

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH KOLKATA
ORIGINAL APPLICATION NO.05/2025/EZ**

IN THE MATTER OF:

ATANU BORTHAKUR.

...APPLICANT

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

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Date: 01.04.2025

Place: Kolkata

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**REJOINDER ON BEHALF OF THE APPLICANT TO THE AFFIDAVIT IN
REPLY FILED ON BEHALF OF RESPONDENT NO. 7**

1. The instant Rejoinder is being filed on behalf of the Applicant in response to the Counter Affidavit filed by the Respondent No. 7.
2. It is submitted that Respondent No.7, in the Counter Affidavit, has not controverted any of the contentious issues raised in the captioned Original Application and therefore, the same merits no consideration. The contentions of the Respondent No.7 in the Counter Affidavit are wholly misconceived, baseless and not tenable either in law or on facts. The reply filed by Respondent No.7 is merely an eye-wash and portrays a false and misleading picture before this Hon'ble Tribunal.
3. Save and except what has been stated in the captioned Original Application and what are matters of record, nothing contained in the Counter Affidavit should be deemed to have been admitted by the Applicant by reason of non-traverse or non-express denial, unless admitted herein.
4. The statements contained in paragraphs 1 to 5 of the Affidavit in Reply are matters of record and does not warrant any response.
5. Save and except what are matters of record, the contents of para 6-7 are denied and disputed. It is submitted that admittedly there is no final

District Survey Report (“**DSR**”) for the District of Udalguri. Despite being well aware of the fact there is no final DSR for the District of Udalguri and that DSR is mandatory as per various notifications, guidelines, judgments passed by this Hon’ble Tribunal and the Hon’ble Supreme Court of India before any mining activity can be carried out, the Respondent No.7 in complete dereliction of his duties and in utter violation of law permitted mining activities to be carried on in the District of Udalguri. Such acts on behalf of the Respondent No.7 shows that they have scant regard to the law of the land and on account of their negligence and dereliction have caused substantial irreversible damage to the environment. It is submitted that it is only when the Applicant moved the present application and this Hon’ble Tribunal passed the order dated 17.01.2024 directing stay of mining activities in the District of Udalguri, it is only then Respondent No.7 issued an office order dated 29.01.2025 directing stay of mining activities in the District of Udalguri. It is submitted that despite passing of the office order dated 29.01.2025, the Respondent No.7 has not implemented the order of 17.01.2025 passed by this Hon’ble Tribunal in its true sense and mining in the District of Udalguri, unlawfully and illegally continues unabated. Before dealing with the aspect that despite the passing of the order dated 17.01.2025 and office order dated 29.01.2025 illegal and unlawful mining activities continues unabated it essential to highlight certain other facts which have emerged from the reply filed by Respondent No. 7.

- i.** DSR for the District of Udalguri is under preparation and has not yet been finally approved.
- ii.** From the status report filed by the Divisional Forest Officer, Dhansiri Forest Division, Udalguri it appears that apart from the 4 mining sites mentioned in the present application there are 10 other mahals which are presently in operation under the Dhansiri Forest Division, Udalguri

District and the necessary Deed of Lease Agreement has been signed, Final Settlement order issued with Approved Mining Plan, Environmental Clearance granted and Consent to Establish (CTE) and Consent to Operate (CTO) has also been issued from the Pollution Control Board, Assam and the necessary kist money has been paid by them as per the settlement order. Although the list of running mahals is a part of the status report as Annexure -I and Annexure- II, however, the Respondent No.7 has deliberately and purposely not brought it on record before this Hon'ble Tribunal and neither supplied the same to the applicant herein. This act of the Respondent No.7 in itself indicates that he is trying to conceal and suppress material facts from this Hon'ble Tribunal.

- iii.** Further, from the status report filed by the Divisional Officer it is evident that in addition to the above, there are 13 work permits against Government Development and works are in operation against the indents placed by the various development departments on payment of advance royalty. There are also four stock offence of Sand and Stone against which on submission of offence report by the Range Officer concerned the necessary Royalty, fine etc. has been realised against the stock of seized minor minerals. That the list of work permits/stock offence was enclosed as Annexure -III to the status report, however, the Respondent No. 7 has deliberately and purposely not brought it on record before this Hon'ble Tribunal and neither supplied the same to the applicant herein. This act of the Respondent No.7 in itself indicates that he is trying to conceal and suppress material facts from this Hon'ble Tribunal.

- iv.** The fact-finding committee conducted the purported physical inspection of the Mahals on 04.02.2035 and 05.02.2025 and submitted their observations of the site visit. In the Inspection Report, the Fact Finding Committee has stated that Respondent No. 8 was carrying out mining activity in M/s Tarajuli Sand Gravel Mahal (Dhansiri River) till the time office order dated 27.01.2025 was passed. In respect of most of the other Mahals it is stated that no sand mining activity including JCB excavators, dumpers etc were observed on the sport during the visit.
- v.** It is submitted that the present inspection report is nothing but an eye wash and portrays a false and misleading picture before this Hon'ble Tribunal.
- vi.** It is submitted that the Applicant has filed an execution application wherein the applicant has clearly stated that unlawful and illegal mining activities continues unabated in the District of Udalguri and has attached necessary photos alongwith the geographical coordinates indicating the same.
- vii.** Upon hearing the submissions of the Applicant, this Hon'ble Tribunal by order dated 18.02.2025 directed Respondent No.7 to file an affidavit clearly stating what action has been taken against the violators who are carrying on illegal activities in the District of Udalguri. It further directed Respondent No.4 to file its counter affidavit showing what action has been taken against the illegal miners towards computation of Environmental Compensation.

- viii.** It is submitted no action has been taken by the Respondent No.7 against the violators who are carrying on illegal mining activities in the District of Udalguri. Further, till date no affidavit has been filed by the Respondent No.7 indicating as to what actions has been taken against the violators who are carrying on illegal mining activities in the District of Udalguri.
- ix.** Despite the specific directions given by this Hon'ble Tribunal on January 17, 2025, the illegal mining activities in the district continue unabated. The Applicant has been able to gather evidence, including photographs, clearly showing the ongoing mining activities after passing of the said order within the district of Udalguri. The photographs obtained the Applicant of ongoing mining activity are as recent as 27.02.2025 alongwith the geographical coordinated showing the places where illegal mining activity is still going on.
A true copy of photographs is annexed and marked as **"Annexure A-1"**.
- x.** In light of the fact that despite specific order passed by this Hon'ble restraining mining activities from being carried out in the District of Udalguri and directing Respondent No. 7 to ensure that mining activities in the District of Udalguri remain stayed, and despite the Respondents having full knowledge of the order, no steps have been taken to stop illegal mining.
- xi.** It is submitted that each day of illegal mining has severe, drastic, irreversible and long lasting effect on the environment. Its consequences are broad and affect

various aspects of ecosystems, biodiversity and the well being of local communities.

6. With respect to the statements contained in paragraph 8 and 9 of the Affidavit in Reply, save and except what are matters of record and save what would appear therefrom, all contentions contrary thereto and/or inconsistent therewith are denied and disputed. It appears from the document at pages 9 and 10 of the Reply being Annexure-I to Annexure-X, that the Respondent No.7 has issued an Order dated January 27, 2025 directing the Divisional Forest Officer, Dhansiri Forest Division to stop all mining activities across the Udalguri District. However, the petitioner submits that despite the orders passed by the Respondent No.7 and despite the categorical order dated 17.01.2025 passed by this Hon'ble Tribunal wherein it was expressly directed that all mining activities within the District of Udalguri shall remain stayed, illegal and unlawful mining activities are still continuing in the Udalguri District without any deterrence and no effective actions are being taken by the concerned Respondent authorities to ensure that no mining activities are carried out in the Udalguri District in the absence of a validly approved DSR. It is submitted that the Respondent No.7 in their counter affidavit have admitted that there is no final District Survey Report for the District of Udalguri. It is disputed that no unauthorised mining is being carried on in the Udalguri District.
7. With respect to the statements contained in paragraphs 10 to 12 of the Affidavit in Reply, save and except what are matters of record and save what would appear therefrom, all contentions contrary thereto and/or inconsistent therewith are denied and disputed. It is stated that presence of the huge opportunity of scientific mining for minor minerals for development and revenue of the states is present in the Udalguri District, does not create a right to carry out mining activities in violation of the applicable laws and the precedents passed by this Hon'ble Tribunal and the Hon'ble Supreme Court. On one hand the Divisional Forest Officer

[in his Memo at pages 17 and 18 of the Affidavit in Reply] and the Fact Finding Committee [in its Inspection Report at pages 19 to 27 of the Affidavit in Reply] has given an impression that no mining activities were being carried out in the Udalguri District and on the other hand, the Respondent No.7 [who is also the Chairman of the Fact Finding Committee] in his statements in the paragraph under reference is stating that the department has stopped its ongoing work to combat flood situation due to ban on collection of materials from the mines. Such statements made by the Respondent No.7 in the paragraph under reference and the relevant documents forming part of the Report are contradictory to one another.

8. In view of the above facts and circumstances, the petitioner submits that the Original Application filed by the petitioner be allowed and appropriate orders and/or directions as prayed for therein may be passed by this Hon'ble Tribunal.
9. Needless to mention that in event the DSR is approved, the process for floating a new tender, formulating a revised mining plan, or obtaining the requisite Environmental Clearance shall be undertaken strictly in accordance with the applicable legal provisions and the guidelines prescribed by this Hon'ble Tribunal and the Hon'ble Supreme Court in its various judgments.

Filed by:

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Place: Kolkata

Sl. No.	3285
Date	01-04-25

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IN THE MATTER OF:

ATANU BORTHAKUR ...APPLICANT
 UNION OF INDIA & ORS ...RESPONDENTS
 VERSUS

AFFIDAVIT

I, Atanu Borthakur, S/o Late Mukti Nath Borthakur, R/o Gandhibasti, Near Guwahati- 781003, aged about 51 years do hereby solemnly affirm and state on oath as under:

1. That I am Applicant in the captioned matter and as such fully conversant with facts and circumstances of the case and competent to swear this Affidavit.
2. That I have gone through the contents of the above Rejoinder that has been drafted by my counsel under my instructions and the contents of the same are true and correct to best of my knowledge and belief and nothing material have been concealed from this Hon'ble Tribunal.

Atanu Borthakur

DEPONENT

VERIFICATION

Verified on this 1st day of April, 2025 that the contents of the present affidavit are true and correct to my knowledge and nothing material has been concealed.

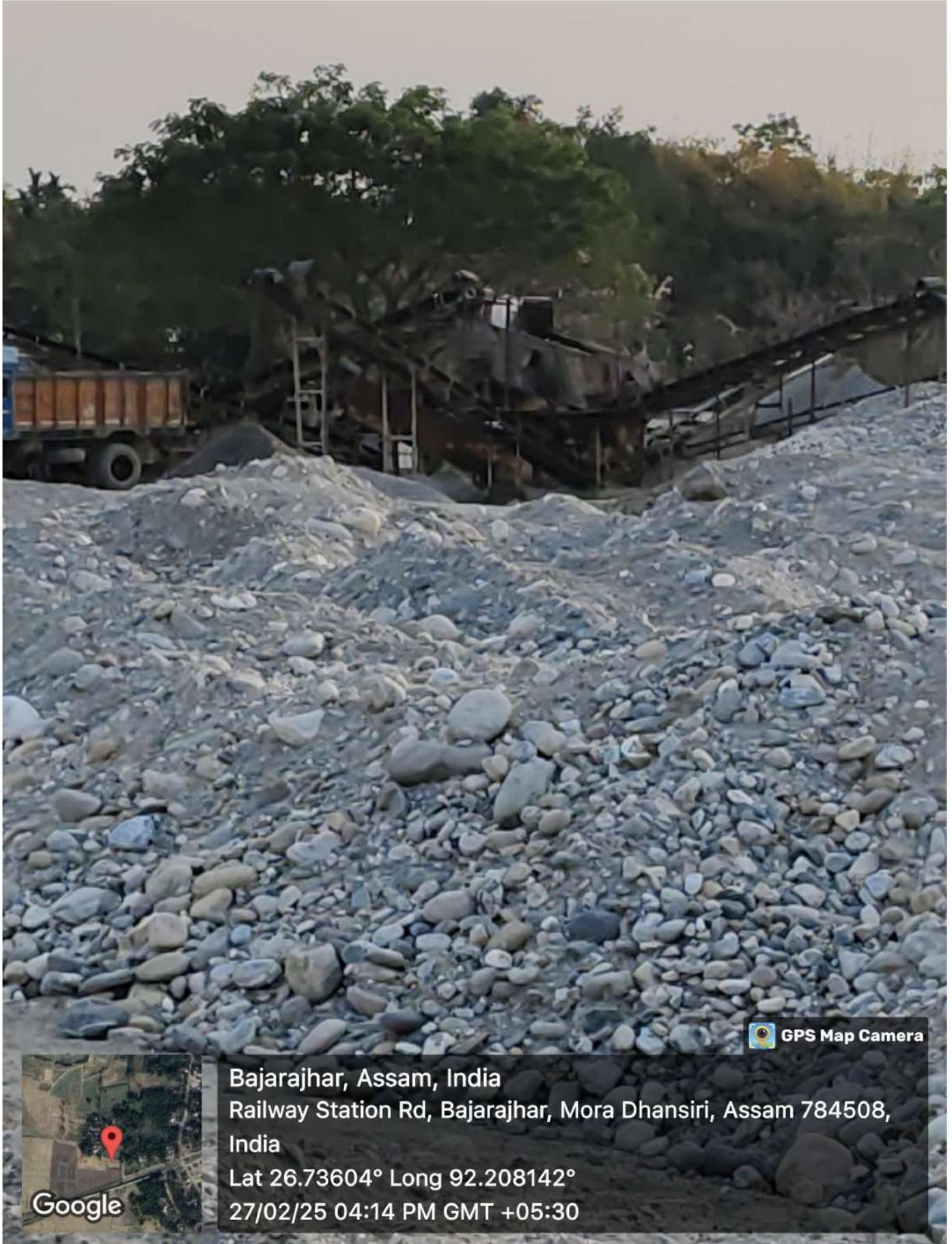
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P. Rabha
Pratima Rabha
NOTARY
Kamrup(Metro), Guwahati,
Regd.No.-KAM-27

Atanu Borthakur

DEPONENT

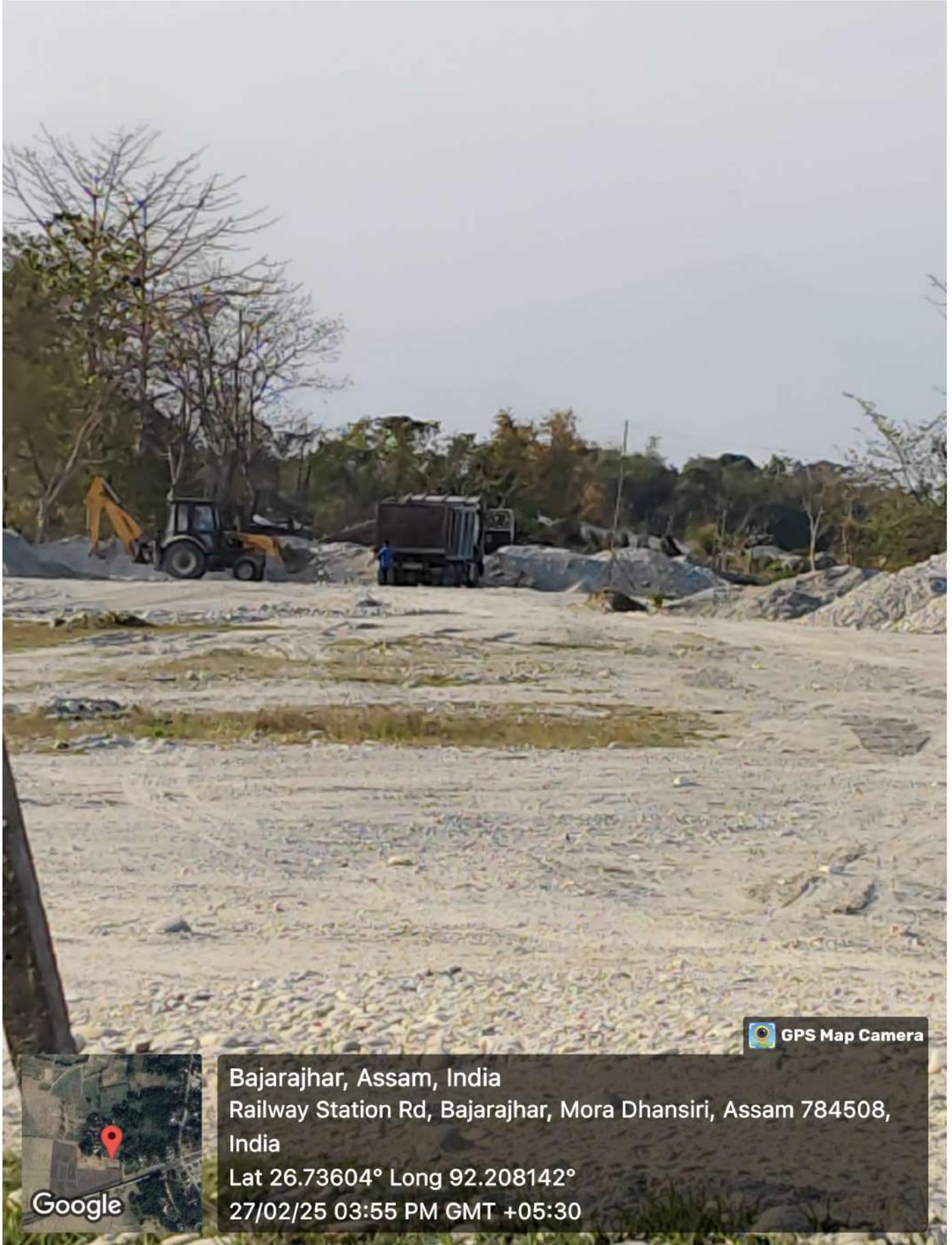
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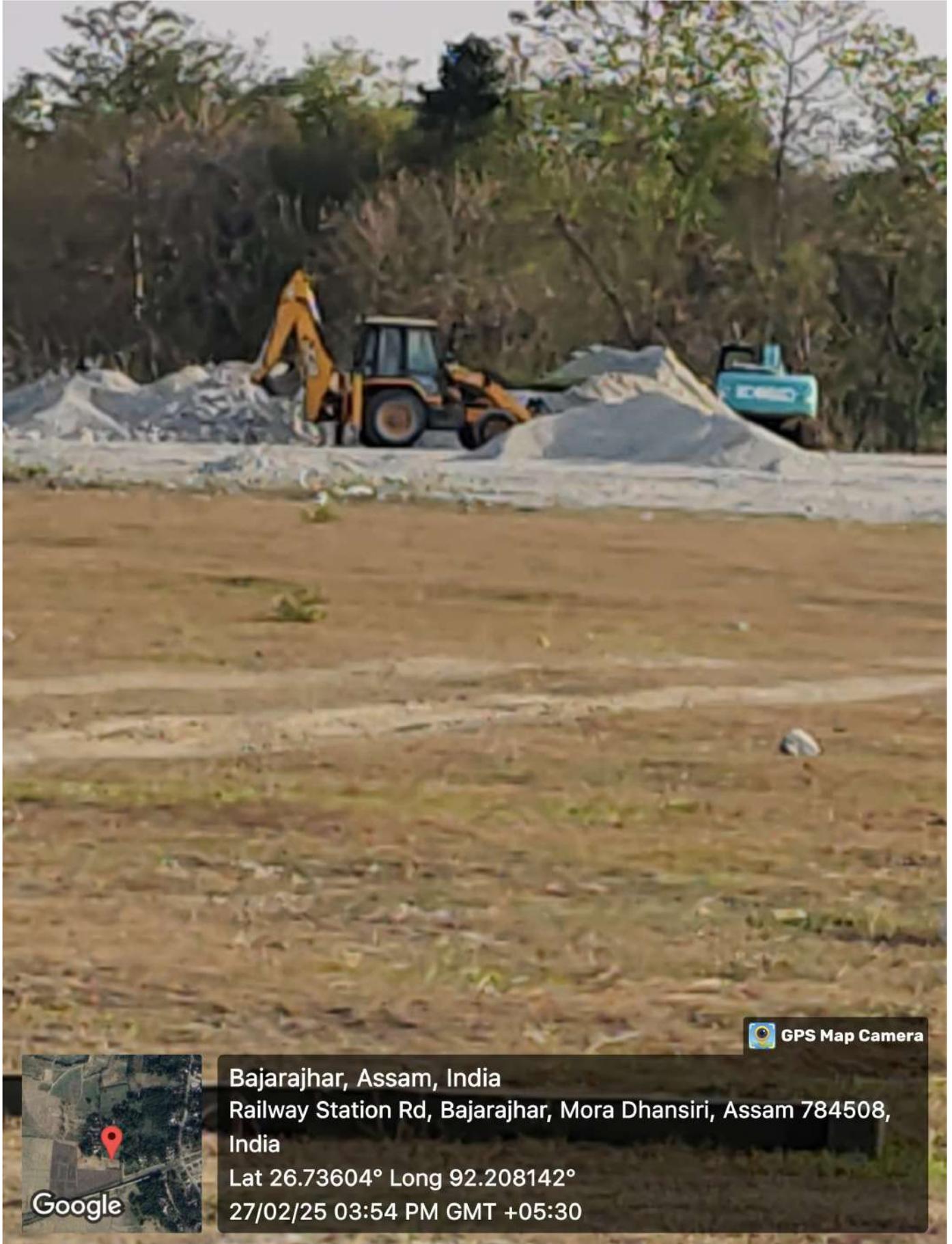
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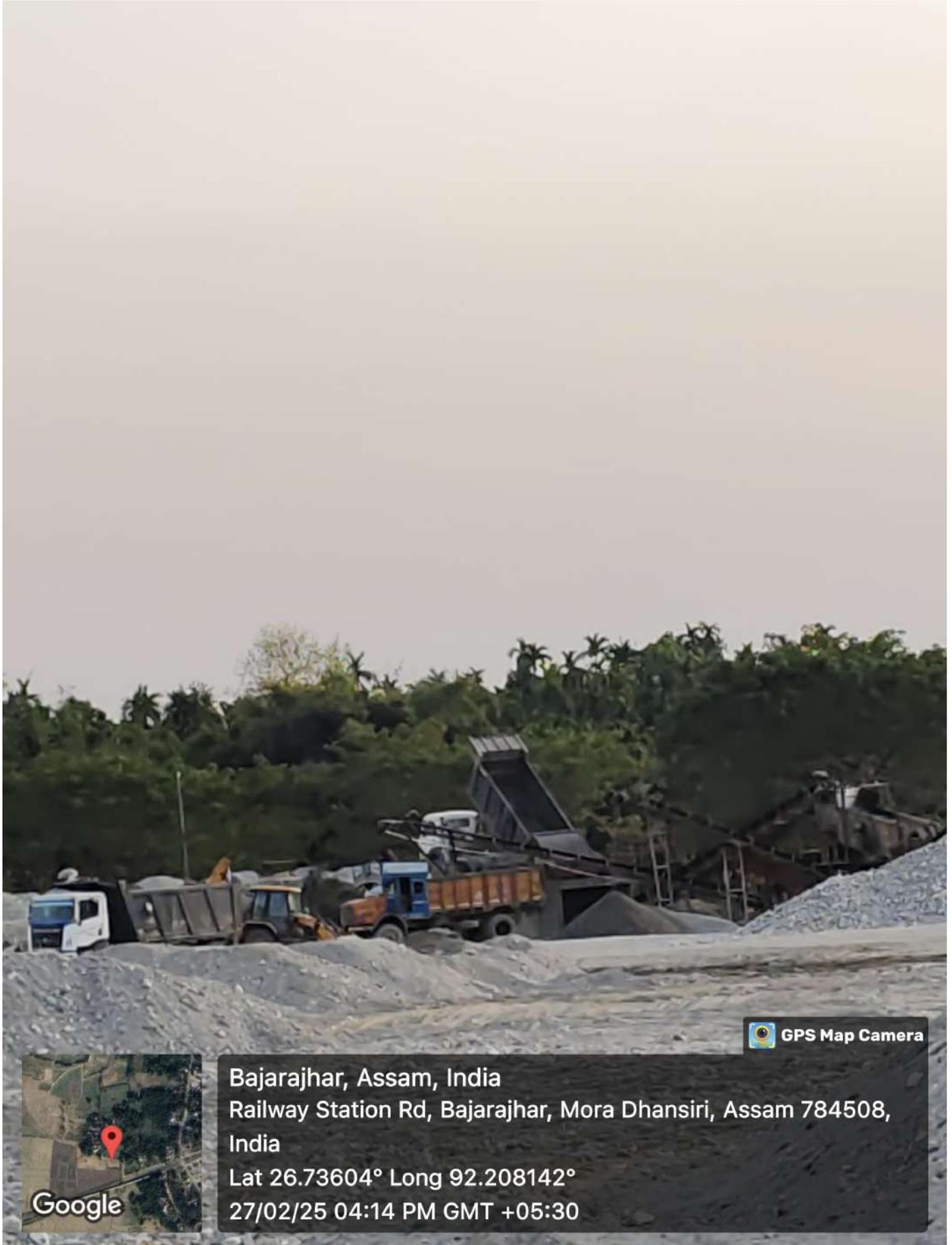
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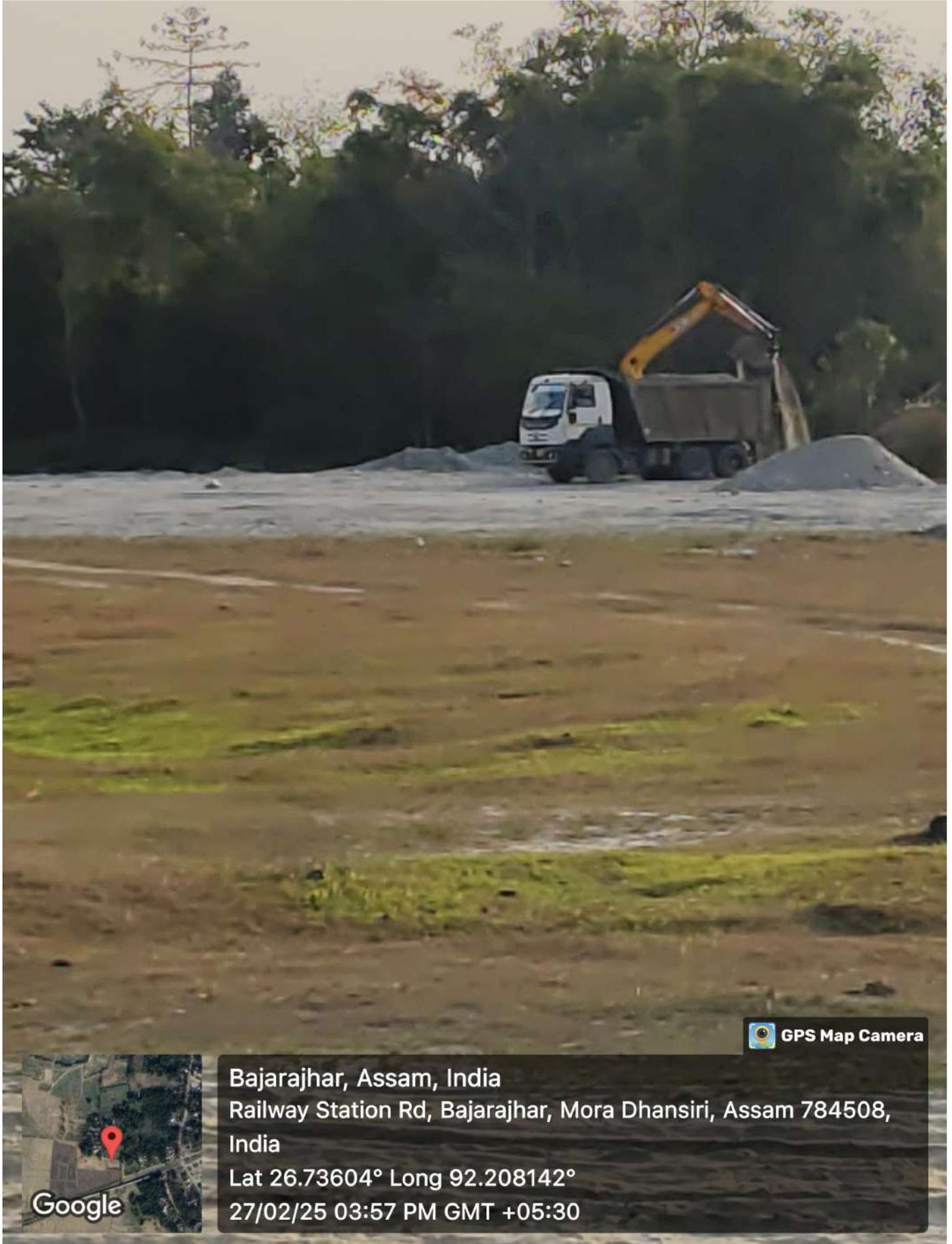
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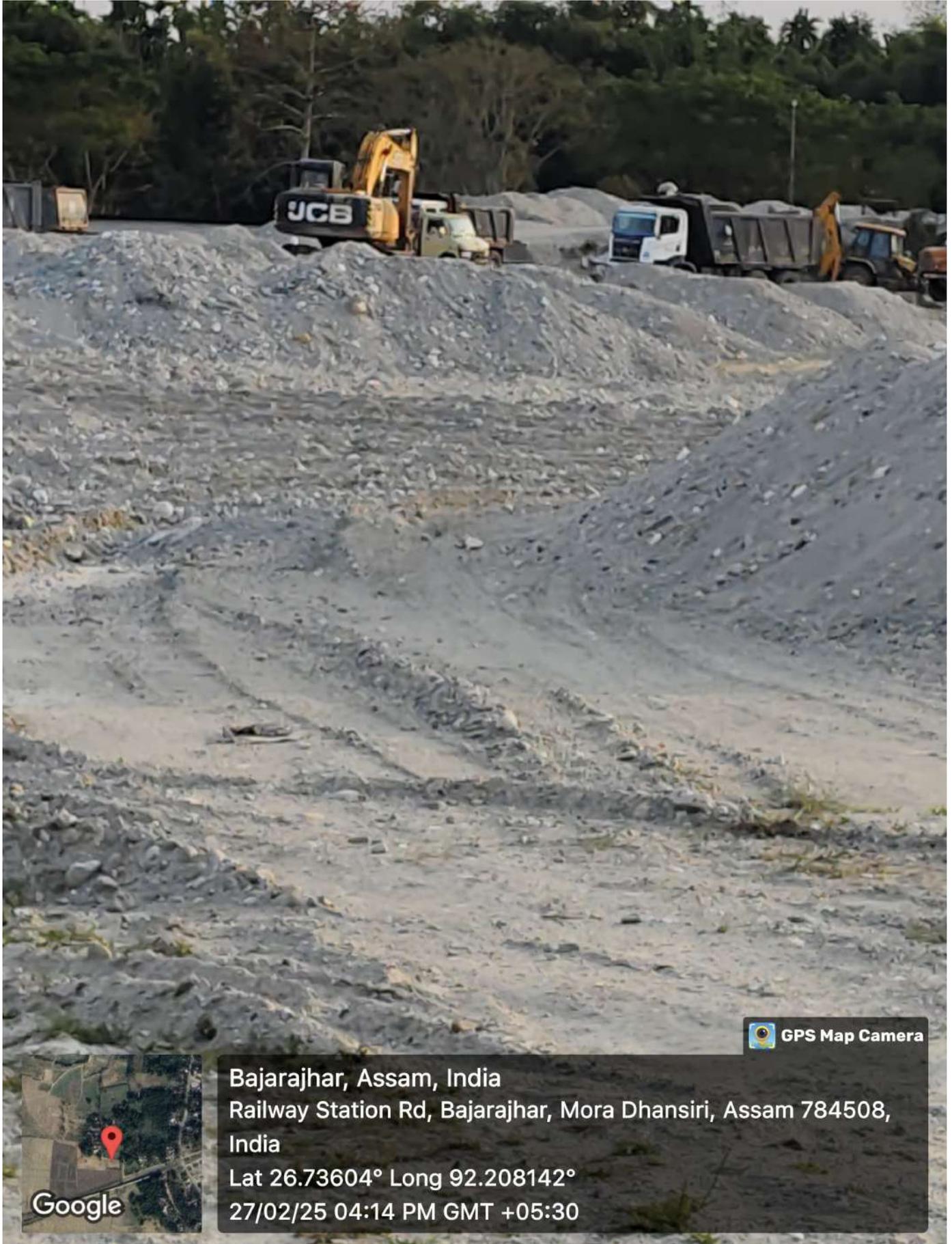
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Ashish Choudhury <ashishchoudhuryadv@gmail.com>

In the matter of Atanu Borthakur vs. Union of India (Original Application No. 05/2025/EZ)

1 message

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Tue, Apr 1, 2025 at 7:21 PM

To: dc-udalguri@nic.in, laxmi.kutum@assam.gov.in, shaque.acs@assam.gov.in, abhi.rajkhowa61@assam.gov.in, devikranti.1991@assam.gov.in, pragyajyoti.laskar@assam.gov.in, ananyadutta.2023@assam.gov.in, secy-moef@nic.in, cs-assam@nic.in, hoff-assam@gov.in, chairman@pcbassam.org, "dgmassam@gmail.com" <dgmassam@gmail.com>, mrdey@rediffmail.com, Amrita Pandey <amritalegal@gmail.com>, shayamvar_deb@hotmail.com

Dear Sir/Ma'am,

PFA the copy of the Rejoinder on behalf of the Applicant to the Affidavit in Reply filed by the Respondent No. 7 in the subject-captioned matter. Kindly treat this email as sufficient proof of service.

Regards,
Ashish Choudhury
Advocate on Record
Supreme Court of India
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Suite 1A, Basement,
New Delhi- 110014

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