



**IN THE NATIONAL GREEN TRIBUNAL, EASTERN ZONE,  
KOLKATA**

**ORIGINAL APPLICATION No. 16 of 2023**

Saroj Mishra and other ..... **Applicant**

**VERSUS**

State of Odisha and others ..... **Respondents**

**AFFIDAVIT BY APPLICANT**

I Madanmohon Rout aged 49 years S/o Late Laxmidhar Rout At/PO-  
Gopinathpur P.S. –Puri Sadar Dist- Puri do hereby solemnly affirm  
and stated here as follows-;

1. That I am the applicant No. 2 in the captioned Original  
Application.

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2. That in response to Paragraph 2-3 of the Counter affidavit by Respondent No. 15 it is worthwhile to mention the applicant

No. 1 is also a Marfardar/ Mahajan of the alleged plots in question. It is worthwhile to mention here that the ROR clearly states that the persons named are "Marfardar" and as per *Lexicon of Revenue Terms* a Marfadar means

*"Agent, Trustee or a person in charge of an endowment. The word is often used in relation to endowed property in favour of religious institution of Hindus. The word is also used in relation to a person incharge of property of an individual"*

Taking into consideration above definition the Opp. Party cannot claim himself as the owner of the said property. Even the said temple comes under non-hereditary trustee as per Section 3(viii) of Odisha Hindu Religious Endowments Act, 1951.

3. That in response to Paragraph 4 it is worthwhile to mention here that in Page number 6 point number 2 of affidavit filed by Pollution Control Board dated 12/05/2023 the board has clearly accepted construction over *Pani Nallah/ Water canal*.

  
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Similarly in affidavit dated 11/04/2023 by the State Pollution Control Board they have (in page 20 point 19) they have clearly stated that the road is over the water canal.

That the committee has accepted a fact that construction over the water body is from a long time by accepting the report of Revenue Inspector Biraharekrushnapur. The report by Revenue Inspector is completely false and without proper evidences. The Revenue Inspector has failed to provide as to from when the construction has been made. Even has even failed to show that as to on what grounds he claimed that construction has been made from long time back. *The construction over the water body is still going as of now* and even the photographs provided by the applicant have substantiated the same. The Committee has randomly accepted the report of R.I Biraharekrushnapur without even scientifically and properly examining as to whether such construction has been made long time back or not..

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4. That the averments made in paragraph 5-6 it is worthwhile to mention here that applicant in his Original application has nowhere prayed for removal of any house or other building like construction. He has only prayed for removal of pollutant as well as filling of water bodies with sands and shoals. It is worthwhile to mention here that the Respondent is only concerned with Plot No. 4. He cannot take plea of some other plots to suppress his illegality. Similarly the applicant has prayed for restriction of disposal of wastes over water bodies which have been annexed through photos in the Original Application.
5. That in response to paragraph 7-8 of the Original Application it is worthwhile to mention here that illegal construction has been proved over most the plots in question the Revenue authority as well as committee has clearly stated that there exists illegal construction over plots in question.

Secondly as to involvement of State Pollution Control Board, SEIAA and Central Pollution Control Board the respondent is scared that if such committee is

formed involving the above mentioned authorities his illegalities will be brought out. He would have used his contacts and would have used or influenced Revenue Inspector to file a false report before the Tribunal so as to suppress his illegality. It is upto the Hon'ble Tribunal as to decide who proper party and who is not. If the Hon'ble Tribunal wouldn't have not considered them as necessary parties then the Court wouldn't have formed a committee involving them.

6. That in reply to averments made in Paragraph 9 it is worthwhile to mention here that the term "*Bebandobast*" is not applicable to this plot and nowhere in ROR it has been referred that the said plot is "*Bebandobast*" in nature. The averments are no way concerned to this plot just to confuse the Hon'ble Tribunal such terms has been used. Secondly settlement has taken place over the plots in question; it will carry the characteristics as mentioned in ROR. If at all there is change in characteristics and the respondents' need to construct over the scheduled land he should have applied before appropriate state

authorities with a prayer to change in character of land as the said water body is dead. It should have even obtained adequate permission to construct over said plots. Without receiving permission he cannot construct over the water canal in question.

7. That in response to paragraph 10-11 That it is worthwhile to mention in page 5 paragraph (d) of reply by Respondent No. 7 vide affidavit dated 12/05/2023 the Irrigation Department who were present in the meeting has stated that *the Dadhua river which is flowing near the alleged plot does not have proper embankment and during rainfall the said river is unable to retain runoff water* within its bed and because of which spillage of water happens. If the alleged construction is allowed such spillage will happen in regular basis and issue of raising the embankment can never happen in proper manner. Even the photograph filed through affidavit as well as OA clearly shows the condition of water body. That in both the reports of Joint Committee and by the State they have observed one fact that **the construction has been made over**

**natural flow of "Musa River"**. If such construction will be **allowed the flow of water of "Musa River"** will be blocked very badly

8. That the averments made in paragraph 12-13-14-15 it is worthwhile to mention here that applicant in his Original application has nowhere prayed for removal any house or other construction. He has prayed for removal of pollutant as well as filling of water bodies with sands and shoals. Who did the construction and when construction was made has been specifically mentioned in the OA. Secondly the **applicant being legal heir of "Marfardar"** has severally protested about the same in Panchayat as well as before Revenue authorities. But the Revenue authorities being involved the illegal act never took any action against the violators.
9. That the averments made in Paragraph 16 it is worthwhile to mention here that on regards to dismissal of OA 13/2023 it is worthwhile to mention here that it was dismissed as there was some typographical error and the Hon'ble Tribunal gave applicant liberty to file again. Nowhere dismissal of first case

and this case proves that the applicant is in slumber and was aware of the illegality from long time. It is difficult to understand the logic behind as to why the respondent has used this as ground to show limitation.

**10.** That the averments made in Paragraph 17 it is worthwhile to mention nothing has been claimed against any private respondents in this OA. Even the respondent in paragraph 24 of his counter affidavit has accepted the fact that the construction is by government. So no way there comes any existence of private parties to be made as array of respondents

**11.** That in response to Paragraph 18 it is worthwhile to mention here that before Court of Commissioner of Endowment case has been filed U/S 25 of the Hindu Religious Endowments Act. The Section speaks about if there is any illegal sale or alienation of temple property then it shall be returned to the temple trust. Similarly in the said case nothing has been prayed against the respondent. So the applicant cannot claim that on same issue another case has been filed.



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12. That in reply to averments made in paragraph 20 it is worthwhile to mention here that nowhere these properties are private the ROR that has been filed in Annexure 1, Annexure 2 and Annexure 3 of the Original Application clearly states that the plots are temple property recorded in the name of “Lord Nilakanteswar Deb, Lord Sri Gopinath Deb and Goddesses Durga”.. The temple is also a non-hereditary trust so the ownership of plots completely comes under ownership of Commissioner of Endowments.

13. That in response to averments made in paragraph 21 the respondent wants to mislead the Hon’ble court by taking into consideration of averments that should made in OA 17/2023 and OA 18/2023. The same averments and in same paragraph has been made in other OA by the State Government. It is more like a copy paste of reply by the State authorities. The reply has been made without proper verification. The ROR clearly states that the recorded plot is in name of “Lord Nilakanteswar Deb, Lord Sri Gopinath Deb and Goddesses Durga”.

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14. That it is worthwhile to mention here that the averment made in Paragraph 22 it is worthwhile to mention here that in affidavit dated 11/04/2023 by the State Pollution Control Board they have (in page 20 point 19) they have clearly stated that the road is over the water canal. Earlier there was only water canal and now road has been made over it.
15. That in response to averments made in Paragraph 23 it is worthwhile to mention here that even the alleged road has been constructed in the middle of the said canal. The major issue with the drain is that it has been constructed by completely blocking the passage of the said canal. The said road doesn't have any culverts for passage of water for which the water gets completely blocked and there is spillage of water from Dadhua Canal.
16. That the averments made in Paragraph 24 it is worthwhile to mention here that being a responsible citizen he has filed this OA. The same question applies to respondent who remained silent on all the illegal construction over the water bodies. Even the road which he is relying has completely blocked the

  
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canal. The road even didn't have proper culvert. Nowhere in the application has the respondent answered what he has done to maintain the water bodies.

17. That in reply to Paragraph 26-27 it is worthwhile to mention here that the environmental issue involving the plots in question has been answered by the report of the Committee.
18. That in reply to averments made in Paragraph 28 it is worthwhile to mention here that in *Annexure 10 and 12* in affidavit dated 15/05/2023 by the applicant the photograph clearly shows construction is going on. In the photo it also clearly shows that the passage has been made in the middle of canal and without proper culverts. This will completely block the free flow of water of canal. Above facts even respondent has not disputed.
19. That in reply to averments made in Paragraph 28 it is worthwhile to mention here that in Khata No 126 Plot NO 192, 4, 24,286/624 and 435 are water bodies.
20. That in reply to Paragraph 29 of the counter affidavit it is worthwhile to mention here that in Page No. 5 point number

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(b) by the affidavit *dated 12/05/2023* the Committee has clearly has accepted plan that the said water bodies get connected to Musa river and later it gets connected to Mangala river. As there is no proper drainage plan and there is severe encroachment, so they proposed alternative plan for passage of rain water from said locality to Musa River.

21. That in reply to Paragraph 31-33 it is worthwhile to mention here that the condition of water bodies has been so bad that it has become breeding ground for mosquitos. The photos filed in OA as well as affidavit dated 15/05/2023 has substantiated it. As proper flow of water is affected in some places there is stagnantation of water which in end creates breeding ground for mosquito.

22. That in reply to averments made in paragraph 34 and 35 it is worthwhile to mention here that as per **24(b) of Water Act** *“(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead*

*to a substantial aggravation of pollution due to other causes or of its consequences”*

The above paragraph clearly states that no construction shall which will obstruct the flow or obstruct the natural water body. That it is worthwhile to mention here that as per Section 24(3) “(3) *The State Government may, after consultation with, or on the recommendation of, the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may by a like notification be altered, varied or amended”*

The respondent hasn't shown any documents or authority whereby he has received permission from the State authority to construct over the water body. So the exemption the respondent is claiming over Section 24(2) is not applicable to respondent until or unless he shows requisite permission to this regard.



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23. That in response to averments made in Paragraph 36- 37 it is worthwhile to mention here that the photographs provided in *Annexure 10 and 12* in affidavit dated 15/05/2023 by the applicant shows how construction is going on in full spree. This clearly shows that cause of action is still going.
24. That in response to Paragraph 38 it is worthwhile to mention here that if the photos provided in Annexure 10 and 12 is not of Plot No. 4 the respondent should have provided *alternative photographs to counter the applicant*. But in the counter affidavit nowhere respondent has provided any photograph to prove his case.
25. That in response to averment made in Paragraph 39 it is worthwhile to mention here that if the road has been constructed during 14<sup>th</sup> State Finance Commission the respondent *has not provided any document to prove the same*. Just mere averments will not prove it as to when the construction was made and on what basis it was made.
26. That in reply to averments made in Paragraph 40 it is worthwhile to mention here that villages which the respondent



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is claiming that the said road is connecting is very well connected by National Highway as well as other roads. Photographs and Google map photographs provided in **Annexure 7 and 8** in affidavits dated 15/05/2023. If the respondent is claiming it is the only road the he should have provided **Google map photographs or other photographs** to substantiate his claim. But nowhere has he provided the same rather a vague claim to suppress his illegality.

Secondly as to nature of plot No 4 the photographs provided in **Annexure 10 and 12** in affidavits dated 15/05/2023 by the applicant it clearly shows the road has been made without proper drainage. The road has been made in such a way that it will completely block the natural flow of water. The road has divided the said canal into two parts. If the nature of plot No 4 is still intact the **respondent should have filed photograph** to substantiate his claim that the plot is intact and it is not affecting natural flow of water. But the respondent has **not annexed any photograph** to the



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same which shows that the he has completely destroyed the water canal.

27. That in response to Paragraph 41 it is worthwhile to mention here that if the photograph is not of Plot No. 4 then the respondent *should have provided the real photograph* of Plot No. 4 to prove his claim. But nowhere has he provided the same. The ground for not providing the same is because the photograph provided in Annexure 10 and 12 is the real photograph as well as if he will provide the photograph his *illegality will be brought* before the Hon'ble Tribunal.
28. That in response to Paragraph 42 it is worthwhile to mention here that if the photograph is not of Plot No. 4 then the respondent *should have provided the real photograph* of Plot No. 4 to prove his claim. But nowhere has he provided the same. Similarly it is not necessary that all the legal heirs of the original Mafardas should be involved in illegal construction as that of Respondent. It is not necessary that if the respondent is involved in an illegal act then all the other legal heirs of other Marfadars should be involved in the illegal act. Even the

Applicant No. 1 is legal heir of one Marfardar but there has been no complaint against him.

29. The in response to Paragraph 43 respondent is interpreting the affidavit in the way he wishes to interpret. The applicants just have interpreted the true legal meaning of the meaning Marfardars. Secondly the trust is non-hereditary trust Thirdly being legal heir of the original Marfardars doesn't give them direct or indirect right to maintain or own the property of the deity. The statement made by respondent on oath is a white lie.
30. That in response to averment made in Paragraph 44 it is worthwhile to mention here that if the road has been constructed during 14<sup>th</sup> State Finance Commission in scheme Gram Vikas Yojna the respondent ***has not provided any document to prove the same.*** Just mere averments will not prove it as to when the construction was made and on what basis it was made. Averments must be made with documental proof. Secondly for sake of argument if the road is constructed ***by the State then also it is illegal*** as it has been made without proper authorisation ***vide letter dated 25616 dated***



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25/08/2014(*Annexure 11*). Nowhere there have been any documents to prove that the said road has been made by following guidelines and by getting adequate permission which is require and which has been *annexed in Annexure 11* of the affidavit ate 15/05/2023 by applicant. The road has completely blocked the water canal as well as it has been. There has been proper drainage or culvert in the road to allow proper flow of water.

- 31.** That in reply to averments made in Paragraph 45 it is worthwhile to mention here that That it is worthwhile to mention the affidavit filed by Committee through Odisha State Pollution Control Board in its report in Annexure R7/1 through it remark has clearly stated that there is no proper drainage in the alleged plots to allow clear flow of rainfall. Hence the respondent has made another misleading statement on oath.
- 32.** That it is worthwhile to mention here that the averments made in paragraph 47 it is worthwhile to mention here that the Respondent No. 15 is liable for misleading the court. The report of committee has clearly substantiated that construction

is there. So the respondent very much liable for the legal impediments to which he has prayed for.

33. That in response to Paragraph 48 it is worthwhile to mention here that if the photograph is not of Plot No. 4 then the respondent *should have provided the real photograph* of Plot No. 4 to prove his claim. Rather making random averments without proper documents and photographs. But nowhere has he provided the same. The ground for not providing the same is because the photograph provided in Annexure 10 and 12 is the real photograph as well as if he will provide the photograph his *illegality will be brought* before the Hon'ble Tribunal.

34. That in reply to Paragraph 49 of the counter affidavit it is worthwhile to mention here that the photograph provided in Annexure 10 and 12 of the affidavit clearly shows construction is going on in the middle of the canal. Secondly the photograph also shows how the road has been constructed over the said canal. The applicant being a responsible citizen filed this OA. Secondly the respondent should himself have been responsible citizen by protecting the water bodies rather than



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constructing and destroying the water body and making bald allegations. Hence repeated lies on oath needs to be dealt very strongly.

**35.** That in reply to averments made in Paragraph 50 it is worthwhile to mention here that the alleged plots are temple land and not a private land. It can be considered as communal land in nature as it comes under Commissioner of Endowments. Similarly the alleged Plot No 4 is a water canal which itself proves that it is communal in nature. Similarly considering WATER Act 1972 and Section 7 and 39 of Orissa Irrigation Act any construction over a water body no matter whether it is private or not cannot be allowed.

**36.** That it is worthwhile to mention here that the averments made in paragraph 51 it is worthwhile to mention here that the Respondent No. 15 is liable for misleading the court. The report of committee has clearly substantiated that construction is there. So the respondent very much liable for the legal impediments to which he has prayed for in the paragraph.

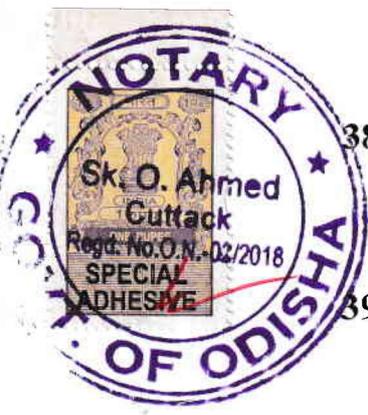


  
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37. That it is worthwhile to mention here that it is worthwhile to mention here that the Opp. Party has completely remained silent on as to how the level of *ground water* will be affected in the said area if such construction is allowed. Puri has always the issue of poor ground water. As in most of the water bodies constructions has been made. Because of the illegal construction the ground water never gets recharged properly. Similarly if the construction over the alleged water body is allowed it will badly affect the already dwindling groundwater level of Puri

38. That the paragraph which has not been specifically denied is hereby denied.

39. The applicant prays liberty of Hon'ble Tribunal to file further affidavit.



Kolkata

Date 1/07/2023

*[Signature]*  
Identified By

*Madanmohan Rout*

DEPONENT

Solemnly Sworn before  
 ..... *M. M. Rout* .....  
 Identified by ..... *A. Solikh Ahmed* .....  
 at Cuttack, d. *01/07/2023*  
*[Signature]*  
 ..... *studdin Ahmed* .....  
 ..... CUTTACK TOWN