

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA, WEST BENGAL
Finance Centre, 3rd Floor, New Town

MEMORANDUM OF REPLY TO THE MAINTAINABILITY PETITION
(Under Section 18 read with Sections 14 and 15 of the National Green Tribunal Act,
2010)

SARBANI BRAHMA
Petitioner/Complainant/Applicant

VERSUS
STATE OF WEST BENGAL & OTHERS
Respondents/Accused

ORIGINAL APPLICATION NO: 1 OF 2025 (EZ)

REPLY TO THE MAINTAINABILITY PETITION OF PRIVATE RESPONDENTS
NO. 12, 13, 14, 15, 16 & 23 IN O.A. 1 OF 2025 (EZ)

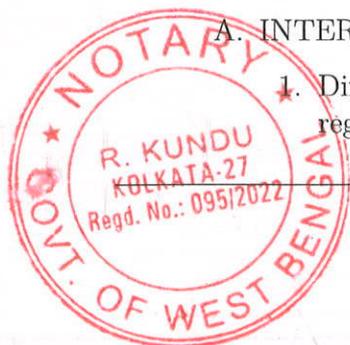
The humble petition on behalf of the applicant abovenamed

Most Respectfully Sheweth:

1. Denial of Allegations: The applicant denies and disputes each and every allegation made by the private respondents (Nos. 12, 13, 14, 15, 16, & 23) in their maintainability petition, save and except those forming part of the official records.
2. Maintainability of the Application: The applicant submits that Original Application No. 1 of 2025 (EZ) is maintainable before this Hon'ble Tribunal under Sections 14, 15, and 18 of the National Green Tribunal Act, 2010 (NGT Act), as it raises substantial questions relating to the environment, specifically the illegal filling and pollution of a pond at R.S. Dag No. 973/L.R. Dag No. 953, R.S. Khatian No. 1153, L.R. Khatian No. 495, 10022, 14368-14387, District - Howrah, Block - Domjur, Mouza - Bankra, Pin - 711403 (hereinafter "the schedule property"), within the ambit of enactments listed in Schedule I of the NGT Act, including the Water (Prevention and Control of Pollution) Act, 1974, and the Environment (Protection) Act, 1986.
3. Prayers in the Original Application: With reference to paragraphs 1 and 2 of the maintainability petition, the applicant denies the characterization of her prayers as solely concerning illegal pond filling. The applicant reiterates her interim and main prayers, as reproduced below, which seek restoration of the polluted pond to its pristine state, prevention of further environmental degradation, and regulatory actions by state authorities, including the Bankra-II Gram Panchayat under Section 23 of the West Bengal Panchayat Act, 1973:

A. INTERIM PRAYERS:

1. Direct state respondent authorities Nos. 1 to 7 to produce the assessment register and/or land register of the schedule property.



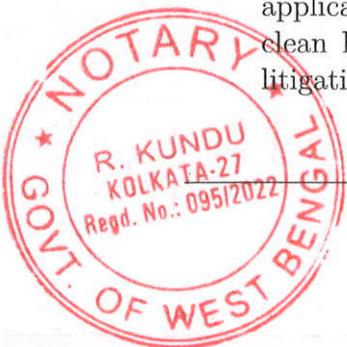
Sarbani Brahma

Filed by
Advocate

2. Direct state respondent authorities to formulate and place on record a strategy/scheme to prevent illegal pond filling at the schedule property.
3. Constitute a committee of state respondent authorities to formulate and implement a restoration plan and file an action taken report.
4. Direct private respondents to refrain from further filling of the pond at the schedule property.
5. Direct private respondents to refrain from illegal building constructions at the schedule property.
6. Direct state respondent authorities Nos. 1 to 7 to include the schedule property as a protected pond in the assessment register and/or land register of the Bankra-II Gram Panchayat.
7. Direct state respondent authorities Nos. 1 to 7 to issue no building sanction plan for the schedule property.
8. Ad-interim orders in terms of the above prayers.
9. Any other or further interim order as deemed fit by this Hon'ble Tribunal.

B. MAIN PRAYERS:

1. Direct respondents to remove all rubbish, solid waste, industrial effluents, and toxic substances from the pond at the schedule property and restore it to its original pristine state.
 2. Direct state respondent authorities to take legal action against private respondents responsible for illegal pond filling without statutory clearances.
 3. Direct state respondent authorities to formulate and place on record a strategy/scheme to prevent illegal pond filling.
 4. Constitute a committee to formulate and implement a restoration plan and file an action taken report.
 5. Direct state respondent authorities to include the schedule property as a protected pond in the Bankra-II Gram Panchayat's records.
 6. Direct state respondent authorities to produce the assessment register and/or land register of the schedule property.
 7. Direct state respondent authorities to issue no building sanction plan for the schedule property.
 8. Ad-interim orders in terms of the above prayers.
 9. Any other or further order as deemed fit by this Hon'ble Tribunal.
4. Denial of Suppression of Facts: With reference to paragraph 3 of the maintainability petition, the applicant categorically denies suppressing any material facts. The applicant submits that her application before this Hon'ble Tribunal is made with clean hands, focusing on environmental restoration, a cause distinct from prior litigations cited by the private respondents.



5. Prior Litigation in Calcutta High Court: With reference to paragraphs 4, 5, 6, 7, and 8 of the maintainability petition:

a. The applicant acknowledges that WPA 10707 of 2020 and M.A.T. 322 of 2021 before the Calcutta High Court concerned demolition of unauthorized constructions and injunctions against further construction on the schedule property, as admitted by the private respondents. The applicant submits that she is neither a party to nor connected with the petitioners or respondents in these cases, nor was she aware of their existence prior to filing O.A. 1 of 2025 (EZ).

b. In the order dated 27.04.2021 in M.A.T. 322 of 2021, a Division Bench of the Calcutta High Court passed the following operative part: "Since the principal allegation of the appellants herein before the writ Court was illegal construction made by the private respondents without obtaining any sanction plan, the Hon'ble Single Bench, in our view, was justified in directing the representation to be considered and disposed of by the concerned Gram Panchayat. The impugned order thus calls for no interference by this Court. We, however, extend the period fixed by the Hon'ble Single Bench for consideration and disposal of the representation by a period of four weeks from the date of passing of this order since a substantial period of the time allowed by the Hon'ble Single Bench has expired in the meantime on account of pendency of the instant appeal." Scan copy of order dated 27.04.2021 in M.A.T. 322 of 2021 is annexed herewith and marked as Annexure-D.

c. In the order dated 21.05.2025 in CPAN/912/2021 arising out of M.A.T. 322 of 2021, a Division Bench of the Calcutta High Court passed the following operative part: "Pursuant to the last order dated December 6, 2024, the petitioners have served a copy of this contempt application upon the alleged contemnor. Despite service, none represents the alleged contemnor. Affidavit of service is on record. Let a rule be issued against the alleged contemnor returnable on June 18, 2025." The applicant notes that on 18.06.2025, a holiday was declared by the Calcutta High Court. Scan copy of order dated 21.05.2025 in CPAN/912/2021 is annexed herewith and marked as Annexure-E.

d. The applicant filed WPA (P) 453 of 2024 before the Calcutta High Court for demolition of illegal constructions on the schedule property, a cause distinct from the environmental restoration sought in this application. The applicant submits that no prayer for restoration of the polluted pond to its pristine state was made in WPA 10707 of 2020, M.A.T. 322 of 2021, or WPA (P) 453 of 2024, making the present application unique and maintainable.

e. The applicant submits that persistent illegal pond filling with pollutants, as evidenced by Google images annexed to the original application, continued subsequent to the orders dated 09.02.2021 (WPA 10707 of 2020) and 27.04.2021 (M.A.T. 322 of 2021), necessitating the present application before this Hon'ble Tribunal.

6. Distinct Cause of Action: With reference to paragraphs 8 and 9 of the maintainability petition, the applicant denies that O.A. 1 of 2025 is based on the same cause of action as the High Court cases. The applicant submits that the cause of

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Advocate



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Advocate

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action in this application—restoration of a polluted pond to its pristine state—is distinct from demolition of illegal constructions, which was the focus of WPA 10707 of 2020, M.A.T. 322 of 2021, and WPA (P) 453 of 2024. The Supreme Court in Aditya Kumar Bose v. Union of India (NGT, 2015, affirmed by SC) held that prior litigation on related but distinct issues does not invoke res judicata if the cause of action differs. No court has adjudicated the restoration of the schedule property's pond, making this application maintainable.

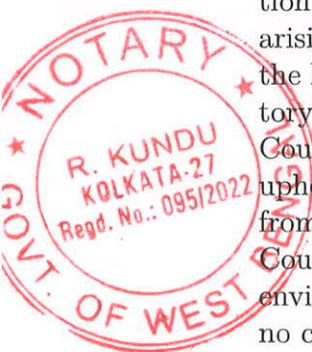
7. No Estoppel or Res Judicata: With reference to paragraph 10 of the maintainability petition, the applicant denies the applicability of estoppel or res judicata. The Supreme Court in J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. (1961 AIR 1170) clarified that res judicata applies only when the same issue between the same parties has been conclusively decided. As the applicant is not a party to the prior High Court cases, and the issue of pond restoration has not been adjudicated, these principles do not bar this application.
8. Simultaneous Operation of NGT Act and West Bengal Panchayat Act: The applicant submits that the National Green Tribunal Act, 2010, and Section 23 of the West Bengal Panchayat Act, 1973, can operate simultaneously over the schedule property, as their jurisdictions are distinct and complementary:
 - a. NGT Act, 2010: Under Sections 14 and 15, the NGT has exclusive jurisdiction to address substantial questions of environment, including pollution of water bodies, as upheld in Mantri Techzone Pvt. Ltd. v. Forward Foundation (2019 18 SCC 494). The applicant's prayers for restoration of the polluted pond and removal of rubbish, industrial effluents, and toxic substances fall within the ambit of the Water (Prevention and Control of Pollution) Act, 1974, and the Environment (Protection) Act, 1986 (Schedule I, NGT Act).
 - b. Section 23, West Bengal Panchayat Act, 1973: This provision empowers the Bankra-II Gram Panchayat to regulate construction on the schedule property, including approving or denying building plans and ensuring compliance with sanitation norms. The applicant's prayers (e.g., including the pond as protected in the Gram Panchayat's records and prohibiting building sanctions) align with this authority, as reflected in the Calcutta High Court's order dated 27.04.2021 in M.A.T. 322 of 2021, directing the Gram Panchayat to consider representations regarding unauthorized constructions.
 - c. Non-Exclusivity of Statutory Powers: The Supreme Court in J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. (1961 AIR 1170) and T. Barai v. Henry Hoe (1983 AIR 150) held that statutory powers under different Acts can coexist unless there is a direct conflict or express exclusion. The NGT's environmental jurisdiction does not conflict with the Gram Panchayat's construction regulation powers under Section 23. The applicant's prayers for restoration (NGT) and regulatory actions (Gram Panchayat) demonstrate harmonious operation.
 - d. Judicial Precedents Supporting Concurrent Jurisdiction:
 - In L. Chandra Kumar v. Union of India (1997 3 SCC 261), the Supreme Court clarified that specialized tribunals like the NGT can exercise juris-



diction within their statutory scope without precluding other statutory authorities' powers. The NGT's role in restoring the pond does not bar the Gram Panchayat's authority under Section 23.

- In T.N. Godavarman Thirumulpad v. Union of India (1997 2 SCC 267), the Supreme Court recognized that environmental protection involves multiple authorities, including local bodies and tribunals, working cooperatively. The applicant's prayer for a committee involving state authorities, including the Gram Panchayat, aligns with this framework.
- In Mantri Techzone Pvt. Ltd. v. Forward Foundation (2019 18 SCC 494), the Supreme Court upheld the NGT's jurisdiction over water body violations, even when local authorities had granted construction permissions, affirming that local actions do not bar NGT's powers.

9. Exclusive Jurisdiction of NGT: With reference to paragraph 11 of the maintainability petition, the applicant submits that this Hon'ble Tribunal has exclusive jurisdiction under Section 14 of the NGT Act to adjudicate environmental restoration, as no other court, including the Calcutta High Court, is seized of the matter concerning restoration of the polluted pond to its pristine state. The Supreme Court in Talli Gram Panchayat v. Union of India (2022 LiveLaw (SC) 614) affirmed the NGT's role in environmental disputes, subject to procedural compliance. The applicant's prayers for restoration and prevention of further pollution are within this jurisdiction.
10. Clean Hands and Bona Fide Intent: The applicant submits that she has approached this Hon'ble Tribunal with clean hands, seeking restoration of the polluted pond for environmental protection, a public interest cause. The applicant's lack of connection to prior High Court litigants and her distinct prayers for restoration, supported by evidence of ongoing pollution (Google images), reinforce the maintainability of this application.
11. No Bar from Prior Litigation: The prior High Court cases (WPA 10707 of 2020, M.A.T. 322 of 2021, and WPA (P) 453 of 2024) addressed demolition and construction injunctions, not environmental restoration. The mere pendency of CPAN/912/2021 arising out of M.A.T. 322 of 2021, concerning contempt for non-compliance with the High Court's order on unauthorized constructions, does not constitute a statutory bar upon this Hon'ble Tribunal to hear O.A. 1 of 2025 (EZ). The Supreme Court in Forward Foundation v. State of Karnataka (NGT, 2016, affirmed by SC) upheld the NGT's authority to order restoration of polluted water bodies, distinct from local governance issues. The applicant's prayers do not overlap with the High Court's jurisdiction, and Section 33 of the NGT Act (overriding effect) ensures that environmental matters under Schedule I prevail over conflicting provisions, though no conflict exists with Section 23.
12. Prayer for Dismissal of Maintainability Petition: Under the facts and circumstances, the applicant humbly prays that this Hon'ble Tribunal:
 - a. Dismiss the maintainability petition of private respondents Nos. 12, 13, 14, 15, 16, & 23 in limine.
 - b. Allow the interim and main prayers in O.A. 1 of 2025 (EZ) for restoration of



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Advocate

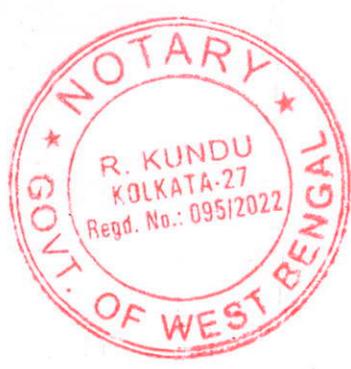
Sarbanī Boraone

the polluted pond to its pristine state, prevention of further filling and construction, and regulatory actions by state authorities, including the Bankra-II Gram Panchayat.

c. Pass any other or further order as deemed fit and proper.

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

Sarbanī Boraone
2/7/25



02 JUL 2025

Sl. No. 138 dated 02 JUL 2025

BEFORE THE NATIONAL GREEN TRIBUNAL
AT EASTERN ZONE BENCH, KOLKATA, WEST BENGAL
FINANCE CENTRE, 3RD FLOOR, NEW TOWN

MEMORANDUM OF REPLY TO THE MAINTAINABILITY PETITION
(Under Section 18 read with Section 14, 15 of the National Green Tribunal Act, 2010)

SARBANI BRAHMA
Petitioner/Complainant/Applicant

BEFORE THE NOTARY
ALIPORE JUDGES' COURT

VERSUS
STATE OF WEST BENGAL & OTHERS
Respondent/Accused

ORIGINAL APPLICATION NO: 1 OF 2025 (EZ)



AFFIDAVIT

I, Sarbani Brahma, daughter of Nalini Ranjan Brahma, by faith Hindu, by occupation service, aged about 66 years, residing at premises No. 278 Kalighat Road, P.S. Kalighat, Kolkata-700026, state that the statement made above in the foregoing paragraphs 1 to 12 are true to my knowledge and belief, and rest are humble submissions before the Learned Court, do hereby solemnly affirm and say as follows:

1. That I am the Petitioner herein and as such I am well acquainted with the facts and circumstances of this case. Hence, I am competent enough to affirm this Affidavit.
2. That the statements contained in Paragraph Nos. 1 to 12 are true to my knowledge and belief and rest are my respectful submissions before this Honorable Tribunal.

Sarbani Brahma

Prepared in my office

The deponent is known to me

Giasul Islam
Giasul Islam, Advocate
Enrolment No. WB/2474/2010

Giasul Islam
Advocate

I certify that all the annexure are legible

Solemnly declared and affirmed
before me on identification at
Alipore Judges' Court, Kolkata-
700 027 at Alipore, under the
Notaries Act. at.....A.M./P.M.

RJK
RAJSEKHAR KUNDU
Notary, Govt. of West Bengal
Regd. No.: 095/2022



27.04.2021
Item No.3
Crt.No.11
K.B.

M.A.T. 322 of 2021
with
I.A. No. CAN 1 of 2021
(Through Video Conference)

Buland Javed & Anr.
-Versus-
The State of West Bengal & Ors.

Mr. Arif Ali
Mr. Chandrakant Kushwaha
.... For the appellants.

Mr. Manash Kumar Kundu
Mr. Sudip Sarkar
.... For the State-respondents.

Mr. Haradhan Banerjee
Mr. Amitava Pain
Mr. Partha Pratim Mukhopadhyay
.... For the Private Respondents.

With the consent of the parties, the instant appeal is taken up for hearing by treating the same as on the day's list.

The writ petitioners have preferred the instant appeal challenging an order dated February 9, 2021 passed by a Hon'ble Single Bench in WPA No.10707 of 2020.

In the writ petition the appellants have alleged that the Private respondents are making illegal and unauthorised construction on a water body being R.S. Dag No.973 corresponding to L.R. Dag No. 953, J.L. No.55 in R.S. Khatian No.1153 within Mouza - Bankra under Police Station Domjur in the District of Howrah.



The appellants submitted a representation before the Proadhan of Bankra-II Gram Panchayat praying for taking immediate steps to stop the ongoing construction and for demolition of the structure which has already been constructed alleging that the construction was made without obtaining permission and in violation of the provisions of Section 23 of the West Bengal Panchayat Act, 1973.

The Hon'ble Single Judge, by the order impugned, disposed of the writ petition by directing the Proadhan of the concerned Gram Panchayat to consider and dispose of the representation of the appellants strictly in accordance with law and by passing a reasoned order within a specified time frame.

Being aggrieved against the aforesaid order, the writ petitioners have preferred the instant appeal.

Mr. Ali, Learned Advocate for the appellants submits that the Hon'ble Single Judge instead of directing disposal of the representation by the Proadhan of the concerned Gram Panchayat ought to have also directed the competent authority under the Inland Fisheries Act to consider the allegation of the appellants that the Respondents herein were making construction in a portion of a water body by illegally filling up of the same.

Mr. Ali further contended that the Hon'ble Single Judge ought to have passed an order of injunction restraining the respondents from making any further



construction on the property in question till a decision is taken by the concerned authorities on the representation of the appellants.

Mr. Banerjee, Learned Advocate appearing for the Private Respondents raised a preliminary objection with regard to the maintainability of the instant appeal as, according to him, the impugned order cannot be said to be a "judgement" against which an appeal lies under Clause 15 of the Letters Patent.

Mr. Banerjee relied upon a judgement of the Hon'ble Supreme Court of India in the case of *Shah Babulal Khimji vs. Jayaben D. Kania and Another* reported at (1981) 4 *Supreme Court Cases* 8 in support of his aforesaid contention.

Mr. Kundu, Learned Advocate appears for the State and submits, on instructions, that no construction was found to be going on at the disputed property in recent times.

In reply, Mr. Ali submits that since the writ petition was finally disposed of by the order impugned, the same falls within the expression "final judgement". As such, according to Mr. Ali, an appeal lies before the Hon'ble Division Bench under Clause 15 of the Letters Patent against such order.

We have heard the Learned Advocates for the parties and have perused the materials on record.



(11)

The Hon'ble Supreme Court in Shah Babulal Khimji (supra) held that if any order has the effect of finally determining any controversy forming the subject matter of the litigation, such an order will normally constitute "judgement" within the meaning of Clause 15 of the Letters Patent to be appealable under the provisions thereof.

Upon perusing the order impugned, we are of the concerned view that the order impugned did not finally determine the controversies between the parties to the writ petition and, therefore, such order cannot be said to constitute "judgement" under Clause 15 of the Letters Patent to be appealable under the provisions thereof.

Furthermore, it is evident from the materials on record that a suit being Title Suit No.844 of 2020 is pending before the Learned Civil Judge, 4th Court at Howrah with regard to the rights of the private parties in respect of the property which is the subject matter of the instant writ petition. From the materials placed it further appears that the Civil Court has passed an order of status quo in respect of the property in question. Thus the Hon'ble Single Bench was justified in not passing an order of injunction in respect of the property which was the subject matter of the writ petition.

Since the principal allegation of the appellants herein before the writ Court was illegal construction made by the private respondents without obtaining any sanction plan, the Hon'ble Single Bench, in our view, was justified in



directing the representation to be considered and disposed of by the concerned Gram Panchayat. The impugned order thus calls for no interference by this Court.

We, however, extend the period fixed by the Hon'ble Single Bench for consideration and disposal of the representation by a period of four weeks from the date of passing of this order since a substantial period of the time allowed by the Hon'ble Single Bench has expired in the meantime on account of pendency of the instant appeal.

With the aforesaid directions, the appeal being MAT 322 of 2021 with IA No. CAN 1 of 2021 are disposed of. There shall, however, be no order as to costs.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.)

(Subrata Talukdar, J.)



ANNEXURE- "E"

166

13

21-05-2025
Item no.1
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Special Civil Jurisdiction
Appellate Side

CPAN No.912 of 2021
Buland Javed & Anr.

-vs-

Smt. Rejina Begam Sardar
arising out of
MAT No.322 of 2021

Rule drawn on
the following
page

Mr. Giasul Islam ...for the petitioners

Pursuant to the last order dated December 6, 2024,
the petitioners have served a copy of this contempt
application upon the alleged contemnor.

Despite service, none represents the alleged
contemnor. Affidavit of service is on record.

Let a rule be issued against the alleged contemnor
returnable on June 18, 2025.

All parties are to act on the server copy of this order
duly downloaded from the official website of this court.

[Hiranmay Bhattacharyya, J]

[Supratim Bhattacharya, J]



**BEFORE THE NATIONAL GREEN TRIBUNAL
AT EASTERN ZONE BENCH, KOLKATA, WEST
BENGAL
FINANCE CENTRE, 3RD FLOOR, NEW TOWN**

In the matter of:
**ORIGINAL APPLICATION NO : 1 OF 2025
(EZ)**

-And-

In the matter of:

**SARBANI BRAHMA.....Petitioner/
Complainant/Applicant**

VERSUS

**STATE OF WEST BENGAL &
OTHERS.....Respondent/Accused**

**REPLY TO THE MAINTAINABILITY
AFFIDAVIT OF SERVICE PETITION.**

**OA/1/2025(EZ) being Sarbani Brahma
Vs State of West Bengal & Ors,**

GIASUL ISLAM
Advocate
High Court Bar Association
Room No.18.
Kolkata -700001
Email: adv.giasul@gmail.com
Mob - 9433014080

