

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)**

Original Application No.114/2022/EZ

Sirin Tammana & Ors.

Applicant(s)

Versus

State of Odisha & Ors.

Respondent(s)

Date of hearing: 01.09.2022.

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s) : Mr. Biranchi Narayan Mahapatra, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Prasenjeet Mohapatra, ASC for R-1,2,4 & 5 (in Virtual Mode),
Ms. Papiya Banerjee Bihani, Advocate for R-3

ORDER

1. Mr. Biranchi Narayan Mahapatra, learned Counsel is present (in Virtual Mode) for the Applicant.
2. This Original Application has been filed by the Applicant with the allegation that the Baula Bandha water body and its embankment relating to the Plot No.100 (Ac. 1.341 Decimal), 100/132 (Ac. 0.020 Decimal), 101 (Ac. 3.426 Decimal), 101/166 (Ac. 0.180 Decimal), 102 (Ac. 0.842 Decimal) which is recorded as Jalasaya-ii and its embankment measuring area AC. 3.001 Decimal out of total area measuring Ac. 5.809 Decimal of Khata No.27 at Kalapuri Mouza (Panda Colony, near Engineering School) under Berhampur Tahasil of Ganjam District of Odisha, has been illegally encroached by various persons and constructions have been made thereon, thereby almost destroying the waterbody.
3. The learned Counsel for the Applicant submits that encroachment of waterbody has been seriously viewed by the Hon'ble Supreme Court of India. In *(2001) 6 SCC 496 Hinch Lal Tiwari Vs. Kamala Devi & Others* the State has been directed to ensure that no

waterbody is allowed to be encroached and if there are encroachments over the waterbody, the same have to be removed.

The relevant extract of the judgment reads as under:-

“It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature’s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is failing in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and

maintain the same as a recreational spot which will undoubtedly be in the interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride."

4. In (2018) 13 SCC 390, National Institute of Medical Science University Rajasthan & Anr. Vs. State of Rajasthan & Ors., the Hon'ble Supreme Court has approved the view taken by the Court in Jagpal Singh (supra). Paragraphs 40, 41 and 42 of the judgment read as under:-

"40. In M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and Ors.¹ this Court directed enforcement of the rule of law by demolition of unauthorized constructions. It was held as follows:

"The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion the wherever it is required to be exercised has to be in accordance with law and

¹(1999) 6 SCC 464

set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.”

41. This view was followed and endorsed in Jagpal Singh in the following words:

“In M.I. Builders (P) Ltd. v. Radhey Shyam Sahu the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores.

In Friends Colony Development Committee v. State of Orissa² this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

In many States government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

42. Keeping in mind the view expressed by this Court in these and other decisions, we also direct the demolition of the unauthorized construction by or on behalf of NIMS on Khasra No. 526. The demolition should be carried out by the Jaipur Development Authority with the assistance of the State

² (2004) 8 SCC 733

Government and the Collector of Jaipur District on or before 30th November, 2017. The Director General of Police of Rajasthan is directed to render all necessary assistance in the process of demolition. The cost of demolition and removal of rubble etc. will be at the expense of NIMS. Any pending application made by NIMS for compounding the unauthorized construction or regularizing it stands superseded in view of our decision.”

5. It is stated that the Applicant sought information under Right to Information (RTI) Act in pursuance to which a list of encroachers has been provided to him from the office of Tahasildar, Berhampur (Bramhapur), District - Ganjam, translated copy of which has been filed as Annexure-A/1 series at page 27 to 34.
6. In our opinion, matter requires consideration.
7. Issue notice to the Respondents, returnable within three weeks.
8. Mr. Prasenjeet Mohapatra, learned Additional Standing Counsel appearing in Virtual Mode, accepts notice on behalf of the Respondent Nos.1, 2, 4 and 5, State Respondents, Govt. of Odisha.
9. Ms. Papiya Banerjee Bihani, learned Counsel who is present in the Court, is directed to accept notice on behalf of Respondent No.3, Odisha State Pollution Control Board.
10. All the Respondents shall file their counter-affidavits within three weeks.
11. So far as State Respondents are concerned, we direct the Respondent No.5, Collector-cum-District Magistrate, Ganjam to file his personal affidavit within three weeks.
12. Mr. Biranchi Narayan Mahapatra, learned Counsel for the Applicant, shall serve e-copy/soft copy of the Original Application along with all its annexures upon Mr. Prasenjeet Mohapatra and

Ms. Papiya Banerjee Bihani, learned Counsel for the Respondents,
today itself.

13. **List on 26.09.2022.**

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B. Amit Sthalekar, JM

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Saibal Dasgupta, EM

September 01, 2022,
Original Application No.114/2022/EZ
SKB