

**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)**

IN THE MATTER OF:

- 1. Dilip Kumar Samantara,**
S/o Lingaraj Samantara,
Aged about 35 Years,
At – Bajtakot, P.O. – Baunsagarh,
P.S. – Ranpur, Dist. – Nayagarh,
- 2. Anil Kumar Kumar Ray,**
S/o Hata Kishor Nayak,
Aged about 29 Years,
At /P.O. – Tankol, P.S. – Jankia,
Dist. – Khordha,
- 3. Pradip Jayasingh, Gadadhar Jayasingh,**
Aged about 29 Years,
At /P.O. – Tankol, P.S. – Jankia,
Dist. – Khordha,

.... Applicant(s)

Versus

- 1. State of Odisha,**
Represented by Chief Secretary,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar
- 2. Principal Secretary,**
Revenue and Disaster Management,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar- 751001
- 3. Additional Chief Secretary,**
Forest and Environment Management,
Government of Odisha,
Kharavela Bhawan,
Bhubaneswar,
Odisha – 751001
- 4. Collector & District Magistrate, Khordha,**
At/P.O. - Khordha,
Pin – 752069

5. Superintendent of Police, Khordha,
At/P.O./P.S. – Khordha,
Pin – 752069

6. Divisional Forest Officer, Khordha,
At/P.O./P.S. – Khordha,
Pin – 752055

7. Member Secretary,
Odisha State Pollution Control Board,
A/118, Unit-VII, Nilakantha Nagar,
Bhubaneswar
Pin – 751012

8. Regional Officer, State Pollution Control Board,
Bhubaneswar

9. Member Secretary,
State Environment Impact Assessment Authority (SEIAA),
Odisha,
Bhubaneswar,
5RF-2/1, Acharya Vihar, Unit-IX,
Pin – 751022

10. Director of Mines and Geology,
Bhubigyan Bhawan,
Bhubaneswar,
Khordha,
Pin – 751001

11. Patitapaban Barik,
Lessee of Sahadaghai Laterite Stone Quarry, Tangi,
Jankia,
Khordha,
Odisha

12. Tahasildar, Tangi,
At/P.O./P.S. – Tangi,
Dist. - Khurdha,

13. Deputy Director General of Forests (C),
Integrated Regional Office (EZ),
A/3, Chandersekharapur,
Bhubaneswar - 751023

.... Respondent(s)

Date of hearing: 06.07.2023

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

For Applicant(s) : Mr. Sankar Prasad Pani, Advocate (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 Mohapatra, Adv. for R-11, (in Virtual Mode)
Mr. Apurba Ghosh, Adv. for R-13, (in Virtual Mode)

ORDER

1. The allegation in this Original Application is that the Respondent No.11, Private Respondent, is carrying on illegal laterite stone quarry mining in Mouza-Sahadaghai, Tahasil-Tangi, District-Khordha, Odisha, in the absence of Consent to Establish, Consent to Operate from a date prior to transfer of Environmental Clearance in favour of the Lessee. It is stated that the Environmental Clearance dated 11.05.2022 was transferred in favour of the Patitapaban Barik, Respondent No.11 herein, for Laterite Stone Quarry over an area of 6.32 acres for production quantity of 1500m³/annum and the total production in the entire lease period i.e., five years, would be 7500 m³ from Plot No. 719 which is a 'Bagayat Kisam' but the Respondent No.11, prior to that date has started mining operation and Y Form has also been issued on 09.03.2022 which confirms illegal mining being carried out by him.
2. It is also stated that the Consent to Establish was granted on 12.10.2022 for Sahadaghai Laterite Stone Quarry but no Consent to Operate has been granted till date. It is further stated that three FIRs have been lodged against the Respondent No.11, the lessee, for illegally carrying out quarrying operation beyond the lease area and seven vehicles, two power tillers and one motorcycle engaged in illegal mining during night have been seized. As per the RespondentNo.11, FIRs were lodged against him on 20.11.2022.
3. The allegation further is that though the Environmental Clearance was granted only for Plot No. 719 but illegal Laterite Stone Mining operation has been carried out on Plot Nos. 712, 713, 714, 716 & 717 without there being Environmental Clearance or Consent to Operate in respect of these plots. It is alleged that there has been a

violation of Condition No. 9.22 of the Environmental Clearance and there is also violation of the Hazardous Waste Management Rules, 2016. Para 9.22 of the Environmental Clearance conditions reads as under:-

“9. Stipulated Conditions:

9.22 It shall be mandatory for the project management to submit quarterly compliance reports on the status of implementation of the above stipulated environmental safeguards to the SEIAA, Odisha/SPCB, Odisha/Regional Office of the MoEF&CC, Bhubaneswar, in hard and soft copies on 1st day of January, April, July, October of each calendar year, failing which EC is liable to be revoked.”

4. It is also alleged that the area in question is full of acacia, cashew and the other associated trees and the said land is Forest Land recorded as such in the Sabik Records.
5. At the time of admission, the Tribunal also constituted a Committee comprising of the following Members:-
 - (i) *Collector & District Magistrate, Khurdha,*
 - (ii) *Divisional Forest Officer, Khurdha, and*
 - (iii) *Director of Mines and Geology, Khurdha, or his senior representative.*
6. The Committee was required to submit its report within one month and in case the allegations made in the Original Application were found to be true, the District Collector & Magistrate, Khurdha, was directed to take immediate steps and pass appropriate orders to stop such illegal mining and also determine Environmental Compensation in this regard.
7. The State Pollution Control Board, Odisha, Respondent Nos.7&8, has filed affidavit dated 28.04.2023. Along with this affidavit, 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.

.....XXX.....XXX.....XXX.....XXX.....

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 Establish (CTE), Consent to Operate (CTO) and prior of Transfer of Environmental Clearance (ECO dated	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 Tahasildar, Tangi. 2. Transfer of EC from the name Tahasildar, Tangi to Sri patitapaban Barik (successful bidder) was made vide SEIAA, Odisha

	11.05.2022	letter no. 452/SEIAA dated 11.05.2022 (Online application No.SIA/OR/MIN/271033/2022). 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). 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. 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. 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 accordingly the concerned Dept. calculated illegally mined out material. The details are mentioned below.
--	------------	--

2.	<i>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.</i>	1. <i>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.</i> 2. <i>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.712, 713, 714, 716 and 717 comes under Kisam-Chhota Jungle.</i>
----	--	--

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.712, 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. 712, 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	Excavated area AREA	THICKNESS in M	VOMUME of excavation
--------	-------	---------------------	----------------	----------------------

	<i>H</i>	<i>in Sq.M</i>		<i>in cu.m</i>
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 $D*RF=Rs. 1,80,51,880 \times 1$ (RF=1, ever Impact) =Rs. 1,80,51,880/-

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

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

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

$$=NPV = PV - D$$

$$=Rs. 7,81,50,803.00 - Rs. 1,80,51,880.00 = Rs. 6,00,98,923/-$$

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)

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

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

- 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 reproduced 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.

.....XXX.....XXX.....XXX.....XXX.....

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 found 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 consideration and the highest price is found 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. The Respondent No.11 has filed his counter-affidavit dated 12.03.2023, stating therein that criminal proceedings have been initiated against the lessee on 20.11.2022, therefore, the present Original Application is not maintainable. Reliance has been placed on the judgment of the Hon’ble Supreme Court in (2010) 6 SCC 1 (*Manu Sharma Vs. State (NCT Delhi)*), wherein the Hon’ble Supreme

Court has held that *“the criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime”*. Other judgments have also been referred to by the Respondent No.11.

10. However, we may refer to some other judgments of the Hon’ble Supreme Court which actually address the plea raised by the Respondent No.11. The Hon’ble Supreme Court in (2008) 5 SCC 765 (*P. Swaroopa Rani Vs. M. Hari Narayan Alias Hari Babu*), has held that filing of independent criminal proceedings, although initiated in terms of some observations made by the civil court, is not barred under any statute. Para 13 of the judgment reads as under:-

“13. Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute.”

11. A Constitution Bench of the Hon’ble Supreme Court in (2005) 4 SCC 370 (*Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.*), has clearly held that civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. Relevant extract of para 32 of the judgment reads as under:-

“32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases

are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in *M.S. Sheriff v. State of Madras* [1954 SCR 1144 : AIR 1954 SC 397 : 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

“15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But

in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.”

12. The judgment in Iqbal Singh Marwah (Supra) has been followed by the another Constitution Bench of the Hon’ble Supreme Court in (2009) 13 SCC 729 (*Vishnu Dutt Sharma Vs. Daya Sapra (SMT)*). Paras 28, 29 and 30 of the judgment read as under:-

“28. *If judgment of a civil court is not binding on a criminal court, it is incomprehensible that a judgment of a criminal court will be binding on a civil court. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant in some other provisions of the Act, no other provisions of the Evidence Act or for that matter other statute had been brought to our notice.*

29. *Another Constitution Bench of this Court had the occasion to consider the question in Iqbal Singh Marwah v. Meenakshi Marwah. Relying on M.S. Sheriff as also various other decisions, it was categorically held:*

“32. *Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given.”*

30. *The question yet again came up for consideration in P. Swaroopa Rani v. H. Hari Narayana wherein it was categorically held:*

“11. *It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.”*

13. The Hon'ble Supreme Court in (2001) 2 SCC 17 (*Lalmuni Devi (SMT) Vs. State of Bihar & Ors.*), in para 6, 7 and 8 of the judgment observed as under:-

“6. Mr. Sinha submitted that the impugned order was unsustainable. He submitted that facts make out a wrong as well as a criminal liability. He submitted that merely because civil action can be taken does not mean that a criminal complaint is not maintainable. In support of his submission he relied upon the case of Trisuns Chemical Industry V. Rajesh Agarwal. In this case, the agreement between the parties contained an arbitration clause. This Court held that merely because the dispute could be referred to arbitration it was not an effective substitute for a criminal prosecution when the act also made out an offence.

7. On the other hand, Mr. Singh submitted that the alleged acts have made out no case for taking cognizance. He submitted that at the highest the remedy would lie in a civil court only. He relied upon the cases of State of Haryana v. Bhajan Lal and K. Ramkrshn v. State of Bihar. In these cases it is held that inherent powers can be exercised to quash proceedings to prevent abuse of the process of law and to secure ends of justice. It has been held that where the allegations in the FIR do not constitute the alleged offence or where the offence is not disclosed in the complaint or the FIR the frivolous criminal litigation could be quashed.

8. There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. if that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed.”

14. For reasons stated hereinabove, we are satisfied that the present Original Application is maintainable and the case law referred to by

the Respondent No.11 has no application to the facts of the present case.

15. The case of the Respondent No.11 is that he was declared highest bidder at the Sahadaghai Laterite Stone Quarry No.A and the Tahasildar-Tangi, executed a lease deed in his favour on 18.06.2021 for a long term lease for operation of the quarry (MGQ 1500 CUM) as per the provisions of the Odisha Minor Mineral Concession Rules, 2016, (hereinafter referred to as 'the OMMC Rules, 2016') and amendments thereto. It is stated that the lessee obtained Environmental Clearance and approved Mining Plan as well as Consent to Establish from the competent authorities but Consent to Operate has not been granted by the State Pollution Control Board even though application to that effect together with fees had been deposited with the State Pollution Control Board vide receipt dated 20.10.2022.
16. Further case of the Respondent No.11 is that since Consent to Operate was not granted in respect of Plot No. 719 (the lease area), therefore, he has not started mining operation over the said plot. In para 4 of his counter-affidavit dated 12.03.2023 the allegation of illegal mining outside the lease area over Plot Nos. 717, 716, 712, 713, 714, Kissam-Bagayat, under Khata No.278, has been denied and *it is stated that the Tahasildar had not raised any objection at any point of time against illegal mining operation by the lessee outside the mining area.* It is also the contention of the Respondent No.11 that it is the duty of the State Authorities to protect the plots in question as the trustee of the Sairat Source as per the OMMC Rules, 2016.

17. The Collector & District Magistrate, Khurdha, Respondent No.4, has filed his counter-affidavit dated 28.03.2023, bringing on record the Joint Inspection Report, which is already reproduced hereinabove.
18. The Ministry of Environment, Forests and Climate Change, Respondent No.13, has filed affidavit dated 26.04.2023 referring to the various rules which are applicable in the matter of granting Environmental Clearance.
19. Another affidavit dated 06.05.2023 has been filed by the Respondent No.11, stating therein that he was issued notice by the Collector & District Magistrate, on 02.02.2023 for joint inspection of the site to be carried out on 09.02.2023 but on that date the officials did not come to the site but for the inspection carried out on the subsequent date i.e., on 13.02.2023, the Respondent No.11 was not given any intimation. It is also stated that the Committee has itself mentioned in its report that there was no mining activity found and no machinery found on Plot Nos. 712, 713, 714, 716 and 717 during inspection.
20. The contention of the Respondent No.11 also is that the enquiry report has been sent by the Members of the Committee and others on 21.02.2023 whereas the Collector & District Magistrate had already sent a letter to the Tahasildar on 20.02.2023 i.e., one day earlier, mentioning that the lessee had illegally operated the Laterite Stone Mining and had excavated an area of 3979 sq. mtr. of different patches over the Plot Nos. 712, 713, 714, 716 and 717 and the quantum of extraction of Laterite and Morrum is found to be 5861 cum and 5257 cum respectively and, therefore, a direction

was given for lodging of FIR against the Respondent No.11 and for computation of Environmental Compensation.

21. The contention of the Applicant in the Original Application is that the land in question is forest land as shown in the Sabik Records which has also been noted by the Committee in its Report and, therefore, lease of the said land could not have been granted without compliance of the provisions of Section 2 of the Forest (Conservation) Act, 1980, irrespective whether the lease was of Plot No.719 or any other plot in the area. It is further stated that the Consent to Establish dated 12.10.2022 granted in favour of M/s Sahadaghai Laterite Stone Quarry does not mention that the land in question is forest land recorded as such in the Sabik Records which means that the Consent to Establish was granted without proper inquiry and inspection by the State Pollution Control Board. Learned Counsel for the Applicant contended that the SEIAA, Odisha, Respondent No.9, had granted Environmental Clearance on 17.12.2020 but it also did not make proper inquiries before granting the same.
22. At the outset, we may note that this contention of the Applicant is not correct since in the Environmental Clearance itself, in para 5 h, it is mentioned that the Tahasildar, Tangi, vide his letter dated 31.08.2020 has submitted that the proposed quarry is situated on non-forest land, even after verification of the DLC report. Therefore, the SEIAA, Odisha, cannot be faulted for accepting the report of the then Tahasildar, Tangi.
23. The contention of the learned Counsel for the Applicant further is that the Environmental Clearance was initially granted in favour of the Tahasildar, Tangi, but thereafter transferred in the name of the

lessee, Respondent No.11, on 11.05.2022 but the lessee had already commenced mining activities illegally prior to 11.05.2022. However, it is contented that till date no Consent to Operate has been granted by the State Pollution Control Board and, therefore, the entire mining operation in question is illegal.

24. We may now refer to the Joint Inspection Report which clearly mentions that during inspection it was observed that Environmental Clearance, Consent to Establish and Y Form was issued for the Sahadaghai Laterite Stone Quarry-A bearing Plot No. 719 but no mining activity was observed over the said plot. It is also noted that the Consent to Establish was issued on 12.10.2022 by the State Pollution Control Board and the Environmental Clearance was granted over the lease area of 6.325 acres of 2.56 hectare at Village-Sahadaghai, Tahasil-Tangi, District-Khordha, on 17.12.2020 but the Consent to Operate has not been issued for the quarry i.e., the mine lease Plot No.719, Khata No.278. So far as the nature of the land as to whether it is forest land or not is concerned, there is a clear finding of the Committee that the area does not fall under forest according to the HAL records but in the Sabik Records it is found that the Khata No. 165, Plot No.384, corresponding to Plot Nos.712, 713, 714, 716 and 717 is recorded as Kissam-‘Chhota Jungle’.
25. The total volume of excavation in each of the plots has been given in the table which is appended to the Joint Committee’s Report, already extracted hereinabove, which shows that the total Laterite excavated is 5861 cum and total Morrum excavated is 5257 and Environmental Compensation has, therefore, been computed accordingly as Rs. 6,00,98,923/- (Rupees Six Crores Ninety Eight

Thousand Nine Hundred Twenty Three) for Laterite and Rs. 1,24,61,378/- (Rupees One Crore Twenty Four Lakhs Sixty One Thousand Three Hundred Seventy Eight only) for Morrum and the total compensation charged for Laterite plus Morrum is Rs. 7,25,60,301/- (Rupees Seven Crores Twenty Five Lakhs Sixty Thousand Three Hundred and One only).

26. A perusal of the Environmental Clearance dated 17.12.2020 shows under the head Stipulated Conditions, para 9.3, that '*demarcation of mining area with pillars and geo-referencing should be done prior to start of mining at the cost of the lease holder after certification by the mining official and its geo coordinates are made available to the concerned authority*'.
27. The contention of the learned Counsel for the Applicant is that there was no marking of pillars to identify the area under mining and the boundary pillars have not been set-up by the lessee and, therefore, there is a violation of the Condition No. 9.3 of the Environmental Clearance. The Inspection Report clearly mentions that during inspection boundary pillars mentioned in the approved Mining Plan were not found at the quarry lease which reveals that the lessee has intentionally not posted the boundary pillars and has operated outside the lease area.
28. According to the Applicant, he has submitted a complaint to the State Pollution Control Board, Odisha, SEIAA, Odisha, Divisional Forest Officer, Khurdha, Collector-Khurdha, Superintendent of Police, Khurdha, Additional Chief Secretary, Forest and Environment Department, Odisha, and Deputy Director General of Forests (C), Bhubaneswar, on 17th September, 2022, copies of the registered post and letters have been filed as Annexure-3 (series),

pages 43-58 of the paper book, but no action has been taken in this regard.

29. The Applicant in his rejoinder affidavit dated 06.07.2023 has stated that the criminal prosecution is not proceeding since the Respondent No.11 is absconding for the last several months.
30. The contention of the learned Counsel for the Applicant is that from the Committee Report, it is seen that the land in question is recorded as forest land in the Sabik Records, therefore, lease of such land could not have been granted for mining purposes without permission from the Central Government as per Section 2 of the Forest (Conservation) Act, 1980. Therefore, the land of Plot No.719 was itself illegally allotted for mining purposes and granted in favour of the Tahasildar, Tangi, and subsequently transferred in favour of the lessee, Respondent No.11, and, therefore, the whole transaction was illegal.
31. We find that in the Committee Report there is a clear finding that illegal mining was noticed over Plot Nos. 712, 713, 714, 176 and 717 but there was no mining activity on the actual mine area over Plot No.719 under Khata No.278. The contention of the Respondent No.11 is that because he did not have Consent to Operate, he did not carry out any mining activities over the designated mining area over Plot No.719 under Khata No.278.
32. However, from the Committee's Report it is established that illegal mining was carried out over the plots outside the mining area and, therefore, extraction of laterite and morrum from the plots outside the mining area was clearly illegal and in violation of the OMMC Rules, 2016. In fact, the averment of the Respondent No.11 in para 4 of his counter-affidavit that "*the Tahasildar has not raised*

objection for illegal operation by the lessee in the outside lease area” is an admission by the Respondent No.11 that he was conducting illegal mining operation outside the lease area.

33. The Respondent No.11 has contended that he was given only one notice to appear before the Committee on the date of inspection i.e., on 09.02.2023, but there was no other notice for actual inspection carried out on 13.02.2023.
34. We may note that the question whether the Respondent No.11 had notice to be present during inspection on 13.02.2023 becomes irrelevant for the reason that the Committee Members were present and some of the villagers in that area were also present, therefore, it cannot be said that the inspection or the findings of the Committee were illegally or wrongly recorded to the prejudice of the Respondent No.11. Respondent No.11 states that he was under notice to be present during inspection on 09.02.2023, however, copy of the said notice has not been filed by him, and in any case there was no direction or observation by the Tribunal that during inspection the Respondent No.11 would be present or that the Committee was required to issue him notice to be present during inspection and, therefore, any allegation in that regard of prejudice being caused to the Respondent No.11 due to his non-presence on the date of inspection is wholly misconceived.
35. The contention of the learned Counsel for the Applicant further is that the Committee Report was dated 21.02.2023 whereas the letter of the Collector & District Magistrate, Khurdha, is dated 20.02.2023 addressed to the Tahasildar-Tangi, and, therefore, the Collector & District Magistrate, Khurdha, could not have known

about the findings of the Committee Report prior to the report itself is thoroughly misconceived.

36. We may note that the Committee had inspected the mining site on 13.02.2023 and thereafter a meeting was held for fixation of compensation on 17.02.2023 as would be clear from the document Annexure-1, page no.324 of the paper book, which would explain that the fact with regard to illegal mining had already been on record even on 17.02.2023 and compensation was determined on 21.02.2023 since the document at page no. 322 of the paper book, Committee's determination of compensation itself refers to the letter of the Collector-Khurdha, being No.2255 dated 20.02.2023 issued to the Sub-Collector, Khurdha, and, therefore, the insinuation of Respondent No.11 that the Collector was not in the knowledge of the Committee Report prior to the Report itself is thoroughly misconceived.
37. The insinuation of the Respondent No.11 is also liable to be rejected since FIR was already lodged against him on 20.11.2022 as per his own case in his counter-affidavit, i.e., much before the Inspection Report, which shows that the State authorities were already seized of the matter, even before filing of the present Original Application and before directions were given by the Tribunal to conduct inspection of the site in question. The site inspection was for determination of quantum of illegal laterite and morrum by the Respondent No.11 and determination of Environmental Compensation for damage caused to the environment.
38. In this entire controversy, the role of the then Tahasildar-Tangi, comes under a cloud since the mining lease was granted by him in

favour of the Respondent No.11 and he ought to have examined as to whether there was a valid Consent to Operate in favour of the Respondent No.11. Even otherwise, the area outside the Plot No.719 under Khata No.278, over which mining was carried out by the Respondent No.11 was well within the jurisdiction of the Tahasildar and it was his duty to have prevented illegal mining thereby causing loss to the State exchequer and public revenue and, therefore, the then Tahasildar is equally liable for prosecution along with the Respondent No.11.

39. For better appreciation of the case, we may reproduce Section 3 of the Prevention of Money-Laundering Act, 2002, which reads as under:-

“3. Offence of money-laundering- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it is untainted property shall be guilty of offence of money-laundering.”

40. Section 4 of the Act which prescribes the punishment for money-laundering, reads as under:-

“4. Punishment for money-laundering- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

41. Section 43 of the Prevention of Money-Laundering Act, 2002, reads as under:-

“43. Special Courts.— (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

42. Section 44 of the Prevention of Money-Laundering Act, 2002, reads as under:-

*44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— 1 [(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed: Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]; (b) a Special Court may, 2 *** upon a complaint made by an authority authorised in this behalf under this Act take 3 [cognizance of offence under section 3, without the accused being committed to it for trial]; 4 [Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or] 5 [(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is*

committed. (d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.]”

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under section 43.

43. Paragraphs 25, 26 & 27 of the Schedule of the Prevention of Money-Laundering Act, 2002, read as under:-

PARAGRAPH 25

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986
(29 OF 1986)

Section	Description of offence
15 read with section 7	Penalty for discharging environmental pollutants, etc., in excess of prescribed standards.
15 read with section 8	Penalty for handling hazardous substances without complying with procedural safeguards.

PARAGRAPH 26

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 (6 OF 1974)

Section	Description of offence
41 (2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 (14 OF 1981)

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.

44. A conjoint reading of Sections 3, 4 and Sections 43 and 44 of the Prevention of Money-Laundering Act, 2002, and paragraphs 25, 26 and 27 of the Schedule thereto, would show that if air, water,

ground and environment pollution is caused in an area, not only the person causing environmental pollution but any person indirectly or knowingly aiding or assisting such act would also be liable for causing illegal financial gain to such violator.

45. There is another aspect of the matter, the Inspection Report mentions that the mining 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.712, 713, 714, 716 and 717 comes under Kisam-Chhota Jungle.'***

This information, we find, was withheld rather concealed by the then Tahasildar, Tangi, from the SEIAA, Odisha, while applying for Environmental Clearance and also from the State authorities and it was simply mentioned that the area does not come under forest according to Hal record which is confirmed from the Environmental Clearance dated 17.12.2020, para 5h thereto which mentions that ***'the Tahasildar, Tangi vide his letter no. 1881 dated 31.08.2020 has submitted that the proposed quarry is situated on non-forest land, even after verification of the DLC report.'*** There is no mention that the quarry is situated on forest land as per Sabik Record.

46. A similar question came up for consideration before this Tribunal in Original Application No.83/2022/EZ (*Dilip Kumar Samantaray & Anr. Vs. State of Odisha & Ors.*), wherein also the Hal record mentioned that the land in question to be Kisam 'Patita' or reserved for 'Gramya Jungle' corresponding to Sabik plot having Kissam 'Bada Jungle' or 'Chhota Jungle' which fact was concealed from the authorities by the then Tahasildar and the Additional Tahasildar (in that area) and which fact came to light only after the filing of the

said Original Application. The Tribunal, therefore, while disposing of the said Original Application issued direction to initiate criminal prosecution in view of the provisions of Section 51 of the Odisha Minor Mineral Concession Rules, 2016, against the then Tahasildar/Additional Tahasildar-in-Charge for deliberately fudging the records and concealing the correct facts from the authorities. Paras 45, 46, 47, 48, 49, 50 and 51 of the judgment read as under:-

45. *So far as the question as to whether the land in question is forest land i.e. 'Gramya Jungle' or 'Gramya Jungle Jogya' is concerned, the affidavit of the Collector & District Magistrate, Nayagarh, categorically mentions that though the Hal Plot No.1689 mentions Kissam-'Patita' or reserved for 'Gramya Jungle' corresponding to Sabik Plot No.262 area Ac. 88.78, Plot No.770 area Ac. 52.65, Plot No. 626/785 area Ac. 6.17, having Kissam-'Bada Jungle & Chhota Jungle' respectively, this fact was concealed from the authorities by the then Tahasildar and Additional Tahasildar and if this fact had been disclosed by the then Tahasildar and Additional Tahasildar, in-Charge Tahasildar and the Hal record correlated with Sabik Record of Rights, such quarry would not have been auctioned. The name of the Tahasildar and Additional Tahasildar have been disclosed in the affidavit as Sri Sanjaya Kumar Samantaray, OAS Tahasildar and Sri Ashok Kumar Pattnaik, ORS, Additional Tahasildar-in-Charge, Tahasildar, respectively and it is categorically stated that these aforesaid persons have unilaterally taken the decision for auction of the quarry ignoring the Sabik Record of Rights.*

46. *Thus, connivance and collusion of Sri Sanjaya Kumar Samantaray, OAS Tahasildar and Sri Ashok Kumar Pattnaik, ORS, Additional Tahasildar-in-Charge, Tahasildar, in fudging the records and concealing the correct records from the authorities have rendered themselves liable for criminal prosecution for causing financial benefit to the Respondent Nos. 17 & 18 and also causing loss to valuable State resources thereby causing huge loss to the Public Exchequer under the*

Odisha Minor Mineral Concession Rules, 2016. Section 51 of the OMMC Rules, 2016, reads as under:-

- “51. Penalties:—** (1) (i) *Whenever any person is found extracting or transporting any minor mineral or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal extraction or removal of such minor minerals and every such person shall be punishable with simple imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees or with both and in case of a continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.*
- (ii) *The Collector or Sub-Collector or Tahasildar or Director or Joint Director or Deputy Director or Mining Officer or Senior Inspector of Mines or Divisional Forest Officer or Assistant Conservator of Forest or Range Officer or Police Officer not below the rank of Sub-Inspector of Police may seize the minor minerals and its products together with all tools, equipments and vehicles used in committing such offence within their respective jurisdiction.*
- (iii) *No court shall take cognizance of any offence punishable under these rules except upon complaint in writing made by such officer or authority mentioned under clause (ii) of this sub-rule having jurisdiction.*
- (iv) *Where the offender agrees in writing to compound the offence punishable under these rules, the Tahasildar or Deputy Director or Mining Officer or Divisional Forest Officer, within their respective jurisdiction, shall, either before or after filing the complaint, compound the offence on payment of such sum, as determined by the officers mentioned under clause (ii), not exceeding the maximum amount of fine prescribed under these rules and value of the mineral and other properties seized and on payment of such fine and value, the seized mineral and properties shall be released forthwith: Provided that the accused shall be liable to furnish an undertaking or bond to the effect that he shall not commit such offence in future: Provided further that, in case*

the offender fails to pay the value of mineral and any other property, such properties shall be confiscated to Government and disposed of through public auction.

(v) Where an offence under these rules is compounded, no proceeding or further proceeding, as the case may be, shall be initiated against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith.

(vi) If no person claims the mineral and other property, if any, so seized within a period of thirty days, the authority competent to compound the offence may confiscate the same to the State and dispose of the same through public auction.”

(2) Whenever any person trespasses into any land in contravention of the provisions of these rules, such trespasser may be served with an order of eviction by the Tahasildar or Sub-Collector or Collector or Deputy Director or Mining Officer or Assistant Mining Officer or Divisional Forest Officer or Assistant Conservator of Forest or Range Officer within their respective jurisdiction and such Government Officer, if necessary, may obtain the help of the police to evict the trespassers from the land.

(3) Any mineral, tool, equipment, vehicle or any other things seized under these rules in respect of which complaint has been filed under clause (iii) of sub-rule (1), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence and shall be disposed of in accordance with the directions of such court.

(4) Whenever the person wins, without any lawful authority, any mineral from any land, the Tahasildar or Mining Officer or Deputy Director or Divisional Forest Officer, as the case may be, may recover from such person the mineral so won, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(5) If the person committing an offence under these rules is a company, every person, who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished as per the provisions of the Act and these rules:

Provided that nothing contained in this sub-rule shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(6) Notwithstanding anything contained in sub-rule (5), where an offence under these rules has been committed with the consent or connivance of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:- for the purposes of this rule –

- (a) “Company” means anybody, corporate and includes a firm or other association of individuals;*
- (b) “Director” in relation to a firm means a partner in the firm.*

(7) In case of breach of any condition of the lease deed, the Competent Authority may give notice of sixty days to the lessee to rectify the defects within the time specified and if the lessee fails to rectify the defects within the specified time, the Competent Authority may cancel the lease and/or levy a penalty not exceeding rupees fifty thousand.

(8) In case of breach of any condition mentioned in rule 37 of these rules and other conditions which the Competent Authority might have specified while granting a quarry permit, the Competent Authority may impose a penalty which may extend to rupees five thousand per day and in the event of continuing contravention, the Competent Authority may cancel the permit and in such case the minerals lying on the land from which the same are extracted shall thereafter

become the property of the Government and be disposed of by public auction.”

47. *Learned Counsel for the Applicants, referring to Clause (i) of Sub-rule 51(1) submitted that the said Rule empowers the revenue assessing authority to punish any person found extracting or transporting any minor mineral or on whose behalf such extraction or transportation is being made otherwise than in accordance with the Rules, but shall be presumed to be a party to the illegal extraction or removal of such minor mineral, shall be punishable with simple imprisonment for a term which may extend to two years or with fine which may extend to five lakhs rupees or with both and in case of a ‘continuous’ contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continuous after conviction for the first such contravention.*

48. *We may also note that if the Respondents have applied for lease for extraction of ordinary soil/earth and under the garb thereof have illegally extracted morrum or laterite stone, as the case may be, they would have to obtain Environmental Clearance for the same.*

49. *We accordingly dispose of this Original Application with a direction to the State Respondents to initiate criminal proceedings against the Respondent No.17 & 18, Sri Susant Kumar Barad, Lessee of Mayurjhalia Laterite Quarry, and Sri Shashank Agarwal, Director of M/s Agarwal Infrabuild Private Limited, for illegal extraction of ordinary earth/soil/morrum beyond the lease area as per Section 51 of the OMMC Rules, 2016, by lodging FIRs within a period of two months.*

50. *The State Respondents shall also initiate criminal proceedings against the then Tahasildars Sri Jugal Kishore Mishra, OAS (retd.), Sri Sanjaya Kumar Samantaray, OAS, and the then Additional Tahasildar, in-Charge Tahasildar, Sri Ashok Kumar Pattnaik, ORS, concerned Revenue Inspector, Revenue Supervisor and Dealing Assistant/Section Officer (as disclosed in the affidavit of the Collector & District Magistrate, Nayagarh), for unilaterally taken the decision for auction of the quarry ignoring the Sabik Record of Rights and fudging the records and concealing the correct records from the authorities and causing financial benefit to the Respondent Nos. 17 & 18 and also causing loss of valuable State resources and thereby causing*

huge loss to the Public Exchequer, as per Section 51 of the OMMC Rules, 2016, by lodging FIRs within a period of two weeks.

51. *A further direction is issued to the SEIAA, Odisha, Respondent No.13, to compute Environmental Compensation against the Respondent Nos. 17 & 18 for excess mining of laterite stone/morrum/ordinary earth, bearing in mind the observation made hereinabove, after giving the said Respondents due notice with regard to the methodology of computation and thereafter proceed to recover the same from the Respondent Nos. 17 & 18 in accordance with law without being influenced by Environmental Compensation computed in Original Application No.10/2023 within a period of two months.”*

47. In the present case also we find that the then Tahasildar, Tangi, has deliberately concealed material facts regarding the status of the area in question from the State authorities as well as SEIAA, Odisha, and failed to check and prevent illegal mining carried out by the Respondent No.11 in area outside the lease area. We are, therefore, satisfied that the then Tahasildar, Tangi, is also liable for prosecution under the OMMC Rules, 2016.
48. The present Original Application is, therefore, disposed with a direction to the State Respondents to initiate criminal prosecution against the then Tahasildar, Tangi, who obtained the Environmental Clearance by concealing the material facts from the SEIAA, Odisha, and thereafter transferred the same in favour of the Respondent No.11 and for failing to prevent illegal mining in the area in question.
49. The learned Counsel for the Respondent No.11 next submitted that though the Environmental Compensation has been determined by the Committee but no notice has been issued to him to dispute the computation.

50. The learned Counsel for the State Respondents and the State Pollution Control Board, Odisha, on the other hand, submitted that notice was issued to the Respondent No.11. Reference was made to the show cause notice dated 27.02.2023, copy of which has been filed along with the affidavit of the Respondent No.4 as Annexure-C/4, (page 288 of the paper book).
51. A perusal of this notice, however, shows that it is only a show cause notice directing the Respondent No.11 to show cause within ten days for illegally operated laterite stone and morrum mining over Plot Nos. 712, 713, 714, 716 and 717 in Mouza-Sahadaghal under Achyutpur, R.I. Circle, as to why the lease permission for the Sahadaghal Laterite Stone Quarry-A be not cancelled due to violation of agreement of Lease Deed, Mining Plan, Environmental Clearance.
52. There is nothing on record filed by the Respondents to show whether any show cause notice was issued to the Respondent No.11 to respond to the computation of Environmental Compensation made by the Committee.
53. In our opinion, the Respondent No.11 was entitled to a copy of the computation of Environmental Compensation to enable him to respond to the computation made, if he so desired. Therefore, in addition to the directions given hereinabove, we also direct that before the Respondents proceed to recover Environmental Compensation from the Respondent No.11, they shall give an opportunity of hearing to the Respondent No.11 to submit his reply on the said computation of Environmental Compensation and only thereafter proceed to pass appropriate order and take appropriate action in accordance with law within a period of one month.

- 54. I.As. if any, stand disposed of accordingly.
- 55. There shall be no orders as to costs.

.....
B. Amit Sthalekar, JM

.....
Dr. Afroz Ahmad, EM

July 06, 2023,
Original Application No.10/2023/EZ
(I.A. No.19/2023/EZ)
AK