

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

Original Application No.31/2023/EZ

Chandra Sekhar Roy		Applicant(s)
	Versus	
State of Odisha & Ors.		Respondent(s)

Date of hearing: 12.05.2023

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

For Applicant(s) : Ms. Medha Singh, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Saubhagya Ketan Nayak, AGA a/w
Mr. Tarun Patnaik, ASC for State Respondents, (in Virtual Mode),
Ms. Papiya Banerjee Bihani, Adv. for R-9 (in Virtual Mode),
Mr. Venugopal Mohapatra, Adv. for R-10 (in Virtual Mode)

ORDER

1. Mr. K. Sravan Kumar, learned Counsel for the Applicant is not present.
Ms. Medha Singh, learned Counsel appearing (in Virtual Mode) for the Applicant states that she has no instructions in this case.
2. Supplementary-affidavit dated 10.05.2023 has been filed by the Respondent No.5, Executive Officer, Jajpur Municipality; the same is taken on record.
3. Counter-affidavit dated 09.05.2023 has been filed by the Respondent No.10, Private Respondent; the same is taken on record.

(Final order of the said case will be uploaded in website by separate sheets of paper.)

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

May 12, 2023
Original Application No.31/2023/EZ
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**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.31/2023/EZ

IN THE MATTER OF:

CHANDRA SEKHAR ROY,
S/o Late Abhimanyu Roy,
Aged about 52 years,
At Basupur, Unit-3, PO/Dist-Jajpur,
Odisha-755001

.....Applicant(s)

Versus

- 1. STATE OF ODISHA,**
Rep. by Addl. Chief Secretary,
Department of Water Resource,
Rajiv Ghwan, Kesari Nagar,
Bhubaneswar, Odisha-751001;
- 2. SECRETARY, DEPARTMENT OF REVENUE,**
Govt. of Odisha, Secretariat, Bhubaneswar,
Khurda, Odisha;
- 3. REVENUE DIVISIONAL COMMISSIONER,**
At-PO-Cuttack, 753002,
Odisha;
- 4. DISTRICT COLLECTOR,**
Jajpur, At/PO/Dist.-Jajpur,
Odisha-755001;
- 5. EXECUTIVE OFFICER,**
Jajpur Municipality,
At-PO-Jajpur, Odisha;
- 6. SPECIAL PLANNING AUTHORITY, JAJPUR,**
At-PO-Jajpur, Odisha;
- 7. TAHASILDAR, JAJPUR,**
At District-Jajpur-754022;
- 8. ASSISTANT EXECUTIVE ENGINEER,**
Irrigation Department,
District-Jajpur, PIN-755001
- 9. MEMBER SECRETARY,**
Odisha State Pollution Control Board,
A/118, Unit-VII, Nilakantha Nagar,
Bhubaneswar, PIN-751012, Odisha;

10. BISHNU CHARAN RATH,
S/o Sri Aparti Rath, At-Chorda, PO-Jajpur,
Road, Dist.-Jajpur, Odisha;

.....Respondent(s)

Date of hearing: 12.05.2023

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

For Applicant(s) : Ms. Medha Singh, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Saubhagya Ketan Nayak, AGA a/w
Mr. Tarun Patnaik, ASC for State Respondents, (in Virtual Mode),
Ms. Papiya Banerjee Bihani, Adv. for R-9 (in Virtual Mode),
Mr. Venugopal Mohapatra, Adv. for R-10 (in Virtual Mode)

ORDER

1. The allegation in the Original Application is that Plot No.667, Khata No.636/503, Unit-8, Jajati Nagar, Jajpur Municipality, Jajpur, Odisha is recorded in the Revenue Record as 'Jalasaya Kissam' but has been encroached by the Respondent No.10 who is unauthorizedly constructing a shopping mall on the said plot of land (copy of the Revenue Record has been filed at page 36 of the paper book).
2. It is also stated that two notices dated 12.04.2021 and 12.05.2021 were issued by the Special Planning Authority, Jajpur and Executive Officer, Jajpur Municipality respectively directing the Respondent No.10 to stop construction and to appear before the Authority but it is stated that no action has been taken till date and the Respondent No.10 is proceeding with the illegal construction of the Shopping Mall.
3. Notices were issued to the Respondents and it was directed that till the next date of listing there shall be a stay upon constructions on the Plot No.667, Khata No.636/503, Unit-8, Jajati Nagar, Jajpur Municipality, Jajpur, Odisha.

4. Affidavit dated 24.04.2023 has been filed by the Respondent No.9, Odisha State Pollution Control Board. Along with this affidavit, an inspection report has been filed which reads as under: -

“The said plot was visited by the undersigned on 20.04.2023 and it was observed that construction of one floor of about 2700 sq. ft. has been done on the said plot. The land has lost its characteristic as Jalasaya. There is a concrete storm water drain at one side of the plot.

The owner of the land was contacted and he submitted the copy of the land record (copy attached as annexure I). It was verified that the land type is of Gharabari type. It was understood that the land type was previously Jalasaya type and it has been converted to Gharabari type having plot no. 667 khata no.636/503 of area Ac 0.15 Dec which is owned by Sri Bishnu Charan Ratha. It was submitted that application has been submitted to Special Planning Authority, Jajpur for approval of building construction for commercial cum residential purpose having ground floor, first floor and second floor having total built up area of 8145 sq. ft. (757 m²). The copy of application received from the owner of the land is attached as annexure II for reference.

It is pertinent to mention here that Board has the office order vide letter no. 6606 dtd. 26.04.2021 that building and construction projects having built up area up to 20,000 m² and waste water generation more than or equal to 50 kilolitre per day is coming under consent administration of the Board as an orange category of unit as per the Board's classification. (copy attached as annexure-III). It was reported that proposal has been made for 13 nos of rooms in the building including ground floor, first floor and second floor. Considering 26 persons (13 rooms × 2 persons per room) in the building and per capita water consumption as 135 ltrs as per the standard of Ministry of Housing and Urban Affairs, about 3510 litres water will be consumed in the building per day. Considering 80% of water

consumption will be waste water generation, about 2808 litres (2.8 kilo litres) waste water will be generated in a day.

Board has the office order vide letter no. 6606 dtd. 26.04.2021 that building and construction projects having built up area up to 20,000 m² and waste water generation more than or equal to 50 kilolitres per day is coming under consent administration of the Board as an orange category of unit as per the Board's classification. Since, the waste water generation in this building will be about 2.8 kilolitres per day; this building will not come under the preview of the consent administration of the Board."

5. Affidavit dated 19.04.2023 has been filed by Respondent No.5, Executive Officer, Jajpur Municipality, Jajpur, stating that-
 - a) Notices have been issued to Bishnu Charan Rath, Respondent No.10, directing him to stop construction;
 - b) No approval/sanction has been granted to the Respondent No.10 for construction of the building over water body; and
 - c) Drainage facility is there for flow of water.
6. It is stated that the Executive Officer, Jajpur, has vide his letter dated 27.07.2021 directed the Tahasildar to take action with regard to constructions made over Jalasaya Plot and Tahasildar was also empowered under the Orissa Land Reforms Act, 1965 to demolish any structure constructed over Jalasaya land.
7. Reference has also been made to the letter of the Executive Officer dated 06.09.2021 addressed to the Tahasildar mentioning that no pond or tank is existing over Plot No.667.
8. Annexure-'J' is a Joint Inspection Report of the Amin, Sanitary Inspector, Junior Engineer, Health Officer and Municipal Engineer of Jajpur Municipality dated 29.07.2022 wherein it is stated that a joint visit of the plot was conducted and it was found that there is

free flow of rain water and clear flow of drainage and there is no obstacle or blockage of drain and rain water over the said plot. The Kissam of the plot, however, is shown as Jalasaya.

9. It is also stated that the verification of Bhulekh Plot No.667 area Ac. 0.15 decimals shows that the said plot was recorded as Kissam Jalasaya under Khatian No.390. It was recorded in the name of one Sahadev Nayak in M.S. R.O.R. published on 31.03.1998. Thereafter, M.S. No.667 Ac. 0.15 decimals has been mutated in the name of Respondent No.10, Bishnu Charan Ratha, in Mutation Case No.2566/20 and in Misc. Case No.5121, the Tahasildar has converted the land to 'Patita' Kissam. It is further stated that there is no problem of flow of rain water in the drain already constructed by the Municipality over Plot No.667. However, there is no approved plan or permission granted for construction over Plot No.667 as stipulated under the Orissa Municipal Act, 1950.
10. Another affidavit dated 10.05.2023 has been filed by Respondent No.5, Executive Officer, Jajpur Municipality, Jajpur, wherein it is stated that a Committee headed by the Revenue Divisional Commissioner has taken a decision on 02.08.2022 that Plot No.667, Khata No.636/503 i.e. the plot in question, does not have any characteristics as Jalasaya, and therefore, it was decided that the Kissam of the land be converted to "Homestead" and in pursuance of the said decision, the classification of the land has been changed to "Homestead" Kissam which is also noted in the Record of Rights (RoR). The relevant extract of the revenue record has been filed with the affidavit showing the Kissam of the Plot No.667 to be Gharabari area Ac. 0.1500 decimals/0.0607 hectares.

11. The order of the Revenue Divisional Commissioner, Central Division, Cuttack, in the proceedings of the Jalasaya Committee Meeting of Jajpur District held on 02.08.2022 has also been filed as Annexure-‘M’ which clearly records that though the land is recorded as Jalasaya-II Kissam but no pond exists there. The said land is neither obstructing the natural flow of water or rain water nor the water channel passing through it. Though the land is recorded as Kissam-Jalasaya (pond) by the Settlement Authority but physically there is no sign of Jalasaya; the land has lost its characteristics as Jalasaya and it is reported by the Executive Officer as well as the State Pollution Control Board, Jajpur that the conversion of the land will not cause any hindrance or water logging problem. The Tahasildar, Jajpur, Sub-Collector, Jajpur and Collector, Jajpur, have also recommended the case for change of Kissam of the land as it has lost its characteristics as Jalasaya since a long time.
12. In this context, we may also advert to the observations of the Division of the Hon’ble High Court of Orissa at Cuttack in *W.P. (C) No.8797 of 2004 and O.J.C. No.6721 of 1999, Tapan Kumar Das vs. Commissioner, Cuttack Municipal Corporation & Ors.* and connected case, and refer to sub paragraph 3 of the paragraph 14 of the said judgment. The sub paragraph 3 of paragraph 14 reads as under: -

“The applications for change of classification of lands from Jalasaya to homestead shall be processed through the Tahasildar, Sadar, Cuttack, to the Collector for appropriate orders. The decision of the Collector shall be placed before the Committee as constituted above for approval. Only after approval of the Committee, change of classification/kissam of the land shall be allowed. The Committee shall record the reasons for allowing change of classification/kissam of such

lands. However, if the Committee is of the opinion that the lands, which have lost their character as Jalasaya, and those, which are actually not Jalasaya or swampy lands but have been recorded as Jalasaya, change of classification of such lands may be allowed. This shall be effective from the date of the judgment.”

13. The judgment of Tapan Kumar Das (supra) has been followed by another Hon’ble Division Bench of the Orissa High Court in W.P. (C) No.8485/2005, *Batakrushna Das vs. State of Orissa & Ors.* Paragraphs-9 & 19 of the judgment read as under:

“9. There is no dispute to the facts, as enumerated above. Only contention raised that conversion of nature of the land from “Jalasaya to “Stitiban”, as well as grant of lease and permission to the RMC, Jagatsinghpur-opposite party no.6 to go for construction cannot sustain in the eye of law in view of the judgment of this Court in Tapan Kumar Das (supra). We have perused the judgment of this Court in Tapan Kumar Das (supra), wherein this Court had held that the water bodies are required to be retained and such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48-A thereof. Article 51-A of the Constitution furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife. There is no dispute on the question of proposition set forth by this Court in the aforementioned judgment, but at the same time this Court had already held in the very same

judgment that if the lands which have lost their character as “Jalasaya”, and those, which are actually not “Jalasayas” or Swampy lands but have been recorded as “Jalasaya”, change of classification of such lands may be allowed.

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19. Considering the facts and law discussed above, we are of the considered view that even though no limitation has been prescribed in filing the writ petition under Article 226 of the Constitution of India, but the petitioner has approached this Court at a belated stage and, as such, in the meantime the third party rights have emerged. Apart from the above, on merits also by following due procedure of law, the lands in question have been converted and transferred in favour of opposite party no.6-Secretary, RMC, Jagatsinghpur on accepting premium amount and a market is functioning over the said lands, we are not inclined to unsettle the settled position after expiry of such long period. Consequentially, the writ petition is liable to be dismissed on merits, as well as for delay and laches and, thus the same is hereby dismissed. No order to costs.”

14. In view of the above, since the land in question has been converted to “Homestead” and is no longer Jalasaya, we do not find any merit in the Original Application and the same is accordingly dismissed. Interim order, if any stands vacated.
15. However, so far as the question as to whether the building plan of the building constructed by Respondent No.10 in Mouza Unit-8, Jajati Nagar, Khata No.636/506, Plot No.667 area Ac. 0.1500 decimals i.e. plot in question having not been approved by the Jajpur Municipality the same lies within the domain of the

Municipality and appropriate orders in that regard can be passed by the Municipality in accordance with law.

16. In view of the above, the Original Application No.31/2023/EZ is dismissed.
17. Interlocutory Applications, if any, stand disposed of accordingly.

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

May 12, 2023
Original Application No.31/2023/EZ
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