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BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONAL BENCH, KOLKATA, WEST BENGAL  
FINANCE CENTRE, 3<sup>RD</sup> FLOOR, NEW TOWN

**MEMORANDUM OF APPLICATION**

[Under Section 18 (1) read with sections 14, of the National Green Tribunal Act,  
2010]

Original Application No. 182 of 2023

Sushovan Shaw

..... Applicant

AND

MOEF & ORS

..... Respondent

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	A copy of Satellite Map of 2011 is annexed herewith marked in red depicting the encroachment and marked as Annexure A	11

Paushali Banerjee

Advocate

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**REJOINER TO THE COUNTER AFFIDAVIT OF RESPONDENT NO. 3, SHYAM SHELL & POWER LTD**

I, Sushovan Sow, Son of Sudhamai Shaw, aged about 26 years residing at Village-Gopedanga, PO- Amdahi, Laudoha Faridpur, Amdahi, Burdwan, PIN-713381, by occupation Social Service, do hereby solemnly affirm and say as follows:

1. I am the Applicant in this herein and as such I am fully conversant with the fact and circumstances of the case, as such I am competent to affirm this affidavit in this instant matter.
2. I say that before dealing with the Affidavit, the Applicant seek liberty to place on record certain preliminary objections that are crucial for a holistic adjudication of the present matter.

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1. I am the Applicant in this herein and as such I am fully conversant with the fact and circumstances of the case, as such I am competent to affirm this affidavit in this instant matter.
2. I say that before dealing with the Affidavit, the Applicant seek liberty to place on record certain preliminary objections that are crucial for a holistic adjudication of the present matter.

( a) I say that it is a clear case that found that respondent no.3 have encroached 8.59 acres of forest land , or approximately 3.53 ha of forest land in violation of the Forest Conservation Act, 1980 and the Orders of and the Hon'ble Supreme Court and this Hon'ble Tribunal. That on 24.08.2023, the report of the DFO inter alia affirmed that -

- i. JL No.51, Plot No. 473 is Notified Forest Land (Protected Forest);
- ii. The Land is recorded in favour of DFO Durgapur and classification is jungle (forest)
- iii. The survey report of the land department, Government of West Bengal has stated that the user agency has encroached upon 8.73 acre of forest land and a big RCC construction has been undertaken over an area of 1.17acre (0.74 ha).
- iv. During inspection it was found that endangered/unique species of flora and fauna such as wild boar. Indian jackle, Bengal fox, wolf, jungle cat, pangolin, porcupine, rock python, cobra, Russell's viper etc. in the nearest forest areas under this diversion proposal.

Copy of the Report as obtained from the Parivesh Portal of Respondent No.1. MoEF&CC is marked and annexed as Annexure A/1 with the rejoinder of the Applicant to Respondent no.2.

3. That thereafter, the Enquiry report dated 12.09.2023 of Superintendent Police, Jamuria Police Station has also categorically informed that Respondent No. 3

(4)

has encroached upon 8.73 acres (which is 3.53 ha) of forest land with an RCC structure on 0.79 ha of forest land.

4. That post the inquiry by the Superintendent of Police, the Respondent No. 4 (office In Charge of the Police Station) has stated that the Investigating Officer (IO) has submitted the charge sheet against one Bajranglal Agarwal, (designation in the company) and one Alok Kumar Mishra (designation in the company under section 26, 30, 32, 33 and 63 of Indian Forest Act, 1927 and Section 4C of West Bengal Land Reform Act, 1955, before the Court of the Learned Chief Judicial Magistrate, Court, District: Paschim
  
5. That during the pendency of the abovementioned encroachment case before the Ld. Chief Judicial Magistrate, the Respondent No. 3 applied for In-Principle Approval for 0.47 ha of forest land on 27.08.2023. It is pertinent to note that in its application for Forest Clearance, Respondent No. 3 has stated that only 0.47 ha of forest land has been encroached, despite the submission of the Forest Department that 3.53 ha has been encroached upon. The copy of the parivesh application of the Respondent No. 3 is marked and annexed as Annexure A/2 with the rejoinder of the Applicant to Respondent no.2. It is also stated that the encroachment of forest land was done by the Respondent no.3 in 2011. A copy of Satellite Map of 2011 is annexed herewith marked in red depicting the encroachment and marked as Annexure A to this Affidavit.

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6. That thereafter, during the processing of the application for In Principle approval, the DFO has raised the query and submitted that there is a clear encroachment of 3.48 ha or 8.73 acres of forest land. Copy of the DFO response to EDS is marked and annexed as Annexure A/3 with the rejoinder of the Applicant to Respondent no.2.
7. That a final site inspection was conducted by the ADFO, Beat officer, Forest Guard and Ban Sahayak on 23.11.2023. It is pertinent to note that the site inspection notes that construction was carried out over 0.47 ha of land by the Project Proponent/Respondent No. 3. Out of 3.53 ha, In principle approval is sought for 0.47 ha and for the balance encroached forest land amounting to 3.0629 ha, soil filling has been undertaken by the Respondent No.3. Copy of the Site Inspection Report is annexed at Annexure A/4 with the rejoinder of the Applicant to Respondent no.2. Clearly, the encroachment is established with such non forestry activity which violates the FCA, 1980 and therefore not only such forest land should be resumed back to the Forest Department but even the Environment clearance should be held as void ab initio
8. That from the above, it is also evident that the Forest Department has merely processed the application for In Principle approval for 0.47 ha of land without any action for encroachment of 3.0629 ha of land and without examining whether such post facto use is a site specific use or not. Merely by planting

certain plantations without any formal approvals, the Project Proponent has been allowed to go scot-free for his illegal action. It is pertinent to note that the encroachment assumes a more serious illegality in view of the presence of Schedule I species such as Pangolin and Porcupine and several Schedule II species such as the Bengal Fox, Cobra, among others. In view of the same, such encroachment should not have been allowed by the Forest Department.

Regularization of Forest Encroachment cases only in exceptional circumstances

9. I now propose to deal with each of the allegations contained in the Affidavit of respondent no.3 in seriatim( hereinafter referred to as the said Affidavit). Save and except what are matters of record and/or specifically admitted by me hereinafter all other allegations contained in the said Application shall be deemed to have been denied by this answering respondent. I have been advised to traverse only those portions of the said application which are material for the purpose of disposal of the said Application

10. That now dealing with the said Affidavit I say with regard to paragraphs 1,2,3,4,5,6, 7, 8,9 & 10 that the term 'environment' has to be interpreted liberally. The environmental dispute cannot be cribbed, cabined or put in the small compass of 'personal disputes' or 'property disputes' or "disputed rights between two groups" or "individual rights". The damage caused to environment has to be looked from holistic angle. Any person may raise environmental dispute

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irrespective of his being personally affected. Protection of environment, is related to the fundamental right guaranteed under Article 21 of the Constitution and as such, anyone who has bonafide intention to protect environment can approach the Tribunal for the purpose of protection of such right. The Apex Court in a three judges bench Judgment made it clear that "...any person or organization who may be interested in the subject matter is permitted to approach the NGT".

11. That with regard to paragraph 11,12, 13 & 14 It is submitted that environment pollution cannot only effect one person it effects the entire society therefore matters related to environment pollution cannot be only effecting the Applicant.

12. That with regard to paragraph 15, I specifically deny and dispute each and every allegation contained therein as if the same were set out herein seriatim and specifically traverse, and put the respondent to strict proof thereof.

13. That with regard to paragraph 16,17,18,19,20, 21,22,23,24,25, 26, 27,28 I say that It is however pertinent to note that the subsequent Handbook of Guidelines for Effective and Transparent Implementation of the Provisions of the Forest Conservation Act, 1980', (Hereinafter referred as the 'Handbook') clarify in para1.21 of Chapter I of Court Orders and General Clarifications that proposals seeking ex post facto approval from the Central Government under the Forest Conservation Act, 1980 are normally not to be entertained. The Central

Government will accord its approval "only in exceptional circumstances", which may justify condonation. Annexure I of the said Affidavit is the site inspection report which clearly states that 8.73 acres of forest land is encroached and construction is carried out by the respondent in 0.47 hectares of encroached land out of the total 8.73 acres of encroached forest land which is completely contrary to the statements of the respondent in paragraph 28 of the said Affidavit.

14. That with regard to paragraph 29,30, 31, 32 33, 34, 35, 36, 37, 38,39 &40 I say that I repeat that the subsequent Handbook of Guidelines for Effective and Transparent Implementation of the Provisions of the Forest Conservation Act, 1980', (Hereinafter referred as the 'Handbook') clarify in para1.21 of Chapter I of Court Orders and General Clarifications that proposals seeking ex post facto approval from the Central Government under the Forest Conservation Act, 1980 are normally not to be entertained. Para 1.16 categorically states that ex post facto are normally not to be entertained except in in exceptional circumstances and not as a matter of rule, however with regard to the respondent no.3 Stage I clearance is granted in violation of the law, without any reason, there is no exceptional circumstance in the matter of respondent no.3 except that already 8.73 acres of forest land is encroached and construction is started on 0.47 hectares of forest land by respondent no.3 and the land is required by the respondent no.3. Therefore the Stage I clearance granted to respondent no.3 is bad in law and void ab initio.

15. That with regard to paragraph 41,42, 43, 44, 45 46,47 & 48 I deny the contention of the respondent no.3 in paragraph 41 that the respondent acted in good faith, it is clear from the EIA report that is the part of the EC annexed as annexure A to the original application that the respondent obtained the EC by committing fraud on the respondent authorities, where it is stated by the respondent authority that no forest land is involved in the project. I say that in accordance with section 14 of the NGT Act 2010, The Tribunal shall have jurisdiction over all civil cases where a substantial question relating to environment is involved. Therefore any citizen can invoke the provisions of law before this Hon'ble Tribunal.

15 (a) The Applicant submits that as only Stage I clearance is provided it can be said that the respondent still now does not have Forest Clearance. Forest clearance is given in three stages. In 1<sup>st</sup> stage, the proposal shall be agreed to in-principle or Stage I Clearance , in which usually there are conditions relating to transfer, mutation and declaration as RF/PF under the Indian Forest Act, 1972, of equivalent non-forest land for compensatory afforestation and funds for raising Compensatory afforestation there of are stipulated and after receipt of compliance report from the State Government in respect of the stipulated conditions, formal approval under the Act shall be issued by Government. In 3<sup>rd</sup> stage State Govt. accords Approval of Final Stage Clearance under Section 2 of FCA, 1980. (ii) However as per Para 4.2(ii) in cases where compliance of conditions stipulated in the in-principle approval is awaited for more than 5 (five) years from the State Governments. The in-principle approvals would summarily be revoked by Government of India.

No. 40/24

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16. It is submitted that no case has been made out in the said affidavit for denying the relief as prayed for in the Application which may be kindly be allowed

17. That the statements made in paragraphs are true to my knowledge, and those made in paragraph ..... are my humble submissions before this Hon'ble Tribunal.

*Sashovan Sen*

Prepared in my office

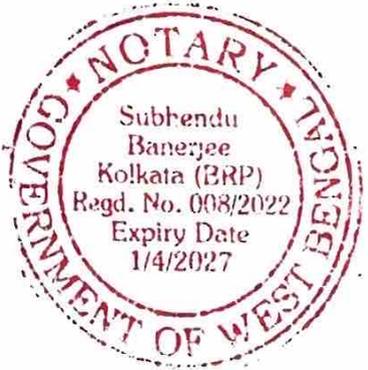
*Panaboli Samy*

[ Advocate ]

The deponent is known to me

Clerk to Mr.

Advocate



Solemnly Affirmed and Declared before me U/S 139 CPC

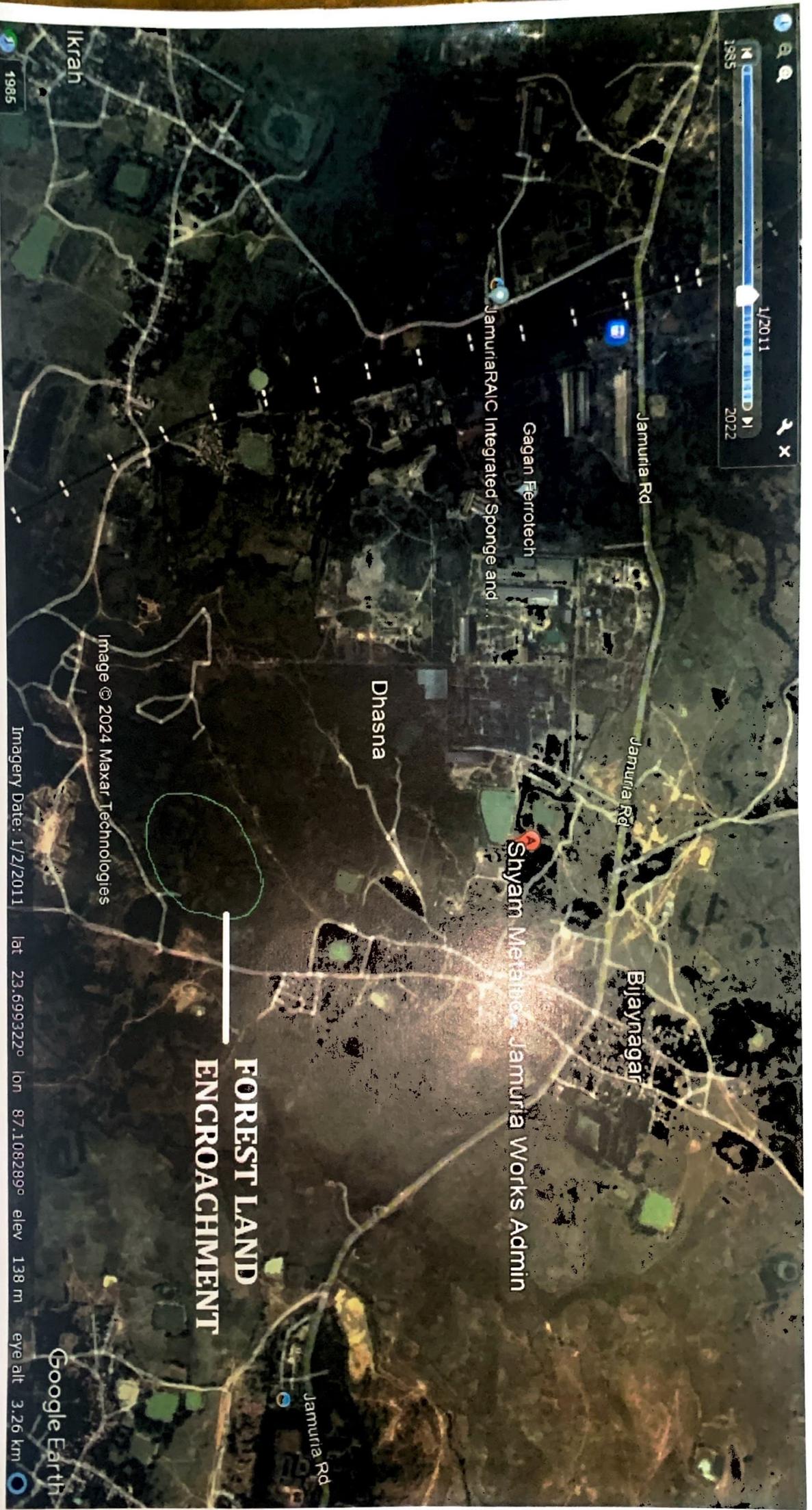
*Banerjee*

Notary Govt. of West Bengal

16.07.2024

SUBHENDU BANERJEE  
Notary, Govt. of W.B.  
Regd. No.-008/2022  
Advocate High Court, Calcutta

16 JUL 2024



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Jamuria Rd  
 Gagan Ferrotech  
 JamuriaRAIC Integrated Sponge and

Dhasna

Shyam Metabloc Jamuria Works Admin

Bijaynagar

FOREST LAND  
 ENCROACHMENT

Image © 2024 Maxar Technologies  
 Imagery Date: 1/2/2011

lat 23.699322° lon 87.108289° elev 138 m eye alt 3.26 km

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