



BEFORE HONBLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA.

Original Application No- 109 of 2025

IN THE MATTER OF:

KAILASH CHANDRA NAYAK ...APPLICANT

VERSUS

STATE OF ODISHA AND OTHERS ... RESPONDENTS

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PLACE: Bhubaneswar

SANKAR PRASAD PANI 

DATE: 23/08/2025

ASHUTOSH PADHY 

ADVOCATE

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BEFORE HONBLE NATIONAL GREEN TRIBUNAL
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**REJOINDER AFFIDAVIT ON BEHALF OF THE
APPLICANT TO THE AFFIDAVIT FILED BY
RESPONDENT NO.-3.**

Most Respectfully Showth :-

I, Kailash Chandra Nayak, aged about 43 years, C/o- Chakradhar Nayak,
At Nuadiha, Po- Kuhika, Via- Sukinda, Dist- Jajpur, Pin-755018, do hereby
solemnly affirm, and declare, that I am the applicant in the above mentioned
Original Application and I am fully conversant with the facts and
circumstances of the case and therefore competent to swear this affidavit.

1. That the para 3 admits there is involvement of forest land and additional class room, library room and activity rooms have been constructed on the land for which for which user AGENCY TAKING **steps for obtaining forest diversion diversion approval from competent authority**
2. That para 4 admits that 84 schools in Danagadi Block are in Forest land while 94 Schools in Sukinda Block exist on Forest Land.
3. That para 6 states that District Welfare Officer, Jajpur submitted form A under **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 here after in short Forest**



Rights Act 2006 on 5/07/2025 for five schools in Sukinda Block to the Forest Range Officer Tomka. And One before forest Range Officer Jajpur Road for diversion of forest land for Non-Forestry Purpose. Further Block Education Officer, Danagadi on 25/07/2025 submitted Inspection Report, Toposheet, Trace Map and Gram sabha Resolution.

4. And in Para 7 it states that the BLOCK Education Officer, Sukinda under letter No.916 dated 23.05.2025 submitted application of 24 Nos. of Schools, under letter No.979 dated 03.06.2025 submitted application of 24 Nos. of Schools, under letter No.1292 dated 30.07.2025 submitted application of 21 Nos. of schools, under letter No.1349 dated 04.08.2025 submitted application of 15 Nos. of Schools and on 12/08/2025 submitted application for 4 number of schools
5. That, in Para 8 it is stated that, **under Danagadi Block out of 84 Nos of schools established over Jungal Kisam of land 66 Nos of schools applied for diversion of Forest land and under Sukinda Block out of 94 Nos. of schools established over Jungal Kisam of land 88 Nos. of schools applied for diversion of Forest land.** The respondent No.3 under letter No.11313 dated 05.08.2025 issued direction to the Block Education Officer, Danagadi/Sukinda to intimate the present status of land in the name of different Schools taken up under DMF for renovation in Sukinda and Danagadi Block and as to whether they have applied for record of right or not.



6. It is submitted that the complaint is of 30/03/2025 and Notice issued in the matter on 7th July 2025 and the proposal for Diversion of Forest Land under Forest Rights Act made on 5th July 2025 and 25th July 2025, 4/08/2025 and 12/08/2025 post the complaint and issue of Notice by Honble NGT in the matter. It is needless to state that the DMF has approved the estimate of building construction on 16/01/2024
7. That from the above facts it is clear the Construction on Forest land Started without approval under the erstwhile Forest Conservation Act 1980 which renamed as "**Van (Sanrakshan Evam Samvardhan) Adhiniyam**" as per the Gazette of India Notification dated 4/08/2023 and after the complaint dated 30/03/2025 and Notice issued on 7/07/2025 the District Administration has submitted diversion proposal under Forest Rights Act 2006 which is still pending for approval by the District Level Committee under Forest Rights Act headed by District Collector AND wherein DFO and DSWO are the members of the committee. Here the members are trying to cover up their wrong abusing their authority under Forest Rights Act. It is also a case of violation of basic principles of jurisprudence that **no one should judge his own case.**
8. It is pertinent to mention here that the Approval under Forest Rights Act is no not meant for the projects/activities which are already in violation and rather for new projects where the Gram Sabha Resolution is pre-requisite. Here the entire process followed is **Post-Facto and there is no such**



provisions under forest Rights Act for post Facto approval. Further the proposal has to come from the Gram sabha and not from the district Admin as in the present case the proposals were first sent by District Social Welfare Officer and then the Block Education Officers have submitted the forms with Gramsabha Resolution. Needless to say that No gramsabha Resolution has been annexed with the Reply and hence the present deponent is not sure if there is any quorum in the gramsabh or not and the due procedure has been followed or not.

9. That the present proposal to regularise the violations of Forest Conservation act already made under the provision Section 3(2) of Forest Rights Act. Here the DFO Cuttack has a duty to stop construction work once it is brought to his notice and here the DFO has been intimated since 30/03/2025 and no steps taken to stop construction amounts to dereliction of duty and warrants action against the Officer under Section 3(A) of Forest Conservation act 1980 along with the disciplinary proceedings. This is not just violation but also contempt of the Tribunal as because despite of Notice on 7/07/2025, no action has been taken by the DFO Cuttack as on date.

10. That Section 3-A. of Forest Conservation Act 1980 prescribes for Penalty for contravention of the provisions of the Act and the same is reproduced as follows

“Whoever contravenes or abets the contravention of any of the provisions of section 2, shall be punishable



with simple imprisonment for a period which may extend to fifteen days.

Section 3-B. Offences by authorities and Government departments: -

(1) Where any offence under this Act has been committed. (a) **by any department of Government**, the head of the department; or (b) by any authority, every person who, at the time the offence was committed, was directly in charge of and was responsible to, the authority for the conduct of the business of the authority as well as the authority; **shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.**

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in Clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in Clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of; or is attributable to any neglect on the part of any officer, other than the head of the department or in the case of an authority, any



person other than the persons referred to in Clause (b) of sub-section (1), such officer or persons shall also be deemed to be guilty of that offences and shall be liable to be proceeded against and punished accordingly

11. It is further submitted that the Gramsabha Recommendation is Pre-requisite and mandatory before a forest diversion proposal is taken for consideration and same is prescribed in Section 3(2) Provisos 2 of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of forest Rights) Act 2006. The same has been further explained in the letter dated **18/05/2009 issued by Ministry of Tribal Affairs (MoTA).**

12. Sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides that notwithstanding anything contained in the Forest (Conservation) Act, 1980, **the Central Government shall provide for diversion of forest land for certain facilities managed by the Government,** as specified in that Section, which involve felling of trees not exceeding seventy-five trees per hectare, provided that such diversion of forest land shall be allowed only if, - (i) the forest land to be diverted for the purposes mentioned in the said sub-section is less than one hectare in each case; and (ii) **the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.** 2. For implementation of the provisions of sub-section (2) of Section 3 of the **Scheduled Tribes and**

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Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Central Government hereby lays down the following procedure:-

13. Submission of the proposals seeking approval for diversion of the forest land under subsection (2) of Section 3 of the Act.- **(i) Every User Agency, that wants to use any forest land for any developmental project**, specified in Section 3(2) of the Act, **shall make a proposal in the appropriate Form appended, i.e. Form ‘A’, and place it before the general assembly of the concerned Gram Sabha for adopting a resolution** to that effect. **(ii) A quorum of at least half the members of the Gram Sabha should be present for adopting a resolution recommending the diversion of forest land.** **(iii)** On receipt of a recommendation of the proposal by the Gram Sabha, the User Agency will submit the proposal to the concerned Range Forest Officer (RFO) of the area, along with the resolution adopted by the Gram Sabha. **(iv)** The Range Forest Officer (RFO) concerned will carry out site inspection of the proposed area to opine on the acceptance of the proposal. **(v)** The Range Forest Officer (RFO) concerned will submit the proposal and his recommendation to the concerned Divisional Forest Officer (DFO) in Form ‘B’ appended, along with his site inspection report and his opinion within three weeks from the date of receipt of complete proposal from the User Agency. **(vi) The Divisional Forest Officer (DFO) concerned will consider the proposal, and if he agrees, he will accord his approval and communicate his decision to the Range Forest Officer**



(RFO) concerned with a copy to the Chairperson of the District Level Committee, within four weeks from the date of receipt of the proposal from the RFO. (vii) After receipt of the approval from the concerned DFO, the RFO will demarcate the area of the forest land approved for diversion and hand over the same to the User Agency under the supervision of the Gram Sabha. (viii) If the Divisional Forest Officer (DFO) concerned does not approve the proposal submitted by the User Agency through the Range Forest Officer (RFO), he shall forward the proposal to the District Level Committee for a final decision. (ix) The District Level Committee will meet and take a final decision, with at least 1/3 quorum, and convey the decision to the DFO for implementation and correction of records and map if the proposal is accepted. (x) The approval for diversion of the forest land by the Divisional Forest Officer (DFO) or by the District Level Committee, as the case may be, shall be accorded subject to the condition that the land diverted for a specific purpose shall not be allowed to be used for any other purpose and the diverted land would be appropriated by the Forest Department if the activity for which the land was diverted is not started within one year of handing over the land to the User Agency. (xi) The DFO concerned will submit a quarterly report of the approvals accorded for diversion of forest land under Section 3(2) of the Act to the Nodal Officer of the State who, in turn, will furnish the consolidated information quarterly to the Secretary, Tribal Welfare Department who will, in turn send the consolidated report to

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the Ministries of Tribal Affairs and Environment & Forests. (xii) The Nodal Officer will also monitor the progress. Copy of the letter dated **18/05/2009** issued by **Ministry of Tribal Affairs (MoTA)** is annexed here with as **ANNEXURE-1**.

14. That the applicant is conscious of the purpose of the construction but equally concerned of the large-scale violation of the law by none other than the state authorities which gives a message of lawlessness and disregard to the law of the land passed by the parliament of the country. The State authority should have set an example by abiding the law and not violating the law.
15. It is further submitted that the Forest Rights Act is not intended as a substitute to Forest Conservation Act. In the present case in the garb of forest rights act, the authorities are trying to regularise the violations already done under Forest Conservation Act and same is not permissible, Further the state respondents are free to pursue the diversion proposal under Forest Conservation act after appropriate action against the erring officer for permitting such construction on forest land,
16. That the proposal to regularise the violations also negate the letter and spirit of Forest Conservation Act 1980 and to do the same under a different law **is the abuse and colourable exercise of powers of authorities under the Forest Rights Act 2006**. So as to cover up the violations of Forest Conservation Act, Documents manufactured in order to bring the project in the domain of Forest Rights Act (FRA) That so as to escape from the rigors

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of Forest Conservation Act, the User agency in collusion with District Administration and Forest Authorities are trying to take the shelter of provisions of FRA 2006.

17. That in view of the admitted position that the buildings under construction are on Forest land and no prior approval obtained under Forest Conservation Act 1980, hence it is a violation of the FC Act. The applicant prays for a direction to the DFO Cuttack not to proceed with the Diversion proposals under Forest Rights Act and initiate proceeding under Section 3(b) of Forest Conservation Act 1980 against the violator the government department executing the project including the Managing Trustee of DMF who has sanctioned the money for the project.

And for this act of kindness, the petitioner as in duty bound shall ever pray.

DATE-23/08/2025



APPLICANT THROUGH
ADVOCATE

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

ORIGINAL APPLICATION NO.-109OF 2025

IN THE MATTER OF:

KAILASH CHANDRA NAYAK

APPLICANT

VERSUS

STATE OF ODISHA AND OTHERS

RESPONDENTS

AFFIDAVIT

23 AUG 2025

I, Kailash Chandra Nayak, aged about 43 years, C/o- Chakradhar Nayak, At/Po- Nuadihi, Dist- Jajpur, Pin-755018, do hereby solemnly affirm, and declare as under:

1. That I am the applicant in the above mentioned Original Application and I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
2. That I have read over the contents of the accompanying affidavit and the same is true and correct and is drafted on my instruction.

Kailash Chandra Nayak
DEPONENT

VERIFICATION

Verified on this 23 day AUG 2025 at Bhubaneswar that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

Identified By
[Signature]
Advocate

Kailash Chandra Nayak
DEPONENT



The above named deponent(s) being duly identified by Sr. *S. A. Patra* Advocate, Bhubaneswar Appears before me on 23 AUG 2025 at 12:50 pm A.M./P.M. States on oath the contents of this affidavit are true to the best of his / her / their knowledge and belief

Deponent(s) Notary, Bhubaneswar

[Signature]
JANMEJAYA RAUTRAY
NOTARY, GOVT. OF ODISHA
BHUBANESWAR
REGD. NO. ON-86/2012
Mob No-7978581217

ANNEXURE-1

Annexure to letter No 23011/15/2008-SG.II
dated May 18, 2009

Government of India
Ministry of Tribal Affairs

Procedure for seeking prior approval for diversion of forest land for non-forest purposes for facilities managed by the Government under Section 3(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

- - -

Sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides that notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for certain facilities managed by the Government, as specified in that Section, which involve felling of trees not exceeding seventy-five trees per hectare, provided that such diversion of forest land shall be allowed only if, -

- (i) the forest land to be diverted for the purposes mentioned in the said sub-section is less than one hectare in each case; and
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

2. For implementation of the provisions of sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Central Government hereby lays down the following procedure:-

2.1 **Definitions.-** In the procedure, unless the context otherwise requires:-

- (a) "Act" means the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
- (b) "District Level Committee" shall mean the Committee constituted under Rule 7 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Rules, 2008;
- (c) "Forest Land" shall have the same meaning as defined in Section 2(d) of the Act;
- (d) "Gram Sabha" shall have the same meaning as defined in Section 2(g) of the Act;

- (e) “Nodal Officer” means any officer not below the rank of Conservator of Forests, authorized by the State Government to deal with matters relating to diversion of forest land under the Act;
- (f) “Section” means a section of the Act;
- (g) “User Agency” means a Department of the Central or State Government or a District Panchayat making a request for diversion of forest land for developmental projects managed by the Government as specified in sub-section (2) of Section 3 of the Act;
- (h) “Village” shall have the same meaning as defined in Section 2(p) of the Act.

2.2 Submission of the proposals seeking approval for diversion of the forest land under sub-section (2) of Section 3 of the Act.-

- (i) Every User Agency, that wants to use any forest land for any developmental project, specified in Section 3(2) of the Act, shall make a proposal in the appropriate Form appended, i.e. Form ‘A’, and place it before the general assembly of the concerned Gram Sabha for adopting a resolution to that effect.
- (ii) A quorum of atleast half the members of the Gram Sabha should be present for adopting a resolution recommending the diversion of forest land.
- (iii) On receipt of a recommendation of the proposal by the Gram Sabha, the User Agency will submit the proposal to the concerned Range Forest Officer (RFO) of the area, along with the resolution adopted by the Gram Sabha.
- (iv) The Range Forest Officer (RFO) concerned will carry out site inspection of the proposed area to opine on the acceptance of the proposal.
- (v) The Range Forest Officer (RFO) concerned will submit the proposal and his recommendation to the concerned Divisional Forest Officer (DFO) in Form ‘B’ appended, along with his site inspection report and his opinion within three weeks from the date of receipt of complete proposal from the User Agency.
- (vi) The Divisional Forest Officer (DFO) concerned will consider the proposal, and if he agrees, he will accord his approval and communicate his decision to the Range Forest Officer (RFO) concerned with a copy to the

Chairperson of the District Level Committee, within four weeks from the date of receipt of the proposal from the RFO.

- (vii) After receipt of the approval from the concerned DFO, the RFO will demarcate the area of the forest land approved for diversion and hand over the same to the User Agency under the supervision of the Gram Sabha.
- (viii) If the Divisional Forest Officer (DFO) concerned does not approve the proposal submitted by the User Agency through the Range Forest Officer (RFO), he shall forward the proposal to the District Level Committee for a final decision.
- (ix) The District Level Committee will meet and take a final decision, with at least 1/3 quorum, and convey the decision to the DFO for implementation and correction of records and map if the proposal is accepted.
- (x) The approval for diversion of the forest land by the Divisional Forest Officer (DFO) or by the District Level Committee, as the case may be, shall be accorded subject to the condition that the land diverted for a specific purpose shall not be allowed to be used for any other purpose and the diverted land would be appropriated by the Forest Department if the activity for which the land was diverted is not started within one year of handling over the land to the User Agency.
- (xi) The DFO concerned will submit a quarterly report of the approvals accorded for diversion of forest land under Section 3(2) of the Act to the Nodal Officer of the State who, in turn, will furnish the consolidated information quarterly to the Secretary, Tribal Welfare Department who will, in turn send the consolidated report to the Ministries of Tribal Affairs and Environment & Forests.
- (xii) The Nodal Officer will also monitor the progress.

APPENDIX

Form for seeking prior approval for diversion of forest land for non-forest purposes for the facilities managed by the Government under sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

FORM-A

[See para 2.2(i)]

(To be filled up by the User Agency)

1. Project details:
 - (i) Short narrative of the proposed project / scheme for which the forest land is required.
 - (ii) Details of the forest land required (two options to be indicated)
 - a. Location – Survey No./ Compartment No.
 - b. Extent of the area (in hectare)
 - c. Forest Division
 - d. Map showing the required forest land, boundary of adjoining forest on a 1:50,000 scale map.
 - (iii) Justification for locating the project in proposed forest land(s)
 - (iv) Number of trees to be felled (per hectare) and number that will be kept standing

2. Detailed, purpose-wise break-up of the total forest land required with proposed building/activity area map.

3. Confirmation that User Agency will plant at least twice the number of trees to be felled, in the project or adjacent area and the amount to be provided annually for protection and maintenance of these plants for at least five years (Details to be enclosed).

4. Recommendation of the Gram Sabha – Accepted/Rejected
 [Please tick (√), as the case may be]. [Copy of the Gram Sabha resolution to be attached.]

Signature of the authorized person for the User

Agency

(Name in Block letters)

Address _____

Date: _____

Place: _____

Serial No. of proposal _____

(To be filled up by the Range Forest Officer with date of receipt)

FORM-B

[See para 2.2(iv)]

(To be filled by the concerned Range Forest Officer)

Serial No. of proposal _____

1. Location of the project / Scheme:
 - (i) State / Union Territory
 - (ii) District.
 - (iii) Forest Division
 - (iv) Proposed forest land(s) (two options to be indicated)
 - i. Location – Survey No./ Compartment No.
 - ii. Extent of the area (in hectare)
 - (v) Whether part of biosphere reserve, tiger reserve, elephant corridor, etc.

2. Site inspection report (to be attached), containing the date of visit, and justified opinion on the acceptability of the proposal (separately for the two options).

3. Specific recommendation of the Range Forest Officer for acceptance or otherwise of the proposal and the better option.

Signature of the RFO

Name

Official Seal

Date: _____

Place: _____

Accepted / Not accepted
with reasons to be recorded

Signature of the DFO

Name _____

Official Seal

Date: _____

Place: _____



Sankar Pani <sankarprasadpani@gmail.com>

REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT TO THE AFFIDAVIT FILED BY RESPONDENTNO.-3.

1 message

Sankar Pani <sankarprasadpani@gmail.com>

Sat, Aug 23, 2025 at 3:16 PM

To: Parth Sarthi <sarthiparth155@gmail.com>, secy-moef@nic.in

Dear Sir/Madam, please find the attachment.

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Sankar Prasad Pani, Environment Lawyer
National Green Tribunal Kolkata & Orissa Highcourt
Res-Plot No 2132/4814(B), Nageswar Tangi,
Bhubaneswar, 751002
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**REJOINDER AFFIDAVIT JAJPUR FOREST LAND-merged.pdf**

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