

DISTRICT: KAMRUP(M)

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM ANI
ARUNACHAL PRADESH)

(CIVIL EXTRAORDINARY JURISDICTION)

*Filled BY the petitioner through
, Advocate,
Enrolment No.
on*

PUBLIC INTEREST LITIGATION NO. of 2024

CATEGORY OF CASE:

CATEGORY CODE:

To,

The Hon'ble Mr. Justice Vijay Bishnoi the Chief Justice of the
Hon'ble Gauhati High Court and His Lordship's other companion
Justices of the said Hon'ble Court.

IN THE MATTER OF :

A Public Interest Litigation under
Article 226 of the Constitution of
India praying for issuance of a writ
in the nature of Certiorari and/or
Mandamus and/or Prohibition

and/or any other appropriate writ, order or direction.

-AND-

IN THE MATTER OF:

Violations of the provisions of The Wild Life Protection Act, 1972.

-AND-

IN THE MATTER OF:

Violation of directions passed by the Hon'ble Supreme Court from time to time in the Godavarman Case contravention of the provisions of The Wild Life Protection Act, 1972 The Forest (Conservation) Act, 1980, and other rules and guidelines issued on the subject from time to time.

-AND-

IN THE MATTER OF:

Violation of Articles 21, 48A and 51-A (g) of the Constitution of India.

-AND-

IN THE MATTER OF:

Impugned Notification Dated
Dispur, the 26th September, 2023.

ECF No. 197492/44: In
pursuance of the Cabinet Meeting
Decision held on 25.08.2023 vide
File No. ECAB/ENV/2023/6, the
Governor of Assam is pleased to
cancel the Preliminary Notification
on Garbhanga Wildlife Sanctuary
issued vide No. FRW.3/2022/44;
Dtd. 28.03.2022, with immediate
effect without following the due
procedure.

-AND-

IN THE MATTER OF:

Gross illegalities committed by
Forest Department Govt. of Assam
in not communicating the
Preliminary Notification 28/3/2022
vide Notification No
FRW/3/2022/44 declaring the
Garbhanga Reserve Forest as Wild
Life Sanctuary to the Union of
India , Ministry of Environment
Forests and Climate Change as
required by law and National

Board Wild Life and other
Statutory Authority.

-AND-

IN THE MATTER OF:

Pursuant to Preliminary Notification dtd 28/3/22 declaring Garbhanga Reserve Forest as Wild Life Sanctuary no inquiry was conducted by the Deputy Commissioner Kamrup (Metro) and thereafter the aforesaid Notification was cancelled vide impugned Notification dated 26/9/23 pursuant to a cabinet meeting dated 25/8/2023 without any cogent reasons and in violation of established environmental laws.

-AND-

IN THE MATTER OF:

1. Sri RAJEEV BHATTACHARYYA
S/o of Late Hiranya Bhattacharyya

302 Basistha Road The
Wilderness, Beltola Guwahati,
Assam – 781028.

2. Sri Gaurav Choudhury s/o Sri Sukriti Choudhury, 17, Ananda Path Behind ML Hostel, Dispur, Guwahati-781006, Kamrup (M), Assam. PETITIONERS

-VS-

1. Union of India, Represented by the Secretary to the Government of India, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jorbagh Road, New Delhi-110003.
2. Ministry of Environment, Forest and Climate Change, North Eastern Regional Office, Law-U-Sib, Lumbatngen, Near MTC Workshop, Shillong-7930211.
3. The State of Assam,
Represented by the Principal Secretary to the Government of Assam, Environment and Forest Department, Dispur, Guwahati-6.

4. The Chief Secretary to the Government of Assam, Dispur Secretariat Complex, Guwahati-6.
5. The Chief Secretary Govt of Assam, Department of Forest Dispur, Assam
6. The Principal Chief Conservator of Forests & Head of Forest Force, H-Block, 2nd Floor Janata Bhawan, Dispur, Guwahati-781006, Assam.
7. The Principal Chief Conservator of Forests (Wildlife), H-Block, 2nd Floor, Janata Bhawan, Dispur, Guwahati-781006, Assam.
8. The North Eastern Frontier Railway , represented by its Chief General Manager Head Quarters Maligaon ,Guwahati.

9. The Chief Wild Life Warden,
Assam, Department of Forest,
Government of Assam, Guwahati,
Assam.
10. The National Board for Wildlife,
Represented by the Standing
Committee of National Board for
Wildlife,
Ministry of Environment, Forest
and Climate Change (Wildlife
Division),
6th Floor, Vayu Wing, Indira
Paryavaran Bhawan, Jorbagh
Road,
New Delhi-110003.
11. State Board for Wildlife,
Represented by its Chairman,
Dispur Secretariat Complex,
Guwahati-6.
12. The Deputy Commissioner
Kamrup (Metro) , Guwahati, Assam
13. The Divisional Forest Officer
(Wild Life) , Kamup (M) Guwahati
Division. Guwahati

14. The Divisional Forest Officer
Kamrup East Division, Guwahati,
Assam

The humble petition of the petitioners
above named:

MOST RESPECTFULLY SHEWETH:

1. That the Petitioners are citizens of India. The petitioner no. 1 is a permanent resident of Beltola area of Guwahati -781028 as described above and petitioner no. 2 is a permanent resident of Guwahati-781021, Assam. As such, the petitioners are entitled to all the rights and privileges guaranteed under the Constitution of India and the laws framed thereunder. The present petition is being filed under Article 226 of the Constitution of India espousing the cause of the people of the state of Assam so as to safeguard the flora and fauna, particularly the wildlife of the Garbhanga Forest Reserve and moreover, to protect the ecological balance of the entire state and Guwahati City in particular. The Petitioners do not have any private and/or personal interest in the matter and the present petition is not guided by self-gain or for gain of any other person/ institution/ body and there is no motive other than of public interest in filing this writ petition. The petitioners are financially sound and can bear costs if imposed upon them by this Hon'ble Court
2. That the averments made in the writ petition are based on personal knowledge of the petitioners and on the documents which are available in the public domain. The petitioners have made further

enquiries by visiting the websites of the Government Departments and have also done considerable research on the subject so as to determine the veracity of such information and having been satisfied thereof, have approached this Hon'ble Court by filing the present petition. Certain documents have been downloaded from different websites, which are in public domain.

3. The present petition is being filed under Article 226 of the Constitution of India on behalf of every citizen of the state whose life would be or has been affected by the excessive and unplanned illegal encroachment of Forest land and rampant illegal stone mining that has been carried out and continuing in the District of Kamrup(M) as well as the forested areas of Garbhanga Forest Reserve de hors the law. The present petition has also been filed with a view to protect the environment, different species of flora and fauna, rights of the Schedule Tribes dwelling in the area as well as to stop the degradation of the Garbhanga Forest Reserve and its vibrant wild life and wild life habitat from further destruction.
4. That the respondent no. 1 is the Union of India, respondent no. 2 is the Regional Office of the Ministry of Environment, Forest and Climate Change, respondent no. 3 is the State of Assam, respondent no. 4, 5 6 and 7 are the officers of the Government of Assam, respondent no, 8 is the North East Frontier Railway and respondent no:9 is the Chief Wild Life Warden Assam, respondent no:10 is the National Board for Wildlife and the Respondent no.11 is the State Board for Wildlife. The respondent no:12 is the Deputy Commissioner Kamrup(M) and

respondent no:13 & 14 are Divisional Forest Officers of the Forest Department Assam. Thus, respondents no.1 to 3 come within the meaning of State under Article 12 of the Constitution of India and hence are amenable to the writ jurisdiction of this Hon'ble Court. The respondents impleaded are likely to be affected by the orders sought in the writ petition and to the best of the knowledge of the petitioner, no other persons/bodies/institutions are likely to be affected by the orders sought in the writ petition.

5. That the petitioner no. 1 passed Master of Arts (MA) with specialization in Indian Medieval History from University of Delhi in 1996 and is Free Lance Investigative Journalist and Researcher .He has also filed PIL no: 77/18 (Asom Basaok vs State of Assam) raising the issue of dwindling forest cover of Assam and same is pending for disposal. He is a Contributor to news magazines The Diplomat, The Irrawaddy, Firstpost & The Quint. That following are the various capacities in which the petitioner no:1 worked in his career

Aug 2011 - April 2013

SEVEN SISTERS POST

Managing Editor

Based in Guwahati (Assam)

July 2010 – July 2011

THE BENGAL POST

Chief of Bureau (Northeast)

Based in Guwahati (Assam) and covered India's Northeast, Bhutan and the contiguous border regions in Myanmar and Bangladesh

March 2007-June 2010

TIMES NOW

Chief of Bureau (Northeast India)

Based in Guwahati (Assam) and covered India's Northeast, Bhutan and the contiguous border regions in Myanmar and Bangladesh.

Feb 2006 – Feb 2007

THE INDIAN EXPRESS

Principal Correspondent

Based in New Delhi and covered the union home ministry and developments on the country's Northeast

April 2002 – Jan 2006

THE TELEGRAPH

Principal Correspondent based in New Delhi and covered developments on the country's Northeast including central ministries dealing with these regions

April 2001 – March 2002

THE TIMES OF INDIA

Editorial Coordinator

Based in New Delhi and covered local events in West Delhi

The petitioner no:1 also completed his FELLOWSHIP Attended the *Chevening Programme for Indian Print Journalists* in London (University of Westminster) sponsored by the British Foreign and Commonwealth Office in 2004- 05. His project was on the state of the peace process between the British government and the *Irish*

Republican Army (IRA) that included field visits to Northern Ireland and interviews of overground rebels.

The Following are the Books and Papers the petitioner no:1 authored:

BOOKS & ACADEMIC PAPERS

- Books

(a) *ULFA: The Mirage of Dawn*, HarperCollins Publishers, New Delhi, 2023

(b) *Rendezvous with Rebels: Journey to Meet India's Most Wanted Men*, HarperCollins Publishers, New Delhi, 2014

(c) *Lens and the Guerrilla: Insurgency in India's Northeast*, Manas Publications, New Delhi, 2012

(d) *Paresh Baruah's Sandhanot*, Chandra Prakash Publications, Guwahati, 2013 (in Assamese)

- Academic Papers

(a) *Small Arms Proliferation In India's Northeast: The Chinese Connection*, Aakrosh, October 2010,
(https://www.academia.edu/9310657/Small_Arms_Proliferation_in_Indias_Northeast_The_Chinese_Connection)

(b) *Birth Of UNLFSEA: Internal Dynamics and Implications for India's Northeast*, Journal of Defence Studies, Vol 9, No 4, October – December 2015,
(https://idsa.in/system/files/jds/jds_9_4_2015_UNLFWSEA.pdf)

(c) *Reality On The Indo-Myanmar Border: Field Observations from Longwa and Hmaungbuchhuah on issues of ethnic, connectivity and security*, in *India and Myanmar Borderlands: Ethnicity,*

Security and Connectivity by Pahi Saikia & Anusaya Ray Chaudhury (editors), Routledge India, 2019

(https://www.academia.edu/69464793/Reality_on_the_Indo_Myanmar_border)

(d) *Rebel Camps In Myanmar: Will They Hamper the Act East Policy?* in *Mainstreaming the Northeast In India's Look and Act East Policy* by A Sarma & S Choudhury (editors), Springer, Pgrave MacMillan, 2018

(https://www.academia.edu/69463131/Rebel_Camps_in_Myanmar_Will_They_Hamper_the_Act_East_Policy)

(e) *Campaigning and Party Strategies In Assam* (with co-author Pahi Saikia), South Asian History and Culture, Routledge, 2022

(https://www.academia.edu/81681100/Campaigning_and_party_strategies_in_Assam)

The petitioner no:2 is a professional journalist and has been a part of the media fraternity for more than 27 years. He is currently the Co-Founder and CEO of Earshot DigiMedia, India's first Dolby-powered digital audio and podcasting venture for news and infotainment content – bringing together the country's leading editors and journalists, besides top radio professionals. He has worked in leading media houses in leadership positions. He served as Executive Editor of Network 18, Moneycontrol.com, and can be seen regularly on television discussions on policy and economy. He remains engaged with Network 18 as a Group Consulting Editor. He joined Network 18 from Hindustan Times where he worked for more than a decade in various capacities including the Economics Editor. He is a trained economist with a Masters in Economics from the Delhi School

of Economics. He graduated from Hindu College in University of Delhi. He hails from Guwahati.

The petitioners crave leave of this Hon'ble Court to produce relevant documents to show their antecedents, at the time of hearing or at any other time, if this Hon'ble Court so desires.

6. That the petitioners humbly beg to state that the factual matrix of the public interest raised in the petition lies in a narrow compass of following the established procedure in declaration of intention of the state Government of Assam the Garbhanga Wild Life Sanctuary from the Garbhanga Reserve Forest in Kamrup district and its subsequent cancellation without the mandate of law and without any discernible cogent reasons. The Wild Life Protection Act, 1972 (Act.53 of 1972) was enacted by the Parliament to provide for the protection of wild animals, birds, plants and for matters connected therewith an ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country. it was a major step in the direction of protecting wildlife and birds. Hunting of various animals specified in the First Schedule to the Act is totally prohibited while hunting of certain other animals specified in Schedules II, III and IV is permitted only on licence. Under the Act, the Central Government is empowered to declare any area of adequate ecological, geomorphologies, natural or geological significance, a Sanctuary. In

such Sanctuaries, public entry is barred and hunting without a licence is prohibited. The Act contemplates that a specified area can be declared a National Park. National Parks so constituted are meant for protecting, propagating and developing wildlife. Trade and commerce in wild animals, articles and products of such animals, except in specified conditions, is forbidden. Any violation of the provisions of the Act may be visited with penalties of imprisonment and fine. Several authorities have been created under the Act to give effect to the provisions intended to protect wildlife and birds. By a subsequent amendment made in 1991, specified plants have also been brought under the protective umbrella of the Act. This, broadly speaking, is the purport of the enactment. Even Articles 48-A and 51-A(g) inserted in the Constitution by the 42nd Amendment oblige the State and the citizen, respectively, to protect and improve the natural environment and to safeguard the forest and wildlife off the country. The statutory as well as the constitutional provisions of Directive Principles of state policy thus comes into play while dealing with issues and matters concerning the environment and the forest area as well as wildlife within those forests. This objective guides the State in interpreting the laws dealing with these matters unless the context conveys otherwise, subserve and advance the aforementioned constitutional objectives.

7. That the petitioner states that Section 18 of the Wild Life Protection Act, 1972 before its amendment by Act 44 of 1991 provided that the State Government, may, by notification, declare any area to be a Sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphologies, natural or zoological significance for

the purpose of protecting, propagating wildlife or its environment. After its amendment, it provides that the State Government may, by notification declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphologies, natural or zoological significance for the purpose of protecting, propagating or developing wildlife or its environment. In substance, the thrust of the Section is the same except that earlier the State Government could straightaway declare any area to be a Sanctuary by issuing a notification but under the amended section, it has to declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary. When a notification is issued under section 18, the Collector is required to enquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the Sanctuary. After such a notification is issued, no rights can be acquired in or over the land comprised within the said limits except by succession, testamentary or otherwise. Section 21 requires the Collector to publish the notification in the regional language in every town and village in or in the neighbourhood of the area comprised therein specifying the situation and the limits of the Sanctuary and calling upon persons claiming any right to prefer the claim before the Collector specifying the nature and extent of such right and the amount and particulars of the compensation, if any, and the claim in respect thereof. The Collector is then expected to inquire into the claim preferred by any person and pass an order admitting or rejecting the same in whole

or in part. If such a claim is admitted in whole or in part, the Collector may either exclude such land from the limits of the proposed Sanctuary or proceed to acquire such rights unless the right-holder agrees to surrender his rights on payment of agreed compensation, worked out in accordance with the provisions of the Land Acquisition Act, 1894 or allow the continuance of any right of any person in or over any land within the limits of the Sanctuary. If he decides to proceed to acquire such land or right in or over such land, he shall proceed in accordance with the provisions of the Land Acquisition Act. Section 27 bars the entry of any person other than those specified in clauses (a) to (e) thereof from entering or residing in the area of the Sanctuary except in accordance with the conditions of permit granted under Section 28, Section 26-A, which was introduced in the Act by the amending Act 44 of 1991, has already been extracted earlier. Sections 29 and 30 prohibit the destruction and setting of fire within the Sanctuary and Section 31 prohibits entry into the Sanctuary with any weapon unless specifically permitted. Section 32 bans the use of injurious substances; Section 33 provides for control of Sanctuaries; Section 34 requires registration of certain persons in possession of arms. These are the provisions which relate to Sanctuaries. Section 35, which we have extracted earlier deals with National Parks and sub-section (3) thereof provides that where any area is intended to be declared as a National Park, the provisions of Sections 19 to 26-A (both inclusive) except clause (c) of Section 24(2) shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of right, in relation to any land in such

area as they apply in the said matters in relation to any land in a Sanctuary.

8. That the Garbhanga Reserve Forest is the large forest contiguous with border of Meghalaya and is a home large number wild animals, birds and flora and fauna and borders the Ramsar site of Deepor Beel which is a source of water hole for the animals. The forest extends beyond Assam to Meghalaya. That a study was conducted in the subject matter of **"Status of Elephant Corridors in Garbhanga-Rani Reserve Forest in an around Deepor beel"** by **Ankita Kalita¹ 1M.Sc. Zoology, University of Science & Technology, Meghalaya-793101, Arup Nama Das, Asstt. Professor Department of Zoology, University of Science & Technology, Meghalaya-793101.** Wherein it came out that in the Kamrup (M) district is an administrative district of the state of Assam which is about 1528 sq. kms. The Guwahati is the largest city in the state of Assam and also the largest urban area in the Northeast India. the latitude and longitude of the Guwahati are 26°14'45oN and 91°73'62o E. Deepor beel is a lake located to the south west of Guwahati city, in Kamrup district of Assam, India. To the south of Deepor beel there is Rani- Garbhanga forest. There are five notified Elephant corridors across the forest to the Deepor beel. These five corridors are situated along the PWD Highway through Deepor Beel 274 railway gate as the name of the corridor is given by the forest department. This corridor starts from the Rani forest in Meghalaya and Assam border and passes through the deep forest down to the Deepor Beel in search of water. The railway track cut the corridor in the tail end along with a VIP road that connect national highway-37

to the LGB airport Guwahati. The forest habitat contains many wild trees. The Elephant came down the corridor in search of water and food. Some of names of the plant they consume are Foxnut, Sal, Country Fig, Bamboo, Water hyacinth etc. The human population nearby the corridor in the beginning of a study conducted by the above authors was lesser in the month of August 2018 which increases over time and in the end of study period by the month of March 2019. The Elephant population is seen maximum in the month of August 2018 in number and minimum in the month of March'2019.

A copy of the Study Report on "Status of Elephant Corridors in Garbhanga-Rani Reserve Forest in an around Deepor beel" by Ankita Kalita M.Sc. Zoology, University of Science & Technology, Meghalaya-793101, Arup Nama Das2Asstt. Professor Department of Zoology, University of Science & Technology, Meghalaya-793101 as published in www.jettir.org is annexed as Annexure -A

9. That following are the Govt. notified Animal Corridors of Garbhanga-Rani Reserve Forest to the Deepor Beel which is the source of water for the animals:

(i)**Watch Tower point corridor:** This corridor is situated near Deepor beel watch Tower point as the name of the corridor is given by the forest department. This corridor starts from the Rani forest in Meghalaya and Assam border and passes through the deep forest down to the Deepor beel in search of water. The railway track cut the corridor in the tail end along with a VIP road that connect national

highway-37 to the LGB airport Guwahati. The forest habitat contains many wild trees. The Elephant came down the corridor in search of water and food. Some of names of the plant they consumes are foxnut, sal, country Fig, bamboo, water hyacinth etc. There is no human dwellings near by the corridor. The Elephant population is seen maximum in the month of August,2018 i.e 47 in number and minimum in the month of November,2018 i.e 13 in number. however the frequency of ride is seen maximum in the month of February and March,2019 (32 rides/month) and minimum in the the month of January,2019 (24 rides) . The forest department allotted the duty of the forest guard since 2013. Since then there is no major accident happened in terms of injury or death of the Elephants. However there are mild injury of 1 Elephants case reported in month of August 2018 and 2 Elephant injury in the month March 2019 by the vehicle (truck) passes by the road. And there is no new human settlements till date.

(ii) **Banbandha corridor:** This corridor is situated 1km from the watch Tower point of Deepor beel through the banbandha Village. This corridor starts from the Rani forest in Meghalaya and Assam border and passes through the deep forest down in search of food and water. The VIP road cut the corridor in the tail end. The forest habitat contains many wild trees. The Elephant came down the corridor in search of water and food. Some of names of the plant they consumes are Consumes Paddy crops, sahysdrithron, mango, jackfruit, Elephant apple etc. The human population nearby the corridor is 135 in the month of August i.e in the beginning of the study which gradually increase over the time and in the month of March the population recorded 145. As compared to others this

corridor has less number of Elephant population. The Elephant population is maximum in the month of August,2018 i.e 5 however there is no Elephant seen in the month of November,2018. However the frequency of ride is seen maximum in the month of January (24 rides/month) and no Elephant rides in the month of November. The forest department allotted the duty of the forest guard since 2013. Since then there is no major accident happened in terms of injury or death of the Elephants. However there are mild injury of 1 Elephants case reported in month of December 2018 due to human Elephant conflict. And there is new settlements seen in the month of September (2), October (1), January (1).

(iii) Beltol corridor: This corridor is situated 1.5 km from the watch Tower point of Deepor beel. This corridor starts from the Rani forest in Meghalaya and Assam border and passes through the deep forest down in search of food and water. The VIP road cut the corridor in the tail end. The forest habitat contains many wild trees. The Elephant came down the corridor in search of water and food. Some of names of the plant they consumes are Consumes Paddy crops, sahydrithron, mango, jackfruit, Elephant apple , banana crops , bamboo etc. The human population nearby the corridor is 71 in the month of August i.e in the beginning of the study time and remains static through out the study period the Elephant population is maximum in the month of August,2018 i.e13 however there is no Elephant seen in the month of december ,2018. However the frequency of ride is seen maximum in the month of August and November,2018 (16 rides/month) and no Elephant rides in the month of December. The forest department allotted the duty of the forest

guard since 2013. Since then there is no major accident happened in terms of injury or death of the Elephants. However there are mild injury of 2 Elephants case reported in month of November 2018 by the vehicles.

(iv)Mikirpara Elephant corridor: This corridor is situated 500 m away from the watch Tower point of Deepor beel through the mikirpara Village. This corridor starts from the Rani forest in Meghalaya and Assam border and passes through the deep forest down in search of food and water. The VIP road cut the corridor in the tail end. The forest habitat contains many wild trees. The Elephant came down the corridor in search of water and food. Some of names of the plant they consumes are Consumes banana crops, bamboo, Paddy crops, sahydrithron,mango, jackfruit, Elephant apple etc. The human population nearby the corridor is 35 in the month of August i.e in the beginning of the study which gradually increase over the time and in the month of March the population recorded 37. The Elephant population is maximum in the month of September, 2018 i.e 30 however there is no Elephant seen in the month of October and November, 2018. However the frequency of ride is seen maximum in the month of February (16 rides/month) and no Elephant rides in the month of October and November. The forest department allotted the duty of the forest guard since 2013. Since then there is no major accident happened in terms of injury or death of the Elephants. However there are mild injury of 1 Elephants case reported in month of February 2019 by vehicles. And there is new settlements seen in the month of December (1).

(v) 274 railway gate corridor: This corridor is situated near Deepor beel 274 railway gate as the name of the corridor is given by the forest department. This corridor starts from the Rani forest in Meghalaya and Assam border and passes through the deep forest down to the Deepor beel in search of water. The railway track cut the corridor in the tail end along with a VIP road that connect national highway-37 to the LGB airport Guwahati. The forest habitat contains many wild trees. The Elephant came down the corridor in search of water and food. Some of names of the plant they consumes are foxnut, sal, country Fig, bamboo, water hyacinth etc. The human population nearby the corridor in the beginning of the study was 22 in the month of August 2018 which increases over time and in the end of study period it is recorded 28 in the month of March 2019. The Elephant population is seen maximum in the month of August 2018 i.e 35 in number and minimum in the month of March, 2019 i.e 2 in number. however the frequency of ride is seen maximum in the month of August 2018 and January, 2019 (33 rides/month) and minimum in the the month of March ,2019 (12 rides) . The forest department allotted the duty of the forest guard since 2013. Since then there is no major accident happened in terms of injury or death of the Elephants. However there are mild injury of 2 Elephant injury in the month November 2018 by the vehicle (truck) passes by the road. And there also 2 new human settlement in the month of November, 2018.

10. That the petitioners state that Garbhanga- Rani Reserve forest were declared as reserve forests long back and are protected as per the Forest Conservation Act 1980. But its rampant destruction of the

forest was continuing to benefit certain vested interests by felling of valuable trees. In the year 2004 an I.A no: 1147/2004 in W.P.(C) no:202/1995 (T.N. Godavarman vs U.o.I) was filed to stop its rampant destruction by felling of trees. The Hon'ble Apex Court by order dated 27/7/2007 in I.A no:1147/2004 directed the Regional Chief Conservator of Forest having his Office at Shillong to submit a report. Thereafter the case was not listed as per the website for further orders. The Garbhanga-Rani forest contributes to the flourishing the wildlife in the region and also affects the climate of the entire state and Kamrup district in particular.

A copy of the order dtd 27/7/07 passed
in I.A no:1147 in W.P.(C) no:202/1995 is annexed
as Annexure B.

11. That the petitioners beg to state that they came across a news item published in a news portal www.m.nenow.in/article/assam-garbhangawildlife-sanctuary-preliminary-notification-revoked-without-following-mandatory-procedures/376110 published on 14/7/2024 by Mahesh Deka. In the said report it was inter-alia stated that "An examination of the website of the Assam Environment and Forest department reveals that the Government, on March 28, 2022, issued a Preliminary Notification under Section 18 of the Wildlife (Protection) Act, 1972, designating 117 square kilometres of Rani and Garbhanga Reserve Forests as 'Garbhanga Wildlife Sanctuary.'" The Preliminary Notification was also published in the Assam Gazette dated 7th April 2022. The Preliminary Notification, besides containing the boundary details of the Garbhanga Wildlife Sanctuary, listed

several species of mammals, birds, reptiles and butterflies, categorized as Schedule-I species under the Wildlife (Protection) Act, as residing in the area. Wildlife lovers in Assam note that the area also forms part of the famous Garbhanga-Rani-Deepar Beel elephant landscape. Surprisingly, the Assam Environment and Forest Department backtracked from its decision to constitute the Garbhanga Wildlife Sanctuary after elapse of eighteen months from the date of Preliminary Notification. On September 26, 2023, it issued another notification, a one liner, ECF No.197492/44, cancelling the earlier Preliminary Notification. No reasons have been cited for the cancellation, but for a fleeting reference to a Cabinet Meeting Decision dated 25th August 2023. Activists involved in environmental advocacy point out to multiple orders of the apex court which lay down that once a Section 18 notification is issued under the Wildlife (Protection) Act, 1972, the area attains the status of a Protected Area, and any decision to reverse the status either through a denotification or a cancellation can be taken only after an approval of the National Board of Wildlife and that of the Supreme Court. They also point out that Cabinet decisions do not confer immunity from judicial scrutiny, and that the notification cancelling the earlier Preliminary Notification is bound to be legally challenged in the apex court. They highlight that the Supreme Court has consistently insisted upon having Eco Sensitive Zones demarcated even in case of Section-18 notified Protected Areas. Wildlife activists pointed out that the apex court had earlier come down heavily on Assam government ,regarding a Cabinet decision that favoured denotification of the Pobitora Wildlife Sanctuary in Assam without following the mandatory

procedures. In the same vein, Gauhati High Court, in a separate order, had been critical of Assam government in connection with a Cabinet decision favouring denotification of the Deepor Beel Wildlife Sanctuary, and stayed the same. The Kolkata Bench of the National Green Tribunal was very critical of the illegal diversions in the Sonai-Rupai Wildlife Sanctuary of Assam and directed the Chief Secretary of Assam to submit an affidavit in this regard. In all these instances, the name of M.K. Yadava has cropped up again and again. Sources alleged that the cancellation of the Preliminary Notification of the Garbhanga Wildlife Sanctuary was aimed at facilitating mining activities in the Rani Reserve Forest by one particular miner who is said to be close to M.K. Yadava. In December 2023, while still serving as PCCF, Yadava issued three Expressions of Interest (EOI) notices for 20-year mining in the pristine Rani Reserve Forest and two other Assam reserves respectively. Investigations revealed that a father-son duo, R.S. Gandhi and C.S. Gandhi, were allegedly involved in manipulating the EOI selection criteria. The Gandhis, who reportedly face charges by the CBI in a separate forestry scam, operate quarries and stone crushers in several Assam districts.

The EOI criteria itself was criticized for being overly restrictive and gave rise to the allegations of favouritism towards specific companies. Bypassing of Divisional Forest Officers (DFOs) who typically handle tenders, and issuing of EOIs directly by the PCCF office further raised suspicions. The proposed mining leases were seen as legally unsound as well. Forest (Conservation) Act, 1980 mandates central government's prior approval for diverting forest land for non-forestry activities like mining. On the other hand, no

such approvals were reportedly sought or acquired in this case. Amidst mounting public scrutiny, Yadava placed the three EOI notices in abeyance in January 2024. But environmentalists now allege that decks are being cleared to set the EOIs in motion again”.

A copy of the M.nenow.in report dtd 14/7/24 is annexed as Annexure C.

12. That the petitioners beg to state that by Gazette Notification dated 28/3/2022 vide no: FRW.3/2022/44 issued by the Commissioner and Secretary Environment and Forest Department in exercise of its powers under section 18(1), (2) of the Wild Life Protection Act, 1972 as amended up to date was pleased to declare its intention to constitute Garbhanga Wild Life Sanctuary with proper demarcations in the schedule of the aforesaid notification, however no date was fixed for its final declaration as Wild Life Sanctuary. The Notification dated 28/3/2022 also appointed Deputy Commissioner Kamrup (Metro) to act as Collector under the Wild Life Protection Act, 1972 u/s 18(B) of the Wild Life (Protection) Act, 1972 to inquire and determine the existence, nature and extent of rights of any persons in or over the land comprised within the limits in the schedule. But it is not known whether any such inquiry was conducted or not.

A copy of the Preliminary Notification dtd 28/3/2022 declaring Garbhanga Wild Life Sanctuary is annexed as Annexure D

13. That the petitioner states that The Ministry of Environment, Forest & Climate Change, Govt. of India Forest Conservation Division) on 17.05.2022 issued an office memorandum vide No. FC11/119/2020-FC stating inter-alia under the subject matter of “Clarification on

requirement of various Environmental and Forest Clearances for Project/Activity in Eco-sensitive zone and other such areas outside protected area” that pursuant to Hon’ble Supreme Court’s order dated 04.12.2006 in W.P (C) No. 460 of 2004 that MoEF would also refer to standing committee of National Board of Wildlife under Section 5 (b) and 5 (c) (ii) of the Wildlife Protection Act, 1972. That the eco-sensitive zone was declared to be 10 Kms from the boundaries of the centuries of National Park and development activities were prohibited/regulated in the ESZ. The O.M also further emphasized the need for environmental clearance, forest clearance in ESZ and other ecologically significant areas outside the protected areas. Thus under the preliminary notification of Garbhanga Wild Life Sanctuary the protections of O.M 17/5/22 became applicable.

A copy of the Office Memorandum dtd
17/5/22 vide No. FC-11/119/2020-FC is annexed and
marked as **ANNEXURE- E**

14. That the petitioners beg to state that the respondent authority thereafter on 26/9/2023 issued the impugned Notification vide ECF No.197492/44 by the Additional Chief Secretary to Government of Assam Environment and Forest Department cancelling the Gazette Notification dated 28/3/2022 vide no: FRW.3/2022/44 issued by the Commissioner and Secretary Environment and Forest Department declaring Garbhanga Wild Life Sanctuary solely on basis of Cabinet Decision held on 25/8/23 without any discernible grounds resorting to established procedure under the Wild Life Protection, Act 1972 of taking approval from Union Government, National Board of Wild Life

and such statutory authorities. That the action of the respondents from the very inception of declaring Garbhanga Wild Life Sanctuary is clouded with malice as because the law requires a date from which the preliminary notification shall become final and in the instant case same was missing. The decision to cancel the Notification 28/3/2022 after 18 months by impugned notification dated 26/9/2023 is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, as such court's interference is called for.

A copy of the Impugned notification dated 26/9/23 cancelling the Notification dtd 28/3/2022 is annexed as Annexure-E.

- 15.** That the petitioners beg to state that the Government declared its intention to create Garbhanga Wild Life Sanctuary under section 18 of the Wild Life Protection Act, 1972 on 28/3/2022 and automatically it is entitled to protection under the Act ,1972. As per section 33B of the Wild Life Protection Act, 1972, the State is to constitute an Advisory Committee for better conservation and management of the Sanctuary but in the instant case no such Advisory Committee was formed. But instead a cabinet decision of 25/8/23 decided to cancel the Preliminary Notification dated 25/3/2022 declaring Garbhanga Wild Life Sanctuary. That for ready reference the section 18 and 33B of Wild Life Protection Act, 1972 is quoted below:

1[PROTECTED AREAS]

Sanctuaries

Section 18. Declaration of sanctuary.

2[(1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.]

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.

Explanation.—For the purposes of this section it shall be sufficient to describe the area by roads, rivers, ridges or other well-known or readily intelligible boundaries.

. Subs. by Act 16 of 2003, sec. 10, for the heading "SANCTUARIES, NATIONALPARKS AND CLOSED AREAS" (w.e.f. 1-4-2003).

2. *Subs. by Act 44 of 1991, sec. 15, for sub-section (1) (w.e.f. 2-10-1991).*

1[33B. Advisory Committee.

(1) The State Government shall constitute an Advisory Committee consisting of the Chief Wild Life Warden or his nominee not below the rank of Conservator of Forests as its head and shall include a member of the State Legislature within whose constituency the sanctuary is situated, three representatives of Panchayati Raj Institutions, two representatives of non-governmental organisations and three individuals active in the field of wild life conservation, one representative each from departments dealing with Home and Veterinary matters, Honorary Wild

Life Warden, if any, and the officer-in-charge of the sanctuary as Member-Secretary.

(2) The Committee shall render advice on measures to be taken for better conservation and management of the sanctuary including participation of the people living within and around the sanctuary.

(3) The Committee shall regulate its own procedure including quorum.]

1. Ins. by Act 16 of 2003, sec. 17 (w.e.f. 1-4-2003).

16. That the petitioner no:1 earlier also filed PIL no:77/2018 (Asom Basaok vs U.O.I) agitating the dwindling tree cover in the State of Assam which is also pending for disposal. The petitioner also came across news paper reports on PIL no:18/23 (Pramod Kalita & ors vs State of Assam) wherein protection of Deepor Beel was sought for preservation and protection of wild life and demarcation of the eco-sensitive zone of Deepor Beel Ramsar Site for implementation Central Wetland (Management) Rules 2017 to get protection under laws framed under the Constitution of India. The petitioner was alarmed on finding that Notification of Deepor Beel Wild Life Sanctuary was withdrawn pursuant to a cabinet decision and also came across news item published in The Assam Tribune Daily dated 26/7/2024, wherein Chief Minister of Assam stated that Deepor Beel area will be excluded from forest Department jurisdiction under the heading **“Steps on to exclude Deepor Beel from Forest Department”** . Thus almost a pattern was being made where Forest areas are losing its protection due to non-forest activities encouraged by the Govt. through various

red tapism. These events also coincides with the Deepor Beel wetland area being reduced of its characteristics by rampant earth filling. The petitioners now on joining the dots of these anti-environment activities sees a very large grim picture wherein whole of this pristine area of Garbhanga Reserve Forest will be destroyed due to anthropogenic activities unless the laws meant for its protection are adhered to. The destructions of Hills around the Guwahati City have also abetted to large scale flooding due to rains which is also evidently seen from rampant destruction of Hills next to Khanapara in Kylling side of Meghalaya.

A copy of the News item published in The Assam Tribune on 27/7/2024 is annexed as Annexure F.

17. The petitioner accordingly filed grievance to Ministry Of Environment, Forest and Climate Change on 28/7/24 through CPGRAM portal and same was accepted with registration No: MOEAF/2024/00018178. Thereafter the petitioner also informed the Chief Secretary, Govt of Assam on 7/8/24 by email raising his grievances against the cancellation of the Preliminary Notification of Garbhanga Wild Life Sanctuary dtd 28/3/23 by impugned Notification dated 26/9/23. Similar grievance through email on 9/8/24 was sent to PCCF& HoFF Aranya Bhawan Guwahti -781006 on 9/8/24.

Copies of the representation dated 28/7/24 to MoEF&CC , dated 7/8/24 to Chief Secretary Assam and dated 9/8/24 are annexed as Annexure-G , Annexure-H and Annexure-I

18. That the actions impugned in the instant PIL are in complete violation of the Wildlife Protection Act, 1972 and the rules framed thereunder. The Government of Assam being the regulator of the reserve forests in the State, it is the duty cast upon it to protect the lives of the varied species of flora and fauna within the Garbhanga-Rani Reserve forest. It is also the duty of the State Government to maintain and protect the biodiversity of the region. The petitioners humbly beg to submit that the illegal stone mining and laying of railway tracks will cause to the destruction of the rich biodiversity of the forest. It is the duty of the State Government to protect and improve the environment and to safeguard the forests and wildlife under Article 48-A of the Constitution of India. In the further humble submission of the petitioners the State of Assam has failed in its duty. As such, this Hon'ble Court may be pleased to intervene in the matter in exercise of its extra ordinary powers under Article 226 of the Constitution of India, and pass appropriate directions therein.
19. That the petitioners humbly beg to submit that the Garbhanga-Rani Reserve forest has a significant cultural and ecological importance in the lives of the people of Assam. The forest is home to several rare and endangered species and plants, animals, birds, etc. It houses a large number of birds , mammals , birds and reptiles of various species. Moreover, several ethnic tribes also reside in the region. In the humble submission of the petitioners the rampant and uncontrolled stone mining in the reserve forest and its vicinity will lead to the destruction of life therein. The stone mining operations will not only damaged the natural resources but will also at the same

time led to unimaginable amount of air, water and noise pollution. Such uncontrolled and rampant mining and development projects in the forested area will adversely affected the lives of the people of the State and hence is against the public interest at large. The illegal survey and subsequent laying of rail tracks in the Biodiversity rich Garbhanga-Rani Reserve Forest is violative of the right to life of the citizens of the State guaranteed under Article 21 of the Constitution of India. As such, this Hon'ble Court may be pleased to interfere in the matter in exercise of its extra ordinary powers under Article 226 of the Constitution of India.

20. That the Garbhanga-Rani reserve Forest has a rich and vibrant ecosystem with hundreds of species of plants and trees. The different trees that are found in the forest provides an environment that is suitable for the survival of the various species of plants and animals. That apart from the different species of plants, the Garbhanga-Rani Reserve forest is also home to a variety of animals which is an admitted fact as per the preliminary notification to declare it as Wild Life Sanctuary dtd 28/3/23. There are various species of mammals, Birds reptiles and species of Butterflies , some rare and endangered species of turtle, etc. It also has globally threatened mammals like Asian elephant. The forest also aids in migratory birds coming to Deepor Beel in the winters. Therefore unless a composite integrated eco-sensitive zone is declared along with the eco-sensitive zone of Deepor Beel its survival in the near future looks impossible. Therefore withdrawal of the preliminary Declaration of Garbhanga Wild Life Sanctuary merely on a cabinet decision without any approval from

the Ministry of Environment Forests and Climate Change, the National Board of Wild Life, The Forest Advisory Committee , the State Board of Wild Life is blatantly arbitrary, illegal and without the mandate of law.

21. That the petitioners states that from the aforesaid factual matrix it is categorically clear that Statutory Authorities of the State & Central Govt miserably failed to protect the fragile eco-system of Garbhanga-Rani Forest and it will lead rapacious , chaotic and illegal stone mining with no element of social or public purpose nor any concern for society. Thereby allowing and facilitating the vested interests to completely damage the Environment and Ecology with impunity flouting all environmental laws. Hence judicial intervention and remedial action by the Hon'ble High Court is of paramount importance & necessity.
22. That the petitioners state that it has come to their knowledge that North East Frontier Railway is planning to lay railway track through the Garbhanga Reserve Forest and has already made survey installing concrete post to ear mark the land. There are also efforts to revive stone quarries situated in the edge of forest areas which were earlier closed due ban order to maintain green zone. The actions of the Respondent authorities warrants judicial scrutiny. And for proper and fair adjudication of the instant matter, this Hon'ble Court may be pleased to call for records pertaining to the undertaking of decisions as to how the authorities have arrived at a decision to cancel Preliminary Notification of declaring Garbhanga Wild Life Sanctuary

by issuing notification dtd. 26/9/23 dehors the law. The cancellation of the Notification dtd 28/3/2022 of Garbhanga Wild Life Sanctuary sanctuary by impugned Notification dtd. 226/9/2023 is based on non-application of mind without any adequate study with regard to the impact of the such deprivation of protection given to a Wild Life Sanctuary will affect the unique position of Guwahati City as gateway to S.E Asia from India, and as such the said action is in violation of Article 14 of the Constitution of India as well as it is not in public interest. The subsequent decision to construct a triple railway track through the forest area from Garbhanga to Tetelia by issuing Tender notice dtd 9/9/2022 vide Tender Notice No. CON/SURVEY/AT-KK/2022 issued by the Office of the General Manager N.F Railway , Maligaon, Guwahati in total violation of the Forest Conservation Act and presumably without the FAC (Forest Advisory Committee) clearance Hence, the instant writ petition. Thereafter the Mikirpara Chakradeo Deepor Beel Gana Suraksha Samity filed objections against the respondents on 28/8/24 raising objection against laying of railway track.

A copy of the objection dtd 28/8/24 by Mikirpara Chakradeo Deepor Beel Gana Suraksha Samity is annexed as Annexure-J

The petitioner craves leave of this Hon'ble Court to refer and rely on Tender Notice of N.F Railways at the

time of hearing of this instant petition.

23. That the petitioners submit that there are no discernible grounds in passing of the impugned Notification dated 26/9/23 cancelling the Preliminary Notification of declaring Garbhanga Wild Life Sanctuary solely on a cabinet decision of 25/8/23 in as much as same is without jurisdiction and same has to be decided as per the Wild Life Act, 1972.
24. That the petitioners submit that there is no indication in the impugned Notification dated 26/9/23 cancelling the Preliminary Notification of declaring Garbhanga Wild Life Sanctuary that mandatory and Statutory approval NBWL and SBWL and Ministry of Environment Forest & Climate Change was taken.
25. That the petitioner submits as soon as Preliminary Notification declaring a Forest Area as Wild Life Sanctuary is made the same comes under the protection of Wild Life Act, 1972 u/s 18 A. There is also no requirement for fresh assessment of rights of public if the area is already a Reserve Forest declared under the Forest Conservation Act and it is protected under the Forest Regulations. The issuance of Notification dtd 17/5/22 also grants protection to Garbhanga Wild Life Sanctuary notified through the preliminary notification.
26. That the Hon'ble Supreme Court in the year 2006 in Goa Foundation Case in consonance with Govt of India's Wild Life Management Plan to be implemented by all states and Union Territory held that in absence of any such notification notifying the ESZ of any Protected Area, Sanctuary and National Park a default zone of 10 Km is to be taken as

the ESZ of such Protected Area, Sanctuary or National Park for implementing the ESZ guidelines of 2011. Thereafter by Judgment /order dated 3/6/2022 the Hon'ble Apex Court in I.A 1000/2003 in W.P.(C) no:202/1995 held that the minimum extent of the ESZ cannot be less than 1 Km. The following are the some of relevant directions in the above referred Judgment and order dtd 3/6/2022 :

(a) Each protected forest, that is national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9th February 2011.

(b) In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained.

(c) The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Union Territory. The Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting structures and other relevant details within the respective ESZs forthwith and a report shall be furnished before this Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such

authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.

(d) Mining within the national parks and wildlife sanctuaries shall not be permitted.

(e) In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9th February 2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.

(f) The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach the CEC and MoEF & CC and both these bodies shall give their respective opinions/recommendations before this Court. On that basis, this Court shall pass appropriate order.

(g) In the event the CEC, MoEF & CC, the Standing Committee of National Board of Wildlife or any other body of persons or individual having special interest in environmental issues consider it necessary

for maintaining a wider or larger ESZ in respect of any national park or wildlife sanctuary, such body or individual shall approach the CEC. In such a situation the CEC shall be at liberty to examine the need of a wider ESZ in respect of any national park or wildlife sanctuary in consultation with all the stakeholders including the State or Union Territory concerned, MoEF & CC as also the Standing Committee of National Board of Wildlife and then approach this Court with its recommendations.

(h) In respect of sanctuaries or national parks for which the proposal of a State or Union Territory has not been given, the 10 kilometres buffer zone as ESZ, as indicated in the order passed by this Court on 4th December 2006 in the case of Goa Foundation (*supra*) and also contained in the Guidelines of 9th February 2011 shall be implemented. Within that area, the entire set of restrictions concerning an ESZ shall operate till a final decision in that regard is arrived at. This order dated 3/6/22 was again modified by another order dated 26/4/23 on a number of IA's filed in W.P.(C) no:202/1995 (T.N Godavarman vs U.O.I) reported in 2022 (10) SC,544.

27. That the petitioners submit that Section 2(26) defines "sanctuary" to mean an area declared, whether under section 26A or under section 36, or deemed under sub-section (3) of section 66, as a Wild Life sanctuary. Section 2(37) defines "Wild Life" to include any animal, butterflies, fish and aquatic or land vegetation which forms part of any habitat. Chapter IV deals with sanctuaries and national parks. Section 18 deals with 'declaration of sanctuary' by a preliminary notification with

definite boundaries where the government intends to constitute any area as a sanctuary, provided it is satisfied that such area is of adequate ecological significance for protecting or developing wild life or its environment. Under section 19 the collector is required to inquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the sanctuary. Under section 26A the State government shall make declaration of an area as a sanctuary. After such declaration, any alteration of the boundaries of sanctuary can be made only by a resolution passed by the State legislature. Section 29 specifically prohibits carrying out of commercial activity as well as diversion, stopping or enhancement of the flow of water into or outside the sanctuary. Section 29 reads as follows:

"29. Destruction, etc., in a sanctuary prohibited without a permit. - No person shall destroy, exploit or remove any Wild Life from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by Chief Wild Life Warden and no such permit shall be granted unless the State Government being satisfied that such destruction, exploitation, or removal of wild life from the sanctuary is necessary for the improvement and better management of Wild Life therein, authorises the issue of such permit.." Thus view of the provisions of section 26A read with section 29 all commercial activities which seek to destroy the

ecology, stands prohibited.

28. That the petitioners humbly beg to submit that the facts and circumstances narrated herein above conclusively establish that it has a strong prima facie case in its favour. The actions impugned in the instant case are violative of Articles 21 and 48A, 51A (g) of the Constitution of India and various provisions of the Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Mines and Minerals (Development & Regulation) Act, 1957, Wildlife (Protection) Act, 1972, and the Assam Forest Regulation, 1891. Therefore, the balance of convenience is strongly in favour of the petitioners. Irreparable loss and injury is bound to be caused to the State of Assam, if any non forest activity is allowed in the remaining area. As such, this Hon'ble Court may be pleased to intervene into the matter and grant adequate interim protection to the petitioners.
29. That the petitioners humbly beg to submit that the facts and circumstances narrated herein above conclusively establish that they have a strong prima facie case in their favour. The actions impugned in the instant case are violative of Articles 21 and 48A, 51A (g) of the Constitution of India and various provisions of the Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Wildlife (Protection) Act, 1972, and the Assam Forest Regulation, 1891. Therefore, the balance of convenience is strongly in favour of the petitioners. Irreparable loss and injury is bound to be caused to the State of Assam, if the Railways is allowed to continue with any proposed project of laying a second railway track along the southern side Garbhanga Reserve Forest. As such, this

Hon'ble Court may be pleased to intervene into the matter and grant adequate interim protection to the petitioner.

30. That the present Public Interest Litigation is being filed for violation of the rights of the citizens of the state of Assam under Article 21 of the Constitution of India as well as for the protection of the environment under the Environment protection Act, 1986, as well as wildlife under the Wildlife Protection Act, 1972. As such, there is no other alternative, equally efficacious remedy available to the petitioners and the reliefs sought for, if granted, would be just, adequate and proper. This Hon'ble Court has exclusive jurisdiction to decide the question on protection of wildlife under the Wild Life Protection Act, 1972 as the same is not included in the Schedule of The National Green Tribunal Act, as such the issues raised in the present public interest litigation is not within the jurisdiction of the National Green Tribunal. Hence, this Hon'ble Court may be pleased to entertain the instant petition under its extra ordinary under Article 226 of the Constitution of India.
31. That the petitioners state that the actions of the Respondent authorities warrants judicial scrutiny. And for proper and fair adjudication of the instant matter, this Hon'ble Court may be pleased to call for records pertaining to the undertaking of decisions as to how the authorities have arrived at a decision to cancel the Preliminary Notification declaring Garbhanga Wild Life Sanctuary on 28/3/23 de hors the law. Hence, the instant writ petition.

32. The petitioners demand justice but the same was denied to them. There is no other alternative efficacious remedy and the remedy sought for by the petitioner, if granted would be just proper and adequate, for future protection of this wild life vibrant area of Garbhanga-Rani reserve forests contiguous to wetland of Deepor Beel.

33. That this petition is filed bonafide and for securing ends of justice.

In the premises aforesaid, it is most respectfully prayed that your Lordships may be pleased to admit this application by calling for the records, to show cause as to why and issue a Rule calling upon the Respondents to show cause as to why:

A writ in the nature of Certiorari shall not be issued to set aside/quash the:

(A) Impugned Notification vide ECF No.197492/44 dtd 26/9/23 issued by the Additional Chief Secretary to Government of Assam Environment and Forest Department cancelling the Preliminary Gazette Notification dated 28/3/2022 vide no: FRW.3/2022/44 issued by the Commissioner and Secretary

Environment and Forest Department intending the declare Garbhanga Wild Life Sanctuary and/or pass such other order or orders as to Your Lordship may deem fit and proper.

- (B) Direct the respondents to give effect to Preliminary Gazette Notification dated 28/3/2022 vide no: FRW.3/2022/44 issued by the Commissioner and Secretary Environment and Forest Department intending the declare Garbhanga Wild Life Sanctuary to a final declaration of Garbhanga Wild Life Sanctuary, so as to defeat the designs of vested interest, protect wild life habitat and/or

- (i) A writ in the nature of Mandamus to declare the Garbhnaga-Rani Forest Reserve and the animal corridors and other Eco-Sensitive areas around the area as ecologically fragile region under the Environment (Protection) Act, 1986, and/or

- (ii) To declare Garbhanga-Rani Forest Division as Wildlife Sanctuary/Protected Area due to its critical importance in terms of Flora, Fauna and Bio-diversity, and/or

AND

Pending disposal of the Rule, Your Lordships may deem fit and proper in order to grant adequate interim protection by directing the respondents to not to indulge in any non-forest activities in area of Garbhanga Wild Life Sanctuary forest which was sought to be declared as Wild Life Sanctuary by the Preliminary Notification dated 28/3/22 vide no: FRW.3/2022/44 and stay/suspend and forebear from giving effect to Notification dated 26/9/23 vide ECF No.197492/44 cancelling the preliminary Notification dated 28/3/23 vide no: FRW.3/2022/44 declaring Garbhanga Wild Life Sanctuary.

And for this act of kindness the petitioner as in duty bound shall ever pray.

.....Affidavit

AFFIDAVIT

I, Sri RAJEEV BHATTACHARYYA aged about 51 years S/o of Late Hiranya Bhattacharyya 302 Basistha Road The Wilderness, Beltola Guwahati, Kamrup (M) Assam – 781028, Assam do hereby solemnly affirm and state as follows:

1. That I am the petitioner no. 1 in the instant case and as such I am fully acquainted and well conversant with the facts and circumstances of the case. I have been duly authorised by the petitioner no. 2 to swear and sign this affidavit on his behalf.
2. That the petitioners have filed the present petition as a Public Interest Litigation.
3. That I have gone through the Gauhati High Court (Public Interest Litigation) Rules, 2011 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
4. That the Petitioners have no personal interest in the litigation and neither myself nor anybody in whom I am interested would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. This petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of public interest in filing this petition.
5. That the petitioners have done whatsoever inquiry/investigation which was in their power to do, to collect all data/ materials which were available in public domain and which were relevant for this Court to entertain the present petition.
6. That I further confirm that I have not concealed in the present petition any data/ material/ information which may have enabled

this Court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.

7. That the statements made in this affidavit and in paragraphs

.....

.....

..... are true to my knowledge and those made in paragraphsbeing

matters of record are true to my information derived there from, which I believe to be true and the rest are my humble submission before this Hon'ble Court.

8. That the mobile number in which I can be contacted is _____ and if during the pendency of the proceedings there is a change in my contact number , I undertake to inform the Registry of this Hon'ble Court.

OATH

That the statements made in the accompanying writ petition are true to my knowledge and belief and nothing material has been concealed so help me God.

And I sign this affidavit on this the day of August, 2024 at Guwahati.

DEPONENT

Identified by me:

Advocate's Clerk.

DISTRICT: KAMRUP(M)**IN THE GAUHATI HIGH COURT**

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND
ARUNACHAL PRADESH)

(CIVIL EXTRAORDINARY JURISDICTION)

PUBLIC INTEREST LITIGATION NO. of 2024

RAJEEV BHATTACHARYYA & ANR vs. U.O.I & Ors

SYNOPSIS

The petitioners in the instant PIL is challenging the Notification dtd 26/9/23 cancellation of the Preliminary Notification dated 28/3/2022 declaring the Garbhanga Wild Life Sanctuary with its proper demarcation to include the areas of Garbhanga Reserve Forest and parts of Rani Reserve Forest for its rich bio-diversity and animal life species with pristine wild life habitat visa-vis animal corridor to its watering hole in the Ramsar site of Deepor Beel. That immediately after its Preliminary Notification dtd 28/3/22 to declare Garbhanga Wild Life Sanctuary the Indian Railways on 9/9/22 floated Tender Notice for survey of laying Railway Tracks through Garbhanga Forested area. Thereafter the cabinet decision was taken on 25/8/23 to cancel the Preliminary Notification of Garbhanga WLS and on 26/9/23 the Govt cancelled the Preliminary Notification of Garbhanga Wild Life Sanctuary without any discernible reasons. Then on 14/7/24 a news in www.m.nenow.in/article/assam-garbhanga-wildlife-sanctuary-preliminary-notification-revoked-without-following-mandatory-procedures/376110 it came to light that vested interest are involved in

the cancellation of the Preliminary Notification of Garbhanga WLS to accommodate stone mining and change in the use of land pattern. The action of the Govt in cancelling the Notification of Preliminary declaration of WLS in Garbhanga needs judicial scrutiny and monitoring to save wild life habitat. The people of Mikirpara, Chakradeo Deepor Beel Gana Surakshya Samity also raised their grievanes to the Indian Railways for survey in forested area to lay triple rail tracks on 28/8/24. The whole of Garbhanga area needs protection alongwith Ramsar site of Deepor Beel from encroachment from further destrutions. That earlier also in I.A 1147/07 in W.P.(C) no:202/95 (T.N Godavarman vs U.O.I) by order dated 27/7/07 rampant destruction of Garbhanga - Rani Reserve forests was raised and a report was called from the Forest Department but thereafter the case in website do not reflect any orders. Hence this public interest litigation.

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ANNEXURE-C

www.m.nenow.in/article/assam-garbhang-wildlife-sanctuary-preliminary-notification-revoked-without-following-mandatory-procedures/376110

Assam

Assam: Garbhang Wildlife Sanctuary preliminary notification revoked without following mandatory procedures?

Sources alleged that the cancellation of the Preliminary Notification of the Garbhang Wildlife Sanctuary was aimed at facilitating mining activities in the Rani Reserve Forest by one particular miner who is said to be close to IFS officer M.K. Yadava



by Mahesh Deka July 14, 2024 1:11 pm

Guwahati: Wildlife activists in Assam are alleging that the state Environment and Forest Department at the behest of the controversial IFS officer M.K. Yadava, cancelled the Preliminary Notification issued for

Garbhanga Wildlife Sanctuary, without following the procedures mandated under the wildlife laws of the country.

An examination of the website of the Assam Environment and Forest department reveals that the Government, on March 28, 2022, issued a Preliminary Notification under Section 18 of the Wildlife (Protection) Act, 1972, designating 117 square kilometres of Rani and Garbhanga Reserve Forests as 'Garbhanga Wildlife Sanctuary.'

The Preliminary Notification was also published in the Assam Gazette dated 7th April 2022. The Preliminary Notification, besides containing the boundary details of the Garbhanga Wildlife Sanctuary, listed several species of mammals, birds, reptiles and butterflies, categorized as Schedule-I species under the Wildlife (Protection) Act, as residing in the area. Wildlife lovers in Assam note that the area also forms part of the famous Garbhanga-Rani-Deepar Beel elephant landscape.

Surprisingly, the Assam Environment and Forest Department backtracked from its decision to constitute the Garbhanga Wildlife Sanctuary after elapse of eighteen months from the date of Preliminary Notification.

On September 26, 2023, it issued another notification, a one liner, ECF No.197492/44, cancelling the earlier Preliminary Notification. No reasons have been cited for the cancellation, but for a fleeting reference to a Cabinet Meeting Decision dated 25th August 2023.

Activists involved in environmental advocacy point out to multiple orders of the apex court which lay down that once a Section 18 notification is issued under the Wildlife (Protection) Act, 1972, the area attains the status of a Protected Area, and any decision to reverse the status either

through a denotification or a cancellation can be taken only after an approval of the National Board of Wildlife and that of the Supreme Court.

They also point out that Cabinet decisions do not confer immunity from judicial scrutiny, and that the notification cancelling the earlier Preliminary Notification is bound to be legally challenged in the apex court. They highlight that the Supreme Court has consistently insisted upon having Eco Sensitive Zones demarcated even in case of Section-18 notified Protected Areas.

Wildlife activists pointed out that the apex court had earlier come down heavily on Assam government , regarding a Cabinet decision that favoured denotification of the Pobitora Wildlife Sanctuary in Assam without following the mandatory procedures.

In the same vein, Gauhati High Court, in a separate order, had been critical of Assam government in connection with a Cabinet decision favouring denotification of the Deepor Beel Wildlife Sanctuary, and stayed the same. The Kolkata Bench of the National Green Tribunal was very critical of the illegal diversions in the Sonai-Rupai Wildlife Sanctuary of Assam and directed the Chief Secretary of Assam to submit an affidavit in this regard. In all these instances, the name of M.K. Yadava has cropped up again and again.

Sources alleged that the cancellation of the Preliminary Notification of the Garbhanga Wildlife Sanctuary was aimed at facilitating mining activities in the Rani Reserve Forest by one particular miner who is said to be close to M.K. Yadava.

In December 2023, while still serving as PCCF, Yadava issued three Expressions of Interest (EOI) notices for 20-year mining in the the pristine Rani Reserve Forest and two other Assam reserves respectively.

Investigations revealed that a father-son duo, R.S. Gandhi and C.S. Gandhi, were allegedly involved in manipulating the EOI selection criteria. The Gandhis, who reportedly face charges by the CBI in a separate forestry scam, operate quarries and stone crushers in several Assam districts.

The EOI criteria itself was criticized for being overly restrictive and gave rise to the allegations of favouritism towards specific companies.

Bypassing of Divisional Forest Officers (DFOs) who typically handle tenders, and issuing of EOIs directly by the PCCF office further raised suspicions. The proposed mining leases were seen as legally unsound as well.

Forest (Conservation) Act, 1980 mandates central government's prior approval for diverting forest land for non-forestry activities like mining. On the other hand, no such approvals were reportedly sought or acquired in this case.

Amidst mounting public scrutiny, Yadava placed the three EOI notices in abeyance in January 2024. But environmentalists now allege that decks are being cleared to set the EOIs in motion again.