

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

O.A. NO.114 OF 2024/EZ.

Rabindra Pradhan. ... Applicant.
-Versus-
State of Orissa & others. ... Respondents.

: I N D E X :

Sl. No.	Description of Documents	Pages.
1.	Counter Affidavit filed by Respondent Nos.3, 4 and 8.	1-7
2.	Annexure-A/4. Copy of Joint Enquiry Report dated 3.08.2024.	8-17
3.	Annexure-B/4 Series. Copies of Satellite Image and Trace Map.	18-19

Cuttack

Date: 19.09.2024.


Addl. Government Advocate.

Abheyan Sunit Agrawal

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**COUNTER AFFIDAVIT FILED ON BEHALF
OF THE RESPONDENTS/OPP.PARTIES
NOs.3, 4 & 8.**

I, Sri Akshay Sunil Agrawal, aged about 32 years, Son of Sri Sunil Agrawal, at present working as Collector & District Magistrate, Nayagarh, Dist: Nayagarh, Odisha do hereby solemnly affirm and state as follows:-

1. That I am Opp.Party No.5 in this case and swearing this affidavit for self and on behalf of the Opp.Party Nos.3 and 8 being duly authorized by the Opp.Party No.3.
2. That I have gone through the abovementioned original application and have understood the contents thereof. In my official capacity I am well acquainted with the facts of the case and thus competent to swear this affidavit.



Akshay

Sunil Agrawal
Akshay

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3. That the aforesaid original application has been filed by the applicant before the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata seeking for a direction to the Collector & District Magistrate, Nayagarh to demolish and remove of the illegal encroachments/structures standing in the said reserve forest land to protect the original form of the Land and to initiate criminal proceeding U/s.379, 420, 120-B of IPC and Section-19 of Environment Protection Act 1986 against the private Respondents No.10, 11 and 12 and other erring officials and respondents also to impose fine and environment compensation on as there is irreparable loss to the environment and huge pollution due to the illegal activities in the forest land as well as fix the accountability/responsibilities of the concerned Government Authorities including Executive Officer of Jhadapada Gram Panchayat for their inaction and willful dereliction of duties causing damage to environment. The petitioner also prayed for a direction to constitute a joint committee of District Collector, Nayagarh, Divisional Forest Officer, Khurda, Officer of Odisha State Pollution Control Board and other officers as Hon'ble Tribunal deems fit to enquiry and submit its report.

4. That the averments made in paragraphs-1 to 3 of the original application call for no reply from this deponent.

✓
Aksray Sunil Agrawal



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5. That in reply to the averments made in paragraph-4 of the original application, it is humbly submitted that the suit land that is Hal Plot No. 1793 Ac. 1.70 with kissam Patita under hal Govt. Abada Jogy Anabadi Khata No. 387 of village Jhadapada corresponds to sabik Plot No. 1005 with kissam Chhotajungle (Small jungle) which attracts Forest Conservation Act. 1980 since the current RoR has been published after 1980.

It is pertinent to mention here that a committee constituted by the Collector, Nayagarh (Respondent No. 4) comprising of ADM, Revenue, Nayagarh, ACF, Khurda & Regional Officer, SPC, Board, Berhampur have visited the alleged site on 02.07.2024 and found a one room building with an area of 489 sqft. exists on the suit plot where the Gram Panchayat office is running at present temporarily as admitted by the Sarapancha, the Panchayat Extension Officer and some other persons of village Jhadapada. The Team has submitted the report to Respondent No.04 on 3.08.2024 after completion of enquiry. Copy of Enquiry Report dated 3.08.2024 is annexed herewith as **Annexure-A/4**.

As the building was constructed in the year 2017, the committee could not ascertain whether felling/cutting of trees have taken place or not. The



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Abhay Sewil Agrawal

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committee also did not find the existence of dense growth of forest species on the remaining part of plot except a few trees exist sporadically.

6. That the averments made in paragraph-5 of the original application are false, baseless and hereby denied. It is humbly submitted that in the year 2020-21, on getting a report from the Revenue Inspector, the Tahasildar, Ranpur (Respondent No. 8) has booked a case under OPLE Act. against the encroacher Sri Nityananda Jena vide L.E. Case No. 293 of 2021 who had unauthorisedly constructed the one room building on behalf of the village community utilizing private fund on Government land. The Tahasildar, Ranpur passed eviction order to the encroacher in Form No. (Kha) but physically eviction has not yet been carried out as the Gram Panchayat Office is running in the said building.

7. That in reply to the averments made in paragraph-6 of the original application, it is humbly submitted that the Gram Panchayat Office is functioning temporarily on alleged building constructed unauthorisedly on Plot No.1793. The Gram Panchayat initially started it's functioning in the community hall (Kothaghar) of village Jhadapada as the newly created Gram Panchayat does not have it's own building. Subsequently, the Gram Panchayat

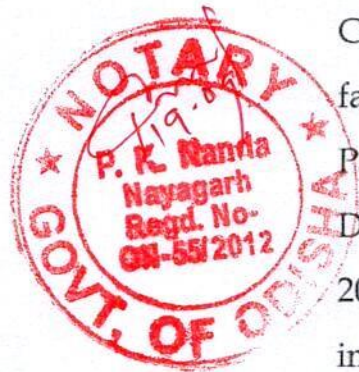


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Abshay Sunil Agrawal

Office was shifted to the alleged building due to space constraint and non availability of toilet etc., after a decision taken by the Special Gram Sabha convened under the chairmanship of Sarapancha on 27.01.2023. The Gram Panchayat is functioning in the said building free of rent and also that no Government fund or Gram Panchayat fund have been utilized for construction of the building as stated by Panchayat Extension Officer, Jhadapada. On the other hand, construction of a plinth over an area of 1200 sqft. on another Hal Plot No.1795 by cutting down the trees was not found on the spot. But an approximate area of 2000 sqft. from Plot No. 1795 with sabik kisam Chhota Jungle has been leveled for construction of fair price shop and community hall by the Gram Panchayat after obtaining permission from the Divisional Forest Officer, Khurda under F.R. Act., 2005 as found by the Joint Enquiry Team. The satellite image from 2022 of the same area indicates that trees have not been felled down in the past two years. Copies of Satellite Image and Trace Map are annexed herewith as **Annexure-B/4 Series**.

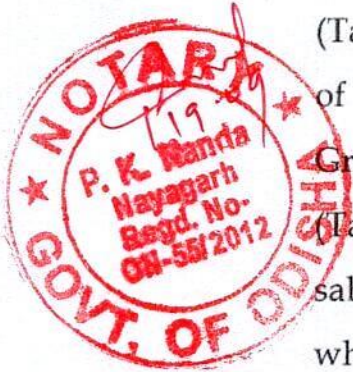
8. That the averments made in paragraphs-7 and 8 of the original application call for no reply from this deponent.



Apsaray Sunil Agrawal

9. That in reply to the averments made in paragraph-9 of the original application, it is humbly submitted that the Respondent No. 12 had encroached a portion of Plot No. 1793 and illegally constructed a pucca building on it. The corresponding Sabik Plot of Hal Plot No. 1793 is 1005 with kism Chhotajungle. Due to this unauthorized construction Land Encroachment Case bearing No.293 of 2021 has also been initiated against the encroacher and eviction order issued.

It is also pertinent to mention here that the Respondent No. 10 (Sarapanch, Jhadapada G.P.) had submitted a proposal before the Respondent No.8 (Tahasildar, Ranpur) to settle Plot No. 1795 in favour of Jhadapada Gram Panchayat for construction of Gram Panchayat building. The Respondent No.8 (Tahasildar, Ranpur) passed adverse order as the sabik kism of hal plot No. 1795 is Chhotajungle which hits Forest Conservation Act. 1980. The Sarapancha filed appeal before Sub-Collector who upheld the decision of Tahasildar. The Respondent No.10 (Sarapancha, Jhadapada G.P.) filed a writ before Hon'ble High Court vide W.P.(C) No. 20308 of 2021 challenging the orders of Tahasildar, Ranpur & Sub-Collector, Nayagarh. The Hon'ble High Court vide order dated 30.07.2021 has been pleased to dismiss the writ petition and confirmed the orders of



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Abshay Sunil Agrawal

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Sub-Collector, Nayagarh with suggestion to the petitioners to file an application before the Collector, Nayagarh identifying another suitable land for construction of Gram Panchayat Office building.

10. That the averments made in paragraphs-10 to 13 of the original application call for no reply from this deponent.

11. That the Respondents carves the leave of the Hon'ble Court to file fresh affidavit, it required in the interest of the lis.

12. That the original application is otherwise improper unjustified and as such is liable to be dismissed.

13. That the facts stated above are true to the best of my knowledge and belief based on official records.

Identified by:-

Somato Palach
Advocate

Akshay Sunil Agrawal
Deponent.

Certificate

Certified that the cartridge papers are not readily available.

CUTTACK

Date: 19.09.2024

Somato Palach
Addl. Government Advocate



Believe me
19.09.2024
Stamp: **TRIPURA...**

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COMMITTEE REPORT OF JOINT VERIFICATION IN O.A.
NO. 114/2024 FILED BY RABINDRA PRADHAN
-VRS- STATE OF ODISHA & OTHERS

The Hon'ble NGT have ordered to constitute a committee comprising of the following members and that the committee shall visit the site in question and submit it's report on affidavit within four weeks with regard to the allegation made in Original Application No. 114/2024

- i. District Magistrate, Nayagarh or his representative not below the rank of Addl. District Magistrate, Nayagarh.
- ii. Divisional Forest Officer, Khurda or his representative not below the rank of Asst. Conservator of Forests.
- iii. Senior Scientist, Odisha State Pollution Control Board, Berhampur

As per direction of the Hon'ble NGT, Collector, Nayagarh being the Nodal Officer in this case constituted the committee taking the following members (1) A.D.M.(Revenue), Nayagarh, the representative of Collector, Nayagarh (2) Asst. Conservator of Forest, the representative of DFO, Khurda (3) Regional Officer, State Pollution Control Board, Berhampur, the representative of Senior Scientist, OSPC Board.

The Committee members proceeded to the spot on 02.07.2024. The Committee instructed the Tahasildar, the Revenue Supervisor (R.S.) and the Revenue Inspector (R.I.) of the circle to remain at the spot for inquiry. The Sarpancha, Jhadapada Grama Panchayat (G.P.) and the Panchayat Extension Officer (P.E.O.) were also intimated to remain present at the time of enquiry. All of them remained present. Also, the Range Officer, Ranpur, Forest Range remained present. Some villagers of Jhadapada participated in the enquiry suo motu.

The allegation are follows:-

Sl. No.	Issue	Present status
1.	Sri Nityananda Jena of Jhadapada, Respondent No. 12, has illegally constructed one room building by cutting the trees from forest land on Plot No. 1793, Area Ac. 1.70 in Khata No. 387 of Jhadapada Mouza under Ranpur Tahasil.	The Committee found after verification of land records and map of the village that on Plot No. 1793 a one room building exists, the area of which is approximately 489 sqft. At present the G.P. Office Jhadapada is functioning there temporarily as stated by the Sarapancha, Jhadapada and villagers. The Plot No. 1793 measuring an area of Ac. 1.70 under hal A.J.A. Khata No. 387 of Kissam- Patita of village -Jhadapada corresponds to sabik No. 1005 with Kissam- Chhotajungle and hence it attracts the provision of Forest Conservation Act. 1980. The Tahasildar, Ranpur stated that OPLE case bearing No. 293/2020-21 has been initiated against the encroacher Sri Nityanada Jena for this unauthorized encroachment. The assessment and penalty has been levied and eviction order in Form No. "Kha" has been issued. Till date, the encroacher has not vacated the land and eviction has also not also been carried out. As the building is not a new one and has been constructed a few years back, the Committee could not ascertain whether tree felling has taken place or not. The Committee also did not find the existence of

		<p>dense growth of forest species on remaining area of plots beyond this building except that a few trees exist sporadically here and there.</p> <p>It was stated by village gentries that Sri Nityananda Jena has constructed the building on behalf of the villagers utilizing the village common fund for running the village library- "Nilekantheswar Pathagar".</p>
2.	<p>Since 2017, the Respondent No. 10 (Sarpancha, Jhadapada G.P.) is using the building as G.P. office violating all the environmental norms which is also illegal act on the part of the Panchayat Officials.</p>	<p>It was admitted by Sarpancha, Jhadapada G.P. that the G.P. building is functioning temporarily on the above stated one room building existing on Plot No. 1793. Further, it was stated by most of the villagers, the P.E.O. and the Sarpancha that originally Jhadapada G.P. was part of Mayurjhalia G.P. Subsequently, the Govt. decided to constitute the new Jhadapada G.P. comprising of village Jhadapada and Bokakhai which also has a separate hamlet namely Kanchanpur as is called by the local people. Sri Nityananda Jena (Respondent No. 12) as representative of the villagers, has constructed the building on Plot No.1793 for the purpose of village Library by utilizing village funds for the sake of common interest. As the G.P. is a new one and it does not have yet its own building due to non finalization of land, a special Grama Sabha had been convened under the</p>

		<p>chairmanship of the Sarapancha on 27.01.2023, where decision was taken to temporarily shift G.P. office from the village community hall (Kothaghara) where minimum facilities such as toilet were not available and the general public were facing hardship due to space constraints, to this building on Plot No. 1793. They thus shifted the G.P. office to the present building which was constructed for the village library in the name of "Nilakantheswar Pathagara". Hence, it was found that the Sarapancha has no role for construction of the building on Plot No. 1793 where the G.P. office is functioning now. It was also confirmed by the P.E.O. of the said G.P. that the G.P. building is functioning in the said building free of rent and no Govt. fund or G.P. funds have been utilized for construction of the building.</p>
3.	<p>The Respondent No. 10, 11 & 12 (Sarapancha, Jhadapada G.P; P.E.O., Jhadapada G.P. & Nityananda Jena) have jointly started foundation work by clearing the trees for construction of a new Panchayat building measuring an area of 1200</p>	<p>The Committee did not find construction of plinth over an area of 1200 sqft. on Plot No. 1795 by cutting down the trees. However, it was found that land leveling on an area of approximately 2000 sqft. has been made on the plot. No valuable trees were noted to be cut down at the time of land leveling. The satellite image from 2022 of the same area also supported the fact that trees have not been felled during past 2</p>





square feet on Plot No. 1795, Area Ac. 1.22, under Khata No. 387 of village-Jhadapada, the kissam of which was also Jungle, without requisite approval under Section 2 of Forest Conservation Act. 1980.

years. It was seen that in the adjacent area of the alleged plot No. 1795 there are bushy plants of different varieties still available. In this regard, the Sarapancha and the P.E.O. explained that they have leveled the land for construction of community centre and fair price shop of the G.P. in 0.488 hectre after obtaining permission from the D.F.O., Khurda vide letter No.1143 dtd. 15.02.2024. Copy of the said order is attached as **Annexure-A.**

However, before giving permission, the D.F.O. had instructed for site inspection and this report submitted to D.F.O. Office revealed that no trees were present in the proposed area. Copy of Satellite image of alleged area where the D.F.O., Khordha allowed for construction of Community Hall and Fair Price Shop is attached as **Annexure-B.**

On verification of land records, it was seen that hal Plot No. 1795 measuring an area of Ac. 1.22 with Kissam- Patita under hal A.J.A. Khata No. 387 of village Jhadapada corresponds to sabik Plot No. 1005 with kissam- Chhotajungle. Since the sabik kissam of the land was Chhotajungle, any change for non forest purpose also attracts the provision of the Forest Conservation Act. 1980. The Sarapancha







Jhadapada G.P. stated that at the time of creation of Jhadapada G.P. from the mother G.P. Mayurjhalia, the inhabitants of the related village had agreed to have the G.P. headquarter in the central place and accordingly they had decided unanimously to construct their G.P. building on Plot No. 1795, as it is situated in the bi-junction of both the villages. It was found that the Sarpancha has obtained permission under FR Act. 2006 from the D.F.O., Khurda for construction of community centre and fair price shop on part of the plot No. 1795 vide letter No. 1143 dt. 15.02.2024. Accordingly they have made land leveling only on a small portion of the plot without cutting any trees but have not gone ahead with any foundation or construction activities.

To mention here, the Sarpancha had submitted an application to Tahasildar, Ranpur for alienation of a portion of the plot for construction of the G.P. building which was rejected by the Tahasildar, Ranpur intimating to the Sarpancha that since RoR has been published after Forest Conservation Act. 1980 came into force, the sabik kisam of the plot was verified and found Chhotajungle, so it can not be alienated for non forest use. The Sarpancha preferred appeal before Sub-Collector,

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		<p>Nayagarh where the Sub-Collector upheld the decision of Tahasildar. Then the Sarpancha filed a writ vide W.P.(C) No. 2308/2021 which was also dismissed and the order of lower court was confirmed. The Hon'ble High Court suggested Sarpancha Jhadapada G.P. to file an application before Collector, Nayagarh identifying another suitable land for construction of G.P. building. The land plan prepared by the Tahasildar, Ranpur is enclosed herewith as Annexure-C for better appreciation of the matter.</p>
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Asst. Conservator Forest,
Khurda


31/07/2024
Regional Officer,
SPCB, Regional Office,
Berhampur


31-7-2024
Addl. District Magistrate,
(Revenue)
Nayagarh


03/08/24
Collector & Dist. Magistrate
NAYAGARH

OFFICE OF THE DIVISIONAL FOREST OFFICER: KHORDHA DIVISION, KHORDHA
AT / PO / DIST. - KHORDHA
Tele No. (06755), 222825
Email ID - dfp.khordha@odisha.gov.in

Letter No. 1143 /4F (Misc)-12/2024
Dated, Khordha 15 February, 2024

To,

The Sarapanch,
Jhadapada Gram Panchayat.

Subj:

Grant of Permission for diversion of 0.488 Ha./Ac.1.220 of forest land for construction of community center and fair price shop of Jhadapada mouza of Ranpur block, Nayagarh district under Section-3(2) of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Ref:

Your Office Letter No. 54 dated 24.01.2024.

Sir,


A proposal for diversion of forest land for diversion of forest land under Section-3(2) of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 for construction of community center and fair price shop for the public utility in the Hall- Khata no. 387, Plot no.1795, kizam- Patita and Sabik Khata no. 192, Plot no. 1005 of Kizam- Chhota jungle in Athakahani Mundia of Jhadapada mouza, GP- Jhadapada of Ranpur block in Nayagarh district was received by this office on dated 25.01.2024. This area of 0.488 Ha./Ac.1.220 is coming under Athakahani Mundia of Jhadapada mouza. The concerned Gram Sabha has passed a resolution in favour of the project on dated 15.08.2023. The Range Officer, Ranpur has examined & scrutinized the project for its eligibility as per the guidelines prescribed by Govt. of India, Ministry of Tribal Affairs vide their letter No. 23011/15/2008-SG-II dtd. 18.05.2009.

Keeping in view the above circumstances, the project proposal is approved & permission is hereby accorded in favour of the Sarapanch, Jhadapada Gram Panchayat necessarily (herein referred to as User Agency) subject to fulfillment of the following conditions.

1. The Status of the land shall remain unchanged.
2. The Forest land allowed for diversion of forest land for construction of community center and fair price shop for the public utility in the middle place of the Gram Panchayat i.e Hall- Khata no. 387, Plot no.1795, kizam- Patita and Sabik Khata no. 192, Plot no. 1005 of Kizam- Chhota jungle in Athakahani Mundia of Jhadapada mouza, GP- Jhadapada of Ranpur block under Nayagarh district shall not be used for any other purposes.
3. Area shall be demarcated by you in the field and after demarcation the existing forest land should be improved by the User Agency under supervision of Gram. Sabha / Palli Sabha.






31.7.2024

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4. No trees are found to be felled.
5. No trees are to be trimmed during construction of community center and fair price shop for the public utility in the middle place of the Gram Panchayat i.e Hall- Khata no. 387, Plot no.1795, kizam- Patita and Sabik Khata no. 192, Plot no. 1005 of Kizam- Chhota jungle in Athakahani Mundia of Jhadapada mouza, GP- Jhadapada of Ranpur block under Nayagarh district as per the proposal approved.
6. No crushing/ breaking of stones shall be allowed inside forest areas. Materials shall be procured from authorized source for use in the project.
7. No labour camps shall be established on the forest land.
8. No work shall be allowed after sunset.
9. The implementation for diversion of forest land for construction of community center and fair price shop for the public utility in the middle place of the Gram Panchayat i.e Hall- Khata no. 387, Plot no.1795, kizam- Patita and Sabik Khata no. 192, Plot no. 1005 of Kizam- Chhota jungle in Athakahani Mundia of Jhadapada mouza, GP- Jhadapada of Ranpur block under Nayagarh district shall not obstruct natural flow of water.
10. The User Agency shall be responsible for any loss to the flora/ fauna in the surroundings & therefore shall take all possible measures to conserve the same. Any damage done in this regard shall be compensated by the User Agency within the project cost as per the assessment of the DFO, Khordha. **An undertaking by the User Agency** is required to be submitted in the office of the Range Officer, Ranpur before execution of work of the approved project.

Encl : As above

Yours faithfully,

[Signature]
15/2/24
Divisional Forest Officer,
Khordha Division, Khordha

Memo No. 1144 /Date. 15.02.2024

Copy forwarded to the District Welfare Officer, Khordha & Nayagarh for information and necessary action.

[Signature]
15/2/24
Divisional Forest Officer,
Khordha Division, Khordha

Memo No. 1145 /Date. 15.02.2024

Copy forwarded to the Range Officer, Ranpur for information and necessary action with reference to your memo no. 71 dated 05.02.2024. He should monitor the progress of construction work during execution & any deviation to the stipulations mentioned above by the User Agency should be dealt/ reported accordingly. **An undertaking by the User Agency** to abide by the above stipulations should be obtained before allowing improvement work. He shall submit the same undertaking to this office for record & reference. Two sets of the approved proposal are sent herewith for your reference. He is also directed to visit the work at any time on the spot & follow up the instructions laid down in guideline, Government of India & make sure to obtain undertaking from the User agency (Form of undertaking enclosed).

[Signature]
15/2/24
Divisional Forest Officer,
Khordha Division, Khordha

[Signature]

[Signature]
31.7.2024

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Memo No. 1146 /Date. 15.02.2024
Copy forwarded to the Tahasildar, Ranpur for information and necessary action with reference.

P. P. P.
15/2/24
Divisional Forest Officer,
Khordha Division, Khordha

Memo No. 1147 /Date. 15.02.2024
Copy forwarded to the Sub-Collector, Khordha / Nayagarh for information & necessary action.

P. P. P.
15/2/24
Divisional Forest Officer,
Khordha Division, Khordha

Memo No. 1148 /Date. 15.02.2024
Copy forwarded to the Collector & District Magistrate, Khordha / Nayagarh for favour of kind information & necessary action.

P. P. P.
15/2/24
Divisional Forest Officer,
Khordha Division, Khordha

Memo No. 1149 /Date. 15.02.2024
Copy forwarded to the Regional Chief Conservator of Forests, Bhubaneswar for favour of kind information & necessary action.

P. P. P.
15/2/24
Divisional Forest Officer,
Khordha Division, Khordha

Memo No. 1150 /Date. 15.02.2024
Copy forwarded to the Principal Chief Conservator of Forests (Forest Diversion & Nodal Officer, FC, Act, O/o the Principal Chief Conservator of Forests, Odisha, Bhubaneswar for favour of kind information & necessary action.

P. P. P.
15/2/24
Divisional Forest Officer,
Khordha Division, Khordha

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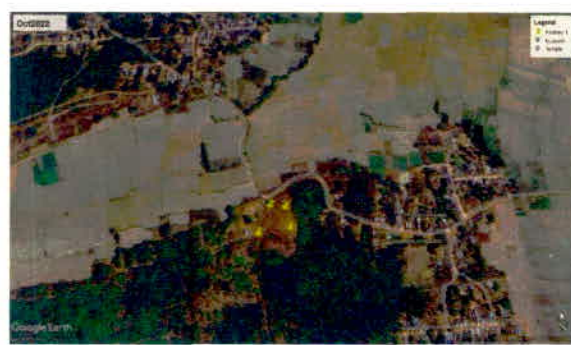
[Signature]
21-7-2024

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Annexure - B/4

Annexure - B

Satellite Imagery of Alleged Area of OA Case no 114/2024/EZ with Marking of the Area in which Construction of Community Hall and Fair Price Shop was Allowed by DFO, Khordha Under FRA Act.

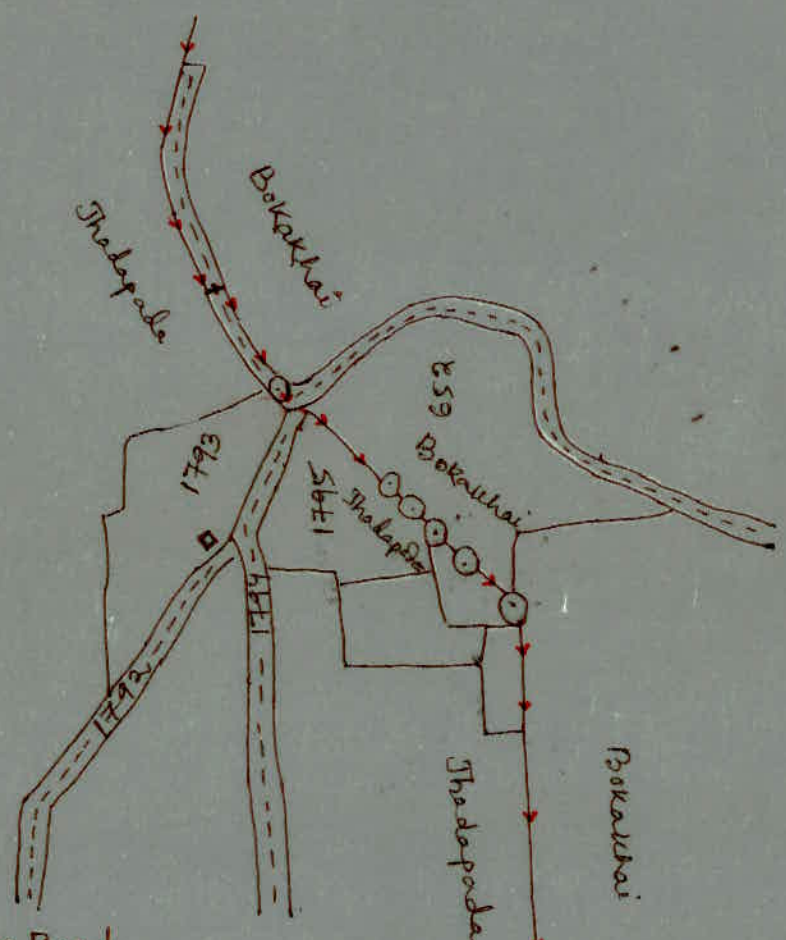


Leahy
Assistant Conservator of Forests
Khordha Division, Khordha

[Signature]
RO/PCB, Berhampur

[Signature]
Addl. Dist Magistrate
NAYAGARH

Village - Jhadapada
 Thana - Ranpur No-204
 Tahasil - Ranpur No-204
 District - Nayagarh
 Scale - 16 inch = 1 mile
 Year - 1995-96



- Village Road
- Temporarily Functioning of Gram Panchayat Office, Jhadapada
- Boundary of village - Jhadapada and Bokakhalai

Khata no - 387 (Bada Jagya Anabali)
 Plot no - 1793 = Area - Ac 1.70 dec kassam - Patita
 Plot no - 1795 = Area - Ac 1.22 dec kassam - Patita

The G.P office is functioning over plot no - 1793 of an area Ac 0.01, 122 Bk or 489 square feet.

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 4/7/2024
 Revenue Inspector
 Jhadapada

[Handwritten signature]
 18/7/24
 Tahasildar, Ranpur

[Handwritten signature]
 31-7-2024
 Addl. Dist. Magistrate
 NAYAGARH