

BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

M.A No: of 2024/EZ

(Arising out of O. A. No: 106 of 2021/ EZ disposed of on 03.08.2022)

IN THE MATTER OF:

Sisir Kumar Panda APPLICANT

-VERSUS-

Union of India and others ...RESPONDENTS

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BY THE APPLICANT

Dom
03.08.24

THROUGH ADVOCATE

Date: 03.08.2024.

BIRANCHI NARAYAN MAHAPATRA

ADVOCATE, ORISSA HIGH COURT, CUTTACK

CELL: +91 8984383812, Email: imbiranchi@gmail.com

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BY THE APPLICANT

Do
03.08.2024

THROUGH ADVOCATE

(Biranchi Narayan Mahapatra)

Date: 03.08.2024

Mob No: 8984383812

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

M.A No: of 2024/EZ

(Arising out of O. A. No: 106 of 2021/ EZ disposed of on 03.08.2022

IN THE MATTER OF:

An Application under Section 18(1) read with 14 of the NGT Act, 2010.

IN THE MATTER OF:

An Application for necessary orders in compliance to the order dated: 21.03.2024 of the Hon'ble Orissa High Courts Passed in W.P (C) No: 22622 of 2022 in the matter of Maa Mangala Temple and Kalyan Mandap Managing Committee, Berhamur, Ganjam & Ors.- Union of India and Others.

IN THE MATTER OF:

Sisir Kumar Panda

S/o: Late Ram Prasad Panda,

Aged about 53 years,

Advocate by profession,

Residing at : Nehru Nagar 7th Lane,

Gosaninuagaon, Berhampur-760003,

PS: Gosaninuagaon, Dist: Ganjam, Odisha

...Applicant / Applicant in O.A No 106 of 2021/EZ



*Done
03.08.24
(Adv. for the Applicant)*

FORM PART OF
[Signature]
NOTARY PUBLIC

-VERSUS-

Union of India

1. Represented by its Secretary
Ministry of Environment, Forest and Climate Change,
(MOEFF&CC) Indira Paryavaran Bhavan, Jorbagh Road, New
delhi-110003, India.
Email: secy-moef@nic.in
2. **Chief Secretary to Govt. of Odisha**
State Secretariat, Bhubaneswar,
Pin-751001, Odisha,
E mail: csori@nic.in, cs-ori@nic.in
3. **Principal Secretary to Government**
Water Resource Department, Odisha State
Secretariat, Bhubaneswar-751001, Odisha Email:
wrsec@ori.nic.in
4. **Principal Secretary to Government**
Home Department, Odisha State Secretariat,
Bhubaneswar-751001, Odisha Email: [home
sec.od@nic.in](mailto:home
sec.od@nic.in)
5. **Principal Secretary to Government**
Forest, Environment and Climate Change
Department, Odisha State Secretariat, Kharavel
Bhavan, Bhubaneswar- 751001, Odisha
Email: fosec.or@nic.in



Dr. K.M. Pamigrahy
03.08.2024
(Adv. for the Applicant)

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6. **Member Secretary**
Central Pollution Control Board, Parivesh Bhawan,
East Arjun Nagar, New Delhi-110032, India, Email:
mscb.cpcb@nic.in
7. **Member Secretary**
Odisha State Pollution Control Board,
Paribesh Bhawan, A/118, Nilakantha Nagar,
Unit- Bhubaneswar-751012, Odisha,
Email:membersecretary@ospcboard.org
8. **Commissioner-Cum-Secretary** to
Government
Revenue and Disaster Management Department,
Government of Odisha, State Secretariat,
Bhubaneswar-751001, Odisha, Email:
revsec.od@nic.in
9. **Commissioner-Cum-Secretary** to
Government
Urban and Housing Development Department,
Government of Odisha, 3rd Floor, Kharvel Bhavan,
West wing Room No: 301, State Secretariat,
Bhubaneswar-751001, Odisha. Email:
hudsec.or@nic.in
10. **Revenue Divisional Commissioner**
Southern Division, At/Po: Berhampur-760004,
District: Ganjam, Odisha,
E mail: rdbcamp@nic.in



Done
03.08.2024
(Att. for the Applicant)

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11. **Deputy Director General of Forests (C)**
Regional Office, Eastern Zone (EZ) Ministry of Environment, Forest and Climate Change (MOEFF&CC), A/3, Chandrasekharpur, Bhubanswer-751023, Email: roez.bsr-mef@nic.in
12. **Regional Director**
Regional Directorate, Central Pollution Control Board, Ministry of Environment, Forest and Climate Change (MOEFF&CC), South end conclave Block-502, 5th & 6th Floor, 1582, Razidanga, Main Road, Kolkata-700107, West Bengal, Email: mkbiswas.cpcb@nic.in
13. **Tahasildar**
At/Po: Berhampur, Pin- 760004, Dist: Ganjam, Odisha. Email: tah.berh-od@nic.in
14. **Collector-Cum-District Magistrate**
Ganjam Collectrate, at/Po: Chatrapur, Pin- 761020, Dist: Ganjam, Odisha, E Mail: dm-ganjam@nic.in
15. **Sub-Collector**, at/Po: Berhampur- 760004,
District: Ganjam, Odisha,
E-Mail: subcol.berh-od@nic.in
Odisha
16. **Commissioner**
Berhampur Municipal Corporation
At/Po: Berhampur-760002
Dist: Ganjam, State: Odisha,
Email: ber_municipality@rediffmail.com
17. **Secretary**
Board of Revenue
At/Po: Cuttack, Odisha-753002
Email: mbr@nic.in, bor.secy-od@nic.in

...Respondents

Dr
03.08.2024
(Adv. for the Applicant)

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- I. The address of the applicant is as given above for the service of notices of this application.
- II. The addresses of the respondents are as given above for the service of notices of this application.
- III. The above named applicant begs to present the memorandum of application on the grounds set-out here under:

...Respondents

MOST RESPECTFULLY SHEWETH

1. That the Misc. Application is being filed by the present Applicant with reference under Section 18(1) read with 14 of the NGT Act, 2010.
2. That the present Application is being filed to for necessary orders in compliance to the order dated: 21.03.2024 of the Hon'ble Orissa High Courts Passed in W.P (C) No: 22622 of 2022 in the matter of Maa Mangala Temple and Kalyan Mandap Managing Committee, Berhamur, Ganjam & Ors.- Union of India and Others.
3. That the present Applicant is also an Applicant in the O.A No: 106 of 2021/EZ and the Present Respondents are also the Respondents in the O.A.
4. That the present applicant is acquainted with the facts and proceedings of the O.A No: 106 of 2021/EZ, which has been disposed of with reference to the order dated: 03.08.2022 by this Hon'ble Tribunal. Copy of the order dated: 03.08.2022 of this Hon'ble Tribunal Passed in O.A No: 106 of 2021/EZ is annexed here to as ANNEXURE-A/1. The Copy of the order dated: 21.03.2024 of the Hon'ble Orissa High Courts Passed in W.P (C) No: 22622 of 2022 in the matter of Maa Mangala Temple and Kalyan Mandap Managing Committee, Berhamur, Ganjam & Ors.- Union of India and Others is annexed here to as Annexure-A/2.



Done
03'08-2024
(Adv. for the Applicant)

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P R A Y E R

Hence, it is prayed that the Hon'ble Tribunal may be pleased to admit the Misc. Application and after hearing both parties and pass necessary order/orders in compliance to the order dated: 21.03.2024 of the Hon'ble Orissa High Court, Passed in W.P (C) No: 22622 of 2022 in the matter of Maa Mangala Temple and Kalyan Mandap Managing Committee, Berhamur, Ganjam & Ors.- Union of India and Others for the ends of justice.

Pass such other orders in favour of the present Applicant as deemed fit and proper in light of the facts and circumstances of the case.

And for this act of kindness, the humble applicant as in duty bound shall ever pray.

BY THE APPLICANT

Dr.
03.08.2024.

THROUGH ADVOCATE

(Biranchi Narayan Mahapatra)
Advocate, Orissa High Court
Enrolment No: O-04/2013
Mob No: 8984383812

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3/8/24



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

M.A No: of 2024/EZ

(In Original Application No: 106 of 2021/EZ disposed of on 03.08.2022)

IN THE MATTER OF

Sisir Kumar Panda **Applicant**

-Versus-

Union of India and others**Respondents**

A F F I D A V I T

I, **Sisir Kumar Panda**, S/o: Late Ram Prasad Panda, Aged about 53 years, Advocate by profession, Residing at: Nehru Nagar 7th lane, **Gosaninuagaon**, Berhampur-760003, PS: Gosaninuagaon, Dist: Ganjam, Odisha do hereby state on solemn affirmation as under:-

1. That I am the Applicant of M.A and deponent of this affidavit.
2. That I am acquainted with the facts of the case basing on the records available. I am competent to swear this affidavit.
3. That the facts stated here and above are true to the best of my knowledge and belief and information, which I believe to be true.



Sisir Kumar Panda
DEPONENT

Done
03.08.2024.
(identified by Advocate)

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[Handwritten signature]

VERIFICATION

Verified on this the 03.08.2024 at Berhampur that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

IDENTIFIED BY

Dr
03.08.2024

ADVOCATE

[Handwritten Signature]

DEPONENT

(Biranchi Narayan Mahapatra)

Advocate, Orissa High Court

Enrolment No: O-04/2013

Mob No: 8984383812



Dr. K.M. Panigrahy
NOTARY
Berhampur (Ganjam)

No... *A 21/02*
Time... *11:30*
Place:.....

DECLARATION

The deponent having been identified by Advocate Sri..... *Biranchi Narayan Mahapatra* solemnly affirm before me this the.....2024 before the Notary BerhampurA.M./P.M read over and explained the deponent who seems perfectly to have understood the contents and teh affidavit.

[Handwritten Signature]
Dr. K.M. Panigrahy
Notary Berhampur (Ganjam)
Rend. No.31/2000

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As per Use-A/1

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

.....
ORIGINAL APPLICATION No. 106/2021/EZ

IN THE MATTER OF:

**Sisir Kumar Panda,
S/o Late Ram Prasad Panda,
Aged about 50 years,
Advocate by Profession,
R/o Nehru Nagar, 7th Lane, Gosaninuagaon,
Berhampur, P.S.-Gosaninuagaon, District-Ganjam,
Pin - 760003, Odisha,**

....Applicant(s)

Versus

- 1. Union of India,
Through Secretary,
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhavan, Jorbagh Road,
New Delhi - 110003,**
- 2. Chief Secretary to Govt. of Odisha,
State Secretariat, Bhubaneswar,
Pin - 751001,**
- 3. Principal Secretary to Government,
Water Resource Department,
Odisha State Secretariat, Bhubaneswar,
Pin - 751001,**
- 4. Principal Secretary to Government,
Home Department,
Odisha State Secretariat, Bhubaneswar,
Pin - 751001,**
- 5. Principal Secretary to Government,**

**Forest, Environment and Climate Change Department,
Odisha State Secretariat,
Kharavel Bhavan, Bhubaneswar,
Pin - 751001,**

- 6. Member Secretary,
Central Pollution Control Board,
Parivesh Bhavan, East Arjun Nagar,
New Delhi - 110032,**
- 7. Member Secretary,
Odisha State Pollution Control Board,
Paribesh Bhawan, A/118, Nilakantha Nagar,
Unit-8, Bhubaneswar,
Pin - 751012,**
- 8. Commissioner-cum-Secretary to Government,
Revenue and Disaster Management Department,
Government of Odisha,
State Secretariat, Bhubaneswar,
Pin - 751001,**
- 9. Commissioner-cum-Secretary to Government,
Urban and Housing Development Department,
Government of Odisha.
3rd Floor, Kharvel Bhavan, West Wing Room No. 301,
State Secretariat, Bhubaneswar,
Pin - 751001,**
- 10. Revenue Divisional Commissioner, Southern Division,
At/Po: Berhampur, District-Ganjam,
Pin - 760004,**
- 11. Deputy Director General of Forests (C),
Regional Office, Eastern Zone (EZ),
Ministry of Environment, Forests and Climate Change,
A/3, Chandrasekharpur, Bhubaneswar,
Pin - 751023,**

11

Annexure-A/1

12. **Regional Director,
Regional Directorate, Central Pollution Control Board,
Ministry of Environment, Forests and Climate Change,
South end Enclave Block-502, 5TH & 6TH Floor,
1582, Razidanga, Main Raod,
Kolkata - 700107,**
 13. **Tahasildar, Berhampur,
At/Po: Berhampur, District-Ganjam, Odisha,
Pin - 760004,**
 14. **Collector-cum-District Magistrate,
Ganjam Collectrate,
At/Po: Chatrapur, District-Ganjam, Odisha,
Pin - 761020,**
 15. **Sub-Collector, Berhampur,
At/Po: Berhampur, District-Ganjam,
Odisha - 760004,**
 16. **Commissioner, Berhampur Municipal Corporation,
At/Po: Berhampur, District-Ganjam,
Odisha - 760002,**
 17. **Secretary, Board of Revenue,
At/Po: Cuttack, Odisha,
Pin - 753002,**
-Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Biranchi Narayan Mahapatra, Advocate

COUNSEL FOR RESPONDENTS :

**Mr. Soumitra Mukherjee, Advocate for R-1,
Mr. Tarun Pattnaik, ASC for R-2 to 5, 8 to 10, 13-15 & 17,
Mr. Ashok Prasad, Advocate for R-6 & 12,
Ms. Papiya Banerjee Bihani, Advocate for R-7,
Mr. Ramesh Sahoo, Advocate for R-16**

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Annexure-A/1

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)

Reserved On:- July 26th, 2022

Pronounce On:- August 3rd, 2022

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**

JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the parties and perused the documents on record.

2. This Original Application has been filed by the Applicant for removal of illegal constructions/obstructions caused by the State Authorities as well as the private persons in the Ecological Sensitive Zone i.e. Agula Bandha (Common Water Bodies) and its embankments situated at Gosaninuagaon under Berhampur Tahasil of Ganjam District of Odisha.

3. When we put a specific question to Mr. Biranchi Narayan Mahapatra, learned Counsel for the Applicant, to show us the Ministry of Environment, Forests and Climate Change Notification declaring Agula Bandha as an Ecological Sensitive Zone or as a Wetland, the learned counsel submitted that it has not been declared as an Ecological Sensitive Zone or a Wetland by the

Government of India nor has it been declared as an Ecological Sensitive Zone or a Wetland by the State Government.

4. It is stated that within the jurisdiction of the Berhampur Municipal Corporation, District Ganjam, Odisha, there are 42 ponds as per Revenue/Municipality records including Agula Bandha, the land details of which are mentioned in paragraph 4 of the original application but over a period of time a Police Station, Revenue Inspector Officer, Over Bridge, Rajib Abas Project, Maa Mangla Temple have been constructed over Agula Bandha water body and its boundary has been constructed over the water body in question.

5. The learned Counsel for the Applicant has referred to the proceedings of the meeting held on 05.02.2021 in the office of the Berhampur Divisional Commissioner, Berhampur, and submitted that the proposal to convert the 'Jalasaya Kissam' of the land in question to 'Non-Jalasaya' was taken as late as on 12.02.2021 in spite of the fact that this Tribunal had earlier decided one matter pertaining to the water bodies under the Behrampur Municipal Corporation, being Original Application No. 82/2015/EZ; (*Biranchi Narayan Mahapatra Vs. State of Odisha & Ors.*) and vide its order dated 24.08.2017 passed therein had disposed of the said Original Application on the assurance given by the State Government in an affidavit filed therein that the State Government may be granted reasonable time for completion of the entire process of removal of

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Annexure-A/1

encroachers from the ponds and its embankment and their rehabilitation within one year.

6. The learned Counsel has also referred to Lok Adalat proceedings, (Annexure A-5 to the Original Application), and Award of the Lok Adalat dated 05.05.2016 in an application filed under Section 22 C(1) of the Legal Services Authorities Act, 1987 which pertains to the restoration of the status of Agula Bandha of Gosaninuaon, Berhampur as 'Water Body'.

7. Notices were issued to the Respondents and in response, counter-affidavits have been filed.

8. The Applicant has filed a supplementary affidavit dated 12.11.2021 alleging therein that the constructions made in the premises of the 'Jalasaya' in question and its embankments are absolutely illegal and that for any such constructions, if permissible, prior Environment Impact Assessment is mandatory under the Environment Impact Assessment ('EIA' for short) Notification, 2006 issued by the Ministry of Environment, Forests and Climate Change, but the Respondents have recklessly permitted constructions to be made over the Plots in question which are water bodies without obtaining any Environmental Clearance.

9. An affidavit dated 02.02.2022 has been filed on behalf of the Respondent Nos. 6 & 12, Central Pollution Control Board, and all that has been stated therein is that the EIA Notification 2006 has been amended and it is now provided that building and

construction activities which cover an area of more than 20,000 square meters of built-up area would fall under 'Category-B' and it is mandatory for the Project Proponent to obtain Environmental Clearance from the State Environment Impact Assessment Authority ('SEIAA' for short), in addition to other statutory provisions such as Consent to Establish and Consent to Operate from the State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974.

10. The Respondent No.16, Berhampur Municipal Corporation, has filed its affidavit dated 28.02.2022, wherein it is stated that the pond in question, namely, Agula Bandha, is not situated over the entire land of 18.480 acres in Khata No. 1375 as alleged by the Applicant, rather the water body is situated on Plot No. 1509 area 6.860 acres and 0.086 acres of Plot No. 438. It is also stated that constructions which have been made are all public utility services undertaken in the greater interest of general public of the Bermapur town and that constructions have been made over land which has lost its characteristic as 'Jalasaya' (water body). It is also stated that the Kisam of Plot Nos. 1509/2918, 1509/2638, 1509/3123 have been changed to 'Patita' Kisam by the orders passed in Alienation Miscellaneous Case No. 662/1994, Alienation Miscellaneous Case No. 1/1991 and Alienation Miscellaneous Case No. 41/1998. It is also stated that Kisam of Plot No. 1509/4190 and 438/4189 have been changed to Kisam 'Gharabari' (Homestead) by virtue of the order passed in Alienation Miscellaneous Case No. 01/2020. In support of the averments, Mr. Ramesh Sahoo, learned Counsel for

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Annexure-A/1

the Corporation has referred to the document filed as Annexure B/16 (at page no. 361) to the affidavit, which is the record of the Office of Tehsildar, Berhampur, Ganjam, dated 23.02.2022 which reads as under:-

**“OFFICE OF THE TAHASILDAR, BERHAMPUR,
GANJAM (ODISHA)**

Ph: (0680) 2283824

Email: tah_berhampur@yahoo.in

Letter No. 899

Date 23.02.2022

To

The Commissioner,
Berhampur Municipal Corporation.

Sub: Submission of detail field report, land status and structures related to NGT case No. 106/2021 Mouza-Gopabandhunagar of this tahasil.

Ref: Your Good Office L. No. 2954 dated 21.02.2022.

Sir,

In inviting a kind reference to the letter on the subject cited above, I am to intimate that as per the report of the Rev. Inspector Gosaninugaon RAY Project, RI Office, Gosaninugaon Aganwadi Centre, Police Station Gosaninugaon, Consumer forum court, Railway over bridge and other construction are exist over Plot No. 1509, 438, 437, 1510 in different khatas of Mouza Gopalbandhu Nagar. The detail field report, land status and structures related to NGT case No. 106/2021 Mouza Gopabandhunagar are as below:-

Khata No.	Plot No.	Area	Kisam	RT	Remarks
1375	1509	6.986	Jalasaya	Rakhita Khata	Agula Bandha
	1510	0.719	Adi		Railway Over Bridge

	437	0.148	Adi		
	438	0.086	Jalasaya		
1373	1509/2918	1.000	Patita	Anabadi Khata	RAY Project & Consumer forum
	1509/2638	2.480	Patita		RAY Project
	1509/3132	1.000	Patita		RI Office, Aganwadi Centre
1372/3	1509/4190	0.040	Gharbari		Gosaninuagaon Police Station
	438/4189	0.300	Gharbari		
1372/1	1509/3030	0.120	Patita	Khadya Jogan Bivag (Odisha)	

The demarcated report of RI Gosaninuagaon with Trace Map and RoR copy of the land scheduled are enclosed herewith for favour of your kind information and necessary action.

Encl: As above

Yours Faithfully,

Tahasildar, Berhampur,"

A perusal of the aforesaid document would show that a Jalasaya continues to exist over an area of 6.986 acres on Plot No. 1509 and over 0.086 acres on Plot No. 438.

11. In his rejoinder affidavit dated 09.04.2022, the Applicant has alleged that the constructions, namely, Gosaninuagaon Police Station, Revenue Inspector Officer, Over Bridge, Rajib Abas Project, District Consumer Disputes and Redressal Commission, Railway

Over Bridge, Khadya Jogan Bivag (Odisha), and Aganwadi Centre have been made over the Plot No. 1509, 438, 437 and 1510 of Khata No. 1375 of Gopabandhu Nagar Mouza of Berhampur Tehsil of Ganjam District, Odisha, as would be evident from the document dated 23.02.2022 (already extracted herein above). It is also stated that the State Government is constructing a morrum road with connectivity between Gosaninuagaon Police Station and District Consumer Disputes Redressal Commission by filling up the Agula Bandha (Jalasya/Water Body).

12. The Respondent No.7, Odisha State Pollution Control Board, has also filed its affidavit dated 05.04.2022, bringing on record an Inspection Report of an inspection carried out on 31.01.2022 of Agula Bandha water body filed as Annexure R-7/1 (page no. 444 of the paper book). The Observations and Conclusion & Recommendations in the Inspection Report are reproduced herein below:-

“Following Observations are made during inspection:

- 1. From the surroundings it was observed that waste water was discharged to the Agula Bandha near Revenue Inspector Office. Gosaninuagaon in West direction.*
- 2. One no. of storm water drain outlet was found to be connected to Agula Bandha near Gosaninuagaon Police Station in West direction.*
- 3. It was apprehended from the surroundings, during rainy season surface run off might be discharged into the water body as guard wall was not constructed around the Agula Bandha.*

4. There is no provision for removal of excess water during rainy season from the water body.
5. Agula Bandha water body is filled with Algee, crabgrass and yellow nutsedge and other foreign particles on its surface.
6. Solid waste including plastic bottles are found to be dumped near its embankment towards western part of the water body.
7. Collected one no. of water sample from Agula Bandha on 20.02.2022 for analysis. The analysis result thus obtained indicates that water quality does not conform to Class B (Outdoor Bath Organised) with respect to Dissolved Oxygen (DO), Biochemical Oxygen Demand (BOD) and Total Coliform (TC), MPN/100 ml as per the classification made by CPCB(ADSORBS/3/1978-79).
8. Such non-conformance with respect to DO, BOD & TC may be due to discharge of wastewater into the water body.

Conclusion & Recommendations:

In view of the above following recommendations are made:

1. Immediate steps shall be taken to stop discharge of waste water into Agula Bandha.
2. Municipal Authority shall take necessary measures to remove the solid materials including plastic bottles, Algee, crabgrass and yellow nutsedge and other foreign particles from the surface of the water body.
3. Necessary steps shall be taken by the Municipal Authority to stop/divert outlet of storm water drain into the water body.
4. There shall be provision for removal of excess water during rainy season from the Agula Bandha.
5. Awareness shall be created among the local people of the surrounding areas to prevent disposal of garbage into the water body.”

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Annexure A/1

13. The Collector & District Magistrate, Ganjam District, has also filed an affidavit dated 30.04.2022, stating therein that the common pond Agula Bandha does not exist over all the plots as alleged by the Applicant in his Original Application and, in fact, the common pond is now confined only to an area of 6.860 acres in Plot No. 1509, Khata No. 1375 and this water body has been preserved intact. The details of the other plots on Khata No. 1375 are mentioned in para 4 of the affidavit which reads as under:-

“4. Save what are matters of record, the averments made in paragraph 4 of the Original Application are disputed and denied. The averment of the Applicant that Agula Bandha is a common water body is disputed and denied. The common pond does not exist over all the plots as mentioned in this paragraph. The common pond is now confined to Plot Nos. 1509 over an area Ac. 6.860 dec. in Khata No. 1375. The water body has been kept intact. The area of the other plots in the Khata are (i) Plot No. 438 area 0.080, (ii), Plot Nos. 1504/1788 Area 0.005, (iii) Plot No. 1507/1791 Area 0.008, (iv) Plot No. 1506/1790 Area 0.006, (v) Plot No. 1505/1789 Area 0.005, (vi) Plot No. 1502/1786 Area 0.006, (vii) Plot No. DI-438 0.438 recorded as Jalasaya, (viii) Plot No. D1 437 area 0.148, (ix) Plot No. 1510 Area 0.719 recorded as Agula Bandha Adi. The aforesaid details of the Plots described with the corresponding area are evident from a bare perusal of the Record of Right. The deponent undertake to file translate copies of RoR at the time of hearing, if necessary.

It is also pertinent to mention that the Respondent No.14 vide its order dated 27.03.1993, by exercising its power under Section 3A of OGLS (Amendment and Validation) Act, 1975, has sanctioned the de-reservation of the government lands in Khata No. 1375 Plot No. 1509

TRUE COPY ATTESTED
Don
BY ADVOCATE

2)

Annexure A/1

admeasuring an area of 3.600 acres out of 11.500 acres which had already lost its original characteristics of Jalasaya. Further, on 19.08.1999, the Respondent No.14 vide its order dated 19.08.1999, has sanctioned the de-reservation of the government lands in Khata No. 1375 Plot No. 1509 admeasuring an area of 1 acre out of 7.900 acres which had already lost its original characteristic of Jalasaya. The constructions such as Ray Project, consumer forum, Revenue Inspector Office, Anganwadi Centre, Gosaninuagaon Police Station, temple Khadya Jogan Bivaga have been carried over the plots after the said plots had already been de-reserved and classified as Patita."

14. It is also stated that the Respondent No.14, Collector-cum-District Magistrate, Ganjam District, in exercise of powers conferred in Section 3A of Orissa Government Land Settlement (OGLS) (Amendment and Validation) Act, 1975, vide his order dated 29.03.1993, has sanctioned the de-reservation of the Government Lands in Khata No. 1375, Plot No. 1509 admeasuring an area of 3.600 acres out of an area of 11.500 acres which had already lost its original characteristics of 'Jalasaya'. It is further stated that the Collector & District Magistrate, Ganjam, vide another order dated 19.08.1999, has sanctioned de-reservation of Government Lands in Khata nO. 1375, Plot No. 1509 admeasuring an area of 1 acre out of 7.900 acres which had already lost its original characteristics of 'Jalasaya'. It is also stated that the constructions such as - Ray Project, Consumer Forum, Revenue Inspector Office, Anganwadi Centre, Gosaninuagaon Police Station, Temple, Khadya Jogan Bivag, have been made over these plots after the same had been de-reserved and classified as 'Patita'. The Record of Rights have also

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Annexure A/1

been filed as Annexure-B/14 (colly) to the affidavit. The details of constructions which have been made in Khata No. 1373, Plot No. 1509/2918, Plot No. 1509/2638, Plot No. 1509/3123, Khata No. 1372/3, Plot No. 1509/4190 & Plot No. 438/4189, Khata no. 1372, Plot No. 1509/3030 and Plot No. 1509/2918 are given in para 5 of the affidavit which reads as under:-

"5xxxx.....xxxx.....xxxx.....xxxxx.....xxxx....."

- a. Consumer forum building which is part of Ray project, has been constructed over Khata No. 1373, Plot No. 1509/2918 admeasuring over an area Ac. 1.000 and the nature of the said land is Kissam Patita.
- b. Plot No. 1509/2638 admeasuring an area of Ac. 2.480 decimals and the nature of the land is Kissam Patita. The said area has been reserved for Ray Project.
- c. Revenue Inspector Office and Anganwadi Centre have been constructed over Plot No. 1509/3123 admeasuring an area Ac. 1.000 and the nature of the land is Kissam Patita.
- d. Gosaninuagaon Police Station, Berhampur has been constructed over Khata No. 1372/3, Plot No. 1509/4190 having an area of Ac. 040 decimals and Plot No. 438/4189 having an area of Ac. 0.300 decimals. The nature of the land is Kissam Gharbari.
- e. In Khata No. 1372/1 Plot No. 1509/3030 area Ac. 0.120 Kissam Patita for Khadya Jogan Bivag (Odisha) Office and the Railway over bridge is constructed over the Plot No. 1510 and 437 Kissam Ad of the Agula Bandha.
- f. Maa Mangala Temple constructed over the Plot No. 1509/2918 over an area of Ac. 0.012 and the nature of the land is Kissam Patita."

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Annexure A/1

15. It is also stated that the existing water body in Agula Bandha is confined to Plot No. 1509 admeasuring an area of 6.860 acres and all necessary steps have been taken to protect the existing water body and steps have also been taken by the Tehsildar to remove encroachments in and around the water body in question. It is also stated that the 'ADI' is not a water body but is a embankment of pond situated on the periphery of the pond. It is also stated that in a meeting held on 05.02.2021 under the Chairmanship of the Revenue Divisional Commissioner (R.D.C.) (Southern Division), Berhampur, necessary permission has been accorded for changing the Kisam of land from 'Jalasaya-I' to 'Patita' and the Collector, Ganjam, in pursuance of the decision taken by the Committee, has vide his order dated 01.03.2021 effected the transfer of the land measuring 0.300 acre in Plot No. 438 and 0.040 in Plot No. 1509 of Khata No. 1375 in favour of Home Department for construction of Gosaninuagaon Police Station since the land had lost its characteristics of 'Jalasaya'.

It is reiterated that this area has not affected the remaining water body of Agula Bandha. It is also stated that the construction of Gosaninuagaon Police Station is for public purpose and covers the area from Ward No. 24 to 28 of the BeMC, Berhampur and Mouza New Khajuria and Old Khajuria and other nearby establishment areas. It is also reiterated that only those lands have been de-reserved from 'Jalasaya' to 'Patita' which have lost their characteristic as 'Jalasaya'.

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Annexure A/1

16. Mr. Biranchi Narayan Mahapatra, learned Counsel for the Applicant has placed reliance upon certain judgments in support of his contention that a water body cannot be allowed to be converted into any other kind of land other than the water body and encroachments thereon also cannot be permitted.

17. Reference has been made to the judgment of the Tribunal dated 24.08.2017 passed in Original Application No. 82/2015/EZ; (*Biranchi Narayan Mahapatra Vs. State of Odisha & Ors.*), which was in respect of all water bodies including Agula Bandha and a direction was issued by the Tribunal to complete the entire process of eviction and comply with the orders of the Tribunal within six months and also to remove all encroachments from the ponds and its embankments and their rehabilitation within one year. There can be no quarrel with the directions given by the Tribunal in Original Application No. 85/2015/EZ.

18. The stand of the State Respondents is that an area of 6.860 acres over Plot No. 1509 in Khata No.1375 is still preserved as 'Water Body' and steps have been taken by the Tehsildar to remove encroachments from the said water body and its embankments.

19. Reference has also been made to the judgment of the High Court of Odisha passed in Writ Petition (C) No. 8797 of 2004; (*Tapan Kumar Das Vs. Commissioner, Cuttack Municipal Corporation & Ors.*) along with other connected cases decided on 11.10.2012. The High Court gave certain directions to the effect that Revenue Divisional Commissioner (R.D.C.) (C.D.) Cuttack, shall form a

Committee and this Committee shall deal with the protection, preservation and conservation of water bodies in the city of Cuttack and take decision accordingly. It was also provided that applications for change of classification/kisam of land from 'Jalasaya' to 'Homestead' shall be processed through the Tehsildar, Sadar, Cuttack, to the Collector for appropriate orders and the decision of the Collector shall then be placed before the Committee for approval and if the Committee is of the opinion that the lands which have lost their characteristic as 'Jalasaya' and those which are actually not 'Jalasaya' or 'Swampy' lands but have been recorded as 'Jalasaya', change of classification of such lands may be allowed. The Division Bench of the High Court further directed that it will be open for the State Government to adopt the directions given in respect of Cuttack city for other cities in the State. Paras 14 and 15 of the High Court judgment are extracted herein below:-

"14. Considering the facts and circumstances of the case, for preservation and conservation of tanks/water bodies in Cuttack City, and to deal with such tanks/water bodies, we direct as follows:

(1) The State Govt. shall act upon the report dated 31.08.2007 submitted by the R.D.C (C.D.) Cuttack, and the affidavit dated 18.05.2020 filed by the Principal Secretary to Govt. H&U.D. Department and shall ensure that the steps indicated therein are taken within a period of two years from today.

(2) The R.D.C. (C.D.) Cuttack, under his chairmanship shall form a Committee not exceeding seven members including the Vice Chairman, C.D.A., Municipal Commissioner, CMC, Cuttack, and an Environmentalist

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Annexure A/1

of the State Pollution Control Board, Odisha. Needless to say, the other members of the Committee shall be nominated by the R.D.C. The Committee shall deal with the protection, preservation and conservation of water-bodies in the city and shall take decisions accordingly.

(3) The applications for change of classification/kissam of lands from Jalasaya to homestead shall be processed through the Tahasildar, Sadar, Cuttack, to the Collector for appropriate orders. The decision of the Collector shall be placed before the Committee as constituted above for approval. Only after approval of the Committee, change of classification/kissam of the land shall be allowed. The Committee shall record the reasons for allowing change of classification/kissam of such lands. However, if the Committee is of the opinion that the lands, which have lost their character as Jalasaya, and those, which are actually not Jalasayas or swampy lands but have been recorded as Jalasaya, change of classification of such lands may be allowed. This shall be effective from the date of the judgment.

(4) The Committee shall also make enquiry, if it is so necessary, to find out whether classification of the lands recorded as Jalasaya has been changed by orders of the Tahasildar during operation of the order of status quo passed by this Court on 08.04.2005 in O.J.C. No. 6721/1999. In case it is found that the classification has been changed during continuance of the order of status quo, the same shall be treated as non est in the eye of law.

15. For the aforesaid purpose, Cuttack city shall be construed to be the old Cuttack City comprising the areas shown in the satellite maps of the ORSAC of 1990 and 2006, which have been annexed to the Report of the R.D.C. dated 31.08.2007. It will be open to the State Govt. to adopt the directions given in respect of Cuttack City in the foregoing paragraph for other cities in the State."

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Annexure-411

20. Learned Counsel for the Applicant has also referred to the judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 4787 of 2001; (*Hinch Lal Tiwari Vs. Kamala Devi & Ors.*), (2001) 6 SCC 496, decided on 25.07.2001 wherein the Hon'ble Supreme Court has observed as under:-

"It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance

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with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride."

21. Reference has also been made to the judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 5109 of 2019; (*Jitendra Singh Vs. Ministry of Environment & Ors.*), (2019) 20 SCC 581, decided on 25.11.2019. Para 23 of the judgment reads as under:-

"23. For the reasons stated above, we allow the appeal and set aside the impugned order passed by the NGT. The allotment of all water bodies (both ponds and canals), including Khasra Nos.552 and 490 to Respondent No.6, or any other similar third party in village Saini, tehsil Dadri, district Gautam Budh Nagar is held to be illegal and the same is hereby quashed. Since this Court has on 15.07.2019 already directed the parties to maintain status quo, Respondent Nos.1 to 5 shall restore, maintain and protect the subject-water bodies in village Saini. Respondents are further directed to remove all obstructions from the catchment area through which natural water accumulates in the village ponds, all within a period of three months."

22. Reference has also been made to (1996) 2 SCC 572; (*Delhi Water Supply & Sewage Disposal Undertaking & Anr. Vs. State of*

Haryana), decided on 29.02.1996, wherein in para 10 of the judgment the Hon'ble Supreme Court has held as under:-

"10. So far as water supply from river Jamuna to Delhi is concerned, we order and direct that Delhi shall continue to get as much water for domestic use from Haryana through river Jamuna which can be consumed and filled in the two water reservoirs and treatment plants at Wazirabad and Hyderpur. Both the Wazirabad and Hyderpur reservoirs shall remain full to their capacity from the water supplied by Haryana through river Jamuna. We direct the State of Haryana through all its officers who are party to these proceedings and who have filed affidavits before us not to obstruct the supply of water to Delhi as directed by us at any time. This order of ours is not dependent on the MOU mentioned above or any other proceedings which may be initiated under any other law between the parties."

In this case, the Hon'ble Supreme Court has directed that so far as water supply from river Jamuna to Delhi is concerned, Delhi shall continue to get as much water for domestic use from Haryana through river Jamuna which can be consumed and filled in the two water reservoirs and treatment plants at Wazirabad and Hyderpur. In our opinion, the aforesaid judgment has no application to the facts of the present case.

23. The learned Counsel for the Applicant has next referred to (2011) 11 SCC 396; (*Jagpal Singh & Ors. Vs. State of Punjab & Ors.*), decided on 28.01.2011 which has been considered by the Hon'ble Supreme Court in the case of *Jitendra Singh* (Supra).

24. Reference has also been made to the judgment of the National Green Tribunal, Principal Bench, dated 18.11.2020 passed in

Original Application No. 325 of 2015; (Lt. Col. Sarvadaman Singh Oberoi Vs. Union of India & Ors.), wherein the Tribunal issued the following directions in para 22 of the judgment which read as under:-

“Directions

22. Accordingly, we dispose of this application with following directions:

(i) All States/UTs may forthwith designate a nodal agency for restoration of water bodies, wherever no such agency has so far been so designated.

(ii) Under oversight of the Chief Secretaries to the States/UTs, the designated nodal agency may

a. Hold its meeting not later than 31.01.2021 to take stock of the situation and plan further steps, including directions to District authorities for further course of action upto Panchayat levels and to evolve further monitor mechanism as well as Grievance Redressal Mechanism (GRM).

b. Submit periodical reports to the CPCB/Secretary Jal Shakti, Government of India. First such report may be furnished by 28.02.2021.

(iii) The CMC for monitoring remediation of 351 polluted river stretches, headed by the Secretary, MoJS may monitor the steps for restoration of water bodies by all the States periodically, at least thrice in a year. First such monitoring may take place by 31.03.2021.

(iv) The CMC may give its action reports to this Tribunal in OA 673/2018 and first such report may be furnished preferably by 30.04.2021 by e-mail.”

In this case, the Tribunal directed all States/UTs to designate a nodal agency for restoration of water bodies, wherever no such agency has so far been so designated and monitor the steps for restoration of water bodies by all states periodically.

However, further directions were also issued by the Tribunal in M.A. No. 26 of 2019 filed in Original Application No. 325 of 2015; (*Lt. Col. Sarvadaman Singh Oberoi Vs. Union of India*).

25. The next case referred by the learned Counsel for the Applicant is the judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 812 of 2002; (*Vijay Sayal & Anr. Vs. State of Punjab & Ors.*), decided on 22.05.2003. This judgment relates to selection/non-selection of candidates to the posts of Assistant District Transport Officer, advertised by the Punjab Subordinate Selection Board and has absolutely no application to the controversy involved in the present case.

26. Learned Counsel for the Applicant has next referred to (1995) 1 SCC 421; (*Chandra Shashi Vs. Anil Kumar Verma*) decided on 14.11.1994, which again has no application to the facts of the present case.

27. Likewise, the judgment of the Hon'ble Supreme Court in the case of Writ Petition (Crl.) No. 15 of 1994; (*Dhananjay Sharma Vs. State of Haryana & Ors.*), decided on 02.05.1995. This matter relates to a civil dispute in which case under Section 406/420 IPC

was also got registered. This judgment also has absolutely no application to the facts of the present case.

28. Learned Counsel has next referred to the judgment of the Hon'ble Supreme Court in *Jagpal Singh* (Supra), which has already been considered by the Hon'ble Supreme Court in the case of *Jitendra Singh* (Supra).

29. The Respondents, on the other hand, have not disputed that a large part of the water body existing on Plot No. 1509, Khata No. 1375, which facts have already been noted by us herein above, but it is stated that those plots were converted by the State Government under Section 3A of the Orissa Government Land Settlement (Amendment and Validation) Act, 1975 as those lands had already been degraded and lost its characteristic of 'Jalasayas' and, therefore, constructions such as – Ray Project, Consumer Forum, Revenue Inspector Office, Anganwadi Centre, Gosaninuagaon Police Station, Temple, Khadya Jogan Bivag, have been made over the plots after de-reservation and classification of the same as 'Patita'. It is also stated that at present only 6.860 acres of Plot No. 1509, Khata No. 1375 is existing as a water body in Agula Bandha which has been preserved and encroachments have been removed therefrom.

30. Learned Counsel for the Respondents have further relied upon the judgment of the Division Bench of the Hon'ble High Court of Odisha in the case of *Tapan Kumar Das* (Supra) and it is submitted that the High Court had directed a Committee to be constituted

under the Chairmanship of Revenue Divisional Commissioner (C.D.) Cuttack, to deal with the issues relating to protection, preservation and conservation of water bodies in the city of Cuttack and take decisions accordingly and it was also directed that applications for change of classification/kisam of land from 'Jalasaya' to 'Homestead' shall be processed through the Tehsildar, Sadar, Cuttack to the Collector for appropriate orders. The decision of the Collector shall be placed before the Committee and if the Committee is of the opinion that the lands which have lost their characteristic as 'Jalasaya' and are not 'Jalasaya' or swampy lands but have been recorded as Jalasaya, change of classification/kisam of such lands may be allowed. The High Court further directed that it will be open to the State Government to adopt the directions given in respect of Cuttack city for other cities in the State.

31. On behalf of the Respondents reliance has also been placed on the observations made in para 17 of the judgment of the Hon'ble Supreme Court in the case of *Jitendra Singh* (Supra). Para 17 of the judgment reads as under:-

"17. It is uncontroverted, in the present case, that the Government Order dated 03.06.2016 was a consequence of the afore-cited judgment in Jagpal Singh. Curiously, however, Clause 5 of the Government Order carves an exception of 'huge projects/works' (albeit in extraordinary circumstances) to Jagpal Singh's strict principle of non-alienation of common water bodies. It is clear that such ground of exception does not fall under the limited class of grants to 'landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a

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Annexure-A/1

school, dispensary or other public utility on the land". Such industrial activities without any rationale classification, unlike the narrow class exempted, do not serve a social public purpose or benefit the local people, and thus will be hit by the inalienability bar."

32. Reliance has also been placed on the observations made in para 22 of the judgment of the Hon'ble Supreme Court in the case of *Jagpal Singh* (Supra) wherein the Hon'ble Supreme Court has observed that regularization of illegal possession should only be permitted in exceptional cases, for example where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

Para 22 of the judgment reads as under:-

"22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes,

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ADOREXUSE-A/1

or where there is already a school, dispensary or other public utility on the land."

33. We have considered the observations of the Hon'ble Supreme Court in *Jagpal Singh* (Supra) read with the directions given by the Division Bench of the High Court of Odisha in *Tapan Kumar Das* (Supra), which leave no doubt that where the Jalasaya has been degraded it can be de-classified as 'Jalasaya' and further that if at all there is illegal possession regularization of such illegal possession should only be permitted in those cases as mentioned in para 22 of the *Jagpal Singh* (Supra) including public utility on the land.

34. There is no dispute in the present case that constructions have been made by the Government itself after de-classifying the portions of Agula Bandha which they claim have lost its characteristic as 'Jalasaya'. Apart from 6.860 acres of land which is stated to be still existing as Agula Bandha water body, it has not been disclosed by the Respondents as to how much of the rest of the water body had lost its characteristics as a 'Jalasaya' and become degraded.

35. We cannot lose sight of the fact that degradation of water bodies cannot be allowed by the State by turning a Nelson's eye to deliberate encroachments upon the water body by unscrupulous persons and thereafter the Government taking a stand that the Jalasaya in question has lost its character as such.

36. We cannot also lose sight of the fact that water is a basic source of all life on earth. If there is no water, all life forms on earth would become extinct. Water bodies even natural springs, serve the purpose of collecting rainwater and runoff water and thereby help to recharge the groundwater through natural aquifers. Water bodies also help to sustain aquamarine life. Water bodies serve to provide drinking and bathing water to humans as well as animals and, therefore, water bodies cannot be allowed to be degraded or to lose their character as 'Jalasaya' and it is the bounden duty of the State to protect the water bodies thereby ensuring protection of the right to life as enshrined in Article 21 of the Constitution of India.

37. At the same time, in the facts of the present case, we cannot ignore the fact that large parts of Agula Bandha water body have been completely destroyed leaving only 6.860 acres which is still a water body. Government buildings have been constructed on the degraded parts of the water body and while the Government may take the plea that these buildings are public utility buildings and, therefore, even if such buildings are illegal, the same may be regularized in terms of para 22 of the judgment of the Hon'ble Supreme Court in the case of *Jagpal Singh* (Supra) but we also find that a Maa Mangala Temple has been constructed over Plot No. 1509/2918 over an area of 0.012 acres. The construction of a temple, by whichever name called, is not a public utility building and cannot be permitted on a specious plea that the Jalasaya has lost its characteristics as 'Jalasaya'.

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Annexure-A/1

38. In Original Application 22/2022/EZ, the National Green Tribunal, Principal Bench had directed demolition of Sri Sri Panchamukhi Hanuman Temple Trust, Ratilo, which was constructed within 35 meters from the embankments of River Mahanadi vide its order dated 15.12.2020. Aggrieved party approached the Hon'ble Supreme Court in Civil Appeal Nos. 4598-4599 of 2021 and the said Civil Appeals were also dismissed by the Hon'ble Supreme Court by its order dated 10.08.2021.

39. In the present case also there can be absolutely no justification for construction of Maa Mangala Temple over Jalsaya land on the plea that the said area of land has lost its characteristics as 'Jalsaya'. We, therefore, direct the Respondent No.14, Collector-cum-District Magistrate, Ganjam District, to remove the said temple from Plot No. 1509/2918 over an area 0.012 acres within one month and restore the said land as 'Jalsaya' and file affidavit of compliance by **08.09.2022**.

40. The Applicant in his Original Application has given the total land area of Plot No. 1509, Khata No. 1375 to be 18.480 acres and the various plots recorded in the Record of Rights particulars of which are as under:- Plot No. 438, measuring an area of 0.860 decimal (recorded as Jalsaya-I), Plot No. 1509 (6.8600 decimal recorded as Jalsaya-I), Plot No. 1504/1788 (0.050 decimal recorded as Jalsaya-I), Plot No. 1507/1791 (0.080 decimal recorded as Jalsaya-I), Plot No. 1506/1790 (0.060 decimal recorded as Jalsaya-I), Plot No. 1505/1789 (0.050 decimal

recorded as Jalasaya-I), Plot No. 1502/1786 (0.060 decimal recorded as Jalasaya-I), D1-438 (0.3860 decimal recorded as Jalasaya-I), D1-437 (0.1480 decimal recorded as AGULA BANDHA ADI), 1510 (0.7190 decimal recorded as AGULA BANDHA ADI), highly required for the preservation/protection of the common pond/common water body.

41. According to the State Respondents an area of 6.860 acres is still maintained as common pond/common water body in Plot No. 1509, Khata No. 1375. According to the State Respondents, the area of the Jalasaya which has lost its characteristics as such is measuring about 11.500 acres of which 3.600 acres was de-reserved in Khata No. 1375, Plot No. 1509 vide Collector's order dated 27.03.1993 and vide another order dated 19.08.1999, area admeasuring 1 acre out of the 7.900 acres of Khata no. 1375, Plot No. 1509 has been de-reserved in exercise of powers conferred in Section 3A of the Orissa Government Land Settlement (Amendment and Validation) Act, 1975. This means that out of a total area of about 18.480 acres of Jalasaya, 11.500 acres of area has lost its characteristic as such and 6.860 acres is still maintained as a common pond/common water body at Agula Bandha. This area of 11.500 acres of land which has been allowed by the State Government to degrade and lose its character as 'Jalasaya' needs to be restored by the Government. Since Government buildings have been constructed on this area of land, we direct the State Respondents to demarcate land of an equivalent size of 11.500 acres including 0.012 acres of the land which will become available

after demolition of Maa Mangala Temple, as far as possible close to the Agula Bandha water body and if not possible, in some other area nearby and re-create a water body of the same size and depth as Agula Bandha.

42. We may remind the State Respondents that this is not an impossible task considering that the Sukhna Lake in Chandigarh, having an area of 3 square kilometers with an overall depth of 8 feet (2.4 meters) maximum depth 16 feet (4.9 meters) was created as an artificial water body and, therefore, what can be done by the Government of Punjab to create a water body for its citizens, can also be replicated by the State of Odisha in the District of Ganjam, Odisha over the remaining area of 11.500 acres including 0.012 acres of the land which will become available after demolition of Maa Mangala Temple.

43. There are also umpteen examples of artificial water bodies created by various State Governments to help in providing drinking water as well as water for agriculture for the rural poor. The above example of Sukhna Lake in Chandigarh is just an illustration.

44. A direction is also issued to the Chief Secretary, Govt. of Odisha, in this regard to ensure compliance of our directions given herein above. The State Respondents shall file a Status Report within three months i.e., by **03.11.2022**.

45. With the above directions, the Original Application No. 106/2021/EZ is disposed of.

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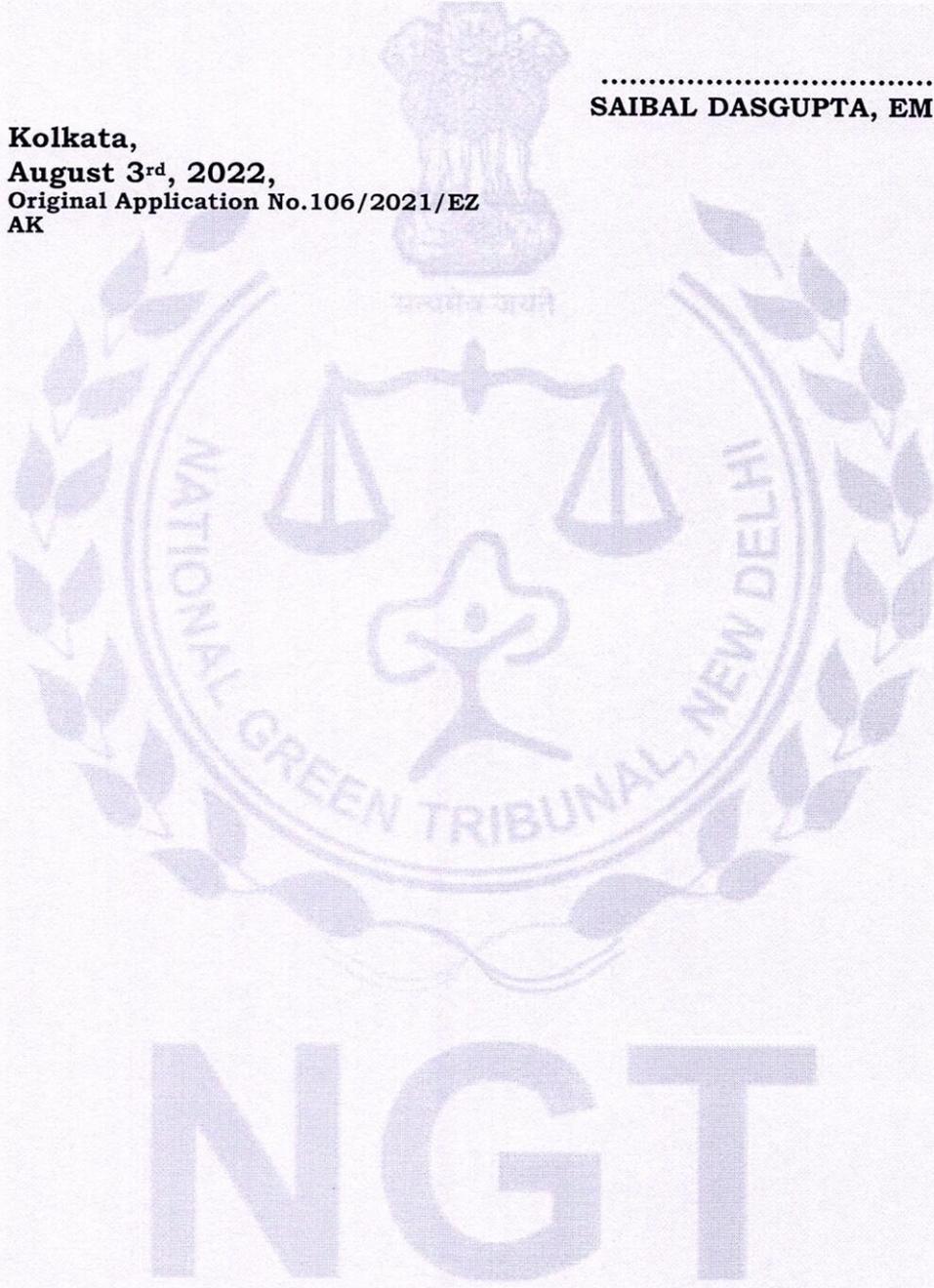
Annexure-A/1

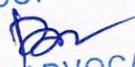
46. There shall be no order as to costs.

.....
B. AMIT STHALEKAR, JM

.....
SAIBAL DASGUPTA, EM

**Kolkata,
August 3rd, 2022,
Original Application No.106/2021/EZ
AK**



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BY ADVOCATE

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Annexure-A/2

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 22622 of 2022

*Maa Mangala Temple and Kalyan
Mandap Managing Committee,
Berhamur, Ganjam & Ors.*

..... **Petitioners**
*Mr. S.P. Mishra, Sr. Adv.
along with associate*

-Versus-

Union of India & Ors.

..... **Opposite Parties**
*Mr. S.B. Panda, CGC
(for O.P.1)
Mr. G.R. Mohapatra, ASC
(for O.P.Nos.1 to 5, 8 to 11, 13 to 15 & 17)
Mr. B.P. Das, Adv.
(for O.P.18)
Mr. S. Senapati, Adv.
(for O.P.18)
Mr. Ramesh Sahoo, Adv.
(for O.P.16)*



CORAM:
DR. JUSTICE S.K. PANIGRAHI

ORDER

21.03.2024

Order No.

03.

1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the parties.

Signature Not Verified

Digitally Signed
Signed by: LITARAM MURMU
Reason: Authentication
Location: High Court of Orissa Cuttack
Date: 28-Mar-2024 19:06:37

3. In filing this Writ Petition, the Petitioners have challenged the judgment dated 03.08.2022 passed by the learned National Green Tribunal, Eastern Zone Bench, Kolkata in

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Original Application No.106/2021/EZ, wherein the learned Tribunal directed the Opposite Party No.14/The Collector, Ganjam to demolish Maa Mangala Temple within one month and restore the land as 'Jalasaya'.

4. Learned counsel for the Petitioners submits that the Petitioner No.1 is the managing committee of Maa Mangala Temple and Kalyan Mandap. The Petitioner Nos.2 to 11 are members of the said committee. The Opposite Party No.18 had filed O.A. No. 106/2021/EZ before the learned National Green Tribunal, Eastern Bench, Kolkata for removal of illegal construction/obstruction caused by the State Authorities as well as private persons in the Ecological Sensitive Zone i.e. Agula Bandha (Common Water Bodies) and its embankments situated at Gosaninuagaon under Berhampur, Ganjam, Odisha. All the parties to the present Writ Petition were arrayed as Opposite Parties to the said proceeding. But, the Petitioner No.1 was not made a party to the proceeding before the learned Tribunal. The Opposite Parties to the O.A. filed their respective counter affidavits to substantiate their case. The Opposite Party No.14 pleaded before the learned

Tribunal that land in dispute has already lost its original characteristics as 'Jalasaya' which was de-reserved and classified as 'Patita'. After such de-reservation and conversion

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of kissam, construction of Ray Projects, Police Station, Temple etc. were made over such plots. In his affidavit, Opposite Party No.14 stated that one Maa Mangala Temple is constructed over Plot No.1509/2918 over an area of Ac. 0.012dec and the kissam of the land is patita.

5. Learned counsel for the Petitioners further submits that after hearing the parties, the learned Tribunal observed that where the 'Jalasaya' has been degraded it can be de-classified. Further, if at all there is illegal possession and regularization of such illegal possession, it should only be permitted in those cases as mentioned in Paragraph 22 of the Supreme Court in *Jagpal Singh and Ors. Vrs. State of Punjab and Ors.*¹ including public utility on the land. Therefore, the buildings which have been constructed for public utility, even if illegal, can be regularized. However, while observing so, the learned Tribunal also observed that Maa Mangala Temple which has been constructed over Plot No.1509/2918 measuring an area of 0.012Ac. is not a public utility building and cannot be permitted on a specious plea that 'Jalasaya' has lost its characteristics.

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6. Learned counsel for the Petitioners further argues that the learned Tribunal, without affording an opportunity of

Decided on 28th January, 2011 in Civil Appeal No.1132/2011 @ SLP(C) No.3109 of

2011

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hearing to the Petitioners and without directing the Applicant in the O.A. to implead the temple/Deity as a party, directed the Opposite Party No.14/The Collector, Ganjam to demolish the temple from Plot No.1509/2918 within one month and restore the said land as 'Jalasaya' and file compliance affidavit by 08.09.2022.

7. Learned counsel for the State/Opposite Party Nos.8,10,13,14 and 15 submits that the Respondent No.14 pleaded before the learned Tribunal that land in dispute has already lost its original characteristics as 'Jalasaya' and, therefore, the said lands were de-reserved and classified as 'Patita'. After such de-reservation and conversion of kissam, construction of Ray Projects, Police Station, Temple etc. were made over such plots. It was mentioned that there is plot wise construction wherein, one Maa Mangala Temple is constructed over Plot No.1509/2918 over an area of Ac.0.012 which comes under the category of "Homestead" land. He further submits that at present only 6.860 acres of land in Plot No.1509, Khata No.1375 is existing as water body in Agula Bandha which has been preserved and encroachments have been removed from

Agula Bandha.

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8. Learned counsel for the State further contends that the learned Tribunal had observed that where the 'Jalasaya' has

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been degraded it can be de-classified and further if at all there is illegal possession regularization of such illegal possession should only be permitted in those cases where the building concerned are being used as "Public Utility" buildings. Therefore, the buildings which are constructed for public utility can be regularized. The learned Tribunal also observed that Maa Mangala Temple which has been constructed over Plot No.1509/2918 measuring an area of 0.012 Ac. is not a public utility building and cannot be permitted on a specious plea that 'Jalasaya' has lost its characteristic.

9. Learned counsel for the State further submits that the learned Tribunal directed the State to re-create a water body of the same size and depth as Agula Bandha as possible close to Agula Bandha water body. Therefore, all the structure and construction raised on the concerned land were allowed to remain as it is and in lieu of that another patch of land is to be created.

10. Learned counsel for the Opposite Party No.18 submits that the Petitioners are not taking care of the Maa Mangala Temple and Kalyan Mandap. He further submits that there is

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no official record available which shows that the Petitioners are committee members of the Temple and Kalyan Mandap. None of the Petitioners had claimed on behalf of the Temple

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and Kalyan Mandap before the learned Tribunal. The State/Respondents were also remained silent before the learned Tribunal and they have not disclosed the names of the present Petitioners while hearing and disposal of the O.A. No.106 of 2021/EZ. He further submits that the Petitioners have suppressed the material facts and have not approached this Court in clean hands. Hence, the Writ Petition may be dismissed in limine with cost.

11. On perusal of the impugned order and considering the facts and circumstances of the case and the submission made by learned counsel for the Petitioners, this Court is of the view that the contention raised by the learned counsel for the Petitioners does not appear to be unfounded.

12. Considering the submission made by the learned counsel for the Petitioners and considering the factual and legal aspects of the case, this Court finds that the learned National Green Tribunal has violated the principles of natural justice by not affording the Petitioners an opportunity of hearing. In such view of the matter, while setting aside the impugned order dated 03.08.2022 under Annexure-4, this Court remits

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the matter back to the learned National Green Tribunal, East Zone Bench, Kolkata for adjudication of the issue [refresh](#). It is also made clear that the learned National Green

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Tribunal, Eastern Zone Bench, Kolkata shall afford the Petitioners a reasonable opportunity of hearing first and thereafter, pass order in accordance with law.

13. This Writ Petition is accordingly, disposed of.

(Dr. S.K. Panigrahi)
Judge

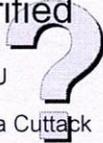
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Annexure-A/2



IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) NO. 22622 OF 2022

CODE NO. _____

In the matter of:

Maa Mangala Temple and Kalyan
Mandap Managing Committee and Ors
...Petitioners

-Versus-

Union of India and Ors

...Opp. Parties

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Annexure-A/2

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- VAKALATNAMA

CUTTACK BY THE PETITIONERS THROUGH

DATE: 30/8/22

SOUMYA MISHRA

ADVOCATE

(O - 749/2009, 99370 96293)

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Annexure-A/2

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) NO. 22622 OF 2022

CODE NO. _____

In the matter of:

An application under Articles 226 and
227 of the Constitution of India;

And

In the matter of:

An application under the provisions of
National Green Tribunal Act, 2010,
Rules and Regulations framed
thereunder;

And

In the matter of:

An application challenging Order dated
3/08/2022 passed by the Hon'ble
National Green Tribunal, Eastern Zone
Bench, Kolkata in O.A. No.
106/2021/EZ;

And

In the matter of:

1. Maa Mangala Temple and Kalyan
Mandap Managing Committee
represented through its Chairman, Shri
Tuna Panigrahi, 52, S/o Late Somnath
Panigrahi, Nehru Nagar, 10th Lane,
Station Road, Ghoshani, Berhampur
Sadar, Ganjam - 76003

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Annexure-A/2

2. Padmanabha Nayak, aged about 46 years, S/o Krushna Chandra Nayak, Biswanathpur, Ganjam Odisha - 761003
3. Kedar Nath Panigrahi, aged about 62 years, Neheru Nagar, 6, Gosani Nuagan Brahmapur Sadar, Ganjam - 76003
4. Santosh Panigrahi, aged about 39 years, S/o Bijay Chandra Panigrahi, Hilpatana, Brahmapur Sadar, Ganjam
5. Ritu Kumar Panda, aged about 43 years, S/o Sadananda Panda, 135, Kadalibadasahi, Gosainnuangaon, Ganjam, Odisha 760003
6. Sibho Pradhan, aged about 60 years, S/o Agadhu Pradhan, Neneru Nagar, 10th Lane, Brahmapur, Sadar, Ganjam
7. Kedarnath Panigrahi, aged about 58 years, S/o Krushnachandra Panigrahi, C/o 51(2), Ambika Nagar, 1 Line, Bijipur, Brahmapur, Ganjam
8. Krushna Chandra Satapathy, aged about 76 years, S/o Late Bharata Satapathy, Nehru Nagar, 10th Lane, Berhampur Sadar, Ganjam
9. Laxmi Narayn Behera, aged about 56 years, Bijipur, 2nd Tota Sahi, Hilpatna, Brahmapur Sadar, Ganjam, Odisha

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52 Annexure-A/2



10. Durga Prasad Sahu, aged about 49 years, S/o Nilamadhab Sahu, Santi Nagar, Near Billo Street, Aska Road, Bramhapur Sadar, Ganjam, Odisha

11. Prashanta Kumar Panigrahy, aged about 35 years, S/o Pibracharan Panigrahy, Parichahacolony, Station Road, Hipatna, Ganjam, Odisha

...Petitioners

-Versus-

1. Union of India, through Principle Secretary, Ministry of Environment, Forests and Climate Change, Indira Paryavaran Bhava, Jorbagh Road, New Delhi - 110003
2. State of Odisha, represented through Chief Secretary to Govt., State Secretariat Building, Bhubaneswar
3. Principle Secretary to Government, Department of Water Resource, Secretariat Building, Bhubaneswar
4. Principle Secretary to Government, Department of Home, Secretariat Building, Bhubaneswar
5. Principle Secretary to Government, Department of Forest, Environment and Climate Change, Kharavel Bhavan, Bhubaneswar

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Annexure-A/2

6. Central Pollution Control Board,
represented through Member Secretary,
Parivesh Bhavan. East Arjun Nagar,
New Delhi - 110032
7. Odisha State Pollution Control Board,
represented through its Member
Secretary, Paribesh Bhawan, A/118,
Nilakanta Nagar, Unit - 8,
Bhubaneswar
8. Commissioner Cum Secretary to
Government, Department of Revenue
and Disaster Management Department,
Govt. of Odisha, State Secretariat,
Bhubaneswar
9. Commissioner Cum Secretary to
Government, Department of Urban and
Housing Development
10. Revenue Divisional Commissioner,
Southern Division, At/P.O. Berhmapur,
Ganjam
11. Deputy Director General of Forests (C),
Regional office, Eastern Zone (EZ),
Ministry of Environment, Forests and
Climate Change, A/3,
Chandrasekharapur, Bhubaneswar
12. Central Pollution Control Board,
represented through Regional Director,
Ministry of Environment, Forests and

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Annexure-A/2

Climate Change, South End Enclave
Block 502, 5th & 6th Floor, 1582,
Razidanaga, Main Road, Kolkata

13. The Tahasildar, Berhampur, At/P.O.
Berhampur, Ganjam, Odisha
14. The Collector Cum District Magistrate,
Ganjam Collectorate, At/P.O.
Chatarpur, Ganjam, Odisha
15. The Sub Collector, Berhampur At/P.O.
Berhampur, District: Ganjam, Odisha
16. The Commissioner, Berhampur
Municipal Corporation, At/P.O.
Berhampur, Ganjam, Odisha
17. The Secretary, Board of Revenue,
At/P.O. Cuttack, Odisha
18. Sisir Kumar Panda, aged about 50
years, S/o Late Ram Prasad Panda,
Profession: Advocate, R/o Nehru
Nagar, 7th Lane, Gosaninuagaon,
Berhampur, P.S. Gosaninuagaon,
Ganjam - 760003, Odisha

...Opp. Parties

The matter out of which the present
writ petition arises was never before
this Hon'ble Court in the present form
as per the instruction received.

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Annexure-A/2

To

The Hon'ble Chief Justice of High Court
of Orissa and his Lordship companion
justices of the said Hon'ble Court.

The humble petition of the Petitioner
named above.

MOST RESPECTFULLY SHEWETH:

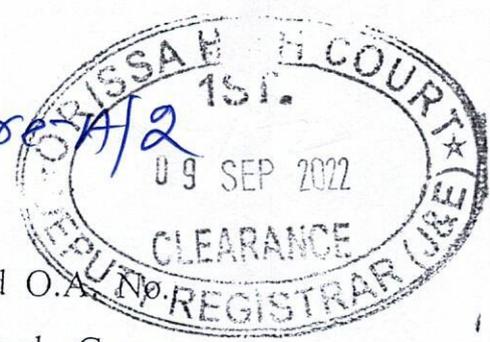
1. That the Petitioners, seek to invoke the extraordinary and supervisory jurisdiction of this Hon'ble Court, as enshrined under Articles 226 and 227 of the Constitution of India, in assailing Order dated 3/08/2022 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 106/2021/EZ, wherein, the Hon'ble Tribunal, has directed present Opp. Party No. 14 to demolish Maa Mangala Temple within one month, restore the land as 'Jalasaya' and to file compliance affidavit by 08/09/2022, without even issuing notice to or granting an opportunity of hearing to the Petitioner.
2. That such order, having been passed without granting opportunity of hearing to the Petitioner - a necessary party to the said proceeding, is illegal and liable to be set aside/quashed.

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Annexure A/2



SYNOPSIS

3. That Opp. Party No. 18, as applicant filed O.A. No. 106/2021/EZ before the Hon'ble National Green Tribunal, Eastern Bench, Kolkata, ("Tribunal") for removal of illegal construction/obstruction caused by the State Authorities as well as private persons in the Ecological Sensitive Zone i.e. Agula Bandha (Common Water Bodies) and its embankments situated at Gosaninuagaon under Berhampur, Ganjam, Odisha. All the parties to the present writ petition were arrayed as Opp. Parties but the Petitioner was not made a party to such proceeding.

The parties to the O.A., filed their respective counter affidavits to substantiate their case. The Opp. Party No. 14 pleaded before the Hon'ble Tribunal that land in dispute had already lost its original characteristics as 'Jalasaya' which were de-reserved and classified as 'Patita'. After such de-reservation and conversion of kissam, construction Ray Projects, Police Station, Temple etc. were made over such plots. In his affidavit, Opp. Party No. 14 mentioned the plot wise construction wherein, he had stated that one Maa Mangala Temple is constructed over Plot No. 1509/2918 over an area of Ac. 0.012dec and the nature of the land is kissam patita.

The Respondent had further submitted that at present only 6.860 acres of Plot No. 1509, Khata No. 1375 is

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ANNEXURE-A/2

existing as a water body in Agula Bandha which has been preserved and encroachments have been removed therefrom.

The Hon'ble Tribunal, after hearing the parties concerned observed that where the Jalasaya has been degraded it can be de-classified and further if at all there is illegal possession regularisation of such illegal possession should only be permitted in those cases as mentioned in Paragraph 22 of the Jagpal Singh judgements including public utility on the land. Therefore, the buildings which are constructed for public utility, even if illegal, can be regularized.

However, while observing so, the Hon'ble Tribunal also observed that Maa Mangala Temple which has been constructed over Plot No. 1509/2918 measuring an area of 0.012Ac. is not a public utility building and cannot be permitted on a specious plea that Jalasaya has lost its characteristic.

In view of the same, the Hon'ble Tribunal, without according an opportunity of hearing to the Petitioner and without directing the Applicant in the O.A. to implead the temple/deity as a party, directed the Opp. Party No. 14 to demolish the temple within one month, restore the said land as 'Jalasaya' and file compliance affidavit by 08/09/2022.

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Annexure-A/2

Furthermore, the Hon'ble Tribunal directed the State Respondents to demarcate the land of an equivalent size of 11.500 acre including 0.012 acres of the land which will become available after demolition of Maa Mangala Temple, as far as possible close to the Agula Bandha water body and if not possible, in some other area nearby and re-create a water body of the same size and depth as Agula Bandha.

Therefore, being aggrieved with such order of demolition without hearing the deity - Petitioner in the proceeding, the Petitioner has filed the present writ petition.

4. That the Petitioner No. 1 is the managing committee of Maa Mangala Temple and Kalyan Mandap. It is represented through its Chairman. The Petitioner No. 2 to 11 are members of the said committee. The Petitioners are citizens of India and permanent resident within the territorial jurisdiction of this Hon'ble Court.
5. That the cause of action for filling of this writ application also arises within the territorial jurisdiction of this Hon'ble Court. The opposite parties are 'State' within the meaning of Article 12 of the Constitution of India and are amenable to the writ jurisdiction of this Hon'ble Court.

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MAINTAINABILITY OF WRIT PETITION

6. That recently, a question regarding maintainability of writ petition against an order passed by the Hon'ble National Green Tribunal, instead of filing an appeal before the Hon'ble Supreme Court of India in terms of Section 22 of the NGT Act, 2010 had arose before the Hon'ble Apex Court in the case of *Madhya Pradesh High Court Advocates Bar Association and Anr. Versus Union of India and Anr* in Writ Petition (Civil) No. 433 of 2012; dated 18/05/2022, wherein, the Hon'ble Court has held that writ petition challenging an order passed by the Hon'ble NGT is maintainable. While observing so, the Hon'ble Apex Court observed that even when a direct appeal to the Supreme Court is provided by a statute against the decision of a tribunal, the remedy under Article 226 or 227 before the High Court remains unextinguished. Therefore, in view of the settled position of law as held above, the present writ petition at the behest of the Petitioner, an affected party to the proceeding, is maintainable both in facts and law.

Copy of the Judgement dated 18/05/2022 in Writ Petition (Civil) No. 433 of 2012 is annexed herewith as ANNEXURE - 1.

7. That substratum of facts leading to filing of the writ petition runs as follows:

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Amendment-A/2

7.1. The Opp. Party No. 18 as Applicant, filed an original application before the Hon'ble Tribunal against the present Opp. Parties praying for removal of illegal constructions/obstructions caused by the State Authorities as well as private persons in the ecological sensitive zone i.e. Agula Bandha (Common Water Bodies) and its embankments situated at Gosaninuagaon under Berhampur Tahasil, Ganjam.

7.2. It was the case of Opp. Party No. 18 before the Hon'ble Tribunal that as per revenue and municipal records, there are 42 ponds under Berhampur Municipal Corporation, Ganjam including Agula Bandha but over a period of time, a police station, Revenue Inspector Office, Over bridge, Rajib Abas Project, Maa Mangala Temple have been constructed over Agula Bandha Water Body and its boundary. It was further the case of the Applicant that the conversion of Jalsaya KISSAM of the land in question to Non Jalsaya KISSAM took place as late as 12/02/2021, without having regard to an earlier decision of the Hon'ble Tribunal.

7.3. In view of the above contention, the Applicant prayed for a direction to the State Respondents therein to remove the illegal obstruction/structures raised over concerned plot. Further to direct the

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Respondents to take step for change in classification of the concerned land to its original kissam i.e. Jalasaya -1 along with other consequential reliefs.

Copy of the Original Application is annexed herewith as ANNEXURE - 2.

Since the annexures to such O.A. are voluminous, the Petitioner has not annexed those documents relied upon by the Applicant in the O.A. but undertakes to file the same as and when this Hon'ble Court directs.

7.4. While all the affected parties were made parties to the said O.A., no one was made party to protect the interest of Maa Mangala Temple even though, the Managing Committee has been looking after the affairs of Temple since inception.

7.5. Be that as it may, upon being notice, the Respondent therein, filed their respective counter affidavits. The Opp. Party No. 8,10,13,14 and 15 filed a joint counter affidavit which is important for the present writ petition. It was stated in the said affidavit that the common pond Agula Bandha does not exist over all the plots as alleged by the Applicant in the O.A. In fact the pond is only confined to an area of 6.860 acres in Plot No. 1509, Khata No. 1375 and the water body has been preserved intact.

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It was further submitted that in exercise of power conferred under Section 3A of the Orissa Government Land Settlement Act, 1975, vide order dated 29/03/1993, he had sanctioned the de-reservation of Govt. lands in Khata No 1375 Plot No. 1509 measuring an area of Ac. 3.600dec out of Ac 11.500dec which had already lost its original characteristics of 'Jalasaya'. In addition thereto, subsequently, on 19/08/1999 he had further sanctioned de-resservation of Govt. land in Khata No. 1375, Plot No. 1509 measuring an area of one Acre out of Ac. 7.900dec which had already lost its original nature as Jalasaya.

It was stated in the affidavit that constriction such as Ray Project, Police Station, Temple etc. were made over such plots after de-reservation and classified as 'Patita'. He had furnished the record of right of each of the plots of such suit land, including Plot No. 1509/2918 wherein, Maa Mangala Temple has been constructed over an area of Ac. 0.012dec, having nature of Patita.

Furthermore, it was categorically stated in such affidavit that only those lands were de-reserved from Jalasaya to Patita which had lost its nature and character as 'Jalasaya'.

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Annexure-A/2

Copy of the Counter Affidavit

is

annexed herewith as

ANNEXURE - 3.

7.6. Apart from the above, the State Respondents took a further stand that an area of Ac. 6.860dec over Plot No. 1509 in Khata No. 1375 is till preserved as 'Water Body' and steps have been taken by the Tahasildar to remove encroachments from the said water body and its embankment.

7.7. After considering the submissions and keeping in mind the judicial precedents, especially the case of *Jagpal Singh & Ors V. State of Punjab & Ors* reported in (2011) 11 SCC 396, the Hon'ble Tribunal hold that where the Jalasay has been degraded it can be de-classified as 'Jasalaya' and further that if at all there is illegal possession regularization, it should only be permitted in those cases as mentioned in Paragraph 22 of the Jagpal Singh (Supra) including public utility on the land.

7.8. The Hon'ble Tribunal in Paragraph No. 33, 34 and 35 has come to a conclusion that large parts of Agula Bandha water body have been completely destroyed leaving only Ac. 6.860 which is still a water body. Government buildings have been constructed on the degraded parts of the water body and while the Govt.

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ANNEXURE-A/2

may take a plea that these buildings are public utility buildings for the purpose of regularization, but Maa Mangala Temple which has been constructed over Plot No. 1509/2918 over an area of Ac. 0.012dec is not a public utility building and therefore, cannot be permitted on a specious plea that the Jalasaya has lost its characteristics as 'Jalasaya'.

7.9. In view of the above observation and taking into consideration the Judgement passed by the Tribunal in O.A.No. 22/2022/EZ wherein a direction was issued to demolish Sri Sri Panchamukhi Hanuman Temple Trust, Ratilo which was constructed within 35 meters from the embankment of River Mahanadi, the Hon'ble Tribunal, directed the State Govt., especially Opp. Party No. 14 to demolish the Maa Mangala Temple within one month, restore the land as 'Jalasaya' and file affidavit of compliance by 08/09/2022.

copy of the impugned order dated 3/08/2022 is annexed herewith as ANNEXURE - 4.
Obtained from official - Website

8. That pursuant to the aforementioned impugned order, the State Govt. and Opp. Party No. 14 are taking steps to demolish the temple therefore, the Petitioner is constrained to approach this Hon'ble Court.

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ANNEXURE-A/2

9. That before delving into the grounds of challenge to the impugned order, it is important to bring certain facts on record so far as the construction and day to day affairs of the temple is concerned.

9.1. Maa Mangala Temple and Kalyan Mandap is situated over Plot No. 1509/2918 over an area of Ac. 0.012dec. The said temple is in existence for more than 40 years. Not only the local habitant but also, people from other locality come to the temple.

9.2. The District Planning Office, Ganjam, Chatrapur vide its letter dated 16/12/2009, issued to the Municipal Commissioner, Berhampur Municipal Corporation requesting thereto submit the plan and estimation for projects to be executed under MLALAD Funds of Berhampur A/c for the year 2009-10. In such letter, a plan for restoration of Maa Mangala Mandir at Neheru Nagar was also made.

Copy of the Letter dated 16/12/2009 is annexed herewith as ANNEXURE - 5.

9.3. Pursuant to the said letter, various projects were recommended for construction and one of the said projects was construction of a Kalyan Mandap near Mangala Mandir, Neherunagar. As a matter of fact an amount of Rs. 5,00,000/- was recommend by the Deputy Director (R&B) DPMU, Ganjam for

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Annexure-A/2

construction of Kalyan Mandap near Maa Mangala Temple. Subsequently, in March, 2012, the said recommendation was sanctioned. Accordingly, the Kalyan Mandap was constructed near the Maa Mangla Temple.

Copy of the list of projects recommended and sanction is annexed herewith as ANNEXURE - 6 SERIES.

9.4. Not only the people are being used for the purpose of worshipping the deity but also, the temple premise is being used for hosting important meetings of the said locality both government and private. Many public health utility services such as health camps, vaccination centre, blood donation camps etc. are being hosted in the temple premises. In addition to that several functions such as marriage, birthdays, family gatherings etc are being in the said Kalyan Mandap. All the important functions such as Dussehra, Ganesh Puja, Saraswati Puja, Kali Puja etc are being organised here for celebration of people of the said locality. As a matter of fact, more than a temple, this place has gained much more recognition as a community hall or a Kalyan Mandap involved in public utility works. Therefore, the temple premises as well as the Kalyan Mandap plays a pivotal role in being utilised by the public.

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ANNEXURE-A/2

Copy of the Photographs showcasing functions and other public utility Activities are annexed herewith as ANNEXURE 7 SERIES.

9.5. It is relevant to mention here that pursuant to the impugned order, many people of the said locality including people's representatives have written numerous representations to Govt authorities requesting thereto to take steps for protection and preservation of Maa Mangala Temple and the Kalyan Mandap standing thereon.

Copy of Representations are annexed herewith as ANNEXURE - 8 SERIES.

9.6. The location and placement of the temple in the said locality can be gathered from a colour photograph and it is apparent from the said photograph that the temple is situated in the heart of the said locality surrounded by buildings and connected by road.

Copy of the Photographs showing location and ROR of the Temple are annexed herewith as ANNEXURE - 9 SERIES.

GROUND S

10. That such being the scheme of things, it is important to assail the impugned order wherein, the interest of such temple is being affected. The impugned order is challenged by the Petitioner primarily on two grounds

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Annexure-A/2

viz. a) violation of principle of natural justice and b) discrimination in choosing the temple for demolition leaving other govt. construction way.

11. That reasonable opportunity of hearing which is synonymous to 'fair hearing', it is no longer res integra, is an important ingredient of audi alteram partem Rule and embraces almost every facet of fair procedure. The Rule of 'fair hearing' requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by reasons and rationale. Reasonable opportunity of hearing or right to 'fair hearing' casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken

In the present case, the Petitioner was not a made party to the proceeding. Neither the Application - Opp. Party No. 18 nor any of the Respondents took any steps to implead the Temple Administration, a party to the O.A. As a matter of fact, when Opp. Party No. 14 in its affidavit disclosed about existence of Maa Mangala Temple, it was the bounden duty of the Applicant as well as the Hon'ble Tribunal to either implead Maa Managala Temple Managing Committee as a party or to

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issue notice to the committee to appear and substantiate its case. Not having taken any steps towards the same, the order of demolition against the Temple, having been passed without granting any opportunity of hearing, is unsustainable in law and on this score alone, is liable to be set aside/quashed.

- 12. That an order of demolition of a structure directly affects the party responsible for the said structure. Therefore, such person becomes a necessary party to the proceeding. The Hon'ble Supreme Court in *Udit Narain Singh Malpaharia v. Board of Revenue, AIR 1965 SC 786*, while explaining the distinction between necessary party, proper party and proforma party has held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice.
- 13. That every person has an inherent right to defend if he or she is affected or is likely to be affected by an order to be passed by any legal forum, for there would be violation of natural justice. The principle of audi alteram partem has its own sanctity. Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected; and that is where the concept of necessary party become significant.

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14. That had an opportunity of hearing would have been granted to the Petitioner, it would have justified its case with the help of necessary supporting documents and further, it would have justified its claim in terms of Paragraph No. 22 of the Jagpal Singh Judgement (Supra), through which the construction raised by State Govt. were allowed to be regularised.
15. That it is the case of the Petitioner as mentioned in the preceding paragraph No. 9 that the temple as well as the Kalyan Mandap standing thereon, are being utilised for public works. The people of the said locality including corporator and other ward member has shown their concerned against the order of demolition as because, they are being benefited out of the temple and Kalyan Mandap.
16. That Maa Mangala Temple as well as the said Kalyan Mandap were constructed after due recommendation and sanction of the State Authorities. The funds for such construction was from MLALAD funds of Berhampur A/c. Therefore, when the State authorities after due sanctioned has made such construction, the temple as well as the Kalyan Mandap are to be treated as any other building constructed on the land in question.
17. That as a matter of fact, the recommendation, sanction and construction was made after several requests of the

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local people as they did not have place for gathering, meetings etc in the said locality. At present it is only the premise of Maa Mangala Temple and Kalyan Mandap, wherein, the aforementioned meetings and gatherings are organised.

18. That Paragraph 22 of the Jagpal Singh judgement is reproduced below for better appreciation of this Hon'ble Court;

"22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

Copy of the Judgement passed in Jagpal Sing case is annexed herewith as ANNEXURE - 10.

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19. That as per the said judgement especially Paragraph No. 22, regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land. In the present case, as mentioned above, the temple is being used by general public and many public utility works are being conducted in the temple premise and in the premise of Kalayn Mandap such utilities includes health camps, sports competition for children, social meetings, political meetings, family functions, election camps etc. therefore, such construction is to be considered for regularisation in terms of Paragraph 22 of the said judgement. All these aspects ought to have been gone into by the Hon'ble Tribunal but unfortunately, the Petitioner was not a party to the same therefore, the Hon'ble Tribunal has misdirected himself by passing such order of demolition.

20. That another important factor to be considered here is that in the directive portion of the order, the State Respondents were directed to re-create a water body of the same size and depth as Agula Bandha as far as possible close to Agula Bandha water Body. Therefore, when all the structure and construction raised on the concerned land were allowed to remain as it is and in

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exchange another patch of land is to be created, then no purpose will be served if the temple is demolished which is situated in the middle of other permanent structures.

21. That Hon'ble Tribunal has erred in holding that there is no justification for constriction of Maa Mangala Temple over Jalasaya land on the plea that the said area of land has lost its characteristics as 'Jalasaya'. Firstly, the Maa Mangala Temple is constructed over an area of Ac. 0.012dec in the middle of all other huge construction. The temple and its premise is used for public utility purpose akin to other construction. When those constructions are allowed to stay as it is, only directing a temple to be demolished, who having a right to defend, was not granted opportunity of hearing, is illegal and warrants interference.
22. That law is fairly settled that "Deity" in the temple is a "minor" and the Court should be astute to protect the interests of an idol in any litigation. Therefore, the Hon'ble Tribunal ought to have taken into consideration all these aspects into consideration and then, pass necessary orders to mitigate the situation.
23. That it is apparent from the photograph attached here, that even if the temple is demolished, an artificial water bodies cannot be re-created in such place and that was the main purpose for which, the Hon'ble Tribunal has

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ADORE V/S R - A/2

directed to re-create a water body in some other area nearby. As such, it will be a futile exercise for the State Govt. to carry one such task having no benefit and purpose behind the same rather, keeping the temple as well as the Kalyan Mandap will facilitate many purpose as have been carried out in its premise since more than 40 years.

24. That the impugned order directing demolition of Maa Mangala Temple is *per se* illegal, thus warrants intervention of this Hon'ble Court.

25. That there being no other speedier or efficacious remedy available the Petitioners seek to invoke the extraordinary and supervisory jurisdiction of this Hon'ble Court under Articles 226 and 227 of the Constitution of India.

PRAYER

It is therefore prayed that your Lordships may graciously be pleased to admit the writ petition, Rule Nisi calling upon the Opp. parties to show cause as to why; the impugned Order dated 3/08/2022 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 106/2021/EZ vide Annexure - 4 shall not be set aside/quashed;

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Annexure-A/2

And in the event, the Opp. Party fails to show cause or show insufficient cause, the impugned Order dated 3/08/2022 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 106/2021/EZ vide Annexure - 4 be set aside/quashed;

And further be pleased to pass any other order(s)/ direction(s) as deem fit and proper;

And for this act of kindness, the Petitioners shall in duty bound ever pray.

Cuttack

By the Petitioners through

Soumya Mishra

Advocate

(O - 749/2009, 99370 96293)

Date: 30/8/22

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Admission - A/2

AFFIDAVIT

I, Tuna Panigrahi, aged about 52 years, S/O Late Somanath Panigrahi, Resident of Neheru Nagar, 10th Lane, Station Road, Gosaninuagaon, Bramhapur, Dist – Ganjam, Odisha - 760003, do hereby solemnly affirm and state as follows:

1. That I am the Petitioner No.1 in the present case and I have been duly authorized by the other Petitioner to swear this affidavit on their behalf. I am otherwise competent to do so.
2. That, the contents of the present application have been read over and explained to me in Odia and after understanding the same, I have put my signature in the affidavit.
3. That, the facts stated above are true to the best of my knowledge and belief.

Identified by

Advocate
30/8/22

30/8/22
Deponent

CERTIFICATE

Certified that due to non-availability of cartridge paper this petition has been prepared in white thick papers.

Cuttack

Dt. 30/8.2022

Advocate

SOUMYA MISHRA O-749/2009 Mob : 9937096293 Ganesh Ghat, Cuttack

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BY ADVOCATE

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**IN THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

M. A. NO. of 2024/EZ

**(Arising out of O.A No: 106 of 2021/ EZ disposed of on
03.08.2022)**

Sisir Kumar Panda ...APPLICANT

-VERSUS -

THE UNION OF INDIA & OTHERS ...RESPONDENTS

VAKALATNAMA

I Sisir Kumar Panda (Applicant), S/O: Late Ram Prasad Panda, aged about 53 years, resident of Nehru Nagar 7th Lane, Gosaninuagaon, Berhampur-760003, P/S: Gosaninuagaon, Dist: Ganjam, State: Odisha Applicant do hereby appoint and retain **Sri Biranchi Narayan Mahapatra**, Advocate of the **Orissa High Court** of Cuttack to act and appear for me in the above Application and or my behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of my application connected with the same of any decree order passed therein, including proceedings in taxation and application for Review, to file and obtain return of documents, and to deposit and receive money on my/ or behalf in the said application, and to represent me and to take all necessary steps on my behalf in the above matter, I agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 03.08.2024

03.08.24

ACCEPTED

Sisir Kumar Panda

SIGNATURE OF THE APPLICANT

Biranchi Narayan Mahapatra

Advocate, Orissa High Court

E Mail: imbiranchi@gmail.com

Mob. No: 8984383812

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MEMO OF APPEARANCE

To,

The Registrar,
National Green Tribunal,
Kolkata.

Sir,

Please enter my appearance on behalf of the Applicant in this case.

Dated this the 3rd day of August, 2024

Yours faithfully,

B. N. Mahapatra
03.08.2024

(Biranchi Narayan Mahapatra)
Advocate for Applicant in M.A
Mob .No: 08984383812