

BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

Original Application No. 109/2025/EZ

IN THE MATTER OF:

Kailash Chandra Nayak

...Applicants

Versus

State of Odisha & Ors

...Respondents

INDEX

Sl. No.	PARTICULARS	PAGE NO.
1	Counter Affidavit on behalf of Respondent No. 2, Ministry of Environment, Forest and Climate Change.	1-5
2	Annexure No. R1; Copy of the letter dated 04-09-2025.	6

Place:

Respondent no. 2

Date:

Through

MS. Rashmi Singhee

Advocate

✕

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**COUNTERAFFIDAVIT ON BEHALF OF RESPONDENT NO. 2 (UNION
OF INDIA THROUGH THE MINISTRY OF ENVIRONMENT, FOREST
AND CLIMATE CHANGE)**

MOST RESPECTEFULLY SHOWETH:

I, Dr. Timir Haran Mahato, son of Shri P.C. Mahato, aged about 50 years, presently employed as Scientist 'E' in the Ministry of Environment, Forest, and Climate Change (MoEF&CC), Regional Office, Bhubaneswar do hereby solemnly affirm and declare the following:

1. That the deponent is authorised and competent to swear this counter affidavit on behalf of Respondent No. 2 – Union of India, Ministry of Environment, Forest and Climate Change (MoEF&CC), and is well acquainted with the facts and records of the case.
2. That at the outset, it is respectfully submitted that the present Original Application, insofar as it seeks relief against Respondent No. 2, is misconceived, premature and not maintainable in law, as no specific act, omission or statutory violation has been attributed to this Respondent.
3. That Respondent No. 2 is a proforma party to the present proceedings and has not granted any approval, clearance or permission under the Forest (Conservation) Act, 1980 / Van (Sanrakshan Evam Samvardhan) Adhiniyam, 2023 in respect of the land parcels alleged in the Original Application.


T. K. Khuntia
Advocate & Notary

Timir Haran Mahato

4. That it is submitted that in accordance with the provisions of section 2(1) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, prior approval of the Central Government is mandatory before any non-forest use of forest land is ordered by the State Government. The relevant provisions of the Adhiniyam are reproduced as under:

2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose. — (1) Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization subject to such terms and conditions, as the Central Government may, by order, specify;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation. — For the purposes of this sub-section "non-forest purpose" includes breaking up or clearing of any forest land or a portion thereof for—

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reafforestation,

but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, such as—

- (i) silvicultural operations including regeneration operations;
- (ii) establishment of check-posts and infrastructure for the front line forest staff;
- (iii) establishment and maintenance of fire lines;

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T. K. Khuntia
Advocate & Notary

- (iv) wireless communications;
- (v) construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;
- (vi) establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972 (53 of 1972), owned by the Government or any authority, in forest areas other than protected areas;
- (vii) eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and
- (viii) any other like purposes, which the Central Government may, by order, specify.

5. That section 3A and 3B of the Adhiniyam prescribe the penal provisions for contravention of the provisions of the Adhiniyam. The provisions of section 3A and 3B are re-produced as under:

3A. Penalty for contravention –

Whoever contravenes or abets the contravention or any of the provisions of section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

3B. Offences by authorities and Government departments. —

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.

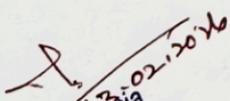
Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or

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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 offence and shall be liable to be proceeded against and punished accordingly.

6. That no proposal seeking prior approval of the Central Government under the Adhiniyam for diversion of the forest land alleged in the Original Application has been received, processed or approved by the Ministry of Environment, Forest and Climate Change till date.
7. That therefore, Respondent No. 2 has neither permitted nor authorised any construction activity over forest land, if any, and cannot be held responsible for alleged actions undertaken by State or local authorities without compliance of statutory procedures.
8. That upon receipt of notice from this Hon'ble Tribunal, Respondent No. 2, issued a communication to the State Government of Odisha calling for a **factual report along with documentary evidence**, including the legal status of the land and details of any violation of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980. Reply in this regard is yet to be received. (A true copy of the letter dated 04-09-2025 is annexed herewith and marked as "ANNEXURE R1")
9. That Respondent No. 2 undertakes to take appropriate action strictly in accordance with law, if any violation of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 or rules made thereunder is established on the basis of records and field verification.
10. That the averments made in the Original Application relating to alleged illegal constructions over forest land are matters primarily within the jurisdiction of the State Government of Odisha and its field authorities, including the Revenue and Forest Departments.
11. That Respondent No. 2 denies that it has any direct role in sanctioning, funding, approving or executing the alleged construction activities referred to in the Original Application.


T. K. Khuntia
Advocate & Notary
13.02.2026

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12. That Respondent No. 2 reiterates that any non-forest use of forest land without prior approval of the Central Government is impermissible in law and, if established, shall be dealt with in accordance with statutory provisions.

13. In view of the facts stated above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass any other order(s) or direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

Timir Haran Mahato
DEPONENT

(डा० तिमिर हरण महतो)
(DR. TIMIR HARAN MAHATO)
वैज्ञानिक 'ई' / Scientist 'E'
भारत सरकार / Govt. of India
पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
क्षेत्रीय कार्यालय / Regional Office
भुवनेश्वर / Bhubaneswar

VERIFICATION

I, the deponent above named, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge and belief derived from official records, and that nothing material has been concealed therefrom.

Verified at Bhubaneswar on this the 13th day of February, 2026.



Timir Haran Mahato
VERIFICANT

(डा० तिमिर हरण महतो)
(DR. TIMIR HARAN MAHATO)
वैज्ञानिक 'ई' / Scientist 'E'
भारत सरकार / Govt. of India
पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
क्षेत्रीय कार्यालय / Regional Office
भुवनेश्वर / Bhubaneswar

13.02.2026
T. K. Khuntia
Advocate & Notary



File No. 7/25/2025-FC
Government of India
Ministry of Environment, Forest and Climate Change
(Forest Conservation Division)

Indira Paryavaran Bhawan,
Jor Bagh Road, Aliganj,
New Delhi: 110003,
Dated: **As Per E-sign.**

To

The Special Secretary, Forest & Environment Department,
Government of Odisha,
Bhubhaneshwar

Sub: Original Application No. 109/2025 (EZ) in the matter of Kailash Chandra Nayak Vs. State of Odisha & Ors. before NGT (EZ), Kolkata -reg.

Sir,

I am directed to inform you that the above stated matter is pending before the Hon'ble National Green Tribunal, Eastern Zone, Kolkata. That in the said matter, the applicant has alleged illegal constructions are being made over sabik as well as hal kisam forest in different villages of District - Jajpur and the constructions are being made from the District Mineral Foundation Fund and is also approved by District Collector, Jajpur.

It is also alleged that that the Block Development Officer of Danagadi and Sukinda are executing the constructions which have been approved and for which funds are sanctioned by the District Collector/Managing Trustee of the District Mineral Foundation Fund. (Copy of the Original Application is enclosed.)

In view of above, the State Government is requested to submit a factual report with the documentary evidences on the contentions of the Original Application. The State Government is also requested to inform about the legal status of the land and whether any violation of Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 has been reported in the instant matter.

Digitally signed by
SUNEET BHARDWAJ
Date: 04-09-2025
17:53:34

Yours faithfully,

Sd/-
(Suneet Bhardwaj)
Assistant Inspector General of Forests

Copy to:- The Deputy Director General of Forests (Central), MoEF&CC Regional Office, Bhubaneswar with a request to provide a counter affidavit in the matter by 10.09.2025 positively.