

S.L. No. 37/24

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, AT KOLKATA
MEMORANDUM OF ORIGINAL APPLICATION
(APPLICATION UNDER SECTION 14, 15 AND 18 OF THE NATIONAL
GREEN TRIBUNAL ACT, 2010)

O. A. No. of 2024 / EZ

In the matter of :

Shri. Nabendu Kumar Bandyopadhyay

... Petitioner

VERSUS -

~~The State of West Bengal~~ & Others
Union of India

... Respondents

PAPER BOOK



FOR INDEX, PLEASE SEE INSIDE

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18 JUL 2024

NATIONAL GREEN TRIBUNAL EASTERN REGION BENCH AT KOLKATA
 MEMORANDUM OF ORIGINAL APPLICATION
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IN THE MATTER OF:

Shri. Nabendu Kumar Bandyopadhyay
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- VERSUS -
 Union B. Srelia
 The State of West Bengal & Others

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SYNOPSIS

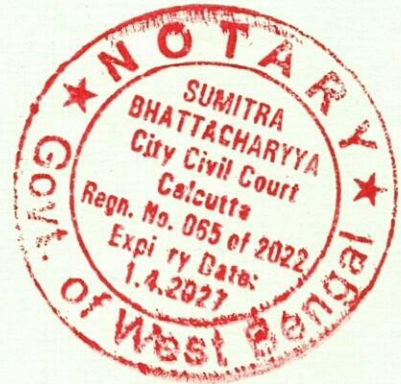
The reason for ^{Filing} filing the present application before this Hon'ble Tribunal against encroachment and filling up of a waterbody commonly known as Nayanjuli which extends from Ultadanga to Lake Town crossing on the southern side of VIP Road covering four wards under the South Dum Dum Municipality. This waterbody is one of the oldest water bodies and caters to the requirement of the entire population in the area, a phenomenon which is said to be increasing. The immense significance of the said Nayanjuli, is being rapidly filled up and depleted due to illegal encroachments for housing projects by private builders and other urban expansion and uncontrolled and indiscriminate dumping of garbage and debris especially for absence of proper application of plan by the State and illegal sanctions in connivence with private builders at the cost of public life and environment. That intentional deliberate negligence on the part of the State authorities in protecting and preserving the water body and ignorance of implementation of Polluter Pay principal has been taken advantage of by those builders indulging in such activities critically endangering the very existence of the Nayanjuli.

Moreso, infringement of law, which is actively or passively being condoned for private gain, is being encouraged which in turn leading to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions and judgment of this hon'ble Tribunal everyday resulting in ecological imbalance and degradation of environment, the adverse effect of which will have far reaching consequence which is to be borne by the future generations to come. This is clear violation of law by State Authorities with hands in gloves with Private Builders. Hence, the present application.

Nabendu Kumar Bandyopadhyay

List of Dates

<u>Dates</u>	Particulars.
10/07/2017	Order/Judgement passed by the Hon'ble National Green Tribunal, Eastern Bench Kolkata.
2017-2024	Respondents authorities have failed and neglected to comply with such order, which was passed by the Hon'ble Tribunal based on all possible records, affidavits, submission, along with physical inspection of the site by its Judicial and Expert Members.



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NATIONAL GREEN TRIBUNAL EASTERN REGION BENCH AT KOLKATA
 ORIGINAL APPLICATION NO. OF 2024/EZ
 MEMORANDUM OF ORIGINAL APPLICATION

In the matter of:

Application under Sections 14, 15 and 18 of
 the National Green Tribunal Act 2010;

And

In the matter of:

Shri. Nabendu Kumar Bandyopadhyay, son
 of Late Nikhil Chandra Banerjee, residing of
 3rd Floor, B-35/8, Kalindi Housing Estate,
 Lake Town, PIN 700089;

email:nabendubanerjee@yahoo.com

...Petitioner/Applicant

-Versus-

1. Union of India, service through the
 Secretary, Ministry of Environment, Forest
 and Climate change, Indira Paryavaran
 Bhawan, Jor. Bagh Road, New Delhi-110
 003; Email: secy-moe@nic.in

2. The State of West Bengal through the
 Chief Secretary, Govt. of West Bengal,
 Nabanna, 325, Sarat Chatterjee Road,
 Shibpur, Howrah-711102;

Email: cs-westbengal@nic.in

3. Urban Development Department and
 Municipal Affairs through the Principal
 Secretary, Govt. of West Bengal, Nagaryan
 Bhawan, Sector-I, Salt Lake, Block-DF-8,
 Bidhannagar,

Kolkata -700 064; email:secy.ma-wb@nic.in

4. The State of West Bengal, through the
 Principal Secretary, Department of
 Environment, Government of West Bengal,
 Pranisampad Bhaban, 5th Floor, LB-2,
 Sector-3, Bidhannagar, Kolkata, West
 Bengal-700106, pescy.env.wb@gmail.com





5. The West Bengal Pollution Control Board, Service through the Member Secretary, having its office At – Paribesh Bhawan, 10 A, Block LA, Sector III, Salt Lake City, Kolkata 700106;

Email: ms.wbpcb-wb@bangla.gov.in;

6. The Chief Environment Officer, Department of Environment, Government of West Bengal, Pranisampad Bhaban, 5th Floor, LB-2, Salt Lake, Sector-3, Bidhannagar, Kolkata, West Bengal-700106.

Email: environmentwb@gmail.com

7. The State of West Bengal through The Secretary, Public Works Department, Govt. of West Bengal, Nabanna, 325, Sarat Chatterjee Road (8th Floor), Howrah-711102, [Email:secpwd@wb.gov.in](mailto:secpwd@wb.gov.in)

8. Public Works Deptt. Through the Secretary Govt. of West Bengal, Nabanna, 8th Floor, 325, Sarat Chatterjee Road, Shibpur, Howrah- 711102;

Email: secpwd@wb.gov.in

9. The Executive Engineer, Barasat Highway Division No. 1 PW (Roads), Directorate, MBL House, 5th Floor, DD-18/8, Sector-I, Salt Lake, Kolkata-700064;

a. email: eebhd1@gmail.com

10. South Dum Dum Municipality, Through its Executive Officer, Nager Bazar, Dum Dum Road, Kolkata -700 074;

Emai: southdumdum74@gmail.com

11. The Chairperson, South Dum Dum Municipality. Nager Bazar. Dum Dum Road, Kolkata-700074,

Emai: southdumdum74@gmail.com

12. The Commissioner of Police, Bidhannagar Police Commissionerate, No.3 Salt Lake Stadium R.D, JB Block, Sector-3

Bidhannagar, Kolkata, West Bengal-700 106,
Emai: cpbdn@police.gov.in

13. The Chief Executive Officer , Kolkata Metropolitan Development Authority, Unnayan Bhavan, DJ - 11, Sec - II, Salt Lake, Kolkata - 700091,
Emai: ceokmda@gmail.com

14. The Principal Secretary, Irrigation & Waterways Deptt. Govt. of West Bengal, Jalasampad Bhawan 1st Floor, DF- Block, Sector-1 Bidhannagar, Kolkata West Bengal-700091;

Emai: iwd.prsecy@gmail.com

15. The Executive Engineer, Canal Division, Irrigation & Waterways Deptt. Govt. of West Bengal, 9, Golf Street, Kolkata, 700 003;

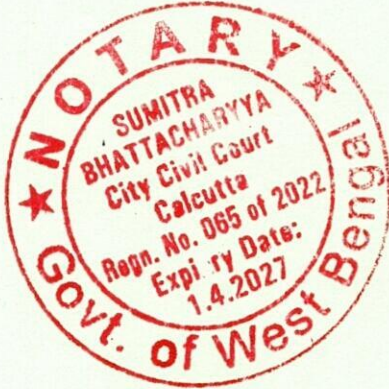
Emai: ee-mayuscndvn@wbiwd.gov.in

16. State Environment impact Assessment Authority (SEIAA) West Bengal through its Principal secretary having office at PRANISAMPAD BHAWAN, Block (5th Floor), LB-II, Salt Lake, Sector-III, Bidhannagar, Kolkata- 700106.

E-mail: environmentwb@gmail.com

.... Respondents

The humble petitioner of the petitioner above named.



Most Respectfully Sheweth:

1. The petitioner is a public spirited, peace loving and law-abiding citizens of India, having his permanent address as mentioned in the cause title herein above.

2. The applicant is cautious and serious about protecting the environment and water bodies and protection of the right to clean Environment as guaranteed under Article 21 and in discharge of his fundamental duty under Article 51A of the Constitution of India. It is settled law that fundamental rights are interlinked. For say, State cannot give one right to reside at one hand and by conduct denial/infringement of his right to work or live in pollution free

environment. The applicant is filling this instant Application under section 14, 15, read with Section 18 of the National Green Tribunals Act, 2010. More so, a person can be deprived of right to pollution free environment when he has been given under right to work and reside. These are the fundamental principles of right to life and recognition of fundamental rights.

3. That in the year 2015, some public spirited and environment conscious persons filed an Original Application being O.A. No. 27/2015/EZ (Dwaipayan Sengupta -VS- Union of India & Ors.) and subsequently, another application was filed being O.A. No. 46/2015/EZ (Paschim Banga Vigyan Mancha & Anr. -Vs- Union of India & Ors.) with identical issues, before the Hon'ble Green Tribunal, Eastern Zone at Kolkata although lacks positive implementation of the orders passed by this hon'ble Tribunal in those proceedings.

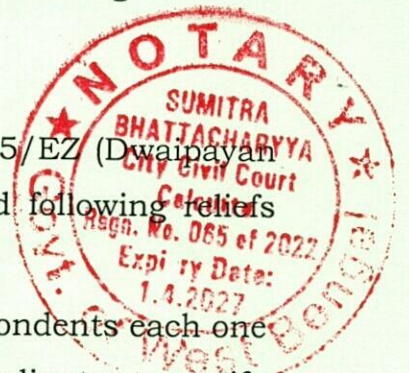
4. That the main issues of such applications, as filed before the Hon'ble Green Tribunal, Eastern Zone at Kolkata, was against illegal encroachment and filling up of a waterbody commonly known as Nayanjuli, which extends from Ultadanga to Lake Town crossing on the southern side of VIP Road, covering four wards under the South Dum Dum Municipality viz. Ward Nos. 29,30,34 and 35 and consequential results by private which is one of the oldest water bodies and caters to the requirement of the entire population.

5. That notwithstanding immense significance, the said Nayanjuli, is being rapidly filled up and depleted due to illegal encroachments for housing projects, other urban expansion and uncontrolled and indiscriminate dumping of garbage and debris.

6. That negligence on the part of the state authorities who is bound by the doctrine of Parens Patria in protecting and preserving the water body and ignorance of implementation of Polluter Pay principal, has been taken advantage of by those indulging in such activities critically endangering the very existence of the said Nayanjuli, thereby infringing the law, which is actively or passively condoned for personal gains.

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7. It is needless to mention that such violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions like Polluter Pay principal, which often resulted in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.
8. That it was further contended in such applications that the water body was also being used as dumping ground for waste materials and it was as further contended in such applications that a joint research on the status of the said Nayanjuli was carried out by the State Environment Department and South Asian Forum for Environment (SAFE), which revealed that 42% of the water body had been covered up by garbage, 36% of it illegally occupied and encroached upon and observed poisonous methane gas being emitted therefrom causing heavy pollution.
9. It was further stated that between the years 2004 and 2014 substantial portion of the said Nayanjuli had been covered up and that such illegal activities had been given a fillip because of the apathy and inaction on the part of the authorities thereby endangering its very existence. It was alleged that the State Authorities had failed to take steps against those responsible for covering up endangering the said Nayanjuli which they were bound to protect and maintain considering its environmental and social significance. That as such acts amounted to violation of the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Wetlands (Conservation and Management) Rules, 2010 and penal action ought to have been initiated against those committing such illegalities.
10. Accordingly, the applicant in the O.A. No. 27/2015/EZ (Dwaipayan Sengupta -VS- Union of India & Ors.) has thus prayed following reliefs although did not cover the larger issue raised herein:-
- Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to certify and transmit to this Hon'ble Tribunal all records forming the basis of their inaction regarding illegal filling up, encroachment and depletion of the Nayanjuli so that conscionable justice may be rendered by setting aside and quashing the same.

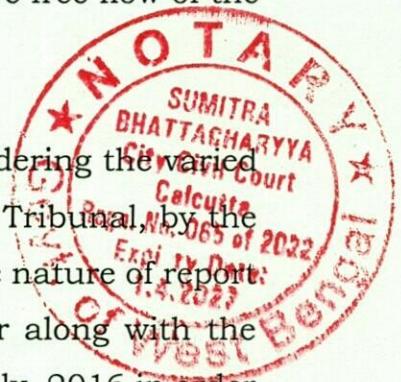


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- b) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to take adequate measures for protecting the said Nayanjuli from Ultadanga to Lake Town crossing on VIP road from being filled up and depleted in any manner whatsoever;
- c) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to restore the said Nayanjuli to its original form and area;
- d) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to take adequate measures for purifying the water of the said Nayanjuli;
- e) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to take adequate measures for preventing the said Nayanjuli from being polluted any further in any manner whatsoever;
- f) Any other appropriate direction/directions and/or order/orders as this Hon'ble Tribunal may deem fit and proper;

11. That it will be evident from the said applications and orders thereof that there are two aspects of the matter that the Hon'ble Tribunal wanted to look into. The First being removal of all manner of obstructions in the entire stretch of the said Nayanjuli and the Second, was to ensure free flow of the water and securing the existence of Water Body..

12. Thereafter during the pendency of the matter, considering the varied and conflicting nature of information conveyed to Hon'ble Tribunal, by the parties and the incomplete, inconclusive and rather cryptic nature of report of the Court Commissioner, the Hon'ble Judicial Member along with the Expert Member, visited the area/site in question on 16th July, 2016 in order to get a first-hand knowledge and to appreciate the actual state of affairs prevailing at the effected site. The Hon'ble Bench of the Tribunal had a clear picture of what existed at the ground level at the time of the visit and the possible condition that may have existed earlier. On 18th July, 2016, the Hon'ble Tribunal was pleased to pass the following order:



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“ It may be noted that on 16.7.2016, this Bench had made a spot visit in order to appreciate the actual state of affairs existing there. The visit was felt essential as there were conflicting information provided by the parties. Even the reports of the Commissioners appointed by us were not to our satisfaction.

It may also be noted that during the visit we were assisted by the ADM & DL & LRO, North 24 Parganas, officers of State PCB, PWD and the local Municipality.

After the visit we have acquired a clear picture of what now exists at the ground level and the possible conditions that existed earlier. We have been also apprised of the various aspects of the issue with which we shall deal in the final order to be passed in due course.

However, we have noticed that certain urgent steps are required to be taken, particularly at the Bangur crossing. The road connecting the VIP road to the other side of the water body (Nayanjuli) i.e., Bangur township, would require to be removed and replaced by an over bridge as a permanent measure to maintain free flow of water. In the meanwhile, at least four Hume pipes of not less than 3 ft diameter are required to be placed across at the middle of the present crossing in order to ensure unobstructed flow of water towards Dum Dum Park as the road has blocked the water path resulting in its stagnation at the place and growth of hydrophytes and other aquatic plants. The earlier direction issued by us to lay hume pipes has been done in a casual and careless manner by laying only two such hume pipes at a far corner of the road towards Bangur township.

The concerned authorities of the Govt. of West Bengal require to take up this work on an urgent basis.

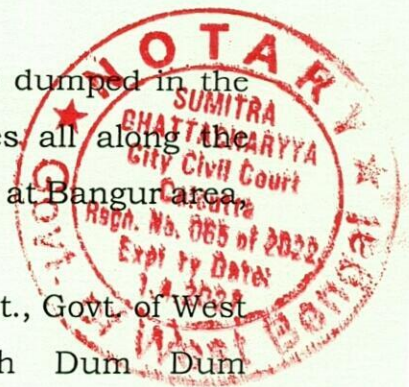
In the meanwhile they shall undertake the following works on priority :-

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- i) To prepare a topo map of the existing water body commencing from Ultadanga to the end i.e., Dum Dum Park. ii) To prepare a DPR for the over bridge to be constructed from VIP road connecting Bangur township in place of the existing road.
- iii) Lay at least 4 humes across the road connecting VIP road and Bangur township of the dimension referred to above to restore free flow of water as a temporary measure until the bridge at (ii) is completed.
- iv) DPR for construction of outlet at Dum Dum park to connect Nayanjuli with Kestopur canal that falls into main Bagjola canal.
- v) South Dum Dum Municipality shall ensure that the Nayanjuli commencing from Sribhumi park to Dum Dum park is made free and cleared of all aquatic plants at both the banks and de-silting work carried out throughout the stretch.
- vi) They shall also measure the flood line of the water body and put up a proposal for beautification of the entire stretch leaving a set back of 3 meters from the flood line on either side and undertake massive plantation programme of fast growing local species for its conversion into an Eco Park.
- vii) All building debris and garbage dumped in the water body at various places, all along the surviving Nayanjuli, particularly at Bangur area, shall be removed immediately.
- viii) We direct the Public Works Deptt., Govt. of West Bengal to assist the South Dum Dum Municipality in carrying out the job.

The ADM & DL & LRO, North 24 Parganas shall oversee the completion of the above tasks as expeditiously as possible.

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We would direct that the above interim actions be carried out within a period of six weeks.

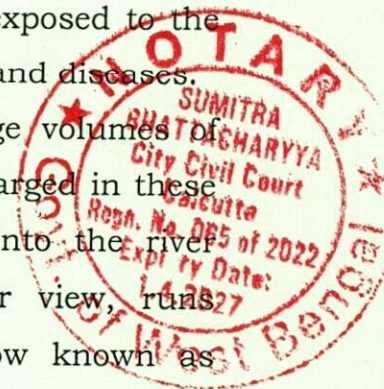
In so far as laying of hume pipes at Bangur as directed above is concerned, we grant liberty to the authorities to either engage the present Agency or execute it departmentally, whichever is more economical. This direction is being issued in the interest of expeditious completion of the task and also to ensure that the State Govt. is not burdened with additional expenditure on tender process for such work and against escalation of cost.

Action taken report shall be filed by the State respondents on or before the next date.

We make it abundantly clear that in the process of beautification, no portion of the existing water body in the entire stretch shall be filled up and if there is any such proposal, that shall be dropped.

We have observed with grave concern that Kestopur canal and Bagjola canal are virtually sewerage canals heavily loaded with pollutants emitting obnoxious odour. We heard complaints from the local people of the difficulties being faced by them on account of this. We have noticed that the areas near these canals are heavily populated. If the canals are not cleansed, the people residing there shall continue to remain exposed to the severe pollution and vulnerable to illness and diseases.

We have been informed that huge volumes of untreated effluents and sewage are discharged in these canals which, quite significantly, flow into the river Ganga without treatment. This, in our view, runs contrary to the Ganga Action Plan, now known as 'Namami Ganga' project. The State Govt. shall consider as to whether cleansing of these canals by setting up Effluent Treatment Plants and Sewage Treatment Plants along the canals, wherever required, could be linked with



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the Ganga Action Plan/Namami Ganga project for which the Central Govt. is providing considerable fund.

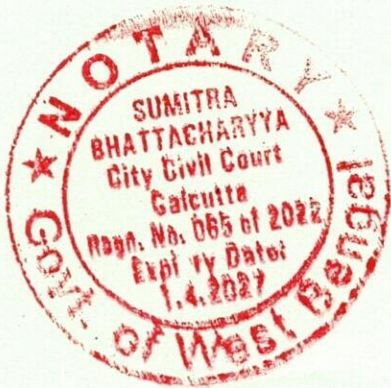
We direct the MOEF, Respondent No. 1, to consider as to whether additional fund can be provided to the State Govt. for this purpose on submission of a detailed project report.

None is present for the MOEF today. Since Mr. Gora Chand Roy Chowdhury, Ld. Adv. had appeared for them in this matter, we direct him to apprise the Ministry of this.

A copy of this order be also transmitted to the Secretary, MOEF. In order to facilitate the State Govt. in seeking additional fund for the purpose, the concerned State Authority shall prepare the DPR urgently and submit it for our consideration on or before the next date.”

13. Subsequently, directions at Sl. No. (iii) & (iv) were modified by order dated 2nd September, 2016 on the prayer of the State respondents. The relevant portion of the order reads as follows :-

“ Reverting back to the two aspects pointed out by Mr. Banerjee, it is stated that the direction contained in para (iii) to lay four humes across the road connecting VIP road and Bangur township, would hinder the work of constructing over bridge connecting VIP road and Bangur Township under direction at para (ii). Mr. Banerjee submits that since the over bridge is expected to be completed within the time frame stipulated by the Govt., after which free flow of water of the water body would be restored which again was the object of direction (iii), this direction may not be insisted upon. We have considered the matter and find that the points raised by Mr. Banerjee are reasonable and, accordingly direct that the direction at para (iii) may not be strictly adhered to subject to completion of the over-bridge



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within the stipulated time as assured on behalf of the State Government.

As regards direction at para (iv), Mr. Banerjee has expressed certain technical difficulties confronted by the concerned authorities. He has referred to a rough sketch map to indicate that the Nayanjuli is at a lower level than the Kestopur and the Baghjala Khals. He submits that it has been found that if the Nayanjuli is connected with the Kestopur or Bagjola khal directly, there would be possibility of back flow of water from these Khals to Nayanjuli. He, therefore, prays for further time to examine the matter and explore for an alternative method of achieving the object for which the direction had been issued.

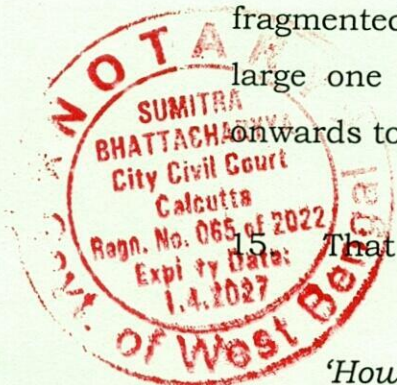
In view of the technical difficulties expressed by Mr. Banerjee, we accept his prayer for time and leave it upon the concerned authorities to examine and explore for an alternative method to ensure that there is free flow of water from the Nayanjuli to either of the Khals.”

14. It would be pertinent to mention that during such proceedings, it was specifically observed by the Hon'ble Tribunal that 'Several maps and topo sheets of the area were referred to by the Learned Counsel to substantiate that the Nayanjuli extended as a continuous water body from Ultadanga to Lake Town and onwards but we find from those documents that there were fragmented waterbodies of varying sizes up to Lake Town and appreciably large one thereafter that had a continuous flow towards Bangur and onwards to Dum Dum Park before merging with the Kestopur canal'.

That the Hon'ble Tribunal was further pleased to observe that –

'However, whatever may have been the extent, the maps and the documents on record do indicate that fragmented waterbodies did exist in wards no. 34 and 35. If so, those encroached up and filled up must be identified, If so on, now those deserves to be ordered to be restored in the original form as is being sought for by the Applicant. These are the crucial

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questions that require to be answered in the light of the documents available on record, rhetoric discounted'.

16. Accordingly, after considering all aspect, records, submissions, maps and personal visits tom the effected area, the Hon'ble Tribunal came to a conclusion that the character of the water bodies has been significantly altered resulting from activities undertaken over several years and is now largely irreversible. The Nayanjuli is admittedly had come into existence at least fifty years ago and, during that period ecology has undoubtedly evolved in it forming an integral component of the environment. Admittedly, remnants of some of the water bodies have been covered up as a part of the beautification project as those had become marshy, stagnant and shallow, a breeding ground for mosquitoes and receptacle of garbage, filth and sewage thereby rendering it a serious health hazard for the locality. The satellite map and photographs are annexed herewith and marked coollectively as **Annexure "A" (Colly)**.

17. It was further observed that 'Mercifully, much of the Nayanjuli is still in existence nearly in its pristine condition from Lake Town onwards to Dum Dum Park' and the Hon'ble Tribunal further find from the report of the Expert Committee and the drawing appended thereto filed to the affidavit of the Principal Secretary, Public Works Department, filed on 09.09.2015 that a channel was still existed connecting the water bodies at the Ultadanga end, Golaghata, Lake Town and onwards during 2015.

18. Accordingly, the Hon'ble Tribunal was pleased to direct the Respondents as follows:-

- (1) To restore the existing fragmented water bodies of Nayanjuli between Golaghata and Sreebhumi as indicated in the report of the West Bengal Pollution Control Board which finds corroboration in the affidavit of the Executive Engineer, Barasat Highway Division No. 1 in his affidavit referred to above. Since it is the stated case of the Respondents that work on beautification project had been stopped after the



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order of prohibition dated 21st April, 2015, there should be no impediment in implementing this order.

(2) While carrying out the above task, the "scheme for restoration of flow of water" shall be implemented as per the drawing prepared by the Expert Committee in its report 07.09.2015 being Annexure A to the affidavit of the Principal Secretary, Public Works Department filed on 09.09.2015, as there appear to exist water channel connecting water bodies marked as MKD.1, 2 and 3 at the Ultadanga end, Golghata and Lake Town respectively. The water channel shall be cleared of all garbage, hydrophytes and sediments. Since there onwards the Nayanjuli is found to exist in its pristine condition, no direction would be necessary except that the South Dum Dum Municipality shall get it free of all garbage, hydrophytes and sedimentation, if not already done.

(3) To construct permanent over bridges of sufficient heights at the Golaghata and Lake Town crossings for ensuring free flow of water as being done at the Bangur crossing instead of laying hume pipes which, in any case, can only be a temporary measure. In carrying out this task, the CESC and the Department of Water Supply shall extend their co-operation and provide necessary assistance.



(4) If necessary, to modify the work on the beautification project of the Nayanjuli that has been withheld pursuant to our order, by incorporating within its scope the above directions.

(5) To expedite the ongoing beautification works at the stretch from Lake Town and beyond making it clear that if there is any proposal for creating islands on

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any stretch of the Nayanjuli, it shall be scrapped and ensure that there is no such encroachment on the water body.

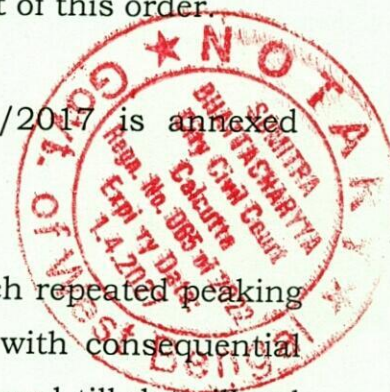
- (6) The South Dum Dum Municipality shall be responsible for the maintenance, preservation and regular cleaning of the entire stretch of the water body as undertaken by them in their letters of proposal submitted to the Public Works Department and the Pollution Control Board in their letters dated December 14, 2010, April 26, 2012 and June 7, 2012.
- (7) While directions (1) and (2) above shall be completed within three months, the process of preparation of DPR for the work under direction (3), its approval and issuance of NIT shall also be c
- (8) completed within three months, the period being computed from the date of receipt of this order.

A copy of the said Order/Judgement dated 10/07/2017 is annexed herewith and marked with the letter "B".

19. That it is unfortunate to state that even after such repeated peaking orders till date such orders have not been complied with consequential reliefs as prayed therein in its true essence and spirit and till date illegal encroachments have not been identified and/or removed. Moreover, such waterbody have been further encroached in between Bangur crossing to Damdam park crossing and a park has been constructed encroaching such waterbody.

20. That the present petitioner being aggrieved thereby such inaction, file the present application afresh for necessary directions and/or orders.

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21. It is submitted humbly that till date nothing fruitful have been done to implement the orders passed by this hon'ble Tribunal.

22. That being aggrieved thereby and dissatisfied therewith the Petitioner moves this Application on the following grounds amongst others:

GROUNDS

I. FOR THAT, the State Respondents with utmost disregard to Constitutional mandate of Parens Partiae and bounden role of fraternity, as a state instrumentality created by the act of statue, cannot be ignorant or negligent or callous or act in disobedience and breach regarding their statutorily mandated public duty.

II. FOR THAT the State Respondents holding public office are bound to comply with and act as well as protect rights arising from Article 21 of the Constitution besides other statutory provisions about which indeed they are well aware. More so, the applicant is cautious and serious about protecting the environment and water bodies and protection of the right to clean Environment as guaranteed as fundamental right under Article 21 read with Article 19 and in discharge of his fundamental duty under Article 51A of the Constitution of India. It is settled law that fundamental rights are interlinked. For say, State cannot give one right to reside at one hand and by conduct denial/infringement of his right to work or live in pollution free environment. The applicant is filling this instant Application under section 14, 15, read with Section 18 of the National Green Tribunals Act, 2010. More so, a person can be deprived of right to pollution free environment when he has been given under right to work and reside. These are the fundamental principles of right to life and recognition of fundamental rights.

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- III. FOR THAT the State authorities cannot sit as a silent spectator while right to dignified life and living is under illegal obstruction.
- IV. FOR THAT the State authorities cannot sit as a silent spectator and ignore the implementation of Polluter Pay principal.
- V. FOR THAT, the acts of the respondents are violative of rights guaranteed to the Petitioner under the Constitution of India besides applicable statutory framework and such act of injustice can soundly be taken as threat to justice and rule of law everywhere.
- VI. For that the respondent authority cannot sit as a silent spectator while the private respondent is filling up a Water Body with the objective of erecting building structures and complexes, in violation of existing law of the land.
- VII. For that the non-action on the part of the state respondents is also hit by the Water (Prevention and Control of Pollution) Act 1974.
- VIII. For that the infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society.
- IX. For that the violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.
- X. For that all the pleadings made herein before are adopted as grounds herein before by the leave of this hon'ble Tribunal.
- XI. Any other grounds and facts if not pleaded not in power and possession of the Petitioner will be placed on records with the leave of this hon'ble Tribunal for proper adjudication of the issues involved herein.

LIMITATON

22. This Petition is well within the period of limitation. The cause of action arose on 10/07/2017, when the Hon'ble Tribunal passed its order and the

Nabendu Kumar Bandyopadhyay

The cause of action is still continuing as the respondent authorities have failed to perform their statutory duty and obligation and neglected to comply with the order of the Hon'ble Tribunal which has got its finality.

23. The balance of convenience is in favour of orders as prayed for being passed and this Petition is made with bonafide intention.

PRAYERS

24. Unless orders as prayed for herein are passed the petitioners shall suffer irreparable loss and prejudice.

In the aforesaid circumstances the petitioners seek for the following orders

- a) An Order directing the Respondent Authorities to take immediate steps to stop such illegal filling of waterbody commonly known as Nayanjuli;
- b) An Order directing the Respondent Authorities to take immediate steps to determine exactly how long ago such filling up of water body was carried out on the said premises without any further delay;
- c) An order directing the Respondent Authorities to file status report of the present situation, after causing an detail inspection and/or enquiry in respect of said area and complaint thereof;
- d) An Order directing the Respondent Authorities to act strictly in accordance with the Order/Judgement dated 10/07/2017 with consequential relief in view of the Polluter Pay principal;
- e) An order directing the respondent authority to compensate the environment in view of the Polluter Pay Principle;
- f) An Order directing the Respondent Authorities to take immediate steps in

accordance with Law, including prosecution by competent authority in case of non-compliance;

g) Ad-interim orders in terms of prayers made herein above till the final disposal of this matter;

h) An order praying implementation of Polluters Pay principle as be properly assessed by expert body ~~NERI, NEERI,~~

i) An order praying for appointment of ~~NERI, NEERI~~ as expert body to assess the loss and file a report;

j) Such other order and/or orders or direction and/or directions and such further orders or directions as Your Lordships may deem fit and proper on facts and circumstances;

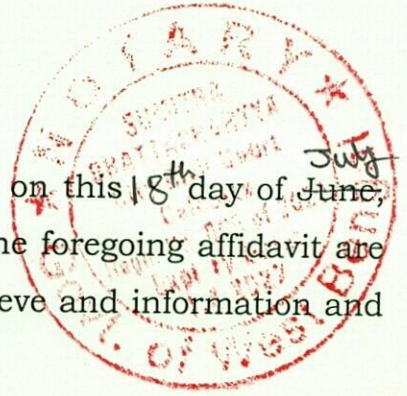
And your petitioners, as in duty bound, shall ever pray.



Nabendu Kumar Bandyopadhyay

VERIFICATION

Verified at Kolkata by the deponent above named on this 18th day of July, 2024 and say that the statements contained in the foregoing affidavit are true and correct to the best of my knowledge, believe and information and nothing material have been suppressed therein.



Subham Kr. Das

Prepared in my Chamber
Advocate

Date: 18/07/2024

Nabendu Kumar Bandyopadhyay

DEPONENT

Subham Kr. Das

Identified by me
Advocate

18 JUL 2024



AFFIDAVIT

I, Nabendu Kumar Bandyopadhyay, son of Late Nikhil Chandra Banerjee, residing of 3rd Floor, B-35/8, Kalindi Housing Estate, Lake Town, PIN 700089, aged about 52 years, by religion- Hindu, by occupation - Business, do hereby solemnly affirm and say as follows:

1. That I am the petitioner herein and as such I am well acquainted with the facts and circumstances of the case.
2. That the statements contained in the paragraphs Nos. 1, 2, 11 to 14 hereinabove are true to the best of my knowledge and are within my information derived from records which I verily believe to be true and the rest are my respectful submissions before this Hon'ble Tribunal.

Nabendu Kumar Bandyopadhyay

DEPONENT

Identified by me

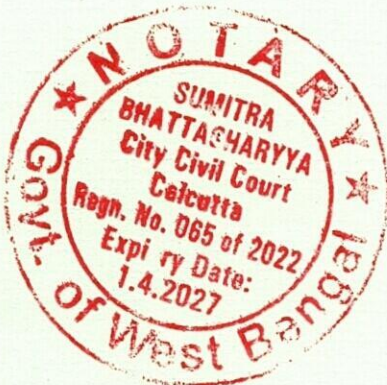
Subhava Kr. Das

Advocate

Prepared in my Office:

Subhava Kr. Das

Advocate

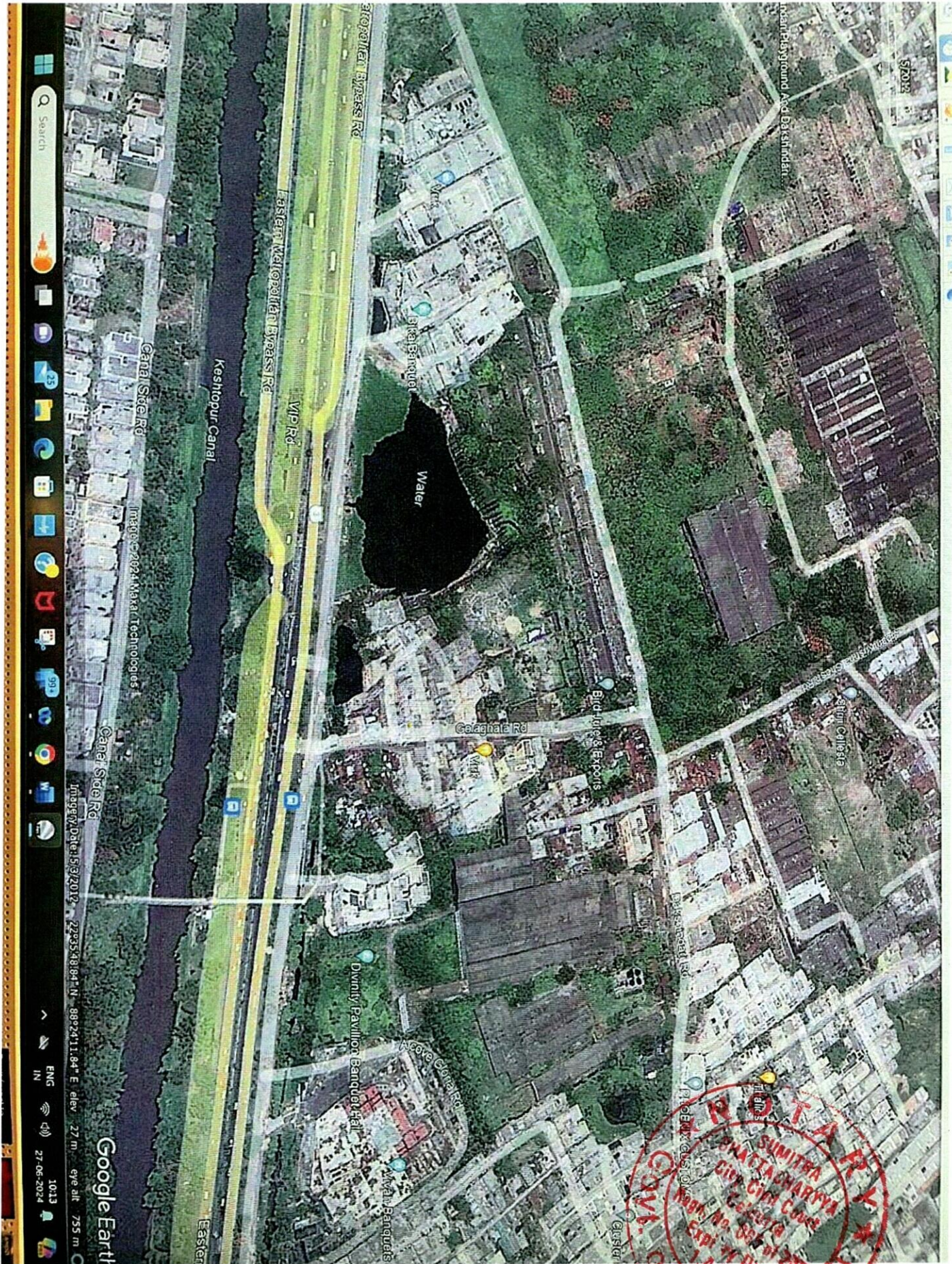


Solemnly Affirmed and
Declared before me U/S 139
CPC, (C) CRPC

Sumitra Bhattacharyya
Notary

Sumitra Bhattacharyya
Notary, Govt. of W.B.
Regd. No. 065 of 2022
City Civil Court, Calcutta

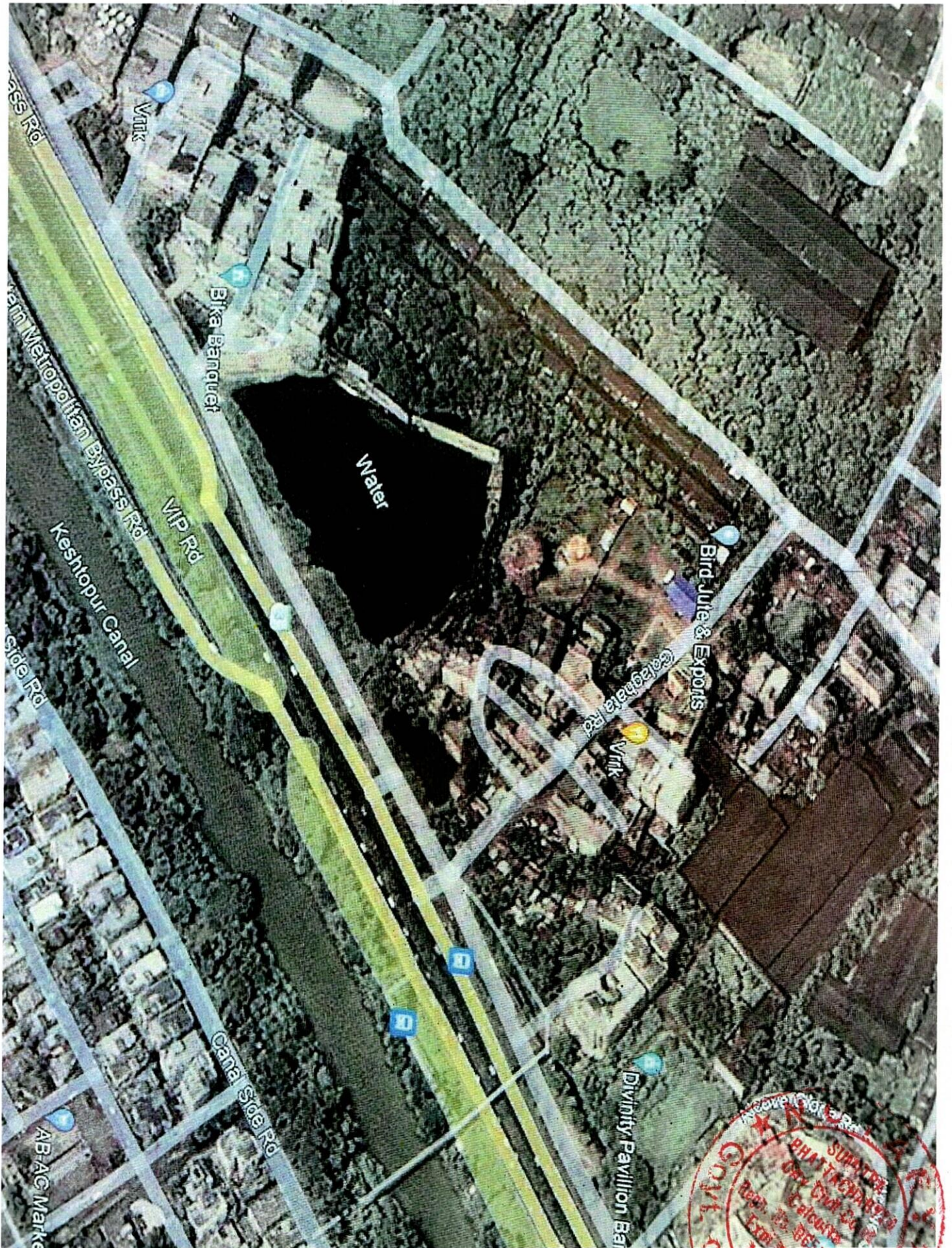
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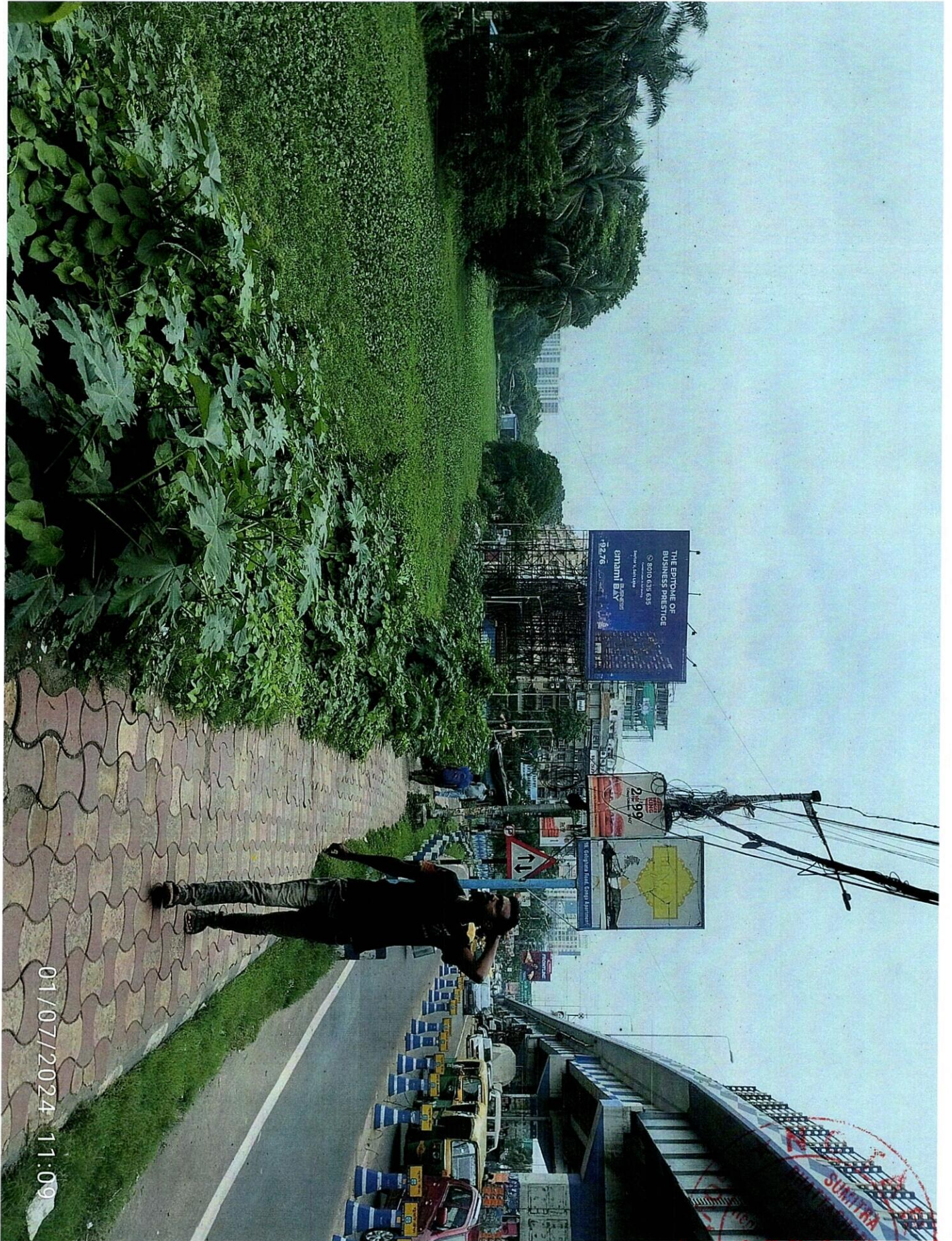
1.4.2027
West Bengal





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Expi. 31 Date
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GOVT. of West Bengal



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Of West Bengal

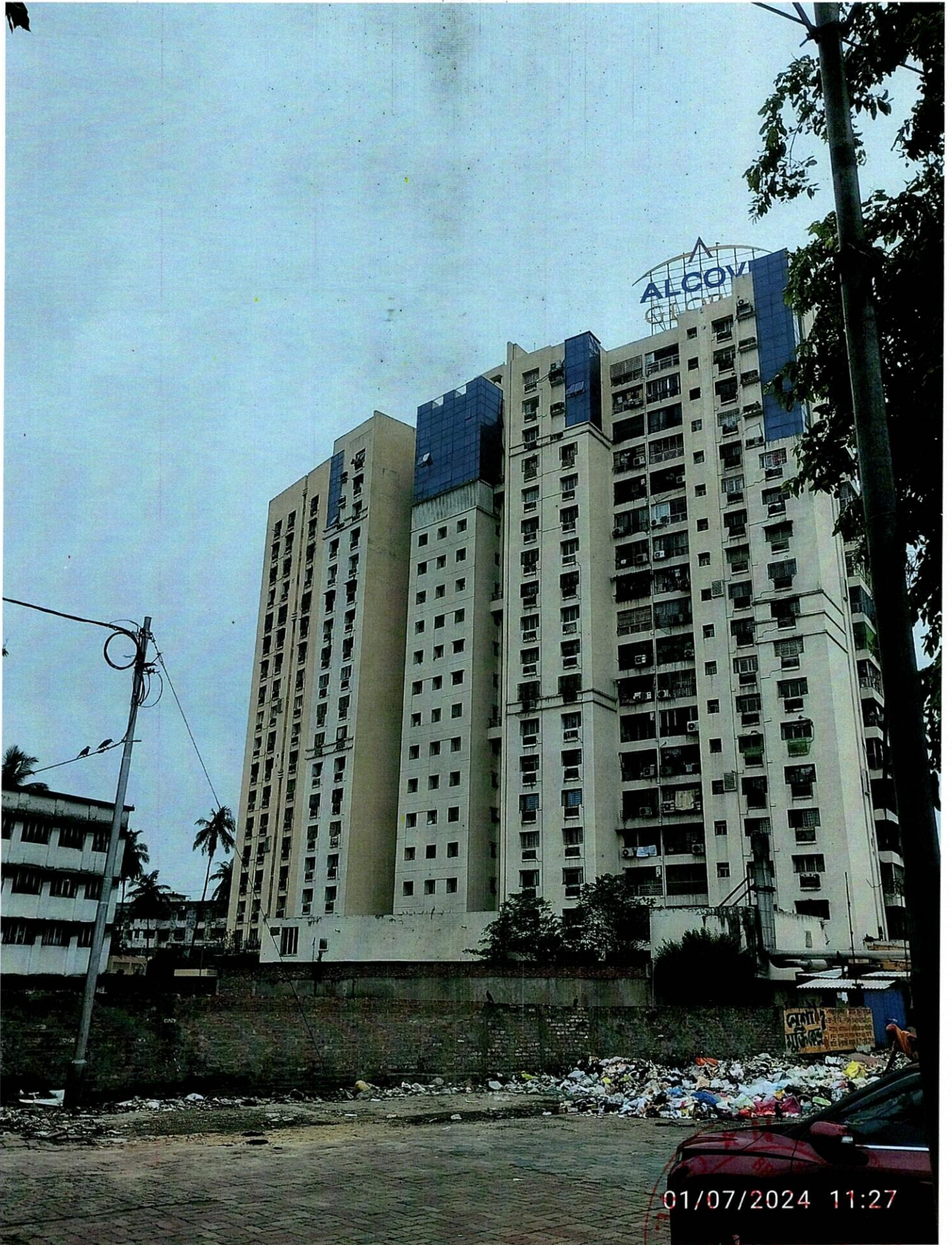


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Date: 01/07/2024



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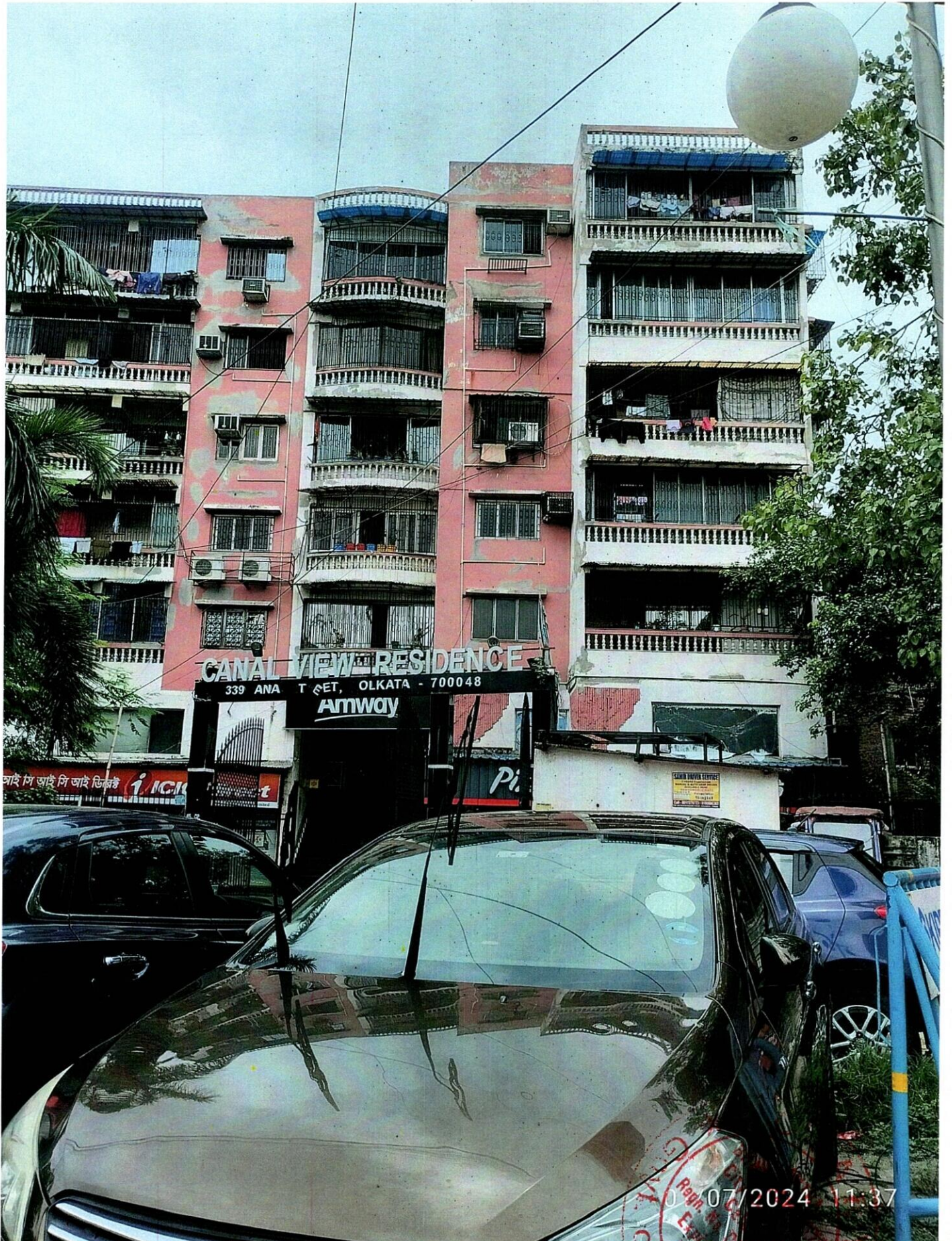
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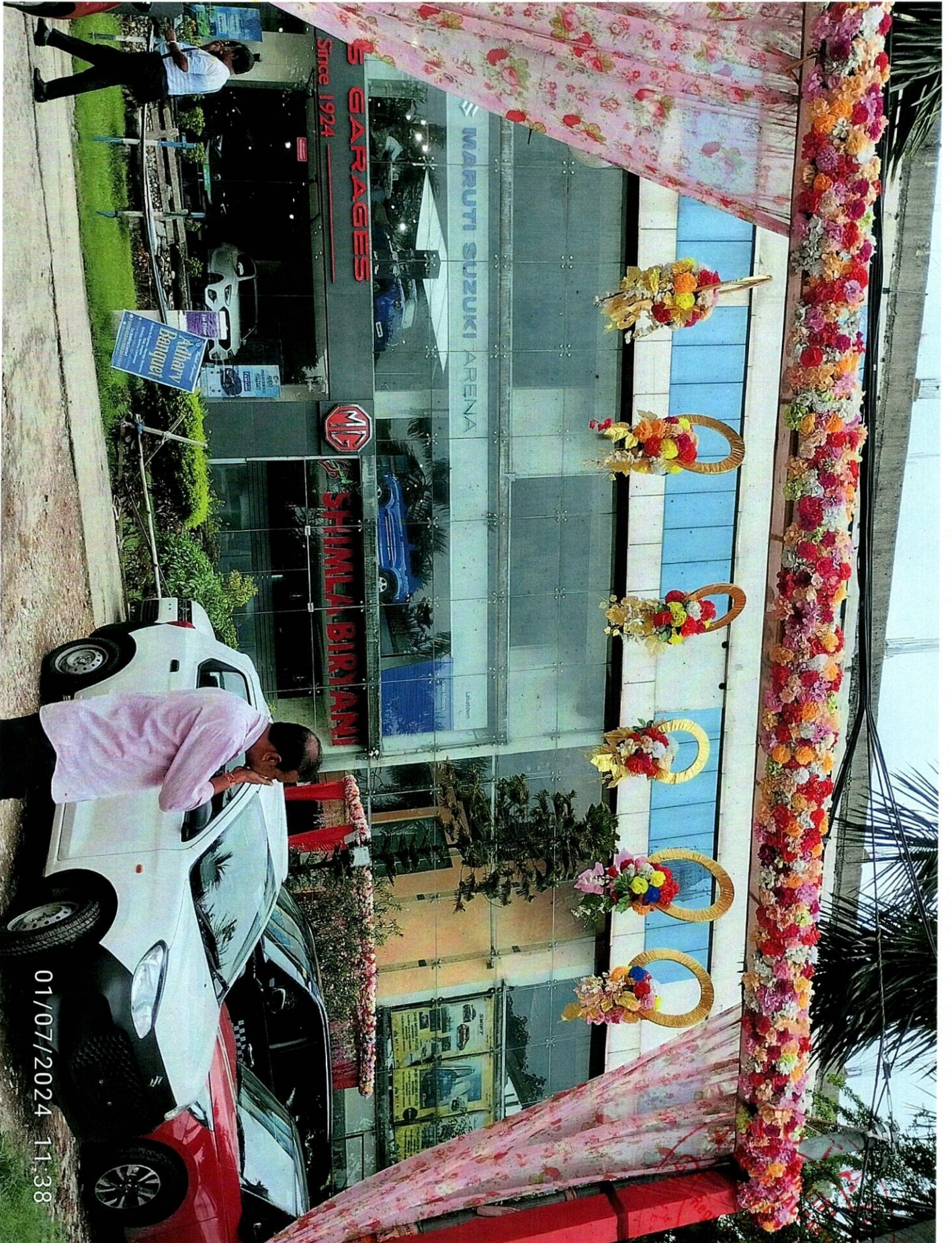
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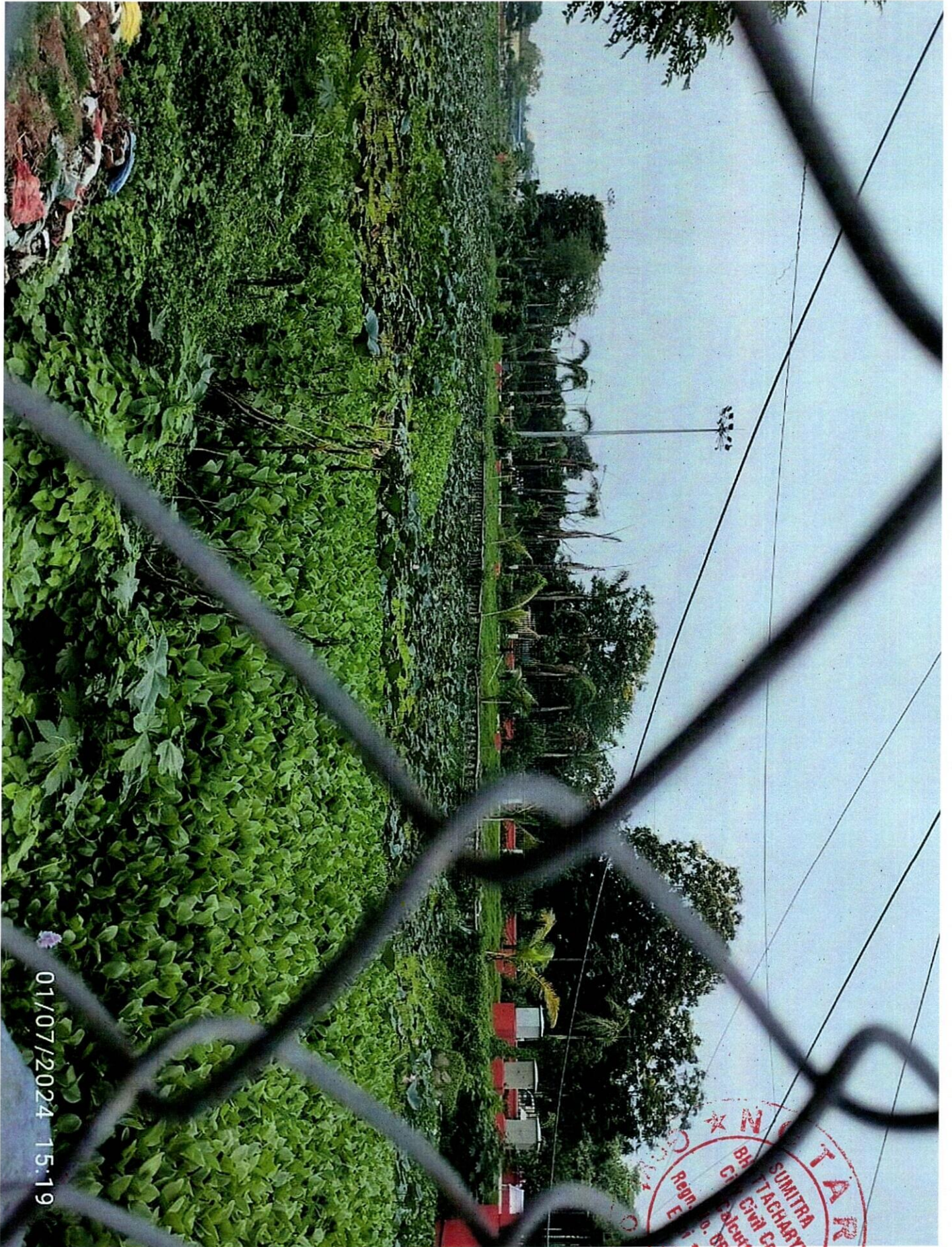
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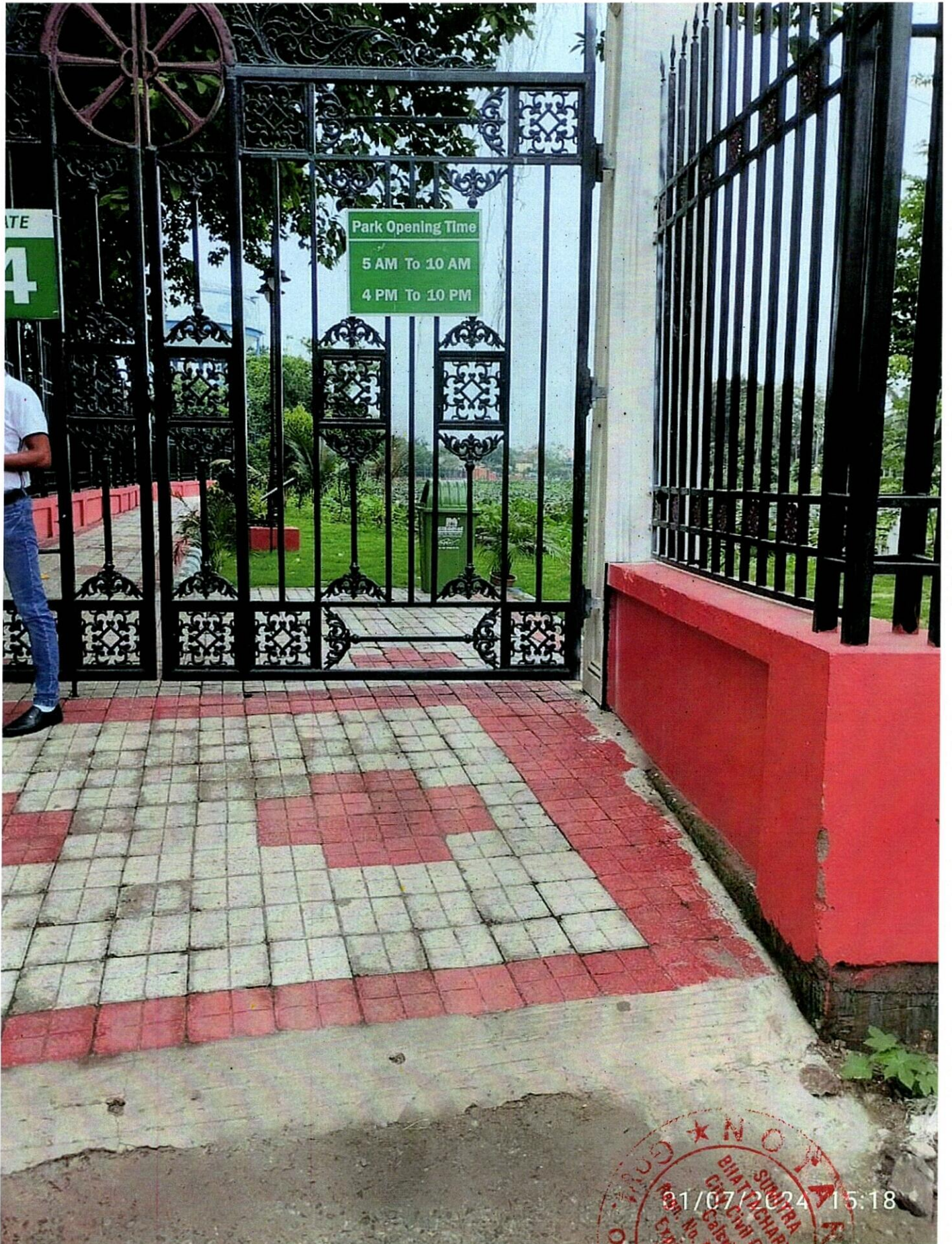
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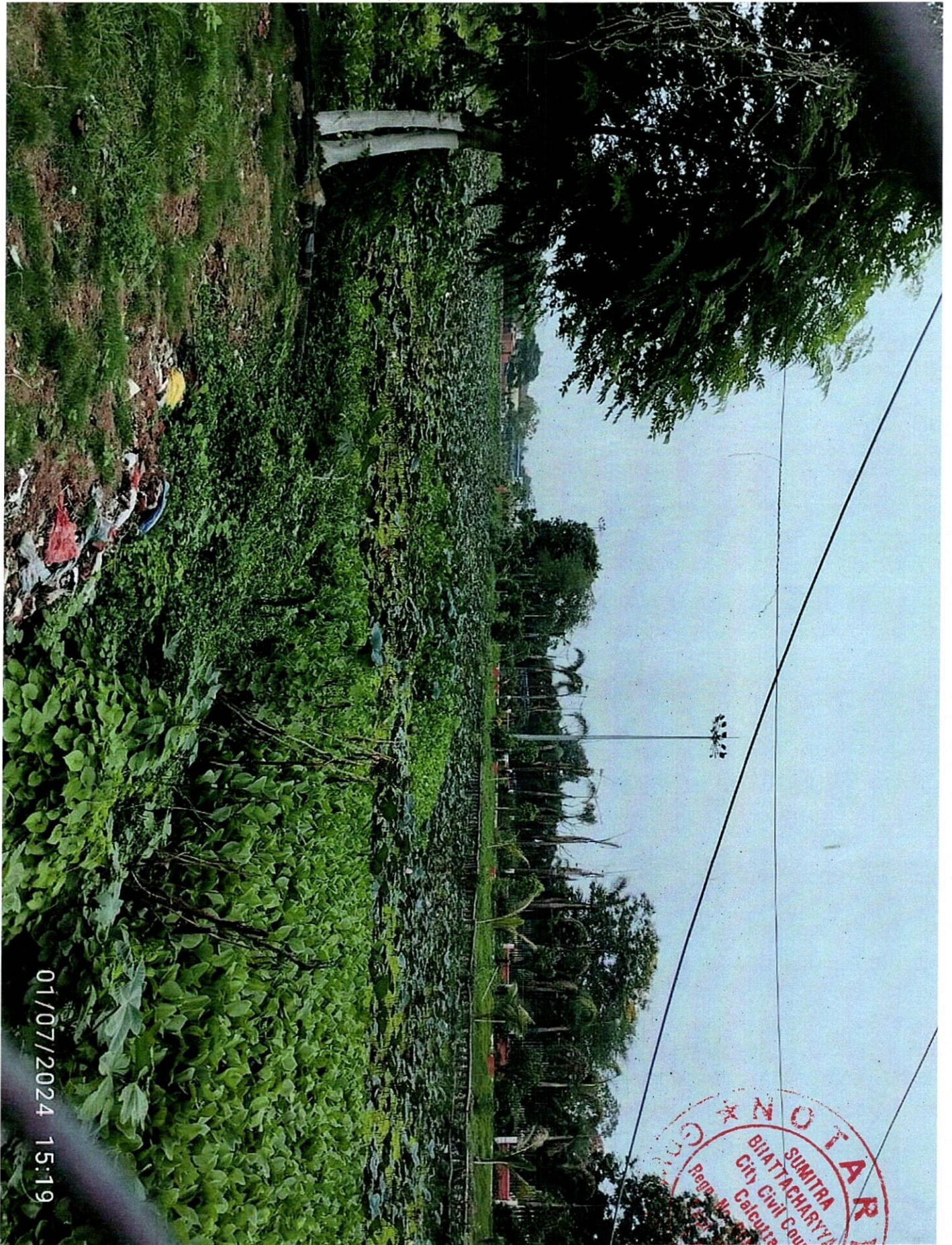


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City Civil Court
Calcutta
Regn. No. 085 of 2022
Expri. 14.2027
14.2027
West Bengal

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

.....

ORIGINAL APPLICATION No. 27/2015/EZ

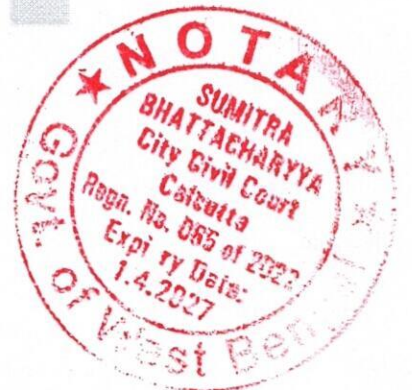
IN THE MATTER OF:

DWAIPAYAN SENGUPTA
S/o Prem Ranjan Sengupta,
Aged about 49 years,
By occupation-advocate, having
Address of service of all notices at
1/10A, Adarsha Pally, Kolkata,
Pin code-700 092

.....Applicant

V e r s u s

1. Union of India through the
Secretary, Ministry of Environment,
Forest and Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road, New Delhi-110 003
- 1A. The State of West Bengal through the
Chief Secretary, Govt. of West Bengal,
Nabanna, 325, Sarat Chatterjee Road,
Shibpur, Howrah-711102
- 1B. Urban Development Department through
The Principal Secretary, Govt. of West Bengal,
Nagaryan Bhawan, Sector-I,
Salt Lake, Block-DF-8,
Bidhan Nagar, Kolkata -700 064
2. The State of West Bengal,
Through the Principal Secretary,
Department of Environment,
Government of West Bengal,
415/A, Pouro Bhawan, 10A, Block-FD Block,
4th Floor, Salt Lake, Kolkata 700 106



3. The West Bengal Pollution Control Board,
Through its Member Secretary,
Department of Environment,
Government of West Bengal,
Paribesh Bhawan, 10A, Block-LA,
Sector-III, Bidhannagar,
Kolkata, PIN CODE: 700 098.
4. The Chairman, Department of Environment,
Government of West Bengal, Paribesh Bhawan,
10A Block-LA, Sector-III, Bidhannagar,
Kolkata-700 098.
5. The State of West Bengal through
The Principal Secretary, Public Works deptt.
Govt. of West Bengal,
Nabanna, 325, Sarat Chatterjee Road (8th Floor)
Howrah-711102
6. The Executive Engineer, Public Works Deptt.
Govt. of West Bengal, 5th Cross Road,
DF Block, Sector-I, Salt Lake City,
Kolkata 700 064,
7. The Executive Engineer, Barasat Highway Division No. 1
PW (Roads), Directorate,
5th Cross Road, DF Block, Sector-I, Salt Lake City,
Kolkata 700 064.
8. South Dum Dum Municipality,
Through its Chairperson, Nager Bazar,
Dum Dum Road, Kolkata -700 074
9. The Chairperson, South Dum Dum Municipality.
Nager Bazar. Dum Dum Road,
Kolkata-700074.
10. The Commissioner of Police,
Bidhannagar Police Commissionerate,
Broadway Road, JB Block, Sector-III
Salt Lake City, Kolkata, West Bengal-700 098
11. The Chairman/Managing director,
Kolkata Metropolitan Development Authority,



"Prashasan Bhavan", Block-BB-1
Sector-I, Salt Lake,
Kolkata-700 064

12. The Principal Secretary,
Irrigation & Waterways Deptt.
Govt. of West Bengal,
9, Golf Street, Kolkata, 700 003
13. The Executive Engineer, Canal Division,
Irrigation & Waterways Deptt.
Govt. of West Bengal,
9, Golf Street, Kolkata, 700 003
14. CESC, Victoria House, Kolkata
15. National Ganga River Basin Authority
Ministry of Water resources, River
Development and Ganga Rejuvenation,
Rear Wing, Third Floor, MDSS Building,
9, CGO Complex, Lodhi Road,
New Delhi-110 003
16. Ministry of Water Resources,
River Development and Ganga Rejuvenation,
Rear Wing, Third Floor, MDSS Building,
9, CGO Complex, Lodhi Road, New Delhi-110 003

WITH

ORIGINAL APPLICATION NO. 46/2015/EZ

PASCHIM BANGA VIGYAN MANCHA
Represented through its Secretary,
162B, AJC Bose Road, 4th Floor,
Flat No. 401 & 402,
Kolkata-700 014

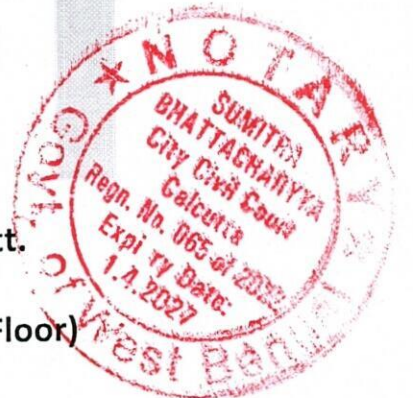
2. MR. SOURAV CHAKRABORTY,
ASSISTANT SECRETARY,
PASCHIM BANGA VIGYAN MANCH,
162B, AJC BOSE ROAD, 4TH FLOOR,
FLAT NO. 401 & 402, KOLKATA – 700014

..... Applicants



VS

1. Union of India through the Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi-110 003
2. Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi-110 003
3. The State of West Bengal, Through the Principal Secretary, Department of Environment, Government of West Bengal, 415/A, Pouro Bhawan, 10A, Block-FD Block, 4th Floor, Salt Lake, Kolkata 700 106
4. The Secretary, Department of Environment, Government of West Bengal, 415/A, Pouro Bhawan, 10A, Block-FD Block, 4th Floor, Salt Lake, Kolkata 700 106
5. The West Bengal Pollution Control Board, Through its Member Secretary, Department of Environment, Government of West Bengal, Paribesh Bhawan, 10A, Block-LA, Sector-III, Bidhannagar, Kolkata, PIN CODE: 700 098.
6. The Chairman, West Bengal Pollution Control Board, Paribesh Bhawan, 10A, Block LA, Sector-III, Salt Lake City, Kolkata 700 098
7. The State of West Bengal through The Principal Secretary, Public Works Deptt. Govt. of West Bengal, Nabanna, 325, Sarat Chatterjee Road (8th Floor) Howrah-711102



8. The Executive Engineer, Public Works Deptt.
Govt. of West Bengal, 5th Cross Road,
DF Block, Sector-I, Salt Lake City,
Kolkata 700 064,
 9. South Dum Dum Municipality,
Through its Chairperson, Nager Bazar,
Dum Dum Road, Kolkata -700 074
 10. The Commissioner of Police,
Bidhannagar Police Commissionerate,
Broadway Road, JB Block, Sector-III
Salt Lake City, Kolkata, West Bengal-700 098
 11. Kolkata Metropolitan Development Authority,
"Prashasan Bhavan", Block-BB-1
Sector-I, Salt Lake, Kolkata-700 064
- ... Respondents

WITH

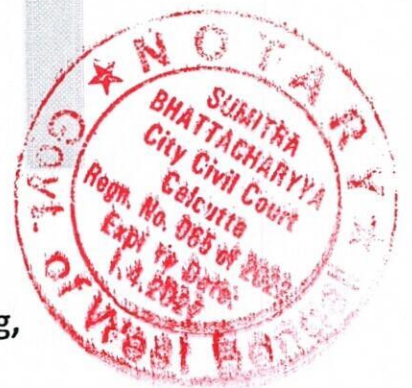
CONTEMPT PETITIONS NO. 03/2015/EZ & 120/2015/EZ
IN ORIGINAL APPLICATION NO. 27/2015/EZ

DWAIPAYAN SENGUPTA
S/o Prem Ranjan Sengupta,
Aged about 49 years,
By occupation-advocate, having
Address of service of all notices at
1/10A, Adarsha Pally, Kolkata,
Pin code-700 092

.....Applicant

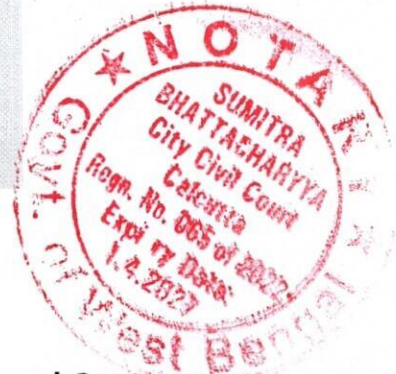
VS

1. Sri Sanjay Mitra,
The Chief Secretary,
Govt. of West Bengal,
Nabanna, 325, Sarat Chatterjee Road,
Shibpur, Howrah- 711102
Presently posted as
Secretary, Ministry of Road Transport,
Highways, Transport Bhawan, Sansad Marg,
New Delhi-110 001



2. Mr. Indevar Pandey,
Principal Secretary, Govt. of West Bengal,
Public Works Department,
Nabanna, 8th floor,
325, Sarat Chatterjee Road,
Shibpur, Howrah-711102
3. Satyabrata Basu,
S/o Ashutosh Basu,
Executive Engineer, Barasat
Highway Division No. 1,
PWD (Roads), MBL House,
5th Floor, DD-18/8, Sector-I,
Salt Lake City, Kolkata-700064
4. Debasish Pal,
Assistant engineer, Baguihati Highway
Sub-division, PWD (Roads),
Kazi Nazrul Islam Sarani,
Kolkata-700 048
5. Ashok Biswas,
Executive Officer-in-Charge,
Finance Officer, South Dum Dum Municipality
Nager Bazar, Kolkata 700 074
6. Sujit Bose,
Councillor, Ward No. 34 and
Vice-chairman, South Dum Dum Municipality,
Kolkata-74
Residing at 52, Canal street, Kolkata- 700 048
7. Sri Javed Shamim,
The Commissioner of Police,
Bidhannagar Police Commissionerate,
Broadway Road, JB Block, Sector-III
Salt Lake City, Kolkata- 7000 98
8. Partha Mukherjee,
Proprietor of M/s Mukherjee & Associates,
19, Ghosh Bagan, Badra,
Kolkata-700 079

.....Alleged Contemnors



COUNSEL FOR APPLICANT (OA 27/2015/EZ):

Mr. Anindya Lahiri, Advocate
Ms. Poushali Banerjee, Advocate
Mr. Mainak Ganguly, advocate

COUNSEL FOR RESPONDENTS :

Mr. Sanjay Kumar Ghosh, Advocate
for Respondent No.1

Mr. Amitesh Banerjee, Sr. Advocate
Mr. Bikas Kargupta, Advocate
Mr. Srijan Nayak, Advocate
Ms. Rituparna Maitra, Advocate
for Respondents No.1A, 1B, 2, 4, 10, 12 & 13

Mr. Amitesh Banerjee, Sr. Advocate
Mr. Srijan Nayak, Advocate
Ms. Rituparna Maitra, Advocate
For Respondents No. 5,6 & 7

Mr. Sibojyoti Chraborti,, Advocate for Respondent No.3

Mr. Amalesh Roy, Advocate
Mr. Ajay Dutta, Advocate
Mr. Deborshi Dhar, Advocate
Mr. P.K.Majumdar, Advocate

For respondents No. 8 & 9

Mr. Sanjib Kumar Mukhopadhyay, Advocate for respondent No. 11

Mrs. Arpita Chowdhury, Advocate for respondent No. 14

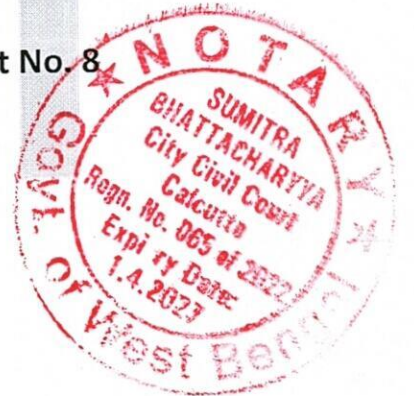
Mr. Ashok Prasad, Advocate for respondents No. 15 & 16

Mr. Somnath Ghosal, Advocate for Respondent No. 8

COUNSEL FOR APPLICANT (OA 46/2015/EZ):

Mr. Somnath Roy Chowdhury, Advocate

Mr. Gora Chand Roy Chowdhury, Advocate



Ms. S. Roy, Advocate for the respondents No. 1 & 2
 Mr. Bikas Kargupta, Advocate for the respondents No. 3,4,7,8 & 10
 Ms. Arpita Chowdhury, Advocate for the respondent No. 5
 Mr. Ajay Dutta, Advocate
 Mr. Deborshi Dhar, Advocate
 Mr. P.K.Majumdar, Advocate for the respondent No. 9

COUNSEL FOR APPLICANT (CA No. 03/2015/EZ):

Mr. Anindya Lahiri, Advocate
 Ms. Poushali Banerjee, Advocate
 Mr. Mainak Ganguly, advocate

Mr. Amitesh Banerjee, Sr. Advocate
 Mr. Bikas Kargupta, Advocate
 Mr. Srijan Nayak, Advocate (Contemnor No. 4)
 Ms. Rituparna Maitra, Advocate
 for Contemnors No.1 to 3 & 4

Mr. Ajay Dutta, Advocate
 Mr. P.K.Majumdar, Advocate
 Mr. Deborshi Dhar, Advocate for contemnor No. 5
 Mr. Soumya Ray, Advocate for the contemnor No. 6
 Mr. Meghnad Dutta, Advocate for the contemnor No. 8

JUDGMENT

PRESENT:

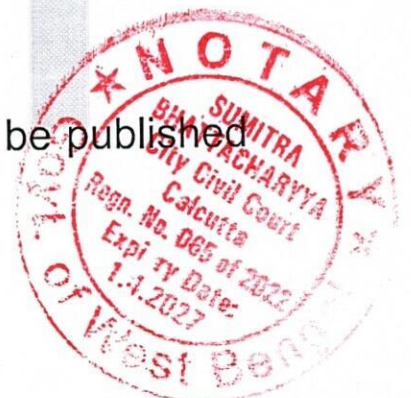
Hon'ble Mr. Justice S.P.Wangdi, Judicial Member
 Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

Reserved On: 16TH May, 2017

Pronounced On : 10th July, 2017

1. Whether the Judgment is allowed to be published
 on the net? **Yes**

2. Whether the Judgment is allowed to be published
 in the NGT Reporter? **Yes**

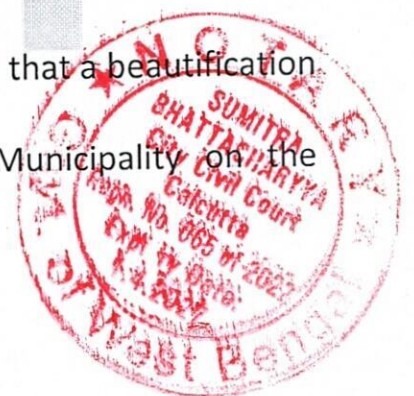


Per Justice S.P.Wangdi, Judicial Member :

The two Original Applications have been taken up together for disposal by this common judgement as the subject matter and the issues raised therein are identical.

2. For the sake of convenience OA 27/2015/EZ is taken up for consideration.

3. In this application concern has been expressed by the applicant on the encroachment and filling up of a waterbody commonly known as Nayanjuli which extends from Ultadanga to Lake Town crossing on the southern side of VIP Road covering four wards under the South Dum Dum Municipality viz. Ward Nos. 29,30,34 and 35. It is stated that it is one of the oldest water bodies and caters to the requirement of the entire population in the area, a phenomenon which is said to be increasing. Notwithstanding its immense significance, the Nayanjuli, as per the applicant, is being rapidly filled up and depleted due to illegal encroachments for housing projects, other urban expansion and uncontrolled and indiscriminate dumping of garbage and debris. That negligence on the part of the authorities in protecting and preserving the water body has been taken advantage of by those indulging in such activities critically endangering the very existence of the Nayanjuli. It is further contended that a beautification project was proposed by the South Dum Dum Municipality on the



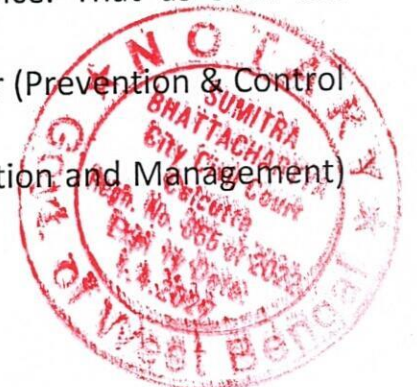
embankment of the Nayanjuli to save it from being encroached and covered up and vide letter dated 28.7.2010, the Executive Engineer, PWD, Barasat Highway Division No. 1, PW (Roads) Directorate, was requested to undertake execution of the project. But even after a schematic diagram and brief description of development project had been submitted as desired by the said Executive Engineer, no action was taken. This led to the Municipality in addressing a letter dt. 26.4.2012 to the Minister-in-Charge, PWD, pointing out the lack of concern of the Department to the critical condition of the Nayanjuli and sought for 'no objection' in carrying out the work of its restoration, development and maintenance. In that letter, the Municipality had conveyed the expanding settlements and pollution of the water body and the possibility of its stretch between Lake Town and Dum Dum Park being filled up by ambitious real estate developers. This was followed up by a communication dt. 9.6.2013 by the Municipality to the Chairman, PCB conveying the apprehension expressed in their letter dated 26.4.2012 that was addressed to the Minister-in-Charge, PWD further observing that the stretch of Nayanjuli from Ultadanga to Lake Town had already been covered by the unscrupulous real estate developers and that the remaining portion of the water body had also become vulnerable.

4. Apart from this, it has been stated that as the water body was also being used as dumping ground for waste materials, the Municipality, as a first step towards its protection, submitted a project report for



restoration, development and maintenance of the stretch of the Nayanjuli between Lake Town and Dum Dum park to be taken up on an urgent basis completely at the cost of the Municipality without placing any financial burden on the State Government. The letter of the Municipality dated 7.6.2012 containing such proposal was forwarded by the PCB to the Principal Secretary, PWD, vide its letter dt. 18.6.2012, conveying the Board's assent, at the same time seeking permission of the Department for commencement of the work.

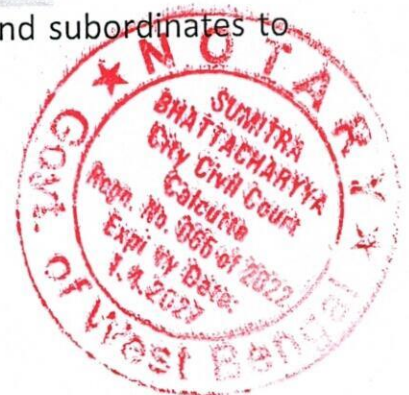
5. It is stated that a joint research on the status of the Nayanjuli carried out by the State Environment Department and South Asian Forum for Environment (SAFE) revealed that 42% of the water body had been covered up by garbage, 36% of it illegally occupied and encroached upon and observed poisonous methane gas being emitted therefrom due to heavy pollution. That between the years 2004 and 2014 substantial portion of the Nayanjuli had been covered up and that such illegal activities had been given a fillip because of the apathy and inaction on the part of the authorities thereby endangering its very existence. It is alleged that the authorities had failed to take steps against those responsible for covering up the Nayanjuli which they were bound to protect and maintain considering its environmental and social significance. That as such act amounted to violation of the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Wetlands (Conservation and Management)



Rules, 2010, penal action ought to have been initiated against those committing such illegalities.

6. The applicant has thus prayed as under :-

- a) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to certify and transmit to this Hon'ble Tribunal all records forming the basis of their inaction regarding illegal filling up, encroachment and depletion of the Nayanjuli so that conscionable justice may be rendered by setting aside and quashing the same.
- b) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to take adequate measures for protecting the said Nayanjuli from Ultadanga to Lake Town crossing on VIP road from being filled up and depleted in any manner whatsoever;
- c) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to restore the said Nayanjuli to its original form and area;
- d) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to

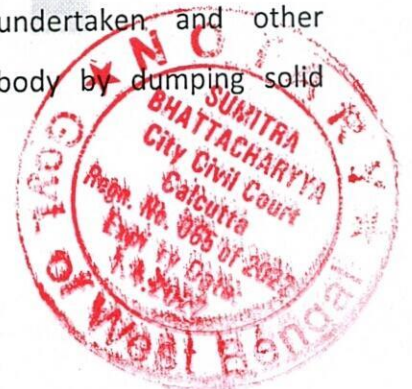


take adequate measures for purifying the water of the said Nayanjuli;

- e) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to take adequate measures for preventing the said Nayanjuli from being polluted any further in any manner whatsoever;
- f) Any other appropriate direction/directions and/or order/orders as this Hon'ble Tribunal may deem fit and proper;
- g) Cost of and/or incidental to the instant application.

7. On 21.4.2015 when the matter first came up for hearing, the Bench, taking note of the anxiety expressed by the applicant, directed the Chief Secretary, Govt. of West Bengal and other authorities including the Pollution Control Board to file status report on the encroachments of the water body giving details of the construction activities being undertaken and on the pollution thereto caused by dumping of solid waste, plastic, etc. For convenience the relevant portions of the order is extracted below :-

“ The Chief Secretary, Govt. of West Bengal, the Principal Secretary, Department of Environment and Principal Secretary, Urban Development Department are directed to file respective status report with reference to the encroachment of Nayanjuli by detailing the construction activities undertaken and other particulars namely pollution of water body by dumping solid wastes, plastics etc.



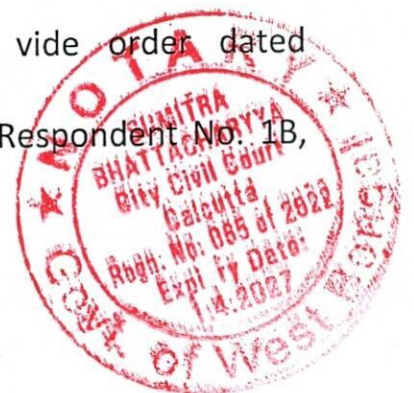
-67-

The State Pollution Control Board is directed to submit the status report by making physical inspection on solid waste disposal by their scientists and also analysing water samples collected at 5 different places in the stretch from Ultadanga to Dum Dum Park. Their water analysis report shall also indicate the status of the water body according to CPCB classification of "designated best use" for surface water. The other respondents viz. South Dum Dum Municipality and the Public Works Department are also directed to submit their report on the issue and the reply, if any. All the respondents are at liberty to file the reply of the original application.

The Respondent No. 8 viz. South Dum Dum Municipality is directed to submit the report detailing the encroachment of the embankment of Nayanjuli and its water body and the constructions thereof, if any. They will also identify the respective buildings and other particulars thereof indicating whether such constructions were made with valid permission or illegally. Let such report in the form of affidavit be filed by all concerned as directed within four weeks."

8. Further, in consideration of the documents, different reports including the satellite pictures filed with the original application, it was directed in the interim, that the respondents viz., concerned Municipality, the police Administration, district Administration, State Govt. including State Pollution Control Board, should take steps and measures to protect the 'Nayanjuli' from being polluted and encroached upon further and to file action taken report on the next date.

9. In response to the directions issued vide order dated 21.04.2015, the respondent 1A, the Chief Secretary, Respondent No. 1B,

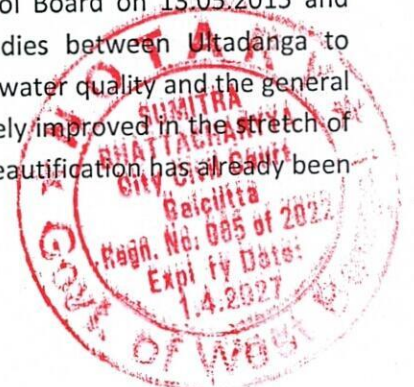


the Principal Secretary, Urban Development Department, Respondent No.2, the Principal Secretary, Environment Department, Respondent No. 5, the Principal Secretary, Public Works Department, Government of West Bengal, the Respondent No. 3, West Pollution Control Board, the Respondent No. 7, the Executive Engineer, Barasat Highway Division No.1 P.W. (Roads) Directorate, Respondent No. 8, the South Dum Dum Municipality and others filed affidavits setting out status reports on the various aspects indicated in the order. Since the affidavit filed by the Chief Secretary contained summary of the reports filed by the other Respondents, it will be sufficient if the relevant portions of it are reproduced below for the sake of brevity and convenience: -

" 2) That the Hon'ble National Green Tribunal (hereinafter referred to as the 'Hon'ble Tribunal') by order dated 21.04.2015 has directed to file a status report with regard to encroachment of Nayanjuli by detailing construction activities undertaken and other particulars namely pollution of water body by dumping solid wastes, plastics, etc.

3) That the Environment department upon receiving the letter from Dr. Dipayan De, Chairman, South Asian Forum for Environment (SAFE) dated 29.05.2011, regarding the critically endangered Nayanjuli waterbody beside the VIP road, opposite side of Kestopur Khal from Ultadanga to Dum Dum Park, the officials of the Department made an inspection on 21.10.2011, and a letter dated 07.03.2012 was issued by the Principal Secretary, Department of Environment to the Principal Secretary, Public Works Department, the Secretary, Irrigation & Waterways Department and the Chairman, South Dum Dum Municipality for taking necessary corrective action for restoration of Nayanjuli. The report of Environment Department is annexed herewith and marked as Annexure-1.

4) The West Bengal Pollution Control Board on 13.05.2015 and 11.06.2015, had inspected the waterbodies between Ultadanga to Bangur Avenue and has reported that the water quality and the general appearance of the water body has relatively improved in the stretch of Lake town to Bangur Avenue where the beautification has already been



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done. The water quality of the rest of the water body was found to be poor. The report of WBPCB is annexed herewith and marked as Annexure-2.

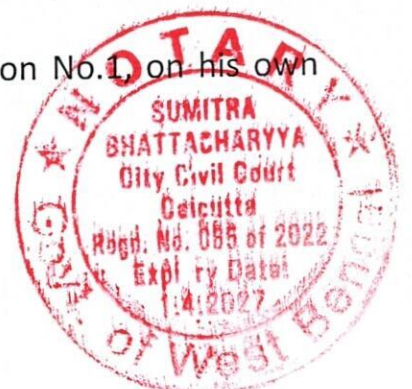
5) The Urban Development Department reported that the land does not belong to the KMDA and is no way related with the allegation raised in connection with the "nayanjuli" extending from Ultadanga to Lake Town crossing, VIP Road. The report of Urban Development Department is annexed herewith and marked as Annexure-3.

6) The report of Public Works Department stated that South Dum Dum Municipality had corresponded with the Public Works Department, Government of West Bengal for the beautification of the "Nayanjuli" and surrounding PWD land and, accordingly, the PWD invited e-tender for execution of such work for the stretch from Bangur Avenue to Dum Dum Park (west side) and the successful bidder has been declared. That the PWD accorded approval to the work of "landscaping and beautification of land along VIP Road from Ultadanga flyover to Lake Town More" for the maintenance of hygienic condition of the locality and prevention of mosquito breeding and nuisance to the said area and work order has been issued and the concerned agency has commenced the said work. Such work has resulted in temporary deposition of sludge and garbage at different places. This sludge which is temporarily kept for disposal and which has been generated in course of the reclamation work sometimes gives the incorrect impression of filling up the water body, which is not the correct presumption.

That the PWD has earlier issued notice for removal of encroachment of the Govt. Land and a case is already subjudice in the Hon'ble High Court, Calcutta in connection with illegal encroachment by a private enterprise on the western flank of VIP road stretching from Lake Town to Golaghata. The report of Public Works Department is annexed herewith and marked as Annexure-4.

7) The Bidhannagar Police Commissionerate, West Bengal in their affidavit stated that as per office record of the Lake Town Police Station no complaint /cases was registered in the matter of encroachment/illegal filling of Nayanjuli/waterbodies within the stretches from Golaghata to Dum Dum Park till date. The report of Bidhannagar Police Commissionerate is annexed herewith and marked as Annexure-5."

10. From amongst the reports of the various Respondents referred to in his affidavit by the Chief Secretary, the ones filed by the Respondent No.7, the Executive Engineer, Barasat Highway Division No.1, on his own



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behalf and on behalf of the Respondent No. 5, the Principal Secretary, Public Works Department and the Respondent No. 8, South Dum Dum Municipality, shall be referred to later being quite revealing and significant.

11. On 10th August, 2015, upon hearing the learned Counsel for the parties and examination of the records, the Tribunal took note of the affidavit filed by the Principal Secretary, Environment, and recorded as follows :-

“ The Principal Secretary, Deptt. Environment, Govt. of West Bengal has filed an affidavit affirmed on 28.5.15. In the said affidavit, a note sheet has been annexed under file No. E/N/PG/KOL-58/2011 dealing with a complaint, which reads as follows :-

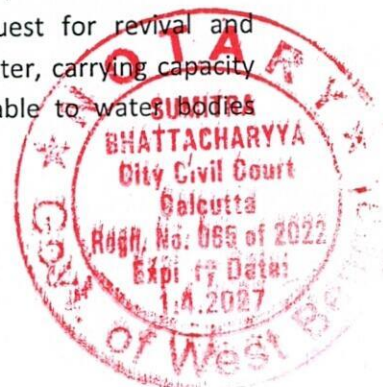
“ Letter No. KGD/MP/1979/10-11/KOL dt. 27.09.11

The p.u.d. is the letter dated 27.09.2011 from Dr. Kakoli Ghosh Dastidar, MP (Lok Sabha) forwarding the letter of the South Asian Forum for Environment (SAFE) dated 29.05.2011 regarding the distortion/filling up of Nayanjali (water body) besides the western side of VIP road, opposite side of Kistopur Khal from Ultadanga to Dum Dum Park.

The undersigned along with Smt. Amrita Chatterjee, research & Liaison Officer of SAFE visited the area on 21st October 2011 and the detail photograph on the encroachment of Nayanjali besides the VIP road by various housing development projects and roads is enclosed.

The revivable of this Nayanjali between Bangur Avenue road connector between VIP road and connected to the Kaistopur Khal at the Ultadanga end would be major project that would save the flooding of Lake Town area and Bangur Avenue area and water logging of the area. The revivable of the water bodies would also work as rain water catchment/harvesting ponds.

The Secretary level letters may be issued along with photographs to (i) PWD (ii) Irrigation Department and (iii) South Dum Dum Municipality, for necessary action with a request for revival and augmentation of the Nayanjali with free flow water, carrying capacity of water during heavy rain and also the revivable to water bodies beside the VIP Road.



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(P.K.Roy)
Senior Environment Officer "

Supporting photographs are also annexed along with this affidavit.

A letter from Principal Secretary, Govt. of West Bengal, Environment Deptt. dt. 7.3.2012 (No. EN/553/PG/Kol-58/2011) reads thus :-

From: RPS Kahlon,
Principal Secretary to the Government of West Bengal.

To:

1.The Principal Secretary,
Public Works Department,
Writers' Buildings',
Kolkata- 700001.

2. The Principal Secretary,
Irrigation & Waterways Department,
Jalasampad Bhavan, Bidhannagar,
Salt Lake, Kolkata-700091.

3.The Chairman,
South Dum Dum Municipality,
Nager Bazar, Kolkata- 700074.

Sir,

This is to inform you that the Department has received the letter from Dr. Dipayan De, Chairman, South Asian Forum for Environment regarding the critically endanger nayanjully beside the VIP road opposite to Kestopur Khal from Ultadanga to Dum Dum Park, was duly endorsed by Mrs. Kakoli Ghosh, Dastidar, M.P.

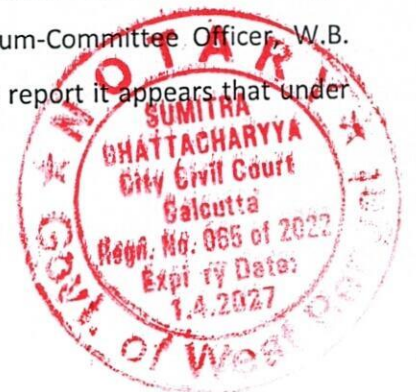
The said Nayanjui was jointly inspected by Smt. Amrita Chatterjee, Research & Liason Officer, South Asian Forum for Environment (SAFE) and Mr. P.K. Roy, Sr. Environment Officer, Department of Environment On 21st October, 2011. The detail photograph of Nayanjuly is attached. The Nayanjuly needs to be revived with water flow to the Kestopur khal. This will take care of water logging problem of Lake Town and Bangur Avenue.

Yours faithfully,

Sd/-

(RPS Kahlon)"

One inspection was conducted by Dr. Rajarshi Chakraborty, Environment Officer, Deptt. of Environment, Govt. of West Bengal based on the letter from Jt. Secretary-cum-Committee Officer, W.B. Legislative Assembly. From the inspection report it appears that under



the heading "Field observation", there are two parts – one is from Ultadanga to Kestopur and another from Kestopur to Baguihati relating to Nayanjuli water body. The importance of Nayanjuli has been specified in Part II of the report which reads as follows :-

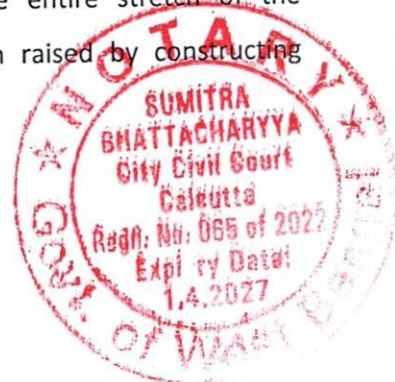
ii) **Importance of the Nayanjuli :**

1. It is now a known fact that many parts of Kolkata are suffering from Urban Heat Island effect (An urban island is a metropolitan area which is significantly warmer than its surrounds rural areas). Since presence of wetlands prevents the formation of urban heat islands, the vast Nayanjuli along with plantation on its sides may serve to ameliorate the environment in its vicinity.
2. The water body with its fish and other aquatic organisms, plantations on its sides, birds etc. can become a reservoir of biodiversity.
3. Other environmental benefits may include nutrient re-cycling, ground water recharge, functioning as a natural carbon sink etc.
4. The anthropocentric benefits of the Nayanjuli may be –
 - a) Source of water during fire hazards in the vicinity.
 - b) Reduction of water-logging during monsoon in the adjacent area.
 - c) Source of food, water, fish etc.
5. The Nayanjuli after proper maintenance and beautification can have high aesthetic value and source of recreation.

Proposed measure to restore the water body and its management has been highlighted in part iii of the said report. Supporting photographs have been annexed depicting the situation at the material point of time.

Having regard to such affidavit of the Environment Department through its Principal Secretary, it is abundantly clear that the Nayanjuli or Water body, in whatever name it may be called, was existing for a long time and that it required to be preserved to arrest the urban heat in metropolitan area for the benefit of environment of the vicinity, for survival of aquatic organisms, plantation and also for the benefits of the people. That apart, it is also beneficial being a source of water during fire hazards, reduction of water logging and source of food, water and fish etc.

Since it is a report of the Govt. itself and having regard to the report of the advocate commissioner, it appears that along the entire stretch of the Nayanjuli/waterbody, many obstructions have been raised by constructing



pathways or road connector either by PWD or by private parties to make a connection of the locality of the west bank of the said Nayanjuli with VIP road.

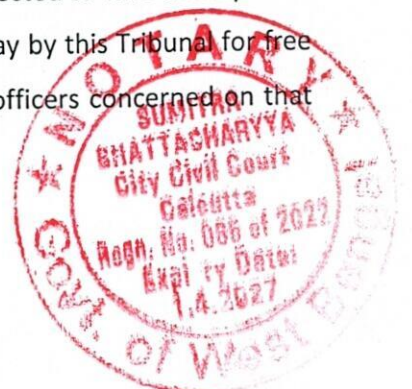
In terms of the affidavit filed by the Environment Deptt. depicting the existing condition as it was there in 2011, Mr. Amlesh Roy and Mr. Ajay Dutta, Id. Advocates appearing for South Dum Dum Municipality, submit that solid waste and debris are deposited by the PWD in Golaghata area and PWD has admitted in their affidavit and have also stated that they will lift these debris. Be that as it may, under the law, the Municipality is responsible to remove it. If the PWD is agreeable to do it, it is better. But in any event, the solid waste has to be removed immediately by the Municipality either by themselves or through PWD.

So far as obstruction of flow of water in the Nayanjuli is concerned, Mr Kar Gupta, Id. Adv. for the State submits that there are three points – viz. Golaghata, Lake Town and Bangur where the Nayanjuli has been blocked and connecting road has been constructed for egress and ingress of the local people long time back and as a result, water flow is completely blocked in these three points.

Principal Secretary, PWD is directed to take immediate steps and measures either to construct over bridge or fixing big hume pipes in these three points under the existing pathways in order to restore easy flow of water in the Nayanjuli throughout the entire stretch from Ultadanga to Kestopur bridge. The said Principal Secretary, PWD will consult with his Engineers and find out ways and means in what manner the flow of water can be restored throughout the entire stretch and at the same time the access point to the areas of three points may also be kept open for the local people. A scheme in this regard may be prepared with a time frame to complete the work, within three weeks and be produced before us positively for our consideration.

We further direct that except construction work relating to the making way for the free flow of water of the Nayanjuli or water body in the aforesaid stretch in terms of our direction as given above, no construction in terms of tender notice for development, beautification or any other construction work shall be undertaken encroaching the Nayanjuli till final disposal of this application.

The Chief Secretary, Govt. of West Bengal is directed to take all steps and measures for compliance of this order as passed today by this Tribunal for free flow of water in Nayanjuli by directing appropriate officers concerned on that issue.



Mr. Roy Chowdhury, Id. Adv. appears for MoEF & CC and submits that his Ministry is not a necessary party in this case. However, Id.adv. for the applicant and other respondents have opposed this submission. We keep this point open and will consider the issue on the next date of hearing.

It is submitted by Id. Adv. for the applicant that so many path ways have been constructed by blocking the water course of Nayanjuli by individual parties who are residents of western portion of the Nayanjuli in order to make their entrance from VIP road as a short cut. Mr. Roy, Id. Adv. for the South Dum Dum Municipality also submit that the Municipality have inspected the area in question and found that so many path ways have been constructed encroaching the Nayanjuli by which the free flow of water is obstructed.

The Chief Secretary, Govt. of West Bengal is directed to take all measures through respective department viz. PWD, Municipality and Urban Development and Police Administration for demolishing all those illegal pathways and construction after identifying them in order to restore free flow of water in the entire stretch of Nayanjuli as indicated earlier. The Executive Officer of South Dum Dum Municipality is directed to identify that illegal construction and submit a report to the Chief Secretary within a week and on that basis demolition work will be undertaken and a compliance report will be submitted within four weeks. "

12. From the above, it will be evident that there are two parts in the order. The first being removal of all manner of obstructions in the entire stretch of the Nayanjuli and the second, laying of hume pipes at three points in Golaghata, Lake Town and Bangur to enable its free flow where it was said to have been blocked a long time back by construction of connecting roads for movement of local people.

13. In his affidavit, filed on dated 31.08.2015, the Executive Engineer, Barasat Highway, Division No. 1, stated as follows :-

"4. In compliance with the said order, a meeting was convened under the direction of Principal Secretary, PWD with Chief Engineer,



South Zone, P.W (Roads) Dte. Superintending Engineer, Eastern Highway Circle, P.W (Roads) Dte., Superintending Engineer, Southern Highway Circle, P.W.(Roads) Dte., Executive Engineer-1, Kolkata North Division, PWD, Executive Engineer, Barasat Highway Division-I, P.W. (Roads) Dte., Assistant Engineer, Baguihati Sub-Division, P.W (Roads) Dte., and Technical Secretary, PWD, for preparation of a scheme to find out ways and means for restoration of flow of water at the three points, viz., Golaghata, Lake Town and Bangur as well as the entire stretch, as directed by the Hon'ble Tribunal in the order dtd. 10.08.2015.

The observations made during the meeting have been duly recorded in the minutes, a copy of which is annexed herewith, marked as "Annexure-A/1"

5. That the debris near Golaghata area has already been removed.
6. So far as obstruction of flow of water in the nayanjuli at the three points, viz., Golaghata, Lake Town and Bangur are concerned, it is stated that at Golaghata, there already exists connectivity for flow of water through hume pipe.

Photographs and plan sketch showing existence of such hume pipes are annexed herewith, marked collectively as Annexure-A/2.

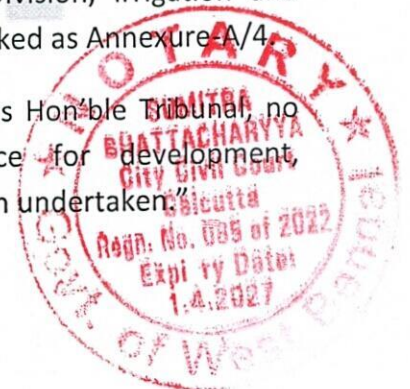
7. That for restoring connectivity to the Nayanjuli at Lake town and Bangur necessary planning, design and estimate has already been initiated. In this regard South Dum Dum Municipality is being consulted for laying Hume pipe through the park and other structures belonging to the municipality.

Copy of cost estimate including sketch for the construction of the pipe culvert for connectivity at Lake town and Bangur is annexed herewith, marked as Annexure-A-3.

8. That regarding restoration of flow of water through the entire stretch, Irrigation Department and KMDA has been requested to provide their valuable opinion regarding feasibility and scheme for the said purpose considering the hydraulic parameters, as they are the experts in this field.

Copy of the relevant letter, being memo No. 1867-8/22 dtd. 18.08.2015 issued by Executive Engineer Barasat Highway Division-I addressed to the Executive Engineer, Canals Division, Irrigation and waterways department, is annexed herewith, marked as Annexure-A/4.

9. That, in compliance with the order of this Hon'ble Tribunal, no construction in terms of the tender notice for development, beautification or any other construction have been undertaken.



14. As would appear from the above, it is the case of the Respondents that in so far as laying hume pipes at the three points in Golaghata, Lake Town and Bangur crossing is concerned, such arrangement already existed only at Golaghata and for Lake Town and Bangur, planning design and estimate has been initiated. Regarding restoration of flow of water on the entire stretch of the Nayanjuli, it is stated that an expert committee consisting of senior engineers constituted by the Public Works Department for the purpose, had prepared a scheme after carrying out phase wise inspection of the area. For better appreciation and convenience the report of the Committee is reproduced below :-

**“SCHEME IN CONNECTION WITH RESTORATION OF FLOW OF WATER
REPORT**

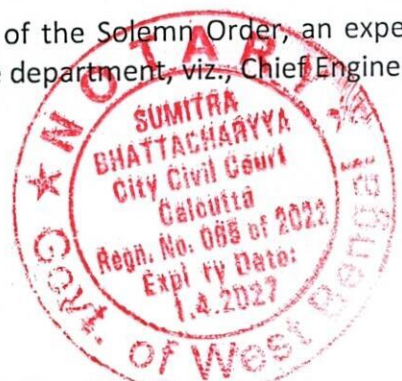
Refn: Original application N o. 27/2015/EZ & M.A.120/2015/EZ:

Dwaipayan Sengupta Vs. Union of India and Ors.

Solemn Order passed by the Hon'ble National Green Tribunal (Eastern Bench), Kolkata dated 10.08.2015 is reproduced herein below: (Refn: page-5.para-3 of the order dated 10.08.2015 of the Hon'ble National Green Tribunal (Eastern Zone Bench))

“Principal Secretary, PWD is directed to take immediate steps and measures either to construct over bridge or fixing big hume pipes in these three points under the existing pathways in order to restore easy flow of water in the Nayanjuli throughout the entire stretch from Ultadanga to Kestopur Bridge. The said Principal Secretary, PWD will consult with his Engineers and find out ways and means in what manner the flow of water can be restored throughout the entire stretch and at the same time the access point to the areas of three points may also be kept open for the local people. A scheme in this regard may be prepared with a time frame to complete the work, within three weeks and be produced before us positively for our consideration.”

Regarding implementation of the second part of the Solemn Order, an expert committee consisting of senior engineers of the department, viz., Chief Engineer



(Headquarter)/PWD, Superintending Engineer (Eastern Highway Circle)/PW(R) D and Executive Engineer (Barasat Highway Division No.I)/PW(R) D was formed on 03.09.2015. Accordingly committee engineers inspected the site on 05.09.2015 and following are the observations:-

1. Water body near Ultadanga end of VIP Road (Mkd.1) and water body named Debighat (Mkd.2) is interconnected by a water channel in the form of Hume Pipe which has been there for flow of water.
2. There is a water body at Sreebhumi (Mkd.3) between Debighat (MKd.2) and Lake Town. This water body would be connected to water body at Debighat through existing box drain. Within this stretch only there is Golaghata connector to VIP Road below which a box culvert already exists. The continuity between Debighat and Sreebhumi would ensure flow of water in this stretch.
3. The water body at Sreebhumi (Mkd.3) would be connected to the existing water body between Lake Town and Bangur (Mkd-4) through the existing box drain. To ensure flow of water below Lake Town Road construction of a Hume Pipe culvert is being taken up as per direction of Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata.
4. To connect water body between Lake Town and Bangur (Mkd.4) and water body between Bangur to Dum Dum Park (Mkd.5), construction of a Hume Pipe culvert is being taken up under Bangur connector of VIP Road to ensure flow of water between these two water bodies.
5. Considering the observations as noted against Sl. No. 1 to Sl. No. 4, it can be stated that water channel which has already been exists and after laying of Hume pipe at the stated locations, connectivity of water bodies can be established and it could carry flow of water throughout the entire stretch as indicated in the stated order.
6. Water channel as mentioned against Sl.No.1 to Sl. No. 4 are blocked at different locations by siltation, debris etc. Free flow of water can be established by removing /lifting/cleaning all these obstructions.
7. Time will be required for implementation of the scheme will be nearly 150 Days and estimated cost will be in the tune of Rs.75 lakhs."

15. Although the Respondents, as noted above, had claimed that hume pipes had already been laid at Golaghata and in other two points i.e Lake Town and Bangur, steps had been initiated to lay hume pipes, it later transpired that execution of such work in these two sites was said to be time consuming and involved huge costs. The inspection report submitted by the Deputy Manager (Utility), CESC also reveals that except for



Golaghata, there were serious impediments in undertaking the work at Lake Town and Bangur as will be evident from the following portions of the report :

"On site inspection it revealed that:

a. **Golaghata site**

Hume pipe has already been placed at the crossing of Golaghata near VIP Road. However, since no major break down has been reported since then we at present are not dealing with the said site.

b. **Crossing of Lake Town**

There are-

- (i) 2 nos. of 132 KV circuits with connected OF cables
- (ii) 2 nos. 33 kv circuits;
- (iii) 1 no. 11 kv circuit; and
- (iv) Other LT cables.

The entire power supply system of considerable portion of Northern Kolkata solely depend upon the underground network. A set of three drawing indicating the existing position of the underground cables are placed for kind perusal.

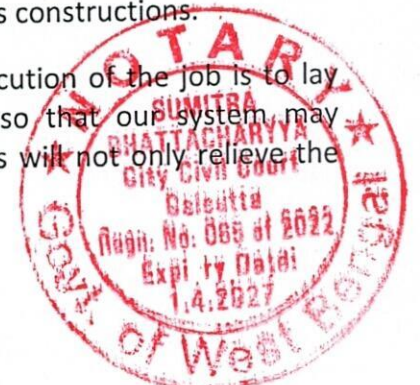
This EHV/HV/L&MV cables have crossed the canal and some of such cables have also crossed the VIP Road.

All such underground cables are located at a different depth from 0.6 mts. To 1.5 mts. From the road surface.

It is understood that PWD is contemplating to lay two big dia hume pipes at the site to ensure continuance of flow of water through the canal is directed by the Hon'ble National Green Tribunal. It is further understood that such hume pipes are contemplating to be laid around 2 mts. So that the upper surface of such hume pipes will be around 0.6 mts. From the road surface.

In that event the entire underground cable network need be shifted and relaid. This exercise is not only heavy time consuming but also involves huge cost, running to few crores of rupees. Besides, there is, at present no suitable way leave since the entire area is full of various constructions.

The only alternative of speedy execution of the job is to lay such hume pipes a little deeper so that our system may remain in its original position. This will not only relieve the



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exchequer from huge costs but also this will ensure speedy execution of the job.

This will enable to execute the job, as directed by the Hon'ble National Green Tribunal without disturbing the major underground electrical network system.

If this proposition is accepted, we may, if informed, depute our personnel to oversee that there is no infringement in the underground electrical network.

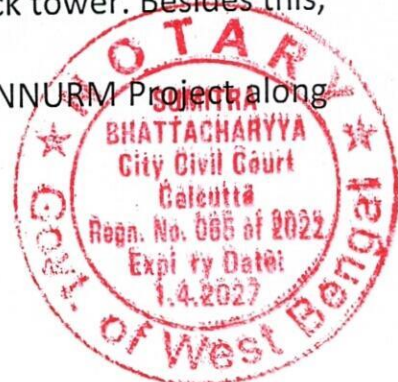
c. **Bangur Road**

At this site no major EHV/HV cable is found. But there are number of LV & MV cables which serves huge number of consumers at the locale.

At this location diversion of such LV & MV cables may be made within the fixed time period and at a comparatively lower cost; but suitable alternative space for laying of such LV & MV cables will be difficult to find out.

In this site also the least possible course of action will be to lay the hume pipes a little deeper so that our underground LV & MV network may remain at its existing place."

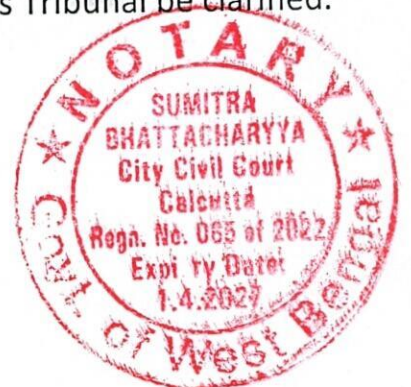
16. Subsequent affidavits filed on 1st December, 2015 and 1st February, 2016 by the Executive Engineer, Barasat Highway Division No.1 and the Chief Engineer-in-Charge, Water Supply Sector of Kolkata Metropolitan Development Agency (KMDA) respectively, highlighted further impediment in the work in the form of an existing two decade old Tallah-Palta dedicated SWMS main water pipeline of 1200 mm diameter (ID) connecting Salt Lake and Lake Town underground reservoirs that interspersed the area in question. The pipeline was said to cross the Kestopur Canal over a bridge and then underground across the VIP Road with an invert of 1.2m to 1.3m and thereafter the clock tower. Besides this, a primary main of 300 mm diameter laid under the JNNURM Project along



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the service road at an invert of 1.00 meter from the top existed. Both these pipelines had been laid in consultation with the South Dumdum Municipality. These were still under the supervision and maintenance of the KMDA although it was required to be taken over by the Municipality after it was commissioned. The KMDA had no objections to the shifting of the pipelines by the PWD from the proposed alignment of their pipe conduit but, at their own risk and cost.

17. In his affidavit filed on 11th March, 2016 in compliance of orders dated 1st December, 2015 and 1st February, 2016, the Chief Secretary, while dealing with the aspect of restoration of water body and its flow continuity in its original form by way of open excavation, stated that excepting in those places where hume pipes were to be laid, it had been decided to first ascertain the original character of the land situated along the VIP road as per the land record. The RS record obtained by the PWD officials from the DL & LRO (North 24 Parganas) which was placed in a meeting convened by him on 9th March, 2016 did not show existence of continuous waterbody along the alignment of the VIP road prior to its construction but rather found that some of the land were recorded being characterised as bastu, danga, shali, bandh, path, bagan, etc. It was urged that in the light of the land records, the order of this Tribunal be clarified.



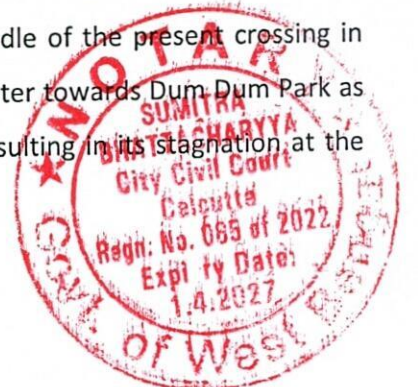
18. It may be relevant to note that considering the varied and conflicting nature of information conveyed to us by the parties and the incomplete, inconclusive and rather cryptic nature of report of the Court Commissioner, this Bench visited the area in question on 16th July, 2016 in order to get a first-hand knowledge and to appreciate the actual state of affairs prevailing there. The visit proved to be fruitful as we were able to acquire a clear picture of what existed at the ground level at the time of the visit and the possible condition that may have existed earlier. On 18th July, 2016, we deemed expedient to pass the following order:

“ It may be noted that on 16.7.2016, this Bench had made a spot visit in order to appreciate the actual state of affairs existing there. The visit was felt essential as there were conflicting information provided by the parties. Even the reports of the Commissioners appointed by us were not to our satisfaction.

It may also be noted that during the visit we were assisted by the ADM & DL & LRO, North 24 Parganas, officers of State PCB, PWD and the local Municipality.

After the visit we have acquired a clear picture of what now exists at the ground level and the possible conditions that existed earlier. We have been also apprised of the various aspects of the issue with which we shall deal in the final order to be passed in due course.

However, we have noticed that certain urgent steps are required to be taken, particularly at the Bangur crossing. The road connecting the VIP road to the other side of the water body (Nayanjuli) i.e., Bangur township, would require to be removed and replaced by an over bridge as a permanent measure to maintain free flow of water. In the meanwhile, at least four Hume pipes of not less than 3 ft diameter are required to be placed across at the middle of the present crossing in order to ensure unobstructed flow of water towards Dum Dum Park as the road has blocked the water path resulting in its stagnation at the



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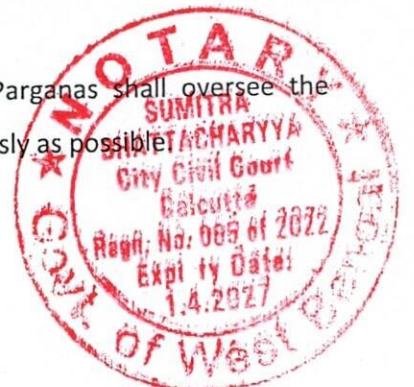
place and growth of hydrophytes and other aquatic plants. The earlier direction issued by us to lay hume pipes has been done in a casual and careless manner by laying only two such hume pipes at a far corner of the road towards Bangur township.

The concerned authorities of the Govt. of West Bengal require to take up this work on an urgent basis.

In the meanwhile they shall undertake the following works on priority :-

- i) To prepare a topo map of the existing water body commencing from Ultadanga to the end i.e., Dum Dum Park.
- ii) To prepare a DPR for the over bridge to be constructed from VIP road connecting Bangur township in place of the existing road.
- iii) Lay at least 4 humes across the road connecting VIP road and Bangur township of the dimension referred to above to restore free flow of water as a temporary measure until the bridge at (ii) is completed.
- iv) DPR for construction of outlet at Dum Dum park to connect Nayanjuli with Kestopur canal that falls into main Bagjola canal.
- v) South Dum Dum Municipality shall ensure that the Nayanjuli commencing from Sribhumi park to Dum Dum park is made free and cleared of all aquatic plants at both the banks and de-silting work carried out throughout the stretch.
- vi) They shall also measure the flood line of the water body and put up a proposal for beautification of the entire stretch leaving a set back of 3 meters from the flood line on either side and undertake massive plantation programme of fast growing local species for its conversion into an Eco Park.
- vii) All building debris and garbage dumped in the water body at various places all along the surviving Nayanjuli, particularly at Bangur area, shall be removed immediately.
- viii) We direct the Public Works Deptt., Govt. of West Bengal to assist the South Dum Dum Municipality in carrying out the job.

The ADM & DL & LRO; North 24 Parganas shall oversee the completion of the above tasks as expeditiously as possible.



We would direct that the above interim actions be carried out within a period of six weeks.

In so far as laying of hume pipes at Bangur as directed above is concerned, we grant liberty to the authorities to either engage the present Agency or execute it departmentally, whichever is more economical. This direction is being issued in the interest of expeditious completion of the task and also to ensure that the State Govt. is not burdened with additional expenditure on tender process for such work and against escalation of cost.

Action taken report shall be filed by the State respondents on or before the next date.

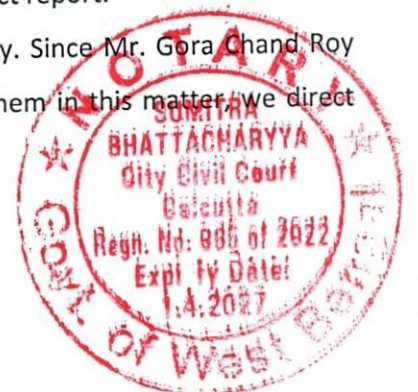
We make it abundantly clear that in the process of beautification, no portion of the existing water body in the entire stretch shall be filled up and if there is any such proposal, that shall be dropped.

We have observed with grave concern that Kestopur canal and Bagjola canal are virtually sewerage canals heavily loaded with pollutants emitting obnoxious odour. We heard complaints from the local people of the difficulties being faced by them on account of this. We have noticed that the areas near these canals are heavily populated. If the canals are not cleansed, the people residing there shall continue to remain exposed to the severe pollution and vulnerable to illness and diseases.

We have been informed that huge volumes of untreated effluents and sewage are discharged in these canals which, quite significantly, flow into the river Ganga without treatment. This, in our view, runs contrary to the Ganga Action Plan, now known as 'Namami Ganga' project. The State Govt. shall consider as to whether cleansing of these canals by setting up Effluent Treatment Plants and Sewage Treatment Plants along the canals, wherever required, could be linked with the Ganga Action Plan/Namami Ganga project for which the Central Govt. is providing considerable fund.

We direct the MOEF, Respondent No. 1, to consider as to whether additional fund can be provided to the State Govt. for this purpose on submission of a detailed project report.

None is present for the MOEF today. Since Mr. Gora Chand Roy Chowdhury, Ld. Adv. had appeared for them in this matter, we direct him to apprise the Ministry of this.



A copy of this order be also transmitted to the Secretary, MOEF.

In order to facilitate the State Govt. in seeking additional fund for the purpose, the concerned State Authority shall prepare the DPR urgently and submit it for our consideration on or before the next date."

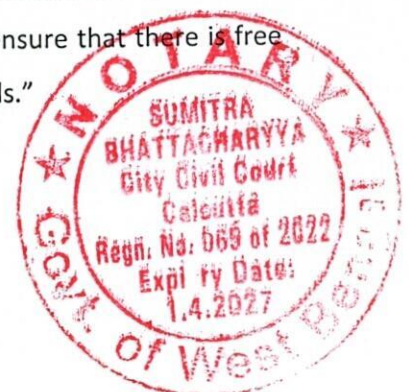
19. Directions at Sl. No. (iii) & (iv) were subsequently modified by order dated 2nd September, 2016 on the prayer of the State respondents. The relevant portion of the order reads as follows :-

" Reverting back to the two aspects pointed out by Mr. Banerjee, it is stated that the direction contained in para (iii) to lay four humes across the road connecting VIP road and Bangur township, would hinder the work of constructing over bridge connecting VIP road and Bangur Township under direction at para (ii). Mr. Banerjee submits that since the over bridge is expected to be completed within the time frame stipulated by the Govt., after which free flow of water of the water body would be restored which again was the object of direction (iii), this direction may not be insisted upon.

We have considered the matter and find that the points raised by Mr. Banerjee are reasonable and, accordingly direct that the direction at para (iii) may not be strictly adhered to subject to completion of the over-bridge within the stipulated time as assured on behalf of the State Government.

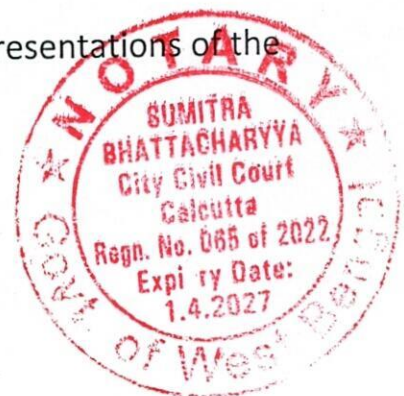
As regards direction at para (iv), Mr. Banerjee has expressed certain technical difficulties confronted by the concerned authorities. He has referred to a rough sketch map to indicate that the Nayanjuli is at a lower level than the Kestopur and the Baghjola Khals. He submits that it has been found that if the Nayanjuli is connected with the Kestopur or Bagjola khal directly, there would be possibility of back flow of water from these Khals to Nayanjuli. He, therefore, prays for further time to examine the matter and explore for an alternative method of achieving the object for which the direction had been issued.

In view of the technical difficulties expressed by Mr. Banerjee, we accept his prayer for time and leave it upon the concerned authorities to examine and explore for an alternative method to ensure that there is free flow of water from the Nayanjuli to either of the Khals."



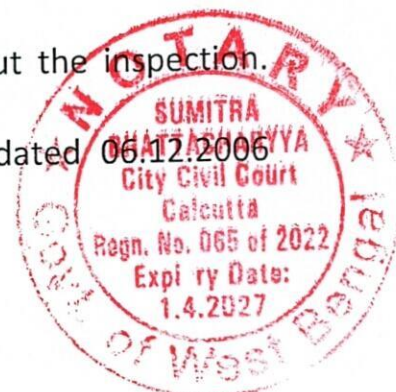
20. We may not delay ourselves further on the narration of the events thereafter on the above aspect except to note that the concerned authorities have been adhering to the directions and the timeline stipulated for completion of the works. We may, however, harken that the directions issued vide order dated 18th July, 2016 was aimed at addressing the urgent and imperative nature of circumstances that were noticed during our visit. We may, therefore, proceed with the other two issues which were under our consideration one of which has been partially addressed i.e., construction of an over bridge at the Bangur crossing and other cognate matters referred to in the order, leaving the ones pertaining to Golaghata and Lake Town crossings, the other being the removal of encroachments between Ultadanga and Lake Town.

21. In order to deal with these two aspects, more particularly removal of encroachments on the Nayanjuli directions towards which we have held to be peremptory vide our order dated 1st February, 2017, it may be recalled that the principal concern of the applicant was the indiscriminate and uncontrolled illegal filling up of the Nayanjuli and its encroachment in the stretch from Ultadanga to Lake Town and the alleged failure on the part of the authorities to take action against the encroachers, their indifference to the reports of experts pointing out the criticality of the waterbody and their inaction on the representations of the applicant calling upon them to restore the waterbody.



22. The foregoing is a brief narration of facts of the case shorn of the details to avoid prolixity and also limited to the salient features of the events unfolding during the course of the proceedings which in our view would be germane for our consideration in the case.

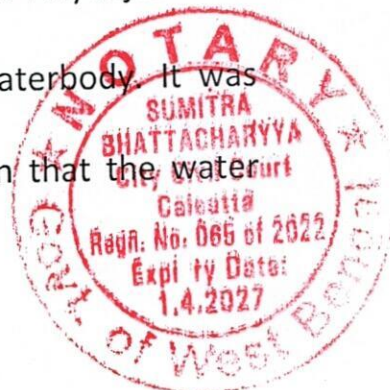
23. Mr. Anindya Lahiri, Learned Counsel for the Applicant, would most passionately argue that there was utter callousness on the part of the authorities in dealing with the waterbody and were grossly negligent in preserving and protecting it. It was submitted that the fact that Nayanjuli existed in the entire stretch from Ultadanga to Lake Town and onwards, as per him, is borne out by various records. Amongst the documents referred to by him, the Learned Counsel drew our attention to letter dated 7th March, 2012 of RPS Kahlon, Principal Secretary, Department of Environment addressed to the Principal Secretary, Public Works Department, the Secretary, Irrigation and Waterways, Department and the Chairman, South Dum Dum Municipality, conveying receipt of a letter from Dr. Dipayan De, Chairman, South Asian Forum for Environment regarding the critically endangered Nayanjuli and the need to revive the water flow to the Kestopur Khal. The next was a report dated 04.06.2013 submitted by Dr. Rajarshri Chakraborty, Environment Officer, Department of Environment, to substantiate that the water body existed in the entire stretch even as on 03.06.2013 when he had carried out the inspection. Reference was also made to a deed of conveyance dated 06.12.2006



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entered into between two parties in respect of a holding situated in the vicinity of the water body and the site appended thereto in support of such contention.

24. The Learned Counsel further went on to submit that the threat to the water body had been a cause of concern even for the authorities since the year 2010. In support of this submission, our attention was invited to various correspondences exchanged between different authorities, first of which was a letter dated 28.07.2010 written by the Chairman-in-Council (PWD), South Dumdum Municipality, to the Executive Engineer, PWD, seeking permission for taking up beautification project of the Nayanjuli urgently for its protection and maintenance followed by letter dated 09.09.2010 of the Executive Engineer requiring the Municipality to submit detailed drawing of the beautification proposal and other correspondences exchanged thereafter on the subject. Next was a letter of the Municipality dated December 14, 2010 addressed to the Executive Engineer, Barasat Highway Division No.1 forwarding a schematic diagram of the Municipality's beautification of Nayanjuli for its proper maintenance. The Learned Counsel would then refer to letter of CIC (PWD) of the Municipality dated 26.04. 2012 addressed to the Minister-in-charge, Department of PWD, reiterating the need to prevent the Nayanjuli from being covered up by taking up beautification of the waterbody. It was emphasised that although this letter gave an impression that the water

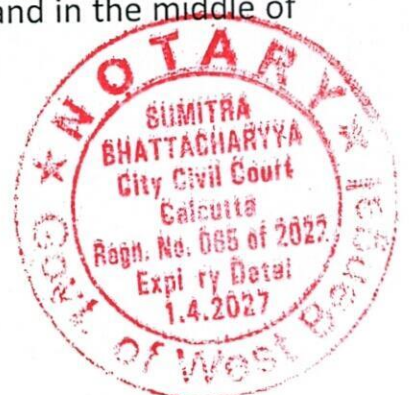


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body existed only between Lake Town to Dum Dum park, the report of Dr. Rajarshri which is based on an inspection carried out on 03.06.2013 and, therefore, later in point of time clearly indicated that it was existing along the entire stretch.

25. Endeavour of the learned counsel in referring to such documents was to demonstrate that the water body was under constant threat of being filled up and that it had indeed been filled up and encroached upon which, as per him, would be apparent from its present condition.

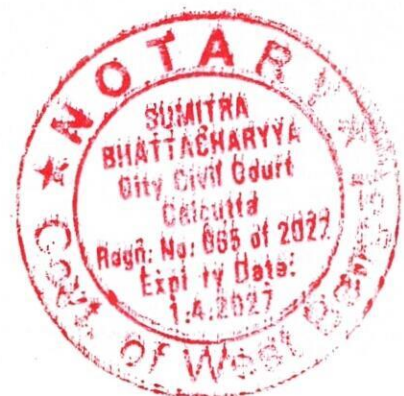
26. Apart from these, several other correspondences of the years 2011, 2012 and 2013 were also referred to in support of such contention with which we may deal later but, at this stage, suffice it to observe that it was the contention of the learned counsel that in the garb of execution of the beautification project taken up by them, albeit rapidly as per him, after administrative approval for it was accorded on 02.12.2014, the authorities had filled up even the existing water bodies. That apart, the Kolkata Metropolitan Development Authority, as per him, had also concealed its existence while undertaking a project under JNNURM for laying storm drainage system. It was submitted that the malafides on the part of the authorities was further evident from the fact that the E-tender issued by the PWD for beautification envisaged creation of an island in the middle of the water body.



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27. Relying upon *People United for Better Living in Calcutta – Public and Another Versus State of West Bengal and Others : AIR 1993 Calcutta 215*, Mr Lahiri would strongly urge that the Respondents should be directed to maintain the nature and character of the water body considering the immense significance of waterbodies as an eco-system highlighted in the decision. He would further exhort us to intervene in the present case as the ecological balance was a certain casualty if the encroachments and filling up of the Nayanjuli continued to persist in the quest of the State for development. It was urged that, as held in the case (*supra*), since benefit to the society ought to be the prime consideration of the Law Courts and, ecological imbalance being a social problem, it ought to be decided by this Bench being a Court of Law vested with special powers to deal with matters pertaining to environment.

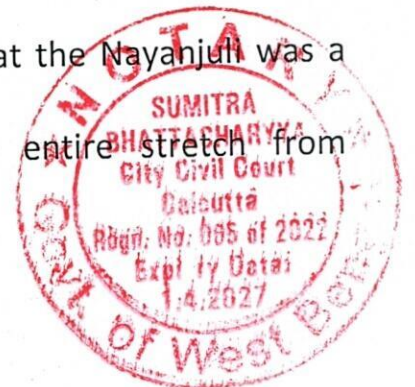
28. Lastly, Mr. Lahiri pointed out that the activities being carried out by the authorities were also in violation of Section 17A of the West Bengal Inland Fisheries Act, 1984 sub-section (1) (a) of which expressly bars conversion of water area including embankment measuring 5 cottahs or 0.035 hectares or more which is capable of being used as fishery, or any naturally or artificially depressed land holding measuring 5 cottahs or 0.035 hectares or more , which retains water for a minimum period of six months in a year, to such use other than fishery, etc.



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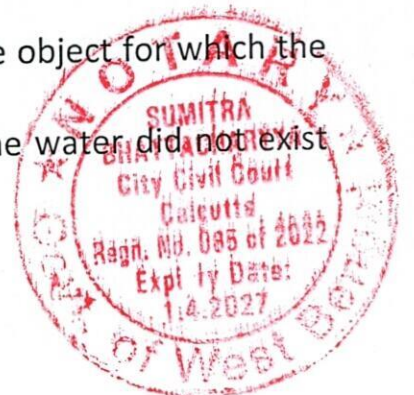
29. Mr. Somnath Roy Chowdhury, Learned Advocate, representing the Applicant in OA No 46 of 2015/EZ on his part while adopting the arguments placed by Mr. Anindya Lahiri, additionally submitted that the action of the authorities in permitting development in the area amounted to infraction of various provisions of the West Bengal Town and Country (Planning and Development) Act, 1979. Our attention was drawn to the preamble of the Act, definition of the term "Development Authority" under Section 2 (8), non-compliance of Sections 31 and 46 and consequence thereof under Section 52 of the Act.

30. Appearing for the Respondents, Mr. Amitesh Banerjee, Learned Senior Government Counsel, submitted that the application suffered from various incurable infirmities for it to be maintainable. First of all, it was contended that it called for dismissal at the thresh-hold as being barred by limitation in view of the specific bar under Section 14 (3) of the National Green Tribunals Act, 2010 and proviso thereto in entertaining belated applications as the case of the applicant is that the encroachments to the water body had been made many years back, the last having commenced from the year 2010 but, the Applicant had chosen to present the application only on 16.04.2015 after the beautification project of the waterbody and its precincts had almost been completed. It was next submitted that the very foundation of the case that the Nayanjuli was a continuous water body that extended for the entire stretch from



Ultadanga to Lake Town and onwards was incorrect when the documents filed by the applicant indicated otherwise. In any case, the Nayanjuli was not a natural waterbody but a burrow pit created by the excavation of earth for construction of the VIP road not so long ago.

31. As per the Learned Senior Counsel, the area was in a continuous process of development since long resulting in rapid growth of population and consequently, the fragmented water bodies which had appeared in the area in question had turned into receptacles of sewage, domestic waste water, waste materials of all hues, garbage, etc., that emitted foul smell and had become a breeding ground for mosquitoes causing serious health hazards for the inhabitants. In response to the persistent public demand, mitigation measures were conceived and undertaken by the State authorities in the form a comprehensive beautification project for the entire stretch. In the process remnants of a few of such waterbodies found in critical conditions were filled up as a part of the project in larger public interest while others were cleaned up and restored and are still in existence in its pristine condition. As per Mr. Banerjee, the project, a well thought out plan made after taking into consideration all relevant factors, consists of multifarious public utilities which has already come up at a huge cost on the public exchequer. Thus the undoing of it will not only be against public interest but also would not achieve the object for which the application has been filed as, in the first instance, the water did not exist

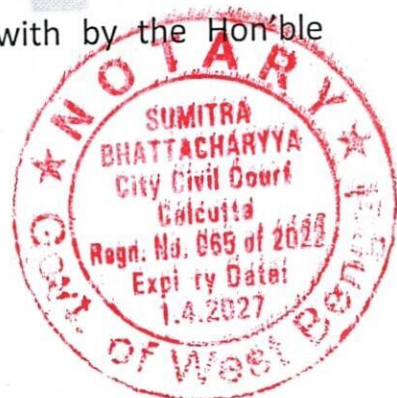


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the way it has been projected by the Applicant and secondly, the change in the user of the land during the several decades had now been rendered irreversible. It was emphasised that if not better, ecologically the area is not worse off than it was.

32. Relying upon the very decision of **People United for Better Living in Calcutta** (*supra*) referred to on behalf of the Applicant, it was submitted that although it is the duty of the Law Courts to exercise its judicial power to see that there is no degradation of the society by indiscriminate exploitation of the environment for the sake of development, it certainly did not mean and imply that every developmental programme ought to be prohibited. It was submitted that as held in the case, "there has to be balance between the development and the environment so that both can co-exist without affecting the other".

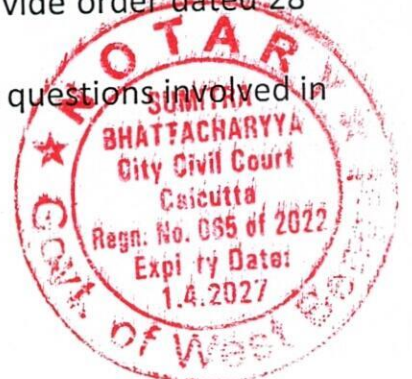
33. Reference was also made to **Concern for Calcutta & Ors Versus State of West Bengal: 1995 SCC Online Cal 397: (1996) 1 CHN 123** wherein construction of a multi-storeyed complex by encroaching upon and filling up major portion of a two hundred years old historical waterbody situated in the campus of the Indian Museum on the Jawaharlal Nehru Road in Kolkata was under challenge, was not interfered with by the Hon'ble Calcutta High Court.



34. We have given thoughtful consideration to the submissions of the Learned Counsel for the parties and carefully examined the pleadings and the documents on record. Since questions raised in both the Original Applications are identical and the Learned Counsel for the Applicant in OA No. 46 of 1015/EZ has adopted the arguments of the one placed by Mr. Anindya Lahiri, the Learned Counsel for the Applicant in OA No. 27 of 2015 of 2015/EZ, we shall deal with the facts and circumstances obtaining in the latter Application for the purpose of disposal of both the cases.

35. In the Original Application it is asserted by the Applicant that the Nayanjuli that extends from Ultadanga to Lake Town Crossing on the VIP road situated at the northern side of Wards No. 29, 30, 34 and 35 of South Dum Dum Municipality in Kolkata is one of the oldest waterbodies upon which the entire area heavily depends for its daily requirement of water. That this water body is rapidly getting depleted being filled up due to encroachments by uncontrolled housing projects, urban expansion and indiscriminate dumping of garbage and waste encouraged by sheer neglect and the lack of efforts on the part of the authorities for its protection and preservation. Directions have, therefore, been sought, *inter alia*, for its protection and restoration to its original state.

36. At this stage, it may also be observed that vide order dated 28th March, 2017, it was noted that the area for which the questions involved in



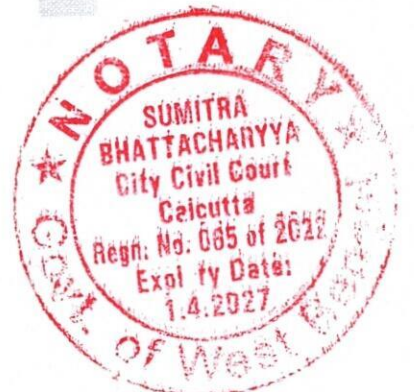
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the case were to be determined had been narrowed down and confined to wards No 34 and 35 of South Dum Dum Municipality and that nothing much was left to be determined in respect of ward 35 except for certain directions that may be required to be issued for restoration, cleaning and preservation of the water body appearing in the map filed by the South Dum Dum Municipality (Respondent No. 9 in OA 46 of 2015 and the Respondent NO.8 in OA No.27 of 2015).

37. Proceeding with our discussions thus, the first question that arises is what is a 'Nayanjuli'? None of the parties including the Applicant has come forward with an explanation on this except for the Executive Engineer, Barasat Highway Division No.1, Respondent No.6, who in his affidavit filed on 01.07.2015 had the following to state :-

"5. Borrow pits were excavated during construction of higher elevated embankment of VIP road. Borrow pits are commonly called as "Nayanjuly". According to Samsad Bengali-English Dictionary, 2nd Edition (reprinted, 1995) "Nayanjuly" means "a trench especially for carrying out filthy water, a gutter". Hence, "Nayanjuly" is not a natural water body.

6. Whatever the stretch of "Nayanjuly" has been shown in the satellite picture annexed to the original application, there is no wide array of fresh water wetland in the stretch from Ultadanga to Dum Dum Park. However, the channel of borrow pits besides the service road on the western flank of VIP road was one of the source for outfall of the drainage water of the Ward Nos. 29, 30, 34 and 35 respectively of South Dum Dum Municipality."

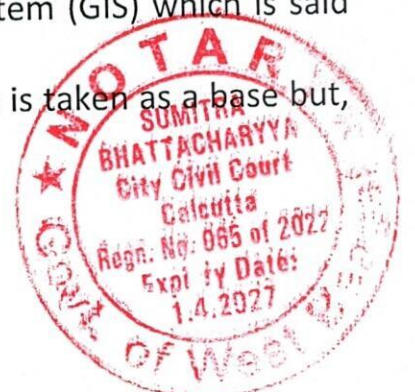


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38. Since the positions averred in paragraph 5 and the second part of paragraph 6 have not been disputed by any of the parties, we shall proceed under the premises that it is correct and that the waterbody which is the subject in the present proceedings would fall within such meanings, i.e., it is not a natural water body and is a burrow pit. We find this position substantiated also by the revenue records the position of which has been set out in paragraph 5 (a) of the affidavit filed on behalf of the Dum Dum Municipality on 29.05.2015, the relevant portion of which reads as follows :-

“5(a). As per records, there was and/or is no Nayanjuly within the stretch from Ultadanga to Golaghata, parallel to VIP road. However, there is a water body in Dag No. 25 measuring an area of 0.9812 decimals and Dag No. 10/29, measuring about 0.015 decimals respectively under Khatian No. 50 Mouza – Golaghata, J.L. No. 27 under South Dum Dum Municipality, District – North 24 Parganas besides the service road which runs parallel to VIP Road.”.

39. It cannot be denied that revenue records are prepared based upon the actual physical position of land found at the time of survey and, except for the trite position that the ownership recorded therein can be challenged as being a rebuttal proof of title, there is a presumption of correctness as regards the rest of the entries. The Applicant in his affidavit-in-reply, has no doubt denied this based upon a map prepared by the Municipality through Geographical Information System (GIS) which is said to be a process by which satellite images of an area is taken as a base but,

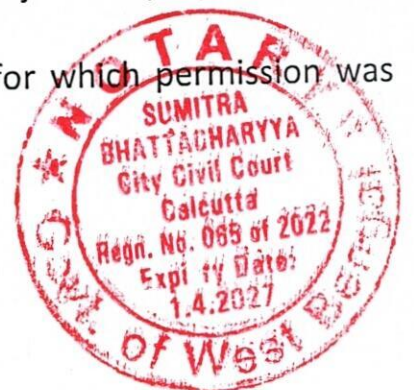


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admittedly that was prepared in the year 2013 which, therefore, would not discount a possibility that the water body may have come into existence after the general survey and attestation. That is what appears to be so. Several maps and topo sheets of the area were referred to by the Learned Counsel to substantiate that the Nayanjuli extended as a continuous water body from Ultadanga to Lake Town and onwards but we find from those documents that there were fragmented waterbodies of varying sizes up to Lake Town and appreciably large one thereafter that had a continuous flow towards Bangur and onwards to Dum Dum Park before merging with the Kestopur canal.

40. However, whatever may have been the extent, the maps and the documents on record do indicate that fragmented waterbodies did exist in wards no. 34 and 35. If so, were those encroached up and filled up? If so, can those now ordered to be restored in the original form as is being sought for by the Applicant? These are the crucial questions that require to be answered in the light of the documents available on record, rhetoric discounted.

41. Letter of the CIC (PWD), Dum Dum Municipality, dated 28th July, 2010 addressed to the Executive Engineer, Public Work Department, indicates that a beautification project of the Nayanjuli was proposed by the Municipality to save it from being covered up for which permission was



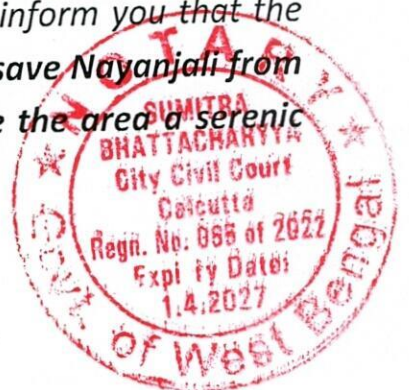
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sought for. This was followed by another letter by him dated December 14, 2010 forwarding a schematic diagram of the proposed beautification as requisitioned by the Executive Engineer in his letter dated 09.09.2010. Not much appear to have progressed on the proposal as would be apparent from letter of the CIC (PWD) dated 26.04.2012 addressed to the Minister-in-charge, Department of P.W.D. and another dated 07.06.2012 to the Chairman, West Bengal Pollution Control Board beseeching upon them to clear the beautification project.

42. On a careful examination of the aforesaid correspondences, we find that the water bodies from Ultadanga to Lake Town were in a continuous process of being filled up since long culminating in area assuming the present position in the year 2010. The letters referred to above clearly indicate that the Municipality intended to take up a beautification programme to prevent encroachment and covering of the Nayanjuli which was still intact between Lake Town and Bangur apart from providing a scenic look to the area. These will be revealed by the excerpts of the following correspondences: -

(a) Letter dated 28th July, 2010 written by CIC (PWD) Dum Dum Municipality to the Executive Engineer, Barasat Highway Division No.1

".....As per discussions we wish to inform you that the Beautification project will not only save Nayanjali from being covered up but will also give the area a serene look."



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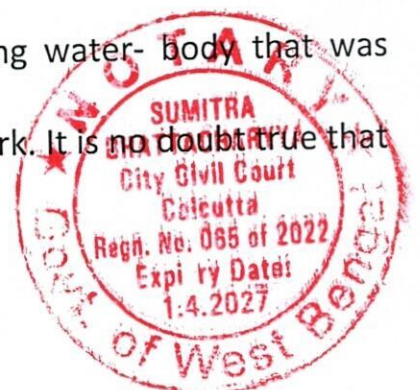
(b) Letter of CIC (PWD) Dum Dum Municipality dated December 14, 2012 addressed to the Minister-in-charge, Department of P.W.D.:

“.....If you see the stretch between Ultadanga and Lake Town it will be seen that Nayajali has been covered up by the big real estate developersFortunately enough the stretch of Nayajuli between Lake Town and Dum Dum park is still intact in its natural form, though there is immense probability of being covered up by the ambitions of big real estate developers. However, in many cases, the economic values of wetlands like Nayanjali, environmental services may significantly exceed the value from alternative use. On the other hand, the reduction in economic value of their environmental services due to pollution, as well as the health costs of the pollution itself are not taken into account while using them as a waste dump.

Hence a holistic view of Nayajali is necessary which looks at Nayajali in terms of its causal linkages with other natural entities, human needs, and its attributes. As a first step forward, restoration, beautification and maintenance of the stretch of Nayanjali between Lake Town and Dum Dum park needs to be taken on an urgent basis.”

(Underlining supplied)

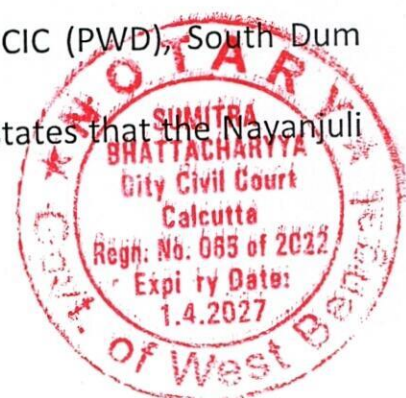
43. It will thus appear from the above that the waterbodies between Ultadanga and Lake Town which is the exact area where questions have been raised by the Applicant, had been filled up even as in December, 2012. The endeavour on the part of the Municipality in conceiving the beautification project was to protect the existing water- body that was lying intact between Lake Town and Dum Dum park. It is no doubt true that



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the field observation report submitted by Dr. Rajarshri Chakraborty, Environment Officer, Department of Environment, dated 04.06.2013, filed by the Principal Secretary, Environment, states that "the Nayanjuli is existing along the entire stretch, although with varying width" (i.e., from Ultadanga to Kestopur) which has also been noted in our order dated 10th August, 2015. The report obviously had culminated as a consequence of a letter dated 27.09.2011 from Dr. Kakoli Ghosh Dastidar, MP (Lok Sabha) forwarding letter of South Asian Forum for Environment (SAFE) dated 29.05.2011 regarding filling up of Nayanjuli besides the western side of VIP road, opposite the Kestopur Khal from Ultadanga to Dum Dum park as recorded in the note of the Senior Environment Officer of the Department of Environment. It had been noted that on an inspection of the area on 21st October, 2011 conducted along with the Research & Liaison Officer that there were encroachments of the water body beside the VIP road by various housing development projects and that its revival between Bangur Avenue road connector between VIP road and connector to the Kestopur khal at the Ultadanga end would be a major project. The next is a letter from the Principal Secretary, Department of Environment, to various Principal Secretaries as already observed earlier.

44. Indeed, we did find an apparent conflict between the report of Dr. Rajarshri Chakraborty and the version of the CIC (PWD), South Dum Dum Municipality in as much as while the former states that the Nayanjuli



exists in the entire stretch, the latter's version is that stretch between Ultadanga and Lake Town have been filled up. A closer examination of the note of the Senior Environment Officer, however, indisputably appear to support the version of the CIC (PWD) where it is recorded that various housing projects have encroached upon the waterbody and that its revival between Bangur connector and the connector at the Ultadanga end would be a major project. Significantly, even in the "Proposed Management Intervention" of Dr. Rajarshri Chakraborty in his report after *inter alia* recommending reclamation of the area and its demarcation, which would have been the ideal steps, it has been suggested as follows: -

" 5.Continuity of the Nayanjali must be restored. All roads across Nayanjali should provide for adequate passage of water underneath.

6.The Nayanjali is truly a large water body much of which still exists and can be restored. Through proper management, it has the potential to become an environmental asset.

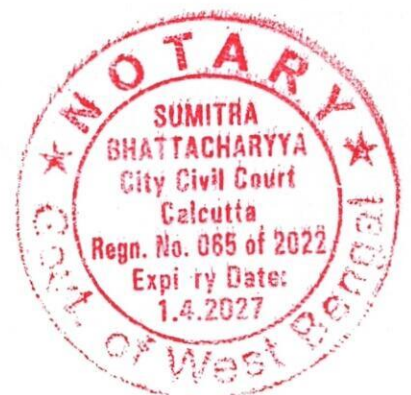
(Underlining supplied)

45. Thus, it is quite obvious that even Dr. Rajarshri Chakraborty undoubtedly appear to have accepted the position unequivocally expressed by the CIC (PWD) in his letters of the years 2010 and 2012 alluded to by us earlier. The necessity of taking a holistic view at "Nayanjali in terms of its causal linkages with other entities, human needs and its attributes" expressed by him In his letter dated 07.06.2012



addressed to the Chairman, West Bengal Pollution Control Board, could only have been prompted by the reality of the situation faced by the Municipality. This, in our view, also explains the cautiously worded statement of the Executive Engineer, Barasat Highway Division No.1 in paragraph (n) of his affidavit filed on 01.07.2015 that *"the department is ready to undertake any possible work for restoration of the existing water body in the stretch from Dum Dum Park to Ultadanga flyover on the western flank of VIP road, if any appropriate and/or order may kindly be passed by the Hon'ble Green Tribunal."* (Emphasis supplied)

46. It may also be recalled that in order to deal with the second part of the order of the Tribunal dated 10th August 2015 which required the Respondents to restore free flow of water in the entire stretch of the Nayanjuli, an expert committee had been constituted which would indicate the complexity of the task. Since we have reproduced the Report of the Committee earlier, we need not detain ourselves further on this. As regards the first part of the order also by which hume pipes were directed to be laid at the crossings in Golaghata, Lake Town and Bangur, it has already been noted that except for the Bangur crossing, the other two still require to be executed towards which necessary directions shall follow hereafter.



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47. Notwithstanding the above position, we find a more realistic position projected in the report of the West Bengal Pollution Control Board on its inspection carried out on 13.05.2015 and 11.06.2015 as would be revealed by the observations in the report relevant portions of which read a under

“ The observations made at different locations, and the results of water analysis and the inferences are presented below :-

1. At the southern end near Ultadanga at Debi Ghat next to a park named “Butterfly” and in front of a housing complex named “Natural Residency” there is a water body with boundary wall on the road side. Some wastes like dry flowers were seen dumped at one corner just within the wall on the southern side. Water sampling was performed on the days and the findings are provided below.

Status of the water quality :

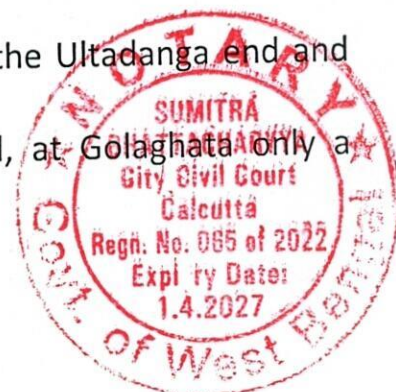
2. Further north, beside the office of the Assistant Engineer of Baguiati Highway Sub Division, PWD at Golaghata, some marshy area was seen. Immediately north of the place, work of laying of sewer line was also observed

3. On 13th May, 2015 at Sreebhumi, in front of Gokul Banquets a water body was found filled with water hyacinth and water sampling was conducted. It was learnt from the workers that this work was for park and rejuvenation of water body.

4. A continuous long water body along VIP Road beside Lake Town entrance to the entrance of Bangur appeared like the “Nayanjuli”. This portion of the water body has been beautified.

5. A long water body was found stretching from the entry point of Bangur to the entry point of Dum Dum Park. This portion of the water body is not cleaned. “

48. The observations thus reveal that at the Ultadanga end and Sreebhumi there was one water body each and, at Golaghata only a



marshy area existed. There was existence of a continuous water body that resembled the "Nayanjuli" along the VIP road from the Lake Town entrance to the entrance of Bangur which was found to have been beautified and thereafter the Nayanjuli was uninterrupted but required to be cleaned.

49. This explains the submission made by Mr. Bikash Kargupta, the Learned Government Advocate, on 10th August, 2015 that there were three points, viz., Golaghata, Lake Town and Bangur, where the Nayanjuli had been blocked by connecting roads constructed across for movement of the local people and, for the Tribunal to direct the Respondents either to construct over bridge or to lay large hume pipes at those points under the pathways to restore flow of water. We find support on this aspect also in the affidavit of the Executive Engineer, Barasat Highway Division No.1 where in paragraph (I) it has been stated that *"there are low swampy land and water body scatteredly(sic) located in between Golaghata to(sic) Ultadanga flyover. There are no such borrow pits, excavated by the department in the stretch from Golaghata to Ultadanga flyover. Because, there is a vast water body commonly called as "Devi Ghat" which is under the reclamation project of South Dum Dum Municipality"*.

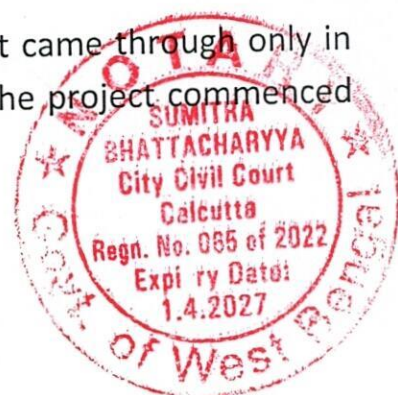
50. On an analysis of the above, it is indisputable that essentially only three water bodies are in existence between Ultadanga



and Sreebhumi, the one at Ultadanga being the Devi Ghat which is a fairly large isolated water body.

51. In the facts and circumstances, what emerges is as follows: -

- (a) The Nayanjuli in question is not a natural water body and, therefore, is not found recorded in the revenue records;
- (b) The Nayanjuli is a burrow pit excavated while constructing the higher elevated VIP road and came into existence in or about the year 1960 (minutes of the first meeting of the Expert Committee for identification of illegal construction and encroachment on Nayanjuli between Ultadanga and Dum Dum Park held on 27th November, 2015);
- (c) The waterbodies in wards no. 34 and 35 were not uninterrupted and continuous joining the point at Sreebhumi and beyond but was scattered and fragmented and of varying sizes.
- (d) Encroachment of the waterbodies in these wards had been continuing for many years culminating in the position in the year 2010. Even going by the contention of the Applicant, filling and covering by encroachment for various housing projects had commenced in the year 2004;
- (e) In order to prevent further encroachment and to save substantial part of the Nayanjuli that was still in existence, the South Dum Dum Municipality conceived project for beautification, restoration and maintenance of the water body in the year 2010 for which clearance was sought for from the Public Works Department, the custodian of the VIP Road for the construction of which the Nayanjuli was excavated.
- (f) After much deliberation, the project came through only in December, 2014 and the work on the project commenced



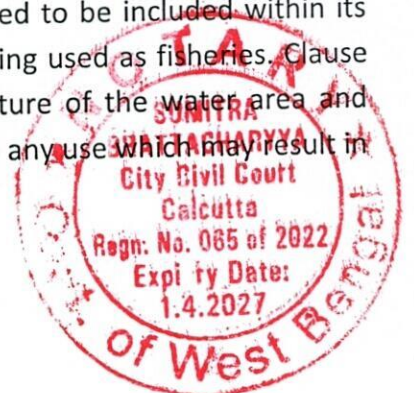
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in March, 2015 after following the tender process which is borne out by the statement of the Executive Engineer, Barasat Highway Division No.1 in paragraph 5(b) of his affidavit filed on 29.05.2015 to the effect that "the Public works Department, Government of West Bengal has already undertaken to execute the work of beautification and greenery within the stretch from Sreebhumi to Lake Town" and that the said work was in progress.

(g) The Original Application came to be filed on 15.04.2015 after the work on the project had started.

52. Before we embark upon giving our decision, we may address on the assertion of Mr. Lahiri on the question of violation of Section 17A of West Bengal Inland Fisheries Act, 1984 inserted by the West Bengal Inland Fisheries (Amendment) Act, 1997. Having considered the submissions, we are of the view that the contention does not appear to be sound in view of the decision of the Hon'ble Calcutta High Court in the case of *Concern for Calcutta & Ors (supra)* which squarely deals with this question as follows :-

"91. Regarding the provisions of the West Bengal Inland Fisheries Act, 1984 and the provisions of Section 17A thereof, it must be borne in mind that the said Act was enacted to provide for conservation, development, propagation, protection, exploitation and disposal of Inland fish and fisheries in West Bengal. It is nobody's case that the Museum tank s being used for the purpose of pisciculture so as to bring it within the ambit of the aforesaid Act. Even s. 17A, which imposed bar to filling up of any water area with a view to converting it into solid land for the purpose of construction of a building thereon or for any other purpose, makes it clear that the water bodies intended to be included within its ambit are such water bodies which were being used as fisheries. Clause (e) of Sub-s. (1) of s. 17A indicates the nature of the water area and provides that the same should, be not put to any use which may result in

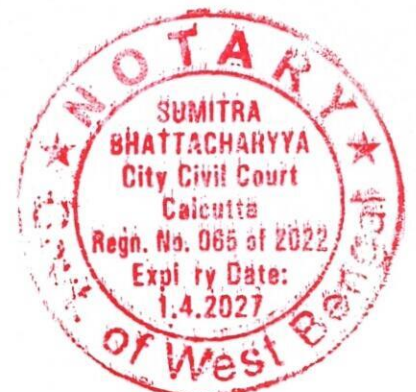


abolition of the fishery, which again clearly indicates that the water area was being used as fishery. The provisions of clauses (b) and (c) of sub-s. (1) of s. 17A of the said Act refers to holdings of the nature indicated in clause (a), namely, water areas used for purposes of fishery.

92. In my view, the provisions of the aforesaid Act would have no application the museum tank which does not appear to be used for pisciculture."

53. We are persuaded to accept the above finding as the facts in the case giving rise to the decision are *pari materia* to the ones before us in this case. Accordingly, the contention stands rejected.

54. The decision of *People United for Better Living in Calcutta (supra)* referred to by Mr. Lahiri is also clearly distinguishable from the facts of the present case as, unlike in the present case where the question is threat to the Nayanjuli, a man-made waterbody, by constructions that have already come up or are said to be ongoing, in that case it was the proposed construction of a World Trade Centre in the East Kolkata Wetlands that was under consideration of the Court. The East Kolkata Wetlands that lies in the east of the city of Kolkata, is a vast natural waterbody that naturally treats the city's sewage and, in consideration of this and its rich bio-diversity, it is now a recognised site under the Ramsar Convention, an International Treaty on Wetlands, and included in the schedule to the Wetlands (Conservation and Management) Rules, 2010 which, obviously is not the case in the case at hand.



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55. Mr. Somnath Roy Chowdhury, Learned Counsel for the Applicant in OA 46 of 2015, in his arguments pressed into service the West Bengal Town and Country (Planning and Development) Act, 1979 to contend that the Act had been violated on several accounts. Without going into the details of his submissions, in our considered opinion, the contentions not only appear to be an afterthought but also alien to the case of the Applicant set out in the Original Application. None of the State Respondents including the Kolkata Metropolitan Development Authority arrayed as Respondent No. 11 has raised any question on this. Furthermore, apart from the fact that the subject matter would not fall within the jurisdiction of the Tribunal, section 52 of the Act admittedly provides for penalty for the violations alleged by him and, therefore, remedy of filing a complaint before the appropriate Authority is available to the Applicant. We, therefore, unhesitatingly reject the contention as untenable.

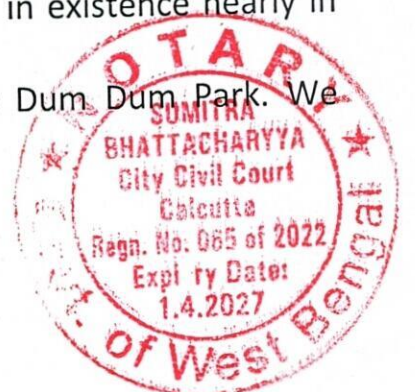
56. Apart from the above, the Applicant has cited instances of illegal constructions by some builders, in particular M/S Pranav Builders. However, we find that the authorities had admittedly initiated action against them and had issued notices which gave rise to litigations in the Calcutta High Court. Although it is the case of the Applicant that those cases were dismissed as withdrawn, we find that, apart from the fact that the alleged infractions are of 2013 vintage and even earlier, the area in



question apparently lies in Lake Town which is beyond the area of dispute presently under consideration as would be evident from site plan appended to the affidavit-in-reply filed by the Applicant on 31.03.2015 to the affidavit of South Dum Dum Municipality.

57. In the light of the above facts, we find that the character of the water bodies has been significantly altered resulting from activities undertaken over several years and is now largely irreversible. Although, the Nayanjuli is not a natural waterbody, it admittedly had come into existence at least fifty years ago and, during that period ecology has undoubtedly evolved in it forming an integral component of the environment. Admittedly, remnants of some of the water bodies have been covered up as a part of the beautification project as those had become marshy, stagnant and shallow, a breeding ground for mosquitoes and receptacle of garbage, filth and sewage thereby rendering it a serious health hazard for the locality. As already noted earlier, as a result of complaints of the local inhabitants and requisitions of the local municipal councillors, the Public Works Department thus accorded approval to the work "Landscaping and beautification of Land along VIP Road from Ultadanga flyover to Lake Town" proposed by the South Dum Dum Municipality.

58. Mercifully, much of the Nayanjuli is still in existence nearly in its pristine condition from Lake Town onwards to Dum Dum Park. We

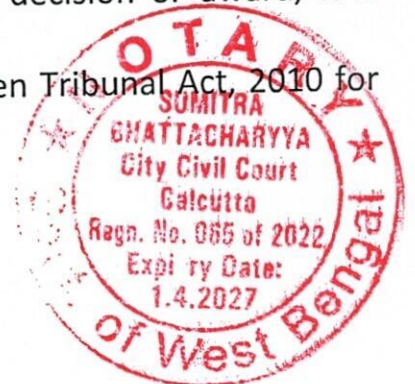


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further find from the report of the Expert Committee and the drawing appended thereto filed as Annexure A to the affidavit of the Principal Secretary, Public Works Department, filed on 09.09.2015 that a channel still exists connecting the water bodies at the Ultadanga end, Golaghata, Lake Town and onwards.

59. Under sub-section (3) of section 14 of the National Green Tribunals Act, 2010, we are mandated not to entertain application for adjudication of disputes arising under sub-section (1) of the said section unless it is made within a period of six months from the date on which the cause of action for such dispute first arose and, in any case, not after a further period not exceeding sixty days of such period as per proviso appended thereto, if the Tribunal is satisfied that the applicant was prevented by sufficient cause from filing the application within such period. Considering the fact that the cause of action was a continuing one, we have gone ahead in entertaining the application in view of the grave environmental concern raised in the Applications and that although the Nayanjuli in question is not a natural water body, "environment" defined under clause (a) of section 2 of the Environment Protection Act, 1986, amongst others, also includes water.

60. Further, while passing any order or decision or award, it is necessary under section 20 of the National Green Tribunal Act, 2010 for



the Tribunal to follow the principles of sustainable development, the precautionary principle and the polluter pays principle.

61. Keeping in view the parameters for exercise of our jurisdiction laid down under the Act and the facts and circumstances earlier alluded to *in extensio*, we are inclined to take a pragmatic view by adopting the principles of sustainable development and precautionary principle.

62. We, therefore, direct the Respondents:-

- (1) To restore the existing fragmented water bodies of Nayanjuli between Golaghata and Sreebhumi as indicated in the report of the West Bengal Pollution Control Board which finds corroboration in the affidavit of the Executive Engineer, Barasat Highway Division No. 1 in his affidavit referred to above. Since it is the stated case of the Respondents that work on beautification project had been stopped after the order of prohibition dated 21st April, 2015, there should be no impediment in implementing this order.
- (2) While carrying out the above task, the "scheme for restoration of flow of water" shall be implemented as per the drawing prepared by the Expert Committee in its report 07.09.2015 being Annexure A to the affidavit of the Principal Secretary, Public Works Department filed on 09.09.2015, as there appear to exist water channel connecting water bodies marked as MKD.1, 2 and 3 at the Ultadanga end, Golghata and Lake Town respectively. The water channel shall be cleared of all garbage, hydrophytes and sediments. Since there onwards the Nayanjuli is found to exist in its pristine condition, no direction would be necessary except



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that the South Dum Dum Municipality shall get it free of all garbage, hydrophytes and sedimentation, if not already done.

- (3) To construct permanent over bridges of sufficient heights at the Golaghata and Lake Town crossings for ensuring free flow of water as being done at the Bangur crossing instead of laying hume pipes which, in any case, can only be a temporary measure. In carrying out this task, the CESC and the Department of Water Supply shall extend their co-operation and provide necessary assistance.
- (4) If necessary, to modify the work on the beautification project of the Nayanjuli that has been withheld pursuant to our order, by incorporating within its scope the above directions.
- (5) To expedite the ongoing beautification works at the stretch from Lake Town and beyond making it clear that if there is any proposal for creating islands on any stretch of the Nayanjuli, it shall be scrapped and ensure that there is no such encroachment on the water body.
- (6) The South Dum Dum Municipality shall be responsible for the maintenance, preservation and regular cleaning of the entire stretch of the water body as undertaken by them in their letters of proposal submitted to the Public Works Department and the Pollution Control Board in their letters dated December 14, 2010, April 26, 2012 and June 7, 2012.
- (7) While directions (1) and (2) above shall be completed within three months, the process of preparation of DPR for the work under direction (3), its approval and issuance of NIT shall also be



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(8) completed within three months, the period being computed from the date of receipt of this order.

(9) A compliance report shall be filed positively in the first week of the fourth month.

63. In the result, both the applications stand allowed in part.

64. In the facts and circumstance of the case, there is no order as to cost.

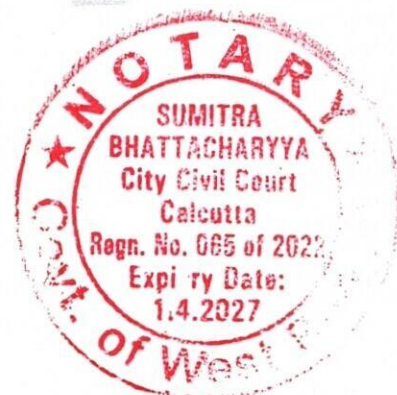
CONTEMPT PETITIONS NO. 03/2015/EZ & 120/2015/EZ (IN OA 27/2015/EZ) :

In view of the detailed facts and circumstances alluded to in the judgements in OA 27/2015/EZ and OA 46/2015/EZ, nothing survives for consideration in this contempt petitions and is accordingly disposed of in terms thereof.

.....
Mr. Justice S.P.Wangdi , JM

.....
Prof.(Dr.) P.C. Mishra , EM

Kolkata,
Dated, 10th July, 2017.



“VAKALATNAMA”

BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE BENCH, AT KOLKATA

District:

Signature

Nabendu Kumar Bandyopadhyay

Q.A NO. OF 2024

Shri Nabendu Kumar Bandyopadhyay

Plaintiff / Appellant
Petitioner

-Versus-

Union of India
The State of West Bengal & others

Defendant/Respondent
Opposite party

Vakalatnama on behalf of Petitioner/Appellant Applicant
Knows all men be these presents that by this Vakalatnama I/We appoint the Advocates Pleaders noted below for filing the memorandum of appeal or petition or any one of them as my/our lawful Advocate or Advocates for filling the memorandum of appeal or petition

for entering appearance

in the above matter for appearing and conducting and arguing the same for depositing or Withdrawing any money in connection therewith, for moving the Court in any matter connected therewith for preparing the Paper Book in the case and for putting in papers, petition etc. on my/our behalf for filing or taking back any documents for withdrawing suits or appeals or petitions with permission to institute fresh suits, appeals, petition etc. for signing and filing the petitions of compromise in connection with the said matter and for taking copies of paper from the Record and I/We further say that any act done by my/our said Advocate or Advocates or by any one of them after accepting this Vakalatnama, shall be considered as my/our own true and lawful act.

And I/We further hereby agree and undertake to pay the said Advocate or Advocates his or their fees as settled and all others sums that may be necessary to carry out the requisition of the Court and otherwise to enable the said Advocate or Advocates to conduct the case properly, failing which the said Advocate or Advocates after notice to me/us will be at liberty to withdraw from the further conduct of the case.

IN WITENESS WHEREOF I/we sign and execute this vakalatnama, on this the.....^{18th}.....
day of July 2024.

SHUBHAM KUMAR DAS
High Court, Calcutta
10, Old Post Office Street,
4th Floor, Room No.105
Kolkata-700001
Mob: +91-33-48221174
Advsubhamdas93@gmail.com

Subham K. Das
Advocate F/457/366/17

Received and Accepted
Subham Kr. Das
Advocate

Subham Kr. Das
Advocate

BEFORE THE NATIONAL GREEN
TRIBUNAL;
EASTERN ZONE BENCH, KOLKATA

O. A. NO. OF 2024/EZ.

Between

Shri. Nabendu Kumar Bandyopadhyay.

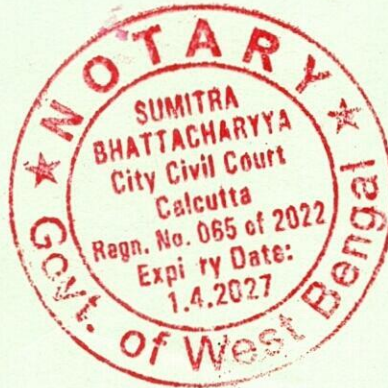
... Petitioner

VERSUS

Union of India
~~The State of West Bengal~~ & Others

... Respondents

Original Application



Shubham Kumar Das

Advocate,

D S & Associates,

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