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dated 5.10.2013 of SLP (C) 12125-2010 in the matter of LG, A&N islands & Ors -vs-Ms Barefo

Learned counsel for the parties made their submissions mainly on the issue of continuance of commercial and tourism related activities within the Reserved Area and the Buffer Zone. While Ms. Indira Jaising, learned Additional Solicitor General submitted that till a decision is taken by the competent authority on the issue of allowing commercial and tourism related activities within the Buffer Zone, the Court may permit the activities specified in paragraphs 2 and 3 of the letter of the Principal Secretary, Shri S. Ganesh vehemently opposed the continuance of any such activity in the Reserved Area and the Buffer Zone by pointing out that the prohibition contained in Notification dated 30.10.2007 and order dated 6.11.2007 issued by Tehsildar, Ferrargunj is absolute. Shri Ganesh submitted that after forced closure of the respondent's resort, the petitioners can neither undertake nor allow any commercial or tourism related activity in contravention of Notification dated 30.10.2007.

We have considered the respective submissions. Notification dated 30.10.2007 which was challenged before the High Court and which is under consideration in the special leave petition reads as under:

"EXTRAORDINARY Published by Authority No. 243, PORT BLAIR,
TUESDAY, OCTOBER 30, 2007
ANDAMAN & NICOBAR ADMINISTRATION
Directorate of Tribal Welfare
NOTIFICATION

Port Blair, dated the 30th October, 2007

No. 234/2007/F.No. 1-752/2007-TW - In exercise of the power conferred by Sub-Section (1) of Section 3 of the Andaman and Nicobar Islands (Protection of Aboriginal Tribes), Regulation, 1956 (Regulation No. 3 of 1956), the Lt. Governor, A & N Islands, is pleased to declare the area up to five km. radius around the Jarawa Tribal Reserve notified vide No. 159/2004/F.No. 1-752/2002-TW (PF) dated 15th September, 2004 from the Boundary Line starting from Constance Bay in South Andaman to Lewis Inlet Bay in Middle Andaman, as a Buffer Zone. Any/person other than a member of an aboriginal tribe is prohibited from entering the Buffer Zone for any commercial and/or tourism activities."

In our view, the prohibition contained in the above reproduced notification and order dated 6.11.2007 passed by Tehsildar, Ferrargunj is unconditional. Therefore, till the notification is rescinded or amended, no commercial or tourism related activity can be allowed within the Reserved Area or the Buffer Zone and it is not possible for the Court to approve the suggestions contained in paragraphs 2 and 3 of letter dated 10.5.2012 sent by the Principal Secretary (Tribal Welfare), Andaman and Nicobar Administration. We, therefore, direct that henceforth no commercial and tourism related activities shall be carried out by the administration or any private individual in violation of the prohibition contained in notification dated 30.10.2007 and order dated 6.11.2007.

It shall be the duty of the Principal Secretary (Tribal Welfare) and other officers of the Administration of Andaman and Nicobar to ensure total compliance of the prohibition contained in notification dated 30.10.2007 and this order. Any breach of