550, highlights the powers and functions of the institution of the Panchayats at different levels and that the primary focus of the subjects enumerated in Schedule XI to the Constitution is on social and economic development of the rural parts of the country by conferring upon the Panchayat the status of a constitutional body. The Parliament has ensured that the Panchayat would no longer perform the role of simply executing the programmes and policies evolved by the political executives of the State but by virtue of the provisions contained in Part IX of the Constitution, the Panchayats have been empowered to formulate and implement their own programmes of economic development and social justice in tune with their status as the third tier of the Government which is mandated to represent the interests of the people living within its jurisdiction. Since the permission of the Panchayat has not been obtained, any construction activity within the Panchayat area would be

in the teeth of the Panchayat Act.

(xii) The rights of the villagers protected by Article 14 and Article 21 of the Constitution are being brazenly violated by the ongoing construction work. Article 14 is attracted because the railway authorities themselves have interpreted the *non-obstante* clause in section 11 of the Railways Act as not applicable to the Wildlife (Protection) Act, the Forest (Conservation) Act and the Trees Act, yet, in strange contradiction and indefensible arbitrariness, have now been relying upon the same provisions to argue that permissions mandated by other environmental legislations are not applicable for railway works. Moreover, since Article 21 includes the right to a healthy environment, the railway authorities, as part of the Union Government, are required to ensure that the rights of the citizens to a healthy environment are not compromised for which obtaining statutory permissions under various laws is essential so that the expert authorities can carry out their duties.

6. Resting on the aforesaid contentions, Ms. Collasso prayed that the relief claimed in the public interest litigation may be granted.

7. The Government of Goa is the respondent no.7 in the writ petition. No reply affidavit has been filed by the Government. However, we have heard Mr. Pangam, learned Advocate General for Goa on the effect and

applicability of the legal provisions.

8. Mr. Pangam submits that in view of section 11 of the Railways Act, the railway authorities are not obliged to obtain any permission under the Panchayat Act, the T&CP Act, the LR Code, the Irrigation Act as well as environmental clearance from the GCZMA under the 2011 CRZ Notification. According to Mr. Pangam, there is no *non-obstante* clause in any of the aforesaid statutory provisions which is a major factor to be appreciated. Having regard to the provisions of section 11 of the Railways Act, the arguments of Ms. Collasso that permission is required to be obtained is not correct.

9. Insofar as the *non-obstante* clause in section 11 of the Railways Act is concerned, Mr. Pangam refers to the decision in **Union of India vs G.M. Kokil**, AIR 1984 SC 1022, for tracing out the purpose for which a *non-obstante* clause is used in legislation. Such *non-obstante* clause, he submits, has a pivotal position when it comes to purposes connected with a railway as defined in section 2(31) of the Railways Act. According to him, by virtue of the *non-obstante* clause in section 11, activities of the nature permitted by section 11 undertaken by a railway administration would override any other law except those mentioned in the said section. The areas which are the subject matter of the PIL are not part of a planning area and, therefore, the T&CP Act has no application. Also,

section 66 of the Panchayat Act which regulates erection of buildings cannot override the provisions of section 11 of the Railways Act since it has an overriding effect and, therefore, the railway authorities were under no obligation to seek permission of the village panchayats.

10. Heavy reliance is placed by Mr. Pangam on the coordinate Bench decisions of this Court in **Goa Foundation** (*supra*) and in **Union of India vs Municipal Corporation of Greater Mumbai**, 2017 SCC OnLine Bom 9424, as well as the Bench decision of the Calcutta High Court in **Subhas Dutta vs Union of India And Others**, 2001 SCC OnLine Cal 178, in support of the contention that the statutory authority of SWR and RVNL to lay lines being established, application of the State legislation as well as the 2011 CRZ Notification is excluded by the opening words of section 11 of the Railways Act. He submits that the Railways Act being a legislation enacted subsequent to the EP Act, section 11 would override any prior legislation, including the EP Act, if such prior legislation contains any provision which is either inconsistent with or repugnant to the Railways Act. Also, the Panchayat Act would have no application insofar as laying of railway lines by the railway authorities having regard to the wide and expansive terms of the provisions in section 11.

11. Mr. Pangam further contends that the Legislature is

supposed to know the existing provisions of law when it enacts a new law, which can either be a primary legislation or a subordinate legislation. The Railways Act was enacted at a point of time when the EP Act was in force, yet, in its wisdom the Legislature almost conferred unlimited power *vide* section 11 on the railway administration for the purposes of constructing or maintaining a railway. If indeed it were the legislative intent that the railway administration would be obliged to obtain environmental clearance, there is no reason as to why the Legislature would omit such an important requirement. It must, therefore, be deemed that confined only to projects undertaken by the railway authorities for construction and maintenance, the notifications issued under the EP Act, initially in 1991 and thereafter in 2011, would have no application.

12. Mr. Pangam took pains in pointing out to us that although the notifications issued under the EP Act are replete with references to ports, harbours, jetties, airports, industries, etc., there is complete silence *qua* a railway. It is his contention that when the 2011 CRZ Notification was framed, the draftsman of the notification must be presumed to be aware that there is an enactment wide enough in terms to cover all aspects of a railway and which has a *non-obstante* clause in section 11, the effect whereof is to exempt works of the nature referred to in the various clauses of section 11 and

implies that in the matter of construction and maintenance of a railway, the railway administration would be exempt from obtaining environmental clearance. It is, therefore, trite that the 2011 CRZ Notification issued under the EP Act took care not to include a requirement which could be in conflict with section 11 of the Railways Act.

13. Mr. Pangam further contends that the decisions in **Goa Foundation** (supra) and **Subhas Dutta** (supra) were holding the field when the 2011 CRZ Notification was issued. Both these decisions, after interpreting section 11 of the Railways Act, had declared that the provisions of the EP Act would not come in the way of any construction or maintenance undertaken by the railway administration and that in view of the overriding provisions of section 11, all other provisions stand superseded. Since there is no whisper that no railway related works can be commenced without obtaining environmental clearance, the position seems to admit of no doubt that the notification issued under the EP Act has no application to works of construction and maintenance carried out by the railway administration.

14. It was in this connection that our attention was drawn by Mr. Pangam to paragraph 3 of the 2011 CRZ Notification which is titled "*Prohibited activities within CRZ*". It was shown to us that none of the 14 clauses refer to any restriction on a railway. The very fact that

paragraph 3 prohibits several activities but does not prohibit any work related to a railway, according to him, the conclusion is inescapable that the 2011 CRZ Notification would have no application insofar as a railway is concerned.

15. Our attention was further drawn by Mr. Pangam to the Major Port Trusts Act, 1963 as well as the Aircraft Rules, 1937 to contend that the same does not have *non-obstante* clauses similar to the one used in section 11 of the Railways Act. This, according to him, is a clear pointer to the fact that no port or airport without the requisite clearance contemplated by the 2011 CRZ Notification could be set up/established. The complete silence in the 2011 CRZ Notification about a railway would afford ground to believe that the omission is deliberate because the field is occupied by the special provisions in section 11 of the Railways Act.

16. The order of the Supreme Court in **T. N. Godavarman Thirumulpad vs Union of India And Ors.**, (2016) 13 SCC 612 (2), was referred to next by Mr. Pangam. Paragraphs 136 to 138 of such order were read by him to give us the background why the Supreme Court was approached by the CEC, aggrieved by the grant of permission to SWR and RVNL by the Standing Committee of the NBWL. According to him, the Supreme Court has been monitoring activities proposed in forest lands. However, it is the contention of Mr. Pangam that all such

matters argued by him were not placed before the Supreme Court while it passed the order dated 9th May 2022 in **T. N. Godavarman Thirumulpad** (supra) and, therefore, such order which was passed in entirely different circumstances does not constitute a binding precedent.

17. The decision in **Union Territory of Chandigarh and Ors. vs Rajesh Kumar Basandhi and Anr.**, (2003) 11 SCC 549, was then referred to by Mr. Pangam for highlighting what the words, "*for the time being*", mean.

18. Mr. Pangam further refers to Notification bearing SO No.1533 dated 14th September, 2006 issued by the Ministry of Environment and Forests in exercise of power conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the EP Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 (hereafter 'EP Rules', for short). Such notification was issued in supersession of notification bearing S.O. No.60(E) dated 27th January 1994. While taking us through the notification dated 14th September, 2006 and the Schedule appended thereto, Mr. Pangam contends that the Schedule does not include a railway although it includes, *inter alia*, mining of minerals, oil and gas exploration, thermal power plant, airports, highways, ports, harbours, etc. The omission to include a railway is a conscious decision having regard to the provisions of

section 11 of the Railways Act. According to him, the previous notification dated 27th January 1994 was considered by the coordinate Bench of the Calcutta High Court in **Subhas Dutta** (supra) and one of the reasons for declining relief rested on the ground that the Ministry of Environment and Forests had not included a railway as one of the projects/activities which would require a prior environmental clearance. The position has not since been altered by the notification dated 14th September, 2006 and, therefore, the contentions of the petitioners' lack merit.

19. Referring to the decision in **Municipal Corporation of Greater Bombay** (supra), Mr. Pangam urges that the effect, scope and impact of section 11 of the Railways Act was duly considered by the coordinate Bench and it was ultimately held that hoardings erected by the railways on its land would not require the permission of the Municipal Corporation either under section 328 or 328A of the Mumbai Municipal Corporation Act (hereafter 'MMC Act', for short) and, consequently, no licence would be required under section 479 of the MMC Act. It was shown from such decision that the coordinate Bench looked into the provisions of section 7 of the Railways Act of 1890, which was bodily lifted and placed in the Railways Act as section 11. Precedents of ancient vintage were also considered by the Bench while concluding that the powers of the railway administration were not controlled by other ordinary

legislations.

20. Mr. Pangam also brought to our notice an order dated 7th December, 1992 passed by the Supreme Court whereby the Special Leave Petition carried from the order in **Goa Foundation** (supra) was dismissed after hearing the parties and by a speaking order.

21. Prior to concluding his submissions, Mr. Pangam contended that there are guidelines of the Ministry of Railways which require an Environment Impact Assessment (hereafter 'EIA', for short) to be conducted internally. It is his submission that there is no reason to assume that such a study has not been conducted. It is also submitted by him that the Government of Goa has no objection to laying of the railway lines by SWR and RVNL in the state.

22. Mr. Pangam, therefore, prays that this PIL be dismissed.

23. Mr. P.P. Singh, learned advocate appearing for SWR, adopts the submissions of Mr. Pangam. He too refers to the wide scope of section 11 of the Railways Act and contends that there is no need to take any environmental clearance. The work of double tracking of the line in question is part of a special project and it is not the requirement of law that the permission of any village

panchayat or other State authorities or even environmental clearance is required to be obtained for every such project, which is proposed to be undertaken on the land of a railway. In the present case, 80% of the work of double tracking is complete and any interference at this stage would result in huge wastage of public money. This itself would be contrary to public interest and, therefore, this writ petition deserves to be dismissed.

24. RVNL is represented by Mr. Agha, learned advocate. He submits that since the Government of Goa has not filed any affidavit-in-reply, it would be appropriate to take the Court through the reply-affidavit of RVNL as well as the relevant provisions of the Railways Act, and as amended by introduction of amendments by the Railways (Amendment) Act, 2008, more particularly Chapter IV-A.

25. Mr. Agha highlights that the Railways Act is a complete code in itself and for giving effect to the 'special railway project' of doubling the track of rail line, RVNL has complied with the entire procedure laid down in Chapter IV-A thereof. First, section 2(37A) is referred to for ascertaining the definition of a 'special railway project'. Thereafter, the provisions contained in section 20A to 20P are placed to show us what the statutory mandate is, in relation to acquisition of land for a 'special railway project'. According to him, four notifications are required

to be issued by the Central Government for such purpose, namely, under section 2(37-A) notifying a 'special railway project', section 2(7A) to define who the 'competent authority' is, authorized to perform the functions of the competent authority for such area as may be specified therein, under section 20A(1) declaring the intention to acquire land for a 'special railway project' and under section 20E(1) declaring that land should be acquired for the purpose mentioned in section 20A(1).

26. Paragraphs 28 to 39 of the reply-affidavit of RVNL was next placed by Mr. Agha not only for the purpose of highlighting the statutory compliances but also to apprise us how steps had been taken to carry forward the special railway project.

27. This is where the proceedings closed yesterday.

28. When proceedings resumed today, Mr. Agha placed before us paragraph 6 of the reply-affidavit divided into sub-paragraphs under the caption "Area" and "Expenditure". It is stated under "Area" that the special railway project, namely, doubling of railway track for route from Hospet-Hubbali-Tinaighat-Vasco-da-Gama proposes to cover a length of 362.73 kms spread over the States of Karnataka and Goa of which 79.23% of work has been completed. It was shown to us that the total length of project work in the State of Goa is 79 kms from

Caranzol to Vasco. So far as Goa is concerned, 27% of the project work is complete measuring 21.49 kms.

29. In the course of arguments, Mr. Agha submits that the work on the stretch from Margao to Sanvordem, the length of which is 15 kms, is complete. From the diagram at page 558 of the paper-book, it has been shown that Chandor falls between Margao and Sanvordem and it is the categorical statement of Mr. Agha that the reliefs claimed by the petitioners have become redundant in view of completion of the work, *inter alia*, within the territories of villages Guirdolim, Chandor and Cavorim. Mr. Agha points out the statements made in paragraph 6(d) of the reply-affidavit to the effect that the work for the 15 kms stretch between Margao and Sanvordem has been completed has neither been denied nor disputed by the petitioners in their rejoinder affidavit.

30. It was for such reason that at the beginning of this judgment we have referred to the fact that by reason of intervening events between the date of institution of this public interest litigation and today, it may not be appropriate to grant any relief claimed by the petitioners because of the lapse of time and the developments in the meanwhile. We have noted from the order sheets that hearing of this PIL was deferred on more than a couple of occasions because of absence of representation from the petitioners. Not only that, the petitioners have never

urged the Court to grant interim relief, as prayed for in the writ petition. Once the special railway project has been carried forward and double tracking completed for the relevant stretch in respect whereof the petitioners have expressed concern, it would indeed be difficult for us to direct SWR and RVNL to uproot the tracks that have been laid to give shape to the special railway project should the petitioners succeed. Be that as it may, as indicated above, we do not propose to dispose of this PIL by adopting a shortcut method and would proceed further to record the other submissions of Mr. Agha and then decide the contentious issues.

31. Mr. Agha has further brought to our notice from the statements made in the reply affidavit that more or less ₹2618 crore has already been spent by the Central Government, of which the expenditure is approximately ₹350 crore for the State of Goa. As crores of rupees have been spent for this special railway project, it is his submission that it would be extremely difficult to alter the project or the alignment of the tracks at this stage. In any event, such alteration, if at all required, could impose further burden on the exchequer and the interest of only a handful of villagers must yield to the interest of the public at large. Mr. Agha submits that the special railway project traverses 15 Panchayat areas in Goa and it is only a single Panchayat that has raised objection. Even the Village Panchayat of Guirdolim has not approached the

Court with any grievance and it is only the disgruntled petitioners who have moved the Court to stall such an important special railway project.

32. Our attention was further drawn by Mr. Agha to show the extent of plantation of saplings by RVNL to compensate for any loss to the environment arising out of execution of the special railway project. He, therefore, contends that public interest would warrant RVNL to complete the project within the stipulated time.

33. Referring to the decision in **Goa Foundation** (supra), Mr. Agha asserts that the so-called concern expressed by the petitioners in this PIL is mere duplication of the arguments that were raised by the petitioners in such case. He has taken us through the various paragraphs to show how this Court, after considering various aspects of the matter including the contours of section 11 of the Railways Act, proceeded to hold that environmental clearance under the EP Act would not be necessary. Paragraph 5 of **Subhas Dutta** (supra) was also placed to show the Court's ruling that section 11 of the Railways Act supersedes the EP Act.

34. Next, Mr. Agha refers to the decision of the Supreme Court in **Chandavarkar Sita Ratna Rao vs Ashalata S. Guram**, AIR 1987 SC 117, where the Court had the occasion to consider the *non-obstante* clause in section

15A of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947. Paragraphs 35, 36 and 67 to 68 of the decision were placed to draw inspiration for the argument that section 11 of the Railways Act is not subject to any other provisions of law except the Railways Act and any law related to land acquisition when a Government railway is at work.

35. The alternative submission of Mr. Agha has been that while railways happens to be a subject traceable to entry no.22 of List I of Schedule VII of the Constitution, local bodies are relatable to entry no.5 of List II; hence, even if there be any inconsistency or repugnancy between the Railways Act and any law which has entry no.5 as its source, it would be the former that would prevail and the local law, to the extent of repugnancy, would be void.

36. Confronted with the order dated 9th May 2022 passed by the Supreme Court in **T. N. Godavarman** (supra), Mr. Agha submits that such decision would have no application in the facts and circumstances of the present case. According to him, it is only a small stretch of 26 kms in the Ghat section that is the subject matter of consideration before the Supreme Court. Relevant parts of the order were placed in support of the contention that the Supreme Court did not conclusively say that double tracking in such stretch of 26 kms is not to be executed for all times to come; on the contrary, paragraphs 22 and

23 would suggest that the Supreme Court desired re-examination of the entire matter.

37. Mr. Agha also argues that if indeed any relief is proposed to be granted to the petitioners, the Court would have to strike down section 11 of the Railways Act; however, the petitioners have chosen not to challenge section 11. Not only that, the petitioners have also not challenged the special railway project. The contention of the petitioners that while executing the special railway project, RVNL must obtain environmental clearance is misconceived since not a single provision has been brought to the notice of the Court mandating the railway authorities to obtain environmental clearance in the course of execution of the special railway project.

38. Based on the aforesaid submissions, Mr. Agha too prays for dismissal of the writ petition.

39. At the outset of today's hearing, we had made over to Mr. Pangam the order dated 18th, 19th and 20th July 2018 passed by a coordinate Bench of this Court on several notices of motion filed in connection with Writ Petition (LDG No.2107) of 2017 **(Mr. Robin Jaisinghani vs Mumbai Metro Rail Corporation Ltd. and Others)**. Since the coordinate Bench had distinguished the decision in **Goa Foundation** (supra) as well as the decision in **Subhas Dutta** (supra), we called upon Mr. Pangam to

argue why such decision shall not be followed.

40. Mr. Pangam responded by submitting that in **Mr. Robin Jaisinghani** (supra), the petitioner instituted the writ petition aggrieved by noise pollution created by the work of a metro railway. It was pointed out that the coordinate Bench did proceed to grant interim relief but not on the ground that the EP Act would prevail over the Railways Act or the Metro Railway (Construction of Works) Act, 1978 or the Metro Railway (Operation & Maintenance) Act, 2002; instead, the Court held that it is duty bound to enforce fundamental rights of citizens and the Court would interfere if any right flowing from Article 21 is violated. He, however, submits that such decision would not apply in a case of the present nature where it is sought to be claimed that environmental clearance under the EP Act as well as the permission of various authorities under diverse State legislation are required to be obtained while going ahead with the project.

41. On his part, Mr. Agha brought to our notice that the coordinate Bench in **Mr. Robin Jaisinghani** (supra) had referred to the decision in **G. Sundarrajan vs Union of India & Ors.**, (2013) 6 SCC 620, where it was held that the larger interest of the community should give way to individual apprehension of violation of human rights and the rights guaranteed by Article 21 of the Constitution.

42. Concern of the Village Panchayat of Guirdolim, represented by Mr. Rodrigues, learned advocate, is confined to the failure or neglect of SWR and RVNL to furnish the plans/sketches. According to him, despite several approaches having been made, the railway authorities turned a deaf ear to all requests which amounts to irrationality. Mr. Rodrigues referred to the decision in **Goa Foundation and Others vs State of Goa and Others**, AIR 2001 Bom 318, and the decision in **Village Panchayat Calangute** (supra) and the order dated 9th May 2022 in **T. N. Godavarman** (supra) while supporting the case of the petitioners.

43. After patiently hearing learned advocates for the parties and considering the materials on record, we are tasked to decide the broad question as to whether it is obligatory for SWR and RVNL, the railway authorities, to obtain environmental clearance from the GCZMA while executing a 'special railway project' which traverses a CRZ area and also as to whether permissions are required to be obtained by such railway authorities from the village panchayats under the Panchayat Act or from the other authorities under various other State legislation. Having bestowed our serious and thoughtful consideration, we are clear in our mind that such question must be answered in the negative.

44. While assigning our reasons to support the aforesaid

answer, we propose to consider first the provisions of section 11 of the Railways Act vis-à-vis the State legislations to which our notice has been invited and the EP Act as well as the 2011 CRZ Notification; then the order dated 9th May, 2022 in **T. N. Godavarman** (supra) as well as the previous orders passed in such matter; then the decisions in **Goa Foundation** (supra) and **Subhas Dutta** (supra) in the light of what has been laid down in the interim judgment in **Mr. Robin Jaisinghani** (supra), and lastly the decision in **Saloni Singh** (supra).

45. Any conclusion in respect of the contentious issues cannot be resolved without first reading section 11 of the Railways Act. It reads as follows:

"11. Power of railway administrations to execute all necessary works.— Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government railway, to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway—

(a) make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, railways, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, waterpipes, gas-pipes, oil-pipes, sewers, electric supply lines, or telegraph lines, such temporary or permanent inclined-planes, bridges, tunnels, culverts, embankments, aqueducts, roads, lines of rails ways, passages, conduits, drains, piers,

cuttings and fences, in-take wells, tube wells, dams, river training and protection works as it thinks proper;

- (b) alter the course of any rivers, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway;
- (c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;
- (d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper;
- (da) developing any railway land for commercial use
- (e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead;
- (f) erect, operate, maintain or repair any telegraph and telephone lines in connection with the working of the railway;
- (g) erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and
- (h) do all other acts necessary for making, maintaining, altering or repairing and using, the railway."

46. The first difficulty for the petitioners that stares at our faces is, the *non-obstante* clause at the beginning of section 11.

47. Let us begin our discussion with what a *non-obstante* clause is. This discussion is necessitated because of the petitioners' (mis)understanding of the legal position about the effect or impact of a *non-obstante* clause. We refer to Ms. Collasso's argument that section 11 does not either expressly or by necessary implication exempt a railway administration from obtaining environmental clearance under the EP Act, a *fortiori*, under the 2011 CRZ Notification.

48. The decision in **G.M. Kokil** (*supra*), cited by Mr. Pangam, held that a "non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions".

49. The decision cited by Mr. Agha in **Chandavarkar Sita Ratna Rao** (*supra*) lays down as follows:

"68. A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document men-

tioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in *South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum*, AIR 1964 SC 207 at p.215.

69. It is well settled that the expression 'notwithstanding' is in contradistinction to the phrase 'subject to', the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. ***."

50. One finds reiteration of the same legal position in the decision in **State of Bihar & Ors. vs Bihar Rajya M. S. E. S. K. K. Mahasangh**, (2005) 9 SCC 129. The Court held that:

"47. Normally the use of a phrase by the legislature in a statutory provision like 'notwithstanding anything to the contrary contained in this Act' is equivalent to saying that the Act shall be no impediment to the measure (see *Law Lexicon* words 'notwithstanding anything in this Act to the contrary'). Use of such expression is another way of saying that the provision in which the *non obstante* clause occurs usually would prevail over other provisions in the Act. Thus, *non obstante* clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principal enacting provision to which the *non obstante* clause is attached.***"

51. In **ICICI Bank Ltd. vs Sidco Leathers Limited**, (2006) 10 SCC 452, the Court further held that the

impact of a non-obstante clause must be kept measured by the legislative policy and it has to be limited to the extent it is intended by Parliament and not beyond that. In other words, the non-obstante clause must be given effect to, to the extent Parliament intended and not beyond the same.

52. We are also reminded of the Full Bench decision of this Court in **Mohd. Riyazur Rehman Siddiqui vs Deputy Director of Health Services**, 2008 Mah LJ 941, where it has been held that the wide meaning of the *non-obstante* clause and the enacting words following it may not be curtailed when the use of wide language accords with the object of the Act.

53. Bearing these principles in mind, we now proceed to consider the impact of the *non-obstante* clause in section 11 of the Railways Act on the other enactments, referred to in section 11 either specifically or generally. We remind ourselves of the settled law that attention should be confined to what is necessary for a particular case. For the purposes of the present case, to paraphrase section 11 and its relevant clauses, the same must be read as mandating that in spite of any provisions contained in any other law for the time being in force except the provisions of the Railways Act and the provisions of any law in relation to acquisition of land for public purpose or for companies, a railway administration may, for the

purposes of constructing or maintaining a railway,

- (i) make or construct in or upon, across, under or over any lands such temporary or permanent inclined-planes, bridges, tunnels, culverts, lines of railways, etc. [clause (a)];
- (ii) alter the course of any rivers, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them [clause (b)];
- (iii) erect and construct such houses, warehouses, offices and other buildings, etc., and other works and conveniences as the railway administration thinks proper [clause (d)];
- (iv) alter, repair or discontinue such buildings, works and conveniences [clause (e)]; and
- (v) do all other acts necessary for making, maintaining altering or repairing and using the railway [clause (h)].

54. Given these wide ranging powers conferred by the Parliament on a railway administration and bearing in mind the impact that the *non-obstante* clause found at the beginning of section 11 of the Railways Act has on other enactments, barring only the Railways Act and land acquisition laws for a public purpose, it is too late in the day for the petitioners to contend that notwithstanding the presence of section 11 of the Railways Act in the statute book conferring such wide ranging powers with

overriding effect, the railway authorities, i.e., SWR and RVNL, are required to obtain building permissions from the village panchayat under the Panchayat Act or other permissions under the other stated State legislation. If we were to accept the contention of the petitioners, we would either have to totally ignore the provisions contained in section 11 or to render section 11 completely ineffective without even outlawing it. Indeed, this is not a permissible course of action. *Qua* the stated State legislation is concerned, we have no option but to hold that the same must yield to section 11 of the Railways Act when a railway administration proceeds to execute the work of construction or maintenance of a railway in accordance with the provisions of the Railways Act and the laws relating to land acquisition.

55. The decision in **Village Panchayat (Calangute)** (supra) relied on by Ms. Collasso and Mr. Rodrigues has been perused by us. The Supreme Court was seized of the question whether a village panchayat can challenge an order passed by the designated officer exercising the power of an appellate authority qua the action/decision/resolution of the village panchayat in a petition under Article 226/227 of the Constitution. Observations made by the Court in answering such a question may not provide the guiding light for deciding the contentious issue arising in this case. The said decision, therefore, is distinguishable.

56. The contention of Ms. Collasso that section 11 does not expressly grant exemption to a railway administration from obtaining permissions of various authorities under the stated State legislation or the GCZMA under the EP Act, is too tenuous to commend acceptance. The exemption for a railway administration to execute the works of construction and maintenance of a railway is conferred by the *non-obstante* clause which has an overriding effect over all other laws except the provisions of the Railways Act and the laws relating to land acquisition for public purpose, if execution is undertaken by a Government railway. The contention, therefore, stands rejected.

57. Insofar as the contention raised by Ms. Collasso that the railway authorities were required to obtain prior environmental clearance from the GCZMA is concerned, the same is equally tenuous. Paragraph 3 of the 2011 CRZ Notification lays down the activities which are prohibited within the CRZ area. None of the sub-paragraphs of paragraph 3 refer to a railway. We may, in this connection, consider and apply the legal maxim *expressio unius est exclusio alterius*. This maxim, embodying the principle of implied exclusion, means that expression of one is the exclusion of another. Where the law specifies certain activities to be prohibited, an inference may be drawn that activities other than those

prohibited are permitted. Although the courts must guard against indiscriminate application of this maxim, we can safely infer not on the basis of what is provided in paragraph 3 but also in view of the *non-obstante* clause in section 11 of the Railways Act, that whatever has not been included in paragraph 3 of the 2011 CRZ notification has, by implication, been excluded.

58. Reliance placed by Mr. Pangam on the decision of the coordinate Bench in **Municipal Corporation of Greater Mumbai** (supra) is apt. Reading the decision, we find that the bench took into consideration various decisions of the vintage era interpreting section 7 of the Railways Act, 1890, which is the present era section 11, while holding that licences and fees for putting up hoardings by the concerned railways is not required under the MMC Act. We have not the slightest hesitation in recording our agreement with what has been laid down in such decision on interpretation of section 11.

59. While also concurring with the decisions in **Goa Foundation** (supra) and **Subhas Dutta** (supra), we cannot fail to note a particular argument that was advanced before the coordinate Bench in **Goa Foundation** (supra) by learned counsel for the petitioners. It was contended that the Ministry of Environment had issued a draft notification inviting objections, since the Government of India had intended to

prescribe that environment clearance from such Government would be required for providing railway lines. This was as far back as in April 1992. If indeed the Government of India had issued a draft notification with a particular intention and had not carried the process further, it stands to reason that the said Government went back on its intention to prescribe environmental clearance to be obtained for providing railway lines. That over the last three decades no such requirement has been spelt out in accordance with law is in itself a pointer to the fact that the Government of India does not intend that environmental clearance is to be obtained for the purposes mentioned in section 11 of the Railways Act.

60. It would also appear from the notification issued by the Ministry of Environment and Forests on 14th September 2006 that the same also does not require a prior environmental clearance to be obtained by a railway administration. The schedule to the notification, it has been brought to our notice by Mr. Pangam, refers to a whole lot of activities that require a prior clearance to be obtained before the same are undertaken by the specified authorities but the Railways is conspicuously absent. We are inclined to think that if at all an environmental clearance for laying railway lines was required in terms of the notification issued by the concerned Ministry, the same would definitely have been incorporated therein. The exclusion is significant and has to be borne in mind

while deciding a claim of the present nature.

61. We are, thus, of the considered opinion that if indeed the legislature intended laying of a railway line or other incidental activities to be a prohibited activity within the EP Act, *a fortiori*, the 2011 CRZ notification or even under the notification issued by the Ministry of Environment and Forests on 14th September 2006, such a prohibition could have been included but only after amendment of the Railways Act and not without. Parliament is presumed to have known what the existing state of law is, when a new law is in course of being enacted by it and if a legislation is enacted giving it overriding effect over the law prior in point of time, the newly enacted law has to be given effect no matter what the consequences would be.

62. We have noted above that despite section 11 beginning with a *non-obstante* clause, section 11 is subject to the other provisions of the Railways Act and the laws relating to land acquisition and it does not override such other provisions/laws. In such view of the matter, the petitioners could have succeeded in their plea of stalling the project if it could be shown that provisions relating to land acquisition have not been followed which is contrary to public interest. Mr. Agha has shown us from the reply affidavit of RVNL how the provisions contained in Chapter IV-A of the Railways Act have been adhered to

while acquiring land and making payment to the land losers. This version of RVNL, which is undisputed, is sufficient for us to hold that the railway authorities, i.e., SWR and RVNL, have not bulldozed the rights of land owners and have acted strictly within the confines of section 11. It has also not been shown that the land losers are aggrieved by the compensation paid to them. These are all relevant considerations which cannot be overlooked when a project of this magnitude is under way.

63. Importantly, the petitioners have neither challenged section 11 of the Railways Act nor the 'special railway project'. Their grievance is confined to non-obtention of permissions from the authorities under the stated State legislation and environmental clearance under the 2011 CRZ notification.

64. As has been held above, permissions were not required to be obtained and, therefore, we see no reason to hold that the provisions of the 2011 CRZ Notification were required to be followed by the railway authorities and/or that by not following the same, they have indulged in activities which ought to be held illegal, arbitrary and without jurisdiction by this Court.

65. Our consideration would now shift to the matter in **T. N. Godavarman Thirumulpad vs. Union of India,**

(1997) 2 SCC 267. Perhaps, this is a case that has generated the longest continuing mandamus. On 12th December 1996, the Supreme Court of India made an interim order banning all ongoing non-forestry activities within any forest in any State throughout the country without prior permission of the Central Government. The Court held that the Forest (Conservation) Act, 1980 was enacted to check further deforestation, resulting in ecological imbalance. Therefore, its provisions would apply to all forests irrespective of the nature of ownership or classification thereof. The Court further held that the expression “forest” must be understood according to its dictionary meaning and include any areas recorded as forests in Government records, irrespective of the ownership.

66. In the interim order dated 12th December 1996, the Court also directed all the States to constitute expert committees to identify and demarcate forests. In addition, some directions were issued in the context of wood-based industries. Even the Ministry of Railways was directed to file an affidavit giving full particulars, including the extent of wood consumed by them, the sources of wood supply, and the steps taken for alternatives to the use of wood.

67. The Court clarified that the orders and directions issued in that matter were to continue till further orders by the Court and would operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made thereafter, by any authority, including the Central or any State Government or any Court (including High Court) or Tribunal.

68. After that, the Supreme Court made several orders and directions on various facets concerning the identification and demarcation of forests and the activities that may be permitted or prohibited in such areas. In addition, multiple orders have been passed on the aspects of afforestation, Net Present Value of diverted forest land, mining, wildlife protection, etc.

69. In 2002, the Supreme Court constituted a CEC for effectively implementing court orders and matters connected therewith. By such orders, a scheme was evolved, *inter alia*, for monitoring various forest activities and procedures for seeking exemptions, clarifications, etc.

70. **T. N. Godavarman Thirumulpad vs. Union of India**, (2016) 13 SCC 586, records several orders and directions issued by the Supreme Court from time to time covering various aspects. The order dated 5th October

2015, referred to by Mr. Pangam and reported in (2016) 13 SCC 612 (2) is relevant to appreciate the genesis of the order dated 9th May 2022, relied upon by the petitioners.

71. One of the aspects considered by the Supreme Court in its order dated 5th October 2015 relates to National Parks and wildlife sanctuaries. The Court ordered that all matters for grant of permissions for implementation of projects in areas falling in National Parks/Sanctuaries, including rationalization of boundaries, etc., will be considered by the Standing Committee of the NBWL on its own merits and in conformity with the orders and directions passed from time to time, i.e., on 14th February 2000, 16th December 2002, 13th November 2000, 9th May 2002, 25th November 2005 and 14th September 2007 and other subsequent clarificatory orders/judgments.

72. Furthermore, the Supreme Court requested the NBWL to furnish a copy of the orders passed by it within 30 days to the CEC. After that, the CEC was granted the liberty to move the Supreme Court of India by filing an appropriate petition/application in case it was aggrieved by the decision of the Standing Committee of the NBWL.

73. The order dated 9th May 2022 relied upon by the petitioners was made by the Supreme Court on a petition/application by the CEC objecting to the clearance granted by the Standing Committee of the NBWL to the double tracking project through a 26 km stretch, admittedly falling within the national park/wildlife sanctuary. Even Ms. Colasso did not claim that this order has any application beyond the stretch of 26 km that falls within the national park/wildlife sanctuary.

74. Thus, it is quite clear that the order dated 9th May 2022 was in the context of the particular scheme evolved by the Supreme Court through its various orders and directions in **T. N. Godavarman** (supra). Admittedly, the lands within the village of Guirdolim, whose cause the petitioners claim to espouse, do not fall within any national park or wildlife sanctuary. The petitioners have not even claimed that any such lands have been demarcated as forests or are otherwise liable for demarcation as forests. Therefore, based upon the order dated 9th May 2022, the petitioners cannot contend that since the Supreme Court set aside the decision of the Standing Committee of the NBWL without adverting to the provisions of section 11 of the Railways Act, even we must hold that the requirements of the Panchayat Act or the T&CP Act must apply to the double tracking project, notwithstanding the clear and unambiguous *non-obstante* clause in section 11 of the Railways Act.

75. In our judgment, no such inference can be drawn, or such conclusion jumped at. A decision is only an authority for what it actually decides. What is of essence is its ratio and not every observation found therein nor what logically follows from the various observations made in the decision. Every decision must be read as applicable to the particular facts proved or assumed to be proved since the generality of the expressions which may be found there is not intended to be the exposition of the law but governed and qualified by the particular facts of the case under which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the decision and build upon it because the essence of the decision is its ratio and not every observation found therein. We may, in this connection, profitably refer to the decision in **Union of India vs Dhanvanti Devi**, (1996) 6 SCC 44.

76. We now move on to consider the other argument of Ms. Collasso that since the railway authorities had sought for permission under the Forest (Conservation) Act and Wildlife (Protection) Act, they cannot choose to ignore the EP Act and not obtain environmental clearance. We have noted above how the Supreme Court in **T. N. Godavarman** (supra) has been monitoring activities in forest land, right from 1996 onwards. Although we are inclined to the view that section 11 of the Railways Act

overrides any other inconsistent provisions including provisions in the Forest (Conservation) Act or Wildlife (Protection) Act, which are laws enacted prior to the Railways Act, and that a railway administration may not be bound to obtain permissions under the said enactments in terms of the statutory mandate, such administration is bound to obtain permissions from the forest authorities and the Standing Committee of the NBWL in view of the various judicial orders passed by the Supreme Court in the **T. N. Godavarman** matter. The permissions that SWR and RVNL sought from the forest as well as the wildlife authorities were because of the judicial orders passed from time to time by the Supreme Court. If indeed the Supreme Court ever passes an order that a rail line cannot be laid in a CRZ area without environment clearance from the authorities of the relevant Coastal Management Authority, any railway administration would be bound to obtain such environmental clearance. However, so long as such a requirement is not expressed in any judicial order, the mere fact that the railway authorities in this case have sought permission from the forest as well as wildlife authorities would not *ipso facto* impose upon SWR and RVNL the obligation to obtain environmental clearance from the GCZMA.

77. Much has been argued by Ms. Collasso on the requirement of the double tracking project drawing

inspiration from the order dated 9th May 2022 in **T. N. Godavarman** (supra). It is indeed true that the Supreme Court was not satisfied of the requirement or real necessity for double tracking. However, what the Supreme Court was seized of is the stretch of 26 kms spread over a national park/wild life sanctuary and not the entirety of the special railway project undertaken by SWR and RVNL. In any event, whether or not double tracking is a necessity cannot be decided by us. It is after all a policy decision taken by the Government of India in the appropriate department and unless such policy decision is shown to infringe any of the fundamental rights of the people, the writ court ought to stay at a distance is the settled law.

78. At this stage, it would be apposite to note the concluding observations made by the Supreme Court in the order dated 9th May 2022 in **T.N. Godavarman** (supra). The same read:

“22. It is necessary that there should be a detailed study and analysis of the impact of the proposed project on the bio-diversity and ecological system of the protected areas under wildlife sanctuary. A detailed study undertaken by NTCA on the viability of the project for the Goa part is essential in view of the Bhagwan Mahaveer Wildlife Sanctuary being an important tiger corridor. Even according to NTCA, an independent and detailed assessment of the cumulative impact of the project for the entire stretch from Tinaighat to Kulem has to be undertaken. The impact of the increase of section capacity by 2.5 times than by doubling the railway line in comparison to the

single line along with increased mobility on wildlife problems in terms of sound pollution, vibration etc. has not been taken into account by the Standing Committee of NBWL while recommending the project. Assessment of the impact which the project would have on the environment, especially in the protected area and wildlife sanctuary taking into account all the major factors such as the impact on the habitat, species, climate, temperature, etc. caused due to felling of trees not only for the laying of railway tracks but also for the secondary works such as setting up machinery, disposal of waste and putting in place various mitigation measures etc.), movement of trains, human-wildlife interactions would have to be strictly undertaken before the project is considered by the NBWL. There is no credible supporting data for the projections that are given by RVNL relating to the traffic between Karnataka and Goa project for the period 2022-2023 and 2030-2031 and there is no explanation regarding the projected traffic for the next 4-5 years which is required for the completion of the construction of the project. Such data, projections and speculations will have to be supported by an independent and credible source before undertaking any kind of construction activity in the Western Ghats which is world's eight hotspots of biological diversity.

23. For the foregoing reasons, we uphold the conclusion of the CEC and revoke the approval granted by the Standing Committee of NBWL for doubling the railway line between Castlerock to Kulem. However, this will not preclude the RVNL to carry out a detailed analysis on the impact of the proposed project on the biodiversity and ecology of the protected areas under the wildlife sanctuary as indicated hereinabove and then submit a fresh proposal to the Standing Committee of NBWL which shall be considered in accordance with law."

(emphasis ours)

Therefore, if at all the railway authorities are unable to

satisfy the Supreme Court of the necessity to execute the project of double tracking through forest areas, certain alternative routes may have to be explored. However, for reasons discussed above, the order dated 9th May 2022 in **T. N. Godavarman** (supra) does not, in our opinion, operate as a bar for SWR or RVNL to lay lines for double tracking in execution of the special railway project in the other areas which do not fall in a national park/wild life sanctuary.

79. We are now left to consider two other decisions.

80. We quite agree with the coordinate Bench in **Mr. Robin Jaisinghani** (supra), while it proceeded to hold that the Metro Railway cannot execute the work by creating noise which is above the permissible limits laid down under the Noise Pollution Rules. Despite section 11 of the Railways Act being on the statute book, the *non-obstante* clause therein would have to be confined to the purposes that find place therein to achieve the object of the legislation. Most certainly, while constructing or maintaining a railway, the railway administration cannot be heard to say that it would be enjoying immunity from adhering to other legislation, be it primary or subordinate, which has no relation to the enacting part of section 11. We must remember that the *non-obstante* clause must be kept measured by the legislative policy and has to be limited to the extent it is intended by the

Parliament and not beyond. While constructing or maintaining a railway, the railway administration has to execute the work in such a manner that the noise levels are maintained and the Fundamental Rights guaranteed by Article 21 to a person is not invaded.

81. We can imagine two other situations where the railway administration in the course of execution of its project must have regard to other statutory enactments. Section 11 would not authorize the railway administration to deprive the workforce employed at the project of their legitimate dues as prescribed by the relevant enactments. Section 11 would be no answer for a railway administration to pay less. Also, if unfortunately, there be an accident resulting in loss of life of a labourer, section 11 of the Railways Act would not give immunity to the railway administration from paying compensation under any relevant enactment.

82. However, to our mind, the decision in **Mr. Robin Jaisinghani** (supra) would have limited application and cannot be read as a precedent which erodes the binding efficacy of the decisions in **Goa Foundation** (supra) and **Subhas Dutta** (supra).

83. It is now time to deal with the order of the NGT in **Saloni Singh** (supra). According to Ms. Collasso, the NGT has rightly held that the decision in **Goa Foundation**

(supra) is of the year 1992 after which much water has flown under the bridges.

84. We find from the order in **Saloni Singh** (supra) that the NGT quoted a previous order passed by it dated 12th December 2019 in the order that was cited before us. We are left to wonder as to how a bench of the NGT, which passed the order dated 12th December 2019, could make observations with regard to a judicial order of this Court which is binding on the NGT. The NGT perhaps was unaware that the decision in **Goa Foundation** (supra), far less from being expressly or impliedly overruled by the Supreme Court, was upheld upon sufficient deliberation though not after grant of special leave to appeal. Apart from a cursory reference to the law laid down in **Goa Foundation** (supra), the NGT did not consider the effect or impact of section 11 of the Railways Act. The observations of the NGT that environment norms have to be read into other regulatory statutes even if such a statute is subsequent to the environment laws, as held in **Bombay Dyeing & Manufacturing Co. Ltd.** (supra) would have application only if it can be demonstrated with reference to adequate and acceptable material that the Railways Act is a mere regulatory statute. That has not been shown and is not the case. The Railways Act consolidates the law relating to railways and is a complete code in itself. While we hold the order in **Saloni Singh** (supra) to be of little assistance to advance the case of

the petitioners, we wish to remind the NGT to remain within its bounds while it discharges duties and functions enjoined by the National Green Tribunal Act upon it.

85. For the reasons aforesaid, we hold that SWR and RVNL are not under any statutory compulsion to obtain environmental clearance from the GCZMA or any building permissions or other permissions from any authority under the diverse legislation referred to by Ms. Collasso.

86. There is no merit in this public interest litigation which, accordingly, stands dismissed.

87. No costs.

M. S. SONAK, J.

CHIEF JUSTICE

MARIA SUZANA REBELLO  Digitally signed by MARIA SUZANA REBELLO
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