

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA.**

Original Application No. 05/2024/EZ

Madhusudan Palai. APPLICANT

VERSUS

State of Odisha and Others.

..... RESPONDENTS.

I N D E X

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Cuttack.

Dt. 8.05.2024


Addl. Govt. Advocate

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COUNTER AFFIDAVIT FILED BY

RESPONDENT NO.6.

I, Smt. Poornima P., aged about 33 years, D/o. Pandian M., at present working as Divisional Forest Officer, Khordha Forest Division, At/P.O./Dist.- Khordha, do hereby solemnly affirm and state as follows:-

Poornima



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1. That, I am working as Divisional Forest Officer, Khordha Forest Division, hereinafter referred to as the answering respondent No.6 and as such I am competent to swear this affidavit in my official capacity.
2. That the averments made in Para-1 of the Original Application need no comments.
3. That in reply to the averments made in Para-2 of the Original Application, it is humbly submitted that all the plots in question belongs to Revenue Department & private plots and are categorized as non-forest except for Sabik plot no. 428 & 430, Khata No.463, mouza-

Ramchandrapur, KISSAM- Chhota jungle that is categorised as forest and will attract the provisions of Forest Conservation Act, 1980. The Tahasildar, Tangi had granted license for extraction of laterite stone over plot no. 673, khata no. 210, KISSAM- Pathara Chatana to M/S Bariko Laterite stone quarry and the Divisional Forest Officer the opposite party No.6 had no knowledge about the fact of lease of the said land.

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Section- 2 of Forest Conservation Act 1980
may be reads as follows:-

2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,-

- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved.
- (ii) that any forest land or any portion thereof may be used for any non-forest purposes.



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- (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government.
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using if for reforestation.

Panama

From the above legal definitions it can be safely concluded that, extraction of laterite stone from Revenue land with the prior approval of Revenue Authority will not attract the provisions of Forest Conservation Act 1980 except over Plot No.428 & 430, Khata No.463, mouza-Ramchandrapur, Kisam- Chhota jungle which will invite the provisions of Forest Conservation Act, 1980 for utilisation of the plots for non-forestry purpose.

4. That in reply to the averments made in Para-3 of the Original Application, it is humbly submitted that the land in question belongs to Revenue Dept. & Private individuals and situated under Tangi Tahasil of Khordha District. Since the alleged land having Plot No.665, Khata No.268 (Kissam-Rakhita), Plot No.231



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(Kissam-Phasal-2), Plot No. 630, Khata No.204
 (Kissam-Phasal-2), Plot No.631 Khata No.219
 (Kissam-Phasal-2), Plot No.663, Khata No.105
 (Kissam-Phasal-2), and in Ramchandrapur mouza Plot
 No.679/1, Khata No.575/57, Plot No.679/85, Khata
 No.575/78, Plot No.649, Khata No. 04/12, Plot
 No.650, Khata No.405, Plot No.652, Khata No.372/,
 kissam- patita belongs to Revenue Deptt & have
 neither been notified under any section of Forest Act
 nor handed over to Forest Department for forestry
 activities as on date. However, Plot No.428 & 430,
 Khata No. 463 are categorized as forest kissam and
 will come under the definition of Forest in Forest
 Conservation Act, 1980 is applicable.

P. S. S. S. S.



Further, in view of the Order passed by the
 National Green Tribunal, a committee was constituted
 comprising the following members.

Sl. No.	Name of the Officer	Designation
1	Sri Saphalya Mandita Pradhan	Additional District Magistrate (Revenue)
2	Sri Dillip Kumar Sahoo	Deputy Director of Mines, Khordha Circle, Khordha
3	Dr. Sohan Giri	Addl. Chief Env. Scientist & Regional Officer, Odisha State Pollution Control Board, Bhubaneswar.
4	Smt. Sushree Swati Mohanty	Assistant Conservator of Forests, Khordha Forest Division

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The above committee along with Sri Dipti Ranjan Sethi, Sub-Collector Khordha, Ms. Mitali Patra, Tahasildar, Tangi and Sri Jagan Behera, Mining Officer, Khordha visited the spot on 19.02.2024 & the land in question was measured. The team examined the contents of the allegation & found that, some 10 to 12 years quarries were found in Plot no. 665 of Mouza-Bariko and Plot no. 430, 428, 679/1, 649, 650 and 652 of Mouza- Ramachandrapur. The Plot no. 765 under Khata no.231 and Plot no. 679/85 under Khata no. 575/78 are not found in Mouza- Bariko and Ramachandrapur respectively. Further the report reveals that there is no excavation in Plot no. 630, 631, 663 of Mouza- Bariko which are recorded in the name of private person. The committee did not find any sign of tree felling from Gochar plot as well as from private plots. True copy of committee report dtd.19.02.2024 is annexed herewith as Annexure-A/6.

P. S. S. S.



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5. That with regard to the averments made in Para-4 & 5 of Original Application need no comments.

6. That in reply to the averments made in para-6 of Original Application, it is humbly submitted that the proposed Revenue and Private land except Plot No.428 & 430, Khata No.463 of Kisam- Chhota jungle are neither been notified under any section of Forest Act nor handed over to Forest Department for forestry

activities as on date. Further the said plots do not find place in the report of the District Level Committee report of Khordha District. No plantations have been carried out over the area by the Forest Department.

7. That with regard to the averments made in Para-7 of Original Application needs no comment.

8. That in reply to the averments made in para-8 of Original Application, it is humbly submitted that the Parliament of India enacted Forest (Conservation) Act 1980 for restriction on the de-reservation of forests or use forest land for non-forest purpose. The Applicant has narrated all the things for a piece of land that belongs from Revenue Department wherein the Forest Department has no authority except for Plot No.428 & 430, Khata No.463 of Kisam- Chhota jungle which will invite the provisions of Forest Conservation Act, 1980 for utilisation of the plots for non-forestry purpose.

9. That with regard to the averments made in Para-9 to 37 of Original Application need no comments.

10. That the averments / assertions / allegations made in the Original Application which are not specifically admitted by this deponent shall be deemed to have been denied. This deponent craves leave of this Hon'ble Tribunal to file further affidavit, if required at a later stage.



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11. That in view of the above submissions made by this deponent, the prayer made in the Original Application is devoid of any merit and liable to be rejected. Consequently, the Original Application being devoid of merit is also liable to be dismissed.

12. That the contents of the above paragraphs are true and correct to the best of knowledge as derived from the official records and that nothing material has been concealed there from and the present deponent reserves the right to file further affidavit as and when required and directed by this Hon'ble Tribunal.

Identified by

Advocate

Deponent

Divisional Forest Officer
Kherdha Division, Khordha

VERIFICATION

I, Smt. Poornima P. , aged about 33 years, D/o. Pandian M., at present working as Divisional Forest Officer, Khordha Forest Division, At/P.O./Dist.- Khordha, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge as derived from official records and that nothing material has been concealed there from.

Verified at ~~Khordha~~ on this the ~~8th~~ day of May, 2024.

Cuttack.

Dt. ~~8~~ .05.2024.

VERIFICANT

Divisional Forest Officer
Khordha Division, Khordha



CERTIFICATE.

Certified that due to non-availability of cartridge paper the contents of this counter affidavit have been typed in thick white paper.

Cuttack.
Dt. 8.05.2024.

hw
Addl.Govt.Advocate



AFFIDAVIT. NO-586 Dt-8/5/24

The above deponent being personally known to me appears before me...8.5.2024... at ...1...AM/PM and states an oath that the contents of the counter are true to the best of her knowledge based on official records.

Identified by:

hw

Advocate.

hw
8.5.2024
EXECUTIVE MAGISTRATE
TAHASIL KHORDHA

Executive Magistrate, Khordha

P. S. S. S.
Divisional Forest Officer
(Khordha Division, Khordha)

Annexure - 1/6

COMMITTEE REPORT OF JOINT VERIFICATION ON DATED.19.02.2024 OF BARIKO
LATERITE STONE IN O.A. NO.05/2024 FILED BY MADHUSUDAN PALAI VRS STATE
OF ODISHA AND OTHERS

The Hon'ble NGT directed to constitute a Committee and the committee shall visit the site and submit its Report with regard to the allegations made in the original Application within four weeks in the matter of O.A. No. 05/2024 (EZ) filed by Madhusudan Palai vrs State of Odisha & Ors passed in order dated 22.01.2024.

The Hon'ble NGT directed to constitute a Committee comprising of the following Members:

- i) Senior Scientist, Odisha State Pollution Control Board;
- ii) Divisional Forest Officer, Khordha or his representative of senior rank;
- iii) Director of Mines and Geology, Bhubaneswar, or his representative of senior rank; and
- iv) Collector and District Magistrate, Khordha, Odisha or his representative not below the rank of Additional District Magistrate;

In view of this, a team consisting of the following members, Additional District Magistrate (Revenue) representative of Collector, Khordha, Sub-Collector, Khordha, Dr. Sohan Giri, Addl. Chief Env. Scientist & Regional Officer, Odisha State Pollution Control Board, Bhubaneswar, Smt. Sushree Swati Mohanty, Asst. Conservator of Forests Officer, Khordha Division, Khordha, Tahasildar, Tangi, Deputy Director of Mines, Khordha Circle, Khordha, Jagan Behera, Mining Officer, Khordha Circle, Khordha visited the site to enquire into the matter at 09.00 AM on dated.19.02.2024. Madhusudan Palai, S/o-Late Binayak Palai, At-Jharia, PO-Badapari and Giridhari Das, Lessee of Bariko Laterite Stone Quarry were present during the joint inspection.

Sl. No.	Name of the Officer	Designation
1	Sri Saphalya Mandita Pradhan	Additional District Magistrate (Revenue)
2	Sri Dipti Ranjan Sethi	Sub-Collector, Khordha
3	Sri Dillip Kumar Sahoo	Deputy Director of Mines, Khordha Circle, Khordha
4	Dr. Sohan Giri,	Addl. Chief Env. Scientist & Regional Officer, Odisha State Pollution Control Board, Bhubaneswar
5	Smt. Sushree Swati Mohanty	Assistant Conservator of Forest, Khordha
6	Ms. Mitali Patra	Tahasildar, Tangi
7	Sri Jagan Behera	Mining Officer, Khordha

(Handwritten signatures of the committee members)

True copy attested

(Handwritten signature of the Divisional Forest Officer)

Divisional Forest Officer
Khordha Division, Khordha

1.0 Present Status of the allegation against Stone quarry:

The site was visited by the team on dtd. 19.02.2024 and the land in question was measured by RS, RI, and Amin of Tangi Tahasil, the team examined the contents of the allegations made in the original application of the petitioner in detail and with the help of available records the point wise observations was made as follows:-

Sl. No.	Issues	Present status
1.	The petitioner alleged that the lease holder has illegally started operation from Govt. land and private land adjoining the lease area by felling the trees from the Gochar Plot as well as from Private plots.	<p>The committee observed that the lease holder has been allotted Plot No.673 over area Ac.2.173 dec of Mouza-Bariko for operation. The Committee found that the lease area is properly demarcated in the field and boundary corner pillar points clearly delineated in the site. The lessee has operated the quarry but the quantum of minor mineral extracted by the lessee will be calculated scientifically by DDM Khordha as per the approved Mining Plan and other statutory clearances from the competent authorities.</p> <p>All the plots which are mentioned by the complainants in his petition were verified on the basis of available revenue records by Tahasildar, Tangi and her team. The detail verification report is given at Annexure-"A". It is seen from the verification report, some old quarries pit found in Plot No.665 of Mouza-Bariko and Plot No.430, 428, 679/1, 649, 650 and 652 of Mouza-Ramachandrapur. The Plot No.765 under Khata No.231 and Plot No.679/85 under Khata No.575/78 are not found in Mouza-Bariko and Ramachandrapur respectively. Further the report reveals that there is no excavation in Plot No.630, 631, 663 of Mouza-Bariko which are recorded in the</p>

True copy attested
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Divisional Forest Officer
Khordha Division, Khordha

		name of private person. The Committee did not found any sign of felling trees from Gochar plot as well as from private plots.
2.	There is allegation that the lessee have operated more than 10 meters depth quarry area.	As per the approved Mining Plan the lessee was entitled to carry out mining operation up to the depth of 6 meters which includes morrum, weathered zone and laterite horzone. The exact depth of excavation and quantum of minor mineral extraction will be scientifically calculated by DDM Khordha by taking necessary assistance with the help of satellite imagery and other relevant documents.
3.	The petitioner alleged that ongoing laterite stone quarry operation started in the year 2020 before the grant of Consent to Operate which would be clear from the RTI reply given by the PIO Tangi Tahasil vide his Letter dated.22.03.2023.	On verification of the record, it is found that EC was issued on 17.12.2020 and same was transferred in the name of lessee on 02.06.2022. The Lease Agreement was registered on 28.01.2021. CTE and CTO was issued by SPCB Odisha, BBSR on 03.12.2022 and 05.01.2023 respectively of the above source. On verification of the T.P. register, it is found that 'Y' form was issued in favour of the lessee on dated.04.03.2021. The photocopy of the register is annexed at "B".

2.0 Over all observations:

The committee members observed the following at the time of inspection:

- Environmental Clearance (EC) was issued for the Bariko Laterite Stone Quarry over a lease area of Ac.2.173dec or 0.880 Ha at village-Bariko, Tahasil-Tangi, Dist-Khordha vide SEIAA, Odisha Letter no. 10371/SEIAA, Dated 17.12.2020 in favour of Tahasildar, Tangi and valid till expiring of lease deed i.e. from 28.01.2021 to 27.01.2026.
- Transfer of EC from the name Tahasildar, Tangi to Sri Giridhari Das (successful bidder) was made vide SEIAA, Odisha Letter no.4668/SEIAA, Dated.02.06.2022.

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Divisional Forest Officer
Khordha Division, Khordha

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- Consent to Establish (CTE) was issued on 03.12.2022 by SPCB, Odisha but Consent to Operate (CTO) was issued on 05.01.2023 for the said quarry (plot no.673, Khata no.270).
- The lease agreement was registered in respect of said quarry on dated.28.01.2021.
- The committee suggested that the Deputy Director of Mines, Khordha Circle, Khordha will to submit the assessment of quantum of minor minerals illegally excavated by the lessee from Bariko Laterite stone quarry as per OMMC Rules and stipulated conditions by SEIAA and SPCB, Odisha, Bhubaneswar. DDM, Khordha and Mining Officer, Khordha Circle will scientifically calculate the volume of minor minerals excavated along with calculation of penalty, Environment compensation and remedial measures as per the existing orders/guidelines within a period of one month to submit further compliance before Hon'ble NGT.

Jagadev
19.02.24
Mining Officer, Khordha

M.S.
19.02.24
Deputy Director of Mines,
Khordha Circle, Khordha

M.S.
19/2/24
RO, SPCB, Bhubaneswar

S.
19/2/24
ACF, Khordha

S.
19/2/24
Tahsildar, Tangi

S.
19/2/24
Sub-Collector, Khordha

S.
19/2/24
Addl. District Magistrate, Khordha

True copy attested
P. S.
Divisional Forest Officer
Khordha Division, Khordha

**MEMBERS PRESENT ON JOINT FIELD VISIT ON DATED 19.02.2024
OF BARIKO LATERITE STONE QUARRY IN O.A. NO 05/2024/EZ
FILED BY MADHUSUDAN PALAI VS STATE OF ODISHA & OTHERS**

SL NO	NAME OF THE OFFICER	DESIGNATION	SIGNATURE
1	Sri Saphalya Mandita Pradhan	Additional District Magistrate (Revenue)	<i>[Signature]</i> 19/2
2	Sri Dipti Ranjan Sethi	Sub- Collector, Khordha	<i>[Signature]</i> 19/2/24
3	Sri Dillip Kumar Sahoo	Deputy Director of Mines, Khordha	<i>[Signature]</i> 19.2.24
4	Dr Sohan Giri	Sr. Env. Scientist & Regional Officer, Odisha, SPCB, Bhubaneswar	<i>[Signature]</i> 19/2/24
5	Smt. Sushree Swati Mohanty	Assistant Conservator of Forests, Khordha	<i>[Signature]</i> 19/2/24
6	Ms. Mitali Patra	Tahsildar, Tangi	<i>[Signature]</i> 19/2/24
7	Sri Jagan Behera	Mining Officer, Khordha	<i>[Signature]</i> 19/02/24

Madhusudan Palai - Applicant -

Girindar Das Lessee -

Jagan Behera
19/02/24

Girindhari Das.
D. 19.02.24

True copy attested
Jagan Behera

Divisional Forest Officer
Khordha Division, Khordha

Annexure - A

**LAND SCHEDULE OF MOUZA-BARIKO AND RAMACHANDRAPUR LISTED IN NGT
CASE=05/2024/EZ**

SL NO	MOUZA	PLOT	KHATA NO	REA IN ACR	KISAM	RECORDED TENANT	EXCAVATED(YES/NO)	REMARKS
1	BARIKO	665	268	1.0820	Puratanpatita	Anabadi(Govt)	YES	TENTATIVELY 10 TO 12 YEARS OLD
2	BARIKO	765	231				NO	THE PLOT DOES NOT EXIST IN MOUZA-BARIKO
3	BARIKO	630	204(DIFFER FROM RECORDED KHATA NO. 211)	0.560	Bajefasal-2	Hata Padhan ,Nata Padhan S/o-Arata Padhan At-Panaspur	NO	
4	BARIKO	631	219(DIFFER FROM RECORDED KHATA NO. 233/3)	0.3435	Bajefasal-2	Surendra Kumar Sahoo, S/o-Dharma Sahoo,At-Bariko	NO	
5	BARIKO	663	105(DIFFER FROM RECORDED KHATA NO. 47)	0.195	Bajefasal-3	Krushna Barik, S/o-Chanda Barik At-Ramachandrapur, Dam Barik S/o-Mahadev Barik ,At-Panaspur	NO	
6	RAMCHANDRAPUR	430	463	11.327	Chota Jungle	Anabadi(Govt)	YES	TENTATIVELY 10 TO 12 YEARS OLD
7	RAMCHANDRAPUR	428	463	9.0600	Chota Jungle	Anabadi(Govt)	YES	TENTATIVELY 10 TO 12 YEARS OLD
8	RAMCHANDRAPUR	679/1	575/57	2.0000	Bagayat-2	Golak Palei, S/o-Apartl Palei, At-Jharla	YES	TENTATIVELY 10 TO 12 YEARS OLD
9	RAMCHANDRAPUR	679/85	575/78					PLOT DOES NOT EXIST IN MOUZA-RAMCHANDRAPUR
10	RAMCHANDRAPUR	649	04-12	1.0150	Bajefasal2	Bihari Palei, S/o-Pitbas Palei, At-Ramchandrapur	YES	TENTATIVELY 10 TO 12 YEARS OLD
11	RAMCHANDRAPUR	650	405(DIFFER FROM RECORDED KHATA NO. 309)	2.3980	Bajefasal-3	Sankar Palei, S/o-Bihari Palei, At-Ramchandrapur	YES	TENTATIVELY 10 TO 12 YEARS OLD
12	RAMCHANDRAPUR	652	372/8	0.5900	Sarad-3	Godabari Palei, S/o-Rajan Palei, At-Ramchandrapur	YES	TENTATIVELY 10 TO 12 YEARS OLD

19/2/24
Amin Tangi

19/2/24
Revenue Inspector
Ramachandrapur

19/2/24
RS Tangi
Tabakri

19/2/24
Mening Officer
Khordha

19/2/24
Tahasildar Tangi

True copy attested
Jeevna
Divisional Forest Officer
Khordha Division, Khordha