

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION. NO.101/EZ/2023**

In the matter of:

Gobardhan Prasad Dalai

... APPLICANT

-VERSUS-

State of Odisha & Others

... RESPONDENTS

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By the Respondent Nos.2 and 5 through

CUTTACK

DATE: 06.11.2023.

(ANAND PRAKASH DAS)

ADDL. STANDING COUNSEL

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA
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COUNTER AFFIDAVIT FILED ON BEHALF OF
THE RESPONDENT NOS.2 AND 5.

I, Sri Radha Ranjan Das, aged about 56 years, S/o- Late Sarat Chandra Das, at present working as Tahasildar, Basta, At/PO- Baharda, Dist.* Balasore, Odisha, do hereby solemnly affirm and state as follows:-

1. That, I have been arrayed as the Respondent No.5 in the present Original Application. I have also been authorized by the Respondent No.2 i.e. Collector & District Magistrate, Balasore to swear this affidavit for self and on his behalf.
2. That, I have gone through the Original Application along with the Annexures appended thereto and understood the content thereof. I am well acquainted with the facts of the case and thus competent to swear this affidavit in my official capacity.

4/6-11-2023
Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK



Radhe Ranjan Das

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3. That, the present Original Application has been filed by the Applicant seeking for a direction to the State Respondents for removal of constructions from Nayanjori Land and restore the land to Government control to be used for the purpose of passage of storm water.

4. That, all averments, contentions and/or statement contained in the Original Application filed by the Applicant, which may not have been specifically denied or traversed herein but are in essence, contrary to the substance of this Counter Affidavit, should not be deemed to be admitted by reason of mere non-traverse, but should be treated as expressly denied and the Applicant should be put to strict proof in respect thereof.

5. That, in reply to the Paragraph No.1 of the Original Application, being matter of record, the same needs no reply.

6. That, in reply to the averments made in Paragraph No.2 of the Original Application, it is humbly submitted that the land bearing Khata No. 328, Plot No. 124,377 and 379, kisan-Nayanjori of Mouza- Barmadhia stands recorded in the name of National Highway Authority of India (hereinafter referred to as

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Advocate
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“NHAI”). Since the NHAI is the appropriate authority to take care of the scheduled land, the deponent is unable to take any action without any prior intimation from the NHAI authority.

7. That, in reply to the averments made in Paragraph Nos.3 and 4 of the Original Application, it is humbly submitted that pursuance to the order dated 09.07.2021 passed by the Hon'ble High Court of Orissa in Writ Petition bearing W.P.(C) No.3567 of 2020, a Misc. Case bearing No. 55/2021 was instituted by the Respondent No.2 i.e. Collector, Balasore.

On 12.11.2021, the Respondent No.2, after hearing the parties, disposed of the matter with a direction to the Tahasildar, Basta to demarcate the schedule land of Mouza- Barmadhia in presence of the NHAI authorities. The relevant portion of the order passed by the Respondent No.2 on 12.11.2021 is extracted hereunder:-

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"In reply Tahasildar, Basta has reported that the Khata No.328 bearing Plot No.124, 377 and 379 having kism Nayanjori stands recorded in the name of National Highway Authority as revealed from the records available in Tahasil level. The schedule land is situated in the middle of Basta Bazar and adjacent to the road connecting Basta Bazar to the National

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Highway. During field verification, it is found that Plot No.124 and 377 is on the north of the main concrete road of the Bazar where Plot No.379 is situated on the opposite side of the concrete road. As per report of the concerned R.I., it is seen that there is no obstruction on the connecting road as well as to the Nayanjori land. The actual possession of land will be traced out after due demarcation of the land by the requisition of NH authorities.

In view of the above report submitted by the Tahasildar, Basta, it is not clear that the extend of encroachment and obstruction on the road in this regard, the TAhasildar, Basta is hereby directed to conduct joint demarcation in presence of NH Authority and in case any encroachment is found, the un-authorized encroachers be evicted following due procedure of Law/Rules immediately".

XX XX XX

8. That, in reply to the averments made in Paragraph No.5 of the Original Application regarding inaction by the Respondent No.5 as alleged by the Appellant is completely baseless. It is humbly submitted that after receiving the application from the present Appellant, on Dated 08.06.2022 the Respondent No.5 i.e. Tahasildar, Basta, had taken steps for demarcation of the suit land bearing plot.No. 124,377 and 379, corresponding to khata No. 328 having kism Nayanjori of Mouza- Barmadhia. Accordingly, the Letter dated 24.06.2022 (Annexure-A/5) was

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issued to the Project Director, NHAI, Kharagpur Division to depute their staff for the demarcation but the demarcation could not be executed due non deputation of staff of NHAI.

It is pertinent to mention here that the concerned Tahasildar, Basta i.e. the Respondent No.5, vide letter No.1695, 24.06.2022, had intimated the fact to the Project Director, NHAI, Kharagpur Division, requesting the NHAI authority to depute their staffs for compliance of the above order. But, the demarcation could not be carried out as the NHAI staffs were absent on the date of demarcation.

Copy of the letter No.1695, 24.06.2022 of the Tahasildar, Basta is annexed herewith as Annexure-A/5.

9. That, the averments made in Paragraph No.6 of the Original Application is denied and disputed by the deponent. It is submitted that the photographs submitted by the present Appellant with respect to the schedule land is adjacent to the main road of Basta Bazar. It is clearly seen from the spot enquiry report that there is encroachment over the suit land. But the extent of encroachment can only be assessed after a proper joint

Rajesh Ranjan Das

Surenara (Signature)
Advocate
NOTARY, CUTTACK

demarcation of the land in presence of the officials of the NHAI and Tahasil Office, Basta.

10. That, in reply to the averments made in Paragraph Nos.7 and 8 of the Original Application, it is humbly submitted that a field enquiry was conducted by the Addl. Tahasildar, Basta alongwith Revenue Supervisor, Basta and the concerned R.I., regarding the status of the land in question on 02.11.2023 and it was seen that there are encroachments in the given plots and the encroachers have constructed illegal structures like cabin, temporary shops, etc. over it.

But, it is ascertained from the local field enquiry that there is no blockage of water on the plot as the drain is covered with slabs and the water channel is regularly passing under the slabs. As the land is recorded in the name of NHAI, the Respondent No.5 cannot institute case as per the provision of the Orissa Prevention of Land Encroachment (OPLE) Act, 1972 unless upon receipt of any requisition from the NHAI.

Copy of the Enquiry Report dated 02.11.2023 is annexed herewith as Annexure-B/5.

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Advocate
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11. That, in reply to the averments made in Paragraph Nos.9 and 10 of the Original Application, it is humbly submitted that the land in question stands recorded in the name of the NHAI authority. Since the land is not under the control of the Revenue & Disaster Management Department, Odisha and has been recorded separately in the name of NHAI, the concerned NHAI authority may apply in the prescribed manner before the competent authority for demarcation and eviction of encroachment, if any, shall be carried out as per law.

12. That, in reply to the averments made in Paragraph Nos.11 and 12 of the Original Application, it is humbly submitted that as per the Orissa Prevention of Land Encroachment (OPLE) Act, 1972 the recorded owner of the land gives a requisition to the concerned Tahasildar for demarcation of land and eviction of encroachers from the said land. Upon receipt of such requisition, the Tahasildar conducts an Enquiry and initiates an encroachment proceeding, in case any encroachment is found over the land in question.

However, in the instant case, no such requisition has been received by the Respondent No.5 i.e. Tahasildar, Basta, with

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 Advocate
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Radhe Ranjan Das

regard to any encroachment on the land in question, which stands recorded in the name of the NHAI.

The present deponent, however, undertakes that he shall immediately take steps to remove any encroachment if any, as per the provisions of the Orissa Prevention of Land Encroachment (OPLE) Act, 1972 in case any requisition is filed by the recorded land tenant.

13. That, in reply to the averments made in Paragraph Nos.13 to 17 of the Original Application, the deponent has no comments to offer.

14. That, it is humbly submitted that the schedule land bearing Khata No. 328, Plot No. 124,377 and 379, kisam- Nayanjori of Mouza- Barmadhia stands recorded in the name of the NHAI. The Tahasildar, Basta had earlier issued notice to the NHAI for demarcation of land and only after that the actual status can be ascertained. As the NHAI authorities were absent on the day of demarcation the demarcation could not be completed. Hence, the allegation made by the Appellant in the Original Application are baseless.

Rachhe Ranjan Das

15. That, the State Authorities undertake to take prompt steps to demarcate the land in question and remove encroachments, if any found, within a stipulated time period, after a requisition is made in that regard by the NHAI i.e. the recorded tenant of the land in question.

16. That, in view of the aforesaid facts and circumstances, the prayers made in the Original Application are devoid of merit and the same is liable to be dismissed in limine.

17. That, the deponent further craves leave of this Hon'ble Tribunal to file further Affidavit / Counter, if the same is deemed necessary.

18. That, the facts stated above are true to the best of my knowledge and based on official records.

Identified by

Advocates Clerk, A.G's Office

Rajha Ranjan Das
DEPONENT
TAHASILDAR
BASTA

CERTIFICATE

Certified that cartridge papers are not available.

CUTTACK

(ANAND PRAKASH DAS)

DATE: 06.11.2023

ADDL. STANDING COUNSEL

The above named Deponent
 Solemnly affirm on.....
Being Identified
 by.....

06-11-2023
Surendra Prasad Das
 Advt.
 NOTARY, CUTTACK



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OFFICE OF THE TAHASILDAR, BASTALetter No. 1695 / Dt. 24.6.22

To

The P.D. NHAI,
Kharagpur Division.

Sub: Joint demarcation of NHAI land as per the order the Collector and District Magistrate vide Misc case No. 55/2021 arising out of W.P.(C) No. 3567/2020.

Sir,

In inviting a kind reference on the subject cited above, I am to inform you that the learned Collector, Balasore vide Misc. case No. 55/2021 arising out of W.P.(C) No 3567/2020 directed Tahasildar, Basta to conduct joint demarcation in presence of NH authority, the plot No. 124,377 and 379 under Khata No. 328 of mouza- Baramadhia.

Hence, I would therefore request you to depute your official for the demarcation of the above mentioned land on dtd. 25/07/2022 at 10.00 a.m. for compliance of the order of the Collector & District Magistrate, Balasore.

This is for your information and necessary action.

Yours faithfully,

[Signature]
24/6/22
Tahasildar, Basta

Memo No. 1696 Date 24.6.22

Copy submitted to the Deputy Collector, Judicial Section, Balasore for favour of information and necessary action.

[Signature]
24/6/22
Tahasildar, Basta

Memo No. 1697 Date 24.6.22

Copy forwarded to the I.I.C, Basta P.S. for information and necessary action with reference to the Memo NO. 995 Dtd. 31/12/2021 of Deputy Collector, Judicial Section. Further, he is requested to depute two number police personnel on the date of demarcation.

[Signature]
24/6/22
Tahasildar, Basta

Memo No. 1698 Date 24.6.22

Copy to Debasish KHillar, Amin, Basta Tahasil/ R.I, Basta for in formation and necessary action.

[Signature]
24/6/22
Tahasildar, Basta

AH estw
[Signature]
24/6/22
TAHASILDAR
BASTA

ANNEXURE - B/S

To

The Tahasildar, Basta

Sub- Submission of enquiry report with respect to O.A. No. 101/2023/EZ filed by Gobardhan Prasad Dalai.

Sir,

With reference to the subject cited above I alongwith Revenue Supervisor and R.I, Basta proceeded to the spot and conducted enquiry in presence of the applicant. The enquiry report is stated as follows;

1. That, the plot No. 124, 377, 379 under khata No 328 having kism Nayanjori are recorded in the name of National Highway Authority, India.
2. That, these Nayanjori plots are being illegally encroached by the unauthorized occupants by constructing building/ structures over these plots.
3. That, the plots are under the jurisdictional authority of NHAI. So without proper communication/ instruction from the competent authority it is not possible to conduct any kind of excecutional progress over the said plots.
4. That, the sewerage drain are constructed along side the main road over the Nayanjori plots for discharge of water smoothly.
5. That, it is not found any kind of obstruction of water by the construction made by the encroachers over the Nayanjori plots as the drain in front of these structures are covered with slabs and as they have not made any kind of filling on the drainage to obstruct the flow of drain water.

In view of the above, the NHAI who is the competent authority should take proper steps to get the Nayanjori plots under khata No. 328 encroachment free or any other proper authority to make it done on behalf of him.

This is for your information and necessary action at your end.

Yours faithfully

R. I. Basta

R.S. Basta
Revenue Supervisor
Basta Tahasil

Addl. Tahasildar, Basta

Attest

6/11/23
TAHASILDAR,
BASTA