

BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

M.A. No. of 2024/EZB

IN

O.A. No. 136 of 2015/EZB

MISCELLANEOUS APPLICATION

under National Green Tribunal Act' 2010

In the matter of:

Subhas Datta

.....Applicant

-Versus-

State of West Bengal and Others

.....Respondents

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Applicant

Subhas Datta

SUBHAS DATTA

Office: 25/1, Guitendal Lane, Howrah-711 101'

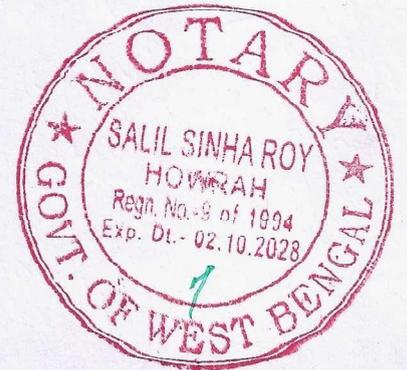
Residence: 55/2, Panchanantala Road,

P.O.+P.S.+Dist. - Howrah-711 101(for both)

Telephone : 033 -2638 3526,

Mobile : 09830 752 752

Email : subhasdatta@rediffamil.com



28 MAY 2024

SYNOPSIS OF THE CASE

Spelt
~~That~~ That the applicant had moved a petition (OA No. 136/2015/EZB) before the Hon'ble National Green Tribunal wherein various environmental aspects concerning North Bengal of the State of West Bengal had been dealt with. The illegal operation of a Stone Crushing Unit on the river-bank of Laiti, near Patharjhora Tea Estate of Jalpaiguri district was brought to the kind attention of the Court. After series of hearings of the matter the Original Application had been disposed of by the Hon'ble Tribunal vide order dated 30th May, 2022,

The synchronised and most relevant part of the order dated 30th May 2022 reads as follows:-

Ref :- Paragraph 14 of the order

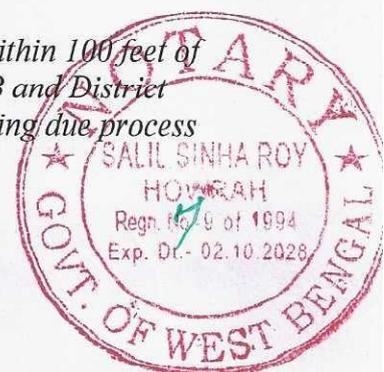
“Consideration, Finding and Directions

14. We have heard learned counsel for the parties and perused records. In view of order dated 01.12.2021, we are only dealing with the issue of stone crusher on Laity river and illegal constructions in the Buxa Tiger Reserve. With regard to the stone crushers, factual position as per affidavit filed on behalf of the District Magistrate is that the stone crusher is operating within 100 ft. from the river. Siting norms laid down under the Guidelines of Environmental Guidelines for Stone Crushing Units¹ dated 2009 issued by CPCB require distance of 200 meters from the river, canal and lake. Further, the stone crusher cannot remain operative without requisite consent to establish and consent to operate and EC. This also violates norms for protection of flood plain zone which has significant environmental functions and has to be protected. The extent http://www.gpcenvis.nic.in/Manuals_Guidelines/Environmental_Guidelines_for_Stone_Crushing_Units.pdf 14 of flood plain zones depends upon the applicable norms under different State laws. In its absence, in terms of order of this Tribunal dated 15.12.2020 in O.A. No. 22/2020, ‘Dilip Kumar Samantaray v. State of Odisha Board & Ors., the extent of flood plain zone has to be 100 meters from the edge of the river.”

Ref :- Paragraph 16 of the order

“In the present case, the stone crusher activity being within 100 feet of the edge of the river, cannot be allowed. The State PCB and District Magistrate may accordingly take further action, following due process of law, within two months from today.”

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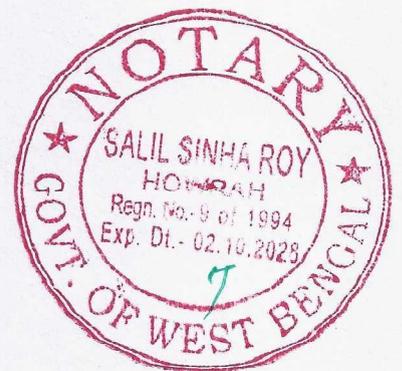


B

The applicant has visited the spot on 8th May 2024 when the stone crushing unit was found to be working in full swing. Although there had been specific direction by the Court to take action within two months from the date of the order, no action has been taken even after the elapse of two years. Photographs of the present working position of the factory have been taken to show clearly the prevailing situation there.

In this context it is pertinent to mention that the unit is not simply situated at the closest proximity to the river, the same has been found to be well within the forest area failing at the same boundary wall of Noam Forest Range office of Kalingpong Forest Division.

If the crushing unit is allowed to operate within the prohibited area, the same will adversely affect the health of the people, marine bio-diversity and environment at large. Without further judicial intervention there is no possibility to get rid of this environmental hazards. Hence this application is being filed.

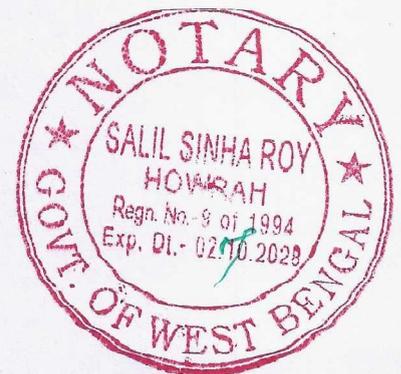


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C

LIST OF DATES

| Sl No. | Dates | Particulars |
|--------|------------|---|
| 1. | July 2015 | OA No. 136/2015/EZB was filed before the Hon'ble Tribunal. |
| 2. | 30.05.2022 | Order had been passed by the National Green Tribunal to disallow the Stone Crushing Unit within the prohibited Zone at the river bank of Laiti. |
| 3. | 08.05.2024 | The applicant had visited the site and took photographs. |
| 4. | 21.05.2024 | Memorandum had been sent to the concerned Respondents. |



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BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

M.A. No. of 2024/EZB

IN

O.A. No. 136 of 2015/EZB

MISCELLANOUS APPLICATION

under National Green Tribunal Act' 2010

In the matter of:

Subhas Datta

.....Applicant

-Versus-

State of West Bengal and Others

.....Respondents

IN THE MATTER OF:

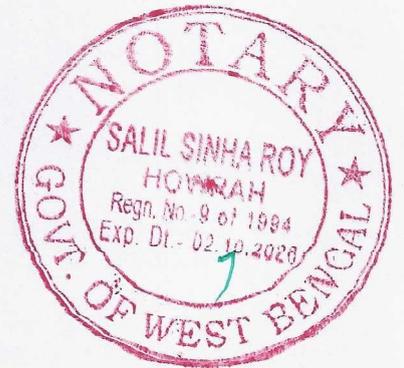
1. Subhas Datta

Son of Late Baneswar Datta,

25/1, Guitendal Lane,

P.O; + P.S; + District – Howrah

Pin code – 711101, West Bengal



..... Applicant

28 MAY 2024

1. **State of West Bengal,**

Through the Additional Chief Secretary,

Department of Environment,

Government of West Bengal,

5th Floor, Pranisampad Bhawan,

Block LB-II, Salt Lake, Sec-III,

Bidhannagar, Kolkata - 700016

Tel-033-2335-2742

Sd/-

p.secy.env-wb@gov.in
acsenv.wb@gmail.com

2. **West Bengal Pollution Control Board,**

Through its Member Secretary,

Paribesh Bhawan, 10A, Block-LA,

Sector-III, Bidhan Nagar,

Sd/- Kolkata-~~70008~~ 700106

Tel-0332335-8213

ms.wbpcb-wb@bangla.gov.in

3. **District Magistrate,**

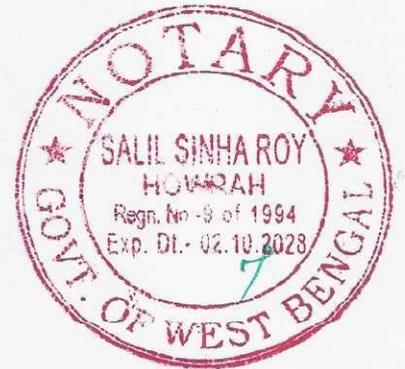
Jalpaiguri,

Collectorate Avenue,

Jalpaiguri-735101

Tel - 03561-23027

dm-jlp@nic.in



.....Respondent(s)

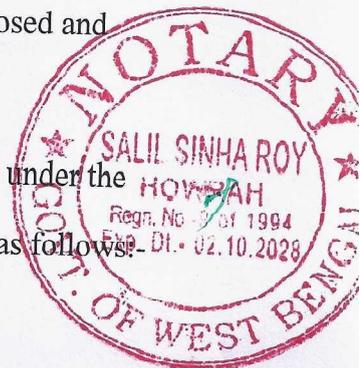
28 MAY 2024

- A. The address of the Applicant as given above is for the service of notices of this application and that of their representatives;
- B. The addresses and e-mail details of the respondents as given above are for service of notices of this application and that of their representatives;
- C. The applicant named above begs to present the Miscellaneous Application on the issue of non – compliances of the concerned Respondents in the matter of OA 136/2015/EZB on which the Hon'ble National Green Tribunal had directed vide order dated 30th May 2022 to take necessary action within two months from the date of the order, the Respondents have not taken any action even after the lapse of two years. Such noncompliance has caused various types of pollution in the area for which the petition is being moved.

Most Respectfully Sheweth

I, Subhas Datta, aged about 74 years, son of Late Baneswar Datta, by Religion – Hindu, occupation Chartered Accountant, residing at 25/1, Guitendal Lane, P;S+P;O+Dist; - Howrah, Pincode-711101, do hereby solemnly declare and say as follows:-

- 1) That the applicant had moved a petition (OA No. 136/2015/EZB) before the Hon'ble National Green Tribunal wherein various environmental aspects concerning North Bengal of the State of West Bengal had been dealt with. The illegal operation of a Stone Crushing Unit on the river-bank of Laiti, near Patharjhora Tea Estate of Jalpaiguri district was brought to the kind attention of the Court. After series of hearings of the matter the Original Application had been disposed of by the Hon'ble Tribunal vide order dated 30th May, 2022, the copy of such order is enclosed and marked as ANNEXURE-MA/1.
- 2) That in the order of 30th May 2022, vide paragraph 14, it had been stated under the caption – “Consideration, Finding and Directions”, which is reproduced as follows:-



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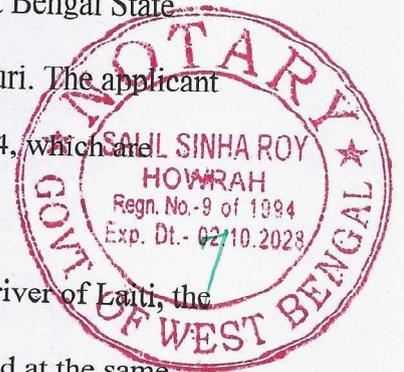
“Consideration, Finding and Directions

14. We have heard learned counsel for the parties and perused records. In view of order dated 01.12.2021, we are only dealing with the issue of stone crusher on Laity river and illegal constructions in the Buxa Tiger Reserve. With regard to the stone crushers, factual position as per affidavit filed on behalf of the District Magistrate is that the stone crusher is operating within 100 ft. from the river. Siting norms laid down under the Guidelines of Environmental Guidelines for Stone Crushing Units dated 2009 issued by CPCB require distance of 200 meters from the river, canal and lake. Further, the stone crusher cannot remain operative without requisite consent to establish and consent to operate and EC. This also violates norms for protection of flood plain zone which has significant environmental functions and has to be protected. The extent http://www.gcpcenvis.nic.in/Manuals_Guidelines/Environmental_Guidelines_for_Stone_Crushing_Units.pdf 14 of flood plain zones depends upon the applicable norms under different State laws. In its absence, in terms of order of this Tribunal dated 15.12.2020 in O.A. No. 22/2020, Dilip Kumar Samantaray v. State of Odisha Board & Ors., the extent of flood plain zone has to be 100 meters from the edge of the river.”

- 3) That the Hon’ble Court had given the specific directions vide paragraph 16 of the said order dated 30th May 2022, which reads as follows:-

“In the present case, the stone crusher activity being within 100 feet of the edge of the river, cannot be allowed. The State PCB and District Magistrate may accordingly take further action, following due process of law, within two months from today.”

- 4) That the applicant had visited the site of the stone crusher unit on 8th May 2024 at the same site when it was found that the same was being operated on the river bank of Laiti, near Patharjhora Tea Estate area of Jalpaiguri. It was evident that the order of the Hon’ble Tribunal had not been acted upon neither by the West Bengal State Pollution Control Board, nor by the District Magistrate of Jalpaiguri. The applicant had taken the photographs of the unit in operation on 8th May 2024, which are enclosed and collectively marked as ANNEXURE – MA/2.
- 5) That it is pertinent to mention that other than the proximity to the river of Laiti, the stone crushing unit appears to be well within the forest area situated at the same boundary wall of Noam Forest Range Office of Kalingpang Forest Division. The



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applicant has taken the photographs on 08.05.2024 showing the Noam Forest Range Office site of Kalingpang Forest District where next to their boundary, the said crushing unit is operating. The photographs are enclosed and marked as ANNEXURE – MA/3.

- 6) That the applicant had next gone to the downstream of the Laiti river and observed that massive lifting operations of stones/boulders were going on from the river-bed of Laiti by using fork lift, trucks/lorries, dumpers etc in order to cater the requirement of the stone crushing unit at the upstream. Those photographs on this score are enclosed and marked as ANNEXURE – MA/4.
- 7) That severe pollution is still continuing by the stone crushing unit operating on the river bank of Laiti at Jalpaiguri and the same is adversely affecting the health of the local people, marine lives and the environment. Unless the problems are mitigated immediately irreparable loss and damage in different forms will continue to destroy the bio-diversity of the area. Without further judicial intervention the environmental hazards will continue to be a danger and direct threat to the lives of the people and the marine bio-diversity. .
- 8) That the specific directions was given by the Hon'ble Court to the Respondents concerned not to allow the stone crusher unit at the close proximity (100 feet) of the Laiti river by flouting the environmental norms as set out by the Central Pollution Control Board but they have negligently not complied with the direction of the Hon'ble Tribunal. Considering the gravity of the matter it would be appropriate for the Hon'ble Court to issue show cause notice u/s 26 of the National Green Tribunal Act 2010.
- 9) That the applicant has sent representation to the Respondents concerned drawing their attention to the non-compliance of the order of the Hon'ble National Green



28 MAY 2024

Tribunal on 21.05.2024, the photocopy of which, with the postal receipt is enclosed and marked as ANNEXURE – MA/5.

- 10) That balance of convenience stands in favour of the Applicant. The Applicant has a strong prima facie case and delay in passing order as prayed for hereinafter shall defeat the purpose of ensuring environmental justice to the people.

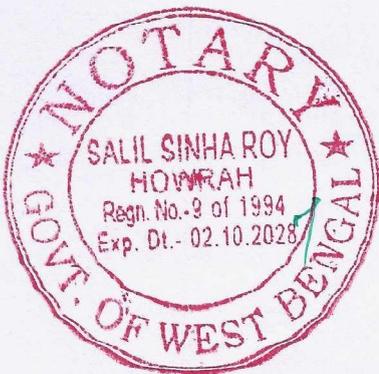
LIMITATION

- 11) That the applicant states that environmental disorders of the red category crusher are continuing for a long time on which the Hon'ble Tribunal had passed several directions/orders from time to time. The issue has not escaped the attention of the media, reporting on this aspect. The applicant has visited the site on 8th May 2024. Afterwards, memorandum had been sent to the concerned Respondents on 21.05.2024. Thus the application is filed within the period of limitation.
- 12) This application is made bonafied and for ends of justice.

PRAYER

Your applicant therefore humbly prays Your Honour for the following orders:-

- I. To direct the Respondents to immediately comply with all the directions/orders passed by the Hon'ble Tribunal in O.A. 136/2015/EZB on 30.05.2022 without any further delay and to be implemented within a specific time frame.
- II. To issue notices to the Respondents concerned u/s 26 of the National Green Tribunal Act 2010 for continued failure to take appropriate actions in the matter, as directed by the Court, by the concerned Respondents.
- III. To direct for computing environmental compensation by the concerned Respondents for the environmental

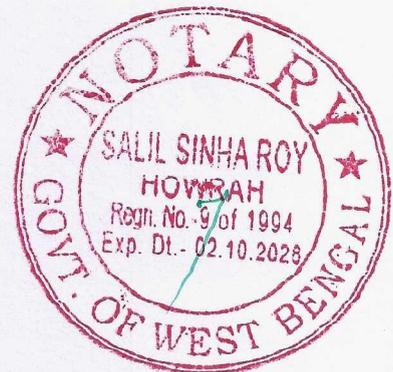


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disorders being caused in the area during the past two
years.

- IV. Such order and/or further order or orders be made
and/or direction or directions be given as the Hon'ble
Tribunal may deem fit and proper.

Subrata
Deponent



28 MAY 2024

VERIFICATION

E 3324

~~SI. NO.~~

I, Sri Subhas Datta, son of Late Baneswar Datta, aged about 74 years, by occupation Chartered Accountant, by religion Hinduism, residing at 25/1, Guitendal Lane, Post Office, Police Station and District - Howrah, Pin code - 711101, do hereby declare and state that the contents of the paragraph nos. 11 to 6, 9 & 10 are true to the best of knowledge and the contents of the paragraph nos. 7 & 8 are my information derived from the relevant records which I verily believe to be true and the rests are my respectful submissions before the Hon'ble Tribunal;

Prepared by me in my office

Subhas Datta
 (Subhas Datta)
 Applicant-in-person

Date : 27.05.2024

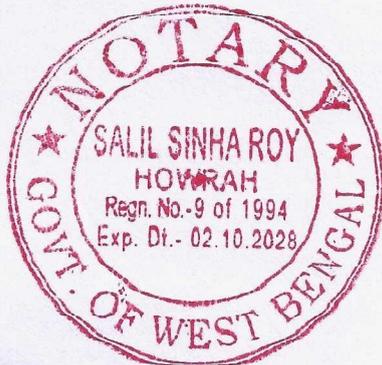
Place: Howrah;

Subhas Datta
 DEPONENTS

IDENTIFICATION BY ME &
 SIGNED/L.T.I. TAKEN IN MY PRESENCE

Subhas Datta
 Advocate

JIBANJIS CHAKRABORTY
 Advocate
 Howrah Judges Court
 WB/1448/2000



SOLEMNLY AFFIRMED & DECLARED
 BEFORE ME ON IDENTIFICATION

27.5.24
 SALIL SINHA ROY
 NOTARY HOWRAH

28 MAY 2024

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 136/2015/EZ
M.A No. 191/2017/EZ

Subhas Datta

Applicant

Versus

State of West Bengal & Ors.

Respondent(s)

WITH

Review Application No.23/2017/EZ
In
Original Application no. 136/2015/EZ
&
M.A. 320/2017/EZ

The Department of Tourism, Govt. of West Bengal

Applicant

Versus

Subhas Datta & Anr.

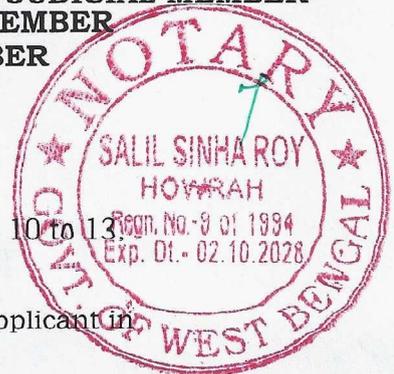
Respondent(s)

Date of hearing: 30.05.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Subhas Datta, Applicant in person

Respondent(s): Ms. Madhumita Bhattacharjee, Advocate for R-1 to 7, 10 to 13,
Mr. Dipanjan Ghosh, Advocate for R-8,
Mr. Soumitra Mukherjee, Advocate for R-9,
Mr. Somnath Roy Chowdhury, Advocate for R-15 & applicant in
(M.A.No.191/2017),
Ms. Paushali Banerjee, Advocate for R-20,
Ms. Arpita Chowdhury, Advocate for R-22,

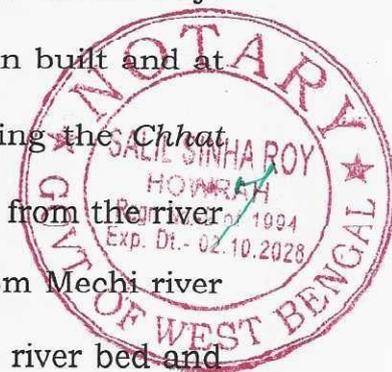


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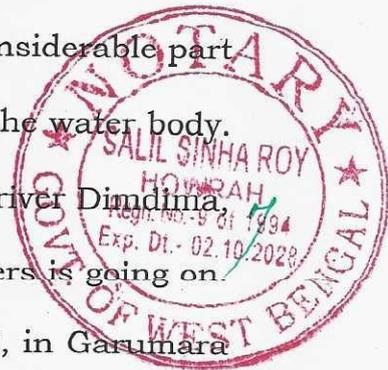
ORDER**The Issue**

1. Grievances in the OA relates to establishment of illegal hotels/ 'home stays' etc. in forest areas, in Tiger Reserve and on flood plain zones of rivers, without statutory consents of the State PCB. The applicant has also complained against other non-forest activities in reserved forests, including illegal river bed mining/stone crusher, in violation of siting guidelines, without requisite EC and in violation of Wildlife (Protection) Act, 1972.

2. Case set out in the application is that the applicant visited different places of the North West Bengal from 17th to 23rd November, 2015. He found serious environmental degradation of environment, ecology, flora and fauna. There is rampant lifting of sand, stone and boulders from river Mahananda. Human settlements have taken place on the alluvian land of the river. There is tethering of cattle and cattle sheds on the river bank of Mahananda from where waste is flown into the river. Several Piggeries were found on the river bank/island of the river from where filthy waste water finds its way to the river. There is blocking of normal flow of the river at several places on the river due to *Chhat* Puja performances. At several places artificial islands have been built and at many points temporary cause-ways have been made during the *Chhat* Puja. There is indiscriminate lifting of sand/stone/ boulder from the river Balsan harming the river bed and normal flow of river. From Mechi river which divides India and Nepal, boulders are lifted from the river bed and the same are carried to a nearby place within the buffer zone of Kalabari Forest area, where a big crusher unit is performing the crushing activities, causing considerable environmental hazard in the forest area which is a frequently used corridor by elephants coming from Dalka and



Bagdogra Forests for which underpass and passages have been made. Boulders are carried from river Balasan at Tihana point to Ghoshpukur. Rampant lifting of boulders takes place from the river bed of Tista near Sevok. Some human carriers are engaged for carrying coal from the bottom of the hill, due to which the top portion of the hill area becomes loose and landslides take place. Earlier pitched road has totally disappeared and a new road is now being built just little below the lost road. Huge quantity of solid wastes, including plastic is dumped on the river itself. Solid waste disposal system in Malbazar is very poor. Entire riverbed of Chal at Odlabari is being used for making of sand, lifting of boulders and sand from the river. On change of the river course, river has been reclaimed and used for other purposes, including making of causeway to facilitate lifting of sand/ boulders from river bed at Paschim Lataguri Samsan Ghat, at the bank of river Neora. Construction of resort/lodge is being made at the other side of Paschim Lataguri Samsan Ghat. Solid waste management is very poor at Banarhat. Plastic is dumped here and there. In Dhupguri, huge quantity of solid waste, including plastics is dumped in river Gulmai. Such dumping in the river and at its bank causes serious environmental hazards. Considerable part of such waste ultimately floats and pollutes big stretch of the water body. At Dhanirampur, in Gram Panchayat area in Ethelbari on river Dimdima, illegal and illogical activities of lifting of sand/stone/boulders is going on. Lifting of sand/boulders is being done at riverbed of Murti, in Garumara Forest area. Illegal/unscientific/ eco-enemy tourism is rampant in the entire North Bengal, the bank of river Murti at Garumara Forest area. Several resorts/lodges/hotels have been built for which pillared fencings have been made. Visits to Buxa Tiger Reserve is not being regulated as per Wild Life (Protection) Act, 1972. Inside the Buxa Tiger Reserve, on the

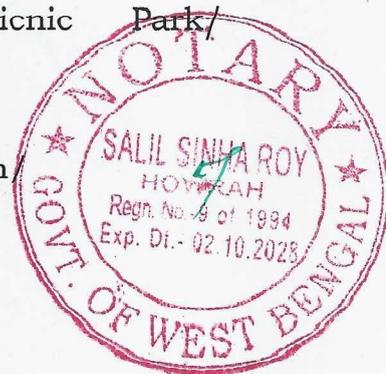


riverbank of river Jayanti rampant lifting of boulders is going on by deploying huge number of lorries and man-power. In forest area, next to Tista Barrage, called Gazoldoba and next to Baikunthapur Forest Wildlife Area and in Tarbandha Range of Apalchand Forest, which is highly eco-sensitive, several sign boards have been placed at different locations. One of such boards placed by Department of Tourism, Govt. of West Bengal, is "Project Master/Broad Zoning", "Eco Tourism Project at Teesta in Doars, Jalpaiguri." Different project components stated in the signboard are as follows:-

- | | |
|------------------------------|-------------------------------|
| a) Lake Plaza | b) Amusement Park |
| c) Ayurvedic Spa Village | d) Youth Hostel (Yuva Kendra) |
| e) Lake Resort | f) Retirement Home |
| g) 4-Star Resort | h) Camping Area |
| i) Hospitality | j) Golf Course & Academy |
| k) Reception/Interpretation | l) Elephant Zone |
| m) Utilities | n) Buffer |
| o) Budget Eco-Resort (WBTDC) | p) Lake |
| q) 3-Star Resort | r) Road |
| s) Cultural Area | t) Bird Watching Area |
| u) Parking | v) Entry Gate Plaza & Boating |

3. In "Project Master Plan-Mega Tourism Park at Gajoldoba" following "Project Components" are stated:

- | | |
|--|---|
| a) High-End Lake Resort | b) 3-Star & 4-Star Resorts |
| c) Budget Hotels | d) Camping Area with Log Huts |
| e) Ayurvedic Spa Village | f) Old-Age Home |
| g) Hospitality Training Institute | h) Food Court/Picnic Park/Children's Park |
| i) Reception/Interpretation Centre | j) Parking Area |
| k) Cultural Zone: Amphitheatre / Craft Village | l) Botanical Garden Herbarium/Park |
| m) Buffer Course+ bodies+Green Verge | n) Theme Garden |
| o) Bird Watching Area | p) Arterial Roads |
| q) Water Body | r) Utilities/Waterbody/Peripheral Buffer |



28 MAY 2024

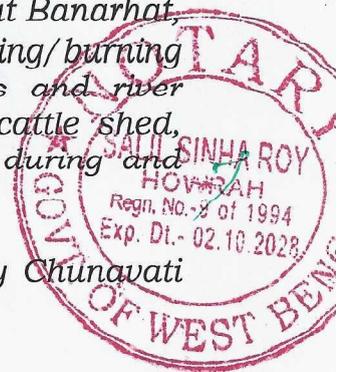
4. Another signboard fixed by the Department of Tourism, Govt. of West Bengal, is titled "Mega Tourism Park at Gajoldoba". The Project Components are same.

Procedural History – Stand of the authorities

5. The application was filed on 24.12.2015 and first came up for hearing on 11.01.2016. The Tribunal sought a status report from the Chief Secretary, West Bengal about the illegal mining, illegal stone crushers units, pollution of rivers mentioned therein, illegal coal mining and illegal establishments of tourists lodges, hotels etc. Relevant extract from the said order is as follows:-

"The status report to be filed by Respondent No.1 viz. the Chief Secretary, Govt. of West Bengal and Respondent Nos. 8 & 9 respectively in respect of the following issues as alleged by the applicant within five weeks:-

- 1) *Illegal lifting of sand, stone and boulder without consent from PCB and/or Environmental clearance from the river bed of Mahananda and Balasan at Siliguri, Tista river bed near Sevak Road, Chal river at Odlabari, Dimdima river at Ethelbari, Murti river in Garumara Forest area.*
- 2) *Illegal stone crusher units in Laiti river near Odlabari and in Kolabari Forest.*
- 3) *Pollution of Gulmai river at Dhupgiri, Umesh Khal at Banarhat, Neora river at Lataguri and Mal river due to dumping/burning of plastic and solid wastes and other misuses and river Mahananda at Siliguri due to establishment of cattle shed, piggeries and wastes generated & disposed of during and after chhatpuja and human settlement.*
- 4) *Illegal coal mining near Odlabari in Kalimpong by Chunavati Coal Company.*
- 5) *Illegal activities like establishment of Tourist lodge/Hotels/Guest Houses etc. in the core area of Buxa Tiger Reserve without having consent to establish and consent to operate from State Pollution Control Board."*



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6. The application was admitted and notice was issued to the respondents, including the Forest Department, Tourism Department, Irrigation Department, State PCB and the State of West Bengal who have filed their respective replies. In pursuance of orders passed from time to time, reply to the questions raised has also been filed. It is not necessary to refer to all the orders and the affidavits as at this stage scope of proceedings stand limited. We will accordingly refer to the material necessary for today's consideration.

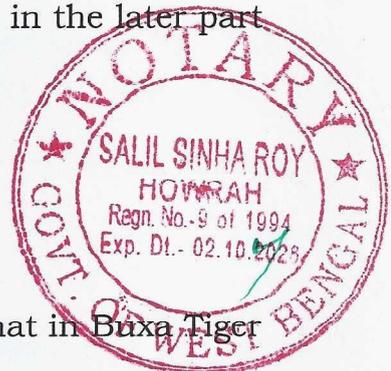
Order dated 27.7.2017

7. Vide order dated 27.07.2017, the Tribunal inter-alia directed that the tourist lodge operated by the West Bengal Tourism Development Corporation at Jayanti, which was in forest area and operated in violation of Forest (Conservation) Act, 1980 (FC Act), claimed to be a 'Camping Station' be demolished. The Tribunal also directed the Forest Department to inform whether there are any other hotels, restaurants, etc. being operated in the reserved forest area. Against the said order, R.A. No. 23/2017/EZ has been filed which will also be dealt with in the later part of this order.

Order dated 1.12.2021, noting surviving issues

8. Vide order dated 01.12.2021, the Tribunal noted that in Buxa Tiger Reserve there are 69 establishments under the private ownership and 20 under the State ownership. Some of the establishments are in Core area of the Tiger Reserve and some on the bank of river Jayanti.

9. The Tribunal also noted that only two issues survived for consideration - operation of stone crushers on Laity River and illegal



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construction in the Buxa Tiger Reserve. Operative part of the said order is reproduced below:-

“4. In this affidavit, it is stated that in the Buxa Tiger Reserve there are 69 establishments under private ownership and 20 under the Management of Government of West Bengal.

5. It is alleged that these establishments have been raised within the core area of Buxa Tiger Reserve. Reference has also been made to a news paper report published in Bengali newspaper of North Bengal, ‘Uttarbanga Sangbad’ dated 16.11.2021 showing construction on the banks of river Jayanti within Buxa Tiger Reserve. It is also alleged that adjacent to the Public Health Engineering Department Bungalow about six hotels/resorts have been constructed. This court vide its order dated 31.08.2017 had directed to close down to all illegal establishments which have been raised within the core area of the Buxa Tiger Reserve but it is alleged that instead of closing down the hotels/resorts and illegal constructions, more such constructions have been allowed to propagate. Photographs by way of evidence have been filed along with this affidavit.

6. Ms. Madhumita Bhattacharjee, learned Counsel appearing for the State Respondents submits that she has been served the copy of the affidavit only on the 25.11.2021 and therefore wants to seek instructions with regard to the allegations made therein. We grant the State Respondents ten days time to file response to the affidavit of the applicant dated 25.11.2021.

7. **Mr. Subhas Datta, applicant in person states that in this Original Application only two issues now survive**

- (i) relating to stone crushers on Laity River;
- (ii) illegal construction in the Buxa Tiger Reserve.

8. Ms. Madhumita Bhattacharjee, learned Counsel also prays for and is granted four weeks time for replying to the supplementary affidavit dated 25.11.2021 within the same period of time.”

10. In pursuance of above, affidavit dated 24.01.2022 has been filed by

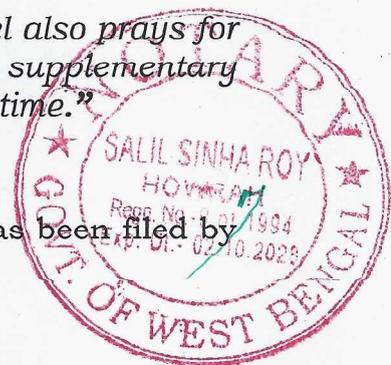
the Forest Department, West Bengal, as follows:

“2. Vide order dated 01.12.2021, this Hon’ble Court was pleased to crystallize the two surviving issues in the present OA which are as follows:

- (i) **Relating to Stone crushers on Laity River;**

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With reference to the above-mentioned allegation, it is stated that the said land does not fall under the jurisdiction of the



(ii) Illegal construction in the Buxa Tiger Reserve.

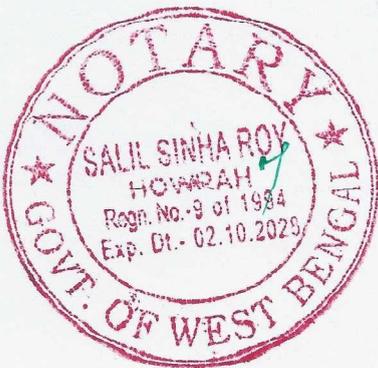
The allegations of the applicant were as follows:

- a. In the core areas of Buxa Tiger Reserve illegal Tourist Lodges/Hotels/Guest Houses/Home stay have been set-up both under private as well as Govt. (State) ownership.
- b. Chief Secretary, vide affidavit dated 25.10.2017 (pages 544 to 567) and State Forest Department, vide affidavit dated 28.08.2017 (pages 501 to 522) have admitted that in Buxa Tiger Reserve there are 69 of such establishments under private ownership and 20 (16+4) under the management of Govt. West Bengal.

With reference to the allegations made above by the Applicant in his statement, the Forest Department reported that status report was filed from time to time giving detailed documents as Respondent No. 3 answering the above-mentioned allegations on 10th May 2016, 28th August 2017, 12th October 2017, 09th February 2018, 24th April 2018, 26th June 2018, 12th April 2021 respectively, before the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata.

That the commercial tourist lodges which are the subject matter of this litigation are being operated by private persons. The activities of these lodges are confined to areas which were once 'Forest Villages' but then those have been designated as 'Revenue Villages' vide Notification No. 2802-L.P. dated 17.10.2014 under Clause(7) of Section 3 of the Land Registration Act, 1876.

- a. **Measures have been taken to stop encroachment in Buxa Tiger Reserve. The 69 numbers of lodges and Home Stays which were operating from different areas under Buxa Tiger Reserve (East) & (West) Division by fixed Demand holders were issued notice in pursuance of the Order of this Hon'ble Tribunal, vide Deputy Field Director, Buxa Tiger Reserve (East) Division's Memo No. 2886/15-230 dated 25.09.2017 and Deputy Field Director, Buxa Tiger Reserve (West) Division's No. 2989/18-4 dated 25.09.2017. Both the notices were served to the incumbents concerned through the Superintendent of Police, Alipurduar District (Memo No. 2174/E/PA dated 09.10.2017 & Memo No. 2175/E/PA dated 09.10.2017). A copy of the said notice issued by the Deputy Field Director, Buxa Tiger Reserve (East) & (West) Division vide its Memo No. 2886/15-230 and Memo No. 2989/18-4 dated 25.09.2017 respectively along with letter issued by Superintendent of Police, Alipurduar District vide**



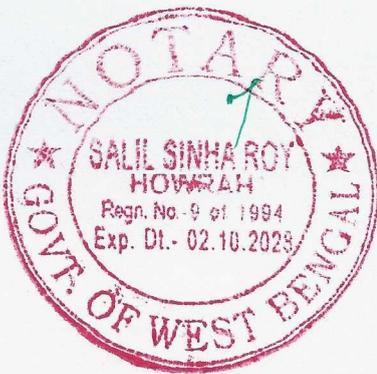
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Memo no. 2174/E/PA and Memo No.2175/E/PA dated 09.10.2017, respectively is annexed hereto collectively and marked as "ANNEXURE R/1"

- b. **It is further stated that 20 establishment under the Government of West Bengal namely Tourism, PWD and Irrigation Department at Jainti and the homestays in Buxa Tiger Reserve are closed as on date.** Copies of the photographs depicting the homestays closed are annexed hereto and marked as "ANNEXURE R/2."

As per report of the Forest Department:

- (i) Notices were issued to private owners of the Tourist Lodges, Hotels and Restaurants by the Deputy Field Director (East) Division's memo number 2989/18-4 dated 25.09.2017. These notices were served through the Superintendent of Police, Alipurduar.
- (ii) All the sixty nine (69) Tourist Lodges, Hotels, and Restaurants operated by the private owners are confined to enclave Revenue Villages which were earlier Forest Villages. There are thirty seven (37) such villages inside the Forest areas of Buxa Tiger Reserve and have been notified as Revenue Village vide Notification No. 2802-L.P. dated 17.10.2014. These Revenue Villages are no more under the administrative control of Forest Department.
- (iii) With reference to the newspaper report published in Bengali News Paper of North Bengal, Uttarbanga Sangbad dated 16.11.2021, Assistant Field Director was asked to do the field inspection. During the inspection, it was revealed that **there were three upcoming illegal constructions under the ownership of Sri Niki Thapa, Sri Kancha Mangar and Sri Umashankar Dubey.** Notices to said effect were earlier issued on 17.01.2021 by the Range Officer, Jayanti Range. A copy of the notice vide letter dated 17.01.2021 issued by the Range Officer, Jayanti Range is annexed hereto and marked as "ANNEXURE R/3".
- (iv) Subsequently, a notice has also been served on 16.11.2021 to Sri Niki Thapa, Sri Kancha Mangar and Umashankar Dubey, vide memo No. 425, 426 & 427/JNT-28, requiring them to prove the legality of the construction as above mentioned. A copy of the notice vide memo No. 425, 426 & 427/JNT-28 dated 16.11.2021 to Sri Niki Thapa, Sri Kancha Mangar and Umashankar Dubey is annexed hereto and marked as "ANNEXURE R/4".



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(v) Moreover, on 16.11.2021, a team of forest officials, including the Assistant Field Director, Buxa Tiger Reserve (East) Division, Range Officer, Jayanti Range and other forest staff along with police personnel tried to demolish the illegal structures but could not complete the same due resistance from local people. An F.I.R. was lodged in the Kalchini Police Station Alipurduar regarding the incident which occurred on 26.11.2021 vide Memo No. 454/Jainti-15. A copy of the F.I.R. lodged in the Kalchini Police Station, Alipurduar regarding the said incident is annexed hereto and marked ANNEXURE R/5".

c. Vide order dated 27.07.2017, Court had directed to demolish the Tourist Lodge being run in the name of Camping Station" but not implemented.

With reference to the above-mentioned allegation made by the Applicant, it is reported by the Tourism Department that it has issued memo to stop booking of "Camping Station" for tourists in Jayanti area and, at present, no tourist is allowed to use the said "Camping Station". The Tourism Department has filed a review petition being R.A.; No. 23/EZ/2017 before this Hon'ble Tribunal with a prayer to review the order of demolition of "Camping Station".

d. Vide order dated 25.04.2018 Court had directed to file Buxa Tiger Conservation Plan 2016-17 with copy to all the parties but not given to any of the parties so far

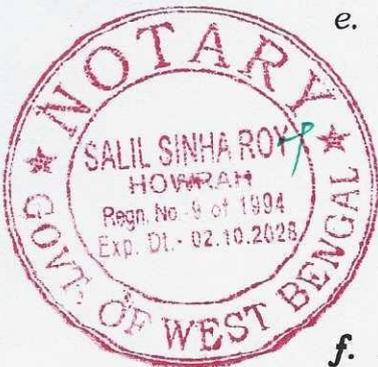
With reference to the above-mentioned allegation made by the Applicant, it is reported by the Forest Department that six copies Conservation Plan were submitted before the Hon'ble of Buxa Tiger Tribunal through Affidavit dated 26.06.2018.

e. Stone/boulder lifting is continuing in full swing from Jayanti River within Buxa.

With reference to the above-mentioned allegation made by the Applicant, it is stated by the Forest Department that no illegal surface collection of boulders/stones is done from Jayanti River in Forest areas. There are no illegal mines in Buxa Tiger Reserve

f. At Present Hundreds of New Establishments Have Come-Up and in the Name of Tourism There Is Extreme Tourism In Buxa.

An exercise to demolish the illegal structures was under taken by a team headed by the Chief Conservator of Forests & Field Director, Buxa Tiger Reserve, Deputy Field Directors, Buxa Tiger



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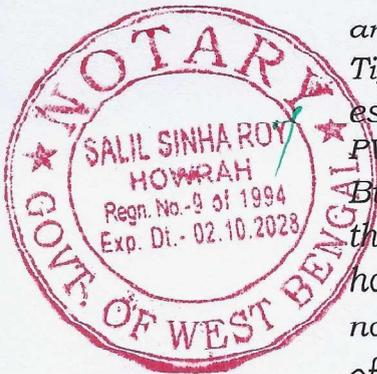
Reserve (East) Division along with forest and police personnel. **The illegal structures were demolished successfully on 08.12.2021.** Copies of the photographs showing the pre and post demolished structure is annexed hereto and marked as "ANNEXURE R/6" alongwith the copy of the Newspaper reporting on the demolition drive are annexed hereto and marked as "ANNEXURE R/7".

C. It is further submitted that the muck & debris from the demolition site is being removed to restore the area to its original form. **The Chief Conservator of Forests & Field Director, Buxa Tiger Reserve, has also issued strict instructions to monitor any kind of illegal constructions in the name of homestays or otherwise to the Deputy Field Director (East) & (West) Division & asked to seek the help of Police as and when required.** A copy the of direction issued by The Chief Conservator of Forests & Field Director, Buxa Tiger Reserve vide its letter dated 17.01.2022 is annexed hereto and marked as "ANNEXURE R/8."

Order dated 25.01.2022

11. Vide order dated 25.01.2022, the Tribunal considered the issue of 69 lodges in Buxa Tiger Reserve. The Tribunal noted that 37 villages inside the Tiger Reserve were notified as Revenue villages and were no longer under the control of the Forest Department. The Tribunal directed the State to explain how such conversion had taken place. Relevant part of the order is reproduced below:-

"3. In the affidavit, with regard to the issue relating to 'illegal constructions in the Buxa Tiger Reserve', it is stated that 69 lodges and home stays are operating from different areas under the Buxa Tiger Reserve (East) & (West) Division. It is further stated that the 20 establishments under the Govt. of West Bengal, namely, Tourism, PWD and Irrigation Department at Jayanti and the home stays in Buxa Tiger Reserve have been closed as on date. It is also stated that notices were also issued to private owners of tourist lodges, hotels and restaurants by the Deputy Field Director (East) vide memo no. 2989/18-4 dated 25.09.2017 served through the Superintendent of Police, Alipurduar. After service of the notices what has happened has not been stated. What has been done with regard to the demolition of structures in respect of structures for which notices were issued has also not been clarified. All that has been stated is that three illegal structures have been demolished on 08.12.2021. The demolition of these structures, we may note, have already been



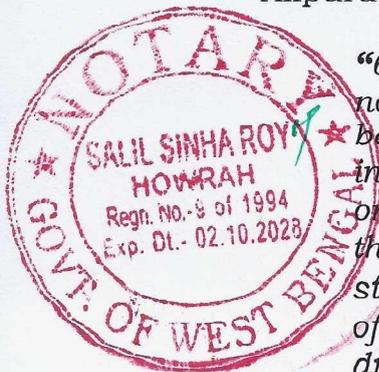
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considered by this Tribunal in Original Application No. 110/2021/EZ: Tribunal on its Own Motion Re. Unrestricted Hotels and Resorts in Jayanti Vs. State of West Bengal, which has been decided by the Tribunal on 25.01.2022.

4. However, we find that with regard to 69 tourist lodges, hotels and restaurants operated by the private owners, it is stated that these tourist lodges, hotels and restaurants are confined to revenue villages which were earlier forest villages. There are 37 villages inside the forest areas of Buxa Tiger Reserve and have been notified as revenue villages vide Notification No. 2802-L.P. dated 17.10.2014 and it is also stated that these revenue villages are no more under the administrative control of Forest Department.

5. The averments made in the affidavit of the Govt. of West Bengal, by the Deputy Secretary, Department of Forest, are deficient in material facts in as much as **it does not disclose as to how forest villages situated within a Forest Reserve declared by the Central Government under the notification of the Ministry of Environment, Forest and Climate Change as a Tiger Reserve has been converted into a revenue village by a State Government notification dated 17.10.2014.** It is also not clarified as to whether prior to converting these villages into revenue villages, due permission/sanction has been taken from the Ministry of Environment Forest and Climate Change under the Forest (Conservation) Act, 1980 or whether the conversion of forest villages to revenue villages were effected as per guidelines of Ministry of Tribal Affairs under Forest Rights Act, 2006. If this affidavit was sworn by the Forest Department, Govt. of West Bengal, we would have expected the Forest Department to have been fair to disclose the correct facts before the Tribunal which has not been done.”

12. Affidavit dated 28.02.2022 filed by the office of District Magistrate, Alipurduar of West Bengal is as follows:-



“6. It is most respectfully submitted that although, Laity river does not fall within Buxa tiger reserve, yet as this issue has been raised before this Hon'ble tribunal therefore, the deponent conducted a field inquiry regarding the present status of stone crusher units operating on the riverbank of Laity river. In furtherance of that on 09.02.2022, the Sub Divisional Officer, Mal, Jalpaiguri forwarded his report stating that one field inquiry was conducted regarding present status of stone crusher unit operating on the riverbank of Laity River and during the inquiry it was revealed as follows

- a) **The ARK Nirman (P) Ltd. Stone crusher unit is currently functional with license valid until 31.12.2023.**

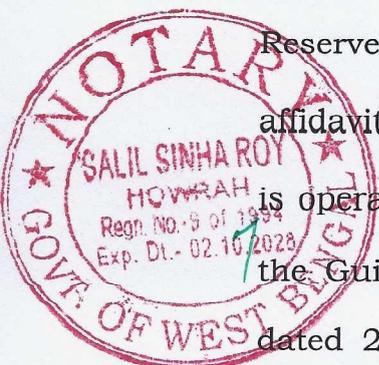
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- b) *The ARK Nirman (P) Ltd. Stone crusher unit is operating in Mal Block, J.L No.- 22, Mouza Manabari, LR Plot No.-48, Area 1.87 Ac and 48/368 Area 1.43 acre, Khatian No.-239, recorded in the name of ARK Nirman Pvt. Ltd and Khatian No.-177 recorded in the name of Rajesh Chettri.*
- c) *It has also been stated that during field inquiry it was found that machinery, materials vehicles were 100 ft. away from the river bank of Laity River. The plot is adjacent to River bank.*
- d) *It is further stated that no Government land is found to be under possession/occupancy by the said unit."*

13. An affidavit has been filed by the State on 04.02.2022. The stand taken therein is that conversion of the Forest villages to Revenue villages is in terms of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which does not require approval of the FC Act, 1980.

Consideration, Finding and Directions

14. We have heard learned counsel for the parties and perused records. In view of order dated 01.12.2021, we are only dealing with the issue of stone crusher on Laity river and illegal constructions in the Buxa Tiger Reserve. With regard to the stone crushers, factual position as per affidavit filed on behalf of the District Magistrate is that the stone crusher is operating within 100 ft. from the river. Siting norms laid down under the Guidelines of Environmental Guidelines for Stone Crushing Units¹ dated 2009 issued by CPCB require distance of 200 meters from the river, canal and lake. Further, the stone crusher cannot remain operative without requisite consent to establish and consent to operate and EC. This also violates norms for protection of flood plain zone which has significant environmental functions and has to be protected. The extent



¹http://www.gpcpcnvis.nic.in/Manuals_Guidelines/Environmental_Guidelines_for_Stone_Crushing_Units.pdf

of flood plain zones depends upon the applicable norms under different State laws. In its absence, in terms of order of this Tribunal dated 15.12.2020 in O.A. No. 22/2020, *Dilip Kumar Samantaray v. State of Odisha Board & Ors.*, the extent of flood plain zone has to be 100 meters from the edge of the river.

15. Relevant extract from the order is as follows:-

“1to7....xxx.....xxx.....xxx

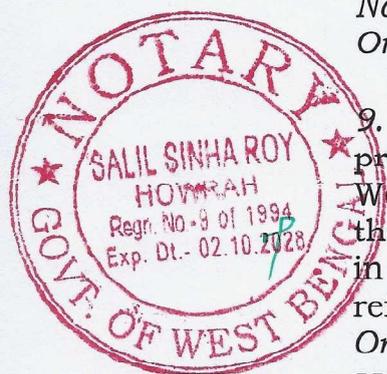
8. There does not appear to be any central legislation to regulate the flood plains, **except a notification dated 07.10.2016 issued by the Ministry of Water Resources, River Development, and Ganga Rejuvenation, with respect to Ganga river, under the Environment (Protection) Act, 1986, prohibiting any construction in the active floodplain area of river Ganga or its tributaries.** The Union Water Resources Ministry circulated a model Bill on the subject in 1975 but the same did not fructify into law. There are some State Acts like Manipur Flood Zoning Act, 1978 and the Uttarakhand Flood Plain Zoning Act, 2012. In the State of Maharashtra, there are norms for demarcating regulatory and prohibitory zones in the floodplains of the rivers.² Various States have taken their own legislative/administrative measures to regulate and prohibit activities in the floodplains. There are guidelines by some other States also.³ There are also norms for no development zone, restricted zone in the floodplains of the rivers in Gujarat as referred to in order of this Tribunal dated 21.09.2020 in OA 50/2018(WZ), *Nav Yuva Sanghatan & Ors. vs. The Secretary, Narmada, Water Resources, Water Supply & Kalpsar Department & Ors.*

9. The Wetlands (Conservation and Management) Rules, 2017 prohibit any permanent constructions within 50 meters of the Wetlands, from the mean high flood level in the past 10 years from the commencement of the rules. There are also similar restrictions in certain Master Plans like the Revised Master Plan of Bangalore referred to in *Mantri Techzone Pvt. Ltd. vs. Forward Foundation & Ors.* (2019) SCC Online SC 322.restricting constructions in catchment area of the lakhs. We are also not aware of the legislative and administrative measures in the State of Odisha on the subject

²Guidelines issued by the Irrigation Department of Maharashtra on 21.09.1989 as amended in the year 2018 and order of this Tribunal dated 11.07.2013 in OA 2/2013, *Sarang Yadwadkar v. Commissioner, Pune Municipal Corporation*, reported in 2013(1) All India NGT (Delhi) 299.

³ i. Also see order of the Allahabad High Court as reported in news article published on 04.01.2019 in The Times of India under the heading “No construction within 500 metre of high flood level: HC” authored by Shri Rajesh Kumar Pandey (https://m.timesofindia.com/city/allahabad/no-construction-within-500-metre-of-high-flood-level-hc/amp_articleshow/67379839.cms)

ii. News article published on 29.09.2016 in The Hindu under the heading “Building along the coast” authored by Shri G. Shyam Sundar (<https://www.thehindu.com/life-and-style/homes-and-gardens/Building-along-the-coast/article14644372.ece>).



of regulating and prohibiting activities in the floodplain zones of the rivers in the State, but such an exercise appears to be necessary to give effect to the precautionary principle of environmental law, required to be enforced by this Tribunal under section 20 of the NGT Act, 2010.

10. While considering the issue of rejuvenation of identified polluted river stretches, (including Mahanadi, which is one of such polluted river stretches) the Tribunal directed that each State must constitute a River Rejuvenation Committee (RRC) to prepare appropriate action plan and execute the same. The action plan needs to include a plan for protection of floodplains.⁴

11. There are also articles in the media dealing with the subject. We may only refer to some as follows:

“

i. Article titled “why floodplains need to be protected” dated 12.10.2018⁵ stating as follows:

“Damage to floodplains harms the riverine ecosystem, lessens groundwater recharge capacity and poses threats of flash floods. Enforcement of floodplain zoning regulation is a must to avert floods.

The Kerala flood of 2018....

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The lack of regulation and enforcement of land use in the floodplains added to the severity of the damage.

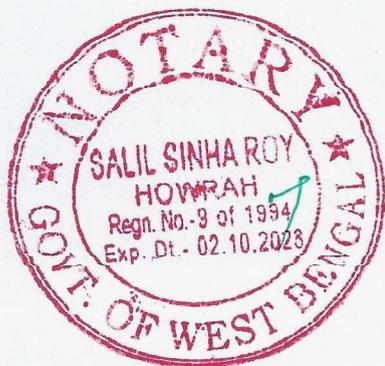
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Floodplains provide the space for rivers to spread their waters. When this space is missing due to encroachments, the river surges up and creates destruction.

“The lack of protection of river floodplains from damaging impacts like encroachment and diversion for ‘developmental projects’ is a tragedy that affects both the river as well as those who encroach it adversely. The river suffers as it is unable to occupy and transport flood waters downstream during high rainfall events (monsoon in particular). It is unable to recharge aquifers, wet the lands along its banks or provide life-sustaining conditions to plant and animal habitats along the river margins and banks.



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⁴ See order dated 21.09.2020 in OA No. 673/2018, In Re: News item published in “The Hindu” authored by Shir Jacob Koshy, titled “More river stretches are now critically polluted: CPCB”.

⁵ Author: Amita Bhaduri : <https://www.indiawaterportal.org/articles/sad-state-floodplains#:~:text=Damage%20to%20floodplains%20harms%20the,poses%20threats%20of%20flash%20floods.&text=The%20lack%20of%20regulation%20and,the%20severity%20of%20the%20damage.>

Damage to floodplains harms the riverine ecosystem, lessens groundwater recharge capacity and poses threats of flash floods. "People too suffer an immense loss of life and property, including loss of public infrastructure like bridges, roads, schools etc., during high floods,".

- ii. Article from Wikipedia under the heading "Floodplain"⁶, it is stated:

xxx xxx xxx
Floodplains can support particularly rich ecosystems, both in quantity and diversity.

xxx xxx xxx

A floodplain can contain 100 or even 1,000 times as many species as a river. Wetting of the floodplain soil releases an immediate surge of nutrients: those left over from the last flood, and those that result from the rapid decomposition of organic matter that has accumulated since then. Microscopic organisms thrive and larger species enter a rapid breeding cycle. Opportunistic feeders (particularly birds) move in to take advantage. The production of nutrients peaks and falls away quickly; however, the surge of new growth endures for some time. This makes floodplains particularly valuable for agriculture."

- 12. The Hon'ble Supreme Court, vide judgment dated 30.07.2009 in D.D.A. vs. Rajendra Singh, 2009 (8) SCC 582, referred to the definition of floodplain in the dictionary as follows:

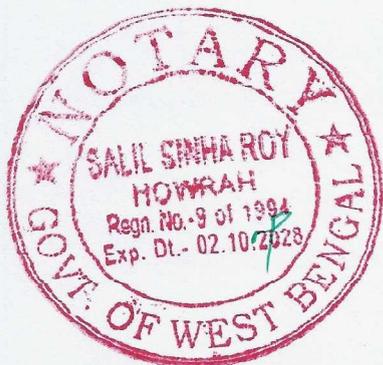
xxx xxx xxx

- 24. Though there is no statutory definition for "riverbed" and "floodplain" from the statute, the dictionary meaning of the same is as under:

"Riverbed" has been defined as the area over which the river flows. In the Thames Conservators Case [1897] 2 QB 335 at 337 it was held that the word riverbed denotes that portion of the river which in the ordinary or regular course of nature is covered by the waters of the river.

The "bed of the river" was defined as the area covered by the river and is the space sub-adjacent to the river over which it flows between the banks. It is the space between the banks occupied by the river at its fullest flow.

The Black's Law Dictionary, 6th Edition (Pg 154) describes a river bed as the hollow channel of a water course; the depression between the banks worn by the regular and usual flow of water; The land which is covered by the water in its ordinary low stage; The area extending between the opposing banks measured from the foot of the bank from the top of the water at its ordinary



⁶ <https://en.wikipedia.org/wiki/Floodplain>

stage. *P. Ramanatha Aiyer's Advanced Law Lexicon, Volume 4, 2005 Edition (Pg. 4157-4158) has described the bed of a river as the space contained between the banks; river bank in turn has been defined in the same law lexicon as the boundaries of a river throughout its width when the water flows to its maximum quantity.*

"Floodplain" - Land adjacent to rivers, which, because of its level topography, floods when river overflows. [Black's Law dictionary, 6th Edn., p.641].

It is also been defined as 'a low, flat area in either side of a river that can accommodate large amounts of water during a flood, lessening flood damage further downstream' [Fredd Michaels, 'Dictionary of Environment Studies']

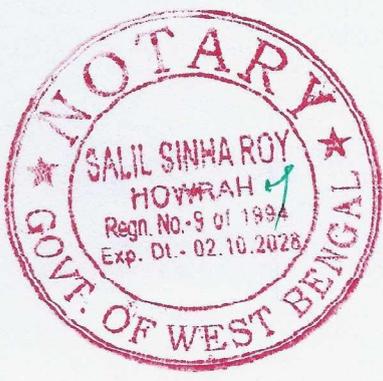
13. The Tribunal while considering restoration measures for Yamuna and Ganga rivers dealt with the issue of floodplains. Vide judgement dated 13.01.2015 in OA No. 6/2012 and OA No. 300/2013, Manoj Misra vs. Union of India & Ors. reported in 2015 ALL (I) NGT REPORTER (1) (DELHI) 139 in the context of river Yamuna, it was observed:

"81. Floodplain zoning has been accepted as an important nonstructural strategy for flood management. The basic concept of floodplain zoning is to regulate land use of floodplains to restrict damage caused due to floods. The floodplain zoning, therefore, aims at determination of locations so that flood damages are reduced to minimum. A very restrictive activity can be allowed in that area. It is not only to protect the areas from damage resulting from floods and failure of water protective measures, but is also useful in reducing the damage caused due to drainage congestion, particularly in urban areas. The Commission claims to have prepared a model bill relating to floodplain zoning. This model bill provides for different categories based of priorities in floodplain.

82. xxx xxx xxx

83. The floodplain must be demarcated, kept free from any permanent developments and wherever it is possible, it should be restored to its original position.

84. Keeping in view the fact that various developments have taken on the floodplain of river Yamuna and to a larger extent they have adversely affected the river flow, its ecology and bio-diversity, we would direct that floodplain zoning should be taken with reference to the flood of once in 25 years, as against other suggested figure of more years. It is important to demarcate the floodplain on this basis immediately, to protect it from any encroachments or development activities, which has already discussed and requested by the High Powered



28-

Committee, would adversely affect the ecology and environment.

85. Thus, it is necessary to call upon the authorities to demarcate the floodplain for the flood of once in 25 years and to prohibit any kind of development activity in the area in question. Furthermore, the Committee should consider restoration of the area and wherever necessary, even demolish the properties, which are likely to be dangerously exposed to the flood and are even affecting the ecology and bio-diversity and flow of the river.

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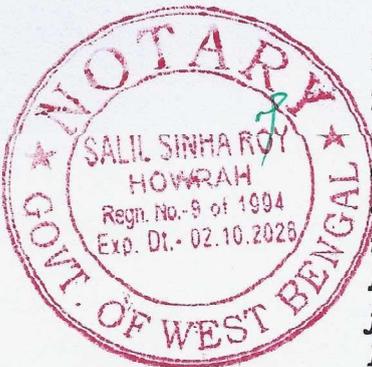
89. Subject to any law coming into force, we have already stated that flood of once in 25 years would be considered for defining and demarcating the flood plain. No development/construction activity, except that is stated herein, would be permitted in the Flood Plain of River Yamuna. No authority or person before us has even taken up the plea that why development/construction activity cannot be carried on in other parts of NCR, Delhi. As of now, sufficient land is available, may it is expensive, but that cannot be a ground for destroying the ecology, environment and biodiversity of River Yamuna of Delhi. The result of indiscriminate, unregulated and uncontrolled development activity are widely visible and felt by each and every one in Delhi. It would not only be unwise, but may prove fatal, if such approach is continued any further.”

14. Vide judgement dated 13.07.2017 in OA No. 200/2014, M.C. Mehta vs. Union of India & Ors. reported in 2017 NGTR (3) PB 1 in the context of river Ganga, it was observed:

“xxx

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142. Being an integral part of the river, floodplain of the river requires protection. Floodplains play significant role in maintaining the bio-diversity and aquatic life of the river. It's significance cannot be overlooked, in terms of environment and ecology. There are numerous dimensions involved while identifying the floodplains. It is required to categorize it into different zones, namely, No Development Zone, Regulated Zone and a Free Zone for development. The principle of Sustainable Development itself justifies the classification of floodplains into such zones for protecting the river. This Tribunal in the case of Manoj Misra (supra) had the occasion to deal with the concept of floodplain, its zoning and management.”

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During the course of proceedings before the Tribunal, the stakeholders also deliberated in favour of demarcation of floodplain of river Ganga, for ensuring protection and maintenance of the health of the river. **The above stated precedent of the Tribunal also has its definite reference in the Notification dated 7th October, 2016 issued by the MoWR. In sub-clause (ix) of clause 4(v) of the Notification which relates to Principles to be followed for rejuvenation, protection and management of river Ganga, states that the bank of river Ganga and its floodplains shall be a construction free zone to reduce sources of pollution, pressure on floodplains and to maintain its natural groundwater recharging properties.** This clearly demonstrates that fixation of the floodplain and its demarcation is one of the principal projects for cleaning and rejuvenation of river Ganga, amongst all the stakeholders. As already stated, the project at priority is to clean river Ganga and not to diversify financial resources to the subsidiary function of cleaning innumerable drains in the city. There are innumerable factors consequential to pollution of floodplains of the river. Indiscriminate and unplanned constructions or developments, carrying on of unauthorized and impermissible activities, dumping of municipal solid waste, bio-medical waste and E-waste in and around the floodplains, are some of the main contributors of pollution in river Ganga.

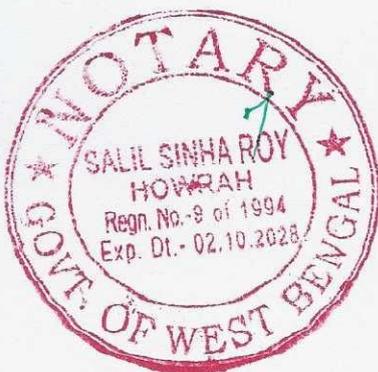
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182. ... The constitutional duty upon the citizens is to protect and improve the nature, environment including forests, rivers, wildlife and to have compassion for living creatures. No industry much less the State or its instrumentality can be permitted to indulge in pollution of natural resources particularly the river for economic benefits. **It is a settled principle of law that the Polluter Pays Principle and Precautionary Principle have to be read into the Principle of Sustainable Development.** Normally, they are applied collectively. Restrictions imposed are inbuilt fact of sustainable developments and that itself serves the cause of Intergenerational Equity. **To protect and improve the environment has a direct nexus to the quality of human life, thus, all environmental principles must come to the aid of the Courts and Tribunals for furthering the cause of Sustainable Development. In the case of 'Vellore Citizens Welfare Forum vs. Union of India' 1996 5 SCC 647 held with approval:**

"The concept of development to say that the traditional concept that development and ecology are opposed to each other is no longer acceptable. Sustainable Development is the answer i.e., development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. It is intended to improve the quality of human life, while living within the carrying capacity of the supporting



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ecosystems. The 'Precautionary' Principle and 'Polluter Pays' Principles were, therefore, said to be the essential features of the Principle of Sustainable Development."

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182.1

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7. Till the demarcation of the floodplains and identification of permissible and non-permissible activities by the State Government of this judgement, we direct that 100 meters from the edge of the river would be treated as no development/construction zone in Segment-B of Phase-I (Haridwar to Unnao, Kanpur)."

15. In view of averments made by the applicant that the river beds is proposed to be affected by setting up of the Medical College or other permanent constructions in the floodplain of the river, there is need to prevent irreversible damage to the riverine ecology by enforcing the applicable rules, if any. If there are no rules, appropriate norms need to be laid down considering such norms in other similar situations in consultation with the experts."

16. In the present case, the stone crusher activity being within 100 feet of the edge of the river, cannot be allowed. The State PCB and District Magistrate may accordingly take further action, following due process of law, within two months from today.

17. We also find that while protection of forest rights under the 2006 Act may not require following of procedure under the FC Act, 1980, the

same cannot be held to permit commercial activity in such area. With

regard to hotels, restaurants/camping stations in the forest area, stand

of the State itself is that the same are not permissible. Establishments

operated by the State have been closed while proceedings have been

initiated against the establishments operated by private persons. Such

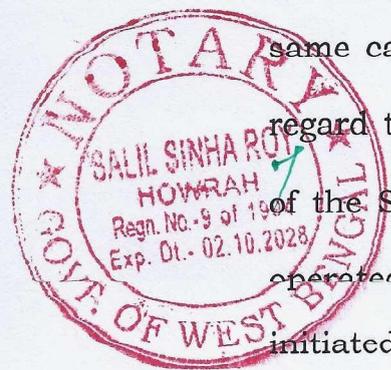
establishment may accordingly be closed within two months, following

due process, which will be the responsibility of the State PCB, Field

Director, Buxa Tiger Reserve and District Magistrate.

The application is accordingly disposed of.

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A copy of this order be forwarded to the Chief Secretary, West Bengal, State PCB, Field Director, Buxa Tiger Reserve and District Magistrates, Jalpaiguri and Alipur Dwar by email for compliance.

R.A. No. 23/2017/EZ

18. The Department of Tourism, West Bengal has sought review of order dated 27.07.2017 referred to above, requiring the establishment operated by it to be demolished. According to the Tourism Department, it is a camping station on the outskirts of Jayanti village. There is no permanent structure. It was given to the Tourism Department by the Forest Department. In the camping station, villagers are getting opportunity of employment. The camping station was set up prior to 05.12.1997, before declaration of the area as National Park.

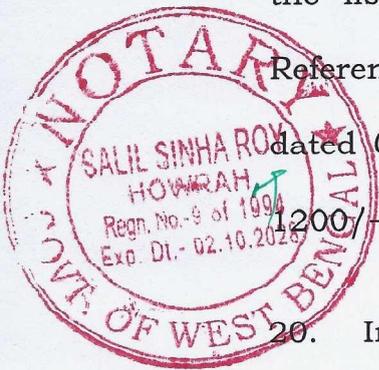
19. Reply has been filed to the review application by the applicant in O.A., disputing the averments that it is a temporary structure. Reference has been made to the official website of the Tourism Department giving the list of 31 tourist centers which include the present structure.

Reference has also been made to the advertisement in Times of India dated 01.05.2016 to let out non-AC room in the said structure at Rs. 1200/- per day and non-AC triple bedroom at Rs. 1500/- per day.

20. In view of the above, it is clear that establishment is being used for commercial purposes which is not permissible in the Core area of Tiger Reserve as per provisions of Wildlife (Protection) Act, 1972.

21. We also find order of the State of West Bengal dated 15.04.2008 filed by the applicant prohibiting any hotels/restaurant/resort within 1

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Km. of reserved forest without consent to establish and consent to operate which have not been granted in the present case.

22. In view of the above, the establishment in question cannot be run for commercial purposes. However, instead directing demolition, we direct that the same be handed over to the Forest Department and used as Interpretation-cum-Training Center for nature conservation and management. If the establishment is not transferred to the Forest Department within two months, the same will be demolished which will be the responsibility of the District Magistrate, Alipurduar.

The review application is disposed of accordingly.

All pending M.A.s will also stand disposed of.

Adarsh Kumar Goel, CP

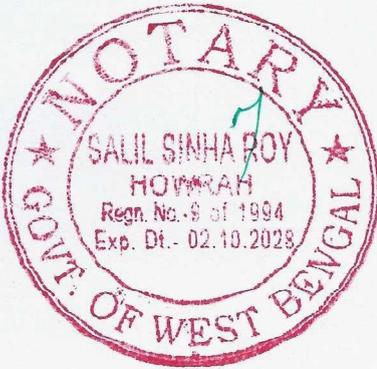
Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Arun Kumar Tyagi, JM

Saibal Dasgupta, EM

Dr. Afroz Ahmad, EM

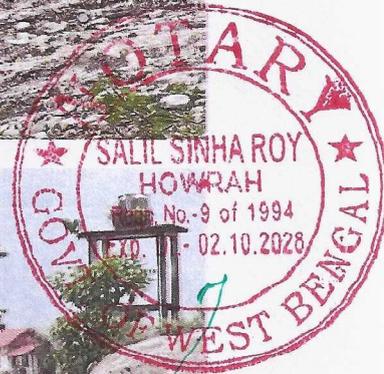
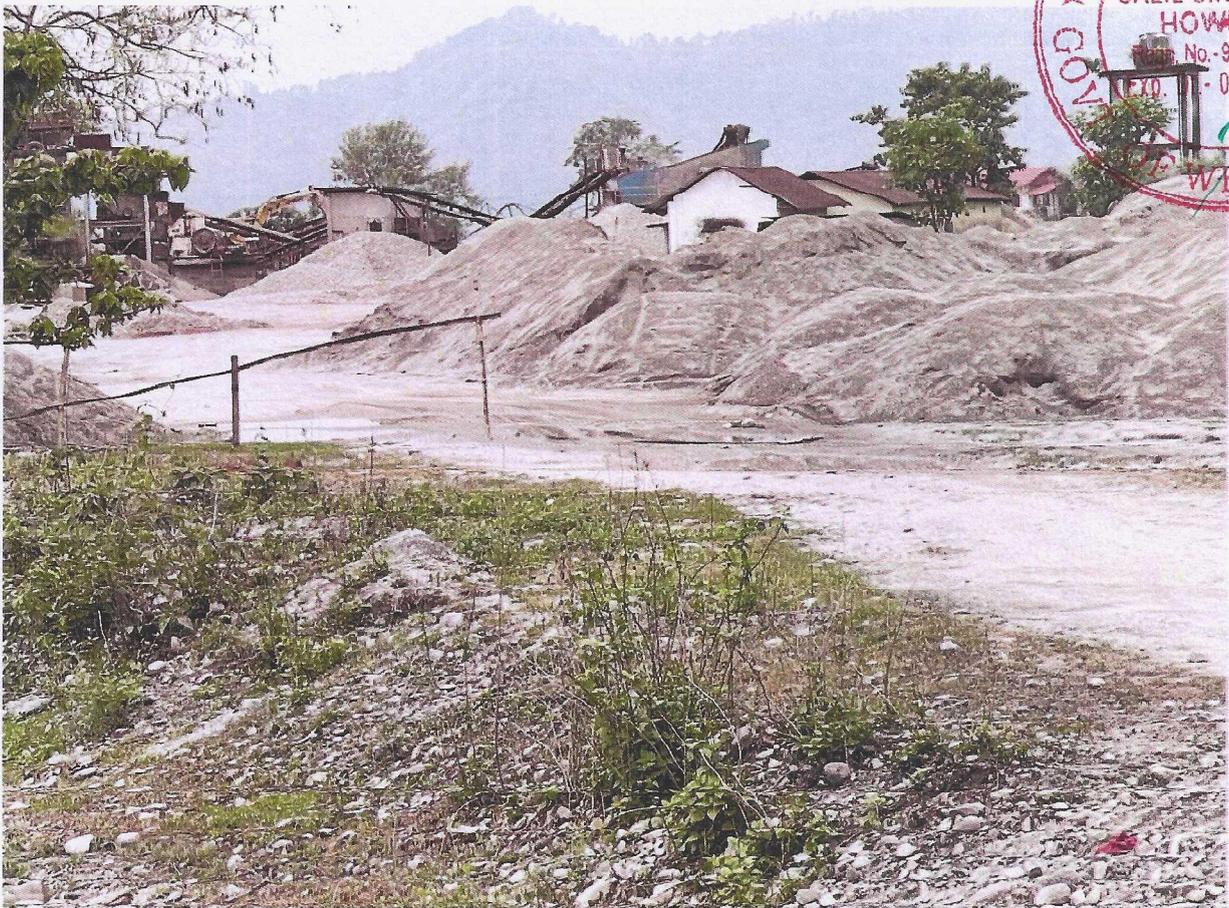
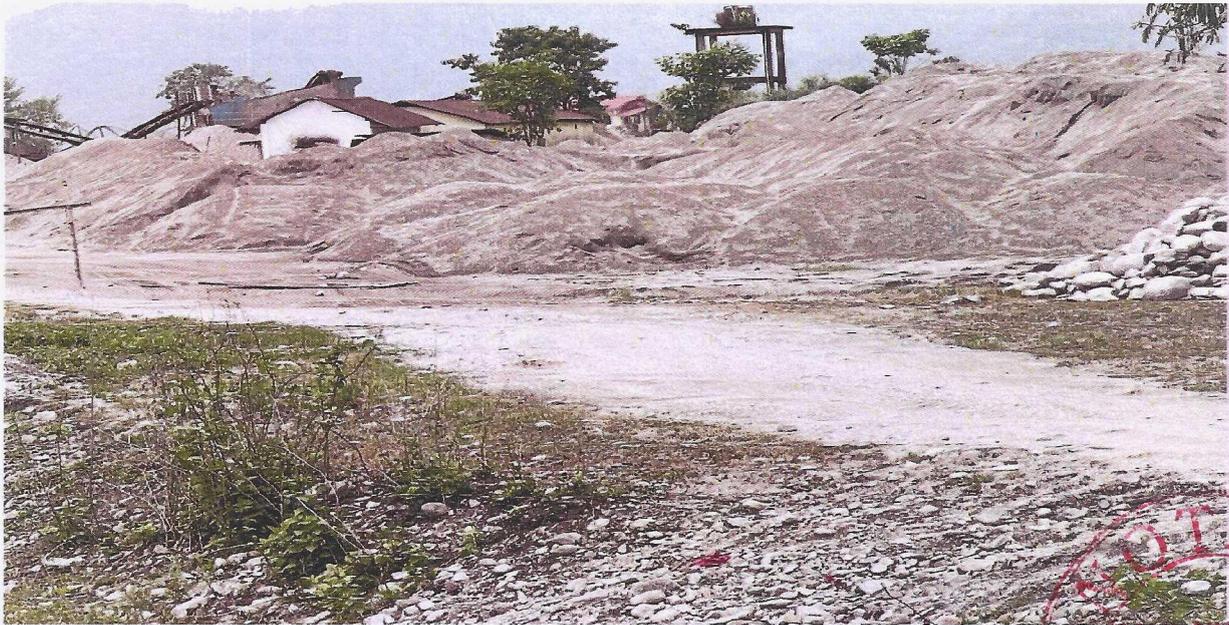


May 30, 2022

O.A. No. 136/2015/EZ & R.A. No.23/2017/EZ

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28 MAY 2024



Photographs taken on 08.05.2024 showing the site of the stone crushing unit at the bank of Laiti river, next to the Noam Forest Range office adjacent to Pather Jhora , Jalpaiguri

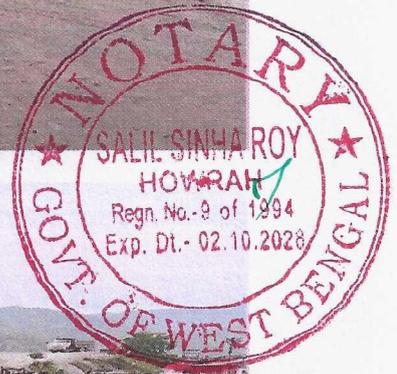
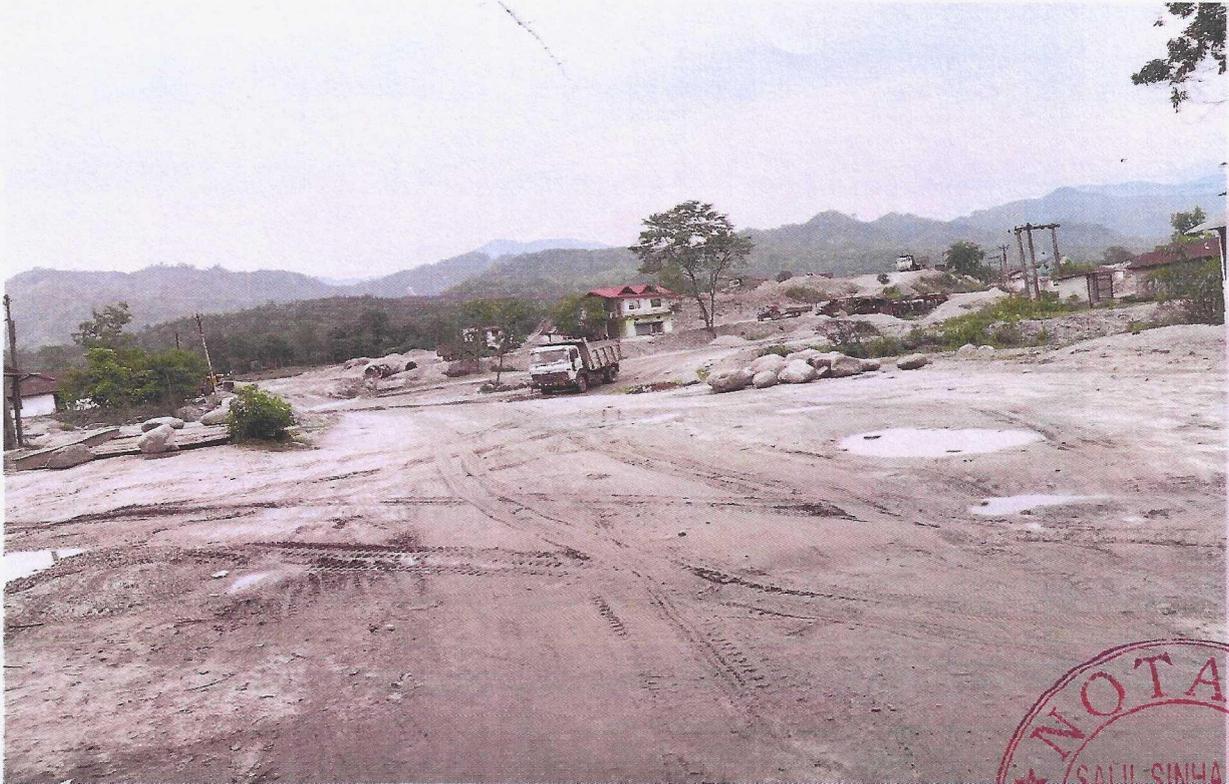
28 MAY 2024

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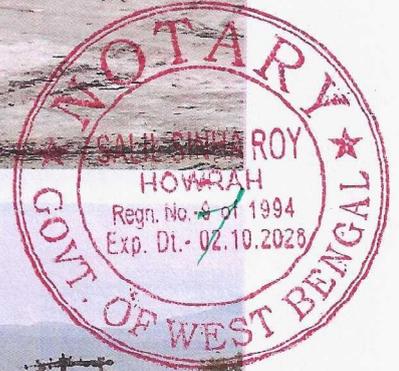
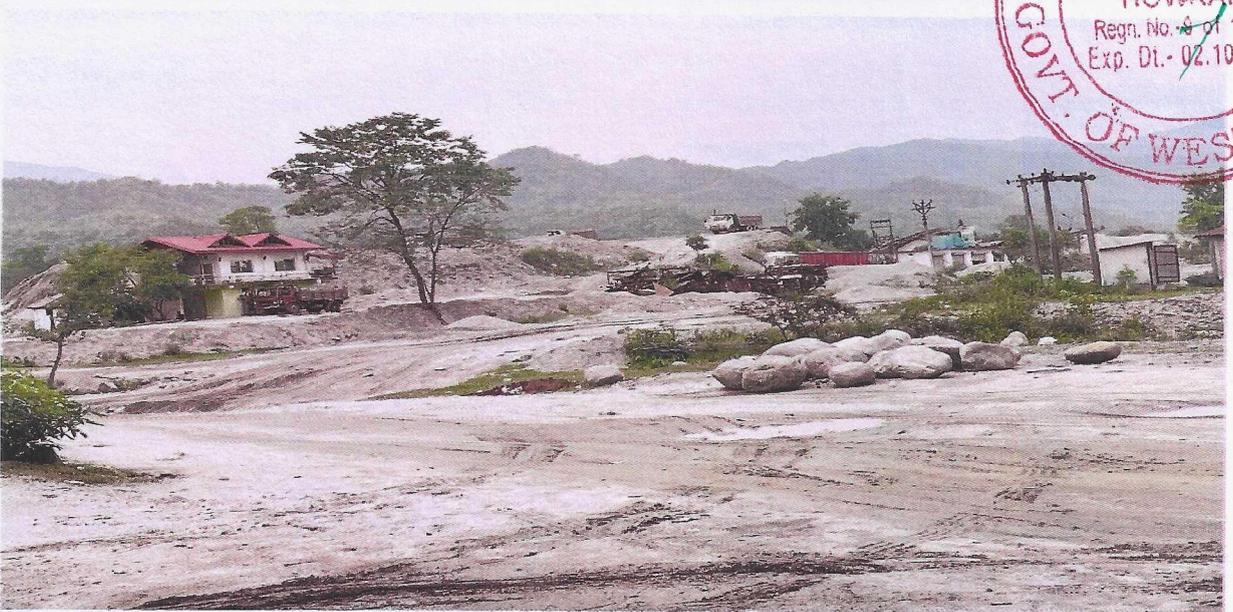
Photographs taken on 08.05.2024 showing the site of the stone crushing unit at the bank of Laiti river, next to the Noam Forest Range office adjacent to Pather Jhora , Jalpaiguri

28 MAY 2024



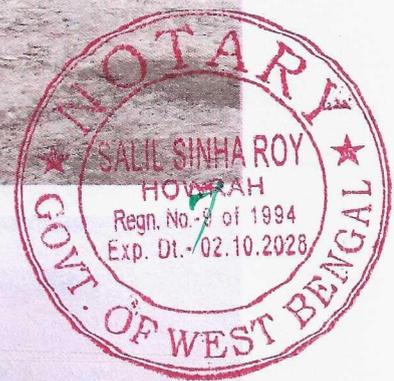
Photographs taken on 08.05.2024 showing the site of the stone crushing unit at the bank of Laiti river, next to the Noam Forest Range office adjacent to Pather Jhora , Jalpaiguri

28 MAY 2024



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28 MAY 2024



Photographs taken on 08.05.2024 showing the site of the stone crushing unit at the bank of Laiti river, next to the Noam Forest Range office adjacent to Pather Jhora , Jalpaiguri

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NOTARY
SALIL SINHA ROY
HOWRAH
Regn No: 9 of 1994
Exp. Dt: 02.10.2028
WEST BENGAL

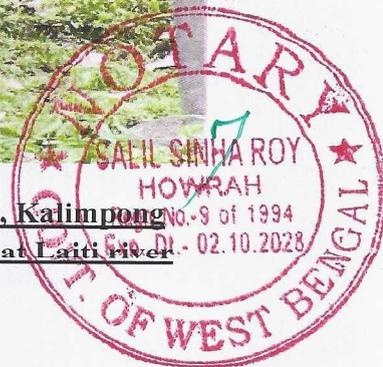
Photographs taken on 08.05.2024 showing the Noam Forest Range Office site , Kalimpong Forest Division where next to their boundary Crusing unit is being operated at Laiti river bank

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Photograph taken on 08.05.2024 showing the Noam Forest Range Office site , Kalimpong Forest Division where next to their boundary Crusing unit is being operated at Laiti river bank



28 MAY 2024



Photographs taken on 08.05.2024 showing the Noam Forest Range Office site , Kalimpong Forest Division where next to their boundary Crusing unit is being operated at Laiti river bank

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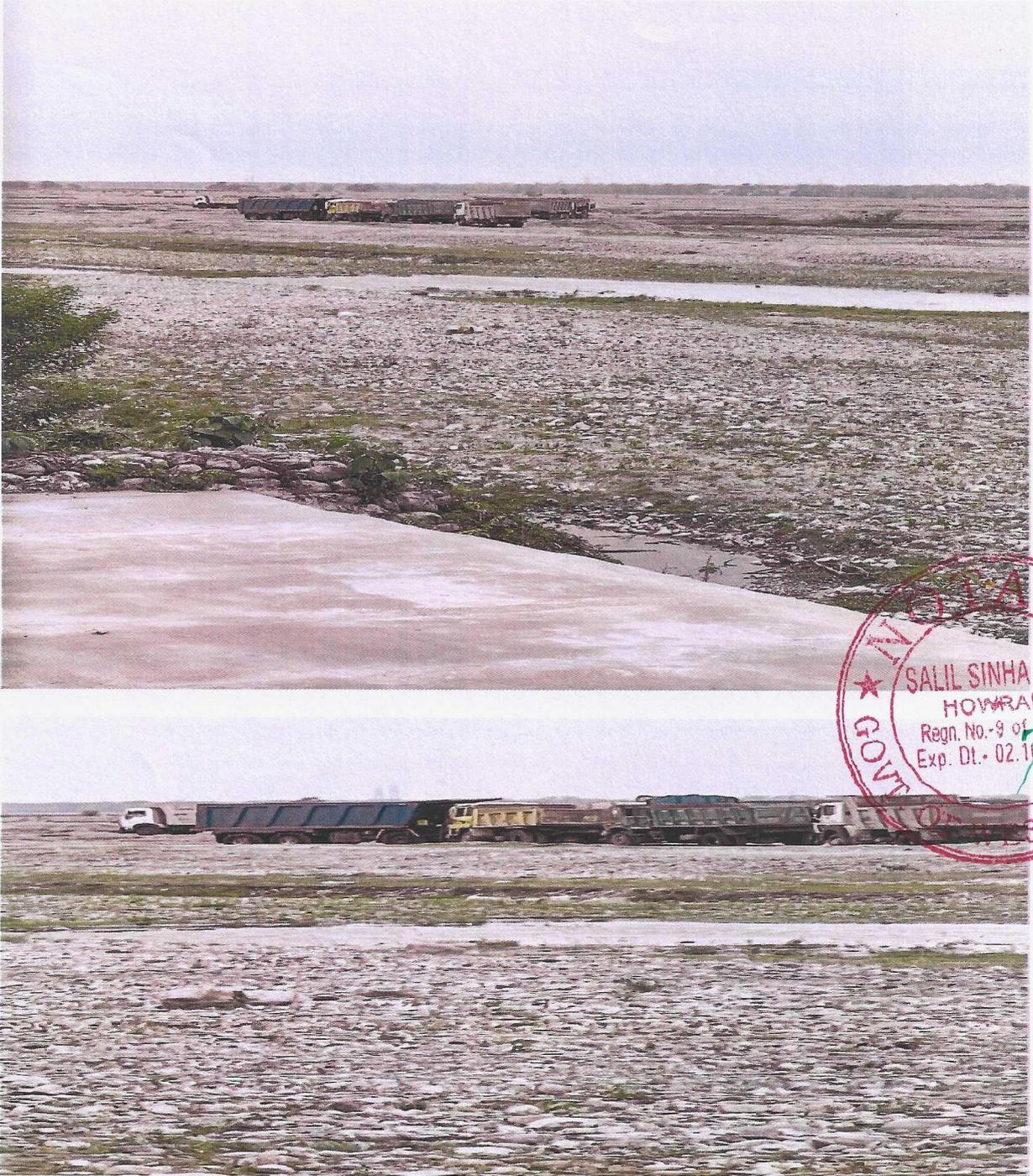


Photograph taken on 08.05.2024 showing the site of the stone crushing unit at the bank of Laiti river, next to the Noam Forest Range office adjacent to Pather Jhora , Jalpaiguri

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Annexure MB/14



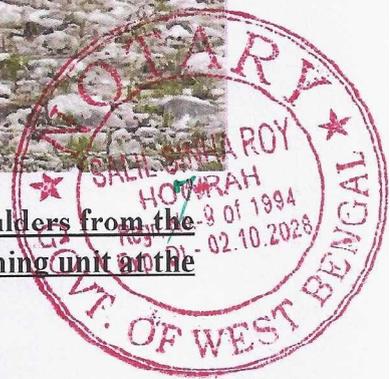
Photographs taken on 08.05.2024 showing the lifting operation of stones/boulders from the river bed of Laiti catering the raw material requirements of the stone crushing unit at the upstream

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Photograph taken on 08.05.2024 showing the lifting operation of stones/boulders from the river bed of Laiti catering the raw material requirements of the stone crushing unit at the upstream



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Subhas Datta
Chartered Accountant
Environmental Activist

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Annexure MA/5

Resi: 25/1, Guitendal Lane, Howrah-711 101
55/2, Panchanantala Road, Howrah-711 101
Office: S. R. Dutt Associates
17, Sagar Dutta Lane, Calcutta-700 073

Contact: (033) 2638 3526, 9830752752 (M)
Email: subhasdatta@rediffmail.com

To
The Member Secretary,
West Bengal Pollution Control Board,
Paribesh Bhawan, 10A, Block-LA,
Sector-III, Bidhan Nagar,
Kolkata-700098 108

21.05.2024

Sir,

Sub: Illegal operation of Stone Crusher on Laiti river at
Jalpaiguri near to Patherjhora Tea Estate by violating
the order of the National Green Tribunal

I like to bring to your kind attention to the position that during a recent visit undertaken by the undersigned in early May 2024 it has been observed that one stone crushing unit is operation at the bank of Laiti river, near Patherjhora Tea Estate by violating the order of the Hon'ble National Green Tribunal, Special Bench in OA No 136/2015/EZB dated 30th May 2022. The operative part of the said order reproduced as follows:-

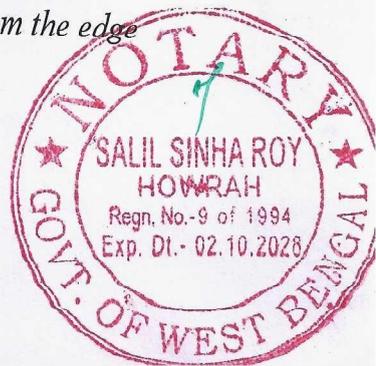
"That in the order of 30th May 2022, vide paragraph 14, it had been stated under the caption – "Consideration, Finding and Directions", which goes as follows:-

"Consideration, Finding and Directions

14. We have heard learned counsel for the parties and perused records. In view of order dated 01.12.2021, we are only dealing with the issue of stone crusher on Laiti river and illegal constructions in the Buxa Tiger Reserve. With regard to the stone crushers, factual position as per affidavit filed on behalf of the District Magistrate is that the stone crusher is operating within 100 ft. from the river. Siting norms laid down under the Guidelines of Environmental Guidelines for Stone Crushing Units¹ dated 2009 issued by CPCB require distance of 200 meters from the river, canal and lake. Further, the stone crusher cannot remain operative without requisite consent to establish and consent to operate and EC. This also violates norms for protection of flood plain zone which has significant environmental functions and has to be protected. The extent

[http://www.gpcenvis.nic.in/Manuals_Guidelines/Environmental_Guidelines_for_Stone_Crushing_Units.pdf] 14 of flood plain zones depends upon the applicable norms under different State laws. In its absence, in terms of order of this Tribunal dated 15.12.2020 in O.A. No. 22/2020, Dilip Kumar Samantaray v. State of Odisha Board & Ors., the extent of flood plain zone has to be 100 meters from the edge of the river."

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"That the Hon'ble Court had given the specific directions vide paragraph 16 of the said order dated 30th May 2022, which reads as follows:-

"In the present case, the stone crusher activity being within 100 feet of the edge of the river, cannot be allowed. The State PCB and District Magistrate may accordingly take further action, following due process of law, within two months from today."

The said unit is violating the environmental and distance criteria norms as set out by the Central Pollution Control Board and directed by the National Green Tribunal. The photographs of the present position have been taken on 8th May 2024.

In view of the above, you are requested to initiate action in the matter without any further delay.

SOLEMNLY AFFIRMED & DECLARED
BEFORE ME ON IDENTIFICATION

SALIL SINHA ROY
NOTARY HOWRAH

Thanking You,
Yours Faithfully,

Subhas Datta
(Subhas Datta)

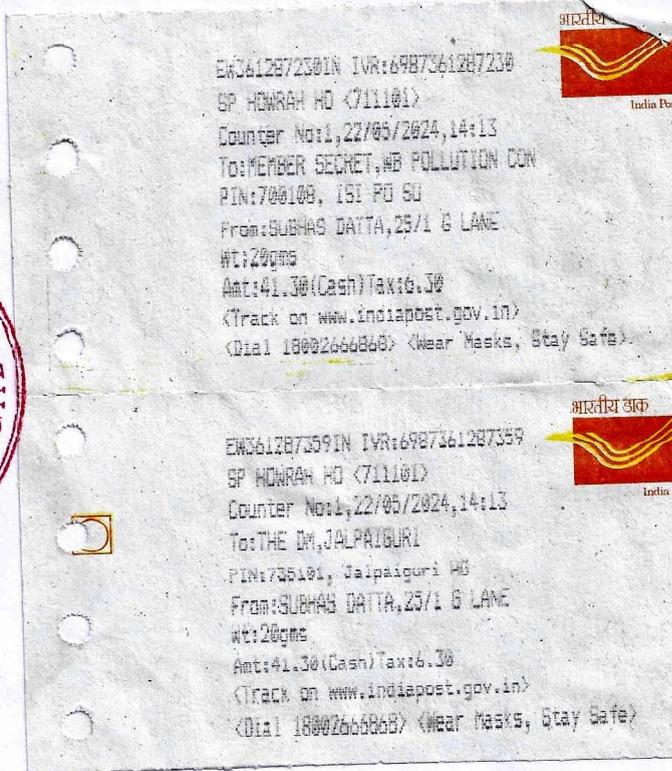
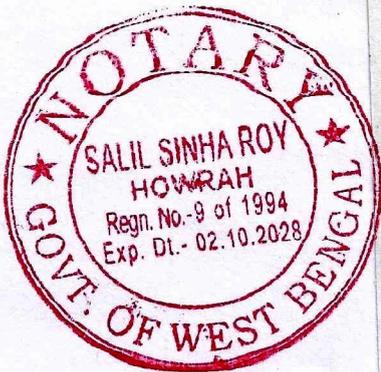
C.c. To,

The District Magistrate,
Collectorate Avenue,
Jalpaiguri-735101

IDENTIFICATION BY ME &
SIGNED/L.T.I. TAKEN IN MY PRESENCE

Jibanjit Chakraborty
Advocate

JIBANJIT CHAKRABORTY
Advocate
Howrah Judges Court
WB-744672000



28 MAY 2024