

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

**M.A. NO.17/2022/EZ
(I.A. NO. 22/2023/EZ)
IN**

ORIGINAL APPLICATION NO.85/2019/EZ

IN THE MATTER OF:

**Tribunal on its Own Motion,
Re. Dwaipayan Sengupta,**
S/o late Prem Ranjan Sengupta,
Having address of service of all notices
At 155F, Swinhoe Lane, 2nd Floor,
Kolkata -700042,

.... Applicant(s)

Versus

- 1. The Union of India,**
Through the Secretary,
Ministry of Environment, Forests and Climate Change
Indira Paryavaran Bhawan, Jorbag Road,
New Delhi-110003,
- 2. The State of West Bengal,**
Through the Chief Secretary, Govt. of West Bengal,
Nabanna, 325, Sarat Chatterjee Road,
Shibpur, Howrah-711102,
- 3. The Principal Secretary,**
Urban Development Department, Govt. of West Bengal
Nagarayan Bhawan, Sector-I, Salt Lake City, Block DF-8,
Bidhannagar, Kolkata-700064,
- 4. The State of West Bengal**
Through the Principal Secretary,
Department of Environment, Govt. of West Bengal,
PraniSampad Bhavan, 5th Floor,
LB-2, Sector-III, Salt Lake,
Kolkata-700098,
- 5. The West Bengal Pollution Control Board,**
Through the Chairman,
Department of Environment, Govt. of West Bengal,
Paribesh Bhawan, 10A, Block-LA, Sector-III,
Bidhannagar, Kolkata-700097,
- 6. The Chairman, Department of Environment, Govt. of West Bengal**
PraniSampad Bhavan, 5th Floor,
LB-2, Sector-III, Salt Lake,
Kolkata-700098,

- 7. The State of West Bengal,**
Through the Principal Secretary,
Public Works Department, Govt. of West Bengal
325, Sarat Chatterjee Road, (8th Floor),
Shibpur, Howrah-711102,
- 8. The Executive Engineer, Public Works Department,
Govt. of West Bengal**
5thCross Road, DF Block,
Sector-I, Salt Lake City,
Kolkata-700064,
- 9. The Executive Engineer,**
Barasat Highway Division No.1, P.W. (Roads) Directorate,
5thCross Road, DF Block, Sector-Salt Lake City,
Kolkata-700064
- 10. South Dum-Dum Municipality,**
Through the Chairperson,
Nagerbazar, Dum-Dum Road,
Kolkata-700074
- 11. The Commissioner of Police,**
Bidhannagar Police Commissionerate,
Broadway Road, JB-Block, Sector-III, Salt Lake City,
Kolkata-700098
- 12. The Chairman/Managing Director,**
Kolkata Metropolitan Development Authority (Prashasan Bhawan),
Block-BB-1, Salt Lake City, Sector-I,
Kolkata-700064
- 13. The Principal Secretary,**
Irrigation and Waterways Department, Govt. of West Bengal,
Jalasampad Bhawan, 1st Floor Bidhannagar, Salt Lake,
Kolkata-700091
- 14. District Magistrate, 24 Parganas (North),**
New Administrative Building, North 24 Parganas,
Barasat, Pin-700124,

.... Respondent(s)

Date of completion of hearing and reserving of order: 28.03.2023

Date of uploading of order on the Website: 05.04.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

For Applicant(s) : *Suo Motu*,

For Respondent(s) : Mr. Prithwish Basu, Adv. for WBPCB,
Mr. Sibojyoti Chakraborty, Adv. for State of W.B. (in Virtual Mode)
Mr. Srijan Nayak, Advocate a/w Ms. Rituparna
Moitra, Advocate for R-8&9 (in Virtual Mode)
Ms. Paushali Banerjee, Advocate for R-12,

ORDER

1. The M.A. No. 17/2022/EZ filed in Original Application No. 85/2019/EZ is being taken up.
2. The Original Application No. 85/2019/EZ (*Dwaipayan Sengupta Vs. The Union of India & Ors.*) was filed by the Applicant, seeking execution of the direction contained in paragraph 62 (1) and (2) of the judgment of this Tribunal dated 10.07.2017 passed in Original Application No.27/2015/EZ, (*Dwaipayan Sengupta Versus Union of India & Ors.*).
3. The aforesaid Original Application was filed by the Applicant alleging encroachment and filling-up of a water body known as 'Nayanjuli' which extends from Ultadanga to Lake Town crossing on the Southern side of VIP Road covering four wards. It was also alleged therein that the water body was being used as a dumping ground for waste material. The said Original Application was disposed of by the Tribunal with several directions but for purposes of the present application, we are only concerned with the directions in paragraph 62 (1) and (2) of the judgment dated 10.07.2017 which read as under:-

“(1) To restore the existing fragmented water bodies of Nayanjuli between Golaghata and Sreebhumi as indicated in the report of the West Bengal Pollution Control Board which finds corroboration in the affidavit of the Executive Engineer, Barasat Highway Division No.1 in his affidavit referred to above. Since it is the stated case of the Respondents that work on beautification project had been stopped after the order of prohibition dated 21st April, 2015, there should be no impediment in implementing this order.

(2) While carrying out the above task, the “scheme for restoration of flow of water” shall be implemented as per the

drawing prepared by the Expert Committee in its report 07.09.2015 being Annexure A to the affidavit of the Principal Secretary, Public Works Department filed on 09.09.2015, as there appear to exist water channel connecting water bodies marked as MKD.1, 2 and 3 at the Ultadanga end, Golghata and Lake Town respectively. The water channel shall be cleared of all garbage, hydrophytes and sediments. Since there onwards the Nayanjuli is found to exist in its pristine condition, no direction would be necessary except that the South Dum Dum Municipality shall get it free of all garbage, hydrophytes and sedimentation, if not already done.”

4. The Original Application No. 85/2019/EZ was disposed of by the Tribunal vide its judgment and order dated 16.03.2022 with the following directions :-

“19. Considering these facts which are supported by the photographic evidence on record, we dispose of this Original Application No.85/2019/EZ with the following directions:-

- (i) The State Government is directed to clear the water body of all hydrophytes, shrubbery, waste material, sediments through dredging and create an earth work embankments on both sides of the Khal with Biodiversity Park/Tree avenue and a walking path all along with boundary of the water line of the Nayanjuli Khal as a beautification project so as to ensure clean and clear flow of water therein.*
- (ii) We also direct the respondents to ensure regular dredging of the Nayanjuli Khal restoring its original embankment and to ensure that there is no dumping of garbage or construction waste/debris in the Nayanjuli Khal. These directions will be carried out in the entire stretch of the Nayanjuli Khal as shown in the ward no.35, 34, 30 and 29 in the maps.*
- (iii) We also direct that there shall be no encroachment and other construction on the existing water body of Nayanjuli water body in future and if any such encroachment happens it may be dealt with immediately in accordance with law by the concerned authorities so as to keep the Nayanjuli water body free from*

encroachment and as a clean ecologically sound water body.

- (iv) *The West Bengal Pollution Control Board is also directed to periodically monitor the water quality of the Nayanjuli water body to test for TDS, BOD, COD, pH, Fecal Coliform (FC) and Total Coliform (TC) and to ensure that the water quality of the Nayanjuli water body is maintained as per ecologically sound standard.”*

5. An Action Taken Report dated 08.09.2022 has been filed by the Executive Engineer, Barasat Highway Division No.1, P.W. (Roads) Directorate, wherein it is stated that the PWD Department has kept strict vigil over Nayanjuli regarding further encroachment and it is confirmed that no further encroachment has taken place. It is also stated that clearing work of water bodies has to be carried out and monitored by the concerned Municipality/Departments regularly. It is further stated that the Executive Engineer, Barasat Highway Division No.1 has assigned the work for cleaning and removal of water hyacinth including weeds from the water body in question to M/s Dulta Construction, Garfa Main Road, Kolkata, by floating tender against an amount of Rs. 4,74,647/- (Rupees Four Lakhs Seventy Four Thousand Six Hundred Forty Seven only) with a request to complete the job within twenty days.
6. The Additional District Magistrate and District Land & Land Reforms Officer, North 24 Parganas, Barasat, has filed affidavit dated 05.11.2022 and particularly with regard to construction of underpass, it is stated that a letter dated 29.09.2022 has been issued by the District Magistrate & Collector, North 24 Parganas to the Principal Secretary, Urban Development and Municipal Affairs Department, Government of West Bengal, addressing the issue with a request to take necessary measures in respect of the directions (i),

(ii), (iii) & (iv) given in the Tribunal's order dated 12.09.2022, already reproduced herein above.

7. Affidavit dated 04.11.2022 has been filed by the West Bengal Pollution Control Board, stating therein that it has collected water samples from the Nayanjuli water body on different dates i.e., on 27.04.2022, 24.05.2022 and 13.06.2022 till the onset of monsoon, copies of the reports have been filed at page nos. 50 to 52 of the paper book, which show high level concentration of Faecal Coliform and Total Coliform. This shows that untreated municipal waste is flowing into the Nayanjuli Khal.

8. The Department of Environment, Government of West Bengal, has filed Status Report on affidavit dated 16.01.2023, wherein it is stated that a Joint Inspection was conducted on the surrounding area of Nayanjuli Khal lying mostly to Mouza-Kankuri, J.L. No. 28, Golaghata, J.L. No. 27 and Ultadanga, J.L. No. 26 under Barrackpore-II Block and stretched out as intermittent water bodies, four in numbers from Dum Dum Park to Dakshindari Bus Stop, on 29.12.2022 by a team of Officials from the Public Works Department, Urban Development and Municipal Affairs Department, Environment Department, South Dum Dum Municipality and District Administration. The findings of the said Inspecting Team quoted in para 3 of the affidavit are reproduced herein below:-

- i) *There is a closed canal started from Dum Dum Park to Bangur. There appears four hutments across the water body over a dyke which is clear encroachment caused by unauthorised filling on the narrow strip of the said water body. There is also found encroachment along the western bank of the canal and garbage is found dumped there beside the embankment, and it needs demarcation to*

ensure the same whether the encroachment or dumping is made within the government land. At the time of enquiry, it appears that a pedestrian plaza, known to be a part of Biodiversity Park to be constructed under supervision of PWD along the embankment of the canal, is being constructed by the PWD. The water of the canal is being cleaned by a couple of labourer engaged by the PWD.

ii) From Bangur to Lake Town crossing, there is another canal where no encroachment is found. Beautification has been done alongside the said water body, however, it needs to be cleaned periodically.

iii) A clear pond is existing known as Debighat between Lake Town crossing and Golaghata. There is cemented 'ghat' constructed on the pond. No visible encroachment is found therein though the water adjacent to the 'ghat' and entry point of Debighat is filled with garbages and plastic which needs to be cleaned immediately.

There is another pond existing near Dakshindari Bus Stop. No visible encroachment is found therein though the water adjacent to the 'ghat' and entry point of Debighat is filled with garbages and plastic which needs to be cleaned immediately."

9. In the affidavit, it is further stated that the Public Works Department (PWD) has intimated that a Detailed Project Report ('DPR' for short) for refurbishment of the Nayanjuli Khal has already been submitted before the Finance Department for approval. It is stated that after inquiry, following actions have been decided:-

A. For point (i) a team would be formed by the ADM & DL&LRO, North 24 Parganas, comprising BL&LRO, Barrackpore-I and other officials of Land Department. This team would demarcate the encroached area occupied with four hutments, on 31.12.2022 and submit report to the PWD who would subsequently take necessary action for eviction. Consequently, PWD in association with the South Dum Dum Municipality, would build up proper fencing/wall as per demarcation to protect the water body permanently. The water of the canal

would be cleaned periodically by South Dum Dum Municipality and the embankment would never be used as 'Dumping zone'. The Municipality would keep strict vigil on this issue. The project for construction of Bio-diversity Park shall be completed as early as possible and all the means for beautification of the area should be adopted. A plan for diversion of water outlet is known to be prepared by the KMDA with the help of South Dum Dum Municipality.

B. The said team, formed with the officials of Land Department, would demarcate all the four waterbodies and surrounding area coming under PWD and put up report within 08.01.2023 who shall subsequently take necessary measures for protection of the water bodies on permanent basis.

C. For point (ii), the water should be cleaned periodically by the Municipality and surrounding area of embankment needs to be cleaned on regular basis.

D. For point (iii) and (iv), the ponds should be kept protected by wall/fencing. No garbage should be dumped in or beside the said ponds. The entry points of the said ponds should be reconstructed and to be kept under strict vigil. An exhaustive planning to execute the same needs to be devised. The municipality is directed to prepare such plan and submit the concerned Department while copy of the same may be sent to the end of the ADM & DL&LRO, North 24 Parganas."

10. In the affidavit, it is further stated that the Public Works Department has reported that temporary cleaning of Nayanjuli and adjacent area, temporary barricading by bamboo fencing, development of Katcha footpath has been undertaken by P.W. (Roads) Directorate along VIP Road from Dum Dum Park to Bangur and further cleaning and maintenance work has also been taken up. It is also stated that once the tender is finalized, work is likely to be completed in 270 days. Para 4 of the affidavit is extracted herein below:-

“4. Public Works Department has reported that temporary cleaning of Nayanjuli and adjacent area, temporary barricading by bamboo fencing, development of katcha footpath has been undertaken by P.W. (Roads) Directorate along VIP Road from Dum Dum Park to Bangur on receipt of the Order of Hon’ble National Green Tribunal, Eastern Bench against O.A.85/2019/EZ dated 16.03.2022, and further cleaning and maintenance work has also been taken up. PWD (Roads) will work under its jurisdiction from Dum Dum Park to Bangur and other part from Bangur to Ultadanga shall be taken up by South Dum Dum Municipality/ KMDA/ BMC. One DPR has been prepared to clear the water body of hydrophytes waste materials, sediments through dredging, creating of earthwork embankment, Bio Diversity Park/Tree Avenue, Walking Path etc. including beautification work.

The project amounting to Rs.9.167 Crore (including electrical works) has been sanctioned vide Memo No.GO22230L1543PD dt.03/0L/2023 of JS(P&C), PWD, Govt. of West Bengal and accordingly NIT has been floated. Once tender is finalized, work is most likely to be completed in 270 days. Meanwhile, steps has been taken for prevention of further encroachment and dumping of garbage falling under the jurisdiction of P.W.(Roads) Directorate. Work of demarcation of Nayanjuli (ROW of VIP Road) is in progress and accordingly action will be taken in compliance of the directions of Hon’ble NGT.”

11. We accordingly direct the Stakeholder Respondents to complete the said work positively by **31.01.2024**.
12. In the affidavit, it is further stated that some portions of the Canal in question have been encroached as reported by the Additional District Magistrate & District Land & Land Reforms Officer, (‘ADM&DL&LRO’ for short), North 24 Pargans, Barasat. Para 5 of the affidavit is extracted herein below:-

“5. That additional District Magistrate& District Land & Land Reforms Officer, North 24 Parganas, Barasat has reported that a team was formed comprising the officers of BL&LRO,BKP-1 and other officers of the Department to demarcate the encroached

area located on the canal in question as well as demarcation of all the four water bodies i.e. i) the one from Dum Dum Park to Bangur, ii) the next one from Bangur to Lake Town Crossing, iii) the one known as DebiGhat and located between Lake Town Crossing and Golaghata and iv) The pond existing near Dakshindari Bus Stop. It is found during the said demarcation work that there is an encroachment of approximately 1600 sq.ft. with some small temporaryhuts over the said Nayanjuli, more specifically over its stretch between Dum Dum Park and Bangur, i.e. water body mentioned above. The matter has been intimated to Public Works Department for taking necessary action for eviction.

The demarcation work of other three water bodies (one from the end of Dum Dum Park to Lake Town, second at Debi Ghat and third was identified at the end point of the map at Ultadanga) has also been done and the said water bodies have been identified in the maps.”

13. Once the encroachments have been identified and others may also be identified during survey, we direct the Stakeholder Respondents to take appropriate steps in accordance with law to remove such encroachments and submits Status Report by **31.01.2024**.
14. It is further stated that the Urban Development & Municipal Affairs Department ('UD&MA Department' for short), has reported that cleaning of hydrophytes, shrubbery, waste materials etc. from water bodies or Nayanjuli Khal (portion from Ultadanga Flyover to Bangur Avenue) will be taken up by South Dum Dum Municipality. The Kolkata Metropolitan Development Authority ('KMDA' for short)/State Urban Development Agency ('SUDA' for short), shall provide IEC activities in the form of poster/banner in order to prevent solid waste disposal to water body/Nayanjuli Khal and supply 200 bins for collection of solid wastes. Para 6 of the affidavit is extracted herein below:-

“6. The Urban Development & Municipal Affairs Department has reported that cleaning of hydrophytes, shrubbery, waste materials etc. from water bodies or Nayanjuli Khal (a portion from Ultadanga Flyover to Bangur Avenue) will be taken up by South Dum Dum Municipality. Kolkata Metropolitan Development Authority / State Urban Development Agency shall provide IEC Activities in the form of poster/banner in order to prevent solid waste disposal to water body/Nayanjuli Khal and supply 200 numbers of bins for collection of solid wastes and South Dum Dum Municipality shall install them on either side of the water bodies of Nayanjuli.”

15. Along with this affidavit, a Spot Verification Report has also been filed as Annexure-R/1, contents of which have already been extracted herein above.
16. Affidavit dated 30.03.2023 has been filed by the ADM&DL&LRO, North 24 Parganas, Barasat, stating therein that after following the demarcation and identification procedure, different segments of P.W.D. Road, eviction notices were issued against the existing encroachments and tender process has already been initiated for carrying out the works as per the directions of the Tribunal following the allotment of funds for the work and the said encroachments have been eradicated and the site has been restored to its original nature.
17. It is also stated that the tender process being No. 40 of 2022-23 has been concluded and letter of acceptance and consequent work order amounting to Rs. 6,57,30,469.00/- (Rupees Six Crore Fifty Seven Lakhs Thirty Thousand Four Hundred Sixty Nine only) has been passed by the Superintending Engineer, Eastern Highway Circle, and time limit for completion of such work has been

stipulated as 270 days with effect from the date of commencement of 09.03.2023.

18. In para 11 of the affidavit, a chart has been given showing progress of work and tentative date of completion which is extracted herein below:-

“That the progress of work and tentative date of completion is as stated below in tabular form:-

<i>Direction</i>	<i>Authorised Department</i>	<i>Progress so far</i>	<i>Tentative time for completion</i>
<i>Primary Clearing (I of order dated 6.03.2022)</i>	<i>PWD</i>	<i>Completed</i>	<i>Not applicable</i>
<i>Demarcation for constructing earth work embankments (i of order dated 16.03.2022)</i>	<i>Land & Land Reforms & Refugee Relief & Rehabilitation</i>	<i>Completed</i>	<i>Not applicable</i>
<i>Creating Social awareness (i of order dated 16.03.2022)</i>	<i>K.M.D.A</i>	<i>Completed</i>	<i>Not applicable</i>
<i>Eviction of unauthorised encroachers (i of order dated 16.03.2022)</i>	<i>PWD</i>	<i>Eviction conducted</i>	<i>Completed</i>
<i>Creation of Biodiversity park (i of order dated 16.03.2022)</i>	<i>PWD & South Dumdum municipality</i>	<i>Work order issued</i>	<i>Stipulated to be completed within 270 days with effect from 09.03.2023. Work has got started.</i>

19. We, therefore, direct the concerned Stakeholder Respondents to complete the said works and file compliance affidavit by **31.01.2024**.
20. With the aforesaid directions, the M.A. No. 17/2022/EZ is accordingly disposed of.
21. **I.A. No.22/2023/EZ:-** This I.A. has been filed by Ms. Shama Parveen, ADM & DL & LRO, North 24 Parganas, Barasat, seeking modification of the order dated 09.12.2022 wherein certain remarks have been made in paras 2 & 3 against her. It is stated that the directions given by the Tribunal were communicated to her only 15.09.2022 by the State Counsel and she has immediately thereafter written letter dated 29.09.2022 communicating the order of the Tribunal to the Principal Secretary, UD&MA Department, Government of West Bengal.
22. Considering these facts, we expunge the observations made by the Tribunal in para 2 & 3 of the order dated 09.12.2022.
23. The I.A. No. 22/2023/EZ is accordingly disposed of.
24. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

.....
Prof. A. Senthil Vel, EM

April 5th, 2023,
M.A. No.17/2022/EZ
(I.A. No.22/2023/EZ)
In
Original Application No.85/2019/EZ
AK