



**SYNOPSIS**

The application is being filed under Sections 14, 15, 18, 19, and 20 of the National Green Tribunal Act, 2010, to challenge the significant issue of unwarranted pollution that is caused to “Chandan Pokhari” by illegal dumping of wastes which is situated over Khata No. 126 and Plot No. 564 Mouza- Gopinathpur@Routraypur Dist- Puri. That the present water body in question has both historical and religious importance. The water body in question belongs to deity namely Sri Sri Nilakanteswar Dev and other deities. Though exact history is still unknown. The said temple was said to patronized by Sri Chaitanya Mahaprabhu the great Saint as well as founder of Gaudiya Vaishnavism who during his time of visit to Puri in the year 1510AD said to have established this temple. That the water body has now become a dumping yard and all the solid and liquid wastes of nearby areas which is now dumped directly over the water body. Even the drainage waste of the nearby areas has now started getting dumped into the above water bodies.

<b>DATE</b>	<b>LIST OF EVENTS</b>
<b>4/07/2023</b>	Order of Hon'ble Tribunal in OA 16/2023

**IN THE NATIONAL GREEN TRIBUNAL; EASTERN**

**ZONE**

**KOLKATA BENCH**

**ORIGINAL APPLICATION No. \_\_\_\_\_ of 2024**

**In the Matter of:** - An application Under Section 14, 15 and 18 of the National Green Tribunal Act, 2010 read with Rule 8 of the National Green Tribunal (Practice and Procedure) Rules, 2011

**In the Matter of:-** Madanmohan Rout S/o Late Laxmidhar Rout At/PO- Gopinathpur PS- Puri Sadar Puri-752002  
email- [email-afraazsuhail2@gmail.com](mailto:email-afraazsuhail2@gmail.com)

**.....Applicant**

**Versus**

1. Sri Nilakanteswar Dev and other deities represented through Trustee At- Gopinathpur Puri-752001 Email- Not Avbl.

2. State of Odisha represented through Addl. Chief  
Secretary of Department of Forest, Environment and  
Climate Change At- Sachivalaya Marg,  
Bhubaneswar-751001 Tel-0674-2536822 Email-  
[fesec.or@nic.in](mailto:fesec.or@nic.in)
3. State of Odisha, represented through Principal  
Secretary of Panchayati Raj and Drinking Water  
Department At – Sachivalaya Marg, Bhubaneswar,  
Pin – 751001 email- [prsec.or@nic.in](mailto:prsec.or@nic.in)
4. Collector and District Magistrate, Puri, At – Collector  
Office, Governor House Road Puri – 752002 email-  
[dm-puri@nic.in](mailto:dm-puri@nic.in)
5. Odisha State Pollution Control Board, Represented  
through Member Secretary, At – Paribesh Bhawan,  
A/118, Nilakantha Nagar, Unit - 8, Bhubaneswar –  
751012 email- [member.secy@ospcboard.org](mailto:member.secy@ospcboard.org)
6. Commissioner of Endowments of Odisha At-  
Debottar Bhawan, near Civil Court, BJB Nagar,

Bhubaneswar-751014 Dist- Khurda [Email-](mailto:ec.orissa@gmail.com)

[ec.orissa@gmail.com](mailto:ec.orissa@gmail.com)

7. Block Development Officer Puri Sadar AT- Srikhetra

Road Puri-752002 [EMAIL-ori-bpuri@nic.in](mailto:EMAIL-ori-bpuri@nic.in)

8. Superintending Engineer of Drainage Division, At-

Shreevihar, Puri-752003 [email-eeddpuri@gmail.com](mailto:email-eeddpuri@gmail.com)

..... **Respondents**

**Humble petition of**

**Applicant above**

**named**

**Most Respectfully Shweth**

1. The address of the applicant is given above for service of notices of this application.
2. The address of respondents is given above for the service of notice of application
3. The application is being filed under Sections 14, 15, 18, 19, and 20 of the National Green Tribunal Act, 2010, to challenge the significant issue of unwarranted pollution

that is caused to “Chandan Pokhari” by illegal dumping of wastes which is situated over Khata No. 126 and Plot No. 564 Mouza- Gopinathpur@Routraypur Dist- Puri. True copy of map of the present water body has been annexed here as **Annexure 1**

4. That the present water body in question has both historical and religious importance. The water body in question belongs to deity namely Sri Sri Nilakanteswar Dev and other deities. Though exact history is still unknown. The said temple was said to patronized by Sri Chaitanya Mahaprabhu the great Saint as well as founder of Gaudiya Vaishnavism who during his time of visit to Puri in the year 1510AD said to have established this temple.
5. That it was said during the time of “Chandan Yatra” where lord is taken in procession from the temple to different places of the villages. After various rituals the deities are taken to the above-mentioned water body and

then they are placed on grandly decorated boats for an evening cruise of the water body.

**6.** That footprints of deities and Shri Chaitanya

Mahaprabhu still exists in the corners of the water bodies and a temple has been made in respect of the same. That the water body was regularly used by people of nearby places for all their religious rituals and daily needs.

**7.** That the present water body is under control of the public deity namely Sri Nilakanteswar Dev and other deities.

The management of the said deity is under the body headed by Sub- Collector Puri and Tehsildar Puri which is done as per direction of Addl. Commissioner of Endowments.

**8.** That with time the water body started losing its water retaining capacity because of uncontrolled pollution and encroachment the water became dumping yard.

**9.** That the water body has now become a dumping yard and all the solid and liquid wastes of nearby areas which is now dumped directly over the water body. Even the

drainage waste of the nearby areas has now started getting dumped into the above water bodies. It has badly affected the water retaining status of the said water body. True copy of photograph of present pond has been annexed here as **Annexure 2.**\

10. That it is worthwhile to mention here that earlier the said water body was used for farming and fishing purposes. But because of unrestricted dumping of untreated solid and liquid waste into the said water body the waterbody has turned completely unfit for any use which has badly affected people from the above community.
11. That many historical structures like steps leading to the water body/ghat and other religious structures still exists in the water body but due to siltation the steps have got silted with wastes and sand.
12. That it is worthwhile to mention here that it is not only the non-usability of water that has caused concern for the people of the nearby localities. The pollution of the said water body is so high that it has become breeding ground

for mosquitos, leeches and other poisonous animals. This has badly affected the health of the people of the said locality. Malaria and dengue have become common in the above mentioned area. Mosquito menace has always been a major headache for the people of the above-mentioned area.

**13.** That rejuvenation of water bodies always been a serious issue and both Union and State has enacted several policies with regards to protection of small water bodies which have both environmental as well as irrigational importance. For example Union of India has enacted policies like

(a) Government of India is providing financial assistance to the identified schemes under Repair, Renovation and Restoration of Water Bodies component of Pradhan Mantri Krishi Sinchayee Yojana (PMKSY) - Har Khet Ko Pani (HKKP).

(b) In 2019, Jal Shakti Abhiyan was launched by the Government. This was followed in 2021, by “Jal

Shakti Abhiyan: Catch The Rain” (JSA:CTR)

campaign. Focused interventions under these annual campaigns taken up by the Government of India and the State Governments, inter-alia, include renovation of traditional and other water bodies/ tanks, enumeration, geo-tagging and making inventory of all water bodies, and removal of encroachments of tanks/ lakes, and de-silting of tanks.

(c) Government has launched the first Census of Water bodies in convergence with the Sixth round of Minor Irrigation Census (reference year 2017-18), under the Centrally Sponsored Scheme- “Irrigation Census”. The objective of the Census of Water bodies is to develop a national database of all water bodies in the country.

(d) Rejuvenation of water bodies is also a component under Water Supply sector of Atal Mission for Rejuvenation and Urban Transformation (AMRUT)

Scheme under Ministry of Housing & Urban Affairs.

Such projects having total estimated cost of Rs.1878.19 crore are ongoing/completed, with 106 number of water bodies have been rejuvenated under this scheme. Further, AMRUT 2.0 launched in October, 2021, with a total outlay targets to promote circular economy of water through development of city water balance plan for each city focusing on recycle/reuse of treated sewage, rejuvenation of water bodies and water conservation

(e) Mahatma Gandhi National Rural Employment

Guarantee Scheme (MNREGS) has provisions for public works relating to natural resource management, water conservation and water harvesting structures to augment and improve ground water like underground dykes, earthen dams, stop dams, check dams and roof top rain water harvesting structures in public buildings.

Similarly in State policy has been enacted under “Preservation and Development of Water bodies” existing under the control of Gram Panchayats under 5<sup>th</sup> SFC(GIA). Despite several policies no steps have been taken by Opp. Parties to save the above water body which has both religious and historical importance

14. `Water bodies have always been very important for ecological balance. It is also extremely important for recharging ground water.
15. That the present applicant has approached this Hon’ble Tribunal in Original Application 16/2023 with a prayer to stop encroachment over the water body as well as other water bodies that is under the control of the present deity. True copy of order of this Hon’ble Tribunal in OA 16/2023 has been annexed here as **Annexure 3**
16. That the present water body has become dumping yard and it needs immediate restoration to protect its religious and historical importance.

17. That the above action of respondent raises substantial question relating to environment as there is direct violation of specific statutory environmental obligation, the community at large other than individual or group of individuals are highly affected by environmental consequences, the gravity of damage to the environment and property is highly substantial, the damage to public health is broadly miserable, the environmental consequences relate to specific activity and point source of pollution as has been enumerated in Section 2(m) of National Green Tribunal Act, 2010.

18. Being aggrieved by the above action of respondent the applicant being a public-spirited person and an environmental activist craves to invoke the jurisdiction of this Hon'ble Tribunal by way of filing this Original Application on following grounds  
That the Original Application has been filed on following  
Grounds

### **GROUND**

- 19.** The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of few.
- 20.** Although, the Constitution of India, which was enforced on 26/01/1950 did not contain any express provision for protection of environment and ecology, the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After 26 years, Article 48 A was inserted in Part

IV of the Constitution and the State was burdened with the responsibility of making an endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country. By the same amendment, Fundamental Duties of the citizens were enumerated in the form of Article 51A (Part IV A). These include the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures [Article 51A(g)]

**21.** As per the Ramsar Convention, a wetland is defined as areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tides does not exceed six meters’. In addition, to protect coherent sites, Article 2.1 of the Convention provides that wetlands may include riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six meters at low tide lying within the wetlands.

- 22.** That the Wetlands are protected under the Wetlands (Conservation and Management) Rules, 2017. Allocation of wetlands for any other purpose constitutes a violation of statutory requirement under the Environment (Protection) Act, 1986 and the Wetlands (Conservation and Management) Rules, 2017 in addition to running contrary to the Principle of Sustainable Development, the Precautionary Principle, the Public Trust Doctrine and the Eco-centric approach propounded by the Hon<sup>ble</sup> Supreme Court of India. Receiving the excess water from Rushikulya River and flood water during rainy season from the surrounding villages and by changing the land use for recreational purposes and altering the land use will seriously affect the purpose it was serving.
- 23.** It is widely recognized that Wetlands are among the most productive ecosystems in the world, comparable to rain forests and coral reefs. An immense variety of species of microbes, plants, insects, amphibians, reptiles, birds, fish and mammals can be part of a wetland

ecosystem. Climate, landscape shape (topology), geology and the movement and abundance of water help to determine the plants and animals that inhabit each in wetland. The complex, dynamic relationships among the organisms inhabiting the wetland environment are called food webs. The future of humanity depends on wetlands. Wetlands are some of the most important biodiversity areas in the world. Many of the challenges of the future can be met through conserving and sustainably using wetlands, such as food and water security, human health, disaster risk reduction and climate change resilience. Wetlands can be thought of as "biological supermarkets." They provide great volumes of food that attract many animal species. These animals use wetlands for part of or all of their lifecycle. The functions of a wetland and the values of these functions to humans depend on a complex set of Relationships between the wetland and the other ecosystems in the watershed. A watershed is a geographic area in which water, sediments and dissolved

materials drain from higher elevations to a common low-lying outlet or basin a point on a larger stream, lake, underlying aquifers or estuary. Role in mitigating Climate Change: Wetlands' microbes, plants and wildlife are part of global cycles for water, nitrogen and sulfur. Thus, wetlands help to moderate global climate conditions

**24.** That in exercise of the powers conferred by section 25, read with sub-section (1) and clause (v) of sub-section (2) and sub-section (3) of section 3 and section 23 of the Environment (Protection) Act, 1986 and in supersession of the Wetlands (Conservation and Management) Rules, 2010, except as respects things done or omitted to be done before such supersession, the Central Government , MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE has notified rules for conservation and management of wetlands, namely Wetlands (Conservation and Management) Rules, 2017 vide NOTIFICATION dated 26th September, 2017. While

notifying the Rules 2017 the MoEFCC has acknowledged in its preamble that the wetlands are vital parts of the hydrological cycle, are highly productive ecosystems which support rich biodiversity and provide a wide range of ecosystem services such as water storage, water purification, flood mitigation, erosion control, aquifer recharge, microclimate regulation, aesthetic enhancement of landscapes while simultaneously supporting many significant recreational, social and cultural activities, being part of our rich cultural heritage.

- 25.** . That clause (g) of article 51A of the Constitution stipulates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
- 26.** That the Environment (Protection) Act, 1986 is a comprehensive legislation to provide protection and improvement of the environment, including interalia,

wetlands, and for matters connected therewith; And  
whereas the National Environment Policy, 2006  
recognizes the ecosystem services provided by wetlands  
and emphasizes the need to set up a regulatory  
mechanism for all wetlands so as to maintain their  
ecological character, and ultimately support their  
integrated management;

**27.** That conservation and wise use of Waterbodies can  
provide substantial direct and indirect economic benefits  
to state and national economy, and thereby the Central  
Government stands committed to mainstreaming full  
range of wetland biodiversity and ecosystem services in  
development planning and decision making for various  
sectors;

**28.** That the State Governments and Union Territory  
Administrations need to take into account waterbodies  
ecosystem services and biodiversity values likewise  
within their developmental programming and economic  
well-being, also taking into cognizance that land and

water, two major ecological constituents of wetland ecosystems, are enlisted as State subjects as per the Constitution;

- 29.** That the Central Pollution Control Board has framed —Indicative Guidelines for Restoration of Water Bodies in June 2019 (in compliance to Hon‘ble NGT Order dated 10.05.2019 in O A. No. 325 of 2015) and same has suggested a detailed methodology such as recognition, restoration, protection, improvement and sustenance phase as the measures to restore the water bodies.
- 30.** There remains therefore no doubt that it is the responsibility of the respondents to ensure the protection and integrity of the environment, especially one which is a source for livelihood for rural population and life for local flora and fauna.
- 31.** Protection of such village commons is essential to safeguard the fundamental right guaranteed by Article 21 of our Constitution. The right to access to clean drinking water is fundamental to life and there is a duty on the

state under Article 21 to provide clean drinking water to its citizens'. The State is duty-bound not only to provide adequate drinking water but also to protect water sources from pollution and encroachment. Any act of the State that allows pollution of water body must be treated as arbitrary and contrary to the public interest and in violation of the right to clean water under Article 21 Constitution of India. These common areas are the lifeline of communities, and often sustain various chores and provide resources necessary for life. Water bodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal

**32.** The Hon'ble National Green Tribunal vide order dated 07.05.2019 in O.A No. 176/2015, Shailesh Singh Vs. Hotel Holiday Regency, Moradabad &Ors., directed the

CGWA to prepare a policy for conservation of groundwater with a robust institutional mechanism for surveillance and monitoring with a view to enhance access to ground water for drinking purposes in OCS( Over Exploited, Critical and Semi critical) areas by way of appropriate replenishment practices which can be properly accounted and measured as well as to sustain the flood plains of rivers in terms of eflows, augmentation of subterranean flows and preservation of other water bodies.

**33. That the Hon“ble NGT Lt. Col. Sarvadaman Singh Oberoi Vs Union Of India, OA NO 325/2015/PB** and order dated 10/05/2019, Para 6 has observed that

*“There can be no dispute that the water bodies play significant role in recharge of ground water, preventing soil erosion, harnessing rain water and maintaining micro-climate in the area. Need for conservation and protection of water bodies is thus obvious. This requires involvement not only at the*

*level of the State but also at the level of the community for which State needs to take initiative. The threat caused to the water bodies is by dumping of waste, discharge of effluents and encroachments. The steps required for restoration will include preparation and implementation of catchment area treatment plans, setting up of green belt and wherever viable setting up of bio-diversity parks around the water bodies, cleaning up of the garbage/debris and demarcation by the Revenue Department on identification survey and demarcation. Each water body is required to be given a geo-reference-UID and an action plan is required for restoration and protection of each of the water bodies. In this view of the matter, need for conservation and protection of water bodies are not confined to the State of Haryana alone but extend to the whole country.*

**LIMITATION**

That there is continuing cause of action due to on-going uncontrolled pollution of water body is going on by dumping of both solid and liquid waste.

**UNDERTAKING**

The counsel for the petitioner undertakes to file translated copy of Odia whenever required by this Hon'ble Tribunal

**PRAYER**

It is therefore prayed that this Hon'ble Tribunal may graciously please to:

- I. Direction to State respondents to Revitalize the water body namely "Chandan Pokhari" Khata No. 126 and Plot No. 564 Mouza- Gopinathpur@ Routraypur Dist- Puri., through the process of desiltation and removal of water hyacinths and wild growth of ferns. And may be directed to take steps to restore the water body to its earlier form
- II. Direction may be given to State respondents to take steps so that dumping of liquid and solid waste is not done in the above water body
- III. Or any other order(s), direction(s) may be passed as deemed fit and proper

And for this act of kindness the applicant shall in duty bound shall ever pray

Kolkata

By the applicant

Date

9/9/24



Advocate

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

**ORIGINAL APPLICATION No. \_\_\_\_\_ of 2024**

Madanmohan Rout .....Applicant

Versus

Sri Nilakanteswar Dev and others .....Respondents

**VERIFICATION**


I Madanmohan Rout S/o Late Laxmidhar Rout At/PO-  
Gopinathpur PS- Puri Sadar Puri-752002 do hereby verify  
and state that the contents of the original application and the  
facts stated are true to best of my belief. And no material  
facts which are available to me are being suppressed by me in  
any manner whatsoever.

Identified by

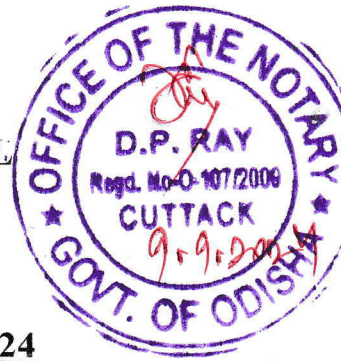
  
Advocate



Verificant

  
**DEBENDRA PRASAD RAY**  
NOTARY, CUTTACK, ODISHA  
REGM.No.ON-107/2009

BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA



ORIGINAL APPLICATION No. \_\_\_\_\_ of 2024

Madanmohan Rout .....Applicant

**Versus**

Sri Nilakanteswar Dev and others .....Respondents

**AFFIDAVIT**

I Madanmohan Rout S/o Late Laxmidhar Rout At/PO-  
Gopinathpur PS- Puri Sadar Puri-752002 herby solemnly  
affirm and state as follows that,

1. That I am the applicant in this case
2. That the facts stated are true to the best of my  
knowledge and no materials facts which are available  
to me are being suppressed by me in any manner  
whatsoever.

Identified By

*Ah An*  
Advocate

*Madan Mohan Rout*  
Deponent



Certified that the above named Deponent(s)  
being identified by.....*A. Sarkar*.....  
Advocate solemnly affirms and states before  
me that the contents of this affidavit are all  
true to the best of their/his/her knowledge

*D.P. Ray* 9.9.2024  
DEBENDRA PRASAD RAY  
NOTARY, CUTTACK





**ANNEXURE 3**

Item No.04

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.16/2023/EZ

**1. Saroj Mishra**

Aged 56 years  
S/o N. Mishra,  
At Nuacolony,  
Gopinathpur,  
Puri-752002

**2. Madanmohan Rout**

Aged 49 years  
S/o Late Laxmidhar Rout,  
At/P.O.-Gopinathpur,  
P.S. PuriSadar,  
Puri-752002

.....Applicant(s)

**Versus****1. State of Odisha,**

Represented through Additional Chief Secretary of  
Department of Forest,  
Environment and Climate Change,  
At-Sachivalaya Marg,  
Bhubaneswar-751001

**2. State of Odisha,**

Represented through Principal Secretary of  
Water Resource,  
At-Keshari Nagar,  
Bhubaneswar-751001

**3. State of Odisha,**

Represented through Principal Secretary of  
Revenue and Disaster Management Department,  
At-Sachivalaya Marg,  
Bhubaneswar-751001

**4. State of Odisha,**

Represented through Principal Secretary of  
Housing and Urban Development,  
At-Sachivalaya Marg,  
Bhubaneswar-751001

**5. Collector and District Magistrate, Puri,**

At-Governor House Road,  
Puri-752002

**6. Central Pollution Control Board,**

Represented through Member Secretary,  
At-Parivesh Bhawan, East Arjun Nagar,  
Delhi-110032

- 7. Odisha State Pollution Control Board,**  
Represented through its Member Secretary,  
At-Paribesh Bhawan, A/118, Nilakantha Nagar,  
Unit-8, Bhubaneswar-751012
- 8. Odisha State Environment Impact Assessment Authority,**  
Represented through Member Secretary,  
At-Acharya Vihar, Unit-IX, OPTCL Colony,  
Bhoi Naga, Bhubaneswar-751022
- 9. Block Development Officer, PuriSadar,**  
Srikhetra Colony, Station Road, Puri-752002
- 10. Engineer in Chief of Water Resource Department, Odisha,**  
Unit-V, Keshari Nagar,  
Bhubaneswar-751001
- 11. Tehsildar Puri,**  
At-Governor House Road,  
Near Collector Office,  
Puri-752002
- 12. Executive Engineer of Drainage Division, Odisha,**  
At-Gandarpur, P.O.-College Square,  
Cuttack-753003
- 13. Superintending Engineer of Drainage Division,**  
At-Shreevihar, Puri-752003
- 14. Commissioner of Endowments of Odisha,**  
At-Debottar Bhawan, Near Civil Courts,  
P.O.-BJB Nagar, Bhubaneswar,  
Dist.-Khurda-751014
- 15. Nilakantheswar Dev,**  
Through Manoj Kumar Mahapatra,  
S/o Late Gobinda Chandra Mohapatra,  
At/PO-Gopinathpur,  
PS-PuriSadar,  
Dist.-Puri-752002, Odisha

.....Respondent(s)

Date of hearing: 04.07.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Mr. Afraaz Suhail, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Tarun Patnaik, ASC for State Respondents (in Virtual Mode),  
Mr. Sibojyoti Chakraborty, Advocate for R-6,  
Ms. Papiya Banerjee Bihani, Advocate for R-7 (in Virtual Mode),  
Mr. Apurba Ghosh, Advocate for R-8 (in Virtual Mode),  
Mr. Sankar Prasad Pani, Advocate for R-15 (in Virtual Mode)

**ORDER**

1. This Original Application has been filed by the Applicant on the allegation that Plot No. 390 and Plot No. 417 of Khatiyan No. 125, Mouza-Gopinathpur @ Routrapur in Tahasil-Puri, Plot No. 192, 4, 24, 286/624 and 435 of Khatiyan No.209, Mouza-Gopinathpur @ Routrapur in Tahasil-Puri, and Plot Nos. 181, 235, 261/628, 172/623, 172, 564, 370, 193, 260, 438, 262, 368, 172/622, 559 of Khatiyan No. 126, Mouza-Gopinathpur @ Routrapur in Tahasil-Puri, are water bodies. The land records to that effect have also been filed along with the Original Application.
2. It is alleged that on these water bodies illegal constructions have been made.
3. It is also alleged that rain water of Villages – Gopinathpur, Tala Nuasahi, Samantra Nagar, Bhoi Sahi, Mallick Sahi, Maitree Vihar, Viswanath Vihar and Mukunda Mishra Nagar, gets accumulated in the said water bodies and passes through Bharaput and becomes source of water for Musa River.
4. It is, therefore, prayed that a direction be issued to the State Respondents to stop constructions over the water bodies in question.
5. At the time of admission, the Tribunal constituted a Committee comprising of the following Members:-
  - (i) *Senior Scientist from the Central Pollution Control Board;*
  - (ii) *Senior Scientist from the Odisha State Pollution Control Board;*
  - (iii) *Collector & District Magistrate, Puri; and*
  - (iv) *Engineer-in-Chief, Water Resource Department, Odisha.*

6. The Committee was required to visit the site in question and submit its Report with regard to the allegations made in the Original Application.
7. Though, the SEIAA, Odisha, Respondent No.8, has been made a party in the Original Application but its stand is that no application has been made to it for grant of Environmental Clearance in respect of any construction which may require Environmental Clearance.
8. The State Pollution Control Board, Odisha, Respondent No.7, has filed affidavit dated 11.04.2023 bringing on record the Inspection Report of the Committee constituted by the Tribunal. The Committee Report reads as under:-

***“Inspection Report of the Committee that was constituted as per the direction of Hon’ble NGT, Kolakta, w.r.t. o.a. No. 16/2023/EZ-Saroj Mishra-Vrs-State of Odisha & Others***

---

*The above The above cited O.A. case has been filed by Sri Saroj Mishra Vrs. State of Odisha and others before Hon'ble NGT w.r.t restoration of water bodies/Jalasaya etc. over the alleged plots those have been cited in the case matter where the drainage system has been completely squeezed due to illegal encroachment.*

*Basing upon the direction of Hon'ble NGT over the above cited OA a committee had been constituted vide order dtd.09.02.2023 with the following members.*

- a) *Collector & District Magistrate. Puri.*
- b) *Engineer-in Chief, Water Resources Department, Odisha.*
- c) *Sr. Scientist from CPCB.*
- d) *Sr. Scientist from Odisha State Pollution Control Board.*

*Over the above cited case matter, the Hon'ble NGT has directed on the date of hearing i.e. on dtd. 09.02.2023 that State Pollution Control Board will act as Nodal Office for filing the report of the committee for all logistic purposes.*

*As per order of Hon'ble NGT, The Member Secretary, State Pollution Control Board, Odisha, Bhubaneswar had communicated through his letter vide No.2217, dtd.15.02.2023, to all the Committee Head i.e. to The Collector & District Magistrate, Puri Regional Director (Eastern Regional Directorate) CPCB, Kolkata, Engineer In Chief Department of Water Resources, Govt. of Odisha, Bhubaneswar & had requested for inspection to the alleged sites w.r.t. allegation raised to submit the inspection report within the 6 weeks, so as to file the report to the Hon'ble Tribunal within stipulated time period.*

*Also in the above cited letter, the Member Secretary had nominated Dr. Sohan Giri, Regional Officer, SPC Board, Odisha, Bhubaneswar to represent the Committee and to act as Nodal Officer on behalf of Board vide Memo No.2218 dtd.15.02.2023.*

*In that capacity Dr. Sohan Giri, Regional Officer, SPC Board, Odisha, Bhubaneswar had communicated a letter vide No.405, dtd.24.02.2023 all the above cited committee Members to have a meeting on dtd.28.02.2023 at Special Circuit House, Puri for holding detail discussion over the above case matter and to conduct the site visit. (Copy of letter enclosed). Subsequently on behalf of Collector & District Magistrate, Puri, the Additional District Magistrate, Puri had communicated his letter vide No.629, dtd.27.02.2023 to The Superintendent Engineer (P.W.D) & (R&B), Puri, SE(IRR) Division, Pun, SE, Drainage Division, Puri, Tahasildar, Puri, BDO, Pun Sadar Block to be remain present in the meeting & to participate in the discussion so as to put forth their suggestion and views over the cited cases and also had directed the Tahasildar, Puri to be present with the concerned Revenue inspector of the said area, on 28.02.2023 at 3.00 P.M. at special circuit house at Puri. In that meeting Addl. District, Magistrate, Puri had requested Sub-Collector, Pun to be present in the said meeting and to participate over the issues.*

*Accordingly on dtd.28.02.2023 at 3.00 P.M. all the Constituted committee members along with the other invited Officials/Members of different Departments as has been cited above (along with Sr. Scientist, CPCB, Kolkata, Dr. Sandeep Roy & Dr. Sohan Giri (Nodal Officer) designated —cum- Regional Officer, SPC Board, Bhubaneswar) met at the Special Circuit*

*House, Puri and discussed the alleged highlighted issues raised in the O.A.*

*The meeting was Chaired by Additional District Magistrate, Puri, representative of Collector & DM, Puri. In the joint committee of said meeting ADM, Puri had discussed with the officials present from different Departments, Sr. scientist of CPCB, Zonal Office, Kolkata in details to prepare a inspection report accordingly. Also ADM, Puri had requested all the participated officers to have a site visit over the alleged area along with Tahasildar, Puri and the concerned Revenue Inspector.*

*As per the direction of Hon'ble NGT, Kolkata all the joint committee members had visited alleged sites and it was decided there that Tahasildar, Puri with the help of Revenue Inspector of that area will provide a clear picture & status of the alleged plots those have been cited in the O.A to the committee so that the same can be communicated to the Hon'ble NGT well before the date of hearing. In that connection Nodal Officer- cum-Regional Officer, SPCB, BBSR had communicated a letter to the Tahasildar, Puri vide his letter No.600, dtd.09.03.2023 to provide real time Land/Plot status (i.e. Plot No., Khata No., Kisam of those plot both past & present) & possession holder at present so as to file an affidavit by The Member Secretary, State Pollution Control Board, Odisha. Bhubaneswar well before 24.03.2023.*

*In response to the letter dtd.09.03.2023 of the Nodal Officer —cum- Regional Officer, SPC Board, Bhubaneswar, the Tahasildar, Puri vide his letter No.2199 dtd.15.03.2023 has submitted the land status of those alleged areas/ plots cited in the O.A basing upon the report furnished by Revenue inspector, Biraharekrishnapur, Puri after the field enquiry conducted with Asst. Engineer, Drainage Division, Puri. Also in his letter Tahasildar, Puri has mentioned that there are lots of changes seen in respect of the characteristics of that land on those particular areas since last settlement (1977). Those plots are recorded in private khata and detail real time possessioner is not ascertainable at present for which further detail survey is required..*

*As decided in the joint committee meeting held on dtd.28.02.2023, Er. Debidutta R.R. Pattnaik, Chief Engineer, HH, GIS & CEM (O/o) Engineer -in- Chief (Water Resources) Odisha has submitted a compiled statement of the sheet containing particulars ROR w.r.t the Govt. record of the alleged plots with the drainage map vide his letter No.7842 dtd.22.03.2023.*

*However, on 10<sup>th</sup> April, 2023, at late evening hour, the Tahasildar, Puri vide his letter No.3065 dtd.10.04.2023 has submitted the Real time Possessioners of the alleged plots basing upon the report submitted by the Revenue Inspector, Biraharekrushnapur, Dist — Puri, showing the present status of land record and real time possession.*

**Remarks:-**

- a) *However the committee Members when visited those alleged plots and observed that all the plots of those areas have been fully developed with human habitation like houses, buildings, gardens, Temple and colonies along with stagnant water bodies, full of floating species. No clear drainage system exists physically so as to allow the clear flow of rainfall water during torrential rainfall. So there might be every chances of over flow of rain water to the nearby area, which cannot be ruled out.*
- b) *The committee observed that the information provided by the Tahasildar with respect to the present status of land record and the real time possession data does not clarify the conversion status of the alleged plot and required further verification and the same has to be approved by the concerned Revenue Authority as well as to verify with the documents provided by the Chief Engineer, Water Resources Deptt, Govt. of Odisha, for which further 2 months of time is required to revisit the alleged sites and submit the final report.”*

9. The observation of the Committee Members with regard to the area in question is that all the plots are fully developed with human

habitation like – houses, buildings, gardens, temples and colonies with stagnant water bodies, full of floating species. There is no clear drainage system to allow clear flow of rain water during torrential rainfall and, therefore, overflow of rain water to nearby area cannot be ruled out. It was also observed that the information provided by the Tahasildar in respect of the status of land record and real time possession data does not clarify the conversion status of the alleged plot. However, letter of the Tahasildar, Puri, referred to in the Committee Report mentions that there are lot of changes in respect of characteristics of the land in these years since the last settlement of 1977.

10. The letter of the Tahasildar, Puri, (Annexure-6, page 96 of the paper book), also mentions that the plots are recorded in private Khatas and details of the possession holder is not ascertainable at present. The present status report of the land has been filed at page no.101 of the paper book, which shows the plots to be house/road/pond/nalla/temple and Khata No.139 Status-Stitiban, Khata No.165/1903 Status-Stitiban, Khata No.126 Status-Stitiban, Khata No.209 Status-Bebandabasta, Khata No.125, Status-Stitiban and Khata No.44 Status-Stitiban, and the Kissam of these Khatas are shown to be Jalasaya-II, Jalasaya-I, Nallah (Paninallah), Jore etc. The Present Status Report of land reads as under:-

## PRESENT STATUS REPORT OF LAND IN CONNECTION WITH O.A NO- 16/2023, 17/2023, 18/2023

Sl No	MOUZA	KHATA	STATUS	NGT, CASE NO	PLOT	AREA	KISAM	RECORDED TENANT	AS PER ROR REMARKS	PRESENT STATUS
1	GOPINATHPUR ORAF ROUTARAPUR	139	Sibban	O.A NO-18/2023	320	0.02	Jalasya-II	Ungaraj Mishra S/O-Ananta Mishra,Caste-		Road
2				O.A NO-18/2023	327	0.03	Jalasya-II	Brahmin,Residence-Nijgaon		House,Road
3		165/1903	Sibban	O.A NO-17/2023	123	1.58	Jalasya-II	1.Jagadananda Mishra,S/O-Mukunda Mishra,Caste-Brahmin,Residence-Heragohrisahi,Mukunda Mishra Nagar,PS-Puri Sadar 2.Bhaskarananda Mishra,S/O-Mukunda Mishra,Caste-Brahmin,Residence-Heragohrisahi,PS-Kumbharpada		Pond, Road
4		126	Sibban	O.A NO-16/2023	181	0.15	Jalasya-II	Shri Nilakantheshwar Dev,Shri Gopinath Dev,Shri Durgadevi Thakuranl,Bije-Nijgaon,C/O-All the Mahajan		Road, Nallah
5				O.A NO-16/2024	235	0.28	Nallah(Paninallah)	: Ramachandra Hota,S/O-Dasarathi Hota,Ramachandra Mishra,S/O-Bhubaneswar Mishra,Jagannath Nanda,S/O-		House
6				O.A NO-16/2025	261/628	0.10	Nallah(Paninallah)	Madhaba Nanda,Krushna Chandra Mishra,S/O-Dinabandhu Mishra,Ghanashyam Mishra,S/O-		Road
7				O.A NO-16/2026	172/623	0.45	Jora	Hrishikesh Mishra,Gobinda Chandra Mohapatra,S/O-Sudarsan Mohapatra,Purnachandra Mishra,Nilakantha Mishra,Sachidananda Mishra,Bijayananda Mishra,S/O-Basudeba Mishra,Caste-Brahmin,Residence-Nijgaon	Jabara dakhul- Khandia Bandha Gramabasi, Sna 1972 tharu Mulabak plot number 172	Pond, Road
8				O.A NO-16/2027	172	2.98	Jora		Ahl joraru khandia bandha, Gopinathpur gramabasi, Jala byabahal karbara, adhikar achhi. Mastyadia sutra, khandia bandha gramabasi, Chandra swain S/O- bhagabat Swain,Caste-Khandayat, Ba-Yearly Deposit Rs. 5000	Pond, Road
9				O.A NO-16/2028	564	0.97	Jalasya-I			Pond,House
10				O.A NO-16/2029	370	2.50	Jalasya-I, Pond			Nallah
11				O.A NO-16/2030	193	0.85	Jalasya-I,Jore			Pond
12				O.A NO-16/2031	260	0.13	Jalasya-II,Pond			TEMPLE,DOLABEDI
13				O.A NO-16/2032	438	0.10	Jalasya-II, Jora			Nallah
14				O.A NO-16/2033	262	0.32	Jalasya-II, Gadla			Pond
15				O.A NO-16/2034	368	0.13	Jalasya-II, Gadla			Nallah
16				O.A NO-16/2035	172/622	0.62	Jalasya-II, Pond			Jabara dakhul- Khandia Bandha Gramabasi, Sna 1973 tharu mulabak plot number 172
17				O.A NO-16/2036	559	0.13	Jalasya-II, Gadla			House
18				O.A NO-16/2023	192	1.7	Nallah(Paninallah)	Shri Nilakantheshwar Dev,Shri Gopinath Dev,Shri Durgadevi Thakuranl,Bije-Nijgaon,C/O-All the Mahajan		Road, Nallah
19				O.A NO-16/2023	4	0.26	Nallah(Paninallah)	: Ramachandra Hota,S/O-Dasarathi Hota,Ramachandra Mishra,S/O-Bhubaneswar Mishra,Jagannath Nanda,S/O-		Nallah, Road
20		O.A NO-16/2023	24	0.26	Nallah(Paninallah)	Madhaba Nanda,Krushna Chandra Mishra,S/O-Dinabandhu Mishra,Ghanashyam Mishra,S/O-		Nallah, Road		
21		O.A NO-16/2023	286/624	0.02	Nallah (Jore)	Hrishikesh Mishra,Gobinda Chandra Mohapatra,S/O-Sudarsan Mohapatra,Purnachandra Mishra,Nilakantha Mishra,Sachidananda Mishra,Bijayananda Mishra,S/O-Basudeba Mishra,Caste-Brahmin,Residence-Nijgaon		Nallah		
22		209	Bebandabasta	O.A NO-16/2023	435	0.30	Jalasya-II		Nallah	
23		125	Sibban	O.A NO-16/2023	390	0.34	Nallah(Paninallah)	Shri Nilakantheshwar Dev,Shri Gopinath Dev,Shri Durgadevi Thakuranl,Bije-Nijgaon,C/O-Gopinathpur		Nallah
24		O.A NO-16/2023	417	0.21	Nallah(Paninallah)	All the Mahajan : Ramachandra Hota,S/O-Dasarathi Hota,Ramachandra Mishra,S/O-Bhubaneswar Mishra,Gobinda Chandra Mohapatra,S/O-Sudarsan Mohapatra,Caste-Brahmin,Residence-Nijgaon		Nallah		
25		44	Sibban	O.A NO-18/2023	326	0.05	Jalasya-II, Gadla	Debashis Bahinipal, Shilashis Bahinipal,Meenakshi Bahinipal,Ramashis Bahinipal,S/O-Chandrasekhar Bahinipal,Caste-Brahmin,Residence-Nijgaon		Road

11. The District Magistrate, Puri, Respondent No.5, in his counter-affidavit dated 12.04.2023 has also filed the same documents and it is stated that the area in question is covered with houses, buildings

with boundary wall or barbed wire. It is stated that the plots in question are not Government plots and are recorded in the name of private owners. The letter of the Superintending Engineer, Drainage Division, Puri, dated 06.03.2023 filed along with the counter-affidavit as Annexure-E (page 128 of the paper book), also mentions that the plots in question are not Government plots but are recorded in the name of private owners.

12. The State Pollution Control Board, Odisha, Respondent No.7, has filed further affidavit dated 12.05.2023 bringing on record another Inspection Report of the Committee constituted by the Tribunal. The Committee Report reads as under:-

**“PROCEEDING OF THE COMMITTEE MEETING AND ACTION TAKEN REPORT ON O.A.NO.16/2023/EZ OF HON'BLE NGT FILED BY SRI SAROJ MISHRA AND ANOTHERS -VS- STATE OF ODISHA & OTHERS**

*The Hon'ble NGT, Eastern Zone Bench, Kolkata in the order dt. 13.4.2023 had granted one month time to Committee to file a Comprehensive Report and the case is placed for hearing on Dt. 16.5.2023.*

*Accordingly the Member Secretary, State Pollution Control Board, Odisha, Bhubaneswar had communicated a letter to Regional Officer, State Pollution Control Board — cum - Nodal officer vide letter No. 6420, dtd. 20.04.2023 to submit the comprehensive report. Basing upon the letter of the Member Secretary and the order of Hon'ble NGT, the Regional Officer-cum-Nodal Officer again through his letter, requested all the committee member along with other Govt. Officials of related Departments to meet on 26.04.2023 at Special Circuit House, Puri for a discussion along with and action undertaken on the case matter. All the committee members were present along with other government officials.*

**Issues Discussed by the Committee Members:**

- a) *In the meeting the Chairman of the committee, i.e. Addl. District Magistrate, Puri had instructed the Additional Tahasildar, Puri (who appeared for the Tahasildar, Puri due to illness of the Tahasildar) to provide a detail clear cut information about the alleged plot w.r.t its real status (both past and present) and who had authorized those persons to construct the dwelling house over the water bodies like Pani Mahara/ Natural drain/ pond etc, so for which the water logging problem has been cropped off and what action has been taken up against those law violator's (those who have constructed their houses over the water bodies) by the concerned department so far and copy of the same to be provided to the committee for its submission before Hon'ble Tribunal.*
- b) *Besides above discussion, the ADM, Puri had instructed the Engineer-in-Chief Drainage Division, Govt. of Odisha, Bhubaneswar through Superintendent Engineer, Drainage Division, Puri (who was present in the meeting) to prepare alternative master plan for a concreted drainage network starting from the area of Mukunda Mishra Nagar upto Musa River and final discharge to Mangala River to be prepared so that during rainfall the rain water will get a clear passage system without further water-logging as has been cited in the case matter without demolishing large number of residential building already builtup within the alleged area to avoid any law and order situation in future by the local public.*
- c) *For this Addl. District Magistrate, Puri had directed the Tahasildar, Puri and the Chief Engineer (H.A, GISS-IEM), Puri and other Officials to extend their full co-operation to the Superintendent Engineer Drainage Division, Puri so as to prepared a drawing/design of proposed drainage system along with identifying the revenue/private plots to be acquired so as to resolve the issue in peaceful manner.*
- d) *Besides above cited discussions the officials of Irrigation Department those who were present in the meeting also highlighted to raise the height of embankment of Dhedua River which is flowing nearby to alleged area i.e. Mukunda Mishra Nagar etc. so that the flow of rain water into the alleged area*

during rainfall can be checked to an greater extend i.e. the perennial problem can be resolved.

A copy of the proceedings of the meeting held on dt 26.04.2023 was circulated to the departments to provide their report by dt. 6.5. 2023 so as to submit the report to the Hon'ble NGT (Proceedings copy enclosed as Annexure-II).

**Informations submitted by the Tahasildar, Puri**

Accordingly the Tahasildar, Puri has submitted a fact-finding report to the Regional Officer, State Pollution Control Board, Bhubaneswar—cum-Nodal Officer in support of the case matter and his view w.r.t the joint enquiry team visit to alleged area to make an overall survey along with official of Drainage Division, Puri for providing an idea for clear passage of proposed drainage system to resolve the water logging issues are as follows:-

- 1) Basing upon the field survey report of the Revenue inspector and Amin of Biraharekrushnapur, Puri on the alleged area/plots and has cited that the Plots belongs to stitiban khata's over Plot No.181 as Kissam-Jalasaya-2; Plot No. 260 as Kissam-Jalasaya-(Gadia) and Plot No. 559 as Kissam-Jalasaya-2 (Gadia).
- 2) Some persons have constructed houses over the Jalasaya kisas land since long time ago without taking any permission for conversion of the same from concerned authorities of Tahasil at that time.
- 3) Also Tahasildar, Puri has informed that no notices have been issued from the office against the persons at that time.
- 4) Also regarding the proposed drainage network maximum revenue plots and some private plots have been identified and a complete muzumuli map has been prepared by taking the identified government plots. Endowment plot comprising mouza Markandeswar Sahi-1, Samanga, Bharatipur and Gopinathpur @ Routarapur for smooth flow of catchment area rain water through drainage system.
- 5) The possible drainage area layout plan has been handed over to Superintendent Engineer, Drainage Division, Puri to prepare a detailed study of Technical feasibility report taking into the

consideration of catchment area, NSL gradient and other aspects.

**Informations submitted by the Superintending Engineer, Drainage Division, Puri, submitted through the Collector & District Magistrate, Puri.**

Basing on the instruction given by the ADM, Puri, Engineer-in-Chief Drainage Division, Govt. of Odisha, Bhubaneswar through Superintendent Engineer, Drainage Division, Puri has submitted a report, in which an alternative master plan for a concreted drainage network starting from the area of Mukunda Mishra Nagar upto Musa River and final discharge to Mangala River has been proposed to prevent water-logging. In the report the Superintending Engineer, Drainage Division, Puri has mentioned that they have initiated action to find out the possible drainage channels in Government lands out falling Musa river ultimate to Mangala river. The necessary preliminary survey and demarcation of Drainage Channels over the government land has been made jointly with the supports of tahasildar and field staff of both Tahasils and Drainage Department and completed it by dt. 6.5.2023. It has been proposed to construct 4 numbers of drainage channels for a length of approximately 7.11 Km i.e. (i) Drain No. 1 — 2.75 Km (approx.); (ii) Drain No. 2 — 1.66 Km (approx.); (iii) Drain No. 3 — 1.20 Km (approx.) and (iv) Drain No. 4 — 1.50 Km (approx.) (drainage map enclosed). It has also been mentioned that if these Drainage Channels are constructed, then their shall be no water logging in that area.

**Conclusion and Recommendations of the Committee:**

- (i) As per the report of the Tahasildar, Puri, some residential houses has been constructed over the Jalasaya kisan land long time ago. An alternative master plan for a concreted drainage network starting from the area of Mukunda Mishra Nagar upto Musa River and final discharge to Mangala River is proposed so that during rainfall the rain water will get a clear passage system without further water-logging as has been cited in the case matter without demolishing large number of residential building already builtup within the alleged

area to avoid any law and order situation in future by the local public.

- (ii) *The Superintending Engineer, Drainage Division, Puri has proposed to construct 4 numbers of drainage channels for a length of approximately 7.11 Km i.e. (i) Drain No. 1 — 2.75 Km (approx.); (ii) Drain No. 2 — 1.66 Km (approx.); (iii) Drain No. 3 — 1.20 Km (approx.) and (iv) Drain No. 4 — 1.50 Km (approx.) (drainage map enclosed). He has also mentioned that if these Drainage Channels are constructed, then there will be no water logging in that alleged area.*
- (iii) *The joint committee also recommends the construction of the 4 numbers of drainage channels for a length of approximately 7.11 Km i.e. (i) Drain No. 1 2.75 Km (approx.); (ii) Drain No. 2 — 1.66 Km (approx.); (iii) Drain No. 3 — 1.20 Km (approx.) and (iv) Drain No. 4 — 1.50 Km (approx.) so that there will be no water logging in the alleged area.”*

13. The Committee Report mentions that queries have been made with the Additional Tahasildar, Puri, to find out as to how private persons had been permitted to make constructions over water bodies like – Pani Mahara/Natural Drain/Pond etc. resulting in water-logging problem and also explain what action has been taken against the violators who have constructed their houses over water bodies. The Additional District Magistrate, Puri, has also directed the Engineer-in-Chief, Drainage Division, Bhubaneswar, to prepare alternative Master Plan for a concrete drainage network starting from the area of Mukunda Mishra Nagar upto Musa River and final discharge to Mangala River to be prepared so that during rainfall the rain water will get a clear passage without causing water-logging so that demolition of large number of residential buildings may be avoided. The officials of the Irrigation Department who were also present during the meeting, highlighted raising of the height of embankment of Dhedua River flowing near the Mukunda Mishra

Nagar area so that flow of rain water into the area in question may be avoided.

14. The Committee in its Report has also noted the proposal for construction of four drainage channels of approximately 7.11 kilometer of length; (i) Drain No.1 - 2.75 kilometer (approx.), (ii) Drain No.2 - 1.66 kilometer (approx.), (iii) Drain No.3 - 1.20 kilometer (approx) and (iv) Drain No.4 - 1.50 kilometer (approx).
15. The Collector & District Magistrate, Puri, Respondent No.5, in his counter-affidavit dated 15.05.2023 has stated that all the plots in question are Jalasaya in nature and the persons in possession of the plots have constructed houses over Jalasaya Kissam land since long time ago without taking any permission for conversion of the same from the concerned authorities of the Tahasil at the relevant point of time and no notices have been issued against such persons at the relevant point of time. Regarding the proposed drainage network, it is stated that maximum revenue plots and some private plots have been identified and a Muzumuli Map of the area has also been prepared for smooth flow of catchment area rain water through drainage system.
16. The Applicant has filed affidavit dated 15.05.2023 with photographs appended thereto and it is submitted that road is being constructed over the canal in the Village-Gopinathpur Sasan. It is also stated that a water body has been constructed for the people of Gopinathpur Sasan for use of the people of village.
17. The Applicant has filed further affidavit dated 01.07.2023, stating therein that the Applicant has not prayed for removal of any house or other building or construction in his Original Application and that he has only prayed for removal of pollutants with regard to

filling of water bodies with sand and shoals. This averment of the Applicant is incorrect. In his prayer to the Original Application, the Applicant has not only prayed for stopping construction over the water body/plots in question but also prayed for demolition of construction that has already been built-up over the water body.

18. The Respondent No.15 has filed affidavit dated 15.05.2023 wherein it is stated that Nilakantheswar Dev temple stands on Plot No.4 and has been standing thus for more than 100 years and the said plot is recorded in the name of deity and the same belongs to the deity. It is stated that Khata No.209 is also recorded in the name of Deity and there are ten plots in that Khata having a total area 4.4 acres. It is also stated that Plot No. 172/622 and Plot No.172/623 mentioned in the Original Application have been under occupation of Khandiabandha since 1972 and 1973 respectively and that in the last 50 years the land has lost its characteristic as a water body.
19. From the findings recorded by the Committee constituted by the Tribunal and other documents on record, we find that though the plots in question are recorded as 'Jalasaya' in the Record of Rights but large constructions have been made on the same and have been in existence since several decades. In our opinion, at this stage it will not be feasible nor practicable to order for demolition of such constructions.
20. In this context, we may advert to the observations of the Division of the Hon'ble High Court of Orissa at Cuttack in *W.P. (C) No.8797 of 2004 and O.J.C. No.6721 of 1999, (Tapan Kumar Das vs. Commissioner, Cuttack Municipal Corporation & Ors)* and connected

cases, and refer to sub-para 3 of para 14 of the said judgment. The sub para 3 of para 14 reads as under: -

*“The applications for change of classification 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/kisam 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 Jalasaya 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.”*

21. The judgment of Tapan Kumar Das (supra) has been followed by another Hon'ble Division Bench of the Orissa High Court in *W.P. (C) No.8485/2005, (Batakrushna Das vs. State of Orissa & Ors)*. Paras- 9 & 19 of the judgment read as under:-

*“9. There is no dispute to the facts, as enumerated above. Only contention raised that conversion of nature of the land from “Jalasaya to “Stitiban”, as well as grant of lease and permission to the RMC, Jagatsinghpur-opposite party no.6 to go for construction cannot sustain in the eye of law in view of the judgment of this Court in Tapan Kumar Das (supra). We have perused the judgment of this Court in Tapan Kumar Das (supra), wherein this Court had held that the water bodies are required to be retained and such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48-A thereof. Article 51-A of the Constitution furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife. There is no dispute on the question of proposition*

*set forth by this Court in the aforementioned judgment, but at the same time this Court had already held in the very same judgment that if the lands which have lost their character as “Jalasya”, and those, which are actually not “Jalasyas” or Swampy lands but have been recorded as “Jalasya”, change of classification of such lands may be allowed.*

.....XXX.....XXX.....XXX.....

*19. Considering the facts and law discussed above, we are of the considered view that even though no limitation has been prescribed in filing the writ petition under Article 226 of the Constitution of India, but the petitioner has approached this Court at a belated stage and, as such, in the meantime the third party rights have emerged. Apart from the above, on merits also by following due procedure of law, the lands in question have been converted and transferred in favour of opposite party no.6-Secretary, RMC, Jagatsinghpur on accepting premium amount and a market is functioning over the said lands, we are not inclined to unsettle the settled position after expiry of such long period. Consequentially, the writ petition is liable to be dismissed on merits, as well as for delay and laches and, thus the same is hereby dismissed. No order to costs.”*

22. In view of above, we dispose of this Original Application with a direction to the State Respondents to ensure that proper drainage system as proposed in the Committee Report and brought on record in their affidavits, is completed within a period of six months since monsoon season has already commenced and the possibility of water logging in the area in question cannot be overlooked. We also direct the State Respondents that the land records in question be placed before the Revenue Divisional Commissioner for appropriate orders in terms of the directions given by the Hon’ble High Court in Tapan Kumar Das (Supra) and Batakrushna Das (Supra).
23. I.As. if any, stand disposed of accordingly.

24. There shall be no order as to costs.

.....  
**B. Amit Sthalekar, JM**

.....  
**Dr. Afroz Ahmad, EM**

July 04, 2023,  
Original Application No.16/2023/EZ  
AK

# FORM OF VAKALATNAMA

IN THE COURT OF NATIONAL GREEN TRIBUNAL

~~Suit Appeal~~ OA No. .... of 20 24  
~~Revision~~

Madanmohan Rout

Appellant / Petitioner / Plaintiff

- VERSUS -

Nilakanteswar Dev&Ors

Respondents / Opp. Party / Defendant

Know all men by these presentS, that by this VAKALATNAMA

I/We Madanmohan Rout S/o L. Rout AH/PO - Gopinathpur PS -  
Puri Sadar Puri - 752002

Appellant/Respondent / Petitioner / Opp Party in the aforesaid Revision / Appeal case do hereby appoint and retain AFRAAZ SUHAIL

Advocate (s) to appear for me/us, in the above case and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including all applications for return of documents or receipt of any money that may be payable to me/us in the said case and also in applications for review in appeals under Orissa High Court order and in applications for leave to appeal to Supreme Court. I/We authorise my/our Advocate(s) to admit any compromise lawfully entered in the said case.

Dated, the.....20.....

Received from the executant (s)  
satisfied and accepted as I hold  
no brief for the other side.

Advocate  
Accepted as above

Advocate  
Accepted as above

Advocate 0-367-17  
M-9040535655  
Accepted as above

Madanmohan Rout

Signature of Executants

Advocate  
Accepted as above