

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH KOLKATA**

O.A. No.05/2022/EZ

IN THE MATTER OF:

Dr. Bina Basnett

... Applicant

-Versus-

State of Sikkim and Ors.

.... Respondents

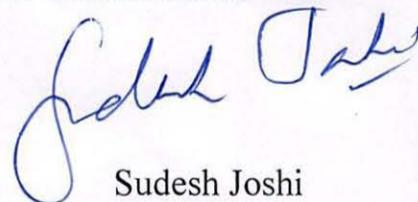
INDEX

S.No.	Particulars	Pg.No.
1.	Reply of the Respondent No. 3 Department of Mines and Geology, Government of Sikkim to the Application for Ad-Interim Ex-Parte Stay and Direction	2-5
2.	<u>ANNEXURE R/1</u> -True copy of the Order dated 11.12.2015 of this Hon'ble Tribunal in O.A.346/2013/PB/9/EZ	6-8
3.	<u>Vakalatnama</u>	9

DATE: 25.02.2022

DRAWN AND FILED BY:

PLACE: KOLKATA



Sudesh Joshi
Addl. Advocate General
Govt. of Sikkim.

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IN THE MATTER OF:

Dr. Bina Basnett

... Applicant

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State of Sikkim and Ors.

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**REPLY OF THE RESPONDENT NO. 3 TO THE APPLICATION FILED
BY THE APPLICANT FOR AD- INTERIM EX-PARTE STAY AND
DIRECTION**

TO

THE HONOURABLE CHAIRPERSON AND HIS

COMPANION MEMBER OF THE

HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH KOLKATA

The Humble Reply of the Respondent No. 3

MOST RESPECTFULLY SHEWETH:-

I, Sonam Ongden Lepcha aged about 57 years, serving as Addl. Director at Department of Mines and Geology, Government of Sikkim. I am Respondent No. 3 and I am well acquainted with the facts and circumstances of the present matter as such I am competent to swear and file this application before this Hon'ble Tribunal, I do hereby solemnly affirm and state as follows:-

REPLY OF THE RESPONDENT NO. 3:

1. That the above-named Original Applicant has filed an I.A. No 3/2022 before this Hon'ble Tribunal for ad- interim ex-parte stay of construction



at Multilevel Car Parking cum Shopping Hub (STNM-Kanchanjunga square below NH) at Old West Point School Area near Hotel Hungry Jack Gangtok which is being undertaken by the Respondent No.2 and direction in that regard.

2. That this Hon'ble Tribunal has been pleased to dismiss the I.A. No 3/2022 vide its Order dated 18.01.2022 passed in c/w **O.A. No.05/2022/EZ** as "*Since, we have already passed order in the original application, this I.A. No.03/2022/EZ has now become in fructuous and is accordingly dismissed*".
3. That vide the above Order dated 18.01.2022 passed in the **O.A. No.05/2022/EZ** this Hon'ble Tribunal has been pleased to direct that till the next date of listing of the present matter there shall be a stay on construction in the area with reference to the multilevel car parking-cum-Shopping Hub in the area in question.
4. That it is however noteworthy to bring to the kind knowledge of this Hon'ble Tribunal that at present there has been no construction of the project but the area has been excavated for more than 10Ft. depth during safe demolition of the old structure and thereafter in the process of ensuring the foundational security of the area which has resulted in the exposure of highly weathered mica Schist rock and parent soil in the area in question.
5. That it is very much pertinent to bring to the kind knowledge of this Hon'ble Tribunal that the foundational security works in the excavated area in the area in question, has to be completed prior to the monsoon to avoid seepage of water from the excavated area and to avoid damages to the existing households in the down slope area.
6. It is pertinent to mention that on the question of safety and security of an area, this Hon'ble Tribunal has passed several Orders. One such Order was passed in the case of Aabhijeet Sharma Vs Union of India and Ors.O.A.346/2013/PB/9/EZ pertaining to a challenge to the construction of



Lower Subansiri dam in Arunachal Pradesh, wherein this Tribunal modified its stay order vide an order dated 11.12.2015 for ensuring safety of the structure. This demonstrates that on similar grounds this Hon'ble Tribunal has granted and kept the security and safety of a structure at a primacy despite an Order of stay. It is therefore submitted that the present case is akin to the earlier case in so far as security and safety of the ongoing structures is concerned. True copy of the Order dated 11.12.2015 is marked and appended as **ANNEXURE R/1**.

7. That it is humbly submitted before this Hon'ble Tribunal that any further stay on construction in the area in question would obviously result into impounding of water from the area in question during monsoon season in the due course of time, which may result into disintegration of parent soil and seepage of water to the down slope area which may damage the existing building located below the proposed site and may risk the life of an individual living in the said area as well. In this regard it is believed that a letter dated 01.02.2022 has been submitted through the Councilor of ward No. 9/ Arithang 1 Gangtok , Sikkim wherein it states that the stay granted by this Hon'ble Tribunal may be counterproductive and result in destruction of drainage system and submergence of construction sites as well as private properties and houses.
8. That this application may be read in conjunction with affidavit in reply dated 25.02.2022 of the answering Respondent and contents of which are not being reiterated here for sake of brevity.
9. That this application is filed *bonafide* and in the interest of justice.

PRAYER:-

In the lights, facts and circumstances of the matter as stated above it is most respectfully prayed before this Hon'ble Tribunal that the Hon'ble Tribunal may pleased to:-

- a) Allow this application,



b) And further be pleased to vacate the *ex partestay* on construction in the area in question as imposed by this Hon'ble Tribunal vide its Order dated 18.01.2022 in O.A. No. 05/2022/EZ.

c) Pass any other Order/ Orders or direction/ directions as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

And for which act of kindness the applicant/ petitioner as in duty bound shall ever pray.

[Signature]
DEPONENT

VERIFICATION

I, the above-named deponent do hereby verify and say that the statements made at aforementioned paragraphs of the Counter affidavit is true to my knowledge rest are my respectful submissions before this Hon'ble Tribunal. The documents filed herewith as annexures are true copies of respective originals.

Affirmed on this the 25th day of February 2022 at Gangtok, East Sikkim.

Identified by:

Talo Sheri.
Yadav Sharma
Govt. Advocate.
Gangtok, E-Sikkim.

[Signature]
DEPONENT

Solemnly affirmed before me on this ^{25th} day of Feb/2022 by Shri/Smt/Miss Sonam Yadav Sharma of Gangtok is known to me & I am Shri/Smt/Miss of Gangtok.

[Signature]
25/2/22
Mr Sujan Sunwar
Oath Commissioner (East)
High Court of Sikkim
Vide Notification No. 38/HCS/30.09.21

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

6

O.A.346/2013/PB/9/EZ

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M.A. 1088/2013/EZ

M.A.06/2014/EZ

&

M.A.85/2015/EZ

Aabhijeet Sharma

Vs

Union of India and Ors.

CORAM: Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: Applicant : Mr. Salik Shafique, Advocate
Respondent Nos.1,6&7 : Mr. Kushagra Shah, Advocate
Respondent No.2 : Mr. Gora Chand Roy Choudhury, Adv.
Respondent No.3 : Mr. K.P. Pathak, Sr. Advocate
Mr. Ajit Pudussery, Advocate
Respondent No.4 : None.

Date & Remarks	Orders of the Tribunal
<p>Item No.10 11th December, 2015.</p>	<p>Heard Id. Counsel appearing for the applicant and the respondents present today.</p> <p>Ld. Counsel appearing for the applicant prays for adjournment for a week. Having regard to the submissions made by Ld. Counsel appearing for the project proponent and MoEF and the report of the Advocate's Commissioner highlighting the work as identified in paragraph 12 of the report appropriate order to be passed for safety of the people of the locality and the workers who are working in the project. It is submitted by Id. Counsel appearing for the Respondent No.3 that emergency maintenance work is required for safety of the people of the locality which is not related to the main project.</p>

Hence direction may be given to the project proponent to perform the repairing job. Ld. Counsel appearing for the MoEF has also supported the submission. Having regard to the contention made and considering the report of the Advocate's Commissioner, we are of the view that the Respondent No.3 should be allowed to complete the repairing and maintenance work on emergent basis in terms of the report relating to the job as identified in paragraph 12 which reads as such:-

“12.

- (i) Removal of the stone chips required for construction from the bank of the river as during the monsoon it may impede the flow of the river.
- (ii) As in most of the tunnels where concrete lining are not completed and only shotcreting is complete, concrete lining needs to be completed for protection of the tunnel as there remains a possibility that the tunnels may collapse.
- (iii) That the road network in the project is in a very bad condition and needs to be repaired.
- (iv) That most of the equipment lying in a desolate state outside under open sky must be properly maintained as during the monsoon or even in summer due to heat they may not function properly.”

It is made clear that no construction work to the project to be done. Besides the aforesaid work, the Respondent No.3 viz. project proponent is entitled to undertake emergency maintenance work for safety and protection of the public and the

	<p>property.</p> <p>Matter stands adjourned to 04.02.2016.</p> <p>.....</p> <p>Justice Pratap Kumar Ray, JM</p> <p>.....</p> <p>Prof. (Dr.) P-. C. Mishra, EM</p>
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-/true copy/-

VAKALATNAMA
BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN BENCH, KOLKATA
ORIGINAL APPLICATION NO. 05/2022

IN THE MATTER OF:

DR. BINA BASNETT

Applicant

-VERSUS -

STATE OF SIKKIM & ORS.

Respondent(s)

KNOW ALL to whom those present shall come that I,, **RESPONDENT** / OPPOSITE PARTY, in the above Original Application do hereby appoint and return **Additional Advocate General Mr. Sudesh Joshi and Fizza Zaidi** Advocate of the National Green Tribunal, to act, appear and plead in the above noted case in the Tribunal.

To sign, file, verify, present pleadings, appeals, cross objections or petitions for execution, review, revision, withdrawal, compromise or other petitions or affidavits or other documents and all other proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein on my/our behalf, and to represent me/us and to take all necessary steps on my/our behalf in the above matter.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my I our own acts, as if done by me justify to all intents and purposes. I/We agree to ratify all act done by the aforesaid advocate, in pursuance of this authority.

IN WITNESS WHEREOF I/We do hereunto set my/your hand to those present the contents of which have been understood by me/us on this day of2022.

Accepted subjected to fees,

Advocate

(AAG Mr. Sudesh Joshi)

Client

Additional Director
Mines & Geology
Govt. of Sikkim

MEMO OF APPEARANCE

To,

The Registrar,
National Green Tribunal, Eastern Zone Bench
Kolkata - 700156.

Sir,

Kindly enter my appearance in the above matter on behalf of the Respondent/ Opposite Party.

Dated

Advocate for the
Petitioner(s)/Appellant(s)/Respondent(s)