

**BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 106/2021/EZ**

Sisir Kumar PandaApplicant

-Versus-

Union of India & OthersRespondents

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Cuttack

Date:

26/02/25


Advocate for the Respondent No. 18 to 28

UMESH CHANDRA MOHANTY
(Advocate)E.No-G-643/1991
Mob-9338855711



**BEFORE THE NATIONAL GREEN TRIBUNAL,
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ORIGINAL APPLICATION NO. 106/2021/EZ

Sisir Kumar PandaApplicant

-Versus-

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**COUNTER AFFIDAVIT FILED ON BEHALF OF THE
RESPONDENTS NO. 18 TO 28:-**

I, Tuna Panigrahi, aged about 55 years, S/o- Late Somnath Panigrahi representing as Chairman of Maa Mangala Temple & Kalyan Mandap Managing Committee, At- Nehru Nagar, 10th Lane, Station Road, Ghoshani, Berhampur Sadar, Ganjam-76003 representing Respondent No. 18 to 28, do hereby solemnly affirm and state as follows:-

3/8, 3/10/21, 3/25

1. That I am working as Chairman of Maa Mangala Temple & Kalyan Mandap Managing Committee & Competent to swear this Affidavit.

2. That, the Applicant filed the above mentioned Original Application with the following prayer:

A. As an interim measure this Hon'ble Tribunal my kindly form an independent Committee for


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thorough probe in to the matter in respect of assessment of the destruction of the ecological sensitive zone i.e. Jalasaya-I / common water bodies (AGULA BANDHA), illegal construction of the Concrete structures/Buildings in the name of the Gosaninuagaon Police Station, Water Reservoir and Pump House, Revenue Inspector Office, Rajib Abas Building, Over Bridge, Maa Mangala Mandir and its Boundary as well as Open Space of the Mandir which has been illegally occupied by filled up the Jalasaya-I Pond and its embankment at Gosaninuagaon, Berhampur, Ganjam, Odisha and remove obstruction/illegal structure raised over the Plot Nos: 438, D1-438, D1-437, 1510, 438/4189, 1509, 1509/4190, 1509/2638, 1509/3123, 1509/2918, 1504/1788, 1507/1791, 1506/1790/1505/1789, 1502/1786 relating to Khata No- 1375 and 1373 of the Gopobandu Nagar Mouza under Berhampur Tahasil of Ganjam District under supervision of this Hon'ble Tribunal with reference to the Hon'ble Apex Court observations made in the matter of **Jitendra Singh (Supra) and Hinchlal Tiwari (Supra)**.

MS 13/04/19


 Adv.
UMESH CHANDRA MOHANTY
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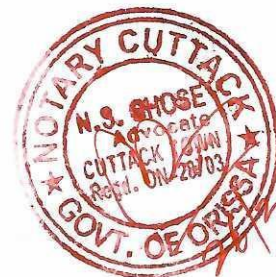
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B. Direct to the State Respondents to remove the illegal obstruction/structures raised over the Jalasaya-1 (Common water Body namely AGULA BANDHA) bearing Plot Nos: 438, D1-438, D1-437, 1510, 438/4189, 1509, 1509/4190, 1509/2638, 1509/3123, 1509/2918, 1504/1788, 1507/1791, 1506/1790/1505/1789, 1502/1786 relating to Khata Nos: 1375 and 1373 of the Gopobandu Nagar Mouza under Berhampur Tahasil of Ganjam District of Odisha with reference to the Hon'ble Apex Court observations made in the matter of **Jitendra Singh (Supra) and Hinchlal Tiwari (Supra)**.

MS, Jitendra Singh

C. Direct to the State Respondents to prepare the action plan for protection, preservation/restoration of the AGULA BANDHA (common pond) situated over Plot Nos: 438, D1-438, D1-437, 1510, 438/4189, 1509, 1509/4190, 1509/2638, 1509/3123, 1509/2918, 1504/1788, 1507/1791, 1506/1790/1505/1789, 1502/1786 relating to Khata Nos: 1375 and 1373 of the Gopabandhu Nagar Mouza under Berhampur Tahasil of Ganjam District of Odisha with reference to the Hon'ble Apex Court


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observations made in the matter of **Jitendra Singh (Supra) and Hinchlal Tiwari (Supra)**.

- D. To declare the change of Classification of the Existing water body (as per record of the Revenue Department) Jalasaya-1 plots to Patita Kissam bearing Plot Nos: 1509/4190, 1509/2638, 1509/3123, 1509/2918 and 438/4189 are illegal and violation of the Environmental law and to direct the State of Odisha to back the said Plots to it's original Kissam such as Jalasaya-I according to law **and particularly with reference to the Hon'ble Apex Court observations made in the matter of Jitendra Singh (Supra) and Hinchlal Tiwari (Supra)**.
- E. Direct to the State Respondents to fix responsibility against the errant officials with reference to Under Section 17 of the Environment Protection Act, 1986 who has been caused illegal obstruction/ construction in the ecological sensitive area over the over Plot Nos: 438, D1-438, D1-437, 1510, 438/4189, 1509, 1509/4190, 1509/2638, 1509/3123, 1509/2918, 1504/1788, 1507/1791, 1506/1790/1505/1789, 1502/1786 relating to Khata Nos: 1375 and 1373 of the Gopabandu Nagar Mouza under

1509, 3123, 2918
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Berhampur Tahasil of Ganjam District of Odisha
with reference to the Hon'ble Apex Court
observations made in the matter of Jitendra
Singh (Supra) and Hinchlal Tiwari (Supra)

But the aforesaid prayer as advanced against the answering Respondent No. 18 to 28 is wholly misconceived and there is no cause of action against the answering Respondent as such the same is liable to be rejected for the following facts stated herein below.

3. That, it is respectfully submitted that the Respondent No. 18, Maa Mangala Temple & Kalyan Mandap Managing Committee is represented through its Chairman Sri Tuna Panigrahi & the Respondent No. 19 to 28 are the Members of the Managing Committee & they are not initially impleaded as Parties to the Original Application No. 106/2021/EZ. However subsequently by M.A No. 33/2024/EZ, the Respondent No. 18 to 28 are impleaded as Parties. However earlier the Respondent Nos. 18 to 28 had filed W.P.(C) No. 26622/2022 before the Hon'ble High Court of Orissa, Cuttack challenging the Order dated 03.08.2022 passed by this Hon'ble Tribunal & prayed for quashing of the same. Ultimately the Hon'ble High Court of Orissa, Cuttack vide Order dated 21.03.2024 pleased to dispose of the said Writ Petition & quash the Order of this Tribunal & directed for adjudication of the issues afresh by

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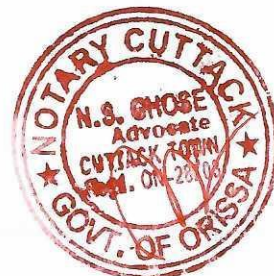
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affording reasonable opportunity to the Respondent No. 18 to 28 as such in every aspect, the Respondent No. 18 i.e. Maa Mangala Temple & Kalyan Mandap Managing Committee, Berhampur, Ganjam hereinafter called the Respondent No. 8 is a necessary party to the O.A & the Respondent No. 19 to 28 being the members of the Temple Management Committee are necessary party. However Copy of the said Order dated 21.03.2024 passed in W.P.(C) No. 22622/2022 is filed herewith as **ANNEXURE-A/18**.

4. That, it is respectfully submitted that during pendency of the aforesaid Writ Petition under Annexure-A/18, the State Respondents i.e. the District Collector & Magistrate, Ganjam, The Tahasildar, Berhampur, the Commissioner, Berhampur Municipal Corporation being the Opp. Parties who are now Respondents in the present O.A before this Hon'ble Tribunal also filed their respective Counter Affidavit i.e. Opp. Party No. 7, 8, 10, 13, 14, 15 & 16. The Opp. Party No. 7 in the Writ Petition i.e. the State Pollution Control Board, Parivesh Bhawan, A/118, Nilakanth Nagar, Unit-VIII, Bhubaneswar through its Senior Law Officer filed Affidavit. In any case, the said Opp. Party No. 7 is not permitted to take any different stand in the present O.A. However, Copy of the Affidavit dated 05.03.2024 filed by Opp. Party No. 7 in W.P.(C) No. 22622 of 2022 is filed herewith as **ANNEXURE-B/18**. The

M/S, 31/10/2024


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Counter Affidavit filed by Opp. Party No. 8, 10, 13, 14, 15 dated 19.10.2022 are filed herewith as **ANNEXURE-C/18**. Similarly Counter Affidavit filed by the Respondent/Opp. Party No. 16, the Commissioner, Berhampur Municipal Corporation is filed herewith as **ANNEXURE-D/18** for kind perusal of this Hon'ble Tribunal.

5. That, it is respectfully submitted that the allegations as raised by the Applicant before the this Hon'ble Tribunal alleging interalia that as per Revenue & 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 & Kalyan Mandap have been constructed over Agula Bandha Water Body and its boundary. It has been further alleged that the conversion of Jalasaya Kissam of the land in question to Non-Jalasaya Kissam took place as late as 12.02.2021 is purely incorrect & with an oblique motive & so as to save limitation period for filing of O.A as such is unsustainable & only to justify and satisfy his personal vendetta, thereby he has abused the process of this Hon'ble Tribunal with concocted facts and misrepresented this Hon'ble Tribunal. Inasmuch as the Prayer advanced by the Applicant (Mr. Panda) against the State Respondents is equally misconceived, baseless & motivated & having no substance.

pp-8, 11, 12, 13, 14, 15


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6. That, it is respectfully submitted that the correct fact is 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 Ac 6.860 acres in Plot No. 1509, Khata No. 1375 and the solid water body has been preserved intact.

7. That, it is respectfully submitted that in exercise of power conferred under Section- 3-A of the Orissa Government Land Settlement Act, 1975, vide order dated 29.03.1993, the Competent Authority had sanctioned the de-reservation of Govt. lands in Khata No 1375, Plot No. 1509 measuring an Area of Ac. 3.600 dec out of Ac 11.500 dec which had already lost its original characteristics of "Jalasaya". In addition thereto, subsequently, on 19.08.1999, further sanctioned was made for de-reservation of Govt. land in Khata No. 1375, Plot No. 1509 measuring an area of one Acre out of Ac. 7.900 dec which had already lost its original nature as Jalasaya. It was stated in the affidavit that construction such as Rail Project, Police Station, Temple etc. were made over such plots after de-reservation and classified as "Patita" land. Accordingly 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. 0.012 dec, having nature of Patita. Furthermore, it is crystal clear & established that only those lands were de-

12/3, 31/10/19
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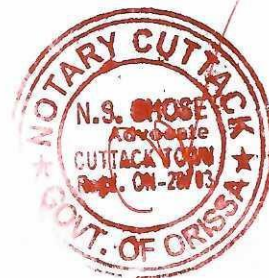
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reserved from Jalasaya to Patita which had lost its nature and character as 'Jalasaya'.

8. That, it is respectfully submitted that apart from the above that an area of Ac 6.860 dec over Plot No. 1509 in Khata No. 1375 is still preserved as Water Body and steps have been taken by the Tahasildar to remove encroachments from the said water body and its embankment. However, this Hon'ble Tribunal has been misled by the Applicant with incorrect facts which is without application of mind & the law laid down by the Hon'ble Supreme Court in the judgment reported in **(2011) 11 SCC 396 (Jagpal Singh & Ors V. State of Punjab & Ors)** is distinguishable and not applicable to the case of the Petitioner. Inasmuch as the allegation that the Jalasaya has been degraded, it can be de-classified as 'Jasalaya' which is purely a motivated submission without having any substance in the change circumstances when large parts of Agula Bandha Water Body have been completely lost its character by efflux of time & leaving only Ac. 6.860 which is still a water body. Inasmuch as Maa Mangala Temple which has been constructed over Plot No. 1509/2918 over an area of Ac. 0.012 dec & has been utilized for all public purposes having human trust, belief & to maintain peace & tranquility in the society and several public functions have also been performed which is in the Public Interest that cannot be destroyed on the

27/10/2019, 13/10/19

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plea of ecological sensitive zone i.e Jalasaya-I/Common Water Bodies (AGULA BANDHA). Inasmuch as the this Hon'ble Tribunal being mislead by the Applicant earlier issued direction 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. to demolish the Maa Mangala Temple & to restore the land as 'Jalasaya'.

9. That, it is relevant to mention here that Maa Mangala Temple & 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 & 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 MLA-LAD 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.

10. That, it is respectfully submitted that in 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.

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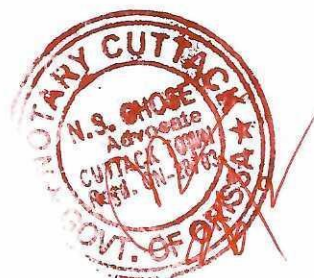
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As a matter of fact an amount of Rs. 5,00,000/- was recommend by the Deputy Director (R&B) DPMU, Ganjam for construction of Kalyan Mandap near Maa Mangala Temple. Subsequently, in March, 2012, the said recommendation was sanctioned. Accordingly, the Kalyan Mandap was constructed near the Maa Mangla Temple.

11. That, it is respectfully submitted that 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 used to held in the said Kalyan Mandap. All the important functions such as Dussehra, Ganesh Puja, Saraswati Puja, Kali Puja etc are also being organized here for celebration of people of the said locality for maintaining social culture & heritage. As a matter of fact, more than a temple, this place has gained much more recognition as a community hall & as Kalyan Mandap involved in public utility works. Therefore, the temple premises as well as the Kalyan Mandap plays a pivotal role in utilized by the public including the common man of the locality.

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11/9, 11/10, 11/13

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12. That, it is relevant to mention here that for the protection & preservation of the Maa Mangala Temple & its Management, there are large numbers of People in 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.

13. That, it is respectfully submitted that the location and placement of the temple in the said locality can be gathered from a color 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 Colored photographs pertaining to different functions are enclosed herewith as **ANNEXURE-E/18 SERIES** for kind perusal of this Hon'ble Tribunal.

14. That, it is respectfully submitted that the Applicant Sisir Kumar Panda being the Opp. Party No. 18 in W.P.(C) No. 22622 of 2022 also filed an Affidavit & at Para-6 also referred to the Order passed by the Respondent No. 14 dated 29.03.1997 in exercise of Power u/s 3-A of the OGLS (Amendment of Validation) Act, 1975 regarding sanctioned & de-reservation of the Govt. land in Khata No. 1375, Plot No. 1509 so also Order dated 19.08.1999 wherein it has been stated that the land already lost its original characteristic of Jalasaya & refer to the judgment

M/S Birendra
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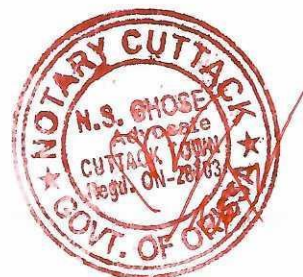
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of this Hon'ble Tribunal dated 22.06.2021 passed in Original Application No. 22/2020/EZ & Misc Case No. 02/2021/EZ which are distinguishable and not applicable to the facts & situation of the present case. However Copy of the said Counter Affidavit filed by Applicant in W.P.(C) No. 22622 of 2022 is filed herewith as **ANNEXURE-F/18**.

15. That, it is respectfully submitted 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.

16. That, it is respectfully submitted that this Hon'ble Tribunal be kindly appreciate 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 the judgment reported in **AIR 1965 SC 786** (Udit


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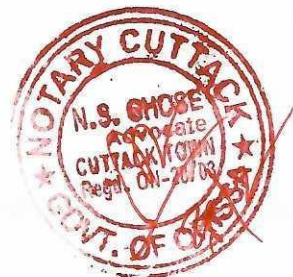

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Narain Singh Malpaharia –Vrs- Board of Revenue) while explaining the distinction between necessary party, proper party and proforma party has held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice.

17. That, it is pertinent to mention here 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. In the present case, when Maa Mangala Temple on the land which is not at all Jalasaya-I & the State Authorities have provided all facilities for the existence & protection of Public Interest & Public purposes. The allegation of the Applicant is purely tainted with ulterior motive & malafide intention & to justify his sadistic pleasure causing serious prejudice to the Public Interest and faith & belief of the Common man in the locality.

18. That, it is respectfully submitted that in case of the Respondent No. 19 to 28 are the Members of the Temple


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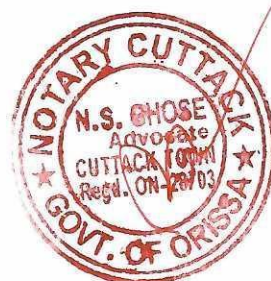
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Agula Bandha Water Body which may be possible when intended for public purpose that would serve the Public interest & Public utility. No purpose will be achieved in demolition of the Temple rather the existence of Temple is intended for achievement of all welfare functions of the locality & general public at large. Therefore, all the structure and construction raised on the concerned land may kindly be allowed to remain as it is and in exchange since the temple is situated in the middle of other permanent structures.

22. That, in the aforesaid facts & circumstances, it is relevant to mention here that during pendency of the W.P.(C) No. 22622/2022 before the Hon'ble High Court of Orissa, Cuttack, the State Opp. Parties who are the Respondents before this Hon'ble Tribunal viz. the Collector & District Magistrate, Ganjam, The Commissioner, Berhampur Municipal Corporation, Berhampur, The Tahasildar, Berhampur particularly the District Collector & Magistrate, Ganjam has narrated that the common pond does not exist over all the Plots so far as the Settlement ROR pertaining to Plot No. 1509, Khata No. 1375, Mouza-Gopabandhu Nagar is Ac 11.500 dec. The Collector in exercise of his power conferred under Section 3-A of the O.G.L.S Act, 1975 has sanctioned the de-reservation of the Govt. lands in Khata No. 1375, Plot No. 1509 admeasuring an Area of 3.600 Acres out of Ac 11.500 dec

N.S. GHOSE, Advocate


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which had already lost its original characteristics of Jalsaya. However on 19.08.1999, the Collector & District Magistrate, Ganjam has sanctioned further de-reservation of the Govt. land in said Khata No. Khata No. 1375, Plot No. 1509 admeasuring an Area of 1 Acres out of Ac 7.900 dec which had already lost its original characteristics of Jalsaya. Further the Water body has been kept intact & the Plot No. 1509 & 438, Khata No. 1375 have also lost its characteristics over the years. Accordingly a meeting was held on 05.02.2021 under the Chairmanship of R.D.C (Southern Division) Berhampur & necessary permission was accorded for changing the Kisam of the land from Jalsaya-I to Patita. Accordingly the Collector, Ganjam passed Order in pursuance of the decision taken by the Committee under the Chairmanship of RDC, Southern Division, Berhampur effected the transfer of the land measuring Ac. 0.300 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 as such portion of the land had lost its characteristics and no objections were received for proposed change of kissam of land to Patita. The later conversion of land for which the classification was changed is a small portion of the plot nos. 1509 & 438 which has lost its characteristics as Jalsaya. The said area is not affecting the remaining water body. The change of classification of the land is for a

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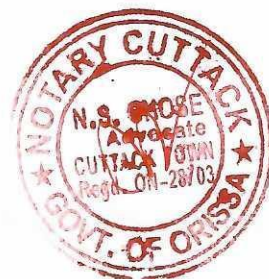


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public purpose i.e. for construction of a Gosaninuagaon PS which covers area from Ward No. 24 to 28 of the BeMC, Berhampur and mouza New Khajuria and Old Khajuria and other nearby establishment areas. It is profitable to mention here that the police station has been constructed for maintaining the smooth Law & Order in the locality over the part of the land which has already lost its characteristics and it no way affects the environment. After change of classification at present the area of the other plots in the khata are (i) Plot No. 438 area 0.080, and Plot No. 1509 Area 06.800 recorded as Agula Bandha Adi & jalasaya. The aforesaid details of the Plots described with the corresponding area are evident from a bare perusal of the Record of Right.

23. That, the averments made in Paragraph-4 of the Original Application are not correct and therefore are denied. It is incorrect to say that as per the Revenue Record, the Agula Bandha is a common water body situated at Gosani Nuagaon pertaining to Khata No. 1375, Plot No. 438, Ac 0.860 dec alongwith other several plots being mentioned therein. Further the Applicant has not disclosed this Hon'ble Tribunal regarding change of status of the respective Plots & no specific report has been obtained plotwise thereby the allegations as raised that all the plots are Jalasaya without ascertained the Nature & character in presentee as such the averments have no

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219, 3110, 14, 19
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substance & liable to be rejected. As a matter of fact, the State Authorities including the Revenue Authorities & Berhampur Municipal Corporation has taken appropriate steps for construction of Govt. Offices for Public purposes & in the Public Interest. It is humbly submitted 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 as per Order dated 19.08.1999, and 19.08.1999 and again RDC, SD, Berhampur in exercising its power under notification no. 44549/R&DM Deptt, Govt. of Odisha has sanctioned the de-reservation of the government lands. The kizam of the land has been changed as per the law enunciated by the Hon'ble High Court in Tapas Das Case and the consequential guideline issued by the Department of Revenue & Disaster Management. Thus the State Authorities have not violated any of the guidelines issued by the Hon'ble Apex Court as alleged by the Applicant.

24. That, the averments made in Paragraphs 5 & 6 of Original Application are self-contradictory & it is incorrect to say that the District Administration has not taken any steps for the Protection of the pond since various project initiatives were effected for creation of New Water Project & protection of the existing Jalasaya. In any case, when the Public Interest is subject matter that has to be


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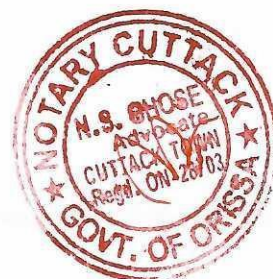
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considered kindly by this Hon'ble Tribunal taking into basic necessity of the general public as a whole & all the Govt. officials including Maa Mangala Temple has been utilized for the Public purposes and it cannot be said that Revenue Department Officials have illegally taken the Jalasaya-I land of Plot No. 1509 & 438, Khata No. 1375. Further it is humbly submitted that neither the present Respondent No. 18 to 28 nor the State Respondents have violated the dictum of the Apex Court. In so far as the contentions made in said Paragraph concerned, it is submitted that the allegations made by the applicant are based on surmises and conjectures. No evidence has been adduced by the Applicant before this Hon'ble Tribunal to substantiate his allegation that the natural character of the water body has been changed. The averments made by the Applicant are without any material facts and therefore, the same ought to be rejected by this Hon'ble Tribunal & no illegal constructions have been made on the Agula Bandha or on its embankment when the Temple is existing in the middle position of all Government buildings causing no harm to any ecological problem.

25. That the averments made in Paragraph-7 to 9 of the Original Application are being repetition of facts are denied by the Respondent No. 18 to 28 & they were not parties before the Permanent Lok Adalat in PLA Case No. 27/2016 as such the same has no effect on the


UMESH CHANDRA MOHANTY
 (Advocate) E.No-O-643/1991
 Mob-9338855711



M/S. 3110, 1375


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Respondent No. 18 is concerned. With regard to averments made that the Revenue & Disaster Management Department, Govt. of Odisha and Order dated 03.11.2017 for transfer of Water Bodies/Tank to the Urban Local Bodies (ELB) is a question of fact are documents which can be explained at the time of hearing having its own status & effect. It is relevant to mention here that "ADI" is not a water body but it the embankment of pond which is situated at the periphery of the pond. The existing water body in Agula Bandha area is confined to Plot No. 1509 admeasuring an area of Ac 6.860 decimals. All necessary steps have been taken to protect the existing water body i.e. the area that carries or contains a collection of water. The area adjacent to the existing pond which has lost its characteristic over the years has been initiated for the purpose of public utility service and development work. It is humbly submitted that any portion of the pond having presence of any water body has ever been filled up and the Applicant is put to strict proof of the same rather due to natural growth by efflux of time, the earlier Kisam of Jalsaya has cost its character & sanctity. A healthy environment is an essential element of the welfare of any society. A civil society cannot be made by the State only. The citizens need to play a vital role in achieving the basic aim of our Constitution. The Applicant as a social activist has not submitted as to in which

MS 15110 1318

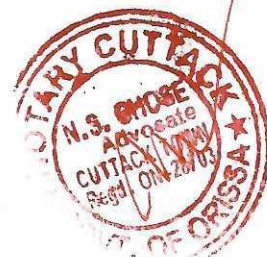
Adv.
UMESH CHANDRA MOHANTY
 (Advocate) E.No-O-643/1991
 Mob-9338855711



manner the Applicant has been discharging his social duties for improvement and protection of a healthy environment particularly in Berhampur town which has lost its glory as the silk city of Odisha. The applicant filed a case before the Permanent Lok Adalat in the year 2016 and remained silent thereafter. Therefore, the present Original Application is a belated attempt on the part of the Applicant and has been filed with the intention of reviewing the orders passed in O.A. No.82 of 2015/EZ. Therefore the Original Application is liable to be dismissed. It is further submitted that the Pond in question namely Agula Bandha is not situated over the entire land of Ac.18.480 decimals in Khata No.1375. The water body has been kept intact. The constructions as alleged are the public utility services which were undertaken in the greater interest of the general public of Berhampur town and the said constructions have been made over the land which had lost their characteristic as Jalasaya and the kism of the said land has been changed following the due procedure.

26. That in reply to the averments made in Paragraph 10 to 14 of the O.A are self-contradictory and repetition of facts, hence denied. It is most humbly submitted that State Respondents have taken all steps for preservation and protection of the water body in question & the present Respondents have also not violated any order of this Hon'ble Tribunal in OA No.82/2015/EZ. Particularly when

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 (Advocate) E.No-O-643/1991
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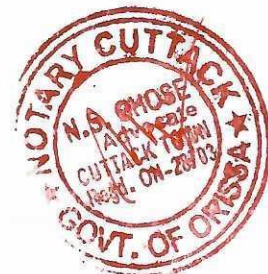
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City area and its embankments. There is no encroachment of the water body as alleged. There is encroachment over the adjacent areas of the some of the water bodies over the area which is no more water body and have lost their characteristic as Jalasaya over the years. However, pursuant to the direction of this Hon'ble Tribunal in O.A. No.82 of 2015/EZ, the State Respondents are taking all steps to remove all the encroachments. Berhampur Municipal Corporation has constructed some residential buildings under Rajiv Awas Yojana and the same has been built over Plot No.1509/2638 and 1509/2918 in respect of which the Kism of the land is "Patita" and also the other construction such as consumer forum, Revenue Inspector Office, Anganwadi Centre, Gosaninuagaon Police Station, office of Khadya Jogan Bivag have been carried over those plots which we reserved and classified as Patita. On the other hand, the facts, situation & findings rendered by the Hon'ble High Court of Orissa, Cuttack in W.P.(C) No. 8797/2014 & OJC No. 6921/1999 dated 11.10.2012 alongwith other batch of cases has been rendered in a different facts & situation of the case, thereby distinguishable and when the present Respondent No. 18 to 28 are not parties to the said proceedings as such the said direction of the Hon'ble High Court is not applicable to the present case.

MS, 31/01/2015


 UMESH CHANDRA MOHANTY
 (Advocate) E.No-O-643/1991
 Mob-9338855711



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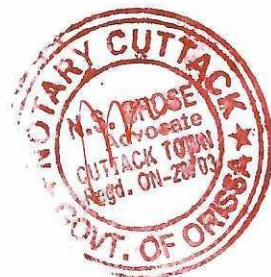
27. That in reply to the averments made in Paragraph 15 to 18 of the O.A with reference to the Authority of Law rendered by the Hon'ble Apex Court & the Hon'ble Principle Bench of this Hon'ble Tribunal are rendered in a different contest & are not applicable to the present Original Application as such distinguishable & hence denied.

28. That in reply to the averments made in Paragraph 19 to 31 are also repetition of facts & denied by the present Respondent No. 18 to 28. At the cost of repetition, it is humbly submitted that the Applicant failed to substantiate the allegations when the documentary evidence of State Authorities clearly established that no violation has been made, thereby Article-21, 41(a) & 51(g) are violate rather the action of the State Respondent in protecting the ponds & Jalasaya may kindly be appreciated on the face of the Affidavit filed by the Odisha State Pollution Control Board.

29. That in reply to the averments made in Paragraph 32 to 34 of the O.A are incorrect when the Applicant with an oblique motive only to save the Limitation has narrated concocted story & incorrect facts having no substance as such are liable to be rejected.

30. That, the present Respondents No. 18 to 28 submits that anything stated in the Rejoinder affidavit except the point of law contrary to what have been stated above are

J. Moh.
UMESH CHANDRA MOHANTY
 (Advocate) E.No-O-643/1991
 Mob-9338855711



M/S, JMO, 3/3

denied herewith. The point of law shall be dealt with at the time of hearing.

31. That this Deponent on behalf of the Respondents No. 18 to 28 reserves their right to file further additional affidavit as shall be required for proper adjudication of this case.

32. That the facts stated above are true to the best of my knowledge and belief.

Identified by

[Handwritten signature]

Advocate

UMESH CHANDRA MOHANTY
(Advocate) E.No-O-643/1991
Mob-9338855711

[Handwritten signature]

DEPONENT

CERTIFICATE

That, the contention raised in the Counter Affidavit on behalf of the Respondent No. 18 to 28 has been read over & explained in Odia to the Deponent & having understood the contents thereof, he signed the Affidavit accordingly.

Cuttack

Date: 26.02.2025

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Advocate

(Umesh Chandra Mohanty)

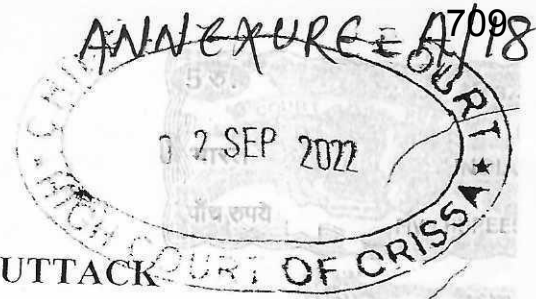
UMESH CHANDRA MOHANTY
(Advocate) E.No-O-643/1991
Mob-9338855711

The above named deponent being identified by Mr./Ms. *[Handwritten name]* Advocate appears before me at *[Handwritten place]* AM/PM on this the *[Handwritten date]* day of *[Handwritten month]* 20*[Handwritten year]* solemnly affirms that the facts stated are true to his/her knowledge and belief

[Handwritten signature]
NOTARY
CUTTACK TOWN
26/2/25
NETAJI BABYASACHI GHOSE
NOTARY, ADVOCATE
GOVT. OF ORISSA
Regd. No-ON-28/03
CUTTACK TOWN



- 27 -



IN THE HIGH COURT OF ORISSA, CUTTACK

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

CODE NO. 299000

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

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

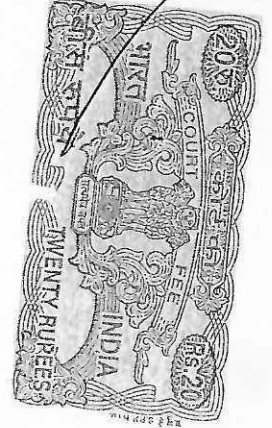
Presented in Court

2-9-22

B.O.

In the matter of:

LALIT KUMAR MAHARANA
ADVOCATE
Enrollment: O-631/16
Contact:- 7504914976(M)



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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



DEBENDRA PRASAD RAY
NOTARY, CUTTACK, ODISHA
REGN. No. ON- 1071/2009

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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



DEBENDRA PRASAD RAY
NOTARY, CUTTACK, ODISHA
REGN. No. ON- 10712009

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6. Central Pollution Control Board,
represented through Member Secreary,
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 Zoe (EZ),
Ministry of Environment, Forests and
Climate Change, A/3,
Chandraskharpur, Bhubaneswar
12. Central Pollution Control Board,
represented through Regional Director,
Ministry of Environment, Forests and



Ju

- 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



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IN THE HIGH COURT OF ORISSA AT CUTTACK

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

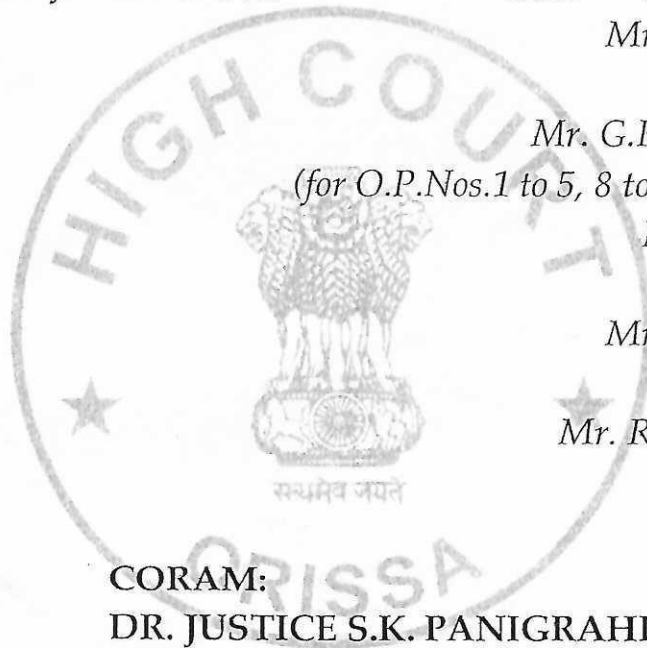
*Maa Mangala Temple and Kalyan
Mandap Managing Committee,
Berhamur, Ganjam & Ors.*

..... *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.
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

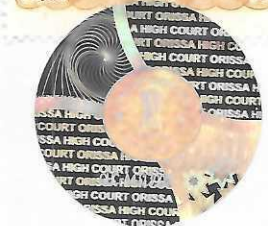


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Original Application No.106/2021/EZ, wherein the learned Tribunal directed the Opposite Party No.14/The Collector, Ganjam to demolish Maa Mangala Temple within one month and restore the land as 'Jalasaya'.

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



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.

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

¹ 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 Agala Bandha.

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 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 the matter back to the learned National Green Tribunal, Eastern Zone Bench, Kolkata for adjudication of the issue afresh. 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.

Sd/- Dr. S.K. Panigrahi, J

Marmu



Comp. by S. Sahoo
28-03-24

M/121 B.P.R. 0 15
(KLM) S.P.C.B.

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copy to petitioner
Dr. S.P. Mishra
Adv.

ANNEXURE-B/18

IN THE HIGH COURT OF ORISSA: CUTTACK.

W.P (C) No. 22622 of 2022

Maa Mangala Temple and Kalyan

Mandap Managing Committee Petitioner

-vrs-

Union of India & others Opp. Parties

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2.	<u>Annexure-A/7</u> Copy of inspection report dtd.4.3.2022	4 - 5
3.	<u>Annexure-B/7</u> Copy of inspection report dtd.2.3.2024	6 - 8

Rd
5/3/24

Dt: 5/03/2024


Advocate for O.P No.7

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IN THE HIGH COURT OF ORISSA,
CUTTACK

W.P (C) No. 22622 of 2022

Maa Mangala Temple and Kalyan
Mandap Managing Committee Petitioner

-VRS-

Union of India & others Opp. Parties

Counter Affidavit of O.P No. 7

I, Sri Santosh Kumar Kuanar, aged about 50 years, S/o Late Surendranath Kuanar, working as Senior Law Officer, Level-II State Pollution control Board, Odisha, Paribesh Bhawan, A/118, Nilakantha Nagar, Unit-VIII, Bhubaneswar-751012, Dist- Khurda, do hereby solemnly affirm and state as follows:

1. That I am competent and authorized to swear this affidavit on behalf of the Opposite Party No.7.
2. That the petitioner has filed the present writ petition challenging the order dated 3.8.2022 under Annexure-4, passed by Hon'ble National Green Tribunal, Eastern Zone, in O.A No.106/2021/EZ directing the Collector-cum-District Magistrate, Ganjam to demolish the Maa Mangala Temple which has been constructed over Agula Bandha 'jalasaya' land and to restore the said land as 'jalasaya'.

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3. That in the above mentioned O.A before the Hon'ble NGT the present O.P Board filed affidavit enclosing the report of inspection carried out on 4.3.2022 to ascertain the status of the 'jalasaya'. The report inter alia revealed that there was discharge of waste water into the water body resulting in high levels of DO, BOD and TC and the water quality did not conform to Class- B category water which could be used for bathing. It was also found that all sorts of debris are thrown into and around the water body. It was recommended in the report to stop discharge of waste water to the water body, to remove the debris from the surface of the water body and to make provision for discharge the excess water during rainy season from the water body. The said observations and recommendations in the report were noted in the order by the Hon'ble NGT.

(Copy of inspection report dt.4.3.2022 is annexed hereto as Annexure-A/7)

4. That the Agula Bandha 'jalasaya' was again inspected on 2.3.2024 to verify the present status and the report of inspection reveals that there has been no change in the meanwhile as the water body is still filled with algae and different types of vegetation on its surface, there is no provision for removal of excess water during rainy season, waste water discharge to the water body continues and

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solid wastes, bio-degradable wastes are dumped near the water body.

(Copy of inspection report dt.2.3.2024 is annexed hereto as Annexure-B/7)

✓ 5. ✓ That the averments in the writ petition being basically against the order of Hon'ble NGT directing demolition of the temple of petitioner, this O.P Board has nothing to comment

6. That however, from the inspection reports it is apparent that the authorities and other people concerned have not been taking appropriate steps for proper upkeep of the water body as it exists now.

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

Identified by

Advocate

Deponent

Certificate

Certified that due to non-availability of cartridge papers plain white papers have been used

Advocate

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Annexure A/7
402~~4~~

INSPECTION REPORT OF AGULA BANDHA, WATER BODY SITUATED AT WARD NO.26, GOSANI NUAGAON IN GOPABANDHU NAGAR MOUZA UNDER BERHAMPUR TAHASIL IN THE DISTRICT OF GANJAM IN THE MATTER OF O.A. NO.106/2021/EZ-SISIR KUMAR PANDA VS. UNION OF INDIA & OTHERS.

Agula Bandha a water body situated at ward no.26, Gosaninuagaon in Gopabandhu Mouza under Berhampur Tahasil in the district of Ganjam was inspected on 31.01.2022 in connection with O.A. No.106/2021/EZ- Sisir Kumar Panda vs. Union of India & others to verify the present status of the water body.

SURROUNDING DETAIL:

Agula Bandha is a water body situated at ward no.26, Gosaninuagaon in Gopabandhu Mouza under Berhampur Tahasil in the district of Ganjam.

Surroundings of the water body include Gosaninuagaon Police Station & Revenue Inspector Office, Gosaninuagaon in West direction, Rajib Abas Project Building in North direction, Over Bridge passing from Ankuli to Gosaninuagaon in South direction and vacant land in East direction.

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 Algae, crabgrass and yellow nutsedge and other foreign particles on its surface.
6. Solid wastes 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 Bathing (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). (Copy of the analysis report is enclosed as Annexure-I).
8. Such non-conformance with respect to DO, BOD & TC may be due to discharge of wastewater into the water body.

~~5~~ - 44 -

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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, Algae, 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 in to 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.

MB
04-03-22

Er. M. Behera
Asst. Environmental Engineer
SPC Board, Berhampur

- 45 -

Amangure - B/7



Email-rospcb.berhampur@ospcbboard.org
www.ospcbboard.org

REGIONAL OFFICE
STATE POLLUTION CONTROL BOARD, ODISHA
 (DEPARTMENT OF FOREST, ENVIRONMENT & CLIMATE CHANGE, GOVT. OF ODISHA)
 2nd Floor, New Division Office, IDCO, Berhampur Division
 Industrial Estate, Berhampur, Dist- Ganjam - 760008 Odisha, India.

No. 961 /Legal/48/2021

Dt. 02/03/2024

Speed Post/e-dispatch

To

The Legal Consultant/ Senior Law Officer (L-II)
 State Pollution Control Board, Odisha
 Bhubaneswar-12

Sub: WP(C) No. 22622/2022- Maa Mangala Temple & Kalyan Mandap
 Managing Committee & Ors. Vs. Union of India & Others,- reg.

Ref: Head Office letter No. 17673 dtd. 26.09.2022 & letter No. 2141 dtd.
 14.02.2023.

Sir,

With reference to the above, inspection of Agula Bandha, At -
 Gosaninuagaon, Gopabandhu Nagar Mouza, Tahasil- Berhampur, Dist -
 Ganjam was conducted by the officials of this office on 02.03.2024 to ascertain
 the present status. The detail inspection report is enclosed for kind information
 and necessary action.

Encl: As above

Yours faithfully,


02/03/2024
 Regional Officer

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INSPECTION REPORT OF AGULA BANDHA, WATER BODY SITUATED AT WARD NO.26, GOSANINUAGAON IN GOPABANDHU NAGAR MOUZA UNDER BERHAMPUR TAHASIL IN THE DISTRICT OF GANJAM IN THE MATTER OF WP(C) NO. 22622/2022- MAA MANGALA TEMPLE & KALYAN MANDAP MANAGING COMMITTEE & ORS. VS. UNION OF INDIA & OTHERS.

Agula Bandha, a water body situated at ward no. 26, Gosaninuagaon in Gopabandhu Nagar Mouza under Berhampur Tahasil in the District of Ganjam was inspected on 02.03.2024 in connection with WP(C) No. 22622/2022- Maa Mangala Temple & Kalyan Mandap Managing Committee & Ors. Vs. Union of India & Others to verify the present status of the water body.

SURROUNDING DETAIL:

Surroundings of the water body include Gosaninuagaon Police Station & Revenue Inspector Office, Gosaninuagaon, private apartments in West direction, Rajib Abas Project Building, Nehru Nagar colony, Maa Mangala Temple with Kalyan Mandap in North direction, Over Bridge passing from Ankuli to Gosaninuagaon. Solid waste collection centre of BeMC in South direction and Berhampur railway station in the East direction.

Following observations were made during inspection:

1. It was observed that there is a point of discharge of waste water to the Agula Bandha near Revenue Inspector Office, Gosaninuagaon, in the west direction.
2. One no. of drain outlet was also found to be connected to Agula Bandha near Rajib Abas Project Building, Gosaninuagaon, in the west direction.
3. Another discharge point of waste water was also found near Gosaninuagaon Police Station, in the west direction.
4. It was apprehended from the surroundings, during rainy season, surface runoff might be discharged into the water body as guard wall was not constructed around the Agula Bandha.
5. There is no provision for removal of excess water during rainy season from the water body.
6. Agula Bandha water body is filled with algae and different types of vegetation on its surface.
7. Solid wastes including plastics, bio-degradable wastes are found to be dumped near its embankment towards western part of the water body. Solid wastes are also found to be dumped near the South-West embankment of the said water body, below the Over Bridge passing from Ankuli to Gosaninuagaon

CONCLUSION & RECOMMENDATIONS:

In view of the above following recommendations are made:

1. Necessary steps shall be taken to stop discharge of waste water into Agula Bandha from surrounding human habitations.
2. Municipal Authority shall take necessary measures to remove the algae and vegetations from the surface of the water body.
3. Solid materials from the embankments of Agula Bandha shall be removed.

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4. Necessary steps shall be taken by the Municipal Authority to stop/divert outlet of storm water drain in to the water Body.
5. There shall be provision for removal of excess water during rainy season from the Agula Bandha.
6. Awareness shall be created among the local people of the surrounding areas to prevent disposal of garbage into the water body. Bilboard advertisements for awareness shall be displayed around the Agula Bandha.

Amal
02/03/2024
Miss Punam Behera
Asst. Environmental Scientist
SPC Board, Berhampur

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ANNEXURE-C/18**IN THE HIGH COURT OF ORISSA: CUTTACK****W.P. (C) NO. 22622 OF 2022**

In the matter of:

Maa Mangala Temple and Kalyan Mandap
 Managing Committee Ganjam and others

... Petitioner

-Versus-

Union of India & Others

... Opp. Parties

COUNTER AFFIDAVIT ON BEHALF OF OPP. PARTY**NO. 08, 10, 13, 14 & 15**

I, Sri Rabindra Kumar Misra aged about 49 years, S/o.
 Late Narasingh Misra at present working as Tahasildar,
 Berhampur, Dist.- Ganjam, Odisha, do hereby solemnly
 affirm and state as follows:-

1. That, I am the Opp. Party No.13 in the present Writ Petition. I have been duly authorized by the Opp. Party Nos. 08, 10, 14 & 15 and competent to swear this affidavit on their behalf.
2. That, I have gone through the writ application along with the Annexures appended thereto and understood the content thereof, I am well acquainted with the facts of the case and thus competent to swear this affidavit in my official capacity.

Rabindra Kumar Misra



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3. That, the petitioner has filed this writ application to challenging the order dated 03.08.2022 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 106/2021/EZ under Annexure-4 of the Writ Petition wherein, the Hon'ble Tribunal has directed the Collector, Ganjam, Respondent No.14 to demolish the Maa Mangala Temple within one month, restore the land as 'Jalasaya'.
4. That, it is humbly clarified that all averments, contentions and/or statement contained in the Writ Petition filed by the petitioner, which may not have been specifically denied or traversed by the petitioner herein but are in essence, contrary to the substance of this Counter Affidavit, should not be deemed to be admitted by reason of mere non-traverse, but should be treated as expressly denied and the petitioners should be put to strict proof in respect thereof. The Opp. Parties further crave leave of this Hon'ble Court to file further Affidavit / Counter, if the same is deemed necessary.
5. That, in reply to Para-2 & Para-3 of the writ petition, it is submitted that, the Respondent No.14 pleaded before the

Rabindra Kumar Mishra

Hon'ble Tribunal that land in dispute had 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 the plot wise construction wherein, one Maa Mangala Temple is constructed over Plot No. 1509/2918 over an area of Ac. 0.012 now comes under the category of "Homestead" land.

It was further submitted 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 Agala Bandha.

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 regularization of such illegal possession should only be permitted in those cases where the buildings concerned are being used as "Public Utility" buildings. Therefore, the buildings which are constructed for public utility can be regularized.

Robinendra Kumar Mishra

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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 0.012 Ac. is not a public utility building and cannot be permitted on a specious plea that Jalsaya has lost its characteristic.

In view of the same, the Hon'ble Tribunal has directed the Collector, Ganjam to demolish the temple within one month and restore the said land as 'Jalasaya'.

6. That, in reply to Para-4 to Para-6, the present Opp. Party has nothing to comment.

7. That, in reply to Para-7 of the writ petition it is submitted that, the common pond does not exist over all the plots as mentioned in this paragraph. As per the settlement RoR, the area of the Plot Nos. 1509 in khata No. 1375 mouza Gopabandhu Nagar is Ac 11.500. However, 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

Rabindra Kumar Misra.

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admeasuring an Area of 3.600 Acres out of 11.500 Acres which had already lost its original characteristics of Jalsaya. 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 measuring an Area of 1.00 Acres out of 7.900 Acres, which had already lost its original characteristics of Jalsaya. It is a fact that the temple has been constructed over Plot No.1509/2918 over an area of Ac. 0.012 dec. The water body has been kept intact. Again the plots over a portion of the area in Plot No. 1509 and 438 of Khata No. 1375 have lost its characteristics over the years. Accordingly, in a meeting held on 05.02.2021 under the Chairmanship of R.D.C. (Southern Division), Berhampur, necessary permission was accorded for changing the Kisam of the land from Jalsaya-I to Patita. The Collector, Ganjam vide Order No.644 dated 01.03.2021 in pursuance of the decision taken by the Committee under the Chairmanship of RDC, Southern Division, Berhampur effected the transfer of the land measuring Ac. 0.300 in Plot No. 438 and 0.040 in plot No. 1509 of Khata No. 1375 in favour of Home Department for construction of

Ratindra Kumar Misra.

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Gosaninuagaon police station as such portion of the land had lost its characteristics and no objections were received for proposed change of kissam of land to Patita. The conversion of land for which the classification was changed is a small portion of the plot nos. 1509 & 438 which had lost its characteristics as Jalasaya. The said area is not affecting the remaining water body. The change of classification of the land is for a public purpose i.e. for construction of a Gosaninuagaon PS which covers area from Ward No. 24 to 28 of the BeMC, Berhampur and mouza New Khajuria and Old Khajuria and other nearby establishment areas..

Copy of the sanction order dated 19.08.1999 passed by the Collector, Ganjam is annexed as ANNEXURE- A/13.

Copy of the RoR pertaining to Plot No.1509/2918 is annexed herewith as ANNEXURE-B/13.

8. That, in reply to Para-8 & Para-11 to 14 of the writ petition it is submitted that, on enquiry, it is found out that the temple building is being used for community purposes such as holding public meetings, community functions, etc.

Rabindran Kumar Mishra.

9. That, in reply to Para-9 of the writ petition, it is submitted that Maa Mangala Temple and Kalyan Mandap is situated over Plot No. 1509/2918 over an area of Ac. 0.012 dec of mouza Gopabandhu Nagar which is surrounded by the residential Rayati land. The said projects for construction of a Kalyan Mandap near Maa Mangala Mandir, Neheru Nagar was recommended and sanctioned by the Deputy Director (R&B) DPMU, Ganjam and subsequently the Kalyan Mandap near Maa Mangala Temple was constructed in March 2012.

It is humbly submitted that the classification of the land as reflected in the RoR (Page No.187 of the Writ Petition) is "Patita" and therefore, the construction has been made on the said patch of land.

It is ascertained from the report of the Addl. Commissioner BeMC, Berhampur letter no. 11550 dated 15.10.2022 in response to this office letter No.6130 dated 07.10.2022 that the Maa Mangala Temple is situated within the compact patch of Kalayan Mandap. The Kalayani Mandap is now used for various social activities like Blood Donation Camp, Eye testing center, Vaccination programme,

Rabindra Kumar Mishra.

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Marriage Function, Old age Pension distribution camp and word committee meeting etc. Besides, it is also being used as cyclone centre during cyclone and heavy rain. The Kalyan Mandap is being utilized by the local public.

Copy of the letter No.11550, dated 15.10.2022 of the Additional Commissioner, Berhampur Municipal Corporation is annexed herewith as ANNEXURE-C/13.

Similarly, the report of the Revenue Inspector, Goshaninuagaon vide his letter No. 181 dated 10.10.2022 and local statement corroborate the facts received from the BeMC, Berhampur about the use of Maa Mangala Temple and Kalyan Mandap. The said premises are being utilized for different public utility works in general and for the need of the local public.

Copy of the letter No.181, dated 10.10.2022 of the I/c Revenue Inspector, Gosaninuagam is annexed herewith as ANNEXURE-D/13.

10. That, in reply to Para-10 of the writ petition, it is submitted that pursuant to the impugned order, many people of the said locality including people's representatives have written numerous representations to Govt. authorities

Rabindra Kumar Mishra

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requesting there to take steps for protection and preservation of Maa Mangala Temple and the Kalyan Mandap standing thereon.

11. That, in reply to Para-11 to 16 it is humbly submitted that the temple as well as the Kalyan Mandap standing thereon, are being utilized for public utility works.

12. That, in reply to Para-17, the present Opp. Party has nothing to submit.

13. That, in reply to Para-18 & 19 and Paragraph 22 of the **Jag pal Singh judgment** 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

Rabindra Kumar Mishra

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 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."

14. That, in reply to Para-20 it is most humbly submitted that another important factor to be considered here is that in the operation portion of the impugned judgment, the State Respondents were directed to re-create a water body of the same size and depth as Agula Bandha 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 exchange another patch of land is to be created.

15. That, in reply to Para-21 to Para-24 of the Writ Petition, the present Opp. Party has nothing to submit.

Rabindra Kumar Misra

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16. That, in view of the aforesaid facts and circumstances, the prayers made in the writ petition are devoid of merit. Hence, liable to be rejected. Consequently, the writ petition being bereft of merit is also liable to be dismissed with cost.

17. That, the facts stated above are true to the best of my knowledge and belief, being based upon the official records available in the office of this respondent.

Identified by

Rabindra Kumar Mishra

DEPONENT

19/10/2022

A.C. of A.G.'s Office

TAHASILDAR
BERHAMPUR

CERTIFICATE

Certified that cartridge papers are not available.

Cuttack

Date: 19.10.2022

ADDL. STANDING COUNSEL



Copy to Mr. Soumya K. G. 10
Adv.

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Ramesh Sahoo, Adv
9338105167

ANNEXURE-D/18

IN THE HIGH COURT OF ORISSA, CUTTACK

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

Maa Mangala Temple & Kalyan Mandap Petitioners
Managing Committee & others

-Versus-

Union of India & others Opp. Parties

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R.D
14/3/24

Cuttack

Dt.13.3.24

By the Opp. Party No.16, through

Advocate

(RAMESH SAHOO)

Enrl. No.O-1098/1991

Mob - 9338105167

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IN THE HIGH COURT OF ORISSA, CUTTACK**W.P.(C) No.22622 of 2022**

Maa Mangala Temple & Kalyan Mandap Petitioners
Managing Committee & others

-Versus-

Union of India & others Opp. Parties

COUNTER AFFIDAVIT FILED BY THE OPP. PARTY NO.16

I, Sri Bhabani Prasad Mishra OAS (S), aged about 46 years, S/o. Sri Durga Charan Mishra, at present working as the Commissioner, Berhampur Municipal Corporation, At/Po.Berhampur, Dist. Ganjam, Odisha do hereby solemnly affirm and state as follows:

- 1) That I am working as the Commissioner of Berhampur Municipal Corporation i.e. the Opp. Party No.16 and I am competent to swear this affidavit for and on behalf of the Opp. Party No.16.
- 2) That I have gone through the averments made in the writ petition and have understood the contents thereof. I have the following to submit in reply thereto.

Bhabani Prasad Mishra

COMMISSIONER
BERHAMPUR MUNICIPAL CORPORATION

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- 3) That in the aforesaid writ petition challenge has been made to the order dt.3.8.2022 passed by the learned National Green Tribunal, Eastern Zone, Kolkata in O.A. No.106/2021/EZ which was filed by the Opp. Party No.18 Sri Sisir Kumar Panda.
- 4) That in the aforesaid case before the learned Tribunal, Berhampur Municipal Corporation being the Respondent No.16, has filed a detailed Reply Affidavit opposing the case of the Applicant therein i.e. the present Opp. Party No.18. in the Original Application before the learned Tribunal the Respondent no.18 made allegations against the State Respondents as well as Berhampur municipal Corporation that the State authorities and Berhampur Municipal Corporation have made illegal constructions over some plots in Khata No.1375 relating to Agulabandha within Berhampur Municipal Corporation area by illegally converting the land with Jalasaya Kisam to Patita & homestead and made a prayer to remove the same.
- 5) That Berhampur Municipal Corporation took a plea before the learned Tribunal that the entire land in Khata No.1375 consists of an Area of Ac 18.480 decimals & the entire land is not the waterbody as alleged. The waterbody existing over the said land has been kept intact and has been well preserved but the portions of land adjacent to the waterbody which have lost their characteristic as Jalasaya over the years, the conversion of the said land was made by

Bhaskar Prasad Mishra,

COMMISSIONER

BERHAMPUR MUNICIPAL CORPORATION

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following the due procedure of law and as per the direction of the Hon'ble High Court in W.P.(C) No.8794/2004 & OJC No.6721/1991 reported in 2012(II) OLR 1040. Moreover, it was also indicated in the Reply Affidavit that the alleged constructions over the said land are all in the nature of Public Utility Services and therefore, the constructions made over the said land cannot be treated as illegal.

- 6) That while disposing of the O.A. No.106/2021/EZ, the learned Tribunal in paragraph-41 of the judgment dt.3.8.2022, has observed as follows :

“** ** * 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 waterbody at Agula Bandha. This area of 11.500 acres of land which has been allowed by the State Govt. to degrade and lose its character as 'Jalasaya' needs to be restored by the Govt. Since Govt. 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

Dhyanendra Prasad Mishra.

COMMISSIONER
BERHAMPUR MUNICIPAL CORPORATION

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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 waterbody and if not possible, in some other area nearby and re-create a water body of the same size and depth as Agula Bandha.”

7) That it is most respectfully submitted that Maa Mangal temple & kalyan Mandap have been constructed over the land which is a part of 11.500 Acres of area which has lost its characteristic. Since the learned Tribunal has directed the State Govt. to demarcate land of an equivalent area of 11.500 acres and to recreate a waterbody of the same size and depth of Agula Bandha, therefore, the direction to demolish Maa Mangala Temple is not sustainable in the eye of law.

8) That since the present proceeding is a certiorari proceeding under Article-227 of the Constitution of India, therefore, this Respondent craves leave of this Hon'ble Court to adopt the Reply Affidavit filed before the learned Tribunal in O.A. No.106/2021/EZ and the copy of the same alongwith its Annexure are filed herewith as Annexure-A/16 series.

Bhuvanesh Prasad Mishra
COMMISSIONER
BERHAMPUR MUNICIPAL CORPORATION

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- 9) That the point of law involved in the present writ petition shall be dealt with at the time of hearing.
- 10) That this deponent craves leave of this Hon'ble Court to file any additional/further affidavit, if the same shall be required by this Hon'ble Court for proper adjudication of the case.
- 11) That the facts stated above are true to the best of my knowledge and belief being based upon the records of the Municipal Corporation.

Identified by

Advocate

Cuttack

Dt. 13.8.2024

Dhyanee Prasad Mishra
 COMMISSIONER
 BERHAMPUR MUNICIPAL CORPORATION
 Deponent

Certified that due to non availability of cartridge papers,
 this Counter Affidavit is typed in thick white papers.

[Signature]
 Advocate

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

O.A. No.106/2021/EZ

Sisir Kumar Panda Applicant
 -Versus-
 The Union of India & others Respondents

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Place : Kolkata

Dt. 28.2.2022

By the Respondent No.16, through

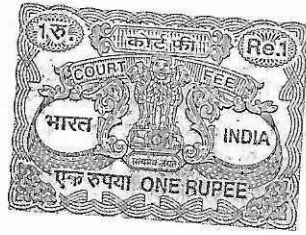
Ramesh Sahoo

ADVOCATE

(RAMESH SAHOO)

Mob - 9338105167

E-mail : sahoolawramesh@yahoo.co.in



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

O.A. No.106/2021/EZ

Sisir Kumar Panda

....

Applicant

-Versus-

The Union of India & others

....

Respondents

REPLY AFFIDAVIT FILED ON BEHALF OF THE
RESPONDENT NO.16

I, Dr. Siddheshwar Baliram Bondar, I.A.S., aged about 33 years, S/o. Sri Baliram Raghunath Bondar, at present working as the Commissioner, Berhampur Municipal Corporation, At/Po. Berhampur, Dist. Ganjam, Odisha do hereby solemnly affirm and state as follows:-

1. That I am working as the Commissioner, Berhampur Municipal Corporation and I am competent to swear this Affidavit on behalf of the Respondent No.16. I have gone through the Original application as well as the documents annexed thereto and I have understood the contents thereof. I

[Handwritten signature]

[Handwritten signature]
Jyoti Ranjan Pattanaik
Notary, Cuttack Town
Regd. No-19 of-2012

[Handwritten signature]
COMMISSIONER
Berhampur Municipal Corporation


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am acquainted with the facts of this case on the basis of the official records of the Respondent No.16 Corporation.

2. That the Applicant has filed this Original Application challenging the conversion of the land for the purpose of construction of the alleged structures over some of the plots in Khata No.1375 relating to Agula Bandha within Berhampur Municipal Corporation on the grounds interalia that the State Authorities have no power to change the kisam of the land which is recorded as Jālasaya.
3. That, in reply to the averments made in paragraphs 1 to 4 of the Original Application, this deponent begs to submit that the present Original Application has been filed as a guise to review the orders passed in O.A. No.82 of 2015/EZ and the Applicant is a fence sitter and did not like to intervene at the time of hearing of O.A. No.82 of 2015/EZ although the Applicant claims to be a social activist of repute. Article - 51(A)(g) of the Constitution of India mandates a duty on every citizen to protect and improve the natural environment. A healthy environment is an essential element of the welfare of any society. A civil society cannot be made by the State only. The citizens need to play a vital role in achieving the basic aim of our Constitution. The Applicant as a social activist has

Notary, Cuttack Town
Regd. No-19 of-2017


COMMISSIONER
Berhampur Municipal Corporation



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not submitted as to in which manner the Applicant has been discharging his social duties for improvement and protection of a healthy environment particularly in Berhampur town which has lost its glory as the silk city of Odisha. The applicant filed a case before the Permanent Lok Adalat in the year 2016 and remained silent thereafter. The Applicant was aware about the work order dt.1.7.2019 vide Annexure-A/7 and alienation of land vide Annexure-A/8 dt.24.2.2018 but the Applicant did not challenge the same. Therefore, the present Original Application is a belated attempt on the part of the Applicant and has been filed with the intention of reviewing the orders passed in O.A. No.82 of 2015/EZ. Therefore the Original Application is liable to be dismissed on the ground of limitation. It is further submitted that the Pond in question namely Agula Bandha is not situated over the entire land of Ac.18.480 decimals in Khata No.1375. The waterbody has been kept intact. The constructions as alleged are the public utility services which were undertaken in the greater interest of the general public of Berhampur town and the said constructions have been made over the land which had lost their characteristic as Jalasaya and the kism of the said land has been changed following the due procedure.




 Jyoti Ranjan Pattanaik
 Notary, Cuttack Town
 Regd. No-19 of-2012


 COMMISSIONER
 Berhampur Municipal Corporation

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4. That in reply to the averments made in paragraph-5 of the Original Application, it is submitted that Agula Bandha waterbody is not existing over the entire area of Ac. 18.480 decimals in Khata No.1375. The waterbody has been kept intact. It is most humbly submitted that the alleged constructions have been done over the land which has lost their characteristics since long period. The Kisam of the land wherever necessary was changed by following the procedure of law and the alleged constructions are in the nature of public utility services constructed by different Govt. departments over the said land in the greater interest of the general public of Berhampur town. It is false to allege that Berhampur Municipal Corporation has constructed large number of buildings forcibly in the premises of the Pond and its embankment. The Applicant may be called upon for strict proof of the same. It is most respectfully submitted that the Kisam of Plot No.1509/2918, 1509/2638, 1509/3123 was changed to "Patita" Kisam by the orders passed in Alienation Misc. Case No.662/1994, Alienation Misc. case No.1/1991 and Alienation Misc. Case No.41/1998. The Kisam of Plot No.1509/4190 and 438/4189 changed to Kisam "Gharabari" ("Homestead") by virtue of the order passed in Alienation Misc. Case No.01/2020. The copies of the Record of Rights

Ranjana Pattanah
 Notary, Cuttack Town
 Regd. No-19 of-2012

~~COMMISSIONER
 Berhampur Municipal Corporation~~

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in respect of these new plots are annexed hereunto and are marked as Annexure-A/16 series.

5. That in reply to the averments made in paragraph-6 of the Original Application, it is most respectfully submitted that this Respondent has the highest regards for the environmental laws and this Respondent has been trying to maintain the cleanliness of Berhampur town without compromising with the fundamental requirements of the people living within the city area. This Respondent has taken several steps to maintain the entire City area with all cleanliness, to remove the encroachments from the public places, roads and drains and to construct roads, parks and taking steps for preservation and beautification of waterbodies inside the City area and its embankments. There is no encroachment of the waterbody as alleged. There is encroachment over the adjacent areas of the some of the waterbodies by the encroachers over the area which is no more waterbody and have lost their characteristic as Jalasaya over the years. However, pursuant to the direction of this Hon'ble Tribunal in O.A. No.82 of 2015/EZ this Respondent is taking steps to remove all the encroachments from over the said land.

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6. That in reply to the averments made in paragraph-7 of the Original Application, it is submitted that the office order in Annexure-A/3 relates to eviction of unauthorized encroachment from over the Government land and from over the waterbodies, drains and public roads. This Respondent is taking all steps to protect and preserve the land belonging to Municipal Corporation. The matter relating to eviction of encroachers from over the adjacent lands of waterbodies is subjudice before this Hon'ble Tribunal in OA No.82/2015/EZ and this Respondent is taking all steps to comply with the directions of this Hon'ble Tribunal. This Respondent has already launched a massive eviction process which has given rise to massive law and order problem in Berhampur Town. Despite massive public unrest and impelling law and order situation, the Berhampur Municipal Corporation is committed to make the entire Municipal Corporation area encroachment free within a short span of time.
7. That in reply to the averments made in paragraph-8 of the Original Application, it is humbly submitted that the Berhampur Municipal Corporation is taking all such steps for renovation, restoration and maintenance of waterbodies situated within the Municipal Corporation Area and has not violated any of the guidelines/Circulars issued by the State

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Govt. in this regard. By the Office Order vide Annexure-A/4, it has been made clear that the guidelines contained in the said office order are not applicable to waterbodies/Jalasaya which have lost their characteristics. The Applicant although was aware about the said order since 2017, preferred not to challenge the same.

8. That in reply to the averments made in paragraph-9 of the Original Application, it is humbly submitted that this Respondent is taking sincere steps to restore and preserve the waterbody situated at Agula Bandha. It is most respectfully submitted that the entire land in Khata No.1375 consists of an area of Ac 18.480 decimals and the entire land is not the waterbody. Some areas adjacent to the waterbody, which have lost their characteristics over the years were converted by change of Kism for construction of public utility services to cater to the general public good. The same has been done by following the procedure under the law as per the directions of the Hon'ble High Court of Orissa and following the guidelines fixed by the State Government. The Municipal Corporation has not taken steps for change of kism of the waterbody which has been kept intact as per the orders passed in PLA Case No.27 of 2016.

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9. That in reply to the averments made in paragraph-10 of the Original Application, it is submitted that as per the direction of the Hon'ble High Court of Orissa passed in W.P.(C) No.8797 of 2004 and OJC No.6721 of 1991 reported in 2012 (II) OLR 1040, the Kisam of Jalasaya has been changed as per the guidelines stipulated by the Hon'ble High Court in the above case. While disposing of the said Writ petitions, the Hon'ble High Court held as follows :

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

- (1) *The State Govt. shall act upon the report dt.31.8.2007 submitted by the R.D.C. (C.D.), Cuttack and the affidavit dt.18.5.2010 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*


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exceeding seven members including the Vice-Chairman, C.D.A., Municipal Commissioner, CMC, Cuttack and an Environmentalist 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/kisam of lands from Jalasaya to homestead shall be processed through the Tahasildar, Sadar, Cuttack, to the Collector for appropriate orders. The decisions 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/kisam of such lands. However, if the Committee is


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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 judgment.

- (4) The Committee shall also make enquiry, if it is so necessary, to find out whether classification of the lands recorded as Jalasayas has been changed by orders of the Tahasildar during operation of the order of status quo passed by this Court on 8.4.2005 in OJC 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.

Para-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

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Report of the R.D.C. dt.31.8.2007. 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."

In compliance of the said directions, the State Govt. constituted Committees under the Chairmanship of R.D.C. of different division in the State of Odisha and the said Committee taking into account the directions of the Hon'ble High Court of Orissa, allowed conversion of Kism from Jalasay to other Kism. In the instant case the kism of a portion of land in Plot No1509 and 438 situated in Khata No.1375 were changed to Kism Patita and Gharabari (homestead) as per the guidelines fixed by the Hon'ble High Court. No illegality has been committed in conversion of the Kism of the land as alleged by the Applicant. It is false to allege that the Municipal authority has filled up the Pond and started illegal construction over the said plots in Agula Bandha. It will be evident from Annexure-A/6 that the conversion of kism of land has been duly approved by the Committee constituted for allowing change of Classification of Jalasaya Kism of Land which has lost its characteristics under the Chairmanship of Revenue Divisional



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Commissioner, Southern Division which was in consonance with the direction of the Hon'ble High Court in W.P.(C) No.8797/2004 and OJC No.6721 of 1999. Therefore, no illegality has been committed while changing the kizam of the land in question as alleged by the Applicant.

10. That in reply to the averments made in paragraph-11 of the Original application, it is submitted that establishment of Police Station in Gosani Nuagaon area where at least 30,000 families are living in addition to schools, public institutions and several Govt. Offices was in the public interest. The Police Station was built over a piece of land which had already lost their characteristic since long and the kizam of the said land was changed to "Gharabari" i.e. homestead by following the due procedure as directed by the Hon'ble High Court. The Applicant was aware about the construction of the police station since 2019, but remained silent and after disposal of OA No.82/2015/EZ, only moved this Hon'ble Tribunal for reasons best known to the Applicant, However, the present Original Application seems to be barred under the limitation provided under the Act and therefore, the same is liable to be dismissed.




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11. That in reply to the averments made in paragraph-12 of the Original Application, it is submitted that the underground reservoir and pump house has been constructed over a portion of the land in Plot No.438/4189 and 1509/4190 by the Public Health Department and the kism of the said land has already been changed to Gharabari (Homestead) where the police Station has been constructed by the Home Deptt. of Govt. of Odisha. The Applicant was aware about the same since 24.2.2018 but filed the present case on or about 5.11.2021 which is barred by limitation and therefore, the same is liable to be dismissed.
12. That in reply to the averments made in paragraph-13 of the Original Application, it is submitted that for conservation and management of wetlands, the Central Govt. has formulated the Wetlands (Conservation & Management) Rules, 2010. The land adjacent to the waterbody which has lost its characteristics as Jalasaya for over a long period cannot be treated as "wetland" within the meaning of the said Rules and the same has not been declared as the wetland by the Appropriate Authority so as to claim that the classification of the land cannot be changed from Jalasaya-I to any other purpose.


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13. That in reply to the averments made in paragraph-14 of the Original Application, it is submitted that the Hon'ble High Court in the said judgment dt.11.10.2012 has directed to form a Committee under the Chairmanship of Revenue Divisional Commissioner to take decision regarding change of classification of land which are not Jalasaya or Swampy lands but have been recorded as Jalasaya and in such cases change of classification can be allowed subject to approval of the Committee. It is submitted that no portion of the waterbody has been allowed to be converted from Jalasaya to any other Kسام. The waterbody situated in Khata No.1375 namely Agula Bandha has been kept intact. Some portion of the land adjacent to the waterbody which has lost its characteristics as Jalasaya over the years, the classification of the some portion of the said land is only changed as per the direction of the Hon'ble High Court for construction of public utility services over the same. The Applicant has alleged that the State Officials have misinterpreted the order/orders of the Hon'ble High Court. In that event the Applicant should have moved the Hon'ble High Court challenging the constitution of the Committee by the Govt. of Odisha pursuant to the direction of the Hon'ble High Court vide Govt. of Odisha, Revenue & Disaster Management Letter No.44549/ R & DM,




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dt.22.12.2017. It is emphatically submitted that entire waterbody in Khata No.1375 has been kept intact. Only the portion of the land adjacent to the waterbody which has lost their characteristics as Jalasaya, the classification was changed and public utility services have been built over the same for the greater interest of the general public of Berhampur Municipal Corporation.

14. That the averments made in paragraphs-15 to 23 are relating to various judgments of the Hon'ble Supreme Court and the same shall be dealt with at the time of hearing. It is most respectfully submitted that this Respondent with great respect admits the settled position as held by the Hon'ble Supreme Court that "Ponds" are a public utility meant for common use and they cannot be commercialized. In the instant case no part of the waterbody in question has been put to commercial use. Construction in the nature of public utility services have been made over the land adjacent to the waterbody which has lost their characteristic as Jalasaya over a long period of time and the classification has been changed following the due procedure as per the direction of the Hon'ble High Court of Orissa.


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15. That the averments made in paragraph-15 & 16 relates to the judgment of the Hon'ble Supreme Court and the same shall be dealt with at the time of hearing.
16. That the averments made in paragraph-17 of the Original Application is relating to "Sana Bandha" the matter in respect of which is subjudice in O.A. No.43/2021/EZ before this Hon'ble Tribunal. However, it has already been submitted that the waterbody in Agula Bandha has been kept intact and there is no construction over the waterbody. The Municipal Corporation is taking all steps for restoration and maintenance of the waterbody and also undertakes to further take such steps to purify the water quality of the said waterbody and also shall carry out any direction issued by this Hon'ble Tribunal for better management of waterbodies within the Municipal Corporation area.
17. That in reply to the averments made in paragraph-18, 19 & 20, it is most humbly submitted that there is no illegal construction or unauthorized occupation over the waterbody as alleged. It is false to allege that the Municipal authorities have misutilised their official capacity and have illegally spent the Govt. fund by misleading the State Govt. Change of classification of Jalasaya land which have lost their


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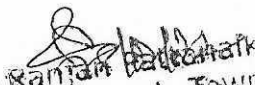

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characteristics for other purpose has been done pursuant to the direction of the Hon'ble High Court and approved by the Committee constituted under the Chairmanship of the Revenue Divisional Commissioner for the said purpose by the State Govt. Therefore, the allegations of misleading and illegal construction are without any basis and the same is liable to be rejected.

18. That in reply to the averments made in paragraph-21 & 22 of the Original Application, it is humbly submitted that this deponent has not made any construction over the waterbody. Whatever constructions have been done are in the nature of public utility services and the same were constructed over the land which have lost their characteristic as Jalasaya and the classification of the said land has been changed as per the due procedure of law. Therefore, no illegality has been committed by this Respondent as alleged by the Applicant. The allegations that the Municipal Authorities alongwith the State officials with their common intention have misutilised the Govt. funds are false and baseless. This Respondent has the highest regards for the Courts of law and this Respondent has not done any construction over the waterbody in question violating the directions of the Hon'ble Supreme Court. The alleged constructions are in the nature of public utility




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services and the same have been constructed over the land which has lost their characteristics and the classification of the said land has been changed as per the directions of the Hon'ble High Court of Orissa.

- 19. That in reply to the averments made in paragraph-22 of the Original Application, it is submitted that Municipal Authorities are taking steps from time to time for cleaning the waterbody. But the people living in the adjacent residential houses are misutilising the Pond water for which the water is becoming polluted. It is most respectfully submitted that the better environment can be achieved with the participation of the general people at their level. It needs greater transformation in the attitudinal behavior of the common people which will maximize the environment protection. The people like the Applicant should take steps in bringing change in the attitude of the people living in Municipal Corporation area to sensitize the people about their duty towards ensuring pollution-free environment. However, the Municipal Corporation undertakes to ensure periodical cleaning of the waterbody so as to reduce the level of pollution of the water.

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20. That in reply to the averments made in paragraph-23 of the Original application, it is submitted that the proceeding in OA No.82/2015/EZ is pending before this Hon'ble Tribunal and this Respondent is taking all steps for implementation of the order of the Hon'ble Tribunal in letter and spirit. Regarding filing of SLP before the Hon'ble Supreme Court, in view of the order dt.24.8.2017 passed by this Hon'ble Tribunal in OA No.82/2015/EZ, there was no necessity to proceed with the said case before the Hon'bel Supreme Court and hence the same was withdrawn.
21. That the averments made in paragraph-24 of the Original application are relating to the shortage of drinking water in Berhampur Town and the State Govt. is taking all such necessary steps to provide drinking water to the people of Berhampur. This Respondent is taking all steps to preserve and restore the existing waterbodies. There is scarcity of water during the Summer season since the River Rusikulya which flows nearby the Berhampur Town gets dried up during the Summer season. The State Govt. has taken every essential step to provide drinking water to the general public on priority basis.
22. That the averments made in paragraph-25 of the Original Application are the mere repetitions of the same allegations

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which have already been replied to by this Respondent. The kism of the land has been changed as per the direction of the Hon'ble High Court of Orissa in their judgment in Annexure-10 and as per the guidelines enumerated in the said judgment. This Respondent has not violated any of the guidelines issued by the Hon'ble Apex Court as alleged by the Applicant.

23. That in reply to the averments made in paragraph-26 of the Original Application, it is most humbly submitted that this Respondent has taken all steps for preservation and protection of the waterbody in question.

This Respondent has not violated any order of this Hon'ble Tribunal in OA No.82/2015/EZ. The Applicant is trying to review the order passed in OA No.82/2015/EZ which is not permissible in the present application since this Hon'ble Tribunal is in session over the matter in OA No.82/2015/EZ. There is no change of kism of the waterbody in question which has been kept intact. The classification of the land adjacent to the waterbody which has lost their characteristics as Jalasaya over a long period of time has been changed following the directions of the Hon'ble High Court in its judgment.


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- 24. That the averments made in paragraph-27 of the Original Application are relating to the implementation of the orders of this Hon'ble Tribunal in OA No.82/2015/EZ and the same is pending before this Hon'ble Tribunal and this Respondent is bound by any direction issued by this Hon'ble Tribunal in the said case.
- 25. That the averments made in paragraph-28 of the Original Application are mere repetitions of the averments made earlier. This Respondent is taking every step to protect and maintain the waterbodies situated in the Municipal Corporation area.
- 26. That the averments made in paragraph-27 of the Original Application are relating to notice under Section-80. of CPC and this Respondent has nothing to submit in this regard.
- 27. That in reply to the averments made in paragraphs -30 & 31 of the Original Application, it is humbly submitted that the change of classification as alleged is as per the direction of the Hon'ble High Court of Orissa. The constructions as alleged have been made over a portion of land which has lost their characteristics as Jalasaya over a long period of time and the change of classification has been done as per the

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 Secretary, Cuttack Town
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guidelines issued by the Hon'ble High Court of Orissa. It is humbly submitted that all the constructions as alleged are in the nature of public utility services which were constructed in the greater interest of the general public in Berhampur Municipal Corporation. This Hon'ble Tribunal may kindly consider the same and pass appropriate orders in the interest of the general public living within the Berhampur Municipal Corporation area.

28. That the Original Application is barred by limitation and the same is liable to be dismissed in limine.
29. That the prayer as made in the Original Application being devoid of any merit is liable to be rejected.
30. That anything stated in the Original Application contrary to what have been stated are denied herewith.
31. That the Applicant has also filed a Supplementary Affidavit on 12.11.2021 raising the same allegations. Since the Municipal Corporation has not made any construction over wetlands or waterbody, therefore, it was not mandatory to obtain environmental clearance and consent to establish from the SEIAA/SPCB, Odisha as alleged by the Applicant. The


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land in question where the alleged constructions have been made is not the Greenbelt/Ecological sensitive zone and therefore Environment Impact Assessment under the E.I.A. notification, 2006 is not mandatory. Berhampur Municipal Corporation has only constructed some residential buildings under Rajiv Awas Yojana and the same has been built over Plot No.1509/2638 and 1509/2918 in respect of which the Kisam of the land is "Patita". It is most respectfully submitted that the aforesaid land was originally allotted to State Bank of India after change of kisam, but subsequently the said land was not taken by State bank of India. The Municipal Corporation has constructed the RAY Project over the said plots recorded in the kisam of "Patita". The same will be evident from the field report submitted by the Tahasildar, Berhampur. Copy of the letter dt.23.2.2022 is annexed hereunto and is marked as Annexure-B/16.

32. That this Respondent submits that anything stated in the Supplementary Affidavit except the point of law, contrary to what have been stated above are denied herewith. The point of law shall be dealt with at the time of hearing.



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33. That this Deponent reserves their right to file further Additional Affidavit as shall be required for proper adjudication of this case.

34. That the facts stated above are true to the best of my knowledge and belief being based upon the official records of the Respondent No.5 Corporation.

Identified by

[Signature]
Advocate

[Signature]
Deponent
Commissioner
Barnampur Municipal Corporation

Dt. 28. 2. 2022



Certified that cartridge papers are not available.

[Signature]
Advocate

Solemnly Sworn Before me
by.....*[Signature]*.....
Being identified by.....*[Signature]*.....
At Cuttack on *[Date]*

Jyoti Ranjan Pattanah
Notary. Cuttack Town









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1
ANNEXURE-F/18

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P(C) No. 22622 of 2022

Maa Mangala Temple and
Kalyan Madap managing
Committee and Others. ... Petitioners.

-Vrs -

Union of India & Others. ... Opp.Parties.

**COUNTER AFFIDAVIT FILED ON BEHALF
OF THE OPP. PARTY NO. 18.**

I, Sisir Kumar Panda, aged about 50 years, S/o. Late Ram Prasad Panda, Advocate by Profession, resident of Nehru Nagar 7th Lane, Gosaninuagaon, Berhampur- 760003, P.S.- Gosaninuagaon, District: Ganjam, do hereby solemnly affirm and state as follows.

1. That I am the Opp. Party No.18 in this writ petition. I was the Applicant before the National Green Tribunal. I am competent to swear this affidavit.
2. That I have gone through the writ petition filed by the petitioners and understood the contents made therein. I am acquainted with the facts of the case.
3. That it is humbly submitted that the writ petition with the prayers to set aside/quash the order

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dtd.03.08.2022 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 106 of 2021/EZ is not maintainable at all. Furthermore, the averments advanced by the petitioners in the writ application have no merits for consideration on facts and law. Therefore, the writ petition is liable to be dismissed in limine.

4. That it is further humbly submitted that the petitioners have suppressed the material facts and have not approached this Hon'ble Court in clean hands. Therefore, the writ petition is liable to be dismissed in limine with cost.
5. That the averments made in paragraphs - 1 and 2 of the writ petition are misconceived and misleading and hence, are specifically denied. It is humbly submitted that the self designated and self declared Chairman representing the Petitioner No. 1 has not filed any single document to prove as chairmen of the Committee. The Petitioner No. 1 has no locus standi to approach this Hon'ble Court in the present form. It is apt to mention here that the State, SPCB, Central Government are not aggrieved to the order dtd.03.08.2022 passed by the learned National Green Tribunal, Eastern Zone Bench, Kolkata in

(1)
(2)
Not required

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O.A No: 106 of 2021/EZ. Thus, the attitude of the Petitioner No. 01 should be curbed with strong hand and other Petitioners being a third Parties have approached this Hon'ble Court by way of misleading facts. The Petitioners are not taking care of the temple and Kalyan Mandap Management affairs. In this Context, this Hon'ble Court may kindly direct for high level enquiry to find out the real truth. The Petitioners have sheltered before this Hon'ble Court to obtain order/orders by playing fraud. It is respectfully stated that there is no official record available in which shows that the Petitioners are Chairmen/Committee members of the temple and Kalyan Mandap Manging Committee. During the Course of proceeding before the learned NGT nobody was claimant on behalf of the temple/Kalyan Mandap. The State Respondents were also remained silent before the NGT and they have not disclosed the name of the present petitioners while hearing and disposal of the O.A No: 106 of 2021/EZ.

It is further humbly submitted that the self designated and self declared Chairman representing the Petitioner No. 1 is neither the Chairmen of the Maa Mangala Temple and Kalyan Mandap Managing Committee nor a party of the O.A No:

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106 of 2021/EZ. Hence, without any document, writ petition is not maintainable at all. Accordingly he was not a necessary and proper party in the National Green Tribunal Proceedings. In view of this the present writ petition is not maintainable in the eye of law.

6. That the averments made in paragraph - 3 of the writ petition are misconceived and misleading and hence, are specifically denied. It is humbly submitted that the Collector- Cum- District Magistrate, Ganjam, Odisha had filed his Counter affidavit dtd.30.04.2022 in O. A No. 106 of 2021/ EZ (NGT proceeding) and stated there in (Para-4, Page No: 95 of the Writ Petition) as follows:-

“It is also pertinent to mention here that the Respondent No: 14 vide its order dated: 27.03.1993, by exercising its power under Section 3A of OGLS (Amendment of validation) Act, 1975, has sanctioned the de-reservation of the Government lands in Khata No: 1375 plot No: 1509 admeasuring an Area of 3,600 Acers out of 11,500 Acers which had already lost its original Characteristics of Jalsaya. Further, on 19.08.1999, has sanctioned the de-reservation of the government lands in Khata No: 1375 plot No: 1509

admeasuring an Area of 1 Acers out of 7.900 Acers which had already lost its original Characteristics of Jalsaya. The Constructions such as Ray Projects, Consumer forum, Revenue Inspector Office, Anganawadi Centre, Gosaninuagaon Police Station, Temple. Khadya Jogan Bivag have been carried over the Plots after the said Plots had already been de-reserved and classified as Patita”.

It is crystal clear that the aforementioned constructions have been made over the Jalsaya land with reference to the area measuring Ac. 11.500 Decimal (Plot No: 1509 of Rakhita Khata No: 1375). The Mangala Mandir has been constructed over the Jalsaya Land i.e. Plot No: 1509 and the Kalayan Mandap name is not recorded in the NGT proceeding. Accordingly after hearing of the parties and carefully considering the material available on record as well the having regard to the observations made by the Hon'ble Apex Court, the learned NGT rightly passed order to demolish the Maa Mangla Mandir and restore the lands i.e. 11.500 Decimal (including the area of the Mangala Mandir) to its original Character. It is respectfully submitted here that the National Green Tribunal, Principal Bench, New Delhi had directed for demolition of Sri Sri Panchamukhi Hanuman

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Temple, Ratilo, which was constructed within 35 meters from the embankments of River Mahanadi vide its order dated 15.12.2020 passed in **Original Application No: 22/2020/EZ**. Aggrieved party approached to the Hon'ble Supreme Court of India 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. The order/orders dated: 15.12.2020 of the learned NGT has been confirmed by the Hon'ble Apex Court. It is crystal clear from the observations of the Hon'ble Apex Court that the temple is not coming under the parameter/definition of the place of Public Utility. The Petitioners are not aggrieved persons to challenge the order/orders of the learned NGT passed in its true spirit and also for the protection of the water Body. Copy of the original Revenue record of Rakhita Khata No: 1375 and its corresponding plots is annexed here to as **ANNEXURE- A/18 Series.**

7. That the averments made in the Para-4 of the Writ petition are not true and disputed and denied. The self declared chairman representing Petitioner No.1 is not at all chairmen and Petitioners No. 02 to 11 are not committee members in accordance with law.

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They are self declared Chairmen and Committee Members. They have not attached a single document in their Writ petition, it needs judicial scrutiny. Therefore, the Writ petition is not maintainable under the law.

8. That the averments made in the Para-5 of the Writ Petition are not correct. There is no cause of action arise to file this writ after order/orders passed by the learned NGT. The Petitioners have no right over the public land and have no right to challenge the order of the learned Tribunal. Hence, they are not aggrieved person. The State Government/ any other authority is not permitted/ allowed anybody to construct any temple or mandap herein, the Maa Mangla Temple/ Kalyan Mandap illegally by filling up the Jalasaya Land. In this context the Petitioners have also not filed any order in connection of the land allotted to them by any order of the Government. Thus, it is not understood how they are officially declared as chairmen/committee members of the Maa Mangla Mandir/Kalyan Mandap. The Petitioners have failed to submit any order in connection of the land allotment of the Jalasaya land for the purpose of construction of Maa Mangla Temple. Hence, the Writ Petition is

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not maintainable under the law and is liable to be dismissed.

9. That the averments made in Para-6 of the Writ Petition is not applicable to the present Case. The writ Petition is not maintainable under the law as well as facts and particularly the averments made in this affidavit at Para-4 to 8 and accordingly the Writ Petition is liable to be dismissed with cost. The Petitioners have not approached to this Hon'ble Court in clean hands, hence, the writ petition is liable to be dismissed on this ground alone.

10. That in reply to the averments made in Paras-7 and 8 of the Writ Petition, it is humbly submitted here that the "AGULA BANDHA" is situated over the total area measuring Ac.18.480 Decimal, out of total area the Government has constructed large number of projects in the area measuring Ac.11.500 decimal including the area of the Maa Mangla Temple by filling of the water Body and taking plea the area has been lost its original Characteristics. In this area Maa Mangla Mandir is illegally constructed by some greedy peoples for their personal benefit as well as business profit motive in the name of the Goddess by illegally encroaching

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water Body. Such Encroachment Could not be regularized as per the observations of the Hon'ble Supreme court of India in the matter of Pnchamukhi Hanuman Temple (Supra) with reference to the order dated 15.12.2020 passed in Original Application No: 22/2020/EZ. Aggrieved party had approached the Hon'ble Supreme Court of India in Civil Appeal Nos. 4598- 4599 of 2021 and the said Civil Appeals were also dismissed by the Hon'ble Supreme Court by order dated 10.08.2021. Copies of the NGT order dated 15.12.2020 passed in Original Application No: 22/2020/EZ and order dated: 10.08.2021 of the Hon'ble Supreme Court passed in Civil Appeal Nos. 4598- 4599 of 2021 is annexed here to as ANNEXURE-B/18 Series. It is humbly submitted here that even after order of learned Tribunal, the state authorities had not taken any steps in compliance of the orders of the learned Tribunal.

11. That the averments made in paragraph – 9.1 of the writ petition are false, incorrect, misconceived and misleading and hence, are specifically denied. It is humbly submitted that the petitioners have made an imaginary pleadings without any document to divert the attention of this Hon'ble Court. In reply

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to the the averments made in Para-9.2 of the Writ Petition, it is humbly submitted that the Municipal Commissioner and any other State Respondents had not disclosed the facts before the learned NGT while hearing and disposing of the O.A No: 106 of 2021/EZ. It presumes that the State Respondents and Commissioner, Berhampur Municipal Corporation were not interested to defend for the illegally constructed temple before the NGT. Hence, the averments made by the Writ Petitioners have no merit for consideration at that stage. The State authorities have no authority to defend for the illegal constructed temple. Thus, the Petitioners are being third parties having no title over the water body have approached this Hon'ble Court by taking some baseless plea, which is not tenable in the eye of law.

12. That the averments made in the Para-9.3 is not relevant to the NGT proceedings. The learned NGT has only issued direction to demolish the temple. Thus, the Petitioners raised new facts in the name of the Klayan Mandap, the actual intention is best known to them. In reply to the the averments made in Para-9.4 of the Writ Petition, it is humbly submitted that the averments made in the Para-9.4 is not covered under the parameter/definition of the

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Public Utility in view of the well settled principle decided by the Hon'ble Apex Court made in the Civil Appeal Nos. 4598- 4599 of 2021 by its order dated 10.08.2021. Furthermore, the averments made in the Paras-9.5 and 9.6 have no merit for consideration in view of the well settled principle observed by the Hon'ble Apex Court made in the Civil Appeal Nos. 4598- 4599 of 2021 by its order dated 10.08.2021.

13. That in reply to the the averments made in Paragraphs -10 to 25 of the Writ Petition, it is humbly submitted that the averments have no merit for consideration in view of the averments made above in this affidavit by this deponent. It is humbly submitted here that the observations made by the Hon'ble Apex Court in the matter of Jagpal Singh is not applicable to the present Case. The Petitioners are trying to mislead this Hon'ble Court by way of baseless pleading. The settled principle by Hon'ble Apex Court in the matter of Panchamukhi Hanuman Temple (Supra) is squarely applicable to the present Case. The learned NGT rightly passed order for demolition of illegal encroachments taking in to consideration of four corner of law as well facts. Furthermore, the writ

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petition is not maintainable by the petitioners. Therefore, the writ application is devoid of any merit and is liable to be dismissed.

14. That the averments which have not been answered specifically are deemed to have been denied. Furthermore, this deponent craves leave of this Hon'ble Court to file further affidavit, if required for proper adjudication of the case.
15. That in view of the above facts and submissions, the writ application is devoid of any merit and hence, the writ petition merits no consideration and is liable to be dismissed.
16. That the facts stated here and above are true to the best of my knowledge and based on records, which I believe to be true.

Identified by:

A.C.

DEPONENT.

CERTIFICATE.

Certified that A4 Size papers have been used.

Advocate.