

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

Original Application No.17/2023/EZ

1. Srikant Pradhan,
Aged 38 years
S/o Hariha Pradhan,
At-Khandiabandha,
P.O.-Gopinathpur,
P.S.-Puri Sadar, Puri-752002

2. Khetramohan Nayak,
Aged 39 years
S/o Balaram Nayak,
At-Khandiabandha,
P.O.-Gopinathpur,
P.S.-Puri Sadar, Puri-752002

.....Applicant(s)

Versus

1. State of Odisha,
Represented through Additional Chief Secretary of
Department of Forest,
Environment and Climate Change,
At-Sachivalaya Marg,
Bhubaneswar-751001

2. State of Odisha,
Represented through Principal Secretary of
Water Resource,
At-Keshari Nagar,
Bhubaneswar-751001

3. State of Odisha,
Represented through Principal Secretary of
Revenue and Disaster Management Department,
At-Sachivalaya Marg,
Bhubaneswar-751001

4. State of Odisha,
Represented through Principal Secretary of
Housing and Urban Development,
At-Sachivalaya Marg, Bhubaneswar-751001

5. Collector and District Magistrate, Puri,
At-Governor House Road,
Puri-752002

6. Central Pollution Control Board,
Represented through Member Secretary,
At-Parivesh Bhawan, East Arjun Nagar,
Delhi-110032

7. Odisha State Pollution Control Board,

Represented through its Member Secretary,
At-Paribesh Bhawan, A/118, Nilakantha Nagar,
Unit-8, Bhubaneswar-751012

8. Odisha State Environment Impact Assessment Authority,

Represented through Member Secretary,
At-Acharya Vihar, Unit-IX, OPTCL Colony,
Bhoi Naga, Bhubaneswar-751022

9. Block Development Officer, Puri Sadar,

Srikhetra Colony, Station Road, Puri-752002

10. Engineer in Chief of Water Resource Department, Odisha,

Unit-V, Keshari Nagar,
Bhubaneswar-751001

11. Tehsildar Puri,

At-Governor House Road,
Near Collector Office,
Puri-752002

12. Executive Engineer of Drainage Division, Odisha,

At-Gandarpur, P.O.-College Square,
Cuttack-753003

13. Superintending Engineer of Drainage Division,

At-Shreevihar, Puri-752003

14. Jagadananda Mishra,

Age 65 years,
S/o Late Mukunda Mishra,
At-Mukunda Mishra Nagar,
P.O.-Gopinathpur,
P.S.-Puri Sadar, Dist.-Puri-752002

.....Respondent(s)

Date of hearing: 04.07.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Mr. Afraaz Suhail, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Tarun Patnaik, ASC for State Respondents (in Virtual Mode),
Mr. Sibojyoti Chakraborty, Advocate for R-6,
Ms. Papiya Banerjee Bihani, Advocate for R-7 (in Virtual Mode),
Mr. Apurba Ghosh, Advocate for R-8 (in Virtual Mode),
Mr. Sankar Prasad Pani, Advocate for R-14 (in Virtual Mode)

ORDER

1. This Original Application has been filed by the Applicant on the allegation that the Plot No.123 of Khatiyani No. 165/1903, Mouza Gopinathpur @ Routrapur in Tahasil-Puri, area around Ac. 1.5800

decimal is a Kissam Jalasaya (water body). The land records to that effect have also been filed as Annexure to the Original Application.

2. It is alleged that on this water body illegal constructions have been made.
3. It is also alleged that the rain water of other water bodies in the nearby areas gets accumulated in the said water body and helps to clear out the water logging in nearby areas
4. At the time of admission, the Tribunal constituted a Committee comprising of the following members: -
 - (i) Senior Scientist from the Central Pollution Control Board;
 - (ii) Senior Scientist from the Odisha State Pollution Control Board;
 - (iii) Collector & District Magistrate, Puri; and
 - (iv) Engineer-in-Chief, Water Resource Department, Odisha.
5. The Committee was directed to visit the site in question and submit its Inspection Report.
6. The Respondent No.8, State Environment Impact Assessment Authority (SEIAA), Odisha, has filed affidavit dated 12.04.2023 stating therein that it has not received any proposal regarding construction of any project requiring Environmental Clearance for the same.
7. The Respondent No.7, Odisha State Pollution Control Board, has filed affidavit dated 11.04.2023. Along with this affidavit, an Inspection Report has been filed which reads as under: -

***“Inspection Report of the Committee that was constituted
as per the direction of Hon’ble NGT, Kolkata, w.r.t. O.A.
No. 17/2023/EZ-Srikant Pradhan & Anr.-Vrs-State of
Odisha & Others*”**

The above cited O.A. case has been filed by Sri Saroj Mishra Vrs. State of Odisha and others before Hon'ble NGT w.r.t restoration of water bodies/Jalasaya etc. over the alleged plots those have been cited in the case matter where the drainage system has been completely squeezed due to illegal encroachment.

Basing upon the direction of Hon'ble NGT over the above cited OA a committee had been constituted vide order dtd.09.02.2023 with the following members.

- a) Collector & District Magistrate. Puri.*
- b) Engineer-in Chief, Water Resources Department, Odisha.*
- c) Sr. Scientist from CPCB.*
- d) Sr. Scientist from Odisha State Pollution Control Board.*

Over the above cited case matter, the Hon'ble NGT has directed on the date of hearing i.e. on dtd. 09.02.2023 that State Pollution Control Board will act as Nodal Office for filing the report of the committee for all logistic purposes.

As per order of Ho'ble NGT, The Member Secretary, State Pollution Control Board, Odisha, Bhubaneswar had communicated through his letter vide No.2217, dtd.15.02.2023, to all the Committee Head i.e. to The Collector & District Magistrate, Puri Regional Director (Eastern Regional Directorate) CPCB, Kolkata, Engineer In Chief Department of Water Resources, Govt. of Odisha, Bhubaneswar & had requested for inspection to the alleged sites w.r.t. allegation raised to submit the inspection report within the 6 weeks, so as to file the report to the Hon'ble Tribunal within stipulated time period.

Also in the above cited letter, the Member Secretary had nominated Dr. Sohan Giri, Regional Officer, SPC Board, Odisha, Bhubaneswar to represent the Committee and to act as Nodal Officer on behalf of Board vide Memo No.2218 dtd.15.02.2023.

In that capacity Dr. Sohan Giri, Regional Officer, SPC Board, Odisha, Bhubaneswar had communicated a letter vide No.405, dtd.24.02.2023 all the above cited committee Members to have a meeting on dtd.28.02.2023 at Special Circuit House, Puri for holding detail discussion over the above case matter and to conduct the site visit. (Copy of letter enclosed). Subsequently on

behalf of Collector & District Magistrate, Puri, the Additional District Magistrate, Puri had communicated his letter vide No.629, dtd.27.02.2023 to The Superintendent Engineer (P.W.D) & (R&B), Puri, SE(IRR) Division, Pun, SE, Drainage Division, Puri, Tahasildar, Puri, BDO, Pun Sadar Block to be remain present in the meeting & to participate in the discussion so as to put forth their suggestion and views over the cited cases and also had directed the Tahasildar, Puri to be present with the concerned Revenue inspector of the said area, on 28.02.2023 at 3.00 P.M. at special circuit house at Puri. In that meeting Addl. District, Magistrate, Puri had requested Sub-Collector, Pun to be present in the said meeting and to participate over the issues.

Accordingly on dtd.28.02.2023 at 3.00 P.M. all the Constituted committee members along with the other invited Officials/Members of different Departments as has been cited above (along with Sr. Scientist, CPCB, Kolkata, Dr. Sandeep Roy & Dr. Sohan Giri (Nodal Officer) designated —cum- Regional Officer, SPC Board, Bhubaneswar) met at the Special Circuit House, Puri and discussed the alleged highlighted issues raised in the O.A.

The meeting was Chaired by Additional District Magistrate, Puri, representative of Collector & DM, Puri. In the joint committee of said meeting ADM, Puri had discussed with the officials present from different Departments, Sr. scientist of CPCB, Zonal Office, Kolkata in details to prepare a inspection report accordingly. Also ADM, Puri had requested all the participated officers to have a site visit over the alleged area along with Tahasildar, Puri and the concerned Revenue Inspector.

As per the direction of Hon'ble NGT, Kolkata all the joint committee members had visited alleged sites and it was decided there that Tahasildar, Puri with the help of Revenue Inspector of that area will provide a clear picture & status of the alleged plots those have been cited in the O.A to the committee so that the same can be communicated to the Hon'ble NGT well before the date of hearing. In that connection Nodal Officer- cum-Regional Officer, SPCB, BBSR had communicated a letter to the Tahasildar, Puri vide his letter No.600, dtd.09.03.2023 to provide real time Land/Plot status (i.e. Plot No., Khata No., Kisam of those plot both past & present) & possession holder at present so as to file an

affidavit by The Member Secretary, State Pollution Control Board, Odisha. Bhubaneswar well before 24.03.2023.

In response to the letter dtd.09.03.2023 of the Nodal Officer —cum- Regional Officer, SPC Board, Bhubaneswar, the Tahasildar, Puri vide his letter No.2199 dtd.15.03.2023 has submitted the land status of those alleged areas/ plots cited in the O.A basing upon the report furnished by Revenue inspector, Biraharekrishnapur, Puri after the field enquiry conducted with Asst. Engineer, Drainage Division, Puri. Also in his letter Tahasildar, Puri has mentioned that there are lots of changes seen in respect of the characteristics of that land on those particular areas since last settlement (1977). Those plots are recorded in private khatas and detail real time possessioner is not ascertainable at present for which further detail survey is required.

As decided in the joint committee meeting held on dtd.28.02.2023, Er. Debidutta R.R. Pattnaik, Chief Engineer, HH, GIS & CEM (O/o) Engineer -in- Chief (Water Resources) Odisha has submitted a compiled statement of the sheet containing particulars ROR w.r.t the Govt. record of the alleged plots with the drainage map vide his letter No.7842 dtd.22.03.2023.

However, on 10th April, 2023, at late evening hour, the Tahasildar, Puri vide his letter No.3065 dtd.10.04.2023 has submitted the Real time Possessioners of the alleged plots basing upon the report submitted by the Revenue Inspector, Biraharekrushnapur, Dist — Puri, showing the present status of land record and real time possession.

Remarks:-

- a) *However the committee Members when visited those alleged plots and observed that all the plots of those areas have been fully developed with human habitation like houses, buildings, gardens, Temple and colonies along with stagnant water bodies, full of floating species. No clear drainage system exists physically so as to allow the clear flow of rainfall water during torrential rainfall. So there might be every chances of over flow of rain water to the nearby area, which cannot be ruled out.*

b) The committee observed that the information provided by the Tahasildar with respect to the present status of land record and the real time possession data does not clarify the conversion status of the alleged plot and required further verification and the same has to be approved by the concerned Revenue Authority as well as to verify with the documents provided by the Chief Engineer, Water Resources Deptt, Govt. of Odisha, for which further 2 months of time is required to revisit the alleged sites and submit the final report.”

8. In this Inspection Report, the Committee had directed the Tahasildar, Puri with the help of Revenue Inspector to provide a clear picture and status of the alleged plots including real time land/plot status both past and present as well as reference of the possession holder. The Tahasildar, Puri, had submitted his report on 15.03.2023 stating that lot of changes have been seen in respect of characteristics of the land since the last statement of 1977. The Committee members also visited the area and observed that all the plots of those areas have been fully developed with human habitation like houses, buildings, gardens, Temple and colonies with stagnant waterbodies full of floating species. There is no clear drainage system to allow clear flow of rain water during torrential rainfall and, therefore, overflow of rain water to nearby area cannot be ruled out.
9. The present Status Report of the land has been filed at page no.69 of the paper book along with the affidavit of the Odisha State Pollution Control Board which shows the status of Khata No.165/1903, Mouza Gopinathpur as Jalasaya-II and its present status is shown as pond, road. The recorded one tenant is Jagadananda Mishra, Respondent No.14. The Present Status Report of land reads as under: -

PRESENT STATUS REPORT OF LAND IN CONNECTION WITH O.A NO- 16/2023, 17/2023, 18/2023

Sl No	MOUZA	KHATA	STATUS	NGT, CASE NO	PLOT	AREA	KISAM	RECORDED TENANT	AS PER ROR REMARKS	PRESENT STATUS
1	GOPINATHPUR ORAF ROUTARAPUR	139	Suliban	O.A NO-18/2023	320	0.02	Jalasaya-II	Ungaraj Mishra S/O-Ananta Mishra,Caste-Brahmin,Residence-Nijgaon		Road
2				O.A NO-18/2023	327	0.03	Jalasaya-II			House,Road
3		165/1903	Suliban	O.A NO-17/2023	123	1.58	Jalasaya-II	1.Jagadananda Mishra,S/O-Mukunda Mishra,Caste-Brahmin,Residence-Heragohirsa,Mukunda Mishra Nagar,PS-Puri Sador 2.Bhaskarananda Mishra,S/O-Mukunda Mishra,Caste-Brahmin,Residence-Heragohirsa,PS-Kumbharpada		Pond, Road
4										
5		126	Suliban	O.A NO-16/2023	181	0.15	Jalasaya-II	Shri Nilakantheswar Dev,Shri Gopinath Dev,Shri Durgadevi Thakuran,Bije-Nijgaon,C/O-All the Mahajan		Road, Nallah
6				O.A NO-16/2024	235	0.28	Nallah(Paninallah)	Ramachandra Hota,S/O-Dasarahi Hota,Ramachandra Mishra,S/O-Bhubaneswar Mishra,Jagannath Nanda,S/O-Madhaba Nanda,Krushna Chandra Mishra,S/O-Dinabandhu Mishra,Ghanashyam Mishra,S/O-Hrishikesh Mishra,Gobinda Chandra Mohapatra,S/O-Sudarsan Mohapatra,Purnachandra Mishra,Nilakantha Mishra,Sachidananda Mishra,Bijayananda Mishra,S/O-Basudeba Mishra,Caste-Brahmin,Residence-Nijgaon		House
7				O.A NO-16/2025	261/628	0.10	Nallah(Paninallah)			Road
8				O.A NO-16/2026	172/622	0.45	Jora		Jabara dakhil- Khandia Bandha Gramabasi, Sna 1972 tharu Mulabak plot number 172	Pond, Road
9				O.A NO-16/2027	172	2.98	Jora		Abi joranu khandia bandha, Gopinathpur gramabasi, Jala byabhar karibara, adhar achhi, Mostyada suira, khandia bandha gramabasi, Chandra ewain S/O- bhagabai Swain,Caste-Khandayat, Ba-Yearly Deposit Rs. 5000	Pond, Road
10				O.A NO-16/2028	564	0.97	Jalasaya-I			Pond, House
11				O.A NO-16/2029	370	2.50	Jalasaya-I, Pond			Nallah
12				O.A NO-16/2030	193	0.85	Jalasaya-I, Jore			Pond
13				O.A NO-16/2031	260	0.13	Jalasaya-II, Pond			TEMPLE, COLLARED
14				O.A NO-16/2032	438	0.10	Jalasaya-II, Jora			Nallah
15				O.A NO-16/2033	262	0.32	Jalasaya-II, Gadla			Pond
16				O.A NO-16/2034	368	0.13	Jalasaya-II, Gadla			Nallah
17				O.A NO-16/2035	172/622	0.62	Jalasaya-II, Pond		Jabara dakhil- Khandia Bandha Gramabasi, Sna 1973 tharu mulabak plot number 172	Pond
18				O.A NO-16/2036	559	0.13	Jalasaya-II, Gadla			House
19		209	Bebandabasta	O.A NO-16/2023	192	1.7	Nallah(Paninallah)	Shri Nilakantheswar Dev,Shri Gopinath Dev,Shri Durgadevi Thakuran,Bije-Nijgaon,C/O-All the Mahajan		Road, Nallah
20				O.A NO-16/2023	4	0.26	Nallah(Paninallah)	Ramachandra Hota,S/O-Dasarahi Hota,Ramachandra Mishra,S/O-Bhubaneswar Mishra,Jagannath Nanda,S/O-Madhaba Nanda,Krushna Chandra Mishra,S/O-Dinabandhu Mishra,Ghanashyam Mishra,S/O-Hrishikesh Mishra,Gobinda Chandra Mohapatra,S/O-Sudarsan Mohapatra,Purnachandra Mishra,Nilakantha Mishra,Sachidananda Mishra,Bijayananda Mishra,S/O-Basudeba Mishra,Caste-Brahmin,Residence-Nijgaon		Nallah, Road
21				O.A NO-16/2023	285/624	0.02	Nallah (Jore)			Nallah, Road
22				O.A NO-16/2023	435	0.30	Jalasaya-II			Nallah
23				O.A NO-16/2023	390	0.34	Nallah(Paninallah)	Shri Nilakantheswar Dev,Shri Gopinath Dev,Shri Durgadevi Thakuran,Bije-Nijgaon,C/O-Gopinathpur : All the Mahajan : Ramachandra Hota,S/O-Dasarahi Hota,Ramachandra Mishra,S/O-Bhubaneswar Mishra,Gobinda Chandra Mohapatra,S/O-Sudarsan Mohapatra,Caste-Brahmin,Residence-Nijgaon		Nallah
24		125	Suliban	O.A NO-16/2023	417	0.21	Nallah(Paninallah)			Nallah
25		44	Suliban	O.A NO-18/2023	316	0.05	Jalasaya-II, Gadla	Debasish Bahinipal, Shilashish Bahinipal,Meenakshi Bahinipal,Romashish Bahinipal,S/O-Chandrasekhar Bahinipal,Caste-Brahmin,Residence-Nijgaon		Road

10. The Respondent No.14, Private Respondent, has also filed its affidavit dated 23.03.2023 stating that the photographs filed with the Original Application are misleading and not connected with the Plot No.123, Khata No.165/1903, Mouza Gopinathpur and it is stated that there is no construction on the said land/waterbody. It is also stated that waterbody remains as it is. Photographs have been filed along with

this affidavit as Annexure-1 showing the date and time of the photograph and Mr. Sankar Prasad Pani, learned Counsel for the Respondent No.14 submits that the facts can be verified on the ground itself.

11. The Respondent No.5, Collector & District Magistrate, Puri, has filed Counter-affidavit dated 12.04.2023 with the same documents showing the same status of the land as already noted hereinabove and in the document filed at page no.105 of the paper book, the status of the Plot No.123, Khata No.165/1903 is stated to Jalasaya-II recorded in the name of Jagadananda Mishra.
12. Another affidavit dated 12.05.2023 has been filed by Respondent No.7, Odisha State Pollution Control Board, with another Report of the Committee and it is stated that recommendations have been made for constructing four drainage channels of length approximately 7.11 km. i.e.,
 - (i) Drain No.1 - 2.75 km (approx.)
 - (ii) Drain No.2 - 1.66 km (approx.)
 - (iii) Drain No.3 - 1.20 km (approx.)
 - (iv) Drain No.4 - 1.50 km (approx.).

It is stated that once these drainage channels are constructed, there shall be no water logging in the area. The Committee Report reads as under: -

“PROCEEDING OF THE COMMITTEE MEETING AND ACTION TAKEN REPORT ON O.A.NO.17/2023/EZ OF HON'BLE NGT FILED BY SRI SRIKANTA PRADHAN AND ANOTHERS -VS- STATE OF ODISHA & OTHERS

The Hon'ble NGT, Eastern Zone Bench, Kolkata in the order dt. 13.4.2023 had granted one month time to Committee to file a Comprehensive Report and the case is placed for hearing on Dt. 16.5.2023.

Accordingly the Member Secretary, State Pollution Control Board, Odisha, Bhubaneswar had communicated a letter to Regional Officer, State Pollution Control Board — cum - Nodal officer vide letter No. 6420, dtd. 20.04.2023 to submit the comprehensive report. Basing upon the letter of the Member Secretary and the order of Hon'ble NGT, the Regional Officer-cum-Nodal Officer again through his letter, requested all the committee member along with other Govt. Officials of related Departments to meet on 26.04.2023 at Special Circuit House, Puri for a discussion along with and action undertaken on the case matter. All the committee members were present along with other government officials.

Issues Discussed by the Committee Members:

- a) In the meeting the Chairman of the committee, i.e. Addl. District Magistrate, Puri had instructed the Additional Tahasildar, Puri (who appeared for the Tahasildar, Puri due to illness of the Tahasildar) to provide a detail clear cut information about the alleged plot w.r.t its real status (both past and present) and who had authorized those persons to construct the dwelling house over the water bodies like Pani Mahara/ Natural drain/ pond etc, so for which the water logging problem has been cropped off and what action has been taken up against those law violator's (those who have constructed their houses over the water bodies) by the concerned department so far and copy of the same to be provided to the committee for its submission before Hon'ble Tribunal.*
- b) Besides above discussion, the ADM, Puri had instructed the Engineer-in-Chief Drainage Division, Govt. of Odisha, Bhubaneswar through Superintendent Engineer, Drainage Division, Puri (who was present in the meeting) to prepare alternative master plan for a concreted drainage network starting from the area of Mukunda Mishra Nagar upto Musa River and final discharge to Mangala River to be prepared so that during rainfall the rain water will get a clear passage*

system without further water-logging as has been cited in the case matter without demolishing large number of residential building already builtup within the alleged area to avoid any law and order situation in future by the local public.

- c) For this Addl. District Magistrate, Puri had directed the Tahasildar, Puri and the Chief Engineer (H.A, GISS-IEM), Puri and other Officials to extend their full co-operation to the Superintendent Engineer Drainage Division, Puri so as to prepared a drawing/ design of proposed drainage system along with identifying the revenue/private plots to be acquired so as to resolve the issue in peaceful manner.*
- d) Besides above cited discussions the officials of Irrigation Department those who were present in the meeting also highlighted to raise the height of embankment of Dhedua River which is flowing nearby to alleged area i.e. Mukunda Mishra Nagar etc. so that the flow of rain water into the alleged area during rainfall can be checked to an greater extend i.e. the perennial problem can be resolved.*

A copy of the proceedings of the meeting held on dt 26.04.2023 was circulated to the departments to provide their report by dt. 6.5. 2023 so as to submit the report to the Hon'ble NGT (Proceedings copy enclosed as Annexure-II).

Informations submitted by the Tahasildar, Puri

Accordingly the Tahasildar, Puri has submitted a fact-finding report to the Regional Officer, State Pollution Control Board, Bhubaneswar—cum-Nodal Officer in support of the case matter and his view w.r.t the joint enquiry team visit to alleged area to make an overall survey along with official of Drainage Division, Puri for providing an idea for clear passage of proposed drainage system to resolve the water logging issues are as follows:-

- 1) Basing upon the field survey report of the Revenue inspector and Amin of Biraharekrushnapur, Puri has reported that in*

the alleged area a water body is present in real time possession over plot no.123.

- 2) Also regarding the proposed drainage network maximum revenue plots and some private plots have been identified and a complete muzumuli map has been prepared by taking the identified government plots. Endowment plot comprising mouza Markandeswar Sahi-1, Samanga, Bharatipur and Gopinathpur @Routarapur for smooth flow of catchment area rain water through drainage system.*
- 3) The possible drainage area layout plan has been handed over to Superintendent Engineer, Drainage Division, Puri to prepare a detailed study of Technical feasibility report taking into the consideration of catchment area, NSL gradient and other aspects.*

Informations submitted by the Superintending Engineer, Drainage Division, Puri, submitted through the Collector & District Magistrate, Puri.

Basing on the instruction given by the ADM, Puri, Engineer-in-Chief Drainage Division, Govt. of Odisha, Bhubaneswar through Superintendent Engineer, Drainage Division, Puri has submitted a report, in which an alternative master plan for a concreted drainage network starting from the area of Mukunda Mishra Nagar upto Musa River and final discharge to Mangala River has been proposed to prevent water-logging. In the report the Superintending Engineer, Drainage Division, Puri has mentioned that they have initiated action to find out the possible drainage channels in Government lands out falling Musa river ultimate to Mangala river. The necessary preliminary survey and demarcation of Drainage Channels over the government land has been made jointly with the supports of tahasildar and field staff of both Tahasils and Drainage Department and completed it by dt. 6.5.2023. It has been proposed to construct 4 numbers of drainage channels for a length of approximately 7.11 Km i.e. (i) Drain No. 1 — 2.75 Km (approx.); (ii) Drain No. 2 — 1.66 Km (approx.); (iii) Drain No. 3 — 1.20 Km (approx.) and (iv)

Drain No. 4 — 1.50 Km (approx..) (drainage map enclosed). It has also been mentioned that if these Drainage Channels are constructed, then there shall be no water logging in that area.

Conclusion and Recommendations of the Committee:

- (i) As per the report of the Tahasildar, Puri, some residential houses have been constructed over the Jalasaya kism land long time ago. An alternative master plan for a concreted drainage network starting from the area of Mukunda Mishra Nagar upto Musa River and final discharge to Mangala River is proposed so that during rainfall the rain water will get a clear passage system without further water-logging as has been cited in the case matter without demolishing large number of residential building already built up within the alleged area to avoid any law and order situation in future by the local public.*
- (ii) The Superintending Engineer, Drainage Division, Puri has proposed to construct 4 numbers of drainage channels for a length of approximately 7.11 Km i.e. (i) Drain No. 1 — 2.75 Km (approx.); (ii) Drain No. 2 — 1.66 Km (approx.); (iii) Drain No. 3 — 1.20 Km (approx.) and (iv) Drain No. 4 — 1.50 Km (approx.) (drainage map enclosed). He has also mentioned that if these Drainage Channels are constructed, then there will be no water logging in that alleged area.*
- (iii) The joint committee also recommends the construction of the 4 numbers of drainage channels for a length of approximately 7.11 Km i.e. (i) Drain No. 1 2.75 Km (approx.); (ii) Drain No. 2 — 1.66 Km (approx.); (iii) Drain No. 3 — 1.20 Km (approx.) and (iv) Drain No. 4 — 1.50 Km (approx.) so that there will be no water logging in the alleged area.”*

13. The Respondent No.5, Collector & District Magistrate, Puri, has also filed another affidavit dated 15.05.2023 to the same effect.

14. The Applicant has also filed additional affidavit dated 01.07.2023 stating that Jalasaya as per its definition cannot be confined by its bunds. However, the Applicant has not denied the contention of the Respondent No.14 that plot in question continues to remain waterbody as shown in the photograph at page no.82 of the paper book.
15. The Respondent No.14, Private Respondent, has filed reply affidavit dated 03.07.2023 reiterating the contents of his earlier affidavit that there is no construction or building existing on the Plot No.123 and the same continues to be a waterbody and that the entire Original Application has been built on false allegations and misleading statements.
16. We have considered the submissions of the parties and documents on record. The land records and present status of the same with particular reference to the Plot No.123 Khata No.165/1903 with which we are concerned in the present case, is shown to be Jalasaya-II. In the affidavit of the Respondent No.14, photographs have been filed to show that the same continues to be a waterbody and its nature has not been changed and there is no construction of any kind on this waterbody.
17. The averments made by the Respondent No.14 in his affidavit dated 23.03.2023 supported by photographs have not been denied by the Applicant through any rejoinder affidavit. In his additional affidavit dated 01.07.2023 all that has been stated by the Applicant in reply to the affidavit of the Respondent No.14 is that construction is going on the waterbody whose size is about Acc.1.5800 decimals and that the Respondent No.14 had made constructions over more than half of the waterbody and left a small portion out of the total area of

Acc.1.5800 decimals. However, the photographs filed with the affidavit of the Respondent No.14 covering a large area does not show any construction on the waterbody.

18. 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 cases, and refer to paragraphs 13, 14 & 15 of the said judgment. The paragraphs 13, 14 & 15 read as under: -

"13. On going through the affidavit dated 18.5.2010 filed by the Principal Secretary, H. & U.D. Department, indicating the steps taken for providing funds for acquisition, renovation and maintenance of 4 numbers of private Jalasayas and 8 numbers of Jalasayas on Govt. lands in Cuttack City in the first phase as well as the report of the Committee headed by the R.D.C. dated 31.8.2007, we are of the view that the water-bodies/Jalasayas existing in the city need to be preserved and protected and should not be allowed to be converted into homesteads. The affidavit filed by the Secretary, H. & U.D. Department, also shows that the State Govt. is very much alive to the situation regarding filling up of tanks/water-bodies and change of classification of the same to homestead and they are concerned for conservation of such tanks/water-bodies. We hope and trust that the State Govt. would come forward to acquire more and more water-bodies in the city in the next phases.

14. Considering the facts and circumstances of the case, for preservation and conservation of tanks/water-bodies in Cuttack City, and to deal with such tanks/water-bodies, we direct as follows:

- (1) The State Govt. shall act upon the report dated 31.8.2007 submitted by the R.D.C. (C.D.), Cuttack, and the affidavit dated 18.5.2010 filed by the Principal Secretary to Govt., H.&U.D. Department, and shall ensure that the steps indicated therein are taken within a period of two years from today.*

(2) *The R.D.C. (C.D.), Cuttack, under his chairmanship shall form a Committee not exceeding seven members including the Vice-Chairman, C.D.A., Municipal Commissioner, CMC, Cuttack, and an Environmentalist of the State Pollution Control Board, Odisha. Needless to say, the other members of the Committee shall be nominated by the R.D.C. The Committee shall deal with the protection, preservation and conservation of water-bodies in the city and shall take decisions accordingly.*

(3) *The applications for change of classification/kissam 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 Jalasayas 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.*

(4) *The Committee shall also make enquiry, if it is so necessary, to find out whether classification of the lands recorded as Jalasayas has been changed by orders of the Tahasildar during operation of the order of status quo passed by this Court on 8.4.2005 in O.J.C. No. 6721/1999. In case it is found that the classification has been changed during continuance of the order of status quo, the same shall be treated as non est in the eye of law.*

15. *For the aforesaid purpose, Cuttack City shall be construed to be the old Cuttack City comprising the areas shown in the satellite maps of the ORSAC of 1990 and 2006, which have been annexed to the Report of the R.D.C. dated 31.8.2007. It will be open to the State Govt. to adopt the directions given in respect of Cuttack City in the foregoing paragraph for other cities in the State.”*

19. 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). Paras-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.”

20. In this view of the matter, we dispose of this Original Application with a direction that the Respondent No.14 shall not make any construction over Plot No.123, Khata No.165/1903 or change its character in any manner except in accordance with law, if permissible and the Tahasildar, Puri, shall ensure that the character of the land shall continue to be a waterbody for which he shall carry out time to time Inspection.
21. I.As. if any, stand disposed of accordingly.
22. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Dr. Afroz Ahmad, EM

July 04, 2023,
Original Application No.17/2023/EZ
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