

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

PUBLIC INTEREST LITIGATION NO. 179 OF 2012

Awaaz Foundation, a public charitable trust, formed and registered under the Bombay Public Trust, 1950 and having its Registered office at 74, New Silver Home, New Kantwadi Road, Bandra (W), Mumbai 400 050.

... Petitioner.

V/s.

1. Union of India, through the Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi-110003.
2. State of Maharashtra, through Secretary, Environment Department, and Secretary, Revenue and Forest Department, both at Mantralaya, Mumbai 400 032.
3. The Principal Chief Conservator of Forests (Wildlife), Maharashtra State, Nagpur.
4. The Collector, Sindhudurg District, Sindhudurg. ... Respondents.

WITH

PUBLIC INTEREST LITIGATION NO. 198 OF 2014

1. Vanashakti, a Public Trust registered under the provisions of the Bombay

Public Trusts Act 1950, having its
Office at 19/21, Unique Industrial Estate,
Twin Towers Lane, Prabhadevi,
Mumbai - 400 025.

2. Stalin Dayanand, of Mumbai,
Indian Inhabitant,
Project Director of Vanashakti,
having his office at 19/21,
Unique Industrial Estate,
Twin Towers Lane, Prabhadevi,
Mumbai - 400 025. ... Petitioners.

V/s.

1. Union of India, through the
Ministry of Environment & Forests,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi - 110 003.
2. State of Maharashtra, through
i) Secretary, Environment Department,
And
ii) Secretary, Revenue and Forest
Department, both at Mantralaya,
Mumbai 400 032.
3. The Principal Chief Conservator of
Forests (Wildlife), Maharashtra State,
Nagpur.
4. The Chief Conservator of Forests,
Kolhapur Forest Division,
Maharashtra State Forest Department.
5. The Collector,
Sindhudurg District, Sindhudurg. ... Respondents.

Ms.Bhakti Jain i/b. M/s.Nankani & Associates for the Petitioners in PIL-179/2012 and CAI-119/2014.

Mr.Zaman Ali for the Petitioners in PIL-198/2014.

Mr.Rui Rodrigues with Mr.D.P.Singh and Mr.A.R.Varma for Respondent No.-1 Union of India in PIL-179/22.

Mr. Parag Vyas with S.S.Badekar and Ms. Karuna Yadav for Respondent No.1 (UOI) in PIL-198/2014 and IA-556/2022.

Mr.M.M.Pabale, AGP for Respondent Nos.2,3,4 in PIL/179/12 and for Respondent Nos.2, 3, 4 and 5 in PIL-198/2014.

CORAM : **NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : **22 March 2024.**

JUDGMENT : (Per Nitin Jamdar, J.)

Dodamarg Taluka, situated in the Sindhudurg district of Maharashtra, is flanked by Goa to the south, Karnataka to the southeast and the Sahyadri range to the north. It is characterized by its hilly terrain intersected by valleys and encircled by mountains. The region is extremely rich in biodiversity. Tillari river flows through the region upon which the Tillari dam is built. Kalne River is one of its tributaries. These Petitions pertain to 25 villages within the area: Kumbral, Panturli, Talkat, Zolambe, Kolzar, Shirwal, Ughade, Kalane, Bhikekonal, Kumbhawade, and Khadpade in

Dodamarg Taluka. Villages Asaniye, Padwe Majgaon, Bhalawal, Tamboli, Saramale, Nevli, Dabhil, Otawane, Konshi, Gharpi, Udeli, Kesri-Phansawade in Sawantwadi taluka, and Bhekurli, Fukeri in Banda taluka. Collectively this area is known as the Sawantwadi-Dodamarg Wildlife Corridor.

2. Both these Public Interest Litigations seek directions to the Respondents to declare and notify these 25 villages, the Sawantwadi-Dodamarg Corridor, as shown in Plan/Map annexed to the Petition as “Ecologically Sensitive Area” under the Environment Protection Act, 1986 and the Environment Protection Rules, 1986.

3. The Respondents are the Ministry of Environment & Forests, Union of India (MoEF), State of Maharashtra, through the Secretary, Environment Department, and the Forest Department, and the Collector of Sindhudurg district.

4. A wildlife corridor connects wildlife populations that could become isolated from viable continuous habitats due to habitat destruction and degradation. These corridors allow animals to move between the forested regions. Wildlife corridors play a pivotal role in preventing the creation of isolated pockets of protected areas, ensuring their continued viability. By facilitating movement, wildlife corridors help maintain genetic diversity among large mammal populations, which is crucial for their long-term survival. Wildlife

corridors thus support vital ecological processes, contributing to the overall health and balance of the ecosystems.

5. The Sawantwadi-Dodamarg Corridor is vital in connecting wildlife sanctuaries and national parks across Maharashtra, Goa, and Karnataka, acting as a pathway for species like the Asiatic Elephant and the Tiger. Specifically, it forms an essential part of the Sahyadri-Konkan wildlife corridor, linking the Koyna and Radhanagari Wildlife Sanctuaries and Chandoli National Park with their counterparts in neighbouring states.

6. Section 3 of the Environment Protection Act, 1986 empowers the Central Government to take measures to protect and improve the environment. Under 3(1) the Central Government has the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Section 3(2)(v) of the Act of 1986 empowers the Central Government to adopt all such measures as it deems necessary to protect and improve the quality of the environment and prevent environmental pollution/degradation. It allows for the restriction in the areas in which industries, operations or processes or classes of industries, operations or processes can be regulated/prohibited. Rule 5 of the Environment Protection Rules, 1986 deals with prohibition and restriction on the location of

industries and the carrying on processes and operations in different areas. Rule 5(1) of the Rules of 1986 states that the Central Government may take into consideration the factors enumerated therein while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas. These include topographic and climatic features, environmentally compatible land use, maximum allowable limits of concentration of pollutants, proximity to protected areas, etc., that can be considered while prohibiting or restricting certain operations in different areas. Rule 5(1)(v) particularly lists the biological diversity of the area, which, in the opinion of the Central Government, needs to be preserved as a criterion. Rule 5(3) confers power upon the Central Government to issue such notifications.

7. Under Section 5A of the Wild life (Protection) Act, 1972, the Central Government has constituted the National Board for Wild Life. Under Section 5C the functions of the National Board are laid down and it is the duty of the National Board to promote the conservation and development of wild life and forests by such measures as it thinks fit. As the Petitioners point out, the National Wildlife Action Plan (NWAP) 2002-2016 indicates that areas outside the protected area network are often vital ecological corridor links and must be protected to prevent the isolation of fragments of biodiversity, which will not survive in the long run. Land and water use policies will need to accept the imperative of

strictly protecting ecologically fragile habitats and regulating use elsewhere. The Action Plan also indicates that all identified areas around Protected Areas and wildlife corridors to be declared as ecologically fragile under the Environment Protection Act, 1986, where the Protected Areas are National Parks and Wildlife Sanctuaries. The Petitioner- Awaaz Foundation submitted that the MoEF has also framed guidelines for the declaration of Eco-Sensitive Zones, which are identified areas around National Parks and Wildlife Sanctuaries as well as wildlife corridors. While framing guidelines to facilitate States/Union Territories to declare Eco-Sensitive Zones the fact that wildlife corridors are also to be treated in the same fashion as Protected Areas around which Eco-Sensitive Zones may be declared is recognized.

8. On 21 April 2011, Public Interest Litigation No.179/2012 was filed by Awaaz Foundation, a public charitable trust concerning the Sawantwadi-Dodamarg Corridor. The Petitioner- Awaaz Foundation referred to the committee chaired by Dr. Pronab Sen, Adviser, Planning Commission, appointed by the Ministry of Environment and Forest, to identify the Ecologically Sensitive Areas. The Sen Committee published its report in September 2000. This Report was followed by other reports, more particularly the Sahyadri Ecological Forum of the Department of Environmental Services, Shivaji University, Kolhapur. Awaaz Foundation also referred to the Western Ghats Ecological Panel. It

pointed out that declaring an area as an ecologically sensitive area does not mean that no development is permitted, but activities will continue to be regulated under the Environment Protection Act, 1986. Therefore, the declaration of this Corridor will not affect any future development in the area and will not be prejudicial to the locals. The Petitioner, Awaaz Foundation, also referred to the Rapid Biodiversity Assessment, which was carried out in the village of Asaniye. The assessment report stated that a significant number of species of wildlife found in this corridor were categorized as "Vulnerable," "Endangered," and "Near Threatened," and the Report concluded with the observation that the Sawantwadi-Dodamarg Corridor is ecologically sensitive. Based on the information collected from the Tree Authority it was pointed out that around eighteen lakh trees were felled in the preceding two years in Dodamarg forest circle alone. The Petitioner, therefore, urged that the area needs to be declared as an Ecologically Sensitive Area.

9. The Petitioner, Awaaz Foundation, has put forth several reasons for declaring the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area. Some of these reasons are as follows. The Sawantwadi-Dodamarg Corridor, being replete with rich biodiversity and flora and fauna, a significant part of which is rare and exotic and only found in the region. The wildlife found in the Corridor includes animals in the Schedule-I to the Wildlife

Protection Act, 1972. The Sen Committee Report has provided the criteria that ought to be fulfilled for a particular region to be declared as an Ecologically Sensitive Area and unique biodiversity is one of them. Several species of plants and animals found in the region are endemic to the said region alone, and some of them are on the endangered list. The Corridor forms an integral part of the Sahyadri Konkan Wildlife Corridor. It is an area with intrinsically low resilience; sacred groves are present within the said Corridor, and Dabhil and Kalane rivers originate in the area. The Corridor also experiences very high rainfall, and the Terekhol River has its catchment area here. The Sawantwadi-Dodamarg Corridor satisfies the requirements in the Sen Committee Report for being declared an Ecologically Sensitive Area. Furthermore, the said ecosystem is fragile and will be unable to sustain the large-scale exploitation being undertaken therein. Therefore, there is an urgent need for the Sawantwadi-Dodamarg Corridor to be declared as an Ecologically Sensitive Area. If the said Corridor is not declared as an Ecologically Sensitive Area forthwith, it may be too late to protect and preserve the fragile ecosystem in the Corridor. The Central Government has previously exercised the power to take necessary steps to declare Mahabaleshwar-Panchgani and Matheran as Ecologically Sensitive Areas. Petitioner stated that the Sawantwadi-Dodamarg Corridor has a much larger array of biodiversity, flora, and fauna; hence, the protection ought to be afforded to the said Corridor. The Petitioner-Awaz Foundation, thus, submitted that the Central

Government/MoEF be directed to take necessary steps for declaring the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area, in accordance with Article 48-A of the Constitution of India as well as the provisions of the Environment Protection Act, 1986, and the Rules framed thereunder.

10. Petitioner Awaz Foundation accordingly prayed for a declaration that the Respondents have an obligation to protect and improve the environment and to safeguard the forests and wildlife of the country under Articles 48-A and 21 of the Constitution of India and consequently have the power to declare the Sawantwadi-Dodamarg Corridor an Ecologically Sensitive Area. It sought a declaration that the Sawantwadi-Dodamarg Corridor satisfies the parameters/criteria as set out in the Sen Committee Report for declaration as an Ecologically Sensitive Area. Petitioner sought a direction to the Respondents to give effect to and enforce the National Wildlife Action Plan by declaring the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area. Petitioner Awaz Foundation also sought to restrain harmful activity in the Sawantwadi-Dodamarg Corridor until the Corridor is declared an Ecologically Sensitive Area.

11. The Public Interest Litigation No. 198/2014 filed by Vanashakti, a non-governmental organization seeks a direction to declare the Dodamarg taluka as ecologically fragile and has sought

various directions in that regard. The Petitioner has also highlighted the importance of the Western Ghats region in terms of its ecological sensitivity, particularly concerning Dodamarg. This Petition also refers to the Report of the Sen Committee and, in turn, the Report of Western Ghats Ecological Panel and other reports. This Petitioner was particularly aggrieved by the office memorandum issued on 17 October 2013 by the Central Government, which lifted the moratorium on the activities and therefore sought the quashing of the said office memorandum. The Counsel for the Petitioner-Vanashakti, informed us that ,during the pendency of the Petition that the memorandum was withdrawn and this Public Interest Litigation (PIL) No.198/2014 also continues only concerning the Sawantwadi-Dodamarg Corridor.

12. In PIL No. 179/2012, various orders have been passed since 2012, and thereafter, from 2014, common orders have been passed in both PIL No. 179/2012 and PIL No. 198/2014. These orders passed over a decade have crystallized the issue and as our narration of the orders would show the common thread running through all the orders is the need to protect the Sawantwadi-Dodamarg Corridor.

13. The main order passed in these petitions is dated 27 September 2013 passed by the Division Bench, (Dr. D.Y. Chandrachud *as His Lordship then was* and M.S. Sonak JJ). The

order dated 27 September 2013 reads as follows:

“1. The issue before the Court is in regard to the declaration of the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area (ESA).

2. In an order of the Division Bench dated 17 July 2012, the Court noted that besides the State of Maharashtra, the Western Ghats run through other States including Tamil Nadu, Karnataka, Kerala, Goa and Gujarat. During the course of the order, the Court noted that the State of Maharashtra had forwarded its suggestions and recommendations to the Union Ministry of Environment of Forest (MoEF) in regard to the Gadgil Committee Report. This Court observed as follows.

“3. Be that as it may, we would like to express that the issues pertaining to ecology and environment could be different in every State. Similarly, the suggestions and recommendations required to be given by each State necessarily will be based on the local issues pertaining to ecology and environment of those respective States. In any case, acceptance of Gadgil Committee Report in respect of Sawantwadi-Dodamarg Corridor which runs through State of Maharashtra only and Western Ghats which run through various States is concerned, will have to be considered in the light of these respective recommendations based on factors prevalent in these respective States. It is in these circumstances, we direct the learned Additional Solicitor General to seek instructions from the Ministry of Environment and Forest as to why the decision in respect of acceptance and applicability of the Gadgil Committee Report cannot be taken in respect of Sawantwadi-Dodamarg Corridor independently, which in our view, would curtail delay and help in preserving ecology and environment, wild life etc. of state of Maharashtra.”

Subsequently, in the order of the Court dated 20 December 2012, the Court recorded the assurance of the Union of India that an affidavit would be filed within four weeks indicating the time within which, a decision in respect of the acceptance of the Gadgil Committee Report, insofar as the Sawantwadi-Dodamarg Corridor is concerned, could be independently taken or otherwise.

3. On 11 February 2013, the learned ASG reported back to the Court stating that the report of the Committee formed by the Union of India was expected to be received on or before 16 February 2013. On 11 July 2013, the learned ASG stated before the Court that the report of the high level working group on the Western Ghats constituted by the MoEF has been submitted on 15 April 2013 and the Union Government needed a reasonable extension of time to take a final decision on the recommendations of the report. While standing over the hearing on 23 August 2013, the Division Bench directed that an affidavit-in-reply should be filed setting out the final decision which has been taken by the Union government on the report and the action taken pursuant thereto.

4. Now an affidavit has been filed in these proceedings on 18 September 2013, on behalf of the MoEF stating as follows:

“2. I say and submit that, in order to consider the proposal for declaration of Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area (ESA), the Ministry undertook a preliminary analysis of the proposal for declaration of Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area (ESA). As per the petitioner, the Sawantwadi-Dodamarg Corridor falls in Western Ghats and includes 30 villages. The petitioner has also stated that out of the 30 villages, 22 villages have passed Gram

Sabha resolutions in favour declaration of ESA. It has also been noted that the petition does not include site-specific ground level information of the proposed Sawantwadi-Dodamarg Corridor. The map furnished in the petition also does not clearly indicate the villages in the corridor. As such, a detailed scrutiny cannot be carried out. However, as the State Government of Maharashtra in their affidavit before the Court have mentioned that considering the floral, fauna and ecological importance of the Sawantwadi-Dodamarg area, declaring it as Ecological Sensitive Area would benefit protection and conservation of the ecosystem including Wildlife & its Corridor. This has been mentioned in the 17th July 2012 order of this Hon'ble Court. This brings out the ecological importance of the area.”

Hence, it has been stated that in view of the fact that the State Government supports the declaration of the area as an ESA, the State Government may forward a proposal based upon ground level information and land records and submit a proposal to the MoEF for considering a declaration of the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area. The affidavit of MoEF does not reflect compliance with the statement, which was made before this Court or of the directions which were issued by the Division Bench. All along, the Court has been informed that the Union Government needed a reasonable extension of time to take a decision on the report submitted by the high level working group. The affidavit of the Union Government, in fact, emphasizes the ecological importance of the Sawantwadi-Dodamarg area, but it has been submitted that a proposal in the first instance should be submitted by the State Government. Insofar as the position of the State Government is concerned, it has been expressly stated in an affidavit dated 25 June 2012 of the Deputy Conservator of Forests. Paragraphs 2 and 3 of the affidavit are extracted hereinbelow for sake of convenience.

“2. With reference to Para 4 of the Petition, I say that Sawantwadi-Dodamarg area consists of Reserved Forests (Government Forests) and privately owned horticulture crops of Mango, Kokam, Cashew-nut, Coconut, Banana, Apricot and other fruit species. Further dense vegetation has come up in uncultivated land in this area. On the agricultural land of private individuals, there are large scale plantations of horticulture. The forest area owned by the Government of Maharashtra is 55,566.60 hectares in Sindhudurg district which is about 10 percent of geographical area. As per the State of Forest Report 2009 of Forest Survey of India, Sindhudurg district has forest cover to the extent of 49% of geographical area. As Sindhudurg-Dodamarg is a continuous stretch of vegetation; it serves as a passage for wildlife movement in the area. This is a part of Western Ghats endowed with rich biodiversity. There has been no rapid degradation in government forest areas of Sawantwadi-Dodamarg area; by and large there is not much change in land use pattern.

3. With reference to Para 5 of the Petition, I say that the Sawantwadi-Dodamarg stretch is about 35 km long consisting of about 25 villages. The Sahyadri Konkan Wildlife corridor connecting Radhanagari Wildlife Sanctuary and Chandoli National Park of Maharashtra is about 70 km from the Sawantwadi -Dodamarg. Though this stretch is more than 10 km away from the above mentioned Sanctuary and National park, it has a significant wildlife corridor value and serves as habitat for wildlife. The Sawantwadi-Dodamarg area has the presence of Asiatic elephants migrated from Karnataka State. Presence of tiger in this landscape has been reported during the monitoring of wildlife population in the year 2005 & 2010.”

Finally, it has been stated as follows, in paragraph 33 of the same affidavit:

“Considering the floral, faunal, and ecological importance of the Sawantwadi-Dodamarg area, declaring it as Ecologically Sensitive Area would benefit the protection and conservation of the ecosystem including wildlife and its corridors.”

5. Having regard to this uncontroverted position, it is impossible to fathom as to how a final decision has still not been arrived at, when there is no divergence of opinion either between the State Government or the Union Government (MoEF) in regard to the ecological importance of the Sawantwadi-Dodamarg Corridor. The affidavit of the State Government also clearly mentions that out of 25 Gram Panchayats in the area, 13 Gram Panchayats have a forest area of 3668.81 hectares and that 22 Gram Panchayats are ready to declare their support for the area as an ESA. Despite several orders of the court granting extension of time on the assurance that a final decision would be arrived at, no decision as yet been taken.

6. In the circumstances, we now direct that the Secretary to the Ministry of Environment and Forests, Government of India shall arrange and hold a meeting with the Secretary in the Ministry of Environment and Forests of the State Government, no later than by 1 November 2013. The meeting shall be held for sorting out of procedural modalities and formalities to facilitate the declaration of the Sawantwadi-Dodamarg Corridor as an ESA. We direct that the State Government shall in terms of the joint decision, which will be arrived at in the meeting, take all necessary steps no later than by 30 November 2013, within which period, the response of the State Government shall be duly remitted to the Union Government in the MoEF. The MoEF shall thereafter take necessary consequential action by 31 December 2013. On the request of the Petitioner, we permit the Petitioner to

supply relevant information, including GPS based maps of the area, to the Ministries of Environment of Forest of the Union and State Governments expeditiously.

7. We stand over the further hearing to 17 January, 2014, on which date, the Court shall apprised about a final decision in the matter”.

(emphasis supplied)

14. The order dated 27 September 2013 was passed on the backdrop of the stand taken by the State Government and the MoEF before the Court. In the affidavit dated 25 June 2012, the State Government categorically stated that, considering flora fauna and ecological importance of the Sawantwadi-Dodamarg Corridor, declaring it as Ecologically Sensitive Area would benefit the protection and conservation of this eco-system including wildlife in this Corridor. The affidavit dated 18 September 2013 filed by MoEF had stated that keeping in view that the State Government supports declaring the area as Ecologically Sensitive Area, the State Government may develop a proposal for the Corridor as an Ecologically Sensitive Area based upon the ground-level information and land records and submit the proposals to the MoEF for considering the declaration of Sawantwadi-Dodamarg Corridor as Ecologically Sensitive Area. Thus, before the Court, there was a consensus to notify Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area. The Division Bench, therefore, observed that in view of the uncontroverted position, it was impossible to fathom why a final decision has still not been arrived

at. The Division Bench directed that a meeting shall be held to sort out procedural modalities and formalities to facilitate the declaration of the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area. The State Government was directed to take all necessary steps by 30 November 2013. The MoEF was directed thereafter to take necessary consequential action by 31 December 2013. The matter was listed to report the developments.

15. The MoEF had earlier imposed a moratorium on 16 August 2010, which was extended. The Division Bench had extended the moratorium until further orders by order dated 17 July 2012 in PIL No.179/2012. After the order dated 27 September 2013 was passed, the MoEF, based on recommendations from the High-Level Working Group, issued an office memorandum lifting the moratorium in Ratnagiri and Sindhudurg districts. This was reconsidered as it would have posed a significant threat to the ecology of Western Ghats. The MoEF, thus, issued the moratorium again in November 2013. There were shortfalls in this moratorium. Therefore, the Petitioner- Vanshakti, sought modification of the office memorandum, which then modified and covered the Sawantwadi-Dodamarg Corridor, the embargo of which continues to this day.

16. The petitions came up on board for hearing on 28 February 2018. Considering the importance of the questions raised

in these petitions and the relief sought, the Division Bench admitted both petitions for further hearing. Upon perusal of the order dated 27 September 2013 and paragraph 6 thereof, the Division Bench directed the Union of India to produce the minutes of the meetings held under the directions issued in paragraph 6 of the said order. The Union of India was also directed to produce a response from the State Government, if any. The Union of India was directed to ensure that under any circumstances these documents will be produced for perusal of the Court on the next date. The Petitioners had pointed out the letter dated 7 December 2017 addressed by the District Collector to the Deputy Conservator of Forest, Sawantwadi Forest Division, by which he called upon the Deputy Conservator of Forest to take action concerning an area of 3,000 hectares which fell in the Eco-sensitive Zone. The Deputy Conservator of Forest, Sawantwadi Forest Division was directed to personally remain present in the Court along with the record.

17. The petitions were then listed before the Division Bench on 17 October 2018. The Division Bench noted the earlier orders and observed that the State has not disputed the fact that the Sawantwadi-Dodamarg Corridor is required to be declared as an Ecologically Sensitive Area. The Court directed the State of Maharashtra and the Union of India to file a compliance report on affidavit within a week.

18. Thereafter, the petitions were heard on 27 November 2018, when the Division Bench passed the following order:

“ This Petition is pending since last 4 to 5 years. Various orders are passed since 2012 onwards. We have perused these orders. However, still, issue as to whether the State has submitted report in respect of the declaration of the area as Ecologically Sensitive Area (for short 'ESA') to the Ministry of Environment is not clear.

2. We have perused the order passed by the Division Bench of this Court on 17/10/2018 (Coram : Shantanu S. Kemkar & Sarang V. Kotwal, JJ.) which reads as under :

“ Today when the matter came up for hearing, none appeared for the Union of India. The learned AGP for the State submits that he will take instruction about the compliance of the earlier orders passed by this Court from time to time including the orders dated 10th April, 2012, 12th June, 2012, 27th September, 2013 and 11th December, 2014. 2. We find that in various orders the State has not disputed the fact that the area Sawantwadi Dodamarg Corridor is required to be declared as a Ecologically Sensitive Area. In the circumstances, we direct the State as also the Union of India to file compliance report on affidavit within a week. 3. List on 25th October, 2018.

3. Learned Counsel appearing for the Applicant has presented before us the Google images of the concerned sites in support of her contention that the area has got deteriorated, mining activities are going on, deforestation is on rise, wild life is not protected. It is submitted that forest areas need to be protected.

4. *An Affidavit on behalf of the Respondent No.1 dated 23/03/2018 is filed by Shri Pankaj Verma, Scientist, Ministry of Environment, Forest and Climate Change, Government of India. In the affidavit it is submitted that the Union of India cannot declare any region as ESA and will have to do so in consonance with the response of the State Government. The learned Government Pleader Shri Vagyanu submits that issue will be discussed with the Member/Secretary of the Revenue and Forest Department.*

5. *We direct the Member/Secretary to take up the issue on priority. Learned Government Pleader shall make a statement accordingly on the next date.*

6. *Stand over to 05/12/2018. To be placed as 'First on Board'.*

7. *A Senior Official in the department of Revenue and Forest and from the Collector's office at Sindhudurga shall remain present before this Court on the next date.*

8. *Learned GP to communicate the order to the concerned parties."*

(emphasis supplied)

19. Despite the consensus to declare this Corridor as an Ecologically Sensitive Area, the issue was kept pending at the administrative level. Meanwhile, the area suffered tree cutting and degradation due to harmful activities. Taking note, the Division Bench on 5 December 2018 directed as follows:

"1.

2. *Perused the affidavit tendered by the learned Government Pleader and considered the submissions. Learned Senior Counsel for the petitioners brought on*

record the condition of degradation of the forest and the need to take immediate steps to protect the wildlife in Dodamarg Taluka of District - Sindhudurg. This is a fit case for the State and Central Government to take cognizance and appropriate steps to protect the wildlife and declare the said area as Ecologically Sensitive Area (ESA).

3. ...

4. In the meanwhile, we direct the respondents not to allow tree cutting/felling in Dodamarg Taluka, District-Sindhudurg. The Collector / concerned official shall monitor the same.

5.”

(emphasis supplied)

20. In one of the orders, the Court raised a query concerning the National Green Tribunal Act, 2010. However, during the hearing before us, this issue was not raised by any of the Respondents. That is so because the petitions are now restricted to the declaration of the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area as per the Court's orders, and various issues under the Wildlife Protection Act are to be addressed.

21. Since there was no progress on the declaration of the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area for a decade, Interim Application No. 556/2022 was taken out in PIL No. 198/2014 by Petitioner- Vanashakti, seeking direction to the Respondents for declaration by giving effect to the directions

issued by this Court in the order dated 27 September 2013. A grievance was also made about the fact that despite the embargo on tree cutting/felling in Dodamarg Taluka, District– Sindhudurg, the tree felling took place in contravention of the Court orders.

22. Both the petitions along with Interim Application No.556/2022 were heard on 23 August 2023. The Petitioners pointed out that the order dated 27 September 2013 is not set aside or modified, neither challenged and still not complied with within 30 days as directed. The Petitioners pointed out that initially steps would have to be taken by the State Authorities, and thereafter, Respondent No.1 – Ministry of Environment, Union of India. The Court, thus, directed the Respondent- State to place on record the steps taken since the order of 27 September 2013.

23. An affidavit was filed by the State Government on 26 October 2023. During the hearing, on 14 December 2023, the learned AGP drew the attention of the Court to the reply affidavit filed by the Principal Secretary (Forest), Revenue and Forest Department, Government of Maharashtra dated 26 October 2023. It referred to the draft notification issued by the Ministry of Environment, Forest and Climate Change on 6 July 2022, and the study report prepared by the Wildlife Institute of India. The learned AGP argued that, as per the legal position, since the draft notification has been issued by the Ministry of Environment and

Forests (MoEF), which covers eleven villages, the MoEF should take the process further. Since this stand was not taken in the reply affidavit and argued as a legal position, the Court directed that the stand of the State be placed on record by way of reply affidavit.

24. The petitions came up for further consideration on 19 January 2024, when the reply affidavit filed by the Principal Secretary (Forest) of the State was submitted. The reply stated that the State Government has also issued a Government Resolution dated 26 August 1997 declaring Sindhudurg district as a 'tourism district' to promote eco-friendly tourism, and the Government Resolution specifically prohibited the establishment of chemical and dangerous industries in the district, and these measures are deemed sufficient to take care of the sustainable development of the entire district without causing any damage to the environment. It was further stated that the State Government has already taken various measures to protect the functional wildlife corridor. It was submitted that the area is already declared as Conservation Reserve. Having perused the affidavit and the argument of the learned AGP that the affidavit dated 26 October 2023 the Court found that it was not in opposition by the State Government to declare the villages as Ecologically Sensitive Areas if the Ministry of Environment and Forest declares so. The Court observed that since the State Government has made its stand clear, it is up to the Central Government to decide whether all 25 villages should be declared as

Ecologically Sensitive Areas, shifting the focus to the Ministry of Environment and Forest, Union of India. The learned Counsel for the MoEF took time to clarify its stand regarding declaring the Sawantwadi-Dodamarg Corridor as Ecologically Sensitive Area.

25. Thereafter, the MoEF has filed its additional affidavit. It is stated in the reply that a High-Level Working Group (HLWG) under the Chairmanship of Dr. K. Kasturirangan was constituted on 17 August 2012, and based on the recommendations of the HLWG, the draft Notification for Ecologically Sensitive Areas (ESA) of the Western Ghats was first published on 10 March 2014, covering an area of 56825.7 sq. km across six states, namely Kerala, Tamil Nadu, Goa, Karnataka, Maharashtra, and Gujarat, falling in the Western Ghats region, as Ecologically Sensitive Areas. It was submitted that despite a series of meetings to address the concerns and apprehensions of the concerned State Governments and other stakeholders, the draft of the Western Ghats Eco-sensitive Area could not be finalized as the State Governments have requested changes/modifications. A Committee was constituted to re-examine the suggestions of the six State Governments. It was submitted that out of the 25 villages from Sawantwadi and Dodamarg talukas mentioned in the Petition, 11 villages already feature in the draft WGESA notification. The remaining 14 villages, which consist of 1 village from Sawantwadi taluka and 13 villages from Dodamarg taluka, are not featured in the draft WGESA notification, since the

MoEF has not received any proposal for inclusion of the remaining 13 villages of the Dodamarg taluka and 1 village of Sawantwadi taluka from the Government of Maharashtra. Reference was made to the affidavit of the State that the area is notified as a conservation reserve.

26. The Petitioner, Vanashakti, has filed an additional affidavit and placed the Report of the Wild Life Institute of India on record. Thus, the pleadings are complete and we have taken the petitions for hearing.

27. Mr. Zaman Ali, learned Counsel for the Petitioners in PIL No.198/2014. Ms. Bhakti Jain, learned Counsel for the Petitioner in PIL No.179/2012 . We have heard Mr. Rui Rodrigues, learned Counsel for the Union of India in PIL No.179/2012 and Mr. Parag Vyas, learned Counsel for the Union of India in in PIL-198/2014 and Mr. M.M. Pabale, Assistant Government Pleader for Respondent- State.

28. As noted above, various orders passed by this Court from the year 2012 are not challenged or, varied or set aside and continue to bind the State government and the MoEF. There is no debate raised before us, either by the State of Maharashtra or by the Ministry of Environment and Forest (MoEF for short), regarding the ecological importance of the Sawantwadi-Dodamarg Corridor and

the need to protect its biodiversity and environment. The earlier orders would show the discussion centered around the modalities for declaration of the Corridor as an Ecologically Sensitive Area.

29. It is admitted that these petitions now concern only about the 25 villages that is the Sawantwadi-Dodamarg Corridor which, under the directions of this Court in the order dated 27 September 2013, are to be declared as Ecologically Sensitive Area. To restate the names of the said villages are: Kumbral, Panturli, Talkat, Zolambe, Kolzar, Shirwal, Ughade, Kalane, Bhikekonal, Kumbhawade, and Khadpade in taluka-Dodamarg, and Asaniye, Padwe Majgaon, Bhalawal, Tamboli, Saramale, Nevli, Dabhil, Otawane, Konshi, Gharpi, Udeli, Kesri-Phansawade in taluka-Sawantwadi, and Bhekurli, Fukeri in Banda taluka. Eleven out of 25 villages feature in the draft of the Western Ghats Ecologically Sensitive Area. For the remaining, the MoEF is awaiting the proposal from the State Government. Two issues arise for consideration. First, whether designating the area as Conservation Reserve is sufficient not to notify it as an Ecologically Sensitive Area. Second, whether the notification for this Corridor should await the finalisation of the large Western Ghats Ecologically Sensitive Area.

30. There is no merit in the Respondent's contention both, in law and fact that the Corridor has been protected as a Conservation Reserve by the State Government and no separate

status as an ecologically sensitive area may be required. There is no denial of the ecological importance of the Sawantwadi-Dodamarg Corridor. In the affidavit dated 25 June 2012 filed by the Deputy Conservator of Forests, the State Government has accepted that the Sawantwadi-Dodamarg Corridor Sindhudurg-Dodamarg is a continuous stretch of vegetation and serves as a passage for wildlife movements in the area and declaring it as an Ecologically Sensitive Area would benefit the protection and conservation of the ecosystem, including wildlife and biological diversity and ecological importance. In the affidavit filed on 18 September 2018, the MoEF has also acknowledged this position, stating that the affidavit of the State Government dated 25 June 2012 clearly establishes the ecological importance of the Sawantwadi-Dodamarg Corridor. This Court, by order dated 27 September 2013, directed the State Government and the Union of India to work out modalities and notify the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area. Therefore, this cannot be substituted by a Conservation Reserve.

31. Secondly, in law the Conservation Reserves and Ecologically Sensitive Areas are two different concepts. Ecologically Sensitive Areas are to be notified under the Environment Protection Act, 1986, and the Environment (Protection) Rules, 1986. Conservation Reserves are declared under Section 36A of the Wildlife Protection Act, 1972. The Petitioners have rightly argued

that for these two categories the degree of protection differs and this legal position is not controverted.

32. Thirdly, the Petitioner- Vanshakti has placed on record a chart which demonstrates that only 2 villages form part of the Conservation Reserve. The chart is as under:

List of 25 villages under Order dated 27.09.2013 directed to be notified as Ecologically Sensitive Area (ESA)	List of villages under notification dated 22.06.2020 declaring "Tillari Conservation Reserve" under WPA, 1972	List of villages under notification dated 15.03.2021 declaring "Amboli-Dodamarg Conservation Reserve" under WPA, 1972
Taluka Dodamarg 1. Kumbral 2. Panturli 3. Talkat 4. Zolambe 5. Kolzar 6. Shirwal 7. Ughade 8. Kalane 9. Bhikekonal	Taluka Dodamarg 1. Bambarde 2. Ghatiwade 3. Kendre KD 4. Kendre BK 5. Patiye 6. Shirange 7. Konal 8. Alnode 9. Hewale	Taluka Dodamarg 1. Ghodge Wadi 2. Morle 3. Tervan 4. Medhe 5. Khadpade 6. Bhekurli Taluka Sawantwadi 7. Parpoli

10. Kumbhawade	10. Medhe	8. Amboli
11. Khadpade		9. Nene
		10. Masure
Taluka		11. Kegad
Sawantwadi		12. Choukul
12. Asaniye		13. Kumbhwa
13. Padwe		de
Majgaon		
14. Bhalawal		
15. Tamboli		
16. Saramale		
17. Nevli		
18. Dabhil		
19. Otawane		
20. Konshi		
21. Gharpi		
22. Udeli		
23. Kesri-		
Phansawade		
Taluka Banda		
24. Bhekurli		
25. Fukeri		

Therefore, even otherwise, only 2 villages, that is, Khumbhwade and Bhekurli out of 25 villages from the Sawantwadi-Dodamarg

Corridor are covered by the Tillari Conservation Reserve and Amboli Conservation Reserve. Therefore, the argument based on the declaration of the Conservation Reserve made by the State Government and the Union of India is entirely misplaced.

33. Now, we turn to the material on record, which further justifies the declaration of the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area. This material is from the record of the Respondents such as the study reports commissioned by the Respondents and the internal correspondence. Apart from the order dated 27 September 2013, this subsequent material clearly shows that all parameters for declaring this Corridor as an Ecologically Sensitive Area under the Act of 1986 and Rules are satisfied.

34. Firstly, the Petitioner- Vanshakti, has placed on record a report submitted to the Chief Conservator of Forest dated 9/14 November 2014. According to the Petitioner, the Respondent-State has withheld this crucial Report from the Court. The Report's title is "Rapid Assessment of Biodiversity in 25 villages in the Sawantwadi-Dodamarg Region". The Report refers to the order passed by this Court directing the State Government to forward the proposal based on the ground-level information for the declaration of Sawantwadi-Dodamarg Corridor as Ecologically Sensitive Area. The Report states that the survey was conducted at the request of the Chief Conservator of Forest, Kolhapur Division, for supplying

ground-level information. In this Report, the study which led to the Report considering the ecological value of Sawantwadi-Dodamarg Corridor. It has placed on record the details of various species of mammals, birds, butterflies, reptiles etc., showing the richness of the biodiversity of the area.

35. Second, in the additional affidavit, Petitioner-Vanshakti has annexed the communication dated 25 June 2020 issued by the office of the Principal Chief Conservator of Forests to the Secretary of the Maharashtra State Biodiversity Board. It refers to the opinion sought as regards the 25 villages in the Sawantwadi-Dodamarg Corridor. The Principal Chief Conservator of Forest (Wildlife) has described the Sawantwadi-Dodamarg Corridor as a treasure of biodiversity, and it is a home of rare species whose protection is crucial. The Principal Chief Conservator of Forest (Wildlife) has given the specific opinion that to protect the area's biodiversity and the environment in general; it is vital to include these 25 villages in Sawantwadi-Dodamarg Corridor as Ecologically Sensitive Area. The Principal Chief Conservator of Forest (Wildlife) has referred to the Report (Rapid Assessment of Biodiversity in 25 villages in the Sawantwadi-Dodamarg Region). The communication also refers to the fact that various stakeholders have expressed their opinions that the Sawantwadi-Dodamarg Corridor is required to be declared as an Ecologically Sensitive Area. This is the opinion of the senior most officer in the Wildlife Department of the State Government.

36. The third and most important material is the report of the Wildlife Institute of India. In response to the orders passed by this Court in this Petition, the State of Maharashtra, by letter dated 22 October 2018, requested the Wildlife Institute of India (WII) for a detailed study of 25 villages for the creation of an Ecologically Sensitive area in the Sawantwadi-Dodamarg region of Sindhudurg District of Maharashtra. The scope of the study was to ascertain whether the Sawantwadi-Dodamarg region of the Sindhudurg District of Maharashtra has any wildlife corridor value. Secondly, whether the said region has a significant presence of wildlife fauna, including tigers and elephants. If the answer to any of the above questions was to be affirmative, then the extent of Corridor or wildlife presence in the area and necessary measures to conserve the biodiversity of the region which would also include the proposal for delineation of the area for notification as Ecologically Sensitive Area.

37. Wildlife Institute of India conducted a detailed study of the 25 villages. WII conducted detailed fieldwork, which covered more than 500 sq. km of Dodamarg and Sawantwadi Talukas, and the camera trap captured 21 species of mammals, of which the majority (81%) were found in Dodamarg Taluka and 71% in Sawantwadi Taluka. The WII Report is divided into 7 chapters. Chapter 1 deals with Introduction, Chapter 2 deals with the Study area covered, Chapter 3 deals with the status and distribution of

mammalian fauna, Chapter 4 deals with habitat characterization, anthropogenic factors, and habitat use, Chapter 5 deals with the status of tigers in studied villages, Chapter 6 deals with the status of elephants in studied villages, and Chapter 7 provides suggestions on villages that are to be included in the Ecologically Sensitive Area of the Sawantwadi-Dodamarg Wildlife Corridor.

38. The important observations and findings in the WII Report are as follows:

1.4 Sawantwadi-Dodamarg Wildlife Corridor (SDWC): A corridor of critical importance in Sahyadri-Konkan Landscape:

Large carnivores have essential roles in many ecosystems, and their habitats rapidly become fragmented and isolated. Scientific studies have found that connectivity between habitats through corridors is critical to maintaining viable populations of large carnivores in the near future. The National Tiger Conservation Authority (NTCA), constituted under the Wildlife (Protection) Act, 1972 (amendment 2006), defines wildlife corridors as inherent geographical linkages (through forests, river courses or other habitat attributes) which facilitate the movement of tigers and other wild animals from one source area to another. The National Wildlife Action Plan 2017-2020, released in February 2016, foresees corridor protection as an essential aspect of wildlife conservation. The plan suggests on the ground demarcation of identified corridors, and restricted land use change in important corridor areas, in addition to proposing guidelines for making state corridor management plans. The plan also recognizes the need for long-term strategies for corridor management in the country. It seeks to make provision in

the Wildlife (Protection) Act for identifying the areas of extended habitats and migratory routes (buffers and corridors) of species – a huge step in providing legal protection to corridors. The plan does offer the right direction for corridor protection in India. However, it remains to be seen if the plan manifests itself in more robust legislative and policy reforms in the near future. Generally speaking, a corridor can be defined as ‘linear landscape elements, meant to establish/facilitate connectivity across habitats and increase survivorship by increasing the diversity of specific gene pools.’ (Varma, 2008) In more technical parlance, ecological literature defines corridors as a fundamental landscape element (the other two are patch and matrix), being narrow strips of land which differ from the matrices on either side.

A Critical Ecosystem Partnership Fund report (Bawa et al., 2007) identified five landscape-scale units for conservation importance in WG and one landscape unit from the Sahyadri Tiger Reserve (STR) comprised of Koyna Wildlife Sanctuary and Chandoli National Park to the Kali Tiger Reserve (KTR), until the river Kali, was identified as the “Sahyadri-Konkan Corridor” (Fig. 1.3). The Sahyadri-Konkan corridor comprises three protected areas in Maharashtra, five in Goa, and three in Karnataka. Its total size is about 10, 800 sq. km, and there are two tiger reserves, the Sahyadri Tiger Reserve in Maharashtra and Kali Tiger Reserve in Karnataka. This corridor is the northernmost limit where tigers and dholes still occur in the Western Ghats. However, the connectivity is threatened due to large-scale habitat modification outside protected areas. The contiguous forests of Goa, Karnataka and Maharashtra and the reserve forests have been named Tiger Conservation Units (TCU), and their habitat may support around 50 tigers.

Chapter – 7: Villages suggested for inclusion in Eco-Sensitive Area (ESA) of Sawantwadi and Dodamarg taluka

7.2. Landscape of villages suggested for inclusion as ESA:

7.2.1. Dodamarg taluka

Based on the extensive and intensive field sampling in the studied villages of Sawantwadi-Dodamarg Wildlife Corridor (SDWC) (Chapter 2), we assessed and determined the status of wildlife species and habitat and landscape characteristics and information has been given under Chapters 3 to 4. We noted the presence of 21 species in the studied area; three were endangered as per the IUCN list, i.e. tiger, wild dog and pangolin. We also generated maps of the spatial distribution, abundance, species richness and diversity of mammal species across the landscape of studied villages, and we found that the northern, eastern and southern parts of the Dodamarg taluka are the most potential wildlife habitat and provide the perennial water source of Tillari dam to the wildlife species.

We also characterize the landscape features concerning terrain features, vegetation composition, and extent of anthropogenic factors. We describe details of these under Chapter 4. Published literature has significantly documented that the mountainous terrain provides ideal habitat to different wildlife species because of the presence of diverse niches in comparison to other terrain types. Such habitats are known to have different stream orders. We observed that most of the dominant hilly terrains are distributed in northern, eastern and southern parts of the studied landscape of SDWC. These are well connected in the north with another wildlife habitat of Maharashtra, the east region with Karnataka and the south with Goa. We delineated these areas in the landscape of DW. (Details are in Chapter 4).

4. *Vegetation characteristics have indicated that the landscape still has reasonably good tree density and canopy cover and has the potential wildlife habitat. Most of the villages of hilly terrain have high tree density and tree cover. We used per cent greenness or openness across the studied villages. Areas of > 100 m altitude have a higher proportion of greenness or low openness, most of which are in the northern, eastern, and southern parts of the Dodamarg.*

5. *Among the anthropogenic factors, though we observed human movement disturbance during the daytime, such activity was relatively low during the night in the northern, eastern and southern parts of the Dodamarg taluka.*

Literature has also suggested using flagship and long ranging species such as tigers and elephants for landscape conservation and connectivity planning because the tiger requires high-quality and undisturbed habitats. In contrast, elephants need a larger landscape to meet food, water, and cover. Regional analysis of these two species concerning terrain characteristics, habitat and other factors are as follows:

.....

Hence, based on species distribution, occurrence, distribution pattern, terrain and habitat characteristics contiguous within Dodamarg taluka and with the adjoining landscape, we identify 35 villages viz. 35 villages viz. Awade, Aynode, Bambarde, Bhekurli, Bodade, Fukeri, Ghatiwade, Ghotge, Ghotgewadi, Hewale, Kendre Bk., Kendre Kh., Ker, Khadpade Tarf Banda, Khanyale, Khokaral, Kolzar, Konal, Mangeli, Morle, Pal, Palye, Parme, Patye, Sargave, Shirange, Shirwal, Sonawal, Talekhol, Talkat, Terwan, Terwanmedhe, Usap, Viridi, Zolambe which are critical for retaining the connectivity within Dodamarg taluka

and adjoining habitat of Maharashtra, Karnataka and Goa. Hence, these villages may be considered Eco-Sensitive Areas (Fig. 7.4).

7.2.2. Sawantwadi taluka: All the villages suggested by the WGEEP for the Sawantwadi taluka has already been covered through draft notification issued by the Ministry of Environment and Forests, Govt. of India vide S.O. 5135 (. E) dated 03.10.2018 except two villages viz. Bhalawal and Otavane (Fig. 7.4). We believe if development comes in these two villages in future, north-western ESA villages may be lost and area may be isolated. In view of avoiding any further isolation among the notified ESA villages of the Sawantwadi taluka, we suggest for inclusion of these two villages as ESA.

Based on the landscape connectivity configuration of the Sawantwadi taluka as SDWC, we noticed that two villages viz. Kalambist and Satuli are not included as ESA but amidst within the declared ESA villages (Fig. 7.4). Wildlife status of these villages was not undertaken as these were not part of selected villages for the study. Though these are not presently part of the ESA but we believe that development activities may take place in future and may affect the overall composition and configuration of SDWC. Additionally, therefore, we suggest for inclusion of Kalambist and Satuli villages of the Sawantwadi taluka as ESA because of their strategic location within the declared ESA villages of the Sawantwadi taluka.

Summary and Recommendations:

The Hon'ble Bombay High Court directed the Maharashtra State Government to forward a proposal

based on ground-level information for the declaration of Sawantwadi and Dodamarg regions as the ecologically sensitive region in response to a Public Litigation (PIL no.179) filed by Awaz Foundation. Given this, Officer on Special Duty, Revenue and Forest Department, Govt. of Maharashtra, vide his letter No. S-30/0914/CR-259/F-1 dated 22nd October 2018 has requested the Institute for a detailed study of 25 villages for the creation of ESZ/ESA in the Sawantwadi-Dodamarg region of Sindhudurg District of Maharashtra. Subsequently, it was suggested to include all villages of Dodamarg Taluka for detailed study vide letter no. S-30/0914/CR-259/F-1 dated 04.12.2018 (Annexure I). Hence, the following tasks were proposed:

- 1. Whether the Sawantwadi-Dodamarg region of the Sindhudurg District of Maharashtra has any wildlife corridor value?*
- 2. Whether the said region has a significant presence of wildlife fauna, including tigers and elephants?*
- 3. If the answer to any of the above questions is affirmative, the extent of such corridor or wildlife presence in the area and necessary measures to conserve the biodiversity of the region. This would also include the proposal for delineation of the area for notification as ESZ with suggestions for regulatory regimes conducive to wildlife conservation.*
- 4. We conducted field work to determine the status of wildlife and habit at between March 2021 to May 2022 of Dodamarg and Sawantwadi talukas. These were determined in 442 grids, each of 2 km² covering 15 (126 km²) and all villages (500 km²) of Sawantwadi and Dodamarg talukas respectively. We assessed spatial variation in wildlife species occurrence and abundance concerning habitat characteristics using camera traps,*

habitat quantification, terrain complexities, the extent of human disturbance, structured questionnaire, crop depredation compensation data of Dodamarg taluka, and Remote Sensing and GIS analysis. We deployed 323 camera traps; however, data could be retrieved only from 304 camera traps due to theft (14) and non-functional (5). These functional camera traps resulted in 9281 trap nights.

*5. During our study period, camera trap sampling resulted in 21 species of mammals, such as Tiger (*Panthera tigris*), leopard (*Panthera pardus fusca*), wild dog (*Cuon alpinus*), sloth bear (*Melursus ursinus*), gaur (*Bos gaurus*), sambar (*Rusa unicolor*), barking deer (*Muntiacus muntjac*), four horned antelope (*Tetracerus quadricornis*), mouse deer (*Moschiola indica*), wild pig (*Sus scrofa*), bonnet macaque (*Macaca radiata*), hanuman langur (*Semnopithecus entellus*), Indian hare (*Lepus nigricollis*), Indian porcupine (*Hystrix indica*), palm civet (*Paradoxurus hermaphroditus*), small Indian civet (*Viverricula indica*), ruddy mongoose (*Herpestes smithii*), grey mongoose (*Herpestes edwardsii*), rusty spotted cat (*Prionailurus rubiginosus*), strip necked mongoose (*Herpestes vitticollis*) and pangolin (*Manis crassicaudata*). Among the birds, most commonly captured were peafowl (*Pavo cristatus*) and grey junglefowl (*Gallus sonneratii*). Of these species, more than five wildlife species were captured in the majority of villages (81 %) of Dodamarg taluka where, as was 71 per cent in the studied villages of Sawantwadi Taluka.*

.....

10. Based on the analysis of wildlife status, habitat use, terrain heterogeneity, and habitat connectivity landscapes,

our recommendations are as follows:

1. a. Species richness, Relative abundance Index of different mammal species and habitat characterization suggest that the Sawantwadi- Dodamarg region of Sindhudurg District of Maharashtra has wildlife corridor value.
2. We observed the presence of tigers, elephant use, and other wildlife species in the Sawantwadi-Dodamarg Wildlife Corridor (SDWC). Movement of the tiger was also reported earlier between Sahyadri Tiger Reserve, Maharashtra and Kail Tiger Reserve, Karnataka, through SDWC. Hence, all these observations indicate the significance of the habitat connectivity landscape between the northern and central Western Ghats.

3. Sawantwadi Taluka:

We conducted the fieldwork in WGEEP recommended villages of Sawantwadi taluka for inclusion as ESA.

(a) All these villages recommended by WGEEP have already been included as ESA except for two villages, viz. Bhalawal and Otavane vide draft notification S.O. 5135 (E) dated 03.10.2018 issued by the Ministry of Environment, Forest and Climate Change, Govt. of India (Annexure IV).

(b) herefore, it is suggested that Bhalawal and Otavane villages of Sawantwadi taluka, as indicated by WGEEP, should also be included in ESA for retaining the habitat connectivity within Sawantwadi and Dodamarg talukas as SDWC (Fig. 7.4).

(c) Based on the landscape connectivity configuration of Sawantwadi taluka as SDWC, we noticed that two villages viz. Kalambist and Satuli are not included as ESA but amidst within the declared ESA villages (Fig. 7.4). Wildlife status of these villages was not undertaken as these were outside the selected villages for the study. Though these are not presently part of the ESA, we

believe that development activities may take place in the future and may affect the overall composition and configuration of SDWC. Therefore, we suggest including the Kalambist and Satuli villages of Sawantwadi taluka as ESA because of their strategic location within the declared ESA villages of Sawantwadi taluka by Govt. of India.

d. Dodamarg taluka:

(i) Dodamarg taluka of 500.10 km² has 62 village (Dodamarg taluka:

(ii) Ten villages were suggested for ESA by the WGEEP committee and are not part of the Tillari Conservation Area (TCA) and Amboli-Dodamarg Conservation Reserve (ADCA).

(iii) Based on the analysis of species occurrence, richness, diversity, habitat suitable for wildlife use and retaining the connectivity, we recommend the inclusion of 35 villages as ESA viz. Awade, Aynode, Bambarde, Bhekurli, Bodade, Fukeri, Ghatiwade, Ghotge, Ghotgewadi, Hewale, Kendre Bk., Kendre Kh., Ker, Khadpade Tarf Banda, Khanyale, Khokaral, Kolzar, Konal, Mangeli, Morle, Pal, Palye, Parme, Patye, Sargave, Shirange, Shirwal, Sonawal, Talekhol, Talkat, Terwan, Terwanmedhe, Usap, Viridi, Zolambe.

(iv) Whereas Kumbhavade of Dodamarg taluka has already been declared as ESA under Sawantwadi taluka vide draft notification S.O. 5135 (E) dated 03.10.2018 issued by the Ministry of Environment, Forest and Climate Change, Govt. of India.

(v) These villages (n=36) cover an area of approximately 338 km² where most of the forest habitats are still intact, connecting the adjoining conservation landscape of Goa and Karnataka.

(emphasis supplied)

The WII report states that tiger movement was recorded in six villages: Mangeli, Bhekurli, Bambarde, Shirange, Ker, and twenty-two independent tiger photo captures were recorded. The study records the presence of 21 species of mammals, such as tiger, leopard, wild dog, sloth bear, gaur, sambar, barking deer, four-horned antelope, mouse deer, wild pig, bonnet macaque, Hanuman langur, Indian hare, Indian porcupine, palm civet, small Indian civet, ruddy mongoose, grey mongoose, rusty spotted cat, strip-necked mongoose, and pangolin. The WII study categorically records that the Sawantwadi-Dodamarg Wildlife Corridor is a critical connecting link and bottleneck between the Northern and Central Western Ghats in the Sahyadri-Konkan corridor. Based on species distribution, occurrence, distribution pattern, terrain, and habitat characteristics contiguous within Dodamarg taluka and with the adjoining landscape, WII identified the villages: Awade, Aynode, Bambarde, Bhekurli, Bodade, Fukeri, Ghatiwade, Ghotge, Ghotgewadi, Hewale, Kendre Bk., Kendre Kh., Ker, Khadpade Tarf Banda, Khanyale, Khokaral, Kolzar, Konal, Mangeli, Morle, Pal, Palye, Parme, Patye, Sargave, Shirange, Shirwal, Sonawal, Talekhol, Talkat, Terwan, Terwanmedhe, Usap, Viridi, Zolambe, as critical for retaining the connectivity within Dodamarg taluka and adjoining habitat of Maharashtra, Karnataka, and Goa. The WII Report unequivocally recorded that the Sawantwadi -Dodamarg corridor needs to be notified as an Ecologically Sensitive Area.

39. Petitioner-Vanashakti has presented the information regarding the treatment of villages by WII in its report in the form of a chart as follows:

<i>Sawantwadi Taluka</i>			
<i>Sr. No.</i>	<i>Names of Villages</i>	<i>Treatment of subject-matter villages by Wildlife Institute of India (WII) in its report of January, 2023</i>	<i>Additional Remarks</i>
1	Asaniye	These 10 villages are identified for protection by WII and have been conclusively recommended to be included in the ESA. WII also records that these 10 villages already form a part of the draft notification covering the entire Western Ghats as ESA (part of the Fourth Draft Notification S.O. 5135(E) dated 03.10.2018 on ESA for Western Ghats) (Page 95 of the WII SWDM-WC Report)	In addition to the 12 villages stated herein, WII recommends addition of 2 more villages, <u>viz.</u> Kalambist and Satuli are not included as ESA. WII states that future development activities in these 2 villages may affect the overall composition and configuration of the Wildlife Corridor. Hence, its inclusion is necessary. (Page 95 of the WII SWDM-WC Report)
2	Dhabil		
3	Gharpi		
4	Konshi (Konas)		
5	Kesri - Phansawade		
6	Majgaon		
7	Saramale		
8	Nevli (Should be Nhaveli, Part of Saramale)		
9	Tamboli		

10	<i>Udeli</i>		
11	<i>Bhalawal</i>	<i>These 2 villages have also been identified by the WII as a critical habitat area and conclusively recommended to be included in the ESA.</i>	
12	<i>Otawane</i>		

<i>Dodamarg Taluka</i>			
<i>Sr. No.</i>	<i>List of Villages</i>	<i>Wildlife Institute of India</i>	<i>Additional Remarks</i>
1	<i>Kumbhawade</i>	<i>This village has been identified by the WII as a critical habitat area recommended for inclusion.</i> <i>This village also forms a part of the larger draft notification of the entire Western Ghats (part of the Fourth Draft Notification S.O. 5135(E) dated 03.10.2018 on ESA for Western Ghats)</i> <i>(Page 91 of the WII SWDM-WC Report)</i>	
2	<i>Bhekurli</i>	<i>These 7 villages have been identified by the WII as a critical habitat area and conclusively recommended</i>	
3	<i>Fukeri</i>		
4	<i>Khadpade</i>		

	<i>Tarf Banda</i>	<i>to be included in the ESA.</i> <i>(Page 91 of the WII SWDM-WC Report)</i>	
5	<i>Kolzar</i>		
6	<i>Shirwal</i>		
7	<i>Talkat</i>		
8	<i>Zolambe</i>		
9	<i>Bhikekonal</i>	<i>These 5 villages have not been included by WII.</i> <i>However, it is pertinent to note that WII conducted its site visit between March 2021 - May 2022 whereas these villages have witnessed massive deforestation and degradation in the years between 2014-2019 which have been documented by the Applicants in its report at Exhibit - J to the IA.</i>	
10	<i>Kalane</i>		
11	<i>Kumbral</i>		
12	<i>Panturli</i>		
13	<i>Ughade</i>		
		<i>(Page 140-142: Ugade Page 143-145: Panturli Page 192-196: Kumbral Page 237-239: Kalane)</i> <i>Therefore because of massive deforestation and no restoration, the ecological value may have denuded. However, these 5 villages form a part of the original 2013 proposal and ought to be included in the</i>	

		<i>final ESA notification of 25 villages concerning the present petition.</i>	
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40. It is pertinent to note that WII Report has recorded that there is a Gramsabha resolution from the cluster of 25 villages from Sawantwadi and Dodamarg talukas of Sindhudurg district that they wish their areas to be constituted as “ecologically Sensitive”.

41. Petitioner- Vanashakti has alleged large-scale deforestation in direct violation of the orders of this Court, and no restoration has been undertaken. Petitioners, based on the satellite imageries and official information received, has prepared a chart of the figures as follows:

<i>Sr. No.</i>	<i>Village</i>	<i>Official data of area of deforestation</i>	<i>Data provided by Petitioners</i>
1.	<i>Kalane</i>	<i>32.25 ha.</i>	<i>30.4 ha. (at Pgs. 237-240 of the IA/556/22)</i>
2.	<i>Kumbral</i>	<i>14.67 ha.</i>	<i>15.6 ha. (at Pgs. 192-196 of the IA/556/22)</i>
3.	<i>Konal</i>	<i>3 ha.</i>	<i>3 ha. (at Pgs. 156-158 of the IA/556/22)</i>
4.	<i>Panturli</i>	<i>1.97 ha.</i>	<i>1.97 ha. (at Pgs. 143-145 of the IA/556/22)</i>

5.	<i>Ugade</i>	<i>0.57 ha.</i>	<i>2.42 ha. (at Pgs. 140-142 of the IA/556/22)</i>
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The Petitioner Vanashakti has alleged that deforestation has increased human-wildlife conflict in these villages and the authorities are required to revive and restore the denuded forest lands by declaring all 25 villages as an Ecologically Sensitive Area. Interim orders are operating in the Petitions prohibiting tree-cutting in the Sawantwadi-Dodamarg Corridor. These orders have been passed on 10 April 2012, 12 June 2012, and 5 December 2018. The Petitioner has stated that there has been large-scale deforestation in the village of Sasoli in Dodamarg taluka of more than 300 acres in recent years. The Petitioner has stated that deforestation in various villages in Dodamarg Taluka has been documented in a tabular manner in the register of the Forest Department and has been received by the Petitioner. According to the Petitioner, deforestation in the Sawantwadi-Dodamarg area is approximately 639.62 hectares. There is no specific denial of this assertion. This position is a matter of serious concern; not only is there wanton destruction in the critical Wildlife Corridor whose ecological value is beyond debate, but it is also in breach of specific orders of the Court.

42. The next aspect to consider is the stand of MoEF to connect the issue of notifying Sawantwadi-Dodamarg Corridor to the a larger draft Western Ghats Ecologically Sensitive Area. The

reply makes the notifying the Sawantwadi-Dodamarg Corridor, dependent on the Western Ghats Ecologically Sensitive Area covering 56,825.7 sq. km across six States: Kerala, Tamil Nadu, Goa, Karnataka, Maharashtra, and Gujarat. The affidavit states that this area could not be finalized as the various State Governments have requested changes/modifications in areas mentioned in the draft, and the draft has been re-notified five times because several States are involved, it is taking time to finalize. It is clear that the final notification of the larger Western Ghats as an Ecologically Sensitive Area will take considerable time.

43. According to us, and as rightly urged by the Petitioners, the notifying the Sawantwadi-Dodamarg Corridor as an ecologically sensitive area need not be tied up with the fate of the larger Western Ghats Ecologically Sensitive Area and should be considered separately. As far back as 27 September 2013, this Court had directed the State Government and MoEF to issue such a notification. At that time, it was not projected before the Court that unless the entire Western Ghats Ecologically Sensitive Area covering 56,085.7 sq. km involved in six States is notified, the notification for the Sawantwadi-Dodamarg Corridor could not be issued. No legal impediment is shown to us from the affidavit. The studies commissioned by the Respondents themselves stress on the urgent need to protect it as an Ecologically Sensitive Area. It is despite specific directions of this Court in the year 2013, accepted by the

State and the MoEF, that for some reason or another, the notification is not being issued. Once both the State Government and MoEF had given a commitment before this Court, and based on which orders are passed, and all factors for declaring the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area are present, refusal to do so would not only amount to a breach of the orders of the Court but also a failure of duty. There is no valid reason why the order dated 27 September 2013 directing the declaration of the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area needs to be deferred until the declaration of the entire Western Ghats is declared as an Ecologically Sensitive Area. From the affidavit itself, MoEF is clear that this process will take a long time as it involves various States. Meanwhile, deforestation is damaging this critical area, and a delayed notification may be too late to save the region.

44. The matter also needs to be looked at from a broader perspective. The scientific rationale behind conserving wildlife corridors and ecology in general is enumerated in detail in the WII report. The Report emphasizes that global conservation is at a critical juncture, and concerted efforts are required to ensure the survival of diverse wildlife. Human activities that alter land use are the primary reasons for the declining wildlife population, which is a significant concern. Loss of genetic diversity and gene flow between populations can lead to demographic and genetic challenges, making

populations vulnerable and reducing their fitness. The Report states that to ensure the sustainability of populations, habitat size and connectivity are essential, facilitating population turnover through immigration and emigration. Biodiversity plays a crucial role in human health, economies, and livelihoods. Landscape connectivity permits organisms and their genes to move across landscapes, but it is threatened by fragmentation and habitat loss. Conservation efforts often focus on enhancing connectivity to counteract the effects of habitat loss and fragmentation on biodiversity and bolster resilience against climate change. The Report highlights that the loss of connectivity can reduce the available habitat size and quality, hindering movement and disrupting ecosystems. Therefore, preserving ecological networks and landscape connectivity among different habitats is vital for the long-term survival of populations, especially in human-dominated landscapes, and mitigating effect of climate change. The Report emphasizes that wildlife corridors are essential to link critical habitat areas and facilitate movement. This allows for greater flexibility and reduces the negative impacts of fragmentation. Importantly, the Report identifies the Sawantwadi-Dodamarg Corridor in the Western Ghats as a unique ecosystem harbouring diverse and endemic taxa. It is one of the world's "Biodiversity Hot Spots", and retaining connectivity across its landscape is critical for this ecosystem's ecological and evolutionary processes.

45. Therefore, once the scientific studies commissioned by

the Respondents for this very purpose point out the urgent need to protect the area, delaying the same would frustrate the very object of the legislature conferring power to declare an ecologically sensitive area as such. Any further delay would also defeat the object and purpose behind the orders of the Court and the need to protect the area as established from the WII Report. While the process for notifying the larger area of the Western Ghats may go on, there is no reason why the notification for this Sawantwadi-Dodamarg Corridor is not issued by the MoEF once the proposal is received from the State Government. The area is admittedly fragile and sensitive and needs protection. Concentrating on the smaller area and according protection to it on an immediate basis could be more beneficial. Furthermore, the concerned area is a corridor and which are generally small in size but it provides crucial support to the health of large protected areas. Therefore, having not found any valid reason why a separate notification cannot be issued by the MoEF on an immediate basis for the Sawantwadi-Dodamarg Corridor as directed by this Court, a time limit has to be placed to initiate the process. Otherwise, permitting the affairs to linger at leisure will put this critical Corridor in peril of destruction and consequently affect the other larger protected areas which this Corridor connects.

46. The importance of declaring the Sawantwadi-Dodamarg corridor as an Ecologically Sensitive Area was noted by this Court in 2013, and it has been 11 years since then, yet the modalities are still

being completed. As noted in the order dated 27 September 2013, there was a consensus between the Union of India and the State Government when the order was passed on 27 September 2013. From the pleadings before us and the arguments by the learned Counsel for the Union of India and the learned AGP for the State on instructions also, there is no debate on the importance of this area. The directions in the order dated 27 September 2013 have not been challenged and they need to be complied with. The Conservation Area and the declaration of an Ecologically Sensitive Area are different concepts with varying degrees of protection, and the order of the Court is clear to declare an Ecologically Sensitive Area. According to the Union of India, 14 villages out of 25 are already included in the draft notification. The remaining 11 villages are awaiting a proposal from the state government. There is no valid justification for the State Government not to submit a proposal as indicated by the MoEF regarding villages in the order dated 27 September 2013.

47. Despite overwhelming scientific evidence and a consensus on the importance of protecting the critical Sawantwadi-Dodamarg Corridor, it is unfortunate that very little has been done over the past decade. To make matters worse, large-scale deforestation is carried out in clear contravention of this Court's orders. Article 48A of the Constitution of India lays down Directive Principles of the State Policy that the State shall endeavour to protect

and improve the environment and to safeguard the forest and wildlife of the country. In the case of *Intellectuals Forum, Tirupahi v. State of Andhra Pradesh*¹, the Supreme Court analysed these principles. The Supreme Court emphasized that Article 48A mandates that the State endeavour to protect and improve the environment to safeguard the forests and wildlife of the country. Article 51A of the Constitution of India, under which fundamental duties of the citizens have been enumerated, one is to protect and improve the natural environment, including forests, lakes, rivers, and wildlife. These two Articles are to be read along with Article 21 of the Constitution of India. Section 3 of the Environment Protection Act, 1986 empowers the Central Government to enact measures aimed at safeguarding and enhancing the environment. Under Section 3(1), the Central Government possesses the authority to implement measures to protect and improve environmental quality. Section 3(2)(v) of the Act of 1986 empowers the Central Government to adopt necessary measures to safeguard and enhance environmental quality. Rule 5(1) of the Rules of 1986 lists factors to be taken into account and Rule 5(1)(v) identifies biological diversity preservation as a criterion for consideration by the Central Government. The material as above clearly demonstrates the uniqueness of the biodiversity of the Corridor and thus all parameters under Act and Rules of 1986 are fulfilled for the declaration of the Corridor as an Ecologically Sensitive Area. The Hon'ble Supreme Court, in the case of *Subhash Kumar v. State of*

1 (2006) 3 SCC 549

*Bihar*² has observed that though Articles 48A and 51A individually may not be judicially enforceable, keeping in mind the sweep of Article 21 of the Constitution, in case there is the failure of duty to protect the environment and natural resources of the country, the High Court could issue necessary directions under Article 226 of the Constitution of India. A case is clearly made out for issuing mandatory directions.

48. It thus is imperative that the Sawantwadi-Dodamarg Corridor is notified as an Ecologically Sensitive Area under the Environment Protection Act 1986 and the Environment (Protection) Rules 1986 without any further delay, and it need not be made dependent on the larger Western Ghats notification, which will admittedly take a longer time. It is thus necessary to issue time bound directions and fix responsibility for the same. The learned AGP submitted that longer time be given considering the ensuing Loksabha Elections and the Code of Conduct.

49. Till such final notification is issued for this Corridor, the embargo on cutting trees and damaging the ecology of the Sawantwadi-Dodamarg Corridor will have to continue. Once the final notification is issued, the position will be governed by the notification. The responsibility of ensuring compliance with the embargo will have to be placed on the senior officers by creating a Task Force. Adequate publicity will have to be given to the

2 AIR 1991 SC 420; (1991) 1 SCC 598

embargo, and necessary instructions will have to be issued to the concerned Authorities. Additionally, a dedicated helpline and social media access to report complaints to the Task Force about ecological damage should be created. The Authorities should also make periodic visits to the area.

50. In light of the above discussion and in furtherance of the earlier orders, we issue the following directions:

- A. The State of Maharashtra shall submit a proposal for declaring 'Sawantwadi-Dodamarg Corridor' (25 villages as above) as an Ecologically Sensitive Area to the Ministry of Environment and Forests, Union of India, within four months.
- B. After receiving the proposal from the State of Maharashtra as above, the Ministry of Environment and Forests, Union of India, shall initiate the procedure for issuing a separate notification to declare the Sawantwadi-Dodamarg Corridor as an Ecologically Sensitive Area within two months, and shall issue the final notification after following the due procedure, as early as possible, preferably within four months thereafter.
- C. We direct that the restraint as per the interim orders of this Court on tree cutting in the Sawantwadi-Dodamarg Corridor shall continue until the final notification is issued

by the Ministry of Environment and Forests, Union of India, as directed above. Thereafter, the Sawantwadi-Dodamarg Corridor will be governed by the legal consequences of the notification as an Ecologically Sensitive Area.

- D. We place the responsibility on the District Collector, Sindhudurg, the Deputy Conservator of Forests, Sawantwadi, and the Superintendent of Police Sindhudurg, to ensure compliance with the mandate against tree cutting as stated above and to ensure that the Sawantwadi-Dodamarg Corridor does not suffer ecological damage. These officers will create a task force (Sawantwadi-Dodamarg Task Force) for coordination, with one nominated officer selected by them as the secretary.
- E. The Sawantwadi-Dodamarg Task Force, as above, shall issue necessary instructions to all concerned officers and shall adequately publicize the restraint orders.
- F. The Sawantwadi-Dodamarg Task Force shall publish a dedicated email address, telephone number, and social media access for complaints regarding ecological damage and tree cutting in the Sawantwadi-Dodamarg Corridor and will take follow-up actions.

- G. All concerned departments of the State and other public and local authorities shall extend necessary cooperation within their powers and duties to assist the Sawantwadi-Dodamarg Task Force in implementing the above directions.
- H. The timeline will come into effect from the date the order is uploaded.

51. Rule in both these petitions is made absolute in the above terms. The Public Interest Litigations are disposed off.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)