

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

.....
**ORIGINAL APPLICATION No. 65/2023/EZ
(I.A. No.43/2023/EZ & I.A. No.57/2023/EZ)**

IN THE MATTER OF:

1. Sachin Mohapatra

....Applicant(s)

Versus

**1. Bhubaneswar Development Authority
Through Chairman,
Akash Shova Building, Sachivalaya Marg,
Bhubaneswar,
Odisha,
Pin - 751001**

**2. District Magistrate/Collector, Khordha,
Collector Office, NH 5, Khordha,
Odisha,
Pin - 752057**

**3. State Pollution Control Board, Odisha,
Through Member Secretary,
Nilkantha Nagar, Nayapalli,
Bhubaneswar,
Odisha - 751012**

**4. Ministry of Environment, Forests and Climate Change,
Integrated Regional Office, Bhubaneswar,
Through Principal Chief Conservator of Forests (C),
Regional Office (EZ), A/3, Chanderesekharapur,
Bhubaneswar,
Pin - 751023**

....Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Sankar Prasad Pani, Advocate

COUNSEL FOR RESPONDENTS :

**Mr. Ashok Parija, AG a/w
Mr. Arya Tripathy, Advocate,
Mr. Saubhagya Ketan Nayak, AGA and**

**Mr. Janmejaya Katikia, AGA and State Respondents,
Mr. Dayananda Mohapatra, Adv. for BDA (in Virtual Mode),
Ms. Amrita Pandey, Adv. for MoEF&CC (in Virtual Mode),
Mr. Dipanjan Ghosh, Advocate for OSPCB,
Mr. Rajib Ray, Advocate for CPCB**

JUDGMENT

PRESENT:

**HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE DR. ARUN KUMAR VERMA (EXPERT MEMBER)**

**Reserved On:- 12th October, 2023
Pronounce On:- 20th October, 2023**

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|---|------------|
| 1. Whether the Judgment is allowed to be published on the net? | Yes |
| 2. Whether the Judgment is allowed to be published in the NGT Reporter? | Yes |
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**JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER) AND
DR. ARUN KUMAR VERMA (EXPERT MEMBER)**

Heard the learned Counsel for the Applicants as well as the learned Counsel for the Respondents and perused the documents on record.

2. Grievance in the present Original Application is against damage caused to the environment by construction works including earth moving, blasting of rocks and felling of trees in Sikharchandi Hills, a part of Chandaka Wildlife Division in Khurda, Odisha.

3. According to the applicants, Sikharchandi Hill is a part of eastern ghat mountains, which is stated to be extremely rich in bio-diversity with varied flora and fauna. Various rare species of wild and medicinal plants are abundant in this hill area. It is alleged that there is no forest clearance for cutting of trees as per Forest (Conservation) Act, 1980.

4. The Applicant has filed photographs to show construction activities, cutting of trees and apparent damage by such activities in the context of loss of biodiversity. It is pointed out that availability of rare medicinal and wild plants in the area stands documented in reputed journals on the subject. An article and media reports have been annexed to the application, drawing our attention to articles titled 'Documentation of medicinal plants in Sikharchandi Hills, Odisha, India-A Priority agenda for action' and 'First record of occurrence of the tree species *Nothopegia racemose* (Dalz.) Ramamurthy (Anacardiaceae) from Eastern Ghats in India. The Applicant has also referred to media report dated 11.06.2023 published in The Hindu titled "Bhubaneswar's green lung in peril" mentioning that about 10 acres of forest has been razed to the ground for the project in question.

5. At the stage of admission, the Tribunal constituted a four members Joint Committee comprising: -

- i) Chief Conservator of Forest;
- ii) Regional Office, Ministry of Environment, Forests and Climate Change (MoEF&CC), Bhubaneswar;
- iii) Representative of Central Pollution Control Board;
- iv) State Pollution Control Board; and
- v) District Magistrates , Khorda

6. The Committee was directed to interact with the concerned stakeholder including WATCO and after ascertaining the factual position particularly with regard to illegally felling of trees, loss of biodiversity and other damage to environment including cutting of

the hill, submit an Action Taken Report before the Tribunal. The Committee was also directed to get broad demarcation of the hill to determine permissible and non-permissible activities. The Tribunal by its order on admission dated 12.06.2023 also directed that the ongoing project be held in abeyance.

7. The Committee has filed its Report dated 03.07.2023 for an Inspection of the site carried out on 24.06.2023. The Report reads as under: -

“Report of the Committee, as per Hon’ble National Green Tribunal Order in the matter of OA No. 65/2023/EZ (Sachin Mohapatra Versus Bhubaneswar Development Authority)”

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

As per the direction of the Hon’ble National Green Tribunal a meeting was conducted in the hybrid mode involving all the members of the committee on 16.04.2023. The Site Visit was scheduled to be on 24.06.2023 at 11.30 A.M.

As per the decision of the meeting the site visit was conducted on 24.06.2023.

The following members were present during the site visit.

- 1. Shri A.T. Mishra, DY. Director General Forest (C), Regional Office, MOEF&CC, Bhubaneswar,*
- 2. Shri K Sudarshan Chakravarthy, District Magistrate, Khurda,*
- 3. Shri Sandeep Roy, Scientist, Regional Directorate, CPCB, Kolkata (Representation of CPCB, Kolkata)*
- 4. Dr. Sohan Giri, Regional Officer, OSPCB, Bhubaneswar (Representation of OSPCB, Odisha)*

As per the decision of the meeting, the DFO, Chandaka and Scientist from SEIAA were also present during the site visit.

The representative of WATCO (Project Proponent) Shri Sarat Chandra Misra, COO, Shri Sachin Mohapatra, the petitioner, Tahasildar, Bhubaneswar, public representatives were also present during the site inspection.

Sikharchandi Hill

The Sikharchandi Hill is famous for temple Sikharchandi and located on the outskirts of Bhubaneswar and is near to the boundary of Chandaka Wildlife Sanctuary. The area of Sikharchandi hill is about 247.656 acre (100.222 ha.) and comprises of two Mouza (village) as listed below:

RI CIRCLE	Name of the Mouza	Khata	Plot No.	Area	Kisam
Chandaka	Pathargadia	2239	5731	35.156 ac (14.22 ha.)	Parbat
Kalarahanga	Patia	474/1607	1(P)	Part of 212.5 ac (85.99 ha.)	Pahad

Legal Status

As per the report submitted by the Divisional Forest Officer, Chandaka Wildlife Sanctuary the area under Sikharchandi hill is not part of any Notified Forest land.

As per the report submitted by the Tahasildar, the kisam of the land under Sikharchandi hill before 1980 is Pahad/Parvat. The proposed plot is not included in DLC.

Though the Sikharchandi hill is near to the Chandaka Wildlife Sanctuary but it is outside the Eco-sensitive Zone of the sanctuary. Hon’ble Supreme Court of India vide order 03.06.2022 has ordered for no new construction activity within 1 km from the boundary of any Protected Area. But

vide Order W.P. (C) No.202 of 1995 dated 10.01.2023 minimum distance of Eco Sensitive Zone of 1 km would not be applicable to Chandaka Wildlife Sanctuary.

Observation:

During field inspection it was observed that an area of about 7.5 acre (3.0 ha.) has been cleared and a road has been constructed clearing vegetation through IDCO has allotted 4.00 acres of land to WATCO for the said project. no permission for cutting of trees has been taken from the local DFO.

The vegetation which is present adjoining the cleared site is shrubby vegetation. Some of the photographs of the cleared site and vegetation around the cleared site can be seen from the photographs.

Interaction with stake holders:

The committee interacted with the local people including elected representatives, DFO, Chandaka, Tahasildar, Bhubaneswar, COO, WATCO, petitioners and other villagers present during interaction.

The people present during site inspection were opposing the clearing of vegetation by WATCO more than the area required for this project. as per the villagers WATCO has not taken permission for felling of trees from the Forest Department. As per the villagers including the petitioner present during discussion said that the area is under the eco-sensitive zone of Chandaka wildlife sanctuary. The WATCO officers are doing the work without taking any Environmental Clearance. they were of the opinion that the hill should be preserved and developed into a park and the demand was to preserve the area (tourist place).

DFO, Chandaka present in the meeting said that this area does not fall within the ESZ of Chandaka Wildlife Sanctuary. The proposed area is not a notified forest area.

WATCO has not taken permission for the felling of trees from the above site.

The representative from WATCO said that as there was no access to the site, so the road has been constructed for movement of vehicle for construction work. They also said that as there was no trees except small bushes so no felling permission was taken from the DFO. The representatives of WATCO said that there is acute shortage of drinking water in the growing Bhubaneswar City. There is no such elevated area in the town where such water tank can be constructed utilizing the gravity for supply of water. They showed the layout of the project where 3.6 acres area has been proposed.

It was also informed by the WATCO that about 4 lakh people (about 30% of Bhubaneswar City) will be benefitted by the project. from the analysis of the lay out plan it was found that the proposed structure can be built in 3.00 acres of land.

Findings:

The Paper attached with the application ‘First record of occurrence of the tree species Nothopegia racemosa (DALZ.) Ramamurthy (Anacardiaceae) from Eastern Ghats in India’ was examined by this committee. As per this report “Nothopegia racemosa” was thought to be endemic to western ghtas but after taking samples from Barbara RF of Khurdha, Sikharchandi Hill and Udayagiri Hill it was found that this species “Nothopegia racemosa” is also found in Eastern ghat region also. From the report it is evident that this species is not endemic to Sikharchandi Hill only.

The Scientist from State Environment Impact Assessment Authority, Odisha present during site inspection and the committee also of the opinion that construction of water tank will not have significant effect on the Environment. The Scientist from SEIAA has also reported that the proposed project does not require Environment Clearance.

The DFO Chandaka Wildlife Sanctuary has reported that WATCO has not taken permission for felling of trees. clearing of vegetation will make the soil vulnerable for erosion and this activity has resulted in removal of vegetation which was present in the site prior to clearing of the site. This need to be compensated by plantation and soil conservation measures.

From perusal of records shown by officers WATCO it was found that the minimum requirement for water tank is only 3.00 acres, while 4.00 acres. Has been allotted to WATCO. Distribution of water to the growing city Bhubaneswar is also an important welfare activity which requires an elevated area to use the force of gravity.

During discussion the Tahasildar, Bhubaneswar said that for demarcation of the hill it will take time. Tahasildar, Bhubaneswar assured to demarcate the Sikharchandi Hill within one month. The committee has recommended the permissible activities in the Sikharchandi Hill in the conclusion part of the report.

Conclusion:

- i. An Eco-restoration plan should be prepared for the Sikharchandi hill with proper fencing at outer periphery with emphasis on soil and water conservation measures and plantation in blank areas by the State Government.*
- ii. All the illegal encroachments in the hill should be evicted.*
- iii. As there is a very old temple which attracts large number of tourists, amenities for tourism and recreation may be developed with minimum loss to vegetation.*

Construction of water tank may be allowed only in the bare minimum area as per the lay out plan (3.0 acre) and for access and pipeline may also be allowed as per the requirement

following proper procedure. Rest area should be afforested with indigenous species.”

8. The Bhubaneswar Development Authority (BDA for short) has filed its affidavit dated 25.07.2023. It is stated that the Kisam of the land under the Shikharchandi Hill before 1980 was Pahada/Parbata situated in two different villages namely Patharagadia in Chandaka R.I. Circle and Patia village under Kalarahanga R.I. Circle in Bhubaneswar Tehsil.

9. It is stated that Plot in question is not included in the DLC and though it is near Chandaka Wildlife Sanctuary but it is outside the Eco Sensitive Zone of the Wildlife Sanctuary.

10. It is further stated that the Hon'ble Supreme Court, while disposing of Writ Petition No.202 of 1995, had also waived the restriction on construction within 1 kilometer as not applicable to Chandaka Wildlife Sanctuary.

11. It is further stated that the Bhubaneswar Development Authority (BDA) proposed the re-development of the "Maa Shikharchandi" Temple" and its peripheral region at an estimated cost of about Rs.30 crores.

12. It is also stated that a few allied renovation works without affecting the main structure of the Temple is also being carried out to secure an open parking over IDCO land area at the bottom of the Hill. The proposed project also ensures redensification of indigenous plant species in the area for which the Development Authority shall take assistance of the Odisha Forest Development Corporation (OFDC).

13. It is also stated that there are few encroachments at the top of the Hill and adjoining areas for which efforts are being made to remove the encroachments and not to allow any Picnic and Feasting activities on the Hilltop.

14. It is further stated that a special area would be carved out of the IDCO area at the bottom of the Hill so that the vegetation is not damaged or affected in any manner. Development proposals of the Sikharchandi Hill have been stated in the affidavit which read as under: -

- i) *Removal of unauthorized encroachments upon the hill area which are a threat to the natural surroundings of the hill and construction of boundary wall around the area of discourage further encroachment in future.*
- ii) *Development of parking space down the hill area over IDCO land where there is no tree growth so as to discourage plying of vehicles to the hill top which may cause loss to the localized eco-system.*
- iii) *Increase the forest cover/ density of the hill by way of planting indigenous plant species for its natural growth. BDA shall take assistance and support of the Odisha Forest Development Corporation and its experts in growing such species to increase the forest covers of the existing hill area.*
- iv) *Repair/renovation/beautification of the temple without any additional constructions in the hill top.*
- v) *Recreation of the picnic spot/pindi down hill by dismantling it from the hilltop which will increase the aesthetics of the temple and also preserve the hill top from denaturalization and overcrowding. The picnic spot will be created with proper solid waste management methods to take care of the sanitation of the area.*
- vi) *All the plans/proposals of BDA aim completely to preserve the natural surrounding and augmenting green cover. BDA, being a responsible organization is always duty bound to preserve the nature of its catered area.”*

15. The Applicant has filed affidavit dated 25.07.2023 stating therein that the Sikharchandi Hill is famous for the Sikharchandi Temple. It is stated that the area of the Sikharchandi Hill is about 247.656 acre (100.222 Ha) and comprises of two Mouzas at 2239 (Pathargadia), 5731 (Pahar Kissam) and Patia 1(p) 474/1607 (Parbat Kissam). It is stated that as per Sabik record published on 07.03.1931 of Patia Mouza, the Plot is "Jhati Jungle". The Plot No.1287, Khata 2247 Mouza Pathar Gadia is stated to be "Jungle Kissam" land as shown in KYFL Application. It is stated that the land in question is Forest Land.

16. The case of the Applicant further is that the site in question is a repository of rich biodiversity and as per all the Journal of Biodiversity titled as "Documentation of Medicinal Plant in Sikharchandi Hill, Orissa, India - A priority agenda for action", there are 110 different varieties of medicinal plants including 32 different tree species and one species namely "Nothopegia - Rocemosa" is endemic to that region. It is further stated that there are 220 Angiosperms and four pteridophytes belonging to 180 genera and distributed in 69 different families. It is stated that 110 species of medicinal plants were recorded under 103 genera and 53 families. It is also stated that there are 39 herbs, 32 trees, 19 climbers, 15 shrubs, 3 grasses and 2 parasites. It is stated that the construction which is proposed by the Development Authority will not be limited to 10 acres of land which is proposed to be used for Water Tank. It is also stated that the Divisional Forest Officer (D.F.O.), Chandaka Wildlife Sanctuary has pointed out that WATCO has not taken

permission for felling of trees. It is alleged that clearing of vegetation will make the soil vulnerable for erosion.

17. Affidavit dated 05.09.2023 has been filed by the Collector and District Magistrate, Khordha and it is stated that as informed by WATCO, Bhadua, WATCO has proposed to construct a Water Tank on the elevated area on Sikharchandi Hill in order to supply drinking water to Bhubaneswar city catering to a population of about 4 lakh people and in this Project Ac. 3.6 acres of land has been proposed to be utilized. It is denied however, that a Road has been constructed to provide access to the site to the Project Proponent for movement of vehicles for construction work. The Inspection Report mentions that no big trees are alleged to have been cut down for construction of the approach road nor small bushes have been removed which may cause soil erosion of the hill site.

18. It is also stated that as informed by the Divisional Forest Officer (D.F.O.), the area under Sikharchandi Hill is not part of any Notified Forest Land and though the Sikharchandi Hill is near the Chandaka Wildlife Sanctuary, it exists outside the Eco Sensitive Zone of the Sanctuary. It is also stated that the Hon'ble Supreme Court vide its order dated 03.06.2022 had ordered that no new construction activity shall be allowed within 1 kilometre from the boundary of any protected area but subsequently vide order dated 11.01.2023 passed in W.P.(C) No.202 of 1995, the Hon'ble Supreme Court observed that the minimum distance of 1 kilometre would not be applicable to the Chandaka Wildlife Sanctuary.

19. It is further stated that WATCO, Bhubaneswar has proposed construction of a Water Tank over the Hill for distribution of water to

the expanding city of Bhubaneswar which requires an elevated area for construction of the Water Tank. The proposal is that an Eco Restoration Plan be prepared for the Sikharchandi Hill with proper fencing on the outer periphery with the following emphasis: -

- i) Soil and water conservation measure and plantation in blank areas by the State Government;
- ii) All illegal encroachers in the Sikharchandi Hill area should be removed;
- iii) Maa Sikharchandi Temple which attracts a large number of tourists and therefore amenities for tourism and recreation be developed with minimum loss of vegetation;
- iv) Construction of Water Tank may be allowed only in the bare minimum area as per requirement following proper procedure.

20. The Collector cum District Magistrate, Khordha has filed an affidavit dated 06.10.2023 wherein it is stated that in order to improve the greenery of Sikharchandi Hill, the BDA has sanctioned a sum of Rs.3,51,68,772/- (Rupees three crore fifty one lakh sixty eight thousand seven hundred seventy two only) in favour of the Orissa Forest Development Corporation (OFDC for short) for plantation of 10,000 tall seedlings and 8,000 flowering shrubs total 18,000 on the Sikharchandi Hill along with maintenance of the saplings for five years. Odisha Forest Development Corporation vide its letter dated 27.09.2023 has apprised the Bhubaneswar Development Authority (BDA) that 9,400 tall seedlings and 4,600 flowering shrubs have already been planted till 26.09.2023 and the

balance 600 tall seedlings and 3,400 flowering shrubs shall be planted by 10.10.2023.

21. The allegation of the Applicant in his rejoinder affidavit that the Eco Tourism Activities and other construction activities being undertaken in forest land without Environmental Clearance and without taking any Environment Impact Assessment or Social Impact Assessment within the Eco Sensitive Zone of Chandaka and Dampara Wildlife Sanctuary has been denied. Allegations of violation of the Biodiversity Act, 2002 has also been denied. It is stated that all statutory Consents and Clearances have been obtained under the law. It has been reiterated that the Kisam of the area under the Sikharchandi Hill as per Government records before and after the year 1980 has been categorised as "Pahar/Parbat" and the said area has not been included in the Report submitted by the D.L.C. i.e. District Level Committee to indicate the same to be Forest Land and therefore, Forest Conservation Act 1980 as amended by the Forest (Conservation) Amendment Act 2023 has no application to the facts of the present case.

22. It is also stated that the proposed construction of Water Tank by WATCO in pursuance to the Report of the Joint Committee will be undertaken in bare minimum area of 3 acres and the total area under construction would be 12140.6 Sqm. and therefore, being under 20,000 Sqm., there is no requirement of Environmental Clearance in view of the Ministry of Environment, Forests and Climate Change (MoEF&CC) - EIA Notification dated 14.09.2006 and no Environmental Assessment Study is, therefore, required for the proposed construction activity.

23. It is stated that the Scientist from SEIAA, Odisha was also present during the site visit on 24.06.2023 and the non-requirement of Environmental Clearance (EC) in the facts and circumstances of the case was pointed out. In the affidavit, there is categorical averment that no mining quarrying activity is being undertaken in the Sikharchandi Hill area and no Permit Lease or Licenses has been granted to any person for such activities.

24. The stand of the State Respondents also is that the Sikharchandi Hill area has not been declared as a Biodiversity Heritage Site by the State Respondents U/S 37 of the Biodiversity Act 2002 and in any case, no trees have been cut and only certain shrub vegetation has been cleared to provide access to the development sites and there will be no loss to the biodiversity of the Sikharchandi Hills with the proposed construction and in any case, a massive 18,000 Tree Plantation Drive has been undertaken at the Sikharchandi Hills which would in fact improve the biodiversity of the hills.

25. The learned Counsel for the Applicant has vehemently contended that the land in question on which WATCO is proposing to construct the Water Tower/Water Tank is Forest Land, as per Sabik Record of March 1931. Copy of the Sabik Record has been filed at page 81 of the paper book. However, the categorical case of the State Respondents is that the land in question is not Forest Land and has never been notified as Forest Land. It is specifically stated that though Sikharchandi Hill is close to Chandaka Wildlife Sanctuary but it exists outside the Eco Sensitive Zone of the Sanctuary.

26. We may at this stage refer to the directions given by the Hon'ble Supreme Court while deciding I.A. No.5269 and 5275 of 2023 seeking parity with the directions contained in the order of the Hon'ble Supreme Court while disposing of I.A. No.1000/2003 filed in W.P.(C) 202 of 1995 *T.N. Godavarman Thirumalpad Vs. Union of India & Ors.* the Hon'ble Supreme Court held that the notification in respect of Chandaka-Dampara Wildlife Sanctuary was issued on 09.09.2016 and that the view taken by the Court while passing the order dated 23.09.2022 would be equally applicable in the present case also. The directions contained in para 22 of the order of the Hon'ble Supreme Court dated 11.01.2023 reads as under: -

“[22] I. A. No. 5269 and 5275 of 2023

[APPLICATIONS FOR INTERVENTION AND DIRECTIONS ON B/O ASSN. FOR ODISHA REALESTATE DEVP.]

The Application for intervention is allowed for the purpose of directions.

This applicant(s) has sought various prayers. However, the prayer that is pressed in service is thus: -

“(c) Clarify that the directions contained in Para 44 of the order dated 03.06.2022 passed by this Hon’ble Court in I.A. No.1000 of 2003, preferred in W.P. (C) No.202 of 1995, providing a minimum of 1 KM ESZ would not be applicable to the Chandaka-Dampara Wildlife Sanctuary”

The application is filed by the applicant(s) in view of the orders passed by this Court dated 03.06.2022 wherein certain directions have been issued with regard to the minimum width of the ESZ. While passing the order dated 03.06.2022, the Bench of three Judges in paragraph 42, has specifically noted the views of the Standing Committee that there could be specific instances wherein ‘no development zone’ of 1 Km. may not be

feasible. The Court recorded the specific instances of Sanjay Gandhi National Park and Guindy National Park.

Subsequently, certain applications with respect to Sanjay Gandhi National Park and Thane Flamingo Creek Sanctuary (I.A. No.1000 of 2003 etc.) were filed, which were decided by a Bench of three Judges vide order dated 23.09.2022.

In the order dated 23.09.2022, this Court, after recording the aforesaid observations made in the order dated 03.06.2022, noted the submission of the learned Solicitor General appearing on behalf of the State of Maharashtra and Union of India to the effect that in view of the final notifications being issued, there should be no impediment in granting the relief as prayed for.

In the case of Thane Flamingo Creek Sanctuary, the notification was dated 14.10.2021. In so far as the Sanjay Gandhi National Park is concerned, the final notification was dated 05.12.2016. The notification in respect of Chandaka-Dampara Wildlife Sanctuary issued, which is the subject matter of the present proceeding, is dated 09.09.2016.

In that view of the matter, we find that the view taken by the three Judges while passing the order dated 23.09.2022 would be equally applicable to the present case also.

The application for directions is, therefore, allowed in terms of the prayer clause (c).”

We are therefore satisfied that the restriction of 1 Km distance from Eco Sensitive Zone for purposes of “no development Zone” would not apply to the construction contemplated in the present case.

27. Mr. Sankar Prasad Pani, learned Counsel for the Applicant next submitted that the Sikharchandi Hill is rich in biodiversity and there are 110 varieties of medicinal plants including 32 different tree species and that there are 220 Angiosperms and 4 Pteridophytes

belonging to 180 genera and distributed under 69 different families and different climbers, shrubs and grasses, trees, parasites and therefore the Sikharchandi Hill area should be declared as a Biodiversity Heritage Site under the provisions U/S 37 of the Biological Diversity Act 2002.

28. Reference has been made to the Annexure-2 to the affidavit which is a copy of the Journal of Biodiversity under the heading ***Documentation of medicinal plants in Sikharchandi Hills, Odisha, India-A Priority agenda for action.*** This document is an article presented by the Department of Botany, Utkal University, Bhubaneswar and Sri Jayadeb College of Education and Technology, Naharkanta, Bhubaneswar cataloguing various plants species, temperature, location of the Sikharchandi Hill and it also records that one of the oldest Temples of Bhubaneswar is situated on the Sikharchandi Hill which is a Natural Sacred site and rich in Biodiversity for which it attracts Eco Tourism itself. The article recommends that conservation of plants needs immediate attention since some of the potential plants used in pharmaceuticals are found to be ecologically vulnerable as regards to their declined population. Furthermore, information documented on disease - specific local use of some selected plant species upon phytochemicals screening may lead to discovery of new bio-active compound for drug formulation.

29. At the outset, we may note that the article published in the Journal of Biodiversity referred to by Mr. Sankar Prasad Pani, learned Counsel is a research paper of the authors of the Article and though it may have intrinsic and scientific value but in our opinion, it is not sufficient to consider giving direction to the State

Government and Central Government to consider declaration of the site as a Biodiversity Heritage Site.

30. The clear stand of the State Respondents on this issue is that plant species found in the Sikharchandi Hill are not endemic to Sikharchandi Hill only, as also noted by the Committee constituted by the Tribunal, and are found in the eastern ghats of India and also the western ghats. The species "Nothopegia Rasemosa" is also found in the eastern ghat region.

31. In this view of the matter, we are not inclined to issue any direction to the State Government or the Central Government to consider declaration of Sikharchandi Hill as a Biodiversity Heritage Site U/S 37 of Biological Diversity Act 2002. Besides, we may note here that the Government has also initiated a massive Tree Plantation Drive with the plantation of 18000 trees in the Sikharchandi Hill area of which there are 10000 tall seedlings, 8000 flowering shrubs of which 9400 tall seedlings and 4000 flowering shrubs have already been planted till 26.09.2023 and balance 600 tall seedlings and 3400 flowering shrubs are stated to be planted by 10.10.2023 and we assume that the same would have been already planted by now.

32. In this regard, we direct the State Respondents that in addition to the plantation of trees and shrubs already planned and planted, efforts will also be made to plant such trees and shrubs which are naturally found in that area to preserve the natural biodiversity of the Sikharchandi Hills.

33. Mr. Sankar Prasad Pani next submitted that the State Respondents, under the garb of constructing Water Tank in the

Sikharchandi Hills are going to extend construction activities over 10 acres of land thereby completely destroying this area by blasting and constructing activities. It is submitted that the Joint Committee in its Report has noted that an area of 7.5 acres (3 ha) has been cleared and a road has been constructed clearing vegetation though IDCO has allowed 4 acres of land to WATCO and no permission has been sought from local Divisional Forest Officer (D.F.O.) for cutting trees.

34. In para 7 of the counter affidavit dated 05.09.2023, the Collector cum District Magistrate has stated that WATCO has proposed to construct a Water Tank on the elevated area of Sikharchandi Hill in order to supply drinking water to Bhubaneswar city, catering to a population of about 4 lakh people, and for this project 3.6 acres of land has been proposed.

35. We, therefore, direct that the construction of the Water Tank proposed by WATCO, Bhubaneswar shall not exceed 4 acres of the land which has been allotted to WATCO for this project by IDCO, as noted by the Joint Committee, though the Committee has also noted that from the analysis of the layout plan it was found that the proposed construction structures can be built in 3 acres of land. The letter of WATCO dated 03.07.2023 is at page 56 of the paper book and mentions that IDCO has given permission, addressed to Deputy Director General of Forest (Central), Ministry of Environment, Forests and Climate Change, Integrated Regional Office of Bhubaneswar mentioning that IDCO has given permissive possession for: -

- i) construction of one 30ML MBR, and
- ii) 2 Nos. RCC ESR 3.00 ML capacity each at Sikharchandi over plot no.31/3 measuring area Ac 4.00 acres.

36. It is also mentioned that as per the Technical Survey and investigation made, the said plot over the Sikharchandi Hill being a naturally elevated land having a high altitude is having the optimum feasibility to construct the MBR & ESR so as to ensure 24x7 water supply to Bhubaneswar Municipal Corporation area through gravity and on account of such high altitude the flow and pressure can be maintained in an adequate manner. It is also noted that there is acute shortage of drinking water in this part of Bhubaneswar city.

37. The letter further mentions that for purpose of construction of the MBR and 2 ESRs, there is minimum requirement of land of a dimension of 163 mtr x 80 mtr. i.e. 13040 Sqmt or Ac.3.22.

38. Though IDCO has made available 4 acres of land in question to WATCO for construction of the water tank for which, in any case, Ac.3.22 of land is required, the Joint Committee has noted that as per layout plan Ac. 3.00 acres can be utilized. We direct WATCO not to exceed in any manner the area of Ac.3.00 acres.

39. Mr. Sankar Prasad Pani, learned Counsel for the Applicant further submitted that “Maa Sikharchandi Temple” is situated on Sikharchandi Hill and is visited by thousands of worshippers everyday and therefore the site needs to be protected. Learned Counsel further submitted that “Maa Sikharchandi Temple” is a site of archaeological importance and is an Archaeological site but no permission has been taken from the Archaeological Survey of India (ASI) before proceeding with the construction in question.

So far as issue of permission from ASI is concerned, we may note that the same is not an environmental issue and this Court being a Court

of limited jurisdiction confined only to environmental issues has no jurisdiction to adjudicate the same.

40. So far as the contention that thousands of pilgrims visit the “Maa Sikharchandi Temple” is concerned, we may point out that even the Research Paper published in the Journal of Biodiversity which has already been referred to hereinabove, notes that *Sikharchandi is famous for Hindu Temple dedicated to Goddess ‘Chandi’ and the deity is named “Sikharchandi” as it is situated at the top of the hills which attracts Eco Tourism.*

41. The Bhubaneswar Development Authority in para 5 of its affidavit dated 27.07.2023 has stated that the Development Authority has already proposed an amount estimated of Rs.30 crores for re-development of the Temple and its peripheral region by carrying out few allied renovation works without affecting the main structure to secure an area of open parking over IDCO land available at the bottom of the hill. It is also stated that the proposed project ensures redensification of indigenous plant species and for the said purpose, the BDA shall take assistance of the Odisha Forest Development Corporation and the expertise available with them. It is stated that a special area would be carved out of IDCO area at the bottom of the hill so that the vegetation is not damaged or affected in any manner. It is also stated that the development of parking space down the hill area would be carried out over IDCO land where there is no tree growth so as to discourage plying of vehicles to the hill top which may cause loss to the localized eco-system. There is a categorical averment that the area would be made encroachment free

and the Bhubaneswar Development Authority restricts not to allow undertaking picnic and feasting at the hill top.

42. We therefore direct that the BDA shall not in any manner extend its activities beyond the area specifically required for purposes of development of the Temple and its approach road, and all steps will be taken for plantation of “area specific” naturally occurring trees, plants and shrubs.

43. It is also stated that a proper Solid Waste Management method would be introduced to take care of sanitation of the area.

44. In view of the above proposals put forth by the Bhubaneswar Development Authority (BDA) and considering that even as of today, Eco Tourism is taking place to the “Maa Sikharchandi Temple”, and there is an existing road leading to the Temple the same would require development by the BDA. The Development Authority has undertaken that in the process of development of the road and area for purposes of eco tourism, the natural vegetation of the Sikharchandi Hills would not be destroyed rather would be preserved. In our opinion, this can be done also by restricting the pilgrims and tourists from straying into the natural vegetation area while visiting the Temple.

45. We, therefore direct the Bhubaneswar Development Authority to confine its development activities to the Temple and removal of encroachments and ensuring a proper approach road to the “Maa Sikharchandi Temple” ensuring in the process that there is no damage to the natural vegetation around and that pilgrims do not stray into the vegetation area.

46. Mr. Sankar Pani, learned Counsel further submitted that a direction should be issued to the Respondents to consider an alternate site to accommodate a project which requires a maximum of 10 acres.

47. In our opinion, in the light of the observations made above, no such direction is required and the claim of the Applicant is wholly misconceived.

48. Mr. Sankar Prasad Pani further submitted that the site in question is a Debasthali (Sacred Groves). We find there nothing on record to show that there are any groves mentioned as Debasthali and all that is mentioned is that there is Maa Sikharchandi Temple on the Sikharchandi Hill.

49. Mr. Sankar Pani next submitted that the Committee has noted that no permission has been taken from the Forest Department i.e. local Divisional Forest Officer for cutting of trees, as noted by the Committee. However, on going through the Committee Report, we find that there no such observation that there are any trees existing at the site or that any trees have been cut. What is mentioned in the Committee Report is that “no permission for cutting of trees has been taken from the local D.F.O.” This in our opinion only refers to the non-existence of such a permission irrespective of whether trees have been actually cut or not. We are supported in our view by the further findings of the Committee that *a road has been constructed clearing vegetation* and it is also mentioned that the vegetation which is present adjoining the site is shrubby vegetation and not trees.

50. Besides, this observation of the Committee that no permission has been sought from the local D.F.O. is in actually a reference to a letter of the response vide letter of D.F.O., Chandaka Wildlife Division, Bhubaneswar dated 26.06.2023 (page 55 of the paper book) addressed to the Deputy Director General, Government of India, Ministry of Environment, Forests and Climate Change (MoEF&CC), Integrated Regional Office, Bhubaneswar and which mentions that the Kism of the land in question is Non-Forest and is under the control of Revenue & Disaster Management.

Therefore, merely because the Committee has noted that no permission has been sought from the D.F.O., does not imply that permission was required and that the trees have also been cut without permission.

51. The Bhubaneswar Development Authority (BDA) in para 6 of its affidavit dated 27.07.2023 has outlined the proposals and plans for development of the Sikharchandi Hill which have already been referred to extracted, and therefore a direction is given to the BDA to confine its activities in respect of the items mentioned from (i) to (vi) in para 6 of its affidavit only without causing any collateral damage to the local vegetation of the Sikharchandi Hills.

52. Further direction is issued that WATCO shall confine its activities with regard to construction of Water Tank only to the Ac. 3.00 acres of land.

53. It is further directed that the BDA in consultation with the Odisha Forest Department Corporation shall ensure adequate plantation of trees, if necessary, in addition to the 18000 trees

proposed to be planted by 10.10.2023 and also carry out plantation of trees and shrubs and plants which are native to the Sikharchandi Hills.

54. With the aforesaid directions, the Original Application No.65/2023/EZ is disposed of.

55. Interim order granted by the Tribunal on 12.06.2023 is hereby vacated.

56. I.As, if any, stand disposed of accordingly.

57. There shall be no order as to costs.

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B. AMIT STHALEKAR, JM

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DR. ARUN KUMAR VERMA, EM

Kolkata,
20th October, 2023,
Original Application No.65/2023/EZ
(I.A. No.43/2023/EZ & I.A. No.57/2023/EZ)
SKB

NGT