

S.L. No. 11/25

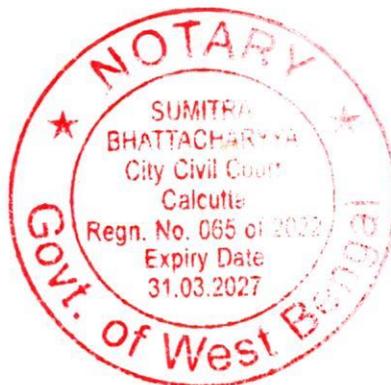
BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

M.A. No. 35/2024/EZ
In
ORIGINAL APPLICATION NO. 85/2019/EZ

In the matter of:
Dwaipayan Sengupta
... Applicant
Versus
Union of India & Ors.
... Respondents

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19 JUN 2025

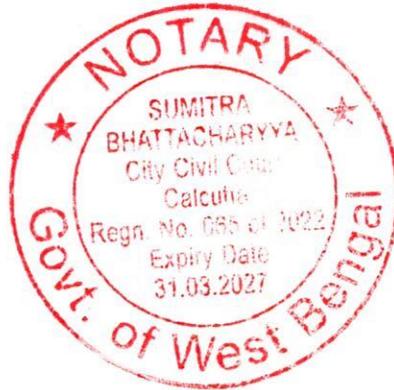
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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

M.A. No. 35/2024/EZ

In

ORIGINAL APPLICATION NO. 85/2019/EZ



In the matter of:

Dwaipayan Sengupta

... Applicant

Versus

Union of India & Ors.

... Respondents

COMPLIANCE IN FORM OF AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 10

I, Lovely Mukherjee, wife of Subhajyoti Mukherjee, aged about 61 years, by occupation – Service, by religion – Hindu, residing at BL-R, Flat – 3, 40/1, Tangra Road, Government Housing Estate, Kolkata – 700 015, do hereby solemnly affirm and say as follows:

1. I am at present holding the post of the Executive Officer, South Dum Dum Municipality, I have made myself acquainted with the facts and circumstances of the present case. I am duly authorised to swear and sign this affidavit on behalf of the respondent no. 10. I am competent to affirm this affidavit.

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2. In filing the compliance of the order dated 27.09.2024, passed by the Hon'ble Tribunal in Misc. Application no. 35 of 2024/EZ in Original Application No. 85 of 2019, I beg to state the following material facts here below:

- a) Originally the judgement and order was pronounced on 10.07.2017 by the Hon'ble Tribunal in O.A. No. 27 of 2015. A copy of the judgement and order dated 10.07.2017 is annexed hereto and marked as "R/1".
- b) The following directions were given upon South Dum Dum Municipality, as it would be evident from the judgement and order dated 10.07.2017:

"..... Since there onwards the Nayanjuli is found to exist in its pristine condition, no direction would be necessary except that the South Dum Dum Municipality shall get it free of all garbage, hydrophytes and sedimentation, if not already done."

"The South Dum Dum Municipality shall be responsible for the maintenance, preservation and regular cleaning of the entire stretch of the water body as undertaken by them in their letters of proposal submitted to the Public Works Department and the Pollution Control Board in their letters dated December 14, 2010, April 26, 2012 and June 7, 2012."

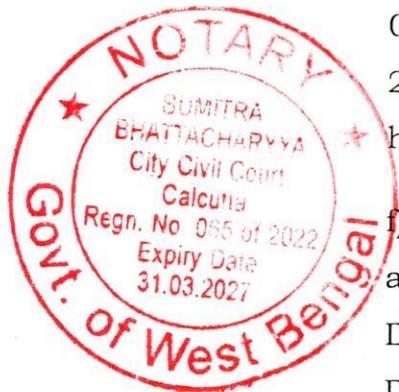


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c) Subsequently Original Application no. 85 of 2019 was filed before this Hon'ble Tribunal for implementation of the judgement and order pronounced on 10.07.2017 by the Hon'ble Tribunal in O.A. No. 27 of 2015. The Hon'ble Tribunal was pleased to deliver a judgement and order on 16.03.2022 in O.A. No. 85 of 2019. A copy of the judgement and order dated 16.03.2022 in O.A. No. 85 of 2019 is annexed hereto and marked as "R/2".

d) It appears, inter alia, in the said judgement and order dated 16.03.2022, the respondents are directed to ensure that there is no dumping of garbage or construction waste /debris in the Nayanjuli khal.

e) Subsequently a Miscellaneous application being MA No. 17 of 2022 was filed suo moto in connection with O.A. NO. 85 of 2019. Upon hearing, the Hon'ble Tribunal was pleased to deliver a judgement and order dated 05.04.2022 in M.A. No. 17 of 2022 in O.A. No. 85 of 2019. A copy of the order dated 05.04.2022 is annexed hereto and marked as "R/3".



f) As it appears from para 10 of the said judgement and order dated 05.04.2022 that the Public Works Department filed an affidavit and stated therein "One DPR has been prepared to clear the water body of hydrophytes waste materials, sediments through dredging creating of earthwork embankment, Bio Diversity Park/Tree Avenue, Walking Path etc. including beautification work".

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g) As it further appears from para 18 of the judgement and order dated 05.04.2022 that the Public Works Department in para 11 of their affidavit stated, inter alia, as follows:

“That the progress of work and tentative date of completion is as stated below in tabular form:

Direction	Authorised Department	Progress so far	Tentative time for completion
Primary Clearing (I of order dated 6.03.2022)	PWD	Completed	Not applicable
Demarcation for constructing earth work embankments (i of order dated 16.03.2022)	Land & Land Reforms & Refugee Relief & Rehabilitation	Completed	Not applicable
Creating Social awareness (i of order dated 16.03.2022)	K.M.D.A.	Completed	Not applicable
Eviction of unauthorised	PWD	Eviction	Completed



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encroachers (i of order dated 16.03.2022)		conducted	
Creation of Biodiversity park (i of order dated 16.03.2022)	PWD & South Dum Dum Municipality	Work order issued	

h) In furtherance a miscellaneous application being MA NO. 35 OF 2024 was filed suo moto in connection with original application no. 85 of 2019 and upon hearing of the same, the Hon'ble Tribunal was pleased to pass an order on 27.09.2024. A copy of the order dated 27.09.2024 is annexed hereto and marked as "R/4". The operative part of the order, inter alia, is as follows:



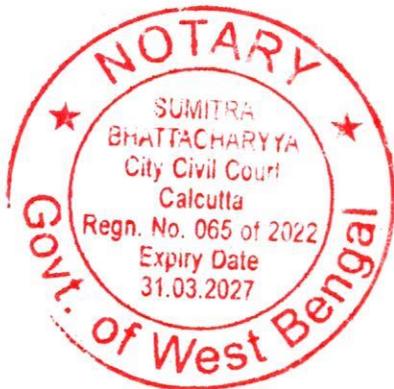
"4. We, therefore, direct the Public Works Department (PWD) and the South Dum Dum Municipality to file affidavit of compliance within four weeks. Let the affidavit be filed within four weeks."

"6. Issue notice to the Respondent no. 10, South Dum Dum Municipality, returnable within four weeks. The said respondent shall file affidavit of compliance with regard to creation of Biodiversity Park as per Para 18 of the order of the Tribunal dated 05.04.2023."

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3. With regard to creation of Bio Diversity Park by PWD and South Dum Dum Municipality, I say as follows:

- a) It is clear from the work order that PWD was responsible for execution of the work of creation of Bio Diversity park in the stretch from Bangur to Dum Dum Park. Bio diversity Park has already been created in the stretch of Bangur to Dum Dum Park.
- b) On the other hand, there is an existing Bio Diversity Park/ Nayanjuli in the stretch from Bangur to Lake Town. Copies of the photographs are annexed hereto and marked collectively as "R/5"
- c) Moreover, the lands pertaining to Nayanjuli in the stretch from Bangur to Lake town belongs to Public Works Department and therefore, naturally the authorities of South Dum Dum Municipality having no authority in the eye of law to create such Bio-Diversity park.
- d) In the affidavit, Public Works Department inadvertently stated that the authority of South Dum Dum Municipality was to create Bio Diversity Park in the Nayanjuly stretching from Bangur to Lake Town. Moreover, the authorities of South Dum Dum Municipality intimated the Public Works Department that the Municipality had no adequate fund to create such Bio Diversity Park



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without taking into consideration that there is an existing Bio Diversity Park in the stretch of Bangur to Lake Town. Biological diversity is being maintained in the Nayanjuli stretching from Bangur to Laketown.

4. However, in compliance with the judgements and orders passed by the Hon'ble Tribunal aforesaid, the authorities of South Dum Dum Municipality have been maintaining, preserving and regularly cleaning Nayanjuli in the stretch from Dum Dum Park to Ultadanga. Photographs are annexed hereto and marked as "R/6".

5. The statements made in paragraphs 1, 2, 3 and 4 true to my knowledge.

Prepared in my office

Mousumi Bhowal
Advocate

Date: 19.6.25

Place: Kolkata



Coily Mukherjee
Deponent

Identified by me

Mousumi Bhowal
Advocate

**Solemaly Affirmed and
Declared before me U/S 139
CPC, (C)**

Sumitra Bhattacharyya
Notary

Sumitra Bhattacharyya
Notary, Govt. of W.B.
Regd. No. 065 of 2022
City Civil Court, Calcutta

19 JUN 2025

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ANNEXURE

R/1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

.....
ORIGINAL APPLICATION No. 27/2015/EZ

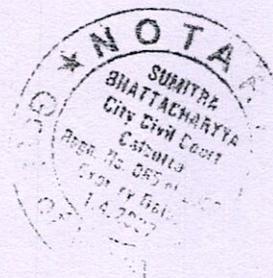
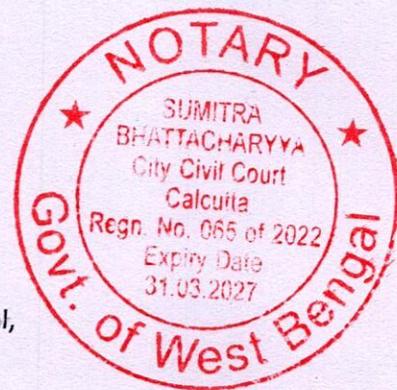
IN THE MATTER OF:

DWAIPAYAN SENGUPTA
S/o Prem Ranjan Sengupta,
Aged about 49 years,
By occupation-advocate, having
Address of service of all notices at
1/10A, Adarsha Pally, Kolkata,
Pin code-700 092

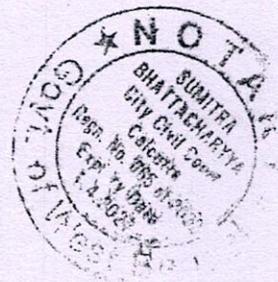
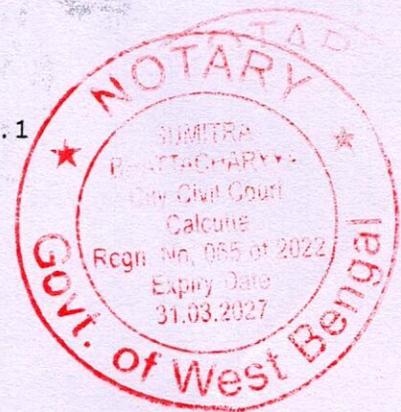
.....Applicant

Versus

1. Union of india through the
Secretary, Ministry of Environment,
Forest and Climate change,
Indira Paryavaran Bhawan,
Jor Bagh Road, New Delhi-110 003
- 1A. The State of West Bengal through the
Chief Secretary, Govt. of West Bengal,
Nabanna, 325, Sarat Chatterjee Road,
Shibpur, Howrah-711102
- 1B. Urban Development Department through
The Principal Secretary, Govt. of West Bengal,
Nagaryan Bhawan, Sector-I,
Salt Lake, Block-DF-8,
Bidhan Nagar, Kolkata -700 064
2. The State of West Bengal,
Through the Principal Secretary,
Department of Environment,
Government of West Bengal,
415/A, Pouro Bhawan, 10A, Block-FD Block,
4th Floor, Salt Lake, Kolkata 700 106



3. The West Bengal Pollution Control Board,
Through its Member Secretary,
Department of Environment,
Government of West Bengal,
Paribesh Bhawan, 10A, Block-LA,
Sector-III, Bidhannagar,
Kolkata, PIN CODE: 700 098.
4. The Chairman, Department of Environment,
Government of West Bengal, Paribesh Bhawan,
10A Block-LA, Sector-III, Bidhannagar,
Kolkata-700 098.
5. The State of West Bengal through
The Principal Secretary, Public Works deptt.
Govt. of West Bengal,
Nabanna, 325, Sarat Chatterjee Road (8th Floor)
Howrah-711102
6. The Executive Engineer, Public Works Deptt.
Govt. of West Bengal, 5th Cross Road,
DF Block, Sector-I, Salt Lake City,
Kolkata 700 064,
7. The Executive Engineer, Barasat Highway Division No. 1
PW (Roads), Directorate,
5th Cross Road, DF Block, Sector-I, Salt Lake City,
Kolkata 700 064.
8. South Dum Dum Municipality,
Through its Chairperson, Nager Bazar,
Dum Dum Road, Kolkata -700 074
9. The Chairperson, South Dum Dum Municipality.
Nager Bazar. Dum Dum Road,
Kolkata-700074.
10. The Commissioner of Police,
Bidhannagar Police Commissionerate,
Broadway Road, JB Block, Sector-III
Salt Lake City, Kolkata, West Bengal-700 098
11. The Chairman/Managing director,
Kolkata Metropolitan Development Authority,



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"Prashasan Bhavan", Block-BB-1
Sector-I, Salt Lake,
Kolkata-700 064

12. The Principal Secretary,
Irrigation & Waterways Deptt.
Govt. of West Bengal,
9, Golf Street, Kolkata, 700 003
13. The Executive Engineer, Canal Division,
Irrigation & Waterways Deptt.
Govt. of West Bengal,
9, Golf Street, Kolkata, 700 003
14. CESC, Victoria House, Kolkata
15. National Ganga River Basin Authority
Ministry of Water resources, River
Development and Ganga Rejuvenation,
Rear Wing, Third Floor, MDSS Building,
9, CGO Complex, Lodhi Road,
New Delhi-110 003
16. Ministry of Water Resources,
River Development and Ganga Rejuvenation,
Rear Wing, Third Floor, MDSS Building,
9, CGO Complex, Lodhi Road, New Delhi-110 003

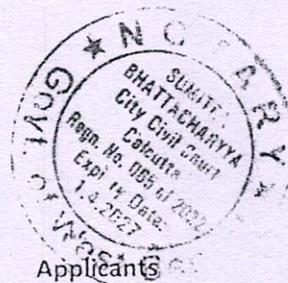
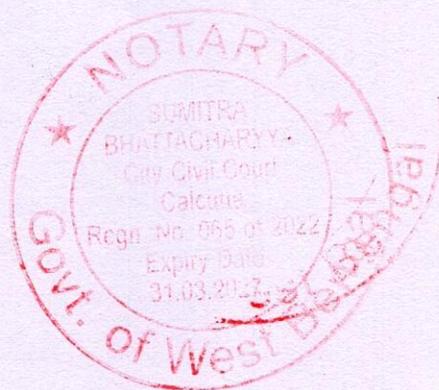
WITH

ORIGINAL APPLICATION NO. 46/2015/EZ

PASCHIM BANGA VIGYAN MANCHA
Represented through its Secretary,
162B, AJC Bose Road, 4th Floor,
Flat No. 401 & 402,
Kolkata-700 014

2. MR. SOURAV CHAKRABORTY,
ASSISTANT SECRETARY,
PASCHIM BANGA VIGYAN MANCH,
162B, AJC BOSE ROAD, 4TH FLOOR,
FLAT NO. 401 & 402, KOLKATA – 700014

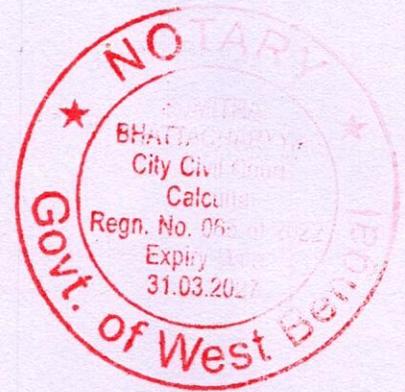
..... Applicants



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VS

1. Union of India through the Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi-110 003
2. Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi-110 003
3. The State of West Bengal, Through the Principal Secretary, Department of Environment, Government of West Bengal, 415/A, Pouro Bhawan, 10A, Block-FD Block, 4th Floor, Salt Lake, Kolkata 700 106
4. The Secretary, Department of Environment, Government of West Bengal, 415/A, Pouro Bhawan, 10A, Block-FD Block, 4th Floor, Salt Lake, Kolkata 700 106
5. The West Bengal Pollution Control Board, Through its Member Secretary, Department of Environment, Government of West Bengal, Paribesh Bhawan, 10A, Block-LA, Sector-III, Bidhannagar, Kolkata, PIN CODE: 700 098.
6. The Chairman, West Bengal Pollution Control Board, Paribesh Bhavan, 10A, Block LA, Sector-III, Salt Lake City, Kolkata 700 098
7. The State of West Bengal through The Principal Secretary, Public Works Deptt. Govt. of West Bengal, Nabanna, 325, Sarat Chatterjee Road (8th Floor) Howrah-711102



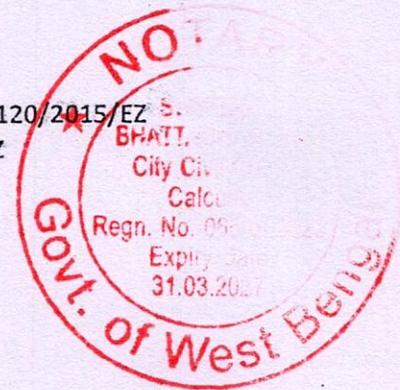
8. The Executive Engineer, Public Works Deptt.
Govt. of West Bengal, 5th Cross Road,
DF Block, Sector-I, Salt Lake City,
Kolkata 700 064,
9. South Dum Dum Municipality,
Through its Chairperson, Nager Bazar,
Dum Dum Road, Kolkata -700 074
10. The Commissioner of Police,
Bidhannagar Police Commissionerate,
Broadway Road, JB Block, Sector-III
Salt Lake City, Kolkata, West Bengal-700 098
11. Kolkata Metropolitan Development Authority,
"Prashasan Bhavan", Block-BB-1
Sector-I, Salt Lake, Kolkata-700 064

... Respondents

WITH

CONTEMPT PETITIONS NO. 03/2015/EZ & 120/2015/EZ
IN ORIGINAL APPLICATION NO. 27/2015/EZ

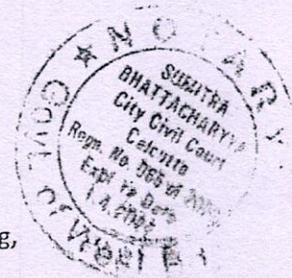
DWAIPAYAN SENGUPTA
S/o Prem Ranjan Sengupta,
Aged about 49 years,
By occupation-advocate, having
Address of service of all notices at
1/10A, Adarsha Pally, Kolkata,
Pin code-700 092



.....Applicant

VS

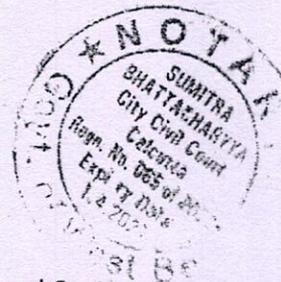
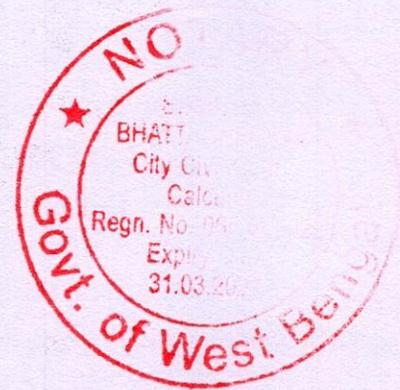
1. Sri Sanjay Mitra,
The Chief Secretary,
Govt. of West Bengal,
Nabanna, 325, Sarat Chatterjee Road,
Shibpur, Howrah- 711102
Presently posted as
Secretary, Ministry of Road Transport,
Highways, Transport Bhawan, Sansad Marg,
New Delhi-110 001



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2. Mr. Indevar Pandey,
Principal Secretary, Govt. of West Bengal,
Public Works Department,
Nabanna, 8th floor,
325, Sarat Chatterjee Road,
Shibpur, Howrah-711102
3. Satyabrata Basu,
S/o Ashutosh Basu,
Executive Engineer, Barasat
Highway Division No. 1,
PWD (Roads), MBL House,
5th Floor, DD-18/8, Sector-I,
Salt Lake City, Kolkata-700064
4. Debasish Pal,
Assistant engineer, Baguihati Highway
Sub-division, PWD (Roads),
Kazi Nazrul Islam Sarani,
Kolkata-700 048
5. Ashok Biswas,
Executive Officer-in-Charge,
Finance Officer, South Dum Dum Municipality
Nager Bazar, Kolkata 700 074
6. Sujit Bose,
Councillor, Ward No. 34 and
Vice-chairman, South Dum Dum Municipality,
Kolkata-74
Residing at 52, Canal street, Kolkata- 700 048
7. Sri Javed Shamim,
The Commissioner of Police,
Bidhannagar Police Commissionerate,
Broadway Road, JB Block, Sector-III
Salt Lake City, Kolkata- 7000 98
8. Partha Mukherjee,
Proprietor of M/s Mukherjee & Associates,
19, Ghosh Bagan, Badra,
Kolkata-700 079



.....Alleged Contemnors

- ✕ -
7
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COUNSEL FOR APPLICANT (OA 27/2015/EZ):

Mr. Anindya Lahiri, Advocate
Ms. Poushali Banerjee, Advocate
Mr. Mainak Ganguly, advocate

COUNSEL FOR RESPONDENTS :

Mr. Sanjay Kumar Ghosh, Advocate
for Respondent No.1

Mr. Amitesh Banerjee, Sr. Advocate
Mr. Bikas Kargupta, Advocate
Mr. Srijan Nayak, Advocate
Ms. Rituparna Maitra, Advocate
for Respondents No.1A, 1B, 2, 4, 10, 12 & 13

Mr. Amitesh Banerjee, Sr. Advocate
Mr. Srijan Nayak, Advocate
Ms. Rituparna Maitra, Advocate
For Respondents No. 5,6 & 7

Mr. Sibojyoti Chraborti,, Advocate for Respondent No.3

Mr. Amalesh Roy, Advocate
Mr. Ajay Dutta, Advocate
Mr. Deborshi Dhar, Advocate
Mr. P.K.Majumdar, Advocate

For respondents No. 8 & 9

Mr. Sanjib Kumar Mukhopadhyay, Advocate for respondent No. 11

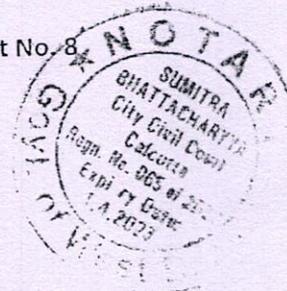
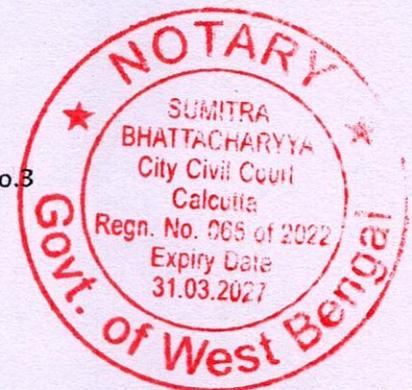
Mrs. Arpita Chowdhury, Advocate for respondent No. 14

Mr. Ashok Prasad, Advocate for respondents No. 15 & 16

Mr. Somnath Ghosal, Advocate for Respondent No. 8

COUNSEL FOR APPLICANT (OA 46/2015/EZ):

Mr. Somnath Roy Chowdhury, Advocate
Mr. Gora Chand Roy Chowdhury, Advocate



Ms. S. Roy, Advocate for the respondents No. 1 & 2
 Mr. Bikas Kargupta, Advocate for the respondents No. 3,4,7,8 & 10
 Ms. Arpita Chowdhury, Advocate for the respondent No. 5
 Mr. Ajay Dutta, Advocate
 Mr. Deborshi Dhar, Advocate
 Mr. P.K.Majumdar, Advocate for the respondent No. 9

COUNSEL FOR APPLICANT (CA No. 03/2015/EZ):

Mr. Anindya Lahiri, Advocate
 Ms. Poushali Banerjee, Advocate
 Mr. Mainak Ganguly, advocate

Mr. Amitesh Banerjee, Sr. Advocate
 Mr. Bikas Kargupta, Advocate
 Mr. Srijan Nayak, Advocate (Contemnor No. 4)
 Ms. Rituparna Maitra, Advocate
 for Contemnors No.1 to 3 & 4

Mr. Ajay Dutta, Advocate
 Mr. P.K.Majumdar, Advocate
 Mr. Deborshi Dhar, Advocate for contemnor No. 5
 Mr. Soumya Ray, Advocate for the contemnor No. 6
 Mr. Meghnad Dutta, Advocate for the contemnor No. 8

JUDGMENT

PRESENT:

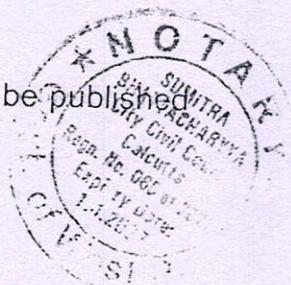
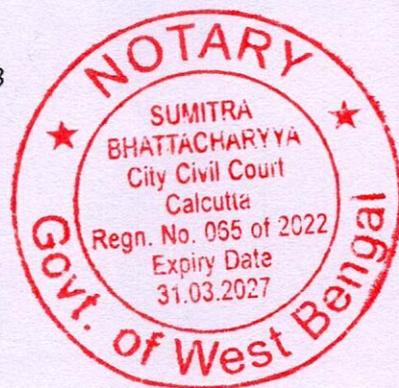
Hon'ble Mr. Justice S.P.Wangdi, Judicial Member
 Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

Reserved On: 16TH May, 2017

Pronounced On : 10th July, 2017

1. Whether the Judgment is allowed to be published
 on the net? Yes

2. Whether the Judgment is allowed to be published
 in the NGT Reporter? Yes

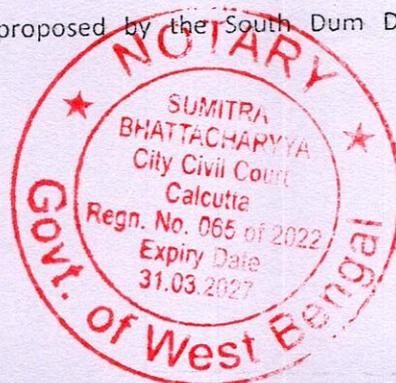


Per Justice S.P.Wangdi, Judicial Member :

The two Original Applications have been taken up together for disposal by this common judgement as the subject matter and the issues raised therein are identical.

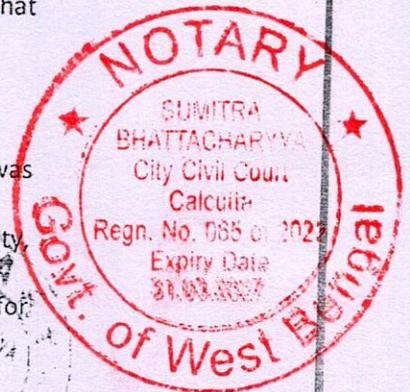
2. For the sake of convenience OA 27/2015/EZ is taken up for consideration.

3. In this application concern has been expressed by the applicant on the encroachment and filling up of a waterbody commonly known as Nayanjuli which extends from Ultadanga to Lake Town crossing on the southern side of VIP Road covering four wards under the South Dum Dum Municipality viz. Ward Nos. 29,30,34 and 35. It is stated that it is one of the oldest water bodies and caters to the requirement of the entire population in the area, a phenomenon which is said to be increasing. Notwithstanding its immense significance, the Nayanjuli, as per the applicant, is being rapidly filled up and depleted due to illegal encroachments for housing projects, other urban expansion and uncontrolled and indiscriminate dumping of garbage and debris. That negligence on the part of the authorities in protecting and preserving the water body has been taken advantage of by those indulging in such activities critically endangering the very existence of the Nayanjuli. It is further contended that a beautification project was proposed by the South Dum Dum Municipality on the



embankment of the Nayanjuli to save it from being encroached and covered up and vide letter dated 28.7.2010, the Executive Engineer, PWD, Barasat Highway Division No. 1, PW (Roads) Directorate, was requested to undertake execution of the project. But even after a schematic diagram and brief description of development project had been submitted as desired by the said Executive Engineer, no action was taken. This led to the Municipality in addressing a letter dt. 26.4.2012 to the Minister-in-Charge, PWD, pointing out the lack of concern of the Department to the critical condition of the Nayanjuli and sought for 'no objection' in carrying out the work of its restoration, development and maintenance. In that letter, the Municipality had conveyed the expanding settlements and pollution of the water body and the possibility of its stretch between Lake Town and Dum Dum Park being filled up by ambitious real estate developers. This was followed up by a communication dt. 9.6.2013 by the Municipality to the Chairman, PCB conveying the apprehension expressed in their letter dated 26.4.2012 that was addressed to the Minister-in-Charge, PWD further observing that the stretch of Nayanjuli from Ultadanga to Lake Town had already been covered by the unscrupulous real estate developers and that the remaining portion of the water body had also become vulnerable.

4. Apart from this, it has been stated that as the water body was also being used as dumping ground for waste materials, the Municipality as a first step towards its protection, submitted a project report for

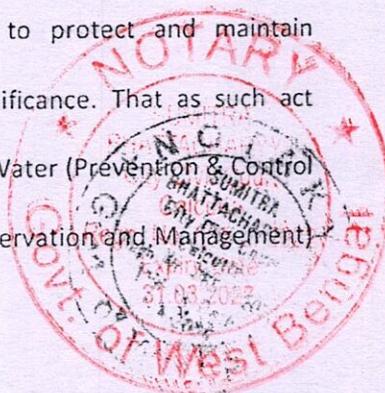


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restoration, development and maintenance of the stretch of the Nayanjuli between Lake Town and Dum Dum park to be taken up on an urgent basis completely at the cost of the Municipality without placing any financial burden on the State Government. The letter of the Municipality dated 7.6.2012 containing such proposal was forwarded by the PCB to the Principal Secretary, PWD, vide its letter dt. 18.6.2012, conveying the Board's assent, at the same time seeking permission of the Department for commencement of the work.

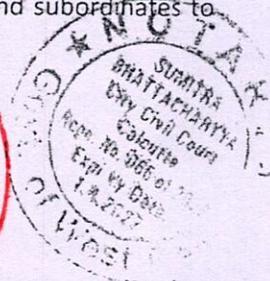
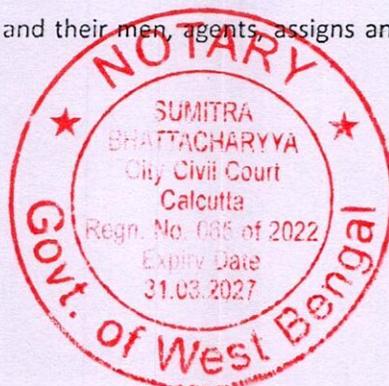
5. It is stated that a joint research on the status of the Nayanjuli carried out by the State Environment Department and South Asian Forum for Environment (SAFE) revealed that 42% of the water body had been covered up by garbage, 36% of it illegally occupied and encroached upon and observed poisonous methane gas being emitted therefrom due to heavy pollution. That between the years 2004 and 2014 substantial portion of the Nayanjuli had been covered up and that such illegal activities had been given a fillip because of the apathy and inaction on the part of the authorities thereby endangering its very existence. It is alleged that the authorities had failed to take steps against those responsible for covering up the Nayanjuli which they were bound to protect and maintain considering its environmental and social significance. That as such act amounted to violation of the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Wetlands (Conservation and Management)



Rules, 2010, penal action ought to have been initiated against those committing such illegalities.

6. The applicant has thus prayed as under :-

- a) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to certify and transmit to this Hon'ble Tribunal all records forming the basis of their inaction regarding illegal filling up, encroachment and depletion of the Nayanjuli so that conscionable justice may be rendered by setting aside and quashing the same.
- b) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to take adequate measures for protecting the said Nayanjuli from Ultadanga to Lake Town crossing on VIP road from being filled up and depleted in any manner whatsoever;
- c) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to restore the said Nayanjuli to its original form and area;
- d) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to

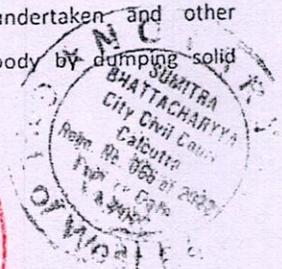
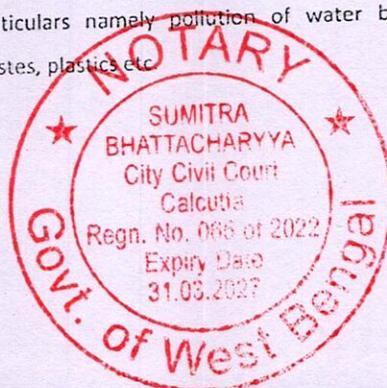


take adequate measures for purifying the water of the said Nayanjuli;

- e) Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to take adequate measures for preventing the said Nayanjuli from being polluted any further in any manner whatsoever;
- f) Any other appropriate direction/directions and/or order/orders as this Hon'ble Tribunal may deem fit and proper;
- g) Cost of and/or incidental to the instant application.

7. On 21.4.2015 when the matter first came up for hearing, the Bench, taking note of the anxiety expressed by the applicant, directed the Chief Secretary, Govt. of West Bengal and other authorities including the Pollution Control Board to file status report on the encroachments of the water body giving details of the construction activities being undertaken and on the pollution thereto caused by dumping of solid waste, plastic, etc. For convenience the relevant portions of the order is extracted below :-

" The Chief Secretary, Govt. of West Bengal, the Principal Secretary, Department of Environment and Principal Secretary, Urban Development Department are directed to file respective status report with reference to the encroachment of Nayanjuli by detailing the construction activities undertaken and other particulars namely pollution of water body by dumping solid wastes, plastics etc

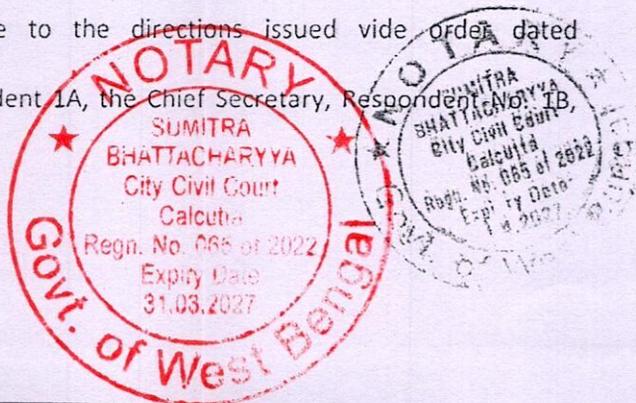


The State Pollution Control Board is directed to submit the status report by making physical inspection on solid waste disposal by their scientists and also analysing water samples collected at 5 different places in the stretch from Ultadanga to Dum Dum Park. Their water analysis report shall also indicate the status of the water body according to CPCB classification of "designated best use" for surface water. The other respondents viz. South Dum Dum Municipality and the Public Works Department are also directed to submit their report on the issue and the reply, if any. All the respondents are at liberty to file the reply of the original application.

The Respondent No. 8 viz. South Dum Dum Municipality is directed to submit the report detailing the encroachment of the embankment of Nayanjuli and its water body and the constructions thereof, if any. They will also identify the respective buildings and other particulars thereof indicating whether such constructions were made with valid permission or illegally. Let such report in the form of affidavit be filed by all concerned as directed within four weeks."

8. Further, in consideration of the documents, different reports including the satellite pictures filed with the original application, it was directed in the interim, that the respondents viz., concerned Municipality, the police Administration, district Administration, State Govt. including State Pollution Control Board, should take steps and measures to protect the 'Nayanjuli' from being polluted and encroached upon further and to file action taken report on the next date.

9. In response to the directions issued vide order dated 21.04.2015, the respondent 1A, the Chief Secretary, Respondent No. 1B,

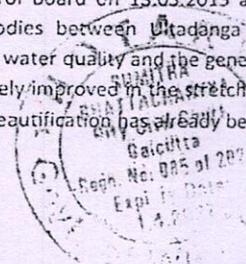
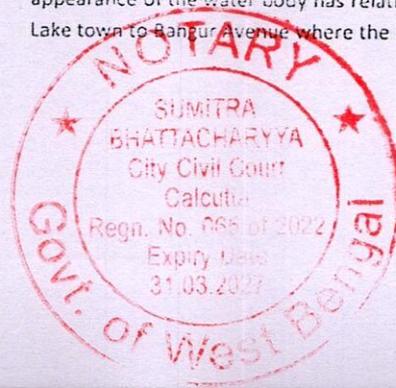


the Principal Secretary, Urban Development Department, Respondent No.2, the Principal Secretary, Environment Department, Respondent No. 5, the Principal Secretary, Public Works Department, Government of West Bengal, the Respondent No. 3, West Pollution Control Board, the Respondent No. 7, the Executive Engineer, Barasat Highway Division No.1 P.W. (Roads) Directorate, Respondent No. 8, the South Dumdum Municipality and others filed affidavits setting out status reports on the various aspects indicated in the order. Since the affidavit filed by the Chief Secretary contained summary of the reports filed by the other Respondents, it will be sufficient if the relevant portions of it are reproduced below for the sake of brevity and convenience: -

“ 2) That the Hon'ble National Green Tribunal (hereinafter referred to as the 'Hon'ble Tribunal') by order dated 21.04.2015 has directed to file a status report with regard to encroachment of Nayanjuli by detailing construction activities undertaken and other particulars namely pollution of water body by dumping solid wastes, plastics, etc.

3) That the Environment department upon receiving the letter from Dr. Dipayan De, Chairman, South Asian Forum for Environment (SAFE) dated 29.05.2011, regarding the critically endangered Nayanjuli waterbody beside the VIP road, opposite side of Kestopor Khal from Ultadanga to Dum Dum Park, the officials of the Department made an inspection on 21.10.2011, and a letter dated 07.03.2012 was issued by the Principal Secretary, Department of Environment to the Principal Secretary, Public Works Department, the Secretary, Irrigation & Waterways Department and the Chairman, South Dum Dum Municipality for taking necessary corrective action for restoration of Nayanjuli. The report of Environment Department is annexed herewith and marked as Annexure-1.

4) The West Bengal Pollution Control Board on 13.05.2015 and 11.06.2015, had inspected the waterbodies between Ultadanga to Bangur Avenue and has reported that the water quality and the general appearance of the water body has relatively improved in the stretch of Lake town to Bangur Avenue where the beautification has already been



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done. The water quality of the rest of the water body was found to be poor. The report of WBPCB is annexed herewith and marked as Annexure-2.

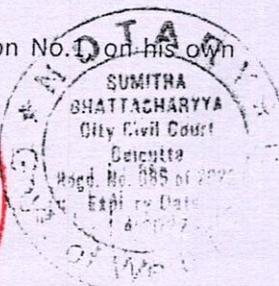
5) The Urban Development Department reported that the land does not belong to the KMDA and is no way related with the allegation raised in connection with the "nayanjuli" extending from Ultadanga to Lake Town crossing, VIP Road. The report of Urban Development Department is annexed herewith and marked as Annexure-3.

6) The report of Public Works Department stated that South Dum Dum Municipality had corresponded with the Public Works Department, Government of West Bengal for the beautification of the "Nayanjuli" and surrounding PWD land and, accordingly, the PWD invited e-tender for execution of such work for the stretch from Bangur Avenue to Dum Dum Park (west side) and the successful bidder has been declared. That the PWD accorded approval to the work of "landscaping and beautification of land along VIP Road from Ultadanga flyover to Lake Town More" for the maintenance of hygienic condition of the locality and prevention of mosquito breeding and nuisance to the said area and work order has been issued and the concerned agency has commenced the said work. Such work has resulted in temporary deposition of sludge and garbage at different places. This sludge which is temporarily kept for disposal and which has been generated in course of the reclamation work sometimes gives the incorrect impression of filling up the water body, which is not the correct presumption.

That the PWD has earlier issued notice for removal of encroachment of the Govt. Land and a case is already subjudice in the Hon'ble High Court, Calcutta in connection with illegal encroachment by a private enterprise on the western flank of VIP road stretching from Lake Town to Golaghata. The report of Public Works Department is annexed herewith and marked as Annexure-4.

7) The Bidhannagar Police Commissionerate, West Bengal in their affidavit stated that as per office record of the Lake Town Police Station no complaint /cases was registered in the matter of encroachment/illegal filling of Nayanjuli/waterbodies within the stretches from Golaghata to Dum Dum Park till date. The report of Bidhannagar Police Commissionerate is annexed herewith and marked as Annexure-5."

10. From amongst the reports of the various Respondents referred to in his affidavit by the Chief Secretary, the ones filed by the Respondent No.7, the Executive Engineer, Barasat Highway Division No.1 on his own



behalf and on behalf of the Respondent No. 5, the Principal Secretary, Public Works Department and the Respondent No. 8, South Dum Dum Municipality, shall be referred to later being quite revealing and significant.

11. On 10th August, 2015, upon hearing the learned Counsel for the parties and examination of the records, the Tribunal took note of the affidavit filed by the Principal Secretary, Environment, and recorded as follows :-

" The Principal Secretary, Deptt. Environment, Govt. of West Bengal has filed an affidavit affirmed on 28.5.15. In the said affidavit, a note sheet has been annexed under file No. E/N/PG/KOL-58/2011 dealing with a complaint, which reads as follows :-

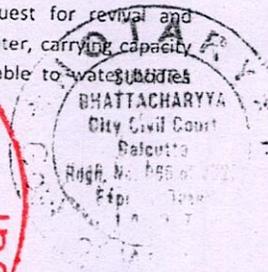
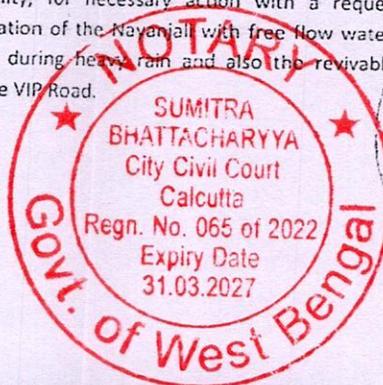
" Letter No. KGD/MP/1979/10-11/KOL dt. 27.09.11

The p.u.d. is the letter dated 27.09.2011 from Dr. Kakoli Ghosh Dastidar, MP (Lok Sabha) forwarding the letter of the South Asian Forum for Environment (SAFE) dated 29.05.2011 regarding the distortion/filling up of Nayanjali (water body) besides the western side of VIP road, opposite side of Kistopur Khal from Ultadanga to Dum Dum Park.

The undersigned along with Smt. Amrita Chatterjee, research & Liaison Officer of SAFE visited the area on 21st October 2011 and the detail photograph on the encroachment of Nayanjali besides the VIP road by various housing development projects and roads is enclosed.

The revivable of this Nayanjali between Bangur Avenue road connector between VIP road and connected to the Kaistopur Khal at the Ultadanga end would be major project that would save the flooding of Lake Town area and Bangur Avenue area and water logging of the area. The revivable of the water bodies would also work as rain water catchment/harvesting ponds.

The Secretary level letters may be issued along with photographs to (i) PWD (ii) Irrigation Department and (iii) South Dum Dum Municipality, for necessary action with a request for revival and augmentation of the Nayanjali with free flow water, carrying capacity of water during heavy rain and also the revivable to water bodies beside the VIP Road.



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(P.K.Roy)
Senior Environment Officer "

Supporting photographs are also annexed along with this affidavit.

A letter from Principal Secretary, Govt. of West Bengal, Environment Deptt. dt. 7.3.2012 (No. EN/553/PG/Kol-58/2011) reads thus :-

From: RPS Kahlon,
Principal Secretary to the Government of West Bengal.

To:

1.The Principal Secretary,
Public Works Department,
Writers' Buildings',
Kolkata- 700001.

2. The Principal Secretary,
Irrigation & Waterways Department,
Jalasampad Bhavan, Bidhannagar,
Salt Lake, Kolkata-700091.

3.The Chairman,
South Dum Dum Municipality,
Nager Bazar, Kolkata- 700074.

Sir,

This is to inform you that the Department has received the letter from Dr. Dipayan De, Chairman, South Asian Forum for Environment regarding the critically endanger nayanjully beside the VIP road opposite to Kestopur Khal from Ultadanga to Dum Dum Park, was duly endorsed by Mrs. Kakoli Ghosh, Dastidar, M.P.

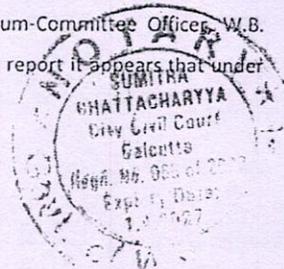
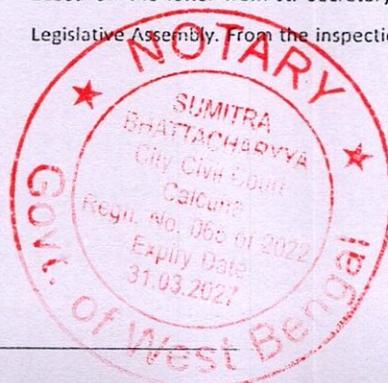
The said Nayanjui was jointly inspected by Smt. Amrita Chatterjee, Research & Liason Officer, South Asian Forum for Environment (SAFE) and Mr. P.K. Roy, Sr. Environment Officer, Department of Environment On 21st October, 2011. The detail photograph of Nayanjuly is attached. The Nayanjuly needs to be revived with water flow to the Kestopur khal. This will take care of water logging problem of Lake Town and Bangur Avenue.

Yours faithfully,

Sd/-

(RPS Kahlon)"

One inspection was conducted by Dr. Rajarshi Chakraborty, Environment Officer, Deptt. of Environment, Govt. of West Bengal based on the letter from Jt. Secretary-cum-Committee Officer, W.B. Legislative Assembly. From the inspection report it appears that under



the heading "Field observation", there are two parts – one is from Ultadanga to Kestopur and another from Kestopur to Baguihati relating to Nayanjali water body. The importance of Nayanjali has been specified in Part II of the report which reads as follows :-

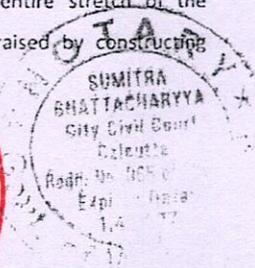
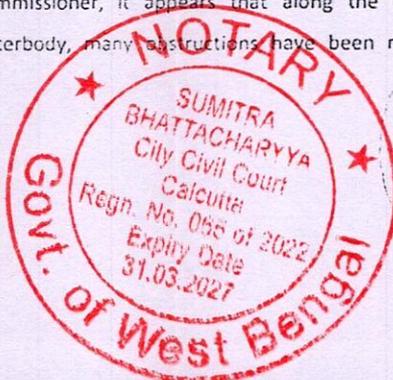
ii) Importance of the Nayanjali :

1. It is now a known fact that many parts of Kolkata are suffering from Urban Heat Island effect (An urban island is a metropolitan area which is significantly warmer than its surrounds rural areas). Since presence of wetlands prevents the formation of urban heat islands, the vast Nayanjali along with plantation on its sides may serve to ameliorate the environment in its vicinity.
2. The water body with its fish and other aquatic organisms, plantations on its sides, birds etc. can become a reservoir of biodiversity.
3. Other environmental benefits may include nutrient re-cycling, ground water recharge, functioning as a natural carbon sink etc.
4. The anthropocentric benefits of the Nayanjali may be –
 - a) Source of water during fire hazards in the vicinity.
 - b) Reduction of water-logging during monsoon in the adjacent area.
 - c) Source of food, water, fish etc.
5. The Nayanjali after proper maintenance and beautification can have high aesthetic value and source of recreation.

Proposed measure to restore the water body and its management has been highlighted in part iii of the said report. Supporting photographs have been annexed depicting the situation at the material point of time.

Having regard to such affidavit of the Environment Department through its Principal Secretary, it is abundantly clear that the Nayanjali or Water body, in whatever name it may be called, was existing for a long time and that it required to be preserved to arrest the urban heat in metropolitan area for the benefit of environment of the vicinity, for survival of aquatic organisms, plantation and also for the benefits of the people. That apart, it is also beneficial being a source of water during fire hazards, reduction of water logging and source of food, water and fish etc.

Since it is a report of the Govt. itself and having regard to the report of the advocate commissioner, it appears that along the entire stretch of the Nayanjali/waterbody, many obstructions have been raised by construction



pathways or road connector either by PWD or by private parties to make a connection of the locality of the west bank of the said Nayanjuli with VIP road.

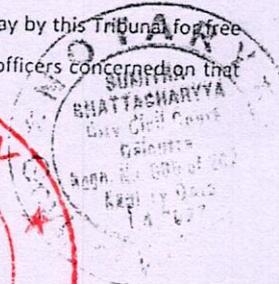
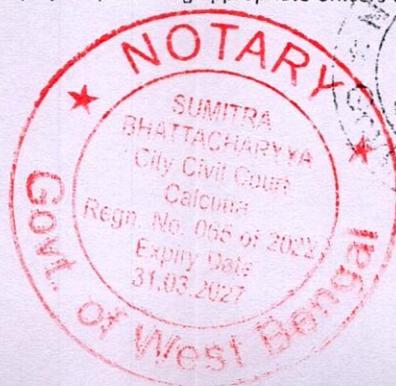
In terms of the affidavit filed by the Environment Deptt. depicting the existing condition as it was there in 2011, Mr. Amlsh Roy and Mr. Ajay Dutta, Id. Advocates appearing for South Dum Dum Municipality, submit that solid waste and debris are deposited by the PWD in Golaghata area and PWD has admitted in their affidavit and have also stated that they will lift these debris. Be that as it may, under the law, the Municipality is responsible to remove it. If the PWD is agreeable to do it, it is better. But in any event, the solid waste has to be removed immediately by the Municipality either by themselves or through PWD.

So far as obstruction of flow of water in the Nayanjuli is concerned, Mr Kar Gupta, Id. Adv. for the State submits that there are three points - viz. Golaghata, Lake Town and Bangur where the Nayanjuli has been blocked and connecting road has been constructed for egress and ingress of the local people long time back and as a result, water flow is completely blocked in these three points.

Principal Secretary, PWD is directed to take immediate steps and measures either to construct over bridge or fixing big hume pipes in these three points under the existing pathways in order to restore easy flow of water in the Nayanjuli throughout the entire stretch from Ultadanga to Kestopur bridge. The said Principal Secretary, PWD will consult with his Engineers and find out ways and means in what manner the flow of water can be restored throughout the entire stretch and at the same time the access point to the areas of three points may also be kept open for the local people. A scheme in this regard may be prepared with a time frame to complete the work, within three weeks and be produced before us positively for our consideration.

We further direct that except construction work relating to the making way for the free flow of water of the Nayanjuli or water body in the aforesaid stretch in terms of our direction as given above, no construction in terms of tender notice for development, beautification or any other construction work shall be undertaken encroaching the Nayanjuli till final disposal of this application.

The Chief Secretary, Govt. of West Bengal is directed to take all steps and measures for compliance of this order as passed today by this Tribunal for free flow of water in Nayanjuli by directing appropriate officers concerned that



Mr. Roy Chowdhury, Id. Adv. appears for MoEF & CC and submits that his Ministry is not a necessary party in this case. However, Id.adv. for the applicant and other respondents have opposed this submission. We keep this point open and will consider the issue on the next date of hearing.

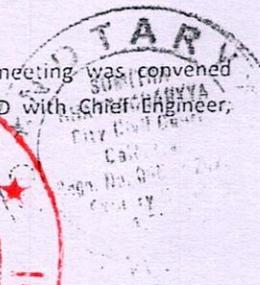
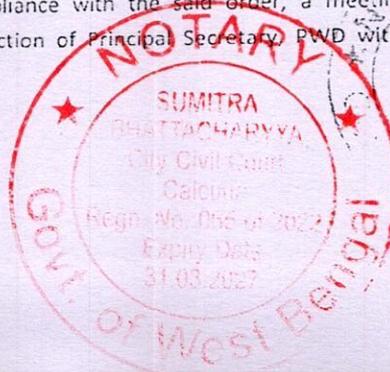
It is submitted by Id. Adv. for the applicant that so many path ways have been constructed by blocking the water course of Nayanjuli by individual parties who are residents of western portion of the Nayanjuli in order to make their entrance from VIP road as a short cut. Mr. Roy, Id. Adv. for the South Dum Dum Municipality also submit that the Municipality have inspected the area in question and found that so many path ways have been constructed encroaching the Nayanjuli by which the free flow of water is obstructed.

The Chief Secretary, Govt. of West Bengal is directed to take all measures through respective department viz. PWD, Municipality and Urban Development and Police Administration for demolishing all those illegal pathways and construction after identifying them in order to restore free flow of water in the entire stretch of Nayanjuli as indicated earlier. The Executive Officer of South Dum Dum Municipality is directed to identify that illegal construction and submit a report to the Chief Secretary within a week and on that basis demolition work will be undertaken and a compliance report will be submitted within four weeks. "

12. From the above, it will be evident that there are two parts in the order. The first being removal of all manner of obstructions in the entire stretch of the Nayanjuli and the second, laying of hume pipes at three points in Golaghata, Lake Town and Bangur to enable its free flow where it was said to have been blocked a long time back by construction of connecting roads for movement of local people.

13. In his affidavit, filed on dated 31.08.2015, the Executive Engineer, Barasat Highway, Division No. 1, stated as follows :-

"4. In compliance with the said order, a meeting was convened under the direction of Principal Secretary, PWD with Chief Engineer,



South Zone, P.W (Roads) Dte. Superintending Engineer, Eastern Highway Circle, P.W (Roads) Dte., Superintending Engineer, Southern Highway Circle, P.W.(Roads) Dte., Executive Engineer-1, Kolkata North Division, PWD, Executive Engineer, Barasat Highway Division-I, P.W. (Roads) Dte., Assistant Engineer, Baguihati Sub-Division, P.W (Roads) Dte., and Technical Secretary, PWD, for preparation of a scheme to find out ways and means for restoration of flow of water at the three points, viz., Golaghata, Lake Town and Bangur as well as the entire stretch, as directed by the Hon'ble Tribunal in the order dtd. 10.08.2015.

The observations made during the meeting have been duly recorded in the minutes, a copy of which is annexed herewith, marked as "Annexure-A/1"

5. That the debris near Golaghata area has already been removed.
6. So far as obstruction of flow of water in the nayanjuli at the three points, viz., Golaghata, Lake Town and Bangur are concerned, it is stated that at Golaghata, there already exists connectivity for flow of water through hume pipe.

Photographs and plan sketch showing existence of such hume pipes are annexed herewith, marked collectively as Annexure-A/2.

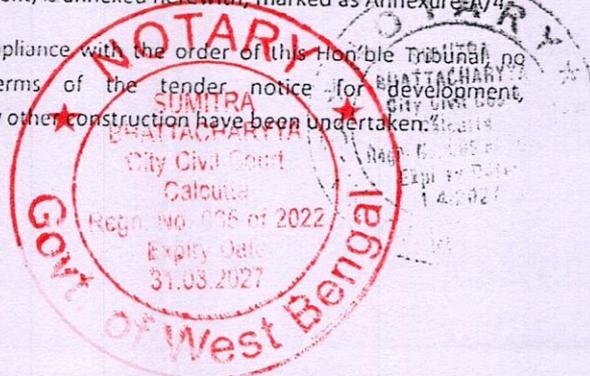
7. That for restoring connectivity to the Nayanjuli at Lake town and Bangur necessary planning, design and estimate has already been initiated. In this regard South Dum Dum Municipality is being consulted for laying Hume pipe through the park and other structures belonging to the municipality.

Copy of cost estimate including sketch for the construction of the pipe culvert for connectivity at Lake town and Bangur is annexed herewith, marked as Annexure-A-3.

8. That regarding restoration of flow of water through the entire stretch, Irrigation Department and KMDA has been requested to provide their valuable opinion regarding feasibility and scheme for the said purpose considering the hydraulic parameters, as they are the experts in this field.

Copy of the relevant letter, being memo No. 1867-8/22 dtd. 18.08.2015 issued by Executive Engineer Barasat Highway Division-I addressed to the Executive Engineer, Canals Division, Irrigation and waterways department, is annexed herewith, marked as Annexure-A/4

9. That, in compliance with the order of this Hon'ble Tribunal, no construction in terms of the tender notice for development, beautification or any other construction have been undertaken.



14. As would appear from the above, it is the case of the Respondents that in so far as laying hume pipes at the three points in Golaghata, Lake Town and Bangur crossing is concerned, such arrangement already existed only at Golaghata and for Lake Town and Bangur, planning design and estimate has been initiated. Regarding restoration of flow of water on the entire stretch of the Nayanjuli, it is stated that an expert committee consisting of senior engineers constituted by the Public Works Department for the purpose, had prepared a scheme after carrying out phase wise inspection of the area. For better appreciation and convenience the report of the Committee is reproduced below :-

"SCHEME IN CONNECTION WITH RESTORATION OF FLOW OF WATER

REPORT

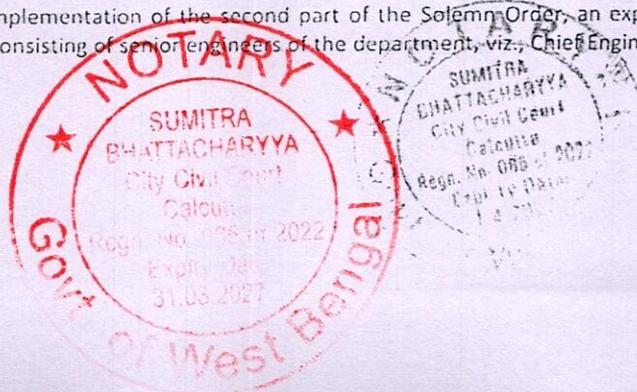
Refn: Original application N o. 27/2015/EZ & M.A.120/2015/EZ:

Dwaipayyan Sengupta Vs. Union of India and Ors.

Solemn Order passed by the Hon'ble National Green Tribunal (Eastern Bench), Kolkata dated 10.08.2015 is reproduced herein below: (Refn: page-5.para-3 of the order dated 10.08.2015 of the Hon'ble National Green Tribunal (Eastern Zone Bench)

"Principal Secretary, PWD is directed to take immediate steps and measures either to construct over bridge or fixing big hume pipes in these three points under the existing pathways in order to restore easy flow of water in the Nayanjuli throughout the entire stretch from Ultadanga to Kestopur Bridge. The said Principal Secretary, PWD will consult with his Engineers and find out ways and means in what manner the flow of water can be restored throughout the entire stretch and at the same time the access point to the areas of three points may also be kept open for the local people. A scheme in this regard may be prepared with a time frame to complete the work, within three weeks and be produced before us positively for our consideration."

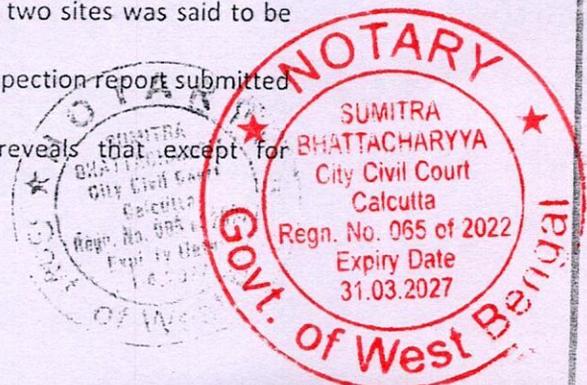
Regarding implementation of the second part of the Solemn Order, an expert committee consisting of senior engineers of the department, viz., Chief Engineer



(Headquarter)/PWD, Superintending Engineer (Eastern Highway Circle)/PW(R) D and Executive Engineer (Barasat Highway Division No.1)/PW(R) D was formed on 03.09.2015. Accordingly committee engineers inspected the site on 05.09.2015 and following are the observations:-

1. Water body near Ultadanga end of VIP Road (Mkd.1) and water body named Debighat (Mkd.2) is interconnected by a water channel in the form of Hume Pipe which has been there for flow of water.
2. There is a water body at Sreebhumi (Mkd.3) between Debighat (Mkd.2) and Lake Town. This water body would be connected to water body at Debighat through existing box drain. Within this stretch only there is Golaghata connector to VIP Road below which a box culvert already exists. The continuity between Debighat and Sreebhumi would ensure flow of water in this stretch.
3. The water body at Sreebhumi (Mkd.3) would be connected to the existing water body between Lake Town and Bangur (Mkd-4) through the existing box drain. To ensure flow of water below Lake Town Road construction of a Hume Pipe culvert is being taken up as per direction of Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata.
4. To connect water body between Lake Town and Bangur (Mkd.4) and water body between Bangur to Dum Dum Park (Mkd.5), construction of a Hume Pipe culvert is being taken up under Bangur connector of VIP Road to ensure flow of water between these two water bodies.
5. Considering the observations as noted against Sl. No. 1 to Sl. No. 4, it can be stated that water channel which has already been exists and after laying of Hume pipe at the stated locations, connectivity of water bodies can be established and it could carry flow of water throughout the entire stretch as indicated in the stated order.
6. Water channel as mentioned against Sl.No.1 to Sl. No. 4 are blocked at different locations by siltation, debris etc. Free flow of water can be established by removing /lifting/cleaning all these obstructions.
7. Time will be required for implementation of the scheme will be nearly 150 Days and estimated cost will be in the tune of Rs.75 lakhs."

15. Although the Respondents, as noted above, had claimed that hume pipes had already been laid at Golaghata and in other two points i.e Lake Town and Bangur, steps had been initiated to lay hume pipes, it later transpired that execution of such work in these two sites was said to be time consuming and involved huge costs. The inspection report submitted by the Deputy Manager (Utility), CESC also reveals that except for



Golaghata, there were serious impediments in undertaking the work at Lake Town and Bangur as will be evident from the following portions of the report :

"On site inspection it revealed that:

a. Golaghata site

Hume pipe has already been placed at the crossing of Golaghata near VIP Road. However, since no major break down has been reported since then we at present are not dealing with the said site.

b. Crossing of Lake Town

There are-

- (i) 2 nos. of 132 KV circuits with connected OF cables
- (ii) 2 nos. 33 kv circuits;
- (iii) 1 no. 11 kv circuit; and
- (iv) Other LT cables.

The entire power supply system of considerable portion of Northern Kolkata solely depend upon the underground network. A set of three drawing indicating the existing position of the underground cables are placed for kind perusal.

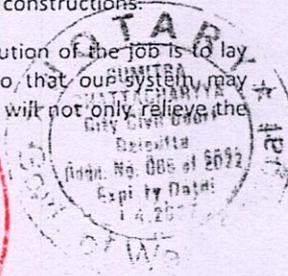
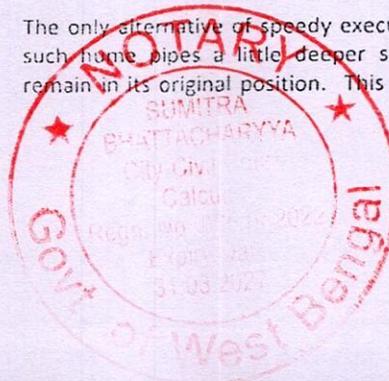
This EHV/HV/L&MV cables have crossed the canal and some of such cables have also crossed the VIP Road.

All such underground cables are located at a different depth from 0.6 mts. To 1.5 mts. From the road surface.

It is understood that PWD is contemplating to lay two big dia hume pipes at the site to ensure continuance of flow of water through the canal is directed by the Hon'ble National Green Tribunal. It is further understood that such hume pipes are contemplating to be laid around 2 mts. So that the upper surface of such hume pipes will be around 0.6 mts. From the road surface.

In that event the entire underground cable network need be shifted and relaid. This exercise is not only heavy time consuming but also involves huge cost, running to few crores of rupees. Besides, there is, at present no suitable way leave since the entire area is full of various constructions.

The only alternative of speedy execution of the job is to lay such hume pipes a little deeper so that our system may remain in its original position. This will not only relieve the



exchequer from huge costs but also this will ensure speedy execution of the job.

This will enable to execute the job, as directed by the Hon'ble National Green Tribunal without disturbing the major underground electrical network system.

If this proposition is accepted, we may, if informed, depute our personnel to oversee that there is no infringement in the underground electrical network.

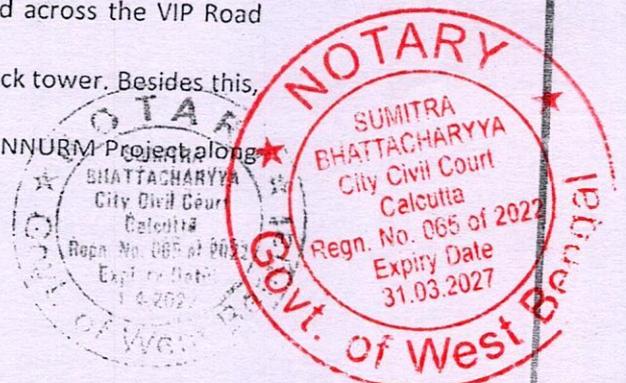
c. Bangur Road

At this site no major EHV/HV cable is found. But there are number of LV & MV cables which serves huge number of consumers at the locale.

At this location diversion of such LV & MV cables may be made within the fixed time period and at a comparatively lower cost; but suitable alternative space for laying of such LV & MV cables will be difficult to find out.

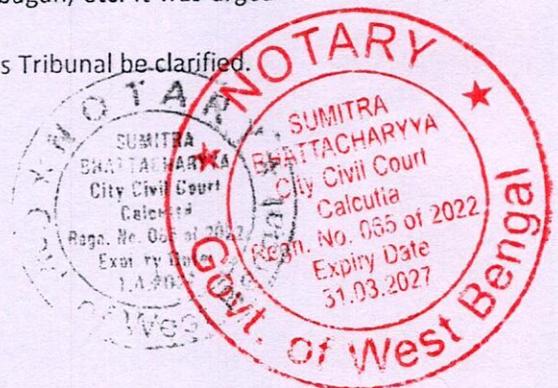
In this site also the least possible course of action will be to lay the hume pipes a little deeper so that our underground LV & MV network may remain at its existing place."

16. Subsequent affidavits filed on 1st December, 2015 and 1st February, 2016 by the Executive Engineer, Barasat Highway Division No.1 and the Chief Engineer-in-Charge, Water Supply Sector of Kolkata Metropolitan Development Agency (KMDA) respectively, highlighted further impediment in the work in the form of an existing two decade old Tallah-Palta dedicated SWMS main water pipeline of 1200 mm diameter (ID) connecting Salt Lake and Lake Town underground reservoirs that interspersed the area in question. The pipeline was said to cross the Kestopur Canal over a bridge and then underground across the VIP Road with an invert of 1.2m to 1.3m and thereafter the clock tower. Besides this, a primary main of 300 mm diameter laid under the JNNURM Project along



the service road at an invert of 1.00 meter from the top existed. Both these pipelines had been laid in consultation with the South Dumdum Municipality. These were still under the supervision and maintenance of the KMDA although it was required to be taken over by the Municipality after it was commissioned. The KMDA had no objections to the shifting of the pipelines by the PWD from the proposed alignment of their pipe conduit but, at their own risk and cost.

17. In his affidavit filed on 11th March, 2016 in compliance of orders dated 1st December, 2015 and 1st February, 2016, the Chief Secretary, while dealing with the aspect of restoration of water body and its flow continuity in its original form by way of open excavation, stated that excepting in those places where huge pipes were to be laid, it had been decided to first ascertain the original character of the land situated along the VIP road as per the land record. The RS record obtained by the PWD officials from the DL & LRO (North 24 Parganas) which was placed in a meeting convened by him on 9th March, 2016 did not show existence of continuous waterbody along the alignment of the VIP road prior to its construction but rather found that some of the land were recorded being characterised as bastu, danga, shali, bandh, path, bagan, etc. It was urged that in the light of the land records, the order of this Tribunal be clarified.



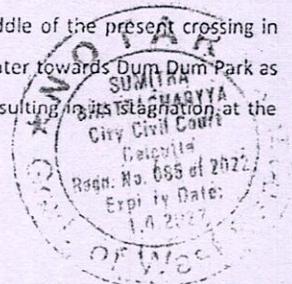
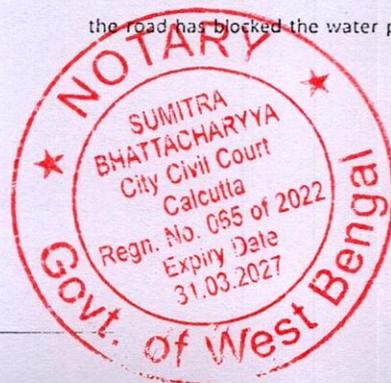
18. It may be relevant to note that considering the varied and conflicting nature of information conveyed to us by the parties and the incomplete, inconclusive and rather cryptic nature of report of the Court Commissioner, this Bench visited the area in question on 16th July, 2016 in order to get a first-hand knowledge and to appreciate the actual state of affairs prevailing there. The visit proved to be fruitful as we were able to acquire a clear picture of what existed at the ground level at the time of the visit and the possible condition that may have existed earlier. On 18th July, 2016, we deemed expedient to pass the following order:

“ It may be noted that on 16.7.2016, this Bench had made a spot visit in order to appreciate the actual state of affairs existing there. The visit was felt essential as there were conflicting information provided by the parties. Even the reports of the Commissioners appointed by us were not to our satisfaction.

It may also be noted that during the visit we were assisted by the ADM & DL & LRO, North 24 Parganas, officers of State PCB, PWD and the local Municipality.

After the visit we have acquired a clear picture of what now exists at the ground level and the possible conditions that existed earlier. We have been also apprised of the various aspects of the issue with which we shall deal in the final order to be passed in due course.

However, we have noticed that certain urgent steps are required to be taken, particularly at the Bangur crossing. The road connecting the VIP road to the other side of the water body (Nayanjuli) i.e., Bangur township, would require to be removed and replaced by an over bridge as a permanent measure to maintain free flow of water. In the meanwhile, at least four Hume pipes of not less than 3 ft diameter are required to be placed across at the middle of the present crossing in order to ensure unobstructed flow of water towards Dum Dum Park as the road has blocked the water path resulting in its stagnation at the



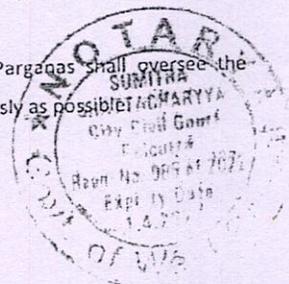
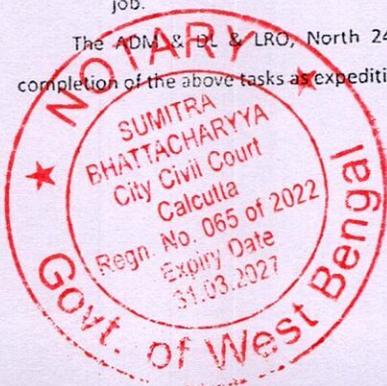
place and growth of hydrophytes and other aquatic plants. The earlier direction issued by us to lay hume pipes has been done in a casual and careless manner by laying only two such hume pipes at a far corner of the road towards Bangur township.

The concerned authorities of the Govt. of West Bengal require to take up this work on an urgent basis.

In the meanwhile they shall undertake the following works on priority :-

- i) To prepare a topo map of the existing water body commencing from Ultadanga to the end i.e., Dum Dum Park.
- ii) To prepare a DPR for the over bridge to be constructed from VIP road connecting Bangur township in place of the existing road.
- iii) Lay at least 4 humes across the road connecting VIP road and Bangur township of the dimension referred to above to restore free flow of water as a temporary measure until the bridge at (ii) is completed.
- iv) DPR for construction of outlet at Dum Dum park to connect Nayanjuli with Kestopur canal that falls into main Bagjola canal.
- v) South Dum Dum Municipality shall ensure that the Nayanjuli commencing from Sribhumi park to Dum Dum park is made free and cleared of all aquatic plants at both the banks and de-silting work carried out throughout the stretch.
- vi) They shall also measure the flood line of the water body and put up a proposal for beautification of the entire stretch leaving a set back of 3 meters from the flood line on either side and undertake massive plantation programme of fast growing local species for its conversion into an Eco Park.
- vii) All building debris and garbage dumped in the water body at various places all along the surviving Nayanjuli, particularly at Bangur area, shall be removed immediately.
- viii) We direct the Public Works Deptt., Govt. of West Bengal to assist the South Dum Dum Municipality in carrying out the job.

The ADM & DL & LRO, North 24 Parganas shall oversee the completion of the above tasks as expeditiously as possible.



We would direct that the above interim actions be carried out within a period of six weeks.

In so far as laying of hume pipes at Bangur as directed above is concerned, we grant liberty to the authorities to either engage the present Agency or execute it departmentally, whichever is more economical. This direction is being issued in the interest of expeditious completion of the task and also to ensure that the State Govt. is not burdened with additional expenditure on tender process for such work and against escalation of cost.

Action taken report shall be filed by the State respondents on or before the next date.

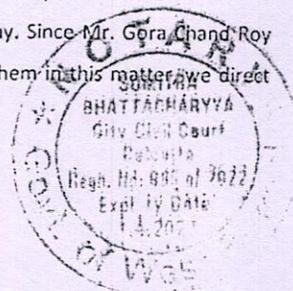
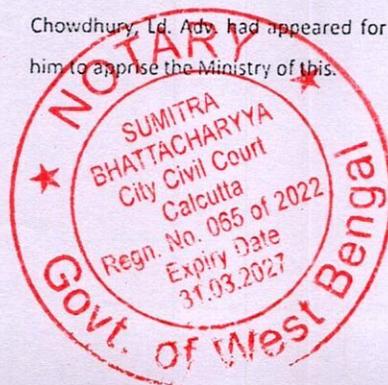
We make it abundantly clear that in the process of beautification, no portion of the existing water body in the entire stretch shall be filled up and if there is any such proposal, that shall be dropped.

We have observed with grave concern that Kestopur canal and Bagjola canal are virtually sewerage canals heavily loaded with pollutants emitting obnoxious odour. We heard complaints from the local people of the difficulties being faced by them on account of this. We have noticed that the areas near these canals are heavily populated. If the canals are not cleansed, the people residing there shall continue to remain exposed to the severe pollution and vulnerable to illness and diseases.

We have been informed that huge volumes of untreated effluents and sewage are discharged in these canals which, quite significantly, flow into the river Ganga without treatment. This, in our view, runs contrary to the Ganga Action Plan, now known as 'Namami Ganga' project. The State Govt. shall consider as to whether cleansing of these canals by setting up Effluent Treatment Plants and Sewage Treatment Plants along the canals, wherever required, could be linked with the Ganga Action Plan/Namami Ganga project for which the Central Govt. is providing considerable fund.

We direct the MOEF, Respondent No. 1, to consider as to whether additional fund can be provided to the State Govt. for this purpose on submission of a detailed project report.

None is present for the MOEF today. Since Mr. Gora Chand Roy Chowdhury, Ld. Adv. had appeared for them in this matter, we direct him to apprise the Ministry of this.



A copy of this order be also transmitted to the Secretary, MOEF.

In order to facilitate the State Govt. in seeking additional fund for the purpose, the concerned State Authority shall prepare the DPR urgently and submit it for our consideration on or before the next date."

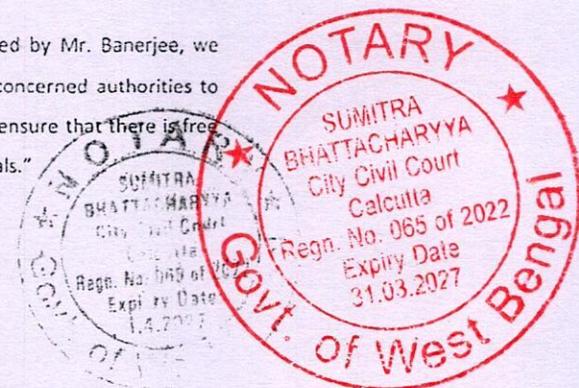
19. Directions at Sl. No. (iii) & (iv) were subsequently modified by order dated 2nd September, 2016 on the prayer of the State respondents. The relevant portion of the order reads as follows :-

" Reverting back to the two aspects pointed out by Mr. Banerjee, it is stated that the direction contained in para (iii) to lay four humes across the road connecting VIP road and Bangur township, would hinder the work of constructing over bridge connecting VIP road and Bangur Township under direction at para (ii). Mr. Banerjee submits that since the over bridge is expected to be completed within the time frame stipulated by the Govt., after which free flow of water of the water body would be restored which again was the object of direction (iii), this direction may not be insisted upon.

We have considered the matter and find that the points raised by Mr. Banerjee are reasonable and, accordingly direct that the direction at para (iii) may not be strictly adhered to subject to completion of the over-bridge within the stipulated time as assured on behalf of the State Government.

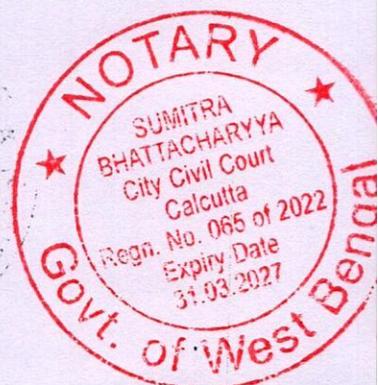
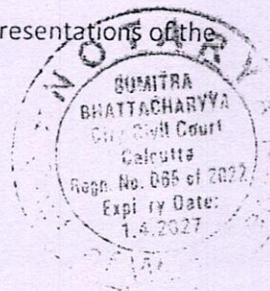
As regards direction at para (iv), Mr. Banerjee has expressed certain technical difficulties confronted by the concerned authorities. He has referred to a rough sketch map to indicate that the Nayanjuli is at a lower level than the Kestopur and the Baghjala Khals. He submits that it has been found that if the Nayanjuli is connected with the Kestopur or Bagjola khal directly, there would be possibility of back flow of water from these Khals to Nayanjuli. He, therefore, prays for further time to examine the matter and explore for an alternative method of achieving the object for which the direction had been issued.

In view of the technical difficulties expressed by Mr. Banerjee, we accept his prayer for time and leave it upon the concerned authorities to examine and explore for an alternative method to ensure that there is free flow of water from the Nayanjuli to either of the Khals."



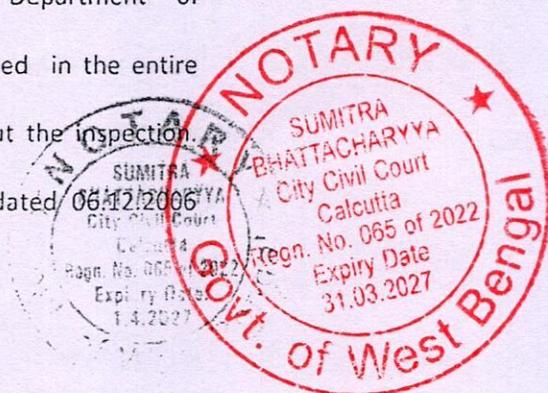
20. We may not delay ourselves further on the narration of the events thereafter on the above aspect except to note that the concerned authorities have been adhering to the directions and the timeline stipulated for completion of the works. We may, however, harken that the directions issued vide order dated 18th July, 2016 was aimed at addressing the urgent and imperative nature of circumstances that were noticed during our visit. We may, therefore, proceed with the other two issues which were under our consideration one of which has been partially addressed i.e., construction of an over bridge at the Bangur crossing and other cognate matters referred to in the order, leaving the ones pertaining to Golaghata and Lake Town crossings, the other being the removal of encroachments between Ultadanga and Lake Town.

21. In order to deal with these two aspects, more particularly removal of encroachments on the Nayanjuli directions towards which we have held to be peremptory vide our order dated 1st February, 2017, it may be recalled that the principal concern of the applicant was the indiscriminate and uncontrolled illegal filling up of the Nayanjuli and its encroachment in the stretch from Ultadanga to Lake Town and the alleged failure on the part of the authorities to take action against the encroachers, their indifference to the reports of experts pointing out the criticality of the waterbody and their inaction on the representations of the applicant calling upon them to restore the waterbody.



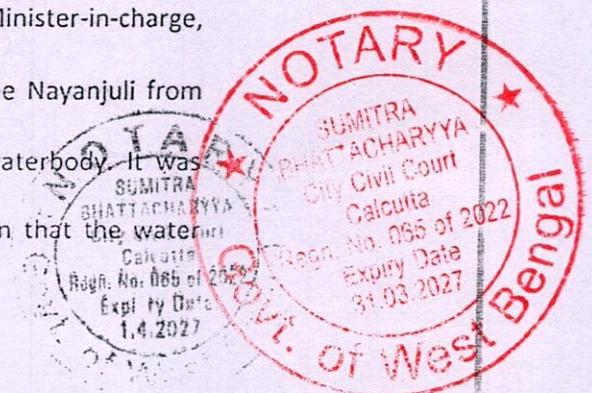
22. The foregoing is a brief narration of facts of the case shorn of the details to avoid prolixity and also limited to the salient features of the events unfolding during the course of the proceedings which in our view would be germane for our consideration in the case.

23. Mr. Anindya Lahiri, Learned Counsel for the Applicant, would most passionately argue that there was utter callousness on the part of the authorities in dealing with the waterbody and were grossly negligent in preserving and protecting it. It was submitted that the fact that Nayanjuli existed in the entire stretch from Ultadanga to Lake Town and onwards, as per him, is borne out by various records. Amongst the documents referred to by him, the Learned Counsel drew our attention to letter dated 7th March, 2012 of RPS Kahlon, Principal Secretary, Department of Environment addressed to the Principal Secretary, Public Works Department, the Secretary, Irrigation and Waterways, Department and the Chairman, South Dum Dum Municipality, conveying receipt of a letter from Dr. Dipayan De, Chairman, South Asian Forum for Environment regarding the critically endangered Nayanjuli and the need to revive the water flow to the Kestopur Khal. The next was a report dated 04.06.2013 submitted by Dr. Rajarshri Chakraborty, Environment Officer, Department of Environment, to substantiate that the water body existed in the entire stretch even as on 03.06.2013 when he had carried out the inspection. Reference was also made to a deed of conveyance dated 06.12.2006



entered into between two parties in respect of a holding situated in the vicinity of the water body and the site appended thereto in support of such contention.

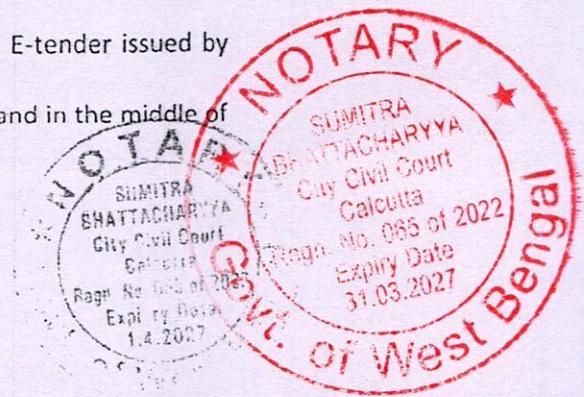
24. The Learned Counsel further went on to submit that the threat to the water body had been a cause of concern even for the authorities since the year 2010. In support of this submission, our attention was invited to various correspondences exchanged between different authorities, first of which was a letter dated 28.07.2010 written by the Chairman-in-Council (PWD), South Dumdum Municipality, to the Executive Engineer, PWD, seeking permission for taking up beautification project of the Nayanjuli urgently for its protection and maintenance followed by letter dated 09.09.2010 of the Executive Engineer requiring the Municipality to submit detailed drawing of the beautification proposal and other correspondences exchanged thereafter on the subject. Next was a letter of the Municipality dated December 14, 2010 addressed to the Executive Engineer, Barasat Highway Division No.1 forwarding a schematic diagram of the Municipality's beautification of Nayanjuli for its proper maintenance. The Learned Counsel would then refer to letter of CIC (PWD) of the Municipality dated 26.04. 2012 addressed to the Minister-in-charge, Department of PWD, reiterating the need to prevent the Nayanjuli from being covered up by taking up beautification of the waterbody. It was emphasised that although this letter gave an impression that the water



body existed only between Lake Town to Dum Dum park, the report of Dr. Rajarshri which is based on an inspection carried out on 03.06.2013 and, therefore, later in point of time clearly indicated that it was existing along the entire stretch.

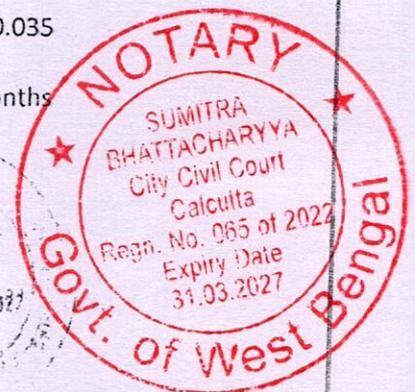
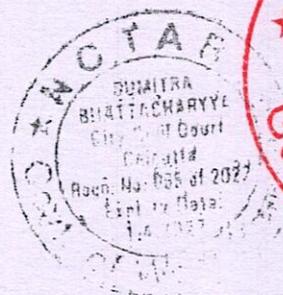
25. Endeavour of the learned counsel in referring to such documents was to demonstrate that the water body was under constant threat of being filled up and that it had indeed been filled up and encroached upon which, as per him, would be apparent from its present condition.

26. Apart from these, several other correspondences of the years 2011, 2012 and 2013 were also referred to in support of such contention with which we may deal later but, at this stage, suffice it to observe that it was the contention of the learned counsel that in the garb of execution of the beautification project taken up by them, albeit rapidly as per him, after administrative approval for it was accorded on 02.12.2014, the authorities had filled up even the existing water bodies. That apart, the Kolkata Metropolitan Development Authority, as per him, had also concealed its existence while undertaking a project under JNNURM for laying storm drainage system. It was submitted that the malafides on the part of the authorities was further evident from the fact that the E-tender issued by the PWD for beautification envisaged creation of an island in the middle of the water body.



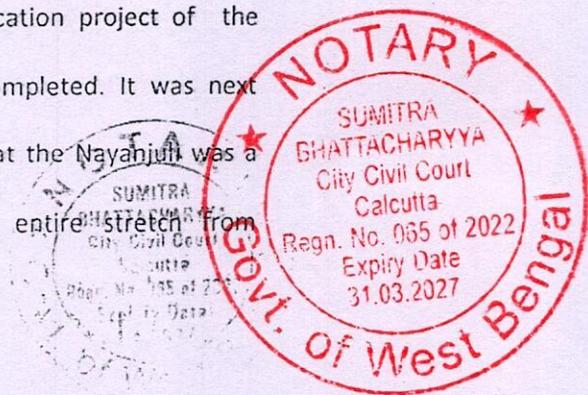
27. Relying upon *People United for Better Living in Calcutta – Public and Another Versus State of West Bengal and Others* : AIR 1993 Calcutta 215, Mr Lahiri would strongly urge that the Respondents should be directed to maintain the nature and character of the water body considering the immense significance of waterbodies as an eco-system highlighted in the decision. He would further exhort us to intervene in the present case as the ecological balance was a certain casualty if the encroachments and filling up of the Nayanjuli continued to persist in the quest of the State for development. It was urged that, as held in the case (*supra*), since benefit to the society ought to be the prime consideration of the Law Courts and, ecological imbalance being a social problem, it ought to be decided by this Bench being a Court of Law vested with special powers to deal with matters pertaining to environment.

28. Lastly, Mr. Lahiri pointed out that the activities being carried out by the authorities were also in violation of Section 17A of the West Bengal Inland Fisheries Act, 1984 sub-section (1) (a) of which expressly bars conversion of water area including embankment measuring 5 cottahs or 0.035 hectares or more which is capable of being used as fishery, or any naturally or artificially depressed land holding measuring 5 cottahs or 0.035 hectares or more, which retains water for a minimum period of six months in a year, to such use other than fishery, etc.



29. Mr. Somnath Roy Chowdhury, Learned Advocate, representing the Applicant in OA No 46 of 2015/EZ on his part while adopting the arguments placed by Mr. Anindya Lahiri, additionally submitted that the action of the authorities in permitting development in the area amounted to infraction of various provisions of the West Bengal Town and Country (Planning and Development) Act, 1979. Our attention was drawn to the preamble of the Act, definition of the term "Development Authority" under Section 2 (8), non-compliance of Sections 31 and 46 and consequence thereof under Section 52 of the Act.

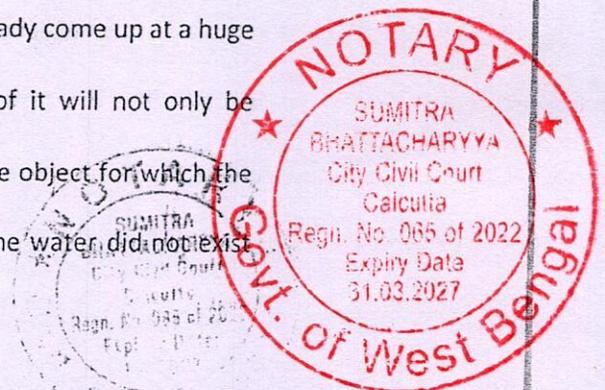
30. Appearing for the Respondents, Mr. Amitesh Banerjee, Learned Senior Government Counsel, submitted that the application suffered from various incurable infirmities for it to be maintainable. First of all, it was contended that it called for dismissal at the thresh-hold as being barred by limitation in view of the specific bar under Section 14 (3) of the National Green Tribunals Act, 2010 and proviso thereto in entertaining belated applications as the case of the applicant is that the encroachments to the water body had been made many years back, the last having commenced from the year 2010 but, the Applicant had chosen to present the application only on 16.04.2015 after the beautification project of the waterbody and its precincts had almost been completed. It was next submitted that the very foundation of the case that the Nayanjuli was a continuous water body that extended for the entire stretch from



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Ultadanga to Lake Town and onwards was incorrect when the documents filed by the applicant indicated otherwise. In any case, the Nayanjuli was not a natural waterbody but a burrow pit created by the excavation of earth for construction of the VIP road not so long ago.

31. As per the Learned Senior Counsel, the area was in a continuous process of development since long resulting in rapid growth of population and consequently, the fragmented water bodies which had appeared in the area in question had turned into receptacles of sewage, domestic waste water, waste materials of all hues, garbage, etc., that emitted foul smell and had become a breeding ground for mosquitoes causing serious health hazards for the inhabitants. In response to the persistent public demand, mitigation measures were conceived and undertaken by the State authorities in the form a comprehensive beautification project for the entire stretch. In the process remnants of a few of such waterbodies found in critical conditions were filled up as a part of the project in larger public interest while others were cleaned up and restored and are still in existence in its pristine condition. As per Mr. Banerjee, the project, a well thought out plan made after taking into consideration all relevant factors, consists of multifarious public utilities which has already come up at a huge cost on the public exchequer. Thus the undoing of it will not only be against public interest but also would not achieve the object for which the application has been filed as, in the first instance, the water did not exist.

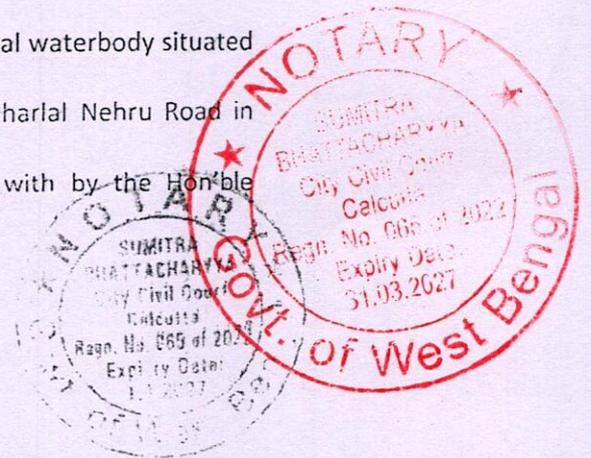


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the way it has been projected by the Applicant and secondly, the change in the user of the land during the several decades had now been rendered irreversible. It was emphasised that if not better, ecologically the area is not worse off than it was.

32. Relying upon the very decision of *People United for Better Living in Calcutta (supra)* referred to on behalf of the Applicant, it was submitted that although it is the duty of the Law Courts to exercise its judicial power to see that there is no degradation of the society by indiscriminate exploitation of the environment for the sake of development, it certainly did not mean and imply that every developmental programme ought to be prohibited. It was submitted that as held in the case, "there has to be balance between the development and the environment so that both can co-exist without affecting the other".

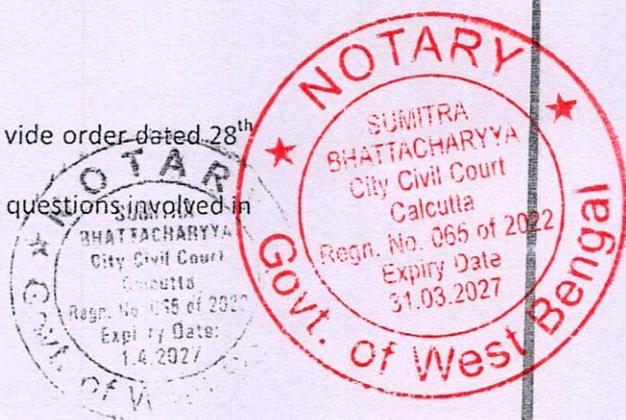
33. Reference was also made to *Concern for Calcutta & Ors Versus State of West Bengal: 1995 SCC Online Cal 397: (1996) 1 CHN 123* wherein construction of a multi-storeyed complex by encroaching upon and filling up major portion of a two hundred years old historical waterbody situated in the campus of the Indian Museum on the Jawaharlal Nehru Road in Kolkata was under challenge, was not interfered with by the Hon'ble Calcutta High Court.



34. We have given thoughtful consideration to the submissions of the Learned Counsel for the parties and carefully examined the pleadings and the documents on record. Since questions raised in both the Original Applications are identical and the Learned Counsel for the Applicant in OA No. 46 of 1015/EZ has adopted the arguments of the one placed by Mr. Anindya Lahiri, the Learned Counsel for the Applicant in OA No. 27 of 2015 of 2015/EZ, we shall deal with the facts and circumstances obtaining in the latter Application for the purpose of disposal of both the cases.

35. In the Original Application it is asserted by the Applicant that the Nayanjuli that extends from Ultadanga to Lake Town Crossing on the VIP road situated at the northern side of Wards No. 29, 30, 34 and 35 of South Durmdum Municipality in Kolkata is one of the oldest waterbodies upon which the entire area heavily depends for its daily requirement of water. That this water body is rapidly getting depleted being filled up due to encroachments by uncontrolled housing projects, urban expansion and indiscriminate dumping of garbage and waste encouraged by sheer neglect and the lack of efforts on the part of the authorities for its protection and preservation. Directions have, therefore, been sought, *inter alia*, for its protection and restoration to its original state.

36. At this stage, it may also be observed that vide order dated 28th March, 2017, it was noted that the area for which the questions involved in

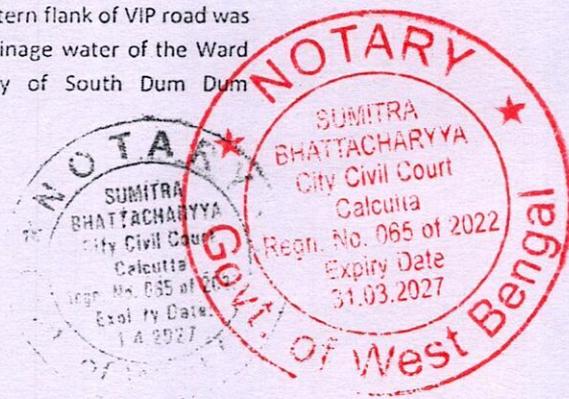


the case were to be determined had been narrowed down and confined to wards No 34 and 35 of South Dum Dum Municipality and that nothing much was left to be determined in respect of ward 35 except for certain directions that may be required to be issued for restoration, cleaning and preservation of the water body appearing in the map filed by the South Dum Dum Municipality (Respondent No. 9 in OA 46 of 2015 and the Respondent NO.8 in OA No.27 of 2015).

37. Proceeding with our discussions thus, the first question that arises is what is a 'Nayanjuli'? None of the parties including the Applicant has come forward with an explanation on this except for the Executive Engineer, Barasat Highway Division No.1, Respondent No.6, who in his affidavit filed on 01.07.2015 had the following to state :-

"5. Borrow pits were excavated during construction of higher elevated embankment of VIP road. Borrow pits are commonly called as "Nayanjuly". According to Samsad Bengali-English Dictionary, 2nd Edition (reprinted, 1995) "Nayanjuly" means "a trench especially for carrying out filthy water, a gutter". Hence, "Nayanjuly" is not a natural water body.

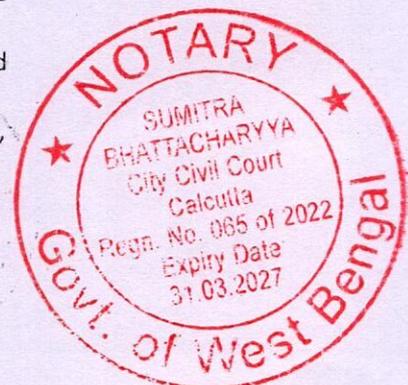
6. Whatever the stretch of "Nayanjuly" has been shown in the satellite picture annexed to the original application, there is no wide array of fresh water wetland in the stretch from Ultadanga to Dum Dum Park. However, the channel of borrow pits besides the service road on the western flank of VIP road was one of the source for outfall of the drainage water of the Ward Nos. 29, 30, 34 and 35 respectively of South Dum Dum Municipality."



38. Since the positions averred in paragraph 5 and the second part of paragraph 6 have not been disputed by any of the parties, we shall proceed under the premises that it is correct and that the waterbody which is the subject in the present proceedings would fall within such meanings, i.e., it is not a natural water body and is a burrow pit. We find this position substantiated also by the revenue records the position of which has been set out in paragraph 5 (a) of the affidavit filed on behalf of the Dum Dum Municipality on 29.05.2015, the relevant portion of which reads as follows :-

"5(a). As per records, there was and/or is no Nayanjuly within the stretch from Ultadanga to Golaghata, parallel to VIP road. However, there is a water body in Dag No. 25 measuring an area of 0.9812 decimals and Dag No. 10/29, measuring about 0.015 decimals respectively under Khatian No. 50 Mouza – Golaghata, J.L. No. 27 under South Dum Dum Municipality, District – North 24 Parganas besides the service road which runs parallel to VIP Road.".

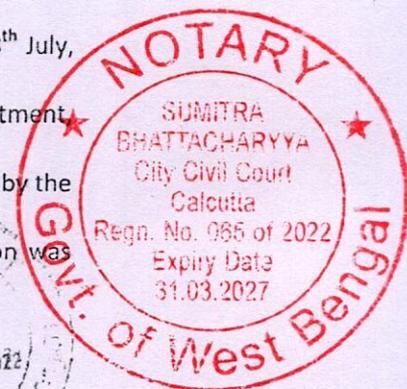
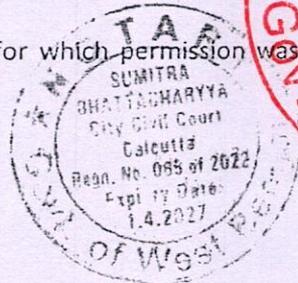
39. It cannot be denied that revenue records are prepared based upon the actual physical position of land found at the time of survey and, except for the trite position that the ownership recorded therein can be challenged as being a rebuttal proof of title, there is a presumption of correctness as regards the rest of the entries. The Applicant in his affidavit-in-reply, has no doubt denied this based upon a map prepared by the Municipality through Geographical Information System (GIS) which is said to be a process by which satellite images of an area is taken as a base but,



admittedly that was prepared in the year 2013 which, therefore, would not discount a possibility that the water body may have come into existence after the general survey and attestation. That is what appears to be so. Several maps and topo sheets of the area were referred to by the Learned Counsel to substantiate that the Nayanjuli extended as a continuous water body from Ultadanga to Lake Town and onwards but we find from those documents that there were fragmented waterbodies of varying sizes up to Lake Town and appreciably large one thereafter that had a continuous flow towards Bangur and onwards to Dum Dum Park before merging with the Kestopur canal.

40. However, whatever may have been the extent, the maps and the documents on record do indicate that fragmented waterbodies did exist in wards no. 34 and 35. If so, were those encroached up and filled up? If so, can those now ordered to be restored in the original form as is being sought for by the Applicant? These are the crucial questions that require to be answered in the light of the documents available on record, rhetoric discounted.

41. Letter of the CIC (PWD), Dum Dum Municipality, dated 28th July, 2010 addressed to the Executive Engineer, Public Work Department indicates that a beautification project of the Nayanjuli was proposed by the Municipality to save it from being covered up for which permission was

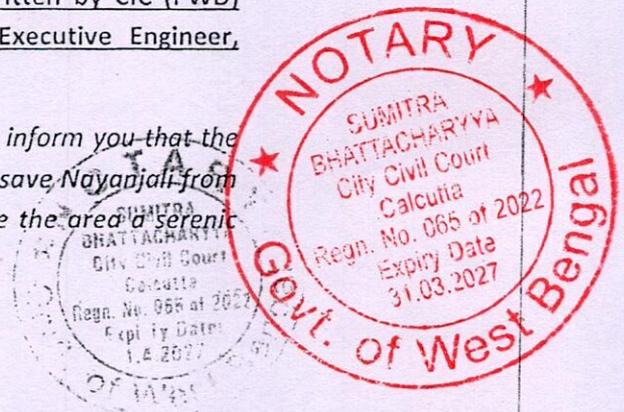


sought for. This was followed by another letter by him dated December 14, 2010 forwarding a schematic diagram of the proposed beautification as requisitioned by the Executive Engineer in his letter dated 09.09.2010. Not much appear to have progressed on the proposal as would be apparent from letter of the CIC (PWD) dated 26.04.2012 addressed to the Minister-in-charge, Department of P.W.D. and another dated 07.06.2012 to the Chairman, West Bengal Pollution Control Board beseeching upon them to clear the beautification project.

42. On a careful examination of the aforesaid correspondences, we find that the water bodies from Ultadanga to Lake Town were in a continuous process of being filled up since long culminating in area assuming the present position in the year 2010. The letters referred to above clearly indicate that the Municipality intended to take up a beautification programme to prevent encroachment and covering of the Nayanjuli which was still intact between Lake Town and Bangur apart from providing a scenic look to the area. These will be revealed by the excerpts of the following correspondences: -

(a) Letter dated 28th July, 2010 written by CIC (PWD) Dum Dum Municipality to the Executive Engineer, Barasat Highway Division No.1

".....As per discussions we wish to inform you that the Beautification project will not only save Nayanjuli from being covered up but will also give the area a serene look."



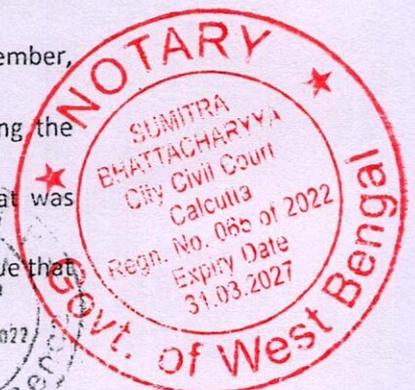
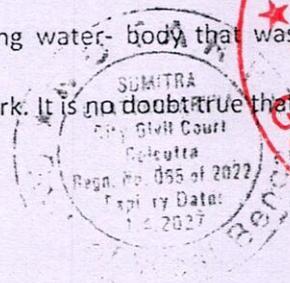
(b) Letter of CIC (PWD) Dum Dum Municipality dated December 14, 2012 addressed to the Minister-in-charge, Department of P.W.D.:

".....If you see the stretch between Ultadanga and Lake Town it will be seen that Nayajali has been covered up by the big real estate developersFortunately enough the stretch of Nayajali between Lake Town and Dum Dum park is still intact in its natural form, though there is immense probability of being covered up by the ambitions of big real estate developers. However, in many cases, the economic values of wetlands like Nayanjali, environmental services may significantly exceed the value from alternative use. On the other hand, the reduction in economic value of their environmental services due to pollution, as well as the health costs of the pollution itself are not taken into account while using them as a waste dump.

Hence a holistic view of Nayajali is necessary which looks at Nayajali in terms of its causal linkages with other natural entities, human needs, and its attributes. As a first step forward, restoration, beautification and maintenance of the stretch of Nayanjali between Lake Town and Dum Dum park needs to be taken on an urgent basis."

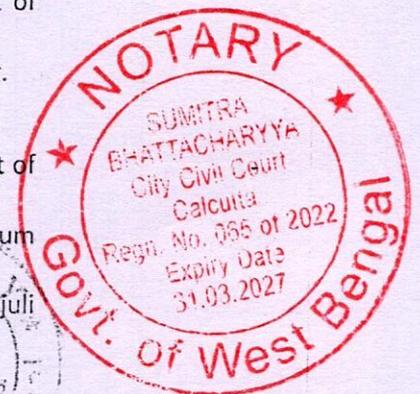
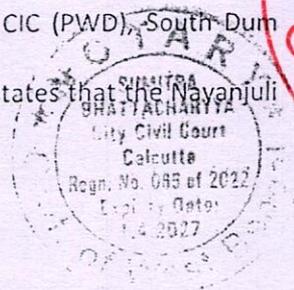
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43. It will thus appear from the above that the waterbodies between Ultadanga and Lake Town which is the exact area where questions have been raised by the Applicant, had been filled up even as in December, 2012. The endeavour on the part of the Municipality in conceiving the beautification project was to protect the existing water-body that was lying intact between Lake Town and Dum Dum park. It is no doubt true that



the field observation report submitted by Dr. Rajarshri Chakraborty, Environment Officer, Department of Environment, dated 04.06.2013, filed by the Principal Secretary, Environment, states that "the Nayanjuli is existing along the entire stretch, although with varying width" (i.e., from Ultadanga to Kestopur) which has also been noted in our order dated 10th August, 2015. The report obviously had culminated as a consequence of a letter dated 27.09.2011 from Dr. Kakoli Ghosh Dastidar, MP (Lok Sabha) forwarding letter of South Asian Forum for Environment (SAFE) dated 29.05.2011 regarding filling up of Nayanjuli besides the western side of VIP road, opposite the Kestopur Khal from Ultadanga to Dum Dum park as recorded in the note of the Senior Environment Officer of the Department of Environment. It had been noted that on an inspection of the area on 21st October, 2011 conducted along with the Research & Liaison Officer that there were encroachments of the water body beside the VIP road by various housing development projects and that its revival between Bangur Avenue road connector between VIP road and connector to the Kestopur khal at the Ultadanga end would be a major project. The next is a letter from the Principal Secretary, Department of Environment, to various Principal Secretaries as already observed earlier.

44. Indeed, we did find an apparent conflict between the report of Dr. Rajarshri Chakraborty and the version of the CIC (PWD), South Dum Dum Municipality in as much as while the former states that the Nayanjuli



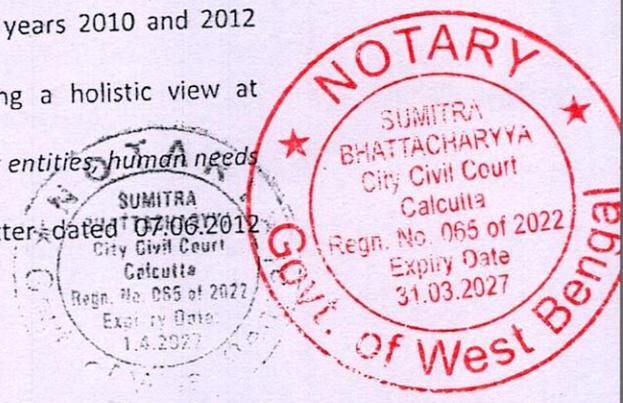
exists in the entire stretch, the latter's version is that stretch between Ultadanga and Lake Town have been filled up. A closer examination of the note of the Senior Environment Officer, however, indisputably appear to support the version of the CIC (PWD) where it is recorded that various housing projects have encroached upon the waterbody and that its revival between Bangur connector and the connector at the Ultadanga end would be a major project. Significantly, even in the "Proposed Management Intervention" of Dr. Rajarshri Chakraborty in his report after *inter alia* recommending reclamation of the area and its demarcation, which would have been the ideal steps, it has been suggested as follows: -

" 5.Continuity of the Nayanjali must be restored. All roads across Nayanjali should provide for adequate passage of water underneath.

6.The Nayanjali is truly a large water body much of which still exists and can be restored. Through proper management, it has the potential to become an environmental asset.

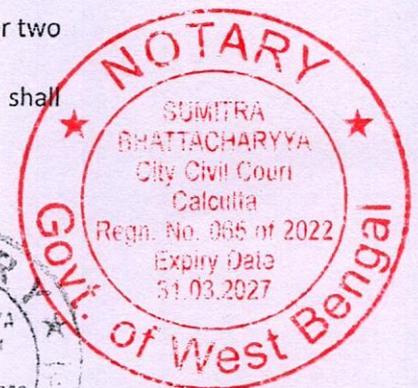
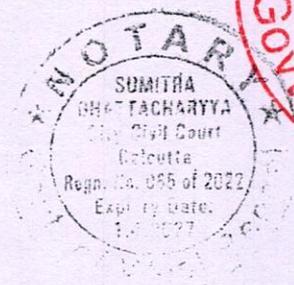
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45. Thus, it is quite obvious that even Dr. Rajarshri Chakraborty undoubtedly appear to have accepted the position unequivocally expressed by the CIC (PWD) in his letters of the years 2010 and 2012 alluded to by us earlier. The necessity of taking a holistic view at "Nayanjali in terms of its causal linkages with other entities, human needs and its attributes" expressed by him in his letter dated 07.06.2012



addressed to the Chairman, West Bengal Pollution Control Board, could only have been prompted by the reality of the situation faced by the Municipality. This, in our view, also explains the cautiously worded statement of the Executive Engineer, Barasat Highway Division No.1 in paragraph (n) of his affidavit filed on 01.07.2015 that *"the department is ready to undertake any possible work for restoration of the existing water body in the stretch from Dum Dum Park to Ultadanga flyover on the western flank of VIP road, if any appropriate and/or order may kindly be passed by the Hon'ble Green Tribunal."* (Emphasis supplied)

46. It may also be recalled that in order to deal with the second part of the order of the Tribunal dated 10th August 2015 which required the Respondents to restore free flow of water in the entire stretch of the Nayanjuli, an expert committee had been constituted which would indicate the complexity of the task. Since we have reproduced the Report of the Committee earlier, we need not detain ourselves further on this. As regards the first part of the order also by which huge pipes were directed to be laid at the crossings in Golaghata, Lake Town and Bangur, it has already been noted that except for the Bangur crossing, the other two still require to be executed towards which necessary directions shall follow hereafter.

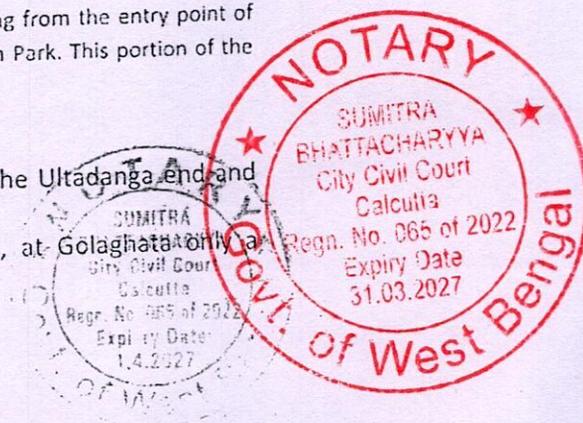


47. Notwithstanding the above position, we find a more realistic position projected in the report of the West Bengal Pollution Control Board on its inspection carried out on 13.05.2015 and 11.06.2015 as would be revealed by the observations in the report relevant portions of which read a under

" The observations made at different locations, and the results of water analysis and the inferences are presented below :-

1. At the southern end near Ultadanga at Debi Ghat next to a park named "Butterfly" and in front of a housing complex named "Natural Residency" there is a water body with boundary wall on the road side. Some wastes like dry flowers were seen dumped at one corner just within the wall on the southern side. Water sampling was performed on the days and the findings are provided below.
Status of the water quality :
2. Further north, beside the office of the Assistant Engineer of Baguiati Highway Sub Division, PWD at Golaghata, some marshy area was seen. Immediately north of the place, work of laying of sewer line was also observed
3. On 13th May, 2015 at Sreebhumi, in front of Gokul Banquets a water body was found filled with water hyacinth and water sampling was conducted. It was learnt from the workers that this work was for park and rejuvenation of water body.
4. A continuous long water body along VIP Road beside Lake Town entrance to the entrance of Bangur appeared like the "Nayanjuli". This portion of the water body has been beautified.
5. A long water body was found stretching from the entry point of Bangur to the entry point of Dum Dum Park. This portion of the water body is not cleaned. "

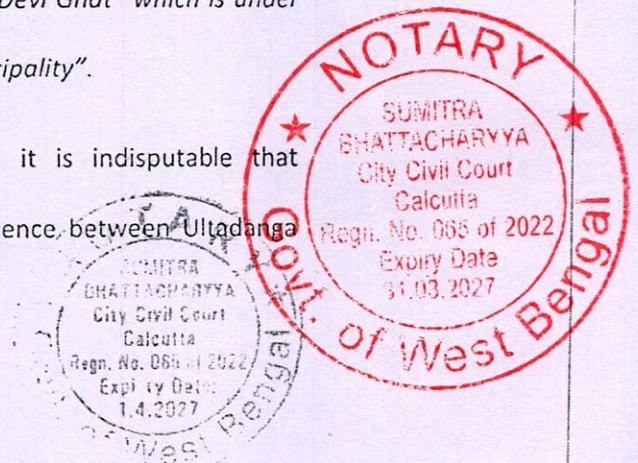
48. The observations thus reveal that at the Ultadanga end and Sreebhumi there was one water body each and, at Golaghata only



marshy area existed. There was existence of a continuous water body that resembled the "Nayanjuli" along the VIP road from the Lake Town entrance to the entrance of Bangur which was found to have been beautified and thereafter the Nayanjuli was uninterrupted but required to be cleaned.

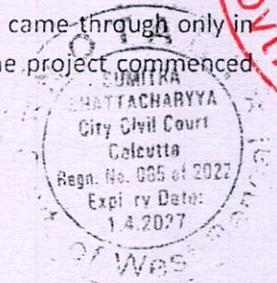
49. This explains the submission made by Mr. Bikash Kargupta, the Learned Government Advocate, on 10th August, 2015 that there were three points, viz., Golaghata, Lake Town and Bangur, where the Nayanjuli had been blocked by connecting roads constructed across for movement of the local people and, for the Tribunal to direct the Respondents either to construct over bridge or to lay large hume pipes at those points under the pathways to restore flow of water. We find support on this aspect also in the affidavit of the Executive Engineer, Barasat Highway Division No.1 where in paragraph (I) it has been stated that *"there are low swampy land and water body scatteredly(sic) located in between Golaghata to(sic) Ultadanga flyover. There are no such borrow pits, excavated by the department in the stretch from Golaghata to Ultadanga flyover. Because, there is a vast water body commonly called as "Devi Ghat" which is under the reclamation project of South Dum Dum Municipality"*.

50. On an analysis of the above, it is indisputable that essentially only three water bodies are in existence between Ultadanga



and Sreebhumi, the one at Ultadanga being the Devi Ghat which is a fairly large isolated water body.

51. In the facts and circumstances, what emerges is as follows: -
- (a) The Nayanjuli in question is not a natural water body and, therefore, is not found recorded in the revenue records;
 - (b) The Nayanjuli is a burrow pit excavated while constructing the higher elevated VIP road and came into existence in or about the year 1960 (minutes of the first meeting of the Expert Committee for identification of illegal construction and encroachment on Nayanjuli between Ultadanga and Dum Dum Park held on 27th November, 2015);
 - (c) The waterbodies in wards no. 34 and 35 were not uninterrupted and continuous joining the point at Sreebhumi and beyond but was scattered and fragmented and of varying sizes.
 - (d) Encroachment of the waterbodies in these wards had been continuing for many years culminating in the position in the year 2010. Even going by the contention of the Applicant, filling and covering by encroachment for various housing projects had commenced in the year 2004;
 - (e) In order to prevent further encroachment and to save substantial part of the Nayanjuli that was still in existence, the South Dum Dum Municipality conceived project for beautification, restoration and maintenance of the water body in the year 2010 for which clearance was sought for from the Public Works Department, the custodian of the VIP Road for the construction of which the Nayanjuli was excavated.
 - (f) After much deliberation, the project came through only in December, 2014 and the work on the project commenced

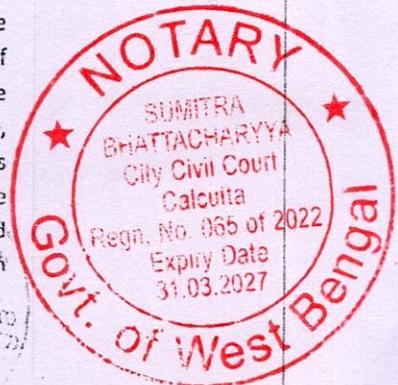
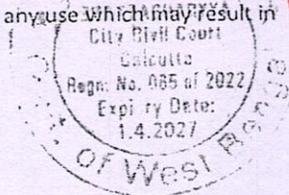


in March, 2015 after following the tender process which is borne out by the statement of the Executive Engineer, Barasat Highway Division No.1 in paragraph 5(b) of his affidavit filed on 29.05.2015 to the effect that "the Public works Department, Government of West Bengal has already undertaken to execute the work of beautification and greenery within the stretch from Sreebhumi to Lake Town" and that the said work was in progress.

(g) The Original Application came to be filed on 15.04.2015 after the work on the project had started.

52. Before we embark upon giving our decision, we may address on the assertion of Mr. Lahiri on the question of violation of Section 17A of West Bengal Inland Fisheries Act, 1984 inserted by the West Bengal Inland Fisheries (Amendment) Act, 1997. Having considered the submissions, we are of the view that the contention does not appear to be sound in view of the decision of the Hon'ble Calcutta High Court in the case of *Concern for Calcutta & Ors (supra)* which squarely deals with this question as follows :-

"91. Regarding the provisions of the West Bengal Inland Fisheries Act, 1984 and the provisions of Section 17A thereof, it must be borne in mind that the said Act was enacted to provide for conservation, development, propagation, protection, exploitation and disposal of Inland fish and fisheries in West Bengal. It is nobody's case that the Museum tank s being used for the purpose of pisciculture so as to bring it within the ambit of the aforesaid Act. Even s. 17A, which imposed bar to filling up of any water area with a view to converting it into solid land for the purpose of construction of a building thereon or for any other purpose, makes it clear that the water bodies intended to be included within its ambit are such water bodies which were being used as fisheries. Clause (e) of Sub-s. (1) of s. 17A indicates the nature of the water area and provides that the same should, be not put to any use which may result in

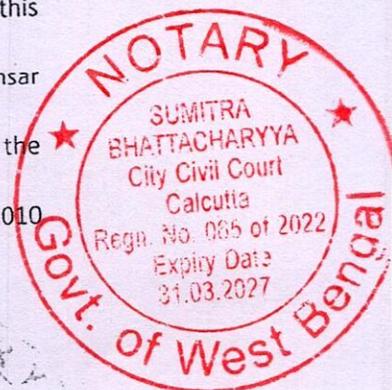
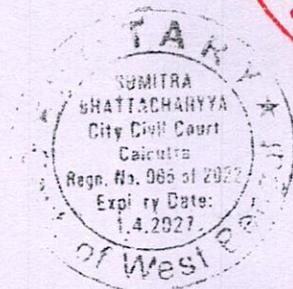


abolition of the fishery, which again clearly indicates that the water area was being used as fishery. The provisions of clauses (b) and (c) of sub-s. (1) of s. 17A of the said Act refers to holdings of the nature indicated in clause (a), namely, water areas used for purposes of fishery.

92. In my view, the provisions of the aforesaid Act would have no application the museum tank which does not appear to be used for pisciculture."

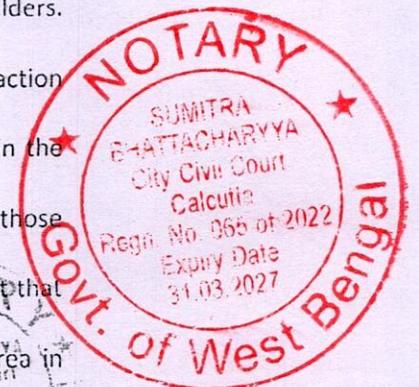
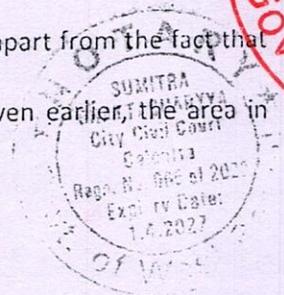
53. We are persuaded to accept the above finding as the facts in the case giving rise to the decision are *pari materia* to the ones before us in this case. Accordingly, the contention stands rejected.

54. The decision of *People United for Better Living in Calcutta (supra)* referred to by Mr. Lahiri is also clearly distinguishable from the facts of the present case as, unlike in the present case where the question is threat to the Nayanjuli, a man-made waterbody, by constructions that have already come up or are said to be ongoing, in that case it was the proposed construction of a World Trade Centre in the East Kolkata Wetlands that was under consideration of the Court. The East Kolkata Wetlands that lies in the east of the city of Kolkata, is a vast natural waterbody that naturally treats the city's sewage and, in consideration of this and its rich bio-diversity, it is now a recognised site under the Ramsar Convention, an International Treaty on Wetlands, and included in the schedule to the Wetlands (Conservation and Management) Rules, 2010 which, obviously is not the case in the case at hand.



55. Mr. Somnath Roy Chowdhury, Learned Counsel for the Applicant in OA 46 of 2015, in his arguments pressed into service the West Bengal Town and Country (Planning and Development) Act, 1979 to contend that the Act had been violated on several accounts. Without going into the details of his submissions, in our considered opinion, the contentions not only appear to be an afterthought but also alien to the case of the Applicant set out in the Original Application. None of the State Respondents including the Kolkata Metropolitan Development Authority arrayed as Respondent No. 11 has raised any question on this. Furthermore, apart from the fact that the subject matter would not fall within the jurisdiction of the Tribunal, section 52 of the Act admittedly provides for penalty for the violations alleged by him and, therefore, remedy of filing a complaint before the appropriate Authority is available to the Applicant. We, therefore, unhesitatingly reject the contention as untenable.

56. Apart from the above, the Applicant has cited instances of illegal constructions by some builders, in particular M/S Pranav Builders. However, we find that the authorities had admittedly initiated action against them and had issued notices which gave rise to litigations in the Calcutta High Court. Although it is the case of the Applicant that those cases were dismissed as withdrawn, we find that, apart from the fact that the alleged infractions are of 2013 vintage and even earlier, the area in



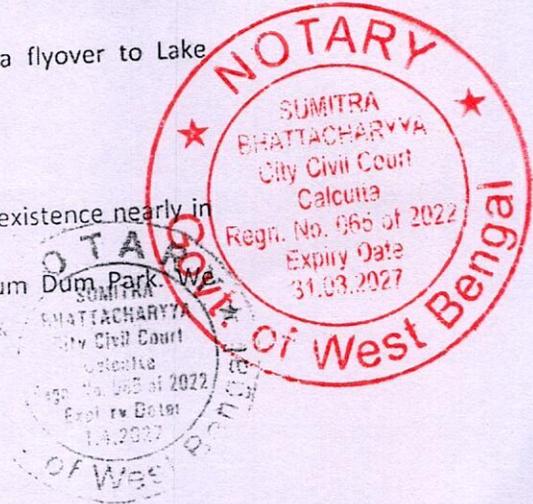
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question apparently lies in Lake Town which is beyond the area of dispute presently under consideration as would be evident from site plan appended to the affidavit-in-reply filed by the Applicant on 31.03.2015 to the affidavit of South Dum Dum Municipality.

57. In the light of the above facts, we find that the character of the water bodies has been significantly altered resulting from activities undertaken over several years and is now largely irreversible. Although, the Nayanjuli is not a natural waterbody, it admittedly had come into existence at least fifty years ago and, during that period ecology has undoubtedly evolved in it forming an integral component of the environment. Admittedly, remnants of some of the water bodies have been covered up as a part of the beautification project as those had become marshy, stagnant and shallow, a breeding ground for mosquitoes and receptacle of garbage, filth and sewage thereby rendering it a serious health hazard for the locality. As already noted earlier, as a result of complaints of the local inhabitants and requisitions of the local municipal councillors, the Public Works Department thus accorded approval to the work " Landscaping and beautification of Land along VIP Road from Ultadanga flyover to Lake Town" proposed by the South Dum Dum Municipality.

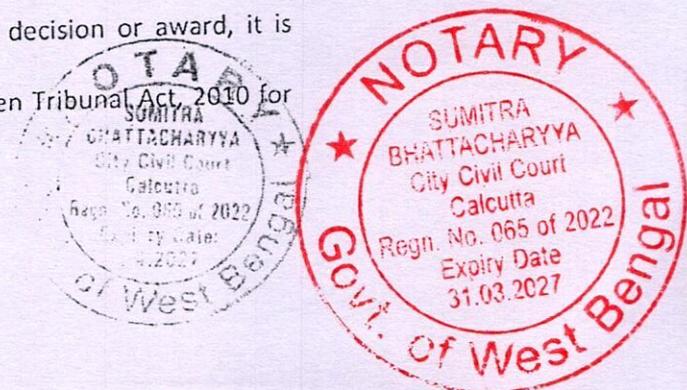
58. Mercifully, much of the Nayanjuli is still in existence nearly in its pristine condition from Lake Town onwards to Dum Dum Park. We



further find from the report of the Expert Committee and the drawing appended thereto filed as Annexure A to the affidavit of the Principal Secretary, Public Works Department, filed on 09.09.2015 that a channel still exists connecting the water bodies at the Ultadanga end, Golaghata, Lake Town and onwards.

59. Under sub-section (3) of section 14 of the National Green Tribunals Act, 2010, we are mandated not to entertain application for adjudication of disputes arising under sub-section (1) of the said section unless it is made within a period of six months from the date on which the cause of action for such dispute first arose and, in any case, not after a further period not exceeding sixty days of such period as per proviso appended thereto, if the Tribunal is satisfied that the applicant was prevented by sufficient cause from filing the application within such period. Considering the fact that the cause of action was a continuing one, we have gone ahead in entertaining the application in view of the grave environmental concern raised in the Applications and that although the Nayanjuli in question is not a natural water body, "environment" defined under clause (a) of section 2 of the Environment Protection Act, 1986, amongst others, also includes water.

60. Further, while passing any order or decision or award, it is necessary under section 20 of the National Green Tribunal Act, 2010 for

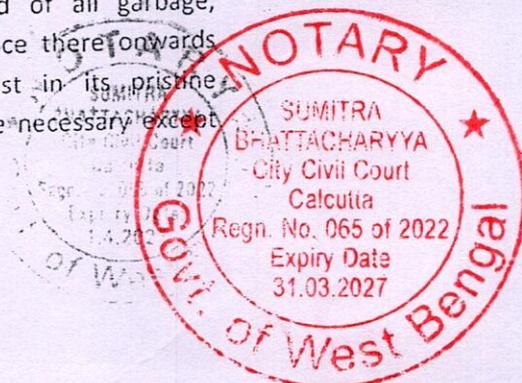


the Tribunal to follow the principles of sustainable development, the precautionary principle and the polluter pays principle.

61. Keeping in view the parameters for exercise of our jurisdiction laid down under the Act and the facts and circumstances earlier alluded to *in extensio*, we are inclined to take a pragmatic view by adopting the principles of sustainable development and precautionary principle.

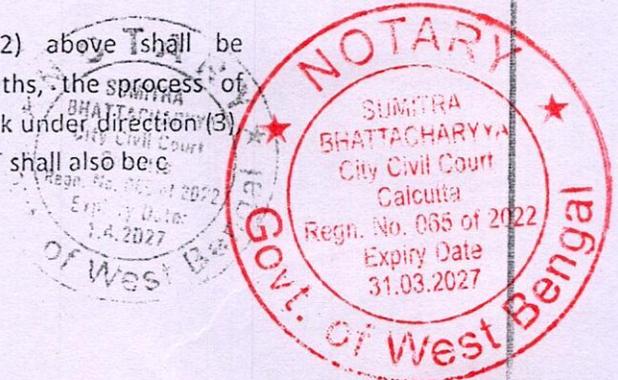
62. We, therefore, direct the Respondents:-

- (1) To restore the existing fragmented water bodies of Nayanjuli between Golaghata and Sreebhumi as indicated in the report of the West Bengal Pollution Control Board which finds corroboration in the affidavit of the Executive Engineer, Barasat Highway Division No. 1 in his affidavit referred to above. Since it is the stated case of the Respondents that work on beautification project had been stopped after the order of prohibition dated 21st April, 2015, there should be no impediment in implementing this order.
- (2) While carrying out the above task, the "scheme for restoration of flow of water" shall be implemented as per the drawing prepared by the Expert Committee in its report 07.09.2015 being Annexure A to the affidavit of the Principal Secretary, Public Works Department filed on 09.09.2015, as there appear to exist water channel connecting water bodies marked as MKD.1, 2 and 3 at the Ultadanga end, Golghata and Lake Town respectively. The water channel shall be cleared of all garbage, hydrophytes and sediments. Since there onwards the Nayanjuli is found to exist in its pristine condition, no direction would be necessary except



that the South Dum Dum Municipality shall get it free of all garbage, hydrophytes and sedimentation, if not already done.

- (3) To construct permanent over bridges of sufficient heights at the Golaghata and Lake Town crossings for ensuring free flow of water as being done at the Bangur crossing instead of laying hume pipes which, in any case, can only be a temporary measure. In carrying out this task, the CESC and the Department of Water Supply shall extend their co-operation and provide necessary assistance.
- (4) If necessary, to modify the work on the beautification project of the Nayanjuli that has been withheld pursuant to our order, by incorporating within its scope the above directions.
- (5) To expedite the ongoing beautification works at the stretch from Lake Town and beyond making it clear that if there is any proposal for creating islands on any stretch of the Nayanjuli, it shall be scrapped and ensure that there is no such encroachment on the water body.
- (6) The South Dum Dum Municipality shall be responsible for the maintenance, preservation and regular cleaning of the entire stretch of the water body as undertaken by them in their letters of proposal submitted to the Public Works Department and the Pollution Control Board in their letters dated December 14, 2010, April 26, 2012 and June 7, 2012.
- (7) While directions (1) and (2) above shall be completed within three months, the process of preparation of DPR for the work under direction (3) its approval and issuance of NIT shall also be



- (8) completed within three months, the period being computed from the date of receipt of this order.
- (9) A compliance report shall be filed positively in the first week of the fourth month.
63. In the result, both the applications stand allowed in part.
64. In the facts and circumstance of the case, there is no order as to cost.

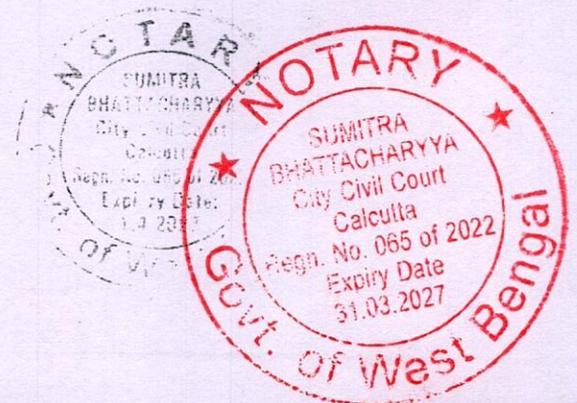
CONTEMPT PETITIONS NO. 03/2015/EZ & 120/2015/EZ (IN OA 27/2015/EZ) :

In view of the detailed facts and circumstances alluded to in the judgements in OA 27/2015/EZ and OA 46/2015/EZ, nothing survives for consideration in this contempt petitions and is accordingly disposed of in terms thereof.

.....
Mr. Justice S.P.Wangdi , JM

.....
Prof.(Dr.) P.C. Mishra , EM

Kolkata,
Dated, 10th July, 2017.



ANNEXURE - R/2

~~6A~~

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

.....
ORIGINAL APPLICATION No.85/2019/EZ

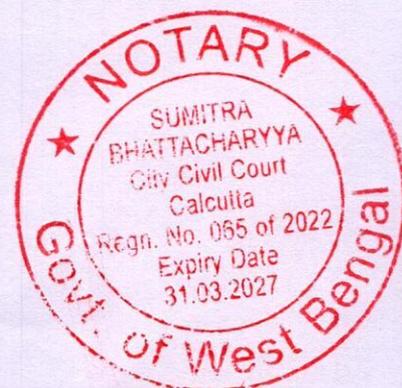
IN THE MATTER OF:

**Dwaipayan Sengupta,
S/o late Prem Ranjan Sengupta,
Having address of service of all notices
At 155F, Swinhoe Lane,
2nd Floor, Kolkata-700042**

....Applicant(s)

Versus

- 1. The Union of India
Through the Secretary,
Ministry of Environment, Forests and Climate Change
Indira Paryavaran Bhawan, Jorbag Road,
New Delhi-110003**
- 2. The State of West Bengal,
Through the Chief Secretary, Govt. of West Bengal
Nabanna, 325, Sarat Chatterjee Road,
Shibpur, Howrah-711102**
- 3. The Principal Secretary,
Urban Development Department, Govt. of West Bengal
Nagarayan Bhawan, Sector-I,
Salt Lake City, Block DF-8,
Bidhannagar, Kolkata-700064**
- 4. The State of West Bengal
Through the Principal Secretary,
Department of Environment, Govt. of West Bengal,
Prani Sampad Bhavan, 5th Floor,
LB-2, Sector-III, Salt Lake,
Kolkata-700098**
- 5. The West Bengal Pollution Control Board,**



Through the Chairman,
Department of Environment, Govt. of West Bengal,
Paribesh Bhawan, 10A, Block-LA, Sector-III,
Bidhannagar, Kolkata-700097

6. The Chairman, Department of Environment, Govt. of West
Bengal

Prani Sampad Bhavan, 5th Floor,
LB-2, Sector-III, Salt Lake, Kolkata-700098

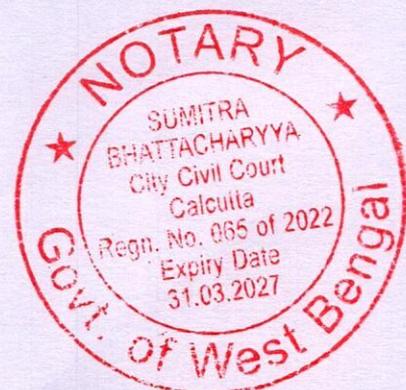
7. The State of West Bengal,
Through the Principal Secretary,
Public Works Department, Govt. of West Bengal
325, Sarat Chatterjee Road, (8th Floor),
Shibpur, Howrah-711102

8. The Executive Engineer,
Public Works Department, Govt. of West Bengal
5th Cross Road, DF Block,
Sector-I, Salt Lake City, Kolkata-700064

9. The Executive Engineer,
Barasat Highway Division No.1, P.W. (Roads) Directorate,
5th Cross Road, DF Block, Sector-Salt Lake City,
Kolkata-700064

10. South Dum-Dum Municipality,
Through the Chairperson, Nagerbazar,
Dum-Dum Road, Kolkata-700074

11. The Commissioner of Police,
Bidhannagar Police Commissionerate,
Broadway Road, JB-Block, Sector-III,
Salt Lake City, Kolkata-700098



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12. The Chairman/Managing Director,
Kolkata Metropolitan Development Authority
(Prashasan Bhawan), Block-BB-1, Salt Lake City,
Sector-I, Kolkata-700064

13. The Principal Secretary,
Irrigation and Waterways Department,
Govt. of West Bengal, Jalasampad Bhawan,
1st Floor Bidhannagar, Salt Lake,
Kolkata-700091

14. District Magistrate,
24 Parganas (North), New Administrative Building,
North 24 Parganas, Barasat, Pin-700124

....Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Anindya Lahiri, Advocate a/w
Mr. Samrat Dey Paul, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Gora Chand Roy Choudhury, Advocate for R-1,
Mr. Srijan Nayak, Advocate a/w
Ms. Rituparna Moitra, Advocate for R-8 & 9,
Ms. Paushali Banerjee, Advocate for R-12,

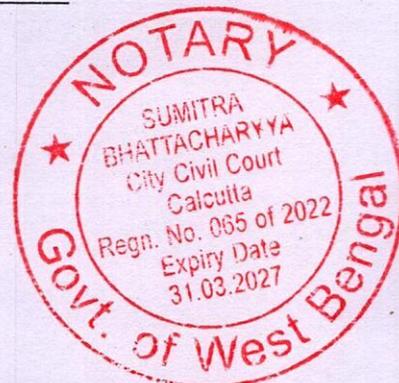
JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)

Reserved On: - 10th February, 2022
Pronounce On: - 16th March, 2022

1. Whether the Judgment is allowed to be published on
the net? **Yes**
2. Whether the Judgment is allowed to be published in the
NGT Reporter? **Yes**



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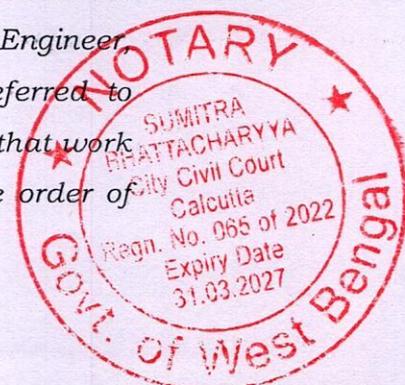
JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the Applicants as well as the learned Counsel for the Respondents and perused the documents on record.

2. This Original Application has been filed by the Applicant seeking execution of the direction contained in paragraph 62 (1) and (2) of the judgment of this Tribunal dated 10.07.2017 passed in *Original Application No.27/2015/EZ, Dwaipayan Sengupta Versus Union of India & Ors.*

3. The aforesaid original application was filed by the Applicant alleging encroachment and filling up of a water body known as Nayanjuli which extends from Ultadanga to Lake Town crossing on the Southern side of VIP Road covering four wards. It was also alleged therein that the water body was being used as a dumping ground for waste material. The said original application was disposed of by the Tribunal with several directions but for purposes of the present application, we are only concerned with the directions in paragraph 62 (1) and (2) of the judgment dated 10.07.2017 which read as under:-

“(1) To restore the existing fragmented water bodies of Nayanjuli between Golaghata and Sreebhumi as indicated in the report of the West Bengal Pollution Control Board which finds corroboration in the affidavit of the Executive Engineer, Barasat Highway Division No.1 in his affidavit referred to above. Since it is the stated case of the Respondents that work on beautification project had been stopped after the order of



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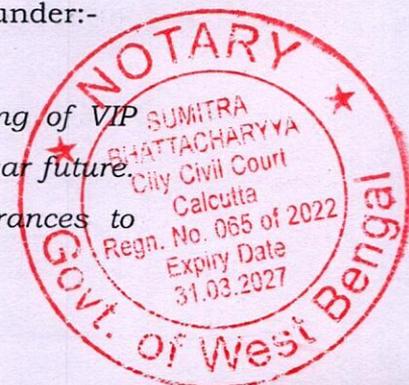
prohibition dated 21st April, 2015, there should be no impediment in implementing this order.

(2) While carrying out the above task, the "scheme for restoration of flow of water" shall be implemented as per the drawing prepared by the Expert Committee in its report 07.09.2015 being Annexure A to the affidavit of the Principal Secretary, Public Works Department filed on 09.09.2015, as there appear to exist water channel connecting water bodies marked as MKD.1, 2 and 3 at the Ultadanga end, Golghata and Lake Town respectively. The water channel shall be cleared of all garbage, hydrophytes and sediments. Since there onwards the Nayanjuli is found to exist in its pristine condition, no direction would be necessary except that the South Dum Dum Municipality shall get it free of all garbage, hydrophytes and sedimentation, if not already done."

4. The original application was entertained on the allegation of the learned Counsel of the Applicant that interim orders are required, since the respondents have taken up the work of expansion of the VIP Road in the process of which water body is being encroached upon.

5. An affidavit has been filed by Respondent No.7 & 9, the Principal Secretary (now designated as Additional Chief Secretary), P.W.D. and the Executive Engineer Barasat Highway Division No.1, PW (Roads) Directorate respectively. The averments of paragraph 3(a) of the affidavit have been reproduced by the Tribunal in its order dated 29.06.2020 which are also reproduced herein under:-

"There is no ongoing construction work for widening of VIP Road at present nor even envisaged to be done in near future. So there is no question of any disturbance/hindrances to



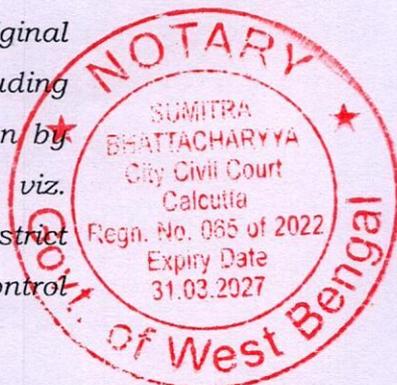
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existing water bodies in anyway." However, an underpass by Jack push technique is stated to be under construction at the Lake Town Crossing of K.N.I. Avenue (V.I.P. Road) under Barasat Highway Division No.1, North 24 Parganas in terms of the directions passed by the Hon'ble Supreme Court for improvement of Road Safety Measures. Tender in respect of this work is stated to have been floated on 18.12.2019.

6. An additional affidavit has been filed by the Applicant placing on record five tracing papers depicting the before and after condition of the water body of Nayanjuli along with several photographs to illustrate that the respondents have been undertaking construction works which would result in the filling up of the Nayanjuli water body. The Nayanjuli water body is still in existence in its pristine condition, as noted by the Tribunal in the judgment dated 10.07.2017 passed in *Original Application No.27/2015/EZ*, from Lake Town towards Dum-Dum Park. Originally it was stated that the Nayanjuli water body existed in fragmented water bodies between Golaghata and Sribhumi.

7. The learned Counsel for the Applicant referred to the order of the Tribunal dated 21.04.2015 passed in *Original Application No.27/2015/EZ* wherein interim directions were issued by the Tribunal. The operative portion of the said order reads as under:-

"Having regard to the documents annexed in the original application and on consideration of different reports including the satellite pictures, we are of the view that a direction by way of interim measures upon all the respondents viz. concerned municipality, the police administration, district administration, State Govt. including State Pollution Control

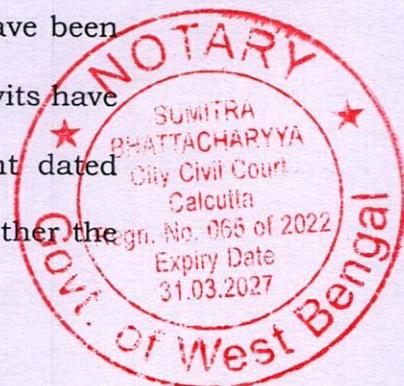


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Board should be passed directing to take all steps and measures to protect the 'Nayanjuli' from being polluted further and is encroached further by way of illegal construction. We pass the order accordingly. Action taken report be filed on the next date by the respective respondents."

8. It is also stated that subsequently the Tribunal in that original application also invoked powers conferred by the National Green Tribunal Act, 2010 under Section 28 of the Act thereof for failure to comply with the orders of the Tribunal and issued notices to the respondents directing them to file counter-affidavits. It is stated that the Tribunal also by its order dated 29.05.2015 appointed an Advocate Commissioner and directed him to inspect the spot and file its report.

9. It is stated that the affidavit was filed by the Executive Engineer, Barasat Highway Division No.1, PW (Roads) wherein it was admitted that administrative approval had been granted for landscaping and beautification of the land along the VIP Road from Ultadanga Flyover to Lake Town More and an e-tender had also been floated in respect of execution of beautification work of 2 standing water bodies along with surrounding land located at 3km of the VIP Road from Bangur Avenue to Dum-Dum Park. Reference has also been made to the report of the Advocate Commissioner dated 02.07.2015 along with which several photographs have been filed. We find that all the matters and all subsequent affidavits have already been considered by the Tribunal in its judgment dated 10.07.2017. The question as of today therefore only is whether the



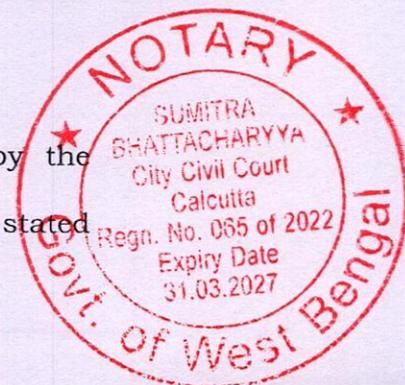
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directions given in paragraph 62 (1) and (2) of the judgment have been complied with or not.

10. The learned Counsel for the Applicant has referred to document filed as Annexure N-1 which is a map to suggest that the boundaries in blue colour represent the Nayanjuli Khal. These maps which are running in several sheets show the Nayanjuli Khal as covering from existing ward no. 35, 34, 30 and 29. The blue lines do not show as such any encroachment by the respondents. The photographs which have been filed at page no.309 to 311 however do show certain earth works being carried out and there are dumpers unloading mud and earth but there is also a wooden barricade showing enclosed water body and the earth work is outside this wooden barricade and does not show any encroachment in the water body as such.

11. The affidavit dated 26.06.2020 of the Principal Secretary (now designated as Additional Chief Secretary) and Executive Engineer, Barasat Highway Division-1, states that a pedestrian underpass is proposed for construction by adopting Box jacking/Jack Push technique at Lake Town Crossing of K.N.I. Avenue (VIP Road) and the construction of the subway would be similar to those which already exist in Lake Town or are proposed in the Lake Town subway for benefit of the people but without disturbing the water body.

12. Another affidavit dated 30.07.2020 has been filed by the Executive Engineer making the same averments and it is stated

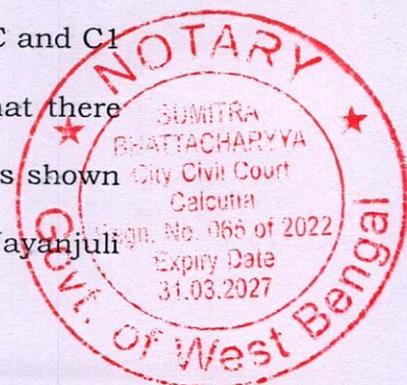


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that the ongoing construction of underpass at Lake Town crossing is not touching the water body and/or adjacent VIP Road in any manner. The photographs at page no. 346 show the proposed underpass and end of the water body and Danga Land is marked therein. No doubt the photographs depicts that the water body in question has been allowed to be severely over grown with weeds and shrubs.

13. The Additional District Magistrate, North 24 Parganas has also filed an affidavit dated 14.09.2020 stating that there was a small park with amusement articles for children which have been temporarily dismantled for the construction work. It is also stated that the construction of the underpass site falls within a part of plot no.282, admeasuring about 25.25 decimal (11,000 square feet approx) in Mouza-Kankuri, J.L. No.28, classification-Shali. The part of plot no.282 was acquired under due provisions of Land Acquisition Act, 1894 for construction of VIP Road and the present construction site falls within the area of acquisition. It is further stated that the construction work of the underpass is going on in the middle portion of the confined area of the map (page no.367 of the paper book) and marked as A, B1, C1 and D.

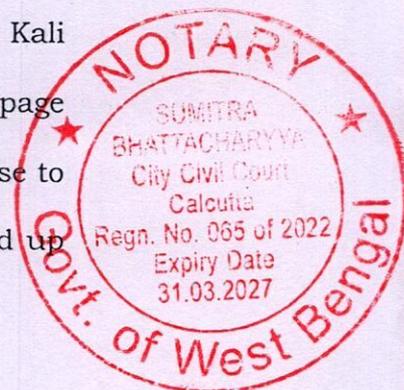
14. It is also stated that the Nayanjuli Khal (water body) exists beyond the said land denoted in the sketch map as B1, B, C and C1 and is also demarcated in the map. It is further stated that there are big trees on the north-east border line of the land mass shown in the sketch map on the verge of the waterline of the Nayanjuli



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Khal. The photographs of the Nayanjuli Khal has been filed at page no. 372 of the paper book, which confirms what we have noted earlier that the Khal is in a very poor state of maintenance and is shown to be over grown with weeds and shrubs which if not cleaned would soon become extinct. The earth embankments are at places narrowing the Nayanjuli Khal.

15. The applicant has filed an affidavit in opposition dated 30.11.2020 stating therein that the natural flow of water in the Nayanjuli water body has almost come to a standstill making it a stagnant polluted water body due to lack of cleaning activities by the respondent authorities. The flow of water in the Khal has been arrested due to dumping of garbage, hydrophytes and settlements of sediments. The allegation of the original application has been repeated that fresh construction activities are going on which are filling up the stretch of the Nayanjuli water body from Lake Town Bangur More to Dum-Dum Park. Certain photographs have been filed with this affidavit and it is argued by the learned Counsel for the Applicant that the photographs at page no. 389 to 391 show the filling up of the Nayanjuli Khal with earth work but these photographs do not show the plot no. or even its location though it is mentioned that it is an illegal slum settlement illegally filling up the Nayanjuli Khal. The photograph at page no. 394 near the Kali Mata Mandir More again shows an extensive water body (page no.394 to 401 of the paper book) showing construction very close to the water line and also that the water body is extensively filled up with shrub, hydrophytes etc.



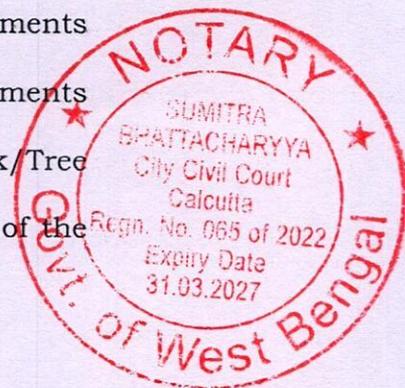
16. The Applicant has filed another affidavit in opposition dated 30.11.2020 with the same allegation.

17. Considering all the averments made in the preceding paragraphs there is nothing to show that Nayanjuli water body from Lake Town Bangur More to Dum-Dum Park has been encroached upon as alleged in the original application although the Khal is existing in an unhealthy environment with over growth of water hyacinth and stagnant water resulting in a breeding ground for mosquitoes and receptacle of garbage, filth and sewage thereby causing a serious health hazards for the locality.

18. Since, the character of water body has been significantly altered resultantly from activities undertaken over several years which is now largely irreversible, it is but natural for the State Government to ensure that the remaining part of the Nayanjuli Khal be maintained as a pristine water body.

19. Considering these facts which are supported by the photographic evidence on record, we dispose of this Original Application No.85/2019/EZ with the following directions:-

- (i) The State Government is directed to clear the water body of all hydrophytes, shrubbery, waste material, sediments through dredging and create an earth work embankments on both sides of the Khal with Biodiversity Park/Tree avenue and a walking path all along with boundary of the

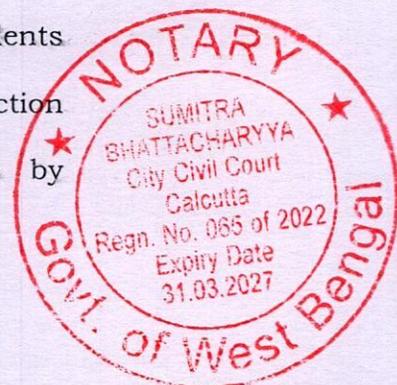


- 78 -

water line of the Nayanjuli Khal as a beautification project so as to ensure clean and clear flow of water therein.

- (ii) We also direct the respondents to ensure regular dredging of the Nayanjuli Khal restoring its original embankment and to ensure that there is no dumping of garbage or construction waste/debris in the Nayanjuli Khal. These directions will be carried out in the entire stretch of the Nayanjuli Khal as shown in the ward no.35, 34, 30 and 29 in the maps.
- (iii) We also direct that they shall be no encroachment and other construction on the existing water body of Nayanjuli water body in future and if any such encroachment happens it may be dealt with immediately in accordance with law by the concerned authorities so as to keep the Nayanjuli water body free from encroachment and as a clean ecologically sound water body.
- (iv) The West Bengal Pollution Control Board is also directed to periodically monitor the water quality of the Nayanjuli water body to test for TDS, BOD, COD, pH, Fecal Coliform (FC) and Total Coliform (TC) and to ensure that the water quality of the Nayanjuli water body is maintained as per ecologically sound standard.

20. The above exercise shall be completed by the respondents within a period of three months i.e. by 30.05.2022 and an Action Taken Report shall be filed by the State Respondents by 04.07.2022.



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21. The urgency in the execution of our orders also arises from the fact that in a couple of months monsoons will break over West Bengal particularly in the City of Kolkata by early June, 2022 and therefore, the execution of our directions must be completed by 30.05.2022.

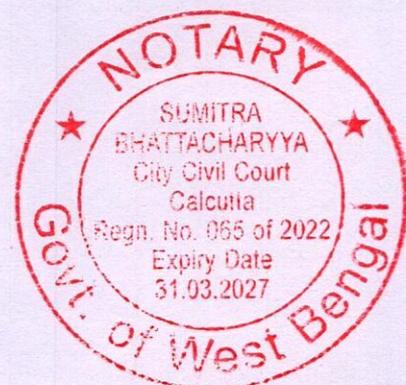
22. We also direct that our directions regarding cleaning of the Nayanjuli water body, also known as Nayanjuli Khal, shall also cover the existing Nayanjuli Khal from Ultadanga More to Lake Town More and Devighat and from Lake Town Bangur More to Dum-Dum Park in the existing Nayanjuli water body.

23. There shall be no order as to costs.

.....
B. AMIT STHALEKAR, JM

.....
SAIBAL DASGUPTA, EM

Kolkata
March 16, 2022
Original Application No. 85/2019/EZ
MN



ANNEXURE - R/3

Item No.11

Court No.1

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

M.A. NO.17/2022/EZ
(I.A. NO. 22/2023/EZ)

IN
ORIGINAL APPLICATION NO.85/2019/EZ

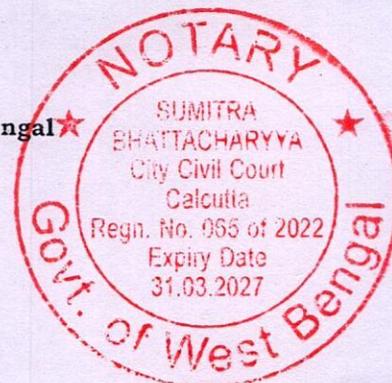
IN THE MATTER OF:

Tribunal on its Own Motion,
Re. Dwaipayan Sengupta,
S/o late Prem Ranjan Sengupta,
Having address of service of all notices
At 155F, Swinhoe Lane, 2nd Floor,
Kolkata -700042,

.... Applicant(s)

Versus

1. **The Union of India,**
Through the Secretary,
Ministry of Environment, Forests and Climate Change
Indira Paryavaran Bhawan, Jorbag Road,
New Delhi-110003,
2. **The State of West Bengal,**
Through the Chief Secretary, Govt. of West Bengal,
Nabanna, 325, Sarat Chatterjee Road,
Shibpur, Howrah-711102,
3. **The Principal Secretary,**
Urban Development Department, Govt. of West Bengal
Nagarayan Bhawan, Sector-I, Salt Lake City, Block DF-8,
Bidhannagar, Kolkata-700064,
4. **The State of West Bengal**
Through the Principal Secretary,
Department of Environment, Govt. of West Bengal,
PraniSampad Bhavan, 5th Floor,
LB-2, Sector-III, Salt Lake,
Kolkata-700098,
5. **The West Bengal Pollution Control Board,**
Through the Chairman,
Department of Environment, Govt. of West Bengal,
Paribesh Bhawan, 10A, Block-LA, Sector-III,
Bidhannagar, Kolkata-700097,
6. **The Chairman, Department of Environment, Govt. of West Bengal**
PraniSampad Bhavan, 5th Floor,
LB-2, Sector-III, Salt Lake,
Kolkata-700098,



- 8 -
7. **The State of West Bengal,**
Through the Principal Secretary,
Public Works Department, Govt. of West Bengal
325, Sarat Chatterjee Road, (8th Floor),
Shibpur, Howrah-711102,
 8. **The Executive Engineer, Public Works Department,
Govt. of West Bengal**
5thCross Road, DF Block,
Sector-I, Salt Lake City,
Kolkata-700064,
 9. **The Executive Engineer,**
Barasat Highway Division No.1, P.W. (Roads) Directorate,
5thCross Road, DF Block, Sector-Salt Lake City,
Kolkata-700064
 10. **South Dum-Dum Municipality,**
Through the Chairperson,
Nagerbazar, Dum-Dum Road,
Kolkata-700074
 11. **The Commissioner of Police,**
Bidhannagar Police Commissionerate,
Broadway Road, JB-Block, Sector-III, Salt Lake City,
Kolkata-700098
 12. **The Chairman/Managing Director,**
Kolkata Metropolitan Development Authority (Prashasan Bhawan),
Block-BB-1, Salt Lake City, Sector-I,
Kolkata-700064
 13. **The Principal Secretary,**
Irrigation and Waterways Department, Govt. of West Bengal,
Jalasampad Bhawan, 1st Floor Bidhannagar, Salt Lake,
Kolkata-700091
 14. **District Magistrate, 24 Parganas (North),**
New Administrative Building, North 24 Parganas,
Barasat, Pin-700124,

.... Respondent(s)

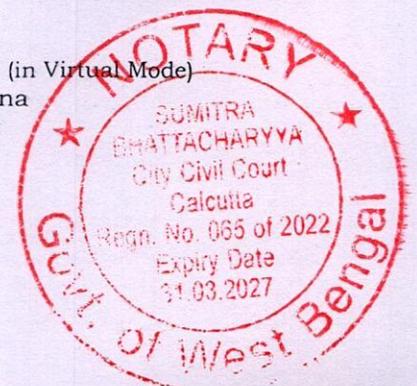
Date of completion of hearing and reserving of order: 28.03.2023

Date of uploading of order on the Website: 05.04.2023

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

For Applicant(s) : *Suo Motu*,

For Respondent(s): Mr. Prithwish Basu, Adv. for WBPCB,
Mr. Sibojyoti Chakraborty, Adv. for State of W.B. (in Virtual Mode)
Mr. Srijan Nayak, Advocate a/w Ms. Rituparna
Moitra, Advocate for R-8&9 (in Virtual Mode)
Ms. Paushali Banerjee, Advocate for R-12,



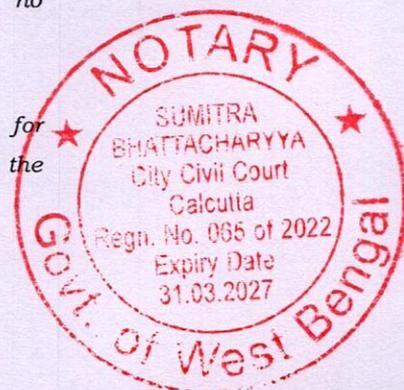
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ORDER

1. The M.A. No. 17/2022/EZ filed in Original Application No. 85/2019/EZ is being taken up.
2. The Original Application No. 85/2019/EZ (*Dwaipayan Sengupta Vs. The Union of India & Ors.*) was filed by the Applicant, seeking execution of the direction contained in paragraph 62 (1) and (2) of the judgment of this Tribunal dated 10.07.2017 passed in Original Application No.27/2015/EZ, (*Dwaipayan Sengupta Versus Union of India & Ors.*).
3. The aforesaid Original Application was filed by the Applicant alleging encroachment and filling-up of a water body known as 'Nayanjuli' which extends from Ultadanga to Lake Town crossing on the Southern side of VIP Road covering four wards. It was also alleged therein that the water body was being used as a dumping ground for waste material. The said Original Application was disposed of by the Tribunal with several directions but for purposes of the present application, we are only concerned with the directions in paragraph 62 (1) and (2) of the judgment dated 10.07.2017 which read as under:-

"(1) To restore the existing fragmented water bodies of Nayanjuli between Golaghata and Sreebhumi as indicated in the report of the West Bengal Pollution Control Board which finds corroboration in the affidavit of the Executive Engineer, Barasat Highway Division No.1 in his affidavit referred to above. Since it is the stated case of the Respondents that work on beautification project had been stopped after the order of prohibition dated 21st April, 2015, there should be no impediment in implementing this order.

(2) While carrying out the above task, the "scheme for restoration of flow of water" shall be implemented as per the



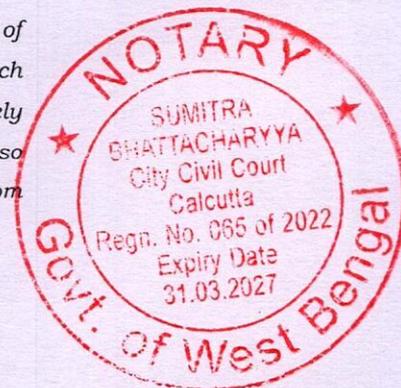


drawing prepared by the Expert Committee in its report 07.09.2015 being Annexure A to the affidavit of the Principal Secretary, Public Works Department filed on 09.09.2015, as there appear to exist water channel connecting water bodies marked as MKD.1, 2 and 3 at the Ultadanga end, Golghata and Lake Town respectively. The water channel shall be cleared of all garbage, hydrophytes and sediments. Since there onwards the Nayanjuli is found to exist in its pristine condition, no direction would be necessary except that the South Dum Dum Municipality shall get it free of all garbage, hydrophytes and sedimentation, if not already done."

4. The Original Application No. 85/2019/EZ was disposed of by the Tribunal vide its judgment and order dated 16.03.2022 with the following directions :-

"19. Considering these facts which are supported by the photographic evidence on record, we dispose of this Original Application No.85/2019/EZ with the following directions:-

- (i) *The State Government is directed to clear the water body of all hydrophytes, shrubbery, waste material, sediments through dredging and create an earth work embankments on both sides of the Khal with Biodiversity Park/Tree avenue and a walking path all along with boundary of the water line of the Nayanjuli Khal as a beautification project so as to ensure clean and clear flow of water therein.*
- (ii) *We also direct the respondents to ensure regular dredging of the Nayanjuli Khal restoring its original embankment and to ensure that there is no dumping of garbage or construction waste/debris in the Nayanjuli Khal. These directions will be carried out in the entire stretch of the Nayanjuli Khal as shown in the ward no.35, 34, 30 and 29 in the maps.*
- (iii) *We also direct that there shall be no encroachment and other construction on the existing water body of Nayanjuli water body in future and if any such encroachment happens it may be dealt with immediately in accordance with law by the concerned authorities so as to keep the Nayanjuli water body free from*

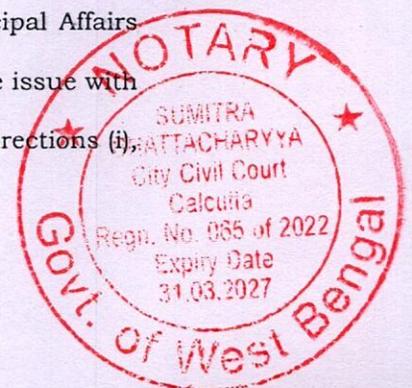


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encroachment and as a clean ecologically sound water body.

(iv) The West Bengal Pollution Control Board is also directed to periodically monitor the water quality of the Nayanjuli water body to test for TDS, BOD, COD, pH, Fecal Coliform (FC) and Total Coliform (TC) and to ensure that the water quality of the Nayanjuli water body is maintained as per ecologically sound standard."

5. An Action Taken Report dated 08.09.2022 has been filed by the Executive Engineer, Barasat Highway Division No.1, P.W. (Roads) Directorate, wherein it is stated that the PWD Department has kept strict vigil over Nayanjuli regarding further encroachment and it is confirmed that no further encroachment has taken place. It is also stated that clearing work of water bodies has to be carried out and monitored by the concerned Municipality/Departments regularly. It is further stated that the Executive Engineer, Barasat Highway Division No.1 has assigned the work for cleaning and removal of water hyacinth including weeds from the water body in question to M/s Dulta Construction, Garfa Main Road, Kolkata, by floating tender against an amount of Rs. 4,74,647/- (Rupees Four Lakhs Seventy Four Thousand Six Hundred Forty Seven only) with a request to complete the job within twenty days.
6. The Additional District Magistrate and District Land & Land Reforms Officer, North 24 Parganas, Barasat, has filed affidavit dated 05.11.2022 and particularly with regard to construction of underpass, it is stated that a letter dated 29.09.2022 has been issued by the District Magistrate & Collector, North 24 Parganas to the Principal Secretary, Urban Development and Municipal Affairs Department, Government of West Bengal, addressing the issue with a request to take necessary measures in respect of the directions (i)

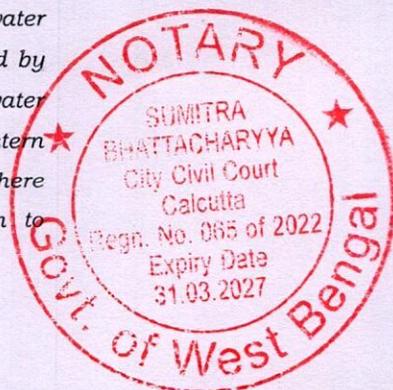


- 85 -

(ii), (iii) & (iv) given in the Tribunal's order dated 12.09.2022, already reproduced herein above.

7. Affidavit dated 04.11.2022 has been filed by the West Bengal Pollution Control Board, stating therein that it has collected water samples from the Nayanjuli water body on different dates i.e., on 27.04.2022, 24.05.2022 and 13.06.2022 till the onset of monsoon, copies of the reports have been filed at page nos. 50 to 52 of the paper book, which show high level concentration of Faecal Coliform and Total Coliform. This shows that untreated municipal waste is flowing into the Nayanjuli Khal.
8. The Department of Environment, Government of West Bengal, has filed Status Report on affidavit dated 16.01.2023, wherein it is stated that a Joint Inspection was conducted on the surrounding area of Nayanjuli Khal lying mostly to Mouza-Kankuri, J.L. No. 28, Golaghata, J.L. No. 27 and Ultadanga, J.L. No. 26 under Barrackpore-II Block and stretched out as intermittent water bodies, four in numbers from Dum Dum Park to Dakshindari Bus Stop, on 29.12.2022 by a team of Officials from the Public Works Department, Urban Development and Municipal Affairs Department, Environment Department, South Dum Dum Municipality and District Administration. The findings of the said Inspecting Team quoted in para 3 of the affidavit are reproduced herein below:-

- i) *There is a closed canal started from Dum Dum Park to Bangur. There appears four hutments across the water body over a dyke which is clear encroachment caused by unauthorised filling on the narrow strip of the said water body. There is also found encroachment along the western bank of the canal and garbage is found dumped there beside the embankment, and it needs demarcation to*



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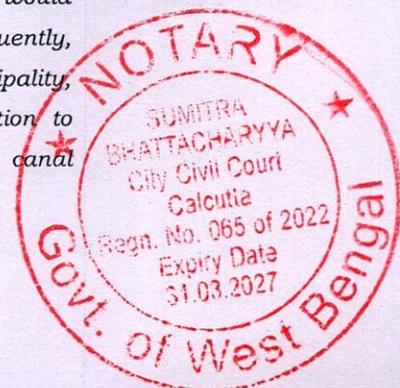
ensure the same whether the encroachment or dumping is made within the government land. At the time of enquiry, it appears that a pedestrian plaza, known to be a part of Biodiversity Park to be constructed under supervision of PWD along the embankment of the canal, is being constructed by the PWD. The water of the canal is being cleaned by a couple of labourer engaged by the PWD.

- ii) From Bangur to Lake Town crossing, there is another canal where no encroachment is found. Beautification has been done alongside the said water body, however, it needs to be cleaned periodically.
- iii) A clear pond is existing known as Debighat between Lake Town crossing and Golaghata. There is cemented 'ghat' constructed on the pond. No visible encroachment is found therein though the water adjacent to the 'ghat' and entry point of Debighat is filled with garbages and plastic which needs to be cleaned immediately.

There is another pond existing near Dakshindari Bus Stop. No visible encroachment is found therein though the water adjacent to the 'ghat' and entry point of Debighat is filled with garbages and plastic which needs to be cleaned immediately."

9. In the affidavit, it is further stated that the Public Works Department (PWD) has intimated that a Detailed Project Report ('DPR' for short) for refurbishment of the Nayanjuli Khal has already been submitted before the Finance Department for approval. It is stated that after inquiry, following actions have been decided:-

- A. For point (i) a team would be formed by the ADM & DL&LRO, North 24 Parganas, comprising BL&LRO, Barrackpore-I and other officials of Land Department. This team would demarcate the encroached area occupied with four hutments, on 31.12.2022 and submit report to the PWD who would subsequently take necessary action for eviction. Consequently, PWD in association with the South Dum Dum Municipality, would build up proper fencing/wall as per demarcation to protect the water body permanently. The water of the canal

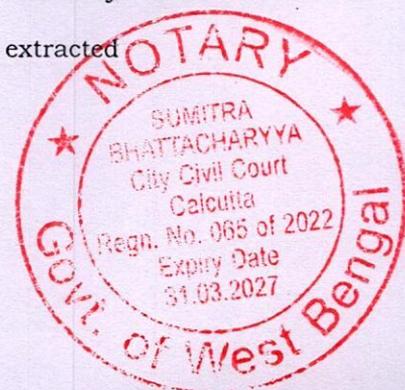


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would be cleaned periodically by South Dum Dum Municipality and the embankment would never be used as 'Dumping zone'. The Municipality would keep strict vigil on this issue. The project for construction of Bio-diversity Park shall be completed as early as possible and all the means for beautification of the area should be adopted. A plan for diversion of water outlet is known to be prepared by the KMDA with the help of South Dum Dum Municipality.

- B. The said team, formed with the officials of Land Department, would demarcate all the four waterbodies and surrounding area coming under PWD and put up report within 08.01.2023 who shall subsequently take necessary measures for protection of the water bodies on permanent basis.
- C. For point (ii), the water should be cleaned periodically by the Municipality and surrounding area of embankment needs to be cleaned on regular basis.
- D. For point (iii) and (iv), the ponds should be kept protected by wall/fencing. No garbage should be dumped in or beside the said ponds. The entry points of the said ponds should be reconstructed and to be kept under strict vigil. An exhaustive planning to execute the same needs to be devised. The municipality is directed to prepare such plan and submit the concerned Department while copy of the same may be sent to the end of the ADM & DL&LRO, North 24 Parganas."

10. In the affidavit, it is further stated that the Public Works Department has reported that temporary cleaning of Nayanjuli and adjacent area, temporary barricading by bamboo fencing, development of Katcha footpath has been undertaken by P.W. (Roads) Directorate along VIP Road from Dum Dum Park to Bangur and further cleaning and maintenance work has also been taken up. It is also stated that once the tender is finalized, work is likely to be completed in 270 days. Para 4 of the affidavit is extracted herein below:-



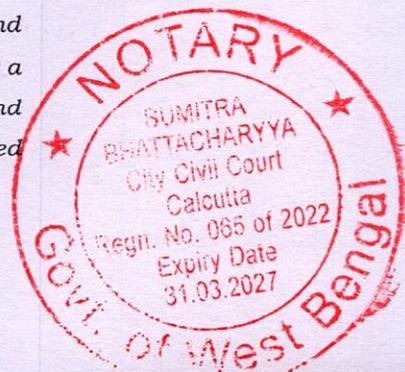


"4. Public Works Department has reported that temporary cleaning of Nayanjuli and adjacent area, temporary barricading by bamboo fencing, development of katcha footpath has been undertaken by P.W. (Roads) Directorate along VIP Road from Dum Dum Park to Bangur on receipt of the Order of Hon'ble National Green Tribunal, Eastern Bench against O.A.85/2019/EZ dated 16.03.2022, and further cleaning and maintenance work has also been taken up. PWD (Roads) will work under its jurisdiction from Dum Dum Park to Bangur and other part from Bangur to Ultadanga shall be taken up by South Dum Dum Municipality/ KMDA/ BMC. One DPR has been prepared to clear the water body of hydrophytes waste materials, sediments through dredging, creating of earthwork embankment, Bio Diversity Park/Tree Avenue, Walking Path etc. including beautification work.

The project amounting to Rs.9.167 Crore (including electrical works) has been sanctioned vide Memo No.GO22230L1543PD dt.03/OL/2023 of JS(P&C), PWD, Govt. of West Bengal and accordingly NIT has been floated. Once tender is finalized, work is most likely to be completed in 270 days. Meanwhile, steps has been taken for prevention of further encroachment and dumping of garbage falling under the jurisdiction of P.W.(Roads) Directorate. Work of demarcation of Nayanjuli (ROW of VIP Road) is in progress and accordingly action will be taken in compliance of the directions of Hon'ble NGT."

11. We accordingly direct the Stakeholder Respondents to complete the said work positively by **31.01.2024**.
12. In the affidavit, it is further stated that some portions of the Canal in question have been encroached as reported by the Additional District Magistrate & District Land & Land Reforms Officer, ('ADM&DL&LRO' for short), North 24 Pargans, Barasat. Para 5 of the affidavit is extracted herein below:-

"5. That additional District Magistrate & District Land & Land Reforms Officer, North 24 Parganas, Barasat has reported that a team was formed comprising the officers of BL&LRO, BKP-1 and other officers of the Department to demarcate the encroached

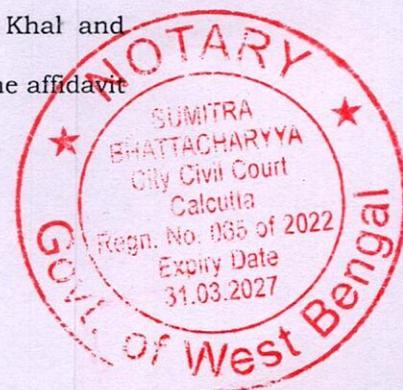




area located on the canal in question as well as demarcation of all the four water bodies i.e. i) the one from Dum Dum Park to Bangur, ii) the next one from Bangur to Lake Town Crossing, iii) the one known as DebiGhat and located between Lake Town Crossing and Golaghata and iv) The pond existing near Dakshindari Bus Stop. It is found during the said demarcation work that there is an encroachment of approximately 1600 sq.ft. with some small temporary huts over the said Nayanjuli, more specifically over its stretch between Dum Dum Park and Bangur, i.e. water body mentioned above. The matter has been intimated to Public Works Department for taking necessary action for eviction.

The demarcation work of other three water bodies (one from the end of Dum Dum Park to Lake Town, second at Debi Ghat and third was identified at the end point of the map at Ultadanga) has also been done and the said water bodies have been identified in the maps.”

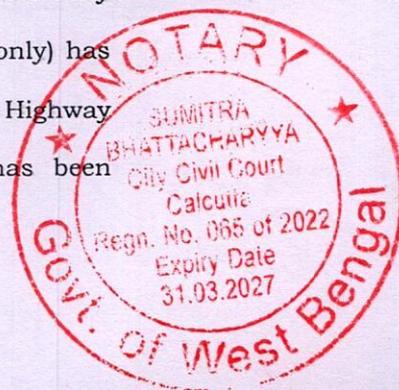
13. Once the encroachments have been identified and others may also be identified during survey, we direct the Stakeholder Respondents to take appropriate steps in accordance with law to remove such encroachments and submits Status Report by **31.01.2024**.
14. It is further stated that the Urban Development & Municipal Affairs Department ('UD&MA Department' for short), has reported that cleaning of hydrophytes, shrubbery, waste materials etc. from water bodies or Nayanjuli Khal (portion from Ultadanga Flyover to Bangur Avenue) will be taken up by South Dum Dum Municipality. The Kolkata Metropolitan Development Authority ('KMDA' for short)/State Urban Development Agency ('SUDA' for short), shall provide IEC activities in the form of poster/banner in order to prevent solid waste disposal to water body/Nayanjuli Khal and supply 200 bins for collection of solid wastes. Para 6 of the affidavit is extracted herein below:-



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"6. The Urban Development & Municipal Affairs Department has reported that cleaning of hydrophytes, shrubbery, waste materials etc. from water bodies or Nayanjuli Khal (a portion from Ultadanga Flyover to Bangur Avenue) will be taken up by South Dum Dum Municipality. Kolkata Metropolitan Development Authority / State Urban Development Agency shall provide IEC Activities in the form of poster/banner in order to prevent solid waste disposal to water body/Nayanjuli Khal and supply 200 numbers of bins for collection of solid wastes and South Dum Dum Municipality shall install them on either side of the water bodies of Nayanjuli."

15. Along with this affidavit, a Spot Verification Report has also been filed as Annexure-R/1, contents of which have already been extracted herein above.
16. Affidavit dated 30.03.2023 has been filed by the ADM&DL&LRO, North 24 Parganas, Barasat, stating therein that after following the demarcation and identification procedure, different segments of P.W.D. Road, eviction notices were issued against the existing encroachments and tender process has already been initiated for carrying out the works as per the directions of the Tribunal following the allotment of funds for the work and the said encroachments have been eradicated and the site has been restored to its original nature.
17. It is also stated that the tender process being No. 40 of 2022-23 has been concluded and letter of acceptance and consequent work order amounting to Rs. 6,57,30,469.00/- (Rupees Six Crore Fifty Seven Lakhs Thirty Thousand Four Hundred Sixty Nine only) has been passed by the Superintending Engineer, Eastern Highway Circle, and time limit for completion of such work has been



- 9X -

stipulated as 270 days with effect from the date of commencement of 09.03.2023.

18. In para 11 of the affidavit, a chart has been given showing progress of work and tentative date of completion which is extracted herein below:-

"That the progress of work and tentative date of completion is as stated below in tabular form:-

<i>Direction</i>	<i>Authorised Department</i>	<i>Progress so far</i>	<i>Tentative time for completion</i>
<i>Primary Clearing (I of order dated 6.03.2022)</i>	<i>PWD</i>	<i>Completed</i>	<i>Not applicable</i>
<i>Demarcation for constructing earth work embankments (i of order dated 16.03.2022)</i>	<i>Land & Land Reforms & Refugee Relief & Rehabilitation</i>	<i>Completed</i>	<i>Not applicable</i>
<i>Creating Social awareness (i of order dated 16.03.2022)</i>	<i>K.M.D.A</i>	<i>Completed</i>	<i>Not applicable</i>
<i>Eviction of unauthorised encroachers (i of order dated 16.03.2022)</i>	<i>PWD</i>	<i>Eviction conducted</i>	<i>Completed</i>
<i>Creation of Biodiversity park (i of order dated 16.03.2022)</i>	<i>PWD & South Dumdum municipality</i>	<i>Work order issued</i>	<i>Stipulated to be completed within 270 days with effect from 09.03.2023. Work has got started.</i>

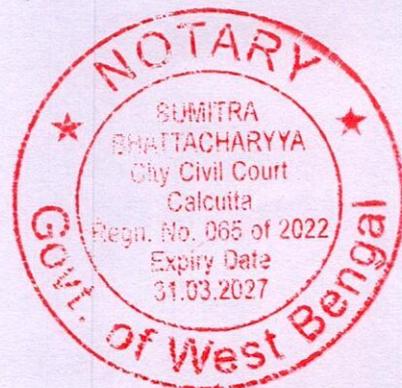


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19. We, therefore, direct the concerned Stakeholder Respondents to complete the said works and file compliance affidavit by **31.01.2024**.
20. With the aforesaid directions, the M.A. No. 17/2022/EZ is accordingly disposed of.
21. **I.A. No.22/2023/EZ:-** This I.A. has been filed by Ms. Shama Parveen, ADM & DL & LRO, North 24 Parganas, Barasat, seeking modification of the order dated 09.12.2022 wherein certain remarks have been made in paras 2 & 3 against her. It is stated that the directions given by the Tribunal were communicated to her only 15.09.2022 by the State Counsel and she has immediately thereafter written letter dated 29.09.2022 communicating the order of the Tribunal to the Principal Secretary, UD&MA Department, Government of West Bengal.
22. Considering these facts, we expunge the observations made by the Tribunal in para 2 & 3 of the order dated 09.12.2022.
23. The I.A. No. 22/2023/EZ is accordingly disposed of.
24. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

.....
Prof. A. Senthil Vel, EM

April 5th, 2023,
 M.A. No.17/2022/EZ
 (I.A. No.22/2023/EZ)
 In
 Original Application No.85/2019/EZ
 AK



ANNEXURE - R/A

Item No.04

Court No.1

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

Miscellaneous Application No.35/2024/EZ
In
Original Application No.85/2019/EZ

Dwaipayan Sengupta

Versus

Applicant(s)

Union of India & Ors.

Respondent(s)

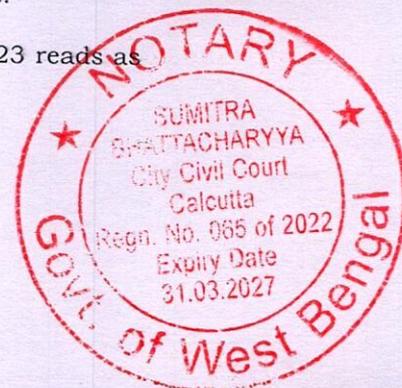
Date of hearing: 27.09.2024

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : None

ORDER

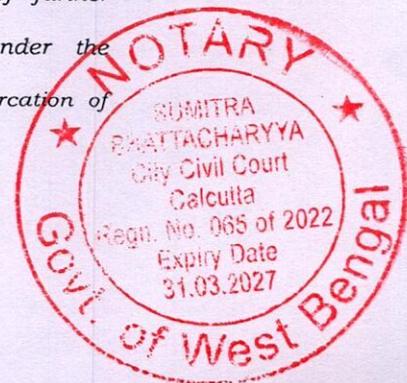
1. Case called out. No one is present for the Applicant.
2. The Original Application No.27/2015/EZ (*Dwaipayan Sengupta Versus Union of India & Ors.*) was filed by the Applicant alleging encroachment and filling of the water body known as Nayanjuli which extends from Ultadanga to Lake Town crossing on the Southern side of VIP Road covering four wards. The said Original Application was disposed of by the Tribunal by order dated 10.07.2017. Thereafter an application M.A. No.17/2022/EZ was filed which was disposed of by the Tribunal by order dated 05.04.2023 with a direction to the State Respondents to complete the work of cleaning of Nayanjuli and adjacent area and also to remove encroachments by 31.01.2024 and file a status report. No status report/compliance affidavit has been filed till date.
3. Para 10, 11, 12, 13 and 18 of the order dated 05.04.2023 reads as under:



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"10. In the affidavit, it is further stated that the Public Works Department has reported that temporary cleaning of Nayanjuli and adjacent area, temporary barricading by bamboo fencing, development of Katcha footpath has been undertaken by P.W. (Roads) Directorate along VIP Road from Dum Dum Park to Bangur and further cleaning and maintenance work has also been taken up. It is also stated that once the tender is finalized, work is likely to be completed in 270 days. Para 4 of the affidavit is extracted herein below:-

"4. Public Works Department has reported that temporary cleaning of Nayanjuli and adjacent area, temporary barricading by bamboo fencing, development of katcha footpath has been undertaken by P.W. (Roads) Directorate along VIP Road from Dum Dum Park to Bangur on receipt of the Order of Hon'ble National Green Tribunal, Eastern Bench against O.A.85/2019/EZ dated 16.03.2022, and further cleaning and maintenance work has also been taken up. PWD (Roads) will work under its jurisdiction from Dum Dum Park to Bangur and other part from Bangur to Ultadanga shall be taken up by South Dum Dum Municipality/ KMDA/ BMC. One DPR has been prepared to clear the water body of hydrophytes waste materials, sediments through dredging, creating of earthwork embankment, Bio Diversity Park/Tree Avenue, Walking Path etc. including beautification work. The project amounting to Rs.9.167 Crore (including electrical works) has been sanctioned vide Memo No.GO22230L1543PD dt.03/OL/2023 of JS(P&C), PWD, Govt. of West Bengal and accordingly NIT has been floated. Once tender is finalized, work is most likely to be completed in 270 days. Meanwhile, steps has been taken for prevention of further encroachment and dumping of garbage falling under the jurisdiction of P.W.(Roads) Directorate. Work of demarcation of



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Nayanjuli (ROW of VIP Road) is in progress and accordingly action will be taken in compliance of the directions of Hon'ble NGT."

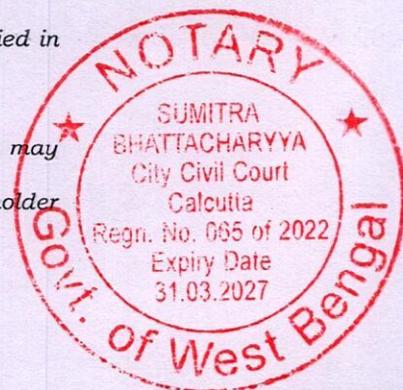
11. We accordingly direct the Stakeholder Respondents to complete the said work positively by 31.01.2024.

12. In the affidavit, it is further stated that some portions of the Canal in question have been encroached as reported by the Additional District Magistrate & District Land & Land Reforms Officer, ('ADM&DL&LRO' for short), North 24 Pargans, Barasat. Para 5 of the affidavit is extracted herein below:-

"5. That additional District Magistrate & District Land & Land Reforms Officer, North 24 Parganas, Barasat has reported that a team was formed comprising the officers of BL&LRO, BKP-1 and other officers of the Department to demarcate the encroached 10 area located on the canal in question as well as demarcation of all the four water bodies i.e. i) the one from Dum Dum Park to Bangur, ii) the next one from Bangur to Lake Town Crossing, iii) the one known as DebiGhat and located between Lake Town Crossing and Golaghata and iv) The pond existing near Dakshindari Bus Stop. It is found during the said demarcation work that there is an encroachment of approximately 1600 sq.ft. with some small temporary huts over the said Nayanjuli, more specifically over its stretch between Dum Dum Park and Bangur, i.e. water body mentioned above. The matter has been intimated to Public Works Department for taking necessary action for eviction.

The demarcation work of other three water bodies (one from the end of Dum Dum Park to Lake Town, second at Debi Ghat and third was identified at the end point of the map at Ultadanga) has also been done and the said water bodies have been identified in the maps."

13. Once the encroachments have been identified and others may also be identified during survey, we direct the Stakeholder



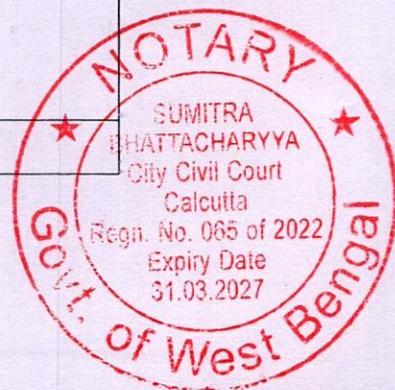
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Respondents to take appropriate steps in accordance with law to remove such encroachments and submits Status Report by 31.01.2024.

18. In para 11 of the affidavit, a chart has been given showing progress of work and tentative date of completion which is extracted herein below:-

"That the progress of work and tentative date of completion is as stated below in tabular form:-

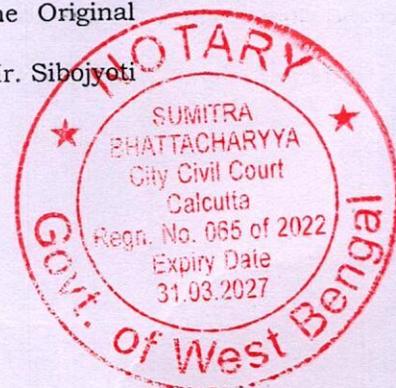
Direction	Authorised Department	Progress so far	Tentative time for completion
Primary Cleaning (I of order dated 6.03.2022)	PWD	Completed	Not applicable
Demarcation for constructing earth work embankments (i of order dated 16.03.2022)	Land & Land Reforms & Refugee Relief & Rehabilitation	Completed	Not applicable
Creating Social awareness (i of order dated 16.03.2022)	K.M.D.A.	Completed	Not applicable
Eviction of	PWD	Completed	Not



- X -

<i>unauthorised encroachers (i of order dated 16.03.2022)</i>			<i>applicable</i>
<i>Creation of Biodiversity park (i of order dated 16.03.2022)</i>	<i>PWD & South Dumdum municipality</i>	<i>Work order issued</i>	<i>Stipulated to be completed within 270 days with effect from 09.03.2023. Work has not started.</i>

4. We, therefore, direct the Public Works Department (PWD) and the South Dum-Dum Municipality to file affidavit of compliance within four weeks. Let the affidavit be filed within four weeks.
5. Mr. Sibojyoti Chakrabarti, learned Counsel who is present in Court accepts notice on behalf of the State Respondents.
6. Issue notice to the Respondent No.10, South Dumdum Municipality, returnable within four weeks. The said respondent shall file affidavit of compliance with regard to creation of Biodiversity Park as per Para 18 of the order of the Tribunal dated 05.04.2023.
7. The said Respondents shall file their compliance affidavits within four weeks.
8. The Office of the Tribunal shall provide copy of the Original Application along with complaint and its Annexures to Mr. Sibojyoti Chakrabarti within 24 hours.

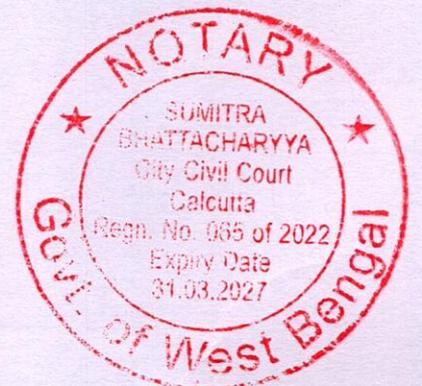


9. List on 26.11.2024.

.....
B. Amit Sthalekar, JM

September 27, 2024,
Miscellaneous Application No.35/2024/EZ
In
Original Application No.85/2019/EZ
OM

.....
Dr. Arun Kumar Verma, EM



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99.

ANNEXURE - R/S

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*
 SHUMITRA
 BHATTACHARYYA
 CIVIL COURT
 Calcutta
 Regn. No. 066 of 2022
 Expiry Date
 31.03.2027
 *
 GOVT. OF WEST BENGAL
 NOTARY

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NOTARY
 BHATTACHARYA
 Govt. of West Bengal
 18/05/2022

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NOTARY
★ SUMITRA BHATTACHARYYA ★
City Civil Court
Calcutta
Regn. No. 065 of 2022
Expiry Date
31.03.2027
Govt. of West Bengal

185

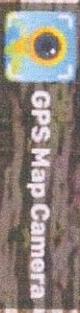
105

ANNEXURE - R/16



Google

Kolkata, West Bengal, India
 271-b, Sreebhumi, Lake Town, Kolkata, West
 Bengal 700048, India
 Lat 22.601467° Long 88.408216°
 20/12/22 02:34 PM GMT +05:30



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NOTARY
 SUMITRA
 BHATTACHARYYA
 City Civil Court
 Calcutta
 Regn. No. 065 of 2022
 Expiry Date
 31.03.2027
 GOVT. of West Bengal

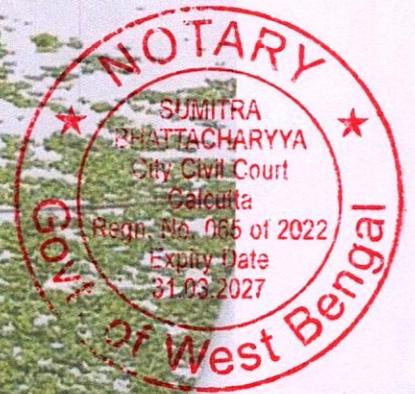
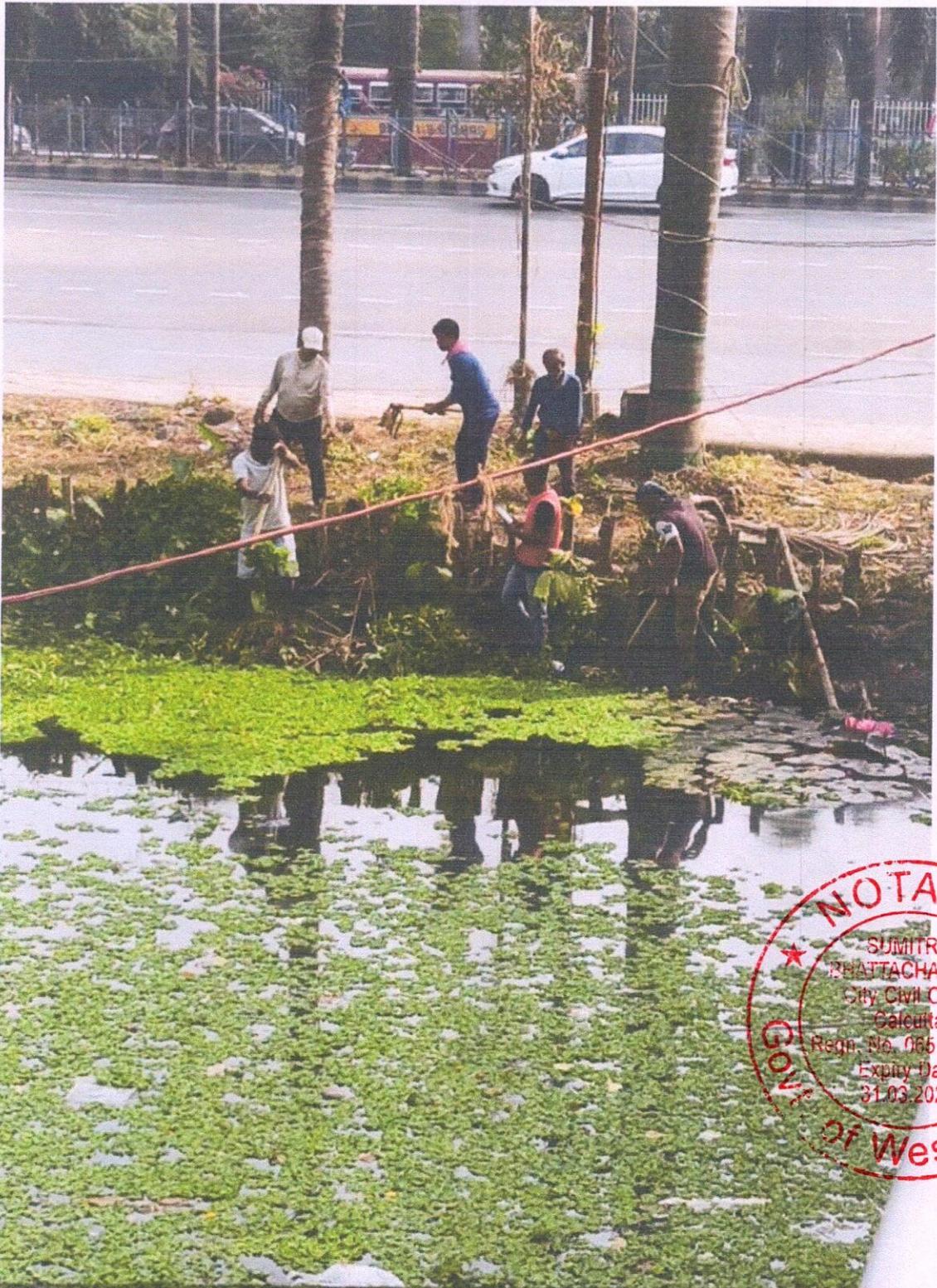
GPS Map Camera



Google

Kolkata, West Bengal, India
 Lake Town, Kazi Nazrul Islam Ave, Block B, Lake Town,
 Kolkata, South Dumdum, West Bengal 700089, India
 Lat 22.601163° Long 88.408308°
 20/12/24 02:44 PM GMT +05:30

- 108 -



266, Lake Town Rd, Block B,
 Lake Town, Kolkata, West

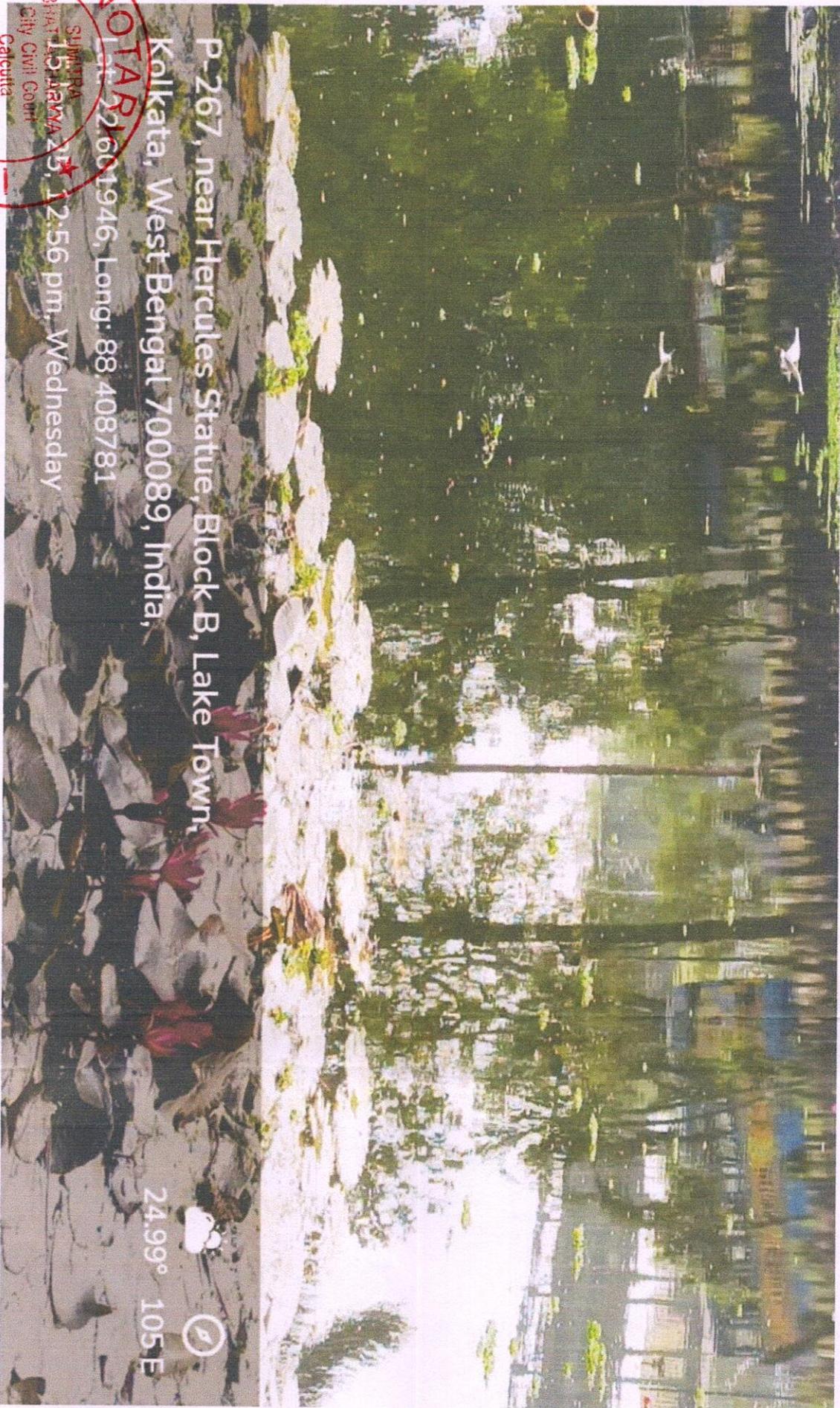
Lat: 22.602103, Long: 88.409071

15 Jan, 25, 12:52 pm, Wednesday



24.99° 139 SE

- 109 -



P-267, near Hercules Statue, Block B, Lake Town,
 Kolkata, West Bengal 700089, India,

24.99° 105E



SHRUTI
 BHATTACHARYA 25, 12:56 pm, Wednesday
 City Civil Court
 Calcutta



18

- 1X0 -



NOTARY
 SUMITRA BHATTACHARYA
 City Civil Court
 Calcutta
 Regn. No. 066 of 2022
 Expiry Date
 31.03.2027
 Govt. of West Bengal

193/B, Block B, Lake Town,
 South Dumdum, West Bengal
 Lat: 22.600971, Long: 88.406923
 15 Jan, 25, 12:58 pm, Wednesday

 
 24.99° 346 N

- XI -



GPS Map Camera



South Dumdum, West Bengal, India
 H9vw+c4v Anandahara Park, Dakshindari, South Dumdum, West Bengal 700048, India
 Lat 22.59352° Long 88.395782°
 11/02/2025 11:36 AM GMT +05:30

NOTARY
 CHARYYA
 Regn. No. 085 of 2022
 Expiry Date
 31.03.2027
 Govt. of West Bengal

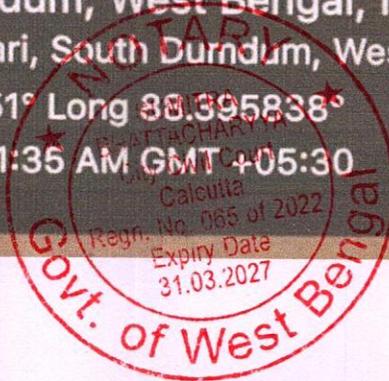
- 118 -



GPS Map Camera



South Dum Dum, West Bengal, India
 17, Dakshindari, South Dum Dum, West Bengal 700048, India
 Lat 22.593651° Long 88.595838°
 11/02/2025 11:35 AM GMT +05:30



- 1XB -



GPS Map Camera

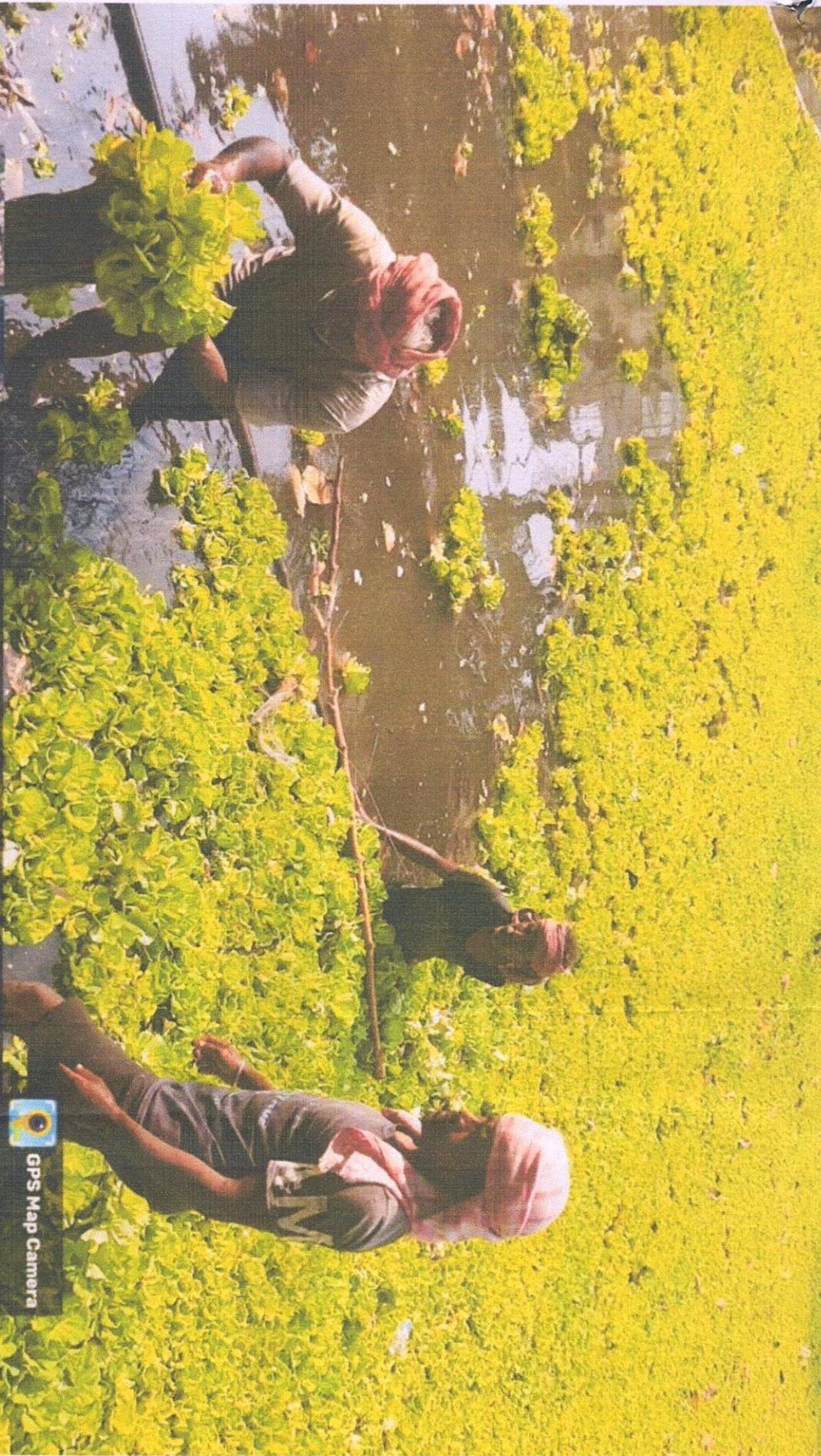


South Dum Dum, West Bengal, India
 H9vw+c4v Anandadhara Park, Dakshindari, South Dum Dum, West Bengal 700048, India
 Lat 22.59352° Long 88.395782°
 11/02/2025 11:36 AM GMT +05:30

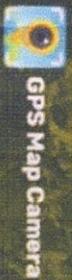
SUMITRA BHATTACHARYYA
 City Civil Court
 Calcutta
 Regn. No. 065 of 2022
 Expiry Date 31.03.2027
 Govt. of West Bengal

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Google



South Dumdum, West Bengal, India
 186, Lake Town Rd, Lake Town, South Dumdum, West Bengal 700089, India
 Lat 22.600637° Long 88.407332°
 08/04/2025 02:26 PM GMT +05:30

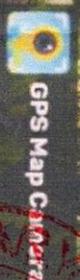
IX5

115



Google

South Dum Dum, West Bengal, India
 186, Lake Town Rd, Lake Town, South Dum Dum, West Bengal 700089, India
 Lat 22.600599° Long 88.407351°
 08/04/2025 02:28 PM GMT +05:30



NOTARY
 SUMITRA
 BHATTACHARYYA
 City Civil Court
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 Regn. No. 965 of 2022
 Expiry Date
 31.03.2027
Notary of West Bengal

X

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Google

South Dum Dum, West Bengal, India
 P192, Block B, Lake Town, South Dum Dum, West Bengal 700089, India
 Lat 22.600711° Long 88.407116°
 08/04/2025 02:24 PM GMT +05:30

NO. 116
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GPS Map Camera

BEFORE THE NATIONAL GREEN
TRIBUNAL, EASTERN ZONE BENCH,
KOLKATA

M.A. No. 35/2024/EZ

In

ORIGINAL APPLICATION NO. 85/2019/EZ

In the matter of:

Dwaipayan Sengupta

... Applicant

Versus

Union of India & Ors.

... Respondents

AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 10

Advocate-on-Record:

Ms. Mousumi Bhowal, Advocate

High Court, Calcutta

Bar Association Room no. 12

Phone - 9339697329

Email: mousumibhowal22@yahoo.in

Enrolment No. WB/1170/2007.



19 JUN 2025