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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL EASTERN ZONE**BENCH, KOLKATA****ORIGINAL APPLICATION NO 200 OF 2025****IN THE MATTER OF:****DIGAMBAR BAG****APPLICANT****VERSUS****STATE OF ODISHA&ORS****RESPONDENTS****INDEX**

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
O.A. NO. 200 OF 2025**

IN THE MATTER OF:

Digambar Bag

....APPLICANT

-Versus-

State of Odisha & Ors.

....RESPONDENTS

**WRITTEN NOTE ON BEHALF OF THE APPLICANT TO THE REPLY
FILED BY RESPONDENT NO. 09 – VEDANTA LTD.**

MOST RESPECTFULLY SHEWETH:

That the OA was listed for fresh admission on 9/12/2026 and the Respondent No 9 appeared on the date prior to issue of notice raised objection to the Application on the ground that the matter is sub-judice before Honble Highcourt. The applicant through this note is filing the objection to the response of Respondent N9 and same is as follows.

1. That the Applicant / Petitioner, Digambar Bag, has approached this Hon'ble Tribunal through the Present Original Application alleging **illegal and continuing encroachment of forest land** by Respondent No. 09, M/s Vedanta Ltd., Jharsuguda, specifically:

- (a) Encroachment of **7.45 acres** of forest land (Gramya Jungle Kissam) in Khata No. 55, Plot Nos. 55, 54/421, 383/479(P) in Banjari Mouza, Jharsuguda; and

(b) Encroachment and dumping of fly ash over **48.68 acres** of forest land at Mouza Bhurkamunda, Khata No. 108, Plot No. 188, Jharsuguda, in gross violation of the Forest (Conservation) Act, 1980.

2. That Respondent No. 09 has filed a Reply dated 22.12.2025 raising objections solely to the **maintainability** of the present O.A. on two grounds: (i) that the matter pertaining to Khata No. 55 is sub-judice before the Hon'ble High Court of Orissa in W.P.(C) No. 4919 of 2017; and (ii) that the allegations pertaining to Khata No. 108 are **barred by limitation** and res judicata in view of the dismissal of O.A. No. 151 of 2016 (Non Violence Again v. Vedanta Ltd.). Both these contentions are misconceived, legally untenable, and are filed to mislead this Hon'ble Tribunal, and are hereby replied to as under.

**PART I: REPLY TO OBJECTIONS ON MAINTAINABILITY VIS-À-VIS
KHATA NO. 55**

**A. The Writ Petition Before the Orissa High Court Does Not Bar This Tribunal
from maintaining the present proceeding**

3. That Respondent No. 09 has contended that the issue pertaining to encroachment of forest land in **Khata No. 55 is sub-judice** before the Hon'ble Orissa High Court in W.P.(C) No. 4919 of 2017 and the proceedings in **Encroachment Appeal No. 58/2016** have been stayed by the High Court. However, it is most respectfully submitted that:
- (a) **The subject matter before the High Court is entirely different.** The Writ Petition W.P.(C) No. 4919 of 2017 was filed by **Respondent No. 09 (Vedanta)** itself to challenge a procedural order of the Sub-Collector dated **15.12.2016 relating to impleadment of a third party in Encroachment Appeal No. 58/2016**. The said Writ Petition does NOT deal with the substantive issue of whether forest land has been illegally



encroached and whether such encroachment violates the Forest (Conservation) Act, 1980 – which is the **core environmental concern** before this Hon'ble Tribunal.

- (b) **This Hon'ble Tribunal has independent and concurrent jurisdiction** to adjudicate upon environmental violations under Section 14 of the National Green Tribunal Act, 2010, specifically regarding violations of the **Forest (Conservation) Act, 1980**, the Environment Protection Act, 1986, and other scheduled enactments. The pendency of a Writ Petition before the High Court on a **procedural revenue matter** does not oust this Tribunal's jurisdiction over **substantive violations of environmental law**.
- (c) The stay granted by the Hon'ble High Court vide order **dated 27.03.2017** in Misc. Case No. 4301/2017 is confined to staying **proceedings in Encroachment Appeal Case No. 58/2016 pending before the Sub-Collector, Jharsuguda**. The said stay does not extend to, nor does it preclude, the National Green Tribunal from exercising its jurisdiction under the NGT Act, 2010 to examine violations of the Forest (Conservation) Act, 1980. It is a settled position of law that the scope of an NGT proceeding is distinct from a revenue encroachment proceeding under the Odisha Prevention of Land Encroachment (OPLE) Act, 1972.
- (d) **There is no res-judicata** since there has been no adjudication on merits of the environmental and forest law violations by any court/tribunal. The stay order is merely an interim measure and cannot be treated as a bar to the maintainability of the present O.A. The out come of the write will only decide if the Third Party can be impleaded in the Revenue

Encroachment Proceeding or not and have nothing to do with the consequences of Violation of Forest Conservation Act 1980.

4. That it is further submitted that Respondent No. 09 has conveniently suppressed the fact that the alleged encroachment in Encroachment Case No. 03/2016 for 2 acres and 0.26 acres (Plot Nos. 55 and 54/421) resulted in the Respondent depositing **Rs. 53,927/- on 28.12.2017** — which is a tacit **admission of encroachment** by Respondent No. 09 itself. If there had been no encroachment, there was no occasion to make such a deposit. This fact, is sufficient to proceed against the Private Respondent for violation of Forest Conservation Act 1980.

PART II: REPLY TO OBJECTIONS ON MAINTAINABILITY VIS-À-VIS
KHATA NO. 108

B. The O.A. Is Not Barred by Limitation

5. That Respondent No. 09 has alleged that the present O.A. is barred by limitation as the cause of action arose in 2013 and the earlier **O.A. No. 151/2016 (Non Violence Again v. Vedanta Ltd.)** was dismissed as being barred by **limitation** under Section 14(3) of the NGT Act, 2010. This contention is misconceived for the following reasons:
 - (a) **Fresh / Continuing Cause of Action:** The present O.A. has been filed on the basis of fresh information obtained by the Applicant through an RTI application . The illegal dumping of fly ash over forest land in Khata No. 108 constitutes a **continuing wrong and a continuing cause of action**, as the encroached land continues to be affected, **the fly ash continues to remain over the forest land**, and the ecological damage is ongoing. A **continuing violation does not become time-barred merely because it originated years ago.**

- (b) **Section 14(3) of the NGT Act – Proviso:** Even if the initial cause of action arose in 2013, RTI response suggested violation is continuing and no action has been taken. The proviso to Section 14(3) allows filing within **six months from the date on which the applicant first had knowledge of the cause of action.** The present O.A. has been filed within the said period of the Applicant's obtaining knowledge. Therefore, the O.A. is well within limitation and as such for restoration of environment the limitation period is 5 years.
- (c) **Distinction from O.A. No. 151/2016:** O.A. No. 151/2016 was filed by a **different applicant** (an NGO – Non Violence Again) and was dismissed **solely on the ground of limitation**, without any adjudication on merits. The dismissal of that O.A. on limitation cannot **operate as res judicata** against the present Applicant who is a different party with a distinct cause of action crystallized later. It is settled law that a **dismissal on technical grounds** without adjudication of merits does not create res judicata.
- (d) **No Identical Parties or Cause of Action:** The Applicant Digambar Bag is directly affected by the encroachment and ecological destruction . His cause of action is **distinct** from that of the NGO in O.A. No. 151/2016. Res judicata requires identity of parties, issues, and a final decision on merits. None of these elements are present here.

C. The Dismissal of O.A. No. 151/2016 Does Not Operate as Res Judicata

6. That it is a well-established proposition of law that **res judicata** under Section 11 of the Code of Civil Procedure, 1908 applies only where there is (i) a final decision on the **merits** of the dispute; (ii) between the **same parties** or parties

claiming under them; and (iii) on the **same subject matter**. In the present case, O.A. No. 151/2016 was dismissed being barred by **limitation alone – i.e., without adjudication on merits**. Therefore, the same cannot operate as res judicata against the present Applicant, who is distinct from the earlier applicant NGO.

7. That the National Green Tribunal, in numerous cases, has held that dismissal of an application on technical grounds such as limitation does not create a bar against a fresh application on the same issue by a different party who has independent standing and locus. The protection of forest land and the right to a clean environment cannot be foreclosed by a technical dismissal in an unconnected proceeding.

**PART III: ON THE ALLEGED SETTLEMENT OF ENCROACHMENT
PROCEEDINGS AND CONDUCT OF RESPONDENT NO. 09**

8. That Respondent No. 09 has attempted to portray itself as having no liability by citing the order of the Sub-Collector dated **06.09.2017 in Encroachment Appeal No. 03/2014** which allegedly set aside the Tehsildar's order in **Encroachment Case No. 158/2013**. However, it is submitted that:

- (a) The order of a revenue court under the OPLE Act on a **purely revenue / encroachment issue** does not determine or absolve the Respondent of its **liability under the Forest (Conservation) Act, 1980**. The OPLE Act proceedings and the forest law violations are **distinct legal frameworks**, and one cannot substitute for the other.
- (b) The Principal Secretary, Revenue and Disaster Management Department, Government of Odisha, vide **Order dated 23.03.2019**, directed the Collector, Jharsuguda to withdraw the permission granted to Respondent No. 09 for filling fly ash over **Plot No. 188 of Mouza Bhurkamunda**

and to evict the Respondent, collect Government dues and impose fines. This government order itself acknowledges the illegal occupation by Respondent No. 09.

- (c) Respondent No. 09 has challenged the said Order dated **23.03.2019** before the Orissa High Court in W.P.(C) No. 17332 of 2019, which is **still sub-judice**. The very fact that the Respondent is challenging this order demonstrates that the matter of illegal encroachment remains **live, unresolved, and ongoing**. This further confirms that there is a **continuing cause of action**
 - (d) The Joint Enquiry Report by the ACF, Tehsildar and Revenue Supervisor conducted in 2015 revealed that Respondent No. 09 had been **making a heap of fly ash over Govt. forest land in Plot No. 188** without lawful authority. The Tehsildar of Jharsuguda had instituted encroachment cases against the Respondent under the OPLE Act. These facts are not disputed by Respondent No. 09 .
9. That Respondent No. 09 itself admits that it was **granted permission on 21.07.2011 to fill fly ash in Plot No. 188** even though the Collector have no such authority and that this permission has since been **revoked by the Collector, Jharsuguda vide Order dated 04.05.2019** in compliance with the directions of the Principal Secretary, R&DM. Therefore, the Respondent is currently in occupation/use of the said plot **without any valid permission**, which itself constitutes an ongoing encroachment attracting the jurisdiction of this Tribunal.

PART IV: FOREST (CONSERVATION) ACT, 1980 — VIOLATIONS
PERSIST

10. That this Hon'ble Tribunal has **jurisdiction under Section 14 of the NGT Act, 2010** to examine all substantial questions relating to the environment including enforcement of the Forest (Conservation) Act, 1980, which is a scheduled legislation under the NGT Act. The diversion of forest land for **non-forest purposes (fly ash dumping / ash pond)** without prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980 is a **grave violation** of the said Act. Such violation can only be adjudicated by this Hon'ble Tribunal and **not by a revenue court** under the OPLE Act.
11. That the present O.A. raises substantial questions relating to the environment and violations of the Forest (Conservation) Act, 1980. This Hon'ble Tribunal, being a **specialized environmental court**, has **exclusive jurisdiction** under Section 14 of the NGT Act, 2010 to deal with matters involving enforcement of environmental laws. The revenue proceedings under the OPLE Act and the Writ Petitions before the High Court do **not oust** this Tribunal's jurisdiction.
12. **That** the Judgement of Honble SC in *State of A.P. v. Raghu Ramakrishna Raju (2022)* is not applicable in the present case as the relief sought and nature of proceedings before Highcourt and NGT are different and distinct.
13. That the present O.A. cannot be dismissed **in limine** on the ground of maintainability without a full hearing, since the questions raised — including continuing encroachment, violation of forest laws, and environmental damage go to the **root of the right to a healthy environment** and require thorough examination on merits.

SANKAR PRASAD PANI



ADVOCATE FOR APPLICANT