

TARUN BHARAT SANGH, ALWAR

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v.

UNION OF INDIA AND OTHERS

APRIL 8, 1993

[B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.]

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*Constitution of India, 1950: Article 32.*

*Forest (Conservation) Act 1980: Section 2.*

*Rajasthan Forest Act: Section 29.*

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*Rajasthan Minor Mineral Concession Rules, 1986: Rule 4(6).*

*Environment (Protection) Act: 1986, Section 3 and Notification dated May 7, 1992. Environment—Protection of—Illegal mining activity in area declared as Tiger Reserve in Alwar District of Rajasthan—Directions by Court.*

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The petitioner, a voluntary organisation interested in protecting environment, approached this Court under Article 32 of the Constitution of India complaining of the widespread illegal mining activity going on in the area declared as a Tiger Reserve in Alwar District in the State of Rajasthan. It prayed that in the interest of ecology, environment and rule of law, the activity should stop. It was alleged that the area where the mining activity was carried on was declared as a tiger reserve under the Rajasthan Wild Animals and Birds Protection Act, 1951; as a sanctuary and a National Park under the Wild Life (Protection) Act, 1972 and as protected forest under the Rajasthan Forest Act, 1953, and that these notifications prohibit all or any mining activity, and yet the State Government had granted hundreds of licences for mining marble, dolomite and other materials and that such section was contrary to law.

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This Court issued notices to the State Government and the mineowners respondents in the Writ Petition. An interlocutory direction was also made that no mining operation be carried on in the protected

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A area.

B The Court also appointed a Committee under the Chairmanship of a Former Judge of the State High Court to ensure due observance of the various Acts and Notifications that had been issued in respect of the protected area. The Committee was requested in particular to demarcate the area declared as protected forest under the notification dated January 1, 1975 issued by the Rajasthan Government under Section 29 of the Rajasthan Forest Act.

C The Committee submitted its Report dated September 28, 1992, stating that the Committee had verified and cross-checked the tracing maps furnished by the Forest Department with the maps furnished by the Revenue Department and found that both of them matched, and that after looking into the Khasra numbers mentioned in the notification dated January 1, 1975 and the other material placed before it by the parties, the Committee identified the areas declared as protected forest. It stated that they were not in one contiguous block but were comprised in several blocks or areas. The 215 mines mentioned in Appendix-A to the Report fall completely within the areas declared as protected forest while 47 mines mentioned in Appendix-B to the Report fall partly inside and partly outside the areas declared as protected forest. There was no difference of opinion among the members of the committee regarding the location of the mines but only with respect to the question whether they should be directed to be closed. The Chairman recommended that the mining operations in all the 215 mines listed in Appendix-A should be stopped forthwith and the mining operation in the 47 mines listed in Appendix-B be stopped forthwith to the extent they fell within the area declared as protected forest. The three other Members of the Committee viz. Collector, Chief Conservator of Forest and Chief Wildlife Warden and Additional Director of Mines differed from the Chairman. They suggested that this Court should accede to the representation of the State Government (Appendix 'C') that the area covered by the mines should be allowed to be excluded from the protected forest, in lieu of which the state Government undertook to provide an equal extent of the area for being included in the protected forest. The State Government's application to the Court was also to the same effect. It was stated therein that the protected forest area measures about 800

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Sq. kilometers whereas the 262 mines mentioned in Appendixes 'A' and 'B' cover only an area of 2.08 Sq. kilometers and that in the interest of the economy of the State, industry and workers, an extent of 5.02 Sq. kilometers including the area covered by the said mines be allowed to be deleted from the protected forest, the State Government offering to place an equal extent for the purpose of being declared as protected forest.

The mine-owners also filed objections to the Report of the Committee and requested that they be allowed to continue their mining operations.

The Government of India which was directed to file an affidavit, filed the same and stated that the area declared as project tiger/tiger reserve was covered by notification issued under the Rajasthan Forest Act, Environment Protection Act, 1986 and the Mines and Minerals Regulation and Development Act, 1957. It submitted that the Forest Conservation Act applies not only to reserve and protected forest but to all areas recorded as forest in Government records, and that Mining was non-forestry activity and, therefore, cannot be carried on in areas to which the Forest Conservation Act applies, without prior approval of the Government of India. It was further stated that on May 7, 1992 the Government of India had issued the final notification under Section 3 of the Environment Protection Act, 1986 prohibiting all mining activity, except with the approval of the Government of India and that since no permission was obtained under any of the said enactments with respect to the said 262 mines, no mining operations can be carried on in the area unless and until the permission of the Central Government was obtained.

On petitioner's behalf it was submitted that all the mining activity in the areas notified under the notification dated May 7, 1992 should have stopped long ago and continuance of mining activity amounts to gross contempt and constitutes a clear violation of orders; that the State Government appears to be colluding with the mine-owners which is evident from the dissent expressed by officers of the State Government who were Members of the Committee to the straight forward and logical recommendation of the Chairman, and that prohibition of mining flows from the provisions of the Forest

- A** Conservation Act as well as the notification issued under the Environment Protection Act in May, 1992.

**B** On behalf of the State Government it was submitted that the State Government and its officers were not aware when they granted leases/licences in respect of the listed mine that they fell within the area declared as protected forest and that the certificate issued by the Forest Department indicates that they did not fall within the protected forest area. It was thus a *bonafide* grant. It was further submitted that the State was prepared to abide fully by the orders of this Court, -54 mines had been shut down and it was prepared to shut down all the listed mines if this Court so directs. A map prepared by the State officers showing the areas covered by tiger reserve, sanctuary, protected forest, and the location of the listed mines was placed before the Court for consideration.

**D** On behalf of the mine-owners in Mallana village it was submitted that demarcation of protected forest by the Committee was defective, erroneous and unacceptable for the various reasons set out in the objections filed to the report, that the map produced by the State Government delineating the tiger reserve was incorrect besides being unauthenticated, that the mine-owners do not admit that their mines fell within the tiger reserve or within the protected forest areas, and that closing down of hundreds of mines employing thousands of workers, wherein a large amount of capital was invested would disturb the economy of the State besides affecting the supplies of marble and other minerals, serving no public purpose.

**F** On behalf of the some of the other mine owners it was submitted that it was unsafe to act upon and to pass any orders based upon the map produced by the State Government; that the declaration as tiger reserve by the Government of India was not under any statutory authority; that the areas declared as protected forest was not co-extensive with the area declared as tiger reserve and sanctuary and national park; that none of the mines fell within the sanctuary or the National Park-not even within project tiger, and that the mine owners are as much interested in protecting the environment and ecology as the petitioner.

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Declaring that the relevant laws were violated, and passing directions, the Court, A

**HELD: 1.** This is not a case where the Court is called upon to shut down an activity being carried on lawfully, in the name of higher considerations of ecology and environment. It is a simple case to ensure observance of enacted laws made by the State to protect the environment and ecology of the area. In such a case, there is no need to be oppressed by considerations of balancing the interests of economy and ecology. That has already been done by the Legislature and Parliament (37-D-E). B

In the instant case, the petitioner's grievance is against the executive. Charged with the delegation of implementing the laws of the land, the executive is yet failing to do its duty by law and by people, and that when faced with the might of money, respect for law is dissolving into respect for mammon (37-E-F). C

**2.** The State Government is empowered not only to declare any forest land as a protected forest but also any waste land as such. The idea evidently is not only to protect the existing forest but also to bring waste lands under schemes of afforestation. Once declared as protected forest, the distinction between forest land and waste land disappears. The entire area becomes a protected forest. (38-B) D

**3.** Reading Section 29 of the Rajasthan Forest Act as a whole, it appears, the normal rule is to make an enquiry into the rights of the state Government and of the private parties over the land proposed to be declared as protected forest in the first instance, prepare a record thereof and then declare it as a protected forest. But in case of urgency, it is open to the State Government to issue such notification forthwith subject, of course, to the existing rights of individuals and communities in the area concerned. (38-F) E

In the instant case, the notification dated January 1, 1975 issued by the Government of Rajasthan appears to be one issued under the proviso to sub-section (3) of Section 29. (38-G) F

**4.** Section 29 contemplates only one notification declaring an H

A area as a protected forest. Whether issued after a normal enquiry and  
record or without enquiry or record, Section 29 contemplates only one  
notification and not two in any event. Therefore, the notification  
issued is the valid and effective one. It is not a provisional or prelimi-  
nary notification. It is not also the case of the mine owners that leases  
B or licences in their favour were granted prior to January 1, 1975. All  
of them were granted in the middle of or in the late eighties. The  
savings clause contained in the proviso to sub-section (3) does not avail  
them. (39-A-B)

5. The Committee appointed by this court to demarcate and  
C identify the areas declared as protected forest was composed of high  
officials of the Government of Rajasthan. They had undertaken an  
elaborate and intensive exercise and have demarcated the areas  
declared as protected forest with the help of the official maps and  
records. There is no reason not to accept the said report. The several  
D objections submitted by the mine owners cannot prevail over the  
official maps and records. They were represented before the commis-  
sion at the time of the said exercise. The dissent note appended by the  
officers of the Government of Rajasthan was not with respect to the  
demarcation or identification of areas declared as protected forest,  
but only with respect to the closure of the mines operating within those  
E areas. The report of the committee is accepted. (39-D-F)

6. Once an area is declared as a protected forest it comes within  
the purview of the Forest (Conservation) Act, 1980. Even the State  
Government cannot carry on any non-forest activity in the said area  
F without prior approval of the Central Government. That the mining  
activity amounts to non-forest purpose is beyond dispute. Thus the  
grant of mining leases/licenses and their renewal by the State Govern-  
ment, without obtaining the prior approval of the Central Govern-  
ment, in respect of the mines situated within the protected forest, after  
January 1, 1975 is contrary to law. (39-G-H, 40-B)

G 7. All the mines listed in Appendix A to the Committee's Report  
do fall within the areas declared as protected forest while the mines  
listed in Appendix-B fall partly within and partly out side such areas.  
(41-B)

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8. According to rule 4(6) of the Rajasthan Minor Mineral Concession Rules, 1986 no mining lease could have been granted or renewed within the forest "without clearance from the Central Government in accordance with the forest (Conservation) Act, 1980 and the Rules made there-under". Admittedly, no such prior approval or clearance of central Government was obtained.

9. The purpose of Forest Acts and Environmental Protection Act may not always be the same. Closure of the mines may not serve the environmental purpose but it may serve the forest purpose. (40-B)

10. It is appropriate that the merits of the proposal of the State Government to delete an extent of 5.02 Sq. kilometers from out of the protected forest be examined by the Ministry of Environment and Forest, forests, and a report submitted to this Court, within three months. Orders will be passed thereafter on the application filed by the State of Rajasthan. (40-E)

11. The notification issued by the Central Government under Section 3 of the Environment (Protection) Act 1986 on May 7, 1992 expressly prohibits the carrying on of mining operations, except with the Central Government's prior permission, in the "areas covered under project tiger". The prohibition extends to existing mining leases in Sanctuaries/National Park. All mining operations are prohibited therein. (41-C-D)

12. There can be no legitimate dispute with respect to the correctness of the map produced by Government of Rajasthan or with respect to the area declared as tiger reserve. Both the State Government and Central Government have delineated it. May be that the declaration as tiger reserve was without any statutory authority and is relatable to the executive power of the Union of India-but the notification issued under Section 3 of the Environment (Protection) Act puts the stamp of statutory authority over it. The Central Government has specifically stated in its affidavits that no "prior permission" was obtained with respect to the mines located within the tiger reserve. On this ground, the mining operations being carried on in the tiger reserve, including the listed mines also appears to be

**A** contrary to law. (42-C-D)

**B** 13. The situation is that the mining activity in the listed mines (mining activities in 54 mines has already been stopped) is illegal and has to stop. May be that this will have the effect of bringing to halt the activity involving a good amount of capital and a large number of workers. But in view of the inherent illegality attaching to them, there is no option but to close them. They cannot be permitted to operate. If and when the Central Government recommends the plea of the State Government and any of the areas already declared as protected forest are deleted with the leave of this Court, can the mining activity go on in these areas. (43-D)

**D** 14. It is directed that the mining activity in the mines situated outside the protected forest areas but within the tiger reserve may continue for a period of four months. Within this period it shall be open to the concerned mine owners to approach the Department of Forest and Environment, Government of India for permission to continue their mining operations. They can continue the mining operations in these mines only if the Central Government permits them and subject to the orders of the Central Government in that behalf. If no permission is obtained from the Central Government within the said period of four months, the mining activity in the entire area declared as tiger reserve shall stop and cease on the expiry of four months. (44-B-C)

**F** ORIGINAL JURISDICTION: Writ Petition (c) No. 509 of 1991.

(Under Article 32 of the Constitution of India.)

Dr. Rajiv Dhawan, V. Akshya Bali and Miss Kamini Jaiswal for the Petitioner.

**G** M.C. Bhandare P. Chidambaram, Sushil Kumar Jain, Ms. Meenakshi Arora, S.S. Jauhar, Aruneshwar Gupta and E.C. Agrawala for the Respondents.

The Judgment of the Court was delivered by

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**B.P. JEEVAN REDDY, J.** Tarun Bharat Sangh, a voluntary Organisation interested *inter alia* in protection of environment, approached this court complaining that widespread illegal mining activity was going on in the area declared as Tiger Reserve in Alwar District of Rajasthan. In the interest of ecology, environment and rule of law, it said, the activity should stop.

The petitioner's case is that the area wherein the illegal mining is going on has been declared as a tiger reserve under Rajasthan Wild Animals and Birds Protection Act, 1951, as a Sanctuary and a National Park under Wild Life (Protection) Act, 1972, and as protected forest under the Rajasthan Forest Act, 1953. These various notifications, said the petitioner, prohibit all or any mining activity and yet the Government of Rajasthan had granted hundred of Licences for mining marble, dolomite and other minerals in late 1980s, contrary to law.

After issuing notices to the Government of Rajasthan and the mine owners (which expression is used in this order to denote leasees and licences under the leases and licences granted by the State of Rajasthan), this court gave certain directions on October 11, 1991. An interlocutory direction was issued to the effect that "no mining operation of whatever nature shall be carried on in the protected area". A Committee under the chairmanship of Shri M.L. Jain, J., former Judge of the Rajasthan High Court was appointed to ensure due observance of the various Acts and Notifications issued there under with respect to the said protected area. In particular, the committee was asked to demarcate the area declared as protected forest under the notification dated January 1, 1975 issued by the Rajasthan Government under section 29 of the Rajasthan Forest Act. This demarcation was felt necessary in view of the ambiguity prevailing with respect to the precise boundaries of the protected forest declared as such under the notification aforesaid. Petitioner's case was that no mining lease/licence can be granted within the protected forest except with the prior permission of the Government of India - Section 2 of the Forest (Conservation) Act, 1980 and Rule 4(6) of Rajasthan Minor Mineral Concession Rules) —and that no such permission was obtained in fact.

By its order dated November 26, 1991, the court clarified that the order dated October 11, 1991 was not intended to permit the mine-

**A** owners to carry on their mining activity where such activity was prohibited by any Act, Rule or Notification having the force of Law. In effect, the order said, it meant to prohibit—and not to permit—the mining activity.

**B** In its order dated May 14, 1992, the court clarified the meaning of the expression “protected area” used in the order dated October 11, 1991. The expression, it was clarified, was intended to and does refer to all the areas which have had legal protection against non-forest activities that devastated the environment including poaching, mining, felling of trees etc. It was further clarified that once an area is declared as protected forest, it becomes a protected forest notwithstanding the fact that a part of that area is waste. The idea behind declaring an area as protected forest, it was pointed out, is not merely the protection of the existing forest but also afforestation.

**D** The Committee submitted its report dated September 28, 1992. The Report states that the Committee verified and cross-checked the tracing maps furnished by the Forest Department with the maps furnished by the Revenue Department and found that both of them matched. After looking into the khasra numbers mentioned in the notification dated January 1, 1975 and all other material placed before it by the parties including the mine-owners, the report states, the committee identified the areas declared as protected forest. The report indicates that the areas declared as protected forest under the said notification was not in one contiguous block but was comprised in several blocks or areas, as it may be called.

**F** As per the said Report, 215 mines mentioned in appendix-A to the Report fall completely within the areas declared as protected forest while 47 mines mentioned in Appendix-B to the Report fall partly inside and partly outside the areas declared as protected forest. (These 262 mines are referred to hereinafter as “Listed mines”). To this extent, there is no difference of opinion among the members of the committee. Differing opinions have, however, been expressed when it came to making of recommendations for the consideration of this court. The Chairman, Shri Justice M.L. Jain recommended that the mining operations in all the 215 mines listed in appendix-A should be stopped forthwith and that the mining operations in the 47 mines listed

in appendix-B should be stopped forthwith to the extent they fell within the area declared as protected forest. Three other members of the Committee (Collector, Alwar, the Chief Conservator of Forest and Chief Wild Life Warden, Rajasthan and the Additional Director of Mines) differed from the Chairman. They suggested that this Court be pleased to accept the representation of the State Government (appended as appendix-C to the Report) wherein it was prayed that the area covered by the mines should be allowed to be excluded from the protected forest, in lieu of which the Government of Rajasthan will provide an equal extent of area for being included in the protected forest. An application has also been filed by the State of Rajasthan to the same effect. It is stated therein that the protected forest area measures about 800 sq. km., whereas the 262 mines mentioned in appendix (A) and (B) cover only an area of 2.08 sq. km. In the interest of economy of the State, industry and the workers engaged therein, it is submitted, an extent of 5.02 sq. km. including the area covered by the said mines be allowed to be deleted from the protected forest. In lieu thereof, the Government of Rajasthan offered to place an equal extent for the purpose of being declared as protected forest. It is submitted further that when the mining leases with respect to the said 262 mines were granted, the Government of Rajasthan was under the impression that the said mines did not fall within the protected forest area. Indeed, it was so certified by the Forest Department. This happened because of want of clarity about the precise boundaries of the areas declared as protected forest.

The mine owners too have filed objections to the Report of the Committee, to the recommendation made by the Chairman of the Committee and submitted alternately that the proposal of the Government of Rajasthan be accepted and they be allowed to continue their mining operations.

At this stage, we directed the Government of India to file an affidavit making their stand clear in the matter. Accordingly, an affidavit sworn to by Shri S.P. Singh, Deputy Director in the Ministry of Environment and Forest, Project Tiger, New Delhi has been filed. It is stated in the affidavit that the area declared as project tiger/tiger reserve is covered by notifications issued under the Rajasthan Forest Act, Environment (Protection) Act, 1986. and Mines and Minerals

A (Regulation and Development) Act, 1957. It is submitted that the Forest (Conservation) Act applies not only to reserve and protected forest but to all areas recorded as forest in Government records. Mining is non-forestry activity and, therefore cannot be carried on in the areas to which Forest (Conservation) Act applies without the prior approval of the Government of India. It is stated further that on May

B 7, 1992, the Government of India has issued the final notification under Section 3 of the Environment (Protection) Act, 1986 prohibiting all mining activity, except with the approval of the Government of India, in the protected forest, Sariska National Park and certain areas of Alwar District mentioned in the Notification. Since no permission is

C obtained under any of the said enactments with respect to the said 262 mines, it is submitted, no mining operations can be carried on in the area until and unless they obtain the permission of the Central Government. Indeed, the prohibition extends not merely to protected forest areas but to the entire area declared as tiger reserve and as Sariska National Park. A copy of the notification dated May 7, 1992

D issued under Section 3 of the Environment (Protection) Act is appended to the affidavit. It is necessary to notice the relevant portions of the said notification. They read:

E “Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby prohibits the carrying on of the following

F processes and operations, except with the prior permission, in the areas specified in the Table appended to this Notification:

- G (i) Location of any new industry including expansion/modernisation;
- (ii) (a) All new mining operations including renewals of mining lease.
- H (b) Existing mining leases in sanctuaries National Park and *areas covered under Project Tiger* and; or

(c) Mining is being done without permission of the competent authority; **A**

(iii) Cutting of trees;

(iv) Construction of any clusters of dwelling units, farms houses, sheds, community centres, information centres and any other activity connected with such construction (including roads a part of any infrastructure relating thereto); **B**

(v) Electrification (laying of new transmission lines). **C**

#### TABLE

Areas where carrying on of processes and operations without permission is prohibited. **D**

(i) all reserved forests, *protected forests* or any other area shown as "forest" in the land records maintained by the State Government as on the date of this notification in relation to Gurgaon District of the State of Haryana and the Alwar District of the State of Rajasthan. **E**

(ii) all areas shown as

(a) Gair Mumkin Pahar, or **F**

(b) Gain Mumkin Rada, or

(c) Gain Mumkin Behed, or

(d) Banjad Beed, or

(e) Rundh **G**

In the land records maintained by the State Government as on the date of this notification in relation to Gurgaon District of the State of Haryana and the Alwar district of the State of Rajasthan. **H**

A (iii) all areas covered by notifications issued under sections 4 and 5 of the Punjab Land Preservation Act, 1900 as applicable to the State of Haryana in the district of Gurgaon upto the date of this Notification.

B (iv) *all areas of Sariska National Park and Sariska Sanctuary notified under the Wildlife (Protection) Act, 1972 (53 of 1972).*"

(emphasis added)

C We have heard Dr. Rajiv Dhawan, counsel for the writ petitioner, Shri Aruneshwar Gupta, counsel for the State of Rajasthan and S/Shri M.C. Bhandare and P. Chidambaram, council appearing for the mine-owners. Certain other mine-owners have intervened. We permitted them to file their written submissions.

D Dr. Rajiv Dhawan submitted that in view of the earlier orders of this court and the report of the committee, all the mining activity in all the areas declared as protected forest and in the areas notified under the notification dated May 7, 1992 should stop forthwith. Indeed, he says, it should have stopped long ago. Continuance of mining activity is in gross contempt of this court and constitutes a clear violation of its  
E orders. The Government of Rajasthan is equally guilty of contempt in as much as it has come forward with an application for directions instead of taking stringent action forthwith to stop the mining activity in all the listed mines. As a matter of fact, he says, the Government of Rajasthan appears to be colluding with the mine-owners which is  
F evident from the dissent expressed by the officers of the Rajasthan Government (who were members of the Committee appointed by this Court) to the straight-forward and logical recommendation of the Chairman of the Committee. The Government of India's affidavit places the matter beyond doubt. Not only the mining operations in the listed mines should be enjoined forthwith but the mine owners and the  
G Government of Rajasthan should be proceeded against for contempt, says the counsel. He pointed out further that the mining leases granted by the Government of Rajasthan are *ex-facie* illegal inasmuch as prior permission of the Central Government was admittedly not obtained for the said leases as required by the Forest (Conservation) Act and Rule  
H 4(6) of the Rajasthan Minor Mineral Concession Rules. Prohibition of

mining flows from the provisions of the Forest (Conservation) Act as well as the notification issued under the Environment (Protection) Act in May, 1992. A

Shri Arunseshwar Gupta, learned counsel for the State of Rajasthan submitted that the Rajasthan Government and its officers were not aware, when they granted leases/licences in respect of listed mines that they fell within the area declared as protected forest. Indeed, a certificate was issued by the Forest Department to the effect that they did not fall within the protected forest area. It was thus a *bonafide* grant. The boundaries of the areas declared as protected areas were not clearly known nor were they demarcated on the spot. Of course, it now turns out that the said listed mines fall wholly or partly within the protected forest but for the reasons mentioned in the application filed by the Government of Rajasthan, the area of five sq. kilometers should be allowed to be deleted from out of the protected forest subject to the conditions offered in the said application. Counsel says that the Government of Rajasthan is neither colluding with the mine-owners nor has it any intention to flout the orders of the court. It is prepared to abide fully by the orders of this court. It has already shut down 54 mines. It is also prepared to shut down all the other listed mines if this court so directs. It is, however, making an earnest request that it may be allowed to exclude the areas covered by these mines from the protected forest in public interest. Learned counsel has placed before us map, said to have been prepared by the officers of the Rajasthan State, showing the areas covered by tiger reserve, sanctuary, protected forest and the location of the listed mines. D E

Shri M.C. Bhandare, learned counsel appearing for the mine-owners in Mallana village submitted that demarcation of protected forest by the committee is defective, erroneous and unacceptable for the various reasons set out in the objections filed by his clients. It is technically imperfect. The very description of the boundaries in the notification dated January 1, 1975 is vague and misleading. It mentions old khasra numbers which were not in vogue in the year 1975. The map produced by the Government of Rajasthan, for the perusal of this court, delineating the tiger reserve is equally incorrect besides being unauthenticated. It is not know who prepared the map and on what basis. The mine-owners do not admit that their mines fall within the F G H

A tiger reserve or within the protected forest areas. Closing down hundreds of mines employing thousands of workers, wherein a large amount of capital is invested would disturb the economy of the State besides affecting the supplies of marble and other minerals. No public purpose would be served by such closure. The mine owners are not guilty of contempt of this court inasmuch as their mines do not fall within the protected forest or protected area. Even otherwise, it appears that the areas declared as protected forest are in disparate patches away from each other. Mines are located not only within the areas declared as protected forest but also in the adjacent areas which are not declared as protected forest. In such a case, no purpose is served by closing the mines within the protected forest inasmuch as the mining activity in the mines located outside the protected forest will continue uninterrupted. The purpose of ecology and environment would not be served by such a situation. Moreover, the notification issued by the Government of Rajasthan on January 1, 1975 declaring certain areas as protected areas is only a provisional or an interim notification. It is not a final notification. The final notification is yet to be issued. Since there is no forest in the areas covered by the mines nor is any afforestation possible in such areas, they should be allowed to be deleted from the protected forest in the final notification to be issued.

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Shri P. Chidambaram, learned counsel appearing for some of the mine-owners submitted that it is unsafe for this court to act upon and/or to pass any orders based upon the map produced by State of Rajasthan showing the tiger reserve and identifying the areas declared as protected forest. It is not known who prepared the said map and on what basis and for what purpose. The declaration as tiger reserve by the Government of India is not under any statutory authority. The area declared as tiger reserve and the area notified as sanctuary under Section 18 of the Wildlife (Protection) Act, as also the area declared as National Park under Section 35 of the Wildlife (Protection) Act are not co-extensive with each other. More particularly, the areas declared as protected forest are not co-extensive with the area declared as tiger reserve, sanctuary or National Park. It is not known how many areas declared as protected forest fall within tiger reserve and how many in the sanctuary and/or National Park. The Government of India has not prepared or submitted any map showing these various areas. None of

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the mines fall within the sanctuary or the National Park, not even within project tiger. In such a situation, any orders stopping the mining operations merely on the basis of the report of the commission or the unauthenticated map produced by the Government of Rajasthan would be wholly unsafe. The proper course would be to appoint a committee, or to call upon the Government of India, to identify the areas declared as tiger reserve, sanctuary, National Park and the areas declared as protected forest indicating at the same time the location of mines, if any, in the said areas. Only then will the correct position be known. Counsel also submitted that the proposal of the Government of Rajasthan merits acceptance by this court. Both the counsel appearing for the mine-owners affirmed that the mine-owners are not acting in a spirit of adversarial litigation but in a spirit of cooperation. They are as much interested in protecting the environment and ecology as the petitioner but, they say, it should not be a one-sided affair.

At the outset, we may be permitted to clarify an aspect. This is not a case where we are called upon to shut down an activity being carried on lawfully, in the name of higher considerations of ecology and environment. This is a simple case where we are called upon to ensure observance of enacted laws made by the State to protect the environment and ecology of the area. In such a case, we need not be oppressed by considerations of balancing the interests of economy and ecology. That has already been done by the Legislature and Parliament. The grievance of the petitioner is against the executive. Charged with the delegation of implementing the laws of the land, the executive is yet failing to do its duty by law and by people, when faced with the might of money; respect for law is dissolving into respect for mammon, says the petitioner. Let us therefore first find out which laws are violated, if any, and then decide, what are the proper directions to make.

*(A) Section 2 of the Forest (Conservation) Act read with Section 29 of the Rajasthan Forest Act and Rule 4 (6) of the Rajasthan Minor Mineral Concessions Rule:-*

Section 29 of the Rajasthan Act empowers the Government to declare any forest land or waste land to be a protected forest. Sub-section (1) says that, "the State Government may by notification in the official gazette declare the provisions of this chapter applicable to any

- A** forest land or waste land which is not included in a reserve forest but which is the property of the State Government or over which the State Government has proprietary rights" It is not disputed in this case that the land over which the listed mines (mines listed in Appendix A and B to the Report of the Justice M.L. Jain Committee) are situated is the property of the State Government. The State Government is empowered not only to declare any forest land as a protected forest but also any waste land as such. The idea evidently is not only to protect the existing forest but also to bring waste lands under schemes of afforestation. Once declared as protected forest the distinction between forest land and waste land disappears. The entire area becomes a protected forest. Before, however, declaring any forest land or waste land as a protected forest, the State Government is obliged to make an enquiry into the nature and extent of the rights of the State Government and of private persons in or over the forest land or waste land proposed to be declared as protected forest and record the same at a survey or settlement or in such other manner as the State Government thinks sufficient. This is the requirement of sub-section (3). However, the proviso to sub-section (3) empowers the State Government, in case it thinks that such an enquiry and record will occupy such length of time as in the meantime to endanger the rights of the State Government, it may, pending such enquiry and record, declare a particular area to be a protected forest without, of course, abridging or affecting any rights of individuals or communities. Sub-section (4) empowers the State Government to delete any area from out of the area declared as protected forest. Reading Section 29 as a whole, it appears, the normal rule is to make an enquiry into the rights of the State Government and of the private parties over the land proposed to be declared as protected forest in the first instance, prepare a record thereof and then declare it as a protected forest. But in case of urgency, it is open to the State Government to issue such notification forthwith subject, of course, to the existing rights of individuals and communities in the area concerned. In this case, the notification dated January 1, 1975 issued by the Government of Rajasthan appears to be one issued under the proviso to sub-section (3). Sri Bhandare submits that a notification issued under the proviso to sub-section (3) is only an interim or provisional notification and that after conducting the enquiry contemplated by the main limb of sub-section (3) a regular and proper notification under sub-section (1) has still to be issued. Until then, he submits, the declaration as protected forest does not take effect. We are not

prepared to agree. Section 29 contemplates only one notification declaring an area as a protected forest. Whether issued after a normal enquiry and record or without enquiry or record, Section 29 contemplates only one notification and not two in any event. Therefore, the notification issued is the valid and effective one. It is not a provisional or preliminary notification. It is not also the case of the mine-owners that leases or licences in their favour were granted prior to January 1, 1975. All of them were granted in the middle of or in the late eighties. The savings clause contained in the proviso to sub-section (3) does not avail them.

In view of the ambiguity prevailing with respect to the precise boundaries of the area or areas declared as protected forest under the notification dated January 1, 1975, the Justice M.L. Jain committee was appointed by this court to demarcate and identify the areas declared as protected forest under the said notification, with the help of the Revenue and Forest Departments of the State of Rajasthan. It has done so. Besides being headed by a former Judge of the Rajasthan High Court, it was composed of high officials of the Government of Rajasthan. They have undertaken an elaborate and intensive exercise and have demarcated the areas declared as protected forest with the help of the official maps and records. We see no reason not to accept the said report. The several objections submitted by the mine-owners cannot prevail over the official maps and records. They were represented before the Commission at the time of the said exercise. It is significant to notice that the dissent note appended by the officers of the Government of Rajasthan was not with respect to the demarcation or identification of areas declared as protected forest, but only with respect to the closure of the mines operating within those areas. The report of the committee is accordingly accepted herewith.

Once an area is declared as a protected forest, it comes within the purview of the Forest (Conservation) Act, 1980. It becomes a forest land within the meaning of Section 2. The effect of this position is that no non-forest activity can be carried on in the said area except with the prior approval of the Central Government. Even the State Government cannot carry on any such non-forest activity in the said area without such prior approval. That the mining activity amounts to non-forest purpose is beyond dispute. Thus, the grant of mining leases/licences

A and their renewal by the State Government, without obtaining the prior approval of the Central Government, in respect of the mines situated within the protected forest, after January 1, 1975 is contrary to law. All the mines listed in Appendix A to the committee's report do fall within the areas declared as protected forest while the mines listed in Appendix B fall partly within and partly outside such areas. According to Rule 4(6) of the Rajasthan Minor Mineral Concession Rules, 1986 too, no mining lease could have been granted or renewed within the forest "without clearance from the Central Government in accordance with the Forest (Conservation) Act, 1980 and the Rules made thereunder". Admittedly, no such prior approval or clearance of Central Government was obtained. The Chairman of the Committee, Sri justice M.L. Jain has recommended that 215 mines mentioned in appendix-A to his report, which are situated wholly within the protected forest should be closed forthwith. There can hardly be any valid objection in law to the said recommendation. Similarly, with respect to 47 mines mentioned in appendix-B to the report, the learned Chairman has recommended that they should be closed forthwith in so far as they fall within the protected forest. To this recommendation also, there can be no valid objection in law.

At this stage, it would be appropriate to consider the application filed by State of Rajasthan for permission to delete an extent of 5.02 sq. Km. from out of the protected forest. The application is confined only to 208 mines out of 262 listed mines. 54 mines mentioned in para (9) of the application are proposed to be closed; indeed, according to the counsel for the State, they have already been closed. Reliance is placed upon the order dated May 14, 1992 in this behalf. It is pointed out that the said order does contemplate such modification, of course, with the permission of this Court and for valid reasons. It is pointed out that for such deletion or modification, the prior approval of the Central Government is not required. No such requirement is prescribed either in the Forest (Conservation) Act or Rajasthan Forest Act, it is submitted. In this context, the submission of Sri M.C. Bhandare may also be considered. He says that there are a number of mines around and outside the area declared as protected forests and that no purpose would be served by merely closing the mines within the protected forest and leaving those outside unhindered. He says that all these mines within and outside, are within the tiger reserve, as per the Rajasthan Government map though outside the sanctuary. May be so.

But it cannot be forgotten that purpose of Forest Acts and purpose of Environmental Protection Acts may not always be the same. Such closure may not serve the environmental purpose—assuming that-factual situation asserted by the learned counsel is true, upon which aspect we need not and do not make any pronouncement but it may serve the forest purpose. Be that as it may, both the purposes appear to be inter-twined in this case. In this situation, we think it appropriate that the merits of the said proposal be examined by the Ministry of Environment and Forests, Government of India and a report submitted to this Court, within three months from today. Orders will be passed on the application for directions filed by the State of Rajasthan after considering the said report.

*(B) Notification issued by the Central Government under Section 3 of the Environment (Protection) Act, 1986 on May 7, 1992:*

This notification expressly prohibits the carrying on of the mining operations, except with the Central Government's prior permission, in the "areas covered under project tiger". The prohibition extends to existing mining leases in Sanctuaries/National Park. All mining operations are prohibited therein. The table appended to the notification particularises the areas where carrying on the processes and operations aforesaid is prohibited without the permission of the Central Government. They include all reserve forest, protected forest or any other area shown as forest in the land records maintained by the State Government as on the date of the issuance of the said notification in relation to *inter alia* Alwar district of the State of Rajasthan. The table also includes "all areas of Sariska National Park and Sariska Sanctuary notified under the Wildlife (Protection) Act, 1972 (53 of 72)". we cannot agree with the learned counsel for mine-owners that the area declared as project tiger in the Alwar district has not been properly identified or that it is not properly identifiable. Both the State Government and Central Government have demarcated them in exactly identical manner. The map produced before us by the State Government is a detailed plan, prepared with great care. There is no reason to presume that it is not prepared by competent persons on the basis of the relevant material. The map delineates the area declared as sanctuary within the area declared as tiger reserve. The location of listed mines is clearly marked. They fall within the tiger reserve-

A though outside the sanctuary. A publication by the Forest Survey of India, Dehradun, Ministry of Environment and Forest, Government of India, entitled, 'Status of Forest covering in Project Tiger Reserve' has been placed before us. At pages 92-94, we find the map of Sariska Tiger reserve, Rajasthan. The boundaries, shape and dimensions of the said map tally fully and perfectly with the map prepared by the State of Rajasthan. Thus, there can be no legitimate dispute with respect to the correctness of the map produced by Government of Rajasthan or with respect to the area declared as tiger reserve. Both the State Government and Central Government have delineated it. May be that the declaration as tiger reserve was without any statutory authority and is relatable to the executive power of the Union of India-but the notification issued under Section 3 of the Environment (Protection) Act puts the stamp of statutory authority over it. The Central Government has specifically stated in its affidavit that no "prior permission" was obtained with respect to the mines located within the tiger reserve. On this ground, the mining operations being carried on in the tiger reserve, including the listed mines also, appears to be contrary to law. Of course, this notification has come only in May, 1992.

Now coming to the appropriate directions to be made in this behalf, it should be borne in mind that there is a distinction between the listed mines and those mines which are situated outside the protected forest but within the tiger reserve. So far as the listed mines are concerned, the very grant and renewal of those mining leases/licences is itself illegal. These areas were declared as protected forest as far back as January 1, 1975. If so, no mining lease or licence could have been granted in respect of the mines situated within the protected forest without clearance from the Central Government as required by Rule 4(6) of the Rajasthan Minor Mineral Concession Rules *and* without prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. It is an admitted fact that all these leases and licences were granted after 1980. There is also the order of this Court dated October 11, 1991 directing that "no mining operation of whatever nature shall be carried on in the protected area"-(Protected area does, without a doubt, include the areas declared as protected forest). The recommendation of the Chairman of the Committee, Sri justice M.L. Jain is also to the effect that the mining activity in the listed mines should be stopped forthwith. Even with respect to the mines in appendix-B (which partly fall within and partly outside the protected

forest areas) the recommendation of the Chairman is that they should  
be closed to the extent they fall within the protected forest. The Central  
Government has also taken the stand that the mining activity in these  
areas is illegal and cannot go on. As against this is the plea of the  
Rajasthan Government and of the mine-owners that the area covered  
by these mines should be allowed to be deleted/ excluded from the  
protected forest in lieu of their offer to include an equal extent of area  
within the protected forest. We do not propose to express any opinion  
on this plea of the Rajasthan Government and the mine-owners for the  
reasons recorded hereinbefore. We would like to have the opinion of  
the Central Government on the said plea or proposal, as it may be  
called. Only thereafter shall we consider the request of the State  
Government. But as on today, the situation is that the mining activity  
in the listed mines (according to the Rajasthan Government, it has  
already stopped all mining activities in 54 mines specified in its  
application) is illegal and has to stop. May be that this will have the  
effect of bringing to halt the activity involving a good amount of capital  
and a large number of workers. But in view of the inherent illegality  
attaching to them, indicated hereinbefore, we have no option but to  
close them. We cannot permit them to operate. If and when the central  
government recommends the plea of the State Government and any of  
the areas already declared as protected forest are deleted with leave of  
this court, can the mining activity go on in these areas. It is accordingly  
directed that all mining activity in the mines mentioned in appendix-  
A to the report of Sri justice M.L. Jain Committee shall stop forthwith.  
Similarly, the mining activity in the mines mentioned in appendix-B to  
the said report shall also stop forthwith in so far as they fall within the  
protected forest areas. The plea of the Rajasthan Government and of  
the mine-owners shall be considered by Department of Forest and  
Environment, Government of India and a report submitted to this Court  
within three months.

Now coming to the mines located outside the protected forest  
areas but within the tiger reserve, it cannot be said that the very grant  
of mining lease/licence is itself illegal in their case- unless, of course,  
such mining lease/ licence or its renewal has been granted on or after  
May 7, 1992 (particulars in this behalf are not made available to us).  
The illegality has attached to these mines by virtue of the notification  
issued by the central government under Section 3 of the Environment

- A** (Protection) Act on May 7, 1992. In the circumstances, it is directed that the mining activity in the mines situated outside the protected forest areas but within the tiger reserve may continue for a period of four months. Within this period it shall be open to the concerned mine-owners to approach the Department of Forest and Environment, Government of India for permission to continue their mining operations.
- B** They can continue the mining operations in these mines only if the central government permits them and subject to the orders of the central government in that behalf. If no permission is obtained from the central government within the said period of four months, the mining activity in the entire area declared as tiger reserve shall stop and cease
- C** on the expiry of four months.

List this matter for further orders on July 12, 1993.

N.V.K.

Petition Pending.