

SL. NO. 61 DT. 13.09.2023

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA, WEST BENGAL
FINANCE CENTRE, 3RD FLOOR, NEWTOWN

Original Application No. 40 of 2023

IN THE MATTER OF:

Sanjib Poddar

...Applicant

Vs.

National Wetland Authority & Ors.

...Respondent

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Filed by
Sandipan Samanta,
Adv.

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COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 10

I, Sabyasachi Mullick Chowdhury, son of Late Sunit Kumar Mullick Chowdhury, aged about 56 years, by occupation – service, residing at 64/11G, Suren Sarkar Road, P.S. Belegkata, Kolkata 700010, do hereby solemnly affirm and say as follows:-

1. That I am the Respondent No. 10 abovenamed and I know of and I am well acquainted with the facts and circumstances of the present case. I am duly competent to make and affirm this affidavit on my behalf.
2. I have read a copy of the Application filed by the present Applicant herein supported by an affidavit said to have been affirmed by one Sanjib Poddar on March 03, 2023 (herein after referred to as “the said application”), and understood the scope, meaning and purport of the contents thereof.
3. I have also read a copy of the Supplementary Affidavit filed by the present Applicant herein in support of his application affirmed by the said Sanjib Poddar on July 13, 2023 (hereinafter referred to as “the said Affidavit”), and understood the scope, meaning and purports of the content thereof.
4. The present counter affidavit is being filed pursuant to the order dated July 13, 2023, passed by the Hon’ble Tribunal and is restricted to the allegations made by the present Applicant herein with respect to the members of the Eight member Joint Committee, who were present at the various meetings which, allegedly were not appropriately representing their departments as per the committee constituted by the Tribunal vide order dated January 3, 2022 in Original Application No. 25/16/EZ and that the documents submitted by the Applicants herein allegedly were not considered by the Eight member Joint Committee, and that the Applicant herein allegedly was not aware of the proceedings before the Hon’ble Tribunal in the matter of Original Application No. 25/16/EZ and that the Applicant allegedly was completely unaware of the constitution of the Eight Member Joint Committee.



5. At the very outset I say that the said application is not maintainable either in facts or law. It is stated that the said application has been filed by the Applicant under section 18 (1) read with sections 14, 18, 25 and 26 of the National Green Tribunal Act, 2010. However, the prayers prayed for in the said application would reflect that the Applicant is essentially praying for direction upon the Eight Member Joint Committee to reconsider its report and conduct a fresh inspection of Ukil Bheri and give a fresh report after consulting and hearing all the stakeholders concerned and to pass a resolution and direction upon the Eight Member Joint Committee to demarcate the Ukil Bheri in a proper manner with boundaries for restoration of the Ukil Bheri. That allowing such prayer of the Applicant would amount to reviewing and/or modification by this Hon'ble Tribunal its order dated January 03, 2022, passed in OA25/16/EZ and also the report of the Eight Member Joint Committee filed in the form of an Affidavit affirmed on November 04, 2022, which has been filed only upon the order of January 3, 2022. It is humbly submitted that such power of review and/or modification is not within the scope and ambit of section 18 (1) read with sections 14, 18, 25 and 26 of the National Green Tribunal Act, 2010, under which this instant application has been filed and therefore on this ground alone the said application is not maintainable and should be nipped in the bud without affording any further opportunity to the Applicant herein. Further the said application cannot by any stretch of imagination be said to be a review application, as the same is not in the proper format of a review application and has not been filed as a Miscellaneous Case in OA No. 25/16/EZ, wherein, the order dated January 3, 2022, was passed. Making a recalling and/or a review application by way of a separate O.A is unheard of. Lastly, no grounds of review have been provided in the present application. The National Green Tribunal Act, 2010, does not provide for any recalling and/or modification of its own orders under Section 18 and 19 thereof.

6. That the Applicant herein have also approached this Hon'ble Tribunal with unclean hands and in gross suppression of material facts, which is germane is deciding whether the instant Application is at all maintainable and if admitted would that result in multiplicity of proceedings and contradictory orders, thereby entirely defeating the spirit and effect of the order dated 03.01.2022, passed by the Hon'ble Tribunal in OA25/2016/EZ. The following facts would reflect the same:

- a. In the instant Application, the applicant herein being Sanjib Poddar, has completely suppressed the fact that proceeding u/s 397 of the KMC Act 1980 is pending against him. It is clear from the said order that the applicant has sought time to delay the KMC proceeding citing continuation of the Writ Petition filed by the said Sanjib Poddar against the KMC, being aggrieved by the show cause notice issued by the KMC.

The copy of the order dated 19.12.2022, passed by the special commissioner of KMC is annexed herewith and marked as Annexure – A.

- b. Admittedly, the Applicant herein, has filed a writ petition before the Hon'ble High Court at Calcutta being WPA No. 20656 of 2022 against KMC. The Applicant herein have filed the said writ petition being aggrieved by the showcause notice

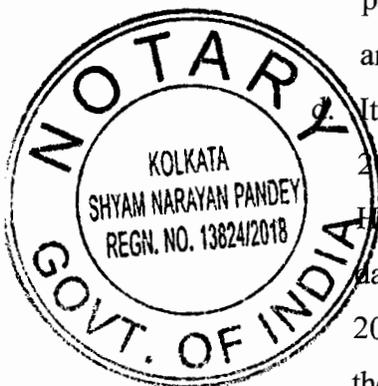


dated April 6, 2022, issued by the Kolkata Municipal Corporation under Section 397 of the Kolkata Municipal Corporate Act, 1980, in compliance of the directions passed by the eight-member joint committee in its meeting dated July 22, 2022, and September 23, 2022, and have parallelly filed the instant application challenging the report of the Eight Member Joint Committee filed in the form of an Affidavit affirmed on November 04, 2022, and by doing so the Applicant have indulged himself in Forum Shopping and the same would lead to passing of contradictory orders by two different forums. It is respectfully submitted that all these legal applications being filed by the said Sanjib Poddar are for delaying proceeding u/s 397 of the KMC Act 1980 and to prevent cancellation of Building sanction plan in plot CZ- 20A. The basis of the said writ petition seems to be that the decision of the eight member joint committee was bad and that order itself has led to the initiation of proceeding by KMC. Thus, the issues raised in the present application are substantial issue in the said writ petition.

- c. It is also submitted that the answering Respondent No. 10, herein have filed a writ petition before the Hon'ble High Court at Calcutta being WPA No. 21710 of 2022, against the Eight-Member Joint Committee, and in the said writ petition the Eight-Member Joint Committee have filed the said report which has been challenged by the Applicant herein in this present application. It is submitted that Eight Member Joint Committee on November 15, 2022, filed its report before the Hon'ble Court in the said writ petition, wherein the answering Respondent No. 10, sought to take exception to a part of the said report. Accordingly, Hon'ble Court vide its order dated November 15, 2022, granted liberty to the answering Respondent No. 10, to file such exception and also granted liberty to the Eight Member Joint Committee to implement part of the report and not be interrupted in their work by way of pendency of the said writ petition. Subsequently, the Hon'ble Court vide its order dated December 5, 2022, further clarified that the Eight Member Joint Committee shall implement the part of the Report with regard to taking steps against the illegal constructions in the meantime. Thus, the veracity of the eight-member joint committee report is also an issue in the said writ petition.

Copy of the order dated November 15, 2022, and order dated December 5, 2022, passed by the Hon'ble High Court in WPA No. 21710 of 2022, is annexed herewith and marked as Annexure – B(colly).

It is also stated that the applicant herein filed an application being CAN No. 1 of 2022 for addition of party in WPA 21710 of 2022, filed by me pending before the Hon'ble High Court at Calcutta. However, the Hon'ble High Court vide its order dated December 8, 2022, have dismissed the said application being CAN No. 1 of 2022, filed by the Applicant herein, in WPA No. 21710 of 2022, on the ground that the applicant herein being Sanjib Poddar, have already availed his remedies against the KMC by filing a sperate writ petition being numbered as WPA No. 20656 of 2022, which is still pending before the Hon'ble High Court at Calcutta.



Copy of the order dated December 8, 2022, passed by the Hon'ble High Court in WPA No. 21710 of 2022, is annexed herewith and marked as Annexure – C.

- e. It is submitted that the Applicant herein was aware of the said order dated November 15, 2022, and December 5, 2022, passed by the Hon'ble High Court in WPA No. 21710 of 2022, however, the Applicant in gross suppression of such orders have approached this Hon'ble Tribunal and pressed for interim order of stay of the report of the Eight Member Joint Committee, which in turn would have resulted to be contradictory to the orders passed by the Hon'ble High Court in WPA No. 21710 of 2022.
7. As it would appear from the said application, the Applicant herein, have filed the same in gross misrepresentation and suppression of facts in order to mislead this Hon'ble Tribunal. The Respondent No. 10 was initially not made a party to the said Application, however, in order to prevent any miscarriage of justice, the Respondent No. 10 herein intervened in the said Application.
8. The Applicant's first leg of alleged contention is that some of the members of the Eight Member Joint Committee were not present at any of the meetings and some of the members who attended the meeting of the Eight Member Joint Committee were not even designated to be members of the committee and therefore they should not have participated in the said meetings. The Respondent No. 10 submits that such allegation of the Applicant herein are incorrect and is an outcome of deliberate improper consideration and interpretation of the report dated November 4, 2022. The correct facts with respect to the meetings held by the Eight Member Joint Committee as reflected in the report dated November 4, 2022, are set out herein below:
- a. First meeting dated January 25, 2022:
- i. Parties Present:
1. National Wetland Authority (National Wetland Committee), being represented by Smt. Manju Pandey, Joint Secretary, MOEF and CC and Sri Rajsekhar Ratti, Scientist D, MOEF and CC, Wetland Division.
 2. MOEF and CC, being represented by Smt. Manju Pandey, Joint Secretary, MOEF and CC, and Sri Rajsekhar Ratti, Scientist D, MOEF and CC, Wetland Division.
 3. State Wetland Authority being represented by Sri Kaliyamurthi Balamuruagan, Chief Environment Officer, Department of
- It is stated that the National Wetland Authority (National Wetland Committee) is a division of MOEF and CC, and therefore both these members were represented by similar officials in the meetings of the Eight Member Joint Committee. The same will be also evident from the attendance sheet of the meeting dated January 25, 2022, at Page No. 202 of the said Application.



Environment, Government of West Bengal and Member, State Wetlands Authority.

4. Central Pollution Control Board being represented by Smt. Susmita Ekka, Scientist D, Eastern Regional Director, CPCB.
5. State Pollution Control Board being represented by Sri Debashis Sarkar, Chief Engineer, West Bengal Pollution Control Board.
6. Director of Environment, West Bengal being represented by Smt. Neelam Meena, Director, Institute of Environmental Studies and Wetland Management, Smt. Pausali Mukherjee, Senior Law Officer, Department of Environment, West Bengal.
7. District Magistrate, South 24 Parganas being represented by Sri Nitesh Dhali, ADM DL & LRO, District Magistrate Office, South 24 Parganas, Sri Sidhartha Guin, Deputy District Land Reforms Officer, District Magistrate Office, South 24 Parganas.
8. Senior Superintendent of Police, South 24 Parganas being represented by Sri Gaurav Lal, IPS, Deputy Commissioner of Police, East Division, Kolkata Police and Rupesh Sapui, Officer in Charge, Pragati Maidan, Police Station
9. Kolkata Municipal Corporation being represented by Sri Debashis Chakrabarty, DG, Environment and Heritage Department, Kolkata Municipal Corporation.

ii. Detail of the meeting:

This meeting was called by the Eight-Member Joint Committee and Kolkata Municipal Corporation was present in the meeting as decision were taken to conduct a joint survey by Kolkata Municipal Corporation and ADM&LR, South 24 Parganas on 07.02.2022 to ascertain on which Dag Numbers the water body namely Ukil Bheri falls and also the status of Dag No. 267 and 268 of Mouza – Nimokpoktan, under P.S: Pragati maidan, Ward No. 57, Kolkata Municipal Corporation.

b. Field visit dated February 17, 2022:

i. Parties Present:

1. National Wetland Authority (National Wetland Committee), being represented by Dr. Shahida Parvin Quazi, Scientist E, Integrated Regional Office, MOEF&CC.
2. MOEF&CC, being represented by Dr. Shahida Parvin Quazi, Scientist E, Integrated Regional Office, MOEF&CC.

It is stated that the National Wetland Authority (National Wetland Committee) is a division of MOEF&CC, and therefore both these members were represented by similar officials in the meetings of the Eight Member Joint Committee.



3. State Wetland Authority being represented by Sri Aniruda Paul, Scientist Officer, East Kolkata Wetland Management Authority, Barnali Dey, Technical Officer – Law, and Tarak Nath Das, Technical Assistant, East Kolkata Wetland Management Authority.
4. Central Pollution Control Board being represented by Smt. Susmita Ekka, Scientist D, Eastern Regional Director, CPCB.
5. State Pollution Control Board being represented by Debashis Sarkar, Chief Engineer, West Bengal Pollution Control Board.
6. Director of Environment, West Bengal being represented by Alok Halder, CAO, Institute of Environmental Studies and Wetland Management and Nirmal Kar, Institute of Environmental Studies and Wetland Management.
7. District Magistrate, South 24 Parganas being represented by Sri Nitesh Dhali, ADM DL &LRO, District Magistrate Office, South 24 Parganas , Sri Sidhartha Guin, Deputy District Land Reforms Officer, District Magistrate Office, South 24 Parganas, Parna Paul Ghosh, SDL&LRO, District Magistrate Office, and Dwaipayan Ghosh, RO&TA, Office of ADM DL&LRO, South 24 Parganas.
8. Senior Superintendent of Police, South 24 Parganas being represented by Sri S.K. Bera, Inspector/Officer in Charge, Pragati Maidan, Police Station.
9. Kolkata Municipal Corporation being represented by Dibendu Pal, Executive Engineer (Building), Kolkata Municipal Corporation, KDM, Executive Engineer (E&H), Kolkata Municipal Corporation.
10. Mr. Sanjib Poddar, Secretary of the Metropolitan Cooperative Housing Society and being the Applicant himself in this instant application.



ii. Detail of the meeting:

This was a site visit conducted by the Committee on February 17, 2022, based on the field enquiry conducted from February 7, 2022 to February 11, 2022 and the report submitted thereafter on February 16, 2022, by the Additional District Magistrate & District Land and Land Reforms Officer, South 24 Parganas. Kolkata Municipal Corporation was present as direction was passed on them to provide certain information as Mouza Nimokpoktan, J.L. No. 1, was integrated into the jurisdiction of Ward No. 57 of Kolkata Municipal Corporation as per the Kolkata Municipal Corporation Act, 1980. It is also pertinent to note that the Mr. Sanjib Poddar, the Applicant himself was present during the field visit representing the Metropolitan Cooperative Housing Society.

c. Second meeting dated March 15, 2022:

i. Parties Present:

1. National Wetland Authority (National Wetland Committee), being represented by Dr. Shahida Parvin Quazi, Scientist E, Integrated Regional Office, MOEF&CC.

2. MOEF&CC, being represented by Dr. Shahida Parvin Quazi, Scientist E, Integrated Regional Office, MOEF&CC.

It is stated that the National Wetland Authority (National Wetland Committee) is a division of MOEF&CC, and therefore both these members were represented by similar officials in the meetings of the Eight Member Joint Committee.

3. State Wetland Authority being represented by Sri Kaliyamurthi Balamuruagan, Chief Environment Officer, Department of Environment, Government of West Bengal and Member, State Wetland Authority.

4. Central Pollution Control Board being represented by Smt. Susmita Ekka, Scientist D, Eastern Regional Director, CPCB.

5. State Pollution Control Board being represented by Sri Debashis Sarkar, Chief Engineer, West Bengal Pollution Control Board.

6. Director of Environment, West Bengal being represented Neelam Meena, Director, Institute of Environmental Studies and Wetland Management and Sri Kaliyamurthi Balamuruagan, Chief Environment Officer, Department of Environment, Government of West Bengal and Member, State Wetland Authority.

7. District Magistrate, South 24 Parganas being represented by Sri Nitesh Dhali, ADM DL & LRO, District Magistrate Office, South 24 Parganas, Sri Sidhartha Guin, Deputy District Land Reforms Officer, District Magistrate Office, South 24 Parganas, and Dwaipayan Ghosh, RO&TA, Office of ADM DL&LRO, South 24 Parganas.

8. Senior Superintendent of Police, South 24 Parganas being represented by Rupesh Sapui, Officer in Charge, Pragati Maidan, Police Station and Arunoy Mukherjee, ACP, Kolkata Police.

9. Kolkata Municipal Corporation being represented by Ujjwal Kumar Sarkar, Deputy Chief Engineer, Building, Kolkata Municipal Corporation.

ii. Detail of the meeting:

This meeting was held pursuant to the field visit dated February 17, 2022. In this meeting, Kolkata Municipal Corporation was present for submitting certain documents as was asked for by the Eight Member Joint Committee. Further, directions were also passed on the Kolkata Municipal Corporation to issue Stop Work Notice at R.S. Dag No. 267 and 268 and submit



documents with respect to the Land Classification of R.S. Dag No. 267 and 268 and whether such Land Classification was changed from "Beel" to anything else, against which the Kolkata Municipal Corporation issued Building Sanction Plans at the subject R.S. Dag Numbers.

d. Third Meeting dated March 22, 2022:

i. Parties Present:

1. National Wetland Authority (National Wetland Committee), being represented by Dr. Shahida Parvin Quazi, Scientist E, Integrated Regional Office, MOEF&CC.

2. MOEF&CC, being represented by Dr. Shahida Parvin Quazi, Scientist E, Integrated Regional Office, MOEF&CC.

It is stated that the National Wetland Authority (National Wetland Committee) is a division of MOEF&CC, and therefore both these members were represented by similar officials in the meetings of the Eight Member Joint Committee.

3. State Wetland Authority being represented by Sri Kaliyamurthi Balamuruagan, Chief Environment Officer, Department of Environment, Government of West Bengal and Member, State Wetland Authority.

4. Central Pollution Control Board being represented by Smt. Susmita Ekka, Scientist D, Eastern Regional Director, CPCB.

5. State Pollution Control Board being represented by Debashis Sarkar, Chief Engineer, West Bengal Pollution Control Board.

6. Director of Environment, West Bengal not represented.

7. District Magistrate, South 24 Parganas being represented by Sri Nitesh Dhali, ADM DL & LRO, District Magistrate Office, South 24 Parganas, Sri Sidhartha Guin, Deputy District Land Reforms Officer, District Magistrate Office, South 24 Parganas, and Dwaipayan Ghosh, RO&TA, Office of ADM DL&LRO, South 24 Parganas, Tathagata Mukherjee, BL&LRO.

8. Senior Superintendent of Police, South 24 Parganas being represented by S. Chattopadhyay, Officer in Charge, Khasmahal, District South 24 Parganas.

9. Kolkata Municipal Corporation being represented by Ujjwal Kumar Sarkar, Deputy Chief Engineer, Building, Kolkata Municipal Corporation, Dibendu Pal, Executive Engineer (Building), Bhaskar Bhattacharya, Chief Manager, Revenue, South, Kolkata Municipal Corporation, Partha Sarathi Samanta, Deputy Chief Engineer (C), Environment and Heritage Department, Kolkata Municipal Corporation, Nitish Chandra Basak, Chief Valuer and Surveyor



Department and Dulal Saha, Environment and Heritage Department, Kolkata Municipal Corporation.

ii. Detail of the meeting:

In this meeting, several Officers of Kolkata Municipal Corporation were present as they were called for by the Eight Member Joint Committee as per the second meeting dated March 15, 2022. Several questions were put forward by the Eight Member Joint Committee to the officers of the Kolkata Municipal Corporation present in the said meeting. Upon consideration of the submissions made by such officials and the documents submitted by them, the Eight Member Joint Committee, directed Kolkata Municipal Corporation to issue Stop Work Notice at the subject land and also submit a report regarding the procedure adapted by Kolkata Municipal Corporation and regarding justification of assessment mutation and building sanction issued to Metropolitan Cooperative Housing Society.

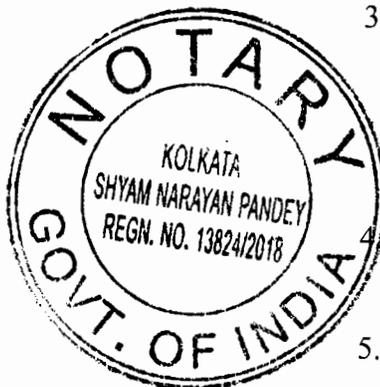
e. Final meeting dated July 27, 2022:

i. Parties Present:

1. National Wetland Authority (National Wetland Committee), being represented by Dr. Shahida Parvin Quazi, Scientist E, Integrated Regional Office, MOEF&CC.
2. MOEF&CC, being represented by Dr. Shahida Parvin Quazi, Scientist E, Integrated Regional Office, MOEF&CC.

It is stated that the National Wetland Authority (National Wetland Committee) is a division of MOEF&CC, and therefore both these members were represented by similar officials in the meetings of the Eight Member Joint Committee.

3. State Wetland Authority being represented by Sri Kaliyamurthi Balamuruagan, Chief Environment Officer, Department of Environment, Government of West Bengal and Member, State Wetland Authority.
4. Central Pollution Control Board being represented by Smt. Susmita Ekka, Scientist D, Eastern Regional Director, CPCB.
5. State Pollution Control Board being represented by Sri Debashis Sarkar, Chief Engineer, West Bengal Pollution Control Board.
6. Director of Environment, West Bengal being represented by Poushali Mukherjee, Senior Law Officer, Environmental Department, Government of West Bengal.
7. District Magistrate, South 24 Parganas being represented by Sri Nitesh Dhali, ADM DL & LRO, District Magistrate Office, South 24 Parganas.



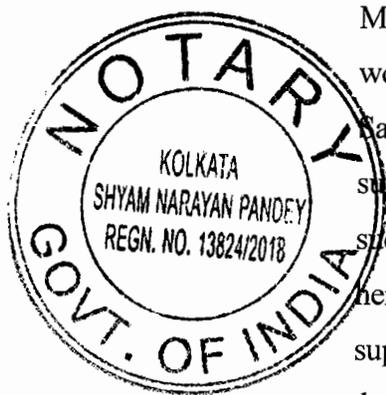
8. Senior Superintendent of Police, South 24 Parganas being represented by Rupesh Sapui, Officer in Charge, Pragati Maidan, Police Station.
9. Kolkata Municipal Corporation being represented by Mukti PT, Kolkata Municipal Corporation, Priyabrata Mukherjee, Kolkata Municipal Corporation, and Sidhharth Sarui, Kolkata Municipal Corporation.

ii. Detail of the meeting:

The Eight Member Joint Committee after having perused the documents submitted by various authorities within the span of the three meetings and one field visit held by the Eight Member Joint Committee, documents submitted by the Respondent No. 10 on May 23, 2022, and the documents submitted by the Applicant herein being the secretary of the Metropolitan Cooperative Housing Society on May 25, 2022, have taken several decisions as would be evident from the minutes of meeting dated July 27, 2022. In this meeting Kolkata Municipal Corporation was present as directions were given to the Kolkata Municipal Corporation to immediately restore the waterbody and demolish the Plots which were created after 2013 by filling up of the waterbody.

f. Meeting dated September 23, 2022:

Pursuant to the request of the Applicant herein on September 5, 2022, this meeting was convened to provide another opportunity of hearing to both the parties being Mr. Sanjib Poddar, the Applicant himself and the Respondent No. 10 herein. It would be pertinent to mention that Mr. Sanjib Poddar along with his Advocate, Sanjay Upadhyay, made detailed submission before the Committee and also submitted written documents in support of their claim. After having considered such written documents submitted by the said Sri Sanjib Poddar, the Applicant herein, the committee observed that there were no new evidence which came up in support of their claim and accordingly the Joint Committee, decided to follow the decisions taken in the final meeting dated July 27, 2022.



9. It is stated that from bare perusal of the details of the meetings as mentioned herein above it would be evident that the Eight Member Joint Committee had the quorum whenever meetings were convened. It would also be pertinent to mention that on May 17, 2022, that due to lack of quorum no decisions were taken by the Joint Committee. Therefore, the allegation that the Joint Committee did not act as per the order dated January 3, 2022, is incorrect. Moreover, the final report of the Eight Member Joint Committee was prepared on October 20, 2022, after the Joint Committee accorded an opportunity of hearing to the said Sanjib Poddar, being the Applicant herein and to the Respondent No. 10. Therefore, the allegation of the Applicant that the decision taken by the Eight Member Joint Committee on July 27, 2022, was thrust on him is an incorrect submission made on behalf

of the Applicant. The Eight Member Joint Committee decided to follow the decision taken in the meeting dated July 27, 2022, as no new evidence was provided by the Applicant in support of his claim.

10. It would also be pertinent to mention that the final report of the Committee was ratified by the Official and/or nominated representatives of all the Eight Members of the Joint Committee which in turn shows that the decisions, measures and the factfinding exercises undertaken by the Committee stood approved by all the Eight Members jointly. The details of the Officials and the members they represented at the time of ratifying the final report of the Committee are stated herein below:

- i. Neelam Meena, Director, IESWM & Secretary, Environment Department, Government of West Bengal (Represented the Director Environment, West Bengal).
- ii. Kaliyamurthi Balamuruagan, Chief Environment Officer, Environment Department, Government of West Bengal & Member, State Wetland Authority (Represented the State Wetland Authority).
- iii. Dr. Shaida Parvin Quazi, Scientist E, Integrated Regional Office, MOEF&CC (Represented MOEF&CC and National Wetland Authority (Committee)).
- iv. Susmita Ekka, Scientist 'D', East Regional Directorate, Central Pollution Control Board (Represented Central Pollution Control Board).
- v. Nitesh Dhali, ADM & DL&LRO, District South 24 Parganas (Represented District Magistrate, South 24 Parganas).
- vi. Debashis Sarkar, Chief Engineer, West Bengal Pollution Control Board, (Represented State Pollution Control Board).
- vii. Gaurav Lal, Deputy Commissioner of Police, East Division, Kolkata Police (Represented Superintendent of Police, South 24 Parganas).



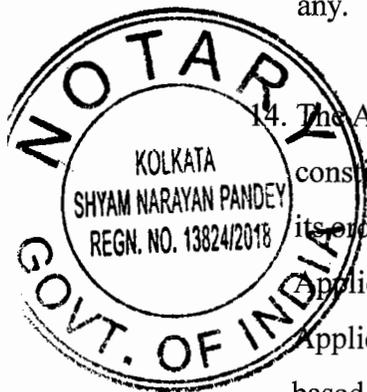
11. In view of the facts as mentioned above, it would be evident that the Eight Member Joint Committee ratified the decision taken by them and with respect to some of the members who attended the meeting of the Joint Committee without being designated to be members of the Committee, the same was necessary for the purpose of the fact finding exercise carried out by the Eight Member Joint Committee as they were called upon several times to produce several documents related to Dag No. 267 and 268 and provide explanations with respect to certain actions taken by them including sanction of Building Plans on Dag No. 267 and 268 without there being any conversion of land classification of the said Dag Numbers from 'Beel' to any other classification. Therefore, the said non-members were not involved in the decision-making process of the Eight Member Joint Committee, only non-essential functions were delegated to these attendees and all facts figures were finally collated and opinion formed by the designated eight member joint committee.

12. It is stated that the Applicant have also contended that the Hon'ble National Green Tribunal in its order dated January 03, 2022, passed in Original Application No. 25/16/EZ had

constituted an Eight Member Joint Committee only by giving names of the offices without specifying as to which Officer is required to be present in the Committee. The Respondent No. 10 herein submits that such contention of the Applicant herein is in total contradiction to the order dated April 13, 2022, passed by the Hon'ble Supreme Court of India in Civil Appeal No. 2723 of 2022 being Sabyasachi Mullick Chowdhury vs. The State of West Bengal and Others. It is submitted that the Respondent No. 10 herein filed the Civil Appeal No. 2723 of 2022, assailing the order dated January 03, 2022, passed in Original Application No. 25/16/EZ being aggrieved by the constitution of the Eight Member Joint Committee, however, the Hon'ble Apex Court having heard the Respondent No. 10 herein was pleased to observe that there was no cogent reason to entertain the said Civil Appeal No. 2723 of 2022, as the Judgment dated January 03, 2022 passed in Original Application No. 25/16/EZ did not warrant any interference of the Hon'ble Apex Court.

Copy of the order dated April 13, 2022 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 2723 of 2022 being Sabyasachi Mullick Chowdhury vs. The State of West Bengal and Others is annexed herewith and marked as Annexure – D.

13. That in view of such order dated April 13, 2022, passed by the Hon'ble Supreme Court of India in Civil Appeal No. 2723 of 2022 being Sabyasachi Mullick Chowdhury vs. The State of West Bengal and Others, the Judgment dated January 03, 2022, passed in Original Application No. 25/16/EZ had attained its finality as no one else had challenged the said order dated January 03, 2022. Moreover, the Applicant herein had himself participated in the entire proceeding of OA 25/16/EZ, being the Secretary of the Metropolitan Cooperative Housing Society and was aware of the order dated January 03, 2022, passed by the Hon'ble National Green Tribunal. Therefore, the contention of the Applicant that the Eight Member Joint Committee was formed only by giving names of the offices without specifying as to which officers are required to be present in the Committee cannot not be accepted at this belated stage. More so, having participated in proceedings before such eight member joint committee without taking any point of maintainability, the applicant have their rights, if any.



14. The Applicant's second leg of alleged contention is that he was completely unaware of the constitution of the Eight Member Joint Committee by the Hon'ble National Tribunal vide its order dated January 03, 2022 and that he could not take part in the proceeding of Original Application No. 25/16/EZ. The Respondent No. 10 submits that such allegation of the Applicant herein is incorrect and have been made in complete suppression of facts and is based on utter falsehood and done with the objective of misleading this Hon'ble Tribunal, the same would be evident from the facts laid down herein below:

- I. Proceeding in Original Application No. 25/16/EZ:
 - a. It is stated that the Applicant herein being the Secretary of the Metropolitan Cooperative Housing Society have participated in the proceedings related to Original Application No. 25/16/EZ from the very beginning.

- b. That the Affidavit in Opposition filed by the Metropolitan Cooperative Housing Society in Original Application No. 25/16/EZ was affirmed by its Secretary, Mr. Sanjib Poddar, being the Applicant herein. The said Affidavit would reflect that the Secretary Mr. Sanjib Poddar was aware of the entire facts and circumstances of the case and accordingly he was competent to file the said Affidavit in Opposition on behalf of the Metropolitan Cooperative Housing Society.

A copy of the said Affidavit in Opposition, signed and affirmed by the Applicant herein on behalf of the Metropolitan Cooperative Housing Society is annexed herewith and marked as Annexure – E.

- c. That in compliance of the order dated November 23, 2020, passed by the Hon'ble Tribunal in Original Application No. 25/16/EZ wherein cost was imposed upon the Metropolitan Cooperative Housing Society for non-submission of their Affidavit in Opposition, the Applicant herein signed a cheque of Rs. 20,000/- dated January 05, 2021 on behalf of the Metropolitan Cooperative Housing Society and paid the same to the Respondent No. 10 herein.

A copy of the order dated November 23, 2020, passed by the Hon'ble Tribunal in Original Application No. 25/16/EZ, a copy of the cheque of Rs. 20,000/- dated January 05, 2021 issued on behalf of the Metropolitan Cooperative Housing Society signed by the Applicant herein are collectively annexed herewith and marked as Annexure – F (Colly.).

- d. The Applicant herein have also signed a response on behalf of the Metropolitan Cooperative Housing Society dated August 05, 2019 in IA 21/2019, being proceeding u/s 26 of the National Green Tribunal Act.

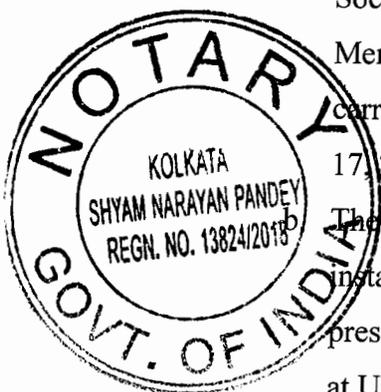
A copy of the said response dated August 05, 2019 filed in IA 21/2019 is annexed herewith and marked as Annexure – G.

II. Interaction with the Eight Member Joint Committee:

- a. The Applicant herein being the Secretary of the Metropolitan Cooperative Housing Society was in receipt of the letter dated February 16, 2022 issued by the Eight Member Joint Committee wherein he was requested to attend the site inspection carried out by the Eight Member Joint Committee for representation on February 17, 2022.

The second para of point 8 of the Joint Committee report placed in Page 178 of the instant Application states that Sanjib Poddar, being the Applicant herein, was present with the committee members/inspection team /survey team on 17.02.2022 at Ukil Bheri during the time of survey and inspection.

- c. In page No.234 of the instant Application, the attendance sheet for the Joint committee /survey team during visit to Ukil Bheri on 17.02.2022 is attached. In the 5th line of the attendance sheet Sanjib Poddar, the Applicant herein, has signed confirming his presence during the joint committee designated survey/field visit.
- d. The Eight Member Joint Committee issued a letter dated April 27, 2022 to the Applicant herein being the Secretary of the Metropolitan Cooperative Housing



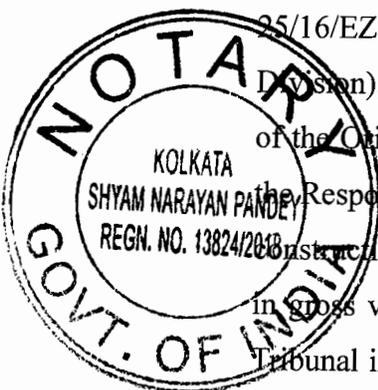
Society and directed him to submit necessary documents in support of his claim before the Eight Member Joint Committee on May 06, 2022, and to appear before the Eight Member Joint Committee on May 11, 2022.

- e. The Applicant herein being the Secretary of the Metropolitan Cooperative Housing Society submitted the documents on May 11, 2022, and subsequently requested for fixation of another hearing date before the Eight Member Joint Committee after June 10, 2022.
- f. The Advocate on behalf of the Applicant herein being the Secretary of the Metropolitan Cooperative Housing Society appeared before the Eight Member Joint Committee on May 17, 2022.
- g. The Applicant also issued a letter on September 05, 2022, to the Eight Member Joint Committee requesting for a hearing and the same was accepted by the Eight Member Joint Committee pursuant to which the Eight Member Joint Committee issued a notice dated September 14, 2022, wherein it was stated that on the request of the Applicant herein one further hearing was organized by the Eight Member Joint Committee on September 23, 2022.

A copy of the notice of meeting dated September 14, 2022 is annexed herewith and marked as Annexure – H.

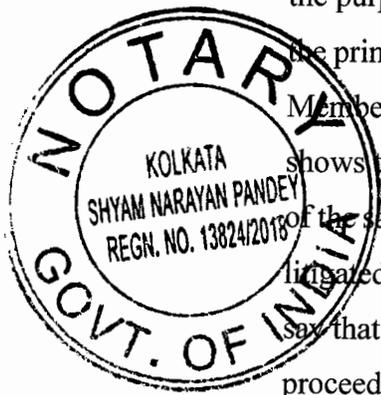
- h. That on September 23, 2022, the Applicant herein along with his Advocate appeared before the Eight Member Joint Committee made his submissions and again submitted documents in support of his claim before the Eight Member Joint Committee.

15. In view of the above facts it would be evident that the Applicant herein by alleging the fact on Affidavit in this instant application that he was not a party to the original application being OA25/16/EZ, and that the Applicant was completely unaware of the constitution of the committee, have committed perjury. It would be pertinent to mention that the Applicant herein on an earlier occasion suppressed the pendency of the Original Application No. 25/16/EZ and filed a Title Suit No. 1041 of 2019 before the Learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas, and in utter suppression of the pendency of the Original Application No. 25/16/EZ, secured an ad-interim injunction order against the Respondent herein from compelling the Applicant herein to stop commencement of the construction work in his Plot No. CZ/20A. Such ad-interim was secured by the Applicant in gross violation of the status quo order dated April 23, 2018, passed by this Hon'ble Tribunal in Original Application No. 25/16/EZ. However, the said Title Suit No. 1041 of 2019 was rejected on March 30, 2021 by the Learned Civil Court at Alipore, after having heard the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, filed by the Respondent herein. Due to such act of suppression and perjury carried out by the Applicant in filing Title Suit No. 1041 of 2019, the Respondent herein was constrained to move an application under Section 340 of the Code of Criminal Procedure, 1973, being Misc. Case No. 70 of 2021 pending before the Learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas. Copy of the order dated March 30, 2021, passed in Title



Suit No. 1041 of 2019 and copy of the case status of Misc. Case 70 of 2021 downloaded from the website of e-courts, are collectively annexed herewith and marked as Annexure – I.

16. The Applicant's third leg of alleged contention is that the document submitted by him were not considered by the Eight Member Joint Committee. It is stated that the proceeding of Original Application No. 25/16/EZ took place for six years from January 25, 2016 to January 03, 2022 and all the documents submitted by the parties including the Applicant herein being the Secretary of the Metropolitan Cooperative Housing Society and other authorities were duly considered by the National Green Tribunal by passing the final order dated January 03, 2022. Even the documents submitted by the Applicant herein being the Secretary of the Metropolitan Cooperative Housing Society on May 25, 2022, before the Eight Member Joint Committee was taken on record as would be evident from the final report of the Eight Member Joint Committee. Moreover, on September 23, 2022, the Applicant along with his Advocate again appeared and submitted written documents in support of their claim before the Eight Member Joint Committee. On perusal of such documents and upon considering the same, the Joint Committee observed that as there were no new documents/evidence adduced by the Applicant herein the Joint Committee decided to follow the decision taken by them in their final meeting dated July 22, 2022. Thus, question of non-consideration on the part of the Eight Member Joint Committee regarding the documents submitted by the Applicant does not arise. Moreover, the Eight Member Joint Committee was not delegated with the power of judiciary, the same was formed for the purpose of fact finding and to take action upon verification of such facts and therefore the principle of natural justice does not arise with respect to the decision taken by the Eight Member Joint Committee after verification of several government records which clearly shows that Dag No. 267 and 268 is a waterbody and that there is no conversion certificate of the said dag numbers from 'Beel' to any other classification. A person having throughout litigated before a forum by availing all possible opportunities cannot now turn around and say that he was appearing in some different capacity and as such was unaware of the entire proceedings. Law comes to the rescue of the vigilant.



17. It is also stated that right to residence being a fundamental right under Article 21 of the Constitution of India cannot be claimed by a citizen while they have encroached over the land of waterbody and have carried out illegal construction thereon. Moreover, longer period of encroachment as has been alleged by the Applicant herein is no defense for illegal filling up of a waterbody and carrying out illegal construction thereon, and the same does not give any equity to the Applicant. It is further stated that, waterbodies are required to be retained and such requirement is also envisaged under Article 21 as right to water and quality life. Moreover, Article 51A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers (natural waterbodies) and wildlife.

18. It is stated that as per Clause 2(g) of the Wetlands (Conservation and Management) Rules, 2017, river channels, paddy fields, human made waterbodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purpose, have been excluded from the definition of wetland. However, Ukil Bheri is neither human made waterbody/tank nor a structure constructed for aquaculture, it is a natural waterbody wherein pisciculture was carried out and therefore it cannot be said that the same is excluded from the definition of waterbody as stipulated under Clause 2 (g) of the Wetlands (Conservation and Management) Rules, 2017. Moreover, as both Dag No. 267 and 268 is classified as waterbodies as per the government records the question of deciding whether Ukil Bheri should be exempted from wetland or not does not arise.
19. That the construction of the building which has been carried out by the Applicant on Plot No. CZ-20A which is on Dag No. 268, as per the report of the Eight Member Joint Committee, is governed by the West Bengal Municipal (Building) Rules, 2007. That as per subrule 3 of Rule 8 of the West Bengal Municipal (Building) Rules, 2007, there is a clear bar in filling up canal, pond, waterbody, wetland, rivulets, jhora, water source, natural spring, streams, drains and culverts. It is clear that the Applicant is also in contravention of the said subrule 3 of Rule 8 of the West Bengal Municipal (Building) Rules, 2007 as Dag No. 268 being a waterbody as per Government records could not have been filled up illegally for the purpose of carrying out illegal construction thereon.
20. It is stated that there is no reasonable justification or explanation given by the Applicant herein in preferring the said Application. The said Application is bereft of any plausible reason and/or ground that would warrant this Hon'ble Tribunal to exercise discretion in favour of the Applicant and allow the Application. No ground, far less sufficient ground is disclosed by the Applicant herein in preferring the instant Application. The Prayer made by the Applicant herein in the instant Application should therefore be rejected. The application is not in proper form.
21. Without prejudice to the aforesaid I now proceed to deal with and/or traverse only those averments and allegations made in the said application which are material for proper adjudication of the instant case. Save what are matters of record, what can be substantiated therefrom and except what are specifically admitted by me hereunder, I deny and dispute each and every statement and/or allegation made in the said application in seriatim as if the same are specifically traversed. Any statement or allegation made in the said application and not specifically dealt with by me hereinunder should not be deemed to have been admitted or accepted by me in any manner whatsoever.
22. With reference to Paragraph No. 3, save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed. It is denied that the Applicant herein was not a party to



the Original Application No. 25/16/EZ, neither was any notice sent by the Eight Member Joint Committee to the Applicant herein giving an opportunity of hearing to the Applicant, as alleged or at all. It is also denied that the Joint Committee had simply denied the submission of the Applicant without considering the submissions and thrusting the post facto decision of the Committee on the Applicant, as alleged or at all. It is stated that the Applicant herein being the Secretary of the Metropolitan Cooperative Housing Society have participated in the proceedings relating to the Original Application No. 25/16/EZ from the very beginning and the same has been stated herein above and documents showing such participation of the Applicant have also been annexed by the Respondent No. 10 herein. It is denied that there was no meeting in terms and as per the direction of the Hon'ble Tribunal in order dated 03.01.2022 was held by the specified and identified persons mentioned in the order of Hon'ble Tribunal, so the decision of committee in all the meetings are nullity in the eye of law and void ab initio, as alleged or at all. It is denied that the Committee was not constituted as per the order of the Hon'ble Tribunal as none from the National Wetland Authority was present in any of the meetings of the committee, as alleged or at all. It is stated that the Respondent herein have clearly demonstrated in this instant Affidavit that the National Wetland Committee (Authority) was duly represented by its nominated member/official in all the meetings of the Committee. It is denied that the decision of the Joint committee was not formed as the direction of the Hon'ble Tribunal in order dated 03.01.2022 and is null and void, as alleged or at all.

23. With reference to Paragraph No. 4(1) to 4 (2), save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed.

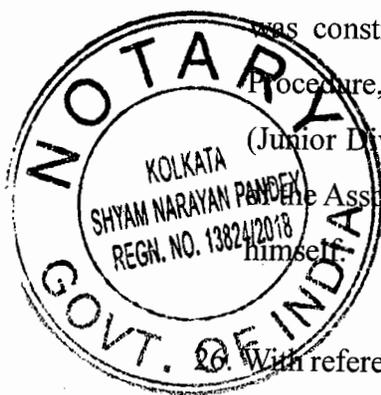
24. With reference to Paragraph No. 4(3) to 4 (4), save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed. It is denied that the Applicant was not a party to the proceedings before the Hon'ble Tribunal in the matter of the Original Application no.25/16/EZ, as alleged or at all. It is stated that the Applicant herein being the Secretary of the Metropolitan Cooperative Housing Society have participated in the proceedings relating to the Original Application No. 25/16/EZ from the very beginning and the same has been stated herein above and documents showing such participation of the Applicant have also been annexed by the Respondent No. 10 herein. It is also denied that the Applicant was completely unaware about the constitution of the committee constituted by the Hon'ble National Green Tribunal vide order dated 03/01/22 neither was the report of the Committee served to your Applicant by the said committee, as alleged or at all. It is stated that the Applicant herein have interacted with the Eight Member Joint Committee on various occasions as demonstrated hereinabove by the Respondent No. 10.



25. With reference to Paragraph No. 4(5) to 4 (6), save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation

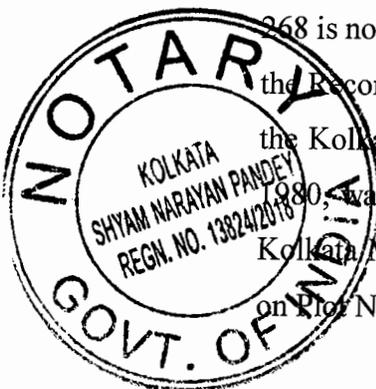
and/or contention is denied and disputed. It is denied that the inspection carried out by the Eight Member Joint Committee on February 17, 2022, was at the back of the Applicant and that the Applicant was clueless about the outcome of such application, as alleged or at all. It is stated that the Applicant herein being the Secretary of the Metropolitan Cooperative Housing Society was in receipt of the letter dated February 16, 2022 issued by the Eight Member Joint Committee wherein he was requested to attend the site inspection carried out by the Eight Member Joint Committee on February 17, 2022, the second para of point 8 of the Joint Committee report placed in Page 178 of the instant Application states that Sanjib Poddar, being the Applicant herein, was present with the committee members/inspection team/survey team on 17.02.2022 at Ukil Bheri during the time of survey and inspection. In page No.234 of the instant Application, the attendance sheet for the Joint committee /survey team during visit to Ukil Bheri on 17.02.2022 is attached. In the 5th line of the attendance sheet Sanjib Poddar, the Applicant herein, has signed confirming his presence during the joint committee designated survey/field visit. It is stated that the Applicant herein by alleging the fact on Affidavit in this instant application that he was not a party to the original application being OA25/16/EZ, and that the Applicant was completely unaware of the constitution of the committee, have committed perjury. It would be pertinent to mention that the Applicant herein on an earlier occasion suppressed the pendency of the Original Application No. 25/16/EZ and filed a Title Suit No. 1041 of 2019 before the Learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas, and in utter suppression of the pendency of the Original Application No. 25/16/EZ, secured an ad-interim injunction order against the Respondent herein from compelling the Applicant herein to stop commencement of the construction work in his Plot No. CZ/20A. Such ad-interim was secured by the Applicant in gross violation of the status quo order dated April 23, 2018, passed by this Hon'ble Tribunal in Original Application No. 25/16/EZ. However, the said Title Suit No. 1041 of 2019 was rejected on March 30, 2021 by the Learned Civil Court at Alipore, after having heard the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, filed by the Respondent herein. Due to such act of suppression and perjury carried out by the Applicant in filing Title Suit No. 1041 of 2019, the Respondent herein was constrained to move an application under Section 340 of the Code of Criminal Procedure, 1973, being Misc. Case No. 70 of 2021 pending before the Learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas. The applicant being a Secretary of the Association and/or Society choose to espouse the cause of all the members including himself.

26. With reference to Paragraph No. 4(7) to 4 (9), save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed.



27. With reference to Paragraph No. 4(10)(a) to 4(10)(a)(viii), save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed.

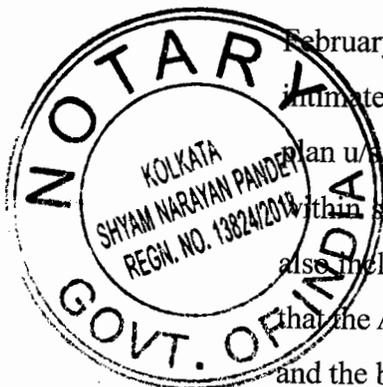
28. With reference to Paragraph No. 4(10)(a)(ix) to 4(10)(a)(xviii), save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed. It is stated that the Eight Member Joint Committee was formed by the Hon'ble Tribunal as a fact finding body and for implementation of preventive measures and restoration of the waterbody. It is stated that in the third meeting dated March 22, 2022, held by the Eight Member Joint Committee, Sri Bhaskar Bhattacharyya, Chief Manager, Revenue South, Kolkata Municipal Corporation have submitted that the mutation of the plots which are under the jurisdiction of the Kolkata Municipal Corporation are assessed and mutated on the basis of sale deed and other documents submitted by the Applicant and that the Kolkata Municipal Corporation does not check any record of the applied plot from the end of the Block Land and Land Reforms Office (BL&LRO). The Chief Manager, Revenue South, Kolkata Municipal Corporation further went on to state that in the case of the Metropolitan Cooperative housing Society, in particular, Kolkata Municipal Corporation made the assessment on the basis of the sale deed and thereafter the sanction plan was issued to the plot holders. The Kolkata Municipal Corporation also submitted a report before the Eight Member Joint Committee wherein the Kolkata Municipal Corporation itself have admitted that upon coming to the notice that several buildings were constructed within the periphery of Dag No. 267 and 268 which has been demarcated by District Land and Land Reforms Officer, 24 Parganas (South), dated February 16, 2022, vide no. MISC 885/2022 as waterbody, Kolkata Municipal Corporation intimated stop construction notice to such premises and notice for revocation of sanction plan u/s 397 of the Kolkata Municipal Corporation Act, 1980. It would be trite to state that within such premises, Plot No. CZ/20/A/B which is the plot of the Applicant herein was also included and therefore it would be futile for the Applicant to bank upon the argument that Plot No. 20A in Dag No. 268 is not within the area in dispute and that the said Dag No. 268 is pukur par recorded in the Record of Rights prepared by the Land Reforms Department mutated and assessed by the Kolkata Municipal Corporation. As the notice u/s 397 of the Kolkata Municipal Act, 1980, was issued to the Applicant herein due to perpetrating misrepresentation upon the Kolkata Municipal Corporation for the purpose of issuance of the building sanction plan on Plot No. CZ/20/A/B.



29. With reference to Paragraph No. 4(10)(a)(xix) to 4(10)(a)(xxiv), save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed. It is stated that the Kolkata Municipal Corporation whom the Applicant herein is referring to as an outsider was never a member of the Eight Member Joint Committee. It is stated that the Complete Mouza Nimokpoktan, J.L. No. 1 has been integrated into the jurisdiction of Ward No. 57 of Kolkata Municipal Corporation as per the Kolkata Municipal Corporation Act, 1980 and it was for the purpose of procuring relevant government documents with respect to Dag No. 267 and 268 of Mouza Nimokpoktan, the Kolkata Municipal Corporation summoned by the Eight

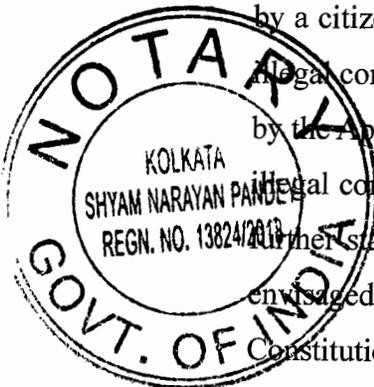
Member Joint Committee on various meetings. The Kolkata Municipal Corporation was further required to submit further reports to the Eight Member Joint Committee with respect to the process of the issuance of the sanction plan, land classification record of Dag No. 267 and 268 and the process followed by the Kolkata Municipal Corporation for mutating and assessing the unassessed plots which lies within the jurisdiction of Kolkata Municipal Corporation. Therefore, the said outsiders as referred to by the Applicant herein were neither member of the Eight Member Joint Committee and nor were they involved in the decision-making process of the Eight Member Joint Committee, they were only present before the Eight Member Joint Committee for the purpose of submitting certain government documents and reports as asked for by the Committee.

30. With reference to Paragraph No. 4(10)(a)(xxv) to 4(10)(a)(xxviii), save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed. It is stated that in the third meeting dated March 22, 2022, held by the Eight Member Joint Committee, Sri Bhaskar Bhattacharyya, Chief Manager, Revenue South, Kolkata Municipal Corporation have submitted that the mutation of the plots which are under the jurisdiction of the Kolkata Municipal Corporation are assessed and mutated on the basis of sale deed and other documents submitted by the Applicant and that the Kolkata Municipal Corporation does not check any record of the applied plot from the end of the Block Land and Land Reforms Office (BL&LRO). The Chief Manager, Revenue South, Kolkata Municipal Corporation further went on to state that in the case of the Metropolitan Cooperative housing Society, in particular, Kolkata Municipal Corporation made the assessment on the basis of the sale deed and thereafter the sanction plan was issued to the plot holders. The Kolkata Municipal Corporation also submitted a report before the Eight Member Joint Committee wherein the Kolkata Municipal Corporation itself have admitted that upon coming to the notice that several buildings were constructed within the periphery of Dag No. 267 and 268 which has been demarcated by District Land and Land Reforms Officer, 24 Parganas (South), dated February 16, 2022, vide no. MISC 885/2022 as waterbody, Kolkata Municipal Corporation intimated stop construction notice to such premises and notice for revocation of sanction plan u/s 397 of the Kolkata Municipal Corporation Act, 1980. It would be trite to state that within such premises, Plot No. CZ/20/A/B which is the plot of the Applicant herein was also included and therefore it would be futile for the Applicant to bank upon the argument that the Assessment Record showed that the Land tax was paid by the Applicant from 1990 and the building was constructed as per sanction plan and not on wetland. As the notice u/s 397 of the Kolkata Municipal Act, 1980, was issued to the Applicant herein due to perpetrating misrepresentation upon the Kolkata Municipal Corporation for the purpose of issuance of the building sanction plan on Plot No. CZ/20/A/B. It is also stated that right to residence being a fundamental right under Article 21 of the Constitution of India cannot be claimed by a citizen while they have encroached over the land of waterbody and have carried out illegal construction thereon. Moreover, longer period of encroachment as has been alleged by the Applicant herein is no defense for illegal filling up of a waterbody and



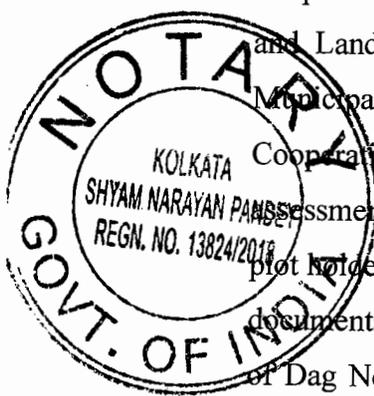
carrying out illegal construction thereon, and the same does not give any equity to the Applicant. It is further stated that, waterbodies are required to be retained and such requirement is also envisaged under Article 21 as right to water and quality life. Moreover, Article 51A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers (natural waterbodies) and wildlife.

31. With reference to Paragraph No. 4(10)(a)(xxix) to 4(10)(a)(xxx), save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed. It is stated that as per Clause 2 (g) of the Wetlands (Conservation and Management) Rules, 2017, river channels, paddy fields, human made waterbodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purpose, have been excluded from the definition of wetland. However, Ukil Bheri is neither human made waterbody/tank nor a structure constructed for aquaculture, it is a natural waterbody wherein pisciculture was carried out and therefore it cannot be said that the same is excluded from the definition of waterbody as stipulated under Clause 2 (g) of the Wetlands (Conservation and Management) Rules, 2017. Moreover, as both Dag No. 267 and 268 is classified as waterbodies as per the government records the question of deciding whether Ukil Bheri should be exempted from wetland or not does not arise. That the construction of the building which has been carried out by the Applicant on Plot No. CZ 20A which is on Dag No. 268, as per the report of the Eight Member Joint Committee, is governed by the West Bengal Municipal (Building) Rules, 2007. That as per subrule 3 of Rule 8 of the West Bengal Municipal (Building) Rules, 2007, there is a clear bar in filling up canal, pond, waterbody, wetland, rivulets, jhora, water source, natural spring, streams, drains and culverts. It is clear that the Applicant is also in contravention of the said subrule 3 of Rule 8 of the West Bengal Municipal (Building) Rules, 2007 as Dag No. 268 being a waterbody as per Government records could not have been filled up illegally for the purpose of carrying out illegal construction thereon. It is also stated that right to residence being a fundamental right under Article 21 of the Constitution of India cannot be claimed by a citizen while they have encroached over the land of waterbody and have carried out illegal construction thereon. Moreover, longer period of encroachment as has been alleged by the Applicant herein is no defense for illegal filling up of a waterbody and carrying out illegal construction thereon, and the same does not give any equity to the Applicant. It is further stated that, waterbodies are required to be retained and such requirement is also envisaged under Article 21 as right to water and quality life. Moreover, Article 51A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers (natural waterbodies) and wildlife.



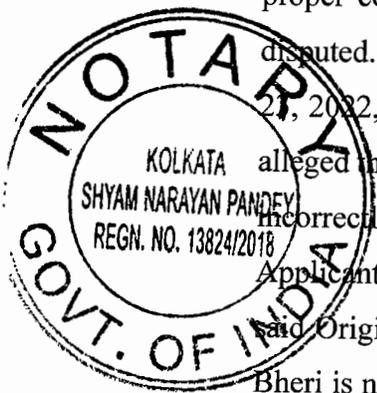
32. With reference to Paragraph No. 4(10)(a)(xxxii) to 4(10)(a)(xxxv), save what are matter of records and save and except what appears from true and proper construction thereof,

each and every allegation and/or contention is denied and disputed. It is stated that after the first meeting on January 25, 2022, held by the Eight Member Joint Committee, it was decided that the Kolkata Municipal Corporation and the Additional District Magistrate & District Land and Land Reforms Officer, South 24 Parganas would jointly conduct survey to ascertain on which Dag No. the said waterbody "Ukil Bheri" falls and also ascertain the status of Dag Nos. 267 and 268 of Mouza Nimokpoktan, under P.S. Pragati Maidan, Ward No. 57, Kolkata Municipal Corporation. Pursuant to such decision, the Additional District Magistrate & District Land and Land Reforms Officer, South 24 Parganas, conducted a field enquiry on R.S. Dag No. 267 and 268 from February 7, 2022, to February 11, 2022 and submitted a report on February 16, 2022. That as per the said report dated February 16, 2022, it was submitted and the classification of area in question that is Dag No. 267 and 268 are recorded as 'Beel' and as per the said report dated February 16, 2022, it was also stated that the land classification of Dag No. 267 and 268 were not converted by the District Administration of South 24 Parganas. Pursuant to such report being submitted before the Eight Member Joint Committee, in its meeting dated March 15, 2022, scrutinized the documents submitted by Kolkata Municipal Corporation in respect of Premises No. 9B 14A and 14B situated on R.S. Dag No. 268 and upon scrutinizing the said documents and also noticing that both R.S. Dag No. 267 and 268 was recorded as 'Beel', the Kolkata Municipal Corporation was further directed to provide relevant documents to show whether the land use pattern of the said Dag No. 267 and 268 was changed from 'Beel' to anything else on March 22, 2022 when the third meeting of the Joint Committee was held. The officers of Kolkata Municipal Corporation were asked to provide necessary documents indicating the procedure followed by the Kolkata Municipal Corporation for permitting construction of buildings on R.S. Dag No. 267 and 268 of Mouza Nimokpoktan to which Sri Bhaskar Bhattacharyya, Chief Manager, Revenue South, Kolkata Municipal Corporation have submitted that the mutation of the plots which are under the jurisdiction of the Kolkata Municipal Corporation are assessed and mutated on the basis of sale deed and other documents submitted by the Applicant and that the Kolkata Municipal Corporation does not check any record of the applied plot from the end of the Block Land and Land Reforms Office (BL&LRO). The Chief Manager, Revenue South, Kolkata Municipal Corporation further went on to state that in the case of the Metropolitan Cooperative housing Society, in particular, Kolkata Municipal Corporation made the assessment on the basis of the sale deed and thereafter the sanction plan was issued to the plot holders. It is stated that the Kolkata Municipal Corporation have failed to submit any documents before the Eight Member Joint Committee to show that the Land Classification of Dag No. 267 and 268 was converted to 'Beel' to anything else. On the contrary, the Kolkata Municipal Corporation have conceded to such above mentioned facts and stated that upon coming into the notice of the Corporation that several buildings were constructed within the periphery of Dag No. 267 and 268 as was demarcated by the District Land and Land Reforms Officer, 24 Parganas (South) in its report dated February 16, 2022, the Kolkata Municipal Corporation have intimated stop Construction Notice and revocation of sanction plan u/s 397 of the Kolkata Municipal Corporation Act, 1980, to Premises No.



A/P-CZ-23, A/P-34/B, CZ-20A/B, A/P-25/A, A/P-38/A, CZ/15A/B and A/P-CZ-18. The Kolkata Municipal Corporation have also submitted a map which shows that filling was done on the eastern side of the "Ukil Bheri". Thus, the documents that were available with the Eight Member Joint Committee and such documents being part of the Government records cannot be refuted by the Applicant just for the asking. The map prepared by the Additional District Magistrate & District Land and Land Reforms Officer, South 24 Parganas and the Kolkata Municipal Corporation was done by way of proper demarcation on the ground and then by using the reference of such maps and coupled with the images compared for the year 2013 and 2022 captured from the Google Earth Imagery, the Eight Member Joint Committee came to the conclusion that there has been illegal construction on the waterbody and the premises of the Applicant being CZ20A/B is a part of such illegal construction.

33. With reference to Paragraph No. 5 of the said application, I submit that the grounds set forth in the sub paragraphs thereunder are thoroughly misconceived, baseless, devoid of any substance or any merit and do not warrant for any consideration by this Hon'ble Tribunal.
34. With reference to Paragraph No. 6 of the said application, save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed.
35. With reference to Paragraph No. 7 and 8 of the said application, save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed. It is stated that the facts and the grounds stated in the said Application does not warrant for any prayer being passed in favour of the Applicant by this Hon'ble Tribunal.
36. With reference to Paragraph 1 and 2 of the said Supplementary Affidavit filed by the Applicant, save what are matter of records and save and except what appears from true and proper construction thereof, each and every allegation and/or contention is denied and disputed. It appears that the Applicant have relied upon a representation dated September 21, 2022, filed by him before the Eight Member Joint Committee, wherein the Applicant alleged that the Hon'ble Tribunal while passing the final order dated January 03, 2022 have incorrectly observed that the Ukil Bheri prima facie appears to be a part of wetland. The Applicant in its representation dated September 23, 2022 further went on to allege that the said Original Application No. 25/16/EZ, was barred by limitation, and that the said Ukil Bheri is not a wetland. It is stated that such allegation of the Applicant with respect to the correctness of the order dated January 03, 2022, could not have been entertained by the Eight Member Joint Committee and if the Applicant was aggrieved by such order dated January 03, 2022 passed in Original Application No. 25/16/EZ, the Applicant could have availed the remedy of filing appeal against the said order, however, the Applicant have



refrained from doing so. With respect to the prayer of the Applicant in his representation dated September 23, 2022 for consideration of revenue records and lease deeds including any demarcation of the said impugned Dag Nos. 267 and 268, it is submitted that the Eight Member Joint Committee have elaborately considered such lease deeds, revenue records, records available with the BL&LRO Kolkata, report of the ADM&DL&LRO dated February 16, 2022 and other relevant records which have been elaborately described in the report of the Eight Member Joint Committed dated November 04, 2022, and thereafter took the unanimous decision in its final meeting held on July 27, 2022. It would be needless to mention that demarcation of the Dag No. 267 and 268 was also carried out by the ADM&DL&LRO during its enquiry from February 7, 2022 to February 11, 2022 and the same is also a part of the report dated February 16, 2022 of the ADM&DL&LRO, and such report dated February 16, 2022 was elaborately discussed, considered and accepted by the Eight member Joint Committee.

37. In the facts and circumstances of the case as stated hereinabove, I submit that this application is absolutely misconceived, purposive and is liable to be dismissed.

38. The statements made in foregoing paragraphs 1, 2, 3, 4, 5, 6(b), 6(c), 7, 8, 9, 10, 11, 13, 14I(a), 14II(a) to (f) and (h), 16 to 36 are true to my knowledge, those made in paragraphs 6(a), 6(c), 6(d), 12, 14I(b) to (d), 14II(a) and 15 are true to my information derived from the records which I verily believe to be true and those made in paragraphs 37 and 38 are my humble submissions before this Hon'ble Tribunal.

Sabyasachi Mukherjee Chowdhury

Pre-identified by me
Sandipan Samanta
Advocate

Deponent is known to me
Clerk to
Advocate

Solemnly affirmed before me
On the _____ day of September, 2023

BEFORE ME

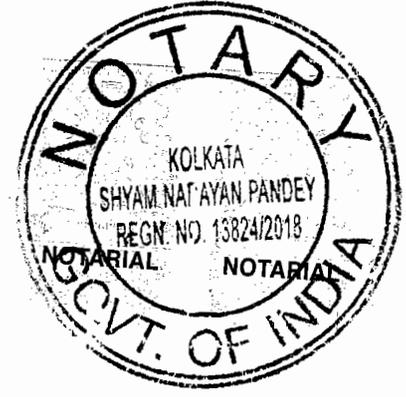


NOTARY

Solemnly Affirm & Declared Before Me on Identification of Ld. Advocate

Shyam Narayan Pandey
SHYAM NARAYAN PANDEY
NOTARY, GOVT. OF INDIA
REGN. NO. 13824/2018

13.09.2023



VERIFICATION

Verified at Kolkata on this the day of September, 2023, that the contents of the above affidavit are true and correct to my knowledge and as per official records maintained in the routine course of business. No part of the above affidavit is false and nothing material has been concealed there from.

Sampasachi Mukherjee Chowdhary

DEPONENT

*Identified by me,
Sandipon Somanta,
Adv.*



Ref: O.A. No. 25/2016/SZ
Babysachi Mallik Chowdhury
Vs.
State of West Bengal & Ors.

Re: Ukil Bheri, situated at Mouza: Nimbokpattan, Parganah:
Dihl Panohangangram, near Chingrihatu (Canal South
Road), P.S. Pragati Maidan, Ward No. 05?

Order No. 1
19/12/2022

Pursuant to the order dated 03.01.2022 of the Hon'ble National Green Tribunal passed in the
aforementioned matter wherein Hon'ble Tribunal directed the Committee to take steps in terms of
law, operative part of the said order inter alia as follows:

*In view of above, we consider it necessary to direct an eight-member Joint
Committee of National Wetland Authority, State Wetland Authority, CPCB, MoEF&CC,
State PCB, Director Environment, West Bengal District Magistrate and SSP, South 24
Parganas to ascertain the factual position about the status and extent of the wetland and
whether prohibition against construction applies to the area in question. If prohibition is
applicable, remedial action for protection of the wetland in question be taken by the
concerned statutory authority. The CPCB and the State Wetland Authority will be the nodal
agency jointly for coordination and compliance. The meeting of the Committee may be held
within two weeks. The Committee may undertake visit to the site and interact with the
stakeholders including the applicant the applicant and the Project Proponents. The
Committee may thereafter, take further measures in accordance with law. The Committee
may conclude its proceedings preferably within three months.*

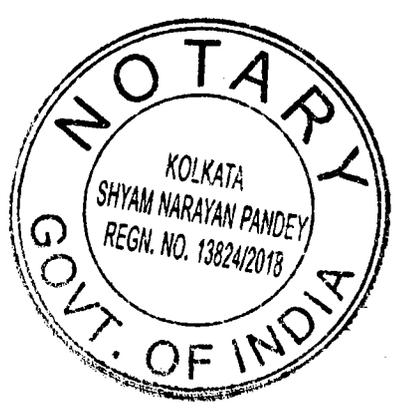
*In view of our prima facie finding that the area is wetland and prohibition against
construction is applicable, pending further action, no further activity be undertaken in the
area in question, including in Dog no. 267 and 268. If the Committee finds the constructions
are in prohibited area, the Committee will ensure removal thereof for restoration of the
wetland in question."*

In view of the said order, Committee has submitted a report in regards to minutes of the meeting
held on 27.07.2022. On the basis of said report, said Committee was given the following directions
upon the Corporation which are quoted herein below:

- Plot Nos. CZ9B, CZ14A, CZ14B, CZ15A, CZ20A, CZ21A and CZ26A/B/C have been created
after 2013 by filling up of waterbody i.e. Ukil Bheri. Hence, they need to be demolished.
- The KMC shall take steps to immediately restore the water body at plot nos. CZ9B, CZ14A,
CZ14B, CZ15A, CZ20A, CZ21A and CZ26A/B/C in compliance with the Order of the Hon'ble
National Green Tribunal dated 03.01.2022.
- After restoration of the waterbody, the KMC shall take management control of the same in
accordance with the West Bengal Inland Fisheries Act, 1984.
- The KMC will demarcate Ukil Bheri boundary with concrete pillars and be the co-trustees
with the help of ADM&LR, Dist South 24 Parganas.

Translated/Legible Copy attached

Commissioner



- 27 -

Annexure -H

Ref.: O.A. No. 25/2016/EZ
 Sabyasachi Mallick Chowdhury
 -Vs.-
 State of West Bengal & Ors.

Re.: Ukil Bhori situated at Mouza Nimokpokkam Pagladangn Dihi
 Panchannagram, near Chingrighata (Canal South Road), P.S.
 Pragati Maidan, Ward No.057.

Order No. 1
 19/12/2022

Pursuant to the order dated 03.01.2022 of the Hon'ble National Green Tribunal passed in the aforementioned matter wherein Hon'ble Tribunal directed the committed to take steps in terms of law, operative part of the said order inter alia as follows :-

"In view of above, we consider it necessary to direct on eight member Joint Committee of National wetland Authority, State Wetland, Authority, CPCB No.EFFSCO, State PCB, Director Environment, West Bengal District Magistrate and SSP, South 24 Parganzas to ascertain the factual position about the status and extent of the wetland and whether prohibition against construction applies to the area in question. If prohibition is applicable remedial action for protection of the wetland in question be taken by the concerned statutory authority. The CPCB and the State Wetland Authority will be the nodal agency jointly for coordination and complied, The meeting of the committee may be held within two weeks. The committee may undertake visit to the site and interest with the stakeholder including that applicant the applicant and the project proponent. The committee may thereafter, take further measure in according with law. The committee may conclude its proceedings preferably within three months.

In view of our prima facie/inding that the area is wetland and prohibition against construction is applicable, pending further action no further activity be undertaken in the area in question, including in Dag No. 267 and 268. If the committee guide the construction are ain prohibited ara. The committee will insure renewal thereof for restoration of the wetland in question."

In view of the said order, Committee has submitted proposit in regards to minutes of the meeting hold on 27.07.2022, On the basis of paid report, said Committee was given the following directions upon the Corporation which are quoted herein below :

- Plot Nos. CZ9B CZ18A CZ14B CZ125B CZ20A and CZ2005A/110 have been created after 2018 by filing up of water body i.e. Ukil Bhori licence they signed to be demolished.
- The KMC shall take steps to immediately restore the water body at plot nos. CZ9BCZ14A CZ14B CZ15A CZ20A CZ21A and CZ26A/B/C in compliance with the order of the Hon'ble National Green Tribunal dated 03.03.2022.
- After restoration of the waterbody, KMC shall take management control of the same in accordance with the West Bengal Inland "fishership Act, 1984.
- The KMC will demarcate Ukil Bhori boundary with separate pillar and to the save signed with the help of ADMY&LR, Dist South 24 Parganas.



Handwritten notes and scribbles, including the number '150' and illegible signatures.

The KMC will submit a compliance report after restoration of the above mentioned plots before the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata within a period of 6 months.

In view of above notice issued by the Executive Engineer (Bldg.), Br. VII to the plot holders (four in number) to appear before me with relevant documents in support of their submission why KMC will not proceed as per section 397 of the K.M.C. Act, 1980 upon the said plot holders and to take steps accordingly.

At the very outset of the hearing on 18.11.2022, Lt. Advocate Mr. Pounhall Banerjee, represented on behalf of two plot holders namely, Sanjib Poddar (Plot No. CZ-20A/B, Canal South Road) and Supriya Saha (Plot No. CZ-08/B, Canal South Road), verbally submits that she has filed two writ applications being WPA No. 20602 of 2022 (Sanjib Poddar Vs. Kolkata Municipal Corporation & Ors.) and WPA No. 20653 of 2022 (Supriya Saha Vs. Kolkata Municipal Corporation & Ors. under article 226 of the Constitution of India before the Hon'ble High Court, Calcutta being aggrieved and dissatisfied with the showcause notice dated 06.11.2022 issued by Executive Engineer (Bldg.), Br. VII under section 397 of the K.M.C. Act, 1980 and the said two writ applications are standing in the list for hearing before the Hon'ble Court. Moreover, she also submitted that another writ petition being WPA 21710 of 2022 filed by Subyashini Mallick Chowdhury where she filed an application for addition of party which has been heard by the Hon'ble Single Bench, High Court at Calcutta dated 09.12.2022 wherein Hon'ble passed an order that the applicant has already proceeded against the KMC by filing writ application. Hence, two writ applications for addition of party are dismissed. So in this respect, she prays adjourned and take two months time until any order of the two pending matters passed by the Hon'ble High Court. Nobody appeared on behalf of two plot holders namely, Ratna Chatterjee (Plot No. AP-CZ 14A/B, Canal South Road) and Hitesh Sharma (Plot No. CZ/15A/B, Canal South Road) respectively inspite of service upon the plot holders by the Executive Engineer (Bldg.), Br. VII.

Hence, in view of the above submission and going through the relevant records and documents order as follows :

Four weeks time has been given to the applicants of the two plot holders namely, Sanjib Poddar (Plot No. CZ-20A/B, Canal South Road) and Supriya Saha (Plot No. CZ-08/B, Canal South Road) to submit any order of the Hon'ble High Court in respect of the pending two writ applications. And in respect of the other two plots, none appeared on behalf of those before the undersigned, inspite of notice duly served. Hence, Building Department, Br. VII, KMC to proceed the matter under section 397 of the K.M.C. Act, 1980 in respect of the said two plots being Nos. AP-CZ 14A/B, Canal South Road and CZ/15A/B, Canal South Road respectively.

Let the copy of this order be communicated to all the interested parties.



Spl. Municipal Commissioner
Kolkata Municipal Corporation

Translated legible copy attached

Commissioner



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150A

- The KMC will submit a compliance report after restoration of the above mentioned plot before the Hon'ble National Green Tribunal, Eastern Zone Bommoli, Kolkata within a period of 6 months."

In view of above notice issued by the Executive Engineer (Bldg.) Br. VII as to the plot holders (four in number) in appear before me with relevant documents in support of their submission why KMC will not proceed as per action 397 of the KMC Act 198D upon the said plot holders and to take stops accordingly.

All that very outset of the hearing on 18.11.2022 Ld. Advocate Ms. Poushali Banerjee, represented on behalf of two plot holders namely Sanjib Poddar (Plot No. CZ-20A/B, Canal South Road) and Supriti Saha (Plot No. CZ 9B/B, Canal South Road), verbally submit that she has filed two writ applications being WPA No. Z0652 of 2022 (Sanjib Podder Vs. Kolkata Municipal Corporation & Ors.) and WPA No. 20653 of 2022 (Supriti Saha Vs. Kolkata Municipal Corporation & Ors. under article 22G of the Constitution of India before the Hon'ble High Court, Calcutta being aggrieved and dissatisfied with the showcause notice dated 06.04.2022 issued by Executive Engineer (Bldg.) Br. VII under Section 897 of the K.M.C Act, 1980 and the said two writ applications are running in the list for hearing before the Hon'ble Court. Moreover, she also submitted that another writ petition being WPA 21710 of 2022 filed by Sabyasachi Mallick Chowdhury where she filed an application for addition of party which has been heard by the Hon'ble Single Bench, High Court at Calcutta dated 08.12.2022 wherein Hon'ble passed an order that the applicant has already proceeded against the KMC by filing writ application. Hence two writ application for addition of party are dismissed. So in this respect, she prayed adjourned and take two months time until any order of the two pending matters passed by the Hon'ble High Court. Nobody appeared on behalf of two plot holders namely, Ratna Chatterjee (Plot No. A/P CZ 144/B, Canal South Road) and Hijeb Sharma (Plot No. CZ/15A/B) Canal South Road) respectively inspite of service upon the plot holders by the Executive Engineer 9Bldg) Br. VII.

Hence, in view of the above submission and going through the relevant records and documents order as follows :

Four weeks time has been given to the applicants of the two plot holders namely, Sanjib Poddar (Plot No, CZ 20A/B, Canal South Road) and Supriti Saha (Plot No. CZ 0B/B, Canal South Road) to submit any order of the Hon'ble High Court in respect of the pending two writ applications. And in respect of the other two plots, none appeared on behalf of those before the undersigned inspite of notice duly served. Hence Building Department. Be VII EMD to proposed the matter under section 807 of the K.M.c. Act 1980 in respect of the said two plots being Nos. AJP CZ 14A/B, Canal South Road and CZ/15A/B, Canal South Road respectively.

Let the copy of the order be communicated to all the interested parties.

Sd/ Illegible

Spl. Municipal Commission
Kolkata Municipal Corporation



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ANNEXURE- B (colly)

15.11.2022

sayandeep

Sl. No. 26

Ct. No. 05

WPA 21710 of 2022

Sabyasachi Mullick Chowdhury

-Versus-

National Wetland Authority & Ors.

Mr. Rupak Ghosh

Mr. V.V.V. Sastri

Mr. Viswarup Acharya

Mr. Sourav Roy

.....for the petitioner

Mr. Amal Kr. Sen

Mr. Benazir Ahmed

.....for the State

Ms. Soumi Guha Thakurata

.....for the respondent No. 3

Mr. Deepnath Roychowdhury

Mr. Ankit Surena

.....for the private respondent No. 9

Mr. Soumya Mukherjee

.....for the WBPCB

Learned counsel appearing for the petitioner seeks to take exception to a part of the Report filed by the State Wetland Authority. Such exception be taken within two weeks from date.

List this matter on 2nd December, 2022.

The authority shall be at liberty of implementing the part of the Report and not be interrupted in their work by reason of pendency of the present writ petition.

(Moushumi Bhattacharya, J.)



- 31 -

Ct. 05
Item No.34
05.12.2022
(Suvendu)

WPA 21710 of 2022
With
CAN 1/2022
CAN 2/2022
CAN 3/2022

Sabyasachi Mullick Chowdhury
Vs.
National Wetland Authority & Ors.

Mr. Rupak Ghosh
Mr. V.V.V.Sastri
Mr. Biswarup Acharya
Mr. Sourav Roy
.....for the petitioner

Mr. Amal Kr. Sen
Mr. Benazir Ahmed
.....for the State

Ms. Soumi Guha Thakurta
.....for the Central Pollution Control Board

Mr. Deepnath Roy Chowdhury
Mr. Ankit Sureka
.....for the private respondent no.9

Mr. Somnath Ray Chowdhury
.....for the applicants (CAN 1/22 &

2/22)

Mr. N.C.Behani
Mr. Soumya Mukherjee
.....for the WBPCB

In Re. CAN 3/2022

The petitioner has filed the present application for an order of injunction restraining the private respondents from carrying out any further constructions and filling up of the wetland area situated in Chingrighata, Kolkata.



-32-

2

Learned counsel appearing for the State as well as the private respondents submit that they have not received any copy of the application.

As clarified in the order passed on 15th November, 2022, the Authorities shall implement the part of the Report with regard to taking steps against the illegal constructions in the meantime.

It is made clear that the concerned respondents shall be at liberty of taking police assistance for implementing the directions passed by this Court.

List this matter on 8th December, 2022 along with other two connected applications being CAN 1/2022 and CAN 2/2022, as prayed for.

Let copies of the Report of the Committee be circulated amongst the parties.

The exception filed by the petitioner to the Report of the Committee is taken on record.

(Moushumi Bhattacharya, J.)



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ANNEXURE - C

08.12.2022

Ct. 5

D/L 18

ab

WPA 21710 of 2022**With****CAN 1 of 2022****With****CAN 2 of 2022****With****CAN 3 of 2022****Sabyasachi Mullick Chowdhury****-Vs-****National Wetland Authority & Ors.**

Mr. Rupak Ghosh,
 Mr. V.V.V. Sastri,
 Mr. Biswaroop Acharya,
 Mr. Sourav Roy

... for the petitioner

Ms. Soumi Guha Thakurta

... for the respondent no. 3

Mr. Amal Kr. Sen,
 Mr. Benazir Ahmed

... for the State

Mr. Deepnath Roy Chowdhury.
 Mr. Ankit Sureka

... for the respondent no. 9

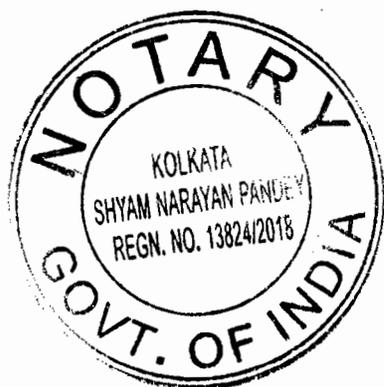
Mr. N .C. Bihani,
 Mr. Soumya Mukherjee

... for the WBPCB

Mr. Somnath Roy Chowdhury,
 Ms. Paushali Banerjee

... for the applicants (CAN 1/22 & 2/22)

Although a direction was made on 5th December, 2022 for listing of CAN 3 of 2022 today, it appears that CAN 3 of 2022 has not been listed.



-34-

2

Re: CAN 1 of 2022 and CAN 2 of 2022

This is an application made by the applicant for being added as a party respondent to the writ petition. The cause of action, which has brought the applicant to this Court, is a letter of 16th April, 2022 issued by the Executive Engineer, KMC asking the applicant to show cause as to why the sanctioned plan of the applicant will not be cancelled under the provisions of The Kolkata Municipal Act, 1980. The applicant has replied to the show cause.

Learned counsel appearing for the applicant submits, after the concluding part of the order is dictated (now deleted), that the applicant has already proceeded against KMC by filing a writ petition.

CAN 1 of 2022 and CAN 2 of 2022 are dismissed in terms of the above.

Re: CAN 3 of 2022

List CAN 3 of 2022 on 15th December, 2022.

(**Moushumi Bhattacharya, J.**)



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ANNEXURE-D

ITEM NO.17

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2723/2022

SABYASACHI MALLICK CHOWDHARY

Appellant(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

(FOR ADMISSION and IA No.51598/2022-EX-PARTE STAY)

Date : 13-04-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s)

Mr. Brijender Chahar, Sr. Adv.
Mr. Amitava Das, Adv.
Mrs. Jyoti Chahar, Adv.
Mr. Karan Chahar, Adv.
Ms. Pooja Chahar, Adv.
Mr. Shashi Bhushan, Adv.
Mr. Vinay Garg, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Pending applications, if any, also stand disposed of.

(NEELAM GULATI)

ASTT. REGISTRAR-cum-PS

(Signed order is placed on the file)

(KAMLESH RAWAT)

COURT MASTER (NSH)

Signature Not Verified

Digitally signed by
Anita Majumdar
Date: 2022.04.16
10:19:59 IST
Reason: []



- 36 -

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 2723 OF 2022

SABYASACHI MALLICK CHOWDHARY

Appellant(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

O R D E R

We have heard learned senior counsel for the appellant and perused the record. We do not see any cogent reason to entertain the Appeal. The judgment impugned does not warrant any interference.

The Appeal is dismissed.

.....J.
(S. ABDUL NAZEER)

.....J.
(VIKRAM NATH)

NEW DELHI
APRIL 13, 2022



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ANNEXURE - E

ANKIT SUREKA
ADVOCATE
HIGH COURT, CALCUTTA.

10, KIRAN SANKAR ROY ROAD,
 Kolkata - 700001.
 MOBILE:-9836533934

To

Date: 21/12/2020

1. Mr. Ashok Prasad
 Advocate, High Court, Calcutta.
 Of D-178, Tagore Park, Kolkata-700 039.
 2. Sabyasachi Mullick Chowdhury
 son of Late Sunit Kumar Mallick Chowdhury
 of 64/11G, Suren Sarkar Road, Police Station- Belegkata,
 District: South 24- Parganas, Kolkata-700010;

**Re: O.A. No. 25 OF 2016/EZ BEFORE THE NATIONAL GREEN
 TRIBUNAL, EASTERN ZONE BENCH, BLOCK -3B, 3RD FLOOR,
 ACTION AREA-II, NEW TOWN, KOLKATA-700157.**

In the matter of :

Sabyasachi Mullick Chowdhury

... Applicant

Versus

The State of West Bengal & Ors.,

... Respondents

My client: Respondent No. 14 and 15 The Secretary and the Metropolitan Co-operative Housing Society Limited, having its registered office at Plot no. CZ-38, Sector - B, Metropolitan Co-operative Housing Society Limited, Kolkata 700105, under Pragati Maidan Police Station.

Sirs,

Please find enclosed herewith copy of Affidavit in Opposition with annexures on behalf of the Respondent No. 14 and 15 i.e. the Secretary and the Metropolitan Co-operative Housing Society Limited to be filed before National Green Tribunal, Eastern Zone Bench, in connection with O.A. No. 25 OF 2016/EZ, which will be taken up on 8th, January, 2021 before the Hon'ble Tribunal.

Encl: as above

Yours truly

Ankit Sureka
 (Ankit Sureka)



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BEFORE THE NATIONAL GREEN TRIBUNAL**EASTERN ZONE BENCH, KOLKATA****O.A. No. 25/2016/EZ****In The Matter Of:**

Sunit Kumar Mullick
 Chowdhury Represented
 through his son and
 Constituted Attorney Sri
 Sabyasachi Mullick
 Chowdhury

.....(Petitioner/Original
 Applicant)

-Versus-

The State of West Bengal &
 Ors.

... (Respondents)

I, Sri Sanjib Podder, son of Late Sukhendra Lal Podder, aged about 46 years, by faith Hindu, by occupation business, residing at Plot No. P-57, Sector-A, Metropolitan Co-operative Housing Society Ltd., Post office: Dhapa, Police Station:- Pragati Maidan, Kolkata - 700 105, District: South 24 Parganas do hereby solemnly affirm and say as follows:-

1. (a) I am the present Secretary being the respondent no. 15 and as such a principal officer of respondent no. 14. I know of and



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have made myself acquainted with the facts and circumstances of instant case and am competent to depose as to the same.

(b) The answering respondents had been served with a copy of the application being O. A. No. 25/2016/EZ affirmed on 17/02/2016 by one Sunit Kumar Mullick Chowdhury. I have gone through the said application and have understood the meaning, content and purport thereof. I am affirming this affidavit for myself and also on behalf the respondents being no. 14, and am also duly authorized to make and affirm this affidavit for and on behalf of respondent nos. 14.

2. The answering respondents in this Case had already filed application being M.A. No.814 of 2016/EZ, inter alia, challenging the maintainability of the Original Application, on various grounds as duly set forth therein. The said application was heard and is still being pending. Pending adjudication and decision on the application involving issues of maintainability of the Original Application(O.A.), the respondents herein did not deal with the other allegations in the said O.A., without admitting the correctness thereof.

Pursuant to the Order passed dated November 23, 2020, the respondents are filing the instant affidavit in Opposition in the



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O.A. A copy of the said Order dated 23rd November, 2020, is annexed herewith and marked with letter "A".

3. Before dealing with various allegations made and contained in the said Original Application, I say as follows:

(i) The instant application is not maintainable in the eye of law for various reasons as duly set forth in the succeeding paragraphs hereinafter.

(ii) The Original Applicant filed the application inter alia, portraying himself as lessee of "Ukhil Bheri". However no document in support thereof has yet been produced by the Original Applicant. Production of such document has become more crucial even then and now when the proceeding is sought to be carried out by his heir after his death. In fact after the death of the Original Applicant the substituted applicant has not produced any document to support as to how he is entitled as lessee of the "Ukhil Bheri" or otherwise to maintain the O.A. This non disclosure of vital documents with regard to his title to the Bheri proves his incompetence to maintain the original application. It is also stated that the documents of lease as well the title deeds of Dag No. 268 are



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vital documents in this list in the absence of which this Hon'ble Tribunal will be unable to determine the actual boundary of "Ukhil Bheri".

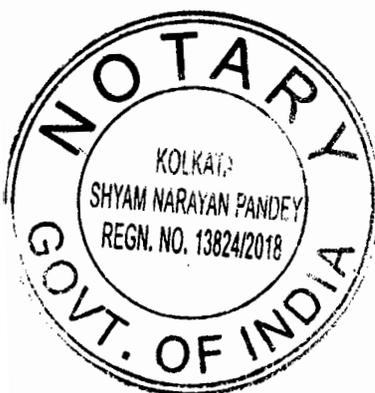
(iii) A criminal case by Kolkata Municipal Corporation was filed and proceeded as against the applicant and his associate, as found mentioned in paragraph 14 of the OA itself, inter alia, for filling up the water body and Charge Sheet was filed against the said Sunit Kumar Mullick Chowdhury and another. The said case was filed/registered on 22/07/2013 wherein his guilt/commission of offence was clear since he had to undo his wrong by purporting to restore back the water body, which per se evidence the illegal filling up of the same. The instant case was filed subsequently, by the offender himself as Original Applicant, as a ploy and motive, to dilute the criminal proceedings and to shift the burden upon the answering respondents, despite knowing fully well that no such filling up has been done by the answering respondents.

(iv) The applicant has further purportedly alleged violation of the provisions of the West Bengal Inland Fisheries Act, 1984. The scope of the said 1984 Act is restricted to



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conservation, development, protection of water body, the Act inter alia contains section-17(A) which enacts bar to conversion of water area, etc. for other use. For section-17(A) of 1984 Act coming into play, the alleged water area should be capable of being used as fishery or such area should be any naturally or artificially depressed land which retains water for a minimum period of six months in a year. It is a disputed question of fact whether the land in question falls within any of the categories or not, nor there is any specific factual averment or substantiation to that effect, by the Original Applicant in O.A.No.25 of 2016/EZ. Further, a statutory provision has already been provided for such question to be brought before and decided by, a Competent Authority, as stated in Section 17A(1) read with Section 17A(2) of the said 1984 Act. Provision for challenge in Appeal against such decision has also been provided Section 18 of the said 1984 Act. Therefore, a complete statutory remedial mechanism has already been laid down and in force, by virtue of the Act itself. Besides, the said Act of 1984, also lays down in section-23 as having overriding effect of the Act over other laws. The instant proceedings before this Hon'ble Tribunal tantamount



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to tactful bypass and disregard of an adjudicatory mechanism already provided and prevailing, by virtue of West Bengal Inland Fisheries Act, 1984, in respect of the adjudication of the dispute in question. When an alternative forum and a dispute redressal mechanism has been statutory provided, it becomes a matter of consideration whether this Hon'ble Tribunal has jurisdiction to entertain the instant O.A. and furthermore, even if this Hon'ble Court has jurisdiction whether to should entertain it since it involves the jurisdiction and disputed questions of facts requiring evidence to be adduced.

(v) The applicant has further alleged in the O.A. of alleged violation of East Kolkata Wetlands (conservation and Management) Act, 2006. However, the subject property is outside the purview of East Kolkata Wetlands (conservation and Management) Act, 2006. In this regard, reference is made to section 2 of the said Act, which is as follows :-

Section 2:- "In this Act, unless the context otherwise requires,- (a) "Authority" means the East Kolkata Wetlands Management Authority constituted under section 3;



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(c) East Kolkata wetlands" means such of the areas included in the list of Ramsar Sites as are specified in Schedule I and shown in the map in Schedule II.

Explanation I.-For the purposes of this Act, "Ramsar Sites" means the wetlands of international importance under Ramsar Convention.

Explanation II.-For the purposes of this Act, "Ramsar Convention" means the Ramsar Convention on Wetlands, Ramsar, Iran;

(d) "land" includes any wetland;... .."

The land-in question being the subject matter of O.A.No. 25/2016/EZ (being Dag No. 268 situated at Mouza Nimokpoktan, admeasuring about 60 Bighas) is not included within the purview of Schedule-I or Schedule-II of the East Kolkata Wetlands(Conservation and Management) Act, 2006.

Further, The State Government, in its opinion have not declared or included, in the public interest, by notification or otherwise, any area in, or enlarge any area of, the East Kolkata wetlands for the subject land to be the part thereof, by virtue of exercising its power U/S 17 of the 2006 Act.



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Hence, in any event, the said subject land or land, being in Dag No. 267, does not come within the purview of 2006 Act in any manner whatsoever.

(vi) Inspection was carried out and respective Reports were filed from time to time upon being called for by various Judicial Authorities, from time to time, do clearly Shows that there is no filling up of water body by the answering respondent.

(vii) The report of the Chief Secretary dated 06/05/2016 clearly states that the subject property is outside the purview of the East Kolkata Wetlands (Conservation and Management) Act, 2006. Copy of such report is annexed hereto and marked with letter "B" as annexure.

(viii) The report called for from R.O. & T.A, Sadar inter alia, clearly shows that the "Filled Up" column against Dag No.267, which is owned by Metropolitan Cooperative Housing Society Limited does not show any "filling up". Copy of such report is annexed hereto and marked with letter "C" as annexure.

(ix) The report filed by the several senior officers of the Kolkata Municipal Corporation dated 01/11/2017 clearly



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shows that no filling up was found at the time of inspection, copy whereof is annexed hereto and marked with letter "D" as annexure.

(x) Even the affidavit dated March 27, 2017 of the Officer-in-Charge of Pragati Maidan Police Station states that on 28/02/2017 no filling up was found at the time of inspection. Copy of such report is annexed hereto and marked with letter "E" as annexure.

(xi) Even the report of the Kolkata Municipal corporation dated 15/01/2018, filed in compliance to the Order passed by Hon'ble High Court at Calcutta dated 06/11/2011 inter alia, clearly shows that no filling up was found at the time of inspection. Copy of such Order passed dated 06/11/2017 together with such report filed by KMC are collectively annexed hereto and marked with letter "F" as annexure.

(xii) The Original Applicant has already, during the pendency of proceeding before the instant Hon'ble Tribunal, has moved the Hon'ble High Court at Calcutta by filing W.P No. 12605 of 2017 between same parties involving same cause of action. The said matter is still pending adjudication as directed by the Hon'ble Court while passing diverse Orders



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including Order dated 27/07/2018 whereby the Hon'ble High Court at Calcutta is already in seisin of the matter. Copy of the order dated 27/07/2018 passed in W.P. No 12605(w) of 2017 are collectively annexed hereto and marked with letter "G" as annexure.

(xiii) While the O.A was pending before this Honble Tribunal, without seeking any leave, the Original Applicant at its whimsical choice and fancy, moved the Hon'ble High Court at Calcutta in W. P No. 12605(w) of 2017 seeking identical reliefs and interim reliefs as already prayed for but could not obtain, from Hon'ble Tribunal. The Applicant has been thus indulging in forum shopping in a desperate attempt to secure Order of his choice in abuse of the process of court. Even such filing of the said writ petition before Calcutta High Court was suppressed from this Hon'ble Tribunal and continued to proceed in two Forums on the self same issue between the same parties. Such conduct alone, as aforesaid, besides every other reasons, warrants dismissal of the proceeding before this Tribunal.

(xiv) Again, in or around July 2017, another person pretending to be a public interest litigant, filed another writ



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petition being W.P. No. 19764(w) of 2017, on the self same cause of action. I reasonably approached that the said writ petitioner was filed at the instance of and/or engineered by the applicant himself. Such Writ petition is still kept pending. Copy of Status Report obtained from Official Website of the Hon'ble Court are collectively annexed hereto and marked with letter "H" as annexure.

(xv) It is the answering respondents herein, who put up such incidents/conducts of the Original Applicant of initiating multifarious proceedings before different forum on the same cause of action, before this Hon'ble Tribunal for the first time, while the Hon'ble Tribunal already called upon the Original Applicant to produce the copy of the other proceedings filed by the Original Applicant before the other different Forum.

(xvi) From the conduct, as aforesaid, it inter alia, appears that three separate proceedings relating to the same subject matter, seeking identical reliefs, viz. One being O.A. No. 25 of 2016 (EZ) before this Hon'ble Tribunal, the other being W.P. No.12605(W) of 2017 and lastly W.P. No. 19764(W) of 2017, which are still pending adjudication as of date, before the Calcutta High Court. The said proceeding, which were



suppressed clearly renders the O.A. 25 of 2016(EZ) as not maintainable.

(xvii) The subject matter of OA No. 25/2016/EZ is the property measuring about 60 bighas being popularly known as 'Ukil Bheri' being R.S. dag no. 268 situated at Mouza Nimokpoktan near Chingrighata, South 24 Paraganas. The petitioner throughout the proceeding being OA No. 25/2016/EZ complained against the alleged filling up of ukil bheri being R.S. dag no. 268 as inter alia, appearing from paragraph 1 page no. 8, paragraph 7 page no. 1, paragraph 15 page no. 15, paragraph 16 page no. 16, irrespective of which by order dated July 20, 2016, an order was passed directing the maintenance of status quo a copy of which is marked with letter "I" as annexure.

(xviii) Such order of status quo dated July 20, 2016 was vacated in November 2017, upon dismissal of O.A. 25/2016/EZ in November 2017. The said O.A. No. 25/2016/EZ was subsequently restored in April 2018. There was no order of restoration of the status quo in O.A. 25/2016, which fact has been suppressed, before this Hon'ble Tribunal, by the applicant. The applicant, therefore, cannot be



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said to have come with clean hands before this Hon'ble Tribunal, particularly, when coming with allegation of violation of order of status quo passed in O.A. 25/2016/Ez. In any event, there is no violation in any manner of any order of status quo in O.A 25/2016/EZ as alleged or at all.

(xix) There was/is no order of status quo in respect of land being R.S. dag No. 267 in which the work of construction is going on. As such there is no violation of any order of this Hon'ble Tribunal passed in OA No. 25/2016/EZ whereas the subject matter involved in such OA No. 25/2016/EZ is 60 bighas of land which is alleged to be in R.S. dag No. 268. Hence there is no violation in any manner of any order passed in this Hon'ble tribunal.

(xx) It is stated that the order of status quo as it appears was directed to be maintained in respect to R.S. Dag No. 268 and in respect of alleged filling up on which the main petition being OA No. 25/2016/EZ was based and relied. There is no illegal filling up or violation of order of status quo dated 20th July, 2016 in any manner by the answering Respondents Nos. 14 and/or 15. The said respondents have not committed violation of any other order passed in OA No. 25/2016/EZ.



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(xxi) It is stated that one more application being M.A No. 13 of 2018 EZ was filed by the respondent no.14 depicting the conduct of the Original applicant However, the said application was dismissed by the Hon'ble Tribunal on 23/04/2018 but later on 24/04/2018 this Hon'ble Tribunal having found merits in the said application suo muto restored the application and posted it for hearing and the same is still pending adjudication.

(xxii) It is stated that the Metropolitan Cooperative housing society is a very renowned Housing society duly registered in accordance with the provisions of the Bengal Co-operative Societies Act, 1940 having its registration No. 75/Cal of 1966 (now governed by The West Bengal Co-operative Societies Act, 2006 and the rules framed thereunder). This application has been filed by the original applicant and continued with the resent applicant in order to harass and pressurize the Board Members to bend to the illegal demands of the Original applicant. However, it is made clear that all construction works are being done after obtaining requisite permission from the Authorities concerned.



(xxiii) It is also pertinent to mention that as construction has been made or is being made by or on behalf of the Respondent No14 and/or 15 without Proper sanction of building plans by the Kolkata Municipal Corporation and respect all constructions made by the Respondents was 14 and/or 15 thus are sanctioned building Plans. Only upon security of documents of title, including deed of conveyance, mutation certificate etc respect of the lands in question, K.MC granted sanction of the building plans. Office from the building Department visited the local and ensured that the plots concerned where all within Dag No. 267 of Mouza Nimokpoktan and on solid land, and then only accorded sanction. It is needless and mentioned that if the Respondent No. 14 and/15 had made or allowed to be made any construction on land unauthorized by and/or contrary to the sanction, the KMC authorities would have immediately stopped any such construction. In this regard. I shall crave reference to and rely upon the affidavit of the Kolkata Municipal Corporation affirmed on 07/08/2019 filed in this proceedings at the hearing of this application.



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(xxiv) Any allegation appearing in the affidavit of the Additional District Magistrate and District Land and Land Reforms Officer affirmed on 5th August, 2019 or any other date which are contrary to or consistent with the statements made hereinabove are incorrect, demonstrates non application of mind and are denied specifically.

4. Without prejudice to the aforesaid and placing complete reliance thereupon, I shall, now, deal with, various allegations made and contained in the said Original Application.
5. Save what are matters of record and save what appears therefrom, each and every allegation made and content in various paragraphs of the said Original Application are denied and disputed as if those are set out herein and denied in seriatim.
6. With reference to paragraphs 1, 2 and 3 at page 7-8 of the Original Application (O.A.), it is denied that any action of respondent no. 14 or 15 or any of them resulted in destruction or damage or illegal filling up or illegal construction on any water body known as 'Ukil Bheri' situated at Mouza Nimokpoktan,



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Pagladanga, Dihi, Panchanangram, P.S. Pragati Maidan, Ward No. 57, Kolkata Municipal Corporation, hence the question of committing any offence continuation thereof or the non action of the State Respondents allegedly of preventing such action on any ground(s), does not and cannot arise as alleged or at all.

7. With reference to paragraphs 1, 2, 3, 4, 5 and 6 under the heading 'Facts In Brief' of the said O.A., save what are matters of record and save what appears therefrom, each and every allegation made and content in various paragraphs of the said Original Application are denied and disputed as if those are set out herein and denied in seriatim. It is denied that respondent no.14 or respondent no.15 or any of them are illegally trying to construct brick built boundary wall by filling sand or mud or garbage or building material or any other waste material on eastern bank of the water body since October 17, 2015, or recently on February 05, 2016 hence the question of taking any alleged action by the concerned Police Authority for preventing allegedly filling up of water body does not and cannot arise as alleged or at all. The allegation that the Respondent nos. 14 and 15 since being influential politically or economically, the Police Authority did not take any action against them are bald and



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baseless. It is denied that any illegal filling up of water body or illegal construction thereupon is continuing till date or the respondent no. 14 or 15 are damaging the 'Ukil Bheri' or hampering the environment of the surrounding locality of the 'Ukil Bheri', as alleged or at all. It is denied that there is any question of affecting the environment of the area or violation of any provision of any law or statute or any rule framed there under as alleged or at all. It is further stated that alleged violation of The West Bengal Inland Fisheries Act, 1984, and/or any provision thereof comes within the remedial mechanism itself provided by the said statute itself before the competent Authority, as laid down therein. Hence this Hon'ble Tribunal, it is most respectfully submitted is not that competent Authority as provided in the said statute. To avoid prolixity and repetition, I refer to the relevant paragraphs hereinbefore on this score and placing my reliance thereon. So far the East Kolkata Wetlands (Conservation and Management) Act, 2006, is concerned, the land in question being Dag No. 268 situated at Mouza Nimokpoktan, Pagladanga, Dihi, Panchanangram, P.S. Pragati Maidan, Ward No. 57, Kolkata Municipal Corporation, does not fall in either of the Schedules of the said Act, which has to be



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sine qua non on the issue of applicability of the said Act. To avoid prolixities and repetitions, I refer to the relevant paragraphs hereinbefore on these scores and placing my reliance thereon.

With reference to paragraphs 7, 8, 9, 10 and 11 of the said O.A., save what are matters of record and save what appears therefrom, each and every allegation made and content in various paragraphs of the said Original Application are denied and disputed as if those are set out herein and denied in seriatim. It is denied that the applicant is the Lessee of the said 'Ukil Bheri' in respect of the Dag Nos. and R.S. Khatian Nos. as given in paragraph 7 of the O.A. or the applicant has been running or carrying his pisciculture business in the said Bheri since 1954 as alleged or at all. It is stated that the applicant has failed to produce any document to substantiate himself as Lessee nor had been able to produce or annex relevant Lease Deed in support thereof. It is denied that the applicant has been an environmentalist throughout his life or at any point of time or there is any incident/instance of destruction or misuse of the environment or greenery in any manner causing the applicant to move before this Hon'ble Tribunal as alleged or at all. It is



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further denied that respondent no. 14 or 15 or any of them have widened or are widening the 'mud bandh' by filling up with soil or bricks or garbage as alleged or at all.

9. With reference to paragraphs 12, 13 and 14 it is stated that the newspaper report does not have any evidentiary value or admissibility in the Court of Law, hence the same, without prejudice to the rights and contentions of the answering respondents, need not be gone into or dealt with. It is stated that from the assertion made by the original applicant himself, it is clear beyond doubt that the police complaint was rightly lodged and upon enquiry/investigation charge sheet was rightly filed against the original applicant while he himself admitted filling up of water body by himself, inter alia, by contending to have allegedly restored back the water body into its original form. Any allegation contrary thereto and/or inconsistent therewith are denied and disputed as if those are set out herein and denied in *seriatim*.

10. With reference to paragraphs 15, 16, 17, 18, 19 and 20 save what are matters of record and save what appears therefrom, each and every allegation made and content in



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various paragraphs of the said Original Application are denied and disputed as if those are set out herein and denied in seriatim. It is denied that there is any encroachment in respect of Dag No. 268 or otherwise, hence the question of taking any action as against the officials of the respondent no.14 does not and cannot arise or the local police was helpless in any manner or the respondent no.14 was under the umbrella of any political party of the State or there arose any situation which required taking any steps by the police but the police kept mum over the matter as alleged or at all. It is denied that there was any illegal filling up of water body as alleged or at all. It is stated that the subject land of the present original application is R.S. Dag No. 268, and the Order of status quo dated July, 20, 2016, passed in the O.A. in respect of the said R.S. Dag No. 268. The construction work of the answering respondent was/is going on in respect of R.S. Dag No. 267 which is not the subject matter of the O.A. Any allegation contrary thereto and/or inconsistent therewith are denied and disputed as if those are set out herein and denied in seriatim. It is denied that on October 17, 2015 or at any point of time, the respondent no. 14 or its officials encroached upon or erected brick walls over 40-45 Cottahs of



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water bodies or there was any illegal filling up or encroachments or constructions upon the water body or the respondent no. 14 or any of its member have been eyeing the said water body for a long time for construction of housing or respondent no.14 changed nature or character of water body or any conduct of the respondent no. 14 was in violation of any provision of the environmental laws as alleged or at all. It is further denied that there was any filling up or illegal construction of any brick wall of the said 'Ukil Bheri' on February 4, 2016, or at any point of time far to speak off by using of force or muscle power or of any illegal threat of dire consequences or risk to life, as alleged or at all. It is denied that the respondent no. 14 or its members are habitual offenders, as alleged or at all. The complaint/representations dated February 05, 2016 being untrue and baseless the question of any action in respect thereof does not and cannot arise as alleged or at all. It is stated that the answering respondents carry their construction work in respect of Dag No. 267. Any allegation contrary thereto and/or inconsistent therewith are denied and disputed as if those are set out herein and denied in seriatim. It is further denied that the answering respondents were/are filling up the bank of Ukil



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Bheri or trying to encroach upon the bank of water body by filling up the water with mud or concrete or other materials or otherwise, as alleged or at all. The copies of photographs annexed and sent are illegible hence could not be understood or dealt with herein, hence are disputed including as to their genuineness.

11. With reference to paragraphs 21, 22, 23, 24 and 25 save what are matters of record and save what appears therefrom, each and every allegation made and content in various paragraphs of the said Original Application are denied and disputed as if those are set out herein and denied in seriatim. It is stated that both the statute as referred to in the paragraphs under reply does not have any manner of application in the present case, for the different reasons as already discussed herein before, to which the answering respondents refer to, to avoid prolixity and repetition. The applicant has filed and/or caused to file, two other separate writ petitions before the High Court at Calcutta, which are both pending before the respective benches of the Hon'ble High Court at Calcutta, in seisin of the matter, on selfsame issues, and hence the averment/undertaking as made in paragraph 24 are incorrect as on date. It



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is stated that one application being M.A No. 13 of 2018/EZ was filed by the respondent no.14 depicting the conduct of the Original applicant, however, the said application was dismissed by the Hon'ble Tribunal on 23/04/2018 but later, on 24/04/2018 this Hon'ble Tribunal having found merits in the said application and suo muto restored the application and posted in for hearing and the same is still pending adjudication. The copy of the order dated 24/04/2018 of the Hon'ble Tribunal is annexed herewith and marked as Annexure "J".

12. It is humbly submitted that the 'Grounds' being (i), (ii), (iii) and (iv) are incorrect and not tenable in the eye of law. It is further denied that the instant application filed is within the period of Limitation.
13. Save as has been expressly admitted herein, all allegation contained in the instant application are specifically denied as if the same have been set out herein and traversed seriatim.
14. The instant application besides being a glaring instance of fanciful Forum Shopping and also filed with an ulterior motive to remove the attention from the admitted misdeeds of the Original



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Applicant of illegally filling up of 'Ukil Bheri', are baseless, unsubstantiated, malafide and on flimsy ground, should be dismissed with exemplary costs.

15. Statements made in paragraphs 1 to 13 and the sub paragraph contained in paragraph 3 and each of them, are true to my knowledge and those made in Paragraphs 14, are my respectful submission before this Hon'ble Tribunal.

Solemnly affirmed before me, on
this the 21st day of December, 2020.



Secretary

Metropolitan Co-operative Housing Society Ltd.

Prepared in my office.

Deponent.

Anwar Surana
Advocate



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ANNEXURE - F (copy)

F

Item No. 03

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 25/2016 (EZ)
(I.A. No. 72/2019, I.A. No. 82/2019,
M.A. No. 814/2016, M.A. No. 25/2017,
M.A. No. 12/2018 & M.A. No. 13/2018)

Sabyasachi Mallick Chowdhury

Applicant

Versus

State of West Bengal & Ors.

Respondent(s)

Date of hearing: 23.11.2020

**CORAM: HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s): Mr. Brijender Chahar, Sr. Advocate along
with Mr. Ashok Prasad, Advocate

For Respondent(s): Mrs. Debanjana Ray Chaudhuri,
Advocate for Respondent No.20

Mr. Dipanjan Ghosh, Advocate for
Respondent No.5&6

Mr. Alok Kumar Ghosh, Advocate along
with Mr. Gopal Chandra Das Adv, Mr.
Sibojyoti Chakraborti, Advocate for
Respondent No.7&8

Mr. Jayanta Mitra, Advocate alongwith
Ms. Paushali Banerjee, Advocate for
Respondent No.14 &15

Mr. Kallol Basu, Advocate alongwith Mr.
Nilanjan Pal, Mr. Ankit Sureka, Advocate
for Respondent No. 14 &15

Mr. Bikas Kargupta, Advocate for
Respondent No 1 to 4,9,10,11,13,

Mr. Deepnath Roy Chowdhury, Advocate
along with Ms. Saheli Sen, Advocate for
respondent No.24

Mr. Indranil Nandi and Mr. Sayak Konar
for Respondents no 16 & 21



ORDER

1. During the course of his arguments at the hearing of the case which was about to be concluded, it was pointed out by Mr. Brijender Chahar, learned Senior Counsel for the Applicant, that the Respondents No. 14 to 22 have failed to file their Affidavit-in-Opposition to the Original Application even when four years had lapsed during the its pendency and, have chosen to respond only to I.A No. 31/2019 relating to the prayer for institution of proceedings under Section 26 of the NGT Act, 2010.
2. At this stage Mr. Jayanta Mitra, learned Senior Counsel for Respondents No. 14 to 22, prays for liberty to place on record their affidavit. Although the prayer has come rather belatedly, in the interest of Justice, the prayer is allowed subject to payment of cost of Rs. 20,000 to the Applicant or his Counsel.
3. Let the affidavit-in Opposition be filed within two weeks from hence with advance copy on the Applicant who shall be at liberty to file reply thereto before the next date.



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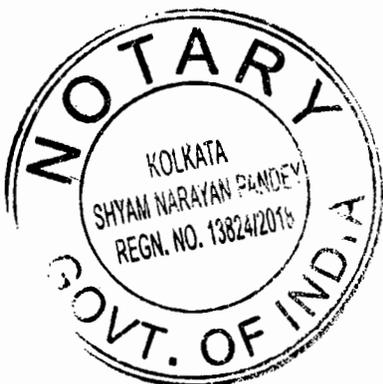
3

4. The other Respondents who have not yet filed their Affidavits-in-Opposition are also at liberty to do so within two weeks.
5. List on 08.01.2021 for hearing.

S.P. Wangdi, JM

Saibal Dasgupta, EM

23rd November, 2020
Original Application No. 25/2016 (EZ)
pk





भारतीय स्टेट बैंक

State Bank of India

(31920) - CANAL SOUTH ROAD
SECTOR-A/76, METROPOLITAN CO-OP HOUSING SOCIETY LTD.,
CANAL SOUTH ROAD, KOLKATA 700105
Tel: 333-1111111 IFS Code : SBIN0031920

केवल 3 महीने के लिए वैध | VALID FOR 3 MONTHS ONLY

05012021
D D M M Y Y Y Y

PAY Sabyasachi Mallik Chowdhury

को या उनके आदेश पर OR ORDER

रुपये RUPEES Twenty thousand only.

अवा करे ₹ 20,000 = 00

खा. सं. 61189115343
A/c No.

VALID UPTO ₹ 10 LACS AT NON-HOME BRANCH FOR NON-CASH TRANSACTION ONLY

34351198116

SB ACCOUNT

PREFIX: 0523700000

A/c Payee Only

METROPOLITAN CO-OPERATIVE HOUSING SOCIETY LIMITED

MULTI-CITY CHEQUE Payable at Par at All Branches of SBI

Asm Armb.

Please sign above *[Signature]*

Authorised Director

Secretary

⑈808945⑈ 700002758⑈ 001824⑈ 3⑈



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ANKIT SUREKA
ADVOCATE
HIGH COURT, CALCUTTA.

10, KIRAN SANKAR ROY ROAD,
Kolkata - 700001.
MOBILE:-9836533934

To
 Sabyasachi Mallick Chowdhury
 son of Late Sunit Kumar Mallick Chowdhury
 of 64/11G, Suren Sarkar Road, Police Station- Belegkata,
 District: South 24- Parganas, Kolkata-700010;

Date: 05-01-2021

**Re: O.A. No. 25 OF 2016/EZ BEFORE THE NATIONAL GREEN
 TRIBUNAL, EASTERN ZONE BENCH, BLOCK -3B, 3RD FLOOR,
 ACTION AREA-II, NEW TOWN, KOLKATA-700157.**

In the matter of:

Sabyasachi Mallick Chowdhury

... Applicant

Versus

The State of West Bengal & Ors.,

... Respondents

My client: Respondent No. 14 and 15 The Secretary and the Metropolitan Co-operative Housing Society Limited, having its registered office at Plot no. CZ-38, Sector - B, Metropolitan Co-operative Housing Society Limited, Kolkata 700105, under Pragati Maidan Police Station.

Sirs,

In compliance to the order dated 23.11.2020 , please find enclosed herewith copy a cheque being no. 808945 dated 05/01/2021 of State Bank of India for a sum of Rupees Twenty Thousand.

This is for record and necessary action.

Encl: as above

Yours truly

Ankit Sureka

(Ankit Sureka)



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Speed post

To

Sabyasachi Mallik Choudhury
son of Late Swint Mr. Mallick Choudhury
of 64/116, Suren Sanyal Road,
P.S. Beleghata, South 24 - parganas,
Hooghly - 700 010.



From

ANKIT SUREKA

Advocate

60, K. S. Roy Road
Kolkata-700 001

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ANNEXURE-G

G

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BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA

In the matter of :

I.A. No.21 of 2019/EZ

In

O.A. No.25/2016/EZ

And

In the matter of :

Sunit Kumar Mallick Chowdhury,
represented through his son and
Constituted Attorney Sri Sabyasachi
Mallick Chowdhury

.....Petitioner

Versus

The State of West Bengal & Ors.

.....Respondents

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3.	Photocopy of the letter posted on 20.05.2019.	"B"	495-497
4.	Photocopy of the inspection report of KMC.	"C"	498-499



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BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA

In the matter of :

I.A. No.21 of 2019/EZ

In

O.A. No.25/2016/EZ

And

In the matter of :

Sunit Kumar Mallick Chowdhury,

represented through his son and

Constituted Attorney Sri Sabyasachi

Mallick Chowdhury

.....Petitioner

Versus

The State of West Bengal & Ors.

.....Respondents

Reply to IA No. 21/2019/EZ and show cause by respondent No. 15 i.e.
the Secretary of Metropolitan Cooperative Housing Society Limited in
compliance to the order dated May 14, 2019:

I, Sajib Podder, Son of Late Sukhendra Lal Podder, the Secretary

Metropolitan Co-operative Housing Society Limited, have



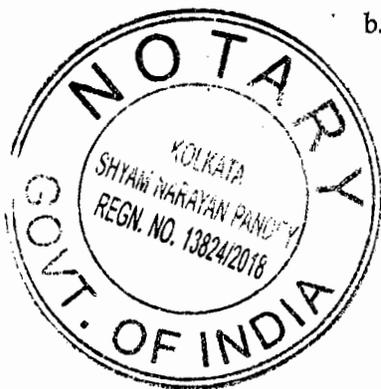
- 71 -

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CZ-38, Sector - B, Canal South Road, Kolkata - 700105, do hereby solemnly affirm and say as follows.

1. I am the secretary of Metropolitan Cooperative Housing Society Ltd. i.e. the respondent no. 15 in the present proceeding and I know of and made myself acquainted with the facts and circumstances of the instant case and I am competent to depose as to the same.
2. I have received a copy of the purported application being IA No. 21/2019/EZ on 16/05/2019 and have gone through and have understood the meaning content and meaning thereof.
3. Before further proceeding to show cause in compliance to the order dated May 14, 2019 passed in IA No. 21/2019/EZ and or further dealing with allegation made in the said application i.e. the IA No. 21/2019/EZ, I say as follows:-
 - a. the instant application under reply is malafied, fictitious, made with ulterior motives and /or collateral purposes.
 - b. the instant application is a result of a play of the petitioner who made and moved the instant application upon gross suppression of material facts and or with unclean hands.



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- c. the plaintiff have some how managed to fixed the matter to be taken up by a video conferencing without giving any prior notice to the Respondent No. 15 and moved the matter exparte on May 14, 2019, and obtained the order dated May 14, 2019.
- d. It is not clear to the answering respondent how the petitioner satisfied the aspect of service upon the respondent prior to fixation of the matter via video conferencing.
- e. Subsequent to passing of order on 14 May, 2019 the advocate of the petitioner namely Mr. Ashok Prasad by a letter on 16th may 2019 handed over the copy of the application being IA No. 21/19/EZ by way of forwarding letter which is already found to have been prepared and kept unserved since May 2nd, 2019 so as to keep the respondent no. 15 in dark relating to filing of the present application and or its arrangement of moving via video conferencing.

The fact of generating of such letter dated 2ndMay 2019 in the name of the respondent and further fact of sitting tight over the said letter and the application as unserved was also suppressed by this Hon'ble tribunal in obtaining the order dated 14th May 2019. Copy



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of such letter dated 2nd May 2019 which was served upon the answering respondent for the 1st time on 16th May 2019 is annexed hereto and marked as Annexure "A", such unethical practice and misconduct involves suppression of material fact as to non service of any notice or application and clearly postulates that the petitioner has proceeded with unclean hands before this Hon'ble tribunal and the application being IA No. 21/19/EZ is liable to be dismissed on that score alone.

- f. the answering respondent raised protest against such sharp and unethical practice of the petitioner / applicant by a letter posted on 20/05/2019 to the advocate of the petitioner namely Mr. Ashok Prasad. The copy of such letter dated which was prepared on 18/05/2019 however whose date was wrongly written as 18/04/19 and which was posted on 20/05/2019 along with postal receipt is annexed hereto and marked as Annexure "B".
- g. It is stated that the petitioner by this instant application tactfully sought to obtain final relief in nature by levelling false and unsubstantiated allegation as against the respondent no. 15 and also bypassing the points of maintainability and various other fraudulent conduct and misconduct of the petitioner which are the



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subject matter in various application which are already pending in the main proceeding being OA No. 25/2016/EZ.

- h. In the present application the petitioner have attempted to secure order by misleading the Hon'ble tribunal by way of tendering false information knowing very well the same to be false.
- i. The subject matter of OA No. 25/2016/EZ is the land measuring about 60 bighas being popularly known as 'Ukil Bheri" being R.S. dag no. 268 situated at Mouza Nimokpoktan near Chingrighata . South 24 Paraganas, which was the subject matter of the petitioner relating to alleged grievances of the petitioner. The petitioner throughout the proceeding being OA No. 25/2016/EZ complained against the alleged filling up of ukil bheri being R.S. dag no. 268 as interalia appearing from paragraph 1 page no. 8, paragraph 7 page no. 1, paragraph 15 page no. 15, paragraph 16 page no. 16, irrespective of which by order dated July 20, 2016 an order was passed directing the maintenance of status quo.
- j. Such order of statusquo dated July 20, 2016 was vacated in November 2017, upon dismissal of O.A. 25/2016/EZ vide Order dated 6th November, 2017. There was no Order of status quo or proceeding being O.A. 25/2016, in the eye of law for a long period.



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which fact has not been canvassed, and hence suppressed before this Hon'ble Tribunal, by the applicant. The applicant, therefore, cannot be said to have come with clean hands before this Hon'ble Tribunal, particularly, when coming with allegation of violation of Order of status quo passed in O.A. 25/2016/EZ. In any event, there is no violation in any manner of any order of statusquo in O.A 25/2016/EZ.

- k. Further, the allegation contained in the present application under reply being IA No. 21/19/EZ is not relating to dag no. 268 which is subject matter of OA No. 25/2016/EZ in respect of which there is a order of statusquo subsisting . It is relating to separate plot of land being R.S. dag No. 267 and not R.S. dag No. 268 which is the subject matter of OA No. 25/2016/EZ the same also appears from various documents.
- l. There was/is no order of status quo in respect of land being R.S. dag No. 267 as such there is no violation of any order of this Hon'ble tribunal passed in OA No. 25/2016/EZ whereas the subject matter involved in such OA No. 25/2016/EZ is 60 bighas of land that is R.S. dag No. 268.Hence there is no violation in any manner of any order passed in this Hon'ble tribunal. Hence none of



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the prayer as purportedly prayed is liable to be granted as against the answering respondent.

- m. The application is barred by law as he applicant has filed this application and prayed for relief in this application against a dead person being the respondent no.17 and as such the said application is untenable in the eyes of law and is required to be dismissed on this ground alone.
- n. The instant application under reply is liable to be dismissed with exemplary cost.
- o. Without prejudice to the aforesaid and placing complete reliance there upon I, shall, now, deal with various allegation made and contained in the said application. Save what are matters of record and save what appears therefrom, each and every allegation made and contained therein are denied and disputed as if those are set out herein and denied in seriatim.
4. With reference to paragraph No. 1 to 4 of the said application, save what are matters of record and save what appears therefrom, each and every allegations made and contained therein are denied and disputed as



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if those are set out set out herein and denied in seriatim. It is denied that either of the reports filed or their conjoint reading reveals or confirms any illegal filling up of water body as alleged or at all. It is stated that since various allegation brought to be levelled by the purported OA No. 25/2016/EZ, for proper adjudication of the matter upon hearing all parties therein statusquo was directed to be maintained in respect of the subject property being R.S. dag No. 268 to which such order of statusquo is still subsisting in due compliance thereof without any violation in any manner whatsoever any allegation contrary to or inconsistent with the aforesaid are denied and disputed as if those are set out herein and denied in seriatim. It is denied that there was or is any illegal filling of any water body hence the question of stopping or of having any direct or indirect effect of damaging or destruction or causing pollution or any instance of fusing risk of natural ecological balance of the environment does not and cannot arise as alleged or at all . It is further stated that the presumption made by the petitioner/applicant is utterly baseless and devoid of any merit. It is further stated that the order of July 20, 2016 was never challenged or questioned by the petitioner which as against the petitioner has attained finality and now cannot be questioned or disputed by the petitioner. Any allegation contrary thereto and/or inconsistent there with are denied and disputed as if they are set out herein and denied in seriatim. It is stated that the petitioner, by this instant



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application tactfully sought to obtain final relief in nature bypassing the points of maintainability and various other fraudulent conducts and misdeed of the petitioner duly canvassed in separate pending applications in OA No. 25/2016/EZ, which are all pending their adjudication since 2016 and thereafter. To avoid any confusion I refer to various application filed by the respondent herein from time to time in the main proceedings and which are all matters of record before the Hon'ble tribunal which portrays various fraudulent acts and /or misdeeds by/or at the instance of the petitioner which clearly establishes that petitioner has come with unclean hands before the tribunal and further continued with forum shopping in respect of the self same cause of action in gross suppression of material fact before this Hon'ble Tribunal and also before Hon'ble High Court Calcutta in Writ proceeding and by filing PIL through his instrumentality . I crave leave to refer to those applications and allegations substantiated thereat at the time of hearing if necessary

5. With reference to paragraph No. 5, 6 and 7 of the said application save what are matters of record and save what appears there from , each and every allegation made and contained therein are denied and disputed as if those are set out therein and denied in seriatim. It is stated that the order of July 20, 2016 was passed in respect of original



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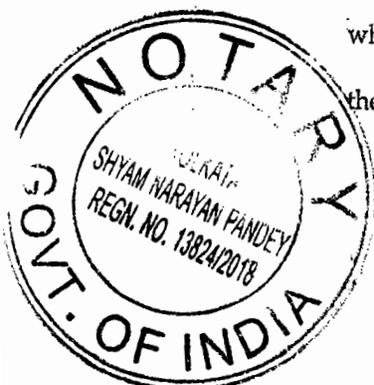
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application No. 25/2016/EZ wherein allegation were made in the petition relating to R.S. Dag No. 268 in respect of which the order of statusquo is directed to be maintained. It is stated that there is no work of construction in any manner, was/is going on in respect of the said R.S. Dag No. 268. Hence the question of flouting or violation of order dated 20th July, 2016, in any manner, does not and cannot arise as alleged or at all. Any allegation contrary thereto and/or inconsistent therewith are denied and disputed as if those are set out herein and denied in seriatim.

It is stated that the order of status quo as it appears was directed to be maintained in respect to R.S. Dag No. 268 and in respect of alleged filling up of which the main petition being OANo. 25/2016/EZ was based and relied. There is no illegal filling up or violation of order of status quo dated 20th July , 2016in any manner or any other order passed in OA No. 25/2016/EZ any allegation contrary thereto and/or inconsistent therewith are denied and disputed as if those are set out herein and denied in seriatim.

6. With reference to paragraph 8 in various sub paragraph being sub paragraph a, b, c, d, e and f save what are matters of record and save what appears there from, each and every allegation made and contained therein are denied and disputed as if those are set out therein and denied



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in seriatim it is denied that there is any filling up going on till date or after the order of July 20, 2016 or prior thereto at any point of time or there is any filling up of water body or selling of plots in violation of order dated July 20, 2016 or any other order or orders passed in OA No. 25/2016/EZ or in respect of R.S. Dag No. 268 as alleged or at all. It is further denied that the construction of the five storied building has been made by the Respondent no.15 and the same is illegal or has been carried on or finished by way of any illegality or there is any question of any violation of order of July 20 2016 or any other order or orders as mentioned or otherwise as alleged or at all. It is further denied that there is any order fraudulently obtained by suppression of order of statusquo passed by this Hon'ble Tribunal before Alipore Court in T.S.No. 532/2017 or any other proceeding as alleged or at all. However the allegation of suppression of fraud allegedly practiced before the Alipore Court in T.S.No. 532/2017 the said Alipore court being the appropriate forum and not this Hon'ble tribunal to try and/or adjudicate and/or ascertain as to whether any fraud or suppression as alleged has been practiced before the Learned Court (Alipore Court) or not. It is further denied that any report filed by any authority bear or can bear testimony in any manner of any alleged illegal filling up of water body in violation of order dated July 20, 2016 by or at the instance of respondent no. 15 or its office bearers



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or any one of them or otherwise, or was there any question or instance of aiding by any of such respondent can or should arise as alleged or at all.

The subject matter of allegation contained in the main petition and the order of statusquo as passed in respect thereof were all relating to R.S. Dag No. 268 admittedly consisting of 60 bighas of property and not in respect of R.S. Dag No. 267. There is no order of statusquo directed to be maintained as against R.S. Dag No. 267 and Plot no. CZ/9B does not belong to R.S. Dag No. 268 in respect of which the order of statusquo is directed to be maintained. Any allegation contrary to or inconsistent with the aforesaid are denied and disputed as if those are set out herein and denied in seriatim.

It is further stated that the allottee of the plot of CZ/9B belonging to Supriti Saha had/has her plot being CZ - 9B in R.S. Dag No. 267 and not in R.S. Dag No. 268 hence in no manner there is violation of the order of statusquo passed in OA No.25/2016/EZ and any allegation contrary to or inconsistent with the aforesaid are denied and disputed as if those are set out herein and denied in seriatim.

It is further stated that the report filed in this proceeding being OA No.25/2016/EZ including dated March 23, 2017 has never been



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challenged by the Petitioner/ Complainant during his life time or taken any exception to, as far as the answering respondent recollects hence it cannot be disputed at this stage and that too in this present application and after about 3 years from the date of such report. In any event it is denied that the report contains any wrong information or any information based on surmises any conjectures or dishonestly or respondent No.15 committed any misdeed as alleged or at all. It is once again stated that the plot no. being plot no. CZ/9B belonging to Respondent No. 24 clearly falls under R.S. Dag No. 267 the order of statusquo which was passed in respect of R.S. Dag No. 268 which was/ is the subject matter of allegation in main petition being OA no. 25/2016/EZ and there is no order of statusquo in respect of R.S. Dag No. 267 in which the plot in question herein being plot No. CZ-9B falls. All allegations therein are denied and disputed as if those are set out therein and denied in seriatim. I reserve my right to make my further submission at the time of hearing, if necessary.

7. With reference to allegation contained in paragraph 10,11,12 of the said application save what are matters of record and save what appears there from , each and every allegation made and contained therein are denied and disputed as if those are set out therein and denied in seriatim



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it is further stated that the applicant was/is , in the habit of forum shopping / interalia in the manner as follows.

- a. one writ Petition Being WP. No. 12605(w) of 2017 was filed on the self same cause of action as of OA No. 25/2016/EZ even suppressing the filing of the said OA No.25/2016/EZ before the Hon'ble Tribunal when no interim order was obtained by the petitioner in the Writ proceeding again he came back and persuaded in OA No. 25/2016/EZ. That in compliance of order of Hon'ble High Court one Report dated 15.01.2018 filed by the Kolkata Municipal Corporation makes it clear that no filling up or construction activities are being carried out at the 'UKHIL BHERI'.

The copy of report dated 15.01.2018 is annexed herewith and marked as annexure "C".

- b. One PIL was filed before the Hon'ble High court being W.P. No. 19774 of 2017 by one Subrata Chatteraj a person in control of and instrumental to, the applicant , wherein the Hon'ble High Court when after considering the application passed no interim order the applicant again kept on persuading the present proceeding. In support of the aforesaid the answering respondent collectively annexed various order passed in the proceeding as afore said and



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further crave leave to reply upon the same in support of their contention at the time of hearing if necessary.

It is further stated that the petitioner had/has proceeded in the matter including the present application with unclean hand and in materialization of his dubious attempt of forum shopping to secure order of his likening and purpose the petitioner was/is a person having his huge business of fishery behind his cosmetic camouflage of love for environment. The answering respondent have come to know that the applicant have recently died which is subject to confirmation from appropriate person in the event the application have died, as of date there is no petitioner in the proceeding.

It is denied that the answering respondent no.15 have not complied with any order of the learned Tribunal , hence the question of refusal or neglect or non compliance does not or cannot arise as alleged or at all. It is further denied that there is any non compliance deliberate or contumacious or otherwise or the respondent no.15 has no regard for orders passed by this Hon'ble tribunal or the appropriate protection or preservation or maintenance of water bodies or fisheries are not maintained in accordance with law as alleged or at all. It is further stated



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that there is no non compliance of any order passed by this Hon'ble Tribunal by the Respondent No. 15 or its office Bearers as alleged or at all.

9. With reference to paragraph 13 and 14 it is denied that the answering respondent or its office bearers or any of them is liable to any punishment of imprisonment or fine in any manner or the said respondent or any of them had/has committed any offence continuing in nature or otherwise or liable to any punishment in any manner or imposition of any fine for any period as alleged or at all.

It is stated that the answering respondent and or its office bearers or any of them are law abiding citizen and has not violated any order of this Hon'ble Tribunal in any manner whatsoever or has acted in violation of any law. It is further denied that unless the order are made as prayed for in the application the purpose or interest of justice cannot be subserved or anyone will suffer any loss or prejudice or injury or the application is made bonafide as alleged or at all.

10. The instant application is suffering from suppression of material fact beside being malafide and misleading in nature and made with an ulterior motive to secure an order of the choice of the applicant, avoiding the hearing/adjudication of the main proceeding together with the issue



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of original application and other aspects involved therewith and hence the main petition being OA No. 25/2016/EZ along with I.A. No.21/2019/EZ in the effect of above and in absence of regular bench of the tribunal should be dismissed with exemplary costs.

11. The statement made in paragraph 1 to 9 are true to my knowledge and rest in I verily belief it to be true.

Prepared in my office &
Identified by me

Sanjib Podder
Deponent
Metropolitan Police Officer, City Ltd.

Advocate



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-18- **ANNEXURE - "A"** 1193

ASHOK PRASAD
Advocate
High Court, Calcutta

Chamber :-
D-17B, Tagore Park
Kolkata 700 039
Mobile:- 91-9883069404
E.mail :- ashokadvhc@gmail.com

Ref:-

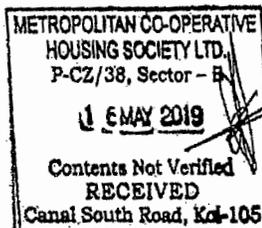
Date:- 02/05/2019

To
1. Metropolitan Co-operative Society Ltd.
CZ-28, Sector - B, Canal South Road
Dist. - 24 PGS(S)
Kolkata - 700105
2. Secretary, Metropolitan Co-operative Society Ltd.
CZ-28, Sector - B, Canal South Road
Dist. - 24 PGS(S)
Kolkata - 700105
3. Paritosh Dutta Roy
P-74, Sector - A, Metropolitan Co-operative Society Ltd.
Dist. - 24 PGS(S)
Kolkata - 700105
4. Jagdish Chandra Mitra
P-74, Sector - A, Metropolitan Co-operative Society Ltd.
Dist. - 24 PGS(S)
Kolkata - 700105
5. Niranjan Mondal
P-116/EA, Sector - A, Metropolitan Co-operative Society Ltd.
Dist. - 24 PGS(S)
Kolkata - 700105
6. Amulya Ratan Dutta
P-138/EA, Sector - A, Metropolitan Co-operative Society Ltd.
Dist. - 24 PGS(S)
Kolkata - 700105
7. Pankaj Majumdar
P-3/SC, Sector - A, Metropolitan Co-operative Society Ltd.
Dist. - 24 PGS(S)
Kolkata - 700105
8. Debojyoti Kar
P-102, Sector - A, Metropolitan Co-operative Society Ltd.
Dist. - 24 PGS(S)
Kolkata - 700105
9. Uma Biswas
P-142, Sector - A, Metropolitan Co-operative Society Ltd.
Dist. - 24 PGS(S)
Kolkata - 700105

Ref:- I A No. 21 of 2019/EZ
In O.A. No. 25/2016/EZ
Sunit Kumar Mallick Chowdhury

Vs.
State of West Bengal & Ors.

My Client:- Sunit Kumar Mallick Chowdhury



Next dated on 06/08/2019



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ASHOK PRASAD
Advocate
High Court, Calcutta

Chamber :-
D-17B, Tagore Park
Kolkata 700 039
Mobile:- 91-9883069404
E.mail :- ashokadvhc@gmail.com

Ref:-

Date:- 02/05/2019

Sir

Please find enclosed herewith a copy of application bearing L.A. No. 21 of 2019 in O.A. No. 25 of 2016 which is likely to be come in the list on 07/05/2019 before the National Green Tribunal, Eastern Zonal bench through video conferencing.

I therefore under instruction from my client forward you herewith a copy of a petition filed by my client before the NGT/EZ which please receive and acknowledge.

Thanking You,

Yours faithfully

Ashok Prasad
Advocate



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~~ANNEXURE - "B"~~

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satirakeshpi@gmail.com

EMS22436025IN INR:6987322436025
 SP KOLKATA EPD (700001)
 Counter No:10,20/05/2019,19:39
 To:ASHOK PR. ADV., KOLKATA
 PIN:700039, Tiljala S.O
 From:METROPOLITA,KOL
 Wt:28gms
 Amt:17.70(Cash)Tax:2.70
 (Track on www.indiapost.gov.in)

भारतीय डाक



India Post



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ANNEXURE - H



**Government of West Bengal
Department of Environment**

East Kolkata Wetlands Management Authority

Pratishamud Bhaban, 5th Floor, LB - 2, Sector - III, Salt Lake, Kolkata - 700106

Ph: 91-33-2335 3003, Fax: 91-33-2335 6403

No: **379/30-15/2016**

Date: 14.09.2022

From: **Kalyanurthi Balamurugan, IFS
Chief Technical Officer**

To: **Sri Sabyasachi Mallick Chowdhury
64/11G, Suren Sarkar Road,
Police Station-Beliaghata,
Dist. South 24 Pgs
Kolkata-700010.**

Refr. O.A. No.25/2016/EZ (Sabyasachi Mallick Chowdhury-Vs- The State of West Bengal & Ors.)

Subs Hearing Notice

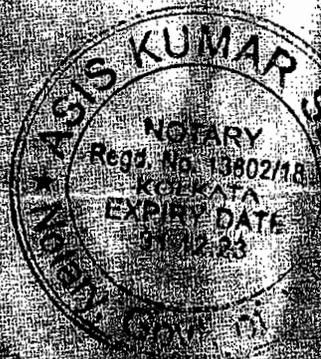
Sir,

In compliance with the Order dated 03.01.2022 of the Hon'ble National Green Tribunal, Eastern Bench, Kolkata in O.A.No. 25/2016/EZ (Sabyasachi Mallick Chowdhury-Vs- The State of West Bengal & Ors.), regarding the disputed R.S.Dag Nos. 267 and 268, Mouza-Nimekpoktan, J.L. No. 1, P.S. -Pragati Maidan, Ward No. 57 under KMC, District-South 24 Parganas, one further hearing is organised by the Joint Committee as per the request of Shri Sandip Poddar, Secretary, Metropolitan Co-operative Housing Society.

You are hereby requested to attend the hearing on 23.09.2022 at 10 noon in the Conference Room of the Environment Department, Pratishamud Bhaban, 5th Floor, LB - 2, Sector - III, Salt Lake, Kolkata - 700106. You are requested to bring all documents and proof of identity. It is noted that you or your authorized representative along with proof of identity may only take part in the hearing, failing which an ex-parte order may be issued.

Sincerely,

(Kalyanurthi Balamurugan)



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ANNEXURE-I

I

T.S. - 1041 of 2019Order No. 22Dated: 30.03.2021

Today is fixed for passing order in respect of application filed under Order 7 Rule 11 of the Civil Procedure Code.

The hearing in respect of said application has already been concluded on the previous date.

Both the parties filed their respective haziras.

The petition under Order 7 Rule 11 of the Civil Procedure Code is taken up for passing order.

Perused the petition and other materials available on record.

Considered.

On perusal of the record, it appears that by filing the said application, the defendant seeks for the rejection of the plaint on the ground that instant suit is barred under Sections 29 & 33 of National Green Tribunal Act, 2010 and Court Fees Act.

The case of the plaintiff is that the plaintiff is the owner of the schedule mentioned land which is the subject matter of dispute. The plaintiff contended that he is one of the members of Metropolitan Co-operative Housing Society (Proforma defendant) and the said society upon payment of consideration price allotted a plot of land being plot no. CZ/20A in Sector - B and also executed a registered deed of conveyance and there after a deed of rectification. Thereafter, the plaintiff mutated his name in the record of Assessment Collection Department, Kolkata Municipal Corporation. Plaintiff after obtaining building permit decided to raise construction upon his plot of land and for that purpose gathered building materials for construction work. Plaintiff alleged that defendant compelled the plaintiff to stop the commencement of construction work as defendant claims that he is the one of the owners of an adjacent water body locally known as (Ukil Bheri) wherein defendant carries on fishery business.

Now according to the application under Order 7 Rule 11 of the CPC, the defendant has contended that the property being R.S Dag Nos. 267 & 268 of Mouza-Nimakpoktan are the subject matter of the proceedings before Hon'ble National Green Tribunal, Eastern Zone, wherein the proforma defendant (the said society) who is also the allottee of land to the plaintiff and several other persons including Government authorities are parties to the proceeding being M.A. 187 of 2017 (arising out of Q.A No. 25 of 2016) and Hon'ble National Green Tribunal has been pleased to pass an order of injunction in the form of status quo in respect of the properties situated within Plot Nos.267 & 268 of Mouza Nimakpoktan. Plaintiff of the instant case contested the above matter and has filed a written objection against the application under Order 7 Rule 11 read with 151 of CPC filed by defendant and during hearing of the instant matter, Ld. Advocate for the plaintiff admitted the fact that one suit is pending before Hon'ble National Green Tribunal with regard to a dispute involving water body, but stated that the jurisdiction of civil court regarding this matter is not barred under the law and the petition filed by the defendant should be rejected.

Now, it is very vital to discuss in few lines about the provisions as laid down in section 29 of National Green Tribunal Act. Section 29 of National Green Tribunal Act bars the jurisdiction of Civil Court to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no adjudication in respect of any action taken or to be taken by or before the Tribunal in respect of settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the Civil Court. More over, section 33 of the Act gives overriding effect to it over other laws.

Carefully perused the plaint and the materials submitted by the plaintiff. It appears that the plaintiff claims to be the owner/allottee of Plot No.CZ/20A and in paragraph 5 of his plaint the plaintiff has stated that the proforma defendant executed a registered deed of conveyance in respect of plot No. CZ/20A in favour of the plaintiff and after perusal of deed of conveyance submitted by the plaintiff being

Contd...



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T.S. - 1041 of 2019

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Deed No.190105019 of 2015 registered before Additional Registrar of Assurance A.R.A.-I, Kolkata, it is clear that said plot of land corresponds to Plot No.267 and this plot is the subject matter of a previously instituted case wherein substantial question relating to preservation of water body is involved and the allottee society of the plaintiff is one of the party being M.A. 187 of 2017 (Q.A 25 of 2016), which is still pending before Hon'ble National Green Tribunal and injunction order in the form of status quo is granted in respect of property situated under plot no 267. So, according to section 29 of National Green Tribunal Act ,this court has no jurisdiction to try the matter. Therefore, this court is of the opinion that the appropriate forum of the plaintiff, at this stage is Hon'ble National Green Tribunal, wherein plaintiff has the option to seek appropriate relief.

Hence, it is

ORDERED

that the present prayer of the defendant under Order. 7, Rule 11(d) of the Civil Procedure Code is considered and allowed on contest against the plaintiff and ex-parte against the proforma defendant but without any order as to costs.

The plaint is hereby rejected.

Interim order if any stands vacated. Petition filed by the plaintiff for extension of ad-interim injunction order stands rejected.

The suit is thus disposed of.

D.A to note in relevant register.

D/c by me.

Sd/-

Civil Judge (Jr. Divn.),
1st Court, Alipore,
24-Parganas (South).



11/09/2023, 17:06

Case Status : Search by Case Number

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Civil Judge, Jr. Div. Alipur, South 24 Pgs**Case Details**

Case Type	: MISC CASE		
Filing Number	: 2890/2021	Filing Date:	26-07-2021
Registration Number	: 70/2021	Registration Date:	26-07-2021
CNR Number	: WBSP03-001111-2021		

Case Status

First Hearing Date	: 26th July 2021		
Next Hearing Date	: 08th March 2024		
Case Stage	: Hearing of Petition		
Court Number and Judge	: 41-1st C.J.(J.D.)		

Petitioner and Advocate

1) SABYASACHI MULLICK CHOWDHURY Advocate- ACHYUTANANDA GHOSH

Respondent and Advocate

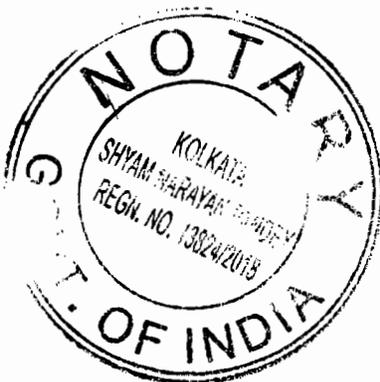
1) SANJIB PODDAR

Acts

Under Act(s)	Under Section(s)
Code of Criminal Procedure, 1973	340

Case History

Registration Number	Judge	Business on Date	Hearing Date	Purpose of Hearing
70/2021	1st C.J.(J.D.)		08-03-2022	Hearing of Petition
70/2021	1st C.J.(J.D.)		08-03-2024	Hearing of Petition



Sabyasachi Medlicke
Choudhury

Signature

"VAKALATNAMA"

In the Court of National Green Tribunal at Kolkata/EZ

Suit Case No. OANo.- 40 of 2023

at 2023

Plaintiff

Applicant

Sanjit Poddar

Applicant

- Versus -

Defendant

Opp. Party

National Wetland Authority & Ors.

Respondent.

KNOW ALL MEN by these

that I/We

do hereby in my/our name and my/our behalf constitute and appoint Sri Sandipan Samanta
Room No.-3, Raja Chambers, 4, K.S Roy Road, Kolkata - 700 009
as my/our true and lawful pleader/Advocate & attorney to appear and act for me/us in the matter
noted above to file suit, written statement, conduct suit, appeal from original suit, order etc. and
for that purpose to do all acts and thinks, whatsoever in that connection including compromise of
the above matter, depositing in or withdrawing money from filing or taking our document and
payment order from Court, referring matter in dispute between the parties hereto to arbitration,
release from attachment, filling execution or miscellaneous cases and other petitions, pleadings
at execution sale, obtaining payment from us out of court, withdrawing custody and other fees
and doing on my/our behalf such other acts in the above matters as are necessary and proper.

I/We hereby agreeing to ratify and confirm all acts so done by the
said Advocate or attorneys as my/our own acts and as if done by me/us to all intent and purposes.

Dated: 13.09.2023

ADVOCATES: -

Vakalatnama received
and accepted
Sandipan Samanta
Adv.
M-9051375742