

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

Original Application No.117/2022/EZ

IN THE MATTER OF:

LOKANATH UPADHYAY,
Son of Biswanath Upadhyay,
Of Shasan Kandagaradi, Mukundapur,
Kandagaridi, Baleshwar,
Odisha-756042

.....Applicant(s)

Versus

- 1. UNION OF INDIA,**
Service through Secretary,
Ministry of Environment, Forest and Climate Change
Government of India, having its Office at Indira Paryavaran
Bhawan, Jor Bagh Road, New Delhi-110003,
- 2. THE STATE OF ODISHA,**
Service through Additional Chief Secretary,
Forest, Environment and Climate Change Department,
Government of Odisha, having its office at Kharavel Bhavan,
Bhubaneswar, Odisha
- 3. THE CHAIRMAN,**
Odisha State Pollution Control Board,
Government of Odisha, having its office at
Parivesh Bhavan, A/118, Nilakantha Nagar,
Unit-VIII, Bhubaneswar-751012,
- 4. MEMBER SECRETARY,**
Odisha State Pollution Control Board,
Having its office at paribesh Bhavan, A/118,
Nilakantha Nagar, Unit-VIII,
Bhubaneswar-751012,
- 5. THE DISTRICT MAGISTRATE,**
Balasore, having his office at Kacheri Road,
Vivekananda Marg, Manikhamb, Balasore,
Odisha-756001,
- 6. THE DIVISIONAL FOREST OFFICER,**
Balasore Wildlife Division, having his office at kuruda, Baleshwar,
Odisha-756056,
- 7. THE REGIONAL CHIEF CONSERVATOR OF FOREST,**
Bhanjpur, Baripada Circle,
Mayurbhanj, Odisha-757002,

8. THE TAHASILDAR NILGIRI,

P.S.-Nilgiri, District-Balasore, Odisha-756040,

9. KRUPASINDHU MOHANTY

(Biju Mohanty), son of Late Shyamasundar Mohanty,
Resident of Mukundapur,
Kandagaradi, Nilgiri, Balasore-756042,

.....Respondent(s)

Date of hearing: 13.04.2023

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

For Applicant(s) : None

For Respondent(s) : Mr. Tarun Patnaik, ASC for R-2,5,6,7 & 8 (in Virtual Mode),
Mr. Sankar Prasad Pani, Adv. for R-9 (in Virtual Mode),

ORDER

1. No one is present for the Applicant.
2. Mr. Sankar Prasad Pani, learned Counsel appearing (in Virtual Mode) has filed Vakalatnama on behalf of the Respondent No.9; Private Respondent.
3. The allegation in this Original Application is that about 79-80 trees have been cut-down at Baba Bisweswar Mahadev Bijesthal, situated in Khatian No. 731, Kandagaradi, under Mouza-Kandagaradi Gram Panchayat, P.S.- Niligiri, P.O.-Kandagaradi, Via-Bahanaga, District-Balasore. These trees comprise of Acacia, Neem, Mahaneem, Eucalyptus, Gambhari, Saguean (Teak Wood) species etc. It is stated that these trees have been cut-down for construction of a 'Ceremonial Hall'.
4. Reliance has been placed on the letter of the Revenue Inspector, Santaragadia, dated 24.05.2022 (page no. 29 of the paper book), addressed to the Tahasildar-Nilgiri, District-Balasore, stating therein that about 79 Aakashia trees have been cut-down at Plot No.578 near Biseswar Temple and have been stored inside the

boundary of Shree Krupasindhu Mohanty, (Respondent No.9 herein).

5. It is also stated that the trees in question would constitute a 'Forest' and no permission has been taken in this regard from the Central Government as required under Section 2 of the Forest (Conservation) Act, 1980, as well as from the State Government under the Orissa Preservation of Private Forests Rules, 1963.
6. Affidavit dated 09.11.2022 has been filed on behalf of Respondent No.5 i.e., Collector and District Magistrate, Balasore, wherein it is stated that the Respondent No.9 cut the trees on 23.05.2022 standing over Khata No.730, Plot No.577, for which permission had never been applied for and, in fact, permission had been sought in respect of Khata No.731, Plot No.578 but the trees were felled even before any order could be passed on the application seeking such permission. It is stated that the Revenue Inspector, Santargadia conducted a field inspection and stated that 79 acacia trees had been cut from the Plot No.577 having Kisam Patharbani and the same were seized and given Zimanama on 24.05.2022. It is also stated that U.D. Case No.03K of 2022-23 has been initiated by the Forest Range Officer, Kuldiha Wildlife Range, against the Respondent No.9.
7. The Tribunal noted that this affidavit does not disclose as to how 79 trees were cut down on Plot No.577 for which several labourers must have been engaged and none of the Revenue Officials discovered these facts till all the 79 trees had been cut down and carried away by the Respondent No.9. This affidavit also does not disclose the total value of the trees cut down and what steps have been taken for recovery of the same from the Respondent No.9.

8. Accordingly, the Counsel for the State Respondents was directed to file a fresh affidavit of the Divisional Forest Officer, Balasore Wildlife Division, Respondent No.6, disclosing the total value of the trees cut down; what action has been taken for recovery of the value of the trees from the Respondent No.9; and what action is proposed for replacement of the trees through the process of afforestation.
9. The Divisional Forest Officer, Balasore, was also directed to determine the Environmental Compensation in addition to the penalty and the monetary value of the trees which have been cut down which has to be recovered from the Respondent No.9 including the cost of afforestation.
10. The Tribunal also noted that the affidavit of the State Respondents dated 09.11.2022 also does not disclose as to who was the officer of the State responsible for carrying out of regular inspections and as to how it escaped the notice of this officer that 79 trees had been cut down and carted away by the Respondent No.9, but no action was taken by the officer to prevent the illegal cutting of the trees.
11. The State Respondents were also directed to disclose the name of the officer due to whose lapse 79 trees were allowed to be cut and who has thus connived with the Respondent No.9 to carry away the logs to the premises of the Respondent No.9 and what disciplinary action has been taken against the officer concerned.
12. Affidavit dated 12.12.2022 has been filed by the Respondent No.6, Divisional Forest Officer, Balasore Wildlife Division, stating therein that on 05.06.2022 the Range Officer, Kuldiha Wildlife Range, after getting information from the villagers of Kandagaradi and Iswarpur Gram Panchayat regarding illegal felling of trees over Plot No. 577,

Khata No. 730, having Kissam-Patharbani, under the ownership of Abad Ajogya Anabadi (AJA) in Tahasil-Nilgiri near Bisweswar Mahadev Temple, had visited the spot in the presence of concerned Forest Officials and it was ascertained by him that 45 acacia trees had been felled by some unknown person/persons. However, this affidavit also states that the Revenue Inspector, Santaragadia seized 79 acacia logs on 24.05.2022 i.e., the outturn of above 45 acacia trees and kept the same in the custody of the Respondent No.9 on Zimanama.

13. It is also stated that U.D. Case No. 03K of 2022-23 under Orissa Timber & Other Forest Produce Transit Rules, 1980, was initiated on 05.06.2022 and 79 acacia logs (59 round logs and 120 poles) were seized and a seizure memo was prepared. It is also stated that investigation was undertaken by the Range Officer, Kuldiha Wildlife Range and a preliminary enquiry was also carried out by the Forester, Panchalingeswar Section, Kuldiha Wildlife Range, and it transpired in the preliminary inquiry that person/persons involved in such felling of trees could not be traced.
14. In the affidavit, it is also stated that a further enquiry was conducted by the Range Officer, Kuldiha Wildlife Range, Nilgiri, in relation to the U.D. Case No. 03K of Kuldiha Wildlife Range, Nilgiri under Sub-rule (2) of Rule (4) of the Orissa Forest (Detection, Enquiry & Disposal of Forest Offences) Rules, 1980, and during enquiry it emerged that 45 acacia trees were cut-down by some unknown persons for construction of Kalyan Mandap.
15. However, the joint verification revealed that trees had been felled on Plot No. 577, Khata No. 730 and came to light for the first time when a complaint dated 03.06.2022 was filed by one Jaydev Behera

and others of Kandagaradi and Iswarpur Gram Panchayat in the Office of the Divisional Forest Officer.

16. It is further stated in the affidavit that the Divisional Manager, Odisha Forest Development Corporation Limited, Baripada (Commercial) Division, Baripada, has computed the total value of seized produce i.e., 79 logs, @ Rs. 6283/- (Rupees Six Thousand Two Hundred and Eighty Three only).
17. Further affidavit dated 17.01.2023 has been filed by the Respondent No.5., Collector & District Magistrate, Balasore, stating therein that 45 acacia trees over Plot No. 577 which is Kissam Patharbani under Khata No. 731 of Mouza-Kandagaradi, Santaragadia R.I. Circle in Nilgiri Tahasil, were cut-down by unknown person/persons using machines. It is also stated that 79 logs of acacia trees were seized by Revenue Inspector, Santaragadia and Zimanama was given to the Respondent No.9 for keeping the same.

It could not be ascertained as to whether the Respondent No.9 was the person who had cut-down 45 acacia trees even though the 79 logs were found in the house of Respondent No.9 which was not near the Plot No. 577 and ultimately the custody of acacia logs was handed over to the Forest Guard, Santaragadia.
18. It is also stated that, *prima-facie*, no material has been found by the Divisional Forest Officer against the concerned Revenue Inspector showing any latches on his part since it was he who reported the incident of felling of 45 trees to his superior officer, the Tahasildar- Nilgiri immediately.
19. The Respondent No.9, Private Respondent, has filed affidavit dated 12.04.2023, and his case is that the land in question is not forest

land but 'Patharbani' and acacia species of plant has been exempted under the Orissa Timber and Other Forest Produce Transit Rules, 1980, from the purview of permit as per the Schedule-III and Rule 5(1) J of the Rules, 1980, and, therefore, felling of these trees does not constitute any offence.

20. Rule 4 of the Orissa Timber and Other Forest Produce Transit Rules, 1980, (hereinafter referred to as 'Transit Rules, 1980') requires that forest produce in transit by land, rail or water, shall be covered by a permit known as 'Transit Permit' to be issued by the Divisional Forest Officer or by the Assistant Conservator of Forests authorized by him in that behalf. Rule 4 of the Transit Rules, 1980 reads as under:-

"4. Transit permit - *Except as provided in Rule 5, all forest produce in transit by land, rail or water shall be covered by a permit hereinafter called the "Transit Permit" to be issued free of cost by the Divisional Forest Officer or by the Assistant Conservator of Forests, authorized by him in that behalf:*

Provided that the Range Officer or a Forester when duly authorized in that behalf by the Divisional Forest Officer may issue transit permit in cases where no verification at the stump site is necessary:

Provided further that in respect of a minor forest produce collected by the Orissa State Tribal Development Co-operative Corporation Ltd., a Branch Manager or a Divisional Manager and in respect of tassar cocoon collected by the State Tassar Co-operative Society Ltd., Orissa, the Assistant Director of Sericulture can issue transit permits:"

21. Rule 5 of the Transit Rules, 1980, provides that no Transit Permit shall be required to cover transit of forest produce in the cases mentioned therein. Rule 5 of the Transit Rules, 1980, reads as under:-

“5. Cases in which permit shall not be required - (1) No transit permit shall be required to cover transit of forest produce in the following cases, namely:

- (a) for the transit from the contract area of forest produce purchased by the Forest Contractors whose contracts are governed by the Orissa Forest Contract Rules and duly covered by a coupe permit;
- (b) for the transit of forest produce whose removal is covered by Forest Department permits;
- (c) for the transit of minerals leased out under the Mineral Concession Rules;
- (d) for the transport of 1 [Bamboo] timber and fire-wood bearing Orissa Forest Departments hammer mark where removal is covered by depot permit;
- (e) for removal of forest produce other than timber, bamboos and minerals of any description required by transits, having recognized rights under any law in force for their bona fide domestic use but not for trade or barter subject to the condition that Tribals can transport or possess up to fifty Kgs. of tamarind and ten bundles of hill brooms without transit permit;
- (f) for timbers not grown in India;
- (g) for timber that is cut or fashioned otherwise than is usually done before timber is removed from the forests or the saw mills and saw pits;
- (h) for fire-wood not exceeding one head load;
- (i) for transport of minor forest produce within the district except lac, tassar, myrabolans, gums and resin, root or patalagaruda, sal seed, tamarind and hill brooms, subject to such limit of transport and storage without transit permit as may be notified by State Government in the Official Gazette for different items;

(2) When any forest produce removed by permits referred to in Clauses (a) (b) and (d) of Sub-rule (1), are unloaded at their destinations, they cannot be transported under the authority of the said permits unless transit permits are obtained under Rule 4.”

22. The contention of the Respondent No.9 is that the Transit Rules, 1980, does not apply to acacia trees.
23. In the present case, what we find is that inquiry carried out by the Revenue Inspector, Sangaragadia, as well as the Divisional Forest Officer, Balasore, confirm that 45 acacia trees were cut and converted into 79 logs and the same were kept in the house of Krupasindhu Mohanty, Respondent No.9, from where they were seized by the Revenue Inspector, Santaragadia and Zimanama was given to the Respondent No.9.
24. The contention of the Respondent No.9 is that the land in question is not notified as Private Forest and, therefore, the Orissa Preservation of Private Forests Rules, 1963, is not applicable in the present case.
25. Be that as it may, the fact remains that 79 logs of acacia being the outturn of 45 acacia trees were recovered from the house of the Respondent No.9, Krupasindhu Mohanty, and thereafter seized by the Revenue Inspector, Santaragadia. The land i.e., Plot No.577, Khata No.730 in Mouza-Kandagaradi under Nilgiri Tahasil, is recorded as Patharbani. This is Government land and, therefore, the trees standing on the said plot were the property of the Government. Whether land is declared as a Forest land (revenue or otherwise) is completely immaterial for purposes of the present case. The Hon'ble Supreme Court in (1997) 2 SCC 267 (*T.N. Godavarman Thirumulpad vs. Union of India & Ors.*) has held that the meaning of the word 'forest' shall be the same as given in the dictionary and, therefore, it cannot be said that 45 acacia trees standing on Plot No. 577 under Khata No.730 did not constitute 'forest'. The land being Government land, permission for felling of

the trees was required from the Divisional Forest Officer, Balasore or the Assistant Conservator of Forest or the Range Officer or the Forester duly authorized by the Divisional Forest Officer as per Rule 4 of the Transit Rules, 1980, already reproduced hereinabove.

26. It is also immaterial whether acacia trees are covered by the Transit Rules, 1980, or not. Form-III of the Transit Rules, 1980, do not contain any provisions excepting acacia trees from the application of Transit Rules, 1980. 45 acacia trees standing on Government land would, in terms of the definition of 'forest' as held by the Hon'ble Supreme Court in *T.N. Godaverman Thirumulpad* (Supra), constitute forest produce.

27. The fact that the 79 logs comprising the outturn of 45 acacia trees were found from the house of the Respondent No.9, Krupasindhu Mohanty, without any proper permit in this regard, would constitute an offence under Section 8-A of the Transit Rules, 1980, as introduced by the amendment of 1st July, 2006, which provides that the Divisional Forest Officer, may from time to time notify the places other than rail heads, river banks, saw mills and factory premises, wherefrom owners having depots of timber and firewood billets bearing Forest Department hammer mark and bamboo, may remove such material by using depot permits issued previously by or with the permission of the Divisional Forest Officer. Section 8-A reads as under:-

“[8-A. Depot permit - The Divisional Forest Officer may from time to time notify the places other than rail heads, river banks, saw mills and factory premises, wherefrom owners having depots of timber and firewood billets bearing Forest Department hammer mark and bamboo, may remove such material by using depot permits issued previously by or with the permission of the Divisional Forest Officer.]”

28. Section 21 of the Notification 2006 further amends the Transit Rules, 1980, and provides that whoever contravenes any of the provisions of these rules shall be punished with imprisonment of a term which may extend to five years and with fine which may extend to five thousand rupees. Section 21 reads as under:-

***“[21. Penalties** - Whoever contravenes any of the provisions of these rules shall be punished with imprisonment of a term which may extend to five years and with fine which may extend to five thousand rupees:*

Provided that where offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority or where the offender has been previously convicted for a like offence, the offender shall be inflicted punishment with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten thousand rupees].”

29. We also find that though the Divisional Manager, Orissa Forest Development Corporation Limited, Baripada (C) Division, has computed the market value of the felled acacia trees @ Rs. 6283/- (Rupees Six Thousand Two Hundred and Eighty Three only), this constitutes only the value of the timber and not the Net Present Value, which would constitute the loss caused to the environment as a result of felling of trees.

30. It has been sought to be argued on behalf of the Respondent No.9 that the value of the trees is negligible.

31. We are not in agreement with the submissions of the Respondent No.9. Trees not only produce oxygen but absorb carbon-dioxide from air and also store carbon, the same thus reducing the carbon footprints in the atmosphere and, therefore, the loss caused to the environment as a result of felling of trees needs to be computed.

32. We, therefore, dispose of this Original Application with a direction to the State Respondents, Government of Odisha, to take appropriate criminal action against the Respondent No.9 under the Transit Rules, 1980, by lodging FIR.
33. The Divisional Forest Officer, Balasore Wildlife Division, shall also determine the Environmental Compensation i.e., the Net Present Value of the trees, and same may be recovered from the Respondent No.9 after giving him an opportunity of being heard.
34. The Environmental Compensation so recovered shall be utilized toward Compensatory Afforestation as well as restoring the Plot No.577, Khata No. 730 of the trees denuded therefrom.
35. I.As. if any, stands disposed of accordingly.
36. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Dr. Afroz Ahmad, EM

April 13, 2023,
Original Application No.117/2022/EZ
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NGT