

BEFORE THE NATIONAL GREEN TRIBUNAL, KOLKATA

Original Application No. 140 of 2022

PAPUN KUMAR SAHU

APPLICANT

V E R S U S

STATE OF ODISHA AND OTHER

Respondents

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO 7 LITU

PRADHAN

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DATE: 08/12/2022

SANKAR PRASAD PANI

ADVOCATE FOR R-7

Plot No 2132/4814, NageswarTangi, Bhubaneswar 751002

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PRADHAN

1. I, Litu Pradhan, S/o Late Bhaskar Pradhan aged about 42 Years, At/Po-Podamari PS- Patapur, Ganjam, Odisha AND arrayed in this Original Application as Respondent No 7
2. That I have gone through the contents of the OA, Affidavit of SPCB and Rejoinder Affidavit of the Applicant, hence competent to swear this affidavit
3. That the applicant states that the cause of action started since **7th August 2021**, representation filed on 9th June 2022 and the application was filed on 11th September 2022 almost after 13 months of the alleged cause of action and same is not permissible under Section 14 of NGT Act 2010 as the application is filed after 6months from date of first cause of action, Hence the application not maintainable, Hopelessly barred by limitation and liable to dismissed with cost.
4. That at the outset the present deponent submits **that in view of the joint inquiry report dated 17th October 2022 and the Affidavit dated**

3/11/2022 filed by state pollution control board, odisha, the Original application is liable to be dismissed with heavy cost.

5. That the unit has already obtained sitting criteria certificate from the Collector and District Magistrate, Ganjam vide Revised Order no. 2852 dtd. 28.08.2017 over Plot No. 823/1189 under Khata No. 127/81, Tehsil: Sanakhemundi, Dist. Ganjam
6. Regional Office, SPCB, Berhampur granted Consent to Establish and Consent to Operate on dtd. 07.08.2021 for the production of Clay Kiln Bricks-20,000,00 Nos./Annum and same is valid till 31/03/2024
7. Mining Plan for Nuagaon Brick Earth Quarry has been duly approved by the Authorised Officer, Joint Director, Geology, Berhampur on 28.08.2019 for the period of five years and Environmental Clearance for mining of brick earth from Nuagaon Earth Quarry over an area of 3.3 acres /1.347 hectares at village-Nuagam, Tehsil, Sanakhemundi. Dist Ganjam from SEIAA, Odisha dated 21.01.2021.
8. Lease agreement has been made between the Tehsildar, Sanakhemundi and lessee on dated 25.03.2022 for quarrying of brick earth over an area of 3.3 acres at village-Nuagam, Tehsil, Sanakhemundi. Dist-Ganjam.
9. A joint inquiry was conducted on 17/10/2022 in presence of Mrs. Subhashree Rath, Deputy Collector, Berhampur, and Representative of Sub-Collector Berhampur, 2. Er. Maheswar Behera, Deputy Environmental Engineer, Representative of Regional Officer, SPC,

Board, Berhampur. 3. Sri Saurava Pradhan, Geologist, Collectorate, Ganjam, Odisha. Also during the site inspection, the Tehsildar, Sanakhemundi and the Revenue Supervisor and Revenue Inspector of the Circle.

10. That the joint inquiry report was submitted to Hon'ble NGT and the same has been accepted by the Hon'ble Tribunal. The order dated 7th Nov 2022 has recorded the observations and the committee recommendations:-

- i. The Nuagam Brick earth quarry shall operate after obtaining valid consent to establish/operate from the Board.
- ii. The Brick Kiln manufacturing unit shall dispose the solid wastes properly without causing any nuisance or environmental pollution in the surroundings.
- iii. The Brick Kiln manufacturing unit has been asked to resume its operation in compliance to consent conditions issued vide Board's letter no. 2477 dtd. 07.08.2021 and after obtaining of CTE/CTO of M/s Nuagaon Brick Earth Quarry.”

11. That in view of the observations of the committee, the application dated 14th October 2022 pending for CTO by paying the requisite fees needs to consider the same on priority. It is need less to mention that the present deponent had made one prior request letter dated 5th Nov 2022 for

immediate grant of CTO as the formalities like inspection of the site has already been completed by the regional office since 17th Oct 2022.

12. That the case of the Applicant is that the Brick Kiln unit is operating without Consent to Operate for its brick earth quarry from the state pollution control board. It is submitted that the applicant could not place any single evidence of operation of the Brick Kiln Unit. The applicant is relying solely on the letter of State Pollution Control Board dated 28/06/2022, which is as a **matter of abundant precaution**, the Board has cautioned present deponent not to operate the BRICK EARTH QUARRY till Consent to Operate is granted by the SPCB. It is also stated that the letter is purely based on the blank allegation of the applicant. Hence the present deponent has never operated the Brick Kiln after 7th August 2021 and same is evident from the Joint inquiry report which states the unit is not in operation for more than one and half years.
13. It is submitted that the State Pollution Control Board has inspected the site pursuant to the complaint on 17th October 2022 where it has a categorical finding that the unit is not in operation, hence the letter dated 28th June 2022 saying “you are operating the brick unit” is just parroting the allegations and not on the basis of any observation or inspection. At the cost of repetition, it is submitted that the Applicant could not produce any single evidence of operation of the Brick Earth Quarry or the Brick Kiln after 7th August 2021, the alleged date of cause of action.

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14. That the land in question is neither a prime agricultural and nor any kind of irrigated land. As such the applicant could not establish Padar Kisam is the Prime Agricultural land. On the contrary Padar Kisam is a kind of fallow and un-irrigated dry land and usually will be treated as Class IV Land type as the same is neither single crop nor double crop yielding land.
15. That the Para 3 of the OA in page 5, applicant admits that the Respondent could not run his brick kiln unit and subsequent paras saying the unit is operating is self-contradictory and the applicant is not sure of the status of the brick kiln, for which the application is liable to be dismissed with cost.
16. That in para 6 of OA it states that the **Office of Revenue Divisional Commissioner was also forwarded** the representation. The statement seems that the office of RDC was forwarded does not make out any sense or any meaning of the phrase which is filed as affidavit claiming to be verified as true. Similarly **ADM Ganjam Chhatrapur is also passed order** makes no sense and only the applicant or his counsel can understand the meaning of such a sentence.
17. In para 4 page 7 it stating that the Tahasildar Sanakhemundi in **convenience** with respondent no 7 is also not understood what the applicant wish to state in the affidavit. Surprisingly the applicant is not

sure about the allegations and beating around the bush without any substance.

18. That the para 5 in page 8 of OA states that **“alleged owner of the Brick Kiln unit has been constructed”**. It is stated that the owner of brick kiln is not an object or material to be constructed. He is roaming free and has not been fixed or constructed anywhere. The applicant may be asked to prove his statement.
19. It is further stated that the Chimney of the Brick Kiln is on homestead land and same has been confirmed by the committee in it's report. Hence the allegation is false and baseless and the respondent is fully compliant of the CTO conditions.
20. It is stated that since the Brick Kiln unit is not in operation, hence there is no question of illegal soil mining. Further the applicant alleged that the Brick Kiln owner playing fraud with SPCB obtained the CTO. It is submitted that the applicant could not explain how the private respondent has played fraud when the unit has not started it's operation.
21. That the applicant could not place any document or evidence suggesting operation of the Brick Kiln after 28/06/2022, the alleged letter of SPCB for stop work, hence the allegation that even after the order for stop operation the unit is operating is false and unsubstantiated. So the application of judgement relied without understanding the facts of the case and same is a classic case of misleading the Hon'ble Tribunal with

unrelated judgements and making the petition bulky so as to create a false impression of application of a judgement to the present case.

22. That when the Brick Kiln unit is not at all in operation after the alleged date of 7/08/2021, so there is no question of environment compensation arises and the Applicant is wasting the valuable time of the Hon'ble Tribunal for which exemplary cost to be imposed.
23. That the Report which has been taken on record and part of the order dated 7/11/2022 clearly states that the **Brick Kiln was not in operation and it further states that the Brick Kiln unit has all the relevant permissions and suggested that the unit be allowed to operate only after issue of Consent to Operate for the Brick Earth Quarry** to the effect the present deponent has already applied for CTO with adequate fees **since 11th October 2022** and thereafter inspection has already been conducted by the State Pollution Control Board during the joint inquiry on 17/10/2022 and the **unit is awaiting for the grant of Consent to Operate**. It is needless to state that the Brick Earth Quarry has been granted Environment Clearance from SEIAA, Odisha, Bhubaneswar vide letter No. 137/SEIAA dtd. **21.01.2021 and same remains un-challenged after the expiry of appeal period of 30days**.
24. It is humbly submitted that the applicant has not made out any case to claim for the reliefs prayed in the Original Application in light of the joint

committee report and for the reason that the **Brick Kiln unit has not started its operation** as revealed from the Joint Inquiry Report.

25. That the Applicant has filed some photos of brick old stocks in an place appears to be an abandoned place and in the note the name of present deponent which is inserted by the applicant, dose not confirm from where the photos taken. As such since the unit is not in operation for more than one and half years, hence, there is no question of any no fresh production after 7th August 2021. It is needless to mention that the applicant could not show any evidence of operation of brick earth quarry, moulding of the earth and baking of earth which is a chain of even to prove one unit is in operation. The applicant has made some bald allegation for the reason best known to him without an iota of evident need to be dismissed with heavy cost.
26. That the grounds mot taken in the OA cannot be permitted to take in rejoinder. Further the applicant cannot be permitted to expand the scope of litigation beyond the prayers and grounds in OA. In the OA there has been no challenge to the Agreement of Tahasildar for mining in a private land and same could not be also challenged before Honble NGT. Further the agreement is for the purpose of collecting the royalty as it is understood that the surface right is of tenant and anything bellow surface the Government owns all such resources. It is further submitted that the mining plan is approved and environment clearance is granted on the

same land, thereby the necessary environment laws and measures have been followed for which no case is made out for interference of this Honble Tribunal.

27. It is needless to mention that the land in question on which the Brick Kiln stands or the brick earth mining plan approved is not a prime agricultural land for which and same is in conformity with the siting criteria which remains un-challenged, thereby the applicant has no case and the same is required to be dismissed with cost.

28. The reliance on the Papiya Sastry judgement is not applicable to facts of the case. On the contrary the **applicant has obtained the order by misleading and suppressing the fact and without any evidence of operation of the unit.** Surprisingly the applicant has annexed a bunch of papers without any reference and relevance or any specific pleadings in the OA. The practice of annexing unrelated documents is misrepresentation and misleading the court and same invites criminal contempt against the applicants as well as the OA is liable to be dismissed with cost.

8/12/2022

RESPONDENT NO 7 THROUGH



ADVOCATE

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO 140 OF 2022

IN THE MATTER OF:

PUPUN KUMAR SAHU

APPLICANT

VERSUS

STATE OF ODISHA AND OTHERS ...

RESPONDENTS

AFFIDAVIT

08 DEC 2022

I, Litu Pradhan, S/o Late Bhaskar Pradhan aged about 42 Years, At/Po-Podamari PS- Patapur, Ganjam, Odisha 761144, hereby solemnly affirm, and declare as under:

- 1. That I am the Respondent No 7 in the Original Application and proprietor of M/s Manikeswari Brick Industry
- 2. I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
- 3. That I have read over the contents of the accompanying Reply Affidavit and the same is true and correct and is drafted on my instruction.

IDENTIFIED BY ME

ADVOCATE

Litu pradhan

DEPONENT

VERIFICATION

Verified on 08 DEC 2022 at Bhubaneswar that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

Identified By

Litu pradhan
DEPONENT



The above named deponent(s) being duly identified by me, I have read over the contents of this affidavit and the same are true to the best of my knowledge and belief.

ANMEJAYA RAUTRAY
NOTARY, GOVT. OF ODISHA
BHUBANESWAR
Regd. No-ON-86/2012
Mob No-9337121223

Deponent(s) Notary, Bhubaneswar



Sankar Pani <sankarprasadpani@gmail.com>

Reply of Respondent No 7 in OA 140 of 2022

1 message

Sankar Pani <sankarprasadpani@gmail.com>

Fri, Dec 9, 2022 at 12:06 PM

To: Biranchi Narayan Mahapatra <imbiranchi@gmail.com>, Samapika Mishra <adv.samapika@gmail.com>, pbanerjeebihani@gmail.com, roychoudhurygorachand@gmail.com

Dear Sir
Please find the attachment
warm regards

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Sankar Prasad Pani, Environment Lawyer
National Green Tribunal Kolkata & Orissa Highcourt
Res-Plot No 2132/4814(B), Nageswar Tangi,
Bhubaneswar, 751002
Cell- 9437279278
Skype- sankar.pani

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