

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 312/2016
(M.A. No. 212/2019, M.A. No. 227/2019
I.A. No. 35/2021 & I.A. No. 36/2021)

Dr. Arun Kumar Sharma Applicant
Versus

Ministry of Environment Forests &
Climate Change & Anr. Respondent(s)

WITH

Original Application No. 757/2019

Manmohan Mishra Applicant

Versus
State of Rajasthan Respondent

WITH

Original Application No. 208/2020
(Earlier O.A. 47/2016 (THC) (CZ))

Bharat Kumar Jain & Anr. Applicant(s)
Versus

Union of India & Ors. Respondent(s)

Date of hearing: 05.03.2021
Date of uploading of order on website: 10.03.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

The Issue

1. These applications challenge the Zonal Master Plan, 2030 (ZMP 2030) for the Mount Abu Eco-sensitive Zone (ESZ). Since all the applications are identical, it will suffice to refer to the averments in the

first application. It is stated that Mount Abu was designated as Eco-Sensitive Zone (ESZ) vide Notification dated 25.06.2009, issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC), under the provisions of the Environmental (Protection) Act, 1986, (EP Act). The Notification mentions that the area has significant ecological importance. It comprises of tropical dry deciduous forests at lower altitude and evergreen forests at higher altitude. Flora and fauna of the region comprise several endemic and rare species. Besides, Mount Abu has natural heritage such as Nakki Lake and man-made heritage like Dilwara temple, apart from other heritage buildings and structures. Degradation of environment with excessive soil erosion, water and air pollution and volcanic activities endangering natural resources and affecting health and survival of human beings has been noticed. The Notification gives boundaries of the ESZ wherein the activities are to be regulated, stipulating preparation of a ZMP for the restoration of denuded areas, conservation of existing water bodies, including Nakki Lake, management of catchment areas, watershed management, groundwater management, soil and moisture conservation, needs of local community, conservation of heritage sites (both natural and cultural) and their surroundings and such other aspects of the ecology and environment that may need attention.

2. The ESZ notification further provides that the ZMP shall demarcate all the existing village settlements, tribal areas including tribal hamlets, types and kinds of forests, agricultural areas, fertile land, green areas, horticultural areas, orchards, lakes and other water bodies, natural heritage sites including points (such as Sunset Point) and man-made heritage sites, steep slopes, drainage channels, first order streams, ground water, recharge areas and areas rich in ground water, spring recharge areas, spring lines and other environmentally and ecologically sensitive

areas and no change of land use from green uses such as orchards, horticulture areas, agriculture parks and other like places to non-green uses shall be permitted in the ZMP, except that strictly limited conversion of agricultural lands may be permitted to meet the residential needs of the existing local residents together with natural growth of the existing local population, without the prior approval of the State Government. Further, no change in use of land from tribal uses to non-tribal uses shall be permitted without the prior approval of the State Government. With regard to tourism, it is specifically mentioned that a detailed carrying capacity study was to be carried out by the State Government based on existing infrastructure “and not on future projections” of any project that may require environmental or forest clearance. Mount Abu has natural sites such as Nakki Lake, Toad rock, rock formations, waterfalls, pools, springs, gorges, caves, points, walks etc. and plans for their conservation in their natural setting shall be incorporated in the ZMP and Sub-Zonal Master Plan. Strict guidelines shall be drawn up by the State Government to discourage construction activities at or near these sites including in the garb of providing tourist facilities. The general pool reserve areas in the zone shall be reserved. According to the Applicants, the rare species of wildlife are under serious threat by unregulated and impermissible developmental activities.

3. The impugned ZMP 2030 was notified on 29.10.2015, after approval by the MoEF&CC vide letter dated 28.09.2015 which led to these petitions challenging the same as being inconsistent with the ESZ notification dated 25.06.2009. Grounds of challenge are that it fails to discourage construction activities at or near the heritage sites, conserve the existing water bodies, permits change of land use by illegal structures. Rock climbing has also been permitted, including sport climbing by fixing

permanent anchors. Construction has been allowed on green tracks to benefit some builders. Though, MoEF&CC vide its letter dated 28.09.2015, while approving the ZMP, placed restriction on change of land use from green uses, the ZMP allows paying guest accommodation in residential land which will be commercialization by back door and will be indirect land use change. ZMP does not take care of the fact that the locations of the STP, Aarna Jain Dharamshala Area, Gurukul locations at Sunset Road and Takhatwala bungalow need to be preserved. The water is limited and its quality needs to be retained by not allowing construction near the water bodies, including in the garb of providing the tourist facilities. The number of tourists to be permitted is required to be restricted to protect the environment.

Procedural History

4. The matter has been considered by way of several orders in the last five years. We may only refer to some of the orders. Vide order dated 26.11.2018, it was found necessary to constitute an Expert Committee comprising two representatives of MoEF&CC, a representative of School of Planning and Architecture, Delhi and a representative of Central Pollution Control Board (CPCB). The mandate of the said four-member Committee was as follows:

“21. The Committee will undertake comparison of ZMP 2030, in terms of letter of MoEF&CC dated 28.09.2015 and ESZ Notification dated 25.06.2009 and point out the aberrations in some besides comparing ZMP 2030 map with reference to pre-existing 2010 map in the light of ESZ notification. Thirteen (13) locations noted above must also be specifically looked into. The Expert Committee may also look into the suggestions relating to prohibiting use of plastics, burning of garbage/ or any other waste, proper laying of high tension lines for protecting animals and birds life particularly in Salim Ali Bird Sanctuary area, preventing forest fire, conservation of Nakki lake and water quality management, siting and operation of Solid Waste processing plant in accordance with Solid Waste Management Rules, 2016 (with reference to sanctuary area), any other issues relating to environment management which may become a part of ZMP 2030, including observations of this Tribunal in Kasuali case.

22. *The Committee will also look into the points of concern raised by the applicant in reference to conversion of green areas to non-green areas, permissibility of construction on higher degree slopes, conservation of rocks, water bodies and wildlife and other heritage sites, the issue of water scarcity, carrying capacity of Mount Abu with regard to number of tourists and vehicles to be permitted having regard to the availability of the infrastructure without relying upon future projection, as required in terms of ESZ notification.”*

5. Thereafter, the matter was considered on 07.11.2019 in the light of report of the Committee dated 04.09.2019 which was not found to be acceptable for the reasons mentioned in the order. The Tribunal modified the constitution of the Committee, as per composition mentioned therein, comprising of seven-members, instead of four members as in the earlier Committee, and sought a fresh report with the following observations:

“8. ... We find from the report that **the Committee has assumed the ZMP to be conclusive on the ground that suitability analysis test had already been carried out by the State Government. This approach is inconsistent with the directions of this Tribunal. If the analysis of the State Government was to be treated as final, there was no need for the Committee.**

9. Accordingly, without expressing any opinion on merit, we direct further exercise to be undertaken by modified Committee as follows:

1. *An Expert of Ecology from G.P. Pant Institute, Almora, Uttarakhand to be nominated by the Director of Institute.*
2. *A senior Scientist from MOEF & CC, to be nominated by the Secretary, MOEF & CC.*
3. *A senior Scientist from the Indian Council of Forestry Research and Education, Dehradun.*
4. *Senior Scientist from Wadia Institute of Himalayan Geology, Dehradun, to be nominated by the Director.*
5. *Scientist/ Senior official from the Central Pollution Control Board, New Delhi.*
6. *Representative of School of Planning and Architecture, New Delhi.*
7. *Member Secretary, Rajasthan Pollution Control Board, shall be a member and Nodal Officer, who shall ensure the compliance.*

10. *The Committee may take into account the material already on record but undertake further study in terms of the directions of*

*this Tribunal and also take into account **the pattern of studies in the context of Manali (referred to order of this Tribunal dated 19.09.2018 in O.A. No. 635/2017, Ramesh Chand v. State of Himachal Pradesh), Shimla (referred to order of this Tribunal dated 16.11.2017 in O.A. No. 121/2014, Yogendra Mohan Sengupta v. UOI & Ors. and Kasauli (referred to order of this Tribunal dated 05.10.2018 in O.A. No. 218/2017, SPOKE Vs. Kasauli Galaxie Resorts (Kasauli case)).** The Committee may also take into account the order dated 19.01.2019 passed by this Tribunal. The Committee will be free to associate any other Expert or Institution.*

11. The Committee will be at liberty to consider the viewpoint of all the stake holders.

12. The Committee may commence its proceedings at the earliest complete the exercise preferably within two months and furnish its report by 31.01.2020 by e-mail at judicial-ngt@gov.in.”

Report of the Expert Committee dated 8.12.2020

6. Accordingly, the Expert Committee has filed its report dated 08.12.2020. The Committee has referred to the ESZ Notification and the ZMP in question. It is mentioned that two buffers (100 m and 200 m radius) have been formed around 10 identified sites within ESZ. The Committee looked into the change in land use through high resolution satellite images, as available on the google earth. The data has been duly analysed with particular reference to 10 identified sites. The Committee also undertook site specific field investigations at the 10 sites. Its observations with reference to the said sites are:-

“Site Specific observations:

S. No.	Location	Observation
1.	Inside Salim Ali Bird Sanctuary	This site is considered for the residential buildings in the ZMP 2030. The location is N 24°36' 40.05"; E 72° 43' 59.61" (± 5m). This site is having slope mostly greater than 20 degree. This land is fragile in terms of soil cover and more prone to erosion. The site is highly vegetated and lies adjacent to the forest block and Mount Abu Sanctuary (Fig. 18).

2.	Aranya Village	<i>This site is considered for residential buildings in the ZMP 2030. The location is N 24°35' 21.40"; E 72° 43' 31.42" (± 3m). Although this site is having a slope mostly less than 20 degree and is stable in terms of erosion (Fig. 19a). Soil cover is thin and intact (Fig. 19a). Geologically, the site may be suitable for proposed construction as the basement rock is massive Granite. But, the location lies at the top of the hillock (Fig. 19b), and the approach to the site covers the steep slope of >20°-30°. Approach road has to be constructed in the steeper slopes (>20°-30°), and this may destabilize the surrounding area where already houses are existing. The triggering of any type of landslide due to constructional activity may pose danger to the lives and property of the residents. It also seems a lot of electrical energy will be consumed to fulfill the needs of the water supply for a longer span of lifetimes at this location due to the limited source of water supply in the ESZ zone of Mount Abu. Even the scope for sewage and solid waste disposal is also limited.</i>
3.	Behind Magan Ji's	<i>This land has been described as residential/commercial in the ZMP 2030 (GPS location N 24°34'53.79"; E 72° 43' 14.15"; ± 3m). Geologically, the slope at this location is less than 20 degree. The rock type at this location is massive granite, and the soil cover is very thin (Fig. 20). Thus, this site is stable and less prone to any erosion. This site is owned by the municipal council of Mount Abu and is within the developed area falling in the municipal limits.</i>
4.	Hill Sahil	<i>This land is described as residential in the ZMP 2030 (GPS location N 24°34'50.77"; E 72° 43' 37.53"; ± 3m). The slope at this location is mostly steep (> 30 degree) (Fig.21a). Most of the land at this is highly vegetated and fragile in terms of soil cover (Fig. 21a) even at places where the slope is gentle (Fig. 21b).</i>
5.	Sunset Road Scheme	<i>This land is described as residential in the ZMP 2030 (GPS location N 24°35'11.49"; E 72° 42' 13.79"; ± 3m). This site has a slope of less than 20 degree and is stable with the granite as basement rock. This site is partly built-up. This site is close to the forest land. Therefore, the ESZ criteria of a buffer zone with forest and water stream must comply before the start of any construction activity.</i>
6.	Sunrise Housing Society	<i>This site is described as residential in the ZMP 2030 (GPS location N 24°34'55.26"; E 72° 43' 38.12"; ± 3m). The site lies adjacent to the already existing houses (Fig. 22a). The slope at this site is mostly less than 20 degree (Figs. 22a-22c). The basement rock is granite and is well exposed at this location with very thin soil cover (Fig. 22a-22d). The site is near a local natural stream (Nala). Therefore, the ESZ criteria of the buffer zone with water stream and forest must be complied before any constructional activity as per norms.</i>
7.	Arna Village	<i>This site is proposed for the residential buildings and lies adjacent to the already existing houses (Fig. 23). The location is N 24°34' 21.32" (± 3m). This site is having slope of less than 20 degree and is stable in terms of erosion. Soil cover is thin and intact. At present, the land is vacant and is also well connected with the Abu Road-Mount Abu road.</i>
8.	Mohanpura	<i>This site is described as residential as well as commercial in the ZMP 2030 (GPS location N 24°34'35.72"; E 72° 43' 36.81"; ± 3m). The slope is mostly less than 20 degree at this site (Figs. 24a and b). The soil cover is thin, and the basement rock granite is well exposed at this location (Figs. 24a and b). The site is less prone to any natural geological hazard.</i>

9.	Hetam Ji	This site is considered for residential settlement for the expansion of the local population in the ZMP 2030. At this site two domains of the landscape have been identified (i) domain with of low slopes having slopes <20 degree that is geologically stable and suitable for construction (Fig. 25a) and the domain with high slopes (that even reach >30 degree) that is not geologically unstable for construction (Fig. 25b). The areas with the steep slopes are also rich in vegetation with thick soil covers making the landscape more prone to erosion and instability. The domain with low-slope that lies adjacent to the Abu Road-Mount Abu road cut may be permitted for construction based on geology (Fig. 12a). But, this domain of low slope is covered with the luxuriant growth of natural Phoenix sylvestris (Khajoor Tree) and any construction shall lead to deforestation caused by felling of these trees. This act of deforestation may spoil the ecosystem of this region.
10.	Near STP Plant	This site is considered for the (i) tourism center (ii) residential buildings in the ZMP 2030. The tourism center is proposed at a land where the slopes are less than 20° and are geologically stable. But, the proposed site for residential buildings covers the land of low slopes that are geologically stable (Fig. 26a) as well as the land with a high slope domain that is not geologically stable for construction (Fig. 26b). At this site, the bedrock is hard and compact with negligible weathering. In the stable slope region, no prominent fractures/joints are developed that may cause instability. .

7. The Committee has given its views in a tabular form as follows:

“3.2.5 Views of Expert Committee Members after Field Visit

Suitability of 10 identified sites within Mount Abu ESZ as reviewed by the expert committee based on the site visit/ground verification as well as interactions with the local residents, Mount Abu Municipality officials, Town Planning Department officials as well as other stakeholders during 16-17 January 2020 are given below:

Table 16

Suitability of 10 identified sites within Mount Abu ESZ as reviewed by the expert committee based on the site visit/ground verification as well as interactions with the local residents/ Mount Abu Municipality officials/Town Planning Department officials/other stakeholders during 16-17 January 2020.

Contd. At next page

Name of Site	Location (Lat & long with Accuracy/ Altitude); Slope (0°)	Present land use & Vegetation type/ Cover (%)	<p style="text-align: center;">Recommendation</p> <p style="text-align: center;">(All these construction should comply the norm of 50 m away from forest boundary and from water body and 100 m from wetland/river)</p>
Inside Salim Ali Bird Sanctuary	24°36'40.50"N 72°43'59.61"E (±5m) 1183 m; most of the land at this site has slope >20°	Natural Forest & Moderately Dense Forest (>40%)	<ul style="list-style-type: none"> • May not serve the purpose of residential location for the local residents. • This site is not suitable for construction from geological as well as ecological perspective as per ESZ norms. As the land is fragile in terms of soil cover and rock strength thus prone to erosion and site is adjoining the forest block and close to Mt. Abu Sanctuary and found to be a pristine forest. <p>Conclusion: Site is not suitable for construction.</p>
Next to Arany a Village	24°35'21.40"N 72°43'31.42"E (±3m) 1198 m;	Vacant; Open scrub/ with isolated trees (<10%)	<ul style="list-style-type: none"> • Soil cover is thin and intact • It also seems a lot of electrical energy will be consumed to fulfill the needs of the water supply for a longer span of lifetimes at this location due to the limited source of water supply in the ESZ zone of Mount Abu. • Mostly the site has slope <20° but the approach road to the site has to be constructed on steeper slope (>20°-30°). • Treacherous terrain with steep slopes poses threat of land destabilization to allow any construction. • triggering of any type of landslide due to constructional activity may pose danger to the lives and property of the residents. • Even the scope for sewage and solid waste disposal is also limited. Therefore, it will not be a wise decision to perform any constructional activity at this site. <p>Conclusion: Site is not suitable for construction.</p>

Behind Maganji Mountain	24°34'53.79"N 72°43'14.15"E (±3m) 1188 m; Most of the land at this site has slope<200	Vacant, about 40% areas are exposed rocks; Open scrub/ isolated trees (<10%)	<ul style="list-style-type: none"> • No Forest patch in the vicinity • A deep Nala is available in northern margin. • Hard rock at this site will not lead to any damage to the landscape for construction. • Sewer line can easily be connected with the main line on the road. • ESZ criteria (50 m away from forest boundary and water body needs to be complied upon). • Site is suitable for residential purpose. In order to be consistent and coherent with the spirit and mandate of the ESZ 2009 the residential plots / houses should only be earmarked for local administration. <p><u>Conclusion: Site is suitable for construction.</u></p>
Hill Sahil	24°34'50.77"N 72°43'37.53"E (±3m) 1159 m; Most of the land at this site has slope>300	Natural Forest; Moderately dense forest (>40%)	<ul style="list-style-type: none"> • Most of the land at this is highly vegetated and fragile in terms of soil cover even at places where the slope is gentle • This is hilly site as implied by its name and the steep slope is not suitable for construction. • Any type of construction will lead to destruction of this pristine forest patch with very old trees of endemic species Anogeissus sericea and wildlife habitat. • Therefore, in terms of stability, this is the site that should not be allowed for any construction from the geological and ecological point of view. Also, any kind of construction at this location may disturb the ecosystem as per ESZ norms. Therefore, this site should be kept as such. <p><u>Conclusion: Site is not suitable for construction.</u></p>
			<u>Conclusion: Site is not suitable for construction.</u>
Sunset Road Scheme	24°35'11.49"N 72°42'13.79"E (±3m) 1169 m; Most of the land at this site has slope <200	Residential (Partly built/partly Vacant); Open scrub/isolated trees (<10%)	<p>This site is stable with the granite as basement rock.</p> <ul style="list-style-type: none"> • This site is close to the forest land. Therefore, the ESZ criteria of a buffer zone with forest and water stream must comply before the start of any construction activity. • Already existing provision for farm house in state of Rajasthan may be made applicable with allowance of 10% of total area of construction as built up area or 5000 sq ft. (whichever is less) subject to NOC from Forest dept. <p><u>Conclusion: Site is suitable for construction.</u></p>

Sunrise Housing Society	24°34'55.26"N 72°43'38.12"E (±3m) 1137 m; Most of the land at this site has slope<200	Vacant; Open scrub with isolated trees (>20%)	The basement rock is granite and is well exposed at this location with very thin soil cover. <ul style="list-style-type: none"> • The site is near a local natural stream (Nala). Therefore, the ESZ criteria of the buffer zone with water stream and forest must be complied before any constructional activity as per norms. • Site is surrounded by habitation so it may cater to the residential needs of the local people. Thus, this site is stable and suitable for the construction of the residential complex. <ul style="list-style-type: none"> • Construction may be allowed following criteria laid down in ESZ <u>Conclusion: Site is suitable for construction.</u>
Arna Village	24°34'21.32"N 72°45'14.37"E (±3m) 994 m; Most of the land at this site has slope <200	Vacant ; Open scrub with isolated trees/Agricultural Land (<10°)	This site is stable in terms of erosion. Soil cover is thin and intact. <ul style="list-style-type: none"> • At present, the land is vacant and is also well connected with the Abu Road-Mount Abu road. • Geologically, the site is suitable for proposed construction as the basement rock is massive granite, provided that the ESZ criteria of a buffer zone with forest and water stream be complied during construction. <u>Conclusion: Site is suitable for construction.</u>
Mohanpura	24°34'59.21"N 72°43'08.25"E (±3m) 1161 m; Most of the land at this site has slope<200	Vacant rocky patch; Rocky terrain with some isolated trees in adjoining slopes	<ul style="list-style-type: none"> • The soil cover is thin, and the basement rock granite is well exposed at this location. The site is less prone to any natural geological hazard. • Thus, this site is suitable for construction as per ESZ norms. • ESZ criteria of 50 m away from forest boundary and water body needs to be complied upon. <u>Conclusion: Site is suitable for construction.</u>

Hetamji	24°34'35.72"N 72°43'36.81"E (±3m) 1139 m; Most of the land at this site has slope>200 & high slopes (that even reach >30 degree	Vacant/partly built-up ; Open forest with >30% tree cover in sloppy area Phoenix trees in valley area	This site is considered for residential settlement for the expansion of the local population in the ZMP 2030. <ul style="list-style-type: none"> • At this site two domains of the landscape have been identified (i) domain with of low slopes having slopes <20° that is geologically stable and suitable for construction and the domain with high slopes (that even reach >30°) is not geologically stable for construction • Most of the area falls over 20° slope and is more prone to erosion and should not be put under construction. • Gently sloping land towards the road side (< 20 degree) has a natural stand of Phoenix sylvestris (Khajoor tree) that should be protected. <u>Conclusion: Site is not suitable for construction.</u>
Near STP plant	24°34'38.14"N 72°43'57.77"E (±3m) 1139 m; Two domains of land at this site is available. Partially, the site has slope>200 and partially <20°.	Vacant/agriculture; Open scrub/ with tree and shrubs along the hill top and the slopes.	This site is considered for the (i) tourism center (ii) residential buildings in the ZMP 2030. The proposed site for residential buildings covers the land of low slopes that are geologically stable as well as the land with a high slope domain that is not geologically stable for construction. <ul style="list-style-type: none"> • At this site, the bedrock is hard and compact with negligible Weathering. In the stable slope region, no prominent fractures/joints are developed. • At places the measured slope towards STP site was found > 20 degree even the landscape is fragile in terms of soil erodibility. Thus high slope domains must be kept as such. • The proposed tourism facility centre at the gentle slopes may be allowed. But may disturb the wildlife ecosystem. • Although the low slopes domain may be suitable for construction, geologically. But this site is the habitat of the wild animals. For example, footprints of the sloth bear were also observed during the field visit. Therefore, any construction May disturb the wildlife ecosystem. Therefore, any construction must not be allowed to preserve the ecosystem of this region. • The construction may be allowed in the land having gentle, i.e., stable slopes while the steep slope region closes to the cliff of the hill should be kept untouched. <u>Conclusion: Site is not suitable for construction.</u>

- In compliance to the GoI, Ministry of Environment & Forests Notification New Delhi June 25, 2009 Gazette Notification (Page 2) about regulations in the ESZ clause (iv), the following need to be fulfilled:
- “No change of land use from green uses to non-green uses shall be permitted in the ZMP, except that strictly limited conversion of agricultural lands may be permitted to meet the residential needs of the existing local residents together with natural growth of the existing local population, without the prior approval of the State Govt.” For this purpose, the proponent will have to submit evidence of his/her being local residents as per the standard norms of the Rajasthan Govt.
- To accommodate the local people’s residential needs for their natural growth, house construction should be allowed on priority.

Further pointed contention on behalf of the applicant is that ZMP 2030 had deficiencies as follows:-

INPUTS RELATED TO ADDRESSING DEFICIENCIES IN ZMP AS PER NGT ORDER dated 07.11.2020			
	Deficiencies	Details in the ZMP 2030	Response
i.	ZMP agrees that no construction is to be permitted in the wetland within 50 meters from the water bodies and wherever possible such buffer zone along the wetlands should be wider. Requirement of buffer zone between construction and the wetlands should have been atleast 100 meters, as per study referred to in the ZMP itself in Chapter – III.	Section 10.2.1 Buffers Zones along Wetland The buffer zone identified along the riparian corridors and wetlands.	100 meters as mentioned in Chapter -III has been arrived on the basis of runoff from watershed and is desirable however during the deliberations implementation of the same was found difficult. The wetlands rule notification of 29 th November 2010, of MoEF & CC states a minimum of 50 meters buffer. Hence the same has been suggested.

ii.	<p>Having regard to the fact that the soil of the hills is loose and the area has potential for landslides, no development should be allowed at slopes having 35 degree or more. Hetamji and Hill Sahil have slopes higher than 35 degree. The same have been described as residential. Thereby, there is possibility of construction being allowed.</p>	<p>20° slope is equal to 36.4 percentage slope. The ZMP has considered slopes greater than 35 percent as highly sensitive and no development has been suggested on them. As described in earlier sections, individual resources have been mapped based on their inherent sensitivity and value - Land Cover , slope , wetland-riparian buffer zone in shades of gray , soil productivity , and wildlife habitat. In order to identify potential areas for development, these maps have been overlaid to produce a composite ecological value maps (refer Map 3.11 and 3.12) illustrating areas which have high, moderate and low ecological values for all the resources combined. To do this, the classes have been rated from 1 to 3 for each of these resource categories based on their ecological value – higher the value, higher the score. However, highly sensitive slopes (slope >35%) and high value Wetland-Riparian buffer zone classes have been</p>	<p>The details regarding same have been incorporated in Table 16. As per notification and ZMP no construction above 20-degree slope.</p>
		<p>assigned a score of 10 instead of 3. This is so because irrespective of the values for any other natural resource, areas with slopes above 35% are unsuitable for any construction activity, and buffer zones need to be conserved and protected against any development activity for the sheer need to protect the quality and quantity of the restricted resource - water. The greys of the overlapped map corresponded to scores from 4 to 29. Areas with score ranges of 4-5, 6 -9, and 10-29 were grouped into low, moderate, and high value classes respectively.</p>	

iii.	There is degradation leading to wildlife decline, as noted in ZMP. This requires invocation of Precautionary Principle while permitting any development in the area.	<p>Table 3.3 Census (Population Figures of Important Animals during Last Three Census)</p> <table border="1"> <thead> <tr> <th rowspan="2">S.No.</th> <th rowspan="2">Name of Animals</th> <th colspan="3">Year</th> </tr> <tr> <th>2008</th> <th>2009</th> <th>2010</th> </tr> </thead> <tbody> <tr><td>1</td><td>Panthers</td><td>28</td><td>27</td><td>29</td></tr> <tr><td>2</td><td>Sloth Bear</td><td>132</td><td>138</td><td>182</td></tr> <tr><td>3</td><td>Sambhar</td><td>30</td><td>35</td><td>42</td></tr> <tr><td>4</td><td>Blue Bell</td><td>302</td><td>291</td><td>328</td></tr> <tr><td>5</td><td>Hyena</td><td>88</td><td>92</td><td>113</td></tr> <tr><td>6</td><td>Langur</td><td>*</td><td>*</td><td>*</td></tr> <tr><td>7</td><td>Jackal</td><td>142</td><td>*</td><td>195</td></tr> <tr><td>8</td><td>Grey Jungle Fowl</td><td>425</td><td>453</td><td>646</td></tr> <tr><td>9</td><td>Wild Boar</td><td>195</td><td>184</td><td>284</td></tr> <tr><td>10</td><td>Porcupine</td><td>84</td><td>88</td><td>158</td></tr> <tr><td>11</td><td>Hare</td><td>*</td><td>*</td><td>*</td></tr> <tr><td>12</td><td>Wolf</td><td>0</td><td>0</td><td>*</td></tr> <tr><td>13</td><td>Mongoose</td><td>*</td><td>*</td><td>*</td></tr> <tr><td>14</td><td>Jungle Cat</td><td>69</td><td>92</td><td>98</td></tr> <tr><td>15</td><td>Monitor Lizard</td><td>*</td><td>*</td><td>*</td></tr> <tr><td>16</td><td>Peacock</td><td>*</td><td>*</td><td>*</td></tr> <tr><td>17</td><td>Civet</td><td>85</td><td>75</td><td>97</td></tr> <tr><td>18</td><td>Crocodile</td><td>6</td><td>8</td><td>5</td></tr> <tr><td>19</td><td>Caracal</td><td>3</td><td>*</td><td>*</td></tr> <tr><td>20</td><td>Vulture</td><td>9</td><td>0</td><td>*</td></tr> <tr><td>21</td><td>Birds of Prey</td><td>23</td><td>21</td><td>34</td></tr> <tr><td>22</td><td>Fox</td><td>-</td><td>-</td><td>45</td></tr> </tbody> </table> <p>Source: Annual plan of operations wild life sanctuary; Mount Abu Urban Development Department, Government of Rajasthan</p>	S.No.	Name of Animals	Year			2008	2009	2010	1	Panthers	28	27	29	2	Sloth Bear	132	138	182	3	Sambhar	30	35	42	4	Blue Bell	302	291	328	5	Hyena	88	92	113	6	Langur	*	*	*	7	Jackal	142	*	195	8	Grey Jungle Fowl	425	453	646	9	Wild Boar	195	184	284	10	Porcupine	84	88	158	11	Hare	*	*	*	12	Wolf	0	0	*	13	Mongoose	*	*	*	14	Jungle Cat	69	92	98	15	Monitor Lizard	*	*	*	16	Peacock	*	*	*	17	Civet	85	75	97	18	Crocodile	6	8	5	19	Caracal	3	*	*	20	Vulture	9	0	*	21	Birds of Prey	23	21	34	22	Fox	-	-	45	As per data collected from Annual Plan of Wild Life Sanctuary given on page III 17 the ban in construction has helped in increasing the number of species.
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iv.	Nakki lake is a 'no construction zone' as per ESZ but ZMP permits organized commercial activities for facilities to the tourists and such activities could be cafeteria, shopping areas and accommodation.	<p>Section 12.3 Salient feature of the plan</p> <p>6. Provision of facilities at Nakki Lake: Nakki Lake being the focal point of the town attracts a large number of tourists lake front seriously lacks adequate facilities. The lake front needs to be planned commercial activities, restructuring off access of shops, parking, pedestrians infrastructural facility</p>	The section mentions organized activity, restructuring entrance and providing infrastructure. There is no mention of accommodation. Section 10.7 of ZMP, pages X-22 to X-25 has mentioned protection of Nakki lake and its entire catchment. This needs to be adhered																																																																																																																						
v.	ESZ notification provides for conservation of Toad rock but the ZMP has provision for ropeways which may result in rock not being conserved as required.	The ZMP suggest there is potential for ropeways, trekking, camping, etc.	Rocks in the area have to be protected as per ESZ notification.																																																																																																																						

vi.	<p>The ZMP provides for 6700 tourists per day and also refers to carrying capacity having being under taken, as required under the ESZ notification, but the said carrying capacity report has not been furnished. Thus, carrying capacity has to be carried out to assess number of vehicles to be allowed and number of tourists to be allowed, having regard to the available existing infrastructure.</p>	<p>The carrying capacity for tourists has been calculated for 2030 by assessing existing infrastructure. The assessment has been based on existing infrastructure taking into account existing tourist accommodation and water availability. The following steps were followed</p> <ol style="list-style-type: none"> 1. Tourist stay areas and their bed Capacity 2. Average stay of tourist 3. Water requirement in the hotels 4. Traffic conditions <p>Existing Tourism Infrastructure The tourism infrastructure includes</p> <ol style="list-style-type: none"> 1. Accommodation, 2. Facilities <p>As per the surveys the average length of stay in Mount Abu for a foreign tourist is 1 day, whereas the average stay for a domestic tourist is 2 days.</p> <p>Tourist Accommodation The type of accommodation available in the town varies from hotels that are newly built to retrofitted residential</p>	<p>The number of tourist to be arrived after a detailed carrying capacity study.</p>												
		<p>buildings of Rajasthan princely states and home stays. The varied accommodation available satisfies different type of tourists and their choices, preferences and affordability. In Mount Abu there are 108 hotels and 97 PG accommodations at present. Mount Abu has 3 heritage hotels with a capacity of approx. 91 rooms and 182 beds.</p> <p>Tourist Accommodation</p> <table border="1" data-bbox="1158 1065 1825 1401"> <thead> <tr> <th data-bbox="1158 1065 1593 1122">Type of Tourist Accommodation</th> <th data-bbox="1593 1065 1825 1122">No. of Units</th> </tr> </thead> <tbody> <tr> <td data-bbox="1158 1122 1593 1179">Four Star Hotels</td> <td data-bbox="1593 1122 1825 1179">1</td> </tr> <tr> <td data-bbox="1158 1179 1593 1235">Three Star Hotels</td> <td data-bbox="1593 1179 1825 1235">1</td> </tr> <tr> <td data-bbox="1158 1235 1593 1292">Heritage Hotels</td> <td data-bbox="1593 1235 1825 1292">3</td> </tr> <tr> <td data-bbox="1158 1292 1593 1349">Unclassed Hotels</td> <td data-bbox="1593 1292 1825 1349">102</td> </tr> <tr> <td data-bbox="1158 1349 1593 1401">Paying Guest Accommodation</td> <td data-bbox="1593 1349 1825 1401">97</td> </tr> </tbody> </table>	Type of Tourist Accommodation	No. of Units	Four Star Hotels	1	Three Star Hotels	1	Heritage Hotels	3	Unclassed Hotels	102	Paying Guest Accommodation	97	
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		Source: Tourism Department: Mount Abu 2010 Besides these, Mount Abu also has some dharamshalas and dormitories that mainly cater to the pilgrim tourist coming in the town. The total was arrived to be 6700 on the basis of primary survey.	
vii.	Rocks in the ESZ area are required to be conserved but provision in the ZMP for adventure tourism permits sport climbing which may require drilling of the rock which will be against the spirit of the ESZ.	Section 12.4 Development Policy Guidelines for Mount Abu Tourism	Rocks in the area have to be protected as per ESZ notification so only those forms of tourism should be propagated that does not harm the rocks.
viii.	Forest Policy, 1988 will be violated if there is reduction in green area as a result of activities permitted under the ZMP, permitting converting green areas into non-green areas for facilities to tourists, including construction of hotels and resorts. Thus, mere denial of the State Government that no development on land with tree covers is contemplated and that there will be no reduction in green area, does not fully appreciate the impact of ZMP. If green area is to be protected, provision for hotels, resorts etc. has to be deleted.	Proposed land use Plan 2030 refer footnotes which mention adherence to ESZ notification.	No change of land use from Green uses such as orchards, horticulture areas, agriculture parks and other like places to non-green area uses shall be permitted in Zonal master plan.
MoEFCC letter dated 28.09.2015			
i.	Rectification of error apparent on face of land records		
	Any error appearing in land records within Eco sensitive zone shall be corrected by the state govt. after obtaining the view of monitoring committee, once each case and correction of said error shall be intimated to the central govt. in the MOEFCC Provided that the above correction of error shall not include change of land use in any case except as provided under this sub paragraph.	Proposed land use Plan 2030 refers footnotes which mention adherence to ESZ notification.	No change of land use from Green uses such as orchards, horticulture areas, agriculture parks and other like places to non-green area uses shall be permitted in Zonal master plan.

ii.	<p>Change in land use pattern in the eco sensitive Zone</p> <p>No change of land use from Green uses such as orchards, horticulture areas, agriculture parks and other like places to no green area uses shall be permitted in Zonal master plan except that Strictly limited conversion of agricultural lands may be permitted to meet the residential needs of the existing local residents together with the natural growth of the existing local population without the prior approval of the state govt. and similarly no change in use of land from tribal uses to tribal uses shall be permitted without the prior approval of state Govt.</p>	<p>Section 10.3 Cultural Heritage (Plan, Proposals and Strategies)</p> <p>Proposed land use Plan 2030 refer footnotes which mention adherence to ESZ notification.</p>	<p>No change of land use from Green uses such as orchards, horticulture areas, agriculture parks and other like places to no green area uses shall be permitted in Zonal master plan.</p>
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1. The Expert Committee may also look into the suggestions relating to

(a) Prohibiting use of plastics, burning of garbage/ or any other waste

Recommendations of the Committee: The committee dwelt on the issue and looking the fragile nature of eco-system of Mount Abu and being an important tourist destination, Committee hereby recommends imposing a ban on the use of the following single use plastic items in the ESZ of Mount Abu:

- Plastic / Thermocol (polystyrene) disposable cups, glasses, plates (dishes), bowls, forks and spoons.
- Single use PET plastic water bottles.
- Single use plastic banners & flags.
-

It may be pointed out that the manufacturing, transport, sale and use of plastic carry bags is already banned in the entire State of Rajasthan vide notification dated 21.07.2010.

As far as the open burning of garbage is concerned, it is already prohibited under the Solid Waste Management Rules, 2016. However, the Municipal Council, Mount Abu should impose strict fines / penalties on the violators, as per the provisions of the Municipal Rules.

(b) Proper laying of high tension lines for protecting animals and birds life particularly in Salim Ali Bird Sanctuary area.

Recommendations of the Committee: Electrocution and collisions of birds poses serious threats to a number of wildlife including birds particularly for the raptors that built their nests on electricity poles or use the poles perches. As forest patches are distributed throughout the municipality area of Mount Abu and Salim Ali Bird Sanctuary area appears a pristine forest with a variety of birds and wildlife too, movement of wildlife is reportedly common in this zone. To prevent death of animals and birds in such eco-sensitive zones covering protected areas and wildlife corridors forests, due to electrocution by the distribution lines, power distribution shall preferably be through underground cable. In case of the overhead lines, the clearance above ground of the lower conductor of 11 KV and 33 KV overhead lines should be as per the CEA (Central Electricity Authority) regulation. In case, where these areas are aquatic in nature, aerial bunched cables or covered conductors would be used as laid down by National Board for Wildlife (NBWL) and accepted by MoEF & CC, Government of India.

(c) Preventing forest fire

Recommendations of the Committee: Forest fires is one of the serious threats like poaching, Illegal felling of trees, disturbance to birds by tourists, Invasive species (*Lantana camara* and *Prosopis juliflora*), introduction of some exotics like *Eucalyptus* and *Grevillea* spp., tourism pressure and pilgrim pressure, now become a common feature in forests of Mount Abu area and it may increase in future considering the changing climatic conditions. Large

human settlement, increasing urbanization due to the importance of Mount Abu as a tourist location, increased anthropogenic activities in forest edges and increasing dryness in the region are major factors responsible for forest fire. Committee recommends adoption of strict guidelines in following prevention activities like creation and maintenance of fire lines and controlled burning to reduce fuel loads as required per the forest working plans including silvicultural practices, such as selective thinning and planting of fire-adapted species. Eradication Lantana from fire prone zones would also reduce the likelihood of wildfire. Furthermore, local communities should also be mobilized to ensure responsible use of fire during camp fire, garbage burning, fetching honey, etc.

(d) Conservation of Nakki lake and water quality management

Recommendations of the Committee: Nakki Lake is a very important water body and tourist destination of Mount Abu. It is very important that the lake is protected from disposal of waste water and municipal solid waste and is conserved in its pristine form. Accordingly, as an immediate measure, there should be a complete ban on discharge of any treated / untreated sewage or industrial effluent into the lake directly or indirectly. Further, the leachates generated from the municipal solid waste dumping areas must be collected and treated separately by the Municipal Council, Mount Abu. Once the ban on use of single use plastics, as recommended above is implemented, it will also help in conservation of water quality of the lake. Further, Rajasthan State Pollution Control Board is already monitoring the lake water quality regularly, under National Water Quality Monitoring Program (NWMP).

As a long term measure, the State Wetland Authority should get an Environmental Conservation Plan for Nakki Lake and get it implemented through the concerned stakeholder departments.

(e) Siting and operation of Solid Waste processing plant in accordance with Solid Waste Management Rules, 2016 (with reference to sanctuary area)

The District Collector Sirohi has recently allotted a piece of land for disposal of Municipal solid waste of Mount Abu near village Mouja Deldar at Khasra no. 49/02. The area of this site is 29 Bigha 16 Biswa. The site is yet to be developed for scientific processing and disposal of waste. At present the Municipal solid waste of Mount Abu is disposed near mudarla Patwar area Amthala. However, a site was close to human settlement therefore this new site has been allotted by the district administration. The proposed site is outside eco sensitive zone of Mount Abu and is on a flat terrain with little habitation. The committee is of the view that the site is suitable for development of Municipal Solid Waste Management Facility.

(f) Any other issues relating to environment management which may become a part of ZMP 2030, including observations of this Tribunal in Kasuali case.

Recommendation of the Committee:

- *Mt. Abu ESZ comprises of twelve villages and a Municipal area. The solid waste management practices adopted by the Municipal body are not extended to the villages. Therefore, State Government is advised to initiate awareness generation program for Gram Panchayats as well as villagers to achieve the goal of Clean Mt. Abu.*
- *Also, considering the air pollution aspect, the possibility of plying of CNG vehicles or electric vehicles may be explored inside Mt. Abu area.*
- *To protect Mt. Abu Wildlife from broken glass pieces, lying even in forest areas, due to the tourist behaviour of throwing Beer Bottles all along the roads leading to Mount Abu, till Gurushikar, the DCF, Mt. Abu suggested replacement of alcohol bottles especially all brands of Beer by aluminum tins/cans to minimize the accidental injuries to the soft paws of Sloth Bear and Leopards and other wildlife in the sanctuary area. The offenders should be prosecuted.*
- *Many of the areas of Mount Abu including sanctuary area have been infested by two invasive species like Lantana camara and Prosopis juliflora, which requires to be control by complete uprooting and pricking out the newly germinated seedlings in subsequent years.*

2. The Committee will also look into the points of concern raised by the applicant in reference to:

(a) Conversion of green areas to non-green areas

Recommendations of the Committee: *About 52.5% (1104.2 ha) of total Municipality area of Mount Abu is forest, whereas 21.1% area is under plantation. Any type of construction and developmental activities will lead to destruction of such green patches, where some patches have very old trees and are habitats for wildlife also. Diversion of forest land for other purposes is continued under Forest (Conservation) Act (FCA), 1980. For maintaining standard of living in an urban area, experts proposes 40 sq m green space of high quality to 140 sq m suburb forest area per capita for achieving a balance between Carbon-di-oxide and Oxygen so as to meet the ecological balance for human well being. In general developing countries are adopting a general standard of green space of 20 sq m park area per capita, whereas WHO recommends that cities should provide 9 sq m undeveloped (unpaved) open space for every inhabitant. Committee feels that in any case, if such conversation is required, it should be as per the standards followed in urban area following FCA (1980) and Urban Greening Guidelines (2014) Issued by Ministry of Urban Development, Government of India, should be strictly followed where there is chances of converting green areas to non-green areas.*

No change of land use from Green uses such as orchards, horticulture areas, agriculture parks and other like places to no green area uses shall be permitted in Zonal master plan except that strictly limited conversion of agricultural lands which may be permitted to meet the residential needs of the existing local

residents together with the natural growth of the existing local population with the prior approval of the state govt. and similarly no change in use of land from tribal uses to non tribal uses shall be permitted without the prior approval of state Govt.

(b) Permissibility of construction on higher degree slopes

Recommendation of the Committee: As per the provisions of ESZ Notification of Mt. Abu, no development shall be proposed on forest land, buffer areas along water channels and wetlands, or lands having slopes more than 20 degree and lands having substantial tree cover (>20% cover) and area dominated by RET species. These have been adequately reflected in the ZMP.

(c) Conservation of rocks, water bodies and wildlife and other heritage sites.

Recommendation of the Committee: The Government of Rajasthan has proposed Adventure based tourism, adventure sports, adventure trails etc., in Zonal Master Plan. However, no specific location for sports / rock climbing has been proposed. The Committee recommends that a feasibility study for undertaking such projects be carried out considering environmental and other statutory provisions and necessary clearances shall be taken as per the prevailing legislation and guidelines.

As per data collected from Annual Plan of Wild Life Sanctuary given on page III 17 the ban in construction has helped in increasing the number of species. In order to prevent further degradation of the Eco Sensitive Area, Precautionary Principle has to be followed.

Rocks in the area have to be protected as per ESZ notification so only those forms of tourism should be propagated that does not harm the rocks.

(d) The issue of water scarcity

Recommendation of the Committee: There were 5 STPs in Mt. Abu, one big and four small. However, the big STP was not functional at the time of visit of the Committee. The State Government should re-vive the STP so that the waste water generated from Mt. Abu Municipal area can be treated and re-used.

(e) Carrying capacity of Mount Abu with regard to number of tourists and vehicles to be permitted having regard to the availability of the infrastructure without relying upon future projection, as required in terms of ESZ notification.

Recommendation of the Committee: As there is only one double road leading to the hill, carrying capacity calculation based on number of vehicles to be allowed inside Mt. Abu. The Nagar Palika is already maintaining a record of number of vehicles entering per day in Mt. Abu Municipal limits. As a short term measure, the Nagar Palika can hold the tourist at entry point if it is exceeding the carrying capacity on a particular day.

Detailed carrying capacity of the hill station will depend on the water availability, sewage treatment capacity, present land use, tourist accommodation available and planned, existing air quality, parking spaces, etc. Accordingly, the Local Authority may

get a detailed carrying capacity study conducted through eminent institution based on the guidelines framed by CPCB and regulate the tourist traffic / number of vehicles as per the recommendations of the study.”

Rival Contentions regarding acceptability of the Report

Submissions of the Applicants:

8. Shri Amit Sibal, Senior Advocate, appearing for the applicants submitted that the report be accepted. Ecological importance of the area in question is mentioned in the statutory Notification dated 25.06.2009 issued by the MoEF&CC. The area is tropical dry deciduous forest has low altitude with evergreen forest at higher altitude and flora and fauna of rare species with natural heritage of certain structures. The notification further mentions that due to excessive soil erosion and water and air pollution on account of developmental activities, there is adverse environment impact endangering natural resources and also affecting health and survival of living beings. It is on that account that a draft notification was first issued under Section 3(2) (v) and (xiv) on 22.10.2008 and after considering the objections final notification dated 25.06.2009 was issued giving specific boundaries and providing for regulations of activities.

The Notification contemplates preparation of ZMP by the State Government to be approved by the Central Government for restoration of denuded areas, conservation of existing water bodies including Nakki Lake, management of catchment areas, watershed management, groundwater management, soil and moisture conservation, needs of local community, conservation of heritage sites (both natural and cultural) and their surroundings and such other aspects of the ecology and environment that need attention. The Zonal Master Plan was expected to demarcate all the existing village settlements, tribal areas including tribal hamlets, types and kinds of forests, agricultural areas, fertile lands, green areas,

horticultural areas, orchards, lakes and other water bodies, natural heritage sites including points (such as Sunset Point) and man-made heritage sites, steep slopes, drainage channels, first order streams, ground water recharge areas and areas rich in ground water, spring recharge areas, spring lines and other environmentally and ecologically sensitive areas and no change of land use from green uses such as orchards, horticulture areas, agriculture parks and other like places to non-green uses shall be permitted in the Zonal Master Plan, except that strictly limited conversion of agricultural lands may be permitted to meet the residential needs of the existing local residents together with natural growth of the existing local populations without the prior approval of the State Government and similarly, no change in use of land from tribal uses to non-tribal uses shall be permitted without the prior approval of the State Government. It is further provided that only non-polluting and non-hazardous cottage industries can be permitted. No quarrying is permitted on steep hill slopes with a gradient of 20 degrees or above. No felling of trees can take place, except in the manner permitted. There is restriction on use of fuel wood and encroachment. There are also restrictions on tourism activities beyond the Master Plan. The Master Plan is to be based on the detailed carrying capacity study, based on existing infrastructure. Natural heritage sites are to be conserved in their natural setting by discouraging construction activities near the said sites. There are other instructions. The Notification also sets up a Monitoring Committee to be headed by an eminent person with nominees from MoEF&CC and other concerned officers and persons as members. It was submitted that though ZMP 2030 purporting to be in compliance of the ESZ was notified on 29.10.2015 after approval by the MoEF&CC on 28.09.2015, the same was

not compliant with the ESZ which led to filing of this application on 27.05.2016 and grant of interim order by this Tribunal on 31.05.2016.

9. Our attention has been invited to the order of the Hon'ble Supreme Court dated 26.11.2019 in Civil Appeal No. 4295/2019, filed against order of this Tribunal by Mohini Bhullar upholding the order of this Tribunal dated 07.11.2019:-

“In this view of the matter, we are satisfied that recourse which has been taken by the Tribunal to seeking an expert view is fair and proper. All that we clarify at this stage is that since a report is to be submitted to the Tribunal within four months and the next date is 30 April 2019, it would be open to the appellant to apply before the Tribunal after the Report is submitted.”

10. Learned counsel for the applicants finally submitted that the observations and recommendations of the Committee need to be accepted for giving effect to the letter and spirit of the ESZ Notification dated 25.06.2009 which may be duly monitored by the Monitoring Committee, as envisaged in the ESZ Notification, with suitable modification of the constitution of the said Committee, to add effectiveness which course of action is contemplated in the Notification itself. He took us through the discussion in the report which fully justified the conclusions. He submitted that to give effect to the principle of 'Sustainable Development', acceptance of the report of the Committee is necessary.

11. Learned counsel for the applicants supports the above report and submits that out of 10 identified sites, the Committee has rightly found the sites 'Inside Salim Ali Bird Sanctuary, Next to Aranya Village, Hill Sahil, Hetamji and Near STP Plant' not suitable for construction. It has found the other sites 'Behind Maganji Mountain, Sunset Road Scheme, Sunrise Housing Society, Arna Village and Mohanpura' suitable for

construction, subject to conditions mentioned therein. The Committee has also made further recommendations for protection of environment. In this regard, reference has been made to the observations of the Committee that rocks have to be protected and only such tourism be permitted as does not harm the rocks. No sport climbing or other facility should affect the rocks as per the spirit of the ESZ Notification. Thus, it is submitted that the report be accepted as it is and orders be passed by the Tribunal in terms thereof.

Submissions of the Objectors

12. However, objections have been filed to the report by Pragnesh Shah, Mehul Shah, Mrs. Mohini Bhullar, Ishwar Chand Daga and Hill Sahil Tourist Complex Pvt. Ltd. Objections of Pragnesh Shah are with reference to Hetam Ji and near STP plant; Mehul Shah with regard to Hetamji; Mrs. Mohini Bhullar with regard to restrictions in Sunset Road Scheme, Hill Sahil Tourist Complex Pvt. Ltd. with regard to Hill Sahil and Ishwar Chand Daga with regard to Sunset Road Scheme. We have heard S/Shri Maninder Singh, Atmaram N.S. Nadkarni and Chander Uday Singh, Senior Advocates respectively for Pragnesh Shah, Mehul Shah and Mrs. Mohini Bhullar and Shri Puneet Jain, Advocate for Hill Sahil Tourist Complex Pvt. Ltd. and Ishwar Chand Daga and considered the said objections.

Objections of Mohini Bhullar

13. Shri C.U. Singh, Senior Advocate appearing for Mohini Bhullar, who is applicant in M.A. 227/2019, submitted that the said applicant purchased the land in the year 1963 by a Sale Deed and on account of stay which has been in operation since 1916, she has not been even able to repair the house. The recommendation of the Committee, that there

should be NOC from Forest Department and Farm House Rules should apply will unreasonably, restricts her right to develop the property. Such recommendation is not called for when the area is not forest and compensatory afforestation has already been undertaken. The area is residential as noted in the report dated 09.03.2019 of the Committee appointed by this Tribunal, vide order dated 26.11.2018, as follows:-

“3.5 Sunset road Scheme:

As per the land use plan of 2009 ESZ Notification, this site has been shown in Residential. No further expansion in residential area is proposed by the State Government. However, any development in this area shall be done keeping in view the Hill slopes of more than 20 degrees and a buffer of up to 50 meters between construction and Forest boundary.”

14. The map annexed to the Notification dated 15.04.2018 under Section 26(A)(1)(b) of the Wildlife (Protection) Act, 1972 shows the area to be partly residential and partly green. It is submitted that if a house has already been constructed, there should not be restriction on renovation.

Reply to Objections of Mohini Bhullar

15. Learned counsel for the applicants opposes the above objections by submitting that the sale was in year 1963 and the map relied upon is annexed to Notification of 2008. Once ESZ Notification has been issued in the year 2009, further construction activities are to be regulated according to the said notification. In this regard the matter has been duly considered by the Committee and its recommendations are based on valid reasons which cannot be brushed aside.

Objections of Pragnesh Shah

16. Shri Maninder Singh, Senior Advocate, appearing for Pragnesh Shah in I.A. No. 35/2021, submitted that conclusions of the Committee that the

area of Hetam ji and near STP plant are not suitable for construction are not justified. It is submitted that intervener's lands are close to village abadi on the main highway, within the Municipal limits. As per Land Use Plan of 2002, the land was vacant and change of land use to non-green was allowed in 2002 on payment of all charges. In 2004, the land use was declared to be residential as well as open park and a part of land was earmarked as tourist facility. Thereafter on 19.04.2004, the Hon'ble Supreme Court directed MoEF&CC to constitute a Committee to carry out repairs still ESZ Notification was issued. The State Government has prepared ZMP, as per ESZ Notification dated 25.06.2009. The State Government, as per minutes of the meeting dated 07.09.2013, decided to allow low density development upto 20% coverage after approval of the MoEF&CC. Finally, the ZMP has been prepared. The Tribunal appointed Committee gave its report on 09.03.2019. The present Committee has prepared two reports in compliance of order dated 07.11.2019. Conclusion of the first report (stated to be received under the RTI Act and annexed to the objections) qua Pragnesh Shah was wrongly changed showing the site of the said applicant as unsuitable for construction. Table 23 of the initial report has been deleted in the final report. Construction has already taken place in the form of STP plant which is functioning 24/7. There is no reason not to allow construction at site below 20 degree slope on the ground that it will disturb wildlife habitat. The recommendations are based on pick and choose and there are contradictions. No ground truthing has been done to determine the vegetation and land use. No temporal changes are mentioned. Major portion of the land falls below the 20° slope category. There is no study of soil erosion or of existence of sloth bears in the area. Doctrine of uniformity has not been followed. The remarks in the report are contradictory. The Committee has ignored that

the land is within the Municipal limits and change of land use is in consonance with ESZ Notification. The Committee has ignored population density. Field photographs show constructions in the area.

Reply to the Objections on behalf of the Applicants

17. As against the above, learned counsel for the applicants points out that the report annexed on behalf of Pragnesh Shah is an incomplete draft report and mentions the recommendations to be given. The report annexed to the objections of Pragnesh Shah based on the RTI information being incomplete, the objection that there are two reports is untenable. There is, thus, no basis for the submission that there is difference in the two reports or for submitting that the report should not be accepted. The Tribunal should go by the report submitted to it by the Committee. Learned counsel for the applicants pointed out that the Committee has found the site to be otherwise suitable but it has potential to disturb the wildlife eco system which cannot be ignored. Thus, merely because the site has low slope, the site being habitat of wildlife animal where footprints of sloth bears were observed during the field visit, the construction has potential to disturb wildlife eco system. The chart under the head "Inputs related to addressing deficiencies in ZMP as per NGT Order dated 07.11.2020" mentioned the data collected from annual plan of wildlife sanctuary to show that ban in construction has resulted in increase of wildlife species. It was, thus, submitted that the conclusion of the Committee not to allow construction for protection of the wildlife is thus fully justified.

Objections of Mehul Shah

18. Shri A.N.S. Nadkarni, Senior Advocate, appearing for Mehul Shah has raised objection to the conclusions of the Committee with regard to

Hetam ji being not suitable for construction. The objections filed on behalf of the Mehul Shah are that the land in question was mentioned as hotel in Master Plan, 2001 and was changed to residential in the subsequent Master Plan and thereafter, partly residential and partly plantation in ZMP, 2030. On account of interim order, no construction could be raised on the site. The conclusion of the Committee that the site is not suitable for construction is uncalled for. The report dated 09.03.2019 recommended that the site can be developed subject to construction being allowed where hill slope was less than 20 degree, with buffer upto 500 meters between construction and the forest boundary. The present report has not duly considered the satellite data and ignored that the location is mostly below 20 degree slope. There is no issue of soil erosion. Adverse observation that the area is prone to erosion is without any basis. It was submitted that the land is within the Municipal limits and subject to any precaution including not cutting khajoor trees, the intervener ought to be allowed to raise construction. He also submitted that Hill Sahil also has been wrongly found to be not suitable for construction.

Reply to the Objection

19. As against the above, learned counsel for the applicants submitted that Committee has found potential for soil erosion as well as high gradient as the reason for holding the area not suitable for construction. It has also been found that there is heavy vegetation in the area with old trees of endemic species. Thus, it was submitted that even if the trees are not cut as stated by Shri Nadkarni, the habitat of "a *natural stand of Phoenix sylvestris*" will be affected by construction which needs to be safeguarded.

Objections of Hill Sahil Tourist complex Pvt. Ltd. and Ishwer Chand Daga

20. Shri Puneet Jain, Advocate submitted that the conclusion of the Committee with regard to the Hill Sahil and also for Sunset Scheme are not justified. The Sunset Scheme was floated in the year 1960 and plots were sold by advertisement. The applicant Ishwer Chand Daga made the payments. The Hill Sahil Tourist complex Pvt. Ltd. owns land in village Hetamji and proposes to develop hotel and amusement park. It was given NOC in the year 1997 and change of land use was allowed. It made a representation in 2011 for changes in the Master Plan. The said ZMP cannot be questioned being protected under Article 243W of the Constitution read with XII Schedule. He submitted that the Committee has not adopted a consistent approach in allowing construction at steep below 20 degree at some places and not allowing at other places.

Reply to the Objections

21. Learned Counsel for the applicants has further submitted that the objectors have confused the buffer area data with the site data. The Committee has given reasons for distinguishing its conclusion with reference to different sites and thus it is not a case of treating unequally but of distinction based on logic. On account of different features of different sites, uniform conclusion could not have been reached. Further, the fact of the land being within municipal limit cannot be a ground to treat the entire land in municipal limit as one category. Location, nature of site and surroundings have to be taken into account to give effect to the ESZ Notification. Thus, the plea that STP has been constructed should be ground to permit further construction nearby or that construction should be permitted to fulfill the basic need for shelter will be against the mandate of the ESZ Notification. Since any further construction will destroy the habit of wild animals, the Committee has rightly recommended restriction

on construction in the said area. The ESZ Notification is under the EP Act, 1986 which has been framed with reference to Entry 1, List 13, read with Article 253 of the Constitution. Article 243W and Twelfth Schedule have to be read with Article 253 and List-1, Entry 13. Legislation to give effect to the sustainable development is not excluded by Article 243W and Twelfth Schedule. There is, thus, no contradiction in the report of the Committee as stated on behalf of the objectors.

Tribunal's view in the matter

22. On due consideration, we find that the report prepared by the experts is based not only on authentic data but also field visits and backed by reasons. Before considering recommendations of the Committee with respect to individual sites and the general observations, we may reproduce the relevant part of the ESZ Notification which is as follows:

**“GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT AND FORESTS
NOTIFICATION New Delhi, the June 25, 2009**

S.O.1545(E) – WHEREAS, Mount Abu area has significant ecological importance comprising of tropical dry deciduous forests at lower altitude and evergreen forests at higher altitude and the flora and fauna of the region comprise of several endemic and rare species; besides Mount Abu has natural heritage such as Nakki Lake and man-made heritage like Dilwara temples and other heritage buildings and structures;

AND WHEREAS, considerable adverse environment impact has been caused due to degradation of the environment with excessive soil erosion and water and air pollution on account of certain developmental activities, thereby endangering not only the natural resources, but also affecting the health and very survival of living beings;

AND WHEREAS, it is necessary to conserve and protect the area from ecological and environmental point of view;

AND WHEREAS, a draft notification under sub-section (1) read with clause (v) and clause (xiv) of sub – section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) was published in the Gazette of India, Extraordinary, vide Notification of Government of India in the Ministry of Environment and Forests vide number S.O. No. 2497 (E), dated the 22nd October, 2008, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of the Gazette containing the said notification were made available to the public;

AND WHEREAS, copies of the Gazette containing the said notification were made available to the public on the 22nd October, 2008;

AND WHEREAS, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government; Now, THEREFORE, in exercise of the powers conferred by sub-section (1) read with clause (v) and clause (xiv) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby notifies Mount Abu and surrounding region enclosed within the boundary described below in the State of Rajasthan as the Mount Abu Eco sensitive Zone (hereinafter called "the Eco-sensitive Zone")."

2. Boundaries of Eco-Sensitive Zone

xxx.....xxx.....xxx

3. The following activities are to be regulated in the Eco-sensitive Zone, namely:-

(1) Zonal Master Plan for the Eco-sensitive Zone:-

xxx.....xxx.....xxx

(iii) The Zonal Master plan shall provide for restoration of denuded areas, conservation of existing water bodies including Nakki Lake, management of catchment areas, watershed management, groundwater management, soil and moisture conservation, needs of local community, conservation of heritage sites (both natural and cultural) and their surroundings and such other aspects of the ecology and environment that need attention.

(iv) The Zonal Master Plan shall demarcate all the existing village settlements, tribal areas including tribal hamlets, types and kinds of forests, agricultural areas, fertile lands, green areas, horticultural areas, orchards, lakes and other water bodies, natural heritage sites including points (such as Sunset Point) and man-made heritage sites, steep slopes, drainage channels, first order streams, ground water recharge areas and areas rich in ground water, spring recharge areas, spring lines and other environmentally and ecologically sensitive areas and no change of land use from green uses such as orchards, horticulture areas, agriculture parks and other like places to non green uses shall be permitted in the Zonal Master Plan, except that strictly limited conversion of agricultural lands may be permitted to meet the residential needs of the existing local residents together with natural growth of the existing local populations without the prior approval of the State Government and similarly, no change in use of land from tribal uses to non tribal uses shall be permitted without the prior approval of the State Government.

(2) Industrial Units:

xxx.....xxx.....xxx

(3) Quarrying and Mining:

xxx.....xxx.....xxx

(iii) No quarrying shall be permitted on steep hill slopes with a gradient of 20 degrees or more or areas with a high degree of erosion, or on forestland.

(4) Trees:

xxx.....xxx.....xxx

(5) Restriction for use of fuel wood:

xxx.....xxx.....xxx

(6) Restriction on encroachment:

xxx.....xxx.....xxx

(7) Tourism:

- (i) The tourism activities shall be as per the Tourism Master Plan to be prepared by the Department of Tourism of the Rajasthan State Government.
- (ii) The Tourism Master Plan shall also form a component of the Zonal Master Plan and shall be based on a detailed Carrying Capacity Study of the Eco-Sensitive Zone, which may be carried out by the State Government.**
- (iii) All new tourism activities, development for tourism or expansion of existing tourism activities shall be permitted only within the parameters of this Tourism Master Plan.
- (iv) The Carrying Capacity Study shall be carried out based on the existing infrastructure and shall not be based on future projections of any project that requires environmental or forest clearance.**
- (v) Till the Zonal Master Plan is approved, development for tourism and expansion of existing tourism activities may be permitted by the Monitoring Committee only after a detailed analysis is carried out by the Monitoring Committee and shall be subject to the guidelines laid down by the State Government and the Central Government in this regard.”

(8) Natural Heritage: Mount Abu has natural sites such as Nakki Lake, Toad rock, rock formations, waterfalls, pools, springs, gorges, groves, caves, points, walks, etc., and plans for their conservation in their natural setting shall be incorporated in the Zonal Master Plan and Sub-Zonal Master Plan and strict guidelines shall be drawn up by the State Government to discourage construction activities at or near these sites including under the garb of providing tourist facilities and all the general pool reserve areas in the Zone shall be reserved.

(9) Man-made Heritage:

xxxxxx.....xxx

(10) Water:

xxxxxx.....xxx

(11) Use of Plastics:

xxxxxx.....xxx

(12) Noise Pollution:

xxxxxx.....xxx

(13) Development on and protection of hill slopes:

xxxxxx.....xxx

(14) Discharge of sewage and effluents:

xxxxxx.....xxx

(15) Solid Waste:

xxxxxx.....xxx

(16) Natural Springs:

xxxxxx.....xxx

(17) Hill Roads:

xxxxxx.....xxx

4. Monitoring Committee:

xxx.....xxx.....xxx.....

- (1) a representative of the Ministry of Environment and Forests, Government of India;**
- (2) senior Town Planner of the Area;**
- (3) one expert, on the Eco-sensitive Zones nominated by Government of India;**
- (4) two local residents / people knowledgeable about the region to be nominated by the Government of India.**
- (5) two representatives of Non-governmental Organizations working in the field of environment (including heritage conservation) to be nominated by the Government of India;**
- (6) Assistant Director (Tourism), Mount Abu;**
- (7) Regional Officer, Rajasthan State Pollution Control Board, Pali;**
- (8) Deputy Conservator of Forests (Wild Life), Mount Abu;**
- (9) the District Collector, Sirohi as the Member Secretary.**

xxxxxx.....xxx”

23. Object of notifying certain areas as eco-sensitive zones is to protect certain specified sensitive areas by restricting and regulating development activities around such areas. Such areas may be species based, geomorphologic feature based or eco system based. It is necessary to protect bio-diversity zones by creating regulated buffers around them to protect their flora and fauna, to prevent habitat destruction and to protect fragile ecology. Regulatory measures include different land use patterns,

regulation of different activities including industries. Such protection is particularly required around national parks, wildlife sanctuaries and areas of peculiar ecology and habitat etc. to minimize negative impact of activities proposed to be restricted/regulated. For restriction/regulation Master Plan has to be prepared by involving Wildlife Department, Environment Department and Revenue Department having regard to broad based thematic areas. Activities to be restricted are pollution causing activities or activities having potential for damage to the fragile ecology like ground water depletion or commercial use of resources like felling of trees. Regulatory measure may involve use of renewable energy, steps like rain water harvesting. The type of regulation may vary from area to area.

24. The issue attracted particular attention of the Hon'ble Supreme Court in public interest litigations including W.P. No. 202/1995, *T.N. Godavarman v. UOI & Ors.* In the said matter the Hon'ble Supreme Court appointed expert Committees on 09.05.2002, on recommendation of Mohan Ram Committee the eco sensitive zones were identified. On 25.06.2009, Mount Abu was declared eco sensitive zone. As recorded in order of the Hon'ble Supreme Court dated 19.08.2011, *(2011) 14 SCC 390 Para 10*, ZMP was directed to be finalized within two months. An interim order was passed on 16.12.2011, *(2012) 12 SCC 246 Para 10* injunction of building plans. W.P. No. 240/2010 was filed challenging the ZMP as violative of Article 243 W read with XIIth Schedule to the Constitution. But the same was dismissed as withdrawn to move the High Court.

25. It is, thus, clear that object of notifying ESZ is to protect specified area from irreversible degradation of environment with a view to give effect

to the principle of Sustainable Development and Inter-Generational Equity and Public Trust Doctrine in exercise of powers under Section 3(2) (v) of the EP Act, 1986.

Individual Sites under consideration

26. The site 'Inside Salim Ali Bird Sanctuary' has rightly been found not suitable for constructions on account of the land being fragile in terms of soil cover and the area being prone to erosion. There is no objection to the said finding. Site 'Next to Aranya Village' has also been found not suitable for construction on account of its location mostly being with more than 20 degree slope and limited sources of water supply. The area is landslide prone. Scope of sewage and solid waste disposal is limited. The site 'Behind Maganji Mountain' has been found to be suitable for construction in the absence of forest, less potential for damage to the landscape.

With regard to 'Hill Sahil' the site has been found to be unsuitable for construction for the reasons already mentioned on account of high vegetation, steep slope, old trees of endemic species. 'Sunset Road Scheme' has been found suitable for construction, subject to the restrictions of 10% of total area being used for construction subject to NOC from the Forest Department. **We direct that consideration of NOC by the Forest Department should be prompt and a decision must be taken within one month from the date of the application, failing which the officer delaying the matter should be held accountable.** We find the restrictions to be otherwise necessary. 'Sunrise Housing Society' has been found suitable for construction, subject to the criteria for buffer zone being followed. 'Arna Village' site has been found to be suitable for construction and no issue has been raised with regard thereto. Similar is the position with regard to 'Mohanpura' which has been found suitable for

construction. With regard to 'Hetam Ji' as already discussed, the site is not suitable for constructions on account of geological instability at high slopes and there being high vegetation. The area is prone to erosion. 'Near STP Plant' location has been found not suitable for construction on considerations of wildlife eco-system. We also find the recommendation of the Committee with regard to prohibiting use of plastic, burning of garbage or other waste, taking precaution in protecting animals while laying high tension lines, preventing forest fires, conserving Nakki Lake, siting the waste processing plant as per rules, regulating the fuel of the vehicles, suitably replacing alcohol bottles to avoid injuries to the wildlife, protecting the species of the vegetation. The Committee has also rightly found that conversion of green areas to non-green areas should not be allowed, except the exceptional situations mentioned therein. Adventure based tourism should not be permitted without a feasibility study considering environmental and other aspects having regard to water scarcity. Re-use of treated water should be fully ensured. The STP must be duly maintained. Since there is only one double road leading to Mount Abu, the number of vehicles should be restricted based on the carrying capacity. Detailed carrying capacity must be undertaken depending upon the water availability, sewage treatment capacity, present land use, tourist accommodation available and planned, existing air quality, parking spaces, etc.

Conclusion and directions:

27. Accordingly, we accept the report of the Committee and direct that the ZMP 2030 may be duly modified in the light thereof. The revision of the ZMP may be undertaken by the concerned authorities, in consultation with the nine-member Committee constituted by this Tribunal vide order

dated 07.11.2019. ZMP may be finalized within three months from today, covering all aspects in detail, and duly published in the official gazette. We may particularly mention that where land holding is less than 2500 meters, the built-up area should be allowed on pro-rata basis, in consonance with the Farmhouse norms where application of such norms has been recommended by the Committee. Apart from giving effect to the recommendations regarding ban and restrictions on construction, protection of rocks in terms of the recommendations by not permitting the ropeway or sport climbing may be ensured. The status of the construction, as on date of ESZ Notification, be duly compiled and placed in public domain and any construction in violation of ESZ Notification be removed. All land parcels where Expert Committee has permitted construction be properly demarcated on map as well as on ground by pucca pillars, after duly leaving the distance for buffers as per ESZ notification. The information be put in public domain. All blank patches of lands within the ESZ be greened up by the Municipal corporation. Buffers around drains, wetlands and forest be duly maintained and protected. The authorities may ensure proper functioning of STP and its connectivity to the sewer lines, utilization of treated sewage, management of solid waste and overall environmental quality. We direct that consideration of NOC by the Forest Department should be prompt and a decision must be taken within one month from the date of the application, failing which the officer delaying the matter should be held accountable. Subject to these directions, the applicants or any other aggrieved party will be at liberty to give their suggestions to the Member Secretary, State PCB for consideration by the Committee. The members of the Committee will be deemed to be co-opted in the statutory Monitoring Committee under the ESZ Notification, till finalization of the ZMP.

The applications will stand disposed of accordingly.

In view of order in the main applications, all pending I.A.s and M.A.s will also stand disposed of.

A copy of this order be forwarded to MoEF&CC, CPCB, Chief Secretary, Rajasthan, Municipal Commissioner, Mount Abu, District Magistrate, Sirohi and Member Secretary, State PCB by e-mail for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

March 10, 2021
Original Application No. 312/2016
and other connected matters
A & DV