

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

Execution Application No.02/2023/EZ
(I.A. No.59/2023/EZ)
In
Original Application No.26/2021/EZ

In the Matter of:

Srikanta Kumar Pakal,
S/o Sindhubas Pakal,
Aged about 40 years,
R/o QR. NO.25/1, OTM Colony,
Choudwar, Cuttack,
Pin – 754025,

...Applicant(s)

Versus

District Collector, Cuttack,
At/PO/District-Cuttack, Odisha,

...Respondent(s)

Date of hearing: 18.10.2023

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

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

For Respondent(s) : Mr. Janmejaya Katikia, AGA for State, (in Virtual Mode)

ORDER

1. Mr. Sankar Prasad Pani, learned Counsel is present (in Virtual Mode) for the Applicant.
2. Compliance affidavit dated 16.10.2023 has been filed by the Collector & District Magistrate, Cuttack; the same is taken on record.
3. In the affidavit, it is stated that the notice in Form-3 has been issued to Sudhakar Nayak, (Respondent No.9 in O.A. No.26/2021/EZ), under the provisions of the Odisha Public Demands Recovery Act, 1962, in Certificate Case No.01/CC dated

13.10.2023 and the matter is pending before the Collector. Relevant document to that effect has been filed as Annexure-A (colly) to the affidavit.

4. In view of above, we accordingly dispose of the Execution Application No.02/2023/EZ.
5. Mr. Janmejaya Katikia, learned Additional Government Advocate appearing (in Virtual Mode) for District Collector, Cuttack, shall provide e-copy/soft copy of the compliance affidavit dated 18.10.2023 to Mr. Sankar Prasad Pani, learned Counsel for the Applicant.

6. **I.A. No.59/2023/EZ:-**

1. This I.A. has been filed by Sri Sudhakar Nayak (Respondent No.9 in O.A. No.26/2021/EZ), in Execution Application No.02/2023/EZ.

2. The Tribunal had disposed of the Original Application No.26/2021/EZ vide its order dated 03.03.2022 and in para 25 a direction was issued to the Respondent No.9 therein (Applicant in the present I.A. i.e., Sri Sudhakar Nayak) to pay Rs.38,28,125/- (Rupees Thirty Eight Lakhs Twenty Eight Thousand One Hundred and Twenty Five only) within a period of three months from the date of certified copy of the order/judgment, failing which the same shall be recovered from him by the Collector & District Magistrate, Cuttack, in accordance with law.

3. Challenging the said order of 03.03.2022, Sri Sudhakar Nayak, Applicant in I.A., filed a SLP being Civil Appeal No.4656/2022 (*Sudhakar Nayak Vs. Srikanta Kumar Pakial & Ors.*)

before the Hon'ble Supreme Court and the said SLP was dismissed by the Hon'ble Supreme Court by its order dated 21.07.2022.

4. The order of the Hon'ble Supreme Court dated 21.07.2022 reads as under:-

"1. We find no error in the order of the National Green Tribunal dated 3 March 2022 in Original Application No.26/2021/EZ.

2. The appeal is accordingly dismissed.

3. Pending application, if any, stands dispose of."

5. Thereafter, the said Sri Sudhakar Nayak filed M.A. No.45/2022/EZ for recall of the order dated 03.03.2022. This M.A. No.45/2022/EZ was dismissed by the Tribunal by order dated 16.12.2022. The said order reads as under:-

"5. In this view of the matter, we do not find any good ground for recall of the order dated 03.03.2022 which has attained finality from the Hon'ble Supreme Court and the M.A. No.45/2022/EZ is wholly misconceived and accordingly dismissed."

6. The present execution proceedings were filed for execution of the directions given by the Tribunal in the Original Application No.26/2021/EZ.

7. In the present I.A., the Applicant, Sri Sudhakar Nayak, is praying that he be impleaded in the present proceedings. He has also raised various pleas that Mines and Minerals (Development and Regulation) Act, 1957, the Orissa Minor Mineral Concession Rules, 2016, and the Orissa Minerals (Prevention of Theft, Smuggling & Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007, do not find mention in Schedule-I of the National Green Tribunal Act, 2010 and, therefore,

this Tribunal lacks jurisdiction to entertain the Original Application No.26/2021/EZ which resulted in the judgment and order dated 03.03.2022.

8. Mr. Anand Chandra Swain, learned Counsel appearing (in Virtual Mode) for Sri Sudhakar Nayak, the Applicant in I.A., submits that the proceedings before the Tribunal were without jurisdiction as the Tribunal has no jurisdiction over Acts not mentioned in Schedule-I of the Act, 2010, and the question of jurisdiction goes to the root of the matter and, therefore, the I.A. No.59/2023/EZ is maintainable.

9. At this stage, we may refer to the definition of ‘Environment’ as given in Section 2(1)(c) of the National Green Tribunal, Act, 2010, which reads as under:-

“2. Definition-(1)
.....xxx.....xxx.....xxx.....
(c) “environment” includes water, air and land and the inter-relationship, which exists among and between water, air and land and human being, other living creatures, plants, micro-organism and property;”

10. Allegations of illegal mining and issues relating to damage, degradation and destruction of riverine ecology are all matters which fall within the jurisdiction of the National Green Tribunal. Section 14 of the Act, 2010, defines the jurisdiction of the Tribunal to settle disputes. In Section 14(1) of the Act, 2010, though it is stated that such jurisdiction is with regard to the questions arising out of the implementation of the enactments specified in Schedule-I. Section 14 (1) of the Act, 2010, reads as under:-

“14. Tribunal to settle disputes-(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question

relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.”

11. We are satisfied that cases relating to damage, destruction and degradation of riverine ecology due to illegal sand mining is a matter that falls exclusively within the jurisdiction of the National Green Tribunal under the definition of ‘environment’ as given in Section 2 (1)(c) of the Act, 2010.

12. The Hon’ble Supreme Court in (2012) 4 SCC 629; (Deepak Kumar & Ors. Vs. State of Haryana & Ors.), in para 25 of the judgment has held as under:-

“25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream’s physical habitat characteristics.”

13. In our opinion, the issue of illegal and indiscriminate sand mining in violation of the Sustainable Sand Mining Guidelines, 2016, and the Enforcement and Monitoring Guidelines for Sand Mining, 2020, is clearly an environmental issue under the Environment (Protection) Act, 1986, and is maintainable before the National Green Tribunal. By way of the present I.A., the Applicant is only trying to re-open the Original Application No.26/2021/EZ and the same is wholly misconceived.

14. We find that the Applicant had filed his counter-affidavit in the Original Application No.26/2021/EZ which had duly been considered and thereafter the order dated 03.03.2022 was passed. Thereafter a Civil Appeal was filed by Sri Sudhakar Nayak before the Hon'ble Supreme Court challenging the order of the Tribunal dated 03.03.2022 which has also been dismissed on 21.07.2022.

15. In this view of the matter, we are of the view that the Applicant in the present I.A., Sri Sudhakar Nayak, has no locus for impleadment in the present execution proceedings and the matter before us is for implementation of the directions of the Tribunal by the competent authority.

16. In view of above, the I.A. No.59/2023/EZ is accordingly rejected.

7. There shall be no order as to cost

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

October 18, 2023,
Execution Application No.02/2023/EZ
(I.A. No.59/2023/EZ)
In
Original Application No.26/2021/EZ
AK