

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

Original Application No. 122/2023/EZ

Ajay Kumar Behera APPLICANT

VERSUS

State of Odisha and Others.

..... RESPONDENTS.

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Cuttack.

Dt. 17.05.2024


Addl. Govt. Advocate

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Ajay Behera. APPLICANT

VERSUS

State of Odisha and Others.

..... RESPONDENTS.

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/Po/Dist.- Khordha do hereby solemnly affirm and state as follows:-

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.
4. The averments made in this para-2 are not correct. In pursuance to the direction of the Honorable National Green Tribunal, Eastern Zone bench, Kolkata, the Collector and District Magistrate, khordha constituted a committee comprising of the following



Poornima

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members to visit the site and to submit the report as regards to the allegations made by the applicant in O.A No. 122/2023/ EZ within three weeks

1. ADM (Revenue), representative of Collector, Khordha.
2. DFO, Khordha
3. Sub Collector, Khordha
4. Tahasildar, Tangi
5. Dr. Sohan Giri, Senior Env. Scientist and Regional Officer, OSPCB
6. Senior Scientist, SEIAA, BBSR
7. Senior Geologist, Directorate of Mines and Geology, BBSR
8. Deputy Director of Mines, Khordha Circle, Khordha
9. Jagan Behera, Geologist of Khordha District

The committee visited the site to enquiry into the matter on 11/10/2023 at 10.00 am wherein the representative of Prahalad Biswal s/o Purnachandra Biswal, lessee of Damanbhuin laterite stone query was also present during the joint inspection. The team examined the contents of the allegation made in the original application of the applicant in detail and submitted inquiry report on 11/10/2023.

In the aforesaid joint enquiry report the committee observed that the lease holder has only operated on allotted plot no. 2161(P) and he has not operated on adjoining forest plot no.2162. So, the



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allegation made by the applicant in this Application is based on surmises and has no merit & is liable to be dismissed. The copy of the joint enquiry report dated 11.10.2023 is annexed herewith as Annexure-A/6.

5. That in reply to the averments made in Para-3 of the Original Application, it is humbly submitted that all the plots in question belongs to Revenue Department and categorized as non-forest except for plot no. 2162 Khata No.708, mouza- Damanabhuin, Kisam- Gramya 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. 2161(P) Khata No.708 to M/S Damanbhuin Laterite Stone Quarry-A and the Divisional Forest Officer the opposite party No.6 had no knowledge about the fact of lease of the said land.

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,-



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- (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.
- (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.



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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.2162 Kisam- Gramya jungle which will invite the provisions

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of Forest Conservation Act, 1980 for utilisation of the plots for non-forestry purpose. But as per the committee report discussed above lease holder has only operated on allotted plot no. 2161(P) and he has not operated on adjoining forest plot no.2162. Further the committee observed that no sign of tree felling was noticed from the adjoining plot no.2162 which is of jungle kissam. Further the committee observed that lessee has mentioned the allotted only plot no. 2161(P) on the sign board on the date of visit & Plot no. 2162 had not been mentioned on the sign board. So, the allegation made by the applicant in this Application is based on surmises and has no merit & is liable to be dismissed.

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6. That the averments made in Para-4 of the Original Application need no comments.

7. That in reply to the averments made in Para-5 of the Original Application, it is humbly submitted that the lease holder has operated on the allotted plot no. 2161(P) and has not operated on the adjoining plot, the details of which has been discussed in Point No. 4 and 5. That the averments made in para 6-10 are already discussed above point no 4 and 5 and do not need more clarifications.

8. That the averments made in Para-11-38 of the Original Application need no comments.

Under the above facts and circumstances, the application filed by the applicant in this case has no merit and is liable to be dismissed.

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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

Poornima
Deponent

Advocate

Divisional Forest Officer
Khordha 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 day of May, 2024.

Khordha

Dt. 17.05.2024.

VERIFICANT

Poornima

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. 17.05.2024.

Jayanta Kaluak
Addl. Govt. Advocate

**AFFIDAVIT.** NO-598 Dt-17/05/2024

The above deponent being personally known to me appears before me on 17.5.24 at 11 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:

Deponent.

Poanina

Divisional Forest Officer
Khordha Division, Khordha

Executive Magistrate, Khordha

17-5-24
TAHASILDAR
KHORDHA

JOINT VERIFICATION COMMITTEE REPORT ON DATED.11.10.2023 OF
DAMANABHUIN LATERITE STONE IN O.A. NO.122/2023 FILED BY AJAY
KUMAR BEHERA VRS STATE OF ODISHA AND OTHERS

1.0 Background:

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 three weeks in the matter of O.A. No. 122 of 2023 (EZ) filed by Ajay Kumar Behera Vrs State of Odisha & Ors passed in order dated 22.09.2023.

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

- i) Senior Scientist, Odisha State Pollution Control Board;
- ii) Senior Scientist, State Environment Impact Assessment Authority (SEIAA), Odisha;
- iii) Representative of the Collector and District Magistrate, Khordha, not below the rank of Additional District Magistrate (ADM);
- iv) Divisional Forest Officer, Khordha; and
- v) Senior Geologist, Directorate of Mines and Geology, Bhubaneswar

In view of this a team consisting of the following members, Additional District Magistrate (Revenue) representative of Collector, Khordha, Divisional Forest Officer, Khordha, Sub-Collector, Khordha, Tahasildar, Tangi, Dr. Sohan Giri, Sr. Env. Scientist & Regional Officer, Odisha State Pollution Control Board, Bhubaneswar, Dr. Pradeep Kumar Nayak, Environmental Scientist, SEIAA, Bhubaneswar, Senior Geologist, Directorate of Mines and Geology, Bhubaneswar, Deputy Director of Mines, Khordha Circle, Khordha, Jagan Behera, Mining Officer, Khordha Circle, Khordha visited the site to enquire into the matter at 11.00 AM on dated. 11.10.2023. Representative of Prahallad Biswal, S/o- Purna Chandra Biswal, Lessee of Damanbhuin Laterite Stone Quarry were present during the joint inspection.

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COLLECTOR & DISTRICT MAGISTRATE
KHORDHA
SEIAA

True copy attested
Poojima
Divisional Forest Officer
Khordha Division, Khordha
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SEIAA

Sl. No.	Name of the Officer	Designation
1	Sri Saphalya Mandita Pradhan	Additional District Magistrate (Revenue)
2	Sri Gobinda Chandra Biswal	Assistant Conservator of Forest, Khordha
3	Sri Dipti Ranjan Sethi	Sub-Collector, Khordha
4	Dr. Janmejaya Sahoo	Tahasildar, Tangi
5	Dr. Sohan Giri,	Sr. Env. Scientist & Regional Officer, Odisha State Pollution Control Board, Bhubaneswar
6	Dr. Pradeep Kumar Nayak	Environmental Scientist, SEIAA, Bhubaneswar
7	Sri Dillip Kumar Sahoo	Deputy Director of Mines, Khordha Circle, Khordha
8	Jagan Behera	Mining Officer, Khordha

2.0 Present Status of the allegation against Stone quarry:

The site was visited by the team on dtd. 11.10.2023 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:-

COLLECTOR & DISTRICT MAGISTRATE
KHORDHA

Sl. No.	Issues	Present status
1.	The petitioner alleged that the lease holder has illegally started operation from plot no 2162 adjoining the lease plot by felling the trees which is of Gramya Jungle Kisam.	The committee observed that the Lease holder has only operated allotted Plot No.2161(P) and he has not operated the adjoining forest plot No.2162. It is also observed that no sign of tree felling was noticed from the adjoining Plot No. 2162, which is of jungle kisam.
2.	The petitioner alleged that the Sign Board erected at the lease site the lessee has mentioned plot no 2162 as part of his lease and same has been photographed.	The committee observed that the Lessee has mentioned the allotted only plot No.2161 (P) on the Sign Board on the date of visit. Plot No. 2162 was not mentioned in the signboard.

[Handwritten signatures and initials]

True copy attested

Divisional Forest Officer
Khordha Division, Khordha

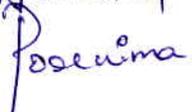
<p>3. The petitioner alleged that the Lessee mentioned the lease period on the Sign Board from 25.04.2022 to 24.04.2027 through the Consent to Establish (CTE) itself was granted only on 29.06.2022 and Consent to Operate (CTO) was granted on 15.07.2022.</p>	<p>The committee observed that the Lessee has mentioned the date of lease period on the Sign Board from 25.04.2022 to 24.04.2027, as per Rule 43 (2) of OMMC Rules 2016 the lease period shall be computed from the date of registration of the lease deed. CTO was granted on 15.07.2022 and work order was issued in favour of the lessee on 29.07.2022.</p>
<p>4. The petition alleged that Lessee is using JCB for carrying out operation.</p>	<p>No machinery equipment has found in the lease area by the committee at the time of joint visit i.e. on 11.10.2023. As per the allegation made in this regard, the committee instructed Tahasildar, Dy. Director of Mines, Khordha Circle and Mining Officer, Khordha to inspect the suit area frequently and remain careful for future compliance as per terms and conditions of mining plan.</p>


COLLECTOR & DISTRICT MAGISTRATE
KHORDHA

3.0 Over all observations:

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

- Environmental Clearance (EC) was issued for the Damanabhuin Laterite Stone Quarry-A over a lease area of 10.23 acres or 4.139 Ha at village-Damanabhuin, Tahasil-Tangi, Dist-Khordha vide SEIAA, Odisha Letter no. 1660/SEIAA, Dated 06.07.2021 in favour of Tahasildar, Tangi and valid till expiry of Lease Deed i.e. from 25.04.2022 to 24.04.2027.
- Transfer of EC from the name Tahasildar, Tangi to Sri Prahallad Biswal (successful bidder) was made vide SEIAA, Odisha Letter no.4216/SEIAA, Dated.15.03.2022.
- Consent to Establish (CTE) was issued on 29.06.2022 by SPCB, Odisha but Consent to Operate (CTO) was issued on 15.07.2022 and 19.06.2023 for the said quarry (plot no.2161 (p) Khata no.708.
- EC, CTE and CTO issued only for plot no. 2161 (P) and no mining activity was observed over the plot No.2162.

     
True copy attested


Divisional Forest Officer
Khordha Division, Khordha

- 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 Damanbhuin Laterite stone quarry (A) as per OMMC Rules and stipulated conditions by SEIAA and SPCB, Odisha, Bhubaneswar. DDM, Khordha Circle and Mining Officer, Khordha will scientifically calculate the volume of minor minerals excavated along with imputation of penalty, Environment compensation and remedial measures as per the existing orders/guidelines within a period of one month to submit the compliance before Hon'ble NGT.

Jagan
11.10.23

Mining Officer, Khordha
Mining Officer (I/c)
O/o. Deputy Director Mines
Khordha Circle, Khordha

M/S
11.10.23

Deputy Director of Mines,
Deputy Director Mines (I/c)
Khordha Circle, Khordha
O/o. Deputy Director Mines
Khordha Circle, Khordha

Environmental Scientist
SEIAA, Odisha
Bhubaneswar

JNK
11/10/23
Regional Officer,
State Pollution Control Board, Odisha
RO, SPCB, Bhubaneswar

DS
11.10.23
ACF, Khordha
Asst. Conservator of Forests
Khordha Division

Raj
11.10.23
Tahsildar, Tangi
Tahsildar
Tangi

J
11/10/23
Sub-Collector, Khordha
Sub-Collector
Khordha

Jagan
11/10/23
Addl. District Magistrate,
Khordha

Divisional Forest Officer,
Khordha

Jagan
COLLECTOR & DISTRICT MAGISTRATE
KHORDHA

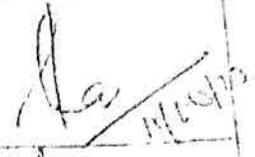
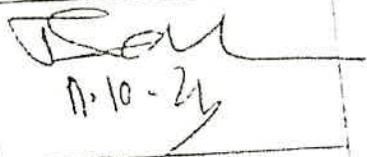
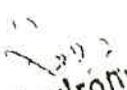
True copy attested
Jagan

Divisional Forest Officer
Khordha Division, Khordha

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MEMBERS PRESENT ON JOINT FIELD VISIT ON DATED.11.10.2023 OF DAMANABHUIN LATERITE STONE IN O.A. NO.122/2023 FILED BY AJAY KUMAR BEHERA VRS STATE OF ODISHA AND OTHERS

Sl. No.	Name of the Officer	Designation	Signature
1	Sri Saphalya Mandita Pradhan	Additional District Magistrate (Revenue)	
2	Sri Dipti Ranjan Sethi	Sub-Collector, Khordha	 11/10/23
3	Sri Gobinda Chandra Biswal	Assistant Conservator of Forest, Khordha	 11.10.2023 Asst. Conservator of Forest Khordha Division
4	Dr. Janmejaya Sahoo	Tahasildar, Tangi	 11.10.23
5	Dr. Sohan Giri,	Sr. Env. Scientist & Regional Officer, Odisha State Pollution Control Board, Bhubaneswar	 11/10/2023 Regional Officer State Pollution Control Board, O.S. Bhubaneswar
6	Dr. Pradeep Kumar Nayak	Environmental Scientist, SEIAA, Bhubaneswar	 11/10/2023 Environmental Scientist SEIAA, Odisha
7	Sri Dillip Kumar Sahoo	Deputy Director of Mines, Khordha Circle, Khordha	 Deputy Director Mines (I/c) O/o. Deputy Director Mines Khordha Circle, Khordha
8	Jagan Behera	Mining Officer, Khordha	 Mining Officer (I/c) O/o. Deputy Director Mines Khordha Circle, Khordha

True copy attested
Divisional Forest Officer
Khordha Division, Khordha