

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN BENCH AT CHENNAI
ORIGINAL APPLICATION No.74 of 2020**

IN THE MATTER OF:

1. D. Pal, S/o. S.R. Pal, Aged about 52 years,
R/O. Saikrishna Nagar,
Near Sambhunagar Flyover,
Alcot Gardens, Rajahmundry,
East Godavari District – 533 101.
Email id: deamra3108@gmail.com
Phone: 9940178702. and 3 others Applicants

VS

1. State of Andhra Pradesh
Through the Chief Secretary,
1st Block, 1st Floor,
Interim Government Complex,
A.P. Secretariat Office, Velagapudi,
Andhra Pradesh. and 4 others Respondents

COUNTER FILED BY THE 4TH RESPONDENT

DATE-02-08-2022



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A.P. POLLUTION CONTROL BOARD
T.T.D. SUPREME COURT OF INDIA
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COUNSEL FOR 4TH RESPONDENT

BEFORE THE NATIONAL GREEN TRIBUNAL

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ORIGINAL APPLICATION No.74 of 2020

IN THE MATTER OF:

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Near Sambhunagar Flyover,
Alcot Gardens, Rajahmundry,
East Godavari District - 533 101.
Email id: deamra3108@gmail.com
Phone: 9940178702.
 2. TummalaKondal Rao,S/o. Veeranna,
Aged about 65 years, R/o. D. NO.17-2-144,
Kondal Rao Street,Parloipeta,
Kakinada-533 001.
Email id: deamra3108@gmail.com
Phone:8130408167.
 3. Mugu Raju,S/o. Bhulokam,
Aged about 42 years,16-17-16/c,
JyothulaVari Street,Dummulpeta, Kakinada,
Email id: deamra3108@gmail.com
Phone: 7904181806.
 4. KasarapuSivaji, S/o. Mutyalu,
Aged about 32 years,
R/o. Dr. No.17/2-163/1-1,
DasannavariStreet ,Parloipeta, Kakinada-533 001.
Email: deamra3108@gmail.com
Phone: 8130408167.
- Applicants

Versus

1. State of Andhra Pradesh
Through the Chief Secretary,
1st Block, 1st Floor,
Interim Government Complex,
A.P. Secretariat Office, Velagapudi,
Andhra Pradesh.
2. Andhra Pradesh Coastal Zone Management Authority
(APCZMA), Through the Member Secretary,
D.No.33-26-14 D/2,
Chalamvari Street, Kasturibaipet,
Vijayawada-520 010,
Email id: apczma2016@gmail.com
Phone: 08662463200.
3. Andhra Pradesh Forest Department,
Through the Principal Chief Conservator of Forest (HOFF),
Aranya Bhavan, K.M. Munshi Road,
Nagarampalem, Guntur-522 004,
Andhra Pradesh,
Email id: prdccf0apfd@ap.gov.in
Phone: 0863 2377500.


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Deponent
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Kakinada District, Kakinada

4. Collector and District Magistrate,
Rama Rao Peta, Kakinada,
East Godavari District,
Andhra Pradesh-533 001.
Email id: collector-cdg@ap.gov.in
Phone: 0884 2365424.
5. Ministry of Environment, Forest and Climate Change,
Through the Secretary, Indira Paryawarani Bhawan,
Jorbagh, New Delhi-110 003.
Email id: secy-moef@nic.in
Phone: 24695262. Respondents

COUNTER AFFIDAVIT FILED BY THE 4th RESPONDENT

I, Dr.Kritika Shukla, I.A.S., wife of Himanshu Shukla, aged 33 years,
Occ: Collector and District Magistrate, Kakinada District, Kakinada, Andhra
Pradesh, do hereby solemnly affirm and sincerely state on oath as follows:

1. I am the 4th respondent herein and as such I am well acquainted
with the facts of the case and competent to file this counter affidavit. I have
gone through affidavit filed by the applicants and hereby deny all the
averments except to those that are specifically admitted herein in this counter
affidavit.

2. The brief facts of the case are as follows:

(a) Sri D. Pal and others, residents of Alcot Gardens, Rajahmundry have
filed O.A. No. 74 of 2020 before the Hon'ble National Green Tribunal, Southern
Zone Bench, Chennai regarding development of land in survey No.374, 376,
etc., of Dummulapeta, Kakinada Urban Mandal for providing house sites to
weaker sections under "Navaratnalupedalankarikiillu" scheme by means of
felling/clearing Mangroves and affecting the livelihood of fishermen.

(b) In this connection, it is respectfully submitted that the Government of
India has launched Pradhan Mantri Awas Yojana (Urban) Mission on 25th June
2015 which intends to provide housing for all in urban areas by year 2022.


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The Government of Andhra Pradesh aimed to implement this mission under the flagship program of "Navaratnalupedalankarikiillu" program so as to distribute 25 lakhs house site pattas to all the eligible poor beneficiaries (weaker sections) residing in rural and urban areas of the State in saturation mode irrespective of caste, creed or religion.

(c) Accordingly, for this programme, the Government issued G.O. Ms. No.510, Revenue (Lands-1) Department, dated 30.12.2019 instructing to utilize the Government lands which were alienated in favour of private individuals/private organizations/Government organisations/Government Departments/public sector undertakings/State Government Corporations, which were not utilized for the intended purpose or violated the conditions of alienation etc, besides the lands acquired by various departments for any public purpose but not put into use for the said purpose.

(d) The Government in their G.O. Ms. No.57, Revenue (Assn.I) Department, dated 16.02.2015 has authorized the District Collectors to resume the unutilized Government lands on the grounds of violation of conditions or non-utilization of the allotted land which were earlier alienated to various departments/private individuals.

(e) It is pertinent to mention that the Government of India has declared Kakinada town as Smart City. The population of Kakinada town is around 4 lakhs. There are so many poor people living without shelters/houses.

(f) After comprehensive enquiry and verification has been done to identify eligible beneficiaries (weaker sections) for sanction of house sites, nearly 31,505 eligible beneficiaries in Kakinada Urban Mandal have been identified for grant of house sites.

(g) It is submitted that a detailed inventory on availability of Government lands, unutilized vacant departmental lands from all the sources has been



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and land audit has been conducted with all departments to reconcile the stage of these lands.

(h) As the surroundings of the Kakinada are mostly urbanized, it is very challenging to acquire huge extent of lands. It is also not affordable to go for land acquisition as the rates in the surroundings are very high and it is not advisable to go for acquisition of land in huge extents in cities/towns based on certain aspects.

(i) On the representations of the public representatives, the District and Divisional level officers have identified and found that there is a land measuring Ac.116.81 cents in T.S. No.376 (part), 375/1, 1985 (part) and 2004 (Part), etc., of Suryaraopeta Village, Kakinada Urban Mandal of Port Department which is kept vacant and unutilized since long time.

(j) As per the Town Survey Field Register (TSFR), the above lands are classified as Ayan-Poramboke and during the year 1978 these lands were transferred to Port Department for expansion of Kakinada Port and port-based industries. The Port Department has not taken any action to develop these lands since 1978/1979. The proposed lands are also very nearer to developed town. Hence, the revenue authorities have identified these lands for providing house sites to the eligible beneficiaries under "Navaratnalupedalankarikiillu" scheme as there is no sufficient Government land in the vicinity to cater the need of the beneficiaries.

(k) The petitioners in their affidavit mainly stated that the action of the respondents in deforesting the Mangrove Forest and development of lands in survey No.374, 376, etc., of Dummulapeta, Kakinada Urban Mandal for providing house sites under "Navaratnalupedalankarikiillu" scheme is in contrary to the guidelines issued for containment of COVID-19 epidemic and contrary to Coastal Regulation Zone Notification, 2011 and requested the


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Hon'ble Tribunal to direct the respondents to stop the activities including deforestation of Mangroves and to protect ecological balance and marine life and families depended on them.

(l) In this regard, the land in question does not belong to Forest Department and so the question of deforesting of Mangrove forest does not arise. The Port Department is also not utilizing the land for its bonafide purpose and the port authorities are allotting these vacant lands to the private individuals on lease basis.

(m) As per the revenue records, i.e. Town Survey Field Register (TSFR), the lands are classified as Ayan-Poramboke belonging to the Port Department.

(n) Developing the subject lands into Housing colony, not at all affects the livelihood of the fishermen and there is a canal existing for the fishermen to have ingress and egress into the sea.

(o) Most of the subject land is located adjacent to the developing town area and are highly susceptible for encroachments and very difficult to protect. It is also becoming burden to the Government/Port Department to protect these lands from unauthorized encroachments.

4. In reply to the averments made in paragraphs 1 and 2 of the affidavit, it is respectfully submitted that the contentions of the petitioners are not correct. This respondent is the authority meant for implementation of all Forest Legislations both Central and State wherever applicable.

5. In reply to the averments made in paragraphs 3 and 4 of the affidavit, it is respectfully submitted that adjacent to this scheduled site on western side one housing colony was already constructed under "Housing for All" Scheme in T.S. Nos.375/1A and 387/1, etc., in an extent of Acs.47.00 Cts. and 2,720 beneficiaries are allotted flats in the Housing Colony. In this connection, it is submitted that the entire port land falls in the Kakinada Municipal Corporation


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limits and on the eastern side of the proposed land for house sites, there are certain buildings like port main office building and godowns of port department and also 3 B.T. roads with a width of 150 feet and 100 feet with infrastructure. Further, the entire land is allocated for house sites to the urban poor under "Navaratnalupedalankarikillu" Scheme only and moreover the majority of beneficiaries are of fishermen community only. It is submitted that the claim of the petitioner in saying that this area as a very breeding ground is an exaggeration and the loss of livelihood to traditional fishermen is negligible as there are no fishermen solely dependent on this area for fishing, there is no obstruction to fishermen for ingress and egress into the sea for the purpose of fishing as the creek is not disturbed in any way while developing the land for house sites. I submit that the A.P. Maritime Board, Kakinada informed that 183 number of allotments were given to the various agencies such as M/s GMR, since 1980 and also Housing programme has been taken-up in the said lands by the Housing Department (APTIDCO). The Port based industries have been established and the development of the area has been done right upto the shoreline which includes office buildings, godowns, wharfs and industrial establishments. The Municipal Corporation, Kakinada has also provided water facility for the said establishments. There is a build-up area of 50%, I may add at this juncture that as observed in this para by the applicant, that it is a fact mangroves provide livelihood and also protection from naturally occurring phenomenon viz., cyclones and Tsunamis, provided Mangroves afforestation is in existence or taken place immediately-near to the sea coast watered area. It is reiterated that the land in issue ie., 100 acres of Government land is located far away from the sea-coast watered area thereby it is not all relevant to the land meant for Development of Housing Colonies.

6. In reply to paragraphs 6 to 8 of the affidavit, it is submitted that the land


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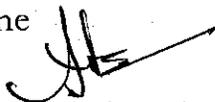

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covered under the present OA. is far away from the sea-coast and vacant government land which has been previously allotted to the Port Department and subsequently resumed for providing housing to the poor people, especially fishermen community who needs shelter. Further the proposed land is more convenient to venture into the sea for their livelihood.

7. In reply to the averments made in paragraph 9 to 12, it is submitted that the petitioners narrated the vulnerability of climate crisis induced sea level rise. With regard to the land under O.A. it is far away from sea and not vulnerable for the sea rise or any other natural phenomena as the entire surrounding area of the proposed land for housing is very well developed with build-up area under the Municipal norms besides Housing Project taken up by the APTIDCO.

8. In reply to the averments made in paragraphs 13 to 15 of the affidavit, it is submitted that the petitioners are saying that this area as a very breeding ground which is an exaggeration and the loss of livelihood to traditional fishermen is negligible as there are no fishermen solely dependent on this area for fishing, there is no obstruction to fishermen for ingress and egress into the sea for the purpose of fishing as the creek is not disturbed in any way while developing the land for house sites. It is also informed that Uppada is nearly 18 kilometers away from the subject lands and no fishermen is directly or indirectly affected by this project. As re-iterated earlier, the land is surrounded by developed area and also convenient to provide housing to the beneficiaries belonging to fishermen community.

9. In reply to the averments made in paragraphs 16 to 20 of the affidavit, it is submitted that the land is far away from the sea coast. The land covered under the OA is falling under developed area surrounded by Port, Godowns, Housing colony etc., and is substantially build-up and provide with drainage, approach road, water supply and infrastructural facilities. Further submitted that the


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land is proposed as industry zone as per master plan of Kakinada Municipal Corporation.

10. In reply to the averment made in paragraph 21 of the affidavit, it is submitted that as per the report of the Divisional Forest Officer, Wildlife Management, Rajahmundry, the said area is at approximate distance of 02.76 kilometers from the boundary of Coringa Wildlife Sanctuary. the land is meant for development of Housing, the irreversible ecological damage is not applicable in this issue. Further as per the line Departments, the land is not reserved/protected forest and not under the control of Forest Department and that there is no fish breeding ground on the subject land and no fishermen are depending on the above land for their fishing activity. The surrounding area is developed with roads, drains, industries and ware houses etc., and the housing is also permissible activity within subject to local towns Country Planning Regulations and also other Regulations in force.

11. In reply to the averments made in paragraph 22 of the affidavit, it is submitted that adjacent to this scheduled site on western side one housing colony was already constructed under "Housing for all" scheme in T.S. Nos.375/1A and 387/1, etc., in an extent of Ac.47.00 Cts.and 2,720 beneficiaries are allotted flats in that Housing Colony. In this connection, the entire port land falls in the Kakinada Municipal Corporation limits and on the eastern side of the proposed land for house sites under "Navaratnalupedalankarikiillu" scheme there are certain buildings like port main office building and godowns of Port Department and also 3 B.T. roads with a width of 150 feet and 100 feet with infrastructure. Further, the entire land is allocated for House sites to the urban poor and moreover the majority of beneficiaries are of fishermen community only.


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12. In reply to the averments made in paragraphs 23 and 24 of the affidavit, it is submitted that the petitioners narrated the judgments of different courts regarding Forest Conservation Act, 1980 etc. It is submitted that the observations of the Apex Court in various decided and reported cases which are to be followed by everyone in letter and spirit.

13. It is further humbly submitted that this respondent reserves the right for filing of Additional Counter Affidavit or any other document or documents if need and if so advised to do so.

14. In the above said circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above Original Application No.74 of 2021 and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.


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Solemnly affirmed at Kakinada on this
the 25 day of May, 2022

Before me


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VERIFICATION

I, Dr.Kritika Shukla, wife Of Himanshu Shukla, aged 33 years, R/o. Kakinada, Occu: District Collector, Kakinada district do hereby verify and state that the contents of the above affidavit are true to the best of my knowledge, belief, information and as per records.

Hence, verified on this the. **25** day of May, 2022.

Advocate


Deponent
Collector
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