

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.10/2023/EZ
(I.A. No.19/2023/EZ)

Dilip Kumar Samantray & Ors. Applicant(s)
Versus

State of Odisha & Ors. Respondent(s)

Date of hearing: 01.05.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : Mr. Sankar Prasad Pani, Adv. (in Virtual Mode)

For Respondent(s) : Ms. Samapika Mishra, ASC for R-1-6,10&12, (in Virtual Mode)
Mr. Dipanjan Ghosh, Advocate for R-7&8,
Mr. Biranchi Narayan Mahapatra, Adv. for R-11, (in Virtual Mode)
Mr. Apurba Ghosh, Advocate for R-13,

ORDER

1. Mr. Sankar Prasad Pani, learned Counsel is present (in Virtual Mode) for the Applicants.
2. Counter-affidavit dated 12.03.2023 has been filed on behalf of the Respondent No.11, Patitapaban Barik, Lessee of Sahadaghai Laterite Stone Quarry; the same is taken on record.
3. Counter-affidavit dated 28.03.2023 has been filed on behalf of the Respondent No.4, Collector & District Magistrate, Khordha; the same is taken on record.
4. Affidavit dated 26.04.2023 has been filed on behalf of the Respondent No.13, Ministry of Environment, Forests and Climate Change; the same is taken on record.
5. Affidavit dated 28.04.2023 has been filed on behalf of the Respondent Nos. 7 & 8, State Pollution Control Board, Odisha; the same is taken on record.

6. Rejoinder affidavit dated 01.05.2023 has been filed on behalf of the Applicant; the same is taken on record.
7. Along with the affidavit of the State Pollution Control Board, Odisha, dated 28.04.2023, a Joint Inspection Report of an inspection carried out on 13.02.2023 by the Joint Committee has been filed as Annexure-R7/1 which reads as under:-

“Joint Committee verification report on Sahadaghai Laterite quarry in the matter of Dillip Kumar Samantray & Ors. Vrs. State of Odisha & Ors of NGT case O.A. No.10/2023 order dated 23.01.2023.

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2.0 Present Status of the allegation against Stone quarry:

As to the direction of Hon’ble national Green Tribunal, assessment of quantum of extraction was conducted at Sahadaghai by the Inspecting Team consisting of Addl. SP, Khordha, Sub-Collector, Khordha, RO, SPCB, BBSR, Dy. Director Mines and Geology, BBSR, Tahasildar, Tangi, Scientist, SEIAA, BBSR, ACF, Khordha, Assistant Mining Officer, Cuttack, Geologist, Khordha over plot no. 712, 713, 714, 716, and 717 on 13.02.2023 at 9.00 AM to calculate the Quantum of laterite and Morrum excavated. The entire excavated area was measured with the help of Total Station and hand-held GPS. From the field verification following observations were made:

Sl. No.	Issues	Present status
1.	The Respondent No.11 (Sri Patitapaban Barik, lessee/successful bidder of Sahadaghai laterite quarry-A) was carrying on illegal laterite stone quarries mining in Mouza-Sahadaghai, Tahasil-Tangi, Dist-Khordha, in absence of Consent to	1. Environmental Clearance (EC) was issued for the Sahadaghai Laterite Stone Quarry-A over a lease area of 6.325 acres or 2.56 Ha at village-Sahadaghai, Tahasil-Tangi, Dist-Khordha vide SEIAA, Odisha letter no. 10394/SEIAA dated 17.12.2020 in favour of

	<i>Establish (CTE), Consent to Operate (CTO) and prior of Transfer of Environmental Clearance (EC) dated 11.05.2022</i>	<i>Tahasildar, Tangi.</i> <i>2. Transfer of EC from the name Tahasildar, Tangi to Sri patitapaban Barik (successful bidder) was made vide SEIAA, Odisha letter no. 452/SEIAA dated 11.05.2022 (Online application No.SIA/OR/MIN/271033/2022).</i> <i>3. Consent to Establish (CTE) was issued on 12.10.2022 by SPCB, Odisha but Consent to Operate (CTO) has not been issued for the said quarry (Plot No.719, Khata No.278).</i> <i>4. During inspection it was observed that the EC, CTE, and Y form was issued for Sahadaghai Laterite Stone Quarry-A bearing Plot No.719 but no mining activity was observed over the said plot.</i> <i>5. Illegal mining was noticed over plot no. 712, 713, 714, 716 & 717 and during inspection there were no mining activities and no machineries found at the place.</i> <i>6. Based on observation the committee suggested the Mines Dept. to calculate the illegally mined out material (without EC, CTO and approval from Tahadil) in that area and</i>
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		accordingly the concerned Dept. calculated illegally mined out material. The details are mentioned below.
2.	The petitioner alleged that the area in question is full of acacia, cashew and other associate trees and the said land is forest land recorded in the Sabik Record.	1. The committee observed that some acacia, cashew and other associate trees were existing over the area and some species were fallen due to illegal mining to clear that area for easily extraction of materials. 2. That area is not coming under forest according to the Hal record. But in Sabik record it is found that Khata No.165, Plot No.384, corresponding to Plot No.713, 713, 714, 716 and 717 comes under Kisam-Chhota Jungle.

3.0 Over all observations:

The committee members observed the following at the time of inspection:

- *Environmental Clearance (EC) was issued for the Sahadaghai laterite Stone Quarry-A over a lease area of 6.325 acres or 2.56 Ha at village-Sahadaghai, Tahasil-Tangi, dist-Khordha vide SEIAA, Odisha letter no. 10394/SEIAA dated 17.12.2020 in favour of Tahsildar, Tangi.*
- *Transfer of EC from the name Tahasildar, Tangi to Sri Patitapaban Barik (successful bidder) was made vide SEIAA, Odisha letter no. 4522/SEIAA dated 11.05.2022 (Online application SIA/OR/MIN/271033/2022).*

- *Consent to Establish (CTE) was issued on 12.10.2022 by SPCB, Odisha but Consent to Operate (CTO) has not been issued for the said quarry (plot No.719, Khata No.278).*
- *EC, CTE issued only for plot no. 719 and no mining activity was observed over the said plot. Illegal mining was noticed over Plot No.713, 713, 714, 716 & 717 except plot no. 719, Khata No.727 and the Committee concluded that there was illegal mining occurred and accordingly suggested for calculation of illegally mind out material.*
- *The extent of the quarry was identified by concerned RI. Boundary pillars mentioned in the approved mining plan were not found at quarry lease area which reveals that the lessee has intentionally not posted the boundary pillars and operated quarry outside the lease area.*
- *The Quarry operation was made at several patches over the plot no. 713, 713, 714, 716, and 717. The quantum of excavation was estimated over these plots. The details of calculation are given in the Table below.*
- *The details calculation of illegally mind out material as follows:*

1. Table of Calculation: Plot No.712, 713 and 714 **(Laterite)**

SL No.	PA TC H	Excavated area AREA in Sq.M	THICKNESS in M	VOMUME of excavation in cu.m
1	A	159	3	477
	B	42	1	42
	C	143	3	429
			TOTAL	948

2. Table of Calculation: Plot No. 716 and 717 **(Laterite)**

SL No.	PA TC H	Excavated area AREA in Sq.M	THICKNESS in M	VOMUME of excavation in cu.m
1	A	1337	2	2674
2	B	515	2	1030
3	C	834	0.5	417
4	D	314	0.5	157
5	E	635	1	635
			TOTAL	4913

3. Table of Calculation: Plot No. 712, 713 and 714 **(Morrum)**

SL No.	PA TC H	Excavated area AREA in Sq.M	THICKNESS in M	VOMUME of excavation in cu.m
1	A	159	1	159
2	B	42	1	42

3	C	143	1	143
			TOTAL	344

4. Table of Calculation: Plot No. 716 and 717 (**Morrum**)

SL No.	PA TC H	Excavated area AREA in Sq.M	THICKNESS in M	VOLUME of excavation in cu.m
1	A	1337	2	2674
2	B	515	2	1030
3	C	834	0.5	417
4	D	314	0.5	157
5	E	635	1	635
			TOTAL	4913

Total Laterite excavated: **948+4913=5861** cu.m

Total Morrum excavated: **344+4913=5257** cu.m

1. Calculation for compensation of Laterite according to the order of Hon'ble NGT in O.A. No. 150/2019 and CPCB guidelines:

Market value of illegally mined Laterite (D) = 5861 x Rs. 3080/- (scale of compensation regime towards environmental and ecological damage for laterite was calculated @ Rs. 3080/- in the meeting held on 17.10.2023) (Annexure-1)

Annual value of Foregone Ecological value $D \times RF = Rs. 1,80,51,880 \times 1$ (RF=1, ever Impact) =Rs. 1,80,51,880/-

- Present value of Foregone Ecological values @ 5% discount rate and over 5 years)

$$\begin{aligned}
 PV &= \sum_{t=1}^5 (D \times RF) / (1+r)^t \\
 &= \sum 18051880 / (1+0.05)^1 + 18051880 / (1+0.05)^2 + \\
 &18051880 / (1+0.05)^3 + 18051880 / (1+0.05)^4 \\
 &+ 18051880 / (1+0.05)^5 \\
 &= 17192266 + 6373587 + 15593892 + 14851370 + 14139688 \\
 &= \text{Rs. } 7,81,50,803/-
 \end{aligned}$$

- Net present value (after netting out market value of illegally mined material)-i.e. Total Compensation to be levied

$$\begin{aligned}
 &= NPV = PV - D \\
 &= Rs. 7,81,50,803.00 - Rs. 1,80,51,880.00 = Rs. \\
 &6,00,98,923/-
 \end{aligned}$$

Compensation Charge in above case for **Laterite: Rs. 6,00,98,923/-**

2. Calculation for compensation of Morrum according to the order of Hon'ble NGT in O.A. No. 150/2019 and CPCB guidelines:

Market value of illegally mined Morrum (D)-5257 x 712/- (Scale of compensation regime towards environmental and ecological damage for morrum was calculated @ Rs.712/- in the meeting held on 17.10.2023) (Annexure-1)

Annual value of Foregone Ecological value $D*RF=Rs. 37,42,984/-$

- Present value of Foregone Ecological values @ 5% discount rate and over 5 years)

$$PV = \sum_{t=1}^5 (D*RF)/(1+r)^t$$

$$= \sum 3742984 / (1+0.05)^1 + 3742984 / (1+0.05)^2 + 3742984 / (1+0.05)^3 + 3742984 / (1+0.05)^4 + 3742984 / (1+0.05)^5 = 3564746 + 3394996 + 3233330 + 3079362 + 2931929 = \text{Rs. 1,62,04,362/-}$$

- Net present value (after netting out market value of illegally mined material)-i.e. Total Compensation to be levied

$$=NPV = PV - D$$

$$=Rs. 1,62,04,362 - 3742984 = Rs. 1,24,61,378/-$$

Compensation Charge in above case for **Morrum: Rs. 1,24,61,378/-**

Total Compensation Charge in above case for Laterite and Morrum = 6,00,98,923 + 1,24,61,378 = 7,25,60,301

Conclusion:

A letter no.2255 dated 20.02.2023 (Annexure-2) has been issued to Sub-Collector, Khordha for promulgation Section 144 CrPC over the plots of Sahadaghai mouza immediately to stop further illegal mining over the said area and intimate the action taken report within three days.

Another letter no. 2252 dated 20.02.2023 (Annexure-3) has been issued to Tahasildar Tangi to realize the dues from the lessee and take all possible steps to stop illegal mining in the Sahadanghai mouza under Tangi Tahasil and intimate the action taken report within three days.”

8. It is also stated that with regard to fixation of scale of compensation regime for illegal mining of Laterite, Black Stone, Morrum towards environmental and ecological damages, a meeting was held on 17.02.2023 under the Chairmanship of Collector and District Magistrate, Khordha. Relevant extract of the meeting is extracted herein below:-

“Proceedings of the Meeting on fixation of scale of compensation regime for illegal mining of Laterite, Black Stone, Morrum towards Environment and Ecological damages as per CPCB held on 17.02.2023 at 10.00 AM in the conference Hall of Collectorate, Khordha under the Chairmanship of Collector and district magistrate Khordha.

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For fixation of scale of compensation regime for illegal mining of Laterite, 14 no. of operational minor sources from different Tahasils of Khordha District are taken into consideration and the highest price is sound to be Rs.3080/- per cubic meter.

For fixation of scale of compensation regime for illegal mining of Black Stone, 15 no. of operational minor mineral sources from different Tahasils of Khordha District are taken into consideration and the highest price is found to be Rs.2287/- per cubic meter.

For fixation of scale of compensation regime for illegal mining of Morrum, 4 no. of operational minor mineral sources from different Tahasils of Khordha District are taken into to consideration and the highest price is ound to be Rs.712/- cubic meter.

*Hence, the market value of Laterite, Black Stone and Morrum are **Rs.3080/-, Rs.2287/- and Rs.712/-** respectively per cubic meter for khordha District.”*

9. Mr. Biranchi Narayan Mahapatra, learned Counsel appearing (in Virtual Mode) for Respondent No.11, Private Respondent, prays for and is granted two weeks time for filing counter-affidavit to the affidavit of the Collector & District Magistrate, Khordha, dated 28.03.2023.
10. **List on 06.07.2023.**

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

May 1st, 2023,
Original Application No.10/2023/EZ
(I.A. No.19/2023/EZ)
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