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Sarbani Brahma

Filed by
Sarbani Brahma**BEFORE THE NATIONAL GREEN TRIBUNAL**

Finance Centre, 3rd Floor, New Town

EASTERN ZONE BENCH, KOLKATA, WEST BENGAL

SARBANI BRAHMA....Applicant**VERSUS****STATE OF WEST BENGAL & OTHERS....Respondents****ORIGINAL APPLICATION NO: 1 OF 2025 (EZ)****SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE APPLICANT IN O.A.
1 OF 2025 (EZ)**

The humble Supplementary Affidavit on behalf of the applicant above named;

Most Respectfully Sheweth:

1. Denial of Allegations

The applicant denies and disputes each and every allegation made by the private respondents (Nos. 12, 13, 14, 15, 16, & 23) in their "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", save and except those forming part of the official records. The applicant states that the electricity supply in the illegal constructions on the subject pond is in violation of the Supreme Court of India Judgment in Rajendra Kumar Barjatya And Another Vs U.P. Avas Evam Vikas Parishad & Ors reported at SCC OnLine SC 3767 especially paragraph 21(IV) reproduced below:-

"21.(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider / Board to the buildings only after the production of the completion/occupation certificate."

The electricity supply in the illegal constructions raised on the subject pond is also in violation of Section 17A of the West Bengal Inland Fisheries Act, 1984, Sections 23, 4C, and 4D of the West Bengal Gram Panchayat Act, 1973 and Section 4C of the West Bengal Land Reforms Act, 1955 and Section 52 of the West Bengal Town and Country (Planning and Development) Act, 1979. The applicant states that WBSEDCL is statutorily

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barred from supplying electricity to unauthorized constructions raised on the subject pond under Section 43 of the Electricity Act, 2003. Reliance is placed on the following judgments:-

- 1) Raghunath Maity v. West Bengal Pollution Control Board (Before The National Green Tribunal Eastern Zone Bench, Kolkata in Original Application No.64/2023/EZ decided on 07.05.2025), barring electricity without clearances.
- 2) Supreme Court of India Judgment in Rajendra Kumar Barjatya And Another Vs U.P. Avas Evam Vikas Parishad & Ors reported at SCC OnLine SC 3767 wherein paragraph 21 of the judgment held that Electricity, Water Supply & Sewerage Connection To Be Given Only After Completion or Occupation Certificate.

2. Maintainability of the Application

The applicant submits that Original Application No. 1 of 2025 (EZ) is maintainable before this Hon'ble Tribunal under Sections 14, 15, and 18 of the National Green Tribunal Act, 2010 (NGT Act), as it raises substantial questions relating to the environment, specifically the illegal filling and pollution of a pond at R.S. Dag No. 973/L.R. Dag No. 953, R.S. Khatian No. 1153, L.R. Khatian No. 495, 10022, 14368-14387, District Howrah, Block Domjur, Mouza Bankra, Pin 711403 (hereinafter the schedule property), within the ambit of enactments listed in Schedule I of the NGT Act, including the Water (Prevention and Control of Pollution) Act, 1974, and the Environment (Protection) Act, 1986.

3. Prayers in the Original Application

With reference to the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", the applicant denies the characterization of her prayers as solely concerning illegal pond filling. The applicant reiterates her interim and main prayers, as reproduced below, which seek restoration of the polluted pond to its pristine state, prevention of further environmental degradation, and regulatory actions by state authorities, including the Bankra-II Gram Panchayat under Section 23 of the West Bengal Panchayat Act, 1973:

A. INTERIM PRAYERS

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

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

B. MAIN PRAYERS

- i. Direct respondents to remove all rubbish, solid waste, industrial effluents, and toxic substances from the pond at the schedule property and restore it to its original pristine state.
- ii. Direct state respondent authorities to take legal action against private respondents responsible for illegal pond filling without statutory clearances.
- iii. Direct state respondent authorities to formulate and place on record a strategy/scheme to prevent illegal pond filling.
- iv. Constitute a committee to formulate and implement a restoration plan and file an action taken report.
- v. Direct state respondent authorities to include the schedule property as a protected pond in the Bankra-II Gram Panchayats records.
- vi. Direct state respondent authorities to produce the assessment register and/or land register of the schedule property.
- vii. Direct state respondent authorities to issue no building sanction plan for the schedule property.

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viii. Ad-interim orders in terms of the above prayers.

ix. Any other or further order as deemed fit by this Hon'ble Tribunal.

4. Denial of Suppression of Facts

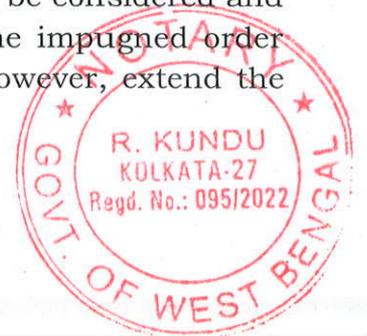
With reference to the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", the applicant categorically denies suppressing any material facts. The applicant submits that her application before this Hon'ble Tribunal is made with clean hands, focusing on environmental restoration, a cause distinct from prior litigations cited by the private respondents.

The applicant states that the impugned order dated 30.07.2025 in WPA/16797/2025 passed by the Hon'ble Calcutta High Court, overlooked by deferring to the Gram Panchayat without considering the pre-existing FACT FINDING REPORT IN THE FORM OF AN AFFIDAVIT" dated 30.06.2025 submitted by the District Magistrate & Collector, Howrah District, has resulted in a miscarriage of justice, as the illegality stands admitted, warranting immediate disconnection to prevent further environmental harm.

5. Prior Litigation in Calcutta High Court

With reference to the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23":-

- 1) The applicant acknowledges that WPA 10707 of 2020 and M.A.T. 322 of 2021 before the Calcutta High Court concerned demolition of unauthorized constructions and injunctions against further construction on the schedule property, as admitted by the private respondents. The applicant submits that she is neither a party to nor connected with the petitioners or respondents in these cases, nor was she aware of their existence prior to filing O.A. 1 of 2025 (EZ).
- 2) In the order dated 27.04.2021 in M.A.T. 322 of 2021, a Division Bench of the Calcutta High Court passed the following operative part: "Since the principal allegation of the appellants herein before the writ Court was illegal construction made by the private respondents without obtaining any sanction plan, the Hon'ble Single Bench, in our view, was justified in directing the representation to be considered and disposed of by the concerned Gram Panchayat. The impugned order thus calls for no interference by this Court. We, however, extend the



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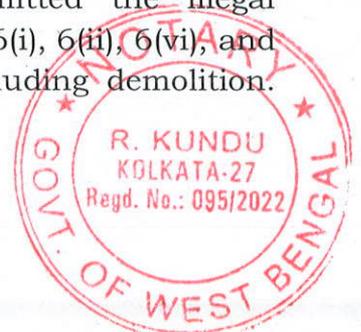
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period fixed by the Hon'ble Single Bench for consideration and disposal of the representation by a period of four weeks from the date of passing of this order since a substantial period of the time allowed by the Hon'ble Single Bench has expired in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

- 3) In the order dated 21.05.2025 in CPAN/912/2021 arising out of M.A.T. 322 of 2021, a Division Bench of the Calcutta High Court passed the following operative part: Pursuant to the last order dated December 6, 2024, the petitioners have served a copy of this contempt application upon the alleged contemnor. Despite service, none represents the alleged contemnor. Affidavit of service is on record. Let a rule be issued against the alleged contemnor returnable on June 18, 2025. The applicant notes that on 18.06.2025, a holiday was declared by the Calcutta High Court.
- 4) In order dated 25.07.2025 in the new contempt application being CRC/12/2025 (old contempt application CPAN/912/2021) arising out of order dated 27.04.2021 in MAT/322/2021, the Division Bench of this court was pleased to hold that the application for contempt would lie before the Hon'ble Single Bench and not before the Hon'ble Division Bench, with liberty granted to the petitioners to move contempt application before the appropriate bench. Photocopy of order dated 25.07.2025 in CRC/12/2025 annexed herewith and marked as annexure "F".
- 5) The applicant filed WPA (P) 453 of 2024 before the Calcutta High Court for demolition of illegal constructions on the schedule property, a cause distinct from the environmental restoration sought in this application. The applicant submits that no prayer for restoration of the polluted pond to its pristine state was made in WPA 10707 of 2020, M.A.T. 322 of 2021, or WPA (P) 453 of 2024, making the present application unique and maintainable. The applicant states that the FACT FINDING REPORT IN THE FORM OF AN AFFIDAVIT" dated 30.06.2025 submitted by the District Magistrate & Collector, Howrah District, before the National Green Tribunal (NGT), Eastern Zone, in OA 1(EZ) of 2025 specifically pleaded in paragraph 6 thereof, wherein it was stated that the District Magistrate admitted the illegal constructions on the subject pond vide paragraphs 6(i), 6(ii), 6(vi), and 6(vii) of the report, and suggested restoration including demolition.

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The aforesaid FACT FINDING REPORT IN THE FORM OF AN AFFIDAVIT" dated 30.06.2025 submitted by the District Magistrate & Collector, Howrah District, included representatives from the Bankra-II Gram Panchayat, namely Shri Tapas Kumar Pramanick, Secretary, and Shri Badrul Haque, Executive Assistant Secretary, who participated in the inspection on 01.02.2025 at 12 noon. Thus, the Gram Panchayat's involvement in the Fact Finding Committee further underscores that its independent decision cannot override the Fact-Finding-Committee's findings.

The FACT FINDING REPORT IN THE FORM OF AN AFFIDAVIT" dated 30.06.2025, being a product of a Fact Finding committee constituted under the NGT's direction, is binding and takes precedence over any pending or potential report/decision by the Gram Panchayat, as it involves higher statutory authority under the National Green Tribunal Act, 2010, and addresses environmental and land use violations comprehensively.

- 6) In the order dated 21.05.2025 in CPAN/912/2021 arising out of M.A.T. 322 of 2021, a Division Bench of the Calcutta High Court passed the following operative part: Pursuant to the last order dated December 6, 2024, the petitioners have served a copy of this contempt application upon the alleged contemnor. Despite service, none represents the alleged contemnor. Affidavit of service is on record. Let a rule be issued against the alleged contemnor returnable on June 18, 2025. The applicant notes that on 18.06.2025, a holiday was declared by the Calcutta High Court.
- 7) The petitioners have filed a contempt application being CPAN No. 1381 of 2025 arising out of W.P.A. No. 10707 of 2020, before Hon'ble Calcutta High Court on 08.08.2025, alleging willful and deliberate violation of the order dated 09.02.2021 passed by Hon'ble Justice Amrita Sinha in W.P.A. No. 10707 of 2020, Buland Javed Anr. Vs. The State of West Bengal Ors, which is pending before Hon'ble Justice Amrita Sinha.
- 8) The applicant submits that persistent illegal pond filling with pollutants, as evidenced by Google images annexed to the original application, continued subsequent to the orders dated 09.02.2021 (WPA 10707 of 2020) and 27.04.2021 (M.A.T. 322 of 2021),

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necessitating the present application before this Hon'ble Tribunal.

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6. Distinct Cause of Action

- 1) With reference to the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", the applicant denies that O.A. 1 of 2025 is based on the same cause of action as the High Court cases. The applicant submits that the cause of action in this application restoration of a polluted pond to its pristine state is distinct from demolition of illegal constructions, which was the focus of WPA 10707 of 2020, M.A.T. 322 of 2021, and WPA (P) 453 of 2024. The Supreme Court in Aditya Kumar Bose v. Union of India (NGT, 2015, affirmed by SC) held that prior litigation on related but distinct issues does not invoke res judicata if the cause of action differs. No court has adjudicated the restoration of the schedule property pond, making this application maintainable.
- 2) With reference to the paragraph 6 of the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", the applicant states that the impugned order dated 30.07.2025 in WPA/16797/2025, the Hon'ble Calcutta High Court overlooked environmental urgency under Articles 21, 48A, and 51A(g). Reliance is placed on the following judgments:-
 - i) Supreme Court asks how a city can become smart without protecting water bodies (Supreme Court in Civil Appeal No. 7607/2023, State of Rajasthan & Ors. Versus Ashok Malik & Ors decided on 19.02.2025), emphasizing protection;
 - ii) Supreme Court order directing UP Govt to form committee to investigate illegal filling of water bodies (2025), binding restoration; Nanhe Lal Kanaujia v. State of U.P. (Allahabad High Court, PIL No. 390 of 2022, in 2023), directing affidavits and reports on pond encroachments as continuing wrongs;
 - iii) Sukhchain v. State of Madhya Pradesh (Madhya Pradesh High Court, WP No. 1377 of 2016, 20.09.2017), mandating removal of pond encroachments and compliance reports.
- 3) With reference to the paragraph 6 of the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", The applicant states that the impugned order dated 30.07.2025 in WPA/16797/2025, the Hon'ble Calcutta High Court overlooked the prolonged and willful

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inaction by the Bankra-II Gram Panchayat for over four years despite binding directions from this Hon'ble Court in W.P.A. No. 10707 of 2020 and MAT 322 of 2021 to consider petitioners representations made in 2020. Such inaction constitutes a continuing wrong, and the petitioner cannot be left remediless indefinitely. Reliance is placed on the judgments:-

1. Gourahari Lenka v. State of Odisha (Orissa High Court, W.P.(C) No. 34606 of 2021, 06.01.2023), permitting a second writ for enforcement of prior directions. The court reiterated that a second writ petition is maintainable to enforce an order from an earlier writ petition, particularly where authorities fail to comply with directions to consider representations or grant benefits. In this case, the first writ directed the Collector to decide a representation under a housing scheme, but the authority denied relief post-order. The second writ challenged this inaction, and the court set aside the denial, holding that non-compliance with court orders is illegal and remediable under Article 226. It emphasized that failure to appeal the first order makes it binding, and a fresh petition ensures justice without being barred by res judicata.
2. Indrapuri Studio Pvt. Ltd. v. State of West Bengal (Calcutta High Court, 2003 (3) CHN 148), affirming successive writs for non-compliance. Cited approvingly in the above Orissa HC case, the court held that a second writ petition is maintainable for enforcing directions from an earlier writ, quoting Bibekananda Mondal v. State of West Bengal, (2003) 1 WBLR (Cal) 213. It stressed that Article 226 allows successive petitions where prior orders are violated, as dismissing them would defeat judicial oversight over administrative inaction
3. Arjun Singh v. Mohindra Kumar (AIR 1964 SC 993), ruling res judicata does not bar continuing causes of action. The Supreme Court ruled that res judicata does not bar claims arising from continuing causes of action, such as ongoing trespass or encroachments. Each day of illegal construction without valid plans/certificates creates a new cause, permitting a fresh writ despite prior litigation.

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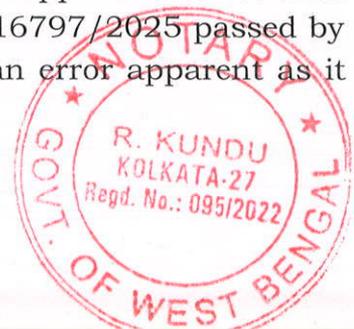


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4. Devaki Nandan Prasad v. State of Bihar ((1983) 4 SCC 20), entertaining a second petition for enforcement. The Supreme Court entertained a second writ petition under Article 32 to enforce prior directions for pension payment, despite an earlier petition being disposed of with similar instructions. It ruled that res judicata does not apply rigidly where enforcement is sought for non-compliance, as the court's mandate under Articles 32/226 is to ensure justice, not to perpetuate wrongs through technical bars. This precedent directly supports filing a fresh writ for persistent inaction by authorities like Gram Panchayats.
 5. State of Uttar Pradesh v. Nawab Hussain ((1977) 2 SCC 806), clarifying res judicata does not apply to new facts or grounds. The court clarified that res judicata applies to writ petitions under Article 226, but not if the second petition raises new grounds or facts not adjudicated earlier.
 6. Hope Plantations Ltd. v. Taluk Land Board ((1999) 5 SCC 590), noting exceptions for continuing wrongs in public interest. While affirming res judicata's application to writs, the court noted exceptions for continuing wrongs or where public interest demands intervention. In cases of illegal land encroachments, this allows successive petitions if violations evolve or persist, as rigid application would encourage administrative defiance.
 7. Ved Prakash Katiyar v. Member Secretary (Allahabad High Court, 2005 (2) AWC 1564), holding ongoing issues like encroachments as continuing causes of action. The court held that if a prior writ petition was dismissed, a second one on the same facts is not maintainable, but suspension (or similar ongoing issues) constitutes a continuing cause of action. Thus, res judicata does not apply, allowing fresh petitions for each instance of violation. Applied to illegal constructions on ponds, this supports a second writ where encroachments persist without sanctions, creating daily fresh causes.
- 4) With reference to the paragraph 6 of the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", The applicant states that the impugned order dated 30.07.2025 in WPA/16797/2025 passed by the Hon'ble Calcutta High Court suffers from an error apparent as it

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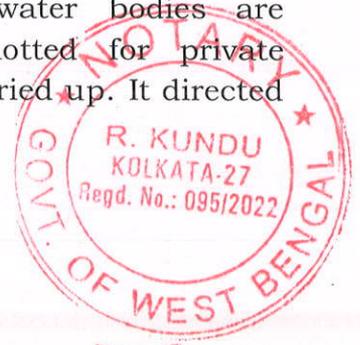
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failed to consider that a writ court can direct a state respondent like Bankra-II Gram Panchayat to file a report on affidavit pertaining to the petitioners new representation dated 17.05.2025, wherein the private respondents Nos. 12 to 17 are responsible for continuing illegal constructions on the pond at R.S. Dag No. 973/L.R. Dag No. 953 without valid building sanction plans and/or completion certificates. Reliance is placed on the following judgments:-

1. Jagpal Singh v. State of Punjab ((2011) 11 SCC 396). In this landmark case on illegal encroachments on village ponds and common lands, the Supreme Court held that such lands (including ponds) are held in trust by the State for public use and cannot be alienated or encroached upon for private purposes. The Court directed all State Governments to prepare schemes for the swift eviction of illegal occupants from Gram Sabha/Gram Panchayat lands (including ponds) and restore them for common village use. It emphasized that long-standing encroachments do not create rights, and Gram Panchayats must act to prevent and remove them. This supports writ courts directing local authorities like Gram Panchayats to investigate and report on such violations via affidavits in ongoing petitions.
2. Jitendra Singh v. Ministry of Environment (Supreme Court of India judgment reported at AIR ONLINE 2019 SC 1537, (2019) 17 SCALE 29, (2020) 1 KER LT 56, (2020) 1 WLC(SC)CVL 203 2019). The Supreme Court quashed the illegal allotment of village ponds to private industrialists, reiterating the State's constitutional duty under Articles 48A and 51A(g) to protect water bodies from encroachments and constructions. It directed state authorities (including local bodies) to restore affected ponds, remove obstructions, and maintain them, rejecting schemes for "replacement" water bodies as ecologically harmful. This underscores the power of writ courts to mandate reports/affidavits from Gram Panchayats on specific encroachments to facilitate restoration.
3. Hinch Lal Tiwari v. Kamala Devi ((2001) 6 SCC 496), mandating removal of encroachments and compliance reports. The Supreme Court ruled that ponds and water bodies are communal properties that cannot be allotted for private construction or habitation, even if partially dried up. It directed

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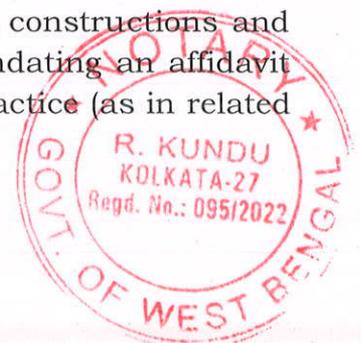
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removal of encroachments and restoration, affirming that local authorities must file compliance reports in such matters. This has been cited in subsequent High Court cases to justify directions for affidavits on illegal constructions.

4. Nanhe Lal Kanaujia v. State of U.P. (Allahabad High Court, PIL No. 390 of 2022, 2023), directing affidavits on pond encroachments. In this PIL alleging encroachments on Gram Sabha lands including ponds, the court directed the Principal Secretary (Revenue) to file an affidavit detailing pending encroachment cases, affected areas, reasons for delays, suggestions for resolution, and actions against erring officials. It also instructed the District Magistrate to submit a personal affidavit and enquiry report on specific encroachments (including a temple and trees on pond land). The judgment emphasized prompt removal under the U.P. Revenue Code, 2006, and circulation of orders to all districts, directly supporting directions to Gram Panchayats for affidavit-based reports on illegal constructions.
5. Sukhchain v. State of Madhya Pradesh (Madhya Pradesh High Court, WP No. 1377 of 2016, 20.09.2017), mandating removal and compliance reports. The court addressed a Gram Panchayat's illegal resolution to construct shops around a pond, directing the State and Collector to remove all encroachments/constructions and restore the water body to its original state per the public trust doctrine. It mandated official respondents (including local authorities) to file a compliance report within 60 days, illustrating writ courts' practice of requiring reports (often on affidavit) from Gram Panchayats on such violations.
6. Syed Bakibillah v. State of West Bengal (Calcutta High Court order dated 16.05.2023 in W.P.A. No. 11483 of 2023 Syed Bakibillah vs State Of West Bengal & Ors), directing demolition of unauthorized buildings. In a case involving unauthorized buildings sanctioned by a Gram Panchayat, the court held that Panchayats lack authority to approve illegal constructions and directed demolition. While not explicitly mandating an affidavit here, it aligns with Calcutta HC's broader practice (as in related

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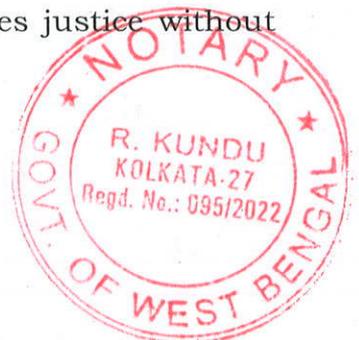


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cases) of requiring local bodies to probe and report on encroachments, especially on water-adjacent lands.

7. Calcutta High Court PIL on Encroachment of Water Bodies (2023), directing investigation and action in Ajit Kumar Mondal & Anr vs The State Of West Bengal & Ors decided on 29 March, 2023 in WPA(P) 123 of 2023. In a PIL, the Division Bench directed the West Bengal government to investigate encroachments on water bodies statewide and take action against land grabbers, implying the need for reports from local authorities like Gram Panchayats. This supports directions for affidavit-based probes into specific representations about illegal pond constructions.
 8. Kolkata Municipal Corporation Case on Water Bodies (Calcutta High Court, 2023), mandating affidavits on water body status.
- 5) With reference to the paragraph 6 of the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", The applicant states that the petitioner can file a second writ petition WPA/16797/2025 before the Hon'ble Calcutta High Court on a later date stating inaction, as it involves a fresh cause of action, with new additional facts made in the new representation dated 17.05.2025. Reliance is placed on the following judgments:-
- (1) Gourahari Lenka v. State of Odisha (Orissa High Court, W.P.(C) No. 34606 of 2021, 06.01.2023), permitting a second writ for enforcement of prior directions. The court reiterated that a second writ petition is maintainable to enforce an order from an earlier writ petition, particularly where authorities fail to comply with directions to consider representations or grant benefits. In this case, the first writ directed the Collector to decide a representation under a housing scheme, but the authority denied relief post-order. The second writ challenged this inaction, and the court set aside the denial, holding that non-compliance with court orders is illegal and remediable under Article 226. It emphasized that failure to appeal the first order makes it binding, and a fresh petition ensures justice without being barred by res judicata.



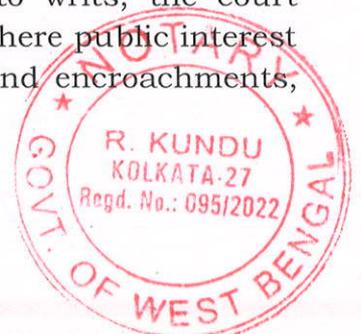
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- (2) Indrapuri Studio Pvt. Ltd. v. State of West Bengal (Calcutta High Court, 2003 (3) CHN 148), affirming successive writs for non-compliance. Cited approvingly in the above Orissa HC case, the court held that a second writ petition is maintainable for enforcing directions from an earlier writ, quoting Bibekananda Mondal v. State of West Bengal, (2003) 1 WBLR (Cal) 213. It stressed that Article 226 allows successive petitions where prior orders are violated, as dismissing them would defeat judicial oversight over administrative inaction
- (3) Arjun Singh v. Mohindra Kumar (AIR 1964 SC 993), ruling res judicata does not bar continuing causes of action. The Supreme Court ruled that res judicata does not bar claims arising from continuing causes of action, such as ongoing trespass or encroachments. Each day of illegal construction without valid plans/certificates creates a new cause, permitting a fresh writ despite prior litigation.
- (4) Devaki Nandan Prasad v. State of Bihar ((1983) 4 SCC 20), entertaining a second petition for enforcement. The Supreme Court entertained a second writ petition under Article 32 to enforce prior directions for pension payment, despite an earlier petition being disposed of with similar instructions. It ruled that res judicata does not apply rigidly where enforcement is sought for non-compliance, as the court's mandate under Articles 32/226 is to ensure justice, not to perpetuate wrongs through technical bars. This precedent directly supports filing a fresh writ for persistent inaction by authorities like Gram Panchayats.
- (5) State of Uttar Pradesh v. Nawab Hussain ((1977) 2 SCC 806), clarifying res judicata does not apply to new facts or grounds. The court clarified that res judicata applies to writ petitions under Article 226, but not if the second petition raises new grounds or facts not adjudicated earlier.
- (6) Hope Plantations Ltd. v. Taluk Land Board ((1999) 5 SCC 590), noting exceptions for continuing wrongs in public interest. While affirming res judicata's application to writs, the court noted exceptions for continuing wrongs or where public interest demands intervention. In cases of illegal land encroachments,

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this allows successive petitions if violations evolve or persist, as rigid application would encourage administrative defiance.

- (7) Ved Prakash Katiyar v. Member Secretary (Allahabad High Court, 2005 (2) AWC 1564), holding ongoing issues like encroachments as continuing causes of action. The court held that if a prior writ petition was dismissed, a second one on the same facts is not maintainable, but suspension (or similar ongoing issues) constitutes a continuing cause of action. Thus, res judicata does not apply, allowing fresh petitions for each instance of violation. Applied to illegal constructions on ponds, this supports a second writ where encroachments persist without sanctions, creating daily fresh causes.
- 6) With reference to the paragraph 6 of the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", The applicant states that Hon'ble Calcutta Court has directed disconnection of electricity to unauthorized constructions. Reliance is placed on the following judgments:-
- a) Sk Mahbub Hossain v. State of West Bengal (Calcutta High Court orders dated 03.01.2025 and 22.05.2025 in WPO(P)/1/2024, IA NO: GA/2/2024, GA/3/2024, GA/4/2025) Sk Mahbub Hossain vs The State Of West Bengal And Ors on 22 May, 2025 directing electricity disconnection;
 - b) Dr. Syamal Kumar Lahiri v. State of West Bengal (Calcutta High Court order dated 01.04.2024 and 06.03.2024 in W.P.A 17901 of 2023), mandating electricity disconnection;
 - c) Samiran Ghosal v. CESC Limited (Calcutta High Court, order dated 09.11.2023 in W.P.A. 25918 of 2023 Samiran Ghosal vs Cesc Limited And Ors), upholding electricity disconnection;
 - d) Rabkul Islam Mondal v. State of West Bengal (Calcutta High Court order dated 20.02.2025 in WPA(P) 493 of 2024 Rabkul Islam Mondal vs State Of West Bengal & Ors), directing electricity disconnection;
 - e) Arup Basu v. State of West Bengal (Calcutta High Court, order dated 18.09.2023 in WPA(P)/469/2023 Arup Basu vs State Of

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West Bengal And Ors), similar disconnection;

- f) Suman Tewari v. Kolkata Municipal Corporation (Calcutta High Court order dated 04.04.2025 in W. P. A. 2983 of 2025 Suman Tewari vs The Kolkata Municipal Corporation & Ors), directing disconnection and demolition;
- g) Prabhat Goswami v. State of West Bengal (Calcutta High Court order dated 03.04.2023 in WPA No. 1140 of 2023 Prabhat Goswami vs The State Of West Bengal & Ors), noting destruction by unauthorized constructions.

7. No Estoppel or Res Judicata

With reference to the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", the applicant denies the applicability of estoppel or res judicata. The Supreme Court in J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. (1961 AIR 1170) clarified that res judicata applies only when the same issue between the same parties has been conclusively decided. As the applicant is not a party to the prior High Court cases, and the issue of pond restoration has not been adjudicated, these principles do not bar this application.

With reference to the paragraph 5 of the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", the applicant states that the photography Annexure R-4 is a forged and fabricated photography lacking GPS location with date and time. The applicant states the forged and fabricated photography Annexure R-4 well establishes that there is an ongoing illegal filling up of large pond with rubbish, solid waste rubbish materials, industrial effluents, toxic substances. The applicant states the forged and fabricated photography Annexure R-4 well establishes that there is an illegal building constructions raised by illegal filling up of large pond with rubbish, solid waste rubbish materials, industrial effluents, toxic substances.

8. Simultaneous Operation of NGT Act and West Bengal Panchayat Act

The applicant submits that the National Green Tribunal Act, 2010, and Section 23 of the West Bengal Panchayat Act, 1973, can operate

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simultaneously over the schedule property, as their jurisdictions are distinct and complementary:-

a. NGT Act, 2010: Under Sections 14 and 15, the NGT has exclusive jurisdiction to address substantial questions of environment, including pollution of water bodies, as upheld in *Mantri Techzone Pvt. Ltd. v. Forward Foundation* (2019 18 SCC 494). The applicants prayers for restoration of the polluted pond and removal of rubbish, industrial effluents, and toxic substances fall within the ambit of the Water (Prevention and Control of Pollution) Act, 1974, and the Environment (Protection) Act, 1986 (Schedule I, NGT Act).

b. Section 23, West Bengal Panchayat Act, 1973: This provision empowers the BankraII Gram Panchayat to regulate construction on the schedule property, including approving or denying building plans and ensuring compliance with sanitation norms. The applicants prayers (e.g., including the pond as protected in the Gram Panchayats records and prohibiting building sanctions) align with this authority, as reflected in the Calcutta High Courts order dated 27.04.2021 in *M.A.T. 322 of 2021*, directing the Gram Panchayat to consider representations regarding unauthorized constructions.

c. Non-Exclusivity of Statutory Powers: The Supreme Court in *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P.* (1961 AIR 1170) and *T. Barai v. Henry Hoe* (1983 AIR 150) held that statutory powers under different Acts can coexist unless there is a direct conflict or express exclusion. The NGTs environmental jurisdiction does not conflict with the Gram Panchayats construction regulation powers under Section 23. The applicants prayers for restoration (NGT) and regulatory actions (Gram Panchayat) demonstrate harmonious operation.

d. Judicial Precedents Supporting Concurrent Jurisdiction:

- 1) In *L. Chandra Kumar v. Union of India* (1997 3 SCC 261), the Supreme Court clarified that specialized tribunals like the NGT can exercise jurisdiction within their statutory scope without precluding other statutory authorities powers. The NGTs role in restoring the pond does not bar the Gram Panchayats authority under Section 23.
- 2) In *T.N. Godavarman Thirumulpad v. Union of India* (1997 2 SCC 267), the Supreme Court recognized that

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environmental protection involves multiple authorities, including local bodies and tribunals, working cooperatively. The applicants prayer for a committee involving state authorities, including the Gram Panchayat, aligns with this framework.

- 3) In Mantri Techzone Pvt. Ltd. v. Forward Foundation (2019 18 SCC 494), the Supreme Court upheld the NGTs jurisdiction over water body violations, even when local authorities had granted construction permissions, affirming that local actions do not bar NGTs powers.

9. Exclusive Jurisdiction of NGT

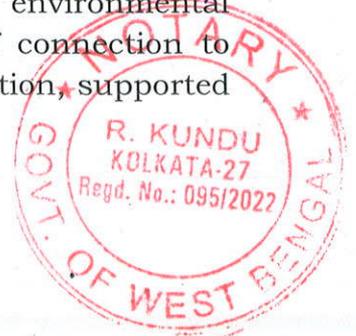
With reference to the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", the applicant submits that this Hon'ble Tribunal has exclusive jurisdiction under Section 14 of the NGT Act to adjudicate environmental restoration, as no other court, including the Calcutta High Court, is seized of the matter concerning restoration of the polluted pond to its pristine state. The Supreme Court in Talli Gram Panchayat v. Union of India (2022 LiveLaw (SC) 614) affirmed the NGTs role in environmental disputes, subject to procedural compliance. The applicants prayers for restoration and prevention of further pollution are within this jurisdiction.

With reference to the paragraph 5 of the "Counter Affidavit of The Respondent No. 12, 13, 14, 15, 16 & 23", the applicant states that the pH level of the water in the subject recorded pond altered, to such an adverse and extreme extent, that fishes and it eggs cannot survive in the subject pond. The applicant states that the pH level of the water in the subject recorded pond has become highly acidic that all the aquatic organisms once lived in the symbiotic relationships with the environment completely ceased to exist. Hence, there is a serious ecological imbalance around the subject recorded pond and the area surrounding the subject pond, and there is an extreme urgency to restore the recorded pond to its original pristine state.

10. Clean Hands and Bona Fide Intent

The applicant submits that she has approached this Hon'ble Tribunal with clean hands, seeking restoration of the polluted pond for environmental protection, a public interest cause. The applicants lack of connection to prior High Court litigants and her distinct prayers for restoration, supported

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by evidence of ongoing pollution (Google images), reinforce the maintainability of this application.

11. No Bar from Prior Litigation

The prior High Court cases (WPA 10707 of 2020, M.A.T. 322 of 2021, and WPA (P) 453 of 2024) addressed demolition and construction injunctions, not environmental restoration. The mere pendency of CPAN/912/2021 arising out of M.A.T. 322 of 2021, concerning contempt for non-compliance with the High Court's order on unauthorized constructions, does not constitute a statutory bar upon this Hon'ble Tribunal to hear O.A. 1 of 2025 (EZ). The Supreme Court in *Forward Foundation v. State of Karnataka* (NGT, 2016, affirmed by SC) upheld the NGTs authority to order restoration of polluted water bodies, distinct from local governance issues. The applicants prayers do not overlap with the High Courts jurisdiction, and Section 33 of the NGT Act (overriding effect) ensures that environmental matters under Schedule I prevail over conflicting provisions, though no conflict exists with Section 23.

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

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BEFORE THE NOTARY
ALIPORE JUDGES' COURT

02 SEP 2025

S. NO. 13 dated

**AFFIDAVIT**

I, Sarbani Brahma, daughter of Nalini Ranjan Brahma, by faith Hindu, by occupation service, aged about 66 years, residing at premises No. 278 Kalighat Road, P.S. Kalighat, Kolkata-700026, state that the statement made above in the foregoing paragraphs 1 to 11 are true to my knowledge and belief, and rest are humble submissions before the Learned Court, do hereby solemnly affirm and say as follows:

1. That I am the Petitioner herein and as such I am well acquainted with the facts and circumstances of this case. Hence, I am competent enough to affirm this Affidavit.

2. That the statements contained in Paragraph Nos. 1 to 11 are true to my knowledge and belief and rest are my respectful submissions before this Honorable Tribunal.

Prepared in my office

GIASUL ISLAM
GIASUL ISLAM, Advocate
Enrolment No. WB/2474/2010

GIASUL ISLAM
I certify that all the annexure are legible

Sarbani Brahma

The deponent is known to me

GIASUL ISLAM
GIASUL ISLAM, Advocate

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

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



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D/L-5
25/07/2025
Ct. No.-6
Aritra

CRC 12 of 2025

Buland Javed & Anr.

Vs.

Smt. Rejina Begam Sardar

In

MAT No.322 of 2021

With

CAN 1 of 2021

Mr. Giasul Islam

....for the petitioners

This application under Article 215 of the Constitution of India has been filed alleging willful and deliberate violation of the judgment and order dated April 27, 2021 passed in MAT 322 of 2021.

By the judgment and order dated April 27, 2021, the appeal was disposed of without interfering with the order passed by the learned Single Bench.

In view thereof, the application for contempt would lie before the Hon'ble Single Bench and not before the Hon'ble Division Bench.

With the above observations, the contempt application stands disposed of and accordingly, rule stands discharged.

The petitioner will be at liberty to take out an appropriate application before the appropriate bench.

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Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

02 SEP 2025



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

**ORIGINAL APPLICATION NO: 1
OF 2025 (EZ)**

**AND
IN THE MATTER OF:-
SARBANI BRAHMA....Applicant**

VERSUS

**STATE OF WEST BENGAL &
OTHERS....Respondents**

**SUPPLEMENTARY AFFIDAVIT ON
BEHALF OF THE APPLICANT IN
O.A. 1 OF 2025 (EZ)**

GIASUL ISLAM

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High Court, Calcutta

Bar Association Room No. 18

Kolkata- 700001.

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Email : adv.giasul@gmail.com

02 SEP 2025

