

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

Original Application No. 40/2022 (WZ)
I.A. No. 41/2022 & I.A. No. 133/2022

IN THE MATTER OF:

- 1. Laxman Narayan Raul,**
House No 609, Dadachiwadi,
Dhargalirn, Pernem,
North Goa, Goa – 403 513.

- 2. Sandip Madan Kambli**
House No 158, Shemecheadvan,
Warkhand, Pernem,
North Goa, Goa – 403512.

.....Applicant(s)

Versus

- 1. M/s. Ashoka Buildcon Limited**
Through its Addl. General Manager,
Survey No 861, Ashoka House,
Ashoka Marg, Vadala, Nashik
Maharshatra – 422 011.

- 2. Ministry of Environment, Forests and Climate Change,**
Through the Joint Secretary,
2nd Floor, Agni Block, Indira
Paryavaran Bhawan, Jorbagh Road,
New Delhi - 110 003.

- 3. The Directorate of Civil Aviation, Government of Goa,**
Through its Director,
Room No 19, the Secretariat, Alto-Porvorim,
Bardez, Goa – 403 521.

- 4. Goa State Environmental Impact Assessment Authority,**
Through its Member Secretary,
C/o Department of Environment and Climate Change,
4th Floor, Dempo Towers, Patto Plaza,
Panaji, Goa - 403001.

- 5. The Forest Department, Government of Goa**
Through its Principal Chief Conservator of Forests,
Van Bhavan, Altinho, Panaji, Goa – 403 001.

6. The Public Works Department, Government of Goa,
Through its Chief Engineer (NH, R & B),
Altinho, Panaji, Goa – 403 001.

7. GMR Goa International Airport Limited,
Through its Chief Executive Officer,
Survey No 38 1/3, Mathura One,
1st Floor, NH 17, Porvorim, Goa – 403 501.

8. National Highway Authority of India
Through its Chairman,
G 5 & 6, Sector-10, Dwarka,
New Delhi-110 075.

9. State of Goa
Through the Principal Secretary
The Secretariat,
Alto-Porvorim, Bardez, Goa.

10. Ministry of Road Transport and Highways
Union of India, through its Principal Secretary
Transport Bhawan, 1, Parliament Street,
New Delhi-110 001.

.....Respondent(s)

Counsel for the Applicant(s):

Appellant(s) : Ms. Ronita Bhattacharya, Advocate

Counsel for the Respondent(s):

Respondent(s) : Mr. D. M. Gupte, Advocate for R-2
Ms. Ruchira Gupta, Advocate for R-6 & 9
Mr. Nalin Kohli, Advocate for R-6
Mr. C. Padgonkar, Advocate for R-7
Mr. Pravin Faldessai, Advocate for R-10

PRESENT:

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Reserved on : 13.09.2022

Pronounced on : 27.09.2022

JUDGMENT

1. This Original Application has been moved under Section 18 (1) read with Sections 14 and 20 of the National Green Tribunal Act, 2010 by the Applicants who are local farmers and residents of the Villages of Warkhand (also known as Varconda), Casarvanem and Dhargalim in Pernem Taluka of North Goa District, Goa, alleging that the Respondent No. 1/M/s. Ashoka Buildcon Limited is carrying out construction of the new National Highway without prior Environmental Clearance in violation of the EIA Notification, 2006 on the basis of a contract given to it by the Respondent No. 6/Public Works Department, Government of Goa. The Respondent No. 7/GMR Goa International Airport Limited is the Project Proponent carrying out the construction of the Greenfield Airport for which the new National Highway is being constructed. The Respondent No. 10/Ministry of Road Transport and Highways notified the Highway starting from Dhargalim and terminating at Mopa Airport as New National Highway No. 166 (S) on 23.09.2020 which requires prior Environmental Clearance being covered under Category A under item 7 (f), (i) of the Schedule to the EIA Notification, 2006. The said project is not an extension of an existing Highway, therefore, it is not exempted from taking prior Environmental Clearance (EC) under EIA Notification, 2006. The Environmental Clearance (EC) for Greenfield Airport cannot be considered as Environmental Clearance for the new Highway. The Respondent No. 2/Ministry of Environment, Forest & Climate Change (MoEF&CC) has granted an Environmental Clearance to the Respondent No 3/The Directorate of Civil Aviation, Government of Goa for development of Greenfield International Airport at Mopa, Goa vide

letter dated 28.10.2015 and addenda was issued to the Environmental Clearance on 22.02.2018 for change in the name of Project Proponent from Respondent No 3 to Respondent No 10/Ministry of Road Transport and Highways. The Environmental Clearance (EC) dated 28.10.2015 was challenged by aggrieved farmers and environmental activists before this Tribunal and ultimately, the matter went up to the Hon'ble Supreme Court of India from where the EC was upheld after consideration of environmental consequences. The Environmental Clearance granted for the Greenfield Airport does not include the New National Highway because contents of the EIA Report and the plans clearly show that the New National Highway was never a part of the project for which the Environmental Clearance was granted. No Environment Impact Assessment studies were carried out for the impact of the 4-lane approach road and related construction activities on the agriculture, water resources, local communities, wildlife and environment. The EIA Report proposed a four-lane link road, which was not included in the project site. Now, a six-lane New National Highway is being constructed in its place. The 4-lane road was an "approach road from NH-17 to Mopa Airport site". A decision to declare a 4-lane "approach road" to 6-lane National Highway was taken on 23.09.2020 i.e. 5 years after the original Environmental Clearance dated 28.10.2015. In the initial Environmental Clearance, there were two specific conditions imposed which were as follows:-

“(1) The Project Proponent shall ensure availability of adequate land at the junction of the Mopa Airport road and Mumbai Goa NH-17 for traffic circulation/management and to provide for all the traffic interchanges and proposed clover.

(2) The approach and exit roads to the Airport shall be got approved from the NHAI and should be according to IRC norms.”

2. A reference to the approval of the NHAI was for the limited extent that an approach road connecting NH-17 to the Mopa Airport could be constructed but the addenda and revisions to the Environmental Clearance made no mention of the construction of a National Highway. The New National Highway is six-lane in size, having a new alignment, distinct from the alignment of the four-lane road, shown in the EIA Report. The Environment Clearance provides coordinates for the whole area under consideration and for which the Clearance is granted, these coordinates when plotted on a map showed that the area for which the Environmental Clearance was granted, does not include the new National Highway 166(S) or any other approach road. A comparison of the two maps would show that the length of the new National Highway will be measured 6.59 kms, whereas the 4-lane approach road was about 320 m away from the new National Highway with a length of 6.26 kms. The additional areas through which the 6-lane National Highway will traverse, are prime agricultural lands interspersed with forested areas. Such construction would lead to a sweeping deforestation of the forested areas in Dhargalim and Warkhand Villages. The width of acquisition starts at 130 mtrs. near the junction with the NH-66 and reduces to 80 mtrs. for some length and then reduces further to 60 mtrs. closer to the Airport. As against this, the four-lane road highway geometries given in the IRC reveal that the standard width for four-lane highways varies from 20m in mountainous areas to 27m and above in plain and rolling terrain. Therefore, it is clear that

the land being acquired, is about double what was envisaged within the EIA study.

3. Further, it is submitted that among the conditions mentioned in the EC, it is recorded that *"In the event of a change in project profile or change in the implementation agency, a fresh reference shall be made to the Ministry of Environment, Forest & Climate Change."* Therefore, the change in the site location of the "approach road" to a much larger "National Highway" is the biggest change in project profile, therefore, it required a reference to be made to Respondent No 2/MoEF&CC.

4. Further, it is submitted that in EIA Report under the heading of "Socio Economic Environment", following is stated:-

"Further, both traffic congestion and distance to travel to reach new airport shall be less due to connectivity to existing highway and the proposed approach road, which would also bring business opportunities to transports services. Aggregative there shall be positive impact on socio-economic environment due to development of infrastructure in the area, growth of secondary and tertiary sector businesses and subsequent enhancement in the standards of living of the local populace."

5. Above indicates that the EIA report in fact relied on the existing national highway network and a need to construct only an approach road, asserting the reason behind it that there would be minimal socio-economic impact.

6. Further, it is submitted that the survey owner has granted permission for tree felling vide order dated 03.09.2021 in gross violation of the laws in force as the same has been given without

identification of the land/area for plantation of saplings three times, the number of trees to be felled. The Google Earth shows two alternative routes that could have been considered with lesser socio-economic and environmental impacts. Therefore, it is prayed that the Respondent Nos. 1 & 3 be directed to stop all constructions and development activities for the New National Highway 166(S). Further, Respondent Nos. 1, 3, 6 & 8 be directed to apply for an Environmental Clearance for the said Highway.

7. The stand of **Respondent No. 1**/ M/s. Ashoka Buildcon Limited is as follows:-

- (i). The Environmental Clearance which was obtained for the Greenfield Airport includes within its ambit the clearance for the construction of the Highway/Expressway/approach road as well. The Highway bearing No. 166(S) starting from its junction with NH-66 (old NH-17) near Dhargalim and terminating at Mopa Airport (under construction) near Varconda is an expansion of the existing Highway NH-66 (old NH-17). It is also clear from the manner in which the said Highway has been named. Vide Notification dated 28/04/2010, the Respondent No. 10 published a new numbering system for the National Highway network in the country as per which, a three-digit numbered highway is ordinarily a secondary route or a branch of the main National Highway. Therefore, while naming/numbering the highway, the secondary/branch route number is prefixed to the

number of the main highway. In the present case, the branch route number i.e. 1 is prefixed to the number of the main National Highway i.e. 66. As such, the Highway bearing No. 166(S) is a branch/expansion of the existing National Highway bearing No. 66.

(ii). Further, it is submitted that the Notification dated 22.08.2013 issued by the Government of India, amended the 2006 EIA Notification. A plain reading of Item 7 (f) of the Notification dated 22.08.2013, makes it clear that the expansion of a National Highway Project needs prior Environmental Clearance (EC) only in following cases:-

(a) expansion of the National Highway project is greater than 100 kms, and

(b) it involves additional right of way or land acquisition greater than 40 mts. on existing alignments and 60 mts. on re-alignment or bypasses.

(iii). In the present case, the stretch of the said expansion is merely 6.59 kms. Therefore, it would not be requiring prior Environmental Clearance (EC).

(iv). It is further submitted that the word 'approach road', 'Highway', 'expressway' and 'Mopa Airport link road' have been used interchangeably in different documents pertaining to the Mopa Airport Project. The change in the nomenclature from Expressway as mentioned in the draft Concession Agreement

to Highway, in no manner, changes the nature of the road which leads from the existing Highway No. 66 to the Mopa Airport. Therefore, it is denied that the 6-lane Highway was taken as late as on 23/09/2020. The 6.580 km. proposed NH-166(S) has stilted structure approximately 2.7 km. in length which is approximately 41% of structure. As per the norms for construction of a National Highway, all the stilted structures are supposed to comprise of six-lanes considering the future growth of traffic. The width difference between four lane and six lane is 7 meters whereas the environmental impact assessment is carried out in a radius of 10 km for the Mopa Airport. The 6-lane Highway has a new alignment which is distinct from the alignment of the 4-lane road, shown in the EIA report. The Directorate of Civil Aviation applied for forest clearance under the Forest Conservation Act, 1980 for diversion of 2.89 ha. forest land for construction of an approach road/expressway/highway to Mopa Airport in Sy. No. 337, 339 and 340 in Village Dhargalim, Pernem Taluka. The land parcel bearing Survey No. 59 of Tuem Village was identified as suitable land for compensatory afforestation in lieu of diversion of forest land. The Government of Goa declared the land admeasuring 2.89 ha. under Sy. No. 59/0 of Tuem Village of Pernem Taluka as reserved forest and appointed as a Forest Settlement Officer. The Government of Goa granted permission to fell the trees on 08/10/2021. The land was identified for plantation of samplings to be carried

out by the Officers of the Forest Department. The permission of felling of 7,218 trees was granted by DCF, North Goa vide Order dated 16/03/2022, coupled with directions to re-plant 21,654 trees in the acquired land. The land acquisition process conducted under the National Highways Act, cannot be challenged before this Tribunal.

8. The stand of **Respondent No. 2**/Ministry of Environment, Forests and Climate Change (MoEF&CC), is as follows:-

- (i). Under the provision of EIA Notification, 2006, all new projects or activities listed in the Schedule to the EA Notification, 2006 or the expansion or modernization of existing projects or activities listed in the Schedule to the EIA Notification, 2006 with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization or any change in product, mix in an existing manufacturing unit included in schedule beyond the specified range, shall be undertaken in any part of India, as applicable, only after receipt of the prior Environment Clearance from the Central Government or by the State Level Environment Impact Assessment Authority (SEIAA) as the case may be. It is submitted that the Central Government, under sub-section (3) of the Section 3 of the Environment Protection Act, 1986 in accordance with the procedure specified in the EIA Notification, 2006, duly constitutes SEIAA in the States.

(ii). It is humbly submitted that the Environmental Clearance was issued by the Answering Respondent to the Directorate of Civil Aviation (Respondent No. 3) for the project 'Greenfield International Airport' at Mopa (Goa) vide letter dated 28.10.2015. Before the grant of Environmental Clearance, one of the submissions made by the Project Proponent (Respondent No. 3) before the Expert Appraisal Committee, was as follows:-

“(iv) The project will be implemented in four phases. The components in Phase I of proposed Mopa Airport shall include one runway, with half parallel taxiway, three runway exists and Phase II includes one runway with full parallel building, security area and control points, GSE storage, parking, technical area, cargo maintenance, general and business aviation areas, road network, rail connectivity and airport city.”

(iii). In this respect, the specified conditions stated in the EC letter for compliance by the Project Proponent are mentioned below:

“(ii) The Project Proponent shall ensure availability of adequate land at the junction of the Mopa Airport road and Mumbai/Goa NH-17 for traffic circulation/management and to provide for all the traffic interchanges and proposed clover.

(iii) The approach and exit roads to the Airport shall be got approved from the NHAI and should be according to IRC norms.”

(iv). In view of the above, it is submitted that the EC was granted to Respondent No. 3 for construction of an approach and exit roads and not for a National Highway. Construction of a new National Highway is notified by the Ministry of Road, Transport and Highways (Respondent No. 10) and the land acquired for construction of such Highway comes under the purview of the National Highways Act, 1956, the communication for which is to be provided by the Respondent No. 10 itself.

(v). It is respectfully submitted by the Answering Respondent that under the Schedule to the EIA Notification, 2006 relating to the list of activities that require prior Environmental Clearance, Highways are included under sub-clause 7(f) of clause (7) of the said Schedule, the relevant portion of which is reproduced below:-

(1)	Project Activity	Category with threshold limit		Condition, if any
		A	B	
(2)	(3)	(4)	(5)	
7(f)	Highways	i). New National Highways; and ii). Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40 m on existing alignment and 60 m on re-alignment or by-passes.	i). All New State Highway Projects; ii). State Highway expansion projects in hilly terrain {above 1,000 m AMSL) and or ecologically sensitive areas.	General condition shall apply. Note: Highways include expressways.

Thus, in accordance with the provisions of EIA Notification, 2006, all new National Highways require prior Environmental Clearance from the Ministry of Environment, Forest and Climate Change before commencement of any activity under the said project.

(vi). It is humbly submitted that a proposal for amendment in Environmental Clearance accorded to Respondent No. 3/ The

Directorate of Civil Aviation, Government of Goa was received by the answering Respondent for '*change in the name of the Project Proponent from Directorate of Civil Aviation, Government of Goa to GMR Goa international Airport Limited*'. The application was submitted by Respondent No. 3 in accordance with para 11 of the EIA Notification, 2006, Clause (1) of which states that:

“A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transfer or, or by the transferee with a written “no objection” by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior Environmental Clearance was initially granted, and for the same validity period.”

- (vii). Vide letter dated 22.02.2018, the Amendment in Environmental Clearance w.r.t. change in the name of the Project Proponent from Directorate of Civil Aviation, Government of Goa to GMR Goa International Airport Limited was thereby issued by the Answering Respondent.
- (viii). With reference to the contention of the Applicant regarding the Stage-1 Forest Clearance granted to the Respondent No. 3, the Answering Respondent respectfully submits that the proposal received from Government of Goa for construction of approach road (Expressway) to Mopa Airport, was processed as per the provisions of F(C) Act, 1980, Rules and Guidelines issued there-under and in-principle approval to the proposal was accorded on 18.05.2021. The State Forest Department had reported compliance to the conditions stipulated by the Central

Government in the in-principle approval and accordingly, final approval (Stage-1) had also been accorded vide letter dated 03.11.2021.

- (ix). It is further submitted that as per the proposal submitted by State Government; compensatory afforestation was proposed in non-forest land in Sy. No. 59/0 of Tuem village. As part of compliance of Stage-1 condition, Government of Goa had notified the said non-forest land as a Reserve Forest and DCF, North Goa Division has certified that the identified non-forest land is suitable for plantation. As per para 2.4 (vi) of the Handbook of Comprehensive guidelines issued under F(C) Act, 1980, 1000 plants per hectare shall be planted in the area selected for compensatory afforestation. In case, it is not possible to raise plantation at the rate of 1000 plants per ha. on the selected non-forest land, then the balance plants shall be planted on degraded forest land as per working plan prescriptions.
- (x). The Answering Respondent respectfully submits that land is a State subject and the State Government while forwarding the proposal, had mentioned that the area required for diversion, is a private forest land. The User Agency has also stated that the land proposed for diversion is acquired by the Government for MoPA Airport. Therefore, the proposal submitted by State Government has been lawfully processed and approved by the Answering Respondent.

(xi). That as per para 11.2 of Comprehensive guidelines issued by the Answering Respondent, consequent to grant of Stage-I approval in respect of linear projects such as laying of new roads, widening of existing highways, water supply lines, railway lines etc. by the Central Government under FCA, the State Government or a Senior Officer, not below the Rank of a Divisional Forest Officer, having jurisdiction over the forest land proposed to be diverted, duly authorized in this behalf by the State Government, can pass an order for tree cutting and commencement of work of a linear project in forest land for a period of one year subject to full realization of funds for compensatory Afforestation, Net Present Value (NPV), wildlife conservation plan, plantation of dwarf species of medicinal plants, and all such other compensatory levies, specified in the Stage-1 (in-principle) approval from the User Agency, and wherever applicable, transfer and mutation of non-forest/ revenue forest land in favour of State Forest Department.

(xii). It is most respectfully submitted that the Hon'ble Supreme Court has only barred conversion of the areas that has natural vegetation with canopy density in excess of 0.1 involving above 1 ha. However, the State Government has considered the area as a private forest land and accordingly submitted the proposal for diversion of forest land as per the Provisions of F(C) Act, 1980.

(xiii). Therefore, in view of the above, the Answering Respondent respectfully submits that the trees felling can be carried with permission of the designated Officer authorized by the State Government and with the fulfilment of the conditions stated above. In order to compensate felling of trees in the diverted area, compensatory afforestation has been stipulated in the identified non-forest land.

9. The stand of **Respondent No. 6**/The Public Works Department, Government of Goa, is as follows:-

(i). The same facts have been stated in its affidavit which are mentioned above in the reply affidavit of Respondent No. 1, hence need not be repeated here.

10. The stand of **Respondent No. 7**/GMR Goa International Airport Limited, is as follows:-

(i). Answering Respondent participated in the bidding and was declared as the successful bidder on 07th September, 2016. GGIAL is a 99.99% owned subsidiary of GAL, an independent legal entity. On 08th November 2016, the Chief Secretary, Government of Goa signed a Concession Agreement with the Answering Respondent to design, build, finance, operate and transfer (DBFOT) the new Greenfield International Airport at Mopa, Goa in accordance to the terms and conditions set forth in the Concession Agreement on Public Private Partnership basis. Under the said terms and conditions, the Answering

Respondent was granted Right of Way for a land admeasuring approximately 2,132 acres spread across 6 Villages which was acquired for the purpose of construction of the new Greenfield International Airport at Mopa, Goa.

(ii). Further, it is submitted that the construction of New National Highway 166(S) is beyond the area for which Right of Way has been granted to the Answering Respondent. The construction is not being carried out by/on behalf of the Respondent No. 7, hence, the Answering Respondent cannot be made answerable for the said construction.

(iii). Further, it is submitted that the proposed New National Highway 166(S) is an important public utility project and if the Petition is allowed, it will adversely impact public purpose and will result in serious impediment in the smooth connectivity to the new Greenfield International Airport at Mopa, Goa.

11. The stand of **Respondent No.10**/Ministry of Road Transport and Highways, Union of India, is as follows:-

(i). The land acquisition process for acquisition of the subject land was under challenge before the Hon'ble High Court of Bombay at Goa in *Writ Petition No. 1119 of 2021(F)*, *Writ Petition No. 1128 of 2021(F)*, *Writ Petition No. 1127 of 2021(F)* and *Writ Petition No. 1149 of 2021 (F)*, respectively. However, in terms of Judgment dated 13.04.2022, the Hon'ble High

Court dismissed the above Writ Petitions, observing as follows:-

“Para 55 – The decision of the Supreme Court in Ramniklal N. Bhutta & Another Vs. State of Maharashtra & Others (1997) 1 SCC 134 also is material in as much as the construction of the Airport and the operationalization of the Airport being inevitable, it is obvious that a proper access is also inevitable. The access would have to be linked to the arterial road such as NH-66 in the facts at hand. The power of this Court under Article 226 of the Constitution being discretionary, we have weighed all pros and cons. The authorities appear to have considered the necessary criteria including the public interest versus private interest aspect and have come to the conclusion that the land proposed is required. We find no reason to take a different view and in conclusion, believe that the law of the land has been followed to the extent applicable and the challenges in this petition cannot succeed.”

(ii). Rest of the pleadings are the same which have already been mentioned above in the affidavit of other Respondents, hence need not be repeated.

12. Affidavit-in-**Rejoinder** filed by the Applicants, which is as follows:-

(i). It is submitted that Respondent No. 6 has relied upon a letter dated 28.04.2010 of the Under Secretary, Govt. of India, Ministry of Road, Transport and Highways to all concerned offices across the country, enclosing a Notification dated 05.03.2010 to justify its argument that NH-166(S) is a branch/expansion of NH-66. But the same is not correct, because the said Notification and covering letter in fact demonstrates that NH-166(S) is a New National Highway because the said letter dated 28.04.2010 has the subject *"Rationalizing of Numbering Systems of National Highways"*

and explains, "I am directed to forward a copy of Notification S.O. 542(E) published on 05-03-10 in part I, Section 3, Sub-section (ii) in the Gazette of India, Extraordinary and to say that existing number of National Highway does not give any indication of its location and direction. Therefore, Ministry has adopted a systematic numbering of National Highways vide above said notification. It will indicate the direction of National Highways whether it is East-West or North-South and also the geographical region where it is located. I is, therefore, requested to re-number the National Highway in place of existing number of National Highway for its proper location."

- (ii). The above extract makes it evident that existing highways were re-named to show the geographic direction (North, South, East and West) of a National Highway as well as its location in terms of region. There is no statement indicating that the numbering provided would show whether the highway in question would be a new or not. Each number is treated as a separate Highway and that there is no concept or indication of any distinct Highway being a 'branch' of any other National Highway. For example, NH-166, NH- 366, NH-566, NH-766, NH-966, NH-966A and NH-966B are entered at Sr. Nos. 196 to 20, thereby presumably all located in the same region and are all listed and described as separate and distinct Highways. There is no mention made in it that the three-digit numbered highway is ordinarily a secondary route

or branch of a main National Highway. Therefore, the proposed Highway, in question being a new National Highways would require an Environmental Clearance under Sub-clause (i) of item 7(f) of the Schedule to the EIA Notification of 2006.

- (iii). Further, it is submitted that a perusal of the relevant documents serving Mopa Airport and its environment would make it clear that the new National Highway 166(S) was not part of the environmental clearance.
- (iv). It is further submitted that the term "highway" could not have been used interchangeably with "expressway" and "link road", as a highway is legally recognised to be entirely distinct from an expressway or link road. In fact, there is no document preceding the NHA notice dated 23.09.20220 that refers to the original 4-lane link road between the old NH-66 and the Mopa Airport as being a "highway" that has been relied on by the Respondent. Before the decision, convert the 4-lane link road to a new National Highway was a longstanding decision, is denied.
- (v). Further, it is submitted that there is construction in the side of Respondent No. 6 has on one hand stated that the alignment of the highway was remained the same, but on the other hand, it says that there are minor variations in the alignment in some locations owing to technical consideration. The Environmental Clearance granted to the Greenfield

Airport at Mopa, was clearly restricted by the co-ordinates given there-in to an area of 2271 acres, which do not include the new National Highway which is admitted by the Respondent No. 7/GMR Goa International Airport Limited stating therein that "*the expressway falls outside the area of approximately 2,1322 acres for Right of Way has been granted to this Respondent*".

- (vi). Further, it is submitted in the affidavit filed by the Director of Civil Aviation dated 21.09.2016 that he has referred to an "8 km approach road" and not a new National Highway.
- (vii). Further, it is submitted that the approach road has been changed to a new National Highway as is evident from the Notification of the National Highway Authority of India dated 23.09.2020, as well the facts of the width of the road which has been increased from 4 lanes to 6 lanes.
- (viii). Further, it is submitted that the Hon'ble High Court of Bombay passed its Judgment dated 13.04.2022, included the issue of whether an environmental clearance was required for National Highway 166(S). The Hon'ble High Court erroneously held in its Judgment dated 13.04.2022 that construction under the Highways Act, 1956, does not require environmental clearance under EIA, 2006. The position of law is that acquisition of land for a national highway does not require prior environmental clearance to be issued for the project in advance. The observation of the Hon'ble Bombay

High Court that an environmental clearance is not required prior to construction and not acquisition, is inadvertent mistake which can be evidenced from para 26 of the Judgment, where-in the Hon'ble Court has summarized the reply of the Advocate General, which is as follows:-

*"That the EIA Notification, 2006 itself provides that any clearance required in respect of new projects and activities or for expansion and modification of existing projects and activities, the EIA notification does not require environmental clearance for **proposed acquisition** of land for construction of a link road."*

- (ix). Further, it is submitted that the compensatory afforestation in Survey No. 59, Tuem Village was completely untenable, since the land is already densely forested. It has only four un-forested patches admeasuring a total of 4,606 sq. m., whereas 2.89 Ha or 28,900 sq. m. of the land is required to be utilised for the compensatory afforestation proposed by the Respondent No.1, 28,900 sq. m. amounts 45% of the entire plot bearing Survey No. 59 of the said Village which totally admeasures 63,925 sq. m.
- (x). It is further stated that vide an *ex-post facto* NOC issued by the Deputy Conservator of Forests dated 16.03.2022, it has been permitted for cutting of 7218 trees in the Villages of Dhargalim, Warkhand and Casarvarnmen as the said trees were falling within the Right of Way of the link road. The said NOC directs the Respondent No. 6 to plant 21,654 tree

samplings before the onset of monsoon, but does not specify where. The said ex-post facto NOC is an absurdity.

(xi). Further, it is submitted that cutting of 538 trees was conveyed to the DCF North Goa on 08.10.2021 and within 2 days, the approval was given for the same which does not show application of mind.

Our analysis:

13. Heard the arguments of Ms. Ronita Bhattacharya, Leaned Counsel for the Applicant as well as Mr. Nalin Kohli, Learned Senior Counsel for Respondent No. 6/The Public Works Department, Government of Goa. No other Counsel has argued in this case.

14. The Learned Counsel for the Applicant has drawn attention to page no. 62 of the paper book which has Notification dated 23.09.2020, issued by the Ministry of Road, Transport and Highways containing that new National Highway 166 (S) and its description to the effect as follows:-

“

Sr. No.	New National Highway No.	Description of National Highways
(1)	(2)	(3)
570	166S	The highway starting from its junction with NH-66 (old NH-17) near Dhargalim and terminating at Mopa Airport (under construction) near Varconda in the State of Goa

”

15. Based on that, it is argued by her that this Notification makes it very clear that the proposed link road is nothing but a new National Highway which requires the prior Environmental Clearance under Item

7(f) of the Schedule of the EIA Notification, 2006. Then, she drew our attention to page nos. 306 and 307 of the paper book which shows change in alignment which is the table of Survey Numbers under acquisition and initially planned for the approach road to the green field Airport at Mopa. It clearly reveals the position of those Survey Numbers which were included in EIA report and those Survey Numbers which are now in acquisition. The Environmental Clearance granted for Greenfiled Airport, cannot be treated to cover the Environmental Clearance for the proposed link road, the same being a new Highway notified by National Highway Authority of India, in view of Notification of Ministry of Road, Transport and Highway dated 23.09.2020. Construction of the said link road would impact large number of people and environment as the people would have to be shifted, wildlife would be adversely affected and the trees would have to be cut which would result in damage to the environment. Therefore, the project should be immediately stopped and be directed to obtain environmental clearance first prior to proceeding with the construction.

16. She has further urged that National Highway 166(S) is a new National Highway which is being wrongly claimed to be an offshoot/expansion of the existing National Highway on the basis of Notification dated 28.04.2010 issued by the Respondent No. 10/ Ministry of Road Transport and Highways whereby new numbering system is said to have been promulgated in respect of National Highway network. It has wrongly been stated that the prefix to the

number of main National Highway, would indicate a branch/expansion of the existing National Highway and accordingly, prefixing 1 before Highway No. 66, cannot be treated to be a branch/expansion of the existing National Highway No. 66. In fact, the Ministry has adopted the systematic numbering of National Highways, indicating the direction, whether it is East-West or North-South and also its geographical area where it is located. Nowhere, it shows that numbering provided would show whether the Highway in question is a new one or not.

17. She has also brought to our notice the purpose of such mode of numbering and drawing our attention for an example to NH-66, NH-166, NH-366, NH-566, NH-766, NH-966, NH-966A and NH-966B which are entered in Serial Nos. 196 to 202 and argued that prefixing the digit i.e. 1, 3, 5, 7, 9, before NH-66 would indicate that they are located in the same region, although they all are shown as a separate and distinct highways.

18. Further, it is vehemently argued that earlier proposal for constructing the link road was of 4-lane which has now been extended to 6-lane, which will change the alignment and that the same could not be treated to have been taken up for study while granting Environmental Clearance for the Mopa Airport, because at that time, it was 4-lane link road regarding which the study was made. Therefore, a fresh study i.e. environmental impact assessment study is required in the present case which should comprehensively deal with the impact of this construction on the environment and local population.

19. With respect to the Judgment of Hon'ble Bombay High Court, it is vehemently argued by her that the same should not be treated to give any benefit to the Project Proponent in the present case because that related to the land acquisition proceedings and not to the environment issues. Moreover in that case, the Applicants were not party.

20. With regard to cutting of trees also, it has been vehemently argued by her that without application of mind, the DCF, North Goa ordered to cut the trees and for re-forestation the area which has been chosen, is impactable because the number of trees/samplings which are required to be planted, cannot be accommodated in the said area.

21. In rebuttal, from the side of Respondent No. 6- Mr. Nalin Kohli, Learned Senior Counsel has argued that there was no requirement of prior Environmental Clearance for the proposed link road, because 166(S) is not a new Highway, rather the same is a link road for which an Environmental Clearance will be treated to have been obtained at the time when Environmental Clearance was taken for the Mopa Airport. It can be gathered from the following two specific conditions contained in the said Environmental Clearance:-

“(i) The Project Proponent shall ensure availability of adequate land at the junction of the Mopa Airport and Mumbai/Goa NH-17 for traffic circulation/management and to provide for all the traffic interchanges and proposed clover.

“(ii) The approach and exit road to the Airport shall be got approved from the NHAI and should be according to IRC norms.”

22. According to above, it is clear that the approach and exit road to the Airport were to be got approved from NHAI, which has been done.

23. Further, he has drawn attention to the Notification dated 05.03.2010 as Annexure at page no. 823 of the paper book to the following:-

Sr. No.	Proposed New NH No.	Description of National Highways
55	17	The Highway starting from its junction with NH-10 near Sivok connecting Bagrakot, Chalsa, Nagarkata, Goyerkat, Birpara, Falakata, Sonarpur, Koch-Bihar, Tufanganj in the State of West Bengal, Golakganj, Bilasipara-North Salmara, Goalpara, Boko and terminating at its junction with NH-27 near Guwahati in the State of Assam.
56	117	The highway starting from its junction with NH-17 near North Salmara and terminating at its junction with NH-27 near Bijni, in the State of Assam.
57	217	The highway starting from its junction with NH-17 near Paikan in the State of Assam connecting Tura, Dalu, Baghmara, Rongjeng Damra in the State of Meghalaya and terminating at its junction with NH-17 near Dudhnai in the State of Assam.
58	317	The highway starting from its junction with NH-17 near Birpara connecting Madari Hat, Rajabaht Khawa terminating at its junction with NH-27 near Salsabari in the State of West Bengal.
59	517	The highway starting from its junction with NH-17 near Goyerkata and terminating at its junction with NH-27 near Dhupgari in the State of West Bengal.

and argued that it distinctly shows that by pre-fixing 1, 2, 3 & 5 in front of 17, off-shoot/expansion of the existing Highway 17 have been shown and thereafter, he has drawn attention to page No. 835 of the paper book towards the Highway in question :-

Sr. No.	Proposed New NH No.	Description of National Highways
195	66	The highway starting from its junction with NH-48 near Panvel connecting Indapur, Mahad, Rajapur, Kudal in

		the State or Maharashtra, Panaji, Margao in the State of Goa, Karwar, Honavar, Udupi, Mangalore in the State of Karnataka, Kasaragod, Kannur, Ponnani, Edappalli, Ernakulam, Thiruvananthapuram in the State of Kerala and terminating at its junction with NH-44 near Kanniyakumari in the State or Tamil Nadu.
196	166	The highway connecting Ratnagiri, Tink, Pali and terminating at its junction with NH-48 near Kolhapur in the State of Maharashtra.

”

and argued that 166 would, therefore, indicate off-shoot/expansion of the existing of the National Highway 166 (S) and the same should not be treated as a new Highway. In fact, Highway/expressway/an approach road, there terminologies are used interchangeably and in view of this, it is vehemently emphasised by him that no new Environmental Clearance was required to be obtained.

24. Thereafter, he has drawn our attention to the Judgment of Hon’ble High Court of Bombay at Goa passed in *Writ Petition No. 1119 of 2021 (F)* at page no. 905 of the paper book and read out the relevant paragraph of the same. The relevant paragraphs are quoted herein below for the sake of convenience:-

“10. While the respondents have contended that the proposed acquisition was for improving the existing junctions on the Mopa Airport road, Mr. Pai submits that the existing road is being widened and upon being widened, there will be no need for NH-166S to connect the national highway to the new Airport. Mr. Pai invited our attention to copy of notification dated 18.02.2021 issued by the Deputy Collector and Sub Divisional Officer, Pernem Taluka and submitted that the proposed link road could be an elevated road that would be constructed and therefore, it would require prior environmental clearance from the Ministry of Environment, Forest and Climate Change (MoEF) under the Environmental Impact Assessment (EIA) Notification of 2006, whereas the respondents have proceeded to issue notification on 06.04.2021 under Section 3-D of the said Highways Act, proposing to acquire land without obtaining valid environmental clearance for the project. Mr. Pai submitted

that ignoring such mandatory requirements, respondent no. 4 has also been informed of the fact that the lands under acquisition are part of a Command Area under the GCAD Act, 1997 and there is a strong possibility that environmental clearance may not be granted.

19. The deponent has further shaped that the Government of Goa had undertaken development of a new green field Airport near village Mopa in North Goa as an international Airport which would serve tourists and business markets. Connectivity to the proposed Mopa Airport is presently through an existing village road, which is wholly insufficient considering that the Airport is to be an international Airport and anticipating growth in traffic, it was found that an arterial road is required to be constructed connecting the Airport with major tourist centres and the State Capital and it is in this context that MoRTH had declared the proposed road as a national highway NH-166S. The responsibility of developing this connectivity was then entrusted to the State, Public Works Department, National Highway Section and the Government of Goa. It is contended that the proposed length of the road is about 6.60 kilometres. It is further contended that considering the limited scope of inquiry under Section 3-C of the Highways Act, the objections were considered by the third respondent and were rejected. It was further contended that the respondents have a high degree of expertise excess to the best technical know-how and resources for implementation of the project and by appointing expert consultant and as such, the alignment of the national highway is not likely to destroy the environment or effect the community at large. Expert opinion has revealed that the construction of the national highway from Dhargalim upto the Airport was in the interest of the general public and to cater to the need of the commuters which would become critical after the Airport commenced operations.

21. That brings us to consider the last of these Petitions i.e. Writ Petition No. 1149/2021 alongwith Civil Application (F) No. 1660/2021. The petitioners in WP No.1149/2021 are also claiming the possession of agricultural lands for over a century. They have been sustaining them. The petitioners claim to come from families of agriculturists and with the background of agricultural community and as canvassed by Mr. Costa Frias, the lands which are listed in Annexure A collectively are Tillari lands, part of the Tillari Irrigation Project. They impugn the notification dated 28.12.2020, which declares the intention to acquire 46.6693 hectares of land of villages Dhargalim, Varconda and Casarvarnem in the same Pernem Taluka. The purpose for which the acquisition is proposed is the same as in other Petitions, namely, the construction of NH-166S. Mr. Costa Frias submitted that under the GCAD Act of 1997, a Command Area is defined as an area irrigated or capable of being

irrigated either by gravitational flow or by lift irrigation had to be specified by the Command Area Board. Our attention is invited to the fact that the proposed link road is not part of the initial approved road for the Mopa Airport and as contemplated in the environmental clearance as granted by the MoEF. The learned Counsel for the petitioners submitted that initially, the Airport had been granted approval on the basis of an alternate road that had been proposed which did not pass through the lands, now proposed for the acquisition. It is the contention of the petitioners that the third respondent namely the MoRTH had changed the alignment of the link road without approval of the MoEF and the EIA Notification. Mr. Costa Frias invited our attention to a Manual of Guidelines on Land Acquisition for National Highways under the Highways Act, 1956 (Manual of Guidelines). He submitted that this was published in December 2018 and mandated the appointment of a consultant and a due diligence of a highest degree for selection of the best alignment for the connecting road. In the instant case, Mr. Costa Frias submitted that no such consultant has been appointment and there has been no attempt to consider an alternate alignment at all. He submits that the lands that are proposed to be acquired are eco-sensitive, rich in bio-diversity with natural springs with species of plants and trees and need to be protected. He admits however that under Section 3-C(2) of the Highways Act, 1956, the respondent no. 2 conducted a hearing of objections raised by the petitioners amongst others, but by an order dated 18.02.2021, these objections were overruled and it is now proposed that the construction will proceed.

39. *In terms of the said procedure, the respondents prepared a detailed project report by appointing a DPR consultant. The consultant collected information required for the work and carried out various field surveys and investigations and in the process of preparing the DPR, it considered the feasibility, viability and the necessity for the road. In terms of the DPR, the project was found to be in public interest at large since the project road will be the main highway which will connect the new international Airport to NH-66. The existing village road was found to be grossly insufficient to provide the requisite connectivity and in our view, experience has shown that absent proper and sufficiently wide and easily accessible roads to an important infrastructural development such as an international Airport would cause huge bottlenecks in movement of people, personnel, equipment and facilities. The importance of a proper connecting road to the National Highway which is an arterial road is also important from the point of view of safety. Easy access of emergency services such as the fire brigade, hospital services, ambulances and all other disaster management service will have to be taken into account. Absent proper access, all safety measures including those for disaster management*

would be frustrated and blocked and rendered insufficient would result in emergency measures also inoperable from both sides viz. from the Airport and to the Airport. The Airport being an international Airport and considering the extent of tourist traffic and the popularity of the State of Goa as tourist destination of great attraction worldwide, it is bound to attract large number of visitors over the years not only for the purposes of tourism, but also for the purposes of promoting entrepreneurship, business development and developing the economy of the State as a whole.

40. An important infrastructural project such as the international Airport provides a gateway to the State which will necessarily witness a constant flow of people, personnel, cargo and equipment through vehicular mode and that will require a suitable road access from other arterial roads connecting the State, intra-state and inter-state. The DPR consultants having carried out this exercise, it is not for this Court to examine the suitability of the road that is selected. The DPR consultants, no doubt, will have a degree of expertise ability and knowledge, which in their judgment would have been utilized for the purpose of arriving at a decision in the interest of the project. The petitioners basic premise that a DPR consultant had not been appointed is found to be incorrect. The challenge in the Petitions being predicated on the invocation of the Highways Act instead of the LARR Act, offers no serious constitutional challenge. The enactments are all in force and continue to be in force. It is for the authorities, respondents to decide the manner and extent to which, appropriate enactment is to be invoked. Once having decided on invocation of the Highways Act, in our view, it is not open for this Court to interfere in that discretion and the law of the land must follow and it is only if the provisions of the Highways Act have not been implemented in the facts situation at hand that may call for interference from this Court.

41. In the instant case, a DPR consultant having been appointed and having carried out its exercise and having recommended the suitable route, in our view, it is not open to object to this course of action. Amongst the challenges that have been pressed into service, one of the fundamental challenges to these notifications and the proposed acquisition is on the basis of lack of environmental clearance. We have seen that construction of roads under the Highways Act do not require environmental clearance under the EIA Notification of 2006, permission of the Command Area Development Board is also not mandatory. Considering the fact that the Highways Act is a self contained Code and the Central Government has framed Rules in exercise of Section 9 of the Act, it is these Rules that are required to be followed by the executing authority and nothing in these Rules oblige the

Central Government to obtain environmental clearance prior to issuing a notification under Section 3-A.

42. *We had occasion to consider the notification dated 14.09.2006 issued by the MoRTH and we are unable to find any provision that restricts the power of the Central Government to issue notifications under the Highways Act. The Airport itself has since obtained environmental clearance after the initial hiccups and clearance having being provided, the land proposed to be acquired would vest in the Central Government.*

50. *As regards the requirements of the Highways Act, we find no reason to dislodge the proposed acquisition on the basis that the proposed road terminates at the Airport and therefore it is not a highway. The Act is intended to provide for access via national highways including all roads running through the length and breadth of the country and the proposed road would certainly provide access to NH-166S. The nomenclature of the link road as NH-166S need not in our view lead to the conclusion that such nomenclature is bad in law. This link road is absolutely essential, a fact that the petitioners themselves have recognized in having recommended alternative routes over other lands. What remains to be seen is whether NH-166S through the present route would be appropriate and in that behalf, it is not for this Court to consider the viability of the route. That is best left to the expertise of the DPR consultant. In our view, despite of the reply having disclosed that the DPR consultant have carried out a survey and have carried out their obligations under the Highways Act, the petitioners have not re-joined to this contention.*

56. *As a result, we pass the following order:*

(a) Writ Petition (Filing) Nos. 1119/2021, 1128/2021, 1127/2021 and 1149/2021 are dismissed.

(b) Civil Application (Filing) No. 1660/2021 in Writ Petition (Filing) No. 1149/2021 stands disposed.

(c) No orders to costs.

(d) Interim protections, if any, stands vacated.

25. In the light of above, it has been vehemently argued by him that the Hon'ble High Court has considered all the aspects in respect of proposed link road connecting to the Mopa Airport in great detail, including the matter of lack of Environmental Clearance (para-41) and

has given a conclusive finding that the proposed link road NH-166(S) is not a new Highway. It's nomenclature of link road as NH166(S) should not lead us to conclude that the same is bad in law. The link road is absolutely essential as regards availability of the approach road for smooth functioning of Mopa Airport. As regards the location of the approach road, it is held that it is left to the best discretion of the experts and in the present case, the said road has been proposed after consulting the experts, therefore, it should not be interfered with and in the larger public interest, the said road should be constructed promptly. Accordingly, the Writ Petition was dismissed.

26. We are of the considered opinion that the Environmental Clearance (EC) which was granted at the time of considering the Mopa Airport at Goa, the same would include Environmental Clearance (EC) for the access road also. The NH-166(S) which is being said by the Project Proponent to be a link road/approach road to the said Airport, simply by its nomenclature as National Highway, would not qualify to be treated a new National Highway requiring fresh prior Environmental Clearance (EC) under Clause 7(f) of the Schedule of EIA Notification, 2006. We are fully in agreement with the opinion of Hon'ble High Court cited above which has conclusively settled the matter. We concur with the opinion expressed in the said Judgment by the Hon'ble High Court and are of the view that minor variations in the alignment which were required on the technical ground in the estimation of the experts, in view of the extension of the 4-lane into 6-lane road, the same should

not be interfered with on the ground that it could violate the environment adversely.

27. We also find that the permission regarding cutting of trees and the larger number of samplings to be planted in-stead, at different place which has been identified, would be sufficient to meet out that aspect of the matter and simply saying that the area which has been identified for afforestation/planting of the said samplings, would not be sufficient, cannot be taken to be right objection for want of sufficient evidence.

28. For larger public interest, we are of the view that the said road should be constructed expeditiously and accordingly, we do not find any substance in the present application which deserves to be dismissed and is accordingly dismissed.

29. I.A. No. 41/2022 (WZ) & I.A. No. 133/2022 (WZ) also stand disposed of accordingly.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 27, 2022
Original Application No. 40/2022 (WZ)
I.A. No. 41/2022 & I.A. No. 133/2022
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