

**Before the National Green Tribunal**

**Eastern Zone Bench, Kolkata**

**O.A. No. 113/2021//EZ**

Biranchi Narayan Mallick ..... Applicants

Vrs.

State of Odisha and others. .... Respondents

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Cuttack

Date 16.04.22

By the Respondent No. 5 through

*Adv. ...*  
Advocate

**Before the National Green Tribunal**

**Eastern Zone Bench, Kolkata**

**O.A. No. 113/2021//EZ**

In the matter of

Biranchi Narayan Mallick ..... Applicants

Vrs.

State of Odisha and others. .... Respondents

**Counter Affidavit on behalf of the Respondent No.5-Collector, Khordha District**

I, Sri Sangram Keshari Mahapatra, aged about 54 years working as Collector & District Magistrate, Khurda, Dist – Khurda do hereby solemnly affirm and state as follows:-

1. That, I am swearing this affidavit being the Respondent No.5 in this case.
2. That I have gone through the above mentioned original application and have understood the contents thereof. In my official capacity, I am well acquainted with the facts of the case and thus competent to swear this affidavit.
3. That, this application is filed before the Hon'ble Green Tribunal, Eastern Zone Bench, Kolkata praying for issue direction in respect

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Sangram Keshari Mahapatra



of the following points in connection with unauthorized use of Forest land for non forestry by encroaching, constructing building and structure over the plot No. 308 Khata no. 493 Mouza- Patia:-

A. Direct the respondent 4 i.e. Secretary , Revenue & Disaster Management department, Government of Odisha, Bhubaneswar to take necessary legal action against the BMC Commissioner, including the criminal proceeding for willfully violating the provision of Forest Conservation Act of 1980 and order of the Hon'ble Tribunal.

B. Direct the Respondents to take necessary action against the unauthorised use of forest land for construction of building.

C. Direct the Respondents No. 1,2 and 5 i.e. Principal SDeputy to Government, G.A. & PG Department, Commissioner, BMC and Collector, Khordha respectively to restore the damages cause to the forest land and impose an exemplary penalty against encroachers.

D. Fix the accountability of person concerned responsible for transfer of forest land to various industrial houses without approval from central government.



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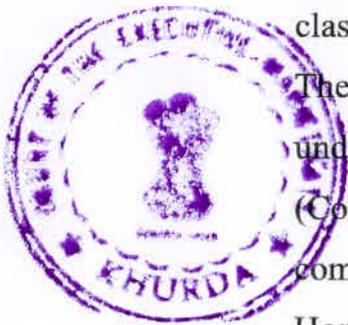
3. That, the Hon'ble Tribunal directs vide order dated 17.12.2021 to this respondent to examine the matter and if the plot No. 308 area 8.560 acres in Mouza Patia, Bhubaneswar Tahasil, Khordha district is found to be recorded as Jungle-2 Kisam in the Revenue records, he shall immediately

Sarjan Kishor Mohapatra

take steps for keeping in abeyance all further constructions till forest clearance under the Forest (Conservation) Act is obtained.

4. That, the field verification report at **Annexure- A** indicate that there is no construction in the name of Micro Composting Centre (MCC) and Material Recovery Facility (MRF) over the case plot No. 308. Rather, Government of Odisha has rehabilitated the slum people under rehabilitation scheme over plot No. 308. On further verification, it was ascertained that the Material Recovery Facility (MRF) is under construction over Khata No. 491, Plot No. 320(p), classified as "Pathar Bania" in the same village Patia recorded in the name of G.A.& PG Department. Permissive possession for the above plot was accorded in favour of the H&UD Department to be used by Bhubaneswar Municipal Corporation for construction of Micro Composting Centre (MCC) in respect of Plot No. 320 area Ac. 0.504 dec of village Patia. Hal/present ROR in respect of Mouza Patia was finally published by the settlement Authority on 06.12.1973. As per finally published Hal/Present ROR the classification of the land i.e. Plot No. 320 is recorded as "Pathar Bania".

The term "Pathar Bania" is non forest classification and does not come under the category of Forest land under the provision of Forest (Conservation) Act, 1980. The Classification "Pathar Bania" is not coming under the purview of the order date 12.12.1996 passed by the Hon'ble Supreme Court of India in WP © No. 202/1995 in the matter of T.N. Godabverman Vrs Union of India and Others. Therefore, the allegation of the petitioners regarding use of forest land for non-forest purpose is not correct.



*Sangam Kishor Mohapatra*

5. That the petitioner carves the leave of the Hon'ble Court to file fresh affidavit, if required.
6. That the facts stated above are true to the best of my knowledge and belief based on official records.

*Sarpan Bani Mahapatra*  
Deponent

Khurda

date: 16.4.2022

Affidavit no. 951 dt of 16/4/22

Certificate

The deponent personally known to me being present before me this day i.e. 16.04.2022 solemnly affirm that the contents of this affidavit are true to the knowledge basing on official records.

*Sarpan Bani Mahapatra*  
Deponent

*JMS* 16/04/2022  
Executive Magistrate, Khurda  
Executive Magistrate  
Khurda



**Joint Inquiry report of in respect of OA case no 113 of 2021- EZ filed by  
(Biranchi Narayan Mallick -vrs-State of Odisha & Others)**

Collector Khordha was pleased to constitute a committee consisting of following members for joint verification to ascertain the present status of the case land, violation of forest (conservation) Act 1980 with regard to construction of Material Recovery Facility (MRF) over the case land.

- |   |   |          |
|---|---|----------|
| 1. Sub-Collector, Bhubaneswar   | : | Chairman |
| 2. Assistant Conservator of Forests,<br>O/o DFO, Chandaka Wildlife Division | : | Member   |
| 3. Tahasildar, Bhubaneswar  | : | Member   |
| 4. Range Officer, Bhubaneswar Wildlife Range                                | : | Member   |
| 5. Representative of BMC, Bhubaneswar                                       | : | Member   |

Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata vide order dt 17.12.2021 directed Respondent no 5 i.e District Collector Khordha to examine the matter and if the plot no 308 area Ac8.560 dec in Mouza Patia under Bhubaneswar Tahasil is found to be recorded jungle 2 Kisam in the Revenue records, he shall immediately take steps for keeping in abeyance all further constructions till forest clearance under the Forest (Conservation) Act 1980 is obtained.

The committee along with RI Kalarahanga visited the spot on dt **11.03.22**. It was ascertained that there is no construction in the name of Micro Composting Centre (MCC) and Material Recovery Facility (MRF) over the case plot no 308. Rather, Govt. of Odisha have rehabilitated the slum people under rehabilitation scheme over plot no 308. On further verification, it was ascertained that the Material Recovery Facility (MRF) is under construction over khata no 491, plot no 320(P), classified as "Pathar Bania" in village Patia recorded in the name of G.A & PG Department. Permissive possession was accorded in favour of the H&UD Department to be used by Bhubaneswar Municipal Corporation for construction of Micro Composting Centre (MCC) vide order no 1446 dtd 17.01.2021 in respect of plot no 320 area Ac 0.504 dec of village Patia.

Attested

  
16/4/2022  
Deputy Collector (Jud.)  
Collectorate, Khordha

Hal ROR in respect of Mouza Patia was finally published by the settlement Authority on 06.12.1973. As per finally published Hal ROR the classification of the land i.e. plot no 320 is recorded as "Pathara Bania". The term "Pathar Bania" is a non forest classification and does not come under the category of Forest land under the provisions of the Forest (Conservation) Act 1980. The classification "Pathar Bania" is not coming under the purview of the order dt 12.12.1996 passed by the Hon'ble Supreme Court of India in WP© no 202/1995 in the matter of T.N Godabverman vrs Union of India and others.

In view of the above findings, it can be concluded that there is no constructions / proposed construction of Material Recovery Facility (MRF) by Bhubaneswar Municipal Corporation over the case plot no 308. Rather the same is under construction by way of construction of boundary wall over plot no 320, classified as "Pathar Bania" in lieu of permissive possession accorded by G.A &PG department which is beyond the scope of Forest Conservation Act 1980.

*25/03/2022*  
Assistant Conservator of Forests  
O/o DFO, Chandaka Wildlife Division

*25.03.22*  
Sub-Collector, Bhubaneswar.

*25/3/2022*  
Tahasildar, Bhubaneswar

*25/3/2022*  
Range Officer, Bhubaneswar  
Wildlife Range

*25/3/22*  
Representative of BMC,  
Bhubaneswar

Attested  
*16/4/2022*  
Deputy Collector (Jud.)  
Collectorate, Khordha