

BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN
ZONE BENCH, KOLKATA.

Original Application No.102/2021/EZ

Keshab Ganda ... Applicant

-Versus-

State of Odisha & others ... Respondents

I N D E X

Sl. No.	Description of Documents	Pages
-		
1.	COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT Nos.1 & 7	1-9
2.	<u>ANNEXURE-R-7/A</u> Copy of the permission letter issued under Section 3 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 dated 06.10.2021.	10

Cuttack

By The Respondent Nos. 1&7 through

Date: 17.11.2022

ADDL. STANDING COUNSEL



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COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT
Nos.1 & 7

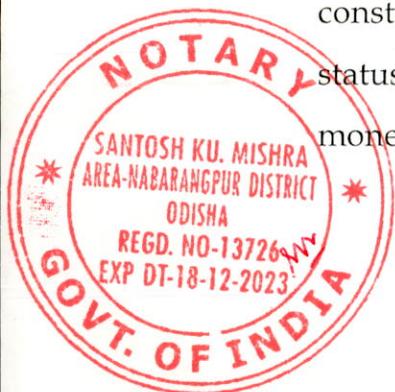
I, Dr. Kamal Lochan Mishra, aged about 56 years, S/o Late Sarada Kanta Mishra, Collector-cum-Dist. Magistrate, Nabrangpur, At./P.O./Dist.-Nabrangpur, Respondent No.7, do hereby solemnly affirm and state as follows:-

1. That, I am the Opposite Party No.7 in the present Original Application. I have been authorized to swear this affidavit on behalf of Respondent No. 1 to file the counter affidavit in the instant case.

2. That, the Applicant in the instant case assails the decision of the district administration in constructing the gram panchayat building of Ichhapur Gram Panchayat on the forest land without obtaining forest clearance as required under Forest Conservation Act, 1980 and therefore prays to declare the aforesaid construction as illegal and restore the forest land to its original status. Additionally, the Applicant has prayed to recover the money spent on construction from the officers concerned.

Kamal Lochan Mishra

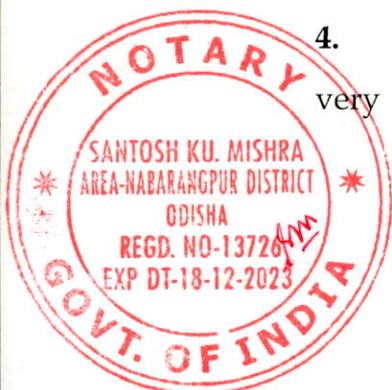
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OBJECTION ON THE MAINTAINABILITY OF THE OA ON THE GROUND OF LIMITATION:

3. That at the outset the Deponent would humbly submit that Chapter-III and Section 14 of the National Green Tribunal Act, 2010 deals with the jurisdiction, power and proceedings of the Hon'ble Tribunal. Section 14(3) of the Acts further says that No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose. In the instant case, the Applicant himself admits that it was as early as on 04.05.2018, the villagers had given an objection to the proposed construction of Gram Panchayat building over the scheduled land i.e. Plot No.276, Khata No.234, Area Ac 0.74 dc. The Applicant further in Paragraph 6 and 7 of the Original Application places reliance on the news paper publication dated 03.05.2018 and grievance petition dated 09.08.2018 to substantiate his case. Therefore, it cannot be discarded that the Petitioner was aware of the proposal of construction of gram panchayat over the scheduled land much earlier. But surprisingly the Applicant approached this Hon'ble Tribunal only in the month of October'2021, more specifically this Original Application was filed on 18.10.2021 and he has not explained the reasons for late filing of the original application.

4. That Section 14 of The National Green Tribunal Act, 2010 very clearly and categorically states that No application for



Kamal Lachan Mishra

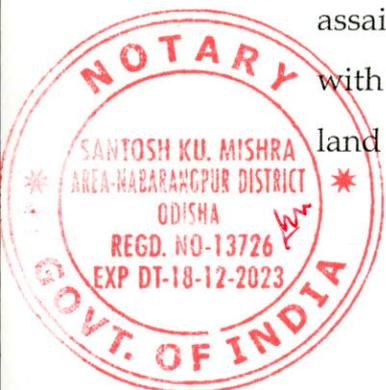
adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose. So at the first instance, the Original Application should not have been entertained by this Hon'ble Tribunal since this application has been filed much after the prescribed time period under the statute and the cause of action as per the own admission of the Applicant arose way back on 04.05.2018. Therefore, the present Original Application, being grossly time barred, should be dismissed at the threshold given the fact that the Applicant has not offered any explanation for delayed filing of the Original Application in the entire petition.

5. That in Paragraph 8 of the Original Application, the Applicant very categorically states that the construction work is going on over a forest land since January'2021 and as per Section 16 of the Act, the Applicant was supposed to file the Application by June'2021 to be entertained by this Hon'ble Commission. Even two months grace period as provided as per proviso to Section 14(3) of the Act came to an end on August'2021. Law is fairly well settled in this regard that delay defeats equity and that relief can be denied on the ground of delay alone.

RESPONSE TO THE ALLEGATION OF VIOLATION OF SECTION-2 OF FOREST CONSERVATION ACT:

6. That the Applicant in the Original Application mainly assails the decision of the District Administration in going ahead with the construction of gram panchayat office over a forest land without obtaining clearance from the Central Government

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as per Section 2 of the Forest Conservation Act, 1980. For better appreciation of this Hon'ble Tribunal, Section 2 of the Forest Conservation Act, 1980 is quoted hereunder.

2. Restriction on the dereservation of forests or use of forest land for non-forest purpose. – Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing –

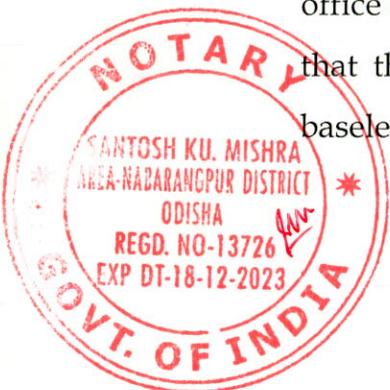
(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

Explanation. – For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation.

7. That the Applicant placing reliance on the aforesaid Section, submits that since there is no clearance obtained for construction of Gram Panchayat Office from the central Government under the Forest Conservation Act, 1980, the action of the Opposite Parties in constructing the Gram Panchayat office over a forest land is illegal. The Deponent humbly submits that the aforesaid stand taken by the Applicant is completely baseless since there is already approval given for construction of

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Kamal Lochan



the Community center and diversion of forest land under Section 3 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Copy of the permission letter issued under Section 3 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 dated 06.10.2021 is enclosed herewith and marked as Annexure-R-7/A.

8. That Section 3 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is quoted hereunder for better appreciation of this Hon'ble Tribunal.

"3 (1) xxxxx xxxx xxxxxx

(2) *Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-*

- (a) schools;
- (b) dispensary or hospital;
- (c) anganwadis;
- (d) fair price shops;
- (e) electric and telecommunication lines;
- (f) tanks and other minor water bodies;
- (g) drinking water supply and water pipelines;
- (h) water or rain water harvesting structures;
- (i) minor irrigation canals;



Kamal Lochan Mishra

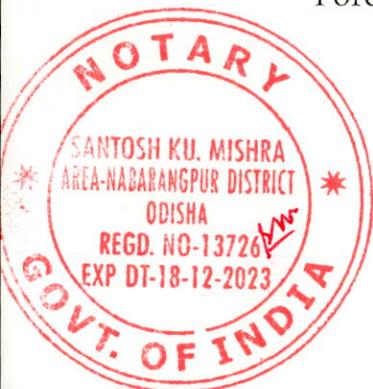
- (j) non-conventional source of energy;
- (k) skill up-gradation or vocational training centers;
- (l) roads; and
- (m) **community centers:**

Provided that such diversion of forest land shall be allowed only if, -

- (i) the forest land to be diverted for the purposes mentioned in this subsection is less than one hectare in each case; and
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha

9. That Section 3 (2) of the Forest Rights Act, 2006 starts with a non-obstante clause and very clearly means and intends to be preceded over and above the Forest Conservation Act, 1980. The Act of 2006 also being a special statute supersedes the general statute of 1980 and therefore when permission is granted under Section 3 (2) of the Act of 2006, no further permission is required to be obtained under Section 2 of Forest Conservation Act.

10. That in the instant case, the Applicant has alleged violation of Forest Conservation Act, 1980 to invite cognizance of this Hon'ble Tribunal. As pointed out above, there is no violation of Forest Conservation Act, 1980 in the given case as the authorities have taken the permission from the competent authority under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

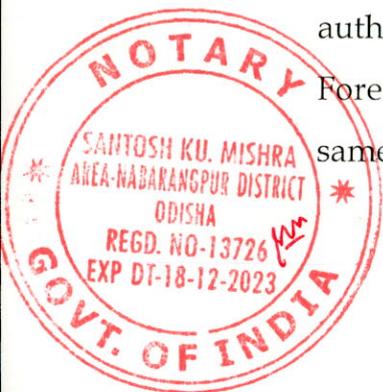


Kamal Kachan Mishra

11. That the Deponent would respectfully submit that Schedule-I of the National Green Tribunal Act, 2010 read with sections 14(1), 15(1), 17(1)(a), 17(2), 19(4) (j) and 34(1) of the Act empowers the Hon'ble Tribunal to have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I. Schedule-I covers the following enactments such as :

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002

In the instant case, the Applicant to maintain his Original Application before this Hon'ble Tribunal has alleged violation of Forest Conservation Act, 1980 but since the aforesaid Act is not applicable to the instant case, and given the fact that the Authorities has obtained permission from the competent authority under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and the same enactment not being covered under the Schedule-I, the



Kamal Lachan Mishra

Instant Original Application is liable to be dismissed on that score alone.

PRAYER TO IMPOSE COST UNDER SECTION 23

12. That the Deponent now seeks leave of this Hon'ble Tribunal to impose cost on the Applicant by invoking Section 23 of the National Green Tribunal Act, 2010. The said provision is quoted hereunder for better appreciation of this Hon'ble Court.

23. Cost.—(1) While disposing of an application or an appeal under this Act, the Tribunal shall have power to make such order as to costs, as it may consider necessary.

(2) Where the Tribunal holds that a claim is not maintainable, or is false or vexatious, and such claim is disallowed, in whole or in part, the Tribunal may, if it so thinks fit, after recording its reasons for holding such claim to be false or vexatious, make an order to award costs, including lost benefits due to any interim injunction.

That on the strength of the averments made and the materials produced by the Deponent in the present Affidavit, the Deponent would pray to this Hon'ble Tribunal to impose heavy cost for not because the claim was grossly time barred and not-maintainable, false and vexatious, but due to non-presentation of proper facts, order of interim injunction was granted by this Hon'ble Tribunal on 20.12.2021 and the construction of a public project has been stalled till date.



Kamal Lochan Mishra

13. That, the contents of the above paragraphs are true and correct to the best of my knowledge and based on official records.

14. That the answering Deponent craves leave of this Hon'ble Tribunal to add, alter, amend the present affidavit if necessary.

Identified by

Kamal Lochan Mishra

DEPONENT
District Magistrate & Collector
Naurangpur

CERTIFICATE

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

CUTTACK

Dt.- 17.11.2022

[Signature]

ADDL. STANDING COUNSEL



AFFIDAVIT

Solemnly affirmed before me
by Sri/Smt. Kamal Lochan Mishra;
P/o. Collector, cum District Magistrate
Tq. Naurangpur Dist. Naurangpur
Who identified by xx
whom He/She is personally Known

BEFORE ME

[Signature]
17/11/2022
SANTOSH KUMAR MISHRA
NOTARY (GOVT. OF INDIA)
REGD. NO-13726

NOTED & REGISTERED

AT Sr. No. 110/17-11-2022

THIS DOCUMENT CONTAINS
(09) Nine PAGES



OFFICE OF THE DIVISIONAL FOREST OFFICER, NABARANGPUR DIVISION

Phone No. 06858-222014 (OFFICE/FAX), Cell No. 09437094840

Email - dfo.ngpur@yahoo.co.in

Memo No. _____ /SF (Consd.) Dated _____ October, 2021.

To

**The Range Officer,
Jharigam Range.**

Sub :-

Diversion of forest land Under Section - 3(2) of Schedule Tribes and Other Traditional Forest Dwellers (RoFR) Act -2006 for Construction of Community Center for Ichhapur GP at Karlmal over an area 0.40 Ha vide Khata No-234, Plot No-276, Kissam-Jungal, Mouza- Ichhapur, Tahasil- Jharigam-regd.

Ref :-

Your Memo No. 651 dtd. 27.09.2021.

With reference to the aforementioned memo and captioned subject cited above, it is to inform you that the proposal for diversion of forest land for Construction of Community Center for Ichhapur GP at Karlmal under Section 3(2) of FRA '2006 over an area 0.40 Ha Forest Land vide Khata No-234, Plot No-276, Kissam- Jungal, Mouza- Ichhapur, Tahasil- Jharigam with no tree felling is accepted.

You are requested to demarcate the area of the forest land approved for diversion and allow the user agency for Construction of Community Center for Ichhapur GP at Karlmal over an area 0.40 Ha and report compliance. The guidelines alongwith the conditions issued in this regard vide Letter No. 23011 dtd. 18.05.2009 by Govt. of India, Ministry of Tribal Affairs communicated vide Memo No. 14458 dtd. 03.09.2010 of CCF, Forest Diversion & Nodal Officer should be scrupulously followed.

The Xerox copy of the sketch map and application from Under Section 3(2) of Schedule Tribe & Other Traditional Forest Dwellers (RoFR) Act-2006 are enclosed herewith for your reference and record.

Encl:- As above


Divisional Forest Officer, 06/10/2021
Nabarangpur Forest Division.

Memo No. 4639 /SF(Consd.) Dtd. 06/10/2021

Copy submitted to the Block Development Officer, Jharigam for information & necessary action.

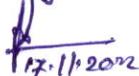

Divisional Forest Officer, 06/10/2021
Nabarangpur Forest Division.

Memo No. _____ /SF(Consd.) Dtd. _____

Copy submitted to the Collector & District Magistrate, Nabarangpur -Cum- Chairman, District Level Committee under ST & OTFD (FR) Act, 2006 for favour of information and necessary action.


Divisional Forest Officer, 06/10/2021
Nabarangpur Forest Division.

True copy attested


17.11.2021

Sr. Assistant, Block office Jharigam
Dist. Nabarangpur