

BEFORE THE NATIONAL GREEN TRIBUNAL, KOLKATA

O.A. No. 157/2022/EZ

In the matter of :

Pratap Chandra Mohanty and Others

.... Petitioner

-Vrs-

State of Odisha & Others

.... Opp. Parties.

I N D E X

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Cuttack

BY THE RESPONDENT NO.1 THROUGH

Date: 19 .04.2023


ADVOCATE

BEFORE THE NATIONAL GREEN TRIBUNAL, KOLKATA

O.A. No. 157/2022/EZ

In the matter of :

Pratap Chandra Mohanty and Others

....

Petitioner

-Vrs-

State of Odisha & Others

....

Opp. Parties.

COUNTER AFFIDAVIT FILED ON BEHALF OF

OPP. PARTY. NO. 01

C.F NO-83

Dated-19-04-2023

I, Smt. Itishree Rout, aged about 42 years, W/o Bibhudatta Sahu at present working as Deputy Director of Estate, G.A. & P.G. Deptt., Odisha, Bhubaneswar, Dist- Khurda do here by solemnly affirm and state as follows:

1. That, I am presently working as stated above. I have gone through the writ petition and understood the averments made therein to swear this affidavit and I have been duly authorised to file Counter Affidavit on behalf of Opp. Party No. 01.

2. That before giving parawise comments to the petition filed by the Petitioner, it is humbly submitted that all averments,



Itishree Rout

contentions and/or statement contained in the aforesaid writ petition which may not have been specifically denied or traversed by the answering deponent herein, should not be deemed to be admitted by reason of mere non-traverse, but should be treated as expressly denied and the petitioners should be put to strict proof in respect thereof.

3. That the present Application has filed the present application praying to remove the construction from the Nayanjori Land and restore the land to government control to be used for the purpose of passage of storm water.
4. That the writ petition as laid is misconceived in fact and law and the same is liable to dismissed.
5. That, the Original Application is filed before the Hon'ble Tribunal praying for issue of a direction to the State Respondent to remove the construction from the Nayanjori land and restore the land to government control to be used for the purpose of passage of storm water and initiate prosecution against the private respondent as per MoEFCC order dtd. 12.12.2012 and impose exemplary environment compensation and penalty for construction without environment clearance.

Hishore Patel



6. That in the present application, the Applicant has primarily contended that the construction activity carried out by the Project Proponent / Respondent No. II is illegal since the same is being done without an Environmental Clearance. In so far as the applicability of Environmental Clearance is concerned, the Respondent No. 6 will be competent to reply to such contentions.
7. That, it is stated that on consideration of the application filed by the Petitioner Sikhya 'O' Anusandhan University, the land schedule indicated below was allotted in their favour vide order No. 4735 dtd. 17.02.2022 for establishment of Institute of Medical Science & SUM Hospital (Campus-2) subject to deposit of land premium amounting to Rs. 15,34,50,000/- (Rupees fifteen crore thirty-four lakh fifty thousand) only i.e., @ Rs. 3,00,00,000/- per acre.

Hishore Raut

Mouza-Nakhara		P.S. Baliana	
Khata No.	Plot No.	Area	Kissam
626/1 (GAD)	416	Ac. 0.150 dec.	Nayanjori
	297	Ac.0.070 dec.	
	417	Ac.0.050 dec.	



419	Ac.0.080 dec.
296	Ac.0.060 dec.
298	Ac. 0.020 dec.
418	Ac. 0.170 dec.
299	Ac.0.080 dec.
420	Ac.0.060 dec
287	Ac.0.240 dec.
415(p)	Ac. 4.135 dec.

Dishore ROR

8. That, after the deposit of land premium, a Registered Lease Deed was executed on 02.03.2022. Physical possession of the land has also been delivered to the Respondent No. II on 04.03.2022. It is pertinent to mention that the land was leased out in favour of the Applicant under the provisions of Odisha Government land Settlement Act (Second Amendment Rule,2020).

9. That, after execution of the said lease deed, the Record of Rights (ROR) has been corrected in the name of the Applicant by the Tahasildar, Bhubaneswar in 'patadar status'.



10. That, it is stated that the land has been allotted for institutional purpose i.e., for establishment of Institute of Medical Science and SUM Hospital. The Tahasildar, Bhubaneswar has corrected the classification of the allotted land as Gharabari. Clause-8 of Odisha Government Land Settlement (Second Amendment) Rules, 2020 envisages correction of Records of Rights by the Tahasildar after execution of lease deed. In so far as the averment of the Applicant that the present land in question was used to facilitate the flow of water into Prachi River is concerned, it is submitted that the said land was never used for the passage of water.
11. That, it is humbly submitted that the Applicant has contended that the land in question is "Nayanjori" which is a water body through which storm water is stored and discharged. It is submitted that Nayanjori is a roadside land. The land was lying vacant and unused for a considerable period of time. The land has been allotted in favour of the Respondent No.11 after the area was surrendered by the National Highway Authority of India.

Highway Road



12. That, it is humbly submitted that the field enquiry report dtd. 06.01.2023 indicates that area measuring Ac. 3.105 dec. is still available in between the National Highway and the area allotted in favour of the Respondent No.11. The contention of the Applicant regarding water body, discharge of storm water etc. in respect of the Nayanjori land is disputed as the land was unused and lying vacant for a long period of time. The said patch of land does not have any presence of water. It was allotted for development of health care facilities following the due process of law as envisaged in Odisha Government Land Settlement (Second Amendment) Rules, 2020. The field enquiry report dated 06.01.2023 indicates that no river named "Prachi" exists in the vicinity. The details of the plots allotted to the Applicant and its corresponding classification of the land is detailed herein below;

gfishroce Rowel

Mouza-Nakhara		P.S. Balaianta	
Khata No.	Plot No.	Area	Kissam
648(Patadar)	416	Ac. 0.150 dec.	Gharabari
	297	Ac.0.070 dec.	



417	Ac.0.050 dec.
419	Ac.0.080 dec.
296	Ac.0.060 dec.
298	Ac. 0.020 dec.
418	Ac. 0.170 dec.
299	Ac.0.080 dec.
420	Ac.0.060 dec
287	Ac.0.240 dec.
415(p)	Ac. 4.135 dec.

Dhishore Kote

Copy of the Field Enquiry Report dtd. 06.01.2023 is annexed herewith at Annexure-A/1.

13. It is disputed and denied that the land allotted to Respondent No. 11 is objectionable and the same cannot be allotted to Respondent No. 11. As stated hereinabove, the allotted land has been classified as "Homestead" and such lands can be allotted to the Respondent No. 11.

14. That, it is humbly submitted that the contention of the Applicant regarding "Prachi Nadi" and the catchment area of the Prachi



Nadi are disputed and denied. Prachi Nadi does not exist in the field. The area in the vicinity has been used for developmental purpose including residential and commercial purpose. The allotted land was never used as water body at any point of time. There is no application of the judgment of the Hon'ble Supreme Court in Hinch Lal Trywari vs. Kamala Devi &Ors., and (2001) 6 SCC 496 of Jagpal Singh and ors. Vrs. State of Punjab and others to the facts of the present case. In any event, the restrictions laid down with respect to usage of land is limited to areas which have been classified as "Jalasaya Land". In the present case, the land in question have not been classified as "Jalasaya".

Dr. Ishrae Rouf

15. That, it is stated that the field enquiry report further indicates that there is an existing road pertaining to Plot No. 421, Kissam-Rasta (Kacha Rasta), area Ac. 0.260 dec. in field which connects from NH-16 to Lakheswar Temple and situated adjacent to south side of SOA University land.
16. That, the State Pollution Control Board has granted necessary permission vide letter No. 6854 dated 03.01.2023 for



construction of IMS and SUM Hospital Campus -2 over the land in question.

17. That, it is humbly submitted that the Member, Secretary SEIA has also accorded environmental clearance for construction of IMS and SUM Hospital Campus -2 on behalf of the Ministry of Environment, Forest and Climate Change, Government of India.
18. That the averments made in different paragraphs of the original application are not borne out of records and not been specifically admitted may be deemed to have been denied. The deponent craves leave of this Hon'ble Tribunal to add / alter / amend the present affidavit if the same is necessary.
19. That the facts stated above are true to the best of my knowledge and based on official records.

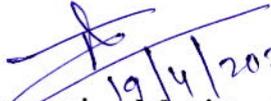
Shishoo Kotel
19/4/23
Deponent

Deputy Director of Estate
cum-Joint Secy. to Govt.
GA & PG Deptt.



AFFIDAVIT

The above deponent being personally known to me appears before me T. Samel on 19.4.2023 at 2.30 AM / PM and states on oath that the contents of the show cause reply are true to the best of his knowledge based on official records.


19/4/2023
Executive Magistrate

Bhubaneswar
**Executive Magistrate &
Assistant Collector
Bhubaneswar**

CERTIFICATE

Certificate that due to non-availability of cartridge papers, white papers are used.

CUTTACK

Dt.- 19 .04.2023

Advocate

Joint Director of EstatesANNEXURE - A/1

Kind orders on the above file.

This is regarding O.A No.157-2022-EZ (NGT) filed by Pratap Chandra Mohanty & others Vrs. State of Odisha & Others in respect of suit land area measuring Ac.5.115 of Mouza-Nakhara. The details allotment status & field status of the S 'O' A University, Bhubaneswar for establishment of institute of Medical Science & SUM Hospital (Campus-2) in Mouza-Nakhara and ROR and other status are as follows.

1. Allotment Details

Mouza	Name of Allottee	Purpose	Khata no.	Plot no.	Area in Ac.	Kissam	Premium Charged	Allotment Order no. & Date
Nakhara	S 'O' A University	Establishment of institute of Medical Science & SUM Hospital (Campus-2)	626/1 (GAD)	416 297 417 419 296 298 418 299 420 287 415(pt)	0.150 0.070 0.050 0.080 0.060 0.020 0.170 0.080 0.060 0.240 4.135	Nayanajori Nayanajori Nayanajori Nayanajori Nayanajori Nayanajori Nayanajori Nayanajori Nayanajori Nayanajori Nayanajori	Rs.15,34,50,000 /-	4735/CA dated. 17.02.2022

Total =Ac.5.115

2. Present ROR of the allotted land

Mouza	Khata no.	R.T	Plot no.	Kissam	Area in Ac.
Nakhara	648(Patadar)	S "O" A University	416 297 417 419 296 298 418 299 420 287 415/4195	Gharabari Gharabari Gharabari Gharabari Gharabari Gharabari Gharabari Gharabari Gharabari Gharabari Gharabari	0.150 0.070 0.050 0.080 0.060 0.020 0.170 0.080 0.060 0.240 4.135

Total=Ac.5.115

3. Present field position

No construction is going on over the suit land at present.

TRUE COPY ATTESTED

[Signature]
06/01/2023
A.M.N.

[Signature]
08/01/2023
R.2

[Signature]
06/01/2023
ADCS (B)

Deputy Director of Estate
Joint Secy. to Govt.
GA & PG Dept.

4. Issue related Nayanajori

The allotted land measuring Ac.5.115 is situated adjacent to NH-16 living behind area Ac.3.105 pertaining to plot no.415. Earlier area of plot no.415 was Ac.7.240, Khata no.623(PWD), Kissam-Nayanajori out of which Ac.4.135 is coming within the area allotted of S 'O'A University. The rest area Ac.3.105 has been kept for expansion of NH-16 which is situated in between land of S 'O'A University and existing NH-16 and shown in green colour in the sketch map enclosed. Allotted land of S 'O'A University shown in red colour in sketch map.

At the time of allotment kissam of allotted land was Nayanajori. Now the same has converted to Gharabari kissam by Tahasildar, Bhubaneswar under OGLS(SA) Rules, 2020.

5. Prachi River

There is no Prachi river situated adjacent to allotted land of S 'O'A University in Mouza-Nakhara pertaining to plot no.415/4195 etc.

6. Avenue Plantation

There are some trees available over the NH side land (Ac.3.105) situated in between land of S 'O'A University and existing NH-16. The same is shown green colour in sketch map.

7. Road to Lakheswar Temple

There is an existing road pertaining to plot no.421, kissam-Rasta (Kacha Rasta), area Ac.0.260 in field connects from NH-16 to Lakheswar temple and situated adjacent to south side of S 'O'A University land. Lakheswar temple is shown in yellow colour in sketch map. Existing road to Lakheswar temple is shown in blue colour in sketch map. Existing NH-16 is shown in violet colour in sketch map.

Copy of ROR of S 'O'A University land, ROR of road pertaining to plot no.421 connect to Lakheswar temple and along with sketch map are enclosed for kind perusal.

8. NOC from State Pollution Control Board, Odisha

State Pollution Control Board, Odisha has consent for construction of IMS & SUM Hospital, Campus-II over the suit land vide his letter no.152/INDIICTE-6854 dated.03.01.2023 (Copy enclosed).

9. NOC from Government of India, Ministry of Environment, Forest and Climate Change (Issued by the State Environment Impact Assessment Authority (SEIAA), Odisha)

Member Secretary, SEIAA, Odisha has granted environmental clearance on dated.03.01.2023 for construction of IMS & SUM Hospital, Campus-II (Copy enclosed)

TRUE COPY ATTESTED

Report submitted for kind information and necessary action.

Dmch
06/01/2023
Amin
G.A & P.G Deptt.

Bm
06/01/2023
Revenue Inspector
G.A & P.G Deptt.

[Signature]
06/01/2023
Asst. Director (S&E)
G.A & P.G Deptt.
Deputy Director of Estate
cum-Joint Secy. to Govt.
GA & PG Deptt.

